State Affairs Committee

Thursday, February 27, 2020
8:00 AM – 12:00 PM
Morris Hall (17 HOB)

Jose R. Oliva
Speaker

Blaise Ingoglia
Chair

Committee Meeting Notice

HOUSE OF REPRESENTATIVES

State Affairs Committee

Start Date and Time: Thursday, February 27, 2020 08:00 am

End Date and Time: Thursday, February 27, 2020 12:00 pm

Location: Morris Hall (17 HOB)

Duration: 4.00 hrs

Consideration of the following bill(s) with proposed committee substitute(s):

CS/CS/HB 203 Growth Management by Commerce Committee, Local, Federal & Veterans Affairs Subcommittee, McClain
CS/HB 279 Local Government Public Construction Works by Oversight, Transparency & Public Management Subcommittee, Smith, D.
CS/HB 549 Pub. Rec./Site-specific Location Information of Endangered and Threatened Species by Agriculture & Natural Resources Subcommittee, Overdorf
CS/HB 569 Diesel Exhaust Fluid by Transportation & Infrastructure Subcommittee, Overdorf, McClure
CS/HB 687 Services for Veterans and Their Families by Health Care Appropriations Subcommittee, Zika, Hattersley
CS/HB 777 Fish and Wildlife Activities by Agriculture & Natural Resources Subcommittee, Gregory
CS/HB 787 Driver Licenses by Transportation & Infrastructure Subcommittee, Tomkow
CS/HB 789 Driver License Fees by Transportation & Infrastructure Subcommittee, Tomkow
CS/HB 921 Department of Agriculture and Consumer Services by Agriculture & Natural Resources Subcommittee, Brannan
CS/HB 977 Motor Vehicle Dealers by Transportation & Infrastructure Subcommittee, Rommel
CS/HB 1035 Pub. Rec./Records and Information Provided to Specified Entities for Disaster Recovery Assistance by Oversight, Transparency & Public Management Subcommittee, Raschein
CS/HB 1039 Transportation Network Companies by Transportation & Infrastructure Subcommittee, Rommel
CS/HB 1049 Office of the Judges of Compensation Claims by Government Operations & Technology Appropriations Subcommittee, Stone
CS/HB 1061 Aquatic Preserves by Agriculture & Natural Resources Appropriations Subcommittee, Massullo
CS/HB 1091 Environmental Enforcement by Agriculture & Natural Resources Subcommittee, Fine
CS/HB 1181 Florida Disaster Volunteer Leave Act by Oversight, Transparency & Public Management Subcommittee, Maggard
CS/HB 1249 Transfer of Tax Exemption for Veterans by Local, Federal & Veterans Affairs Subcommittee, Sullivan
HB 1455 Division of Library and Information Services by Rodriguez, A. M.

Consideration of the following proposed committee substitute(s):

PCS for CS/CS/HB 395 -- Transportation
PCS for CS/HB 1111 -- Government Accountability
PCS for HB 1343 -- Environmental Resource Management

NOTICE FINALIZED on 02/25/2020 4:11PM by Denson.Tori

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 203 Growth Management
SPONSOR(S): Commerce Committee, Local, Federal & Veterans Affairs Subcommittee, McClain and others
TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 410

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Local, Federal & Veterans Affairs Subcommittee	9 Y, 5 N, As CS	Rivera	Miller
2) Commerce Committee	16 Y, 6 N, As CS	Wright	Hamon
3) State Affairs Committee		Rivera	Williamson

SUMMARY ANALYSIS

In order to manage growth in Florida, certain statutory procedures and requirements have been put in place for state agencies and local governments to follow and enforce.

The bill makes the following changes to growth management regulations:

- Requires a local comprehensive plan to have a property rights element, which requires the local government to consider certain private property rights in its decision-making process. Local governments must adopt this element during their next plan amendment process, or by July 1, 2023.
- Provides that all municipal comprehensive plans effective, rather than adopted, after January 1, 2019, must incorporate development orders existing before the plan's effective date.
- Provides that a developer and the local government are authorized to amend or cancel a development agreement without securing the consent of other parcel owners of property, unless such amendment or cancellation directly modifies the allowable uses or entitlements of an owner's property.
- Prohibits a municipality from annexing an area within another municipality's jurisdiction without the other municipality's consent, unless an interlocal agreement provides for a different process.
- Allows agreements pertaining to existing developments of regional impact that are classified as essentially built out, which agreements were valid on or before April 6, 2018, to be amended including amendments exchanging land uses under certain circumstances.
- Provides that a municipality may not extend new water or sewer services into the unincorporated area of a county, without consent of the county, if the county already provides the same service, on or after July 1, 2020.
- Requires that all utility permit applications for use of the public right-of-way be processed within the timeframes currently applicable only to permit applications submitted by communications services providers.
- Requires the Department of Economic Opportunity to give preference to counties with populations less than 200,000, and their municipalities, when selecting applications to fund technical assistance related to certain determinations pertaining to multi-use corridors, including necessary changes or updates to a local government's comprehensive plan.
- Allows the prevailing party in a challenge to certain local ordinances for local growth policy and land development regulation to seek attorney fees and costs.

The bill may have a minimal, negative fiscal impact on state government, and an indeterminate, negative fiscal impact on local governments.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Local Comprehensive Plans

Background

Private Property Rights

The "Bert Harris Jr., Private Property Rights Protection Act" (Harris Act) entitles private property owners to relief when a specific action of a governmental entity inordinately burdens the owner's existing use, or a vested right to a specific use, of real property.[1] The Harris Act recognizes that the inordinate burden, restriction, or limitation on private property rights as applied may fall short of a taking under the Florida Constitution or the United States Constitution and establishes a separate and distinct cause of action for relief, or payment of compensation, when a new law, rule, or ordinance of the state or a political entity in the state unfairly affects real property.[2] The Harris Act applies generally to state and local governments but not to the U.S. government, federal agencies, or state or local government entities exercising formally delegated federal powers.[3]

In addition to action inordinately burdening a property right, an owner may seek relief when a state or local governmental entity imposes a condition on the proposed use of the real property that amounts to a prohibited exaction.[4] A prohibited exaction occurs when an imposed condition lacks an essential nexus to a legitimate public purpose and is not roughly proportionate to the impacts of the proposed use that the governmental entity seeks to avoid, minimize, or mitigate.[5]

The "Florida Land Use and Environmental Dispute Resolution Act" provides a non-judicial alternative dispute resolution process for a landowner to request relief from a government entity's development order or enforcement action when the order or action allegedly is unreasonable or unfairly burdens the use of the owner's real property.[6] Parties in pending judicial proceedings may agree to use this process if the court approves.[7]

State and Local Comprehensive Plans

Laws protecting private property rights are balanced against the state's need to effectively and efficiently plan, coordinate, and deliver government services amid the state's continued growth and development.[8] The State Comprehensive Plan provides long-range policy guidance for the orderly management of state growth,[9] which must be consistent with the protection of private property rights.[10] Local governments are required to adopt local comprehensive plans to manage the future growth of their communities.[11]

First adopted in 1975[12] and extensively expanded in 1985,[13] Florida's laws on comprehensive land planning were significantly revised in 2011, becoming the Community Planning Act.[14] The Community

[1] S. 70.001(2), F.S.
[2] S. 70.001(1), F.S.
[3] S. 70.001(3)(c), F.S.
[4] S. 70.45(2), F.S.
[5] S. 70.45(1)(c), F.S.
[6] S. 70.51, F.S.
[7] S. 70.51(29), F.S.
[8] *See* s. 186.002(1)(b), F.S.
[9] S. 187.101(1), F.S.
[10] S. 187.101(3), F.S. The plan's goals and policies must also be reasonably applied where they are economically and environmentally feasible and not contrary to the public interest.
[11] S. 163.3167(2), F.S.
[12] *See* ch. 75-257, Laws of Fla.
[13] *See* ch. 85-55, Laws of Fla.
[14] *See* ch. 2011-139, s. 17, Laws of Fla.

Planning Act directs how local governments create and adopt their local comprehensive plans. All governmental entities in the state must recognize and respect judicially acknowledged or constitutionally protected private property rights, exercising their authority without unduly restricting private property rights, leaving property owners free from actions by others that would harm their property or constitute an inordinate burden on property rights under the Harris Act.[15]

Local Comprehensive Plan Elements

Local comprehensive plans must include principles, guidelines, standards, and strategies for orderly and balanced future land development. Plans must reflect community commitments to implement the plan[16] and identify procedures for monitoring, evaluating, and appraising its implementation.[17] Plans may include optional elements,[18] but must include the following nine elements:

- Capital improvements;[19]
- Future land use plan;[20]
- Intergovernmental coordination;[21]
- Conservation;[22]
- Transportation;[23]
- Sanitary sewer, solid waste, drainage, potable water, and aquifer recharge;[24]
- Recreation and open space;[25]
- Housing;[26] and
- Coastal management (for coastal local governments).[27]

Counties and municipalities may employ individual comprehensive plans or joint plans if both entities agree. Alternatively, they may coordinate plans in any combined manner that aligns with their common interests.[28] A county plan controls in a municipality until a municipal comprehensive plan is adopted. New municipalities must adopt a comprehensive plan within three years after the date of incorporation.[29]

Amendments to a Local Comprehensive Plan

Local governments must review and amend their comprehensive plans every seven years to reflect any changes in state requirements.[30] Within a year of any such amendments, local governments must adopt or amend local land use regulations consistent with the amended plan.[31] A local government is not required to review its comprehensive plan before its regular review period unless the law specifically requires otherwise.[32]

Generally, a local government amending its comprehensive plan must follow an expedited state review process.[33] Certain plan amendments, including amendments required to reflect a change in state requirements, must follow the state coordinated review process for the adoption of comprehensive

[15] S. 163.3161(10), F.S.
[16] S. 163.3177(1), F.S.
[17] S. 163.3177(1)(d), F.S.
[18] S. 163.3177(1)(a), F.S.
[19] S. 163.3177(3)(a), F.S. The capital improvements element must be reviewed by the local government on an annual basis.
[20] S. 163.3177(6)(a), F.S.
[21] S. 163.3177(6)(h), F.S.
[22] S. 163.3177(6)(d), F.S.
[23] S. 163.3177(6)(b), F.S.
[24] S. 163.3177(6)(c), F.S.
[25] S. 163.3177(6)(e), F.S.
[26] S. 163.3177(6)(f), F.S.
[27] S. 163.3177(6)(g), F.S.
[28] S. 163.3167(1), F.S.
[29] S. 163.3167(3), F.S.
[30] S. 163.3191, F.S.
[31] S. 163.3203, F.S.
[32] S. 163.3161(12), F.S.
[33] S. 163.3184(3)(a), F.S.

plans.[34] Under the state process, the state land planning agency is responsible for plan review, coordination, and preparing and transmitting comments to the local government.[35] The Department of Economic Opportunity (DEO) is designated as the state land planning agency.[36]

Under the state coordinated review process, local governments must hold a properly noticed public hearing[37] about the proposed amendment before sending it for comment from several reviewing agencies, including DEO, the Department of Environmental Protection, the appropriate regional planning council, and the Department of State.[38] Local governments or government agencies within the state filing a written request with the governing body are also entitled to copies of the amendment.[39] Comments on the amendment must be received within 30 days after DEO receives the proposed plan amendment.[40]

DEO must provide a written report within 60 days of receipt of the proposed amendment if it elects to review the amendment.[41] The report must state the agency's objections, recommendations, and comments with certain specificity, and must be based on written, not oral, comments.[42] Within 180 days of receiving the report from DEO, the local government must review the report and any written comments and hold a second properly noticed public hearing on the adoption of the amendment.[43] Adopted plan amendments must be sent to DEO and any agency or government that provided timely comments within 10 working days after the hearing.[44]

After receiving the adopted amendment and determining it is complete, DEO has 45 days to determine if the adopted plan amendment complies with the law[45] and to issue on its website a notice of intent finding whether or not the amendment is compliant.[46] A compliance review is limited to the findings identified in DEO's original report unless the adopted amendment is substantially different from the reviewed amendment.[47] Unless challenged, a local comprehensive plan amendment takes effect pursuant to the notice of intent.[48] If there is a timely filed challenge, then the plan amendment will not take effect until DEO or the Administration Commission enters a final order determining the adopted amendment complies with the law.[49]

Requirements for Local Land Development Regulations and Comprehensive Plans

Section 163.3202(2), F.S., outlines the minimum provisions that counties and municipalities should include in their local government land development regulations. These provisions include:

- Regulating the subdivision of land;
- Regulating the use of land and water;
- Providing for protection of potable water wellfields;
- Regulating areas subject to seasonal and periodic flooding and provide for drainage and stormwater management;
- Ensuring the protection of environmentally sensitive lands designated in the comprehensive plan;
- Regulating signage;

[34] S. 163.3184(2)(c), F.S.
[35] S. 163.3184(4)(a), F.S.
[36] S. 163.3164(44), F.S.
[37] S. 163.3184(4)(b) and (11)(b)1., F.S.
[38] S. 163.3184(4)(b) and (c), F.S.
[39] S. 163.3184(4)(b), F.S.
[40] S. 163.3184(4)(c), F.S.
[41] S. 163.3184(4)(d)1., F.S.
[42] S. 163.3184(4)(d)1., F.S. All written communication the agency received or generated regarding a proposed amendment must be identified with enough information to allow for copies of documents to be requested. S. 163.3184(4)(d)2., F.S.
[43] S. 163.3184(4)(e)1. and (11)(b)2., F.S. If the hearing is not held within 180 days of receipt of the report, the amendment is deemed withdrawn absent an agreement and notice to DEO and all affected persons that provided comments. S. 163.3184(4)(e)1., F.S.
[44] S. 163.3184(4)(e)2., F.S.
[45] S. 163.3184(4)(e)3. and 4., F.S.
[46] S. 163.3184(4)(e)4., F.S.
[47] *Id*.
[48] S. 163.3184(4)(e)5., F.S.
[49] *Id*.

- Addressing concurrency;
- Ensuring safe and convenient onsite traffic flow; and
- Maintaining the existing density of residential properties or recreational vehicle parks.

Local comprehensive plans adopted after January 1, 2019, and all land development regulations adopted to implement the plan, must incorporate development orders existing before the comprehensive plan's effective date. The plan may not impair a party's ability to complete development in accordance with the development order and must vest the density[50] and intensity[51] approved by the development order without any limitations or modifications. Land development regulations must incorporate preexisting development orders.[52]

Effect of Proposed Changes

The bill requires local governments to include a property rights element in their comprehensive plans at their next proposed plan amendment or by July 1, 2023, whichever comes first. The bill provides that a local government may develop its own property rights language if such language does not conflict with the model statement of rights. The model statement of rights requires the local government to consider the following four elements in local decision-making:

- Physical possession and control of the property owner's interests in the property, including easements, leases, or mineral rights;
- Use, maintenance, development, and improvement of the property for personal use or the use of any other person, subject to state law and local ordinances;
- Privacy and exclusion of others from the property to protect the owner's possessions and property; and
- Disposal of the property owner's property through sale or gift.

The bill provides that all local comprehensive plans effective, rather than adopted, after January 1, 2019, and all land development regulations adopted to implement the plan, must incorporate development orders existing before the plan's effective date.

Local Government Development Agreements

Background

Local governments may enter into development agreements with developers.[53] A "development agreement" is a "contract between a local government and a property owner/developer, which provides the developer with vested rights by freezing the existing zoning regulations applicable to a property in exchange for public benefits."[54]

Any local government may, by ordinance, establish procedures and requirements to consider and enter into a development agreement with any person having a legal or equitable interest in real property located within its jurisdiction.[55] A development agreement must include the following:[56]

- A legal description of the land subject to the agreement and the names of its legal and equitable owners;
- The duration of the agreement;
- The development uses permitted on the land, including population densities, and building intensities and height;

[50] S. 163.3164(12), F.S., defines the term "density" as an objective measure of the number of people or residential units allowed per unit of land, such as residents or employees per acre.
[51] S. 163.3164(22), F.S., defines the term "intensity" as an objective measurement of the extent to which land may be developed or used, including the consumption or use of the space above, on, or below the ground; the measurement of the use of or demand on natural resources; and the measurement of the use of or demand on facilities and services.
[52] Ss. 163.3167(3) and 163.3203, F.S.
[53] S. 163.3220(4), F.S. *See* ss. 163.3220-163.3243, F.S., known as the "Florida Local Government Development Agreement Act."
[54] *Morgran Co., Inc. v. Orange County*, 818 So. 2d 640 (Fla. 5th DCA 2002); 7 Fla. Jur 2d Building, Zoning, and Land Controls § 168 (2019).
[55] S. 163.3223, F.S; 7 Fla. Jur 2d Building, Zoning, and Land Controls § 168 (2019).
[56] S. 163.3227(1), F.S.

- A description of public facilities that will service the development, including who will provide such facilities, the date any new facilities, if needed, will be constructed, and a schedule to assure public facilities are available concurrent with the impacts of the development;
- A description of any reservation or dedication of land for public purposes;
- A description of all local development permits approved or needed to be approved for the development of the land;
- A finding that the development permitted or proposed is consistent with the local government's comprehensive plan and land development regulations;
- A description of any conditions, terms, restrictions, or other requirements determined to be necessary by the local government for the public health, safety, or welfare of its citizens; and
- A statement indicating that the failure of the agreement to address a particular permit, condition, term, or restriction does not relieve the developer of the necessity of complying with the law governing said permitting requirements, conditions, term, or restriction.

A development agreement may also provide that the entire development, or any phase, must be commenced or completed within a specific time.[57] Within 14 days after a local government enters into a development agreement, the local government must record the agreement with the clerk of the circuit court in the county where the local government is located. A development agreement will not be effective until properly recorded in the public records of the county.[58]

The requirements and benefits in a development agreement are binding upon and vest or continue with any person who later obtains ownership from one of the original parties to the agreement,[59] also known as a successor in interest.[60] A development agreement may be amended or canceled by mutual consent of the parties to the agreement or by their successors in interest.[61]

Effect of Proposed Changes

The bill provides that a party or its designated successor in interest to a development agreement and the local government are authorized to amend or cancel a development agreement without securing the consent of other parcel owners of property that were originally subject to the development agreement unless the amendment, modification or termination directly modifies the allowable uses or entitlements of an owner's property.

Municipal Annexation

Background

Municipal annexation of unincorporated territory, merger of municipalities, and exercise of extra-territorial powers by municipalities must be completed as provided by general or special law.[62] The Legislature established local annexation procedures by general law in 1974 with the "Municipal Annexation or Contraction Act."[63] The act provides how property may be annexed or de-annexed by municipalities without legislative action. The purpose of the act is to:

- Ensure sound urban development and accommodation to growth;
- Establish uniform legislative standards for the adjustment of municipal boundaries;
- Ensure efficient provision of urban services to areas that become urban in character; and
- Ensure areas are not annexed unless municipal services can be provided to those areas.[64]

Before local annexation procedures may begin, the governing body of the municipality must prepare a

[57] S. 163.3227(2), F.S; 7 Fla. Jur 2d Building, Zoning, and Land Controls § 168 (2019).
[58] S. 163.3239, F.S; 7 Fla. Jur 2d Building, Zoning, and Land Controls § 168 (2019).
[59] S. 163.3239, F.S.
[60] A successor in interest is one who follows another in ownership or control of property. A successor in interest retains the same rights as the original owner, with no change in substance. Black's Law Dictionary 1473 (8th ed. 2004).
[61] S. 163.3237, F.S.
[62] Art. VIII, s. 2(c), Fla. Const.
[63] Ch. 171, F.S. *See* ch. 74-190, s. 1, Laws of Fla., the "Municipal Annexation or Contraction Act."
[64] S. 171.021, F.S.

report containing plans for providing urban services to any area to be annexed.[65] A copy of the report must be filed with the board of county commissioners where the municipality is located.[66] This report must include appropriate maps, plans for extending municipal services, timetables, and financing methodologies. The report must certify the subject area is appropriate for annexation because it meets the following standards and requirements:[67]

- The area to be annexed must be contiguous to the boundary of the annexing municipality.[68]
- The area to be annexed must be reasonably compact.[69]
- No part of the area to be annexed may fall within the boundary of another incorporated municipality.
- Part or all of the land to be annexed must be developed for urban purposes.[70]
- Alternatively, if the proposed area is not developed for urban purposes, it must either border at least 60 percent of a developed area or provide a necessary bridge between two urban areas for the extension of municipal services.[71]

The Interlocal Service Boundary Agreement Act (Interlocal Boundary Act)[72] authorizes an alternative to these statutory procedures. Intended to encourage intergovernmental coordination in planning, delivery of services, and boundary adjustments, the primary purpose of the Interlocal Boundary Act is to reduce the costs of local governments, prevent duplication of services, increase local government transparency and accountability, and reduce intergovernmental conflicts.[73]

An interlocal agreement may provide an annexation procedure with a flexible process for securing the consent of those within the area to be annexed, while continuing the requirement for approval of the proposed annexation by a majority of the registered voters, the landowners, or both, within the proposed annexation area. The alternate process also must provide for certain disclosures pertaining to a privately owned solid waste disposal facility located within the proposed annexation area, including whether the owner of the facility objects to the proposed annexation.[74]

Effect of Proposed Changes

The bill prohibits a municipality from annexing an area within another municipality's jurisdiction without the other municipality's consent.

The bill provides an exception to these annexation requirements when an interlocal agreement is in effect for property annexed by a municipality.

Developments of Regional Impact

Background

[65] S. 171.042(1), F.S.
[66] S. 171.042(2), F.S.
[67] S. 171.042(1)(a)-(c), F.S.
[68] "Contiguous" means that a substantial part of the boundary of the area to be annexed has a common boundary with the municipality. There are specified exceptions for cases in which an area is separated from the city's boundary by a publicly owned county park, right-of-way, or body of water. *See* s. 171.031(11), F.S.
[69] S. 171.031(12), F.S., defines the term "compactness" as concentration of a piece of property in a single area and precludes any action which would create enclaves, pockets, or finger areas in serpentine patterns. Any annexation proceeding in any county in the state is required to be designed in such a manner as to ensure that the area will be reasonably compact.
[70] An area developed for urban purposes is defined as one that meets any one of the following standards: (a) a total resident population equal to at least two persons per acre; (b) a total resident population equal to at least one person per acre, with at least 60 percent of subdivided lots one acre or less; or (c) at least 60 percent of the total lots used for urban purposes, with at least 60 percent of the total urban residential acreage divided into lots of five acres or less. S. 171.043(2), F.S.
[71] S. 171.043, F.S.
[72] Ch. 171, Part II, F.S. *See* s. 171.20, F.S.
[73] S. 171.201, F.S.
[74] S. 171.205, F.S.

A Development of Regional Impact (DRI) is "any development which, because of its character, magnitude, or location, would have a substantial effect on the health, safety, or welfare of citizens of more than one county."[75]

The DRI statutes were created in 1972 as an interim program intended to be replaced by comprehensive planning and permitting laws.[76] The program provided a process to identify regional impacts stemming from large developments and appropriate provisions to mitigate impacts on state and regional resources.[77]

The process to review or amend a DRI agreement and its implementing development orders went through several revisions[78] until repeal of the requirements for state and regional reviews in 2018.[79] Local governments, where a DRI is located, are responsible for implementing and amending existing DRI agreements and development orders.[80]

Currently, an amendment to a development order for an approved DRI may not amend to an earlier date the date to which the local government had agreed not to impose downzoning, unit density reduction, or intensity reduction, unless:[81]

- The local government can demonstrate that substantial changes in the conditions underlying the approval of the development order have occurred;
- The development order was based on substantially inaccurate information provided by the developer; or
- The change is clearly established by local government to be essential to the public health, safety, or welfare.

Any proposed change to a previously approved DRI must be reviewed by the local government based on the standards and procedures in its adopted local comprehensive plan and local land development regulations.[82] A proposed change reducing the originally approved height, density, or intensity of the development must be reviewed by the local government based on the standards in the local comprehensive plan at the time the development was originally approved. If the proposed change would have been consistent with the comprehensive plan in effect when the development was originally approved, the local government may approve the change.[83]

DRI agreements classified as essentially built out and valid on or before April 6, 2018, were preserved, but the provisions that allowed such agreements to be amended to exchange approved land uses were eliminated.[84]

For such agreements, a DRI is essentially built out if:[85]

- All the mitigation requirements in the development order were satisfied, all developers were in compliance with all applicable terms and conditions of the development order except the buildout date, and the amount of proposed development that remained to be built was less than 40 percent of any applicable development-of-regional-impact threshold; or

[75] S. 380.06(1), F.S.
[76] The Florida Senate, Committee on Community Affairs, Interim Report 2012-114, September 2011, citing: Thomas G. Pelham, *A Historical Perspective for Evaluating Florida's Evolving Growth Management Process*, in *Growth Management in Florida: Planning for Paradise*, 8 (Timothy S. Chapin, Charles E. Connerly, and Harrison T. Higgins eds. 2005).
[77] Ch. 72-317, s. 6, Laws of Fla.
[78] *See* ch. 2015-30, Laws of Fla. (requiring that new DRI-sized developments proposed after July 1, 2015, must be approved by a comprehensive plan amendment in lieu of the state review process provided for in s. 380.06, F.S.) and ch. 2016-148, Laws of Fla. (requiring DRI reviews to follow the state coordinated review process if the development, or an amendment to the development, required an amendment to the comprehensive plan).
[79] Ch. 2018-158, Laws of Fla.
[80] S. 380.06(4)(a) and (7), F.S.
[81] S. 380.06(4)(a), F.S.
[82] S. 380.06(7)(a), F.S. These procedures must include notice to the applicant and public about the issuance of development orders.
[83] *Id*.
[84] Ch. 2018-158, s. 1, Laws of Fla.
[85] S. 380.06(15)(g)3. and 4., F.S. (2017).

- The project was determined to be an essentially built-out development of regional impact through an agreement executed by the developer, the state land planning agency, and the local government.

Effect of Proposed Changes

The bill authorizes the amendment of any DRI agreement previously classified as (or officially determined to be) essentially built out, and entered into on or before April 6, 2018, including amendments authorizing the developer to exchange approved land uses. Subject to the developer demonstrating that the exchange will not increase impacts to public facilities, amendments are made pursuant to the processes adopted by the local government for amending development orders.

Technical Assistance Funding

Background

DEO, as the state land planning agency, must assist communities to find creative solutions fostering vibrant, healthy communities and by providing direct and indirect technical assistance within available resources.[86] To carry out this charge, the Bureau of Community Planning and Growth within DEO manages the Community Planning Technical Assistance Grant Program.[87]

Under the program, DEO awards grants to counties, cities, and regional planning councils to assist local governments in developing economic development strategies, meeting the requirements of the Community Planning Act, addressing critical local planning issues, and promoting innovative planning solutions to challenges identified by local government applicants. The program has funded a wide range of activities, including the development and revision of comprehensive plan amendments, economic development strategic plans, affordable housing action plans, downtown master plans, transportation master plans, and revitalization plans.[88]

Beginning in fiscal year (FY) 2011-2012, the Legislature appropriated funds for DEO to implement the program. From FY 2015-2016 to FY 2019-2020, DEO expended almost $6 million on 174 approved grant projects.[89]

M-CORES Program

Enacted during the 2019 Regular Session,[90] the Multi-use Corridors of Regional Economic Significance (M-CORES) Program is designed to advance the construction of regional corridors that will accommodate multiple modes of transportation and multiple types of infrastructure.[91] The specific purpose of the program is to revitalize rural communities, encourage job creation in those communities, and provide regional connectivity while leveraging technology, enhancing the quality of life and public safety, and protecting the environment and natural resources.[92]

The intended benefits to be provided through the M-CORES Program include, but are not limited to:
- Hurricane evacuation;
- Congestion mitigation;
- Trade and logistics;
- Broadband, water, and sewer connectivity;
- Energy distribution;

[86] S. 163.3168(3), F.S.
[87] DEO, Division of Community Planning, *Technical Assistance*, available at http://www.floridajobs.org/community-planning-and-development/programs/community-planning-table-of-contents/technical-assistance (last visited Feb. 18, 2020).
[88] *Id.*
[89] *See* email and email attachment from Eva Davis, Senate Judiciary Committee, "DEO Information on SB 410 (footnote 2).pdf" (Feb. 17, 2020) (on file with House State Affairs Committee).
[90] Ch. 2019-43, Laws of Fla.
[91] *See* FDOT, https://floridamcores.com/ (last visited Feb. 17, 2020).
[92] S. 338.2278(1), F.S.

- Autonomous, connected, shared, and electric vehicle technology;
- Other transportation modes, such as shared-use nonmotorized trails, freight and passenger rail, and public transit;
- Mobility as a service;
- Availability of a trained workforce skilled in traditional and emerging technologies;
- Protection or enhancement of wildlife corridors or environmentally sensitive areas; and
- Protection or enhancement of primary springs protection zones and farmland preservation areas.[93]

The following three corridors comprise the M-CORES Program:
- Southwest-Central Florida Connector (Collier County to Polk County);
- Suncoast Connector (Citrus County to Jefferson County); and
- Northern Turnpike Connector (the northern terminus of the Florida Turnpike northwest to the Suncoast Parkway).[94]

As required by the law, the Florida Department of Transportation (FDOT) assembled three task forces to study the three specific multi-use corridors.[95] The task forces will make recommendations to FDOT regarding the potential economic and environmental impacts of the corridor and other factors as specified in the M-CORES legislation to the Governor, the President of the Senate, and the Speaker of the House of Representatives by October 1, 2020.[96] FDOT must provide local governments affected by the report with a copy and project alignments,[97] and each local government with an interchange[98] within its jurisdiction must review its comprehensive plan by December 23, 2023. The review must consider whether the area around the interchange contains appropriate land uses and natural resource protections and whether the plan should be amended to provide appropriate uses and protections.[99] The law requires, to the maximum extent feasible, project construction to begin no later than December 31, 2022, with projects open to traffic no later than December 31, 2030.[100]

Effect of Proposed Changes

The bill requires DEO, when selecting applications for Community Planning Technical Assistance Grants, to give preference to counties with a population of 200,000 or less, and municipalities within such counties, for assistance in:
- Determining whether an area in and around a proposed multiuse corridor interchange contains appropriate land uses and natural resource protection; and
- Developing or amending a local government's comprehensive plan to provide for the land uses, natural resource protection, and intended benefits associated with a proposed multiuse corridor interchange.

Municipal Water and Wastewater Service in Unincorporated Areas

Background

[93] S. 338.2278(1)(a)-(k), F.S.
[94] S. 338.2278(2)(a)-(c), F.S.
[95] S. 338.2278(3)(c)1., F.S.
[96] S. 338.2278(3)(c)9., F.S.
[97] Project Alignment is the process of developing a common understanding among the key stakeholders of the purpose and goals of the project and the means and methods of accomplishing those goals. David Wiley, et. al, Project Management for Instructional Designers.553 (4th Ed.), available at https://pm4id.org/back-matter/glossary/ (last visited Feb. 19, 2020).
[98] An interchange is a grade-separated intersection (one road passes over another) with ramps to connect them. *See* FDOT, RCI Features & Characteristics Handbook, available at https://fdotwww.blob.core.windows.net/sitefinity/docs/default-source/statistics/statistics/rci/sections/252--interchanges.pdf?sfvrsn=50a6e807_0 (last visited Feb. 19, 2020).
[99] S. 338.2278(3)(c)10., F.S.
[100] S. 338.2278(6), F.S.

Municipalities are authorized to provide water and sewer utility services.[101] With respect to public works projects, including water and sewer utility services,[102] a municipality may extend and execute its corporate powers outside of the municipal boundary as "desirable or necessary for the promotion of the public health, safety and welfare."[103] A municipality may not extend or apply these corporate powers within the corporate limits of another municipality.[104] However, it may permit any other municipality and the owners of lands outside its corporate limits or within the limits of another municipality to connect with its water and sewer utility facilities and use its services upon agreed terms and conditions.[105]

Effect of Proposed Changes

The bill provides that a municipality may not extend new water or sewer service into the unincorporated area of a county, without the express consent of a majority of the county commissioners given at a duly noticed meeting of the commission, if the county already provides the same service within the county. However, the bill provides that a municipality need not obtain consent to continue to provide water or sewer service within an unincorporated area in which it provided service prior to July 1, 2020.

Utility Right-of-Way Permits

Background

Pursuant to s. 337.401, F.S., FDOT and each local government with jurisdiction and control of public roads or publicly owned rail corridors is authorized to prescribe and enforce reasonable rules or regulations with regard to the placement and maintenance of utility facilities across, on, or within the right-of-way (ROW) limits of any road or publicly owned rail corridor under its jurisdiction. Each of these entities is individually referred to as the "authority" when acting in this capacity. Each authority may authorize any person who is a resident of this state, or any corporation organized or licensed to do business under Florida law, to use a public ROW for a utility[106] in accordance with the authority's rules or regulations. A utility may not be installed, located, or relocated within a public ROW unless authorized by a written permit.[107]

The Advanced Wireless Infrastructure Deployment Act

In 2017, the Legislature established an expedited permitting process for small wireless facilities[108] (SWF) that a wireless provider[109] seeks to place in the public ROW.[110] Under this process, an authority must, within 14 days after receiving an application, determine and notify the applicant, by electric mail, as to whether the application is complete. If it determines the application is incomplete, the authority

[101] Pursuant to s. 180.06, F.S., a municipality may "provide water and alternative water supplies;" "provide for the collection and disposal of sewage, including wastewater reuse, and other liquid wastes;" and "construct reservoirs, sewerage systems, trunk sewers, intercepting sewers, pumping stations, wells, siphons, intakes, pipelines, distribution systems, purification works, collection systems, treatment and disposal works" to accomplish these purposes.
[102] Other public works projects authorized under s. 180.06, F.S., include alternative water supplies, maintenance of water flow and bodies of water for sanitary purposes, garbage collection and disposal, airports, hospitals, jails, golf courses, gas plants and distribution systems, and related facilities.
[103] S. 180.02(2), F.S.
[104] *Id.*
[105] S. 180.19, F.S.
[106] S. 337.401(1)(a), F.S., refers to "any electric transmission, telephone, telegraph, or other communications services lines; pole lines; poles; railways; ditches; sewers; water, heat, or gas mains; pipelines; fences; gasoline tanks and pumps; or other structures referred to in this section and in ss. 337.402, 337.403, and 337.404" as a "utility."
[107] S. 337.401(2), F.S.
[108] "Small wireless facility" means a wireless facility that meets the following qualifications:
- Each antenna associated with the facility is located inside an enclosure of no more than 6 cubic feet in volume or, in the case of antennas that have exposed elements, each antenna and all of its exposed elements could fit within an enclosure of no more than 6 cubic feet in volume; and
- All other wireless equipment associated with the facility is cumulatively no more than 28 cubic feet in volume. The following types of associated ancillary equipment are not included in the calculation of equipment volume: electric meters, concealment elements, telecommunications demarcation boxes, ground-based enclosures, grounding equipment, power transfer switches, cutoff switches, vertical cable runs for the connection of power and other services, and utility poles or other support structures.

S. 337.401(7)(b)10., F.S.
[109] The term "wireless provider" means a wireless infrastructure provider or a wireless services provider. S. 337.401(7)(b)14., F.S.
[110] Ch. 2017-136, L.O.F., codified in pertinent part at s. 337.401(7)(d)7.-9., F.S.

must specifically identify the missing information. An application is deemed complete if the authority fails to notify the applicant within 14 days.

A completed permit application for a SWF is deemed approved if the authority fails to approve or deny the application within 60 days of receipt. This review period may be extended by mutual agreement. If an application is denied, the applicant may cure the deficiencies and submit a revised application within 30 days after denial. The revised application is deemed approved if the authority does not approve or deny it within 30 days of receipt. If the authority provides for administrative review of its denial of an application, the authority must complete its review and issue a written decision within 45 days of a written request for review.[111] In 2019, this expedited permitting process was expanded to include all communications facilities a provider of communications services[112] seeks to place in the public ROW.[113]

No timeframes are specified in current law for processing permit applications to use the public ROW for any other type of utility.

Effect of Proposed Changes

The bill provides that all permit applications to use the public ROW for any type of utility must be processed within the expedited timeframe that currently applies only to permit applications submitted for communications facilities. Thus, the bill expands application of the expedited permitting process to include public ROW permits for, among other things, electric, natural gas, water, and sewer facilities.

Attorney Fees and Costs for Claims Related to Growth Policy Ordinances

Background

Preemption

The Florida Constitution grants local governments broad home rule authority. Counties operating under a county charter have all powers of self-government not inconsistent with general law or special law approved by the vote of the electors.[114] Non-charter county governments may exercise those powers of self-government that are provided by general or special law.[115] Municipalities have governmental, corporate, and proprietary powers that enable them to conduct municipal government, perform municipal functions and provide services, and exercise any power for municipal purposes except when expressly prohibited by law.[116] A local government enactment may be considered inconsistent with state law if:

- The State Constitution preempts a subject area;
- The Legislature preempts a subject area; or
- It conflicts with a state statute.

Florida law recognizes two types of preemption: express and implied. Express preemption requires a specific legislative statement; it cannot be implied or inferred.[117] To expressly preempt a subject area,

[111] S. 337.401(7), F.S.
[112] The term "communications services" means "the transmission, conveyance, or routing of voice, data, audio, video, or any other information or signals, including video services, to a point, or between or among points, by or through any electronic, radio, satellite, cable, optical, microwave, or other medium or method now in existence or hereafter devised, regardless of the protocol used for such transmission or conveyance. The term includes such transmission, conveyance, or routing in which computer processing applications are used to act on the form, code, or protocol of the content for purposes of transmission, conveyance, or routing without regard to whether such service is referred to as voice-over-Internet-protocol services or is classified by the Federal Communications Commission as enhanced or value-added." The term does not include: information services; installation or maintenance of wiring or equipment on a customer's premises; the sale or rental of tangible personal property; the sale of advertising, including, but not limited to, directory advertising; bad check charges; late payment charges; billing and collection services; or Internet access service, electronic mail service, electronic bulletin board service, or similar online computer services. Ss. 337.401(5) and 202.11(1), F.S.
[113] Ch. 2019-131, L.O.F.
[114] Art. VIII, s. 1(g), Fla. Const.
[115] Art. VIII, s. 1(f), Fla. Const.
[116] Art. VIII, s. 2(b), *See also* s. 166.021(1), F.S.
[117] *See City of Hollywood v. Mulligan*, 934 So. 2d 1238, 1243 (Fla. 2006); *Phantom of Clearwater, Inc. v. Pinellas County*, 894 So. 2d 1011, 1018 (Fla. 2d DCA 2005).

the Legislature must use clear statutory language stating that intent.[118] Implied preemption occurs when the Legislature has demonstrated an intent to preempt an area, though not expressly. Florida courts find implied preemption when "the legislative scheme is so pervasive as to evidence an intent to preempt the particular area, and where strong public policy reasons exist for finding such an area to be preempted by the Legislature."[119] Implied preemption is found where the local legislation would present a danger of conflicting with the state's pervasive regulatory scheme.[120]

Where state preemption applies, a local government may not exercise authority in that area.[121] Whether a local government ordinance or other measure violates preemption is ultimately decided by a court. If a local government improperly enacts an ordinance or other measure on a matter preempted to the state, a person may challenge the ordinance by filing a lawsuit. A court ruling against the local government may declare the preempted ordinance void.[122]

Attorney Fees and Costs in Actions Related to Certain Local Government Ordinances

A prevailing party is entitled to attorney fees and costs[123] in an action challenging a local government ordinance when such ordinance is found to be expressly preempted by the Florida Constitution or Florida law.[124]

An award of attorney fees and costs against a local government is prohibited if the local government:[125]

- Receives written notice that an ordinance or proposed ordinance is expressly preempted; and
- Within 30 days of receiving the notice, withdraws a proposed ordinance; or, in the case of an adopted ordinance, notices an intent to repeal the ordinance within 30 days of receiving the notice and repeals the ordinance within 30 days thereafter.

In addition, attorney fees and costs may not be awarded for challenges to ordinances relating to:[126]

- Part II of ch. 163, F.S., for local growth policy and land development regulations;
- Section 553.73, F.S., for the Florida Building Code; or
- Section 633.202, F.S., for the Florida Fire Prevention Code.

The award of attorney fees and costs is supplemental to other available sanctions or remedies.[127]

Effect of Proposed Changes

The bill allows a prevailing party in an action challenging an ordinance related to local growth policy and land development regulations, which is determined or found to be expressly preempted by the Florida Constitution or law, to collect attorney fees and costs under s. 57.112, F.S.

B. SECTION DIRECTORY:

Section 1. Amends s. 57.112, F.S., allowing attorney fees and costs for prevailing parties in certain growth policy ordinance actions.

Section 2. Amends s. 163.3167, F.S., requiring comprehensive plans initially effective after a certain date to incorporate development orders preexisting the plan.

---

[118] *Mulligan*, 934 So. 2d at 1243.
[119] *Tallahassee Mem. Reg. Med. Ctr., Inc. v. Tallahassee Med. Ctr., Inc.*, 681 So. 2d 826, 831 (Fla. 1st DCA 1996).
[120] *Sarasota Alliance for Fair Elections, Inc., v. Browning,* 28 So.3d 880, 886 (Fla. 2010).
[121] Judge James R. Wolf and Sarah Harley Bolinder, The Effectiveness of Home Rule: A Preemptions and Conflict Analysis, 83 Fla. B.J. 92 (June 2009).
[122] *See, e.g., Nat'l Rifle Ass'n of Am., Inc. v. City of S. Miami,* 812 So.2d 504 (Fla. 3d DCA 2002).
[123] The term "attorney fees and costs" includes those reasonable and necessary fees and costs for all preparations, motions, hearings, trails, and appeals. S. 57.112(1), F.S.
[124] S. 57.112, F.S., created in 2019 by ch. 2019-151, Laws of Fla. Attorney fees and costs may be awarded under this section of law in cases commenced on or after July 1, 2019. S. 57.112(6), F.S.
[125] S. 57.112(3), F.S.
[126] S. 57.112(5), F.S.
[127] S. 57.112(4), F.S.

Section 3. Amends s. 163.3168, F.S., requiring DEO to give preference to certain small counties and municipalities for funding and technical assistance.

Section 4. Amends s. 163.3177, F.S., requiring a comprehensive plan to include a private property rights element.

Section 5. Amends s. 163.3237, F.S., authorizing amendment or cancelation of certain development agreements without the consent of certain parties.

Section 6. Amends s. 172.042, F.S., prohibiting a municipality from annexing municipal land without consent of the affected municipality.

Section 7. Amends s. 180.02, F.S., prohibiting municipalities from providing new water and sewer service to certain unincorporated areas without county consent.

Section 8. Amends s. 337.401, F.S., extending local application processing time limits for permits to install certain utilities in a ROW to all utility ROW installation permit applications.

Section 9. Amends s. 380.06, F.S., allowing certain agreements relating to an approved DRI to be amended under certain circumstances.

Section 10. Provides an effective date of July 1, 2020.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   The bill provides that all permit applications to use the public ROW for a utility must be processed within the expedited timeframe currently pertaining only to permit applications submitted for communications facilities. Permitting authorities, including FDOT, may need to expend additional resources to satisfy this requirement.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   The bill may have an insignificant fiscal impact on local governments not scheduled to review their comprehensive plans before 2024 due to the requirement to amend their plans by July 1, 2023, to include a property rights element; and each local government to amend its comprehensive plan to include development orders existing before the plan's effective date if it does not already do so.

   The bill provides that all permit applications to use the public ROW for a utility must be processed within the expedited timeframe currently pertaining only to permit applications submitted for communications facilities. Permitting authorities, including local governments, may need to expend additional resources to satisfy this requirement. However, the bill does not constrain the ability of local governments to adjust fees as necessary to account for to the potential extra workload.

The bill allows attorney fees and costs to be awarded to a prevailing party in certain challenges to growth policy ordinances. This may cause local governments to be liable for attorney fees and costs in such cases where they are not the prevailing party.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The county/municipality mandates provision of Art. VII, s. 18 of the Florida Constitution may apply because this bill requires counties and municipalities that are not scheduled to amend their comprehensive plans before 2024 to amend their plans by July 1, 2023, to include the statement on property rights; requires each county and municipality to amend its comprehensive plan to include development orders existing before the plan's effective date if it does not already do so; and requires local governments to process all utility right-of-way permit applications within a specified time period. However, an exemption may apply given that laws having an insignificant fiscal impact are exempt from the requirements of Art. VII, s. 18 of the Florida Constitution.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

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

C. DRAFTING ISSUES OR OTHER COMMENTS:

The bill prohibits one municipality from annexing an area within the jurisdiction of another municipality unless that municipality consents. The bill does not specify in what form that consent must be given. The bill also does not address whether a municipality's consent to the annexation of a portion of the area within its jurisdiction may be construed as an exception both to the requirement that the area to be annexed not be within the boundary of another municipality[128] and that a municipality may contract its boundary only from areas that would not meet the criteria for annexation.[129]

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On February 13, 2020, the Commerce Committee considered a proposed committee substitute, adopted four amendments, and reported the bill favorably as a committee substitute. The proposed committee substitute added the following provisions to the bill:

- All municipal comprehensive plans effective after January 1, 2019, must incorporate development orders existing before the plan's effective date.
- A developer and the local government are authorized to amend or cancel a development agreement without securing the consent of other property owners unless such amendment or cancellation directly modifies the uses or entitlements of an owner's property.
- A municipality is prohibited from annexing an area within another municipality's jurisdiction without the other municipality's consent, unless an interlocal agreement to the contrary is in effect.
- Existing DRI agreements that are classified as essentially built out and were valid on or before April 6, 2018, may be amended and their land uses exchanged under certain circumstances.

[128] S. 171.043(1), F.S.
[129] S. 171.052(1), F.S.

- DEO must give preference to counties with populations less than 200,000 and their included municipalities seeking funding for certain actions under the M-CORES program when selecting applications for funding for technical assistance.
- On or after July 1, 2020, a municipality may not extend its water or sewer service into the unincorporated area without consent of the county if the county already provides the same service.
- All utility permit applications for use of the public ROW must be processed within the timeframes currently applicable only to permit applications submitted by communications services providers.
- The prevailing party in a claim challenging whether a local growth policy or land development regulation is preempted may seek attorney fees and costs.

Additionally, a provision that required a local comprehensive plan to enumerate a right to quiet enjoyment of property was removed from the bill.

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

A bill to be entitled

An act relating to growth management; amending s. 57.112, F.S.; deleting a provision that prohibits specified attorney fees and costs from applying to local ordinances adopted pursuant to the growth policy act; amending s. 163.3167, F.S.; specifying requirements for certain comprehensive plans effective after a specified date and for associated land development regulations; amending s. 163.3168, F.S.; requiring the Department of Economic Opportunity to give a preference to certain counties and municipalities when selecting applications for funding for technical assistance; amending s. 163.3177, F.S.; requiring the comprehensive plan to include a property rights element; providing a statement of rights that a local government may use; requiring local government to adopt a property rights element by a specified date; providing that a local government's property rights element may not conflict with the statutorily provided statement of rights; amending s. 163.3237, F.S.; providing that certain property owners are not required to consent to development agreement changes under certain circumstances; amending s. 171.042, F.S.; prohibiting a municipality from annexing specified areas under certain circumstances; amending

s. 180.02, F.S.; providing conditions under which a municipality may exercise certain powers to provide water and sewer services within the unincorporated area of a county; amending s. 337.401, F.S.; providing a timeframe for processing permit applications for use by right-of-way by utilities; amending s. 380.06, F.S.; authorizing certain developments of regional impact agreements to be amended under certain circumstances; providing an effective date.

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

Section 1. Subsection (5) of section 57.112, Florida Statutes, is amended to read:

57.112 Attorney fees and costs and damages; preempted local actions.—

(5) This section does not apply to local ordinances adopted pursuant to ~~part II of chapter 163,~~ s. 553.73~~,~~ or s. 633.202.

Section 2. Subsection (3) of section 163.3167, Florida Statutes, is amended to read:

163.3167 Scope of act.—

(3) A municipality established after the effective date of this act shall, within 1 year after incorporation, establish a local planning agency, pursuant to s. 163.3174, and prepare and

adopt a comprehensive plan of the type and in the manner set out in this act within 3 years after the date of such incorporation. A county comprehensive plan is controlling until the municipality adopts a comprehensive plan in accordance with this act. A comprehensive plan effective ~~adopted~~ after January 1, 2019, and all land development regulations adopted to implement the comprehensive plan must incorporate each development order existing before the comprehensive plan's effective date, may not impair the completion of a development in accordance with such existing development order, and must vest the density and intensity approved by such development order existing on the effective date of the comprehensive plan without limitation or modification.

Section 3. Subsection (4) of section 163.3168, Florida Statutes, is renumbered as subsection (5), and a new subsection (4) is added to that section, to read:

163.3168 Planning innovations and technical assistance.—

(4) When selecting applications for funding for technical assistance, the state land planning agency shall give a preference to a county that has a population of 200,000 or less, and to a municipality located within such a county, for assistance in determining whether the area in and around a proposed multi-use corridor interchange as described in s. 338.2278 contains appropriate land uses and natural resource protections and for aid in developing or amending a local

government's comprehensive plan to provide for such uses, protections, and intended benefits as provided in s. 338.2278.

Section 4. Paragraph (i) is added to subsection (6) of section 163.3177, Florida Statutes, to read:

163.3177 Required and optional elements of comprehensive plan; studies and surveys.—

(6) In addition to the requirements of subsections (1)-(5), the comprehensive plan shall include the following elements:

(i)1. In accordance with the legislative intent expressed in ss. 163.3161(10) and 187.101(3) that governmental entities respect judicially acknowledged and constitutionally protected private property rights, each local government shall include in its comprehensive plan a property rights element to ensure that private property rights are considered in local decisionmaking. A local government may adopt its own property rights element or use the following statement of rights:

The following rights shall be considered in local decisionmaking:

1. The right of a property owner to physically possess and control his or her interests in the property, including easements, leases, or mineral rights.

2. The right of a property owner to use, maintain, develop, and improve his or her property for personal use or the use of any other person, subject to state law and local ordinances.

3. The right of the property owner to privacy and to exclude others from the property to protect the owner's possessions and property.

4. The right of a property owner to dispose of his or her property through sale or gift.

2. Each local government must adopt a property rights element in its comprehensive plan by the earlier of its next proposed plan amendment or July 1, 2023. If a local government adopts its own property rights element, the element may not conflict with the statement of rights provided in subparagraph 1.

Section 5. Section 163.3237, Florida Statutes, is amended to read:

163.3237 Amendment or cancellation of a development agreement.—A development agreement may be amended or canceled by mutual consent of the parties to the agreement or by their successors in interest. A party or its designated successor in interest to a development agreement and a local government may

amend or cancel a development agreement without securing the consent of other parcel owners whose property was originally subject to the development agreement, unless the amendment or cancellation directly modifies the allowable uses or entitlements of such owner's property.

Section 6. Subsection (4) is added to section 171.042, Florida Statutes, to read:

171.042 Prerequisites to annexation.—

(4) Except as otherwise provided in s. 171.205, a municipality may not annex an area within another municipal jurisdiction without the other municipality's consent.

Section 7. Subsection (2) of section 180.02, Florida Statutes, is amended to read:

Section 180.02 Powers of municipalities.-

(2) Any municipality may extend and execute all of its corporate powers applicable for the accomplishment of the purposes of this chapter outside of its corporate limits, as hereinafter provided and as may be desirable or necessary for the promotion of the public health, safety, and welfare or for the accomplishment of the purposes of this chapter; provided, however, that said corporate powers shall not extend or apply within the corporate limits of another municipality. Further, a municipality may not extend or execute its corporate powers to provide water service or sewage collection and disposal service within the unincorporated area of a county that has exercised

its authority under s. 153.03 to provide the same service or services within the county without the express consent of a majority of the commissioners at a duly noticed meeting of the board of county commissioners of that county. A municipality, without such consent, may continue to provide water service or sewage collection and disposal service within an unincorporated area in which the municipality provided such service or services before July 1, 2020.

Section 8. Subsection (2) of section 337.401, Florida Statutes, is amended to read:

337.401 Use of right-of-way for utilities subject to regulation; permit; fees.—

(2) The authority may grant to any person who is a resident of this state, or to any corporation which is organized under the laws of this state or licensed to do business within this state, the use of a right-of-way for the utility in accordance with such rules or regulations as the authority may adopt. No utility shall be installed, located, or relocated unless authorized by a written permit issued by the authority. However, for public roads or publicly owned rail corridors under the jurisdiction of the department, a utility relocation schedule and relocation agreement may be executed in lieu of a written permit. The permit shall require the permitholder to be responsible for any damage resulting from the issuance of such permit. The authority may initiate injunctive proceedings as

provided in s. 120.69 to enforce provisions of this subsection or any rule or order issued or entered into pursuant thereto. A permit application required by an authority under this subsection must be processed and acted upon consistent with the timeframes provided in subparagraphs (7)(d)7., 8., and 9.

Section 9. Paragraph (d) of subsection (4) of section 380.06, Florida Statutes, is amended to read:

380.06 Developments of regional impact.—

(4) LOCAL GOVERNMENT DEVELOPMENT ORDER.—

(d) Any agreement entered into by the state land planning agency, the developer, and the local government with respect to an approved development of regional impact previously classified as essentially built out, or any other official determination that an approved development of regional impact is essentially built out, remains valid unless it expired on or before April 6, 2018 and may be amended pursuant to the processes adopted by the local government for amending development orders. Any such agreement or amendment may authorize the developer to exchange approved land uses subject to demonstrating that the exchange will not increase impacts to public facilities. This paragraph applies to all such agreements and amendments effective on or after April 6, 2018.

Section 10. This act shall take effect July 1, 2020.

COMMITTEE/SUBCOMMITTEE ACTION

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

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

Amendment

Remove lines 147-158 and insert:

within the corporate limits of another municipality. Further, a municipality may not extend or provide water service or sewage collection and disposal service within the unincorporated area of a county that has exercised its authority under s. 153.03 to provide the same service or services within the county without the express consent of a majority of the commissioners at a duly noticed meeting of the board of county commissioners of that county. A municipality, without such consent, may provide water service or sewage collection and disposal service within an unincorporated area in which the municipality, before July 1,

2020, either provided such service or has constructed infrastructure to provide such service.

Amendment No.

COMMITTEE/SUBCOMMITTEE ACTION

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

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

Amendment (with title amendment)

Remove lines 164-180 and insert:

resident of this state, or to any corporation that ~~which~~ is organized under the laws of this state or licensed to do business within this state, the use of a right-of-way for the utility in accordance with such rules or regulations as the authority may adopt. A ~~No~~ utility may not ~~shall~~ be installed, located, or relocated unless authorized by a written permit issued by the authority. However, for public roads or publicly owned rail corridors under the jurisdiction of the department, a utility relocation schedule and relocation agreement may be executed in lieu of a written permit. The permit must ~~shall~~ require the permitholder to be responsible for any damage

resulting from the issuance of such permit. The authority may initiate injunctive proceedings as provided in s. 120.69 to enforce provisions of this subsection or any rule or order issued or entered into pursuant thereto. A permit application required under this subsection by a county or municipality having jurisdiction and control of the right-of-way of any public road must be processed and acted upon in accordance with the timeframes provided in subparagraphs (7)(d)7., 8., and 9.

Section 9. The Legislature finds and declares that this act fulfills an important state interest.

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

Remove line 31 and insert:

by right-of-way utilities; providing a declaration of important state interest; amending s. 380.06,

CS/HB 279

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 279 Local Government Public Construction Works
SPONSOR(S): Oversight, Transparency & Public Management Subcommittee; Smith, D. and others
TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 504

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Oversight, Transparency & Public Management Subcommittee	11 Y, 3 N, As CS	Toliver	Smith
2) Business & Professions Subcommittee	8 Y, 2 N	Thompson	Anstead
3) State Affairs Committee		Toliver	Williamson

SUMMARY ANALYSIS

Counties, municipalities, special districts, and other political subdivisions seeking to construct or improve a public building or structure must competitively bid the project if the projected cost is in excess of $300,000. For electrical work, local governments must competitively bid projects estimated to cost more than $75,000. An exemption from the requirement to competitively award these projects exists when the governing board of a local government determines that it is in the public's best interest to use the local government's own services, employees, and equipment.

Current law also requires counties to competitively bid and award to the lowest bidder all projects for construction and reconstruction of roads and bridges that utilize the proceeds of the 80-percent portion of the surplus of the constitutional gas tax. An exception to this requirement allows a county to use its own forces for these construction and reconstruction projects if the estimated cost of a project is less than specified thresholds depending upon the type of project.

The bill raises the threshold above which a political subdivision seeking to construct or improve a public building or structure must competitively bid the project to $400,000, and raises the same threshold for electrical work to $100,000. The bill specifies the manner in which the estimated cost of a public building construction project must be determined when a governing board is deciding whether it is in the local government's best interest to perform the project using its own services, employees, and equipment. Specifically, the bill requires the estimated cost of the project to be determined using generally accepted cost-accounting principles that fully account for all costs associated with performing and completing the work, including employee compensation and benefits, equipment costs and maintenance, insurance costs, and the cost of materials.

The bill requires a local government that performs a public building construction project using its own services, employees, and equipment to disclose the actual costs of the project after completion to the Auditor General, who must review such disclosures as part of his or her routine audits of local governments.

The bill also requires local governments to consider the same costs when estimating the cost of construction and reconstruction projects of roads and bridges performed utilizing proceeds from the constitutional gas tax.

The bill does not appear to have a fiscal impact on state government, but it may have an indeterminate positive fiscal impact on local governments. *See* Fiscal Comments.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Procurement of Construction Services

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

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

Counties, municipalities, special districts, and other political subdivisions seeking to construct or improve a public building, structure, or other public construction works must competitively award the project if the projected cost is in excess of $300,000.[2] For electrical work, local governments must competitively award[3] projects estimated to cost more than $75,000.[4] These threshold amounts are adjusted by the percentage change in the Engineering News-Record's Building Cost Index[5] from January 1, 2009, to January 1 of the year in which the project is scheduled to begin.[6]

Exemption from Competitive Solicitation for Local Governments Performing Work

If the governing board of a local government seeking to construct or improve a public building or structure conducts a public meeting and finds by majority vote that it is in the public's best interest to perform the project using its own services, employees, and equipment, then the local government is exempt from the requirement to competitively award the contract for the project.[7] The meeting of the governing board must have been publicly noticed at least 21 days before the date of the public meeting at which the governing board takes final action.[8] The notice must identify the project, the components and scope of the project, and the estimated cost of the project using generally accepted cost-accounting principles that fully account for all costs associated with performing and completing the project, including employee compensation and benefits, equipment cost and maintenance, insurance costs, and materials.[9] The notice must state that the purpose of the meeting is to consider whether it is in the best interest of the public to perform the project using the local government's own services, employees, and equipment.[10]

---

[1] Section 255.29, F.S.
[2] Section 255.20(1), F.S.
[3] The term "competitively award" means to award contracts based on the submission of sealed bids, proposals submitted in response to a request for proposal, proposals submitted in response to a request for qualifications, or proposals submitted for competitive negotiation. *Id.*
[4] *Id.*
[5] The Engineering News-Record is a weekly private-sector publication that publishes, monthly, a Building Cost index (BCI). *Construction Economics*, ENGINEERING NEWS-RECORD, https://www.enr.com/economics (last visited Feb. 12, 2020).
The BCI serves to inform those in the engineering profession and construction industry about general construction costs across the United States. *Id.* The BCI has a material component that incorporates the actual cost of construction materials and a labor component incorporating the actual cost of labor. *Using ENR Indexes*, ENGINEERING NEWS-RECORD, https://www.enr.com/economics/faq (last visited Feb. 12, 2020).
[6] Section 255.20(2), F.S.
[7] Section 255.20(1)(c)9., F.S.
[8] *Id.*
[9] *Id.*
[10] *Id.*

At the public meeting, the governing board must allow any qualified contractor or vendor who could have been awarded the project had the project been competitively bid to present evidence regarding the project and the accuracy of the local government's estimated cost of the project.[11] In making a determination, the governing board must consider the estimated cost of the project and the accuracy of the estimated cost in light of any other information presented at the public meeting. In addition, the board must consider whether the project requires an increase in the number of government employees or an increase in capital expenditures for public facilities, equipment, or other capital assets.[12] The governing body may further consider the impact on local economic development, the impact on small and minority business owners, the impact on state and local tax revenues, whether the private sector contractors provide health insurance and other benefits equivalent to those provided by the local government, and any other factor relevant to what is in the public's best interest.[13]

Construction and Maintenance of Roads and Bridges

Current law authorizes counties to employ labor and provide road equipment to construct and open new roads or bridges and to repair and maintain any existing roads and bridges under certain circumstances.[14] However, counties must competitively bid and award to the lowest bidder all projects for construction and reconstruction of roads and bridges, including resurfacing, that utilize the proceeds of the 80-percent portion of the surplus of the constitutional gas tax.[15] An exception to this requirement allows a county to use its own forces for these construction and reconstruction projects under the following circumstances:

- In emergencies;
- When a construction or reconstruction project has a total cumulative annual value not to exceed 5 percent of its 80-percent portion of the constitutional gas tax or $400,000, whichever is greater; or
- When constructing sidewalks, curbing, accessibility ramps, or appurtenances incidental to roads and bridges if each project is estimated in accordance with generally accepted cost-accounting principles to have total construction project costs of less than $400,000.[16]

In addition, if, after proper advertising, the county receives no bids for a specific project, the county may use its own forces to construct the project.[17] A county is not prohibited from performing routine maintenance as authorized by law.[18]

Effect of the Bill

The bill raises the threshold above which a political subdivision seeking to construct or improve a public building or structure must competitively bid the project from $300,000 to $400,000, and raises the same threshold for electrical work from $75,000 to $100,000.[19]

The bill specifies the manner in which the estimated cost of a public building construction project must be determined when a governing board is deciding whether it is in the local government's best interest to perform the project using its own services, employees, and equipment. Specifically, the bill requires the estimated cost of the project to be determined using generally accepted cost-accounting principles that fully account for all costs associated with performing and completing the work, including employee compensation and benefits, equipment costs and maintenance, insurance costs, and the cost of materials.

[11] *Id.*
[12] *Id.*
[13] *Id.*
[14] Section 336.41, F.S.
[15] Section 336.41(4), F.S.; *see also* Art. XII, s. 9(c)(4), FLA. CONST.
[16] *Id.*
[17] *Id.*
[18] *Id.*
[19] Pursuant to s. 255.20(2), F.S., these threshold amounts would be adjusted by the percentage change in the Engineering News-Record's Building Cost Index from January 1, 2009, to January 1 of the year in which the project is scheduled to begin.

The bill requires a local government that performs a public building construction project using its own services, employees, and equipment to disclose the actual costs of the project after completion to the Auditor General, who must review such disclosures as part of his or her routine audits of local governments.

The bill also requires a local government to consider the same costs when determining the estimated cost of road and bridge construction and reconstruction projects performed utilizing proceeds from the constitutional gas tax, for which a county may use its own forces.

B. SECTION DIRECTORY:

Section 1 amends s. 255.20, F.S., relating to local bids and contracts for public construction works.

Section 2 amends s. 336.41, F.S., relating to counties; employing labor and providing road equipment; accounting; when competitive bidding required.

Section 3 provides an effective date of July 1, 2020.

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:

See Fiscal Comments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

See Fiscal Comments.

D. FISCAL COMMENTS:

The bill may have an indeterminate positive fiscal impact on local governments if the estimated cost for a local government to complete a construction project causes governing boards to select private contractors that can perform the projects at a lower cost. Any increase in projects awarded to private contractors would result in a positive fiscal impact on the private sector.

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 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 state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill does not confer rulemaking authority nor require the promulgation of rules.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On January 29, 2020, the Oversight, Transparency & Public Management Subcommittee adopted an amendment and reported the bill favorably as a committee substitute. The amendment raised the threshold above which a political subdivision seeking to construct or improve a public building or structure must competitively bid the project from $300,000 to $400,000, and raised the same threshold for electrical work from $75,000 to $100,000.

The analysis is drafted to the committee substitute as approved by the Oversight, Transparency & Public Management Subcommittee.

A bill to be entitled

An act relating to local government public construction works; amending s. 255.20, F.S.; revising the amount at which specified entities must competitively award certain projects; requiring the governing board of a local government to consider estimated costs of certain projects using generally accepted cost-accounting principles that account for specified costs when making a specified determination; requiring a local government that performs a project using its own services, employees, and equipment to disclose the actual costs of the project after completion to the Auditor General; requiring the Auditor General to review such disclosures as part of his or her routine audits of local governments; amending s. 336.41, F.S.; requiring estimated total construction project costs for certain projects to include specified costs; providing an effective date.

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

Section 1. Subsection (1) of section 255.20, Florida Statutes, is amended to read:

255.20 Local bids and contracts for public construction works; specification of state-produced lumber.—

(1) A county, municipality, special district as defined in chapter 189, or other political subdivision of the state seeking to construct or improve a public building, structure, or other public construction works must competitively award to an appropriately licensed contractor each project that is estimated in accordance with generally accepted cost-accounting principles to cost more than $400,000 ~~$300,000~~. For electrical work, the local government must competitively award to an appropriately licensed contractor each project that is estimated in accordance with generally accepted cost-accounting principles to cost more than $100,000 ~~$75,000~~. As used in this section, the term "competitively award" means to award contracts based on the submission of sealed bids, proposals submitted in response to a request for proposal, proposals submitted in response to a request for qualifications, or proposals submitted for competitive negotiation. This subsection expressly allows contracts for construction management services, design/build contracts, continuation contracts based on unit prices, and any other contract arrangement with a private sector contractor permitted by any applicable municipal or county ordinance, by district resolution, or by state law. For purposes of this section, cost includes the cost of all labor, except inmate labor, and the cost of equipment and materials to be used in the construction of the project. Subject to the provisions of subsection (3), the county, municipality, special district, or

other political subdivision may establish, by municipal or county ordinance or special district resolution, procedures for conducting the bidding process.

(a) Notwithstanding any other law, a governmental entity seeking to construct or improve bridges, roads, streets, highways, or railroads, and services incidental thereto, at a cost in excess of $250,000 may require that persons interested in performing work under contract first be certified or qualified to perform such work. A contractor may be considered ineligible to bid if the contractor is behind by 10 percent or more on completing an approved progress schedule for the governmental entity at the time of advertising the work. A prequalified contractor considered eligible by the Department of Transportation to bid to perform the type of work described under the contract is presumed to be qualified to perform the work described. The governmental entity may provide an appeal process to overcome that presumption with de novo review based on the record below to the circuit court.

(b) For contractors who are not prequalified by the Department of Transportation, the governmental entity shall publish prequalification criteria and procedures prior to advertisement or notice of solicitation. Such publications must include notice of a public hearing for comment on such criteria and procedures prior to adoption. The procedures must provide for an appeal process within the authority for making objections

to the prequalification process with de novo review based on the record below to the circuit court within 30 days.

(c) ~~The provisions of~~ This subsection does ~~do~~ not apply:

1. If the project is undertaken to replace, reconstruct, or repair an existing public building, structure, or other public construction works damaged or destroyed by a sudden unexpected turn of events such as an act of God, riot, fire, flood, accident, or other urgent circumstances, and such damage or destruction creates:

a. An immediate danger to the public health or safety;

b. Other loss to public or private property which requires emergency government action; or

c. An interruption of an essential governmental service.

2. If, after notice by publication in accordance with the applicable ordinance or resolution, the governmental entity does not receive any responsive bids or proposals.

3. To construction, remodeling, repair, or improvement to a public electric or gas utility system if such work on the public utility system is performed by personnel of the system.

4. To construction, remodeling, repair, or improvement by a utility commission whose major contracts are to construct and operate a public electric utility system.

5. If the project is undertaken as repair or maintenance of an existing public facility. For the purposes of this paragraph, the term "repair" means a corrective action to

restore an existing public facility to a safe and functional condition and the term "maintenance" means a preventive or corrective action to maintain an existing public facility in an operational state or to preserve the facility from failure or decline. Repair or maintenance includes activities that are necessarily incidental to repairing or maintaining the facility. Repair or maintenance does not include the construction of any new building, structure, or other public construction works or any substantial addition, extension, or upgrade to an existing public facility. Such additions, extensions, or upgrades shall be considered substantial if the estimated cost of the additions, extensions, or upgrades included as part of the repair or maintenance project exceeds the threshold amount in subsection (1) and exceeds 20 percent of the estimated total cost of the repair or maintenance project using generally accepted cost-accounting principles that fully account for all costs associated with performing and completing the work, including employee compensation and benefits, equipment cost and maintenance, insurance costs, and materials. An addition, extension, or upgrade shall not be considered substantial if it is undertaken pursuant to the conditions specified in subparagraph 1. Repair and maintenance projects and any related additions, extensions, or upgrades may not be divided into multiple projects for the purpose of evading the requirements of this subparagraph.

6. If the project is undertaken exclusively as part of a public educational program.

7. If the funding source of the project will be diminished or lost because the time required to competitively award the project after the funds become available exceeds the time within which the funding source must be spent.

8. If the local government competitively awarded a project to a private sector contractor and the contractor abandoned the project before completion or the local government terminated the contract.

9. If the governing board of the local government complies with all of the requirements of this subparagraph, conducts a public meeting under s. 286.011 after public notice, and finds by majority vote of the governing board that it is in the public's best interest to perform the project using its own services, employees, and equipment. The public notice must be published at least 21 days before the date of the public meeting at which the governing board takes final action. The notice must identify the project, the components and scope of the work, and the estimated cost of the project using generally accepted cost-accounting principles that fully account for all costs associated with performing and completing the work, including employee compensation and benefits, equipment cost and maintenance, insurance costs, and materials. The notice must specify that the purpose for the public meeting is to consider

whether it is in the public's best interest to perform the project using the local government's own services, employees, and equipment. Upon publication of the public notice and for 21 days thereafter, the local government shall make available for public inspection, during normal business hours and at a location specified in the public notice, a detailed itemization of each component of the estimated cost of the project and documentation explaining the methodology used to arrive at the estimated cost. At the public meeting, any qualified contractor or vendor who could have been awarded the project had the project been competitively bid shall be provided with a reasonable opportunity to present evidence to the governing board regarding the project and the accuracy of the local government's estimated cost of the project. In deciding whether it is in the public's best interest for the local government to perform a project using its own services, employees, and equipment, the governing board must consider the estimated cost of the project using generally accepted cost-accounting principles that fully account for all costs associated with performing and completing the work, including employee compensation and benefits, equipment costs and maintenance, insurance costs, and the cost of materials, and the accuracy of the estimated cost in light of any other information that may be presented at the public meeting and whether the project requires an increase in the number of government employees or an increase

in capital expenditures for public facilities, equipment, or other capital assets. The local government may further consider the impact on local economic development, the impact on small and minority business owners, the impact on state and local tax revenues, whether the private sector contractors provide health insurance and other benefits equivalent to those provided by the local government, and any other factor relevant to what is in the public's best interest. A local government that performs a project using its own services, employees, and equipment must disclose the actual costs of the project after completion to the Auditor General. The Auditor General shall review such disclosures as part of his or her routine audits of local governments.

10. If the governing board of the local government determines upon consideration of specific substantive criteria that it is in the best interest of the local government to award the project to an appropriately licensed private sector contractor pursuant to administrative procedures established by and expressly set forth in a charter, ordinance, or resolution of the local government adopted before July 1, 1994. The criteria and procedures must be set out in the charter, ordinance, or resolution and must be applied uniformly by the local government to avoid awarding a project in an arbitrary or capricious manner. This exception applies only if all of the following occur:

a. The governing board of the local government, after public notice, conducts a public meeting under s. 286.011 and finds by a two-thirds vote of the governing board that it is in the public's best interest to award the project according to the criteria and procedures established by charter, ordinance, or resolution. The public notice must be published at least 14 days before the date of the public meeting at which the governing board takes final action. The notice must identify the project, the estimated cost of the project, and specify that the purpose for the public meeting is to consider whether it is in the public's best interest to award the project using the criteria and procedures permitted by the preexisting charter, ordinance, or resolution.

b. The project is to be awarded by any method other than a competitive selection process, and the governing board finds evidence that:

(I) There is one appropriately licensed contractor who is uniquely qualified to undertake the project because that contractor is currently under contract to perform work that is affiliated with the project; or

(II) The time to competitively award the project will jeopardize the funding for the project, materially increase the cost of the project, or create an undue hardship on the public health, safety, or welfare.

c. The project is to be awarded by any method other than a

competitive selection process, and the published notice clearly specifies the ordinance or resolution by which the private sector contractor will be selected and the criteria to be considered.

d. The project is to be awarded by a method other than a competitive selection process, and the architect or engineer of record has provided a written recommendation that the project be awarded to the private sector contractor without competitive selection, and the consideration by, and the justification of, the government body are documented, in writing, in the project file and are presented to the governing board prior to the approval required in this paragraph.

11. To projects subject to chapter 336.

(d) If the project:

1. Is to be awarded based on price, the contract must be awarded to the lowest qualified and responsive bidder in accordance with the applicable county or municipal ordinance or district resolution and in accordance with the applicable contract documents. The county, municipality, or special district may reserve the right to reject all bids and to rebid the project, or elect not to proceed with the project. This subsection is not intended to restrict the rights of any local government to reject the low bid of a nonqualified or nonresponsive bidder and to award the contract to any other qualified and responsive bidder in accordance with the standards

and procedures of any applicable county or municipal ordinance or any resolution of a special district.

2. Uses a request for proposal or a request for qualifications, the request must be publicly advertised and the contract must be awarded in accordance with the applicable local ordinances.

3. Is subject to competitive negotiations, the contract must be awarded in accordance with s. 287.055.

(e) If a construction project greater than $300,000, or $75,000 for electrical work, is started after October 1, 1999, is to be performed by a local government using its own employees in a county or municipality that issues registered contractor licenses, and the project would require a contractor licensed under chapter 489 if performed by a private sector contractor, the local government must use a person appropriately registered or certified under chapter 489 to supervise the work.

(f) If a construction project greater than $300,000, or $75,000 for electrical work, is started after October 1, 1999, is to be performed by a local government using its own employees in a county that does not issue registered contractor licenses, and the project would require a contractor licensed under chapter 489 if performed by a private sector contractor, the local government must use a person appropriately registered or certified under chapter 489 or a person appropriately licensed under chapter 471 to supervise the work.

(g) Projects performed by a local government using its own services and employees must be inspected in the same manner required for work performed by private sector contractors.

(h) A construction project provided for in this subsection may not be divided into more than one project for the purpose of evading this subsection.

(i) This subsection does not preempt the requirements of any small-business or disadvantaged-business enterprise program or any local-preference ordinance.

(j) A county, municipality, special district as defined in s. 189.012, or any other political subdivision of the state that owns or operates a public-use airport as defined in s. 332.004 is exempt from this section when performing repairs or maintenance on the airport's buildings, structures, or public construction works using the local government's own services, employees, and equipment.

(k) A local government that owns or operates a port identified in s. 403.021(9)(b) is exempt from this section when performing repairs or maintenance on the port's buildings, structures, or public construction works using the local government's own services, employees, and equipment.

(l) A local government that owns or operates a public transit system as defined in s. 343.52, a public transportation system as defined in s. 343.62, or a mass transit system described in s. 349.04(1)(b) is exempt from this section when

performing repairs or maintenance on the buildings, structures, or public construction works of the public transit system, public transportation system, or mass transit system using the local government's own services, employees, and equipment.

(m) Any contractor may be considered ineligible to bid by the governmental entity if the contractor has been found guilty by a court of any violation of federal labor or employment tax laws regarding subjects such as safety, tax withholding, workers' compensation, reemployment assistance or unemployment tax, social security and Medicare tax, wage or hour, or prevailing rate laws within the past 5 years.

Section 2. Subsection (4) of section 336.41, Florida Statutes, is amended to read:

336.41 Counties; employing labor and providing road equipment; accounting; when competitive bidding required.—

(4) All construction and reconstruction of roads and bridges, including resurfacing, full scale mineral seal coating, and major bridge and bridge system repairs, to be performed utilizing the proceeds of the 80-percent portion of the surplus of the constitutional gas tax shall be let to contract to the lowest responsible bidder by competitive bid, except for:

(a) Construction and maintenance in emergency situations; ~~, and~~

(b) In addition to emergency work, construction and reconstruction, including resurfacing, mineral seal coating, and

bridge repairs, having a total cumulative annual value not to exceed 5 percent of its 80-percent portion of the constitutional gas tax or $400,000, whichever is greater;~~,~~ and

(c) Construction of sidewalks, curbing, accessibility ramps, or appurtenances incidental to roads and bridges if each project is estimated in accordance with generally accepted cost-accounting principles to have total construction project costs of less than $400,000 or as adjusted by the percentage change in the Construction Cost Index from January 1, 2008,

for which the county may utilize its own forces. Estimated total construction project costs shall include all costs associated with performing and completing the work, including employee compensation and benefits, equipment costs and maintenance, insurance costs, and the cost of materials. However, if, after proper advertising, no bids are received by a county for a specific project, the county may use its own forces to construct the project, notwithstanding the limitation of this subsection. Nothing in this section shall prevent the county from performing routine maintenance as authorized by law.

Section 3. This act shall take effect July 1, 2020.

COMMITTEE/SUBCOMMITTEE ACTION

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

Committee/Subcommittee hearing bill: State Affairs Committee
Representative Smith, D. offered the following:

Amendment (with title amendment)

Remove everything after the enacting clause and insert:

Section 1. Subsection (3) of section 218.80, Florida Statutes, are amended to read:

218.80 Public Bid Disclosure Act.—

(3) Bidding documents or other request for proposal issued for bids by a local governmental entity, or any public contract entered into between a local governmental entity and a contractor shall disclose each permit or fee which the contractor will have to pay before or during construction, ~~and shall include~~ the dollar amount or the percentage method or the unit method of all permits or fees which may be required by the local government as a part of the contract and a listing of all

other governmental entities that may have additional permits or fees generated by the project. If the request for proposal does not require the response to include a final fixed price, the local governmental entity is not required to disclose any fees or assessments in the request for proposal. However, at least 10 days prior to requiring the contractor to submit a final fixed price for the project, the local governmental entity shall make the disclosures required in this section. Any of the local governmental entity's permits or fees that ~~which~~ are not disclosed in the bidding documents, other request for proposal, or a contract between a local government and a contractor shall not be assessed or collected after the contract is let. No local government shall halt construction under any public contract or delay completion of the contract in order to collect any permits or fees which were not provided for or specified in the bidding documents, other request for proposal, or the contract.

Section 2. Subsection (1) of section 255.20, Florida Statutes, is amended to read:

255.20 Local bids and contracts for public construction works; specification of state-produced lumber.—

(1) A county, municipality, special district as defined in chapter 189, or other political subdivision of the state seeking to construct or improve a public building, structure, or other public construction works must competitively award to an appropriately licensed contractor each project that is estimated

~~in accordance with generally accepted cost-accounting principles~~ to cost more than $300,000. For electrical work, the local government must competitively award to an appropriately licensed contractor each project that is estimated ~~in accordance with generally accepted cost-accounting principles~~ to cost more than $75,000. As used in this section, the term "competitively award" means to award contracts based on the submission of sealed bids, proposals submitted in response to a request for proposal, proposals submitted in response to a request for qualifications, or proposals submitted for competitive negotiation. This subsection expressly allows contracts for construction management services, design/build contracts, continuation contracts based on unit prices, and any other contract arrangement with a private sector contractor permitted by any applicable municipal or county ordinance, by district resolution, or by state law. For purposes of this section, cost includes employee compensation and benefits ~~the cost of all labor~~, except inmate labor, ~~and the cost of equipment and~~ the cost of direct materials to be used in the construction of the project including materials purchased by the local government, and other direct costs, plus a factor of 20 percent for management, overhead, and other indirect costs. Subject to the provisions of subsection (3), the county, municipality, special district, or other political subdivision may establish, by

municipal or county ordinance or special district resolution, procedures for conducting the bidding process.

(a) Notwithstanding any other law, a governmental entity seeking to construct or improve bridges, roads, streets, highways, or railroads, and services incidental thereto, at a cost in excess of $250,000 may require that persons interested in performing work under contract first be certified or qualified to perform such work. A contractor may be considered ineligible to bid if the contractor is behind by 10 percent or more on completing an approved progress schedule for the governmental entity at the time of advertising the work. A prequalified contractor considered eligible by the Department of Transportation to bid to perform the type of work described under the contract is presumed to be qualified to perform the work described. The governmental entity may provide an appeal process to overcome that presumption with de novo review based on the record below to the circuit court.

(b) For contractors who are not prequalified by the Department of Transportation, the governmental entity shall publish prequalification criteria and procedures prior to advertisement or notice of solicitation. Such publications must include notice of a public hearing for comment on such criteria and procedures prior to adoption. The procedures must provide for an appeal process within the authority for making objections

to the prequalification process with de novo review based on the record below to the circuit court within 30 days.

(c) The provisions of this subsection do not apply:

1. If the project is undertaken to replace, reconstruct, or repair an existing public building, structure, or other public construction works damaged or destroyed by a sudden unexpected turn of events such as an act of God, riot, fire, flood, accident, or other urgent circumstances, and such damage or destruction creates:

a. An immediate danger to the public health or safety;

b. Other loss to public or private property which requires emergency government action; or

c. An interruption of an essential governmental service.

2. If, after notice by publication in accordance with the applicable ordinance or resolution, the governmental entity does not receive any responsive bids or proposals.

3. To construction, remodeling, repair, or improvement to a public electric or gas utility system if such work on the public utility system is performed by personnel of the system.

4. To construction, remodeling, repair, or improvement by a utility commission whose major contracts are to construct and operate a public electric utility system.

5. If the project is undertaken as repair or maintenance of an existing public facility. For the purposes of this paragraph, the term "repair" means a corrective action to

restore an existing public facility to a safe and functional condition and the term "maintenance" means a preventive or corrective action to maintain an existing public facility in an operational state or to preserve the facility from failure or decline. Repair or maintenance includes activities that are necessarily incidental to repairing or maintaining the facility. Repair or maintenance does not include the construction of any new building, structure, or other public construction works or any substantial addition, extension, or upgrade to an existing public facility. Such additions, extensions, or upgrades shall be considered substantial if the estimated cost of the additions, extensions, or upgrades included as part of the repair or maintenance project exceeds the threshold amount in subsection (1) and exceeds 20 percent of the estimated total cost of the repair or maintenance project ~~using generally accepted cost-accounting principles that~~ fully accounting ~~account~~ for all costs associated with performing and completing the work, including employee compensation and benefits, the cost of direct materials to be used in the construction of the project including materials purchased by the local government, and other direct costs, plus a factor of 20 percent for management, overhead, and other indirect costs ~~equipment cost and maintenance, insurance costs, and materials~~. An addition, extension, or upgrade shall not be considered substantial if it is undertaken pursuant to the conditions specified in

subparagraph 1. Repair and maintenance projects and any related additions, extensions, or upgrades may not be divided into multiple projects for the purpose of evading the requirements of this subparagraph.

6. If the project is undertaken exclusively as part of a public educational program.

7. If the funding source of the project will be diminished or lost because the time required to competitively award the project after the funds become available exceeds the time within which the funding source must be spent.

8. If the local government competitively awarded a project to a private sector contractor and the contractor abandoned the project before completion or the local government terminated the contract.

9. If the governing board of the local government complies with all of the requirements of this subparagraph, conducts a public meeting under s. 286.011 after public notice, and finds by majority vote of the governing board that it is in the public's best interest to perform the project using its own services, employees, and equipment. The public notice must be published at least 21 days before the date of the public meeting at which the governing board takes final action. The notice must identify the project, the components and scope of the work, and the estimated cost of the project ~~using generally accepted cost-accounting principles that~~ fully accounting ~~account~~ for all

costs associated with performing and completing the work, including employee compensation and benefits, the cost of direct materials to be used in the construction of the project including materials purchased by the local government, and other direct costs, plus a factor of 20 percent for management, overhead, and other indirect costs ~~equipment cost and maintenance, insurance costs, and materials~~. The notice must specify that the purpose for the public meeting is to consider whether it is in the public's best interest to perform the project using the local government's own services, employees, and equipment. Upon publication of the public notice and for 21 days thereafter, the local government shall make available for public inspection, during normal business hours and at a location specified in the public notice, a detailed itemization of each component of the estimated cost of the project and documentation explaining the methodology used to arrive at the estimated cost. At the public meeting, any qualified contractor or vendor who could have been awarded the project had the project been competitively bid shall be provided with a reasonable opportunity to present evidence to the governing board regarding the project and the accuracy of the local government's estimated cost of the project. In deciding whether it is in the public's best interest for the local government to perform a project using its own services, employees, and equipment, the governing board must consider the estimated cost

of the project fully accounting for all costs associated with performing and completing the work, including employee compensation and benefits, the cost of direct materials to be used in the construction of the project including materials purchased by the local government, and other direct costs, plus a factor of 20 percent for management, overhead, and other indirect costs, and the accuracy of the estimated cost in light of any other information that may be presented at the public meeting and whether the project requires an increase in the number of government employees or an increase in capital expenditures for public facilities, equipment, or other capital assets. The local government may further consider the impact on local economic development, the impact on small and minority business owners, the impact on state and local tax revenues, whether the private sector contractors provide health insurance and other benefits equivalent to those provided by the local government, and any other factor relevant to what is in the public's best interest. A report summarizing completed projects constructed by the local government pursuant to this subsection shall be publicly reviewed each year by the governing body of the local government. The report shall detail the estimated costs and the actual costs of the projects constructed by the local government pursuant to this subsection. The report shall be made available for review by the public. The Auditor General

shall review the report as part of his or her audits of local governments.

10. If the governing board of the local government determines upon consideration of specific substantive criteria that it is in the best interest of the local government to award the project to an appropriately licensed private sector contractor pursuant to administrative procedures established by and expressly set forth in a charter, ordinance, or resolution of the local government adopted before July 1, 1994. The criteria and procedures must be set out in the charter, ordinance, or resolution and must be applied uniformly by the local government to avoid awarding a project in an arbitrary or capricious manner. This exception applies only if all of the following occur:

a. The governing board of the local government, after public notice, conducts a public meeting under s. 286.011 and finds by a two-thirds vote of the governing board that it is in the public's best interest to award the project according to the criteria and procedures established by charter, ordinance, or resolution. The public notice must be published at least 14 days before the date of the public meeting at which the governing board takes final action. The notice must identify the project, the estimated cost of the project, and specify that the purpose for the public meeting is to consider whether it is in the public's best interest to award the project using the criteria

and procedures permitted by the preexisting charter, ordinance, or resolution.

b. The project is to be awarded by any method other than a competitive selection process, and the governing board finds evidence that:

(I) There is one appropriately licensed contractor who is uniquely qualified to undertake the project because that contractor is currently under contract to perform work that is affiliated with the project; or

(II) The time to competitively award the project will jeopardize the funding for the project, materially increase the cost of the project, or create an undue hardship on the public health, safety, or welfare.

c. The project is to be awarded by any method other than a competitive selection process, and the published notice clearly specifies the ordinance or resolution by which the private sector contractor will be selected and the criteria to be considered.

d. The project is to be awarded by a method other than a competitive selection process, and the architect or engineer of record has provided a written recommendation that the project be awarded to the private sector contractor without competitive selection, and the consideration by, and the justification of, the government body are documented, in writing, in the project

file and are presented to the governing board prior to the approval required in this paragraph.

11. To projects subject to chapter 336.

(d) If the project:

1. Is to be awarded based on price, the contract must be awarded to the lowest qualified and responsive bidder in accordance with the applicable county or municipal ordinance or district resolution and in accordance with the applicable contract documents. The county, municipality, or special district may reserve the right to reject all bids and to rebid the project, or elect not to proceed with the project. This subsection is not intended to restrict the rights of any local government to reject the low bid of a nonqualified or nonresponsive bidder and to award the contract to any other qualified and responsive bidder in accordance with the standards and procedures of any applicable county or municipal ordinance or any resolution of a special district.

2. Uses a request for proposal or a request for qualifications, the request must be publicly advertised and the contract must be awarded in accordance with the applicable local ordinances.

3. Is subject to competitive negotiations, the contract must be awarded in accordance with s. 287.055.

(e) If a construction project greater than $300,000, or $75,000 for electrical work, is started after October 1, 1999,

is to be performed by a local government using its own employees in a county or municipality that issues registered contractor licenses, and the project would require a contractor licensed under chapter 489 if performed by a private sector contractor, the local government must use a person appropriately registered or certified under chapter 489 to supervise the work.

(f) If a construction project greater than $300,000, or $75,000 for electrical work, is started after October 1, 1999, is to be performed by a local government using its own employees in a county that does not issue registered contractor licenses, and the project would require a contractor licensed under chapter 489 if performed by a private sector contractor, the local government must use a person appropriately registered or certified under chapter 489 or a person appropriately licensed under chapter 471 to supervise the work.

(g) Projects performed by a local government using its own services and employees must be inspected in the same manner required for work performed by private sector contractors.

(h) A construction project provided for in this subsection may not be divided into more than one project for the purpose of evading this subsection.

(i) This subsection does not preempt the requirements of any small-business or disadvantaged-business enterprise program or any local-preference ordinance.

(j) A county, municipality, special district as defined in s. 189.012, or any other political subdivision of the state that owns or operates a public-use airport as defined in s. 332.004 is exempt from this section when performing repairs or maintenance on the airport's buildings, structures, or public construction works using the local government's own services, employees, and equipment.

(k) A local government that owns or operates a port identified in s. 403.021(9)(b) is exempt from this section when performing repairs or maintenance on the port's buildings, structures, or public construction works using the local government's own services, employees, and equipment.

(l) A local government that owns or operates a public transit system as defined in s. 343.52, a public transportation system as defined in s. 343.62, or a mass transit system described in s. 349.04(1)(b) is exempt from this section when performing repairs or maintenance on the buildings, structures, or public construction works of the public transit system, public transportation system, or mass transit system using the local government's own services, employees, and equipment.

(m) Any contractor may be considered ineligible to bid by the governmental entity if the contractor has been found guilty by a court of any violation of federal labor or employment tax laws regarding subjects such as safety, tax withholding, workers' compensation, reemployment assistance or unemployment

tax, social security and Medicare tax, wage or hour, or prevailing rate laws within the past 5 years.

Section 3. Subsection (4) of section 336.41, Florida Statutes, is amended to read:

336.41 Counties; employing labor and providing road equipment; accounting; when competitive bidding required.—

(4) All construction and reconstruction of roads and bridges, including resurfacing, full scale mineral seal coating, and major bridge and bridge system repairs, to be performed utilizing the proceeds of the 80-percent portion of the surplus of the constitutional gas tax shall be let to contract to the lowest responsible bidder by competitive bid, except for:

(a) Construction and maintenance in emergency situations, and

(b) In addition to emergency work, construction and reconstruction, including resurfacing, mineral seal coating, and bridge repairs, having a total cumulative annual value not to exceed 5 percent of its 80-percent portion of the constitutional gas tax or $400,000, whichever is greater, and

(c) Construction of sidewalks, curbing, accessibility ramps, or appurtenances incidental to roads and bridges if each project is estimated ~~in accordance with generally accepted cost-accounting principles~~ to have total construction project costs of less than $400,000 or as adjusted by the percentage change in the Construction Cost Index from January 1, 2008,

for which the county may utilize its own forces. Estimated total construction project costs must include all costs associated with performing and completing the work, including employee compensation and benefits, the cost of direct materials to be used in the construction of the project including materials purchased by the local government, and other direct costs, plus a factor of 20 percent for management, overhead, and other indirect costs. However, if, after proper advertising, no bids are received by a county for a specific project, the county may use its own forces to construct the project, notwithstanding the limitation of this subsection. Nothing in this section shall prevent the county from performing routine maintenance as authorized by law.

Section 4. This act shall take effect July 1, 2020.

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

Remove everything before the enacting clause and insert:

An act relating to local government public construction works; amending s. 218.80, F.S.; revising disclosure requirements for bidding documents and other requests for proposals issued for bids by a local governmental entity and public contracts entered into between local governmental entities and contractors; amending s. 255.20, F.S.; revising the

term cost to include specified information; requiring the governing board of a local government to consider estimated costs of certain projects that account for specified costs when the board is making a specified determination; requiring that a local government that performs projects using its own services, employees, and equipment provide a report to the local governing board with certain information; requiring that the Auditor General review the report as part of his or her audits of local governments; amending s. 336.41, F.S.; requiring estimated total construction projects for certain projects to include specified costs; providing an effective date.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 549 Pub. Rec./Site-specific Location Information of Endangered and Threatened Species
SPONSOR(S): Agriculture & Natural Resources Subcommittee, Overdorf
TIED BILLS: **IDEN./SIM. BILLS:** CS/CS/SB 812

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Agriculture & Natural Resources Subcommittee	11 Y, 0 N, As CS	Melkun	Moore
2) State Affairs Committee		Melkun	Williamson

SUMMARY ANALYSIS

An endangered species is any species of fish or wildlife naturally occurring in Florida whose prospects of survival are in jeopardy due to modification or loss of habitat; overutilization for commercial, sporting, scientific, or educational purposes; disease; predation; inadequacy of regulatory mechanisms; or other natural or manmade factors affecting its continued existence. A threatened species is any species of fish or wildlife naturally occurring in Florida that is not in immediate danger of extinction, but exists in such small populations that it is at risk of becoming endangered if it is subjected to increased stress as a result of further modification of its environment.

At the federal level, the National Oceanic and Atmospheric Administration's National Marine Fisheries Service is responsible for determining whether to list most marine species as endangered or threatened, and the United States Fish and Wildlife Service is responsible for determining whether to list other species. On the state level, the Florida Fish and Wildlife Conservation Commission (FWC) may designate species by rule as state-designated threatened species.

In managing species listed as endangered or threatened, FWC conducts significant research that includes population trends, migratory patterns, reproductive ecology, distribution data, den locations, satellite telemetry, point localities for artificial reefs, and mark-recapture data. FWC often collaborates with nongovernmental organizations, universities, other management agencies, and private consultants when making management decisions for listed species.

The bill provides that site-specific location information concerning a federally-designated endangered or threatened species or a state-designated threatened species held by an agency is exempt from public records requirements. The bill specifies that the public record exemption does not apply to animals in captivity.

The bill provides for repeal of the exemption on October 2, 2025, unless reviewed and saved from repeal by the Legislature. The bill provides a public necessity statement as required by the State Constitution.

The bill may have a minimal fiscal impact on the state and local governments. *See* Fiscal Comments

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 public record exemption. The bill creates a public record exemption; thus, it requires a two-thirds vote for final passage.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Public Records Laws

Article I, s. 24(a) of the State Constitution sets forth the state's public policy regarding access to government records. This section 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 119.07(1), F.S., guarantees every person a right to inspect and copy any state, county, or municipal record.

Public Record Exemptions

The Legislature may provide by general law for the exemption of records from the requirements of Art. I, s. 24(a) of the State Constitution.[1] 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.[2]

Furthermore, the Open Government Sunset Review Act[3] provides that a public record or public meeting exemption may be created or maintained only if it serves an identifiable public purpose. The exemption may be no broader than is necessary to meet one of the following purposes:

- Allow the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption.
- Protect 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.
- Protect trade or business secrets.[4]

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.[5]

Florida's Management of Endangered Species

Pursuant to Art. IV, s. 9 of the State Constitution, the Florida Fish and Wildlife Conservation Commission (FWC) exercises the regulatory and executive powers of the state with respect to wild animal life, fresh water aquatic life, and marine life.[6] Under the Florida Endangered and Threatened Species Act, FWC is responsible for research and management of freshwater and upland species as well as marine species.[7]

An endangered species is any species of fish or wildlife naturally occurring in Florida whose prospects of survival are in jeopardy due to modification or loss of habitat; overutilization for commercial, sporting, scientific, or educational purposes; disease; predation; inadequacy of regulatory mechanisms; or other natural or manmade factors affecting its continued existence.[8] A threatened species is any species of

[1] Art. I, s. 24(c), FLA. CONST.
[2] Art. I, s. 24(c), FLA. CONST.
[3] Section 119.15, F.S.
[4] Section 119.15(6)(b), F.S.
[5] Section 119.15(3), F.S.
[6] Art. IV, s. 9, FLA. CONST.
[7] Section 379.2291(4), F.S.
[8] Section 379.2291(3)(b), F.S.

fish or wildlife naturally occurring in Florida that is not in immediate danger of extinction, but exists in such small populations that it is at risk of becoming endangered if it is subjected to increased stress as a result of further modification of its environment.[9]

At the federal level, the National Oceanic and Atmospheric Administration's National Marine Fisheries Service is responsible for determining whether to list most marine species as endangered or threatened, and the United States Fish and Wildlife Service (USFWS) is responsible for determining whether to listed other species.[10] On the state level, FWC may designate species by rule as state-designated threatened species.[11] FWC's rule designating species as threatened also includes a list of federally-designated endangered and threatened species.[12] Intentionally killing, wounding, or destroying the eggs or nest of any species designated as endangered or threatened is a third degree felony.[13]

In the management of species listed as endangered or threatened, FWC conducts significant research for surveying and monitoring such species, including habitat improvement and restoration, development and implementation of management plans, and conservation planning. Research data typically includes population trends, migratory patterns, reproductive ecology, distribution data, den locations, satellite telemetry, point localities for artificial reefs, and mark-recapture data.[14] FWC often collaborates with nongovernmental organizations, universities, other management agencies, and private consultants when making management decisions for listed species.[15]

Effect of the Bill

The bill provides that site-specific location information concerning a federally-designated endangered or threatened species or a state-designated threatened species held by an agency[16] is exempt[17] from public records requirements. The bill specifies that the exemption does not apply to animals in captivity.

The bill provides a public necessity statement as required by the State Constitution, specifying that the release of such information would jeopardize the continued existence of endangered and threatened species by increasing the risk of exposure to poachers or by threatening the integrity of the site due to increased use or traffic. The public necessity statement also provides that the protection of such information would protect private property owners from potential trespass and related liability issues when endangered or threatened species are found on their properties and would encourage such property owners, as well as researchers, to provide agencies with information they might not otherwise provide if such location information were made public.

The bill provides for repeal of the exemption on October 2, 2025, unless reviewed and saved from repeal by the Legislature.

---

[9] Section 379.2291(3)(c), F.S.
[10] 50 C.F.R. 17 (animals); 50 C.F.R. 23 (plants); 50 C.F.R. 223 and 224 (marine species).
[11] Rule 68A-27.001(3), F.A.C.
[12] Rules 68A–27.003 and 68A–27.0031, F.A.C.; FWC, *Florida's Endangered and Threatened Species*, available at https://myfwc.com/media/1945/threatend-endangered-species.pdf (last visited Jan. 28, 2020).
[13] Section 379.411, F.S.
[14] Florida Fish and Wildlife Conservation Commission, Agency Analysis of 2020 House Bill 549, p. 2 (Jan. 14, 2020).
[15] *Id*.
[16] Section 119.011(2), F.S., defines the term "agency" to include 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, 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.
[17] There is a difference between records the Legislature designates exempt from public record requirements and those the Legislature deems confidential and exempt. A record classified as exempt from public disclosure may be disclosed under certain circumstances. *See WFTV, Inc. v. Sch. Bd. of Seminole*, 874 So.2d 48, 53 (Fla. 5th DCA 2004), *review denied* 892 So.2d 1015 (Fla. 2004); *City of Rivera Beach v. Barfield*, 642 So.2d 1135 (Fla. 4th DCA 1994); *Williams v. City of Minneola*, 575 So.2d 683, 687 (Fla. 5th DCA 1991). If the Legislature designates a record as confidential and exempt from public disclosure, such record may not be released by the custodian of public records, to anyone other than the persons or entities specifically designated in statute. *See* Op. Att'y Gen. Fla. (1985).

B. SECTION DIRECTORY:

Section 1. Creates s. 379.1026, F.S., to provide a public record exemption for site-specific location information for endangered and threatened species.

Section 2. Provides a public necessity statement as required by the State Constitution.

Section 3. Provides an effective date of July 1, 2020.

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:

See Fiscal Comments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

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

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, nor 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 public record exemption. The bill creates a 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 public record exemption. The bill creates a 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 exemption to be no broader than necessary to accomplish the stated purpose of the law. The bill creates a public record exemption for site-specific location information concerning a federally-designated endangered or threatened species or state-designated threatened species. As such, the exemption does not appear to be in conflict with the constitutional requirement that it be no broader than necessary to accomplish its purpose.

B. RULE-MAKING AUTHORITY:

The bill does not confer rulemaking authority nor require rulemaking.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On February 4, 2020, the Agriculture & Natural Resources Subcommittee adopted a strike-all amendment and reported the bill favorably as a committee substitute. The amendment specified that the exemption does not apply to animals in captivity and removed a provision specifying when release of the exempt information would not waive the exemption.

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

A bill to be entitled

An act relating to public records; creating s. 379.1026, F.S.; providing an exemption from public records requirements for the site-specific location information of certain endangered and threatened species; providing for future legislative review and repeal of the exemption; providing a statement of public necessity; providing an effective date.

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

Section 1. Section 379.1026, Florida Statutes, is created to read:

379.1026 Site-specific location information for endangered and threatened species; public records exemption.—The site-specific location information held by an agency as defined in s. 119.011 concerning an endangered species as defined in s. 379.2291(3)(b), a threatened species as defined in s. 379.2291(3)(c), or a species listed by a federal agency as endangered or threatened, is exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. This exemption does not apply to the site-specific location information of animals held in captivity. This section is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2025, unless reviewed and saved from

repeal by the Legislature.

Section 2. The Legislature finds that it is a public necessity that the site-specific location information held by an agency concerning an endangered or threatened species as listed by a federal agency or the Fish and Wildlife Conservation Commission be made exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution. The Legislature finds that the release of such location information would jeopardize the continued existence of endangered or threatened species by increasing the risk of exposure to wildlife poachers or by threatening the integrity of the site due to increased use or traffic. This exemption protects private property owners from potential trespass and related liability issues when endangered or threatened species are found on their properties and encourages such property owners, as well as researchers, to provide agencies with information they might not otherwise provide if such location information were made public. The Legislature finds that the harm that may result from the release of such location information outweighs any public benefit that may be derived from the disclosure of the information.

Section 3. This act shall take effect July 1, 2020.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 569 Diesel Exhaust Fluid
SPONSOR(S): Transportation & Infrastructure Subcommittee, Overdorf, McClure and others
TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 1036

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Transportation & Infrastructure Subcommittee	15 Y, 0 N, As CS	Johnson	Vickers
2) Transportation & Tourism Appropriations Subcommittee	12 Y, 0 N	Hicks	Davis
3) State Affairs Committee		Johnson	Williamson

SUMMARY ANALYSIS

The United States Environmental Protection Agency requires diesel exhaust fluid (DEF) to be used in newer diesel engines, including diesel-powered vehicles used for aircraft and airport support. DEF is an exhaust additive that reduces diesel emissions by neutralizing nitrogen oxide into harmless nitrogen gas and water.

In recent years, a number of aircraft have experienced engine shutdowns and other engine operability issues resulting from the contamination of jet fuel due to the inadvertent filling of fuel truck anti-icing injection system reservoirs with DEF instead of a fuel system icing inhibitor. The Federal Aviation Administration has made a number of preliminary safety recommendations regarding the use of DEF at airports including additional training and the adoption of best management practices.

The bill requires certain public airports that utilize DEF to create a DEF safety mitigation and exclusion plan and provides minimum requirements for such plan. The plan must be approved by the governing body of the airport and submitted to the Florida Department of Transportation. The airport must regularly review its plan and annually certify compliance.

The bill may have an indeterminate negative fiscal impact on state and local governments. *See* Fiscal Analysis for details.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Diesel Exhaust Fluid

As part of the Clean Air Act of 1990, the United States Environmental Protection Agency (EPA) has, in order to curb air pollution, mandated stronger emission control standards for vehicle engines. Nitrogen Oxide (NOx) emissions can be a major polluter from diesel engines and the EPA has targeted them for significant reductions. In 2007, the EPA mandated that all new on-road heavy duty vehicles manufactured after 2010 meet certain requirements and required light duty vehicles to meet these requirements in 2014. In order to meet these standards, technologies such as selective catalytic reduction have been developed.[1]

In diesel vehicles, selective catalytic reduction reduces NOx emissions by injecting diesel exhaust fluid (DEF) into ammonia, which in the presence of the catalyst, reacts with the exhaust NOx to neutralize it into harmless nitrogen gas and water.[2]

DEF is a nontoxic, nonhazardous, and colorless aqueous solution of automotive grade urea in deionized water.[3]

Airport Use of Diesel Exhaust Fluid

At public airports, the airport and its tenants use DEF in various diesel-powered vehicles including aircraft refueling equipment, diesel aircraft fire-fighting equipment, life-saving equipment, and emergency generators.[4]

In recent years, a number of aircraft have experienced engine shutdowns and other engine operability issues due to the contamination of jet fuel as a result of the inadvertent filling of aircraft fuel trucks anti-icing injection system with DEF instead of a fuel system icing inhibitor.[5]

Due to fuel system designs, some aircraft require a fuel system icing inhibitor to prevent engine operability issues in cold weather. Due to this requirement, for many years, airport refueling trucks have been equipped with fuel system icing inhibitor injections systems, which require a fuel system icing inhibitor fluid reservoir mounted on the truck to supply the injection system during refueling. However, new refueling trucks often contain a DEF reservoir in addition to the fuel system icing inhibitor reservoir. Since EPA's mandate for selective catalytic reduction on non-road diesel trucks began in 2014, airport refueling trucks with two reservoirs have begun appearing more often at airports.[6]

Between November 2017 and May 2019, there were three instances, two in Florida, in which aircraft had jet fuel contaminated with DEF or were refueled using equipment exposed to DEF. Because of these instances, numerous aircraft had to perform emergency landings. The Federal Aviation Administration (FAA) conducted a hazard analysis and issued preliminary recommendations to address the problem, including additional training for ground support crews, adoption of best management practices, and dying either DEF or fuel system icing inhibitors so they can be distinguished from each other.[7]

---

[1] Aircraft Diesel Exhaust Fluid Contamination Working Group, *A collaborative Industry Report on the Hazard of Diesel Exhaust Fluid Contamination of Aircraft Fuel*, June 11, 2019. P. 3-4 (Copy on file with Transportation & Infrastructure Subcommittee).
[2] *Id.*
[3] *Id.*
[4] Email from Lisa Waters, President/CEO Florida Airports Council, Diesel Exhaust Fluid, Nov. 4, 2019. (Copy on file with Transportation & Infrastructure Subcommittee).
[5] Federal Aviation Administration, *Safety Assessment for Jet Fuel Contamination with Diesel Exhaust Fluid.* August 30, 2019. P.4. (Copy on file with Transportation & Infrastructure Subcommittee).
[6] *Id.*
[7] *Id.*

Effect of the Bill

The bill requires the governing body of each public airport[8] to create a DEF mitigation and exclusion plan if:

- Aviation fuels receive onsite treatment with fuel system icing inhibitors by means of injection or mixing systems; and
- The exhaust system of an aircraft fuel delivery vehicle or ground service equipment is treated with DEF within 150 feet of any aircraft.

At a minimum, the plan must include:

- A full inventory of all DEF on the airport's premises.
- Designation of specific areas where DEF may be stored on the airport's premises. To the extent practicable, such areas may not be located within or on a vehicle operated for the fueling or servicing of aircraft or at any aviation fuel transfer facility or bulk aviation storage facility.
- Designation of specific areas where DEF may be added to vehicles. Such areas may not be located in aircraft operating areas.
- Incorporation of best practices for ensuring the proper labeling and storage of DEF.
- Incorporation of training in the proper use and storage of DEF for all persons on the airport's premises who may come into contact with DEF in the ordinary course of his or her duties.

The DEF fuel safety mitigation and exclusion plan must be approved by the airport's governing body by September 1, 2020. The governing body must, by October 1, 2020, submit the plan to the Florida Department of Transportation (FDOT) and certify that all DEF has been secured within the premises of the airport.

Each airport's DEF fuel safety mitigation and exclusion plan must be fully implemented by January 1, 2021.

By January 1 of each year, beginning in 2022, each public airport must certify to FDOT compliance with the airport's DEF safety mitigation and exclusion plan.

B. SECTION DIRECTORY:

Section 1 creates s. 330.401, F.S., relating to the DEF safety mitigation and exclusion plan.

Section 2 provides an effective date of July 1, 2020.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   The bill does not appear to impact state government revenues.

2. Expenditures:

   There is an indeterminate, but likely insignificant fiscal impact to FDOT associated with reviewing airport DEF safety mitigation and exclusion plans. These expenditures can be absorbed within existing resources.

[8] Section 330.27(6), F.S., defines the term "public airport" as an airport, publicly or privately owned, which is open for use by the public.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill does not appear to impact local government revenues.

2. Expenditures:

There is an indeterminate, but likely negative fiscal impact to local governments operating public airports associated with complying with DEF safety mitigation and exclusion plans.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Tenants of public airports, including fuel providers, may incur expenditures associated with complying with the DEF safety mitigation and exclusion plans; however, the impact is indeterminate.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The county/municipality mandates provision of Art. VII, s. 19 of the Florida Constitution may apply because the bill requires public airports to develop DEF safety mitigation and exclusion plans; however, an exemption may apply since there is likely an insignificant fiscal impact.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

This bill does not grant rulemaking authority, nor does it require rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

On lines 22-24 of the bill, it is unclear whether the exhaust system must be treated within 150 feet of an aircraft or whether the vehicles must be used within 150 feet of an aircraft.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On January 21, 2020, the Transportation & Infrastructure Subcommittee adopted a strike-all amendment and reported the bill favorably as a committee substitute. The strike-all amendment removed the requirement that all DEF be removed from the premises of public airports by October 1, 2030. The amendment revised provisions regarding the DEF safety mitigation and exclusion plans to incorporate best practices and training requirements regarding the use of DEF. The amendment also required airports to certify compliance with FDOT, rather than the Department of Environmental Protection.

This analysis is drafted to the committee substitute as approved by the Transportation & Infrastructure Subcommittee.

A bill to be entitled

An act relating to diesel exhaust fluid; creating s. 330.401, F.S.; requiring the governing body of each public airport that meets certain criteria to create a diesel exhaust fluid safety mitigation and exclusion plan for submission to the Department of Transportation; providing plan requirements; requiring an annual certification of compliance; providing an effective date.

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

Section 1. Section 330.401, Florida Statutes, is created to read:

330.401 Diesel exhaust fluid safety mitigation and exclusion plan; certification.—

(1)(a) The governing body of each public airport as defined in s. 330.27 at which:

1. Aviation fuels receive onsite treatment with fuel system icing inhibitors by means of injection or mixing systems; and

2. Any aircraft fuel delivery vehicle or ground service equipment the exhaust system of which is being treated with diesel exhaust fluid is operated within 150 feet of any aircraft

shall create a diesel exhaust fluid safety mitigation and exclusion plan.

(b) The plan must include, at a minimum:

1. A full inventory of all diesel exhaust fluid on the premises of the airport.

2. Designation of specific areas where diesel exhaust fluid may be stored on the premises of the airport. To the extent practicable, such areas may not be located within or on a vehicle operated for the fueling or servicing of aircraft or at any aviation fuel transfer facility or bulk aviation fuel storage facility.

3. Designation of specific areas where diesel exhaust fluid may be added to vehicles. Such areas may not be located in aircraft operating areas.

4. Incorporation of best practices for ensuring the proper labeling and storage of diesel exhaust fluid.

5. Incorporation of training in the proper use and storage of diesel exhaust fluid for all persons on the premises of the airport who may come in contact with such fluid in the ordinary course of his or her duties.

(2) The diesel exhaust fluid safety mitigation and exclusion plan must be approved by the governing body by September 1, 2020. The governing body must, by October 1, 2020, submit the plan to the Department of Transportation and certify that all diesel exhaust fluid has been secured within the

premises of the airport.

(3) The diesel exhaust fluid safety mitigation and exclusion plan must be fully implemented on the premises of each airport by January 1, 2021.

(4) By January 1 of each year, beginning in 2022, each public airport must certify to the department the airport's compliance with its diesel exhaust fluid safety mitigation and exclusion plan.

Section 2. This act shall take effect July 1, 2020.

Amendment No.

COMMITTEE/SUBCOMMITTEE ACTION

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

Committee/Subcommittee hearing bill: State Affairs Committee

Representative Overdorf offered the following:

Amendment

Remove lines 19-24 and insert:

1. Aviation fuels receive onsite treatment with fuel system icing inhibitors;

2. Aviation fuel is delivered by a public or private owned fixed base operator; and

3. Any aircraft fuel delivery vehicle or ground service equipment that uses diesel exhaust fluid is operated within 150 feet of any aircraft

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 687 Services for Veterans and Their Families
SPONSOR(S): Health Care Appropriations Subcommittee, Zika, Hattersley and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 104

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Local, Federal & Veterans Affairs Subcommittee	14 Y, 0 N	Renner	Miller
2) Health Care Appropriations Subcommittee	10 Y, 0 N, As CS	Mielke	Clark
3) State Affairs Committee		Renner	Williamson

SUMMARY ANALYSIS

Veterans throughout the United States face mental health and substance abuse issues. Depression, post-traumatic stress disorder, and suicide affect between two and 17 percent of veterans returning from combat.

In 2014, the Legislature appropriated $150,000 to the Florida Department of Veterans Affairs (FDVA) to create a pilot program expanding existing Florida 211 Network (information and referral network) services to veterans in Hillsborough, Pasco, Pinellas, Polk, and Manatee Counties. Through the pilot project, veterans receive information on available services, referrals to federal Veterans Affairs (VA)-funded and other community-based services, and care coordination to verify that referrals lead to successful service connection.

The bill authorizes FDVA to establish the Florida Veterans' Care Coordination Program (Program) to provide veterans and their families dedicated behavioral health care referral services, primarily for mental health and substance abuse. Through the Program, a veteran may call a separate veteran-dedicated support line to receive assistance and support from a fellow veteran trained to respond to the calls for assistance.

If FDVA establishes the Program, FDVA may contract with a nonprofit entity that has statewide phone capacity to serve veterans, is accredited by the Council on Accreditation, and is fully accredited by the Alliance of Information and Referral Services. The contracting entity must enter into agreements with Florida 211 Network participants to provide services to veterans.

The bill models the Program after the pilot program. The bill specifies Program goals, services, and requirements. If the Program is established, FDVA must compile data collected by the Florida 211 Network into a report for the Governor, President of the Senate, and Speaker of the House of Representatives by December 15, 2021.

The bill has no fiscal impact on the FDVA for Fiscal Year 2020-2021 and an indeterminate negative fiscal impact on the FDVA thereafter.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Veterans and Mental Health and Substance Abuse

Florida has the nation's third-largest veteran population with more than 1.5 million veterans.[1] Veterans face unique challenges and some struggle with mental health and substance abuse.

Posttraumatic Stress Disorder (PTSD) is a psychiatric disorder that can occur in people who have experienced or witnessed a traumatic event, including war or combat.[2] The National Center for PTSD, within the United States Department of Veterans Affairs (VA), lists the percentage of veterans with PTSD by service era:

- Between 11 and 20 percent of veterans who served in Operations Iraqi Freedom and Enduring Freedom were diagnosed with PTSD in a given year.
- About 12 percent of veterans who served in the Gulf War were diagnosed with PTSD in a given year.
- About 15 percent of veterans of the Vietnam War were diagnosed with PTSD at the time of the most recent study in the late 1980s. However, the National Center for PTSD estimates that about 30 percent of veterans of the Vietnam War have had PTSD in their lifetimes.[3]

A strong association exists between PTSD and substance abuse disorders (SUD) among veterans. Statistics show:

- More than two in 10 veterans with PTSD also have SUD.
- Almost one in three veterans seeking treatment for SUD also have PTSD.
- About one in 10 veterans returning from the wars in Iraq and Afghanistan have problems with alcohol or other drugs.[4]

Suicide rates for veterans continue to be a cause of national concern. More than 6,000 veterans committed suicide each year from 2008 to 2016. In 2016, the suicide rate was 1.5 times greater for veterans than for non-veteran adults, after adjusting for age and gender. From 2005 to 2016, the increase in the suicide rate among veterans in Veterans Hospital Administration (VHA) care was lower than among veterans not in VHA care.[5]

Federal Veterans Crisis Line

The VA Veterans Crisis Line connects veterans and current service members in crisis and their families and friends with information from qualified responders through a confidential toll-free hotline, online chat, and text messaging service.[6]

The Veterans Crisis Line launched in 2007. Over the course of the program, it has answered more than 4.4 million calls and initiated the dispatch of emergency services to callers in crisis more than 138,000

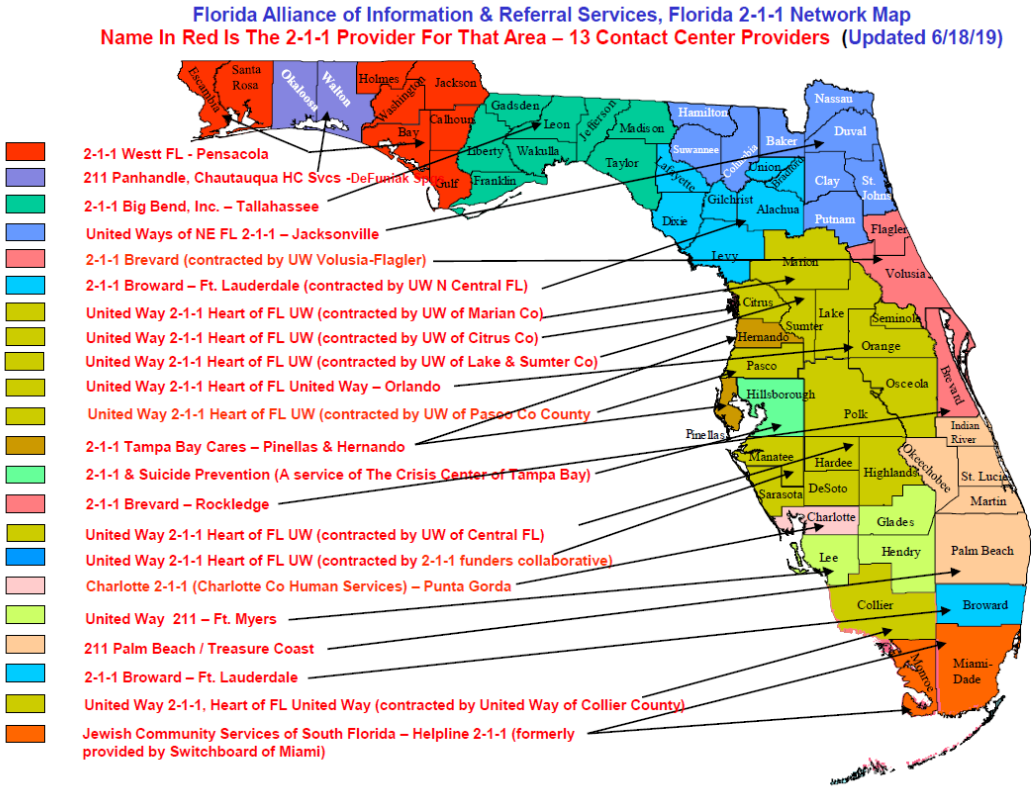
[1] Florida Department of Veterans' Affairs, *Our Veterans, Fast Facts,* http://floridavets.org/our-veterans/profilefast-facts/ (last visited Dec. 6, 2019).
[2] American Psychiatric Association, *What is Posttraumatic Stress Disorder?,* https://www.psychiatry.org/patients-families/ptsd/what-is-ptsd (last visited Dec. 9, 2019).
[3] National Center for PTSD, VA, *How Common is PTSD in Veterans?,* https://www.ptsd.va.gov/understand/common/common_veterans.asp (last visited Dec. 9, 2019).
[4] National Center for PTSD, VA, *PTSD and Substance Abuse in Veterans,* https://www.ptsd.va.gov/understand/related/substance_abuse_vet.asp (last visited Dec. 9, 2019).
[5] Office of Mental Health and Suicide Prevention, VA, *VA National Suicide Data Report 2005-2016,* https://www.mentalhealth.va.gov/docs/data-sheets/OMHSP_National_Suicide_Data_Report_2005-2016_508.pdf (last visited Dec. 9, 2019).
[6] VA Veterans Crisis Line, *What to Expect,* https://www.veteranscrisisline.net/about/what-to-expect (last visited Dec. 13, 2019).

times. In 2009, an anonymous online chat service was added. In 2011, a text-messaging service was also added to provide another way for veterans to connect with confidential, round-the-clock support.[7]

Florida 211 Network

A 211 network is a telephone-based service offered by nonprofit and public agencies throughout the United States that provides free and confidential information and referral services 24 hours a day, seven days a week. The network helps callers identify and connect with health and human service programs that can meet a variety of needs, including food, housing, employment, health care, crisis counseling, and more.[8]

The Florida Alliance of Information and Referral Services (FLAIRS) is the 211 collaborative organization for the state and is responsible for designing, studying, and implementing the Florida 211 Network.[9] The Florida 211 Network[10] operates as the single point of coordination for information and referral of health and human services.[11] These services are available statewide through any cell phone provider as well as through landlines in all 67 counties by dialing 2-1-1.[12] There are a total of 13 Florida 211 Network certified providers, serving the areas shown below.[13]



To participate in the Florida 211 Network, a 211 provider must be fully accredited by the National Alliance of Information and Referral Services or have received approval to operate, pending accreditation from its affiliate, FLAIRS.[14]

---

[7] VA Veterans Crisis Line, *What It Is*, https://www.veteranscrisisline.net/about/what-is-vcl (last visited Dec. 13, 2019).
[8] Florida 2-1-1 Association, http://www.my211florida.org/ (last visited Dec. 9, 2019).
[9] S. 408.918(3), F.S.
[10] S. 408.918, F.S.
[11] S. 408.918(1), F.S.
[12] *Supra* note 6.
[13] Florida Alliance of Information and Referral Services, *Map of 2-1-1 Centers*, http://www.flairs.org/wp-content/uploads/sites/13/2019/09/FL-211-providers-and-coverage-areas-061819.pdf (last visited Dec. 9, 2019).
[14] S. 408.918(2), F.S. The full accreditation process requires a remote database review, consultation component, on-site review, and demonstration of a call handling component, as well as payment of a membership fee. *See* https://www.airs.org/i4a/pages/index.cfm?pageid=3286 (last visited Dec. 9, 2019).

Council on Accreditation

The Council on Accreditation (COA) is an international accrediting entity that accredits private and public organizations and programs that provide human services.[15] The COA specifically accredits entities providing child welfare, behavioral health, and community-based social services.[16]

Crisis Center of Tampa Bay Pilot Project

In 2014, the Florida Legislature appropriated $150,000 to create a pilot project expanding existing 211 services to veterans in Hillsborough, Pasco, Pinellas, Polk, and Manatee Counties.[17] The Crisis Center of Tampa Bay (CCTB), through the pilot project, expanded its services to veterans and launched the Florida Veterans Support Line (1-844-MYFLVET) in November 2014.[18] The expanded service is veteran-specific and peer-based. By calling the Florida Veterans Support Line, veterans in the Tampa Bay region are able to speak with a fellow veteran, called a Peer-to-Peer Coordinator, and offered:

- Comprehensive information and referral to VA-funded services and other community-based services;
- Assistance and support provided by a peer who has experienced the transition from military back to civilian life; and
- Care coordination services, including system navigation, advocacy, and ongoing support.[19]

During Fiscal Year (FY) 2014-2015,[20] the Florida Veterans Support Line handled 1,135 total calls; of those, 925 calls were referred to care coordination services, as shown below:[21]

Call Origin:	Contact Made By:	Veteran Status:	Current Use of VA Services:	Presenting Need:	Type of Service Referred:
• Transfer from other 211 Line: 853 (75.2%) • Florida Veterans Support Line: 257 (22.6%) • Walk-In/ Event: 25 (2.2%)	• Self: 926 (81.6%) • Friend/ Relative: 168 (14.8%) • Organization: 38 (3.3%) • Other: 3 (0.3%)	• Veteran: 973 (85.7%) • Retired: 47 (4.1%) • Former Military (<180 Days): 20 (1.8%) • Active Duty: 20 (1.8%) • Reserve: 16 (1.4%)	• Yes: 530 (46.7%) • No: 316 (27.8%) • Unknown: 273 (24.1%) • Refused: 16 (1.4%)	• Financial Assistance: 292 (25.7%) • Substance Abuse Counseling: 221 (19.5%) • Shelter: 131 (11.5%) • Legal Services: 97 (8.5%) • Mental Health Counseling: 79 (7%) • Emotional Support: 66 (5.8%) • Suicide Related: 63 (5.6%)	• Care Coordination Services: 626 (55.2%) • Other Community Resources: 590 (52%) • VA Services: 294 (25.9%) • Community Mental Health Services: 270 (23.8%) • No referral made: 210 (18.5%)

During FY 2015-2016 and FY 2016-2017, the Florida Veterans Support Line handled 7,343 calls.[22] During FY 2017-2018, there were 28,962 veterans served; 49,932 services referred; 396 suicide concerns; and 880 veterans served in Care Coordination.[23]

Expansion of the Florida Veterans Support Line

In 2017, the Florida Department of Veterans' Affairs (FDVA) provided the CCTB with a one-time funding of $400,000 for a statewide expansion of the Florida Veterans Support Line. The CCTB used the funding to train 211 providers and to implement a marketing campaign to raise awareness for the support line. This funding was not used to expand the Peer-to-Peer Coordination component from the pilot project.[24]

---

[15] Council on Accreditation, http://coanet.org/home/ (last visited Dec. 9, 2019).
[16] Council on Accreditation, *About COA*, http://coanet.org/about/whats-new/about-coa/ (last visited Dec. 9, 2019).
[17] Specific appropriation 595 of HB 5001, 2014-2015 General Appropriations Act.
[18] CCTB, *Overview of Current Funding* (on file with Local, Federal & Veterans Affairs Subcommittee).
[19] CCTB, *Florida Veterans Support Line, What we offer,* https://www.myflvet.com/about-1 (last visited Dec. 10, 2019).
[20] The CCTB pilot program operates with an October-September fiscal year. Its first operating year began on October 28, 2014.
[21] CCTB, *Florida Veterans Support Line 1-844-MYFLVET: Fiscal Year 2015 Report* (on file with Local, Federal & Veterans Affairs Subcommittee).
[22] CCTB, *1-844-MYFLVET: Demographic Data FY 2016 and FY 2017* (on file with Local, Federal & Veterans Affairs Subcommittee).
[23] CCTB, *Overview of the 1-844-MYFLVET Support Line* (on file with Local, Federal & Veterans Affairs Subcommittee).
[24] *Id.*

In 2018, the VA provided partial funding for a statewide expansion of the Peer-to-Peer Coordination component in the amount of $1,000,000 for September 2018 through September 2019. This funding has a multi-year option at $1,000,000 per year for an additional three years until September 2021.[25] The VA activated the second-year option beginning September 28, 2019.[26] The third-year will be determined in June 2020. Additionally, the Department of Children and Families (DCF) provided $538,000 for operations from February 1, 2019, through June 30, 2019.[27] DCF activated a second-year option beginning July 1, 2019, expiring June 30, 2020, for $1,000,000.[28]

Effect of the Bill

The bill authorizes FDVA to establish the Florida Veterans' Care Coordination Program (Program) as a statewide program to provide veterans and their families dedicated behavioral health care referral services, primarily for mental health and substance abuse.

If FDVA establishes the Program, it may contract with a nonprofit entity that has statewide phone capacity to serve veterans and is accredited by COA and fully accredited by the National Alliance of Information and Referral Services. The nonprofit entity selected must enter into agreements with Florida 211 Network participants to provide services to veterans.

The Program must be modeled after the pilot program established in 2014 by the CCTB and FDVA in Hillsborough, Pasco, Pinellas, Polk, and Manatee Counties.

The goals of the program include:
- Preventing suicide by veterans;
- Increasing the use by veterans of programs and services provided by the VA; and
- Increasing the number of veterans who use other available community-based programs and services.

Program services include:
- Telephonic peer support, crisis intervention, and information on referral resources;
- Treatment coordination, including coordination of follow-up care;
- Assessment of suicide risk as part of an immediate needs assessment, including safety planning and support; and
- Resource coordination, including data analysis, to facilitate acceptance, enrollment, and attendance of veterans and their families in programs and services provided by the VA and other available community-based programs and services.

The bill requires Program teams to:
- Track the number of requests from veterans or family members;
- Follow up with callers to determine if they have pursued referrals and whether additional help is needed;
- Implement communication strategies to educate veterans and their families about programs and services provided by the VA and other community-based programs and services; and
- Document all calls and capture necessary data to improve outreach to veterans and their families and report such data to the contracted entity.

Florida 211 Network participants must establish and maintain a database of services available locally. Both FDVA and its contractor must work with managing entities to educate service providers about the Florida Veterans Support Line and the Program.

[25] *Id.*
[26] Email from Sunny Hall, Vice President of Client Services, CCTB, RE: funding. (Dec. 10, 2019) (on file with Local, Federal & Veterans Affairs Subcommittee).
[27] *Supra* note 23.
[28] *Supra* note 26.

Florida 211 Network participants must provide all collected data to the FDVA. By December 15, 2021, FDVA must submit a report to the Governor, President of the Senate, and Speaker of the House of Representatives that must include:

- The nature, number, and outcome of each call received;
- Demographic information on each caller; and
- Follow-up by the Program team, including timeliness and positive outcomes, as well as the caller's level of satisfaction with Program services.

B. SECTION DIRECTORY:

Section 1 Creates s. 394.9087, F.S., relating to the establishment of the Program.

Section 2 Provides an effective date of July 1, 2020.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

If FDVA contracts with CCTB to establish the Program, no state funding for FY 2020-2021 will be needed because CCTB is currently operating with VA grant dollars.[29] The fiscal impact for FY 2021-2022 and thereafter is indeterminate as it is not known what federal grant opportunities may be available at that time or what the cost to the state may be in the absence of grant dollars.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Veterans and their families may financially benefit from having greater access to treatments and services specifically designed for veterans with mental health or substance abuse issues.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

[29] *Supra* note 23.

B. RULE-MAKING AUTHORITY:

The bill neither authorizes nor requires administrative rulemaking by executive branch agencies.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On February, 11, 2020, the Health Care Appropriations Subcommittee adopted one amendment and reported the bill favorably as a committee substitute. The amendment made establishment of the Program permissive and authorized FDVA to contract with a nonprofit entity.

This analysis is drafted to the committee substitute as approved by the Health Care Appropriations Subcommittee.

A bill to be entitled

An act relating to services for veterans and their families; creating s. 394.9087, F.S.; authorizing the Department of Veterans' Affairs to establish the Florida Veterans' Care Coordination Program to provide for veterans and their families behavioral health care referral and care coordination services; authorizing the department to contract with a certain nonprofit entity to enter into agreements with Florida 211 Network participants to provide such services; providing program goals; providing for the statewide delivery of specified services by program teams; requiring Florida 211 Network participants to collect program implementation data and to submit such data to the department; requiring the department to submit a report to the Governor and Legislature by a specified date; providing requirements for the report; providing an effective date.

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

Section 1. Section 394.9087, Florida Statutes, is created to read:

394.9087 Florida Veterans' Care Coordination Program.—

(1) The Department of Veterans' Affairs may establish the

Florida Veterans' Care Coordination Program. If the Department of Veterans' Affairs establishes the program, it may contract with a nonprofit entity that is accredited by the Council on Accreditation, is fully accredited by the National Alliance of Information and Referral Services, and has statewide phone capacity to serve veterans, to enter into agreements with Florida 211 Network participants to provide veterans and their families in this state with dedicated behavioral health care referral services, especially mental health and substance abuse services. The Department of Veterans' Affairs shall model the program after the proof-of-concept pilot program established in 2014 by the Crisis Center of Tampa Bay and the Department of Veterans' Affairs in Hillsborough, Pasco, Pinellas, Polk, and Manatee Counties.

(2) The goals of the program are to:

(a) Prevent suicides by veterans.

(b) Increase veterans' use of programs and services provided by the United States Department of Veterans Affairs.

(c) Increase the number of veterans who use other available community-based programs and services.

(3) The program must be available statewide. Program services must be provided by program teams operated by Florida 211 Network participants as authorized by s. 408.918. A Florida 211 Network participant may provide services in more than one geographic area under a single contract.

(4) The program teams shall provide referral and care coordination services to veterans and their families and expand the existing Florida 211 Network to include the optimal range of veterans' service organizations and programs. Florida 211 Network participants in the Florida Veterans' Care Coordination Program must include all of the following:

(a) Telephonic peer support, crisis intervention, and the communication of information on referral resources.

(b) Treatment coordination, including coordination of followup care.

(c) Suicide risk assessment.

(d) Promotion of the safety and wellness of veterans and their families, including continuous safety planning and support.

(e) Resource coordination, including data analysis, to facilitate acceptance, enrollment, and attendance of veterans and their families in programs and services provided by the United States Department of Veterans Affairs and other available community-based programs and services.

(f) Immediate needs assessments, including safety planning and support.

(5) To enhance program services, program teams shall:

(a) Track the number of requests from callers who are veterans or members of a veteran's family.

(b) Follow up with callers who are veterans or members of

a veteran's family to determine whether they have acted on the referrals or received the assistance needed and whether additional referral or advocacy is needed.

(c) Develop and implement communication strategies, such as media promotions, public service announcements, print and Internet articles, and community presentations, to inform veterans and their families about available programs and services provided by the United States Department of Veterans Affairs and other available community-based programs and services.

(d) Document all calls and capture all necessary data to improve outreach to veterans and their families and report such data to the contracted entity.

(6) Florida 211 Network participants in the Florida Veterans' Care Coordination Program shall maintain a database of veteran-specific services available in the communities served by the programs. The Department of Veterans' Affairs and its selected contractor shall work with managing entities as defined in s. 394.9082(2)(e) to educate service providers about the Florida Veterans Support Line and the Florida Veterans' Care Coordination Program.

(7) Florida 211 Network participants shall collect data on the program and submit such data to the Department of Veterans' Affairs in the format prescribed by the Department of Veterans' Affairs. The Department of Veterans' Affairs shall use such data

to prepare a report for submittal to the Governor, the President of the Senate, and the Speaker of the House of Representatives by December 15, 2021. The report must include all of the following:

(a) The number of calls received.

(b) Demographic information for each caller, including, but not limited to, the caller's military affiliation, the caller's veteran status, and whether the caller is receiving services provided by the United States Department of Veterans Affairs or other available community-based programs and services.

(c) The nature of each call, including, but not limited to, the concerns prompting the call and the services requested.

(d) The outcome of each call, including, but not limited to, the services for which referrals were made and the organizations to which the caller was referred.

(e) Services received as a result of each call.

(f) Information regarding followup by the program team, including, but not limited to, the percentage of calls receiving followup and the outcome of followup.

(g) Information regarding the program's impact on each caller's quality of life and on the avoidance of negative outcomes, including arrest and suicide.

(h) Each caller's level of satisfaction with program services.

Section 2. This act shall take effect July 1, 2020.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 777 Fish and Wildlife Activities
SPONSOR(S): Agriculture & Natural Resources Subcommittee, Gregory and others
TIED BILLS: **IDEN./SIM. BILLS:** CS/CS/SB 1414

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Agriculture & Natural Resources Subcommittee	24 Y, 0 N, As CS	Melkun	Moore
2) State Affairs Committee		Melkun	Williamson

SUMMARY ANALYSIS

Right to Hunt

Under current law, a person may not intentionally, within a publicly or privately owned wildlife management or fish management area or on any state-owned water body: interfere with or attempt to prevent the lawful taking of fish, game, or nongame animals by another; or attempt to disturb fish, game, or nongame animals or attempt to affect their behavior with the intent to prevent their lawful taking by another.

The bill specifies that a person may not intentionally, within or on any public lands or waters, interfere with or attempt to prevent the lawful taking of fish, game, or nongame animals by another; or attempt to disturb fish, game, or nongame animals or attempt to affect their behavior with the intent to prevent their lawful taking by another.

Free Fishing Days

The Fish and Wildlife Conservation Commission (FWC) is authorized to designate up to four days per year as free freshwater fishing days and up to four days per year as free saltwater fishing days. During each free fishing day, any person may fish without a license or permit.

The bill increases the number of free freshwater fishing days that FWC may designate from four days per year to six days per year and the number of free saltwater fishing days that may be designated from four days per year to six days per year.

Conditional Species

Conditional species are nonnative species that pose a risk to native fish and wildlife or to the ecology of native wildlife communities. Species designated as conditional nonnative snakes and lizards are prohibited from being kept, possessed, or imported into the state, sold, bartered, traded, or bred for personal use or for sale for personal use.

The bill adds the green iguana and the tegu lizard to the conditional nonnative snakes and lizards list.

The bill prohibits a person or entity from keeping, possessing, importing, selling, bartering, trading, or breeding a species listed as a conditional nonnative snake or lizard except for educational, research, eradication, or control purposes.

The bill specifies that a person or entity who had a documented inventory of green iguanas or tegus on an application for an exhibition or sale license in 2019 and held such license on January 1, 2020, may continue to exhibit, sell, or breed green iguanas and tegus commercially for as long as the license remains active.

Fiscal Impact

The bill may have an indeterminate negative fiscal impact to the state.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Right to Hunt or Fish

The Legislature recognizes that hunting, fishing, and the taking of game are a valued part of the cultural heritage of Florida and should be forever preserved for Floridians.[1] The Legislature further recognizes that these activities play an important part in the state's economy and in the conservation, preservation, and management of the state's natural areas and resources. Therefore, the Legislature intends that the citizens of Florida have a right to hunt, fish, and take game, subject to the regulations and restrictions prescribed by general law and by the Fish and Wildlife Conservation Commission (FWC).[2]

Harassment of Hunters, Trappers, or Fishers

A person may not intentionally, within a publicly or privately owned wildlife management or fish management area or on any state-owned water body:

- Interfere with or attempt to prevent the lawful taking of fish, game, or nongame animals by another; or
- Attempt to disturb fish, game, or nongame animals or attempt to affect their behavior with the intent to prevent their lawful taking by another.[3]

Any person who violates this section commits a Level Two violation,[4] punishable by the following:

Level Two Violation	Type of Infraction	Civil Penalty or Jail Time	License Restrictions
First offense	2nd Degree Misdemeanor[5]	Max: $500 or Max: 60 days	None
Second offense within three years of previous Level Two violation (or higher)	1st Degree Misdemeanor[6]	Min: $250; Max: $1,000 Max: one year	None
Third offense within five years of two previous Level Two violations (or higher)	1st Degree Misdemeanor[7]	Min: $500; Max: $1,000 Max: one year	Suspension of license for one year
Fourth offense within 10 years of three previous Level Two violations (or higher)	1st Degree Misdemeanor[8]	Min: $750; Max $1,000 Max: one year	Suspension of license for three years

[1] Section 379.104, F.S.
[2] *Id*.
[3] Section 379.105(1), F.S.
[4] Section 379.105(2), F.S.
[5] Section 379.401(2)(b)1., F.S.
[6] Section 379.401(2)(b)2., F.S.
[7] Section 379.401(2)(b)3., F.S.
[8] Section 379.401(2)(b)4., F.S.

Freshwater and Saltwater Fishing Licenses

Current law prohibits the taking of game, freshwater or saltwater fish, or fur-bearing animals within the state without first obtaining a license, permit, or authorization number and paying the associated fees.[9] Section 379.354, F.S., establishes freshwater and saltwater fishing license fees as follows:

For residents:

- An annual freshwater or saltwater fishing license costs $15.50.[10]
- A five-year freshwater or saltwater fishing license costs $77.50.[11]
- A lifetime freshwater or saltwater fishing license costs:
  - $125 for persons four years of age or younger.
  - $225 for persons five years of age or older, but under 13 years of age.
  - $300 for persons 13 years of age or older.[12]

For nonresidents:

- A freshwater or saltwater fishing license for three consecutive days costs $15.50.[13]
- A freshwater or saltwater fishing license for seven consecutive days costs $28.50.[14]
- An annual freshwater or saltwater fishing license costs $45.50.[15]

FWC also charges $1.50 for each issued permit to cover the administrative cost of issuing the permit.[16]

Free Fishing Days

FWC may designate up to four days per year as free freshwater fishing days and up to four days per year as free saltwater fishing days.[17] During each free fishing day, any person may fish without a license or permit.[18] A person who takes freshwater or saltwater fish on a free fishing day must comply with all laws, rules, and regulations governing the holders of a fishing license or permit and all other conditions and limitations regulating the taking of freshwater or saltwater fish as imposed by law or rule.[19]

Nonnative Species

Nonnative[20] species are animals or plants living in Florida outside captivity or human cultivation that were not historically present in the state.[21] More than 500 fish and wildlife nonnative species have been documented in Florida.[22] Not all nonnative species pose a threat to Florida's ecology, but some nonnative species become invasive species by causing harm to native species, posing a threat to human health and safety, or causing economic damage.[23] To manage and minimize the impacts of nonnative animal species, individuals may not import, introduce, or possess any nonnative animal species without a permit from FWC.[24]

---

[9] Section 379.354(1), F.S.
[10] Sections 379.354(4)(a)-(b), F.S.
[11] Section 379.354(9)(a)1., F.S.
[12] Section 379.354(10)(a), F.S.
[13] Sections 379.354(5)(a) and (c), F.S.
[14] Sections 379.354(5)(b) and (d), F.S.
[15] Sections 379.354(5)(e)-(f), F.S.
[16] Section 379.352(5), F.S.
[17] Section 379.354(15), F.S. Rule 68A-5.006, F.A.C., designates the first weekend in April as "Free-Freshwater Fishing Day-Spring," and the second weekend in June as "Free-Freshwater Fishing Day-Summer." Rule 68B-2.009, F.A.C., designates the first weekend in June, the first Saturday in September, and the Saturday following Thanksgiving as "License-Free Saltwater Fishing Days."
[18] Section 379.354(15), F.S.
[19] *Id*.
[20] The terms "nonnative" and "exotic" have the same meaning and are used interchangeably.
[21] FWC, *Nonnative Species Information*, available at https://myfwc.com/wildlifehabitats/nonnatives/exotic-information/ (last visited Jan. 7, 2020).
[22] Nicole Dodds, Mary Miller, and Alexa Lamm, University of Florida Institute of Food and Agricultural Sciences, *Floridians' Perceptions of Invasive Species*, Feb. 2014, p. 1, available at http://edis.ifas.ufl.edu/pdffiles/WC/WC18600.pdf (last visited Feb. 18, 2020).
[23] FWC, *Nonnative Species Information*, available at https://myfwc.com/wildlifehabitats/nonnatives/exotic-information/ (last visited Feb. 18, 2020).
[24] Section 379.231(1), F.S.

Class III Wildlife
Any non-domesticated wildlife species that do not appear on the list of Class I[25] or Class II[26] wildlife are considered Class III wildlife.[27] Therefore, there is no formal list of Class III species. Examples of Class III species include, but are not limited to, parrots, finches, skunks, foxes, geckos, snakes, and frogs.[28] A permit is required for personal possession, exhibition, or sale of Class III wildlife; however, a permit is not required to possess certain Class III wildlife as a personal pet.[29]

Conditional Nonnative Snakes and Lizards
Conditional species are nonnative species that pose a risk to native fish and wildlife or to the ecology of native wildlife communities. Specifically, conditional nonnative snakes and lizards are prohibited from being kept, possessed, or imported into the state, sold, bartered, traded, or bred for personal use or for sale for personal use. Current law identifies the following as conditional nonnative snakes and lizards:

- Burmese or Indian python;
- Reticulated python;
- Northern African python;
- Southern African python;
- Amethystine or scrub python;
- Green Anaconda;
- Nile Monitor; and
- Any other reptile designated as a conditional or prohibited species by FWC.[30]

Permits to possess a conditional nonnative snake or lizard may only be issued to individuals or institutions engaged in research, commercial import or export businesses, public aquaria, public zoological parks, or public exhibitors providing educational exhibits.[31] Conditional nonnative snakes and lizards must be kept indoors or in outdoor enclosures with a fixed roof and must be permanently identified with a passive integrated transponder tag, also known as a microchip.[32] Owners of such species must also submit a Captive Wildlife Disaster and Critical Incident Plan to FWC and maintain records of their inventory.[33]

Priority Invasive Species
In 2018, the Legislature directed FWC to create a pilot program to mitigate the impact of priority invasive species on the public lands or waters of the state.[34] 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 the state.[35]

As part of the program, FWC is authorized to enter into contracts to capture or destroy animals belonging to priority invasive species found on public lands, in the waters of this state, or on private lands or waters with the consent of the owner. All captures and disposals of animals that are priority

[25] Class I wildlife are those that pose a significant danger to people. Species include bears, cheetahs, baboons, crocodiles, elephants, gorillas, etc. FWC, *Captive Wildlife*, available at https://myfwc.com/license/captive-wildlife/ (last visited Feb. 19, 2020). *See* r. 68A-6.002(1)(a), F.A.C., for a list of Class I wildlife.
[26] Class II wildlife are those that can pose a danger to people. Species include alligators, badgers, bobcats, monkeys, ostrich, wolves, etc. FWC, *Captive Wildlife*, available at https://myfwc.com/license/captive-wildlife/ (last visited Feb. 19, 2020). *See* r. 68A-6.002(1)(b), F.A.C., for a list of Class II wildlife.
[27] Rule 68A-6.002(1)(c), F.A.C.; FWC, *Captive Wildlife*, available at https://myfwc.com/license/captive-wildlife/ (last visited Feb. 19, 2020).
[28] FWC, *Captive Wildlife*, available at https://myfwc.com/license/captive-wildlife/ (last visited Feb. 19, 2020).
[29] Rule 68A-6.003, F.A.C.; FWC, *Captive Wildlife*, available at https://myfwc.com/license/captive-wildlife/ (last visited Feb. 19, 2020).
[30] Section 379.372(2)(a), F.S.
[31] Rule 68-5.005(1), F.A.C.; *see* FWC, *Conditional Snakes and Lizards*, available at http://myfwc.com/wildlifehabitats/nonnatives/regulations/snakes-and-lizards/ (last visited Feb. 18, 2020).
[32] Rule 68-5.005(5), F.A.C.
[33] *Id*.
[34] Section 379.2311, F.S.
[35] Section 379.2311(2), F.S.

invasive species must be documented and photographed and the geographic location of the take must be recorded for research purposes. FWC is required to submit a report of findings and recommendations regarding its implementation of the pilot program to the Governor and the Legislature by January 1, 2021.[36]

Priority invasive species include lizards of the genus *Tupinambis*, also known as tegu lizards; *Pterois volitans*, also known as red lionfish; *Pterois miles*, also known as the common lionfish or devil firefish; and the conditional nonnative lizard and snake species listed above.[37]

Tegu Lizards

According to FWC, there are three types of nonnative tegu lizards that have been found in Florida: the Argentine Black and White Tegu (*Salvator merianae*); the Red Tegu (*Salvator rufescens*); and the Gold Tegu (*Tupinambus teguixin*).[38] Tegus are an invasive species that have established breeding populations in Miami-Dade and Hillsborough Counties[39] and an emerging population in Charlotte County.[40] The tegu causes harm to native species by disturbing alligator nests and consuming their eggs, utilizing gopher tortoise burrows, and consuming juvenile gopher tortoises.[41]

The tegu is listed as a priority invasive species, but is not designated as a conditional or prohibited species.[42] A permit is not currently required to possess a tegu as a pet; however, a person must possess a license from FWC for any commercial use of a tegu, such as the sale or public exhibition.[43] According to a survey conducted by FWC in November 2019, 106 license holders are authorized to sell tegus, and they have more than 1,245 tegus in their combined inventory.[44]

In response to the invasive populations, FWC developed a trapping removal program to minimize the impact of tegus on native wildlife and natural areas and works with other agencies and organizations to assess the tegu's threat as well as develop species management strategies.[45] Members of the public may also remove and kill tegus from 22 FWC-managed public lands without a license or permit.[46] Through these efforts, over 7,800 tegus have been reported as removed from the wild or found dead in Florida by FWC staff, partners, and the public since 2012, primarily in Miami-Dade County.[47]

Green Iguanas

Green iguanas *(Iguana iguana*) are large, green lizards that can grow to over five feet in length and weigh up to 17 pounds. Green iguanas typically mate in October through November in their native range, and nesting occurs on riverbanks, beaches, and other sandy areas.[48] Green iguanas can live up to 10 years in the wild and can live on the ground, in shrubs, or in trees in a variety of habitats including suburban developments, urban areas, small towns, and agricultural areas.[49] Green iguana populations currently stretch along the Atlantic Coast in Broward, Martin, Miami-Dade, Monroe, and Palm Beach Counties and along the Gulf Coast in Collier and Lee Counties. There have also been reports as far north as Alachua, Highlands, Hillsborough, Indian River, and St. Lucie Counties; however, iguanas

[36] *Id*.
[37] Section 379.2311, F.S.
[38] FWC, *Nonnative Whiptails and Wall Lizards*, available at https://myfwc.com/wildlifehabitats/nonnatives/reptiles/whiptails-and-wall-lizards/ (last visited Feb. 18, 2020).
[39] FWC, *Argentine black and white tegu*, available at https://myfwc.com/wildlifehabitats/nonnatives/reptiles/whiptails-and-wall-lizards/tegu/ (last visited Feb. 18, 2020).
[40] *Id*.
[41] *Id*.
[42] *Id*.
[43] Rule 68-5.006, F.A.C.; *see* s. 379.3761, F.S.
[44] FWC, Agency Analysis of 2020 House Bill 777, 2 (Jan. 13, 2020) (on file with the Agriculture & Natural Resources Subcommittee).
[45] FWC, *Argentine black and white tegu*, available at https://myfwc.com/wildlifehabitats/nonnatives/reptiles/whiptails-and-wall-lizards/tegu/ (last visited Feb. 18, 2020).
[46] FWC, *Executive Order 17-11* (Mar. 31, 2017), available at https://myfwc.com/media/3682/eo-17-11.pdf (last visited Feb. 18, 2020).
[47] FWC, Agency Analysis of 2020 House Bill 777, 2 (Jan. 13, 2020) (on file with the Agriculture & Natural Resources Subcommittee).
[48] FWC, *Green Iguana*, available at https://myfwc.com/wildlifehabitats/profiles/reptiles/green-iguana/ (last visited Feb. 18, 2020).
[49] *Id*.

observed in more northern counties are likely escaped or released captive animals and are unlikely to establish populations, as iguanas are not cold hardy.[50]

Green iguanas cause damage to residential and commercial landscape vegetation and are often considered a nuisance by property owners. Some green iguanas can cause damage to infrastructure by digging burrows that erode and collapse sidewalks, foundations, seawalls, berms, and canal banks. Green iguanas may also leave droppings on docks, moored boats, seawalls, porches, decks, pool platforms, and inside swimming pools. As is the case with other reptiles, green iguanas can also pose a health risk as they can transmit the infectious bacterium *Salmonella* to humans through contact with water or surfaces contaminated by their feces.[51]

Green iguanas are not designated as conditional or prohibited species or in any way protected in Florida except by anti-cruelty laws.[52] A permit is also not currently required to possess a green iguana as a pet, however, a person must possess a license from FWC for any commercial use of a green iguana, such as the sale or public exhibition.[53] According to a survey conducted by FWC in November 2019, 382 license holders are authorized to sell iguanas, and they have more than 5,307 in their combined inventory.[54]

FWC encourages the removal of green iguanas from private properties by landowners and allows members of the public to remove and kill iguanas from 22 FWC-managed public lands without a license or permit.[55] FWC also hosts Iguana Technical Assistance Public Workshops to help empower homeowners to manage this nonnative species on their own property with legal trapping and removal options.[56] In 2018, FWC initiated removal efforts on public conservation lands, resulting in nearly 5,000 iguanas being removed.[57]

Effect of the Bill

The bill specifies that a person may not intentionally, within or on any public lands or waters, interfere with or attempt to prevent the lawful taking of fish, game, or nongame animals by another; or attempt to disturb fish, game, or nongame animals or attempt to affect their behavior with the intent to prevent their lawful taking by another.

The bill increases the number of free freshwater fishing days that FWC may designate from four days per year to six days per year and the number of free saltwater fishing days that may be designated from four days per year to six days per year.

The bill adds the green iguana (*Iguana iguana*) and the tegu lizard (any species of the genera *Salvator* or *Tupinambis*) to the conditional nonnative snakes and lizards list.

The bill prohibits a person, party, firm, association, or corporation from keeping, possessing, importing, selling, bartering, trading, or breeding species listed as conditional nonnative snakes and lizards except for educational, research, eradication, or control purposes. The bill prohibits the possession of such snakes and lizards for personal use.

The bill specifies that a person, party, firm, association, or corporation who had a documented inventory of green iguanas or tegus on an application for a Class III captive wildlife exhibition or sale license in

[50] *Id*.
[51] *Id*.
[52] *Id*.
[53] Rule 68-5.006, F.A.C.; *see* s. 379.3761, F.S.
[54] FWC, Agency Analysis of 2020 House Bill 777, 2 (Jan. 13, 2020) (on file with the Agriculture & Natural Resources Subcommittee).
[55] FWC, *Executive Order 17-11* (Mar. 31, 2017), available at https://myfwc.com/media/3682/eo-17-11.pdf (last visited Feb. 18, 2020).
[56] FWC, *Nonnative Species Public Workshops*, available at https://myfwc.com/wildlifehabitats/nonnatives/public-workshops/ (last visited Feb. 18, 2020).
[57] FWC, Agency Analysis of 2020 House Bill 777, 3 (Jan. 13, 2020) (on file with the Agriculture & Natural Resources Subcommittee).

2019 and held such license on January 1, 2020, may continue to exhibit, sell, or breed green iguanas and tegus commercially for as long as the license remains active.

The bill requires any inventory of green iguanas or tegus to be sold outside of the state and prohibits licensees from importing such species into the state.

The bill requires FWC to adopt rules to establish reporting requirements for the possession, exhibition, and sale of green iguanas and tegus; biosecurity measures to prevent the escape of such species; and any necessary grandfathering provisions for those persons currently in possession of green iguanas or tegu lizards that do not qualify for the grandfathering provisions applicable to commercial sale or exhibition.

B. SECTION DIRECTORY:

Section 1. Amends s. 379.105, F.S., relating to the harassment of hunters, trappers, or fishers.

Section 2. Amends s. 379.354, F.S., relating to recreational licenses, permits, and authorization numbers.

Section 3. Amends s. 379.372, F.S., relating to conditional nonnative snakes and lizards.

Section 4. Reenacts s. 379.2311, F.S., relating to nonnative animal management.

Section 5. Provides an effective date of July 1, 2020.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   The bill may have an indeterminate negative fiscal impact on FWC revenue because the bill increases the number of free fishing days available to the public, but such impact is likely insignificant.

2. Expenditures:

   None.

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 negative fiscal impact on commercial owners and sellers of tegus and green iguanas because they will no longer be permitted to sell the species within the state. The bill may also have an indeterminate negative fiscal impact on commercial owners and sellers of species currently listed as conditional that will no longer be able to possess a prohibited species unless it is used for educational, research, eradication, or control purposes.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill requires FWC to adopt rules to provide certain requirements for conditional nonnative snakes and lizards. FWC appears to have sufficient rulemaking authority to adopt such rules.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On February 25, 2020, the Agriculture & Natural Resources Subcommittee adopted a proposed committee substitute (PCS) and reported the bill favorably as a committee substitute. The PCS removed provisions relating to a sales tax holiday and an associated appropriation, expanded the authorized purposes of conditional nonnative snakes and lizards, created a grandfathering process for entities currently in possession of green iguanas and tegus, and required FWC to adopt rules to implement the changes made by the PCS.

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

A bill to be entitled

An act relating to fish and wildlife activities; amending s. 379.105, F.S.; prohibiting certain harassment of hunters, trappers, and fishers within or on public lands or publicly or privately owned wildlife and fish management areas, or in or on public waters; amending s. 379.354, F.S.; authorizing the Fish and Wildlife Conservation Commission to designate additional annual free freshwater and saltwater fishing days; amending s. 379.372, F.S.; prohibiting the keeping, possessing, importing, selling, bartering, trading, or breeding of certain reptiles except for educational, research, eradication, or control purposes; designating green iguanas and tegu lizards as prohibited reptiles; authorizing certain persons and entities to exhibit, sell, or breed green iguanas and tegu lizards commercially under specified conditions; requiring the commission to adopt rules; reenacting s. 379.2311(1), F.S., relating to the definition of the term "priority invasive species," to incorporate the amendment made to s. 379.372, F.S., in a reference thereto; providing an effective date.

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

Section 1. Subsection (1) of section 379.105, Florida Statutes, is amended to read:

379.105 Harassment of hunters, trappers, or fishers.—

(1) A person may not intentionally, within or on any public lands or ~~a~~ publicly or privately owned wildlife management and ~~or~~ fish management areas, ~~area~~ or in or on any public waters ~~state-owned water body~~:

(a) Interfere with or attempt to prevent the lawful taking of fish, game, or nongame animals by another within or on such lands or areas, or in or on such waters.

(b) Attempt to disturb fish, game, or nongame animals or attempt to affect their behavior with the intent to prevent their lawful taking by another within or on such lands or areas, or in or on such waters.

Section 2. Subsection (15) of section 379.354, Florida Statutes, is amended to read:

379.354 Recreational licenses, permits, and authorization numbers; fees established.—

(15) FREE FISHING DAYS.—The commission may designate by rule no more than 6 ~~4~~ consecutive or nonconsecutive days in each year as free freshwater fishing days and no more than 6 ~~4~~ consecutive or nonconsecutive days in each year as free saltwater fishing days. Notwithstanding any other provision of this chapter, a ~~any~~ person may take freshwater fish for noncommercial purposes on a free freshwater fishing day and may

take saltwater fish for noncommercial purposes on a free saltwater fishing day, without obtaining or possessing a license or permit or paying a license or permit fee as set forth ~~prescribed~~ in this section. A person who takes freshwater or saltwater fish on a free fishing day must comply with all laws, rules, and regulations governing the holders of a fishing license or permit and all other conditions and limitations regulating the taking of freshwater or saltwater fish as are imposed by law or rule.

Section 3. Paragraph (a) of subsection (2) of section 379.372, Florida Statutes, is amended to read:

379.372 Capturing, keeping, possessing, transporting, or exhibiting venomous reptiles, reptiles of concern, conditional reptiles, or prohibited reptiles; license required.—

(2)(a) A ~~No~~ person, party, firm, association, or corporation may not ~~shall~~ keep, possess, import into the state, sell, barter, trade, or breed the following species except for educational, research, eradication, or control purposes ~~personal use or for sale for personal use~~:

1. Burmese or Indian python (Python molurus).
2. Reticulated python (Python reticulatus).
3. Northern African python (Python sebae).
4. Southern African python (Python natalensis).
5. Amethystine or scrub python (Morelia amethystinus).
6. Green Anaconda (Eunectes murinus).

7. Nile monitor (Varanus niloticus).

8. Green iguana (Iguana iguana).

9. Tegu lizard (any species of the genera Salvator or Tupinambis).

10.~~8.~~ Any other reptile designated as a conditional or prohibited species by the commission.

(b)1. A person, party, firm, association, or corporation who had a documented inventory of green iguanas or tegu lizards on an application for a Class III captive wildlife exhibition or sale license in 2019 and held such license on January 1, 2020, may continue to exhibit, sell, or breed green iguanas and tegu lizards commercially for as long as the license remains active. Any inventory of green iguanas or tegu lizards must be sold outside the state and a licensee may not import such species into the state. The grandfather status under this paragraph is void upon transfer or lapse of such license.

2. The commission shall adopt rules for the following:

a. Reporting requirements for the possession, exhibition, and sale of green iguanas and tegu lizards;

b. Biosecurity measures to prevent the escape of green iguanas or tegu lizards; and

c. Any necessary grandfather provisions for a person who currently possesses a green iguana or tegu lizard but does not meet the criteria of subparagraph (b)1.

Section 4. For the purpose of incorporating the amendment

made by this act to section 379.372, Florida Statutes, in a reference thereto, subsection (1) of section 379.2311, Florida Statutes, is reenacted to read:

379.2311 Nonnative animal management.—

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

(a) Lizards of the genus *Tupinambis*, also known as tegu lizards;

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

(c) *Pterois volitans*, also known as red lionfish; and

(d) *Pterois miles*, also known as the common lionfish or devil firefish.

Section 5. This act shall take effect July 1, 2020.

CS/HB 787

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 787 Driver Licenses
SPONSOR(S): Transportation & Infrastructure Subcommittee, Tomkow
TIED BILLS: CS/HB 789 **IDEN./SIM. BILLS:** CS/SB 1692

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Transportation & Infrastructure Subcommittee	13 Y, 0 N, As CS	Roth	Vickers
2) Transportation & Tourism Appropriations Subcommittee	12 Y, 0 N	Hicks	Davis
3) State Affairs Committee		Roth	Williamson

SUMMARY ANALYSIS

Upon request by a person diagnosed with a developmental disability, or by a parent or guardian of a child or ward who has a developmental disability, the Department of Highway Safety and Motor Vehicles (DHSMV) must issue an identification card exhibiting a capital “D” after payment of an additional $1 fee and proof of a developmental disability diagnosis. There is currently no developmental disability designation offered on a driver license.

The bill authorizes an optional “D” designation on the driver license of a person who has been diagnosed with a developmental disability. The licensee, or his or her parent or legal guardian, must present DHSMV with sufficient proof that a licensed physician has diagnosed the licensee with a developmental disability. Additionally, a licensee, or his or her parent or legal guardian, may surrender his or her current driver license at any time to add or remove a “D” designation. If the applicant is not conducting any other transaction affecting the driver license, the standard $25 replacement fee is waived.

The bill will likely have an indeterminate, negative fiscal impact on state government expenditures associated with the programming costs required to add the “D” designation, but it is expected the department can absorb these costs within existing resources. *See* Fiscal Analysis.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Developmental Disability
The term "developmental disability" is defined as a disorder or syndrome that is attributable to intellectual disability, cerebral palsy, autism, spina bifida, Down syndrome, Phelan-McDermid syndrome, or Prader-Willi syndrome; that manifests before the age of 18; and that constitutes a substantial handicap that can reasonably be expected to continue indefinitely.[1]

Disability Designations
Any person who is five years of age or older, or any person who has a disability and who applies for a disabled parking permit (regardless of age), may be issued an identification card by the Department of Highway Safety and Motor Vehicles (DHSMV) upon completion of an application and payment of an application fee.[2] Upon request by a person diagnosed with a developmental disability, or by a parent or guardian of a child or ward who has a developmental disability, DHSMV must issue an identification card exhibiting a capital "D" after payment of an additional $1 fee and proof of a developmental disability diagnosis. The $1 fee must be deposited into the Agency for Persons with Disabilities Operations and Maintenance Trust Fund.[3] As of January 2020, DHSMV had issued 1,295 identification cards with the "D" designation.[4]

There are also optional designations that can be exhibited on a driver license. The international symbol for the deaf and hard of hearing is an optional designation that can be exhibited on the driver license of a person who is deaf or hard of hearing. If the licensee wants to have a designation on his or her driver license that he or she is deaf and hard of hearing, the licensee must pay an additional $1 at the time of receiving a new or renewed driver license. Otherwise, upon the surrender of his or her driver license, a licensee may have the symbol added to his or her license for $2. The fees are deposited into the Highway Safety Operating Trust Fund.[5]

Other optional designations that can be exhibited on a driver license include the word "Veteran,"[6] and symbols representing lifetime freshwater fishing, saltwater fishing, hunting, and sportsman's licenses as well as a lifetime boater safety identification card.[7]

There is currently no developmental disability designation offered on a driver license.

Effect of Proposed Changes

The bill authorizes an optional "D" designation on the driver license of a person who has been diagnosed with a developmental disability. The licensee, or his or her parent or legal guardian, must present DHSMV with sufficient proof that a licensed physician has diagnosed the licensee with a developmental disability. The licensee, or his or her parent or legal guardian, may surrender his or her current driver license at any time to receive a replacement license with a "D" designation on it or to remove the "D" designation from the license. If the applicant is not conducting any other transaction affecting the driver license, the standard $25 replacement fee is waived.

B. SECTION DIRECTORY:

[1] Section 393.063, F.S.
[2] Section 322.051(1), F.S.
[3] Section 322.051(8)(e)1., F.S.
[4] Email from Kevin Jacobs, Deputy Legislative Affairs Director, DHSMV, RE: HB 787, (January 16, 2020).
[5] Section 322.14(1)(c), F.S.
[6] Section 322.14(1)(d), F.S.
[7] Section 322.14(1)(e), F.S.

Section 1: Amends s. 322.14, F.S., relating to licenses issued to drivers.

Section 2: Provides an effective date of October 1, 2020.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   See Fiscal Comments.

2. Expenditures:

   See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   The bill does not appear to impact local government revenues.

2. Expenditures:

   The bill does not appear to impact local government expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

DHSMV estimates that the bill will have an indeterminate, negative impact to DHSMV's operational resources and the resources dedicated to the Motorist Modernization Phase 1 project. Programming will be required in the Florida Driver License Information System to add the "D" designation to driver licenses. It is expected DHSMV can absorb these costs within existing resources.

The bill allows for the waiver of the $25 license fee when the replacement transaction is performed for the sole purpose of adding or removing a "D" designation. Because the individual would otherwise have no reason to replace his or her driver license, the waiver should not directly impact revenues. The $2 fee, which is authorized in HB 789 (2020), will offset the cost of printing a new driver license if HB 789 passes and becomes a law.[8]

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 expenditure 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.

[8] HB 789 (2020), which is linked to this bill, provides for the payment of an additional $1 fee for a new or renewed driver license with a "D" designation on it or a payment of a $2 fee upon the surrender and replacement of a current driver license with a "D" designation on it or to remove the "D" designation from the license. The bill provides that the fees are deposited into the Highway Safety Operating Trust Fund.

B. RULE-MAKING AUTHORITY:

The bill does not provide a grant of rulemaking authority, nor does it require rulemaking.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Other Comments: Benefit of Developmental Disability Designation
According to DHSMV, the bill could benefit law enforcement agencies by providing notification to officers that a person has a developmental disability. This knowledge could be helpful in the de-escalation of some scenarios involving law enforcement officers and individuals with developmental disabilities.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On January 28, 2020, the Transportation & Infrastructure Subcommittee adopted an amendment and reported the bill favorably as a committee substitute. The amendment:

- Authorized a person with a developmental disability to remove the “D” designation from his or her driver license;
- Authorized a person with a developmental disability to present sufficient proof of the diagnosis from a physician licensed under chapter 459, F.S.; and
- Changed the effective date from July 1, 2020, to October 1, 2020.

This analysis is drafted to the committee substitute as approved by the Transportation & Infrastructure Subcommittee.

A bill to be entitled

An act relating to driver licenses; amending s. 322.14, F.S.; authorizing a person with specified disabilities to have the capital letter "D" placed on his or her driver license under certain circumstances; providing requirements for the placement of such letter on, or the removal of such letter from, a person's driver license; providing an effective date.

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

Section 1. Paragraph (f) is added to subsection (1) of section 322.14, Florida Statutes, to read:

322.14 Licenses issued to drivers.—

(1)

(f)1. The capital letter "D" shall be exhibited on the driver license of a person who has a developmental disability, as defined in s. 393.063, if the person, or his or her parent or legal guardian, presents sufficient proof that the person has been diagnosed with a developmental disability by a physician licensed under chapter 458 or chapter 459 as determined by the department.

2. Until a person's driver license is next renewed, the person, or his or her parent or legal guardian, may have the capital letter "D" added to or removed from his or her license

upon the surrender of his or her current license and presentation of sufficient proof that the person has been diagnosed with a developmental disability by a physician licensed under chapter 458 or chapter 459 as determined by the department. If the applicant is not conducting any other transaction affecting the driver license, a replacement license may be issued with the capital letter "D" added or removed without payment of the fee required in s. 322.21(1)(e).

Section 2. This act shall take effect October 1, 2020.

Amendment No.

COMMITTEE/SUBCOMMITTEE ACTION

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

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

Amendment (with title amendment)

Remove lines 12-16 and insert:

Section 1. Subsection (8) of section 322.08, Florida Statutes, is amended to read:

322.08 Application for license; requirements for license and identification card forms.—

(8) The application form for an original, renewal, or replacement driver license or identification card must include language permitting the following:

(a) A voluntary contribution of $1 per applicant, which contribution shall be deposited into the Health Care Trust Fund

for organ and tissue donor education and for maintaining the organ and tissue donor registry.

(b) A voluntary contribution of $1 per applicant, which shall be distributed to the Florida Council of the Blind.

(c) A voluntary contribution of $2 per applicant, which shall be distributed to the Hearing Research Institute, Incorporated.

(d) A voluntary contribution of $1 per applicant, which shall be distributed to the Juvenile Diabetes Foundation International.

(e) A voluntary contribution of $1 per applicant, which shall be distributed to the Children's Hearing Help Fund.

(f) A voluntary contribution of $1 per applicant, which shall be distributed to Family First, a nonprofit organization.

(g) A voluntary contribution of $1 per applicant to Stop Heart Disease, which shall be distributed to the Florida Heart Research Institute, a nonprofit organization.

(h) A voluntary contribution of $1 per applicant to Senior Vision Services, which shall be distributed to the Florida Association of Agencies Serving the Blind, Inc., a not-for-profit organization.

(i) A voluntary contribution of $1 per applicant for services for persons with developmental disabilities, which shall be distributed to The Arc of Florida.

(j) A voluntary contribution of $1 to the Ronald McDonald House, which shall be distributed each month to Ronald McDonald House Charities of Tampa Bay, Inc.

(k) Notwithstanding s. 322.081, a voluntary contribution of $1 per applicant, which shall be distributed to the League Against Cancer/La Liga Contra el Cancer, a not-for-profit organization.

(l) A voluntary contribution of $1 per applicant to Prevent Child Sexual Abuse, which shall be distributed to Lauren's Kids, Inc., a nonprofit organization.

(m) A voluntary contribution of $1 per applicant, which shall be distributed to Prevent Blindness Florida, a not-for-profit organization, to prevent blindness and preserve the sight of the residents of this state.

(n) Notwithstanding s. 322.081, a voluntary contribution of $1 per applicant to the state homes for veterans, to be distributed on a quarterly basis by the department to the Operations and Maintenance Trust Fund within the Department of Veterans' Affairs.

(o) A voluntary contribution of $1 per applicant to the Disabled American Veterans, Department of Florida, which shall be distributed quarterly to Disabled American Veterans, Department of Florida, a nonprofit organization.

(p) A voluntary contribution of $1 per applicant for Autism Services and Supports, which shall be distributed to

Achievement and Rehabilitation Centers, Inc., Autism Services Fund.

(q) A voluntary contribution of $1 per applicant to Support Our Troops, which shall be distributed to Support Our Troops, Inc., a Florida not-for-profit organization.

(r) Notwithstanding s. 322.081, a voluntary contribution of $1 per applicant to aid the homeless. Contributions made pursuant to this paragraph shall be deposited into the Grants and Donations Trust Fund of the Department of Children and Families and used by the State Office on Homelessness to supplement grants made under s. 420.622(4) and (5), provide information to the public about homelessness in the state, and provide literature for homeless persons seeking assistance.

(s) A voluntary contribution of $1 or more per applicant to End Breast Cancer, which shall be distributed to the Florida Breast Cancer Foundation.

(t) A voluntary contribution of $1 or more per applicant to Childhood Cancer Care, which shall be distributed to the Live Like Bella Childhood Cancer Foundation.

A statement providing an explanation of the purpose of the trust funds shall also be included. For the purpose of applying the service charge provided under s. 215.20, contributions received under paragraphs (b)-(t) ~~(b)-(s)~~ are not income of a revenue nature.

Section 2. Paragraph (f) is added to subsection (1) of section 322.14, Florida Statutes, to read:

322.14 Licenses issued to drivers.—

(1)

(f)1. Upon request by a person who has a developmental disability, or by a parent or guardian of a child or ward who has a developmental disability, the capital letter "D" shall be exhibited on the

---

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

Between lines 2 and 3, insert:

322.08, F.S.; requiring application forms for original, renewal, and replacement driver licenses and identification cards to include language allowing a voluntary contribution to the Live Like Bella Childhood Cancer Foundation; amending s.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 789 Driver License Fees
SPONSOR(S): Transportation & Infrastructure Subcommittee, Tomkow
TIED BILLS: CS/HB 787 **IDEN./SIM. BILLS:** CS/SB 1694

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Transportation & Infrastructure Subcommittee	13 Y, 0 N, As CS	Roth	Vickers
2) Transportation & Tourism Appropriations Subcommittee	12 Y, 0 N	Hicks	Davis
3) State Affairs Committee		Roth	Williamson

SUMMARY ANALYSIS

House Bill 787 (2020), which this bill is linked to, authorizes an optional “D” designation on the driver license of a person who has been diagnosed with a developmental disability.

This bill provides for the payment of an additional $1 fee for a new or renewed driver license with a “D” designation or a payment of a $2 fee upon the surrender and replacement of a current driver license to add or remove a “D” designation. The fees are deposited into the Highway Safety Operating Trust Fund.

This bill will have a positive, but insignificant, fiscal impact on state and local government revenues.

This bill will take effect on the same date that CS/HB 787 or similar legislation takes effect, if such legislation is adopted in the same legislative session or an extension thereof and becomes a law.

This bill authorizes a new state fee, requiring a two-thirds vote of the membership of the House. *See* Section III.A.2. of the analysis.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

The Florida Constitution provides that no state tax or fee may be imposed, authorized, or raised by the Legislature except through legislation approved by two-thirds of the membership of each house of the Legislature.[1] For purposes of this requirement, a "fee" is any charge or payment required by law, including any fee or charge for services and fees or costs for licenses and to "raise" a fee or tax means to:[2]

- Increase or authorize an increase in the rate of a state tax or fee imposed on a percentage or per mill basis;
- Increase or authorize an increase in the amount of a state tax or fee imposed on a flat or fixed amount basis; or
- Decrease or eliminate a state tax or fee exemption or credit.

A bill that imposes, authorizes, or raises any state fee or tax may only contain the fee or tax provision(s) and may not contain any other subject.[3]

The constitutional provision does not authorize any state tax or fee to be imposed if it is otherwise prohibited by the constitution and does not apply to any tax or fee authorized or imposed by a county, municipality, school board, or special district.[4]

House Bill 787 (2020)
House Bill 787 (2020), which this bill is linked to, authorizes the addition or removal of an optional "D" designation on the driver license of a person who has been diagnosed with a developmental disability.

Effect of Proposed Changes

The bill provides for the payment of an additional $1 fee for a new or renewed driver license with a "D" designation or a payment of a $2 fee upon the surrender and replacement of a current driver license to add or remove a "D" designation. The fees are deposited into the Highway Safety Operating Trust Fund.

B. SECTION DIRECTORY:

Section 1: Amends s. 322.14, F.S., relating to licenses issued to drivers.

Section 2: Provides that this act takes effect on the same date that CS/HB 787 or similar legislation takes effect, if such legislation is adopted in the same legislative session or an extension thereof and becomes law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   See Fiscal Comments.
2. Expenditures:

   None.

[1] Fla. Const. art. VII, s. 19(a)-(b).
[2] Fla. Const. art. VII, s. 19(d).
[3] Fla. Const. art. VII, s. 19(e).
[4] Fla. Const. art. VII s. 19(c).

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill authorizes DHSMV to charge a $1 or $2 fee for a "D" designation on a driver license. Pursuant to s. 322.135(1)(c), F.S., tax collectors are required to charge a service fee of $6.25 per driver license service request per customer. This will have a positive but likely insignificant impact to the tax collectors.[5]

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Individuals diagnosed with a developmental disability may opt to pay an additional $1 or $2 fee for a "D" designation on their driver license.

D. FISCAL COMMENTS:

DHSMV estimates the bill will have an indeterminate, negative impact to both DHSMV's operational resources and to the resources dedicated to the Motorist Modernization Phase 1 project. Programming will be required in the Florida Driver License Information System to incorporate fee code changes to collect the $1 or $2 fee.[6] It is expected DHSMV can absorb these costs within existing resources.

Based upon the payment of an additional $1 fee for a new or renewed driver license with a "D" designation or a payment of a $2 fee upon the surrender and replacement of a current driver license to add or remove a "D" designation, this bill will have a positive, but insignificant, fiscal impact on state government revenues.

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 expenditure 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:

Article VII, s. 19 of the Florida Constitution requires the imposition, authorization, or raising of a state tax or fee be contained in a separate bill that contains no other subject and be approved by two-thirds of the membership of each house of the Legislature. As such, the bill appears to implicate Art. VII, s. 19 of the Florida Constitution because the bill authorizes a $1 or $2 fee for an optional "D" designation on a driver license.

B. RULE-MAKING AUTHORITY:

The bill does not provide a grant of rulemaking authority, nor does it require rulemaking.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

[5] Department of Highway Safety and Motor Vehicles, Agency Analysis of House Bill 787 & 789, p. 4 (January 23, 2020).
[6] *Id*.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On January 28, 2020, the Transportation & Infrastructure Subcommittee adopted an amendment and reported the bill favorably as a committee substitute. The amendment:

- Authorized a person with a developmental disability to remove the “D” designation from his or her driver license for a $2 fee; and
- Authorized a person with a developmental disability to present sufficient proof of the diagnosis from a physician licensed under chapter 459, F.S.

This analysis is drafted to the committee substitute as approved by the Transportation & Infrastructure Subcommittee.

A bill to be entitled

An act relating to driver license fees; amending s. 322.14, F.S.; providing fees for the placement of a specified letter on, or the removal of such letter from, the driver license of a person who has a developmental disability; providing a contingent effective date.

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

Section 1. Paragraph (f) of subsection (1) of section 322.14, Florida Statutes, as created by CS/HB 787, is amended to read:

322.14 Licenses issued to drivers.—

(1)

(f)1. The capital letter "D" shall be exhibited on the driver license of a person who has a developmental disability, as defined in s. 393.063, upon the payment of an additional $1 fee for the license and if the person, or his or her parent or legal guardian, presents sufficient proof that the person has been diagnosed with a developmental disability by a physician licensed under chapter 458 or chapter 459 as determined by the department.

2. Until a person's driver license is next renewed, the person, or his or her parent or legal guardian, may have the

capital letter "D" added to or removed from his or her license upon the surrender of his or her current license, payment of a $2 fee to be deposited into the Highway Safety Operating Trust Fund, and presentation of sufficient proof that the person has been diagnosed with a developmental disability by a physician licensed under chapter 458 or chapter 459 as determined by the department. If the applicant is not conducting any other transaction affecting the driver license, a replacement license may be issued with the capital letter "D" added or removed without payment of the fee required in s. 322.21(1)(e).

Section 2. This act shall take effect on the same date that CS/HB 787 or similar legislation takes effect, if such legislation is adopted in the same legislative session or an extension thereof and becomes a law.

Amendment No.

COMMITTEE/SUBCOMMITTEE ACTION

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

Committee/Subcommittee hearing bill: State Affairs Committee

Representative Tomkow offered the following:

Amendment

Remove line 16 and insert:

(f)1. Upon request by a person who has a developmental disability, or by a parent or guardian of a child or ward who has a developmental disability, the capital letter "D" shall be exhibited on the

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 921 Department of Agriculture and Consumer Services
SPONSOR(S): Agriculture & Natural Resources Subcommittee, Brannan
TIED BILLS: **IDEN./SIM. BILLS:** CS/CS/SB 1514

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Agriculture & Natural Resources Subcommittee	11 Y, 0 N, As CS	Melkun	Moore
2) State Affairs Committee		Melkun	Williamson

SUMMARY ANALYSIS

Agricultural Loads on Vehicles

Under Florida law, a vehicle may not be driven or moved on any highway unless the vehicle is constructed or loaded to prevent any of its load from escaping from the vehicle. Currently, the requirements to cover and secure the load do not apply to vehicles carrying agricultural products locally from a harvest site or to or from a farm on roads where the posted speed limit is 65 miles per hour or less and the distance driven on public roads is less than 20 miles.

The bill removes the 20-mile maximum distance that a vehicle carrying agricultural products may travel without covering and securing the load.

Pest Control Trust Fund

The Pest Control Trust Fund (Trust Fund) is used to carry out various responsibilities of the Department of Agriculture and Consumer Services (DACS) related to the regulation of pest control, including the licensing of pest control businesses, examinations for operators' certificates, and the education of the pest control industry. In addition, current law allows DACS to use funds from the Trust Fund to carry out the duties of its Division of Agricultural Environmental Services (division), which include inspecting and drawing samples of commercial goods for sale; conducting general inspection activities; reviewing and evaluating technical and scientific data; analyzing samples of certain goods offered for sale; and investigating, evaluating, and developing new or improved technology. DACS's authority to use funds from the Trust Fund to carry out the division's duties is set to expire on June 30, 2020.

The bill extends the expiration date of DACS's authority to use funds from the Trust Fund to carry out the division's duties to June 30, 2024.

Forest Service Firefighters

The Florida Forest Service (FFS) works to protect and manage the forest resources of Florida by providing fire protection for forests and natural areas as well as firefighting assistance to municipal and volunteer fire departments. FFS firefighters must complete a fire training course approved by the Florida State Fire College of the Division of State Fire Marshal and a minimum of 250 hours of wildfire training.

The bill revises the training curriculum for FFS firefighters to require the curriculum to include a minimum of 40 hours of structural firefighter training and a minimum of 40 hours of emergency medical training and to increase the minimum number of hours of wildfire training required from 250 hours to 376 hours.

The bill authorizes DACS to purchase private insurance policies to cover expenses related to the payment of benefits to firefighters diagnosed with cancer.

Fiscal Impact

The bill may have an indeterminate impact on state government.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Agricultural Loads on Vehicles

Background
Under Florida law, a vehicle may not be driven or moved on any highway unless the vehicle is constructed or loaded to prevent any of its load from dropping, shifting, leaking, blowing, or otherwise escaping from the vehicle.[1] Every vehicle owner and driver has a duty to prevent items from escaping from his or her vehicle and may do so by using an appropriate cover or load-securing device that meets federal requirements, or a device designed to reasonably ensure that cargo will not shift or fall from the vehicle.[2]

Currently, the requirements to cover and secure the load do not apply to vehicles carrying agricultural products locally from a harvest site or to or from a farm on roads where the posted speed limit is 65 miles per hour or less and the distance driven on public roads is less than 20 miles.[3]

Effect of the Bill
The bill removes the 20-mile maximum distance that a vehicle carrying agricultural products may travel without covering and securing the load.

Pest Control Trust Fund

Background
The Pest Control Trust Fund (Trust Fund) is used to carry out the various responsibilities of the Department of Agriculture and Consumer Services (DACS) related to the regulation of pest control, including the licensing of pest control businesses, examinations for operators' certificates, and the education of the pest control industry.[4] Revenue sources of the Trust Fund include fines as well as license, examination, certification, and commercial fees imposed by DACS.[5]

In addition to DACS's pest control responsibilities, current law also allows DACS to use funds from the Trust Fund to carry out the duties of its Division of Agricultural Environmental Services (division), which include:

- Inspecting and drawing samples of commercial feeds for sale, seeds for sale, certified seed grown in Florida, fertilizers for sale, and pesticides;
- Conducting general inspection activities in regard to weights, measures, and standards of articles for sale;
- Reviewing and evaluating technical and scientific data associated with the production, manufacture, storage, transportation, sale, or use of any article or product with respect to any statutory authority conferred on DACS;
- Analyzing samples of fertilizer, pesticide formulations, commercial feed, and certain seeds offered for sale; and
- Investigating, evaluating, and developing new or improved technology to enhance the analytical capability and efficiency of all divisional laboratories and perform other related analyses as deemed necessary.[6]

DACS's authority to use funds from the Trust Fund to carry out the division's duties is set to expire on June 30, 2020.

[1] Section 316.520(1), F.S.
[2] Section 316.520(2), F.S.
[3] Section 316.520(4), F.S.
[4] Section 570.441, F.S.; ch. 482, F.S.
[5] Chapter 482, F.S.
[6] Section 570.44, F.S.

Effect of the Bill
The bill extends the expiration date of DACS's authority to use funds from the Trust Fund to carry out the division's duties to June 30, 2024.

Forest Service Firefighters

Background
Each year, thousands of acres of wildland and many homes are destroyed by wildfires that can erupt at any time of the year from a variety of causes, including arson, lightning, and debris burning.[7] The Florida Forest Service (FFS) within DACS works to protect and manage the forest resources of Florida by providing fire protection for forests and natural areas as well as firefighting assistance to municipal and volunteer fire departments.[8]

To become licensed, FFS firefighters must complete a fire training course approved by the Florida State Fire College of the Division of State Fire Marshal and a minimum of 250 hours of wildfire training.[9] The fire training course consists of two parts and equates to 398[10] hours, collectively referred to as the "Minimum Standards Course."[11] When an FFS firefighter completes the training program and has passed an examination as required by the Division of State Fire Marshal, FFS firefighters are granted a Forestry Certificate of Compliance and are entitled to the same rights, privileges, and benefits provided by law to firefighters.[12]

Firefighter Benefits
In 2019, the Legislature enacted a law to require that, upon a diagnosis of cancer, a firefighter that has been employed by his or her employer for at least five continuous years, has not used tobacco products for the preceding five years, and has not been employed in any other position for the previous five years that is proven to create a higher risk for any cancer, is entitled to:

- Cancer treatment covered within an employer-sponsored health plan or through a group health insurance trust fund; and
- A one-time cash payout of $25,000, upon the firefighter's initial diagnosis of cancer.[13]

Effect of the Bill
The bill revises the requirements for the training curriculum for FFS firefighters to require the curriculum to include a minimum of 40 hours of structural firefighter training and a minimum of 40 hours of emergency medical training and to increase the minimum number of hours of wildfire training required from 250 hours to 376 hours.

The bill changes the title of the certificate of compliance for FFS firefighters from "Forestry Certificate of Compliance" to "Wildland Firefighter Certificate of Compliance."

The bill authorizes DACS to purchase private insurance policies to cover expenses related to the payment of benefits to firefighters diagnosed with cancer.

B. SECTION DIRECTORY:

Section 1. Amends s. 316.520, F.S., relating to loads on vehicles.

Section 2. Amends s. 570.07, F.S., relating to the powers and duties of DACS.

[7] Florida Division of Emergency Management, *Wildfires*, available at https://www.floridadisaster.org/hazards/wildfire/ (last visited Feb. 20, 2020).
[8] FFS, *Florida Forest Service Career Opportunities*, available at https://www.fdacs.gov/Divisions-Offices/Florida-Forest-Service/Career-Opportunities (last visited Feb. 20, 2020).
[9] Section 590.02(1)(e), F.S.
[10] Part I is 206 hours and Part II is an additional 192 hours; r. 69A-37.055(1), F.A.C.
[11] *Id*.
[12] Sections 633.408(8)(a) and (b), F.S.
[13] Section 112.1816, F.S.; ch. 2019-21 Laws of Fla.

Section 3. Amends s. 570.441, F.S., relating to the Trust Fund.

Section 4. Amends s. 590.02, F.S., relating to the powers and duties of FFS.

Section 5. Amends s. 633.408, F.S., relating to firefighter training and certification.

Section 6. Provides an effective date of July 1, 2020.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The bill may have an indeterminate positive fiscal impact on DACS as a result of extending DACS's authority to use funds from the Trust Fund to carry out the duties of its Division of Agricultural Environmental Services until June 30, 2024.

The bill may have an indeterminate negative fiscal impact on FFS associated with the costs of implementing more training hours for FFS firefighters; however, these costs can likely be absorbed within existing resources.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

None. The bill does not appear to affect county or municipal governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill does not grant rulemaking authority, nor does it appear to require a grant of rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On February 25, 2020, the Agriculture & Natural Resources Subcommittee adopted a proposed committee substitute (PCS) and reported the bill favorably as a committee substitute. The PCS removed all provisions of the bill with the exception of the provisions relating to the training of firefighters and the Trust Fund. The PCS also added provisions that authorize DACS to purchase insurance policies to cover certain expenses and revise the requirements for vehicles carrying agricultural products.

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

A bill to be entitled

An act relating to the Department of Agriculture and Consumer Services; amending s. 316.520, F.S.; revising application of agricultural load securing requirements; amending s. 570.07, F.S.; revising the functions, powers, and duties of the Department of Agriculture and Consumer Services to authorize the department to purchase private insurance policies for a specified purpose; amending s. 570.441, F.S.; extending the scheduled expiration for the Department of Agriculture and Consumer Services' use of funds from the Pest Control Trust Fund for certain duties of the department; amending s. 590.02, F.S.; directing the Florida Forest Service to develop a training curriculum for wildland firefighters; providing requirements for such training; amending s. 633.408, F.S.; providing wildland firefighter training and certification for certain firefighters and volunteer firefighters; providing an effective date.

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

Section 1. Subsection (4) of section 316.520, Florida Statutes, is amended to read:

316.520 Loads on vehicles.—

(4) The provision of subsection (2) requiring covering and securing the load with a close-fitting tarpaulin or other appropriate cover does not apply to vehicles carrying agricultural products locally from a harvest site or to or from a farm on roads where the posted speed limit is 65 miles per hour or less ~~and the distance driven on public roads is less than 20 miles~~.

Section 2. Subsection (47) is added to section 570.07, Florida Statutes, to read:

570.07 Department of Agriculture and Consumer Services; functions, powers, and duties.—The department shall have and exercise the following functions, powers, and duties:

(47) To purchase, at its discretion, private insurance policies to cover expenses related to the payment of benefits required by s. 112.1816.

Section 3. Subsection (4) of section 570.441, Florida Statutes, is amended to read

570.441 Pest Control Trust Fund.—

(4) In addition to the uses authorized under subsection (2), moneys collected or received by the department under chapter 482 may be used to carry out the provisions of s. 570.44. This subsection expires June 30, 2024 ~~2020~~.

Section 4. Paragraph (e) of subsection (1) of section 590.02, Florida Statutes, is amended to read:

590.02 Florida Forest Service; powers, authority, and

duties; liability; building structures; Withlacoochee Training Center.—

(1) The Florida Forest Service has the following powers, authority, and duties to:

(e) Develop a training curriculum for wildland ~~forestry~~ firefighters which must contain a minimum of 40 hours of structural firefighter training, a minimum of 40 hours of emergency medical training, ~~the basic volunteer structural fire training course approved by the Florida State Fire College of the Division of State Fire Marshal~~ and a minimum of 376 ~~250~~ hours of wildfire training;

Section 5. Subsection (8) of section 633.408, Florida Statutes, is amended to read:

633.408 Firefighter and volunteer firefighter training and certification.—

(8)(a) Pursuant to s. 590.02(1)(e), the division shall establish a structural fire training program of not less than 40 ~~206~~ hours. The division shall issue to a person satisfactorily complying with this training program and who has successfully passed an examination as prescribed by the division and who has met the requirements of s. 590.02(1)(e), a Wildland Firefighter ~~Forestry~~ Certificate of Compliance.

(b) An individual who holds a current and valid Wildland Firefighter ~~Forestry~~ Certificate of Compliance is entitled to the same rights, privileges, and benefits provided for by law as

a firefighter.

Section 6. This act shall take effect July 1, 2020.

Amendment No.

COMMITTEE/SUBCOMMITTEE ACTION

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

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

Amendment (with title amendment)

Between lines 61 and 62, insert:

Section 5. Paragraph (m) is added to subsection (1) of section 597.003, Florida Statutes, to read:

597.003 Powers and duties of Department of Agriculture and Consumer Services.—

(1) The department is hereby designated as the lead agency in encouraging the development of aquaculture in the state and shall have and exercise the following functions, powers, and duties with regard to aquaculture:

(m) The department may revoke an aquaculture certificate of registration issued pursuant to s. 597.004 upon a finding

that aquaculture is not the primary purpose of the certified entity's operation.

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

Remove line 16 and insert:
requirements for such training; amending s. 597.003, F.S.; authorizing the Department of Agriculture and Consumer Services to revoke an aquaculture certificate of registration under certain conditions; amending s. 633.408,

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 977 Motor Vehicle Dealers
SPONSOR(S): Transportation & Infrastructure Subcommittee, Rommel and others
TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 1738

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Transportation & Infrastructure Subcommittee	11 Y, 0 N, As CS	Roth	Vickers
2) Judiciary Committee	16 Y, 0 N	Jones	Luczynski
3) State Affairs Committee		Roth	Williamson

SUMMARY ANALYSIS

The dangerous instrumentality doctrine holds an owner strictly liable for injuries caused by another person's negligent use of the owner's property. Specifically, when the owner entrusts a dangerous instrumentality to another person, the owner is responsible for damages caused by the other person. In 2005, Congress passed what is commonly known as the Graves Amendment to prohibit states from imposing vicarious liability on car rental companies. In 2011, the Florida Supreme Court held that as it relates to rental car companies, the Graves Amendment specifically preempts Florida's dangerous instrumentality law and relieves rental car companies, while engaged in the trade or business of renting or leasing motor vehicles, from vicarious liability for harm caused by the driver. In 2019, the Fourth District Court of Appeal, relying on the Supreme Court's analysis, held that the Graves Amendment also limits the liability of a motor vehicle dealer that provides a customer with a temporary replacement vehicle.

The bill states that subjecting motor vehicle dealers and their leasing and rental affiliates to vicarious liability under the dangerous instrumentality doctrine is both unfair and economically disadvantageous in that it causes dealers and their affiliates to suffer higher insurance costs, which are then passed on to consumers.

Additionally, the bill provides that a motor vehicle dealer, or a motor vehicle dealer's leasing or rental affiliate, that provides a temporary replacement vehicle to a customer whose vehicle is being held for repair, service, or adjustment by the dealer is immune from vicarious liability in a civil or criminal proceeding. This immunity applies as long as there is no negligent or criminal wrongdoing by the dealer or affiliate. The bill provides that a motor vehicle dealer or affiliate must obtain a copy of the vehicle operator's driver license and insurance information to qualify for the immunity granted in the bill.

The bill will likely have no fiscal impact on state or local government.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

The court-created dangerous instrumentality doctrine holds an owner strictly liable for injuries caused by another person's negligent use of the owner's property. Specifically, when the owner entrusts a dangerous instrumentality to another person, the owner is responsible for damages caused by the other person. Whether the owner was negligent or at fault is irrelevant. The rationale for holding an innocent person responsible for such damages is that the owner of an instrumentality capable of causing death or destruction should be liable for damages caused by anyone operating it with the owner's consent.[1]

The dangerous instrumentality doctrine originated in English common law and was adopted by the Florida Supreme Court in 1920 in *Southern Cotton Oil Company v. Anderson*, 86 So. 629 (1920).[2] The Court acknowledged the doctrine was originally limited to fire, water, and poisons, but had expanded over time:

> It is true that, in the early development of this very salutary doctrine, the dangerous agencies consisted largely of fire, flood, water, and poisons. In Dixon v. Bell . . . Lord Ellenborough extended the doctrine to include loaded firearms. With the discovery of high explosives, they were put in the same class. As conditions changed it was extended to include other objects that common knowledge and common experience proved to be as potent sources of danger as those embraced in the earlier classifications. The underlying principle was not changed, but other agencies were included in the classification. Among them are locomotives, push cars, street cars, etc., and it is now well settled that these come within the class of dangerous agencies, and the liability of the master is determined by the rule applicable to them. The reasons for putting these agencies in the class of dangerous instrumentalities apply with equal, if not greater, force to automobiles.[3]

In a 1990 Florida Supreme Court case, a man leased a car from a lessor and then loaned the leased car to a friend. The friend caused a motor vehicle crash in the leased car, killing another person. The victim's estate sued the lessor of the car directly. The Court held that the lessor was liable for the death of the victim under the dangerous instrumentality doctrine, even though the lessor did not cause the accident. The Court acknowledged that the dangerous instrumentality doctrine was "unique to Florida" but justified the doctrine as necessary "to provide greater financial responsibility to pay for the carnage on our roads."[4]

The Second District Court of Appeal has acknowledged that the dangerous instrumentality doctrine creates "real and perceived inequities" and "has drawn its fair share of criticism."[5] Once a court decides that an item is a dangerous instrumentality, an owner of such instrumentality is liable for damages the instrumentality causes, even if the owner was not in control of the instrumentality at the time.

[1] *Roman v. Bogle*, 113 So. 3d 1011, 1016 (Fla. 5th DCA 2013).
[2] *Id.* at 1014.
[3] *S. Cotton Oil Company v. Anderson*, 86 So. 629, 631 (Fla. 1920).
[4] *Kraemer v. General Motors Acceptance Corp.*, 572 So. 2d 1363, 1365 (Fla. 1990).
[5] *Fischer v. Alessandrini*, 907 So. 2d 569, 570 (Fla. 2d DCA 2005).

Whether an item is a dangerous instrumentality is a question of law depending on several factors, none of which alone is dispositive, including:

- Whether the instrumentality is a motor vehicle.[6]
- Whether the instrumentality is frequently operated near the public, regardless of whether the incident at issue occurred on public property.
- The instrumentality's peculiar dangers relative to other objects that courts have found to be dangerous instrumentalities.
- The extent to which the Legislature has regulated the instrumentality.[7]

If the court decides an item is a dangerous instrumentality, the owner is liable regardless of the facts of the particular case. Over time, Florida courts have expanded the applicability of the doctrine to include automobiles,[8] trucks, buses,[9] tow-motors,[10] golf carts, and other motorized vehicles.[11]

The Florida Legislature has limited the dangerous instrumentality doctrine by providing that a rental car company, or a motor vehicle dealer that provides a temporary replacement vehicle to a customer for up to 10 days, is liable for damages only up to $100,000 per person and $300,000 per incident for bodily injury and up to $50,000 for property damage.[12] If the driver of the vehicle is uninsured or has insurance limits of less than $500,000 combined property damage and bodily injury liability, the motor vehicle dealer or car rental company is liable for up to an additional $500,000 in economic damages arising out of the use of the vehicle.[13]

In 2005, Congress passed what is commonly known as the Graves Amendment to prohibit states from imposing vicarious liability on car rental companies.[14] Vicarious liability is "liability that a supervisory party (such as an employer) bears for the actionable conduct of a subordinate (such as an employee) based on the relationship between the two parties."[15] To benefit from the Graves Amendment, the "owner" must be "engaged in the business of renting or leasing motor vehicles." A vehicle "owner" may be the titleholder, lessee, or bailee of the vehicle.[16] The Graves Amendment, however, does not protect a rental company from its own active negligence or criminal wrongdoing. If an injury is caused by a rental company's negligent or criminal act, the rental company can still be directly liable for its actions or inactions, even if an accident occurs while a renter is driving the vehicle.[17] Federal law supersedes Florida's dangerous instrumentality doctrine when a rental car company rents a car to a driver who negligently injures another person.[18]

In 2011, the Florida Supreme Court held that as it relates to rental car companies, the Graves Amendment specifically preempts s. 324.021(9)(b)2., F.S., and relieves rental car companies, while engaged in the trade or business of renting or leasing motor vehicles, from vicarious liability for harm caused by the driver.[19]

---

[6] A motor vehicle is a "wheeled conveyance that does not run on rails and is self-propelled, especially one powered by an internal combustion engine, a battery or fuel-cell, or a combination of these." *Newton v. Caterpillar Financial Servs. Corp.*, 253 So. 3d 1054, 1056 (Fla. 2018) (quoting Black's Law Dictionary (10th ed. 2014)).
[7] *Newton*, 253 So. 3d at 1056.
[8] *S. Cotton Oil*, 86 So. at 629, supra at FN 3.
[9] *Meister v. Fisher*, 462 So. 2d 1071, 1072 (Fla. 1984).
[10] *Eagle Stevedores, Inc. v. Thomas*, 145 So. 2d 551 (Fla. 3d DCA 1962) (where plaintiff was struck in a dock area by a "tow-motor," a small motor-operated vehicle, dangerous instrumentality doctrine applied).
[11] *Meister*, 462 So. 2d at 1072.
[12] Section 324.021(9)(b)2. and (c)1., F.S.
[13] *Id.*
[14] 49 U.S.C. § 30106; Auto Rental News, The Graves Amendment: Challenges, Interpretations, Answers, https://www.autorentalnews.com/156611/the-graves-amendment-challenges-interpretations-and-answers (last visited Apr. 30, 2019).
[15] Black's Law Dictionary 427 (3rd pocket ed. 2006).
[16] Auto Rental News, *supra* at FN 14.
[17] *Id.*
[18] 49 U.S.C. § 30106.
[19] *Vargas v. Enterprise Leasing Co.*, 60 So.3d 1037 (Fla. 2011).

In 2019, the Fourth District Court of Appeal, relying on the Supreme Court's analysis in *Vargas*, held that the Graves Amendment applies to a motor vehicle dealer that provides a customer with a temporary replacement vehicle.[20]

Effect of Proposed Changes

The bill provides the following legislative findings:

> The Legislature finds that absent negligence or criminal conduct by a motor vehicle dealer, or its leasing or rental affiliates, subjecting motor vehicle dealers and their leasing and rental affiliates to vicarious liability under the dangerous instrumentality doctrine when a temporary replacement vehicle is provided to a consumer violates the federal Graves Amendment and is both unfair and economically disadvantageous in that it causes dealers and their affiliates to suffer higher insurance costs, which are then passed on to consumers. Additionally, application of the vicarious liability doctrine in such cases often serves to relieve the actual tortfeasor from liability.

Additionally, the bill provides that a motor vehicle dealer, or a motor vehicle dealer's leasing or rental affiliate, that provides a temporary replacement vehicle to a customer whose vehicle is being held for repair, service, or adjustment by the dealer is immune from civil and criminal liability if:

- The vehicle is provided at no charge or at a reasonable daily rate;
- There is no negligent or criminal wrongdoing by the dealer or affiliate; and
- The dealer or affiliate obtained a copy of the vehicle operator's driver license and insurance information reflecting at least the minimum required motor vehicle insurance coverage.

If the driver license or insurance information provided to the dealer or affiliate is fraudulent or otherwise invalid, that fact does not diminish the dealer's or affiliate's immunity unless the dealer or affiliate had actual knowledge of such fact.

B. SECTION DIRECTORY:

Section 1: Provides legislative findings.

Section 2: Amends s. 324.021, F.S., relating to definitions; minimum insurance required.

Section 3: Provides an effective date of July 1, 2020.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   The bill will likely have no fiscal impact on state government revenues.

2. Expenditures:

   The bill will likely have no fiscal impact on state government expenditures.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   The bill will likely have no fiscal impact on local government revenues.

2. Expenditures:

[20] *Collins v. Auto Partners V, LLC*, 276 So.3d 817 (Fla. 4th DCA 2019).

The bill will likely have no fiscal impact on local government expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Motor vehicle dealers may experience a reduction in insurance premiums and the cost of litigation. These savings may be passed onto consumers.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill does not provide a grant of rulemaking authority, nor does it require rulemaking.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On February 4, 2020, the Transportation & Infrastructure Subcommittee adopted a strike-all amendment and reported the bill favorably as a committee substitute. The strike-all amendment:

- Revised the legislative findings; and
- Provided certain requirements for motor vehicle dealer eligibility for immunity from vicarious liability.

This analysis is drafted to the committee substitute as approved by the Transportation & Infrastructure Subcommittee.

A bill to be entitled

An act relating to motor vehicle dealers; providing legislative findings; amending s. 324.021, F.S.; revising the definition of the term "rental company" to exclude certain motor vehicle dealers, for the purpose of determining minimum insurance coverage requirements; providing that specified motor vehicle dealers and their affiliates are immune to causes of action and not vicariously or directly liable for harm to persons or property under certain circumstances; providing that specified motor vehicle dealers and their affiliates are not adjudged liable in civil proceedings or guilty in criminal proceedings under certain circumstances; providing exceptions; providing an effective date.

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

Section 1. The Legislature finds that, absent negligence or criminal conduct by a motor vehicle dealer, or its leasing or rental affiliates, subjecting motor vehicle dealers and their leasing and rental affiliates to vicarious liability under the dangerous instrumentality doctrine when a temporary replacement vehicle is provided to a consumer violates the federal Graves Amendment and is both unfair and economically disadvantageous in

that it causes dealers and their affiliates to suffer higher insurance costs, which are then passed on to consumers. Additionally, application of the vicarious liability doctrine in such cases often serves to relieve the actual tortfeasor from liability.

Section 2. Paragraph (c) of subsection (9) of section 324.021, Florida Statutes, is amended to read:

324.021 Definitions; minimum insurance required.—The following words and phrases when used in this chapter shall, for the purpose of this chapter, have the meanings respectively ascribed to them in this section, except in those instances where the context clearly indicates a different meaning:

(9) OWNER; OWNER/LESSOR.—

(c) Application.—

1. The limits on liability in subparagraphs (b)2. and 3. do not apply to an owner of motor vehicles that are used for commercial activity in the owner's ordinary course of business, other than a rental company that rents or leases motor vehicles. For purposes of this paragraph, the term "rental company" includes only an entity that is engaged in the business of renting or leasing motor vehicles to the general public and that rents or leases a majority of its motor vehicles to persons with no direct or indirect affiliation with the rental company. ~~The term also includes a motor vehicle dealer that provides temporary replacement vehicles to its customers for up to 10~~

~~days.~~ The term "rental company" also includes:

a. A related rental or leasing company that is a subsidiary of the same parent company as that of the renting or leasing company that rented or leased the vehicle.

b. The holder of a motor vehicle title or an equity interest in a motor vehicle title if the title or equity interest is held pursuant to or to facilitate an asset-backed securitization of a fleet of motor vehicles used solely in the business of renting or leasing motor vehicles to the general public and under the dominion and control of a rental company, as described in this subparagraph, in the operation of such rental company's business.

2. Furthermore, with respect to commercial motor vehicles as defined in s. 627.732, the limits on liability in subparagraphs (b)2. and 3. do not apply if, at the time of the incident, the commercial motor vehicle is being used in the transportation of materials found to be hazardous for the purposes of the Hazardous Materials Transportation Authorization Act of 1994, as amended, 49 U.S.C. ss. 5101 et seq., and that is required pursuant to such act to carry placards warning others of the hazardous cargo, unless at the time of lease or rental either:

a. The lessee indicates in writing that the vehicle will not be used to transport materials found to be hazardous for the purposes of the Hazardous Materials Transportation Authorization

Act of 1994, as amended, 49 U.S.C. ss. 5101 et seq.; or

b. The lessee or other operator of the commercial motor vehicle has in effect insurance with limits of at least $5,000,000 combined property damage and bodily injury liability.

3. A motor vehicle dealer, or a motor vehicle dealer's leasing or rental affiliate, that provides a temporary replacement vehicle at no charge or at a reasonable daily charge to a service customer whose vehicle is being held for repair, service, or adjustment by the motor vehicle dealer is immune from any cause of action and is not liable, vicariously or directly, under general law by reason of being the owner of the temporary replacement vehicle, for harm to persons or property that arises out of the use, or operation, of the temporary replacement vehicle by any person during the period the temporary replacement vehicle has been entrusted to the motor vehicle dealer's service customer if there is no negligence or criminal wrongdoing on the part of the motor vehicle owner, or its leasing or rental affiliate. For purposes of this section, and notwithstanding any other provision of general law or existing case law, a motor vehicle dealer, or a motor vehicle dealer's leasing or rental affiliate, that gives possession, control, or use of a temporary replacement vehicle to a motor vehicle dealer's service customer may not be adjudged liable in a civil proceeding, or guilty in a criminal proceeding, if the motor vehicle dealer or the motor vehicle dealer's leasing or

rental affiliate obtains from the person receiving the temporary replacement vehicle a copy of the person's driver license and insurance information reflecting at least the minimum motor vehicle insurance coverage required in the state. Any subsequent determination that the driver license or insurance information provided to the motor vehicle dealer, or the motor vehicle dealer's leasing or rental affiliate, was in any way false, fraudulent, misleading, nonexistent, canceled, not in effect, or invalid does not alter or diminish the protections provided by this section, unless the motor vehicle dealer, or the motor vehicle dealer's leasing or rental affiliate, had actual knowledge thereof at the time possession of the temporary replacement vehicle was provided.

Section 3. This act shall take effect July 1, 2020.

COMMITTEE/SUBCOMMITTEE ACTION

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

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

Amendment

Remove lines 99-113 and insert:

a civil proceeding, or guilty in a criminal proceeding, absent negligence or criminal wrongdoing on the part of the motor vehicle dealer, if the motor vehicle dealer or the motor vehicle dealer's leasing or rental affiliate obtains from the person receiving the temporary replacement vehicle a copy of the person's driver license and insurance information reflecting at least the minimum motor vehicle insurance coverage required in the state. Any subsequent determination that the driver license or insurance information provided to the motor vehicle dealer, or the motor vehicle dealer's leasing or rental affiliate, was in any way false, fraudulent, misleading, nonexistent, canceled,

not in effect, or invalid does not alter or diminish the protections provided by this section, unless the motor vehicle dealer, or the motor vehicle dealer's leasing or rental affiliate, had actual knowledge thereof at the time possession of the temporary replacement vehicle was provided. For purposes of this subparagraph, the term "service customer" does not include an employee, an agent, or a principal of a motor vehicle dealer or a motor vehicle dealer's leasing or rental affiliate unless such person has been provided a temporary replacement vehicle while such person's vehicle is being held for repair, service, or adjustment by the motor vehicle dealer.

Amendment No.

COMMITTEE/SUBCOMMITTEE ACTION

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

Committee/Subcommittee hearing bill: State Affairs Committee

Representative Grall offered the following:

Amendment to Amendment (817861) by Representative Rommel

Remove line 8 of the amendment and insert:

vehicle dealer, or the motor vehicle dealer's leasing or rental affiliate, if the motor vehicle dealer or the motor vehicle

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1035 Pub. Rec./Records and Information Provided to Specified Entities for Disaster Recovery Assistance
SPONSOR(S): Oversight, Transparency & Public Management Subcommittee; Raschein
TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 966

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Oversight, Transparency & Public Management Subcommittee	15 Y, 0 N, As CS	Toliver	Smith
2) State Affairs Committee		Toliver	Williamson

SUMMARY ANALYSIS

The Department of Economic Opportunity (DEO), the Florida Housing Finance Corporation (FHFC), counties, municipalities, and local housing finance agencies provide various housing programs designed to assist those who have been impacted by a disaster. One such program, the Community Development Block Grant - Disaster Recovery (CDBG-DR) program, supports communities following disasters by addressing long-term recovery needs. The United States Department of Housing and Urban Development (HUD) administers the CDBG-DR program at the federal level and the Office of Disaster Recovery within DEO administers the program at the state level. The CDBG-DR program is designed to address housing, infrastructure, economic development, and mitigation needs that remain after other assistance has been exhausted, including federal assistance and private insurance.

Persons or families that have had their homes damaged or destroyed following a disaster may apply to DEO to receive money to repair, reconstruct, or possibly replace their homes. To receive funding from the CDBG-DR program, an applicant must submit the following types of information:

- Photo identification;
- Proof of ownership;
- Homeowner's insurance information;
- Tax returns; and
- Salary or wage statements, including social security, disability, retirement benefits, and unemployment income.

The bill creates a public record exemption for property photographs and applicant financial documentation provided to DEO, FHFC, a county, a municipality, or a local housing finance agency by or on behalf of an applicant for, or participant in, a federal, state, or local housing program for the purpose of disaster recovery assistance for presidentially declared disasters. The information is confidential and exempt from public record requirements. The bill provides that the information may be released to a governmental entity for the purpose of auditing a housing program and may be used in any administrative or judicial proceeding provided certain requirements are met.

The bill provides for repeal of the exemptions on October 2, 2025, unless reviewed and saved from repeal by the Legislature. It also provides a public necessity statement as required by the Florida Constitution.

The bill may have a minimal fiscal impact on the state and local governments.

Article I, s. 24(c) of the Florida Constitution requires a two-thirds vote of the members present and voting for final passage of a newly created public record or public meeting exemption. The bill creates a public record exemption; thus, it requires a two-thirds vote for final passage.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Public Records

Article I, s. 24(a) of the State Constitution sets forth the state's public policy regarding access to government records. This section guarantees every person a right to inspect or copy any public record of the legislative, executive, and judicial branches of government. The Legislature, however, may provide by general law for the exemption of records from the requirements of Article I, section 24(a).[1] The general law must state with specificity the public necessity justifying the exemption and must be no more broad than necessary to accomplish its purpose.[2]

Public policy regarding access to government records is addressed further in the Florida Statutes. Section 119.07(1), F.S., guarantees every person a right to inspect and copy any state, county, or municipal record. Furthermore, the Open Government Sunset Review Act[3] provides that a public record or public meeting exemption may be created or maintained only if it serves an identifiable public purpose. In addition, it may be no broader than is necessary to meet one of the following purposes:

- Allow the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption.
- Protect 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.
- Protect trade or business secrets.[4]

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.[5]

Department of Economic Opportunity

The Department of Economic Opportunity (DEO) was created to assist the Governor in working with the Legislature, state agencies, business leaders, and economic development professionals to formulate and implement coherent and consistent policies and strategies designed to promote economic opportunities for all Floridians.[6] The head of DEO is the executive director, who is appointed by the Governor, subject to confirmation by the Senate. The executive director serves at the pleasure of and reports to the Governor.[7] The executive director manages all activities and responsibilities of DEO, and serves as the manager for the state with respect to contracts with Enterprise Florida Inc., and all applicable direct-support organizations.[8] The Office of Disaster Recovery (ODR) within DEO "supports communities following disasters by addressing long-term recovery needs for housing, infrastructure and economic development."[9]

[1] Art. I, s. 24(c), FLA. CONST.
[2] Art. I, s. 24(c), FLA. CONST.
[3] Section 119.15, F.S.
[4] Section 119.15(6)(b), F.S.
[5] Section 119.15(3), F.S.
[6] Section 20.60(4), F.S.
[7] Section 20.60(2), F.S.
[8] Section 20.60(9), F.S.
[9] DEO, *Office of Disaster Recovery*, http://www.floridajobs.org/community-planning-and-development/assistance-for-governments-and-organizations/disaster-recovery-initiative (last visited Feb. 1, 2020).

Florida Housing Finance Corporation

The Florida Housing Finance Corporation (FHFC), a public corporation administratively housed within DEO,[10] is the state's affordable housing finance agency. FHFC is responsible for increasing the amount of affordable housing available to individuals and families by stimulating investment of private capital and encouraging public and private sector housing partnerships. To accomplish this mission, FHFC uses federal and state resources to finance the development of safe, affordable homes and rental housing to assist first-time homebuyers.[11]

Disaster Recovery Housing Assistance Programs

DEO, FHFC, counties, municipalities, and local housing finance agencies have various housing programs designed to assist those who have been impacted by a disaster. One such program, the Community Development Block Grant - Disaster Recovery (CDBG-DR) program, supports communities following disasters by addressing long-term recovery needs. The United States Department of Housing and Urban Development (HUD) administers the CDBG-DR program at the federal level[12] and ODR administers the program at the state level.[13] In response to a presidentially declared disaster, Congress may appropriate additional funding for the CDBG-DR program as "grants to rebuild the affected areas and provide crucial seed money to start the recovery process."[14] The CDBG-DR program is designed to address housing, infrastructure, economic development, and mitigation needs that remain after other assistance has been exhausted, including federal assistance and private insurance.[15]

In September 2018, Florida launched Rebuild Florida, a program housed within ODR, administered in partnership with HUD, and funded through the CDBG-DR program.[16] Rebuild Florida was created to help Florida recover from the devastating impacts of Hurricane Irma by repairing and rebuilding damaged homes across the hardest-hit communities, with priority funding for those low-income residents who were most vulnerable, including the elderly, those with disabilities and families with children under the age of 18.[17] Florida has received $616 million through the CDBG-DR program.[18]

Persons or families that have had their homes damaged or destroyed following a disaster may apply to DEO to receive money to repair, reconstruct, or possibly replace their home.[19] To receive funding from the CDBG-DR program, an applicant must submit the following information:

- Photo identification;
- Proof of ownership;
- Homeowner's insurance;
- Tax returns; and
- Salary or wage statements, including social security, disability, retirement, and unemployment income.[20]

Presidential Disaster Declaration

Congress passed the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act) "to provide an orderly and continuing means of assistance by the Federal Government to State and

[10] Section 420.504(1), F.S.
[11] *See* ss. 420.502 and 420.507, F.S.
[12] HUD, *CDBG-DR Fact Sheet*, available at https://files.hudexchange.info/resources/documents/CDBG-DR-Fact-Sheet.pdf (last visited Feb. 1, 2020).
[13] DEO, *Office of Disaster Recovery*, http://www.floridajobs.org/community-planning-and-development/assistance-for-governments-and-organizations/disaster-recovery-initiative (last visited Feb. 1, 2020).
[14] HUD, *Community Development Block Grant Disaster Recovery Program*, https://www.hudexchange.info/programs/cdbg-dr/ (last visited Feb. 1, 2020).
[15] *Supra* note 12.
[16] Rebuild Florida, *Frequently Asked Questions*, http://floridajobs.org/rebuildflorida/faqs (last visited Feb. 1, 2020).
[17] *Id.*
[18] *Id.; see also* Governor DeSantis, *Governor Ron DeSantis Announces Completion of Rebuild Florida's First Home Repair*, https://www.flgov.com/2019/05/21/governor-ron-desantis-announces-completion-of-rebuild-floridas-first-home-repair/ (last visited Feb. 1, 2020).
[19] *Supra* note 12.
[20] Rebuild Florida, *Housing Repair and Replacement Program: Applicant Document Checklist*, available at http://floridajobs.org/docs/default-source/communicationsfiles/rebuildflorida-applicationdocumentchecklist-singlefamily_12-29-18.pdf?sfvrsn=4 (last visited Feb. 12, 2020).

local governments in carrying out their responsibilities to alleviate the suffering and damage which result from … disasters."[21] The Stafford Act allows a state to collect monetary assistance from the federal government in the event that an emergency "situation is of such severity and magnitude that [an] effective response is beyond the capabilities of the State and the affected local governments."[22]

To receive funding, the Governor, on behalf of the state or on behalf of certain localities, must request from the President of the United States a declaration that an emergency exists (Stafford declaration).[23] If the Governor requests a Stafford declaration from the President, he or she must submit the request through the Federal Emergency Management Agency[24] Regional Administrator.[25] Based upon the Governor's request, the President may declare that an emergency exists in a state or a region of a state.[26] Once a Stafford declaration is signed by the President, Congress may allocate funds for the CDBG-DR program.[27]

Effect of the Bill

The bill creates a public record exemption for property photographs and applicant financial documentation provided to DEO, FHFC, a county, a municipality, or a local housing finance agency by or on behalf of an applicant for, or a participant in, a federal, state, or local housing assistance program for the purpose of disaster recovery assistance for presidentially declared disasters. The property photographs and applicant financial information is confidential and exempt[28] from public record requirements. The bill provides that the information may be released to a governmental entity for the purpose of auditing a housing program. Further, the bill specifies that the information may be used in any administrative or judicial proceeding, provided such information is kept confidential and exempt unless otherwise ordered by a court.

The bill defines the term "financial documentation" to mean income statements, paystubs, bank statements, tax returns, public assistance information, disaster recovery benefits, social security disability benefits, and insurance information.

The bill provides for the repeal of the exemption on October 2, 2025, unless reviewed and saved from repeal by the Legislature. It also provides a statement of public necessity as required by the Florida Constitution.

B. SECTION DIRECTORY:

Section 1 amends s. 119.071, F.S., relating to general exemptions from inspection or copying of public records.

Section 2 provides a statement of public necessity.

Section 3 provides an effective date of July 1, 2020.

[21] 42 U.S.C. s. 5121(b); P.L. 100-707 (1988).
[22] 42 U.S.C. s. 5191(a).
[23] *Id.*
[24] The Stafford Act empowers the Federal Emergency Management Agency to promulgate rules and regulations to carry out its provisions. 42 U.S.C. s. 5164.
[25] 44 C.F.R. ss. 206.35(a) and 206.36(a).
[26] 42 U.S.C. s. 5191(a).
[27] *Supra* note 12.
[28] There is a difference between records the Legislature designates exempt from public record requirements and those the Legislature deems confidential and exempt. A record classified as exempt from public disclosure may be disclosed under certain circumstances. *See WFTV, Inc. v. Sch. Bd. of Seminole*, 874 So.2d 48, 53 (Fla. 5th DCA 2004), *review denied* 892 So.2d 1015 (Fla. 2004); *City of Rivera Beach v. Barfield*, 642 So.2d 1135 (Fla. 4th DCA 1994); *Williams v. City of Minneola*, 575 So.2d 683, 687 (Fla. 5th DCA 1991). If the Legislature designates a record as confidential and exempt from public disclosure, such record may not be released by the custodian of public records, to anyone other than the persons or entities specifically designated in statute. *See* Op. Att'y Gen. Fla. 85-62 (1985).

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:

See Fiscal Comments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The bill may have a minimal fiscal impact on agencies because agency staff responsible for complying with public records requests may require training related to the creation of the public records exemptions. Agencies could incur costs associated with redacting the confidential and exempt information prior to releasing a record. The costs, however, would be absorbed by existing resources, as they are part of the day-to-day responsibilities of agencies.

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, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

Vote Requirement
Article I, s. 24(c) of the Florida Constitution requires a two-thirds vote of the members present and voting for final passage of a newly created public record exemption. The bill creates a public record exemption; thus, it requires a two-thirds vote for final passage.

Public Necessity Statement
Article I, s. 24(c) of the Florida Constitution requires a public necessity statement for a newly created public record exemption. The bill create a public record exemption; therefore, it includes a public necessity statement.

Breadth of Exemption
Article I, s. 24(c) of the Florida Constitution requires a newly created public record or public meeting exemption to be no broader than necessary to accomplish the stated purpose of the law. This bill creates a public record exemption for certain information submitted by persons applying to receive

housing aid in the wake of a disaster. The purpose of the exemption is to protect persons made vulnerable due to a disaster from actors who might use the information maliciously.

B. RULE-MAKING AUTHORITY:

The bill does not confer rulemaking authority nor require the promulgation of rules.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On February 4, 2020, the Oversight, Transparency & Public Management Subcommittee adopted a strike-all amendment and reported the bill favorably as a committee substitute. The amendment narrowed the public records exemption, limiting the exemption to only financial documentation and property photographs. In addition, the amendment provided a definition for financial documentation and specified that the exemption only applies to presidentially declared disasters.

The analysis is drafted to the committee substitute as approved by the Oversight, Transparency & Public Management Subcommittee.

A bill to be entitled

An act relating to public records; amending s. 119.071, F.S.; defining the term "financial documentation"; providing an exemption from public records requirements for property photographs and financial documentation provided to specified entities by certain persons for the purpose of disaster recovery assistance; authorizing access to such records and information for certain purposes; providing for future legislative review and repeal of the exemption; providing a statement of public necessity; providing an effective date.

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

Section 1. Paragraph (l) is added to subsection (5) of section 119.071, Florida Statutes, to read:

119.071 General exemptions from inspection or copying of public records.—

(5) OTHER PERSONAL INFORMATION.—

(l) 1. For purposes of this paragraph, the term "financial documentation" means income statements, paystubs, bank statements, tax returns, public assistance information, disaster recovery benefits, social security disability benefits, and insurance information.

2. Property photographs and applicant financial documentation provided to the Department of Economic Opportunity, the Florida Housing Finance Corporation, a county, a municipality, or a local housing finance agency by or on behalf of an applicant for, or a participant in, a federal, state, or local housing assistance program for the purpose of disaster recovery assistance for a presidentially declared disaster are confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

3. A governmental entity and its agents shall have access to such confidential and exempt records and information for the purpose of auditing federal, state, or local housing programs or housing assistance programs. Such confidential and exempt records and information may be used in any administrative or judicial proceeding, provided such records are kept confidential and exempt unless otherwise ordered by a court.

4. This paragraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2025, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 2. The Legislature finds that it is a public necessity that property photographs and applicant financial documentation provided to the Department of Economic Opportunity, the Florida Housing Finance Corporation, a county, a municipality, or a local housing finance agency by or on

behalf of an applicant for, or a participant in, a federal, state, or local housing assistance program for the purpose of disaster recovery assistance for a presidentially declared disaster be made confidential and exempt from s. 119.07(1), Florida Statutes, and s. 24 (a), Article I of the State Constitution. In response to a disaster an agency, in an effort to determine storm damage and ascertain the estimated cost of rehabilitation, may conduct a property inspection to observe and record the presence of damage. The damage assessment data collected may include interior and exterior photographs of such individual's residence. This information may be used to locate the damaged property and identify and contact the property owner or tenant. If released, this information may be used by fraudulent contractors, predatory lenders, thieves, or individuals seeking to impose on the vulnerability of a distressed property owner or tenant following a disaster. Therefore, it is necessary that this information be protected to ensure that people impacted by a disaster do not have sensitive information released.

Section 3. This act shall take effect July 1, 2020.

COMMITTEE/SUBCOMMITTEE ACTION

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

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

Amendment (with title amendment)

Remove everything after the enacting clause and insert:

Section 1. Paragraph (f) of subsection (5) of section 119.071, Florida Statutes, is amended to read:

119.071 General exemptions from inspection or copying of public records.—

(5) OTHER PERSONAL INFORMATION.—

(f) 1. The following information held by the Department of Economic Opportunity, the Florida Housing Finance Corporation, a county, a municipality, or a local housing finance agency is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution:

a. Medical history records and information related to health or property insurance provided ~~to the Department of Economic Opportunity, the Florida Housing Finance Corporation, a county, a municipality, or a local housing finance agency~~ by an applicant for or a participant in a federal, state, or local housing assistance program ~~are confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution~~.

b. Property photographs and personal identifying information of an applicant for or a participant in a federal, state, or local housing assistance program for the purpose of disaster recovery assistance for a presidentially declared disaster.

2. Governmental entities or their agents shall have access to such confidential and exempt records and information for the purpose of auditing federal, state, or local housing programs or housing assistance programs.

3. Such confidential and exempt records and information may be used in any administrative or judicial proceeding, provided such records are kept confidential and exempt unless otherwise ordered by a court.

4. Sub-subparagraph 1.b. is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2025, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 2. The Legislature finds that it is a public necessity that property photographs and personal identifying information of an applicant for or participant in a federal, state, or local housing assistance program for the purpose of disaster recovery assistance for a presidentially declared disaster, held by the Department of Economic Opportunity, the Florida Housing Finance Corporation, a county, a municipality, or a local housing finance agency, be made confidential and exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution. In response to a disaster, an agency, in an effort to determine damage and ascertain the estimated cost of rehabilitation, may conduct a property inspection to observe and record damage to the property. This information may be used to locate the damaged property and to identify and contact the property owner or tenant. Following a disaster, the people affected are vulnerable and frequently displaced due to the severely damaged and often uninhabitable condition of their residence. If released, property photographs and personal identifying information could be used by fraudulent contractors, predatory lenders, thieves, or individuals seeking to impose on the vulnerability of the distressed property owner or tenant following a disaster. Therefore, it is necessary that property photographs and personal identifying information be protected to ensure those affected by a disaster are not harassed, intimidated, or potentially defrauded.

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

Remove everything before the enacting clause and insert:
An act relating to public records; amending s. 119.071, F.S.; providing an exemption from public records requirements for property photographs and personal identifying information provided to specified entities by certain persons for the purpose of disaster recovery assistance; authorizing access to such records and information for certain purposes; providing for future legislative review and repeal of the exemption; providing a statement of public necessity; providing an effective date.

CS/HB 1039

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1039 Transportation Network Companies
SPONSOR(S): Transportation & Infrastructure Subcommittee; Rommel
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Transportation & Infrastructure Subcommittee	12 Y, 0 N, As CS	Roth	Vickers
2) Insurance & Banking Subcommittee	11 Y, 0 N	Lloyd	Cooper
3) State Affairs Committee		Roth	Williamson

SUMMARY ANALYSIS

A transportation network company (TNC) is an entity that uses a digital network to connect a rider to a TNC driver, who provides prearranged rides. A TNC vehicle is not a for-hire vehicle or a limousine. With certain exceptions, a "for-hire vehicle" means any motor vehicle used for transporting persons or goods for compensation, or let or rented to another for consideration. There are different regulatory and insurance requirements in place for TNCs and for-hire vehicles.

The bill allows a limousine and luxury for-hire vehicles to be operated as a TNC. The bill defines "luxury ground transportation network company" to mean a company that uses its digital network to connect riders exclusively to drivers who operate for-hire vehicles, including limousines and luxury sedans. The bill requires luxury ground TNCs to comply with all of the requirements applicable to a TNC, and requires maintenance of specific insurance coverage at all times.

The bill authorizes TNC drivers to contract for the installation of TNC digital advertising devices on the TNC vehicle. The bill defines "transportation network company digital advertising device" to mean a device no larger than 20 inches tall and 54 inches long that is fixed to the roof of a TNC vehicle that displays advertisements on a digital screen only while the TNC vehicle is turned on. The bill provides additional requirements for the use and display of a TNC digital advertising device.

The bill provides that a luxury ground TNC is not considered a for-hire vehicle and that the regulation of luxury ground TNCs, luxury ground TNC drivers, and luxury ground TNC vehicles is preempted to the state.

The bill may have an indeterminate negative fiscal impact on the state and local governments. *See* Fiscal Analysis section for details.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Transportation Network Companies

In 2017, the Legislature established a regulatory framework for transportation network companies (TNCs).[1] A TNC is an entity operating in this state that uses a digital network to connect a rider[2] to a TNC driver, who provides prearranged rides. A TNC is not deemed to own, control, operate, direct, or manage the TNC vehicles or TNC drivers that connect to its digital network, except where agreed to by written contract, and is not a taxicab association or for-hire vehicle owner. The term does not include entities arranging nonemergency medical transportation for individuals who qualify for Medicaid or Medicare pursuant to a contract with the state or a managed care organization.

A "TNC vehicle" is a vehicle that is used by a TNC driver to offer or provide a prearranged ride that is owned, leased, or otherwise authorized to be used by the TNC driver. A vehicle that is let or rented to another for consideration may be used as a TNC vehicle. The law specifies that a taxicab, jitney, limousine, or for-hire vehicle is not a TNC vehicle.

A "prearranged ride" is the provision of transportation by a TNC driver to a rider, beginning when a TNC driver accepts a ride requested by a rider through a digital network[3] controlled by a TNC, continuing while the TNC driver transports the requesting rider, and ending when the last requesting rider departs from the TNC vehicle. The term does not include a taxicab, for-hire vehicle, or street hail[4] service and does not include ridesharing,[5] carpool,[6] or any other type of service in which the driver receives a fee that does not exceed the driver's cost to provide the ride. TNC drivers are prohibited from soliciting or accepting street hails.

A "TNC driver" is an individual who receives connections to potential riders and related services from a TNC and in return for compensation, uses a TNC vehicle to offer or provide a prearranged ride to a rider upon connection through a digital network. The law specifies that a TNC or TNC driver is not a common carrier, contract carrier, or motor carrier and does not provide taxicab or for-hire vehicle service. The law provides that a TNC driver is not required to register a TNC vehicle as a commercial motor vehicle or a for-hire vehicle. The TNC's digital network must display the TNC driver's photograph and the TNC vehicle's license plate number before the rider enters the TNC vehicle.

If a fare is collected from a rider, the TNC must disclose the fare or fare calculation method on its website or within the online-enabled technology application service before beginning the prearranged ride. If the fare is not disclosed, the rider must have the option to receive an estimated fare before beginning the prearranged ride. In addition, a TNC is required to transmit to the rider an electronic receipt within a reasonable period after the completion of a ride. The receipt must list the origin and destination of the ride, total time and distance of the ride, and total fare paid.

---

[1] Section 627.748, F.S.

[2] "Rider" means an individual who uses a digital network to connect with a TNC driver in order to obtain a prearranged ride in the TNC driver's TNC vehicle between points chosen by the rider.

[3] The term "digital network" means any online-enabled technology application service, website, or system offered or used by a TNC that enables the prearrangement of riders with TNC drivers.

[4] The term "street hail" means an immediate arrangement on a street with a driver by a person using any method other than a digital network to seek immediate transportation.

[5] Section 341.031(9)(a), F.S., defines "ridesharing" as an "arrangement between persons with a common destination, or destinations, within the same proximity, to share the use of a motor vehicle on a recurring basis for round-trip transportation to and from their place of employment or other common destination. For purposes of ridesharing, employment shall be deemed to commence when an employee arrives at the employer's place of employment to report for work and shall be deemed to terminate when the employee leaves the employer's place of employment, excluding areas not under the control of the employer. However, an employee shall be deemed to be within the course of employment when the employee is engaged in the performance of duties assigned or directed by the employer, or acting in the furtherance of the business of the employer, irrespective of location."

[6] Section 450.28(3), F.S., defines "carpool" as "an arrangement made by the workers using one worker's own vehicle for transportation to and from work and for which the driver or owner of the vehicle is not paid by any third person other than the members of the carpool."

A TNC is required to designate and maintain an agent for service of process in this state.[7]

Because a TNC or TNC driver is not a common carrier, contract carrier, or motor carrier and does not provide taxicab or for-hire vehicle service, a TNC driver is not required to register the TNC vehicle as a commercial motor vehicle or a for-hire vehicle.[8]

While a TNC driver is logged on to the digital network but is not engaged in a prearranged ride, the TNC or TNC driver must have automobile insurance that provides:[9]

- Primary automobile liability coverage of at least $50,000 for death and bodily injury per person, $100,000 for death and bodily injury per incident, and $25,000 for property damage; and
- Personal injury protection benefits that meet the minimum coverage amounts required under the Florida Motor Vehicle No-Fault Law.[10]

When a TNC driver is engaged in a prearranged ride, the automobile insurance must provide:[11]

- Primary automobile liability coverage of at least $1 million for death, bodily injury, and property damage; and
- Personal injury protection benefits that meet the minimum coverage amounts required of a limousine under the Florida Motor Vehicle No-Fault Law.

The coverage requirements may be satisfied by automobile insurance maintained by the TNC driver, an automobile insurance policy maintained by the TNC, or a combination of automobile insurance policies maintained by the TNC driver and the TNC.[12]

The law preempts to the state the regulation of TNCs and specifies that a county, municipality, special district, airport authority, port authority, or other local governmental entity or subdivision may not:

- Impose a tax on or require a license for a TNC, TNC driver, or TNC vehicle if such tax or license relates to providing prearranged rides;
- Subject a TNC, TNC driver, or TNC vehicle to any rate, entry, operation, or other requirement of the county, municipality, special district, airport authority, port authority, or other local governmental entity or subdivision; or
- Require a TNC or TNC driver to obtain a business license or any other type of similar authorization to operate within the local governmental entity's jurisdiction.[13]

However, an airport or seaport is not prohibited from charging reasonable pickup fees consistent with any pickup fees charged to taxicab companies at that airport or seaport for their use of the airport's or seaport's facilities or from designating locations for staging, pickup, and other similar operations at the airport or seaport.[14]

For-Hire Vehicles

With certain exceptions, offering for lease or rent any motor vehicle in the State of Florida qualifies the vehicle as a "for-hire vehicle." A "for-hire vehicle" is a motor vehicle used for transporting persons or goods for compensation. When goods or passengers are transported for compensation in a motor vehicle outside a municipal corporation of this state, or when goods are transported in a motor vehicle not owned by the person owning the goods, such transportation is considered "for hire." The carriage of goods and other personal property in a motor vehicle by a corporation or association for its stockholders, shareholders, and members, cooperative or otherwise, is transportation "for hire."[15]

[7] Section 48.091, F.S., requires any corporation doing business in the state to have a registered agent and registered office in the state.
[8] Section 627.748(2), F.S.
[9] Section 627.748(7)(b), F.S.
[10] Sections 627.730-627.7405, F.S. The amount of insurance required is $10,000 for emergency medical disability, $2,500 non-emergency medical, and $5,000 for death.
[11] Section 627.748(7)(c), F.S.
[12] Section 627.748(7)(b) and (c), F.S.
[13] Section 627.748(15)(a), F.S.
[14] Section 627.748(15)(b), F.S.
[15] Section 320.01(15)(a), F.S.

Florida law establishes specific financial responsibility requirements applicable to for-hire vehicles. For-hire vehicles, such as taxis and limousines, must maintain a motor vehicle liability policy with minimum limits of $125,000 per person for bodily injury, $250,000 per incident for bodily injury, and $50,000 for property damage.[16] The owner or operator of a for-hire vehicle may also prove financial responsibility by providing satisfactory evidence of holding a motor vehicle liability policy issued by an insurance carrier, which is a member of the Florida Insurance Guaranty Association, or by providing a certificate of self-insurance.[17]

In general, a county may, to the extent not inconsistent with general or special law, license and regulate taxis, jitneys, limousines, rental cars, and other passenger vehicles for hire that operate in the unincorporated areas of the county.[18]

Digital Advertising Device

Certain companies allow taxi and TNC drivers to generate revenue through digital advertising via a digital smart screen on top of the taxi or TNC vehicle. The digital screen allows advertisers to run targeted, geofenced campaigns.[19] Digital advertising screens are installed on the roofs of motor vehicles owned or operated by individuals who commit to drive a minimum number of hours per week in certain urban markets. Drivers with digital advertising screens report earning an average of $300 a month, depending on how many hours are driven.[20]

There are currently digital advertising screens in use on vehicles in New York, Los Angeles, San Francisco, Chicago, and Dallas.[21]

Prohibition Against Certain Lights

A person may not drive any vehicle or equipment upon any highway in this state with any lamp or device thereon showing or displaying a red, red and white, or blue light visible from directly in front of the vehicle, except for certain exceptions, such as fire department vehicles and road maintenance equipment.[22] The law expressly prohibits any vehicle or equipment, except police vehicles, from showing or displaying blue lights, except for Department of Corrections vehicles or county correctional agency vehicles when responding to emergencies. Flashing lights are prohibited on vehicles except:

- As a means of indicating a right or left turn, to change lanes, or to indicate that the vehicle is lawfully stopped or disabled upon the highway;
- When a motorist intermittently flashes his or her vehicle's headlamps at an oncoming vehicle notwithstanding the motorist's intent for doing so; and
- Flashing lamps authorized for bicycle riders and deceleration lighting systems on buses.

Florida Deceptive and Unfair Trade Practices Act

The Florida Deceptive and Unfair Trade Practices Act (FDUTPA) became law in 1973.[23] The purpose[24] of FDUTPA is to:

1) Simplify, clarify, and modernize the law governing consumer protection, unfair methods of competition, and unconscionable, deceptive, and unfair trade practices.
2) Protect the consuming public and legitimate business enterprises from those who engage in unfair methods of competition, or unconscionable, deceptive, or unfair acts or practices in the conduct of any trade or commerce.
3) Make state consumer protection and enforcement consistent with established policies of federal law relating to consumer protection.

[16] Section 324.032(1), F.S.
[17] Section 324.031, F.S.
[18] Section 125.01(1)(n), F.S.
[19] Anthony Ha, *Rideshare Advertising Startup Firefly Launches with $21.5M in Funding*, Techcrunch.com (December 6, 2018), available at https://techcrunch.com/2018/12/06/firefly-launch/ (last visited January 22, 2020).
[20] Sarah Holder, *Car-Mounted Ads Take a New Direction: Data Collection*, Citylab.com (November 20, 2019), available at https://www.citylab.com/transportation/2019/11/firefly-digital-advertising-driver-pay-uber-lyft-cars-data/602077/ (last visited January 22, 2020).
[21] *See* Firefly.com, available at https://fireflyon.com/ (last visited January 22, 2020).
[22] Section 316.2397, F.S.
[23] Chapter 73-124, Laws of Fla.; codified at part II of ch. 501, F.S.
[24] Section 501.202, F.S.

FDUTPA prohibits "[u]nfair methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practices in the conduct of any trade or commerce."[25] The term "trade or commerce" is defined as "advertising, soliciting, providing, offering, or distributing, whether by sale, rental, or otherwise, any good or service, or any property, whether tangible or intangible, or any other article, commodity, or thing of value, wherever situated," and the term includes "the conduct of any trade or commerce, however denominated, including any nonprofit or not-for-profit person or activity."[26]

Effect of Proposed Changes

Luxury Ground Transportation Network Companies

The bill allows a limousine and luxury for-hire vehicle to be operated as a TNC. The bill defines a "luxury ground transportation network company" or "luxury ground TNC" as a company that uses a digital network to connect riders exclusively to drivers who operate for-hire vehicles, including limousines and luxury sedans and excluding taxicabs. An entity operating luxury sedans and limousines may elect, upon written notification to the Department of Financial Services (DFS), to be regulated as a luxury ground TNC. A luxury ground TNC must comply with all of the requirements applicable to a TNC, but is not required to comply with any requirements that prohibit the company from connecting riders to drivers who operate for-hire vehicles.

At all times, a luxury ground TNC must maintain insurance coverage at the levels at least equal to the greater of those required for TNCs and those required of for-hire vehicles, regardless of whether the driver is operating as a for-hire vehicle driver or luxury ground TNC driver. The bill changes the minimum insurance requirements applicable to a vehicle that is sometimes operated as a limousine or for-hire vehicle compared to periods when the vehicle is operated as a luxury ground TNC. The insurance differences are:

<table>
<tr><th rowspan="2">Insurance Coverage</th><th rowspan="2">Limousine or For-hire Vehicle</th><th colspan="2">Luxury Ground TNC</th><th rowspan="2">Result</th></tr>
<tr><th>Logged on/No rider</th><th>Connected to Rider</th></tr>
<tr><td>Personal Injury Protection</td><td>Not required</td><td>Not required</td><td>Not required</td><td>No change</td></tr>
<tr><td>Bodily Injury or Death</td><td>$125,000 per person
$250,000 per incident</td><td>$50,000 per person
$100,000 per incident</td><td rowspan="2">$1,000,000 combined for bodily injury, death, or property damage</td><td>Decrease when logged on/no rider</td></tr>
<tr><td>Property Damage</td><td>$50,000</td><td>$25,000</td><td>Increase when connected to rider</td></tr>
</table>

A limousine or luxury sedan that wishes to become a luxury ground TNC may continue to use self-insurance to satisfy the insurance requirements for a luxury ground TNC, as long as the self-insurance satisfies the minimum insurance requirements for luxury ground TNCs.

The bill adds TNC vehicle owners to the list of insureds whose coverage can be used to satisfy the insurance requirements for TNCs. The required coverage may be provided by the TNC, TNC driver, TNC owner, or any combination of the three. This allows the insurance maintained by the owner of a luxury ground TNC, who is not necessarily the driver, to satisfy the insurance requirements.

The bill preempts the regulation of luxury ground TNCs, luxury ground TNC drivers, and luxury ground TNC vehicles to the state.

Digital Advertising Devices

The bill authorizes TNC drivers to contract for the installation of TNC digital advertising devices on the TNC vehicle. The bill defines a "transportation network company digital advertising device" or "TNC digital advertising device" as a device no larger than 20 inches tall and 54 inches long that is fixed to

[25] Section 501.204(1), F.S.
[26] Section 501.203(8), F.S.

the roof of a TNC vehicle and that displays advertisements on a digital screen only while the TNC vehicle is turned on.

The bill provides the following requirements for a TNC digital advertising device:

- A TNC digital advertising device must follow the lighting requirements of s. 316.2397, F.S.
- No portion of the TNC digital advertising device may extend beyond the front or rear windshield of the vehicle, nor may it impact the TNC driver's vision.
- A TNC digital advertising device must display advertisements only on the sides of the device and not to the front or rear of the vehicle. Identification of the provider does not constitute advertising.
- A TNC digital advertising device must, at a minimum, meet the requirements of the MIL-STD-810G standard,[27] or other reasonable environmental and safety industry standard, as determined through independent safety and durability testing under the review of a licensed professional engineer, before being installed on a TNC vehicle.
- A TNC digital advertising device may not display advertisements for illegal products or services or advertisements that include nudity or violent images. All advertisements displayed on a TNC digital advertising device are subject to the FDUTPA.

The bill provides that a TNC driver is immune from liability for the display of an advertisement that violates s. 627.748, F.S., or the FDUTPA, unless the TNC driver is the advertiser. The owner or operator of a TNC digital advertising device is also immune from liability if the device displays an advertisement that violates s. 627.748, F.S., or the FDUTPA, unless the owner or operator is the advertiser.

The bill provides that the TNC advertising device is part of a TNC vehicle. Because of the inclusion of the TNC digital advertising device as part of a TNC vehicle, the regulation of such devices is preempted to the state.

B. SECTION DIRECTORY:

Section 1: Amends s. 627.748, F.S., relating to TNCs.

Section 2: Provides that the act will take effect upon becoming a law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   The bill will likely have no impact on state government revenues.

2. Expenditures:

   The bill may have a fiscal impact on DFS, but the impact is unknown at this time.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   The bill preempts the regulation of luxury ground TNCs, luxury ground TNC drivers, luxury ground TNC vehicles, and TNC digital advertising devices to the state. To the extent local governments are imposing fees on luxury ground TNCs, luxury ground TNC drivers, luxury ground TNC vehicles, and TNC digital advertising devices, they will experience an indeterminate negative fiscal impact. The bill also authorizes limousines and other luxury for-hire vehicles to register as luxury ground TNCs. As such, the bill may have an insignificant negative fiscal impact to local government revenues to

[27] MIL-STD-810G is a U.S. military specification that guarantees a level of durability for a piece of technology. Specifically, it means the equipment has gone through a series of 29 tests, including shock tests, vibration tests, and more.

the extent that such vehicles elect to operate as luxury ground TNCs and no longer register as commercial motor vehicles or for-hire vehicles.

2. Expenditures:

The bill will likely have no impact on local government expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill authorizes the use of TNC digital advertising devices, thus enabling TNC drivers to install the devices and earn additional monthly revenue. The bill also authorizes certain limousine and for-hire vehicle owners and drivers to begin operating as or with a luxury ground TNC, thus increasing competition within the TNC market and allowing them access to TNC customers.

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 expenditure 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 a grant of rulemaking authority, nor does it require rulemaking.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Other Comments – Digital Advertising Device

The bill permits a TNC driver, or his or her designee, to contract for the installation of a TNC digital advertising device on the TNC vehicle. In some cases, the TNC driver may not own the TNC vehicle. If the intent of the bill is to authorize TNC vehicle owners to control the placement of the devices on the vehicle, then an amendment could clarify whether the TNC driver must have the consent of the TNC vehicle owner. In addition, the bill does not specify whether the TNC must approve the use of such devices.

The bill allows a TNC digital advertising device to display advertisements only when the device is turned on. If the intent of the bill is to only allow the display of advertising while the TNC driver is in the vehicle and engaged in TNC activity, then an amendment may be needed to clarify when the advertisements may be displayed.

The bill provides immunity from liability to a TNC driver and the owner or operator of a TNC digital advertising device for violations of s. 627.748, F.S., and the FDUTPA for certain advertisement-related violations. The bill does not provide the same immunity to the TNC vehicle owner, which may not be the same person as the driver, or to the TNC. As such, if the intent of the bill is to grant immunity to the TNC vehicle owner and the TNC, then an amendment may be needed.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On January 28, 2020, the Transportation & Infrastructure Subcommittee adopted an amendment and reported the bill favorably as a committee substitute. The amendment:

- Authorized TNC vehicle owners, rather than just TNC drivers, to maintain insurance that satisfies the insurance requirements required for TNCs;
- Specified that a TNC digital advertising device may be enabled with cellular or Wi-Fi-enabled data transmission and equipped with GPS;
- Required that a TNC digital advertising device may only display advertisements when the vehicle is turned on;
- Removed the requirement that a TNC digital advertising device must allocate 10 percent of all advertisement inventory for government, not-for-profit, or charitable organizations at no cost;
- Provided that TNC digital advertising devices are subject to the FDUTPA;
- Provided the TNC driver protection from liability for the display of an advertisement that violates s. 627.748, F.S., or the FDUTPA, unless the driver is the advertiser; and
- Provided the owner or operator of a TNC digital advertising device immunity from liability when a displayed advertisement is in violation of s. 627.748, F.S., or the FDUTPA , if the advertisement was displayed in good faith and without knowledge, unless the owner or operator is the advertiser.

This analysis is drafted to the committee substitute as approved by the Transportation & Infrastructure Subcommittee.

A bill to be entitled

An act relating to transportation network companies; amending s. 627.748, F.S.; revising and providing definitions; deleting for-hire vehicles from the list of vehicles that are not considered TNC carriers or are not exempt from certain registration; revising automobile insurance coverage requirements for TNCs and TNC drivers; authorizing TNC drivers to contract for installment of TNC digital advertising devices; providing requirements for such devices; providing that TNC drivers and owners and operators of TNC digital advertising devices are immune from specified liabilities under certain circumstances; providing construction; authorizing entities to be regulated as luxury ground TNCs; providing requirements for luxury ground TNCs; providing that luxury ground TNCs, luxury ground TNC drivers, and luxury ground TNC vehicles are governed by state law; providing an effective date.

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

Section 1. Paragraphs (f) and (g) of subsection (1), subsections (11) through (14), and subsection (15) of section 627.748, Florida Statutes, are redesignated as paragraphs (g) and (h) of subsection (1), subsections (12) through (15), and

subsection (17), respectively, paragraphs (b) and (e) and present paragraph (g) of subsection (1), subsection (2), paragraphs (b) and (c) of subsection (7), and paragraph (a) of present subsection (15) are amended, a new paragraph (f) is added to subsection (1), and a new subsection (11) and subsection (16) are added to that section, to read:

627.748 Transportation network companies.—

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

(b) "Prearranged ride" means the provision of transportation by a TNC driver to a rider, beginning when a TNC driver accepts a ride requested by a rider through a digital network controlled by a transportation network company, continuing while the TNC driver transports the rider, and ending when the last rider exits from and is no longer occupying the TNC vehicle. The term does not include a taxicab~~, for-hire vehicle,~~ or street hail service and does not include ridesharing as defined in s. 341.031, carpool as defined in s. 450.28, or any other type of service in which the driver receives a fee that does not exceed the driver's cost to provide the ride.

(e) "Transportation network company" or "TNC" means an entity operating in this state pursuant to this section using a digital network to connect a rider to a TNC driver, who provides prearranged rides. A TNC is not deemed to own, control, operate, direct, or manage the TNC vehicles or TNC drivers that connect to its digital network, except where agreed to by written

contract, and is not a taxicab association ~~or for-hire vehicle owner~~. An individual, corporation, partnership, sole proprietorship, or other entity that arranges medical transportation for individuals qualifying for Medicaid or Medicare pursuant to a contract with the state or a managed care organization is not a TNC. This section does not prohibit a TNC from providing prearranged rides to individuals who qualify for Medicaid or Medicare if it meets the requirements of this section.

(f) "Transportation network company digital advertising device" or "TNC digital advertising device" means a device no larger than 20 inches tall and 54 inches long that is fixed to the roof of a TNC vehicle and that displays advertisements on a digital screen only when the TNC vehicle is turned on.

(h) ~~(g)~~ "Transportation network company vehicle" or "TNC vehicle" means a vehicle that is not a taxicab or~~,~~ jitney~~, limousine, or for-hire vehicle as defined in s. 320.01(15)~~ and that is:

1. Used by a TNC driver to offer or provide a prearranged ride; and

2. Owned, leased, or otherwise authorized to be used by the TNC driver.

Notwithstanding any other provision of law, a vehicle that is let or rented to another for consideration may be used as a TNC

vehicle.

(2) NOT OTHER CARRIERS.—A TNC or TNC driver is not a common carrier, contract carrier, or motor carrier and does not provide taxicab ~~or for-hire vehicle~~ service. In addition, a TNC driver is not required to register the vehicle that the TNC driver uses to provide prearranged rides as a commercial motor vehicle ~~or a for-hire vehicle~~.

(7) TRANSPORTATION NETWORK COMPANY AND TNC DRIVER INSURANCE REQUIREMENTS.—

(b) The following automobile insurance requirements apply while a participating TNC driver is logged on to the digital network but is not engaged in a prearranged ride:

1. Automobile insurance that provides:

a. A primary automobile liability coverage of at least $50,000 for death and bodily injury per person, $100,000 for death and bodily injury per incident, and $25,000 for property damage;

b. Personal injury protection benefits that meet the minimum coverage amounts required under ss. 627.730-627.7405; and

c. Uninsured and underinsured vehicle coverage as required by s. 627.727.

2. The coverage requirements of this paragraph may be satisfied by any of the following:

a. Automobile insurance maintained by the TNC driver or

the TNC vehicle owner;

b. Automobile insurance maintained by the TNC; or

c. A combination of sub-subparagraphs a. and b.

(c) The following automobile insurance requirements apply while a TNC driver is engaged in a prearranged ride:

1. Automobile insurance that provides:

a. A primary automobile liability coverage of at least $1 million for death, bodily injury, and property damage;

b. Personal injury protection benefits that meet the minimum coverage amounts required of a limousine under ss. 627.730-627.7405; and

c. Uninsured and underinsured vehicle coverage as required by s. 627.727.

2. The coverage requirements of this paragraph may be satisfied by any of the following:

a. Automobile insurance maintained by the TNC driver or the TNC vehicle owner;

b. Automobile insurance maintained by the TNC; or

c. A combination of sub-subparagraphs a. and b.

(11) TRANSPORTATION NETWORK COMPANY DIGITAL ADVERTISING DEVICE.—

(a) A TNC driver or his or her designee may contract with a company to install a TNC digital advertising device on a TNC vehicle.

(b) A TNC digital advertising device may be enabled with

cellular or WiFi-enabled data transmission and equipped with GPS.

(c) A TNC digital advertising device may display advertisements only when the TNC vehicle is turned on.

(d) A TNC digital advertising device must follow the lighting requirements of s. 316.2397.

(e) No portion of the TNC digital advertising device may extend beyond the front or rear windshield of the vehicle, nor may it impact the TNC driver's vision.

(f) A TNC digital advertising device must display advertisements only to the sides of the vehicle and not to the front or rear of the vehicle. Identification of the provider does not constitute advertising under this paragraph.

(g) A TNC digital advertising device must, at a minimum, meet the requirements of the MIL-STD-810G standard or other reasonable environmental and safety industry standard, as determined through independent safety and durability testing under the review of a licensed professional engineer, before being installed on a TNC vehicle.

(h) A TNC digital advertising device may not display advertisements for illegal products or services or advertisements that include nudity or violent images. All advertisements displayed on a TNC digital advertising device are subject to the Florida Deceptive and Unfair Trade Practices Act.

(i)1. A TNC driver is immune from liability for the

display of an advertisement that violates this section or the Florida Deceptive and Unfair Trade Practices Act unless the TNC driver is the advertiser.

2. The owner or operator of a TNC digital advertising device that displays an advertisement that is in violation of this section or the Florida Deceptive and Unfair Trade Practices Act is immune from liability under this section and the Florida Deceptive and Unfair Trade Practices Act for the violation if the advertisement was displayed in good faith and without actual knowledge of the violation, unless the advertiser is the same person as the owner or operator.

(j) For the purposes of this chapter, a TNC advertising device shall be deemed part of a TNC vehicle.

(16) LUXURY GROUND TRANSPORTATION NETWORK COMPANIES.—

(a) As used in this subsection, the term "luxury ground transportation network company" or "luxury ground TNC" means a company that:

1. Meets the requirements of paragraph (b).

2. Notwithstanding other provisions of this section, uses a digital network to connect riders exclusively to drivers who operate for-hire vehicles as defined in s. 320.01(15), including limousines and luxury sedans and excluding taxicabs.

(b) An entity may elect, upon written notification to the department, to be regulated as a luxury ground TNC. A luxury ground TNC must:

1. Comply with all of the requirements of this section applicable to a TNC, including subsection (17), that do not conflict with subparagraph 2. or that do not prohibit the company from connecting riders to drivers who operate for-hire vehicles as defined in 320.01(15), including limousines and luxury sedans and excluding taxicabs.

2. Maintain insurance coverage required in this section when the luxury ground TNC driver is logged on to a digital network or while the luxury ground TNC driver is engaged in a prearranged ride. However, a prospective luxury ground TNC that satisfies minimum financial responsibility at the time of written notification to the department through compliance with s. 324.032(2) by using self-insurance may continue to use self-insurance to satisfy the requirements of this subparagraph.

(17) ~~(15)~~ PREEMPTION.—

(a) It is the intent of the Legislature to provide for uniformity of laws governing TNCs, TNC drivers, ~~and~~ TNC vehicles, luxury ground TNCs, luxury ground TNC drivers, and luxury ground TNC vehicles throughout the state. TNCs, TNC drivers, ~~and~~ TNC vehicles, luxury ground TNCs, luxury ground TNC drivers, and luxury ground TNC vehicles are governed exclusively by state law, including in any locality or other jurisdiction that enacted a law or created rules governing TNCs, TNC drivers, ~~or~~ TNC vehicles, luxury ground TNCs, luxury ground TNC drivers, or luxury ground TNC vehicles before July 1, 2017. A county,

municipality, special district, airport authority, port authority, or other local governmental entity or subdivision may not:

1. Impose a tax on, or require a license for, a TNC, a TNC driver, ~~or~~ a TNC vehicle, a luxury ground TNC, a luxury ground TNC driver, or a luxury ground TNC vehicle if such tax or license relates to providing prearranged rides;

2. Subject a TNC, a TNC driver, ~~or~~ a TNC vehicle, a luxury ground TNC, a luxury ground TNC driver, or a luxury ground TNC vehicle to any rate, entry, operation, or other requirement of the county, municipality, special district, airport authority, port authority, or other local governmental entity or subdivision; or

3. Require a TNC, ~~or~~ a TNC driver, a luxury ground TNC, or a luxury ground TNC driver to obtain a business license or any other type of similar authorization to operate within the local governmental entity's jurisdiction.

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

COMMITTEE/SUBCOMMITTEE ACTION

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

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

Amendment (with title amendment)

Remove everything after the enacting clause and insert:

Section 1. Present paragraphs (f) and (g) of subsection (1), present subsections (11) through (14), and present subsection (15) of section 627.748, Florida Statutes, are redesignated as paragraphs (g) and (h) of subsection (1), subsections (12) through (15), and subsection (17), respectively, a new paragraph (f) is added to subsection (1) and a new subsection (11) and subsections (16) and (18) are added to that section, and paragraphs (b) and (e) and present paragraph (g) of subsection (1), subsection (2), paragraphs (b) and (c) of subsection (7), and paragraph (a) of present subsection (15) of that section are amended, to read:

627.748 Transportation network companies.—

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

(b) "Prearranged ride" means the provision of transportation by a TNC driver to a rider, beginning when a TNC driver accepts a ride requested by a rider through a digital network controlled by a transportation network company, continuing while the TNC driver transports the rider, and ending when the last rider exits from and is no longer occupying the TNC vehicle. The term does not include a taxicab~~, for-hire vehicle,~~ or street hail service and does not include ridesharing as defined in s. 341.031, carpool as defined in s. 450.28, or any other type of service in which the driver receives a fee that does not exceed the driver's cost to provide the ride.

(e) "Transportation network company" or "TNC" means an entity operating in this state pursuant to this section using a digital network to connect a rider to a TNC driver, who provides prearranged rides. A TNC is not deemed to own, control, operate, direct, or manage the TNC vehicles or TNC drivers that connect to its digital network, except where agreed to by written contract, and is not a taxicab association ~~or for-hire vehicle owner~~. An individual, corporation, partnership, sole proprietorship, or other entity that arranges medical transportation for individuals qualifying for Medicaid or Medicare pursuant to a contract with the state or a managed care organization is not a TNC. This section does not prohibit a TNC

from providing prearranged rides to individuals who qualify for Medicaid or Medicare if it meets the requirements of this section.

(f) "Transportation network company digital advertising device" or "TNC digital advertising device" means a device no larger than 20 inches tall and 54 inches long that is fixed to the roof of a TNC vehicle and that displays advertisements on a digital screen only when the TNC vehicle is turned on.

(h) ~~(g)~~ "Transportation network company vehicle" or "TNC vehicle" means a vehicle that is not a taxicab or~~,~~ jitney~~, limousine, or for-hire vehicle as defined in s. 320.01(15)~~ and that is:

1. Used by a TNC driver to offer or provide a prearranged ride; and

2. Owned, leased, or otherwise authorized to be used by the TNC driver.

Notwithstanding any other ~~provision of~~ law, a vehicle that is let or rented to another for consideration, or a motor vehicle compliant with the Americans with Disabilities Act which is owned and used by a company that uses a digital network to facilitate prearranged rides to persons with disabilities for compensation, may be used as a TNC vehicle.

(2) NOT OTHER CARRIERS.—A TNC or TNC driver is not a common carrier, contract carrier, or motor carrier and does not

provide taxicab ~~or for-hire vehicle~~ service. In addition, a TNC driver is not required to register the vehicle that the TNC driver uses to provide prearranged rides as a commercial motor vehicle ~~or a for-hire vehicle~~.

(7) TRANSPORTATION NETWORK COMPANY AND TNC DRIVER INSURANCE REQUIREMENTS.—

(b) The following automobile insurance requirements apply while a participating TNC driver is logged on to the digital network but is not engaged in a prearranged ride:

1. Automobile insurance that provides:

a. A primary automobile liability coverage of at least $50,000 for death and bodily injury per person, $100,000 for death and bodily injury per incident, and $25,000 for property damage;

b. Personal injury protection benefits that meet the minimum coverage amounts required under ss. 627.730-627.7405; and

c. Uninsured and underinsured vehicle coverage as required by s. 627.727.

2. The coverage requirements of this paragraph may be satisfied by any of the following:

a. Automobile insurance maintained by the TNC driver <u>or the TNC vehicle owner</u>;

b. Automobile insurance maintained by the TNC; or

c. A combination of sub-subparagraphs a. and b.

(c) The following automobile insurance requirements apply while a TNC driver is engaged in a prearranged ride:

1. Automobile insurance that provides:

a. A primary automobile liability coverage of at least $1 million for death, bodily injury, and property damage;

b. Personal injury protection benefits that meet the minimum coverage amounts required of a limousine under ss. 627.730-627.7405; and

c. Uninsured and underinsured vehicle coverage as required by s. 627.727.

2. The coverage requirements of this paragraph may be satisfied by any of the following:

a. Automobile insurance maintained by the TNC driver or the TNC vehicle owner;

b. Automobile insurance maintained by the TNC; or

c. A combination of sub-subparagraphs a. and b.

(11) TRANSPORTATION NETWORK COMPANY DIGITAL ADVERTISING DEVICE.—

(a) A TNC driver or his or her designee may contract with a company to install a TNC digital advertising device on a TNC vehicle.

(b) A TNC digital advertising device may be enabled with cellular or WiFi-enabled data transmission and equipped with GPS.

(c) A TNC digital advertising device may display advertisements only when the TNC vehicle is turned on.

(d) A TNC digital advertising device must follow the lighting requirements of s. 316.2397.

(e) No portion of the TNC digital advertising device may extend beyond the front or rear windshield of the vehicle, nor may it impact the TNC driver's vision.

(f) A TNC digital advertising device must display advertisements only to the sides of the vehicle and not to the front or rear of the vehicle. Identification of the provider does not constitute advertising under this paragraph.

(g) A TNC digital advertising device must, at a minimum, meet the requirements of the MIL-STD-810G standard or other reasonable environmental and safety industry standard, as determined through independent safety and durability testing under the review of a licensed professional engineer, before being installed on a TNC vehicle.

(h) A TNC digital advertising device may not display advertisements for illegal products or services or advertisements that include nudity or violent images.

(i)1. A TNC driver or TNC vehicle owner, or an owner or operator of a TNC digital advertising device that displays or disseminates an advertisement on behalf of another, is exempt for violations this subsection or, under subsection (2) of S. 501.212, for any violations of chapter 501, Part II, the Florida

deceptive and Unfair Trade Practices Act, resulting from display of an advertisement on a digital advertising device unless the TNC driver, or owner or operator of a TNC digital advertising device has actual knowledge that the advertisement violates this section or the Florida Deceptive and Unfair Trade Practices Act.

2. A TNC, that is not the owner or operator of a TNC digital device, is exempt for any violations of this subsection or Chapter 501, Part II, the Florida deceptive and Unfair Trade Practices Act, resulting from display of an advertisement on a digital advertising device, unless the advertisement is displayed on behalf of the TNC."

(j) For the purposes of this chapter, a TNC advertising device shall be deemed part of a TNC vehicle.

(16) LUXURY GROUND TRANSPORTATION NETWORK COMPANIES.—

(a) As used in this section, the term "luxury ground transportation network company" or "luxury ground TNC" means a company that:

1. Meets the requirements of paragraph (b).

2. Notwithstanding other provisions of this section, uses a digital network to connect riders exclusively to drivers who operate for-hire vehicles as defined in s. 320.01(15), including limousines and luxury sedans and excluding taxicabs.

(b) An entity may elect, upon written notification to the department, to be regulated as a luxury ground TNC. A luxury ground TNC must:

1. Comply with all of the requirements of this section applicable to a TNC, including subsection (17), which do not conflict with subparagraph 2. or which do not prohibit the company from connecting riders to drivers who operate for-hire vehicles as defined in 320.01(15), including limousines and luxury sedans and excluding taxicabs.

2. Maintain insurance coverage as required by subsection (7). However, if a prospective luxury ground TNC satisfies minimum financial responsibility through compliance with s. 324.032(2) by using self-insurance when it gives the department written notification of its election to be regulated as a luxury ground TNC, the luxury ground TNC may use self-insurance to meet the insurance requirements of subsection (7), so long as such self-insurance complies with s. 324.032(2) and provides the limits of liability required by subsection (7).

(17) ~~(15)~~ PREEMPTION.—

(a) It is the intent of the Legislature to provide for uniformity of laws governing TNCs, TNC drivers, ~~and~~ TNC vehicles, luxury ground TNCs, luxury ground TNC drivers, and luxury ground TNC vehicles throughout the state. TNCs, TNC drivers, ~~and~~ TNC vehicles, luxury ground TNCs, luxury ground TNC drivers, and luxury ground TNC vehicles are governed exclusively by state law, including in any locality or other jurisdiction that enacted a law or created rules governing TNCs, TNC drivers,

~~or~~ TNC vehicles, luxury ground TNCs, luxury ground TNC drivers, or luxury ground TNC vehicles before July 1, 2017. A county, municipality, special district, airport authority, port authority, or other local governmental entity or subdivision may not:

1. Impose a tax on, or require a license for, a TNC, a TNC driver, ~~or~~ a TNC vehicle, a luxury ground TNC, a luxury ground TNC driver, or a luxury ground TNC vehicle if such tax or license relates to providing prearranged rides;

2. Subject a TNC, a TNC driver, ~~or~~ a TNC vehicle, a luxury ground TNC, a luxury ground TNC driver, or a luxury ground TNC vehicle to any rate, entry, operation, or other requirement of the county, municipality, special district, airport authority, port authority, or other local governmental entity or subdivision; or

3. Require a TNC, ~~or~~ a TNC driver, a luxury ground TNC, or a luxury ground TNC driver to obtain a business license or any other type of similar authorization to operate within the local governmental entity's jurisdiction.

(18) VICARIOUS LIABILITY.—

(a) A TNC shall not be liable under the law of this state by reason of owning, operating, or maintaining the digital network accessed by a TNC driver or rider, or by being the TNC affiliated with a TNC driver, for harm to persons or property that results or arises out of the use, operation, or

possession of a motor vehicle operating as a TNC vehicle while the driver is logged on to the digital network if:

1. There is no negligence under this section or criminal wrongdoing under the federal or Florida criminal code on the part of the Transportation Network Company;

2. The TNC has fulfilled all of its obligations under this section with respect to the TNC driver; and

3. The TNC is not the owner or bailee of the motor vehicle that cause harm to persons or property.

(b) Nothing in this subsection shall alter or reduce the coverage or policy limits of the insurance requirements under paragraph 7 of this section, or the liability of any person other than the vicarious liability of a TNC as addressed in subsection (a).

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

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

Remove everything before the enacting clause and insert:
An act relating to transportation companies; amending s. 627.748, F.S.; revising and providing definitions; deleting for-hire vehicles from the list of vehicles that are not considered TNC carriers or are not exempt from certain registration; providing that TNC vehicle owners may maintain required insurance coverages; authorizing TNC drivers or their designees

to contract with companies to install TNC digital advertising devices on TNC vehicles; providing requirements and restrictions for such devices; providing immunity from certain liability for TNC drivers or TNC vehicle owners and owners and operators of TNC digital advertising devices; providing exceptions; providing construction relating to such devices; authorizing entities to elect to be regulated as luxury ground TNCs by notifying the Department of Financial Services; providing requirements for luxury ground TNCs; providing for preemption over local law on the governance of luxury ground TNCs, luxury ground TNC drivers, and luxury ground TNC vehicles; providing that TNCs are not liable for certain harm to persons or property if certain conditions are met; providing construction relating to insurance coverage and liability; providing an effective date.

CS/HB 1049

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1049 Appropriations for the Division of Administrative Hearings
SPONSOR(S): Government Operations & Technology Appropriations Subcommittee, Stone
TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 1298

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Government Operations & Technology Appropriations Subcommittee	11 Y, 0 N, As CS	Keith	Topp
2) State Affairs Committee		Toliver	Williamson

SUMMARY ANALYSIS

The Division of Administrative Hearings (DOAH) is administratively housed within the Department of Management Services, and is separated into two programs: the Adjudication of Disputes program, and the Workers' Compensation Appeals program. The mission of DOAH is to provide a uniform and impartial forum for the trial and resolution of disputes between private citizens and organizations and agencies of the state in an efficient and timely manner. DOAH also maintains a statewide mediation and adjudication system for the efficient and timely resolution of disputed workers' compensation claims. DOAH is headed by a division director (director) appointed by the Administration Commission, consisting of the Governor and Cabinet, and confirmed by the Florida Senate. The director is the chief administrative law judge and oversees the Adjudication of Disputes program. The Workers' Compensation Appeals program is housed within a subdivision of DOAH, the Office of the Judges of Compensation Claims (OJCC). The OJCC is headed by a Deputy Chief Judge of Compensation Claims, who reports to the director.

The OJCC is a separate budget entity from the Adjudication of Disputes program. Until January 1, 1994, salaries of the judges of compensation claims were linked to salaries of Circuit Court judges. Circuit Court judges salaries are established in s. 8 of the General Appropriations Act, and as of July 1, 2019, were set at $160,688. The current annual salary of a judge of compensation claims is $124,564.20, and the current annual salary of the Deputy Chief Judge of Compensation Claims is $127,422.12.

Since the salaries were unlinked in 1994, salaries of judges of compensation claims have only increased when the Legislature has appropriated general state employee salary increases. The OJCC is funded solely from transfers from the Department of Financial Services' (DFS) Workers' Compensation Administration Trust Fund.

The bill provides that the salaries of judges of compensation claims will be equal to that of county court judges, with the exception of the Deputy Chief Judge of Compensation Claims, whose salary will be $1,000 greater than the judges of compensation claims. The salary of a county court judge is currently $151,822.

The bill provides a recurring appropriation of $1,114,087 from the DOAH Operating Trust Fund, and associated salary rate of 870,392, to adjust the salaries of the Deputy Chief Judge and the judges of compensation claims. Funds expended from the DOAH Operating Trust Fund are from funds transferred from the DFS Workers' Compensation Administration Trust Fund pursuant to s. 440.50, F.S.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

The Division of Administrative Hearings (DOAH) is a quasi-judicial executive agency that aims to provide a uniform and impartial forum for the trial and resolution of disputes between private citizens and organizations and agencies of the state in an efficient and timely manner.[1]

DOAH is administratively housed within the Department of Management Services,[2] and is separated into two programs: the Adjudication of Disputes program and the Workers' Compensation Appeals program.[3] DOAH is headed by a division director (director), who serves as chief administrative law judge.[4] The director is appointed by the Administration Commission, a body consisting of the Governor and the Cabinet, and confirmed by the Senate.[5]

The Adjudication of Disputes program is headed by the director.[6] The Workers' Compensation Appeals program is housed within a subdivision of DOAH, the Office of the Judges of Compensation Claims (OJCC). The OJCC is headed by a Deputy Chief Judge of Compensation Claims who is appointed by the Governor to a term of four years and reports to the division director.[7]

The OJCC is a separate budget entity from the Adjudication of Disputes program.[8] The judges of compensation claims have exclusive jurisdiction over workers' compensation cases.[9] As soon as an employer disputes an employee's claim for workers' compensation, an employee may initiate litigation of the matter by filing a petition with the OJCC.[10] Even after a petition is filed, workers' compensation disputes may be resolved via mediation[11] or arbitration.[12] However, when necessary, judges of compensation claims may hold hearings to resolve the disputed matter.[13] Once the hearings are completed, the judge's order may be appealed to the First District Court of Appeal, which maintains sole appellate jurisdiction.[14]

The current annual salary of a judge of compensation claims is $124,564.20, and the current annual salary of the Deputy Chief Judge of Compensation Claims is $127,422.12.[15] Until January 1, 1994, salaries of the judges of compensation claims were linked to salaries of Circuit Court judges. Circuit Court judges salaries are established in s. 8 of the General Appropriations Act, and as of July 1, 2019, were set at $160,688.[16] Since the salaries were unlinked in 1994, salaries of judges of compensation claims have only increased when the Legislature has appropriated general state employee salary increases. The OJCC is funded solely from transfers from the Department of Financial Services' (DFS) Workers' Compensation Administration Trust Fund.[17]

---

[1] Department of Management Services, *Other Programs*, https://www.dms.myflorida.com/other_programs (last visited Feb. 20, 2020).
[2] Section 120.65, F.S.
[3] DOAH, LONG RANGE PROGRAM PLAN, September 30, 2019, at p. 5, available at http://floridafiscalportal.state.fl.us/Document.aspx?ID=19578&DocType=PDF (last visited Feb. 20, 2020).
[4] Section 120.65(1), F.S.
[5] *Id.*
[6] *Id.*
[7] Section 440.45(1)(a), F.S.
[8] *Id.*
[9] *See Sanders v. City of Orlando,* 997 So. 2d 1089, 1094 (Fla. 2008)
[10] Section 440.192, F.S.
[11] Section 440.25, F.S.
[12] Section 440.1926, F.S.
[13] Section 440.25(4), F.S.
[14] Section 440.271, F.S.
[15] DOAH, Agency Analysis of 2020 House Bill 1049, p.1 (Jan. 3, 2020).
[16] Chapter 2019-115, Laws of Fla.
[17] DOAH, *supra* note 18, at 1.

Effect of the Bill

The bill provides that the salaries for judges of compensation claims will be equal to that of county court judges, with the exception of the Deputy Chief Judge of Compensation Claims, whose salary will be $1,000 greater than the judges of compensation claims. The salaries of county court judges, which are currently $151,822, are established in s. 8 of chapter 2019-115, L.O.F. As such, the bill increases the salaries for the judges of compensation claims to $151,822, and the Deputy Chief Judge to $152,822.

The bill provides a recurring appropriation of $1,114,087 from the DOAH Operating Trust Fund, and associated salary rate of 870,392, to adjust the salaries of the Deputy Chief Judge and the judges of compensation claims. Funds expended from the DOAH Operating Trust Fund are from funds transferred from the DFS Workers' Compensation Administration Trust Fund pursuant to s. 440.50, F.S.

B. SECTION DIRECTORY:

Section 1. Amends s. 440.45(2), F.S., adjusting the salary for the Deputy Chief Judge and judges of compensation claims.

Section 2. Provides an appropriation.

Section 3. Provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The bill provides a recurring appropriation of $1,114,087 from the DOAH Operating Trust Fund and associated salary rate of 870,392, to adjust the salaries of the Deputy Chief Judge and the judges of compensation claims.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill does not confer rulemaking authority nor does it require the promulgation of rules.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On February 4, 2020, the Government Operations & Technology Appropriations Subcommittee adopted one amendment and reported the bill favorably as a committee substitute. The amendment specified that the salaries of the judges of compensation claims must be equal to that of county court judges, with the exception of the Deputy Chief Judge of Compensation Claims, whose salary will be $1,000 greater than the judges of compensation claims. The amendment also provided an appropriation.

This analysis is drafted to the committee substitute as approved by the Government Operations & Technology Appropriations Subcommittee.

A bill to be entitled

An act relating to the Office of the Judges of Compensation Claims; amending s. 440.45, F.S.; specifying the salaries of full-time judges of compensation claims and the Deputy Chief Judge of Compensation Claims; providing appropriations; providing an effective date.

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

Section 1. Paragraph (f) is added to subsection (2) of section 440.45, Florida Statutes, to read:

440.45 Office of the Judges of Compensation Claims.—

(2)

(f) Each full-time judge of compensation claims shall receive a salary equal to that of a county court judge. The Deputy Chief Judge shall receive a salary of $1,000 more per year than the salary paid to a full-time judge of compensation claims.

Section 2. For the 2020-2021 fiscal year, the sum of $1,114,087 in recurring funds is appropriated from the Operating Trust Fund to the Division of Administrative Hearings, and associated salary rate of 870,392 is authorized, for the purposes of making salary adjustments to judges of compensation claims.

Section 3. This act shall take effect July 1, 2020.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1061 Aquatic Preserves
SPONSOR(S): Agriculture & Natural Resources Appropriations Subcommittee, Massullo
TIED BILLS: **IDEN./SIM. BILLS:** SB 1042

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Agriculture & Natural Resources Subcommittee	11 Y, 0 N	Melkun	Moore
2) Agriculture & Natural Resources Appropriations Subcommittee	8 Y, 0 N, As CS	White	Pigott
3) State Affairs Committee		Melkun	Williamson

SUMMARY ANALYSIS

The Florida Aquatic Preserve Act of 1975 was created to ensure that the state-owned submerged lands in areas that have exceptional biological, aesthetic, and scientific value are set aside as aquatic preserves or sanctuaries for the benefit of future generations. Currently, Florida has 41 aquatic preserves, encompassing about 2.2 million acres. Aquatic preserves serve many valuable ecological and economic functions, including providing nurseries for juvenile fish and other aquatic life and providing habitat for shorebirds. Aquatic preserves are also valuable for recreation, providing a host of outdoor activities such as fishing, swimming, and boating.

The bill creates the Nature Coast Aquatic Preserve and specifies the boundaries of the preserve.

The bill does not appear to have a fiscal impact on the state or local governments.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Submerged Lands

The federal Submerged Lands Act (SLA), enacted in 1953, provides that a state, upon becoming a member of the United States, acquires title to and ownership of the lands beneath navigable waters within the boundaries of the state[1] and the natural resources within such lands and waters. The state also acquires the right and power to manage, administer, lease, develop, and use such lands and natural resources.[2] Under the SLA, the U.S. retains all its navigational servitude and rights in and powers of regulation and control of said lands and navigable waters for the constitutional purposes of commerce, navigation, national defense, and international affairs.[3]

Sovereign submerged lands include, but are not limited to, tidal lands, islands, sandbars, shallow banks, and lands waterward of the ordinary or mean high-water line that are beneath navigable fresh water or beneath tidally-influenced waters.[4] Title to sovereign submerged lands is held by the Board of Trustees of the Internal Improvement Trust Fund (BOT), which is comprised of the Governor and Cabinet.[5] BOT is responsible for the acquisition, administration, management, control, supervision, conservation, protection, and disposition of all lands owned by the state, including all sovereign submerged lands.[6]

Aquatic Preserves

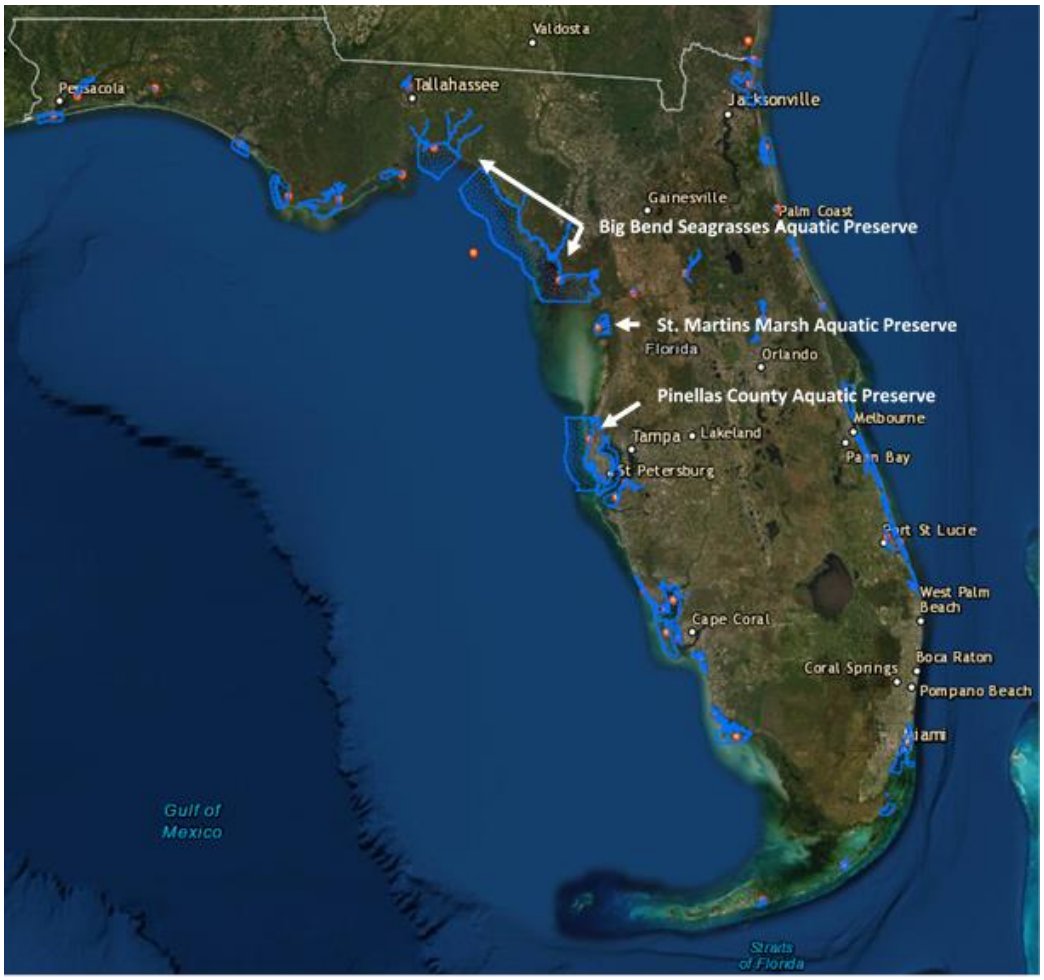
The Florida Aquatic Preserve Act of 1975[7] was created to ensure that the state-owned submerged lands in areas that have exceptional biological, aesthetic, and scientific value are set aside as aquatic preserves[8] or sanctuaries for the benefit of future generations.[9] The Office of Resilience and Coastal Protection within the Department of Environmental Protection (DEP) carries out the Aquatic Preserve Program on behalf of BOT.

Currently, Florida has 41 aquatic preserves, encompassing about 2.2 million acres.[10] All but four of these submerged lands are located along Florida's 8,400 miles of coastline, in the shallow waters of marshes and estuaries. The other four are located inland, near springs and rivers.[11] Aquatic preserves serve many valuable ecological and economic functions, including providing nurseries for juvenile fish and other aquatic life and providing habitat for shorebirds. Aquatic preserves are also valuable for recreation, providing a host of outdoor activities such as fishing, swimming, and boating.[12]

---

[1] 43 U.S.C. §1301 et seq. 43 U.S.C. §1312 designates the seaward boundary of each coastal State as three miles out from its coast line; *U.S. v. Louisiana, et al.*, 363 U.S. 1 (1960), recognizing Florida's seaward boundary into the Gulf of Mexico is three marine leagues (approximately 9-10 miles).
[2] 43 U.S.C. §1301 and §1311(a).
[3] 43 U.S.C. §1314(a).
[4] Rule 18-21.003(65), F.A.C.
[5] DEP, *Submerged Land Management*, available at https://floridadep.gov/lands/bureau-public-land-administration/content/submerged-lands-management (last visited Jan. 29, 2020).
[6] Section 253.03, F.S.
[7] Section 258.35, F.S.
[8] Section 258.37(1), F.S., defines the term "aquatic preserve" as an exceptional area of submerged lands and its associated waters set aside to be maintained in its natural condition.
[9] Section 258.36, F.S.
[10] DEP, *Aquatic Preserve Program*, available at https://floridadep.gov/rcp/aquatic-preserve (last visited Jan. 29, 2020).
[11] *Id*.
[12] *Id*.

The following figure depicts a map of Florida's aquatic preserves, noting the locations of the Big Bend Seagrasses Aquatic Preserve, the Pinellas County Aquatic Preserve, and the St. Martins Marsh Aquatic Preserve:[13]



Current law restricts certain activities, such as the construction of utility cables and pipes and spoil disposal, in aquatic preserves to conserve their unique biological, aesthetic, and scientific value. BOT must maintain aquatic preserves by prohibiting:

- Further sale, lease, or transfer of sovereign submerged lands unless such sale, lease, or transfer is in the public interest;
- Approval of the waterward relocation or setting of bulkhead lines waterward of the mean high-water line within the preserve unless public road and bridge construction projects have no reasonable alternative and it is shown to not be contrary to the public interest; and
- Further dredging or filling of submerged lands except for certain activities, such as public navigation projects, the creation or maintenance of marinas, or public utility expansion.

The drilling of gas or oil wells and the excavation of minerals are expressly prohibited in aquatic preserves.[14] However, the state is not prohibited from leasing the oil and gas rights of the preserve and permitting drilling from outside the preserve to explore for oil and gas if approved by BOT.

Commercial and residential docking facilities and structures for shore protection are also restricted as to size and location, and waste and effluents may not be discharged into the preserve if they substantially inhibit the accomplishment of the purposes of the Florida Aquatic Preserve Act.[15]

[13] DEP, *Aquatic Preserves of Florida StoryMap Component*, available at https://fdep.maps.arcgis.com/home/webmap/viewer.html?webmap=4cf441902aef48dfac100d90f37df3f0 (last visited Jan. 29, 2020).
[14] Section 258.42, F.S. The dredging of dead oyster shells is permitted if approved by DEP.
[15] Section 258.42, F.S.

Fees for leases of sovereign submerged lands are significantly higher within aquatic preserves. A rate of two times the existing rate is applied to aquatic preserve leases if 75 percent or more of the lease shoreline and the adjacent 1000 feet on either side of the leased area is in a natural, unbulkheaded, non-seawalled or non-riprapped condition.[16]

Nature Coast

"The Nature Coast" is located along Florida's Big Bend region and encompasses 980,000 acres across eight counties (Citrus, Dixie, Hernando, Jefferson, Pasco, Levy, Taylor, and Wakulla) and the City of Dunnellon.[17] This area is a sanctuary to 19 endangered species[18] and has many natural resources, including mangroves, spring fed rivers, limestone outcroppings, sandy beaches, oyster bars, mud flats, and seagrass beds.

Effect of the Bill

The bill creates the Nature Coast Aquatic Preserve. The bill provides that it is the intent of the Legislature that the Nature Coast Aquatic Preserve be preserved in an essentially natural condition so that its biological and aesthetic values may endure for the enjoyment of future generations. The bill describes the boundaries of the preserve and specifies that the Nature Coast Aquatic Preserve boundary does not supersede the boundaries of currently designated Outstanding Florida Springs, state parks, national wildlife refuges, or aquatic preserves.

B. SECTION DIRECTORY:

Section 1. Creates s. 258.3991, F.S., establishing the Nature Coast Aquatic Preserve.

Section 2. Provides an effective date of July 1, 2020.

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 may have an indeterminate negative fiscal impact on the private sector because sovereign submerged lands leases within the area identified for the Nature Coast Aquatic Preserve may become more expensive.

D. FISCAL COMMENTS:

[16] Rule 18-21.011(1)(b)5., F.A.C.
[17] Nature Coast Coalition, *History & Area Information*, available at http://www.naturecoastcoalition.com/nchistory.htm (last visited Jan. 29, 2020).
[18] *Id.*

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

The bill does not confer rulemaking authority nor require the promulgation of rules.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On February 11, 2020, the Agriculture & Natural Resources Appropriations Subcommittee adopted a strike-all amendment and reported the bill favorably as a committee substitute. The strike-all amendment removed provisions of the bill that provided directives to BOT related to regulation of the Nature Coast Aquatic Preserve, authorized the Department of Legal Affairs to bring an action for civil penalties, and specified the rights of certain property owners. The strike-all also excluded certain waterbodies from the designation of the preserve and revised the boundaries of the preserve.

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

A bill to be entitled

An act relating to aquatic preserves; creating s. 258.3991, F.S.; creating the Nature Coast Aquatic Preserve; designating the preserve for inclusion in the aquatic preserve system and as an Outstanding Florida Water; describing the boundaries of the preserve; providing an effective date.

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

Section 1. Section 258.3991, Florida Statutes, is created to read:

258.3991 Nature Coast Aquatic Preserve.—

(1) DESIGNATION.—The area described in subsection (2) which lies within Citrus, Hernando, and Pasco Counties is designated by the Legislature for inclusion in the aquatic preserve system under the Florida Aquatic Preserve Act of 1975 and as an Outstanding Florida Water pursuant to s. 403.061(27) and shall be known as the "Nature Coast Aquatic Preserve." It is the intent of the Legislature that the Nature Coast Aquatic Preserve be preserved in an essentially natural condition so that its biological and aesthetic values may endure for the enjoyment of future generations.

(2) BOUNDARIES.—For the purposes of this section, the Nature Coast Aquatic Preserve consists of the state-owned

submerged lands lying west of a meandering line following the westernmost shorelines of Citrus, Hernando, and Pasco Counties, excluding artificial waterways, canals, inland rivers, and tributaries. Such state-owned submerged lands include all those lands seaward of the mean high water line and tidally connected to the Gulf of Mexico lying south of a line extending westerly 4 miles along northerly coordinate 1663693 feet, Florida West Zone (NAD83) from the mean high water line of the corresponding shoreline at Fort Island Gulf Beach Park, Latitude 28.91°N and Longitude -82.69°W, and lying westward of a line extending north from Latitude 28.91° and Longitude -82.75° to the eastern shoreline of the southern boundary of the Big Bend Seagrasses Aquatic Preserve, and continuous with the eastern shoreline of the northern boundary of the Pinellas County Aquatic Preserve, respectively. The boundary of the Nature Coast Aquatic Preserve designated as the shoreline is the mean high water line along such shoreline unless otherwise stated and does not supersede the boundaries of currently designated Outstanding Florida Waters, state parks, national wildlife refuges, or aquatic preserves.

Section 2. This act shall take effect July 1, 2020.

COMMITTEE/SUBCOMMITTEE ACTION

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

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

Amendment (with title amendment)

Remove everything after the enacting clause and insert:

Section 1. Section 258.3991 Florida Statutes, is created to read:

258.3991 Nature Coast Aquatic Preserve.—

(1) DESIGNATION.—The area described in subsection (2) which lies within Pasco, Hernando, and Citrus Counties, is designated by the Legislature for inclusion in the aquatic preserve system under the Florida Aquatic Preserve Act of 1975 and an Outstanding Florida Water pursuant to s. 403.061(27) and shall be known as the "Nature Coast Aquatic Preserve." It is the intent of the Legislature that the Nature Coast Aquatic Preserve be preserved in an essentially natural condition so that its

biological and aesthetic values may endure for the enjoyment of future generations. Nothing in this act shall be construed to impose additional permitting requirements for county or state RESTORE Act projects funded pursuant to 33 U.S.C. § 1321(t)(3).

(2) BOUNDARIES.—For the purposes of this section, the Nature Coast Aquatic Preserve consists of the state-owned submerged lands lying west of a meandering line following the westernmost shorelines of Citrus, Hernando, and Pasco Counties excluding artificial waterways, canals, inland rivers, and tributaries. For the purposes of this section, state-owned submerged lands include all those seaward of the mean high water line and tidally connected to the Gulf of Mexico, lying south of a line extending westerly approximately 4.5 miles along Latitude 28.910000, Florida West Zone (NAD83) from the mean high water line of the corresponding shoreline at Fort Island Gulf Beach Park, Latitude 28.910000, Longitude -82.690000, and lying westward of a line extending north approximately 1.8 miles from Latitude 28.909402, Longitude -82.764 to Latitude 28.9355, Longitude -82.764, lying southward of a line extending westerly approximately 2.0 miles to Latitude 28.9355, Longitude -82.798214, lying westward of a line extending north approximately 4.5 miles to the easternmost point of the southern boundary of the Big Bend Seagrasses Aquatic Preserve at point Latitude 29.001614, Longitude -82.798921, and will be continuous with the eastern shoreline of the northern boundary of the

Pinellas County Aquatic Preserve, respectively. The boundary of the preserve designated as the shoreline shall mean the line of mean high water along such shoreline unless otherwise stated and will not supersede the boundaries of currently designated Outstanding Florida Waters, State Parks, National Wildlife Refuges, and Aquatic Preserves.

Section 2. This act shall take effect July 1, 2020.

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

Remove everything before the enacting clause and insert:
An act relating to aquatic preserves; creating s. 258.3991, F.S.; creating the Nature Coast Aquatic Preserve; designating the preserve for inclusion in the aquatic preserve system and an Outstanding Florida Water; describing the boundaries of the preserve; providing an effective date.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1091 Environmental Enforcement
SPONSOR(S): Agriculture & Natural Resources Subcommittee, Fine and others
TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 1450

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Agriculture & Natural Resources Subcommittee	11 Y, 0 N, As CS	Melkun	Moore
2) Agriculture & Natural Resources Appropriations Subcommittee	9 Y, 0 N	White	Pigott
3) State Affairs Committee		Melkun	Williamson

SUMMARY ANALYSIS

The Department of Environmental Protection (DEP) is Florida's lead agency for environmental management and stewardship, implementing many programs to protect the state's air, water, and land. In accordance with the state's numerous environmental laws, DEP's responsibilities include compliance and enforcement. Violations of Florida's environmental laws can result in damages and administrative, civil, and criminal penalties. Several types of violations impose a penalty for each offense, with each day during which a violation occurs constituting a separate offense.

The bill increases various statutory penalties for violations of environmental laws. For violations that currently impose a penalty for each day during which a violation occurs, the bill specifies that each day the violation occurs or is not remediated constitutes a separate offense until the violation is resolved by order or judgment.

The bill may have a positive fiscal impact on state and local governments from increases in various statutory penalties for violations of environmental law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Environmental Violations

The Department of Environmental Protection (DEP) is Florida's lead agency for environmental management and stewardship, implementing many programs to protect the state's air, water, and land.[1] In accordance with the state's numerous environmental laws, DEP's responsibilities include compliance and enforcement.[2] Violations of Florida's environmental laws can result in damages and administrative, civil, and criminal penalties.

Damages

In environmental enforcement, damages should compensate the state for the value of the loss to natural resources caused by the violation.[3] DEP may institute a civil action in court or an administrative proceeding in the Division of Administrative Hearings (DOAH) to recover damages for any injury to the air, waters, or property, including animal, plant, and aquatic life, of the state caused by any violation.[4] Damages can cover the cost of remediating the damage done to the environment, and/or costs incurred by the state in responding to the damage, such as tracing the source, controlling and abating the source, and restoring the environmental resources to their former condition.[5]

Penalties

In addition to damages, a violator can be liable for penalties. Penalties differ from damages in that they are designed to punish the wrongdoer rather than to address the harm caused by the violation.[6] In environmental enforcement, penalties should create incentives to bring immediate compliance and curb future violations.[7] In current law, several types of violations impose a penalty for each offense, with each day during which a violation occurs constituting a separate offense.

Administrative penalties may be levied directly by DEP or in a proceeding in DOAH.[8] The formal administrative enforcement process is typically initiated by serving a notice of violation, and is finalized through entry of a consent order or final order.[9] In most administrative proceedings, DEP has the final decision.[10] An administrative law judge has the final decision for administrative proceedings involving the Environmental Litigation Reform Act (Reform Act), codified in s. 403.121, F.S., which is the primary statute addressing DEP's administrative penalties.[11] Compared to the judicial process, the administrative process is generally considered less expensive, faster, and more conducive to negotiated settlement.[12] However, if DEP is seeking immediate injunctive relief, which compels a party to act or stop acting, an order must be obtained from a court.[13]

---

[1] DEP, *About DEP*, available at https://floridadep.gov/about-dep (last visited Jan. 27, 2020); s. 20.255, F.S.
[2] DEP, *Enforcement Manual: DEP Regulatory Enforcement Organization* (2017), available at https://floridadep.gov/sites/default/files/Chapter%201%20October%202017.pdf (last visited Jan. 27, 2020).
[3] DEP, *Enforcement Manual: Judicial Process and Remedies, Collections, and Bankruptcies* (2014), 89, available at https://floridadep.gov/sites/default/files/chapter6.pdf (last visited Jan. 27, 2020).
[4] *See* s. 403.121, F.S.
[5] *See* ss. 403.121 and 403.141, F.S.
[6] *See* BLACK'S LAW DICTIONARY 1247 (9th ed. 2009).
[7] DEP, *Enforcement Manual: Judicial Process and Remedies, Collections, and Bankruptcies* (2014), 89, available at https://floridadep.gov/sites/default/files/chapter6.pdf (last visited Jan. 27, 2020).
[8] *See* ch. 120, F.S. The administrative process is formalized in the Administrative Procedure Act.
[9] DEP, *Enforcement Manual: The Administrative Process and Remedies* (2014), 58, available at https://floridadep.gov/sites/default/files/chapter5_0.pdf (last visited Jan. 27, 2020).
[10] *Id.*
[11] *Id.* at 58-59, 66-70; ch. 2001-258, Laws of Fla.
[12] DEP, *Enforcement Manual: The Administrative Process and Remedies* (2014), 59, available at https://floridadep.gov/sites/default/files/chapter5_0.pdf (last visited Jan. 27, 2020).
[13] *Id.* at 59-60.

DEP must proceed administratively when it seeks administrative penalties that do not exceed $10,000 per assessment; DEP is prohibited from imposing administrative penalties in excess of $10,000 in a single notice of violation.[14] DEP also may not have more than one notice of violation pending against a party unless the additional violation occurred at a different site or was discovered subsequent to the filing of a previous notice of violation.[15]

Civil penalties are noncriminal fines that are generally levied by a court, but certain agencies may impose them under certain circumstances. The Reform Act allows DEP to seek civil penalties of up to $10,000 through the administrative process for most environmental violations.[16]

In state court, DEP may pursue two forms of action: a petition to enforce an order previously entered through the administrative process, or a complaint for violations of statutes or rules.[17] Under both actions, DEP may seek injunctive relief, civil penalties, damages, and costs and expenses.[18] For judicially imposed civil penalties, DEP is authorized to recover up to $10,000 per offense, with each day during any portion of which a violation occurs constituting a separate offense.[19]

A court or an administrative law judge may receive evidence in mitigation, which may result in the decrease or elimination of penalties.[20]

Criminal penalties can include jail or prison time, a criminal fine, or both. Florida law imposes criminal penalties for certain violations of environmental law.[21] Punishments for such violations may vary based on standards of intent, such as willful, reckless indifference, or gross careless disregard.[22]

In addition to DEP, the Department of Legal Affairs, any political subdivision or municipality of the state, and any citizen of the state also have the authority to bring an action for injunctive relief against violators of environmental laws.[23]

Effect of the Bill

The bill increases various statutory penalties for violations of environmental laws.

The table below outlines the increased penalties for certain environmental violations proposed by the bill. For violations that currently impose a penalty for each day during which a violation occurs, the bill specifies that each day the violation occurs or is not remediated constitutes a separate offense until the violation is resolved by order or judgment.

SECTION OF LAW	DESCRIPTION OF VIOLATION	CURRENT FINE/PENALTY	PROPOSED FINE/PENALTY

[14] Section 403.121(2)(b), F.S.; DEP, *Enforcement Manual: The Administrative Process and Remedies* (2014), 66-67, available at https://floridadep.gov/sites/default/files/chapter5_0.pdf (last visited Jan. 27, 2020). This requirement does not apply to underground injection, hazardous waste, or asbestos programs.
[15] *Id.*
[16] Section 403.121, F.S.
[17] DEP, *Enforcement Manual: Judicial Process and Remedies, Collections, and Bankruptcies* (2014), 86, available at https://floridadep.gov/sites/default/files/chapter6.pdf (last visited Jan. 27, 2020).
[18] *Id.*
[19] Section 403.121(1)(b), F.S.
[20] Section 403.121, F.S.
[21] Section 403.161, F.S.
[22] *Id.*
[23] Section 403.412, F.S.

SECTION OF LAW	DESCRIPTION OF VIOLATION	CURRENT FINE/PENALTY	PROPOSED FINE/PENALTY
161.054	DEP is required to assess a civil penalty for refusing to comply with the requirements of a coastal construction; a reconstruction or change of existing structures; a construction or physical activity undertaken specifically for shore protection purposes; or certain other structures and physical activities.	Up to $10,000 per day	Up to $15,000 per day
258.397	The Department of Legal Affairs is authorized to bring a civil action for a violation of the requirements of the Biscayne Bay Aquatic Preserve.	$5,000 per day	$7,500 per day
258.46	The Board of Trustees of the Internal Improvement Trust Fund is required to charge a civil penalty for violations of regulations for all aquatic preserves.	Between $500 and $5,000 per day	Between $750 and $7,500 per day
373.129	DEP and the water management districts are authorized to bring actions and proceedings to enforce rules, regulations, and adopted or issued orders; enjoin or abate violations of law, rules, regulations, and adopted orders; protect and preserve the water resources of the state; defend all actions and proceedings involving their powers and duties pertaining to the water resources of the state; and recover a civil penalty for each offense.	$10,000 per offense	$15,000 per offense
373.209	DEP is required to assess a civil penalty for violations of regulations for artesian wells.	$100 per day for each offense	$150 per day for each offense
373.430	A person who causes pollution or fails to obtain a required permit commits a second degree misdemeanor.	$5,000	$10,000
376.065	DEP is required to assess a civil penalty for the operation of a terminal facility without a discharge prevention and response certificate.	$500	$750
376.071	DEP is required to assess a civil penalty for any vessel with a pollutant capacity of 10,000 gallons or more that fails to maintain a discharge prevention and control contingency plan.	$5,000	$7,500
376.16	DEP is required to assess a civil penalty for violations of the Pollutant Discharge Prevention and Control Act.	Up to $50,000 per day for each offense	Up to $75,000 per day for per offense
	DEP is required to assess a civil penalty for a second or subsequent discharge of more than five gallons of gasoline or diesel within 12 months of the first discharge.	2nd discharge: $500 Subsequent discharges: $1,000	2nd discharge: $750 Subsequent discharges: $1,500
	DEP is required to assess a civil penalty for a second or subsequent discharge of any pollutant other than gasoline or diesel within 12 months of the first discharge.	2nd discharge: $2,500 Subsequent discharges: $5,000	2nd discharge: $3,750 Subsequent discharges: $7,500
	DEP is required to assess a civil penalty for a subsequent discharge of gasoline or diesel equal to or less than five gallons within 12 months of the first discharge.	$50	$75
	DEP is required to assess a civil penalty for a subsequent discharge of a pollutant other than gasoline or diesel equal to or less than five gallons within 12 months of the first discharge.	$100	$150

SECTION OF LAW	DESCRIPTION OF VIOLATION	CURRENT FINE/PENALTY	PROPOSED FINE/PENALTY
	A county court is authorized to impose a civil penalty if a violator elects to appear before the court and the court determines that an infraction has been committed for the discharge of gasoline or diesel.	2nd discharge: Up to $500 Subsequent discharges: Up to $1,000	2nd discharge: Up to $750 Subsequent discharges: Up to $1,500
	A county court is authorized to impose a civil penalty if a violator elects to appear before the court and the court determines that an infraction has been committed for the discharge of a pollutant other than gasoline or diesel.	2nd discharge: Up to $5,000 Subsequent discharges: Up to $10,000	2nd discharge: Up to $7,500 Subsequent discharges: Up to $15,000
376.25	DEP is required to assess a civil penalty for violations of regulations for gambling vessels.	Up to $50,000 for each violation	Up to $75,000 for each violation
377.37	DEP is required to assess a civil penalty for violations of the regulations of oil and gas resources.	Up to $10,000 for each violation	Up to $15,000 for each violation
378.211	DEP is authorized to impose a civil penalty for violations of a minor or technical nature of phosphate land reclamation regulations.	$100 each day for each violation	$150 each day for each violation
	DEP is authorized to impose a civil penalty for a major violation by an operator of phosphate land reclamation regulations of which a penalty has not been imposed within the last five years.	$1,000 each day for each violation	$1,500 each day for each violation
	DEP is authorized to impose a civil penalty for major violations not covered by the violations above for phosphate land reclamation regulations.	$5,000 each day for each violation	$7,500 each day for each violation
403.086	DEP is required to assess a civil penalty for failing to conform with regulations for sewage disposal facilities using advanced and secondary waste treatment.	$500 per day	$750 per day
403.121	DEP is authorized to impose a civil penalty for violations of pollution control regulations.	Up to $10,000 per offense	Up to $15,000 per offense
	DEP is authorized to seek administrative penalties to provide appropriate corrective action with respect to various environmental violations. The law specifies the maximum civil penalty DEP may seek.	Up to $10,000 per assessment	Up to $50,000 per assessment
	DEP is required to assess administrative penalties for a drinking water contamination violation related to maximum contaminant levels, with additional penalties under certain conditions.	$2,000 plus $1,000 per condition	$3,000 plus $1,500 per condition
	DEP is required to assess an administrative penalty for failing to obtain a clearance letter prior to placing a drinking water system into service when the system would not have been eligible for clearance.	$3,000	$4,500
	DEP is required to assess an administrative penalty for failing to obtain a wastewater permit other than a surface water discharge permit.	$1,000	$1,500
	DEP is required to assess an administrative penalty for an unpermitted or unauthorized wastewater discharge that did not result in a water quality violation.	$2,000	$3,000
	DEP is required to assess an administrative penalty for the unpermitted or unauthorized discharge that resulted in a water quality violation.	$5,000	$7,500

SECTION OF LAW	DESCRIPTION OF VIOLATION	CURRENT FINE/PENALTY	PROPOSED FINE/PENALTY
	DEP is required to assess an administrative penalty for a dredge and fill or stormwater violation with additional penalties under the following conditions: • If the violation occurs in a certain waterbody • If the violation occurs in an area of a certain size	$1,000 plus $2,000 plus $1,000	$1,500 plus $3,000 plus $1,500
	DEP is required to assess an administrative penalty for failing to complete required mitigation, record a conservation easement, or a water quality violation resulting from certain activities.	$3,000	$4,500
	DEP is required to assess an administrative penalty for failing to properly or timely construct a stormwater management system for systems serving less than 5 acres.	$2,000	$3,000
	DEP is required to assess an administrative penalty against a contractor that conducts unpermitted or unauthorized dredging or filling.	$5,000	$7,500
	DEP is required to assess an administrative penalty against a contractor for mangrove trimming or alteration violations.	$5,000	$7,500
	DEP is required to assess an administrative penalty for the unpermitted or unauthorized disposal of solid waste, with additional penalties for certain conditions.	$2,000 plus $1,000 per condition	$3,000 plus $1,500 per condition
	DEP is required to assess an administrative penalty for failure to properly maintain leachate control.	$3,000	$4,500
	DEP is required to assess an administrative penalty for failing to construct or maintain a required stormwater management system.	$2,000	$3,000
	DEP is required to assess an administrative penalty for an unpermitted or unauthorized air emission or air-emission-permit exceedance, with additional penalties if: • The emission was from a major source and the source was major for the pollutant in violation • The emission was more than 150 percent of the allowable level	$1,000 $3,000 $1,000	$1,500 $4,500 $1,500
	DEP is required to assess an administrative penalty for storage tank system and petroleum contamination violations.	$5,000	$7,500
	DEP is required to assess an administrative penalty for failing to timely upgrade a storage tank system.	$3,000	$4,500
	DEP is required to assess an administrative penalty for release violations of storage tank systems.	$2,000	$3,000
	DEP is required to assess an administrative penalty for failing to properly operate, maintain, or close a storage tank system.	$1,000	$1,500
	DEP is required to assess an administrative penalty for failure to satisfy financial responsibility requirements or pollution of land, water, wildlife, or property by drilling for oil, gas, or other petroleum products.	$5,000	$7,500

SECTION OF LAW	DESCRIPTION OF VIOLATION	CURRENT FINE/PENALTY	PROPOSED FINE/PENALTY
	DEP is required to assess an administrative penalty for failing to install, maintain, or use a required pollution control system or device.	$4,000	$6,000
	DEP is required to assess an administrative penalty for failing to obtain a required permit before construction or modification.	$3,000	$4,500
	DEP is required to assess an administrative penalty for failing to conduct regular monitoring or testing, to conduct required release detection, or to construct in compliance with a permit.	$2,000	$3,000
	DEP is required to assess an administrative penalty for failing to maintain and train staff; prepare and maintain contingency plans; adequately respond to emergencies; or submit required notification to DEP.	$1,000	$1,500
	DEP is required to assess an administrative penalty for failing to prepare, submit, maintain, or use required reports or other documentation.	$500	$750
	DEP is required to assess an administrative penalty for failing to comply with any departmental regulatory statute or rule not described above.	$500	$1,000
	When considering the economic benefit gained by a violator from a violation, the law specifies that the total administrative penalty may not exceed a certain amount.	$10,000	$15,000
	The law specifies that the administrative penalties assessed for any violation may not exceed a certain amount against any one violator unless the violator has a history of noncompliance or the economic benefit exceeds a certain amount.	$5,000 per violator unless economic benefit exceeds $5,000	$7,500 per violator unless economic benefit exceeds $7,500
	The law specifies that the total administrative penalties per assessment for all violations attributable to a specific person may not exceed a certain amount.	$10,000 per assessment	$50,000 per assessment
403.141	Any person who causes pollution, fails to obtain a permit, knowingly makes false statements, or fails to provide required notice is liable to the state for any damage to airs, waters, or properties (including wildlife) of the state and is subject to a civil penalty for each offense.	Up to $10,000 per offense	Up to $15,000 per offense
403.161	Any person who fails to obtain a permit due to reckless indifference commits a 2nd degree misdemeanor punishable by 60 days in jail, a fine, or both for each offense.	Up to $5,000 per offense	Up to $10,000 per offense
403.413	A law enforcement officer is required to assess a civil penalty for dumping litter.	$100	$150
403.7234	DEP is required to assess a civil penalty for any small quantity generator who does not comply with the small quantity generator notification and verification program	Between $50 and $100 per day for up to 100 days	Between $75 and $150 for up to 100 days
403.726	DEP is authorized impose a civil penalty for a violation of hazardous substance regulations.	Up to $25,000 per day	Up to $37,500 per day
403.727	DEP is required to assess a civil penalty for a violation of hazardous waste regulations.	Up to $50,000 per day	Up to $75,000 per day

SECTION OF LAW	DESCRIPTION OF VIOLATION	CURRENT FINE/PENALTY	PROPOSED FINE/PENALTY
403.93345	DEP is authorized to impose a civil penalty for any anchoring of a vessel on a coral reef or any other damage to a coral reef totaling less than one square meter, if the responsible party has been previously issued at least one warning letter, with additional penalties for violations that occur under certain conditions.	$150 plus $150 per condition	$225 plus $225 per condition
	DEP is authorized to impose a civil penalty for damage totaling more than one square meter but less than or equal to 10 square meters of a coral reef, with additional penalties for damage occurring under certain conditions.	$300 plus $300 per condition	$450 plus $450 per condition
	DEP is authorized to impose a civil penalty for damage totaling more than 10 square meters of a coral reef, with additional penalties for damage occurring under certain conditions.	$1,000 plus $1,000 per condition	$1,500 plus $1,500 per condition
	The law specifies that the total penalties DEP may impose for damage totaling more than 10 square meters of a coral reef may not exceed a certain amount per occurrence.	$250,000	$375,000

B. SECTION DIRECTORY:

Section 1. Amends s. 161.054, F.S., to increase penalties.

Section 2. Amends s. 258.397, F.S., to increase penalties.

Section 3. Amends s. 258.46, F.S., to increase penalties.

Section 4. Amends s. 373.129, F.S., to increase penalties.

Section 5. Amends s. 373.209, F.S., to increase penalties.

Section 6. Amends s. 373.430, F.S., to increase penalties.

Section 7. Amends s. 376.065, F.S., to increase penalties.

Section 8. Amends s. 376.071, F.S., to increase penalties.

Section 9. Amends s. 376.16, F.S., to increase penalties.

Section 10. Amends s. 376.25, F.S., to increase penalties.

Section 11. Amends s. 377.37, F.S., to increase penalties.

Section 12. Amends s. 378.211, F.S., to increase penalties.

Section 13. Amends s. 403.086, F.S., to increase penalties.

Section 14. Amends s. 403.121, F.S., to increase penalties.

Section 15. Amends s. 403.141, F.S., to increase penalties.

Section 16. Amends s. 403.161, F.S., to increase penalties.

Section 17. Amends s. 403.413, F.S., to increase penalties.

Section 18. Amends s. 403.7234, F.S., to increase penalties.

Section 19. Amends s. 403.726, F.S., to increase penalties.

Section 20. Amends s. 403.727, F.S., to increase penalties.

Section 21. Amends s. 403.93345, F.S., to increase penalties.

Section 22. Reenacts s. 823.11, F.S., to incorporate amendments made by the bill.

Section 23. Reenacts s. 403.077, F.S., to incorporate amendments made by the bill.

Section 24. Reenacts s. 403.131, F.S., to incorporate amendments made by the bill.

Section 25. Reenacts s. 403.4154, F.S., to incorporate amendments made by the bill.

Section 26. Reenacts s. 403.860, F.S., to incorporate amendments made by the bill.

Section 27. Reenacts s. 403.708, F.S., to incorporate amendments made by the bill.

Section 28. Reenacts s. 403.7191, F.S., to incorporate amendments made by the bill.

Section 29. Reenacts s. 403.811, F.S., to incorporate amendments made by the bill.

Section 30. Reenacts s. 403.7186, F.S., to incorporate amendments made by the bill.

Section 31. Reenacts s. 403.7255, F.S., to incorporate amendments made by the bill.

Section 32. Provides an effective date of July 1, 2020.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   The bill may have an indeterminate positive fiscal impact on state government revenues because the bill increases various penalties associated with the violation of environmental laws.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   The bill may have an indeterminate positive fiscal impact on the revenues of local governments with the delegated authority to assess penalties because the bill increases a number of penalties associated with the violation of environmental laws.

2. Expenditures:

   The bill may have an indeterminate negative fiscal impact on local governments that own and operate wastewater treatment facilities because the bill increases a number of penalties associated with the violation of environmental laws, including permit violations for wastewater treatment facilities.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may have an indeterminate negative fiscal impact on the private sector because it increases a number of penalties associated with the violation of environmental laws and, in some instances, may increase the period during which each day constitutes a separate offense.

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 expenditure 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:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On February 4, 2020, the Agriculture & Natural Resources Subcommittee adopted a strike-all amendment and reported the bill favorably as a committee substitute. The amendment revised provisions related to determining the period during which a violation is subject to separate penalties for certain criminal violations.

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

A bill to be entitled

An act relating to environmental enforcement; amending s. 161.054, F.S.; revising administrative penalties for violations of certain provisions relating to beach and shore construction and activities; providing that each day that certain violations occur or are not remediated constitutes a separate offense until such violations are resolved by order or judgment; making technical changes; amending ss. 258.397, 258.46, 373.129, 376.16, 376.25, 377.37, 378.211, and 403.141, F.S.; revising civil penalties for violations of certain provisions relating to the Biscayne Bay Aquatic Preserve, aquatic preserves, water resources, the Pollutant Discharge Prevention and Control Act, the Clean Ocean Act, regulation of oil and gas resources, the Phosphate Land Reclamation Act, and other provisions relating to pollution and the environment, respectively; providing that each day that certain violations occur or are not remediated constitutes a separate offense until such violations are resolved by order or judgment; making technical changes; amending ss. 373.209, 376.065, 376.071, 403.086, 403.413, 403.7234, and 403.93345, F.S.; revising civil penalties for violations of certain provisions relating to artesian wells, terminal

facilities, discharge contingency plans for vessels, sewage disposal facilities, dumping litter, small quantity generators, and coral reef protection, respectively; making technical changes; amending ss. 373.430 and 403.161, F.S.; revising criminal penalties for violations of certain provisions relating to pollution and the environment; making technical changes; amending s. 403.121, F.S.; revising civil and administrative penalties for violations of certain provisions relating to pollution and the environment; providing that each day that certain violations occur or are not remediated constitutes a separate offense until such violations are resolved by order or judgment; increasing the amount of penalties that can be assessed administratively; making technical changes; amending ss. 403.726 and 403.727, F.S.; revising civil penalties for violations of certain provisions relating to hazardous waste for each day that certain violations occur and are not resolved by order or judgment; making technical changes; reenacting s. 823.11(5), F.S., to incorporate the amendment made to s. 376.16, F.S., in a reference thereto; reenacting ss. 403.077(5), 403.131(2), 403.4154(3)(d), and 403.860(5), F.S., to incorporate the amendment made to s. 403.121, F.S., in a reference

thereto; reenacting ss. 403.708(10), 403.7191(7), and 403.811, F.S., to incorporate the amendment made to s. 403.141, F.S., in a reference thereto; reenacting s. 403.7255(2), F.S., to incorporate the amendment made to s. 403.161, F.S., in a reference thereto; reenacting s. 403.7186(8), F.S., to incorporate the amendment made to ss. 403.141 and 403.161, F.S., in references thereto; providing an effective date.

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

Section 1. Subsection (1) of section 161.054, Florida Statutes, is amended to read:

161.054 Administrative fines; liability for damage; liens.—

(1) In addition to the penalties provided for in ss. 161.052, 161.053, and 161.121, any person, firm, corporation, or governmental agency, or agent thereof, refusing to comply with or willfully violating ~~any of the provisions of~~ s. 161.041, s. 161.052, or s. 161.053, or any rule or order prescribed by the department thereunder, shall incur a fine for each offense in an amount up to $15,000 ~~$10,000~~ to be fixed, imposed, and collected by the department. Until a violation is resolved by order or judgment, each day during any portion of which such violation occurs or is not remediated constitutes a separate offense.

Section 2. Subsection (7) of section 258.397, Florida Statutes, is amended to read:

258.397 Biscayne Bay Aquatic Preserve.—

(7) ENFORCEMENT.—~~The provisions of~~ This section may be enforced in accordance with ~~the provisions of~~ s. 403.412. In addition, the Department of Legal Affairs may ~~is authorized to~~ bring an action for civil penalties of $7,500 ~~$5,000~~ per day against any person, natural or corporate, who violates ~~the provisions of~~ this section or any rule or regulation issued hereunder. Until a violation is resolved by order or judgment, each day during any portion of which such violation occurs or is not remediated constitutes a separate offense. Enforcement of applicable state regulations shall be supplemented by the Miami-Dade County Department of Environmental Resources Management through the creation of a full-time enforcement presence along the Miami River.

Section 3. Section 258.46, Florida Statutes, is amended to read:

258.46 Enforcement; violations; penalty.—~~The provisions of~~ This act may be enforced by the Board of Trustees of the Internal Improvement Trust Fund or in accordance with ~~the provisions of~~ s. 403.412. However, any violation by any person, natural or corporate, of ~~the provisions of~~ this act or any rule or regulation issued hereunder is ~~shall be~~ further punishable by a civil penalty of not less than $750 ~~$500~~ per day or more than

$7,500 ~~$5,000~~ per day of such violation. Until a violation is resolved by order or judgment, each day during any portion of which such violation occurs or is not remediated constitutes a separate offense.

Section 4. Subsections (5) and (7) of section 373.129, Florida Statutes, are amended to read:

373.129 Maintenance of actions.—The department, the governing board of any water management district, any local board, or a local government to which authority has been delegated pursuant to s. 373.103(8), is authorized to commence and maintain proper and necessary actions and proceedings in any court of competent jurisdiction for any of the following purposes:

(5) To recover a civil penalty for each offense in an amount not to exceed $15,000 ~~$10,000~~ per offense. Until a violation is resolved by order or judgment, each date during any portion of which such violation occurs or is not remediated constitutes a separate offense.

(a) A civil penalty recovered by a water management district pursuant to this subsection shall be retained and used exclusively by the water management district that collected the money. A civil penalty recovered by the department pursuant to this subsection must be deposited into the Water Quality Assurance Trust Fund established under s. 376.307.

(b) A local government that is delegated authority

pursuant to s. 373.103(8) may deposit a civil penalty recovered pursuant to this subsection into a local water pollution control program trust fund, notwithstanding ~~the provisions of~~ paragraph (a). However, civil penalties that are deposited in a local water pollution control program trust fund and that are recovered for violations of state water quality standards may be used only to restore water quality in the area that was the subject of the action, and civil penalties that are deposited in a local water pollution control program trust fund and that are recovered for violation of requirements relating to water quantity may be used only to purchase lands and make capital improvements associated with surface water management, or other purposes consistent with the requirements of this chapter for the management and storage of surface water.

(7) To enforce ~~the provisions of~~ part IV of this chapter in the same manner and to the same extent as provided in ss. 373.430, 403.121(1) and (2), 403.131, 403.141, and 403.161.

Section 5. Subsection (3) of section 373.209, Florida Statutes, is amended to read:

373.209 Artesian wells; penalties for violation.—

(3) Any person who violates ~~any provision of~~ this section is ~~shall be~~ subject to either:

(a) The remedial measures provided for in s. 373.436; or

(b) A civil penalty of $150 ~~$100~~ a day for each and every day of such violation and for each and every act of violation.

The civil penalty may be recovered by the water management board of the water management district in which the well is located or by the department in a suit in a court of competent jurisdiction in the county where the defendant resides, in the county of residence of any defendant if there is more than one defendant, or in the county where the violation took place. The place of suit shall be selected by the board or department, and the suit, by direction of the board or department, shall be instituted and conducted in the name of the board or department by appropriate counsel. The payment of any such damages does not impair or abridge any cause of action which any person may have against the person violating ~~any provision of~~ this section.

Section 6. Subsections (2) through (5) of section 373.430, Florida Statutes, are amended to read:

373.430 Prohibitions, violation, penalty, intent.—

(2) A person who ~~Whoever~~ commits a violation specified in subsection (1) is liable for any damage caused and for civil penalties as provided in s. 373.129.

(3) A ~~Any~~ person who willfully commits a violation specified in paragraph (1)(a) commits ~~is guilty of~~ a felony of the third degree, punishable as provided in ss. 775.082(3)(e) and 775.083(1)(g), by a fine of not more than $50,000 or by imprisonment for 5 years, or by both, for each offense. Each day during any portion of which such violation occurs constitutes a separate offense.

(4) A ~~Any~~ person who commits a violation specified in paragraph (1)(a) or paragraph (1)(b) due to reckless indifference or gross careless disregard commits ~~is guilty of~~ a misdemeanor of the second degree, punishable as provided in ss. 775.082(4)(b) and 775.083(1)(g), by a fine of not more than $10,000 ~~$5,000~~ or 60 days in jail, or by both, for each offense.

(5) A ~~Any~~ person who willfully commits a violation specified in paragraph (1)(b) or who commits a violation specified in paragraph (1)(c) commits ~~is guilty of~~ a misdemeanor of the first degree, punishable as provided in ss. 775.082(4)(a) and 775.083(1)(g), by a fine of not more than $10,000 or by 6 months in jail, or by both, for each offense.

Section 7. Paragraphs (a) and (e) of subsection (5) of section 376.065, Florida Statutes, are amended to read:

376.065 Operation of terminal facility without discharge prevention and response certificate prohibited; penalty.—

(5)(a) A person who violates this section or the terms and requirements of such certification commits a noncriminal infraction. The civil penalty for any such infraction shall be $750 ~~$500~~, except as otherwise provided in this section.

(e) A person who elects to appear before the county court or who is required to so appear waives the limitations of the civil penalty specified in paragraph (a). The court, after a hearing, shall make a determination as to whether an infraction has been committed. If the commission of the infraction is

proved, the court shall impose a civil penalty of $750 ~~$500~~.

Section 8. Paragraphs (a) and (e) of subsection (2) of section 376.071, Florida Statutes, are amended to read:

376.071 Discharge contingency plan for vessels.—

(2)(a) A master of a vessel that violates subsection (1) commits a noncriminal infraction and shall be cited for such infraction. The civil penalty for such an infraction shall be $7,500 ~~$5,000~~, except as otherwise provided in this subsection.

(e) A person who elects to appear before the county court or who is required to appear waives the limitations of the civil penalty specified in paragraph (a). The court, after a hearing, shall make a determination as to whether an infraction has been committed. If the commission of the infraction is proved, the court shall impose a civil penalty of $7,500 ~~$5,000~~.

Section 9. Section 376.16, Florida Statutes, is amended to read:

376.16 Enforcement and penalties.—

(1) It is unlawful for any person to violate ~~any provision of~~ ss. 376.011-376.21 or any rule or order of the department made pursuant to this act. A violation is ~~shall be~~ punishable by a civil penalty of up to $75,000 ~~$50,000~~ per violation per day to be assessed by the department. Until a violation is resolved by order or judgment, each day during any portion of which the violation occurs or is not remediated constitutes a separate offense. The penalty provisions of this subsection do ~~shall~~ not

apply to any discharge promptly reported and removed by a person responsible, in accordance with the rules and orders of the department, or to any discharge of pollutants equal to or less than 5 gallons.

(2) In addition to the penalty provisions which may apply under subsection (1), a person responsible for two or more discharges of any pollutant reported pursuant to s. 376.12 within a 12-month period at the same facility commits a noncriminal infraction and shall be cited by the department for such infraction.

(a) For discharges of gasoline or diesel over 5 gallons, the civil penalty for the second discharge shall be $750 ~~$500~~ and the civil penalty for each subsequent discharge within a 12-month period shall be $1,500 ~~$1,000~~, except as otherwise provided in this section.

(b) For discharges of any pollutant other than gasoline or diesel, the civil penalty for a second discharge shall be $3,750 ~~$2,500~~ and the civil penalty for each subsequent discharge within a 12-month period shall be $7,500 ~~$5,000~~, except as otherwise provided in this section.

(3) A person responsible for two or more discharges of any pollutant reported pursuant to s. 376.12 within a 12-month period at the same facility commits a noncriminal infraction and shall be cited by the department for such infraction.

(a) For discharges of gasoline or diesel equal to or less

than 5 gallons, the civil penalty shall be $75 ~~$50~~ for each discharge subsequent to the first.

(b) For discharges of pollutants other than gasoline or diesel equal to or less than 5 gallons, the civil penalty shall be $150 ~~$100~~ for each discharge subsequent to the first.

(4) A person charged with a noncriminal infraction pursuant to subsection (2) or subsection (3) may:

(a) Pay the civil penalty;

(b) Post a bond equal to the amount of the applicable civil penalty; or

(c) Sign and accept a citation indicating a promise to appear before the county court.

The department employee authorized to issue these citations may indicate on the citation the time and location of the scheduled hearing and shall indicate the applicable civil penalty.

(5) Any person who willfully refuses to post bond or accept and sign a citation commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(6) After compliance with paragraph (4)(b) or paragraph (4)(c), any person charged with a noncriminal infraction under subsection (2) or subsection (3) may:

(a) Pay the civil penalty, either by mail or in person, within 30 days after the date of receiving the citation; or

(b) If the person has posted bond, forfeit the bond by not

appearing at the designated time and location.

A person cited for an infraction under this section who pays the civil penalty or forfeits the bond has admitted the infraction and waives the right to a hearing on the issue of commission of the infraction. Such admission may not be used as evidence in any other proceeding.

(7) Any person who elects to appear before the county court or who is required to appear waives the limitations of the civil penalties specified in subsection (2). The court, after a hearing, shall make a determination as to whether an infraction has been committed. If the commission of an infraction is proved, the court may impose a civil penalty up to, but not exceeding, $750 ~~$500~~ for the second discharge of gasoline or diesel and a civil penalty up to, but not exceeding, $1,500 ~~$1,000~~ for each subsequent discharge of gasoline or diesel within a 12-month period.

(8) Any person who elects to appear before the county court or who is required to appear waives the limitations of the civil penalties specified in subsection (2) or subsection (3). The court, after a hearing, shall make a determination as to whether an infraction has been committed. If the commission of an infraction is proved, the court may impose a civil penalty up to, but not exceeding, $7,500 ~~$5,000~~ for the second discharge of pollutants other than gasoline or diesel and a civil penalty up

to, but not exceeding, $15,000 ~~$10,000~~ for each subsequent discharge of pollutants other than gasoline or diesel within a 12-month period.

(9) At a hearing under this section, the commission of a charged offense must be proved by the greater weight of the evidence.

(10) A person who is found by a hearing official to have committed an infraction may appeal that finding to the circuit court.

(11) Any person who has not posted bond and who neither pays the applicable civil penalty, as specified in subsection (2) or subsection (3) within 30 days of receipt of the citation nor appears before the court commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(12) Any person who makes or causes to be made a false statement that ~~which~~ the person does not believe to be true in response to requirements of ~~the provisions of~~ ss. 376.011-376.21 commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Section 10. Paragraph (a) of subsection (6) of section 376.25, Florida Statutes, is amended to read:

376.25 Gambling vessels; registration; required and prohibited releases.—

(6) PENALTIES.—

(a) A person who violates this section is subject to a

civil penalty of not more than $75,000 ~~$50,000~~ for each violation. Until a violation is resolved by order or judgment, each day during any portion of which such violation occurs or is not remediated constitutes a separate offense.

Section 11. Paragraph (a) of subsection (1) of section 377.37, Florida Statutes, is amended to read:

377.37 Penalties.—

(1)(a) Any person who violates ~~any provision of~~ this law or any rule, regulation, or order of the division made under this chapter or who violates the terms of any permit to drill for or produce oil, gas, or other petroleum products referred to in s. 377.242(1) or to store gas in a natural gas storage facility, or any lessee, permitholder, or operator of equipment or facilities used in the exploration for, drilling for, or production of oil, gas, or other petroleum products, or storage of gas in a natural gas storage facility, who refuses inspection by the division as provided in this chapter, is liable to the state for any damage caused to the air, waters, or property, including animal, plant, or aquatic life, of the state and for reasonable costs and expenses of the state in tracing the source of the discharge, in controlling and abating the source and the pollutants, and in restoring the air, waters, and property, including animal, plant, and aquatic life, of the state. Furthermore, such person, lessee, permitholder, or operator is subject to the judicial imposition of a civil penalty in an

amount of not more than $15,000 ~~$10,000~~ for each offense. However, the court may receive evidence in mitigation. Until a violation is resolved by order or judgment, each day during any portion of which such violation occurs or is not remediated constitutes a separate offense. This section does not ~~Nothing herein shall~~ give the department the right to bring an action on behalf of any private person.

Section 12. Subsection (2) of section 378.211, Florida Statutes, is amended to read:

378.211 Violations; damages; penalties.—

(2) The department may institute a civil action in a court of competent jurisdiction to impose and recover a civil penalty for violation of this part or of any rule adopted or order issued pursuant to this part. The penalty may ~~shall~~ not exceed the following amounts, and the court shall consider evidence in mitigation:

(a) For violations of a minor or technical nature, $150 ~~$100~~ per violation.

(b) For major violations by an operator on which a penalty has not been imposed under this paragraph during the previous 5 years, $1,500 ~~$1,000~~ per violation.

(c) For major violations not covered by paragraph (b), $7,500 ~~$5,000~~ per violation.

Subject to ~~the provisions of~~ subsection (4), until a violation

is resolved by order or judgment, each day or any portion thereof in which the violation continues or is not remediated shall constitute a separate violation.

Section 13. Subsection (2) of section 403.086, Florida Statutes, is amended to read:

403.086 Sewage disposal facilities; advanced and secondary waste treatment.—

(2) Any facilities for sanitary sewage disposal shall provide for secondary waste treatment and, in addition thereto, advanced waste treatment as deemed necessary and ordered by the Department of Environmental Protection. Failure to conform shall be punishable by a civil penalty of $750 ~~$500~~ for each 24-hour day or fraction thereof that such failure is allowed to continue thereafter.

Section 14. Section 403.121, Florida Statutes, is amended to read:

403.121 Enforcement; procedure; remedies.—The department shall have the following judicial and administrative remedies available to it for violations of this chapter, as specified in s. 403.161(1).

(1) Judicial remedies:

(a) The department may institute a civil action in a court of competent jurisdiction to establish liability and to recover damages for any injury to the air, waters, or property, including animal, plant, and aquatic life, of the state caused

by any violation.

(b) The department may institute a civil action in a court of competent jurisdiction to impose and to recover a civil penalty for each violation in an amount of not more than $15,000 ~~$10,000~~ per offense. However, the court may receive evidence in mitigation. Until a violation is resolved by order or judgment, each day during any portion of which such violation occurs or is not remediated constitutes a separate offense.

(c) Except as provided in paragraph (2)(c), it is ~~shall~~ not ~~be~~ a defense to, or ground for dismissal of, these judicial remedies for damages and civil penalties that the department has failed to exhaust its administrative remedies, has failed to serve a notice of violation, or has failed to hold an administrative hearing prior to the institution of a civil action.

(2) Administrative remedies:

(a) The department may institute an administrative proceeding to establish liability and to recover damages for any injury to the air, waters, or property, including animal, plant, or aquatic life, of the state caused by any violation. The department may order that the violator pay a specified sum as damages to the state. Judgment for the amount of damages determined by the department may be entered in any court having jurisdiction thereof and may be enforced as any other judgment.

(b) If the department has reason to believe a violation

has occurred, it may institute an administrative proceeding to order the prevention, abatement, or control of the conditions creating the violation or other appropriate corrective action. Except for violations involving hazardous wastes, asbestos, or underground injection, the department shall proceed administratively in all cases in which the department seeks administrative penalties that do not exceed $50,000 ~~$10,000~~ per assessment as calculated in accordance with subsections (3), (4), (5), (6), and (7). Pursuant to 42 U.S.C. s. 300g-2, the administrative penalty assessed pursuant to subsection (3), subsection (4), or subsection (5) against a public water system serving a population of more than 10,000 shall be not less than $1,000 per day per violation. The department may ~~shall~~ not impose administrative penalties in excess of $50,000 ~~$10,000~~ in a notice of violation. The department may ~~shall~~ not have more than one notice of violation seeking administrative penalties pending against the same party at the same time unless the violations occurred at a different site or the violations were discovered by the department subsequent to the filing of a previous notice of violation.

(c) An administrative proceeding shall be instituted by the department's serving of a written notice of violation upon the alleged violator by certified mail. If the department is unable to effect service by certified mail, the notice of violation may be hand delivered or personally served in

accordance with chapter 48. The notice shall specify the ~~provision of the~~ law, rule, regulation, permit, certification, or order of the department alleged to be violated and the facts alleged to constitute a violation thereof. An order for corrective action, penalty assessment, or damages may be included with the notice. When the department is seeking to impose an administrative penalty for any violation by issuing a notice of violation, any corrective action needed to correct the violation or damages caused by the violation must be pursued in the notice of violation or they are waived. However, an ~~no~~ order is not ~~shall become~~ effective until after service and an administrative hearing, if requested within 20 days after service. Failure to request an administrative hearing within this time period constitutes ~~shall constitute~~ a waiver thereof, unless the respondent files a written notice with the department within this time period opting out of the administrative process initiated by the department to impose administrative penalties. Any respondent choosing to opt out of the administrative process initiated by the department in an action that seeks the imposition of administrative penalties must file a written notice with the department within 20 days after service of the notice of violation opting out of the administrative process. A respondent's decision to opt out of the administrative process does not preclude the department from initiating a state court action seeking injunctive relief, damages, and the judicial

imposition of civil penalties.

(d) If a person timely files a petition challenging a notice of violation, that person will thereafter be referred to as the respondent. The hearing requested by the respondent shall be held within 180 days after the department has referred the initial petition to the Division of Administrative Hearings unless the parties agree to a later date. The department has the burden of proving with the preponderance of the evidence that the respondent is responsible for the violation. ~~No~~ Administrative penalties should not be imposed unless the department satisfies that burden. Following the close of the hearing, the administrative law judge shall issue a final order on all matters, including the imposition of an administrative penalty. When the department seeks to enforce that portion of a final order imposing administrative penalties pursuant to s. 120.69, the respondent may ~~shall~~ not assert as a defense the inappropriateness of the administrative remedy. The department retains its final-order authority in all administrative actions that do not request the imposition of administrative penalties.

(e) After filing a petition requesting a formal hearing in response to a notice of violation in which the department imposes an administrative penalty, a respondent may request that a private mediator be appointed to mediate the dispute by contacting the Florida Conflict Resolution Consortium within 10 days after receipt of the initial order from the administrative

law judge. The Florida Conflict Resolution Consortium shall pay all of the costs of the mediator and for up to 8 hours of the mediator's time per case at $150 per hour. Upon notice from the respondent, the Florida Conflict Resolution Consortium shall provide to the respondent a panel of possible mediators from the area in which the hearing on the petition would be heard. The respondent shall select the mediator and notify the Florida Conflict Resolution Consortium of the selection within 15 days of receipt of the proposed panel of mediators. The Florida Conflict Resolution Consortium shall provide all of the administrative support for the mediation process. The mediation must be completed at least 15 days before the final hearing date set by the administrative law judge.

(f) In any administrative proceeding brought by the department, the prevailing party shall recover all costs as provided in ss. 57.041 and 57.071. The costs must be included in the final order. The respondent is the prevailing party when an order is entered awarding no penalties to the department and such order has not been reversed on appeal or the time for seeking judicial review has expired. The respondent is ~~shall be~~ entitled to an award of attorney's fees if the administrative law judge determines that the notice of violation issued by the department seeking the imposition of administrative penalties was not substantially justified as defined in s. 57.111(3)(e). An ~~No~~ award of attorney's fees as provided by this subsection

may not ~~shall~~ exceed $15,000.

(g) Nothing herein shall be construed as preventing any other legal or administrative action in accordance with law. Nothing in this subsection shall limit the department's authority provided in ss. 403.131, 403.141, and this section to judicially pursue injunctive relief. When the department exercises its authority to judicially pursue injunctive relief, penalties in any amount up to the statutory maximum sought by the department must be pursued as part of the state court action and not by initiating a separate administrative proceeding. The department retains the authority to judicially pursue penalties in excess of $50,000 ~~$10,000~~ for violations not specifically included in the administrative penalty schedule, or for multiple or multiday violations alleged to exceed a total of $50,000 ~~$10,000~~. The department also retains the authority provided in ss. 403.131, 403.141, and this section to judicially pursue injunctive relief and damages, if a notice of violation seeking the imposition of administrative penalties has not been issued. The department has the authority to enter into a settlement, either before or after initiating a notice of violation, and the settlement may include a penalty amount different from the administrative penalty schedule. Any case filed in state court because it is alleged to exceed a total of $50,000 ~~$10,000~~ in penalties may be settled in the court action for less than $50,000 ~~$10,000~~.

(h) Chapter 120 applies ~~shall apply~~ to any administrative action taken by the department or any delegated program pursuing administrative penalties in accordance with this section.

(3) Except for violations involving hazardous wastes, asbestos, or underground injection, administrative penalties must be calculated according to the following schedule:

(a) For a drinking water contamination violation, the department shall assess a penalty of $3,000 ~~$2,000~~ for a Maximum Containment Level (MCL) violation; plus $1,500 ~~$1,000~~ if the violation is for a primary inorganic, organic, or radiological Maximum Contaminant Level or it is a fecal coliform bacteria violation; plus $1,500 ~~$1,000~~ if the violation occurs at a community water system; and plus $1,500 ~~$1,000~~ if any Maximum Contaminant Level is exceeded by more than 100 percent. For failure to obtain a clearance letter prior to placing a drinking water system into service when the system would not have been eligible for clearance, the department shall assess a penalty of $4,500 ~~$3,000~~.

(b) For failure to obtain a required wastewater permit, other than a permit required for surface water discharge, the department shall assess a penalty of $1,500 ~~$1,000~~. For a domestic or industrial wastewater violation not involving a surface water or groundwater quality violation, the department shall assess a penalty of $3,000 ~~$2,000~~ for an unpermitted or unauthorized discharge or effluent-limitation exceedance. For an

unpermitted or unauthorized discharge or effluent-limitation exceedance that resulted in a surface water or groundwater quality violation, the department shall assess a penalty of $7,500 ~~$5,000~~.

(c) For a dredge and fill or stormwater violation, the department shall assess a penalty of $1,500 ~~$1,000~~ for unpermitted or unauthorized dredging or filling or unauthorized construction of a stormwater management system against the person or persons responsible for the illegal dredging or filling, or unauthorized construction of a stormwater management system plus $3,000 ~~$2,000~~ if the dredging or filling occurs in an aquatic preserve, an Outstanding Florida Water, a conservation easement, or a Class I or Class II surface water, plus $1,500 ~~$1,000~~ if the area dredged or filled is greater than one-quarter acre but less than or equal to one-half acre, and plus $1,500 ~~$1,000~~ if the area dredged or filled is greater than one-half acre but less than or equal to one acre. The administrative penalty schedule does ~~shall~~ not apply to a dredge and fill violation if the area dredged or filled exceeds one acre. The department retains the authority to seek the judicial imposition of civil penalties for all dredge and fill violations involving more than one acre. The department shall assess a penalty of $4,500 ~~$3,000~~ for the failure to complete required mitigation, failure to record a required conservation easement, or for a water quality violation resulting from dredging or

filling activities, stormwater construction activities or failure of a stormwater treatment facility. For stormwater management systems serving less than 5 acres, the department shall assess a penalty of $3,000 ~~$2,000~~ for the failure to properly or timely construct a stormwater management system. In addition to the penalties authorized in this subsection, the department shall assess a penalty of $7,500 ~~$5,000~~ per violation against the contractor or agent of the owner or tenant that conducts unpermitted or unauthorized dredging or filling. For purposes of this paragraph, the preparation or signing of a permit application by a person currently licensed under chapter 471 to practice as a professional engineer does ~~shall~~ not make that person an agent of the owner or tenant.

(d) For mangrove trimming or alteration violations, the department shall assess a penalty of $7,500 ~~$5,000~~ per violation against the contractor or agent of the owner or tenant that conducts mangrove trimming or alteration without a permit as required by s. 403.9328. For purposes of this paragraph, the preparation or signing of a permit application by a person currently licensed under chapter 471 to practice as a professional engineer does ~~shall~~ not make that person an agent of the owner or tenant.

(e) For solid waste violations, the department shall assess a penalty of $3,000 ~~$2,000~~ for the unpermitted or unauthorized disposal or storage of solid waste; plus $1,000 if

the solid waste is Class I or Class III (excluding yard trash) or if the solid waste is construction and demolition debris in excess of 20 cubic yards, plus $1,500 ~~$1,000~~ if the waste is disposed of or stored in any natural or artificial body of water or within 500 feet of a potable water well, plus $1,500 ~~$1,000~~ if the waste contains PCB at a concentration of 50 parts per million or greater; untreated biomedical waste; friable asbestos greater than 1 cubic meter which is not wetted, bagged, and covered; used oil greater than 25 gallons; or 10 or more lead acid batteries. The department shall assess a penalty of $4,500 ~~$3,000~~ for failure to properly maintain leachate control; unauthorized burning; failure to have a trained spotter on duty at the working face when accepting waste; or failure to provide access control for three consecutive inspections. The department shall assess a penalty of $3,000 ~~$2,000~~ for failure to construct or maintain a required stormwater management system.

(f) For an air emission violation, the department shall assess a penalty of $1,500 ~~$1,000~~ for an unpermitted or unauthorized air emission or an air-emission-permit exceedance, ~~plus $1,000 if the emission results in an air quality violation,~~ plus $4,500 ~~$3,000~~ if the emission was from a major source and the source was major for the pollutant in violation; plus $1,500 ~~$1,000~~ if the emission was more than 150 percent of the allowable level.

(g) For storage tank system and petroleum contamination

violations, the department shall assess a penalty of $7,500 ~~$5,000~~ for failure to empty a damaged storage system as necessary to ensure that a release does not occur until repairs to the storage system are completed; when a release has occurred from that storage tank system; for failure to timely recover free product; or for failure to conduct remediation or monitoring activities until a no-further-action or site-rehabilitation completion order has been issued. The department shall assess a penalty of $4,500 ~~$3,000~~ for failure to timely upgrade a storage tank system. The department shall assess a penalty of $3,000 ~~$2,000~~ for failure to conduct or maintain required release detection; failure to timely investigate a suspected release from a storage system; depositing motor fuel into an unregistered storage tank system; failure to timely assess or remediate petroleum contamination; or failure to properly install a storage tank system. The department shall assess a penalty of $1,500 ~~$1,000~~ for failure to properly operate, maintain, or close a storage tank system.

(4) In an administrative proceeding, in addition to the penalties that may be assessed under subsection (3), the department shall assess administrative penalties according to the following schedule:

(a) For failure to satisfy financial responsibility requirements or for violation of s. 377.371(1), $7,500 ~~$5,000~~.

(b) For failure to install, maintain, or use a required

pollution control system or device, $6,000 ~~$4,000~~.

(c) For failure to obtain a required permit before construction or modification, $4,500 ~~$3,000~~.

(d) For failure to conduct required monitoring or testing; failure to conduct required release detection; or failure to construct in compliance with a permit, $3,000 ~~$2,000~~.

(e) For failure to maintain required staff to respond to emergencies; failure to conduct required training; failure to prepare, maintain, or update required contingency plans; failure to adequately respond to emergencies to bring an emergency situation under control; or failure to submit required notification to the department, $1,500 ~~$1,000~~.

(f) Except as provided in subsection (2) with respect to public water systems serving a population of more than 10,000, for failure to prepare, submit, maintain, or use required reports or other required documentation, $750 ~~$500~~.

(5) Except as provided in subsection (2) with respect to public water systems serving a population of more than 10,000, for failure to comply with any other departmental regulatory statute or rule requirement not otherwise identified in this section, the department may assess a penalty of $1,000 ~~$500~~.

(6) For each additional day during which a violation occurs, the administrative penalties in subsections ~~subsection~~ (3), ~~subsection~~ (4), and ~~subsection~~ (5) may be assessed per day per violation.

(7) The history of noncompliance of the violator for any previous violation resulting in an executed consent order, but not including a consent order entered into without a finding of violation, or resulting in a final order or judgment after the effective date of this law involving the imposition of $3,000 ~~$2,000~~ or more in penalties shall be taken into consideration in the following manner:

(a) One previous such violation within 5 years prior to the filing of the notice of violation will result in a 25-percent per day increase in the scheduled administrative penalty.

(b) Two previous such violations within 5 years prior to the filing of the notice of violation will result in a 50-percent per day increase in the scheduled administrative penalty.

(c) Three or more previous such violations within 5 years prior to the filing of the notice of violation will result in a 100-percent per day increase in the scheduled administrative penalty.

(8) The direct economic benefit gained by the violator from the violation, where consideration of economic benefit is provided by Florida law or required by federal law as part of a federally delegated or approved program, shall be added to the scheduled administrative penalty. The total administrative penalty, including any economic benefit added to the scheduled

administrative penalty, may ~~shall~~ not exceed $15,000 ~~$10,000~~.

(9) The administrative penalties assessed for any particular violation may ~~shall~~ not exceed $7,500 ~~$5,000~~ against any one violator, unless the violator has a history of noncompliance, the economic benefit of the violation as described in subsection (8) exceeds $7,500 ~~$5,000~~, or there are multiday violations. The total administrative penalties may ~~shall~~ not exceed $50,000 ~~$10,000~~ per assessment for all violations attributable to a specific person in the notice of violation.

(10) The administrative law judge may receive evidence in mitigation. The penalties identified in subsections ~~subsection~~ (3), ~~subsection~~ (4), and ~~subsection~~ (5) may be reduced up to 50 percent by the administrative law judge for mitigating circumstances, including good faith efforts to comply prior to or after discovery of the violations by the department. Upon an affirmative finding that the violation was caused by circumstances beyond the reasonable control of the respondent and could not have been prevented by respondent's due diligence, the administrative law judge may further reduce the penalty.

(11) Penalties collected pursuant to this section shall be deposited into the Water Quality Assurance Trust Fund or other trust fund designated by statute and shall be used to fund the restoration of ecosystems, or polluted areas of the state, as defined by the department, to their condition before pollution

occurred. The Florida Conflict Resolution Consortium may use a portion of the fund to administer the mediation process provided in paragraph (2)(e) and to contract with private mediators for administrative penalty cases.

(12) The purpose of the administrative penalty schedule and process is to provide a more predictable and efficient manner for individuals and businesses to resolve relatively minor environmental disputes. Subsections (3)-(7) may ~~Subsection (3), subsection (4), subsection (5), subsection (6), or subsection (7) shall~~ not be construed as limiting a state court in the assessment of damages. The administrative penalty schedule does not apply to the judicial imposition of civil penalties in state court as provided in this section.

Section 15. Subsection (1) of section 403.141, Florida Statutes, is amended to read:

403.141 Civil liability; joint and several liability.—

(1) A person who ~~Whoever~~ commits a violation specified in s. 403.161(1) is liable to the state for any damage caused to the air, waters, or property, including animal, plant, or aquatic life, of the state and for reasonable costs and expenses of the state in tracing the source of the discharge, in controlling and abating the source and the pollutants, and in restoring the air, waters, and property, including animal, plant, and aquatic life, of the state to their former condition, and furthermore is subject to the judicial imposition of a civil

penalty for each offense in an amount of not more than $15,000 ~~$10,000~~ per offense. However, the court may receive evidence in mitigation. Until a violation is resolved by order or judgment, each day during any portion of which such violation occurs or is not remediated constitutes a separate offense. Nothing herein gives ~~shall give~~ the department the right to bring an action on behalf of any private person.

Section 16. Subsections (2) through (5) of section 403.161, Florida Statutes, are amended to read:

403.161 Prohibitions, violation, penalty, intent.—

(2) A person who ~~Whoever~~ commits a violation specified in subsection (1) is liable to the state for any damage caused and for civil penalties as provided in s. 403.141.

(3) A ~~Any~~ person who willfully commits a violation specified in paragraph (1)(a) commits ~~is guilty of~~ a felony of the third degree, punishable as provided in ss. 775.082(3)(e) and 775.083(1)(g) by a fine of not more than $50,000 or by imprisonment for 5 years, or by both, for each offense. Each day during any portion of which such violation occurs constitutes a separate offense.

(4) A ~~Any~~ person who commits a violation specified in paragraph (1)(a) or paragraph (1)(b) due to reckless indifference or gross careless disregard commits ~~is guilty of~~ a misdemeanor of the second degree, punishable as provided in ss. 775.082(4)(b) and 775.083(1)(g) by a fine of not more than

$10,000 ~~$5,000~~ or by 60 days in jail, or by both, for each offense.

(5) A ~~Any~~ person who willfully commits a violation specified in paragraph (1)(b) or who commits a violation specified in paragraph (1)(c) commits ~~is guilty of~~ a misdemeanor of the first degree punishable as provided in ss. 775.082(4)(a) and 775.083(1)(g) by a fine of not more than $10,000 or by 6 months in jail, or by both for each offense.

Section 17. Paragraph (a) of subsection (6) of section 403.413, Florida Statutes, is amended to read:

403.413 Florida Litter Law.—

(6) PENALTIES; ENFORCEMENT.—

(a) Any person who dumps litter in violation of subsection (4) in an amount not exceeding 15 pounds in weight or 27 cubic feet in volume and not for commercial purposes commits ~~is guilty of~~ a noncriminal infraction, punishable by a civil penalty of $150 ~~$100~~, from which $50 shall be deposited into the Solid Waste Management Trust Fund to be used for the solid waste management grant program pursuant to s. 403.7095. In addition, the court may require the violator to pick up litter or perform other labor commensurate with the offense committed.

Section 18. Subsection (5) of section 403.7234, Florida Statutes, is amended to read:

403.7234 Small quantity generator notification and verification program.—

(5) Any small quantity generator who does not comply with the requirements of subsection (4) and who has received a notification and survey in person or through one certified letter from the county is subject to a fine of between $75 ~~$50~~ and $150 ~~$100~~ per day for a maximum of 100 days. The county may collect such fines and deposit them in its general revenue fund. Fines collected by the county shall be used to carry out the notification and verification procedure established in this section. If there are excess funds after the notification and verification procedures have been completed, such funds shall be used for hazardous and solid waste management purposes only.

Section 19. Subsection (3) of section 403.726, Florida Statutes, is amended to read:

403.726 Abatement of imminent hazard caused by hazardous substance.—

(3) An imminent hazard exists if any hazardous substance creates an immediate and substantial danger to human health, safety, or welfare or to the environment. The department may institute action in its own name, using the procedures and remedies of s. 403.121 or s. 403.131, to abate an imminent hazard. However, the department is authorized to recover a civil penalty of not more than $37,500 ~~$25,000~~ for each day until a ~~of continued~~ violation is resolved by order or judgment. Whenever serious harm to human health, safety, and welfare; the environment; or private or public property may occur prior to

completion of an administrative hearing or other formal proceeding that which might be initiated to abate the risk of serious harm, the department may obtain, ex parte, an injunction without paying filing and service fees prior to the filing and service of process.

Section 20. Paragraph (a) of subsection (3) of section 403.727, Florida Statutes, is amended to read:

403.727 Violations; defenses, penalties, and remedies.—

(3) Violations of the provisions of this act are punishable as follows:

(a) Any person who violates ~~the provisions of~~ this act, the rules or orders of the department, or the conditions of a permit is liable to the state for any damages specified in s. 403.141 and for a civil penalty of not more than $75,000 ~~$50,000~~ for each day of continued violation or until a violation is resolved by order or judgment, except as otherwise provided herein. The department may revoke any permit issued to the violator. In any action by the department against a small hazardous waste generator for the improper disposal of hazardous wastes, a rebuttable presumption of improper disposal shall be created if the generator was notified pursuant to s. 403.7234; the generator shall then have the burden of proving that the disposal was proper. If the generator was not so notified, the burden of proving improper disposal shall be placed upon the department.

Section 21. Subsection (8) of section 403.93345, Florida Statutes, is amended to read:

403.93345 Coral reef protection.—

(8) In addition to the compensation described in subsection (5), the department may assess, per occurrence, civil penalties according to the following schedule:

(a) For any anchoring of a vessel on a coral reef or for any other damage to a coral reef totaling less than or equal to an area of 1 square meter, $225 ~~$150~~, provided that a responsible party who has anchored a recreational vessel as defined in s. 327.02 which is lawfully registered or exempt from registration pursuant to chapter 328 is issued, at least once, a warning letter in lieu of penalty; with aggravating circumstances, an additional $225 ~~$150~~; occurring within a state park or aquatic preserve, an additional $225 ~~$150~~.

(b) For damage totaling more than an area of 1 square meter but less than or equal to an area of 10 square meters, $450 ~~$300~~ per square meter; with aggravating circumstances, an additional $450 ~~$300~~ per square meter; occurring within a state park or aquatic preserve, an additional $450 ~~$300~~ per square meter.

(c) For damage exceeding an area of 10 square meters, $1,500 ~~$1,000~~ per square meter; with aggravating circumstances, an additional $1,500 ~~$1,000~~ per square meter; occurring within a state park or aquatic preserve, an additional $1,500 ~~$1,000~~ per

square meter.

(d) For a second violation, the total penalty may be doubled.

(e) For a third violation, the total penalty may be tripled.

(f) For any violation after a third violation, the total penalty may be quadrupled.

(g) The total of penalties levied may not exceed $375,000 ~~$250,000~~ per occurrence.

Section 22. For the purpose of incorporating the amendment made by this act to s. 376.16, Florida Statutes, in a reference thereto, subsection (5) of s. 823.11, Florida Statutes, is reenacted to read:

823.11 Derelict vessels; relocation or removal; penalty.—

(5) A person, firm, or corporation violating this section commits a misdemeanor of the first degree and shall be punished as provided by law. A conviction under this section does not bar the assessment and collection of the civil penalty provided in s. 376.16 for violation of s. 376.15. The court having jurisdiction over the criminal offense, notwithstanding any jurisdictional limitations on the amount in controversy, may order the imposition of such civil penalty in addition to any sentence imposed for the first criminal offense.

Section 23. For the purpose of incorporating the amendment made by this act to section 403.121, Florida Statutes, in a

reference thereto, subsection (5) of section 403.077, Florida Statutes, is reenacted to read:

403.077 Public notification of pollution.—

(5) VIOLATIONS.—Failure to provide the notification required by subsection (2) shall subject the owner or operator to the civil penalties specified in s. 403.121.

Section 24. For the purpose of incorporating the amendment made by this act to section 403.121, Florida Statutes, in a reference thereto, subsection (2) of section 403.131, Florida Statutes, is reenacted to read:

403.131 Injunctive relief, remedies.—

(2) All the judicial and administrative remedies to recover damages and penalties in this section and s. 403.121 are alternative and mutually exclusive.

Section 25. For the purpose of incorporating the amendment made by this act to section 403.121, Florida Statutes, in a reference thereto, paragraph (d) of subsection (3) of section 403.4154, Florida Statutes, is reenacted to read:

403.4154 Phosphogypsum management program.—

(3) ABATEMENT OF IMMINENT HAZARD.—

(d) If the department determines that the failure of an owner or operator to comply with department rules requiring demonstration of financial responsibility or that the physical condition, maintenance, operation, or closure of a phosphogypsum stack system poses an imminent hazard, the department shall

request access to the property on which such stack system is located from the owner or operator of the stack system for the purposes of taking action to abate or substantially reduce the imminent hazard. If the department, after reasonable effort, is unable to timely obtain the necessary access to abate or substantially reduce the imminent hazard, the department may institute action in its own name, using the procedures and remedies of s. 403.121 or s. 403.131, to abate or substantially reduce an imminent hazard. Whenever serious harm to human health, safety, or welfare, to the environment, or to private or public property may occur prior to completion of an administrative hearing or other formal proceeding that might be initiated to abate the risk of serious harm, the department may obtain from the court, ex parte, an injunction without paying filing and service fees prior to the filing and service of process.

Section 26. For the purpose of incorporating the amendment made by this act to section 403.121, Florida Statutes, in a reference thereto, subsection (5) of section 403.860, Florida Statutes, is reenacted to read:

403.860 Penalties and remedies.—

(5) In addition to any judicial or administrative remedy authorized by this part, the department or a county health department that has received approval by the department pursuant to s. 403.862(1)(c) shall assess administrative penalties for

violations of this section in accordance with s. 403.121.

Section 27. For the purpose of incorporating the amendment made by this act to section 403.141, Florida Statutes, in a reference thereto, subsection (10) of section 403.708, Florida Statutes, is reenacted to read:

403.708 Prohibition; penalty.—

(10) Violations of this part or rules, regulations, permits, or orders issued thereunder by the department and violations of approved local programs of counties or municipalities or rules, regulations, or orders issued thereunder are punishable by a civil penalty as provided in s. 403.141.

Section 28. For the purpose of incorporating the amendment made by this act to section 403.141, Florida Statutes, in a reference thereto, subsection (7) of section 403.7191, Florida Statutes, is reenacted to read:

403.7191 Toxics in packaging.—

(7) ENFORCEMENT.—It is unlawful for any person to:

(a) Violate any provision of this section or any rule adopted or order issued thereunder by the department.

(b) Tender for sale to a purchaser any package, packaging component, or packaged product in violation of this section or any rule adopted or order issued thereunder.

(c) Furnish a certificate of compliance with respect to any package or packaging component which does not comply with the provisions of subsection (3).

(d) Provide a certificate of compliance that contains false information.

Violations shall be punishable by a civil penalty as provided in s. 403.141.

Section 29. For the purpose of incorporating the amendment made by this act to section 403.141, Florida Statutes, in a reference thereto, section 403.811, Florida Statutes, is reenacted to read:

403.811 Dredge and fill permits issued pursuant to this chapter and s. 373.414.—Permits or other orders addressing dredging and filling in, on, or over waters of the state issued pursuant to this chapter or s. 373.414(9) before the effective date of rules adopted under s. 373.414(9) and permits or other orders issued in accordance with s. 373.414(13), (14), (15), or (16) shall remain valid through the duration specified in the permit or order, unless revoked by the agency issuing the permit. The agency issuing the permit or other order may seek to enjoin the violation of, or to enforce compliance with, the permit or other order as provided in ss. 403.121, 403.131, 403.141, and 403.161. A violation of a permit or other order addressing dredging or filling issued pursuant to this chapter

is punishable by a civil penalty as provided in s. 403.141 or a criminal penalty as provided in s. 403.161.

Section 30. For the purpose of incorporating the amendments made by this act to sections 403.141 and 403.161, Florida Statutes, in references thereto, subsection (8) of section 403.7186, Florida Statutes, is reenacted to read:

403.7186 Environmentally sound management of mercury-containing devices and lamps.—

(8) CIVIL PENALTY.—A person who engages in any act or practice declared in this section to be prohibited or unlawful, or who violates any of the rules of the department promulgated under this section, is liable to the state for any damage caused and for civil penalties in accordance with s. 403.141. The provisions of s. 403.161 are not applicable to this section. The penalty may be waived if the person previously has taken appropriate corrective action to remedy the actual damages, if any, caused by the unlawful act or practice or rule violation. A civil penalty so collected shall accrue to the state and shall be deposited as received into the Solid Waste Management Trust Fund for the purposes specified in paragraph (5)(a).

Section 31. For the purpose of incorporating the amendment made by this act to section 403.161, Florida Statutes, in a reference thereto, subsection (2) of section 403.7255, Florida Statutes, is reenacted to read:

403.7255 Placement of signs.—

(2) Violations of this act are punishable as provided in s. 403.161(4).

Section 32. This act shall take effect July 1, 2020.

COMMITTEE/SUBCOMMITTEE ACTION

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

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

Amendment (with title amendment)

Remove everything after the enacting clause and insert:

Section 1. Subsection (1) of section 161.054, Florida Statutes, is amended to read:

161.054 Administrative fines; liability for damage; liens.—

(1) In addition to the penalties provided for in ss. 161.052, 161.053, and 161.121, any person, firm, corporation, or governmental agency, or agent thereof, refusing to comply with or willfully violating ~~any of the provisions of~~ s. 161.041, s. 161.052, or s. 161.053, or any rule or order prescribed by the department thereunder, shall incur a fine for each offense in an amount up to $15,000 ~~$10,000~~ to be fixed, imposed, and collected

by the department. Each day during any portion of which such violation occurs constitutes a separate offense.

Section 2. Subsection (7) of section 258.397, Florida Statutes, is amended to read:

258.397 Biscayne Bay Aquatic Preserve.—

(7) ENFORCEMENT.—~~The provisions of~~ This section may be enforced in accordance with ~~the provisions of~~ s. 403.412. In addition, the Department of Legal Affairs may ~~is authorized to~~ bring an action for civil penalties of $7,500 ~~$5,000~~ per day against any person, natural or corporate, who violates ~~the provisions of~~ this section or any rule or regulation issued hereunder. Each day during any portion of which such violation occurs constitutes a separate offense. Enforcement of applicable state regulations shall be supplemented by the Miami-Dade County Department of Environmental Resources Management through the creation of a full-time enforcement presence along the Miami River.

Section 3. Section 258.46, Florida Statutes, is amended to read:

258.46 Enforcement; violations; penalty.—~~The provisions of~~ This act may be enforced by the Board of Trustees of the Internal Improvement Trust Fund or in accordance with ~~the provisions of~~ s. 403.412. However, any violation by any person, natural or corporate, of ~~the provisions of~~ this act or any rule or regulation issued hereunder is ~~shall be~~ further punishable by

a civil penalty of not less than $750 ~~$500~~ per day or more than $7,500 ~~$5,000~~ per day of such violation. Each day during any portion of which such violation occurs constitutes a separate offense.

Section 4. Subsections (5) and (7) of section 373.129, Florida Statutes, are amended to read:

373.129 Maintenance of actions.—The department, the governing board of any water management district, any local board, or a local government to which authority has been delegated pursuant to s. 373.103(8), is authorized to commence and maintain proper and necessary actions and proceedings in any court of competent jurisdiction for any of the following purposes:

(5) To recover a civil penalty for each offense in an amount not to exceed $15,000 ~~$10,000~~ per offense. Each date during which such violation occurs constitutes a separate offense.

(a) A civil penalty recovered by a water management district pursuant to this subsection shall be retained and used exclusively by the water management district that collected the money. A civil penalty recovered by the department pursuant to this subsection must be deposited into the Water Quality Assurance Trust Fund established under s. 376.307.

(b) A local government that is delegated authority pursuant to s. 373.103(8) may deposit a civil penalty recovered

pursuant to this subsection into a local water pollution control program trust fund, notwithstanding ~~the provisions of~~ paragraph (a). However, civil penalties that are deposited in a local water pollution control program trust fund and that are recovered for violations of state water quality standards may be used only to restore water quality in the area that was the subject of the action, and civil penalties that are deposited in a local water pollution control program trust fund and that are recovered for violation of requirements relating to water quantity may be used only to purchase lands and make capital improvements associated with surface water management, or other purposes consistent with the requirements of this chapter for the management and storage of surface water.

(7) To enforce ~~the provisions of~~ part IV of this chapter in the same manner and to the same extent as provided in ss. 373.430, 403.121(1) and (2), 403.131, 403.141, and 403.161.

Section 5. Subsection (3) of section 373.209, Florida Statutes, is amended to read:

373.209 Artesian wells; penalties for violation.—

(3) Any person who violates ~~any provision of~~ this section is ~~shall be~~ subject to either:

(a) The remedial measures provided for in s. 373.436; or

(b) A civil penalty of $150 ~~$100~~ a day for each and every day of such violation and for each and every act of violation. The civil penalty may be recovered by the water management board

of the water management district in which the well is located or by the department in a suit in a court of competent jurisdiction in the county where the defendant resides, in the county of residence of any defendant if there is more than one defendant, or in the county where the violation took place. The place of suit shall be selected by the board or department, and the suit, by direction of the board or department, shall be instituted and conducted in the name of the board or department by appropriate counsel. The payment of any such damages does not impair or abridge any cause of action which any person may have against the person violating ~~any provision of~~ this section.

Section 6. Subsections (2) through (5) of section 373.430, Florida Statutes, are amended to read:

373.430 Prohibitions, violation, penalty, intent.—

(2) A person who ~~Whoever~~ commits a violation specified in subsection (1) is liable for any damage caused and for civil penalties as provided in s. 373.129.

(3) A ~~Any~~ person who willfully commits a violation specified in paragraph (1)(a) commits ~~is guilty of~~ a felony of the third degree, punishable as provided in ss. 775.082(3)(e) and 775.083(1)(g), by a fine of not more than $50,000 or by imprisonment for 5 years, or by both, for each offense. Each day during any portion of which such violation occurs constitutes a separate offense.

(4) A ~~Any~~ person who commits a violation specified in paragraph (1)(a) or paragraph (1)(b) due to reckless indifference or gross careless disregard commits ~~is guilty of~~ a misdemeanor of the second degree, punishable as provided in ss. 775.082(4)(b) and 775.083(1)(g), by a fine of not more than $10,000 ~~$5,000~~ or 60 days in jail, or by both, for each offense.

(5) A ~~Any~~ person who willfully commits a violation specified in paragraph (1)(b) or who commits a violation specified in paragraph (1)(c) commits ~~is guilty of~~ a misdemeanor of the first degree, punishable as provided in ss. 775.082(4)(a) and 775.083(1)(g), by a fine of not more than $10,000 or by 6 months in jail, or by both, for each offense.

Section 7. Paragraphs (a) and (e) of subsection (5) of section 376.065, Florida Statutes, are amended to read:

376.065 Operation of terminal facility without discharge prevention and response certificate prohibited; penalty.—

(5)(a) A person who violates this section or the terms and requirements of such certification commits a noncriminal infraction. The civil penalty for any such infraction shall be $750 ~~$500~~, except as otherwise provided in this section.

(e) A person who elects to appear before the county court or who is required to so appear waives the limitations of the civil penalty specified in paragraph (a). The court, after a hearing, shall make a determination as to whether an infraction

has been committed. If the commission of the infraction is proved, the court shall impose a civil penalty of $750 ~~$500~~.

Section 8. Paragraphs (a) and (e) of subsection (2) of section 376.071, Florida Statutes, are amended to read:

376.071 Discharge contingency plan for vessels.—

(2)(a) A master of a vessel that violates subsection (1) commits a noncriminal infraction and shall be cited for such infraction. The civil penalty for such an infraction shall be $7,500 ~~$5,000~~, except as otherwise provided in this subsection.

(e) A person who elects to appear before the county court or who is required to appear waives the limitations of the civil penalty specified in paragraph (a). The court, after a hearing, shall make a determination as to whether an infraction has been committed. If the commission of the infraction is proved, the court shall impose a civil penalty of $7,500 ~~$5,000~~.

Section 9. Section 376.16, Florida Statutes, is amended to read:

376.16 Enforcement and penalties.—

(1) It is unlawful for any person to violate ~~any provision of~~ ss. 376.011-376.21 or any rule or order of the department made pursuant to this act. A violation is ~~shall be~~ punishable by a civil penalty of up to $75,000 ~~$50,000~~ per violation per day to be assessed by the department. Each day during any portion of which the violation occurs constitutes a separate offense. The penalty provisions of this subsection do ~~shall~~ not apply to any

discharge promptly reported and removed by a person responsible, in accordance with the rules and orders of the department, or to any discharge of pollutants equal to or less than 5 gallons.

(2) In addition to the penalty provisions which may apply under subsection (1), a person responsible for two or more discharges of any pollutant reported pursuant to s. 376.12 within a 12-month period at the same facility commits a noncriminal infraction and shall be cited by the department for such infraction.

(a) For discharges of gasoline or diesel over 5 gallons, the civil penalty for the second discharge shall be $750 ~~$500~~ and the civil penalty for each subsequent discharge within a 12-month period shall be $1,500 ~~$1,000~~, except as otherwise provided in this section.

(b) For discharges of any pollutant other than gasoline or diesel, the civil penalty for a second discharge shall be $3,750 ~~$2,500~~ and the civil penalty for each subsequent discharge within a 12-month period shall be $7,500 ~~$5,000~~, except as otherwise provided in this section.

(3) A person responsible for two or more discharges of any pollutant reported pursuant to s. 376.12 within a 12-month period at the same facility commits a noncriminal infraction and shall be cited by the department for such infraction.

(a) For discharges of gasoline or diesel equal to or less than 5 gallons, the civil penalty shall be $75 ~~$50~~ for each discharge subsequent to the first.

(b) For discharges of pollutants other than gasoline or diesel equal to or less than 5 gallons, the civil penalty shall be $150 ~~$100~~ for each discharge subsequent to the first.

(4) A person charged with a noncriminal infraction pursuant to subsection (2) or subsection (3) may:

(a) Pay the civil penalty;

(b) Post a bond equal to the amount of the applicable civil penalty; or

(c) Sign and accept a citation indicating a promise to appear before the county court.

The department employee authorized to issue these citations may indicate on the citation the time and location of the scheduled hearing and shall indicate the applicable civil penalty.

(5) Any person who willfully refuses to post bond or accept and sign a citation commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(6) After compliance with paragraph (4)(b) or paragraph (4)(c), any person charged with a noncriminal infraction under subsection (2) or subsection (3) may:

(a) Pay the civil penalty, either by mail or in person, within 30 days after the date of receiving the citation; or

(b) If the person has posted bond, forfeit the bond by not appearing at the designated time and location.

A person cited for an infraction under this section who pays the civil penalty or forfeits the bond has admitted the infraction and waives the right to a hearing on the issue of commission of the infraction. Such admission may not be used as evidence in any other proceeding.

(7) Any person who elects to appear before the county court or who is required to appear waives the limitations of the civil penalties specified in subsection (2). The court, after a hearing, shall make a determination as to whether an infraction has been committed. If the commission of an infraction is proved, the court may impose a civil penalty up to, but not exceeding, $750 ~~$500~~ for the second discharge of gasoline or diesel and a civil penalty up to, but not exceeding, $1,500 ~~$1,000~~ for each subsequent discharge of gasoline or diesel within a 12-month period.

(8) Any person who elects to appear before the county court or who is required to appear waives the limitations of the civil penalties specified in subsection (2) or subsection (3). The court, after a hearing, shall make a determination as to whether an infraction has been committed. If the commission of an infraction is proved, the court may impose a civil penalty up to, but not exceeding, $7,500 ~~$5,000~~ for the second discharge of

pollutants other than gasoline or diesel and a civil penalty up to, but not exceeding, $15,000 ~~$10,000~~ for each subsequent discharge of pollutants other than gasoline or diesel within a 12-month period.

(9) At a hearing under this section, the commission of a charged offense must be proved by the greater weight of the evidence.

(10) A person who is found by a hearing official to have committed an infraction may appeal that finding to the circuit court.

(11) Any person who has not posted bond and who neither pays the applicable civil penalty, as specified in subsection (2) or subsection (3) within 30 days of receipt of the citation nor appears before the court commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(12) Any person who makes or causes to be made a false statement that ~~which~~ the person does not believe to be true in response to requirements of ~~the provisions of~~ ss. 376.011-376.21 commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Section 10. Paragraph (a) of subsection (6) of section 376.25, Florida Statutes, is amended to read:

376.25 Gambling vessels; registration; required and prohibited releases.—

(6) PENALTIES.—

(a) A person who violates this section is subject to a civil penalty of not more than $75,000 ~~$50,000~~ for each violation. Each day during any portion of which such violation occurs constitutes a separate offense.

Section 11. Paragraph (a) of subsection (1) of section 377.37, Florida Statutes, is amended to read:

377.37 Penalties.—

(1)(a) Any person who violates ~~any provision of~~ this law or any rule, regulation, or order of the division made under this chapter or who violates the terms of any permit to drill for or produce oil, gas, or other petroleum products referred to in s. 377.242(1) or to store gas in a natural gas storage facility, or any lessee, permitholder, or operator of equipment or facilities used in the exploration for, drilling for, or production of oil, gas, or other petroleum products, or storage of gas in a natural gas storage facility, who refuses inspection by the division as provided in this chapter, is liable to the state for any damage caused to the air, waters, or property, including animal, plant, or aquatic life, of the state and for reasonable costs and expenses of the state in tracing the source of the discharge, in controlling and abating the source and the pollutants, and in restoring the air, waters, and property, including animal, plant, and aquatic life, of the state. Furthermore, such person, lessee, permitholder, or operator is subject to the judicial imposition of a civil penalty in an

amount of not more than $15,000 ~~$10,000~~ for each offense. However, the court may receive evidence in mitigation. Each day during any portion of which such violation occurs constitutes a separate offense. This section does not ~~Nothing herein shall~~ give the department the right to bring an action on behalf of any private person.

Section 12. Subsection (2) of section 378.211, Florida Statutes, is amended to read:

378.211 Violations; damages; penalties.—

(2) The department may institute a civil action in a court of competent jurisdiction to impose and recover a civil penalty for violation of this part or of any rule adopted or order issued pursuant to this part. The penalty may ~~shall~~ not exceed the following amounts, and the court shall consider evidence in mitigation:

(a) For violations of a minor or technical nature, $150 ~~$100~~ per violation.

(b) For major violations by an operator on which a penalty has not been imposed under this paragraph during the previous 5 years, $1,500 ~~$1,000~~ per violation.

(c) For major violations not covered by paragraph (b), $7,500 ~~$5,000~~ per violation.

Subject to ~~the provisions of~~ subsection (4), each day or any portion thereof in which the violation continues shall constitute a separate violation.

Section 13. Subsection (2) of section 403.086, Florida Statutes, is amended to read:

403.086 Sewage disposal facilities; advanced and secondary waste treatment.—

(2) Any facilities for sanitary sewage disposal shall provide for secondary waste treatment and, in addition thereto, advanced waste treatment as deemed necessary and ordered by the Department of Environmental Protection. Failure to conform shall be punishable by a civil penalty of $750 ~~$500~~ for each 24-hour day or fraction thereof that such failure is allowed to continue thereafter.

Section 14. Section 403.121, Florida Statutes, is amended to read:

403.121 Enforcement; procedure; remedies.—The department shall have the following judicial and administrative remedies available to it for violations of this chapter, as specified in s. 403.161(1).

(1) Judicial remedies:

(a) The department may institute a civil action in a court of competent jurisdiction to establish liability and to recover damages for any injury to the air, waters, or property,

including animal, plant, and aquatic life, of the state caused by any violation.

(b) The department may institute a civil action in a court of competent jurisdiction to impose and to recover a civil penalty for each violation in an amount of not more than $15,000 ~~$10,000~~ per offense. However, the court may receive evidence in mitigation. Each day during any portion of which such violation occurs constitutes a separate offense.

(c) Except as provided in paragraph (2)(c), it is ~~shall~~ not ~~be~~ a defense to, or ground for dismissal of, these judicial remedies for damages and civil penalties that the department has failed to exhaust its administrative remedies, has failed to serve a notice of violation, or has failed to hold an administrative hearing prior to the institution of a civil action.

(2) Administrative remedies:

(a) The department may institute an administrative proceeding to establish liability and to recover damages for any injury to the air, waters, or property, including animal, plant, or aquatic life, of the state caused by any violation. The department may order that the violator pay a specified sum as damages to the state. Judgment for the amount of damages determined by the department may be entered in any court having jurisdiction thereof and may be enforced as any other judgment.

(b) If the department has reason to believe a violation has occurred, it may institute an administrative proceeding to order the prevention, abatement, or control of the conditions creating the violation or other appropriate corrective action. Except for violations involving hazardous wastes, asbestos, or underground injection, the department shall proceed administratively in all cases in which the department seeks administrative penalties that do not exceed $50,000 ~~$10,000~~ per assessment as calculated in accordance with subsections (3), (4), (5), (6), and (7). Pursuant to 42 U.S.C. s. 300g-2, the administrative penalty assessed pursuant to subsection (3), subsection (4), or subsection (5) against a public water system serving a population of more than 10,000 shall be not less than $1,000 per day per violation. The department may ~~shall~~ not impose administrative penalties in excess of $50,000 ~~$10,000~~ in a notice of violation. The department may ~~shall~~ not have more than one notice of violation seeking administrative penalties pending against the same party at the same time unless the violations occurred at a different site or the violations were discovered by the department subsequent to the filing of a previous notice of violation.

(c) An administrative proceeding shall be instituted by the department's serving of a written notice of violation upon the alleged violator by certified mail. If the department is unable to effect service by certified mail, the notice of

violation may be hand delivered or personally served in accordance with chapter 48. The notice shall specify the ~~provision of the~~ law, rule, regulation, permit, certification, or order of the department alleged to be violated and the facts alleged to constitute a violation thereof. An order for corrective action, penalty assessment, or damages may be included with the notice. When the department is seeking to impose an administrative penalty for any violation by issuing a notice of violation, any corrective action needed to correct the violation or damages caused by the violation must be pursued in the notice of violation or they are waived. However, an ~~no~~ order is not ~~shall become~~ effective until after service and an administrative hearing, if requested within 20 days after service. Failure to request an administrative hearing within this time period constitutes ~~shall constitute~~ a waiver thereof, unless the respondent files a written notice with the department within this time period opting out of the administrative process initiated by the department to impose administrative penalties. Any respondent choosing to opt out of the administrative process initiated by the department in an action that seeks the imposition of administrative penalties must file a written notice with the department within 20 days after service of the notice of violation opting out of the administrative process. A respondent's decision to opt out of the administrative process does not preclude the department from initiating a state court

action seeking injunctive relief, damages, and the judicial imposition of civil penalties.

(d) If a person timely files a petition challenging a notice of violation, that person will thereafter be referred to as the respondent. The hearing requested by the respondent shall be held within 180 days after the department has referred the initial petition to the Division of Administrative Hearings unless the parties agree to a later date. The department has the burden of proving with the preponderance of the evidence that the respondent is responsible for the violation. ~~No~~ Administrative penalties should not be imposed unless the department satisfies that burden. Following the close of the hearing, the administrative law judge shall issue a final order on all matters, including the imposition of an administrative penalty. When the department seeks to enforce that portion of a final order imposing administrative penalties pursuant to s. 120.69, the respondent may ~~shall~~ not assert as a defense the inappropriateness of the administrative remedy. The department retains its final-order authority in all administrative actions that do not request the imposition of administrative penalties.

(e) After filing a petition requesting a formal hearing in response to a notice of violation in which the department imposes an administrative penalty, a respondent may request that a private mediator be appointed to mediate the dispute by contacting the Florida Conflict Resolution Consortium within 10

days after receipt of the initial order from the administrative law judge. The Florida Conflict Resolution Consortium shall pay all of the costs of the mediator and for up to 8 hours of the mediator's time per case at $150 per hour. Upon notice from the respondent, the Florida Conflict Resolution Consortium shall provide to the respondent a panel of possible mediators from the area in which the hearing on the petition would be heard. The respondent shall select the mediator and notify the Florida Conflict Resolution Consortium of the selection within 15 days of receipt of the proposed panel of mediators. The Florida Conflict Resolution Consortium shall provide all of the administrative support for the mediation process. The mediation must be completed at least 15 days before the final hearing date set by the administrative law judge.

(f) In any administrative proceeding brought by the department, the prevailing party shall recover all costs as provided in ss. 57.041 and 57.071. The costs must be included in the final order. The respondent is the prevailing party when an order is entered awarding no penalties to the department and such order has not been reversed on appeal or the time for seeking judicial review has expired. The respondent is ~~shall be~~ entitled to an award of attorney's fees if the administrative law judge determines that the notice of violation issued by the department seeking the imposition of administrative penalties was not substantially justified as defined in s. 57.111(3)(e).

An ~~No~~ award of attorney's fees as provided by this subsection may not ~~shall~~ exceed $15,000.

(g) Nothing herein shall be construed as preventing any other legal or administrative action in accordance with law. Nothing in this subsection shall limit the department's authority provided in ss. 403.131, 403.141, and this section to judicially pursue injunctive relief. When the department exercises its authority to judicially pursue injunctive relief, penalties in any amount up to the statutory maximum sought by the department must be pursued as part of the state court action and not by initiating a separate administrative proceeding. The department retains the authority to judicially pursue penalties in excess of $50,000 ~~$10,000~~ for violations not specifically included in the administrative penalty schedule, or for multiple or multiday violations alleged to exceed a total of $50,000 ~~$10,000~~. The department also retains the authority provided in ss. 403.131, 403.141, and this section to judicially pursue injunctive relief and damages, if a notice of violation seeking the imposition of administrative penalties has not been issued. The department has the authority to enter into a settlement, either before or after initiating a notice of violation, and the settlement may include a penalty amount different from the administrative penalty schedule. Any case filed in state court because it is alleged to exceed a total of $50,000 ~~$10,000~~ in

penalties may be settled in the court action for less than $50,000 ~~$10,000~~.

(h) Chapter 120 applies ~~shall apply~~ to any administrative action taken by the department or any delegated program pursuing administrative penalties in accordance with this section.

(3) Except for violations involving hazardous wastes, asbestos, or underground injection, administrative penalties must be calculated according to the following schedule:

(a) For a drinking water contamination violation, the department shall assess a penalty of $3,000 ~~$2,000~~ for a Maximum Containment Level (MCL) violation; plus $1,500 ~~$1,000~~ if the violation is for a primary inorganic, organic, or radiological Maximum Contaminant Level or it is a fecal coliform bacteria violation; plus $1,500 ~~$1,000~~ if the violation occurs at a community water system; and plus $1,500 ~~$1,000~~ if any Maximum Contaminant Level is exceeded by more than 100 percent. For failure to obtain a clearance letter prior to placing a drinking water system into service when the system would not have been eligible for clearance, the department shall assess a penalty of $4,500 ~~$3,000~~.

(b) For failure to obtain a required wastewater permit, other than a permit required for surface water discharge, the department shall assess a penalty of $2,000 ~~$1,000~~. For a domestic or industrial wastewater violation not involving a surface water or groundwater quality violation, the department

shall assess a penalty of $4,000 ~~$2,000~~ for an unpermitted or unauthorized discharge or effluent-limitation exceedance. For an unpermitted or unauthorized discharge or effluent-limitation exceedance that resulted in a surface water or groundwater quality violation, the department shall assess a penalty of $10,000 ~~$5,000~~. Each day the cause of an unauthorized discharge of domestic wastewater is not addressed constitutes a separate offense.

(c) For a dredge and fill or stormwater violation, the department shall assess a penalty of $1,500 ~~$1,000~~ for unpermitted or unauthorized dredging or filling or unauthorized construction of a stormwater management system against the person or persons responsible for the illegal dredging or filling, or unauthorized construction of a stormwater management system plus $3,000 ~~$2,000~~ if the dredging or filling occurs in an aquatic preserve, an Outstanding Florida Water, a conservation easement, or a Class I or Class II surface water, plus $1,500 ~~$1,000~~ if the area dredged or filled is greater than one-quarter acre but less than or equal to one-half acre, and plus $1,500 ~~$1,000~~ if the area dredged or filled is greater than one-half acre but less than or equal to one acre. The administrative penalty schedule does ~~shall~~ not apply to a dredge and fill violation if the area dredged or filled exceeds one acre. The department retains the authority to seek the judicial imposition of civil penalties for all dredge and fill violations

involving more than one acre. The department shall assess a penalty of $4,500 ~~$3,000~~ for the failure to complete required mitigation, failure to record a required conservation easement, or for a water quality violation resulting from dredging or filling activities, stormwater construction activities or failure of a stormwater treatment facility. For stormwater management systems serving less than 5 acres, the department shall assess a penalty of $3,000 ~~$2,000~~ for the failure to properly or timely construct a stormwater management system. In addition to the penalties authorized in this subsection, the department shall assess a penalty of $7,500 ~~$5,000~~ per violation against the contractor or agent of the owner or tenant that conducts unpermitted or unauthorized dredging or filling. For purposes of this paragraph, the preparation or signing of a permit application by a person currently licensed under chapter 471 to practice as a professional engineer does ~~shall~~ not make that person an agent of the owner or tenant.

(d) For mangrove trimming or alteration violations, the department shall assess a penalty of $7,500 ~~$5,000~~ per violation against the contractor or agent of the owner or tenant that conducts mangrove trimming or alteration without a permit as required by s. 403.9328. For purposes of this paragraph, the preparation or signing of a permit application by a person currently licensed under chapter 471 to practice as a

professional engineer does ~~shall~~ not make that person an agent of the owner or tenant.

(e) For solid waste violations, the department shall assess a penalty of $3,000 ~~$2,000~~ for the unpermitted or unauthorized disposal or storage of solid waste; plus $1,000 if the solid waste is Class I or Class III (excluding yard trash) or if the solid waste is construction and demolition debris in excess of 20 cubic yards, plus $1,500 ~~$1,000~~ if the waste is disposed of or stored in any natural or artificial body of water or within 500 feet of a potable water well, plus $1,500 ~~$1,000~~ if the waste contains PCB at a concentration of 50 parts per million or greater; untreated biomedical waste; friable asbestos greater than 1 cubic meter which is not wetted, bagged, and covered; used oil greater than 25 gallons; or 10 or more lead acid batteries. The department shall assess a penalty of $4,500 ~~$3,000~~ for failure to properly maintain leachate control; unauthorized burning; failure to have a trained spotter on duty at the working face when accepting waste; or failure to provide access control for three consecutive inspections. The department shall assess a penalty of $3,000 ~~$2,000~~ for failure to construct or maintain a required stormwater management system.

(f) For an air emission violation, the department shall assess a penalty of $1,500 ~~$1,000~~ for an unpermitted or unauthorized air emission or an air-emission-permit exceedance, ~~plus $1,000 if the emission results in an air quality violation,~~

plus $4,500 ~~$3,000~~ if the emission was from a major source and the source was major for the pollutant in violation; plus $1,500 ~~$1,000~~ if the emission was more than 150 percent of the allowable level.

(g) For storage tank system and petroleum contamination violations, the department shall assess a penalty of $7,500 ~~$5,000~~ for failure to empty a damaged storage system as necessary to ensure that a release does not occur until repairs to the storage system are completed; when a release has occurred from that storage tank system; for failure to timely recover free product; or for failure to conduct remediation or monitoring activities until a no-further-action or site-rehabilitation completion order has been issued. The department shall assess a penalty of $4,500 ~~$3,000~~ for failure to timely upgrade a storage tank system. The department shall assess a penalty of $3,000 ~~$2,000~~ for failure to conduct or maintain required release detection; failure to timely investigate a suspected release from a storage system; depositing motor fuel into an unregistered storage tank system; failure to timely assess or remediate petroleum contamination; or failure to properly install a storage tank system. The department shall assess a penalty of $1,500 ~~$1,000~~ for failure to properly operate, maintain, or close a storage tank system.

(4) In an administrative proceeding, in addition to the penalties that may be assessed under subsection (3), the

department shall assess administrative penalties according to the following schedule:

(a) For failure to satisfy financial responsibility requirements or for violation of s. 377.371(1), $7,500 ~~$5,000~~.

(b) For failure to install, maintain, or use a required pollution control system or device, $6,000 ~~$4,000~~.

(c) For failure to obtain a required permit before construction or modification, $4,500 ~~$3,000~~.

(d) For failure to conduct required monitoring or testing; failure to conduct required release detection; or failure to construct in compliance with a permit, $3,000 ~~$2,000~~.

(e) For failure to maintain required staff to respond to emergencies; failure to conduct required training; failure to prepare, maintain, or update required contingency plans; failure to adequately respond to emergencies to bring an emergency situation under control; or failure to submit required notification to the department, $1,500 ~~$1,000~~.

(f) Except as provided in subsection (2) with respect to public water systems serving a population of more than 10,000, for failure to prepare, submit, maintain, or use required reports or other required documentation, $750 ~~$500~~.

(5) Except as provided in subsection (2) with respect to public water systems serving a population of more than 10,000, for failure to comply with any other departmental regulatory

statute or rule requirement not otherwise identified in this section, the department may assess a penalty of $1,000 ~~$500~~.

(6) For each additional day during which a violation occurs, the administrative penalties in subsections ~~subsection~~ (3), ~~subsection~~ (4), and ~~subsection~~ (5) may be assessed per day per violation.

(7) The history of noncompliance of the violator for any previous violation resulting in an executed consent order, but not including a consent order entered into without a finding of violation, or resulting in a final order or judgment after the effective date of this law involving the imposition of $3,000 ~~$2,000~~ or more in penalties shall be taken into consideration in the following manner:

(a) One previous such violation within 5 years prior to the filing of the notice of violation will result in a 25-percent per day increase in the scheduled administrative penalty.

(b) Two previous such violations within 5 years prior to the filing of the notice of violation will result in a 50-percent per day increase in the scheduled administrative penalty.

(c) Three or more previous such violations within 5 years prior to the filing of the notice of violation will result in a 100-percent per day increase in the scheduled administrative penalty.

(8) The direct economic benefit gained by the violator from the violation, where consideration of economic benefit is provided by Florida law or required by federal law as part of a federally delegated or approved program, shall be added to the scheduled administrative penalty. The total administrative penalty, including any economic benefit added to the scheduled administrative penalty, may ~~shall~~ not exceed $15,000 ~~$10,000~~.

(9) The administrative penalties assessed for any particular violation may ~~shall~~ not exceed $10,000 ~~$5,000~~ against any one violator, unless the violator has a history of noncompliance, the economic benefit of the violation as described in subsection (8) exceeds $10,000 ~~$5,000~~, or there are multiday violations. The total administrative penalties may ~~shall~~ not exceed $50,000 ~~$10,000~~ per assessment for all violations attributable to a specific person in the notice of violation.

(10) The administrative law judge may receive evidence in mitigation. The penalties identified in subsections ~~subsection~~ (3), ~~subsection~~ (4), and ~~subsection~~ (5) may be reduced up to 50 percent by the administrative law judge for mitigating circumstances, including good faith efforts to comply prior to or after discovery of the violations by the department. Upon an affirmative finding that the violation was caused by circumstances beyond the reasonable control of the respondent

and could not have been prevented by respondent's due diligence, the administrative law judge may further reduce the penalty.

(11) Penalties collected pursuant to this section shall be deposited into the Water Quality Assurance Trust Fund or other trust fund designated by statute and shall be used to fund the restoration of ecosystems, or polluted areas of the state, as defined by the department, to their condition before pollution occurred. The Florida Conflict Resolution Consortium may use a portion of the fund to administer the mediation process provided in paragraph (2)(e) and to contract with private mediators for administrative penalty cases.

(12) The purpose of the administrative penalty schedule and process is to provide a more predictable and efficient manner for individuals and businesses to resolve relatively minor environmental disputes. Subsections (3)-(7) may ~~Subsection (3), subsection (4), subsection (5), subsection (6), or subsection (7) shall~~ not be construed as limiting a state court in the assessment of damages. The administrative penalty schedule does not apply to the judicial imposition of civil penalties in state court as provided in this section.

Section 15. Subsection (1) of section 403.141, Florida Statutes, is amended to read:

403.141 Civil liability; joint and several liability.—

(1) A person who ~~Whoever~~ commits a violation specified in s. 403.161(1) is liable to the state for any damage caused to

the air, waters, or property, including animal, plant, or aquatic life, of the state and for reasonable costs and expenses of the state in tracing the source of the discharge, in controlling and abating the source and the pollutants, and in restoring the air, waters, and property, including animal, plant, and aquatic life, of the state to their former condition, and furthermore is subject to the judicial imposition of a civil penalty for each offense in an amount of not more than $15,000 ~~$10,000~~ per offense. However, the court may receive evidence in mitigation. Each day during any portion of which such violation occurs constitutes a separate offense. If a violation is an unauthorized discharge of domestic wastewater, each day the cause of the violation is not addressed constitutes a separate offense until the violation is resolved by order or judgment. Nothing herein gives ~~shall give~~ the department the right to bring an action on behalf of any private person.

Section 16. Subsections (2) through (5) of section 403.161, Florida Statutes, are amended to read:

403.161 Prohibitions, violation, penalty, intent.—

(2) A person who ~~Whoever~~ commits a violation specified in subsection (1) is liable to the state for any damage caused and for civil penalties as provided in s. 403.141.

(3) A ~~Any~~ person who willfully commits a violation specified in paragraph (1)(a) commits ~~is guilty of~~ a felony of the third degree, punishable as provided in ss. 775.082(3)(e)

and 775.083(1)(g) by a fine of not more than $50,000 or by imprisonment for 5 years, or by both, for each offense. Each day during any portion of which such violation occurs constitutes a separate offense.

(4) A ~~Any~~ person who commits a violation specified in paragraph (1)(a) or paragraph (1)(b) due to reckless indifference or gross careless disregard commits ~~is guilty of~~ a misdemeanor of the second degree, punishable as provided in ss. 775.082(4)(b) and 775.083(1)(g) by a fine of not more than $10,000 ~~$5,000~~ or by 60 days in jail, or by both, for each offense.

(5) A ~~Any~~ person who willfully commits a violation specified in paragraph (1)(b) or who commits a violation specified in paragraph (1)(c) commits ~~is guilty of~~ a misdemeanor of the first degree punishable as provided in ss. 775.082(4)(a) and 775.083(1)(g) by a fine of not more than $10,000 or by 6 months in jail, or by both for each offense.

Section 17. Paragraph (a) of subsection (6) of section 403.413, Florida Statutes, is amended to read:

403.413 Florida Litter Law.—

(6) PENALTIES; ENFORCEMENT.—

(a) Any person who dumps litter in violation of subsection (4) in an amount not exceeding 15 pounds in weight or 27 cubic feet in volume and not for commercial purposes commits ~~is guilty of~~ a noncriminal infraction, punishable by a civil penalty of

$150 ~~$100~~, from which $50 shall be deposited into the Solid Waste Management Trust Fund to be used for the solid waste management grant program pursuant to s. 403.7095. In addition, the court may require the violator to pick up litter or perform other labor commensurate with the offense committed.

Section 18. Subsection (5) of section 403.7234, Florida Statutes, is amended to read:

403.7234 Small quantity generator notification and verification program.—

(5) Any small quantity generator who does not comply with the requirements of subsection (4) and who has received a notification and survey in person or through one certified letter from the county is subject to a fine of between $75 ~~$50~~ and $150 ~~$100~~ per day for a maximum of 100 days. The county may collect such fines and deposit them in its general revenue fund. Fines collected by the county shall be used to carry out the notification and verification procedure established in this section. If there are excess funds after the notification and verification procedures have been completed, such funds shall be used for hazardous and solid waste management purposes only.

Section 19. Subsection (3) of section 403.726, Florida Statutes, is amended to read:

403.726 Abatement of imminent hazard caused by hazardous substance.—

(3) An imminent hazard exists if any hazardous substance creates an immediate and substantial danger to human health, safety, or welfare or to the environment. The department may institute action in its own name, using the procedures and remedies of s. 403.121 or s. 403.131, to abate an imminent hazard. However, the department is authorized to recover a civil penalty of not more than $37,500 ~~$25,000~~ for each day of continued violation. Whenever serious harm to human health, safety, and welfare; the environment; or private or public property may occur prior to completion of an administrative hearing or other formal proceeding that which might be initiated to abate the risk of serious harm, the department may obtain, ex parte, an injunction without paying filing and service fees prior to the filing and service of process.

Section 20. Paragraph (a) of subsection (3) of section 403.727, Florida Statutes, is amended to read:

403.727 Violations; defenses, penalties, and remedies.—

(3) Violations of the provisions of this act are punishable as follows:

(a) Any person who violates ~~the provisions of~~ this act, the rules or orders of the department, or the conditions of a permit is liable to the state for any damages specified in s. 403.141 and for a civil penalty of not more than $75,000 ~~$50,000~~ for each day of continued violation, except as otherwise provided herein. The department may revoke any permit issued to

the violator. In any action by the department against a small hazardous waste generator for the improper disposal of hazardous wastes, a rebuttable presumption of improper disposal shall be created if the generator was notified pursuant to s. 403.7234; the generator shall then have the burden of proving that the disposal was proper. If the generator was not so notified, the burden of proving improper disposal shall be placed upon the department.

Section 21. Subsection (8) of section 403.93345, Florida Statutes, is amended to read:

403.93345 Coral reef protection.—

(8) In addition to the compensation described in subsection (5), the department may assess, per occurrence, civil penalties according to the following schedule:

(a) For any anchoring of a vessel on a coral reef or for any other damage to a coral reef totaling less than or equal to an area of 1 square meter, $225 ~~$150~~, provided that a responsible party who has anchored a recreational vessel as defined in s. 327.02 which is lawfully registered or exempt from registration pursuant to chapter 328 is issued, at least once, a warning letter in lieu of penalty; with aggravating circumstances, an additional $225 ~~$150~~; occurring within a state park or aquatic preserve, an additional $225 ~~$150~~.

(b) For damage totaling more than an area of 1 square meter but less than or equal to an area of 10 square meters,

$450 ~~$300~~ per square meter; with aggravating circumstances, an additional $450 ~~$300~~ per square meter; occurring within a state park or aquatic preserve, an additional $450 ~~$300~~ per square meter.

(c) For damage exceeding an area of 10 square meters, $1,500 ~~$1,000~~ per square meter; with aggravating circumstances, an additional $1,500 ~~$1,000~~ per square meter; occurring within a state park or aquatic preserve, an additional $1,500 ~~$1,000~~ per square meter.

(d) For a second violation, the total penalty may be doubled.

(e) For a third violation, the total penalty may be tripled.

(f) For any violation after a third violation, the total penalty may be quadrupled.

(g) The total of penalties levied may not exceed $375,000 ~~$250,000~~ per occurrence.

Section 22. For the purpose of incorporating the amendment made by this act to s. 376.16, Florida Statutes, in a reference thereto, subsection (5) of s. 823.11, Florida Statutes, is reenacted to read:

823.11 Derelict vessels; relocation or removal; penalty.—

(5) A person, firm, or corporation violating this section commits a misdemeanor of the first degree and shall be punished as provided by law. A conviction under this section does not bar

the assessment and collection of the civil penalty provided in s. 376.16 for violation of s. 376.15. The court having jurisdiction over the criminal offense, notwithstanding any jurisdictional limitations on the amount in controversy, may order the imposition of such civil penalty in addition to any sentence imposed for the first criminal offense.

Section 23. For the purpose of incorporating the amendment made by this act to section 403.121, Florida Statutes, in a reference thereto, subsection (5) of section 403.077, Florida Statutes, is reenacted to read:

403.077 Public notification of pollution.—

(5) VIOLATIONS.—Failure to provide the notification required by subsection (2) shall subject the owner or operator to the civil penalties specified in s. 403.121.

Section 24. For the purpose of incorporating the amendment made by this act to section 403.121, Florida Statutes, in a reference thereto, subsection (2) of section 403.131, Florida Statutes, is reenacted to read:

403.131 Injunctive relief, remedies.—

(2) All the judicial and administrative remedies to recover damages and penalties in this section and s. 403.121 are alternative and mutually exclusive.

Section 25. For the purpose of incorporating the amendment made by this act to section 403.121, Florida Statutes, in a

reference thereto, paragraph (d) of subsection (3) of section 403.4154, Florida Statutes, is reenacted to read:

403.4154 Phosphogypsum management program.—

(3) ABATEMENT OF IMMINENT HAZARD.—

(d) If the department determines that the failure of an owner or operator to comply with department rules requiring demonstration of financial responsibility or that the physical condition, maintenance, operation, or closure of a phosphogypsum stack system poses an imminent hazard, the department shall request access to the property on which such stack system is located from the owner or operator of the stack system for the purposes of taking action to abate or substantially reduce the imminent hazard. If the department, after reasonable effort, is unable to timely obtain the necessary access to abate or substantially reduce the imminent hazard, the department may institute action in its own name, using the procedures and remedies of s. 403.121 or s. 403.131, to abate or substantially reduce an imminent hazard. Whenever serious harm to human health, safety, or welfare, to the environment, or to private or public property may occur prior to completion of an administrative hearing or other formal proceeding that might be initiated to abate the risk of serious harm, the department may obtain from the court, ex parte, an injunction without paying filing and service fees prior to the filing and service of process.

Section 26. For the purpose of incorporating the amendment made by this act to section 403.121, Florida Statutes, in a reference thereto, subsection (5) of section 403.860, Florida Statutes, is reenacted to read:

403.860 Penalties and remedies.—

(5) In addition to any judicial or administrative remedy authorized by this part, the department or a county health department that has received approval by the department pursuant to s. 403.862(1)(c) shall assess administrative penalties for violations of this section in accordance with s. 403.121.

Section 27. For the purpose of incorporating the amendment made by this act to section 403.141, Florida Statutes, in a reference thereto, subsection (10) of section 403.708, Florida Statutes, is reenacted to read:

403.708 Prohibition; penalty.—

(10) Violations of this part or rules, regulations, permits, or orders issued thereunder by the department and violations of approved local programs of counties or municipalities or rules, regulations, or orders issued thereunder are punishable by a civil penalty as provided in s. 403.141.

Section 28. For the purpose of incorporating the amendment made by this act to section 403.141, Florida Statutes, in a reference thereto, subsection (7) of section 403.7191, Florida Statutes, is reenacted to read:

403.7191 Toxics in packaging.—

(7) ENFORCEMENT.—It is unlawful for any person to:

(a) Violate any provision of this section or any rule adopted or order issued thereunder by the department.

(b) Tender for sale to a purchaser any package, packaging component, or packaged product in violation of this section or any rule adopted or order issued thereunder.

(c) Furnish a certificate of compliance with respect to any package or packaging component which does not comply with the provisions of subsection (3).

(d) Provide a certificate of compliance that contains false information.

Violations shall be punishable by a civil penalty as provided in s. 403.141.

Section 29. For the purpose of incorporating the amendment made by this act to section 403.141, Florida Statutes, in a reference thereto, section 403.811, Florida Statutes, is reenacted to read:

403.811 Dredge and fill permits issued pursuant to this chapter and s. 373.414.—Permits or other orders addressing dredging and filling in, on, or over waters of the state issued pursuant to this chapter or s. 373.414(9) before the effective date of rules adopted under s. 373.414(9) and permits or other orders issued in accordance with s. 373.414(13), (14), (15), or

(16) shall remain valid through the duration specified in the permit or order, unless revoked by the agency issuing the permit. The agency issuing the permit or other order may seek to enjoin the violation of, or to enforce compliance with, the permit or other order as provided in ss. 403.121, 403.131, 403.141, and 403.161. A violation of a permit or other order addressing dredging or filling issued pursuant to this chapter is punishable by a civil penalty as provided in s. 403.141 or a criminal penalty as provided in s. 403.161.

Section 30. For the purpose of incorporating the amendments made by this act to sections 403.141 and 403.161, Florida Statutes, in references thereto, subsection (8) of section 403.7186, Florida Statutes, is reenacted to read:

403.7186 Environmentally sound management of mercury-containing devices and lamps.—

(8) CIVIL PENALTY.—A person who engages in any act or practice declared in this section to be prohibited or unlawful, or who violates any of the rules of the department promulgated under this section, is liable to the state for any damage caused and for civil penalties in accordance with s. 403.141. The provisions of s. 403.161 are not applicable to this section. The penalty may be waived if the person previously has taken appropriate corrective action to remedy the actual damages, if any, caused by the unlawful act or practice or rule violation. A civil penalty so collected shall accrue to the state and shall

be deposited as received into the Solid Waste Management Trust Fund for the purposes specified in paragraph (5)(a).

Section 31. For the purpose of incorporating the amendment made by this act to section 403.161, Florida Statutes, in a reference thereto, subsection (2) of section 403.7255, Florida Statutes, is reenacted to read:

403.7255 Placement of signs.—

(2) Violations of this act are punishable as provided in s. 403.161(4).

Section 32. This act shall take effect July 1, 2020.

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

Remove everything before the enacting clause and insert:

An act relating to environmental enforcement; amending s. 161.054, F.S.; revising administrative penalties for violations of certain provisions relating to beach and shore construction and activities; making technical changes; amending ss. 258.397, 258.46, and 376.25, F.S.; revising civil penalties for violations of certain provisions relating to the Biscayne Bay Aquatic Preserve, aquatic preserves, and the Clean Ocean Act, respectively; providing that each day that certain violations occur constitutes a separate offense; making technical changes; amending ss. 373.129, 373.209, 376.065, 376.071, 376.16,

377.37, 378.211, 403.086, 403.413, 403.7234, and 403.93345, F.S.; revising civil penalties for violations of certain provisions relating to water resources, artesian wells, terminal facilities, discharge contingency plans for vessels, the Pollutant Discharge Prevention and Control Act, regulation of oil and gas resources, the Phosphate Land Reclamation Act, sewage disposal facilities, dumping litter, small quantity generators, and coral reef protection, respectively; making technical changes; amending ss. 373.430 and 403.161, F.S.; revising criminal penalties for violations of certain provisions relating to pollution and the environment; making technical changes; amending s. 403.121, F.S.; revising civil and administrative penalties for violations of certain provisions relating to pollution and the environment; providing that each day that certain violations occur constitutes a separate offense; increasing the amount of penalties that can be assessed administratively; making technical changes; amending s. 403.141, F.S.; revising civil penalties for violations of certain provisions relating to pollution and the environment; providing that each day that the cause of unauthorized discharges of domestic wastewater is not addressed constitutes a separate offense until the violation is resolved by order or judgment; amending ss. 403.726 and 403.727, F.S.; revising

civil penalties for violations of certain provisions relating to hazardous waste; making technical changes; reenacting s. 823.11(5), F.S., to incorporate the amendment made to s. 376.16, F.S., in a reference thereto; reenacting ss. 403.077(5), 403.131(2), 403.4154(3)(d), and 403.860(5), F.S., to incorporate the amendment made to s. 403.121, F.S., in references thereto; reenacting ss. 403.708(10), 403.7191(7), and 403.811, F.S., to incorporate the amendment made to s. 403.141, F.S., in references thereto; reenacting s. 403.7255(2), F.S., to incorporate the amendment made to s. 403.161, F.S., in a reference thereto; reenacting s. 403.7186(8), F.S., to incorporate the amendments made to ss. 403.141 and 403.161, F.S., in references thereto; providing an effective date.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1181 Florida Disaster Volunteer Leave Act
SPONSOR(S): Oversight, Transparency & Public Management Subcommittee, Maggard
TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 1050

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Oversight, Transparency & Public Management Subcommittee	14 Y, 0 N, As CS	Villa	Smith
2) Appropriations Committee	27 Y, 0 N	Keith	Pridgeon
3) State Affairs Committee		Villa	Williamson

SUMMARY ANALYSIS

The Florida Disaster Volunteer Leave Act (the Act) provides that an employee of a state agency who is a certified disaster service volunteer of the American Red Cross (Red Cross) may be granted a leave of absence with pay for not more than 15 working days in any 12-month period to participate in specialized disaster relief services for the Red Cross. Leave may be granted upon the request of the Red Cross and upon the approval of the employee's employing agency. Such leave may only be granted for services related to a disaster occurring within the state. However, with the approval of the Governor and Cabinet, leave may be granted for services in response to a disaster occurring within the United States.

The bill expands the type of organization through which a state agency employee may provide volunteer service and revises employee and employer requirements for disaster volunteer service. Specifically, the bill broadens volunteer service to include nonpaid services to a nonprofit 501(c)(3) or 501(c)(4) organization that the employee has entered into an agreement with, not exclusively the Red Cross. The bill allows a volunteer to take a leave of absence with pay for not more than 120 working hours, rather than 15 working days during a 12-month period. A leave of absence with pay may be granted by the employing agency, upon the request of the employee, after the agency verifies the employee's volunteer status. Approval from the head of the employing agency is required for disasters occurring outside the state but within the United States. The bill further requires an employee who was granted leave for disaster volunteer service to provide the head of his or her employing agency, at a minimum, documentation specifying the period the employee provided volunteer services and a description of the disaster response or recovery services provided.

The bill may have a negative, yet indeterminate fiscal impact to state government expenditures relating to paid leave time for volunteer services granted under provisions in the bill. *See* Fiscal Comments.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Florida Disaster Volunteer Leave Act

The Florida Disaster Volunteer Leave Act[1] (the Act) provides that an employee of a state agency[2] who is a certified disaster service volunteer of the American Red Cross (Red Cross) may be granted a leave of absence with pay for not more than 15 working days in any 12-month period to participate in specialized disaster relief services for the Red Cross.[3] A "disaster" includes disasters designated at level II and above in the American National Red Cross regulations and procedures. Under the Act, a leave of absence may be granted upon the request of the Red Cross and upon the approval of the employee's employing agency. Such leave may only be granted for services related to a disaster occurring within the state. However, with the approval of the Governor and Cabinet, leave may be granted for services in response to a disaster occurring within the United States.

An employee granted leave under the Act is not deemed to be an employee of the state for purposes of workers' compensation during the leave of absence.

Tax-Exempt Nonprofit Organizations and Disaster Relief

Tax-exempt organizations, such as the Red Cross and the Salvation Army, play a critical role in disaster relief and recovery efforts. As recognized by the Internal Revenue Service, "[p]roviding aid to relieve human suffering caused by a natural or civil disaster or an emergency hardship is charity in its most basic form."[4]

To be tax-exempt under s. 501(c)(3) of the Internal Revenue Code, an organization must be operated for an exempt purpose including religious, charitable, scientific, testing for public safety, literary, or educational purposes, or for the prevention of cruelty to children or animals.[5] No part of the net earnings of the organization may inure to the benefit of any private shareholder or individual.[6]

Additionally, certain organizations may be tax-exempt under s. 501(c)(4) of the Internal Revenue Code, if the organization is not organized for profit but operated exclusively for the promotion of social welfare.[7] A local association of employees may also be granted tax-exempt status under s. 501(c)(4) if the membership is limited to the employees of a designated person or persons and the net earnings of the association are devoted exclusively to charitable, educational, or recreational purposes.[8]

State of Emergency Declaration Process

In Florida, the Governor is responsible for meeting the dangers presented to this state and its people by emergencies.[9] In the event of an emergency[10] beyond local control, the Governor may assume or delegate direct operational control over all or any part of the emergency management functions within

---

[1] Section 110.120, F.S., is cited as the Florida Disaster Volunteer Leave Act.
[2] The term "state agency" is defined by the Act to mean any official, officer, commission, board, authority, council, committee, or department of the executive branch of state government. Section 110.120(2)(a), F.S.
[3] Section 110.120(3), F.S.
[4] Internal Revenue Service, *Publication 3833, Disaster Relief, Providing Assistance Through Charitable Organizations*, https://www.irs.gov/pub/irs-pdf/p3833.pdf (last visited January 23, 2020).
[5] 26 U.S.C. § 501(c)(3).
[6] *Id.*
[7] 26 U.S.C. § 501(c)(4).
[8] *Id.*
[9] Section 252.36(1)(a), F.S.
[10] "Emergency" is defined by the State Emergency Management Act to mean any occurrence, or threat thereof, whether natural, technological, or manmade, in war or in peace, which results or may result in substantial injury or harm to the population or substantial damage to or loss of property. Section 252.34(4), F.S.

this state.[11] If the Governor finds that an emergency has occurred or that the occurrence or threat thereof is imminent, the Governor must declare a state of emergency through an executive order or proclamation.[12] The state of emergency will continue until the Governor finds that the emergency conditions no longer exist.[13] However, a state of emergency cannot continue for longer than 60 days unless renewed by the Governor.[14] The Legislature may terminate a state of emergency at any time by a concurrent resolution.[15] If a state of emergency is terminated by the Legislature, the Governor must issue an executive order or proclamation ending the state of emergency.[16] All executive orders or proclamations must indicate the nature of the emergency, the area or areas threatened, and the conditions which have brought the emergency about or which make its termination possible.[17]

Effect of the Bill

The bill expands the type of organization through which a state agency employee may provide volunteer service and revises employee and employer requirements for disaster volunteer service. Specifically, the bill broadens volunteer service to include nonpaid services to a nonprofit 501(c)(3) or 501(c)(4) organization that the employee has entered into an agreement with, not exclusively the Red Cross.

The bill allows a volunteer to take a leave of absence with pay for not more than 120 working hours, rather than 15 working days during a 12-month period. A leave of absence with pay may be granted by the employing agency, upon the request of the employee, after the agency verifies the employee's volunteer status. Approval from the head of the employing agency is required for disasters occurring outside the state but within the United States. The bill further requires an employee who was granted leave for disaster volunteer service to provide the head of his or her employing agency, at a minimum, documentation specifying the period the employee provided volunteer services and a description of the disaster response or recovery services provided.

The bill revises the definition of disaster under the Act to no longer mean a disaster designated at certain levels by the Red Cross but to mean an event that has resulted in a state of emergency as declared by the Governor through an executive order under the State Emergency Management Act.[18]

B. SECTION DIRECTORY:

Section 1 amends s. 110.120, F.S., relating to administrative leave for disaster service volunteers.

Section 2 provides an effective date of July 1, 2020.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   See Fiscal Comments.

[11] Section 252.36(1)(a), F.S.
[12] Section 252.36(2), F.S.
[13] *Id.*
[14] *Id.*
[15] *Id.*
[16] *Id.*
[17] *Id.*
[18] Sections 252.31 – 252.60, F.S., are cited as the State Emergency Management Act. Section 252.31, F.S.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The bill provides that all state agency employees are eligible to request for paid administrative leave associated with disaster volunteer services provided to any tax-exempt nonprofit under sections 501(c)(3) or 501(c)(4) of the Internal Revenue Code. The number of employees who would request paid administrative leave for disaster volunteer services due to provisions of the bill is unknown at this time. There is the potential for increased leave payouts for employees who would have otherwise used annual leave or compensatory leave to volunteer under declared disasters.[19] Thus the government sector may experience a slight negative impact due to increased number of eligible volunteer opportunities. It is anticipated that any costs incurred by state agencies can be handled within existing resources.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not Applicable. This bill does not appear to effect county or municipal governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On January 29, 2020, the Oversight, Transparency & Public Management Subcommittee adopted an amendment and reported the bill favorably as a committee substitute. The amendment removed language adding the legislative and judicial branches of government to the definition of “state agency” because those branches currently have broad discretionary authority to grant leave addressed by the bill.

This analysis is drafted to the committee substitute as approved by the Oversight, Transparency & Public Management Subcommittee.

[19] Florida Department of Management Services, Agency Analysis of 2020 House Bill 1181, p.4 (Jan. 9, 2020).

A bill to be entitled

An act relating to the Florida Disaster Volunteer Leave Act; amending s. 110.120, F.S.; providing and revising definitions; providing that certain employees may be granted a leave of absence with pay for a specified period of time under certain circumstances; providing requirements for such leave to be granted; providing restrictions on the location an employee may provide disaster-related services; providing an exception; requiring certain documentation from an employee; providing an effective date.

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

Section 1. Section 110.120, Florida Statutes, is amended to read:

110.120 Administrative leave for disaster service volunteers.—

(1) SHORT TITLE.—This section shall be known and may be cited as the "Florida Disaster Volunteer Leave Act."

(2) DEFINITIONS.—As used in this section, the term ~~following terms shall apply~~:

(a) "State agency" means any official, officer, commission, board, authority, council, committee, or department of the executive branch of state government.

(b) "Disaster" means an event that has resulted in a state of emergency as declared by the Governor through an executive order under chapter 252 ~~includes disasters designated at level II and above in the American National Red Cross regulations and procedures~~.

(c) "Disaster area" means a location under a state of emergency as declared by the Governor through an executive order under chapter 252.

(d) "Volunteer" means a person who has entered into an agreement with a nonprofit organization that is exempt from federal income tax under s. 501(c)(3) or s. 501(c)(4) of the Internal Revenue Code to provide nonpaid services to a disaster area for disaster response or recovery.

(3) LEAVE OF ABSENCE.—An employee of a state agency who is a ~~certified disaster service~~ volunteer ~~of the American Red Cross~~ may be granted a leave of absence with pay for not more than 120 working hours ~~15 working days~~ in any 12-month period to provide ~~participate in specialized~~ disaster relief services ~~for the American Red Cross~~. Such leave of absence may be granted upon the request of the employee ~~American Red Cross~~ and upon the approval of the employee's employing agency after the agency verifies the employee's volunteer status. An employee granted leave under this section is ~~shall~~ not ~~be deemed to be~~ an employee of the state for purposes of workers' compensation. Leave under this section ~~act~~ may be granted only to provide

volunteer ~~for~~ services related to a disaster occurring within the boundaries of the state ~~of Florida~~, except that, with the approval of the head of the employee's employing agency ~~Governor and Cabinet~~, leave may be granted to provide volunteer ~~for~~ services in response to a disaster occurring within the boundaries of the states or territories of the United States. An employee granted leave under this section must provide to the head of his or her employing agency, at a minimum, the following documentation showing he or she completed volunteer services:

(a) Documentation specifying the time period that the employee provided services as a volunteer.

(b) A description of the disaster response or recovery services that the employee provided.

Section 2. This act shall take effect July 1, 2020.

COMMITTEE/SUBCOMMITTEE ACTION

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

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

Amendment (with title amendment)

Remove everything after the enacting clause and insert:

Section 1. Section 110.120, Florida Statutes, is amended to read:

110.120 Administrative leave for disaster service volunteers.—

(1) SHORT TITLE.—This section ~~shall be known and~~ may be cited as the "Florida Disaster Volunteer Leave Act."

(2) DEFINITIONS.—As used in this section, the term ~~following terms shall apply~~:

(c)~~(a)~~ "State agency" means any official, officer, commission, board, authority, council, committee, or department of the executive branch of state government.

(a) ~~(b)~~ "Disaster" means an event that results in a state of emergency, as declared by executive order or proclamation issued by the Governor of this state or any other state or territory of the United States ~~includes disasters designated at level II and above in the American National Red Cross regulations and procedures~~.

(b) "Disaster area" means a location covered under a state of emergency, as declared by executive order or proclamation issued by the Governor of this state or any other state or territory of the United States.

(d) "Volunteer" means an individual who has entered into an agreement with a tax-exempt nonprofit organization under s. 501(c)(3) or s. 501(c)(4) of the Internal Revenue Code to provide nonpaid services to a disaster area for disaster response or recovery.

(3) LEAVE OF ABSENCE.—An employee of a state agency ~~who is a certified disaster service volunteer of the American Red Cross~~ may be granted a leave of absence with pay for no ~~not~~ more than 120 working hours ~~15 working days~~ in any 12-month period to serve as a volunteer ~~participate in specialized disaster relief services for the American Red Cross~~. Such leave of absence may be granted upon the request of the employee ~~American Red Cross~~ and upon ~~the~~ approval of the employee's employing agency after verifying the employee's volunteer status. An employee granted leave under this section is ~~shall~~ not ~~be~~ deemed to be an

employee of the state for purposes of workers' compensation. Leave under this section ~~act~~ may be granted only for providing volunteer ~~for~~ services related to a disaster occurring within the boundaries of this ~~the~~ state ~~of Florida~~, except that~~, with the approval of the Governor and Cabinet,~~ leave may be granted to an employee to provide volunteer ~~for~~ services in response to a disaster occurring within the states or territories ~~boundaries~~ of the United States upon approval of the head of the employee's employing agency. An employee who is granted leave under this section must attest to his or her employing agency that he or she has completed his or her volunteer service for a disaster, and must also specify the period of time for which he or she served as a volunteer for that event and a description of the disaster response or recovery services that the employee provided.

Section 2. This act shall take effect July 1, 2020.

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

Remove everything before the enacting clause and insert: An act relating to the Florida Disaster Volunteer Leave Act; amending s. 110.120, F.S.; reordering, revising, and providing definitions; revising conditions under which an employee may be granted leave under the Florida Disaster Volunteer Leave Act; specifying requirements and

limitations; providing an effective date.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1249 Transfer of Tax Exemption for Veterans
SPONSOR(S): Local, Federal & Veterans Affairs Subcommittee, Sullivan
TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 1662

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Local, Federal & Veterans Affairs Subcommittee	13 Y, 0 N, As CS	Darden	Miller
2) Ways & Means Committee	16 Y, 0 N	Curry	Langston
3) State Affairs Committee		Darden	Williamson

SUMMARY ANALYSIS

The Florida Constitution requires all property to be assessed at just value (i.e. market value) as of January 1 of each year for purposes of ad valorem taxation. Property assessments are used to calculate ad valorem taxes that fund counties, municipalities, school districts, and special districts. The taxable value against which local governments levy tax rates each year reflects the just value as reduced by applicable exceptions and exemptions allowed by the Florida Constitution. One such exemption is on the first $25,000 of assessed value of a homestead property, which is exempt from all taxes. A second homestead exemption is on the assessed value between $50,000 and $75,000, which is exempt from all taxes other than school district taxes.

The homestead property of a veteran who was honorably discharged with a service-connected total and permanent disability is exempt from taxation. To qualify for this exemption, the veteran must be a permanent resident of the state on January 1 of the tax year for which the exemption is being claimed.

The bill allows a veteran who was honorably discharged with a service-connected total and permanent disability to apply for this homestead property exemption in the current tax year for a property acquired after January 1 of the tax year if the veteran had received the exemption on another property in the immediately preceding tax year.

The bill provides that notwithstanding the exemption filing deadline established by statute, the veteran may file for the exemption with the property appraiser at any time during the current tax year. The application for the exemption must identify both the previous homestead and new property. The applicant must also certify under oath that he or she:

- Is otherwise qualified to receive the tax exemption for permanently and totally disabled veterans;
- Holds legal or beneficial title to the new property; and
- Intends to use the new property as his or her homestead.

The bill provides that if the application for the exemption is received more than 25 days after the property appraiser mails the TRIM notice, the property appraiser must correct the assessment to reflect the exemption.

The Revenue Estimating Conference estimates that the bill will reduce local government revenue by $4.4 million, beginning in fiscal year (FY) 2020-21, growing to an annual reduction of $6.2 million by FY 2024-25.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Ad Valorem Taxation

The Florida Constitution reserves to local governments the authority to levy ad valorem taxes on real and tangible personal property.[1] Ad valorem taxes are levied annually by counties, cities, school districts, and some special districts based on the value of real and tangible personal property as of January 1 of each year.[2] The Florida Constitution requires that all property be assessed at just value for ad valorem tax purposes,[3] and provides for specified assessment limitations, property classifications, and exemptions.[4] After the property appraiser considers any assessment limitation or use classification affecting the just value of a parcel of real property, an assessed value is produced. The assessed value is then reduced by any exemptions to produce the taxable value.[5]

Each property appraiser must complete an assessment of the value of all property within the appraiser's jurisdiction and certify to the taxing authorities the taxable value of such property no later than July 1 of each year, unless extended for good cause by the Department of Revenue (DOR).[6] The taxable value of a parcel includes both the value of structures and other improvements on the parcel and the value of the land on which those structures and improvements sit.[7] The property appraiser must ensure all real property is listed on the real property assessment roll.[8]

Each taxing authority uses the taxable value provided by the property appraiser to prepare a proposed millage rate that is levied on each parcel's taxable value.[9] Each taxing authority must compute proposed or final millage rates based on utilizing at least 95 percent of the taxable value of the property within the boundaries of the taxing authority. Each taxing authority must prepare and submit its tentative budget in accordance with applicable law.[10]

Within 35 days of the certification of value by the property appraiser, each taxing authority must inform the property appraiser of its proposed millage rate, its rolled-back rate,[11] and the date, time, and location of the public hearing to be held to consider the proposed millage rate and tentative budget.[12]

---

[1] Art. VII, ss. 1(a), 9(a), Fla. Const.
[2] S. 192.001(12), F.S., defines "real property" as land, buildings, fixtures, and all other improvements to land. The terms "land," "real estate," "realty," and "real property" may be used interchangeably. S. 192.001(11)(d), F.S., defines "tangible personal property" as all goods, chattels, and other articles of value (but does not include the vehicular items enumerated in Art. VII, s. 1(b) of the Florida Constitution and elsewhere defined) capable of manual possession and whose chief value is intrinsic to the article itself.
[3] Art. VII, s. 4, Fla. Const.
[4] Art. VII, ss. 3, 4, and 6, Fla. Const.
[5] S. 196.031, F.S.
[6] S. 193.023(1), F.S.
[7] *See The Appraisal Process and Your Taxes*, Hillsborough County Property Appraiser, *available at* http://www.hcpafl.org/Property-Info/The-Appraisal-Process-Your-Taxes (last visited Jan. 24, 2020) (process for calculating property tax values).
[8] S. 193.085(1), F.S.
[9] S. 200.065(2)(a)1., F.S.
[10] *See* s. 200.065(2)(a)2.-4., F.S. (requiring county commissions to prepare and submit budgets in accordance with s. 129.03, F.S., requiring school districts to prepare and submit budgets in accordance with Ch. 1011, F.S., and requiring other taxing authorities to prepare and consider budgets in accordance with s. 200.065, F.S., and other provisions of law).
[11] The "rolled-back rate" is defined as "a millage rate which, exclusive of new construction, additions to structures, deletions, increases in the value of improvements that have undergone a substantial rehabilitation which increased the assessed value of such improvements by at least 100 percent, property added due to geographic boundary changes, total taxable value of tangible personal property within the jurisdiction in excess of 115 percent of the previous year's total taxable value, and any dedicated increment value, will provide the same ad valorem tax revenue for each taxing authority as was levied during the prior year less the amount, if any, paid or applied as a consequence of an obligation measured by the dedicated increment value." S. 200.065(1), F.S.
[12] S. 200.065(2)(b), F.S.

This information is used by the property appraiser to prepare notices of proposed property taxes.[13] The notice must be mailed by the latter of 55 days after the certification of value by the property appraiser or 10 days after the tax roll is approved or statutory interim roll procedures[14] have been instituted. If the notice is not mailed until 10 days after the tax roll is approved or interim roll procedures are instituted, all statutory deadlines[15] are extended by a number of days equal to the difference between the deadline for the mailing of proposed notices and 55 days after the certification of value.

Corrections

The property appraiser may correct a material mistake of fact concerning "an essential condition of the subject property," if the correction would reduce the assessed value of the property.[16] The property appraiser may make a correction within one year of the approval of the tax roll.[17] A correction does not impact the ability of the tax collector to enforce collection of taxes owed. If an error is corrected in the current year's tax roll, the property appraiser may send a refund request to DOR or directly to the tax collector. Errors in a previous year's tax roll must be sent to DOR.

Homestead Exemption

Every person having legal and equitable title to real estate who maintains a permanent residence on the real estate (homestead property) is eligible for a $25,000 tax exemption applicable to all ad valorem tax levies, including levies by school districts.[18] An additional $25,000 exemption applies to homestead property value between $50,000 and $75,000. This additional exemption does not apply to ad valorem taxes levied by school districts.

Exemption for Permanently and Totally Disabled Veterans

The homestead property of a veteran who was honorably discharged with a service-connected total and permanent disability is exempt from taxation.[19] To qualify for this exemption, the veteran must be a permanent resident of the state on January 1 of the tax year for which exemption is being claimed or must have been a permanent resident of this state on January 1 of the year the veteran died. If the veteran predeceases their spouse, the spouse may continue to receive the exemption as long as the property remains the homestead property of the spouse and the spouse is unmarried.[20]

The presentation of a letter of total and permanent disability from the United States Government or United States Department of Veterans Affairs by a veteran or their spouse to the property appraiser is prima facie evidence of entitlement to the exemption.[21] A veteran may apply for the exemption before receiving documentation from the United States Government or the United States Department of Veterans Affairs.[22] When the property appraiser receives the documentation, the exemption is granted as of the date of the original application, with excess taxes paid refunded.[23]

Annual Application

[13] This notice is commonly referred to as a truth-in-millage, or TRIM, notice.
[14] *See* s. 193.1145, F.S.
[15] *See* s. 200.065, F.S.
[16] S. 197.122(3), F.S. "[A]n essential condition of the subject property" is defined as environmental restrictions, zoning restrictions, or restrictions on permissible use; acreage; wetlands or other environmental lands that are or have been restricted in use because of such environmental features; access to usable land; any characteristic of the subject parcel which, in the property appraiser's opinion, caused the appraisal to be clearly erroneous; or depreciation of the property that was based on a latent defect of the property which existed but was not readily discernible by inspection on January 1, but not depreciation from any other cause. S. 197.122(3)(a), F.S.
[17] S. 197.122(3)(b), F.S.
[18] Art. VII, s. 6(a), Fla. Const.
[19] S. 196.081(1), F.S.
[20] S. 196.081(3), F.S.
[21] S. 196.081(2), F.S.
[22] S. 196.081(5), F.S.
[23] The refund is subject to a four-year statute of limitations pursuant to s. 197.182(1)(e), F.S.

Each person or organization who meets the criteria for an ad valorem tax exemption may claim the exemption if the claimant held legal title to the real or personal property subject to the exemption on January 1.[24] The application for exemption must be filed with the property appraiser on or before March 1 and failure to make an application constitutes a waiver of the exemption for that year. The application must list and describe the property for which the exemption is being claimed and certify the ownership and use of the property. The claimant must reapply for the exemption on an annual basis, unless the property appraiser (subject to approval by a vote of the governing body of the county) has waived the annual application requirement for property after an initial application is made and the exemption granted.[25]

Effect of Proposed Changes

The bill allows a veteran who was honorably discharged with a service-connected total and permanent disability to apply for the homestead property exemption in the current tax year for a property acquired after January 1 of that year if the veteran had received the exemption on another property in the immediately preceding tax year.

The bill provides that notwithstanding the exemption filing deadline established by s. 196.011, F.S., the veteran may file for the exemption with the property appraiser at any time during the current tax year. The application for the exemption must list and describe both the previous homestead and new property. The applicant must also certify under oath that he or she:

- Is otherwise qualified to receive the tax exemption for permanently and totally disabled veterans;
- Holds legal or beneficial title to the new property; and
- Intends to use the new property as his or her homestead.

The bill provides that if the application for the exemption is received more than 25 days after the property appraiser mails the TRIM notice, the property appraiser must correct the assessment to reflect the exemption.

B. SECTION DIRECTORY:

Section 1: Amends s. 196.011, F.S., to provide an exception.

Section 2: Amends s. 196.081, F.S., to authorize a tax exemption for certain permanently and totally disabled veterans to be applied to property acquired in the current tax year under certain conditions.

Section 3: Amends s. 197.122, F.S., to require the property appraiser to correct an assessment under certain circumstances.

Section 4: Provides an effective date of July 1, 2020.

[24] S. 196.011(1)(a), F.S.
[25] S. 196.011(5) and (9)(a), F.S.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The Revenue Estimating Conference estimates that the bill will reduce local government revenue by $4.4 million, beginning in fiscal year (FY) 2020-21, eventually growing to an annual reduction of $6.2 million by FY 2024-25.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may reduce ad valorem tax liability for those who qualify for the exemption for certain permanently and totally disabled veterans, to the extent those veterans would not currently receive the benefit of the exemption in the year a new homestead property was purchased.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The county/municipality mandates provision of Art. VII, s. 18 of the Florida Constitution may apply because this bill reduces ad valorem tax revenues to the extent qualified veterans will receive the benefit of ad valorem tax exemption on two parcels in the year of transfer. This bill does not appear to qualify under any exemption or exception. If the bill does qualify as a mandate, the law must be approved by two-thirds of the membership of each house of the Legislature.

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

On February 3, 2020, the Local, Federal & Veterans Affairs Subcommittee adopted an amendment and reported the bill favorably as a committee substitute. The amendment allowed a qualifying veteran to apply for the exemption at any time during the tax year. If the application is filed more than 25 days after the

TRIM notice is mailed, the amendment required the property appraiser to correct the assessment to reflect the exemption. The amendment also clarified that a veteran may apply for the exemption if he or she holds beneficial title to the property.

The analysis is drafted to the committee substitute as approved by the Local, Federal & Veterans Affairs Subcommittee.

A bill to be entitled

An act relating to transfer of tax exemption for veterans; amending s. 196.011, F.S.; conforming a provision to changes made by the act; amending s. 196.081, F.S.; authorizing certain veterans who acquire a new homestead after the deadlines for receiving the tax exemption for a current year have passed to receive the exemption under specified circumstances; amending s. 197.122, F.S.; requiring property appraisers to correct specified assessments under certain circumstances; providing an effective date.

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

Section 1. Paragraph (a) of subsection (1) of section 196.011, Florida Statutes, is amended to read:

196.011 Annual application required for exemption.—

(1)(a) Except as provided in s. 196.081(1)(b), every person or organization who, on January 1, has the legal title to real or personal property, except inventory, which is entitled by law to exemption from taxation as a result of its ownership and use shall, on or before March 1 of each year, file an application for exemption with the county property appraiser, listing and describing the property for which exemption is

claimed and certifying its ownership and use. The Department of Revenue shall prescribe the forms upon which the application is made. Failure to make application, when required, on or before March 1 of any year shall constitute a waiver of the exemption privilege for that year, except as provided in subsection (7) or subsection (8).

Section 2. Subsection (1) of section 196.081, Florida Statutes, is amended to read:

196.081 Exemption for certain permanently and totally disabled veterans and for surviving spouses of veterans; exemption for surviving spouses of first responders who die in the line of duty.—

(1)(a) Any real estate that is owned and used as a homestead by a veteran who was honorably discharged with a service-connected total and permanent disability and for whom a letter from the United States Government or United States Department of Veterans Affairs or its predecessor has been issued certifying that the veteran is totally and permanently disabled is exempt from taxation, if the veteran is a permanent resident of this state on January 1 of the tax year for which exemption is being claimed or was a permanent resident of this state on January 1 of the year the veteran died.

(b) The exemption under paragraph (a) shall be applied to a current tax year if the real estate owned and used as a homestead is acquired by the veteran after January 1 of the

current tax year and the veteran received the exemption on another property in the immediately prior tax year. Notwithstanding the exemption filing requirements of s. 196.011, to receive the exemption under this paragraph, the veteran must file an application with the property appraiser and may do so at any time during the current tax year. If the application is filed after the 25th day following the date the property appraiser mails the assessment notice under s. 200.069, the exemption shall be processed as a correction pursuant to s. 197.122(3). The applicant must identify the previous homestead and the new property and certify under oath that the veteran meets all of the following requirements:

1. Is otherwise qualified to receive the exemption under paragraph (a).

2. Holds legal title or beneficial title to the new property.

3. Intends to use or uses the new property as his or her homestead.

Section 3. Subsection (3) of section 197.122, Florida Statutes, is amended to read:

197.122 Lien of taxes; application.—

(3) A property appraiser shall correct an assessment to reflect an exemption granted under s. 196.081(1), if the application for the exemption was filed after the 25th day following the date the property appraiser mails the assessment

notice under s. 200.069. A property appraiser may also correct a material mistake of fact relating to an essential condition of the subject property to reduce an assessment if to do so requires only the exercise of judgment as to the effect of the mistake of fact on the assessed or taxable value of the property.

(a) As used in this subsection, the term "an essential condition of the subject property" means a characteristic of the subject parcel, including only:

1. Environmental restrictions, zoning restrictions, or restrictions on permissible use;

2. Acreage;

3. Wetlands or other environmental lands that are or have been restricted in use because of such environmental features;

4. Access to usable land;

5. Any characteristic of the subject parcel which, in the property appraiser's opinion, caused the appraisal to be clearly erroneous; or

6. Depreciation of the property that was based on a latent defect of the property which existed but was not readily discernible by inspection on January 1, but not depreciation from any other cause.

(b) The material mistake of fact or the assessment benefitting from an exemption granted under s. 196.081(1), if the application for the exemption was filed after the 25th day

following the date the property appraiser mails the assessment notice under s. 200.069, may be corrected by the property appraiser, in the same manner as provided by law for performing the act in the first place only within 1 year after the approval of the tax roll pursuant to s. 193.1142. If corrected, the tax roll becomes valid ab initio and does not affect the enforcement of the collection of the tax. If the correction results in a refund of taxes paid on the basis of an erroneous assessment included on the current year's tax roll, the property appraiser may request the department to pass upon the refund request pursuant to s. 197.182 or may submit the correction and refund order directly to the tax collector in accordance with the notice provisions of s. 197.182(2). Corrections to tax rolls for previous years which result in refunds must be made pursuant to s. 197.182.

Section 4. This act shall take effect July 1, 2020.

COMMITTEE/SUBCOMMITTEE ACTION

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

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

Amendment (with title amendment)

Remove lines 48-116 and insert:

(b) If legal or beneficial title to property is acquired between January 1 and November 1 of any year by a veteran or his or her surviving spouse receiving an exemption under this section on another property for that tax year, the veteran or his or her surviving spouse may receive a refund, prorated as of the date of transfer, of the ad valorem taxes paid for the newly acquired property if he or she applies for and receives an exemption under this section for the newly acquired property in the next tax year. If the property appraiser finds that the applicant is entitled to an exemption under this section for the newly acquired property, the property appraiser shall

immediately make such entries upon the tax rolls of the county as are necessary to allow the prorated refund of taxes for the previous tax year.

Section 3. This act shall take effect July 1, 2020.

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

Remove lines 5-12 and insert:

196.081, F.S.; providing that certain veterans and their surviving spouses receiving a certain homestead tax exemption may apply for and receive a prorated refund of property taxes paid on new homestead property acquired during a certain timeframe; requiring the property appraiser to immediately make certain entries upon the tax rolls to allow the prorated refund; providing an effective date.

HB 1455

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1455 Division of Library and Information Services
SPONSOR(S): Rodriguez, A. M.
TIED BILLS: **IDEN./SIM. BILLS:** SB 1570

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Oversight, Transparency & Public Management Subcommittee	11 Y, 0 N	Villa	Smith
2) Transportation & Tourism Appropriations Subcommittee	11 Y, 0 N	Cobb	Davis
3) State Affairs Committee		Villa	Williamson

SUMMARY ANALYSIS

The Division of Library and Information Services (Division), within the Department of State, is responsible for managing and administering the State Aid to Libraries Grant Program, the Florida State Archives, the Records Management Program, the State Records Center, and the Library Cooperative Grants Program.

State Aid to Libraries Grant Program

By December 1 of each year, the Division must certify to the Chief Financial Officer the amount to be paid to a political subdivision under the State Aid to Libraries Grant Program. The bill maintains an annual certification, but removes the December 1 deadline.

Florida State Archives

The Division is responsible for encouraging and initiating efforts to preserve, collect, process, transcribe, index, and research the oral history of Florida government. The bill relieves the Division of this responsibility.

Records Management Program

The Division is responsible for making preservation duplicates of official state records, or designating existing copies as preservation duplicates. The bill relieves the Division of this responsibility.

State Records Center

The Division operates the State Records Center that stores official state records transferred to it by state agencies. When a record stored at the facility is eligible for destruction, the Division must notify the transferring agency via certified mail. The transferring agency has 90 days upon receipt of the notification to request continued storage or authorize destruction or disposal. If the agency does not respond within 90 days, title to the record is transferred to the Division. The bill amends this process and permits the Division to notify the agency by mail, rather than certified mail, and requires the agency to respond and specify its desired management of the record. The bill also specifies that the agency liaison officer will serve as the primary point of contact between the Division and agency for records management purposes, and requires the liaison officer to conduct any records management function the agency assigns.

Library Cooperative Grants Program

Certain libraries may establish library cooperatives for the purpose of sharing resources, and a cooperative can receive an annual grant from the state of not more than $400,000 for this purpose. The bill removes the $400,000 annual cap, but total funding for the Library Cooperative Grant Program remains unchanged.

Fiscal Impact

The bill may have an insignificant, positive fiscal impact on state expenditures and does not appear to have a fiscal impact on local governments.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Division of Library and Information Services

The Division of Library and Information Services (Division)[1] within the Department of State manages the State Library and Archives, supports public libraries, directs record management services, and is the designated information resource provider of the state.[2]

The Division may receive gifts of money, books, or other property and may purchase books, periodicals, furniture, and equipment it deems necessary to carry out its mission. The Division may also give aid and assistance to all school, state, academic, free and public libraries, and to all communities in the state that may establish libraries. The Division must maintain a library for state officials and employees and provide research and informational services for all state agencies. The Division must also provide library services to blind and physically handicapped persons within the state.[3]

State Aid to Libraries Grant Program

Background

The State Aid to Libraries Grant Program (Grant Program), established in 1961, is an incentive program designed to encourage local governments to establish and continue development of free library services to residents and to provide funding to support those services.[4] A political subdivision designated by a county or municipality as the single library administrative unit is eligible to receive an annual operating grant from the state of not more than 25 percent of all local funds expended by that political subdivision for the operation and maintenance of a library.[5] Three types of grants are available under the Grant Program. The grants include:

- Multicounty grants awarded to libraries of two or more counties that qualify for operating grants and have joined together to provide library services to their residents.
- Equalization grants awarded to county library systems that also meet the requirements for operating grants and have limited financial resources.
- Operating grants awarded to any county or municipality that meets basic criteria for professional library services.

The Division administers and allocates the grants under the Grant Program.[6] By December 1 of each year, the Division must certify to the Chief Financial Officer the amount to be paid to each political subdivision.[7] By January 1, the Division must complete an evaluation and review of applications submitted under the Grant Program.[8] The Division must verify the amount of local expenditures submitted by a political subdivision as a part of their application.[9] After the applications are determined sufficient and complete, the Division awards the grant amounts based on the funds appropriated by the Legislature.[10]

Effect of the Bill

---

[1] Section 20.10(2)(d), F.S.
[2] Florida Department of State Division of Library and Information Services, https://dos.myflorida.com/library-archives/ (last visited January 24, 2020).
[3] Section 257.04, F.S.
[4] *See* R. 1B-2.011(2)(a), F.A.C.
[5] Section 257.17, F.S.
[6] Section 257.22, F.S.
[7] *Id.*
[8] *See* R. 1B-2.011(2)(a), F.A.C.
[9] *Id.*
[10] *Id.*

The bill provides that the certification to the Chief Financial Officer of funds to be paid to a political subdivision must be made annually, rather than by December 1 of each year.

Florida State Archives

Background

The Florida State Archives (Archives) collect, preserve, and make available for research the historically significant records of the state, as well as private manuscripts, photographs, and other materials that complement the official state records.[11] The Archives are open to anyone interested in learning about Florida history, government, and people.[12] The Division operates, organizes, and administers the Archives.[13] Specifically, the Division must:

- Preserve and administer the records transferred to its custody;
- Assist in the determination of retention values for records;
- Cooperate with and assist state institutions, departments, agencies, counties, municipalities, and individuals engaged in activities in the field of state archives, manuscripts, and history;
- Accept from any person any paper, book, record, or similar material that the Division believes warrants preservation in the Archives;
- Provide a public research room where the materials in the Archives may be studied;
- Conduct, promote, and encourage research in Florida history, government, and culture;
- Maintain a program of information, assistance, coordination, and guidance for public officials, educational institutions, libraries, the scholarly community, and the general public engaged in such research;
- Cooperate with and assist agencies, libraries, institutions, and individuals in projects designed to preserve original source materials relating to Florida history, government, and culture;
- Prepare and publish handbooks, guides, indexes, and other literature directed toward encouraging the preservation and use of the state's documentary resources; and
- Encourage and initiate efforts to preserve, collect, process, transcribe, index, and research the oral history of Florida government.

Effect of the Bill

The bill amends the Division's duties and responsibilities regarding the Archives. Specifically, the bill deletes the provision requiring the Division to "[e]ncourage and initiate efforts to preserve, collect, process, transcribe, index, and research the oral history of Florida government."[14] According to the Division, the Division has never performed these activities and has neither the resources nor the staff expertise to do so.[15]

Records Management Program

Background

The Division administers a records management program responsible for establishing best practices for the creation, utilization, maintenance, retention, preservation, and disposal of records.[16] To that end, it is the duty and responsibility of the Division to:

- Analyze, develop, establish, and coordinate standards, procedures, and techniques of record making and recordkeeping;
- Maintain a training and information program in all phases of records and information management to bring current practices for the efficient and economical management of records to the attention of all agencies;
- Maintain a training and information program regarding laws regulating public record access;
- Make continuous surveys of recordkeeping operations; and

[11] Florida Department of State Division of Library and Information Services, *Archives*, https://dos.myflorida.com/library-archives/archives/ (last visited February 14, 2020).
[12] *Id.*
[13] Section 257.35(1), F.S.
[14] Section 257.35(1)(h), F.S.
[15] Department of State, Agency Analysis of 2020 House Bill 1455, p. 2 (January 22, 2020).
[16] Section 257.36(1), F.S.

- Recommend improvements in current record management practices.[17]

The Division must also cooperate with each agency[18] in the selection and preservation of records considered essential to the operation of government.[19] Each agency must:

- Cooperate with the Division in complying with the provisions of ch. 257, F.S.;
- Designate a records management liaison officer; and
- Establish and maintain an active and continuing program for the economical and efficient management of records.[20]

In the interest of records management, the Division must also make or have made preservation duplicates, or designate existing copies of records as preservation duplicates, to be preserved in a place and manner of safekeeping.[21] Any preservation duplicate has the same force and effect as the original record.[22]

Effect of the Bill

The bill amends the records management program and removes the requirement for the Division to make preservation duplicates, or designate existing copies of records as preservation duplicates. The bill also removes the provision specifying that preservation duplicates have the same force and effect as the original record.

State Records Center

Background

The Division is responsible for establishing and operating a records center or centers for the storage, processing, servicing, and security of public records that must be retained for varying periods but need not be retained in an agency's office equipment or space.[23] The Division must:

- Ensure the maintenance and security of records deemed appropriate for preservation;
- Establish safeguards against unauthorized or unlawful removal or loss of records; and
- Initiate appropriate action to recover records removed unlawfully or without authorization.[24]

To accomplish this, the Division operates the Edward N. Johnson Records and Information Center (State Records Center), which is equipped to store paper records, microfilm, and electronic media.[25] All records transferred to the Division for storage can be held in the State Records Center, or any other records center the state may operate, for such time as the Division deems necessary.[26] Title of any record stored by the Division will remain in the agency transferring such record to the Division.[27] When a record stored by the Division is eligible for destruction, the Division must provide notice to the agency in writing by certified mail.[28] The agency has 90 days to respond and request continued retention or authorize destruction or disposal of the record.[29] If the agency does not respond within that timeframe, title to the record will pass to the Division.[30]

---

[17] *Id.*
[18] The term "agency" includes any state, county, district, or municipal officer, department, division, bureau, board, commission, or other separate unit of government created or established by law. Section 257.36(5), F.S.
[19] Section 257.36(1)(j), F.S.
[20] Section 257.36(5), F.S.
[21] Section 257.36(1)(k), F.S.
[22] Section 257.36(4), F.S.
[23] Section 257.36(1), F.S.
[24] *Id.*
[25] Florida Department of State Division of Library and Information Services, *The Basics of Records Management*, (October 2017), https://dos.myflorida.com/media/698456/final-basics-of-records-management-2017.pdf (last visited January 26, 2020).
[26] Section 257.36(2)(a), F.S.
[27] Section 257.36(2)(b), F.S.
[28] Section 257.36(2)(c), F.S.
[29] *Id.*
[30] *Id.*

Effect of the Bill
The bill amends the process by which the Division must notify an agency that a record held in a records center is eligible for destruction or disposal. Specifically, the bill deletes the requirement for the Division to notify the agency via certified mail and the provision demanding title of the record to pass to the Division in the case the agency does not respond. Instead, the bill requires the Division to notify the agency in writing and requires the agency that transferred the record to the Division to respond to the Division's written notification.

The bill specifies the duties and responsibilities of an agency records management liaison officer is to serve as the primary point of contact between the agency and the Division for records management purposes and to conduct any records management functions the agency assigns.

Library Cooperative Grants Program

Background
Libraries that are operated by different local governments may establish nonprofit library cooperatives for the purpose of sharing resources.[31] The administrative unit of a library cooperative is eligible to receive an annual grant from the state of not more than $400,000 to be expended on library resource sharing activities such as:

- Bibliographic record enhancement;
- Statewide delivery service support;
- Union catalog support and development;
- Reciprocal borrowing;
- Cooperative cataloging;
- Cooperative reference services;
- Cooperative development;
- Digitization; and
- Innovation of technologies related to resource sharing.[32]

There are currently five library cooperative organizations in Florida:

- Northeast Florida Library Information Network.
- Panhandle Library Access Network, Inc.
- Southeast Florida Library Information Network, Inc.
- Southwest Florida Library Network, Inc.
- Tampa Bay Library Consortium.[33]

Effect of the Bill
The bill removes the annual award cap of $400,000 that an individual library cooperative organization is eligible to receive.

B. SECTION DIRECTORY:

Section 1 amends s. 257.22, F.S., relating to the allocation of funds.

Section 2 amends s. 257.35, F.S., relating to the Florida State Archives.

Section 3 amends s. 257.36, F.S., relating to records and information management.

Section 4 amends s. 257.42, F.S., relating to library cooperative grants.

Section 5 amends s. 120.54, F.S., to correct a cross reference.

[31] Section 257.41(1), F.S.
[32] Section 257.42, F.S. *See also* R. 1B-2.011(2)(c), F.A.C.
[33] Florida Department of State Division of Library and Information Services, *Multitype Library Cooperatives,* https://dos.myflorida.com/library-archives/research/florida-information/libraries/multitype-library-cooperatives/ (last visited February 14, 2020).

Section 6 amends s. 257.34, F.S., to correct a cross reference.

Section 7 provides an effective date of July 1, 2020.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   The removal of the requirement that the Division notify agencies via certified mail that an agency record held in a records center is eligible for destruction or disposal may reduce the Division's mailing expenses. Additionally, the removal of the requirement that the Division make or have made preservation duplicates may reduce the Division's material expenses.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The bill removes the current $400,000 annual award cap for the five library cooperative organizations. While the cap is removed for any individual grant award to a cooperative, total funding for the cooperative grant program remains unchanged.

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 confer rulemaking authority nor does it appear to require agency rulemaking.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.

A bill to be entitled

An act relating to the Division of Library and Information Services; amending s. 257.22, F.S.; removing the deadline for certain information to be certified to the Chief Financial Officer; amending s. 257.35, F.S.; removing duties of the division related to the oral history of Florida government; amending s. 257.36, F.S.; revising duties and responsibilities of the division related to records and information management; providing that certain activities of the division only apply to stored records; revising certain requirements for records eligible for destruction; deleting provisions relating to preservation duplicates of records; providing responsibilities for a records management liaison officer; amending s. 257.42, F.S.; deleting a limitation on the amount of a certain annual grant; amending ss. 120.54 and 257.34, F.S.; conforming cross-references; providing an effective date.

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

Section 1. Section 257.22, Florida Statutes, is amended to read:

257.22 Division of Library and Information Services;

allocation of funds.—Any moneys that may be appropriated for use by a county, a municipality, a special district, or a special tax district for the maintenance of a library or library service shall be administered and allocated by the Division of Library and Information Services in the manner prescribed by law. ~~On or before December 1 of~~ Each year, the division shall certify to the Chief Financial Officer the amount to be paid to each county, municipality, special district, or special tax district.

Section 2. Paragraphs (h) and (i) of subsection (1) of section 257.35, Florida Statutes, are amended to read:

257.35 Florida State Archives.—

(1) There is created within the Division of Library and Information Services of the Department of State the Florida State Archives for the preservation of those public records, as defined in s. 119.011(12), manuscripts, and other archival material that have been determined by the division to have sufficient historical or other value to warrant their continued preservation and have been accepted by the division for deposit in its custody. It is the duty and responsibility of the division to:

~~(h) Encourage and initiate efforts to preserve, collect, process, transcribe, index, and research the oral history of Florida government.~~

(h) ~~(i)~~ Assist and cooperate with the records and information management program in the training and information

program described in s. 257.36(1)(d) ~~257.36(1)(g)~~.

Section 3. Section 257.36, Florida Statutes, is amended to read:

257.36 Records and information management.—

(1) There is created within the Division of Library and Information Services of the Department of State a records and information management program. It is the duty and responsibility of the division to:

(a) Establish and administer a records management program directed to the application of efficient and economical management methods relating to the creation, utilization, maintenance, retention, preservation, and disposal of records.

(b) Establish and operate a records center or centers primarily for the storage, processing, servicing, and security of public records that must be retained for varying periods of time but need not be retained in an agency's office equipment or space. The division must:

1. Ensure the maintenance and security of stored records.

2. Establish safeguards against unauthorized or unlawful access, removal, or loss of stored records.

3. Initiate appropriate action to recover stored records removed unlawfully or without authorization.

(c) Analyze, develop, establish, and coordinate standards, procedures, and techniques of recordmaking and recordkeeping, including, but not limited to, standards and guidelines for the

retention, storage, security, and disposal of records.

~~(d) Ensure the maintenance and security of records which are deemed appropriate for preservation.~~

~~(e) Establish safeguards against unauthorized or unlawful removal or loss of records.~~

~~(f) Initiate appropriate action to recover records removed unlawfully or without authorization.~~

(d) ~~(g)~~ Institute and maintain a training and information program in:

1. All phases of records and information management to bring approved and current practices, methods, procedures, and devices for the efficient and economical management of records to the attention of all agencies.

2. The requirements relating to access to public records under chapter 119.

(e) ~~(h)~~ Make continuous surveys of recordkeeping operations.

(f) ~~(i)~~ Recommend improvements in current records management practices, including the use of space, equipment, supplies, and personnel in creating, maintaining, and servicing records.

(g) ~~(j)~~ Establish and maintain a program in cooperation with each agency for the selection and preservation of records considered essential to the operation of government and to the protection of the rights and privileges of citizens.

~~(k) Make, or have made, preservation duplicates, or designate existing copies as preservation duplicates, to be preserved in the place and manner of safekeeping as prescribed by the division.~~

(2)(a) All records transferred to the division for storage may be held by it in a records center or centers, to be designated by it, for such time as in its judgment retention therein is deemed necessary. At such time as it is established by the division, such records as are determined by it as having historical or other value warranting continued preservation shall be transferred to the Florida State Archives.

(b) Title to any record stored ~~detained~~ in any records center operated by the division shall remain in the agency transferring such record to the division. When the Legislature transfers any duty or responsibility of an agency to another agency, the receiving agency shall be the custodian of public records with regard to the public records associated with that transferred duty or responsibility, and shall be responsible for the records storage service charges of the division. If an agency is dissolved and the legislation dissolving that agency does not assign an existing agency as the custodian of public records for the dissolved agency's records, then the Cabinet is the custodian of public records for the dissolved agency, unless the Cabinet otherwise designates a custodian. The Cabinet or the agency designated by the Cabinet shall be responsible for the

records storage service charges of the division.

(c) When a record held in a records center is eligible for destruction, the division shall notify, in writing, ~~by certified mail,~~ the agency that ~~which~~ transferred the record. The agency must ~~shall have 90 days from receipt of that notice to~~ respond requesting continued retention or authorizing destruction or disposal of the record. ~~If the agency does not respond within that time, title to the record shall pass to the division.~~

(3) The division may charge fees for supplies and services, including, but not limited to, shipping containers, pickup, delivery, reference, and storage. Fees shall be based upon the actual cost of the supplies and services and shall be deposited in the Records Management Trust Fund.

~~(4) Any preservation duplicate of any record made pursuant to this chapter shall have the same force and effect for all purposes as the original record. A transcript, exemplification, or certified copy of such preservation duplicate shall be deemed, for all purposes, to be a transcript, exemplification, or certified copy of the original record.~~

(4)~~(5)~~ For the purposes of this section, the term "agency" shall mean any state, county, district, or municipal officer, department, division, bureau, board, commission, or other separate unit of government created or established by law. It is the duty of each agency to:

(a) Cooperate with the division in complying with the

provisions of this chapter ~~and designate a records management liaison officer~~.

(b) Establish and maintain an active and continuing program for the economical and efficient management of records.

(c) Designate a records management liaison officer to serve as the primary point of contact between the agency and the division for records management purposes and to conduct any records management functions the agency assigns.

(5)~~(6)~~ A public record may be destroyed or otherwise disposed of only in accordance with retention schedules established by the division. The division shall adopt reasonable rules not inconsistent with this chapter which shall be binding on all agencies relating to the destruction and disposition of records. Such rules shall provide, but not be limited to:

(a) Procedures for complying and submitting to the division records-retention schedules.

(b) Procedures for the physical destruction or other disposal of records.

(c) Standards for the reproduction of records for security or with a view to the disposal of the original record.

Section 4. Section 257.42, Florida Statutes, is amended to read:

257.42 Library cooperative grants.—The administrative unit of a library cooperative is eligible to receive an annual grant from the state ~~of not more than $400,000~~ for the purpose of

sharing library resources based upon an annual plan of service and expenditure and an annually updated 5-year, long-range plan of cooperative library resource sharing. Those plans, which must include a component describing how the cooperative will share technology and the use of technology, must be submitted to the Division of Library and Information Services of the Department of State for evaluation and possible recommendation for funding in the division's legislative budget request. Grant funds may not be used to supplant local funds or other funds. A library cooperative must provide from local sources matching cash funds equal to 10 percent of the grant award.

Section 5. Subsection (8) of section 120.54, Florida Statutes, is amended to read:

120.54 Rulemaking.—

(8) RULEMAKING RECORD.—In all rulemaking proceedings the agency shall compile a rulemaking record. The record shall include, if applicable, copies of:

(a) All notices given for the proposed rule.

(b) Any statement of estimated regulatory costs for the rule.

(c) A written summary of hearings on the proposed rule.

(d) The written comments and responses to written comments as required by this section and s. 120.541.

(e) All notices and findings made under subsection (4).

(f) All materials filed by the agency with the committee

under subsection (3).

(g) All materials filed with the Department of State under subsection (3).

(h) All written inquiries from standing committees of the Legislature concerning the rule.

Each state agency shall retain the record of rulemaking as long as the rule is in effect. When a rule is no longer in effect, the record may be destroyed pursuant to the records-retention schedule developed under s. 257.36(5) ~~s. 257.36(6)~~.

Section 6. Paragraph (h) of subsection (1) of section 257.34, Florida Statutes, is amended to read:

257.34 Florida International Archive and Repository.—

(1) There is created within the Division of Library and Information Services of the Department of State the Florida International Archive and Repository for the preservation of those public records, as defined in s. 119.011, manuscripts, international judgments involving disputes between domestic and foreign businesses, and all other public matters that the department or the Florida Council of International Development deems relevant to international issues. It is the duty and responsibility of the division to:

(h) Assist and cooperate with the records and information management program in the training and information program described in s. 257.36(1)(d) ~~s. 257.36(1)(g)~~.

Section 7. This act shall take effect July 1, 2020.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCS for CS/CS/HB 395 Transportation
SPONSOR(S): State Affairs Committee
TIED BILLS: **IDEN./SIM. BILLS:** SB 7054

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: State Affairs Committee		Johnson	Williamson

SUMMARY ANALYSIS

The bill amends various statutes relating to transportation. In summary, the bill:

- Effective July 1, 2023, repeals the Florida Rail Enterprise and transfers its functions to the Department of Transportation (DOT). It also authorizes DOT to utilize documentary stamp tax revenues currently allocated to the Florida Rail Enterprise for rail safety.
- Increases the debt service cap on Right-of-Way Acquisition and Bridge Construction Bonds.
- Removes obsolete references to the General Revenue service charge for transportation-related revenues.
- Removes the expiration date for funding of the Intermodal Logistics Center Infrastructure Support Program.
- Revises the definition of autocycle to incorporate federal safety standards.
- Increases the allowable weight of personal delivery devices.
- Adds road and bridge maintenance or construction vehicles and postal vehicles to the Move Over Law if certain conditions are met.
- Authorizes portable radar speed display units to display flashing red and blue lights under certain circumstances, and allows the use of flashing lights on vehicles during periods of extreme low visibility.
- Revises requirements governing the use of tarpaulins and other covers on vehicles hauling agricultural products.
- Increases the age at which a child must be secured in an approved child restraint device.
- Waives commercial driver license skill test requirements for qualifying veterans.
- Authorizes for-hire vehicles to be insured by certain non-admitted carriers and reduces the number of for-hire vehicles required before an owner or lessee may self-insure.
- Requires certain vessels to be removed from marinas located in deepwater seaports during hurricanes, and clarifies the amount of the fine that can be assessed in the event certain vessels are not removed.
- Conforms specified airport zoning terminology and regulations to federal requirements.
- Revises qualification requirements for contractors desiring to bid on certain DOT contracts and requires the submission of specified financial statements.
- Authorizes airports to allow the same entity perform the design and construction, engineering, and inspection services under certain circumstances.
- Requires DOT to provide the previous property owner the right of first refusal regarding the disposal of DOT property under certain circumstances.
- Requires permit applications for utility service on municipal or county rights-of-way to be acted upon in a specified period.
- Authorizes DOT to establish emergency staging areas along the Florida Turnpike system.
- Advances the deadline for the metropolitan planning organizations list of project priorities to be submitted to DOT.
- Repeals the inactive Economic Development Transportation Fund.
- Increases the state's liability insurance cap for passenger rail to $295 million.
- Extends the period the Jacksonville Transportation Authority may enter into leases.
- Provides that operating vessels in a certain manner near specified vessels constitutes careless operation of a vessel.
- Requires DOT and specified bridge and expressway authorities to submit a report documenting their uncollected customer receivables.

The bill will have a fiscal impact on state and local governments. *See* Fiscal Analysis for details.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Department of Transportation Rail Program/Florida Rail Enterprise

Present Situation

The Department of Transportation (DOT) is a decentralized agency headed by the Secretary of Transportation (secretary).[1] DOT is organized into seven geographic districts headed by district secretaries, as well as a turnpike enterprise and a rail enterprise, each of which are headed by an executive director. The Florida Rail Enterprise (FRE) executive director reports directly to the Secretary, and the FRE headquarters is in Leon County.[2]

DOT must develop and implement a rail program designed to ensure its proper maintenance, safety, revitalization, and expansion to assure its continued and increased availability, and to respond to statewide mobility needs. DOT's statutory rail requirements include:

- Providing the overall leadership, coordination, and financial and technical assistance necessary to assure the effective responses of the state's rail system to mobility needs.
- Promoting and facilitating the implementation of advanced rail systems.
- Developing and administering state standards concerning the safety and performance of rail systems.[3]

In 2009, the Legislature created the FRE within DOT.[4] The FRE was modeled after the Florida Turnpike Enterprise. The secretary must delegate the responsibility for developing and operating the high-speed and passenger rail systems, direct funding for passenger rail systems, and coordinate publicly funded passenger rail operations, including freight rail interoperability issues to the FRE executive director.

DOT, through the FRE, is authorized to use funds allocated to the FRE from documentary stamp collections to fund:

- Up to 50 percent of the nonfederal share of the costs of any eligible passenger rail capital improvement project;
- Up to 100 percent of planning and development costs related to the provision of a passenger rail system;
- The high-speed rail system; and
- Projects necessary to identify or address anticipated impacts of increased freight rail traffic resulting from the implementation of passenger rail systems.[5]

The Florida Rail Enterprise Act,[6] among other powers and duties, requires the FRE to "locate, plan, design, finance, construct, maintain, own, operate, and manage the high-speed rail system in this state."[7] DOT is the only governmental entity authorized to acquire, construct, maintain, or operate the high-speed rail system, except upon specific authorization of the Legislature.[8]

To facilitate the most efficient and effective management of the rail enterprise, including the use of best business practices employed by the private sector, the FRE is exempt from DOT's policies, procedures, and standards, except as provided in the Consultants' Competitive Negotiation Act.[9]

[1] Section 20.23, F.S.
[2] Section 20.23(4), F.S.
[3] Section 341.302, F.S.
[4] Chapter 2009-271, L.O.F.
[5] Section 341.303(5), F.S.
[6] Sections 341.8201-341.842, F.S., are cited as the "Florida Rail Enterprise Act."
[7] Section 341.822, F.S.
[8] Section 341.8225, F.S.
[9] Section 287.055, F.S.

The FRE, a single budget entity, submits its budget to the Legislature along with DOT's budget. All passenger rail funding is included in the FRE budget.[10] The FRE is authorized to carry forward any unexpended funds appropriated to it to be used for any lawful purpose.[11] For fiscal year (FY) 2019-2020, the FRE was authorized one position and appropriated $267 million.[12]

Rail Safety

In December 2019, due to the number of rail-related accidents in this state, the secretary directed DOT to implement a number of rail safety measures and to launch a statewide education initiative. The goal of the directive is to prevent additional fatalities on or near rail crossings on state roads and state owned land crossings. The directive included the following actions:

- Implementing dynamic envelopes[13] at every existing DOT roadway and state-owned land rail crossing.
- Requiring the inclusion of a dynamic envelope in the standard design of any future railroad crossings on DOT roadways or state-owned land rail crossings.
- Launching a data-driven statewide rail safety education initiative in conjunction with rail partners.
- Partnering with state and local law enforcement agencies to help enforce rail safety laws.
- Continuing to partner with local and private rail partners by sharing DOT rail safety design standards and framework and encouraging their participation and implementation of the safety and engineering efforts.[14]

Documentary Stamp Tax

Chapter 201, F.S., provides for the levy of a documentary stamp tax on certain documents, such as deeds, bonds, notes and written obligations to pay money and mortgages, liens, and other evidence of indebtedness. After required distributions to the Land Acquisition Trust Fund[15] and deducting the General Revenue service charge,[16] the lesser of 24.18442 percent of the remainder of the tax proceeds or $541.75 million in each fiscal year is deposited in the State Transportation Trust Fund (STTF).[17] From that amount, $75 million must be deposited into the General Revenue Fund. The remaining amount credited to the STTF must be used for:

- Capital funding for the New Starts Transit Program[18] in the amount of 10 percent;
- The Small County Outreach Program[19] in the amount of 10 percent;
- The Strategic Intermodal System[20] in the amount of 75 percent after deducting the payments for New Starts and Small County Outreach Program; and
- The Transportation Regional Incentive Program[21] in the amount of 25 percent after deducting the payments for New Starts and Small County Outreach Program.

Currently, the first $60 million of the funds allocated to the Transportation Regional Incentive Program are redirected annually to the FRE for the purposes established in s. 341.303(5), F.S.[22]

---

[10] Section 341.303(6)(a), F.S.
[11] Section 341.303(6)(b), F.S.
[12] Chapter 2019-115, L.O.F. Specific appropriations 1953-1961.
[13] A dynamic envelope is the area a vehicle should never stop in when it is crossing railroad tracks. Pavement markings and signage are provided around a rail crossing to emphasize the area and make drivers aware of the area they should never stop in. Email from John Kotyk, Deputy Director Legislative Affairs, DOT, RE: HB 1315-Rail Safety, Jan. 24, 2020 (Copy on file with Transportation & Infrastructure Subcommittee).
[14] DOT, Press Release: *FDOT Secretary Directs Unprecedented Rail Safety Measures, Launches Statewide Education Statewide Education Initiative*, Dec. 5, 2019, available at https://fdotwww.blob.core.windows.net/sitefinity/docs/default-source/info/co/news/newsreleases/12052019-rail-safety.pdf?sfvrsn=f58dd329_2 (last visited Jan. 23, 2020).
[15] Section 201.15(1) and (2), F.S.
[16] Section 215.20, F.S.
[17] Section 201.15(4), F.S.
[18] *See* 49 U.S.C. s. 5309 and s. 341.051, F.S.
[19] Section 339.2818, F.S.
[20] Sections 339.61-339.64, F.S.
[21] Section 339.2819, F.S.
[22] Section 201.15(4)(a)4., F.S.

Effect of the Bill

Florida Rail Enterprise
The bill repeals the FRE and transfers its functions and responsibilities to DOT, effective July 1, 2023. Effective July 1, 2023, the bill:

- Removes the statutory reference to the FRE within DOT's organization, as well as references to an FRE executive director, its headquarters, and its exemption from DOT policies, procedures, and standards. Rather than delegating responsibility for rail systems, passenger rail funding, and publicly funded passenger rail operations to the FRE executive director, the bill authorizes the secretary to delegate those responsibilities, including responsibility for rail safety, to a departmental entity to be named by the secretary.
- Removes DOT's duty to promote and facilitate the implementation of advanced rail systems, including high-speed rail and magnetic levitation systems,[23] and replaces it with the duty to coordinate the development, general rail safety, and operation of publicly funded passenger rail systems in this state. Responsibility for the high-speed rail system remains with DOT.
- Revises various sections of the Florida Rail Enterprise Act relating to high-speed rail to conform to the repeal of the FRE and the revised documentary stamp tax funding. The bill replaces the term "enterprise" with "department" and conforms cross-references.

Effective July 1, 2023, the bill amends s. 343.58(4), F.S., relating to DOT's funding of the South Florida Regional Transportation Authority, to prohibit such funding from documentary stamp tax funds dedicated to the STTF, rather than to the FRE.

Documentary Stamp Tax
The bill continues the current allocation to the FRE of the first $60 million of funds allocated to the Transportation Regional Incentive Program for three fiscal years (FYs), 2020-2021, 2021-2022, and 2022-2023. This allocation to the FRE expires on July 1, 2023. Beginning in the FY 2023-2024, the bill annually transfers the same $60 million to the STTF to be used for rail projects and rail safety improvements as provided in s. 341.303(5), F.S.

Rail Funding and FRE Budget
Effective July 1, 2023, the bill amends DOT's authorized uses of the documentary stamp tax allocation projects necessary to identify or address needed or desirable safety improvements to passenger rail systems in this state. The bill also removes the designation of the FRE as a single budget entity and other provisions relating to the FRE budget.

Right-of-Way Acquisition and Bridge Construction Bonds Debt Service Cap

Present Situation
DOT is authorized to issue Right-of-Way Acquisition and Bridge Construction bonds to finance or refinance the cost of acquiring real property for state roads, or to finance or refinance the cost of state bridge construction. Except for bonds issued to refinance previously issued bonds, bonds must be authorized by the Legislature and must be issued pursuant to the State Bond Act.[24]

Section 206.46, F.S., authorizes DOT to transfer up to 7 percent of the revenues deposited into the STTF in each fiscal year to the Right-of-Way Acquisition and Bridge Construction Trust Fund, to meet the requirements to meet outstanding or proposed bond obligations. However, notwithstanding this authorized annual transfer, the annual amount transferred may not exceed an amount necessary to provide the required debt service coverage levels for a maximum debt service of $275 million.[25]

Section 339.139, F.S., requires DOT to manage all levels of debt to ensure that no more than 20 percent of total projected available state and federal revenues from the STTF, together with any local

[23] Section 341.301(2), F.S.
[24] Sections 215.57-215.83, F.S.
[25] Section 206.46(2), F.S.

funds committed to DOT projects, are committed to certain obligations in any year. Right-of-Way Acquisition and Bridge Construction Bonds are included in DOT's overall debt assessment.[26]

According to DOT, the Right-of-Way Acquisition and Bridge Construction Bond program's debt service limit has not been adjusted since 2007. Based on DOT's most recent bond sale and Revenue Estimating Conference projections, the limit on debt service based on the 7 percent of revenues threshold would have been $286.9 million in FY 2018-2019, and will increase to $350 million in FY 2027-2028.[27]

Effect of the Bill
The bill increases DOT's maximum debt service coverage level from $275 million to $350 million. Thus, under the bill, debt service could not exceed 7 percent of the revenues deposited into the STTF or $350 million, whichever is less. The increase of the debt service cap will provide DOT with additional bonding capacity, offering it more flexibility in financing certain projects.

Obsolete General Revenue Surcharge References

Present Situation
Section 215.20(1), F.S., establishes an 8 percent service charge to the General Revenue Fund from all revenues deposited into most state trust funds,[28] representing the estimated pro rata share of the cost of general government.

Section 215.211, F.S., eliminates or reduces the general revenue service charge for specified proceeds. Effective July 1, 2002, the service charge for taxes distributed under s. 206.606(1), F.S., relating to the distribution of motor fuel taxes, s. 212.0501(6), F.S., relating to taxes on diesel fuel for business purposes, and s. 319.32(5), F.S., providing for the disposition of fees from certificate of title transactions, were eliminated.[29] Additionally, the service charge was eliminated, beginning July 1, 2001, on taxes distributed under s. 206.608, F.S., relating to the State Comprehensive Enhanced Transportation System Tax.[30] While the service charge was eliminated, references to the service charge remain in statute creating each of the above taxes or fees.[31]

Effect of the Bill
The bill removes obsolete references to the general revenue service charge in ss. 206.606(1), 206.608, 212.0501(6) and 319.32(5), F.S.

Intermodal Logistics Center Infrastructure Support Program

Present Situation
An intermodal logistics center is a facility serving as a point of intermodal transfer of freight in a specific area physically separated from a seaport where activities relating to transport, logistics, goods distribution, consolidation, or value-added activities are carried out, and whose activities and services are designed to support or be supported by conveyance or shipping through one or more seaports.[32]

DOT's Intermodal Logistics Center Infrastructure Support Program provides funds for roads, rail facilities, or other means for the conveyance or shipment of goods through a seaport. DOT may provide funds to assist with local government projects or projects performed by private entities that meet the

[26] DOT Legislative Concepts, Change the Right-of-Way Acquisition and Bridge Construction Bonds Debt Service Cap (Copy on file with Transportation & Infrastructure Subcommittee).
[27] *Id.*
[28] Exceptions are enumerated in s. 215.22, F.S.
[29] Section 215.211(1), F.S.
[30] Section 215.211(2), F.S.
[31] DOT Legislative Proposal, Remove Obsolete Language Relating to Service Charge (Copy on file with Transportation & Infrastructure Subcommittee).
[32] Section 311.101(2), F.S.

public purpose of enhancing transportation facilities for the conveyance or shipment of goods through a seaport,[33] and may provide up to 50 percent of project costs for eligible projects.[34]

When evaluating projects, DOT must consider the ability for a project to serve a strategic state interest, the ability of the project to facilitate the cost effective and efficient movement of goods, the extent the project contributes to economic activity, and certain financial and business commitments related to the project.[35]

At least $5 million per year must be made available from the STTF for the Intermodal Logistics Center and Infrastructure Support Program. This minimum funding requirement expires on July 1, 2020.[36] According to DOT, this program has leveraged local and private funding to complete 12 unique, geographically distributed projects across the state.[37]

Effect of the Bill
The bill removes the July 1, 2020, expiration date for the $5 million minimum annual funding for the Intermodal Logistics Center Infrastructure Support Program.

Autocycles

Present Situation
An "autocycle" is a three-wheeled motorcycle that is equipped with a roll cage or roll hoops, a seat belt for each occupant, antilock brakes, a steering wheel, and seating that does not require the operator to straddle or sit astride it. An autocycle must be manufactured in accordance with the applicable federal motorcycle safety standards by a manufacturer registered with the National Highway Traffic Safety Administration.[38] Autocycle drivers are not required to hold a motorcycle endorsement on his or her driver license.[39]

Federal Motor Vehicle Safety Standard No. 122[40] provides standards for all motorcycle braking systems.

Effect of the Bill
The bill amends the definition of the term "autocycle" to provide that it must have a "steering mechanism" rather than a "steering wheel." The bill also requires an autocycle to have brakes meeting federal safety standards for motorcycle brakes, rather than specifying antilock brakes.

Personal Delivery Devices

Present Situation
A personal delivery device (PDD) is an electrically powered device that is operated on sidewalks and crosswalks and intended primarily for transporting property; weighs less than 80 pounds, excluding cargo; has a maximum speed of 10 miles per hour; and is equipped with technology to allow for operation of the device with or without the active control or monitoring of a natural person.[41]

A PDD may operate on sidewalks and crosswalks where it has all the rights and duties applicable to a pedestrian, except that a PDD may not unreasonably interfere with pedestrians or traffic and must yield the right-of-way to pedestrians on the sidewalk or crosswalk.[42]

[33] Section 311.101(1), F.S.
[34] Section 311.101(6), F.S.
[35] Section 311.101(3), F.S.
[36] Section 311.101(7), F.S.
[37] DOT Legislative Proposal, Intermodal Logistics Center Support Program (Copy on file with Transportation & Infrastructure Subcommittee).
[38] Section 316.003(2), F.S.
[39] Sections 322.03(4) and 322.12, F.S.
[40] 49 C.F.R. 571.122
[41] Section 316.003(55), F.S.
[42] Section 316.2071(1), F.S.

A PDD must obey all official traffic and pedestrian control signals and devices, include identifying information on the PDD, and be equipped with a braking system.[43] A PDD may not operate on a public highway except to the extent necessary to cross a crosswalk, operate on a sidewalk or crosswalk unless the PDD operator is actively controlling or monitoring its navigation and operation, or transport hazardous materials.[44]

Effect of the Bill
The bill increases the statutory weight limit of a PDD from 80 pounds to 150 pounds.

Move Over Law

Present Situation
Under Florida's Move Over Law, if an emergency vehicle, a sanitation vehicle, a utility service vehicle, or a wrecker is working along the side of the road, every other driver must vacate the lane closest to the vehicle when driving on a highway with two or more lanes traveling in the direction of the vehicle. If such movement cannot be safely accomplished, the driver must reduce his or her speed to a speed that is 20 miles per hour less than the posted speed limit when the posted speed limit is 25 miles per hour or greater, or travel at 5 miles per hour when the posted speed limit is 20 miles per hour or less, when driving on a two-lane road.[45] The purpose of the Move Over Law is to protect workers stopped along the road performing their jobs.[46]

A violation of the Move Over Law is a noncriminal traffic infraction, punishable as a moving violation.[47] The statutory base fine for a moving violation is $60, but with additional fees assessed by the state and local governments, the total fine increases to $158.[48]

According to DOT, for the safety of both workers and the public, temporary traffic control[49] is required for maintenance and construction activities. However, due to the risks associated with setting up traffic controls for short duration work activities, such as fence repair, ditch repair, or tree trimming, such controls may be omitted. This places road and bridge maintenance or construction vehicles in situations similar to vehicles identified in the Move Over Law,[50] where they are working along the road without any protection from adjacent traffic.

Section 316.2397, F.S., prohibits certain lights on vehicles and provides certain exceptions. With regard to road and bridge construction or maintenance vehicles, the statute provides that:

- Road or street maintenance equipment, road or street maintenance vehicles, road service vehicles, refuse collection vehicles, petroleum tankers, and mail carrier vehicles may show or display amber lights when in operation or a hazard exists.
- Road maintenance and construction equipment and vehicles may display flashing white lights or flashing white strobe lights when in operation and where a hazard exists.[51]

Effect of the Bill

[43] Section 316.0271(2), F.S.
[44] Section 316.2071(3), F.S.
[45] Section 316.126(1)(b), F.S.
[46] Florida Driver Handbook, 2019, p. 44, available at https://www3.flhsmv.gov/handbooks/englishdriverhandbook.pdf (last visited Jan. 31, 2020).
[47] Section 316.126(6), F.S.
[48] Florida Court Clerks and Comptrollers Association, *2019 Distribution of Court Related Filing Fees, Service Charges, and Fines,* available at https://cdn.ymaws.com/www.flclerks.com/resource/resmgr/advisories/advisories_2019/19bull053_Attach_1_2019_Dist.pdf (last visited Jan. 13, 2019).
[49] Temporary traffic control is considered the devises and personnel that change road conditions for a work zone or following an incident. Email from John Kotyk, Deputy Director Legislative Affairs, DOT, Questions, January 31, 2020 (Copy on file with Transportation & Infrastructure Subcommittee).
[50] DOT Legislative Proposal, Move Over Law (Copy on file with Transportation & Infrastructure Subcommittee).
[51] Section 316.2397(4) and (5), F.S.

The bill adds road and bridge maintenance or construction vehicles displaying warning lights consistent with s. 316.2397, F.S., operating on the roadside without advance signs and channelizing devices (such as traffic cones or barricades) and vehicles delivering the United States mail to the list of vehicles subject to the Move Over Law. This will require drivers to move over to a different lane or decrease their speed when road and bridge maintenance or construction vehicles are displaying warning lights on the roadside.

Flashing Red and Blue Lights on Portable Radar Speed Display Units

Present Situation
Florida law prohibits blue lights on any vehicle or equipment, except police vehicles and vehicles of the Department of Corrections or any county correctional agency when responding to emergencies.[52]

Road or street maintenance equipment, road or street maintenance vehicles, road service vehicles, refuse collection vehicles, petroleum tankers, and mail carrier vehicles may display amber lights when in operation or a hazard exists.[53] Additionally, road maintenance and construction equipment and vehicles may display flashing white lights or flashing white strobe lights when in operation and where a hazard exists.[54]

The Manual on Uniform Traffic Control Devices (MUTCD), adopted by DOT pursuant s. 316.0745, F.S., describes portable, changeable message signs as temporary traffic control devices installed for temporary use with the flexibility to display a variety of messages, including warning messages where traffic speed is expected to drop substantially.[55] Warning lights used in a temporary traffic control zone, in either a steady burn or a flashing mode, are yellow in color as required by the MUTCD.[56] In addition, the MUTCD provides that "[i]f a changeable message sign displaying approach speeds is installed, the legend YOUR SPEED XX MPH or such similar legend should be displayed. The color of the changeable message legend should be a yellow legend on a black background or the reverse of these colors."[57]

Effect of the Bill
The bill authorizes portable radar speed display units in advance of a work zone area on roadways with a posted speed limit of 55 miles per hour or more to show or display flashing red or blue lights when workers are present.

Flashing Lights on Vehicles

Present Situation
Florida law prohibits flashing lights on vehicles except:

- As a means of indicating a right or left turn, to change lanes, or to indicate that the vehicle is lawfully stopped or disabled upon the highway;
- When a motorist intermittently flashes his or her vehicle's headlamps at an oncoming vehicle notwithstanding the motorist's intent for doing so; and
- For certain lamps authorized in statute, which may flash, including various types of emergency vehicles.[58]

With the exception of funeral processions,[59] Florida law does not expressly authorize the use of hazard lights on moving vehicles. The Florida Driver Handbook indicates that a driver *should not* use

[52] Section 316.2397(2), F.S.
[53] Section 316.2397(4), F.S.
[54] Section 316.2397(5), F.S.
[55] MUTCD, Section 6F.60, available at https://mutcd.fhwa.dot.gov/pdfs/2009r1r2/mutcd2009r1r2edition.pdf (last visited Feb. 12, 2020).
[56] MUTCD, Section 1A.13, definition of "warning light."
[57] MUTCD, Section 2B.13.
[58] Section 316.2397(7), F.S.
[59] Section 316.1974(3)(c), F.S.

emergency flashers in instances of low visibility or rain, and may only use emergency flashers when a vehicle is disabled or stopped on the side of the road.[60]

Effect of the Bill
The bill authorizes the use of flashing lights during periods of extreme low visibility on roadways with a posted speed limit of 55 miles per hour or more, effectively authorizing the use of hazard lights on moving vehicles under specified circumstances.

Agricultural Loads on Vehicles

Present Situation
Federal rules require each commercial motor vehicle, when transporting cargo on public roads, to have its cargo secured to prevent the cargo from leaking, spilling, blowing, or falling from the motor vehicle.[61]

Under Florida law, a vehicle may not be driven or moved on any highway unless the vehicle is constructed or loaded as to prevent any of its load from dropping, shifting, leaking, blowing, or otherwise escaping from the vehicle.[62]

Every vehicle owner and driver has the duty to prevent items from escaping from his or her vehicle. Covering and securing the load with a close-fitting tarpaulin or other appropriate cover, a load-securing device meeting federal requirements, or a device designed to reasonably ensure that cargo will not shift upon or fall from the vehicle is required and constitutes compliance.[63] However, Florida's load covering and securing provisions do not apply to vehicles carrying agricultural products locally from a harvest site or to or from a farm on roads where the posted speed limit is 65 miles per hour or less and the distance driven on public roads is less than 20 miles.[64]

Effect of the Bill
The bill removes the 20-mile maximum distance that vehicles carrying agricultural products may travel without covering the load. This will allow vehicles hauling agricultural products to travel an unlimited distance without covering the load.

Child Restraint Requirements

Present Situation

Motor vehicle injuries are a leading cause of death among children in the United States.[65] However, use of a car seat reduces the risk of death to children by 71 to 82 percent, when compared with seat belt use alone.[66] Additionally, the use of a booster seat reduces the risk of serious injury by 45 percent for children aged 4-8 years.[67]

The National Highway Traffic Safety Administration, the Center for Disease Control Prevention, and the American Academy of Pediatrics have produced guidelines for parents and caregivers to make sure children are secured appropriately for their age, height, and weight. For instance, the American Academy of Pediatrics' guidelines provide:

- All infants and toddlers should ride in a rear-facing car safety seat (CSS) until they are two years of age or until they reach the highest weight or height allowed by the manufacturer of their CSS.

[60] Department of Highway Safety and Motor Vehicles, *2018 Florida Driver Handbook,* available at: https://www3.flhsmv.gov/handbooks/englishdriverhandbook.pdf (last visited Oct. 30, 2019).
[61] 49 C.F.R. 393.100
[62] Section 316.520(1), F.S.
[63] Section 316.520(2), F.S.
[64] Section 316.520(4), F.S.
[65] Centers for Disease Control and Prevention, *Child Passenger Safety: Get the Facts*, available at http://www.cdc.gov/motorvehiclesafety/child_passenger_safety/cps-factsheet.html (last visited Oct. 16, 2019).
[66] *Id.*
[67] *Id.*

- All children two years of age or older, or those younger than two years of age who have outgrown the rear-facing weight or height limit for their CSS, should use a forward-facing CSS with a harness for as long as possible, up to the highest weight or height allowed by the manufacturer of their CSS.
- All children whose weight or height is above the forward-facing limit for their CSS should use a belt-positioning booster seat until the vehicle lap-and-shoulder seat belt fits properly, typically when they have reached 4 feet 9 inches in height and are between eight and 12 years of age.
- When children are old enough and large enough to use the vehicle seat belt alone, they should always use lap-and-shoulder seat belts for optimal protection.
- All children younger than 13 years of age should be restrained in the rear seats of vehicles for optimal protection.[68]

All 50 states and the District of Columbia have laws requiring some type of child restraint seat for children under a certain age, height, or weight. The majority of states require child restraint seats until age six or seven.[69] Additionally, many states require a rear facing CSS for children under a certain age and weight.[70]

Florida law requires every operator of a motor vehicle operated on its roadways, streets, or highways to provide for protection of a child who is five years of age or younger by properly using a crash-tested, federally approved child restraint device:

- For children from birth through three years of age, the device must be a separate carrier or a vehicle manufacturer's integrated child seat.
- For children aged four through five years of age, a separate carrier, an integrated child seat, or a child booster seat may be used. However, the requirement does not apply when a safety belt is used and the child:
    - Is being transported gratuitously by an operator who is not a member of the child's immediate family;
    - Is being transported in a medical emergency situation involving the child; or
    - Has a medical condition that necessitates an exception as evidenced by appropriate documentation from a health care professional.[71]

A person who violates Florida's child restraint requirements commits a moving violation punishable by a penalty of $60 plus any applicable local court costs.[72] In addition, the violator will have three points assessed against his or her driver license.[73] In lieu of the monetary penalty and the assessment of points, a violator may elect to participate in a child restraint safety program, with the approval of the court with jurisdiction over the violation. After completing the program, the court may waive the monetary penalty and must waive the assessment of points.[74] In 2019, there were 8,394 child restraint device violations.[75]

Effect of the Bill

The bill increases the age for requiring a crash-tested, federally approved child restraint device from five years of age or younger, to six years of age or younger. The bill conforms the provision to provide that from age four through six years of age, a separate carrier, an integrated child seat, or a child booster seat may be used. As a result, children being transported in a child restraint device in compliance with the current provisions of s. 316.613(1) and (1)(a)2., F.S., must be kept in that (or another) compliant device for one additional year if the child is younger than six years old.

[68] American Academy of Pediatrics, *Child Passenger Safety*, April 2011, available at https://pediatrics.aappublications.org/content/127/4/788 (last visited Oct. 18, 2019).
[69] AAA Digest of Motor Laws, *Child Passenger Safety*, available at https://drivinglaws.aaa.com/tag/child-passenger-safety/ (last visited Oct. 21, 2019).
[70] *Id.*
[71] Section 316.613, F.S.
[72] Section 318.18(3)(a), F.S.
[73] Section 322.27(3)(d)7., F.S.
[74] Section 316.613(5), F.S.
[75] Email from Kevin Jacobs, Deputy Legislative Affairs Director, DHSMV, February 4, 2020 (Copy on file with Transportation & Infrastructure Subcommittee).

Commercial Driver License Testing Exemption for Veterans

Present Situation
Florida law requires every applicant for an original driver license to pass an examination. However, the Department of Highway Safety and Motor Vehicles (DHSMV) may waive the knowledge, endorsement, and skills tests requirements for an applicant who is otherwise qualified and who surrenders a valid driver license issued by another state, a Canadian province, or the United States Armed Forces, if the driver applies for a Florida license of an equal or lesser classification.[76]

Under Florida law, the examination for a commercial driver license (CDL) must include various tests including an actual demonstration of the applicant's ability to operate a motor vehicle or combination of vehicles of the type covered by the license classification the applicant is seeking, including his or her ability to perform a vehicle inspection.[77]

Under Federal Motor Carrier Safety Administration rules, states may waive knowledge and skill test requirements for CDLs for current and former military service members who have experience driving a commercial motor vehicle in the military for an equivalent state license. The application must be made within one year of discharge of military service and certain conditions must be met.[78]

Under DHSMV's rules, applicants seeking a waiver of CDL skill testing due to military experience must pass all written knowledge exams for the appropriate CDL class and any applicable endorsements, and apply for a waiver while on active duty or within 90 days of separation from military service. Additionally, he or she must certify that he or she for at least two years immediately preceding the application operated a motor vehicle in the appropriate class, and present a Certificate for Waiver of Skill Test for Military Personnel form signed by his or her commanding officer.[79]

Effect of the Bill
The bill authorizes DHSMV to waive the skill test requirements for a CDL for persons with military commercial motor vehicle experience while on active military service or within one year of honorable discharge, which is consistent with federal rules regarding CDL license waivers for veterans.

For-hire Vehicle Insurance

Current Situation
Section 324.031, F.S., provides that the owner or operator of a taxicab, limousine, jitney, or any other for-hire passenger transportation vehicle may prove financial responsibility by providing satisfactory evidence of holding a motor vehicle liability policy issued by an insurance carrier that is a member of the Florida Insurance Guaranty Association.[80] However, a motor vehicle owner or lessee required to maintain insurance, including lessors of motor vehicles and owners who operate at least 300 for-hire passenger vehicles, may prove financial responsibility through self-insurance.[81]

Effect of the Bill
The bill provides that a for-hire passenger vehicle's motor vehicle liability policy must be provided by an insurer authorized to do business in this state who is a member of the Florida Insurance Guarantee Association, or by an eligible nonadmitted insurer that has a superior, excellent, exceptional, or equivalent financial strength rating by a rating agency acceptable to the Office of Insurance Regulation. The bill reduces the minimum number of for-hire passenger vehicles an owner or lessee must operate to be eligible to self-insurance to 150 vehicles, from 300 vehicles.

[76] Section 322.12(1), F.S.
[77] Section 322.12(4), F.S.
[78] 49 C.F.R. 383.77
[79] Rule 15A-7.018, F.A.C.
[80] The Florida Insurance Guaranty Association is created in s. 631.55, F.S.
[81] Section 324.032(2), F.S. The maximum amount of self-insurance permissible under this section is $300,000 on a per occurrence basis, and the self-insurer must maintain adequate excess insurance issued by an authorized or eligible insurer licensed or approved by the Office of Insurance Regulation.

Marina Evacuations

Present Situation

In order to ensure that protecting the lives and safety of vessel owners is placed before interests of protecting property, s. 327.59(1), F.S., prohibits marinas from adopting, maintaining, or enforcing policies requiring vessels to be removed from marinas following the issuance of a hurricane watch or warning.

After a tropical storm or hurricane watch has been issued, a marina owner or operator may take reasonable actions to further secure any vessel within the marina to minimize damage to a vessel and to protect marina property, private property, and the environment, and may charge a reasonable fee for such services.[82]

A marina owner may provide by contract that in the event a vessel owner fails to promptly remove a vessel from a marina after a tropical storm or hurricane watch has been issued, the marina owner may remove the vessel, if reasonable, from its slip or take whatever reasonable actions are deemed necessary to properly secure a vessel to minimize damage to a vessel and to protect marina property, private property, and the environment. The marina owner may charge the vessel owner a reasonable fee for any such services rendered, and such fees must be disclosed in the contract.[83]

A marina owner is not liable for any damage incurred to a vessel from storms or hurricanes and is held harmless as a result of such actions. Nothing in s. 327.59, F.S., may be construed to provide immunity to a marina owner for any damage caused by intentional acts or negligence when removing or securing a vessel as permitted under s. 327.59, F.S.[84]

Effect of the Bill

The bill provides that upon the issuance of a hurricane watch affecting the waters of a marina located in a deepwater seaport, vessels weighing under 500 gross tons may not remain in the waters of such marinas that have been deemed not suitable for refuge during a hurricane.

Vessel owners must promptly remove their vessels upon issuance of an evacuation order by the deepwater seaport. If the United States Coast Guard Captain of the Port sets the deepwater seaport condition to Yankee[85] and a vessel owner has failed to remove a vessel, the marina owner, operator, employee, or agent, regardless of existing contractual provisions between the marina owner and vessel owner, must remove the vessel, or cause it to be removed, if reasonable, from its slip and may charge the vessel owner a reasonable fee for any such services.

A marina owner, operator, employee, or agent is not liable for any damage incurred to a vessel from hurricanes and is held harmless because of such actions to remove the vessel from the waterways. The bill does not provide immunity to a marina owner, operator, employee, or agent for any damage caused by intentional acts or negligence when removing a vessel. After the hurricane watch has been issued, the owner or operator of any vessel that has not been removed from the waterway of the marina, pursuant to an evacuation order from the deepwater seaport, may be subject to a fine not exceeding three times the cost associated with removing the vessel from the waterway. The deepwater seaport issuing the evacuation order may impose and collect assessed fines.

[82] Section 327.59(2), F.S.
[83] Section 327.59(3), F.S.
[84] Section 327.59(4), F.S.
[85] Hurricane Port condition Yankee is when weather advisories indicate that sustained gale force winds (39-54 mph/34-47 knots) from a tropical or hurricane force storm are predicted to make landfall at the port within 24 hours. 33 C.F.R. s. 165.781.

Airport Zoning

Present Situation
Florida's airport zoning laws[86] require every political subdivision having an airport hazard area[87] within its territorial limits to adopt, administer, and enforce airport protection zoning regulations for such area. The statute contains minimum requirements for airport protection zoning regulations, including the requirement for documentation showing compliance with the federal requirement for notification of proposed construction or alteration of structures and a valid aeronautical study submitted by each person applying for a permit.[88]

Effect of the Bill
The bill revises the minimum requirements for airport protection zoning regulations to require a final valid determination from the Federal Aviation Administration, instead of the currently required aeronautical study. This will conform state statutes to federal requirements.[89]

DOT Application for Qualification

Present Situation
Any contractor desiring to bid for the performance of any DOT construction contract in excess of $250,000 must first be certified by DOT as qualified.[90]

A contractor who is not already qualified and in good standing with DOT as of January 1, 2019, who desires to bid on contracts in excess of $50 million, must have satisfactorily completed two projects, each in excess of $15 million, for DOT or for any other state department of transportation.[91]

Each application for certification must be accompanied by the contractor's latest annual financial statement, which must have been completed within the last 12 months. If the application or the annual financial statement shows the contractor's financial condition more than four months prior to the date on which DOT receives the application, the contractor must also submit an interim financial statement and an updated application. Each required annual or interim financial statement must be audited and accompanied by the opinion of a certified public accountant.[92]

Effect of the Bill
The bill clarifies that a contractor must be certified by DOT as qualified before bidding on contracts in excess of $50 million, in addition to having successfully completed two projects, each in excess of $15 million for DOT or another state transportation department.

The bill requires each application for certification to be accompanied by audited financial statements prepared in accordance with United States generally accepted accounting principles and United States generally accepted auditing standards by a certified public accountant licensed in this state or another state. The contractor's audited financial statements must be specifically for the applying contractor and must have been prepared within the immediately preceding 12 months. DOT may not consider any financial information relating to the contractor's parent entity. DOT may not certify as qualified any contractor that fails to submit the required audited financial statements.

If the application or the annual financial statement shows the contractor's financial condition more than four months before the date on which DOT receives the application, the contractor must also submit interim audited financial statements.

---

[86] Chapter 333, F.S.
[87] Section 333.03(1)(a), F.S. Section 333.01(4), F.S., defines the term "airport hazard area" as any area of land or water upon which an airport hazard might be established.
[88] Section 333.03(1)(c)3., F.S.
[89] DOT Legislative Proposal, Airport Determination Terminology (Copy on file with Transportation & Infrastructure Subcommittee).
[90] Section 337.14(1), F.S. DOT's rules regarding qualifications to bid are contained in Ch. 14-22, F.A.C.
[91] Section 337.14(1), F.S.
[92] *Id.*

Airport Construction Projects

Present Situation
Under current law, a contractor,[93] or his or her affiliate[94] qualified with DOT, may not also qualify to provide testing services, construction, engineering, and inspection (CEI) services to DOT.[95] This limitation does not apply to any design-build prequalification[96] and does not apply when DOT otherwise determines by written order at least 30 days before advertisement that the limitation is not in the public's best interests with respect to a particular contract for testing services and CEI services.

DOT has adopted procedures governing conflicts of interest involving professional services consultant contracts and design-build contracts. The procedures contain a set of matrixes illustrating the variety of scenarios encountered with prime or subcontractors and when DOT would consider the arrangement a conflict. [97]

In 2019, the Legislature passed HB 905,[98] which provided that for a construction project wholly or partially funded by DOT and administered by a local governmental entity, the same entity may not perform both design services and CEI services. That bill exempted certain seaports from that provision.

Effect of the Bill
The bill provides airports with the same exemption afforded seaports in 2019.

DOT Disposal of Real Property

Present Situation
DOT is authorized to convey any land, building, or other real or personal property it acquired if DOT determines the property is not needed for a transportation facility.[99] In such cases, DOT may dispose of the property through negotiations, sealed competitive bids, auctions, or any other means DOT deems to be in its best interest. DOT must advertise the disposal of property valued by DOT at greater than $10,000.[100]

A sale of unneeded property may not occur at a price less than DOT's current estimate of value except that:

- If donated for transportation purposes and a transportation facility has not been constructed for at least five years, plans have not been prepared for the construction of such facility, and the property is not located in a transportation corridor, a governmental entity in whose jurisdiction the property lies may authorize reconveyance of the donated property for no consideration to the original donor or the donor's heirs, successors, assigns, or representatives.[101]
- If the property is to be used for a public purpose, the property may be conveyed without consideration to a governmental entity.[102]

[93] Section 337.165(1)(d), F.S., defines the term "contractor" as any person who bids or applies to bid on work let by DOT or any counterpart agency of any other state or of the Federal Government or who provides professional services to DOT or other such agency. The term "contractor" includes the officers, directors, executives, shareholders active in management, employees, and agents of the contractor.
[94] Section 337.165(1)(a), F.S., defines the term "affiliate" as a predecessor or successor of a contractor under the same, or substantially the same, control or a group of business entities which are connected or associated so that one entity controls or has the power to control each of the other business entities. The term "affiliate" includes the officers, directors, executives, shareholders active in management, employees, and agents of the affiliate. The ownership by one business entity of a controlling interest in another business entity or a pooling of equipment or income among business entities must be prima facie evidence that one business entity is an affiliate of another.
[95] Section 337.14, F.S.
[96] Design-build prequalification is pursuant to s. 337.11(7), F.S.
[97] Topic No.: 375-030-006-c, Conflict of Interest Procedure for Department Contracts (Copy on file with Transportation & Infrastructure Subcommittee).
[98] Chapter 2019-153, L.O.F.
[99] Section 337.25(1) and (4), F.S.
[100] Section 337.25(4), F.S.
[101] Section 337.25(4)(a), F.S.
[102] Section 337.25(4)(b), F.S.

- If the property was originally acquired specifically to provide replacement housing for persons displaced by transportation projects, DOT may negotiate for the sale of such property as replacement housing.[103]

If DOT determines the property requires significant costs to be incurred or that continued ownership of the property exposes DOT to significant liability risks, DOT may use the projected maintenance costs over the next 10 years to offset the property's value in establishing a value for disposal of the property, even if that value is zero.[104]

If in DOT's discretion a sale to a person other than an abutting property owner would be inequitable, the property may be sold to the abutting owner for DOT's current estimate of value.[105]

In cases of property to be used for a public purpose, and in cases of property requiring significant costs to be incurred or exposing DOT to significant liability risks, as described above, DOT may, but is not required, to first offer the property ("right of first refusal") to the local government or other political subdivision in whose jurisdiction the property is situated.[106]

Effect of the Bill

The bill requires DOT, notwithstanding any provision of s. 337.25, F.S., to the contrary, to afford a right of first refusal to the previous property owner from whom DOT originally acquired the property for DOT's current estimate of value in cases of property to be used for a public purpose, in cases of property requiring significant costs to be incurred or exposing DOT to significant liability risks, and in cases in which DOT determines that a sale to any person other than an abutting property owner would be inequitable.

In cases of property to be used for a public purpose, and in cases of property requiring significant costs to be incurred or exposing DOT to significant liability risks, DOT must offer a right of first refusal to the previous property owner before being authorized to offer the property to the local government or other political subdivision in whose jurisdiction the property is located.

The bill requires DOT to offer the previous property owner the right of first refusal in writing, by certified mail or hand delivery, effective upon receipt of the property owner. The offer must provide the previous property owner a minimum of 30 days to exercise the right of first refusal. If the previous property owner wants to purchase the property, the owner must send notice to DOT by certified mail or hand delivery, and such acceptance is effective upon dispatch. Once the right is exercised, the previous property owner has 90 days to close on the property.

Utility Right-of-Way Permits

Present Situation

Section 337.401, F.S., provides that the use of the right-of-way for utilities is subject to regulation. Authorities, defined as the DOT and local governmental entities,[107] may prescribe and enforce reasonable rules or regulations regarding the placing and maintaining of utilities within the right-of-way limits of any road or publicly owned rail corridors under their respective jurisdictions.[108]

[103] Section 337.25(4)(c), F.S.
[104] Section 337.25(4)(d), F.S.
[105] Section 337.25(4)(e), F.S.
[106] Section 337.25(4), F.S.
[107] Section 334.03(13), F.S., defines the term "local governmental entity" as a unit of government with less than statewide jurisdiction, or any officially designated public agency or authority of such a unit of government, that has the responsibility for planning, construction, operation, or maintenance of, or jurisdiction over, a transportation facility; the term includes, but is not limited to, a county, an incorporated municipality, a metropolitan planning organization, an expressway or transportation authority, a road and bridge district, a special road and bridge district, and a regional governmental unit.
[108] Section 337.401(1)(a), F.S. That paragraph defines the term "utility" as electric transmission, voice, telegraph, data, or other communications services lines or wireless facilities; pole lines; poles; railways; ditches; sewers; water, heat, or gas mains; pipelines; fences; gasoline tanks and pumps; or other structures.

An authority may grant to any person who is a Florida resident, or to any corporation organized under Florida law or licensed to do business within Florida, the use of a right-of-way for the utility in accordance with the authority's adopted rules or regulations. However, a utility may not be installed, located, or relocated unless authorized by a written permit issued by the authority. For roads or rail corridors under DOT's jurisdiction, a utility relocation schedule and relocation agreement may be executed in lieu of a written permit.[109]

The Advanced Wireless Infrastructure Deployment Act (wireless act)[110] authorizes the deployment of certain wireless facilities in the public right-of-way. The wireless act permits a local government[111] to require a registration process and permit fees and provides requirements for processing and issuing such permits.[112]

Under the wireless act, an authority must, within 14 days after receiving an application, determine and notify the applicant, by electronic mail, as to whether the application is complete. If it determines the application is incomplete, the authority must specifically identify the missing information. An application is deemed complete if the authority fails to notify the applicant within 14 days.[113]

A complete application is deemed approved if an authority fails to approve or deny the application within 60 days after receipt of the application. If an authority does not use a 30-day negotiation period,[114] the parties may mutually agree to extend the 60-day application review period. The authority must grant or deny the application at the end of the extended review period.[115]

The authority must notify the applicant of approval or denial by electronic mail.[116] An authority must approve a complete application unless it does not meet the authority's applicable codes.[117] If the application is denied, the authority must specify in writing the basis for denial, including the specific code provisions on which the denial was based, and send the documentation to the applicant by electronic mail on the day the authority denies the application.[118] The applicant may cure the identified deficiencies and resubmit the application within 30 days after notice of the denial is sent to the applicant. The authority must approve or deny the revised application within 30 days after receipt or the application is deemed approved.[119]

The review of a revised application is limited to the deficiencies cited in the denial. If an authority provides for administrative review of the denial of an application, the review must be complete and a written decision issued within 45 days after a written request for review is made. A denial must identify the specific code provisions on which the denial is based. If the administrative review is not complete within 45 days, the authority waives any claim regarding failure to exhaust administrative remedies in any judicial review of the denial of an application.[120]

Effect of the Bill

The bill provides that a permit application relating to the use of the right-of-way for utilities required by a county or municipality under s. 337.401, F.S., must be acted on within the timeframes provided in the

[109] Section 337.401(2), F.S.
[110] Section 337.401(7), F.S.
[111] For purposes of the wireless act, s. 337.401(7)(b)5., F.S., provides that the term "authority" means a county or municipality having jurisdiction and control of the rights-of-way of any public road. The term does not include DOT. As such, DOT is excluded from expedited timeframes in the wireless act.
[112] Section 337.401(7)(d), F.S.
[113] Section 337.401(7)(d)7., F.S.
[114] The 30-day negotiation period is provided for in s. 337.401(7)(d)4., F.S.
[115] Section 337.401(7)(d)8., F.S. This subparagraph also requires applications to be processed on a nondiscriminatory basis.
[116] Section 337.401(7)(d)9., F.S.
[117] Section 337.401(7)(b)2., F.S., defines the term "applicable codes" as uniform building, fire, electrical, plumbing, or mechanical codes adopted by a recognized national code organization or local amendments to those codes enacted solely to address threats of destruction of property or injury to persons, and includes the National Electric Safety Code and the 2017 edition of DOT Utility Accommodation Manual.
[118] Section 337.401(7)(d)9., F.S.
[119] *Id.*
[120] Section 337.401(7)(d)9., F.S.

wireless act. Specifically, the bill requires the authority to determine whether an application is complete within 14 days after receiving the application and requires an application to be approved or denied within 60 days of receipt of the application. The bill also requires requests for reviews of denials of applications to be completed within 45 days of the request being made.

Emergency Staging Areas

Present Situation

Chapter 252, F.S., confers certain emergency powers upon the Governor, the Division of Emergency Management (DEM), and the governing bodies of each political subdivision of the state when an emergency or disaster occurs.[121] Section 252.359, F.S., charges DEM with establishing "a statewide system to facilitate the transportation and distribution of essentials in commerce…to meet the needs of residents affected during a declared emergency and to ensure continuing economic resilience of communities impacted by disaster."[122] Similarly, among other related authority, political subdivisions are authorized to obtain and distribute equipment, materials, and supplies for emergency management purposes.[123]

DOT's Florida Turnpike Enterprise operates the Florida Turnpike System, which includes the Turnpike Mainline, the Homestead Extension, Sawgrass Expressway, Seminole Expressway, Beachline Expressway, Southern Connector Extension, Veterans Expressway, Suncoast Parkway, Polk Parkway, Western Beltway, and the I-4 Connector.[124] In addition, any future multi-use corridor of regional significance (M-CORES) will be part of the turnpike system.[125] The following corridors comprise the M-CORES Program:

- Southwest-Central Florida Connector (Collier County to Polk County);
- Suncoast Connector (Citrus County to Jefferson County); and
- Northern Turnpike Connector (northern terminus of the Florida Turnpike northwest to the Suncoast Parkway).[126]

Effect of the Bill

The bill authorizes DOT to plan, design, and construct staging areas for emergency response as part of the turnpike system. The sites are intended to be designated areas for the staging of emergency supplies, equipment, and personnel to facilitate the prompt provision of emergency assistance to the public in response to a declared state of emergency. The bill provides that emergency supplies, such as water, fuel, generators, vehicles, equipment, and other related materials, staged at key geographic points will aide in emergency response and assistance, including evacuations, deployment of emergency-related supplies and personnel, and restoration of essential services.

In selecting a proposed site, DOT, in consultation with DEM, must consider the extent to which a proposed site for a staging area:

- Is located in a geographic area that best facilitates wide dissemination of emergency-related supplies and equipment;
- Provides ease of access to major highways and other transportation facilities;
- Is sufficiently large to accommodate staging of a significant amount of emergency-related supplies and equipment;
- Provides space in support of emergency preparedness and evacuation activities, such as fuel reserve capacity;
- Could be used during non-emergency periods for commercial motor vehicle parking or other uses; and

[121] Section 252.32(1)(b), F.S.

[122] Section 252.359, F.S., defines the term "essentials" to mean goods that are consumed or used as a direct result of a declared emergency, or that are consumed or used to preserve, protect, or sustain life, health, safety, or economic well-being.

[123] Section 252.38(3), F.S.

[124] For a map of the system, *see* Florida's Turnpike, *About*, available at http://www.floridasturnpike.com/about.html (last visited Feb. 22, 2020).

[125] M-CORES is authorized pursuant to s. 338.2278, F.S.

[126] For additional detailed M-CORES information, *see* DOT's M-CORES site, available at https://floridamcores.com/#home (last visited Feb. 22, 2020).

- Is consistent with other state and local emergency management considerations.

DOT must give priority consideration to placement of emergency staging areas in counties with a population of 200,000 or less in which an M-CORES corridor is located.[127]

The bill authorizes DOT to acquire property and property rights necessary for such staging areas,[128] through either negotiated sales or eminent domain. DOT may authorize other uses of a staging area, as provided in the Florida Transportation Code,[129] including, but not limited to, commercial motor vehicle parking to comply with federal hours of service off-duty and sleeper berth requirements and for other vehicular parking to provide rest for drivers. The bill requires that staging area projects be included in DOT's work program.[130]

The increased availability of staging areas may elevate the efficiency of response to emergencies, thereby facilitating faster recovery from such emergencies for both the public and private sectors, including, but not limited to, quicker resumption of market activity, such as tourism. Authorization for other appropriate uses of the proposed staging areas during non-emergency periods may result in other economic efficiencies.

Work Program Submission Deadline

Present Situation

As part of its budgeting process, DOT prepares a tentative work program, based on the district work programs.[131] Each district's work program is developed cooperatively with the state's metropolitan planning organizations (MPOs)[132] and includes, to the maximum extent feasible, the project priorities of MPOs that have been submitted to the district by October 1 of each year.[133] However, DOT and a MPO may agree, in writing, to vary this submittal date.[134]

Prior to submitting the district work program to the central office, each district holds public hearings and makes a presentation to each MPO to determine the necessity of making any changes to the district work program.[135] Following submission of each district's work program to the central office, DOT develops its tentative work program based on the district work programs.[136]

DOT's central office submits a preliminary copy of its tentative work program to the Executive Office of the Governor, the legislative appropriations committees, the Florida Transportation Commission, and the Department of Economic Opportunity (DEO) at least 14 days prior to the convening of the regular legislative session.[137] Following a public hearing and evaluation by the Florida Transportation Commission, DOT submits the tentative work program to the Executive Office of the Governor and the legislative appropriations committees no later than 14 days after the regular legislative session begins.[138]

According to DOT, since the Legislature meets in January in even-numbered years, the statutory period for DOT to complete its work program process has accelerated. In the past, DOT has requested that

[127] The county population is as determined by the most recent official state estimate pursuant to s. 186.901, F.S.
[128] DOT is authorized to acquire property pursuant to s. 338.04, F.S.
[129] The Florida Transportation Code consists of chs. 334-339, 341, 348, and 349 and ss. 332.003-332.007, 351.35, 351.36, 351.37, and 861.011, F.S.
[130] DOT's work program is developed pursuant to s. 339.175, F.S.
[131] Section 339.135(4)(b)1, F.S.
[132] MPOs are federally-required regional transportation planning entities in urbanized areas with populations of 50,000 or more persons.
[133] This is pursuant to s. 339.175(8)(b), F.S.
[134] Section 339.135(4)(c)2., F.S.
[135] Section 339.135(4)(d), F.S.
[136] Section 339.135(4)(e), F.S.
[137] Section 339.135(4)(f), F.S.
[138] Section 339.135(4)(h), F.S.

MPOs submit their project priorities lists by August 1 in order for DOT to have ample time to complete its required processes.[139]

Effect of the Bill
The bill moves the deadline for when MPOs must submit their project priorities to DOT from October 1 to August 1. The change will provide DOT with additional time to complete its work program process prior to the beginning of the annual legislative session.

Economic Development Transportation Projects

Present Situation
The Economic Development Transportation Fund is an economic incentive program intended to encourage specific businesses to locate, expand, or remain in the state.[140] Under this program, DOT in consultation with DEO and Enterprise Florida, Inc., may make and approve expenditures and contract with the appropriate governmental body[141] for the direct costs of eligible transportation projects.[142]

DOT, in consultation with DEO, reviews each transportation project for approval and funding. DOT must approve a project for it to be eligible for funding. DOT must consider the following criteria when reviewing projects: the cost per job created or retained, average wages for jobs created, capital investment by the business, local commitment, and local unemployment and poverty rates.[143]

This program is appropriated on a non-recurring basis in the STTF.[144] According to DOT, this budget category has not been used for several years. In its work program, DOT has continued funding and financing the program; however, in recent years, the Legislature has utilized a unique budget category for local projects.[145]

Effect of the Bill
The bill repeals the economic development transportation program. Repealing this program will release DOT from the requirement to include associated projects into its work program. Without appropriations, these projects have to be deferred or deleted, causing a disruption to DOT's work program.[146]

The bill also makes conforming changes to s. 288.0656, F.S., relating to the Rural Economic Development Initiative, s. 339.18, F.S., relating to the use of moneys in the STTF, and s. 337.809, F.S., relating to the Energy Economic Zone Pilot Program.

Passenger Rail Insurance Limits

Present Situation
Florida law authorizes DOT to purchase liability insurance for its passenger rail program, which amount may not exceed $200 million. This liability insurance may include coverage for DOT, certain freight rail operators, the National Railroad Passenger Corporation,[147] commuter rail service providers, governmental entities, or any ancillary development.[148]

---

[139] DOT Legislative Proposal, Advance MPO Deadline to Submit Project Priorities (Copy on file with Transportation & Infrastructure Subcommittee).
[140] DOT Legislative Proposal, Deletion of Road Fund (Copy on file with Transportation & Infrastructure Subcommittee). Chapter 2012-128, L.O.F.
[141] Section 339.2821(1)(b)1, F.S., defines the term "governmental body" as an instrumentality of the state or a county, municipality, district, authority, board, or commission, or an agency thereof, within which jurisdiction the transportation project is located and which is responsible to the department for the transportation project.
[142] Section 339.2821(1)(b)2., F.S., defines the term "transportation project" as a transportation facility that DOT, in consultation with DEO, deems necessary to facilitate the economic development and growth of the state.
[143] Section 339.2821(2), F.S.
[144] DOT, Economic Development Transportation Fund Fact Sheet (Copy on file with Transportation & Infrastructure Subcommittee).
[145] DOT Legislative Proposal, Deletion of Road Fund (Copy on file with Transportation & Infrastructure Subcommittee).
[146] *Id.*
[147] The National Railroad Passenger Corporation is also known as AMTRAK.
[148] Section 341.302(17)(b), F.S.

In 1997, federal law set the limit on its passenger rail liability at $200 million.[149] In 2015, the federal government required its liability cap to be adjusted to reflect changes to the consumer price index every five years.[150] In 2016, the federal rail passenger liability cap was increased to $294.3 million.[151]

Effect of the Bill
The bill increases the liability insurance cap for DOT's passenger rail systems from $200 to $295 million, consistent with the current federal rail liability cap.

Jacksonville Transportation Authority Leases

Present Situation
Chapter 349, F.S., creates the Jacksonville Transportation Authority (JTA) as a body politic and corporate and an agency of the state.[152] Included in its purposes and powers is the power to enter into and make leases for terms not exceeding 40 years, as either lessee or lessor, in order to carry out the right to lease as set forth in chapter 349, F.S.[153] JTA designs and constructs bridges and highways and provides varied mass transit services, including express and regular bus service, a downtown Skyway monorail, the St. Johns River Ferry, the Gameday Xpress for various sporting events, paratransit for the disabled and elderly, and ride request on-demand services.[154]

While JTA is authorized to enter into 40-year leases, the Central Florida Expressway Authority is authorized to enter into leases not exceeding 99 years.[155] Additionally, DOT is authorized to enter into 99-year leases for the use of DOT property, including rights-of-way, for certain purposes.[156]

Effect of the Bill
The bill authorizes JTA to enter into 99-year leases, instead of the current 40 years authorized by law.

Vessel Regulation

Present Situation

Boating Speed Safety Regulations
In Florida, a vessel[157] must be operated in a reasonable and prudent manner, having regard for other waterborne traffic, posted speed and wake restrictions, and all other attendant circumstances so as not to endanger the life, limb, or property of another person outside the vessel or due to vessel overloading or excessive speed.[158] A person operating a vessel in excess of a posted speed limit is guilty of a civil infraction.[159]

Anchoring or Mooring
Anchoring or mooring refers to a boater's practice of seeking and using a safe harbor on the public waterway system for an undefined duration. Anchoring is accomplished using an anchor carried on the vessel. Mooring is accomplished using moorings permanently affixed to the bottom of the water body. Anchorages are areas that boaters regularly use for anchoring or mooring, whether designated or

[149] 49 U.S.C. 28103.
[150] Email from John Kotyk, Deputy Director of Legislative Affairs, DOT, Rail Liability Adjustment. Jan. 23, 2020 (Copy on file with Transportation & Infrastructure Subcommittee). *See* Pub. L. 114-94, div. A, title XI, s. 11415(b), Dec. 4, 2015.
[151] Federal Register Document No. 2016-00301, filed Jan. 8, 2016, available at https://www.federalregister.gov/documents/2016/01/11/2016-00301/adjustment-to-rail-passenger-transportation-liability-cap (last visited Jan. 23. 2020).
[152] Section 349.03(1), F.S.
[153] Section 349.04(2)(d), F.S.
[154] JTA Website, https://www.jtafla.com/about-jta/ (last visited Feb. 22, 2020).
[155] Section 348.754(1)(d), F.S.
[156] Section 337.251, F.S.
[157] Section 327.02, F.S., defines the term "vessel" to include every description of watercraft, barge, and airboat, other than a seaplane on the water, used or capable of being used as a means of transportation on water.
[158] Section 327.33, F.S.
[159] Section 327.73(h), F.S.

managed for that purpose or not. Mooring fields are areas designated and used for a system of properly spaced moorings.[160]

State Regulation of the Anchoring or Mooring of Vessels
Florida law prohibits a person from anchoring a vessel, except in case of emergency, in a manner that unreasonably or unnecessarily constitutes a navigational hazard or interferes with another vessel.[161] Anchoring under bridges or in or adjacent to heavily traveled channels constitutes interference, if unreasonable under the prevailing circumstances.[162] Interference with navigation is a noncriminal infraction and punishable by a fine of $50.[163]

With certain exceptions, the owner or operator of a vessel or floating structure may not anchor or moor such that the nearest approach of the anchored or moored vessel or floating structure is:
- Within 150 feet of any marina, boat ramp, boatyard, or vessel launching or loading facility;
- Within 300 feet of a superyacht repair facility; or
- Within 100 feet outward from the marked boundary of a public mooring field or a lesser distance if approved by the local government within which the mooring field is located.[164]

An owner or operator of a vessel may anchor or moor within 150 feet of any marina, boat ramp, boatyard, or other vessel launching or loading facility; within 300 feet of a superyacht repair facility; or within 100 feet outward from the marked boundary of a public mooring field if:
- The vessel suffers a mechanical failure that poses an unreasonable risk of harm to the vessel or the persons onboard such vessel. The owner or operator of the vessel may anchor or moor for five business days or until the vessel is repaired, whichever occurs first; or
- Imminent or existing weather conditions in the vicinity of the vessel pose an unreasonable risk of harm to the vessel or the persons onboard such vessel. The owner or operator of the vessel may anchor or moor until weather conditions no longer pose such risk.[165]

The owner or operator of a vessel or floating structure may not anchor or moor within the marked boundary of a public mooring field unless the owner or operator has a lawful right to do so by contractual agreement or other business arrangement.[166]

A vessel or floating structure may not be anchored, moored, or affixed to an unpermitted, unauthorized, or otherwise unlawful object that is on or affixed to the bottom of the waters of this state. This does not apply to a private mooring owned by the owner of privately owned submerged lands.[167]

Effect of the Bill

Careless Operation of Vessels
The bill amends s. 327.33, F.S., relating to the reckless or careless operation of a vessel. The bill prohibits individuals from operating a vessel at a speed greater than slow speed, minimum wake upon approaching within 300 feet of any emergency vessel, including but not limited to, a law enforcement vessel, a United States Coast Guard vessel, or firefighting vessel, when such emergency vessel has its emergency lights activated. This provision does not apply to law enforcement vessels, firefighting vessels, and rescue vessels owned or operated by a governmental entity.

A vessel is not considered to be operating at slow speed, minimum wake if it is:
- Operating on plane;

[160] Ankersen, Hamann, & Flagg, *Anchoring Away: Government Regulation and the Rights of Navigation in Florida*, 2 (Rev. May 2012), available at https://www.law.ufl.edu/_pdf/academics/centers-clinics/clinics/conservation/resources/anchaway.pdf (last visited Feb. 23, 2020).
[161] Section 327.44, F.S.
[162] Section 327.44(2), F.S.
[163] Section 327.73, F.S.
[164] Section 327.4109(1), F.S.
[165] Section 327.4109(2), F.S.
[166] Section 327.4109(3), F.S.
[167] Section 327.4019(4), F.S.

- In the process of coming off plane and settling into the water or getting on plane; or
- Operating at a speed that creates a wake that unreasonably or unnecessarily endangers other vessels.

The bill provides that if an individual operates a vessel at a speed greater than slow speed, minimum wake, upon approaching within 300 feet of any construction vessel or barge when the vessel or barge is displaying an orange flag indicating the vessel is actively engaged in construction operations, he or she is guilty of careless operation. This provision does not apply to law enforcement vessels, firefighting vessels, and rescue vessels owned or operated by a governmental entity. The required flag is considered sufficient if it:

- Is at least 2 feet by 3 feet in size;
- Is displayed from a pole extending at least 10 feet above the tallest portion of the vessel or barge or at least 5 feet above any superstructure permanently installed upon the vessel or barge;
- Is constructed to ensure that the flag remains fully unfurled and extended in the absence of a wind or breeze;
- Is displayed so that the visibility of the flag is not obscured in any direction; and
- Is, during periods of low visibility, including any time between the hours from one-half hour after sunset and one-half hour before sunrise, illuminated such that it is visible from a distance of at least two nautical miles.

Vessels at Risk of Becoming Derelict

The bill prohibits an owner or responsible party of a vessel at risk of becoming derelict, who has been issued a citation for a second violation for the same vessel, from anchoring or mooring the vessel to, or within 20 feet of, a mangrove or upland vegetation on public lands. The 20-foot distance is measured in a straight line from the point of the vessel closest to the outermost branches of the mangrove or vegetation. The bill provides that a violation is a noncriminal infraction.

The bill authorizes the Florida Wildlife Conservation Commission (FWC) and its officers, and county sheriffs and deputies, municipal police officers, and other municipal officers to relocate or cause to be relocated at-risk vessels in violation to a distance of greater than 20 feet from any mangrove or upland vegetation. FWC or any law enforcement officer that relocates an at-risk vessel upon state waters is held harmless for any damages to the vessel resulting from relocation, unless the damage is the result of gross negligence or willful misconduct.

DOT Toll Authority Receivables Report

Present Situation

Current law authorizes DOT, including the Florida Turnpike Enterprise and various expressway and bridge authorities, to assess tolls for the use of their facilities. Depending on the toll facility and the location of the toll collection point, toll payment methods include cash, electronic tolling utilizing a transponder attached to the vehicle, or toll-by-plate. With toll-by-plate, a camera takes a photograph of the vehicle's license plate and the vehicle owner is mailed a bill for the tolls, plus a service charge. Overdue toll-by-plate invoices (or receivables) are referred to a collection agency.

Effect of the Bill

The bill requires DOT, each expressway and bridge authority created pursuant to ch. 348, F.S.,[168] and the Mid-Bay Bridge Authority,[169] to submit a report documenting its uncollected customer receivables to the Governor, the President of the Senate and the Speaker of the House of Representatives by October 1, 2020. Each report must include an aged summary of customer receivables for electronic toll collection, as well as toll-by-plate, as of June 30, 2020. Additionally, each report must include a schedule by year of customer receivables written off, sold to a collection agency, or assigned to a collection agency. Each report must include a detailed discussion by each entity from its independent

[168] Chapter 348, F.S., creates the Greater Miami Expressway Agency, the Tampa-Hillsborough County Expressway Authority, the Central Florida Expressway Authority, and the Santa Rosa Bay Bridge Authority.
[169] The Mid-Bay Bridge Authority was recreated pursuant to ch. 2000-411, L.O.F.

certified public accountant describing the accounting methodology utilized within the entity's audited financial statements to record revenue and bad debt.

B. SECTION DIRECTORY:

Section 1 amends s. 20.23, F.S., relating to the DOT, effective July 1, 2023.

Section 2 amends s. 201.15, F.S., relating to the distribution of taxes collected.

Section 3 amends s. 206.46, F.S., relating to the STTF.

Section 4 amends s. 206.606, F.S., relating to the distribution of certain proceeds.

Section 5 amends s. 206.608, F.S., relating to the State Comprehensive Transportation System Tax.

Section 6 amends s. 212.0501, F.S., relating to the tax on diesel fuel for business purposes.

Section 7 amends s. 288.0656, F.S., relating to the Rural Economic Development Initiative, to conform.

Section 8 amends s. 311.101, F.S., relating to the Intermodal Logistics Center Infrastructure Support Program.

Section 9 amends s. 316.003, F.S., defining terms.

Section 10 amends s. 316.126, F.S., relating to the operation of vehicles and actions of pedestrians on approach of an authorized emergency, sanitation, or utility service vehicle.

Section 11 amends s. 316.2397, F.S., relating to certain lights prohibited; exceptions.

Section 12 amends s. 316.520, F.S., relating to loads on vehicles.

Section 13 amends s. 316.613, F.S., relating to child restraint requirements.

Section 14 amends s. 319.32, F.S., relating to fees; service charges; disposition.

Section 15 amends s. 322.12, F.S., relating to the examination of applicants.

Section 16 amends s. 324.031, F.S., relating to the manner of providing financial responsibility.

Section 17 amends s. 324.032, F.S., relating to the manner of providing financial responsibility; for-hire passenger transportation vehicles.

Section 18 amends s. 327.59, F.S., relating to marina evacuations.

Section 19 amends s. 333.03, F.S., relating to requirements to adopt airport zoning regulations.

Section 20 amends s. 337.14, F.S., relating to applications for qualification.

Section 21 amends s. 337.25, F.S., relating to the acquisition, lease, and disposal of real and personal property.

Section 22 amends s. 337.401, F.S., relating to the use of the right-of-way for utilities subject to regulation.

Section 23 creates s. 338.236, F.S., relating to staging areas for emergencies.

Section 24 amends s. 339.08, F.S., relating to the use of moneys in the STTF, to conform.

Section 25 amend s. 339.135, F.S., relating to DOT's work program.

Section 26 amends s. 339.175, F.S., relating to metropolitan planning organizations.

Section 27 repeals s. 339.2821, F.S., relating to economic development transportation projects.

Section 28 amends s. 341.302, F.S., relating to the rail program; duties and responsibilities of DOT.

Section 29 amends s. 341.302, F.S., relating to the rail program; duties and responsibilities of DOT, effective July 1, 2023.

Section 30 amends s. 341.303, F.S., relating to funding authorization and appropriations, effective July 1, 2023.

Section 31 repeals s. 341.8201, F.S., providing a short title, effective July 1, 2023.

Section 32 amends s, 341.8203, F.S., providing definitions, effective July 1, 2023.

Section 33 amends s. 341.822, F.S., providing powers and duties of the FRE, effective July 1, 2023.

Section 34 amends s. 341.825, F.S., relating to communications facilities, effective July 1, 2023.

Section 35 amends s. 341.836, F.S., relating to associated development, effective July 1, 2023.

Section 36 amends s. 341.838, F.S., relating to fares, rates, rents, fees, and charges, effective July 1, 2023.

Section 37 amends s. 341.839, F.S., relating to alternative means, effective July 1, 2023.

Section 38 amends s. 341.840, F.S., providing a tax exemption, effective July 1, 2023.

Section 39 amends s. 343.58, F.S., relating to County Funding for the South Florida Regional Transportation Authority, effective July 1, 2023, to conform.

Section 40 amends s. 349.04, F.S., relating to the purposes and powers of the JTA.

Section 41 amends s. 377.809, F.S., relating to the Energy Economic Zone Pilot Program, to conform.

Section 42 amends s. 327.33, F.S., relating to the reckless or careless operation of a vessel.

Section 43 amends s. 327.4107, F.S., relating to vessels at risk for becoming derelict on waters of this state.

Section 44 reenacts s. 327.73, F.S., relating to noncriminal infractions.

Section 45 requires DOT and certain expressway and bridge authorities to submit a report.

Section 46 provides a declaration of important state interest.

Section 47 provides that except as otherwise expressly provided, this act takes effect July 1, 2020.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

See Fiscal Comments.

2. Expenditures:

   See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   See Fiscal Comments.

2. Expenditures:

   See Fiscal Comments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Permanent funding of the Intermodal Logistics Center Infrastructure Support Program may provide for additional intermodal logistics center projects in the state.

The change in child safety restraint requirements may result in more motorists being assessed traffic fines, and may require motorists to purchase new child safety restraint seats.

Requiring specified timeframes for approving permits for utilities on rights-of-way may reduce costs for companies wishing to place utilities in such rights-of-way.

Increased availability of staging areas on the turnpike system may provide the public with earlier provision of essential emergency supplies during emergencies and may provide additional benefits, such as increased availability of parking on the turnpike system during non-emergency periods. The business community may experience a positive impact in that more efficient emergency response may allow for a faster return to normal market activity. DOT's maintenance and construction contractors may benefit from increased availability of staging areas during non-emergency periods.

D. FISCAL COMMENTS:

Increasing the $275 million debt cap on Right-of-Way and Bridge Construction Bonds will give DOT the flexibility to utilize that program to meet future bridge replacement needs with minimal disruption to capacity projects in DOT's work program.[170]

Federal rules require each commercial motor vehicle to have its cargo secured to prevent the cargo from leaving the motor vehicle. The bill authorizes agricultural loads to travel across the state uncovered. It is unknown if this conflict with federal law will jeopardize federal funding.

Including road and bridge construction or maintenance vehicles and postal vehicles to the list of vehicles subject to the Move Over Law may increase state and local revenues associated with penalties for violations. However, the impact is indeterminate. DHSMV may incur expenditures associated with enforcement and public education regarding changes to the Move Over Law. The amount is indeterminate, but is likely to be insignificant.

To the extent there is an increase in the number of traffic citations issued due to the new child safety restraint requirements, the state and local governments may realize additional revenues. However, the fiscal impact cannot be quantified and is indeterminate.

DOT may incur administrative expenses associated with the removal of the FRE from DOT's organization and with the DOT secretary naming a departmental entity to oversee rail responsibilities. However, the amount of any such expenses should be insignificant, as DOT currently funds the expenditures of both the FRE and its Rail Office.

[170] DOT Legislative Proposal, Change in Right-of-Way Acquisition and Bridge Construction Bond Debt Service Cap.

The fiscal impact of the emergency staging area provisions are indeterminate. DOT must first exercise the authority granted in the bill, select a site or sites, and estimate the costs to plan, design, and construct the staging areas, which costs are unknown at this time. However, having such staging areas in place may reduce costs associated with providing necessary staging areas for emergency response purposes, for both state and local governments, and may reduce costs incurred by DOT for the provision of other uses authorized by the bill during non-emergency periods.

DOT may incur indeterminate expenditures associated with purchasing additional rail liability insurance. However, the cost of any such additional insurance is unknown and, under current law, the costs to DOT would be shared with any covered freight rail operator, AMTRAK, commuter rail service providers, governmental entities, or ancillary development.

DOT and expressway and bridge authorities may incur expenditures associated with preparing its report on uncollectable toll receivables; however, the cost is expected to be insignificant.

Counties and municipalities may incur expenditures associated with complying with the specified timeframes to approve permits for utilities within their rights-of-way. However, the expenditures may be insignificant.

Local governments operating airports may see a reduction in expenditure due to the exemption from the construction engineering and inspection requirements in the bill. However, the cost savings is associated with specific projects; therefore, this reduction in expenditures is indeterminate.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   The county/municipality mandates provision of Art. VII, s. 18 of the Florida Constitution may apply because the bill requires counties and municipalities to act on applications for permits relating to the use of rights-of-way for utilities within a specified timeframe. However, an exemption may apply if the provisions are found to have an insignificant fiscal impact. In addition, an exception may apply if the bill is approved by a two-thirds vote of the membership of each house because it includes a finding that the bill fulfills an important state interest.

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

DOT may need to amend its rules regarding qualifications to bid on construction projects. DHSMV will need to amend its rules to authorize additional time for veterans to be exempt from CDL testing requirements. DOT and DHSMV appears to have sufficient rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

Not applicable.

A bill to be entitled

An act relating to transportation; amending s. 20.23, F.S.; revising the organization of the Department of Transportation; revising and providing for the delegation of certain responsibilities; revising provisions relating to the operation of a rail enterprise; amending s. 201.15, F.S.; revising uses for distributions made under the State Transportation Trust Fund in specified fiscal years; providing for the expiration of a specified provision; beginning in a specified fiscal year, requiring the allocation of a certain of amount of funds to the State Transportation Trust Fund to be used for rail safety; amending s. 206.46, F.S.; revising a limitation on an annual transfer from the State Transportation Trust Fund to the Right-of-Way Acquisition and Bridge Construction Trust Fund; amending ss. 206.606, 206.608, and 212.0501, F.S.; removing a requirement for deduction of certain service charges before the distribution of certain moneys; amending s. 288.0656, F.S.; making conforming changes; amending s. 311.101, F.S.; deleting the scheduled expiration of funding for the Intermodal Logistics Center Infrastructure Support Program; amending s. 316.003, F.S.; revising definitions; amending s. 316.126, F.S.; requiring the

operator of a motor vehicle to take certain actions under certain circumstances when a road and bridge maintenance or construction vehicle is on the roadside; amending s. 316.2397, F.S.; authorizing certain vehicles to show or display certain lights under certain circumstances; amending s. 316.520, F.S.; revising application of agricultural load securing requirements; amending s. 316.613, F.S.; increasing the age of children for whom operators of motor vehicles must provide protection by using a crash-tested, federally approved child restraint device; increasing the age of children for whom a separate carrier, an integrated child seat, or a child booster seat may be used; amending s. 319.32, F.S.; removing a requirement for deduction of certain service charges before depositing fees for a certificate of title into the State Transportation Trust Fund; amending s. 322.12, F.S.; authorizing the Department of Highway Safety and Motor Vehicles to waive certain commercial motor vehicle testing requirements for specified persons under certain circumstances; amending ss. 324.031 and 324.032, F.S.; revising the manner of providing financial responsibility for owners, operators, or lessees of certain for-hire passenger transportation vehicles;

amending s. 327.59, F.S.; prohibiting certain vessels from remaining in certain marinas that have been deemed unsuitable for refuge during a hurricane; authorizing removal of such vessels under certain circumstances; limiting liability for certain damages; providing construction; providing for penalties; amending s. 333.03, F.S.; requiring airport protection zoning regulations to require certain permit applicants to submit a final valid determination from the Federal Aviation Administration; amending s. 337.14, F.S.; requiring certain contractors to be certified by the Department of Transportation as qualified; revising the financial statements required to accompany an application for certification; prohibiting the department from considering certain financial information; requiring the contractor to submit interim financial statements under certain circumstances; providing requirements for such statements; authorizing a single entity to provide certain contracted services for airport projects wholly or partially funded by the Department of Transportation; amending s. 337.25, F.S.; requiring the Department of Transportation to afford a right of first refusal to certain individuals under specified circumstances; providing requirements and procedures

for the right of first refusal; amending s. 337.401, F.S.; specifying permit application timeframes required for the installation, location, or relocation of utilities within rights-of-way; creating s. 338.236, F.S.; authorizing the Department of Transportation to plan, design, and construct staging areas as part of the turnpike system for the intended purpose of staging supplies for prompt provision of assistance to the public in a declared state of emergency; requiring the department, in consultation with the Division of Emergency Management, to select sites for such areas; providing factors to be considered by the department and division in selecting sites; requiring the department to give priority consideration to placement of such staging areas in specified counties; authorizing the department to acquire property necessary for such staging areas; authorizing the department to authorize certain other uses of staging areas; requiring staging area projects to be included in the department's work program; amending s. 339.08, F.S.; making conforming changes; amending s. 339.135, F.S.; conforming provisions to changes made by the act; amending s. 339.175, F.S.; revising the date by which a metropolitan planning organization must submit a list of project priorities

to the appropriate department district; repealing s. 339.2821, F.S., relating to economic development transportation projects; amending s. 341.302, F.S.; revising the maximum amount of liability insurance the department may purchase; revising department responsibilities regarding rail systems; amending s. 341.303, F.S.; revising department funding authority regarding rail systems; conforming provisions to changes made by the act; repealing s. 341.8201, F.S., relating to the "Florida Rail Enterprise Act" short title; amending s. 341.8203, F.S.; revising definitions; amending s. 341.822, F.S.; requiring the department, rather than the Florida Rail Enterprise, to locate, plan, design, finance, construct, maintain, own, operate, administer, and manage the high-speed rail system in the state; amending ss. 341.825, 341.836, 341.838, 341.839, 341.840, and 343.58, F.S.; conforming provisions to changes made by the act; amending s. 349.04, F.S.; increasing the authorized length of time for a lease by the Jacksonville Transportation Authority; amending s. 377.809, F.S.; conforming provisions to changes made by the act; amending s. 327.33, F.S.; specifying the operation of a vessel at slow speed, minimum wake in certain circumstances; providing requirements for flags

displayed from vessels and barges actively engaged in construction operations; amending s. 327.4107, F.S.; prohibiting the anchoring or mooring of certain vessels in specified locations; authorizing law enforcement to relocate specified vessels if certain conditions exist; reenacting s. 327.73(1)(h) and (aa), F.S.; incorporating amendments made by this act; requiring reports from the Department of Transportation and various authorities regarding toll collections; providing a declaration of important state interest; providing effective dates.

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

Section 1. Effective July 1, 2023, paragraphs (a) and (f) of subsection (4) of section 20.23, Florida Statutes, are amended to read:

20.23 Department of Transportation.—There is created a Department of Transportation which shall be a decentralized agency.

(4)(a) The operations of the department shall be organized into seven districts, each headed by a district secretary, and a turnpike enterprise ~~and a rail enterprise, each enterprise~~ headed by an executive director. The district secretaries and the executive director ~~directors~~ shall be registered

professional engineers in accordance with ~~the provisions of~~ chapter 471 or the laws of another state, or, in lieu of professional engineer registration, a district secretary or the executive director may hold an advanced degree in an appropriate related discipline, such as a Master of Business Administration. The headquarters of the districts shall be located in Polk, Columbia, Washington, Broward, Volusia, Miami-Dade, and Hillsborough Counties. The headquarters of the turnpike enterprise shall be located in Orange County. ~~The headquarters of the rail enterprise shall be located in Leon County.~~ In order to provide for efficient operations and to expedite the decisionmaking process, the department shall provide for maximum decentralization to the districts.

(f)~~1.~~ The responsibility for developing and operating the high-speed and passenger rail systems established in chapter 341, directing funding for passenger rail systems under s. 341.303, ensuring general rail safety, coordinating efforts to enhance passenger rail safety in the state, and coordinating publicly funded passenger rail operations in the state, including freight rail interoperability issues, shall be delegated to a departmental entity to be named by the secretary ~~to the executive director of the rail enterprise, who shall serve at the pleasure of the secretary. The executive director shall report directly to the secretary, and the rail enterprise shall operate pursuant to ss. 341.8201-341.842~~.

~~2. To facilitate the most efficient and effective management of the rail enterprise, including the use of best business practices employed by the private sector, the rail enterprise, except as provided in s. 287.055, shall be exempt from departmental policies, procedures, and standards, subject to the secretary having the authority to apply any such policies, procedures, and standards to the rail enterprise from time to time as deemed appropriate.~~

Section 2. Paragraph (a) of subsection (4) of section 201.15, Florida Statutes, is amended to read:

201.15 Distribution of taxes collected.—All taxes collected under this chapter are hereby pledged and shall be first made available to make payments when due on bonds issued pursuant to s. 215.618 or s. 215.619, or any other bonds authorized to be issued on a parity basis with such bonds. Such pledge and availability for the payment of these bonds shall have priority over any requirement for the payment of service charges or costs of collection and enforcement under this section. All taxes collected under this chapter, except taxes distributed to the Land Acquisition Trust Fund pursuant to subsections (1) and (2), are subject to the service charge imposed in s. 215.20(1). Before distribution pursuant to this section, the Department of Revenue shall deduct amounts necessary to pay the costs of the collection and enforcement of the tax levied by this chapter. The costs and service charge may

not be levied against any portion of taxes pledged to debt service on bonds to the extent that the costs and service charge are required to pay any amounts relating to the bonds. All of the costs of the collection and enforcement of the tax levied by this chapter and the service charge shall be available and transferred to the extent necessary to pay debt service and any other amounts payable with respect to bonds authorized before January 1, 2017, secured by revenues distributed pursuant to this section. All taxes remaining after deduction of costs shall be distributed as follows:

(4) After the required distributions to the Land Acquisition Trust Fund pursuant to subsections (1) and (2) and deduction of the service charge imposed pursuant to s. 215.20(1), the remainder shall be distributed as follows:

(a) The lesser of 24.18442 percent of the remainder or $541.75 million in each fiscal year shall be paid into the State Treasury to the credit of the State Transportation Trust Fund. Of such funds, $75 million for each fiscal year shall be transferred to the General Revenue Fund. Notwithstanding any other law, the remaining amount credited to the State Transportation Trust Fund shall be used for:

1. Capital funding for the New Starts Transit Program, authorized by Title 49, U.S.C. s. 5309 and specified in s. 341.051, in the amount of 10 percent of the funds;

2. The Small County Outreach Program specified in s. 339.2818, in the amount of 10 percent of the funds;

3. The Strategic Intermodal System specified in ss. 339.61, 339.62, 339.63, and 339.64, in the amount of 75 percent of the funds after deduction of the payments required pursuant to subparagraphs 1. and 2.; and

4.a. The Transportation Regional Incentive Program specified in s. 339.2819, in the amount of 25 percent of the funds after deduction of the payments required pursuant to subparagraphs 1. and 2.

b. In fiscal years 2020-2021, 2020-2022, and 2022-2023, the first $60 million of the funds allocated pursuant to this subparagraph must ~~shall~~ be allocated annually to the Florida Rail Enterprise for the purposes established in s. 341.303(5). This sub-subparagraph expires July 1, 2023.

c. Beginning in the 2023-2024 fiscal year, the first $60 million of the funds allocated pursuant to this subparagraph must be allocated annually to the State Transportation Trust Fund to be used for rail projects and rail safety improvements as provided in s. 341.303(5).

Section 3. Subsection (2) of section 206.46, Florida Statutes, is amended to read:

206.46 State Transportation Trust Fund.—

(2) Notwithstanding any other provision ~~provisions~~ of law, from the revenues deposited into the State Transportation Trust

Fund a maximum of 7 percent in each fiscal year shall be transferred into the Right-of-Way Acquisition and Bridge Construction Trust Fund created in s. 215.605~~,~~ as needed to meet the requirements of the documents authorizing the bonds issued or proposed to be issued under ss. 215.605 and 337.276 or at a minimum amount sufficient to pay for the debt service coverage requirements of outstanding bonds. Notwithstanding the 7 percent annual transfer authorized in this subsection, the annual amount transferred under this subsection shall not exceed an amount necessary to provide the required debt service coverage levels for a maximum debt service not to exceed $350 ~~$275~~ million. Such transfer shall be payable primarily from the motor and diesel fuel taxes transferred to the State Transportation Trust Fund from the Fuel Tax Collection Trust Fund.

Section 4. Subsection (1) of section 206.606, Florida Statutes, is amended to read:

206.606 Distribution of certain proceeds.—

(1) Moneys collected pursuant to ss. 206.41(1)(g) and 206.87(1)(e) shall be deposited in the Fuel Tax Collection Trust Fund. Such moneys, after deducting ~~the service charges imposed by s. 215.20,~~ the refunds granted pursuant to s. 206.41~~,~~ and the administrative costs incurred by the department in collecting, administering, enforcing, and distributing the tax, which administrative costs may not exceed 2 percent of collections,

shall be distributed monthly to the State Transportation Trust Fund, except that:

(a) Each fiscal year, $6.3 ~~$6.30~~ million shall be transferred to the Fish and Wildlife Conservation Commission ~~in each fiscal year~~ and deposited in the Invasive Plant Control Trust Fund to be used for aquatic plant management, including nonchemical control of aquatic weeds, research into nonchemical controls, and enforcement activities. The commission shall allocate at least $1 million of such funds to the eradication of melaleuca.

(b) Annually, $2.5 million shall be transferred to the State Game Trust Fund in the Fish and Wildlife Conservation Commission and used for recreational boating activities and freshwater fisheries management and research. The transfers must be made in equal monthly amounts beginning on July 1 of each fiscal year. The commission shall annually determine where unmet needs exist for boating-related activities~~,~~ and may fund such activities in counties where, due to the number of vessel registrations, sufficient financial resources are unavailable.

1. A minimum of $1.25 million shall be used to fund local projects to provide recreational channel marking and other uniform waterway markers, public boat ramps, lifts, and hoists, marine railways, and other public launching facilities, derelict vessel removal, and other local boating-related activities. In

funding the projects, the commission shall give priority consideration to:

a. Unmet needs in counties having populations of 100,000 or fewer.

b. Unmet needs in coastal counties having a high level of boating-related activities from individuals residing in other counties.

2. The remaining $1.25 million may be used for recreational boating activities and freshwater fisheries management and research.

3. The commission may adopt rules to administer a Florida Boating Improvement Program.

The commission shall prepare and make available on its ~~Internet~~ website an annual report outlining the status of its Florida Boating Improvement Program, including the projects funded, and a list of counties the ~~whose~~ needs of which are unmet due to insufficient financial resources from vessel registration fees.

(c) ~~0.65 percent~~ Of the moneys collected pursuant to s. 206.41(1)(g), 0.65 percent shall be transferred to the Agricultural Emergency Eradication Trust Fund.

(d) Each fiscal year, $13.4 million ~~in fiscal year 2007-2008 and each fiscal year thereafter~~ of the moneys attributable to the sale of motor and diesel fuel at marinas shall be transferred from the Fuel Tax Collection Trust Fund to the

Marine Resources Conservation Trust Fund in the Fish and Wildlife Conservation Commission.

Section 5. Section 206.608, Florida Statutes, is amended to read:

206.608 State Comprehensive Enhanced Transportation System Tax; deposit of proceeds; distribution.—Moneys received pursuant to ss. 206.41(1)(f) and 206.87(1)(d) shall be deposited in the Fuel Tax Collection Trust Fund~~,~~ and, after deducting the ~~service charge imposed in chapter 215 and~~ administrative costs incurred by the department in collecting, administering, enforcing, and distributing the tax, which administrative costs may not exceed 2 percent of collections, shall be distributed as follows:

(1) ~~0.65 percent~~ Of the proceeds of the tax levied pursuant to s. 206.41(1)(f), 0.65 percent shall be transferred to the Agricultural Emergency Eradication Trust Fund.

(2) The remaining proceeds of the tax levied pursuant to s. 206.41(1)(f) and all of the proceeds from the tax imposed by s. 206.87(1)(d) shall be transferred into the State Transportation Trust Fund~~,~~ and may be used only for projects in the adopted work program in the district in which the tax proceeds are collected, and~~,~~ to the maximum extent feasible, such moneys shall be programmed for use in the county where collected. However, ~~no~~ revenue from the taxes imposed pursuant to ss. 206.41(1)(f) and 206.87(1)(d) in a county may not ~~shall~~ be expended unless the projects funded with such revenues have

been included in the work program adopted pursuant to s. 339.135.

Section 6. Subsection (6) of section 212.0501, Florida Statutes, is amended to read:

212.0501 Tax on diesel fuel for business purposes; purchase, storage, and use.—

(6) All taxes required to be paid on fuel used in self-propelled off-road equipment shall be deposited in the Fuel Tax Collection Trust Fund~~,~~ to be distributed~~, after deduction of the general revenue service charge pursuant to s. 215.20,~~ to the State Transportation Trust Fund. The department shall, each month, make a transfer, from general revenue collections, equal to such use tax reported on dealers' sales and use tax returns.

Section 7. Paragraph (a) of subsection (7) of section 288.0656, Florida Statutes, is amended to read:

288.0656 Rural Economic Development Initiative.—

(7)(a) REDI may recommend to the Governor up to three rural areas of opportunity. The Governor may by executive order designate up to three rural areas of opportunity which will establish these areas as priority assignments for REDI as well as to allow the Governor, acting through REDI, to waive criteria, requirements, or similar provisions of any economic development incentive. Such incentives shall include, but are not limited to, the Qualified Target Industry Tax Refund Program under s. 288.106, the Quick Response Training Program under s.

288.047, the Quick Response Training Program for participants in the welfare transition program under s. 288.047(8), ~~transportation projects under s. 339.2821,~~ the brownfield redevelopment bonus refund under s. 288.107, and the rural job tax credit program under ss. 212.098 and 220.1895.

Section 8. Subsection (7) of section 311.101, Florida Statutes, is amended to read:

311.101 Intermodal Logistics Center Infrastructure Support Program.—

(7) ~~Beginning in fiscal year 2014-2015,~~ At least $5 million per fiscal year shall be made available from the State Transportation Trust Fund for the program. The Department of Transportation shall include projects proposed to be funded under this section in the tentative work program developed pursuant to s. 339.135(4). ~~This subsection expires on July 1, 2020.~~

Section 9. Subsection (2) and paragraph (b) of subsection (55) of section 316.003, Florida Statutes, are amended to read:

316.003 Definitions.—The following words and phrases, when used in this chapter, shall have the meanings respectively ascribed to them in this section, except where the context otherwise requires:

(2) AUTOCYCLE.—A three-wheeled motorcycle that has two wheels in the front and one wheel in the back; is equipped with a roll cage or roll hoops, a seat belt for each occupant,

~~antilock~~ brakes meeting Federal Motor Vehicle Safety Standard No. 122, a steering mechanism ~~wheel~~, and seating that does not require the operator to straddle or sit astride it; and is manufactured in accordance with the applicable federal motorcycle safety standards in 49 C.F.R. part 571 by a manufacturer registered with the National Highway Traffic Safety Administration.

(55) PERSONAL DELIVERY DEVICE.—An electrically powered device that:

(b) Weighs less than 150 ~~80~~ pounds, excluding cargo;

A personal delivery device is not considered a vehicle unless expressly defined by law as a vehicle. A mobile carrier is not considered a personal delivery device.

Section 10. Paragraph (b) of subsection (1) of section 316.126, Florida Statutes, is amended to read:

316.126 Operation of vehicles and actions of pedestrians on approach of an authorized emergency, sanitation, or utility service vehicle.—

(1)

(b) If an authorized emergency vehicle displaying any visual signals is parked on the roadside, a sanitation vehicle is performing a task related to the provision of sanitation services on the roadside, a utility service vehicle is performing a task related to the provision of utility services

on the roadside, ~~or~~ a wrecker displaying amber rotating or flashing lights is performing a recovery or loading on the roadside, a road and bridge maintenance or construction vehicle displaying warning lights as authorized in s. 316.2397(4) or s. 316.2397(5) is on the roadside without advance signs and channelizing devices, or a vehicle delivering the United States mail displaying warning lights, the driver of every other vehicle, as soon as it is safe:

1. Shall vacate the lane closest to the emergency vehicle, sanitation vehicle, utility service vehicle, ~~or~~ wrecker, road and bridge maintenance or construction vehicle, or a vehicle delivering the United States mail when driving on an interstate highway or other highway with two or more lanes traveling in the direction of the emergency vehicle, sanitation vehicle, utility service vehicle, ~~or~~ wrecker, road and bridge maintenance or construction vehicle, or a vehicle delivering United States mail, except when otherwise directed by a law enforcement officer. If such movement cannot be safely accomplished, the driver shall reduce speed as provided in subparagraph 2.

2. Shall slow to a speed that is 20 miles per hour less than the posted speed limit when the posted speed limit is 25 miles per hour or greater; or travel at 5 miles per hour when the posted speed limit is 20 miles per hour or less, when driving on a two-lane road, except when otherwise directed by a law enforcement officer.

Section 11. Subsections (2) and (7) of section 316.2397, Florida Statutes, are amended to read:

316.2397 Certain lights prohibited; exceptions.—

(2) It is expressly prohibited for any vehicle or equipment~~, except police vehicles,~~ to show or display blue lights, except that:

(a) Police vehicles may show or display blue lights.

(b) ~~However,~~ Vehicles owned, operated, or leased by the Department of Corrections or any county correctional agency may show or display blue lights when responding to emergencies.

(c) Portable radar speed display units in advance of a work zone area on roadways with a posted speed limit of 55 miles per hour or more may show or display flashing red and blue lights when workers are present.

(7) Flashing lights are prohibited on vehicles except:

(a) As a means of indicating a right or left turn, to change lanes, or to indicate that the vehicle is lawfully stopped or disabled upon the highway;

(b) When a motorist intermittently flashes his or her vehicle's headlamps at an oncoming vehicle notwithstanding the motorist's intent for doing so;

(c) During periods of extreme low visibility on roadways with a posted speed limit of 55 miles per hour or more; and

(d)~~(c)~~ For the lamps authorized under subsections ~~(1),~~ (2), (3), (4), (5), and (9), s. 316.2065, or s. 316.235(6) which may flash.

Section 12. Subsection (4) of section 316.520, Florida Statutes, is amended to read:

316.520 Loads on vehicles.—

(4) The provision of subsection (2) requiring covering and securing the load with a close-fitting tarpaulin or other appropriate cover does not apply to vehicles carrying agricultural products locally from a harvest site or to or from a farm on roads where the posted speed limit is 65 miles per hour or less ~~and the distance driven on public roads is less than 20 miles~~.

Section 13. Paragraph (a) of subsection (1) of section 316.613, Florida Statutes, is amended to read:

316.613 Child restraint requirements.—

(1)(a) Every operator of a motor vehicle as defined in this section, while transporting a child in a motor vehicle operated on the roadways, streets, or highways of this state, shall, if the child is 6 ~~5~~ years of age or younger, provide for protection of the child by properly using a crash-tested, federally approved child restraint device.

1. For children aged through 3 years, such restraint device must be a separate carrier or a vehicle manufacturer's integrated child seat.

2. For children aged 4 through 6 ~~5~~ years, a separate carrier, an integrated child seat, or a child booster seat may be used. However, the requirement to use a child restraint device under this subparagraph does not apply when a safety belt is used as required in s. 316.614(4)(a) and the child:

a. Is being transported gratuitously by an operator who is not a member of the child's immediate family;

b. Is being transported in a medical emergency situation involving the child; or

c. Has a medical condition that necessitates an exception as evidenced by appropriate documentation from a health care professional.

Section 14. Subsection (5) of section 319.32, Florida Statutes, is amended to read:

319.32 Fees; service charges; disposition.—

(5)(a) Forty-seven dollars of each fee collected, except for fees charged on a certificate of title for a motor vehicle for hire registered under s. 320.08(6), for each applicable original certificate of title and each applicable duplicate copy of a certificate of title~~, after deducting the service charges imposed by s. 215.20,~~ shall be deposited into the State Transportation Trust Fund. Deposits to the State Transportation Trust Fund pursuant to this paragraph may not exceed $200 million in any fiscal year, and any collections in excess of

that amount during the fiscal year shall be paid into the General Revenue Fund.

(b) All fees collected pursuant to subsection (3) shall be paid into the Nongame Wildlife Trust Fund. Twenty-one dollars of each fee, except for fees charged on a certificate of title for a motor vehicle for hire registered under s. 320.08(6), for each applicable original certificate of title and each applicable duplicate copy of a certificate of title~~, after deducting the service charges imposed by s. 215.20,~~ shall be deposited into the State Transportation Trust Fund. All other fees collected by the department under this chapter shall be paid into the General Revenue Fund.

Section 15. Paragraph (c) is added to subsection (4) of section 322.12, Florida Statutes, to read:

322.12 Examination of applicants.—

(4) The examination for an applicant for a commercial driver license shall include a test of the applicant's eyesight given by a driver license examiner designated by the department or by a licensed ophthalmologist, optometrist, or physician and a test of the applicant's hearing given by a driver license examiner or a licensed physician. The examination shall also include a test of the applicant's ability to read and understand highway signs regulating, warning, and directing traffic; his or her knowledge of the traffic laws of this state pertaining to the class of motor vehicle which he or she is applying to be

licensed to operate, including laws regulating driving under the influence of alcohol or controlled substances, driving with an unlawful blood-alcohol level, and driving while intoxicated; his or her knowledge of the effects of alcohol and controlled substances and the dangers of driving a motor vehicle after having consumed alcohol or controlled substances; and his or her knowledge of any special skills, requirements, or precautions necessary for the safe operation of the class of vehicle which he or she is applying to be licensed to operate. In addition, the examination shall include an actual demonstration of the applicant's ability to exercise ordinary and reasonable control in the safe operation of a motor vehicle or combination of vehicles of the type covered by the license classification which the applicant is seeking, including an examination of the applicant's ability to perform an inspection of his or her vehicle.

(c) Notwithstanding any provision of law to the contrary, the department may waive the skill test requirements provided in this subsection for a commercial driver license for a person with military commercial motor vehicle experience who qualifies under 49 C.F.R. s. 383.77 if the person is on active duty or has been honorably discharged from military service for 1 year or less.

Section 16. Section 324.031, Florida Statutes, is amended to read:

324.031 Manner of proving financial responsibility.—The owner or operator of a taxicab, limousine, jitney, or any other for-hire passenger transportation vehicle may prove financial responsibility by providing satisfactory evidence of holding a motor vehicle liability policy as defined in s. 324.021(8) or s. 324.151, which policy is provided by an insurer authorized to do business in this state ~~issued by an insurance carrier~~ which is a member of the Florida Insurance Guaranty Association or an eligible nonadmitted insurer that has a superior, excellent, exceptional, or equivalent financial strength rating by a rating agency acceptable to the Office of Insurance Regulation of the Financial Services Commission. The operator or owner of any other vehicle may prove his or her financial responsibility by:

(1) Furnishing satisfactory evidence of holding a motor vehicle liability policy as defined in ss. 324.021(8) and 324.151;

(2) Furnishing a certificate of self-insurance showing a deposit of cash in accordance with s. 324.161; or

(3) Furnishing a certificate of self-insurance issued by the department in accordance with s. 324.171.

Any person, including any firm, partnership, association, corporation, or other person, other than a natural person, electing to use the method of proof specified in subsection (2) shall furnish a certificate of deposit equal to the number of

vehicles owned times $30,000, to a maximum of $120,000; in addition, any such person, other than a natural person, shall maintain insurance providing coverage in excess of limits of $10,000/20,000/10,000 or $30,000 combined single limits, and such excess insurance shall provide minimum limits of $125,000/250,000/50,000 or $300,000 combined single limits. These increased limits shall not affect the requirements for proving financial responsibility under s. 324.032(1).

Section 17. Subsection (2) of section 324.032, Florida Statutes, is amended to read:

324.032 Manner of proving financial responsibility; for-hire passenger transportation vehicles.—Notwithstanding the provisions of s. 324.031:

(2) An owner or a lessee who is required to maintain insurance under s. 324.021(9)(b) and who operates at least 150 ~~300~~ taxicabs, limousines, jitneys, or any other for-hire passenger transportation vehicles may provide financial responsibility by complying with ~~the provisions of~~ s. 324.171, such compliance to be demonstrated by maintaining at its principal place of business an audited financial statement, prepared in accordance with generally accepted accounting principles, and providing to the department a certification issued by a certified public accountant that the applicant's net worth is at least equal to the requirements of s. 324.171 as determined by the Office of Insurance Regulation of the

Financial Services Commission, including claims liabilities in an amount certified as adequate by a Fellow of the Casualty Actuarial Society.

Upon request by the department, the applicant must provide the department at the applicant's principal place of business in this state access to the applicant's underlying financial information and financial statements that provide the basis of the certified public accountant's certification. The applicant shall reimburse the requesting department for all reasonable costs incurred by it in reviewing the supporting information. The maximum amount of self-insurance permissible under this subsection is $300,000 and must be stated on a per-occurrence basis, and the applicant shall maintain adequate excess insurance issued by an authorized or eligible insurer licensed or approved by the Office of Insurance Regulation. All risks self-insured shall remain with the owner or lessee providing it, and the risks are not transferable to any other person, unless a policy complying with subsection (1) is obtained.

Section 18. Subsections (1) and (2) of section 327.59, Florida Statutes, are amended, and subsection (5) is added to that section, to read:

327.59 Marina evacuations.—

(1) Except as provided in this section ~~After June 1, 1994~~, marinas may not adopt, maintain, or enforce policies pertaining

to evacuation of vessels which require vessels to be removed from marinas following the issuance of a hurricane watch or warning, in order to ensure that protecting the lives and safety of vessel owners is placed before interests of protecting property.

(2) Nothing in this section may be construed to restrict the ability of an owner of a vessel or the owner's authorized representative to remove a vessel voluntarily from a marina at any time or to restrict a marina owner from dictating the kind of cleats, ropes, fenders, and other measures that must be used on vessels as a condition of use of a marina. Except as provided in subsection (5), after a tropical storm or hurricane watch has been issued, a marina owner or operator, or an employee or agent of such owner or operator, may take reasonable actions to further secure any vessel within the marina to minimize damage to a vessel and to protect marina property, private property, and the environment and may charge a reasonable fee for such services.

(5) Upon the issuance of a hurricane watch affecting the waters of a marina located in a deepwater seaport, a vessel that weighs less than 500 gross tons may not remain in the waters of such a marina that has been deemed not suitable for refuge during a hurricane. The owner of such a vessel shall promptly remove the vessel from the waterway upon issuance of an evacuation order by the deepwater seaport. If the United States

Coast Guard Captain of the Port sets the deepwater seaport condition to Yankee and a vessel owner has failed to remove a vessel from the waterway, the marina owner or operator, or an employee or agent thereof, regardless of existing contractual provisions between the marina owner and vessel owner, shall remove the vessel, or cause it to be removed, if reasonable, from its slip and may charge the vessel owner a reasonable fee for such removal. A marina owner, operator, employee, or agent is not liable for any damage incurred by a vessel as the result of a hurricane and is held harmless as a result of such actions to remove the vessel from the waterway. This section does not provide immunity to a marina owner, operator, employee, or agent for any damage caused by intentional acts or negligence when removing a vessel under this subsection. After a hurricane watch has been issued, the owner or operator of a vessel that has not been removed from the waterway of the marina pursuant to an evacuation order by the deepwater seaport may be subject to a fine not exceeding three times the cost associated with removing the vessel from the waterway. Such fine, if assessed, shall be imposed and collected by the deepwater seaport issuing the evacuation order.

Section 19. Paragraph (c) of subsection (1) of section 333.03, Florida Statutes, is amended to read:

333.03 Requirement to adopt airport zoning regulations.—

(1)

(c) Airport protection zoning regulations adopted under paragraph (a) must, at a minimum, require:

1. A permit for the construction or alteration of any obstruction.~~;~~

2. Obstruction marking and lighting for obstructions.~~;~~

3. Documentation showing compliance with the federal requirement for notification of proposed construction or alteration of structures and a final valid determination from the Federal Aviation Administration ~~aeronautical study~~ submitted by each person applying for a permit.~~;~~

4. Consideration of the criteria in s. 333.025(6)~~,~~ when determining whether to issue or deny a permit.~~; and~~

5. That approval of a permit not be based solely on the determination by the Federal Aviation Administration that the proposed structure is not an airport hazard.

Section 20. Subsections (1) and (7) of section 337.14, Florida Statutes, are amended to read:

337.14 Application for qualification; certificate of qualification; restrictions; request for hearing.—

(1) Any contractor desiring to bid for the performance of any construction contract in excess of $250,000 which the department proposes to let must first be certified by the department as qualified pursuant to this section and rules of the department. The rules of the department must address the qualification of contractors to bid on construction contracts in

excess of $250,000 and must include requirements with respect to the equipment, past record, experience, financial resources, and organizational personnel of the applying contractor which are necessary to perform the specific class of work for which the contractor seeks certification. Any contractor who desires to bid on contracts in excess of $50 million and is not qualified and in good standing with the department as of January 1, 2019, must first be certified by the department as qualified and ~~desires to bid on contracts in excess of $50 million~~ must have satisfactorily completed two projects, each in excess of $15 million, for the department or for any other state department of transportation. The department may limit the dollar amount of any contract upon which a contractor is qualified to bid or the aggregate total dollar volume of contracts such contractor is allowed to have under contract at any one time. Each applying contractor seeking qualification to bid on construction contracts in excess of $250,000 shall furnish the department a statement under oath, on such forms as the department may prescribe, setting forth detailed information as required on the application. Each application for certification must be accompanied by audited financial statements prepared in accordance with United States generally accepted accounting principles and United States generally accepted auditing standards, by a certified public accountant licensed by this state or another state ~~the latest annual financial statement of~~

~~the applying contractor completed within the last 12 months~~. The audited financial statements must be for the applying contractor specifically and must have been prepared within the immediately preceding 12 months. The department may not consider any financial information relating to the parent entity of the applying contractor, if any. The department shall not certify as qualified any applying contractor that fails to submit the audited financial statements required by this subsection. If the application or the annual financial statement shows the financial condition of the applying contractor more than 4 months before ~~prior to~~ the date on which the application is received by the department, the applying contractor must also submit interim audited financial statements prepared in accordance with United States generally accepted accounting principles and United States generally accepted auditing standards, by a certified public accountant licensed by this state or another state ~~an interim financial statement and an updated application must be submitted~~. The interim financial statements ~~statement~~ must cover the period from the end date of the annual statement and must show the financial condition of the applying contractor no more than 4 months before ~~prior to~~ the date that the interim financial statements are ~~statement is~~ received by the department. However, upon the request of the applying contractor, an application and accompanying annual or interim financial statements ~~statement~~ received by the

department within 15 days after either 4-month period under this subsection shall be considered timely. ~~Each required annual or interim financial statement must be audited and accompanied by the opinion of a certified public accountant.~~ An applying contractor desiring to bid exclusively for the performance of construction contracts with proposed budget estimates of less than $1 million may submit reviewed annual or reviewed interim financial statements prepared by a certified public accountant. The information required by this subsection is confidential and exempt from s. 119.07(1). The department shall act upon the application for qualification within 30 days after the department determines that the application is complete. The department may waive the requirements of this subsection for projects having a contract price of $500,000 or less if the department determines that the project is of a noncritical nature and the waiver will not endanger public health, safety, or property.

(7) A "contractor" as defined in s. 337.165(1)(d) or his or her "affiliate" as defined in s. 337.165(1)(a) qualified with the department under this section may not also qualify under s. 287.055 or s. 337.105 to provide testing services, construction, engineering, and inspection services to the department. This limitation does not apply to any design-build prequalification under s. 337.11(7) and does not apply when the department otherwise determines by written order entered at least 30 days

before advertisement that the limitation is not in the best interests of the public with respect to a particular contract for testing services, construction, engineering, and inspection services. This subsection does not authorize a contractor to provide testing services, or provide construction, engineering, and inspection services, to the department in connection with a construction contract under which the contractor is performing any work. Notwithstanding any other provision of law to the contrary, for a project that is wholly or partially funded by the department and administered by a local governmental entity, except for a seaport listed in s. 311.09 or an airport as defined in s. 332.004, the entity performing design and construction, engineering, and inspection services may not be the same entity.

Section 21. Subsection (4) of section 337.25, Florida Statutes, is amended to read:

337.25 Acquisition, lease, and disposal of real and personal property.—

(4) The department may convey, in the name of the state, any land, building, or other property, real or personal, which was acquired under subsection (1) and which the department has determined is not needed for the construction, operation, and maintenance of a transportation facility. When such a determination has been made, property may be disposed of through negotiations, sealed competitive bids, auctions, or any other

means the department deems to be in its best interest, with due advertisement for property valued by the department at greater than $10,000. A sale may not occur at a price less than the department's current estimate of value, except as provided in paragraphs (a)-(d). The department may afford a right of first refusal to the local government or other political subdivision in the jurisdiction in which the parcel is situated, except in a conveyance transacted under paragraph (a), paragraph (c), or paragraph (e). Notwithstanding any provision of this section to the contrary, before any conveyance under this subsection may be made, except a conveyance under paragraph (a) or paragraph (c), the department shall first afford a right of first refusal to the previous property owner for the department's current estimate of value of the property. The right of first refusal must be made in writing and sent to the previous owner via certified mail or hand delivery, effective upon receipt. The right of first refusal must provide the previous owner with a minimum of 30 days to exercise the right in writing and must be sent to the originator of the offer by certified mail or hand delivery, effective upon dispatch. If the previous owner exercises his or her right of first refusal, the previous owner has a minimum of 90 days to close on the property.

(a) If the property has been donated to the state for transportation purposes and a transportation facility has not been constructed for at least 5 years, plans have not been

prepared for the construction of such facility, and the property is not located in a transportation corridor, the governmental entity may authorize reconveyance of the donated property for no consideration to the original donor or the donor's heirs, successors, assigns, or representatives.

(b) If the property is to be used for a public purpose, the property may be conveyed without consideration to a governmental entity.

(c) If the property was originally acquired specifically to provide replacement housing for persons displaced by transportation projects, the department may negotiate for the sale of such property as replacement housing. As compensation, the state shall receive at least its investment in such property or the department's current estimate of value, whichever is lower. It is expressly intended that this benefit be extended only to persons actually displaced by the project. Dispositions to any other person must be for at least the department's current estimate of value.

(d) If the department determines that the property requires significant costs to be incurred or that continued ownership of the property exposes the department to significant liability risks, the department may use the projected maintenance costs over the next 10 years to offset the property's value in establishing a value for disposal of the property, even if that value is zero.

(e) If, at the discretion of the department, a sale to a person other than an abutting property owner would be inequitable, the property may be sold to the abutting owner for the department's current estimate of value.

Section 22. Subsection (2) of section 337.401, Florida Statutes, is amended to read:

337.401 Use of right-of-way for utilities subject to regulation; permit; fees.—

(2) The authority may grant to any person who is a resident of this state, or to any corporation that ~~which~~ is organized under the laws of this state or licensed to do business within this state, the use of a right-of-way for the utility in accordance with such rules or regulations as the authority may adopt. A ~~No~~ utility may not ~~shall~~ be installed, located, or relocated unless authorized by a written permit issued by the authority. However, for public roads or publicly owned rail corridors under the jurisdiction of the department, a utility relocation schedule and relocation agreement may be executed in lieu of a written permit. The permit must ~~shall~~ require the permitholder to be responsible for any damage resulting from the issuance of such permit. The authority may initiate injunctive proceedings as provided in s. 120.69 to enforce provisions of this subsection or any rule or order issued or entered into pursuant thereto. A permit application required under this subsection by a county or municipality

having jurisdiction and control of the right-of-way of any public road must be processed and acted upon in accordance with the timeframes provided in subparagraphs (7)(d)7., 8., and 9.

Section 23. Section 338.236, Florida Statutes, is created to read:

338.236 Staging areas for emergencies.—The Department of Transportation may plan, design, and construct staging areas to be activated during a declared state of emergency at key geographic locations on the turnpike system. Such staging areas must be used for the staging of emergency supplies, such as water, fuel, generators, vehicles, equipment, and other related materials, to facilitate the prompt provision of emergency assistance to the public, and to otherwise facilitate emergency response and assistance, including evacuations, deployment of emergency-related supplies and personnel, and restoration of essential services.

(1) In selecting a proposed site for a designated staging area under this section, the department, in consultation with the Division of Emergency Management, must consider the extent to which such site:

(a) Is located in a geographic area that best facilitates the wide dissemination of emergency-related supplies and equipment;

(b) Provides ease of access to major highways and other transportation facilities;

(c) Is sufficiently large to accommodate the staging of a significant amount of emergency-related supplies and equipment;

(d) Provides space in support of emergency preparedness and evacuation activities, such as fuel reserve capacity;

(e) Could be used during nonemergency periods for commercial motor vehicle parking and for other uses; and

(f) Is consistent with other state and local emergency management considerations.

The department must give priority consideration to placement of such staging areas in counties with a population of 200,000 or fewer, as determined by the most recent official estimate pursuant to s. 186.901, in which a multi-use corridor of regional economic significance, as provided in s. 338.2278, is located.

(2) The department may acquire property and property rights necessary for such staging areas as provided in s. 338.04.

(3) The department may authorize other uses of a staging area as provided in the Florida Transportation Code, including, but not limited to, for commercial motor vehicle parking to comply with federal hours-of-service off-duty requirements or sleeper berth requirements and for other vehicular parking to provide rest for drivers.

(4) Staging area projects must be included in the work program developed by the department pursuant to s. 339.135.

Section 24. Paragraph (f) of subsection (1) of section 339.08, Florida Statutes, is amended to read:

339.08 Use of moneys in State Transportation Trust Fund.—

(1) The department shall expend moneys in the State Transportation Trust Fund accruing to the department, in accordance with its annual budget. The use of such moneys shall be restricted to the following purposes:

~~(f) To pay the cost of economic development transportation projects in accordance with s. 339.2821.~~

Section 25. Paragraph (c) of subsection (4) of section 339.135, Florida Statutes, is amended to read:

339.135 Work program; legislative budget request; definitions; preparation, adoption, execution, and amendment.—

(4) FUNDING AND DEVELOPING A TENTATIVE WORK PROGRAM.—

(c)1. For purposes of this section, the board of county commissioners shall serve as the metropolitan planning organization in those counties that ~~which~~ are not located in a metropolitan planning organization and shall be involved in the development of the district work program to the same extent as a metropolitan planning organization.

2. The district work program shall be developed cooperatively from the outset with the various metropolitan planning organizations of the state and include, to the maximum

969 extent feasible, the project priorities of metropolitan planning
970 organizations which have been submitted to the district by
971 August ~~October~~ 1 of each year pursuant to s. 339.175(8)(b);
972 however, the department and a metropolitan planning organization
973 may, in writing, cooperatively agree to vary this submittal
974 date. To assist the metropolitan planning organizations in
975 developing their lists of project priorities, the district shall
976 disclose to each metropolitan planning organization any
977 anticipated changes in the allocation or programming of state
978 and federal funds which may affect the inclusion of metropolitan
979 planning organization project priorities in the district work
980 program.
981 3. Before ~~Prior to~~ submittal of the district work program
982 to the central office, the district shall provide the affected
983 metropolitan planning organization with written justification
984 for any project proposed to be rescheduled or deleted from the
985 district work program which project is part of the metropolitan
986 planning organization's transportation improvement program and
987 is contained in the last 4 years of the previous adopted work
988 program. By no later than 14 days after submittal of the
989 district work program to the central office, the affected
990 metropolitan planning organization may file an objection to such
991 rescheduling or deletion. When an objection is filed with the
992 secretary, the rescheduling or deletion may not be included in
993 the district work program unless the inclusion of such

rescheduling or deletion is specifically approved by the secretary. The Florida Transportation Commission shall include such objections in its evaluation of the tentative work program only when the secretary has approved the rescheduling or deletion.

Section 26. Paragraph (b) of subsection (8) of section 339.175, Florida Statutes, is amended to read:

339.175 Metropolitan planning organization.—

(8) TRANSPORTATION IMPROVEMENT PROGRAM.—Each M.P.O. shall, in cooperation with the state and affected public transportation operators, develop a transportation improvement program for the area within the jurisdiction of the M.P.O. In the development of the transportation improvement program, each M.P.O. must provide the public, affected public agencies, representatives of transportation agency employees, freight shippers, providers of freight transportation services, private providers of transportation, representatives of users of public transit, and other interested parties with a reasonable opportunity to comment on the proposed transportation improvement program.

(b) Each M.P.O. annually shall prepare a list of project priorities and shall submit the list to the appropriate district of the department by August ~~October~~ 1 of each year; however, the department and a metropolitan planning organization may, in writing, agree to vary this submittal date. Where more than one M.P.O. exists in an urbanized area, the M.P.O.'s shall

coordinate in the development of regionally significant project priorities. The list of project priorities must be formally reviewed by the technical and citizens' advisory committees, and approved by the M.P.O., before it is transmitted to the district. The approved list of project priorities must be used by the district in developing the district work program and must be used by the M.P.O. in developing its transportation improvement program. The annual list of project priorities must be based upon project selection criteria that, at a minimum, consider the following:

1. The approved M.P.O. long-range transportation plan.~~;~~

2. The Strategic Intermodal System Plan developed under s. 339.64.

3. The priorities developed pursuant to s. 339.2819(4).

4. The results of the transportation management systems.~~;~~ ~~and~~

5. The M.P.O.'s public-involvement procedures.

Section 27. Section 339.2821, Florida Statutes, is repealed.

Section 28. Paragraph (b) of subsection (17) of section 341.302, Florida Statutes, is amended to read:

341.302 Rail program; duties and responsibilities of the department.—The department, in conjunction with other governmental entities, including the rail enterprise and the private sector, shall develop and implement a rail program of

statewide application designed to ensure the proper maintenance, safety, revitalization, and expansion of the rail system to assure its continued and increased availability to respond to statewide mobility needs. Within the resources provided pursuant to chapter 216, and as authorized under federal law, the department shall:

(17) In conjunction with the acquisition, ownership, construction, operation, maintenance, and management of a rail corridor, have the authority to:

(b) Purchase liability insurance, which amount shall not exceed $295 ~~$200~~ million, and establish a self-insurance retention fund for the purpose of paying the deductible limit established in the insurance policies it may obtain, including coverage for the department, any freight rail operator as described in paragraph (a), National Railroad Passenger Corporation, commuter rail service providers, governmental entities, or any ancillary development, which self-insurance retention fund or deductible shall not exceed $10 million. The insureds shall pay a reasonable monetary contribution to the cost of such liability coverage for the sole benefit of the insured. Such insurance and self-insurance retention fund may provide coverage for all damages, including, but not limited to, compensatory, special, and exemplary, and be maintained to provide an adequate fund to cover claims and liabilities for loss, injury, or damage arising out of or connected with the

ownership, operation, maintenance, and management of a rail corridor.

Neither the assumption by contract to protect, defend, indemnify, and hold harmless; the purchase of insurance; nor the establishment of a self-insurance retention fund shall be deemed to be a waiver of any defense of sovereign immunity for torts nor deemed to increase the limits of the department's or the governmental entity's liability for torts as provided in s. 768.28. The requirements of s. 287.022(1) shall not apply to the purchase of any insurance under this subsection. The provisions of this subsection shall apply and inure fully as to any other governmental entity providing commuter rail service and constructing, operating, maintaining, or managing a rail corridor on publicly owned right-of-way under contract by the governmental entity with the department or a governmental entity designated by the department. Notwithstanding any law to the contrary, procurement for the construction, operation, maintenance, and management of any rail corridor described in this subsection, whether by the department, a governmental entity under contract with the department, or a governmental entity designated by the department, shall be pursuant to s. 287.057 and shall include, but not be limited to, criteria for the consideration of qualifications, technical aspects of the

proposal, and price. Further, any such contract for design-build shall be procured pursuant to the criteria in s. 337.11(7).

Section 29. Effective July 1, 2023, section 341.302, Florida Statutes, as amended by this act, is amended to read:

341.302 Rail program; duties and responsibilities of the department.—The department, in conjunction with other governmental entities~~, including the rail enterprise~~ and the private sector, shall develop and implement a rail program of statewide application designed to ensure the proper maintenance, safety, revitalization, and expansion of the rail system to assure its continued and increased availability to respond to statewide mobility needs. Within the resources provided pursuant to chapter 216, and as authorized under federal law, the department shall:

(1) Provide the overall leadership, coordination, and financial and technical assistance necessary to ensure ~~assure~~ the effective responses of the state's rail system to current and anticipated mobility needs.

(2) Coordinate the development, general rail safety, and operation of publicly funded passenger ~~Promote and facilitate the implementation of advanced~~ rail systems in this state~~, including high-speed rail and magnetic levitation systems~~.

(3) Develop and periodically update the rail system plan~~,~~ on the basis of an analysis of statewide transportation needs.

(a) The plan may contain detailed regional components, consistent with regional transportation plans, as needed to ensure connectivity within the state's regions, and it shall be consistent with the Florida Transportation Plan developed pursuant to s. 339.155. The rail system plan shall include an identification of priorities, programs, and funding levels required to meet statewide and regional needs. The rail system plan shall be developed in a manner that will ensure ~~assure~~ the maximum use of existing facilities and the optimum integration and coordination of the various modes of transportation, public and private, in the most cost-effective manner possible. The rail system plan shall be updated no later than January 1, 2011, and at least every 5 years thereafter, and include plans for both passenger rail service and freight rail service, accompanied by a report to the Legislature regarding the status of the plan.

(b) In recognition of the department's role in the enhancement of the state's rail system to improve freight and passenger mobility, the department shall:

1. Work closely with all affected communities along an impacted freight rail corridor to identify and address anticipated impacts associated with an increase in freight rail traffic due to implementation of passenger rail.

2. In coordination with the affected local governments and CSX Transportation, Inc., finalize all viable alternatives from

the department's Rail Traffic Evaluation Study to identify and develop an alternative route for through freight rail traffic moving through Central Florida, including the counties of Polk and Hillsborough, which would address, to the extent practicable, the effects of commuter rail.

3. Provide technical assistance to a coalition of local governments in Central Florida, including the counties of Brevard, Citrus, Hernando, Hillsborough, Lake, Marion, Orange, Osceola, Pasco, Pinellas, Polk, Manatee, Sarasota, Seminole, Sumter, and Volusia, and the municipalities within those counties, to develop a regional rail system plan that addresses passenger and freight opportunities in the region, is consistent with the Florida Rail System Plan, and incorporates appropriate elements of the Tampa Bay Area Regional Authority Master Plan, the Metroplan Orlando Regional Transit System Concept Plan, including the SunRail project, and the Florida Department of Transportation Alternate Rail Traffic Evaluation.

(4) As part of the work program of the department, formulate a specific program of projects and financing to respond to identified railroad needs.

(5) Provide technical and financial assistance to units of local government to address identified rail transportation needs.

(6) Secure and administer federal grants, loans, and apportionments for rail projects within this state when necessary to further the statewide program.

(7) Develop and administer state standards concerning the safety and performance of rail systems, hazardous material handling, and operations. Such standards shall be developed jointly with representatives of affected rail systems, with full consideration given to nationwide industry norms, and shall define the minimum acceptable standards for safety and performance.

(8) Conduct, at a minimum, inspections of track and rolling stock; train signals and related equipment; hazardous materials transportation, including the loading, unloading, and labeling of hazardous materials at shippers', receivers', and transfer points; and train operating practices to determine adherence to state and federal standards. Department personnel may enforce any safety regulation issued under the Federal Government's preemptive authority over interstate commerce.

(9) Assess penalties, in accordance with the applicable federal regulations, for the failure to adhere to the state standards.

(10) Administer rail operating and construction programs, which programs shall include the regulation of maximum ~~maxi-mum~~ train operating speeds, the opening and closing of public grade crossings, the construction and rehabilitation of public grade

crossings, and the installation of traffic control devices at public grade crossings, the administering of the programs by the department including participation in the cost of the programs.

(11) Coordinate and facilitate the relocation of railroads from congested urban areas to nonurban areas when relocation has been determined feasible and desirable from the standpoint of safety, operational efficiency, and economics.

(12) Implement a program of branch line continuance projects when an analysis of the industrial and economic potential of the line indicates that public involvement is required to preserve essential rail service and facilities.

(13) Provide new rail service and equipment when:

(a) Pursuant to the transportation planning process, a public need has been determined to exist;

(b) The cost of providing such service does not exceed the sum of revenues from fares charged to users, services purchased by other public agencies, local fund participation, and specific legislative appropriation for this purpose; and

(c) Service cannot be reasonably provided by other governmental or privately owned rail systems.

The department may own, lease, and otherwise encumber facilities, equipment, and appurtenances thereto~~,~~ as necessary to provide new rail services~~,~~ or the department may provide

such service by contracts with privately owned service providers.

(14) Furnish required emergency rail transportation service if no other private or public rail transportation operation is available to supply the required service and such service is clearly in the best interest of the people in the communities being served. Such emergency service may be furnished through contractual arrangement, actual operation of state-owned equipment and facilities, or any other means determined appropriate by the secretary.

(15) Assist in the development and implementation of marketing programs for rail services and of information systems directed toward assisting rail systems users.

(16) Conduct research into innovative or potentially effective rail technologies and methods and maintain expertise in state-of-the-art rail developments.

(17) In conjunction with the acquisition, ownership, construction, operation, maintenance, and management of a rail corridor, have the authority to:

(a) Assume obligations pursuant to the following:

1.a. The department may assume the obligation by contract to forever protect, defend, indemnify, and hold harmless the freight rail operator, or its successors, from whom the department has acquired a real property interest in the rail corridor, and that freight rail operator's officers, agents, and

employees, from and against any liability, cost, and expense, including, but not limited to, commuter rail passengers and rail corridor invitees in the rail corridor, regardless of whether the loss, damage, destruction, injury, or death giving rise to any such liability, cost, or expense is caused in whole or in part, and to whatever nature or degree, by the fault, failure, negligence, misconduct, nonfeasance, or misfeasance of such freight rail operator, its successors, or its officers, agents, and employees, or any other person or persons whomsoever; or

b. The department may assume the obligation by contract to forever protect, defend, indemnify, and hold harmless National Railroad Passenger Corporation, or its successors, and officers, agents, and employees of National Railroad Passenger Corporation, from and against any liability, cost, and expense, including, but not limited to, commuter rail passengers and rail corridor invitees in the rail corridor, regardless of whether the loss, damage, destruction, injury, or death giving rise to any such liability, cost, or expense is caused in whole or in part, and to whatever nature or degree, by the fault, failure, negligence, misconduct, nonfeasance, or misfeasance of National Railroad Passenger Corporation, its successors, or its officers, agents, and employees, or any other person or persons whomsoever.

2. The assumption of liability of the department by contract pursuant to sub-subparagraph 1.a. or sub-subparagraph

1.b. may not in any instance exceed the following parameters of allocation of risk:

a. The department may be solely responsible for any loss, injury, or damage to commuter rail passengers, ~~or~~ rail corridor invitees, or trespassers, regardless of circumstances or cause, subject to sub-subparagraph b. and subparagraphs 3., 4., 5., and 6.

b.(I) In the event of a limited covered accident, the authority of the department to protect, defend, and indemnify the freight operator for all liability, cost, and expense, including punitive or exemplary damages, in excess of the deductible or self-insurance retention fund established under paragraph (b) and actually in force at the time of the limited covered accident exists only if the freight operator agrees, with respect to the limited covered accident, to protect, defend, and indemnify the department for the amount of the deductible or self-insurance retention fund established under paragraph (b) and actually in force at the time of the limited covered accident.

(II) In the event of a limited covered accident, the authority of the department to protect, defend, and indemnify National Railroad Passenger Corporation for all liability, cost, and expense, including punitive or exemplary damages, in excess of the deductible or self-insurance retention fund established under paragraph (b) and actually in force at the time of the

limited covered accident exists only if National Railroad Passenger Corporation agrees, with respect to the limited covered accident, to protect, defend, and indemnify the department for the amount of the deductible or self-insurance retention fund established under paragraph (b) and actually in force at the time of the limited covered accident.

3. When only one train is involved in an incident, the department may be solely responsible for any loss, injury, or damage if the train is a department train or other train pursuant to subparagraph 4., but only if:

a. When an incident occurs with only a freight train involved, including incidents with trespassers or at grade crossings, the freight rail operator is solely responsible for any loss, injury, or damage, except for commuter rail passengers and rail corridor invitees; or

b. When an incident occurs with only a National Railroad Passenger Corporation train involved, including incidents with trespassers or at grade crossings, National Railroad Passenger Corporation is solely responsible for any loss, injury, or damage, except for commuter rail passengers and rail corridor invitees.

4. For the purposes of this subsection:

a. Any train involved in an incident that is neither the department's train nor the freight rail operator's train, hereinafter referred to in this subsection as an "other train,"

may be treated as a department train, solely for purposes of any allocation of liability between the department and the freight rail operator only, but only if the department and the freight rail operator share responsibility equally as to third parties outside the rail corridor who incur loss, injury, or damage as a result of any incident involving both a department train and a freight rail operator train, and the allocation as between the department and the freight rail operator, regardless of whether the other train is treated as a department train, shall remain one-half each as to third parties outside the rail corridor who incur loss, injury, or damage as a result of the incident. The involvement of any other train shall not alter the sharing of equal responsibility as to third parties outside the rail corridor who incur loss, injury, or damage as a result of the incident; or

b. Any train involved in an incident that is neither the department's train nor the National Railroad Passenger Corporation's train, hereinafter referred to in this subsection as an "other train," may be treated as a department train, solely for purposes of any allocation of liability between the department and National Railroad Passenger Corporation only, but only if the department and National Railroad Passenger Corporation share responsibility equally as to third parties outside the rail corridor who incur loss, injury, or damage as a result of any incident involving both a department train and a

National Railroad Passenger Corporation train, and the allocation as between the department and National Railroad Passenger Corporation, regardless of whether the other train is treated as a department train, shall remain one-half each as to third parties outside the rail corridor who incur loss, injury, or damage as a result of the incident. The involvement of any other train shall not alter the sharing of equal responsibility as to third parties outside the rail corridor who incur loss, injury, or damage as a result of the incident.

5. When more than one train is involved in an incident:

a.(I) If only a department train and freight rail operator's train, or only an other train as described in sub-subparagraph 4.a. and a freight rail operator's train, are involved in an incident, the department may be responsible for its property and all of its people, all commuter rail passengers, and rail corridor invitees, but only if the freight rail operator is responsible for its property and all of its people, and the department and the freight rail operator each share one-half responsibility as to trespassers or third parties outside the rail corridor who incur loss, injury, or damage as a result of the incident; or

(II) If only a department train and a National Railroad Passenger Corporation train, or only an other train as described in sub-subparagraph 4.b. and a National Railroad Passenger Corporation train, are involved in an incident, the department

may be responsible for its property and all of its people, all commuter rail passengers, and rail corridor invitees, but only if National Railroad Passenger Corporation is responsible for its property and all of its people, all National Railroad Passenger Corporation's rail passengers, and the department and National Railroad Passenger Corporation each share one-half responsibility as to trespassers or third parties outside the rail corridor who incur loss, injury, or damage as a result of the incident.

b.(I) If a department train, a freight rail operator train, and any other train are involved in an incident, the allocation of liability between the department and the freight rail operator, regardless of whether the other train is treated as a department train, shall remain one-half each as to third parties outside the rail corridor who incur loss, injury, or damage as a result of the incident; the involvement of any other train shall not alter the sharing of equal responsibility as to third parties outside the rail corridor who incur loss, injury, or damage as a result of the incident; and, if the owner, operator, or insurer of the other train makes any payment to injured third parties outside the rail corridor who incur loss, injury, or damage as a result of the incident, the allocation of credit between the department and the freight rail operator as to such payment shall not in any case reduce the freight rail operator's third-party-sharing allocation of one-half under this

paragraph to less than one-third of the total third party liability; or

(II) If a department train, a National Railroad Passenger Corporation train, and any other train are involved in an incident, the allocation of liability between the department and National Railroad Passenger Corporation, regardless of whether the other train is treated as a department train, shall remain one-half each as to third parties outside the rail corridor who incur loss, injury, or damage as a result of the incident; the involvement of any other train shall not alter the sharing of equal responsibility as to third parties outside the rail corridor who incur loss, injury, or damage as a result of the incident; and, if the owner, operator, or insurer of the other train makes any payment to injured third parties outside the rail corridor who incur loss, injury, or damage as a result of the incident, the allocation of credit between the department and National Railroad Passenger Corporation as to such payment shall not in any case reduce National Railroad Passenger Corporation's third-party-sharing allocation of one-half under this sub-subparagraph to less than one-third of the total third party liability.

6. Any such contractual duty to protect, defend, indemnify, and hold harmless such a freight rail operator or National Railroad Passenger Corporation shall expressly include a specific cap on the amount of the contractual duty, which

amount shall not exceed $200 million without prior legislative approval, and the department to purchase liability insurance and establish a self-insurance retention fund in the amount of the specific cap established under this subparagraph, provided that:

a. No such contractual duty shall in any case be effective nor otherwise extend the department's liability in scope and effect beyond the contractual liability insurance and self-insurance retention fund required pursuant to this paragraph; and

b.(I) The freight rail operator's compensation to the department for future use of the department's rail corridor shall include a monetary contribution to the cost of such liability coverage for the sole benefit of the freight rail operator.

(II) National Railroad Passenger Corporation's compensation to the department for future use of the department's rail corridor shall include a monetary contribution to the cost of such liability coverage for the sole benefit of National Railroad Passenger Corporation.

(b) Purchase liability insurance, which amount shall not exceed $295 million, and establish a self-insurance retention fund for the purpose of paying the deductible limit established in the insurance policies it may obtain, including coverage for the department, any freight rail operator as described in paragraph (a), National Railroad Passenger Corporation, commuter

rail service providers, governmental entities, or any ancillary development, which self-insurance retention fund or deductible shall not exceed $10 million. The insureds shall pay a reasonable monetary contribution to the cost of such liability coverage for the sole benefit of the insured. Such insurance and self-insurance retention fund may provide coverage for all damages, including, but not limited to, compensatory, special, and exemplary, and be maintained to provide an adequate fund to cover claims and liabilities for loss, injury, or damage arising out of or connected with the ownership, operation, maintenance, and management of a rail corridor.

(c) Incur expenses for the purchase of advertisements, marketing, and promotional items.

(d) Without altering any of the rights granted to the department under this section, agree to assume the obligations to indemnify and insure, pursuant to s. 343.545, freight rail service, intercity passenger rail service, and commuter rail service on a department-owned rail corridor, whether ownership is in fee or by easement, or on a rail corridor where the department has the right to operate.

Neither the assumption by contract to protect, defend, indemnify, and hold harmless; the purchase of insurance; nor the establishment of a self-insurance retention fund shall be deemed to be a waiver of any defense of sovereign immunity for torts

nor deemed to increase the limits of the department's or the governmental entity's liability for torts as provided in s. 768.28. The requirements of s. 287.022(1) shall not apply to the purchase of any insurance under this subsection. ~~The provisions of~~ This subsection shall apply and inure fully as to any other governmental entity providing commuter rail service and constructing, operating, maintaining, or managing a rail corridor on publicly owned right-of-way under contract by the governmental entity with the department or a governmental entity designated by the department. Notwithstanding any law to the contrary, procurement for the construction, operation, maintenance, and management of any rail corridor described in this subsection, whether by the department, a governmental entity under contract with the department, or a governmental entity designated by the department, shall be pursuant to s. 287.057 and shall include, but not be limited to, criteria for the consideration of qualifications, technical aspects of the proposal, and price. Further, any such contract for design-build shall be procured pursuant to the criteria in s. 337.11(7).

(18) Exercise such other functions, powers, and duties in connection with the rail system plan as are necessary to develop a safe, efficient, and effective statewide transportation system.

Section 30. Effective July 1, 2023, subsections (5) and (6) of section 341.303, Florida Statutes, are amended to read:

341.303 Funding authorization and appropriations; eligibility and participation.—

(5) FUND PARTICIPATION~~; FLORIDA RAIL ENTERPRISE~~.—The department may~~, through the Florida Rail Enterprise, is authorized to~~ use funds provided pursuant to s. 201.15(4)(a)4. to fund:

(a) Up to 50 percent of the nonfederal share of the costs of any eligible passenger rail capital improvement project.

(b) Up to 100 percent of planning and development costs related to the provision of a passenger rail system, including, but not limited to, preliminary engineering, revenue studies, environmental impact studies, financial advisory services, engineering design, and other appropriate professional services.

(c) The high-speed rail system.

(d) Projects necessary to identify or address anticipated impacts of increased freight rail traffic resulting from the implementation of passenger rail systems as provided in s. 341.302(3)(b).

(e) Projects necessary to identify or address needed or desirable safety improvements to passenger rail systems in this state.

~~(6) FLORIDA RAIL ENTERPRISE; BUDGET.—~~

~~(a) The Florida Rail Enterprise shall be a single budget entity and shall develop a budget pursuant to chapter 216. The enterprise's budget shall be submitted to the Legislature along~~

~~with the department's budget. All passenger rail funding by the department shall be included in this budget entity.~~

~~(b) Notwithstanding the provisions of s. 216.301 to the contrary and in accordance with s. 216.351, the Executive Office of the Governor shall, on July 1 of each year, certify forward all unexpended funds appropriated or provided pursuant to this section for the enterprise. Of the unexpended funds certified forward, any unencumbered amounts shall be carried forward. Such funds carried forward shall not exceed 5 percent of the original approved operating budget of the enterprise pursuant to s. 216.181(1). Funds carried forward pursuant to this section may be used for any lawful purpose, including, but not limited to, promotional and market activities, technology, and training. Any certified-forward funds remaining undisbursed on September 30 of each year shall be carried forward.~~

Section 31. Effective July 1, 2023, section 341.8201, Florida Statutes, is repealed.

Section 32. Effective July 1, 2023, section 341.8203, Florida Statutes, is amended to read:

341.8203 Definitions.—As used in ss. 341.822-341.842 ~~ss. 341.8201-341.842~~, unless the context clearly indicates otherwise, the term:

(1) "Associated development" means property, equipment, buildings, or other related facilities which are built, installed, used, or established to provide financing, funding,

or revenues for the planning, building, managing, and operation of a high-speed rail system and which are associated with or part of the rail stations. The term includes air and subsurface rights, services that provide local area network devices for transmitting data over wireless networks, parking facilities, retail establishments, restaurants, hotels, offices, advertising, or other commercial, civic, residential, or support facilities.

(2) "Communication facilities" means the communication systems related to high-speed passenger rail operations, including those which are built, installed, used, or established for the planning, building, managing, and operating of a high-speed rail system. The term includes the land; structures; improvements; rights-of-way; easements; positive train control systems; wireless communication towers and facilities that are designed to provide voice and data services for the safe and efficient operation of the high-speed rail system; voice, data, and wireless communication amenities made available to crew and passengers as part of a high-speed rail service; and any other facilities or equipment used for operation of, or the facilitation of communications for, a high-speed rail system. Owners of communication facilities may not offer voice or data service to any entity other than passengers, crew, or other persons involved in the operation of a high-speed rail system.

~~(3) "Enterprise" means the Florida Rail Enterprise.~~

(3) ~~(4)~~ "High-speed rail system" means any high-speed fixed guideway system for transporting people or goods, which system is, by definition of the United States Department of Transportation, reasonably expected to reach speeds of at least 110 miles per hour, including, but not limited to, a monorail system, dual track rail system, suspended rail system, magnetic levitation system, pneumatic repulsion system, or other system approved by the department ~~enterprise~~. The term includes a corridor, associated intermodal connectors, and structures essential to the operation of the line, including the land, structures, improvements, rights-of-way, easements, rail lines, rail beds, guideway structures, switches, yards, parking facilities, power relays, switching houses, and rail stations and also includes facilities or equipment used exclusively for the purposes of design, construction, operation, maintenance, or the financing of the high-speed rail system.

(4) ~~(5)~~ "Joint development" means the planning, managing, financing, or constructing of projects adjacent to, functionally related to, or otherwise related to a high-speed rail system pursuant to agreements between any person, firm, corporation, association, organization, agency, or other entity, public or private.

(5) ~~(6)~~ "Rail station," "station," or "high-speed rail station" means any structure or transportation facility that is part of a high-speed rail system designed to accommodate the

movement of passengers from one mode of transportation to another at which passengers board or disembark from transportation conveyances and transfer from one mode of transportation to another.

(6) ~~(7)~~ "Railroad company" means a person developing, or providing service on, a high-speed rail system.

(7) ~~(8)~~ "Selected person or entity" means the person or entity to whom the department ~~enterprise~~ awards a contract to establish a high-speed rail system pursuant to ss. 341.822-341.842 ~~ss. 341.8201-341.842~~.

Section 33. Effective July 1, 2023, section 341.822, Florida Statutes, is amended to read:

341.822 Powers and duties.—

(1) The department ~~enterprise~~ shall locate, plan, design, finance, construct, maintain, own, operate, administer, and manage the high-speed rail system in the state.

(2)(a) ~~In addition to the powers granted to~~ The department~~, the enterprise~~ has full authority to exercise all powers granted to it under this chapter. Powers shall include, but are not limited to, the ability to plan, construct, maintain, repair, and operate a high-speed rail system, to acquire corridors, and to coordinate the development and operation of publicly funded passenger rail systems in the state.

(b) It is the express intention of ss. 341.822-341.842 ~~ss. 341.8201-341.842~~ that the department ~~enterprise~~ be authorized to plan, develop, own, purchase, lease, or otherwise acquire, demolish, construct, improve, relocate, equip, repair, maintain, operate, and manage the high-speed rail system; to expend funds to publicize, advertise, and promote the advantages of using the high-speed rail system and its facilities; and to cooperate, coordinate, partner, and contract with other entities, public and private, to accomplish these purposes.

(c) The department ~~enterprise~~ shall establish a process to issue permits to railroad companies for the construction of communication facilities within a new or existing public or private high-speed rail system. The department ~~enterprise~~ may adopt rules to administer such permits, including rules regarding the form, content, and necessary supporting documentation for permit applications; the process for submitting applications; and the application fee for a permit under s. 341.825. The department ~~enterprise~~ shall provide a copy of a completed permit application to municipalities and counties where the high-speed rail system will be located. The department ~~enterprise~~ shall allow each such municipality and county 30 days to provide comments to the department ~~enterprise~~ regarding the application, including any recommendations regarding conditions that may be placed on the permit.

(3) The department may ~~The enterprise shall have the authority to employ procurement methods available to the department under chapters 255, 287, 334, and 337, or otherwise in accordance with law. The enterprise may also~~ solicit proposals and, with legislative approval as evidenced by approval of the project in the department's work program, enter into agreements with private entities, or consortia thereof, for the building, operation, ownership, or financing of the high-speed rail system.

~~(4) The executive director of the enterprise shall appoint staff, who shall be exempt from part II of chapter 110.~~

(4)~~(5)~~ The powers conferred upon the department ~~enterprise~~ under ss. 341.822-341.842 ~~ss. 341.8201-341.842 shall be in addition and supplemental to the existing powers of the department, and these powers~~ shall not be construed as repealing any provision of any other law, general or local, but shall supersede such other laws that are inconsistent with the exercise of the powers provided under ss. 341.822-341.842 ~~ss. 341.8201-341.842~~ and provide a complete method for the exercise of such powers granted.

(5)~~(6)~~ Any proposed rail ~~enterprise~~ project or improvement shall be developed in accordance with the Florida Transportation Plan and the work program under s. 339.135.

Section 34. Effective July 1, 2023, subsections (2) and (3), paragraph (b) of subsection (4), and subsection (5) of section 341.825, Florida Statutes, are amended to read:

341.825 Communication facilities.—

(2) APPLICATION SUBMISSION.—A railroad company may submit to the department ~~enterprise~~ an application to obtain a permit to construct communication facilities within a new or existing high-speed rail system. The application shall include an application fee limited to the amount needed to pay the anticipated cost of reviewing the application, not to exceed $10,000, which shall be deposited into the State Transportation Trust Fund. The application must include the following information:

(a) The location of the proposed communication facilities.

(b) A description of the proposed communication facilities.

(c) Any other information reasonably required by the department ~~enterprise~~.

(3) APPLICATION REVIEW.—The department ~~enterprise~~ shall review each application for completeness within 30 days after receipt of the application.

(a) If the department ~~enterprise~~ determines that an application is not complete, the department ~~enterprise~~ shall, within 30 days after the receipt of the initial application, notify the applicant in writing of any errors or omissions. An

applicant shall have 30 days within which to correct the errors or omissions in the initial application.

(b) If the department ~~enterprise~~ determines that an application is complete, the department ~~enterprise~~ shall act upon the permit application within 60 days of the receipt of the completed application by approving in whole, approving with conditions as the department ~~enterprise~~ deems appropriate, or denying the application, and stating the reason for issuance or denial. In determining whether an application should be approved, approved with modifications or conditions, or denied, the department ~~enterprise~~ shall consider any comments or recommendations received from a municipality or county and the extent to which the proposed communication facilities:

1. Are located in a manner that is appropriate for the communication technology specified by the applicant.

2. Serve an existing or projected future need for communication facilities.

3. Provide sufficient wireless voice and data coverage and capacity for the safe and efficient operation of the high-speed rail system and the safety, use, and efficiency of its crew and passengers.

(c) The failure to adopt any recommendation or comment may not be a basis for challenging the issuance of a permit.

(4) EFFECT OF PERMIT.—

(b) A permit may include conditions that constitute variances and exemptions from rules of the department ~~enterprise~~ or any other agency, which would otherwise be applicable to the communication facilities within the new or existing high-speed rail system.

(5) MODIFICATION OF PERMIT.—A permit may be modified by the applicant after issuance upon the filing of a petition with the department ~~enterprise~~.

(a) A petition for modification must set forth the proposed modification and the factual reasons asserted for the modification.

(b) The department ~~enterprise~~ shall act upon the petition within 30 days by approving or denying the application, and stating the reason for issuance or denial.

Section 35. Effective July 1, 2023, section 341.836, Florida Statutes, is amended to read:

341.836 Associated development.—

(1) The department ~~enterprise~~, alone or as part of a joint development, may undertake associated developments to be a source of revenue for the establishment, construction, operation, or maintenance of the high-speed rail system. Such associated developments must be consistent, to the extent feasible, with applicable local government comprehensive plans and local land development regulations and otherwise be in compliance with ss. 341.822-341.842 ~~ss. 341.8201-341.842~~.

(2) Sections 341.822-341.842 ~~Sections 341.8201-341.842~~ do not prohibit the department ~~enterprise~~, the selected person or entity, or a party to a joint venture with the department ~~enterprise~~ or its selected person or entity from obtaining approval, pursuant to any other law, for any associated development that is reasonably related to the high-speed rail system.

Section 36. Effective July 1, 2023, section 341.838, Florida Statutes, is amended to read:

341.838 Fares, rates, rents, fees, and charges.—

(1) The department ~~enterprise~~ may establish, revise, charge, and collect fares, rates, rents, fees, charges, and revenues for the use of and for the services furnished, or to be furnished, by the system and to contract with any person, partnership, association, corporation, or other body, public or private, in respect thereof. Such fares, rates, rents, fees, and charges shall be reviewed annually by the department ~~enterprise~~ and may be adjusted as set forth in the contract setting such fares, rates, rents, fees, or charges. The funds collected pursuant to this section shall, with any other funds available, be used to pay the cost of designing, building, operating, financing, and maintaining the system and each and every portion thereof, to the extent that the payment of such cost has not otherwise been adequately provided for.

(2) Fares, rates, rents, fees, and charges established, revised, charged, and collected by the department ~~enterprise~~ pursuant to this section shall not be subject to supervision or regulation by any other department, commission, board, body, bureau, or agency of this state other than the department ~~enterprise~~.

Section 37. Effective July 1, 2023, section 341.839, Florida Statutes, is amended to read:

341.839 Alternate means.—Sections 341.822-341.842 ~~Sections 341.8201-341.842~~ provide an additional and alternative method for accomplishing the purposes authorized therein and are supplemental and additional to powers conferred by other laws. Except as otherwise expressly provided in ss. 341.822-341.842 ~~ss. 341.8201-341.842~~, none of the powers granted to the department ~~enterprise~~ under ss. 341.822-341.842 ~~ss. 341.8201-341.842~~ are subject to the supervision or require the approval or consent of any municipality or political subdivision or any commission, board, body, bureau, or official.

Section 38. Effective July 1, 2023, section 341.840, Florida Statutes, is amended to read:

341.840 Tax exemption.—

(1) The exercise of the powers granted under ss. 341.822-341.842 ~~ss. 341.8201-341.842~~ will be in all respects for the benefit of the people of this state, for the increase of their commerce, welfare, and prosperity, and for the improvement of

their health and living conditions. The design, construction, operation, maintenance, and financing of a high-speed rail system by the department ~~enterprise~~, its agent, or the owner or lessee thereof, as herein authorized, constitutes the performance of an essential public function.

(2)(a) For the purposes of this section, the term "department" ~~"enterprise"~~ does not include agents of the department ~~enterprise~~ other than contractors who qualify as such pursuant to subsection (7).

(b) For the purposes of this section, any item or property that is within the definition of the term "associated development" in s. 341.8203(1) may not be considered part of the high-speed rail system as defined in s. 341.8203(3) ~~s. 341.8203(4)~~.

(3)(a) Purchases or leases of tangible personal property or real property by the department ~~enterprise~~, excluding agents of the department ~~enterprise~~, are exempt from taxes imposed by chapter 212 as provided in s. 212.08(6). Purchases or leases of tangible personal property that is incorporated into the high-speed rail system as a component part thereof, as determined by the department ~~enterprise~~, by agents of the department ~~enterprise~~ or the owner of the high-speed rail system are exempt from sales or use taxes imposed by chapter 212. Leases, rentals, or licenses to use real property granted to agents of the department ~~enterprise~~ or the owner of the high-speed rail system

are exempt from taxes imposed by s. 212.031 if the real property becomes part of such system. The exemptions granted in this subsection do not apply to sales, leases, or licenses by the department ~~enterprise~~, agents of the department ~~enterprise~~, or the owner of the high-speed rail system.

(b) The exemption granted in paragraph (a) to purchases or leases of tangible personal property by agents of the department ~~enterprise~~ or by the owner of the high-speed rail system applies only to property that becomes a component part of such system. It does not apply to items, including, but not limited to, cranes, bulldozers, forklifts, other machinery and equipment, tools and supplies, or other items of tangible personal property used in the construction, operation, or maintenance of the high-speed rail system when such items are not incorporated into the high-speed rail system as a component part thereof.

(4) Any bonds or other security, and all notes, mortgages, security agreements, letters of credit, or other instruments that arise out of or are given to secure the repayment of bonds or other security, issued by the department ~~enterprise~~, or on behalf of the department ~~enterprise~~, their transfer, and the income therefrom, including any profit made on the sale thereof, shall at all times be free from taxation of every kind by the state, the counties, and the municipalities and other political subdivisions in the state. This subsection, however, does not exempt from taxation or assessment the leasehold interest of a

lessee in any project or any other property or interest owned by the lessee. The exemption granted by this subsection is not applicable to any tax imposed by chapter 220 on interest income or profits on the sale of debt obligations owned by corporations.

(5) When property of the department ~~enterprise~~ is leased to another person or entity, the property shall be exempt from ad valorem taxation only if the use by the lessee qualifies the property for exemption under s. 196.199.

(6) A leasehold interest held by the department ~~enterprise~~ is not subject to intangible tax. However, if a leasehold interest held by the department ~~enterprise~~ is subleased to a nongovernmental lessee, such subleasehold interest shall be deemed to be an interest described in s. 199.023(1)(d), Florida Statutes 2005, and is subject to the intangible tax.

(7)(a) In order to be considered an agent of the department ~~enterprise~~ for purposes of the exemption from sales and use tax granted by subsection (3) for tangible personal property incorporated into the high-speed rail system, a contractor of the department ~~enterprise~~ that purchases or fabricates such tangible personal property must be certified by the department ~~enterprise~~ as provided in this subsection.

(b)1. A contractor must apply for a renewal of the exemption not later than December 1 of each calendar year.

2. A contractor must apply to the department ~~enterprise~~ on the application form adopted by the department ~~enterprise~~, which shall develop the form in consultation with the Department of Revenue.

3. The department ~~enterprise~~ shall review each submitted application and determine whether it is complete. The department ~~enterprise~~ shall notify the applicant of any deficiencies in the application within 30 days. Upon receipt of a completed application, the department ~~enterprise~~ shall evaluate the application for exemption under this subsection and issue a certification that the contractor is qualified to act as an agent of the department ~~enterprise~~ for purposes of this section or a denial of such certification within 30 days. The department ~~enterprise~~ shall provide the Department of Revenue with a copy of each certification issued upon approval of an application. Upon receipt of a certification from the department ~~enterprise~~, the Department of Revenue shall issue an exemption permit to the contractor.

(c)1. The contractor may extend a copy of its exemption permit to its vendors in lieu of paying sales tax on purchases of tangible personal property qualifying for exemption under this section. Possession of a copy of the exemption permit relieves the seller of the responsibility of collecting tax on the sale, and the Department of Revenue shall look solely to the

contractor for recovery of tax upon a determination that the contractor was not entitled to the exemption.

2. The contractor may extend a copy of its exemption permit to real property subcontractors supplying and installing tangible personal property that is exempt under subsection (3). Any such subcontractor may extend a copy of the permit to the subcontractor's vendors in order to purchase qualifying tangible personal property tax-exempt. If the subcontractor uses the exemption permit to purchase tangible personal property that is determined not to qualify for exemption under subsection (3), the Department of Revenue may assess and collect any tax, penalties, and interest that are due from either the contractor holding the exemption permit or the subcontractor that extended the exemption permit to the seller.

(d) Any contractor authorized to act as an agent of the department ~~enterprise~~ under this section shall maintain the necessary books and records to document the exempt status of purchases and fabrication costs made or incurred under the permit. In addition, an authorized contractor extending its exemption permit to its subcontractors shall maintain a copy of the subcontractor's books, records, and invoices indicating all purchases made by the subcontractor under the authorized contractor's permit. If, in an audit conducted by the Department of Revenue, it is determined that tangible personal property purchased or fabricated claiming exemption under this section

does not meet the criteria for exemption, the amount of taxes not paid at the time of purchase or fabrication shall be immediately due and payable to the Department of Revenue, together with the appropriate interest and penalty, computed from the date of purchase, in the manner prescribed by chapter 212.

(e) If a contractor fails to apply for a high-speed rail system exemption permit, or if a contractor initially determined by the department ~~enterprise~~ to not qualify for exemption is subsequently determined to be eligible, the contractor shall receive the benefit of the exemption in this subsection through a refund of previously paid taxes for transactions that otherwise would have been exempt. A refund may not be made for such taxes without the issuance of a certification by the department ~~enterprise~~ that the contractor was authorized to make purchases tax-exempt and a determination by the Department of Revenue that the purchases qualified for the exemption.

(f) The department ~~enterprise~~ may adopt rules governing the application process for exemption of a contractor as an authorized agent of the department ~~enterprise~~.

(g) The Department of Revenue may adopt rules governing the issuance and form of high-speed rail system exemption permits, the audit of contractors and subcontractors using such permits, the recapture of taxes on nonqualified purchases, and the manner and form of refund applications.

Section 39. Effective July 1, 2023, paragraph (b) of subsection (4) of section 343.58, Florida Statutes, is amended to read:

343.58 County funding for the South Florida Regional Transportation Authority.—

(4) Notwithstanding any other provision of law to the contrary and effective July 1, 2010, until as provided in paragraph (d), the department shall transfer annually from the State Transportation Trust Fund to the South Florida Regional Transportation Authority the amounts specified in subparagraph (a)1. or subparagraph (a)2.

(b) Funding required by this subsection may not be provided from the funds dedicated to the State Transportation Trust Fund ~~Florida Rail Enterprise~~ pursuant to s. 201.15(4)(a)4.

Section 40. Paragraph (d) of subsection (2) of section 349.04, Florida Statutes, is amended to read:

349.04 Purposes and powers.—

(2) The authority is hereby granted, and shall have and may exercise all powers necessary, appurtenant, convenient, or incidental to the carrying out of the aforesaid purposes, including, but without being limited to, the right and power:

(d) To enter into and make leases for terms not exceeding 99 ~~40~~ years, as either lessee or lessor, in order to carry out the right to lease as set forth in this chapter.

Section 41. Paragraph (a) of subsection (4) of section 377.809, Florida Statutes, is amended to read:

377.809 Energy Economic Zone Pilot Program.—

(4)(a) Beginning July 1, 2012, all the incentives and benefits provided for enterprise zones pursuant to state law shall be available to the energy economic zones designated pursuant to this section on or before July 1, 2010. In order to provide incentives, by March 1, 2012, each local governing body that has jurisdiction over an energy economic zone must, by local ordinance, establish the boundary of the energy economic zone, specify applicable energy-efficiency standards, and determine eligibility criteria for the application of state and local incentives and benefits in the energy economic zone. However, in order to receive benefits provided under s. 288.106, a business must be a qualified target industry business under s. 288.106 for state purposes. An energy economic zone's boundary may be revised by local ordinance. Such incentives and benefits include those in ss. 212.08, 212.096, 220.181, 220.182, 220.183, 288.106, and 624.5105 and the public utility discounts provided in s. 290.007(8). The exemption provided in s. 212.08(5)(c) shall be for renewable energy as defined in s. 377.803. For purposes of this section, any applicable requirements for employee residency for higher refund or credit thresholds must be based on employee residency in the energy economic zone or an enterprise zone. A business in an energy economic zone may also

be eligible for funding under ss. 288.047 and 445.003~~, and a transportation project in an energy economic zone shall be provided priority in funding under s. 339.2821~~. Other projects shall be given priority ranking to the extent practicable for grants administered under state energy programs.

Section 42. Subsection (2) of section 327.33, Florida Statutes, is amended to read:

327.33 Reckless or careless operation of vessel.—

(2) A person who operates any vessel upon the waters of this state shall operate the vessel in a reasonable and prudent manner, having regard for other waterborne traffic, posted speed and wake restrictions, and all other attendant circumstances so as not to endanger the life, limb, or property of another person outside the vessel or to endanger the life, limb, or property of another person due to vessel overloading or excessive speed. The failure to operate a vessel in a manner described in this subsection constitutes careless operation. However, vessel wake and shoreline wash resulting from the reasonable and prudent operation of a vessel, absent negligence, does not constitute damage or endangerment to property. A person who violates this subsection commits a noncriminal violation as defined in s. 775.08.

(a) If an individual operates a vessel at a speed greater than slow speed, minimum wake, upon approaching within 300 feet of any emergency vessel, including, but not limited to, a law

enforcement vessel, United States Coast Guard vessel, or firefighting vessel, when the emergency vessel's emergency lights are activated, he or she is guilty of careless operation. Law enforcement vessels, firefighting vessels, and rescue vessels owned or operated by a governmental entity are not subject to this paragraph.

(b) If an individual operates a vessel at a speed greater than slow speed, minimum wake, upon approaching within 300 feet of any construction vessel or barge when the vessel or barge is displaying an orange flag indicating the vessel is actively engaged in construction operations, he or she is guilty of careless operation. Law enforcement vessels, firefighting vessels, and rescue vessels owned or operated by a governmental entity are not subject to this paragraph. The flag required in this paragraph shall only be sufficient to invoke this paragraph if the flag:

1. Is at least 2 feet by 3 feet in size; and

2. Is displayed from a pole extending at least 10 feet above the tallest portion of the vessel or barge or at least 5 feet above any superstructure permanently installed upon the vessel or barge; and

3. Has a wire or other stiffener or is otherwise constructed to ensure that the flag remains fully unfurled and extended in the absence of a wind or breeze; and

4. Is displayed so that the visibility of the flag is not

obscured in any direction; and

5. Is, during periods of low visibility, including any time between the hours from one-half hour after sunset and one-half hour before sunrise, illuminated such that it is visible from a distance of at least 2 nautical miles.

(c) As used in this subsection, slow speed, minimum wake means the vessel is fully off plane and completely settled into the water. A vessel operating at slow speed minimum wake may not proceed at a speed greater than that speed which is reasonable and prudent to avoid the creation of an excessive wake or other hazardous condition under the existing circumstances. A vessel that is:

1. Operating on a plane is not proceeding at slow speed minimum wake;

2. In the process of coming off plane and settling into the water or coming up onto plane is not proceeding at slow speed minimum wake;

3. Operating at a speed that creates a wake which unreasonably or unnecessarily endangers other vessels is not proceeding at slow speed minimum wake;

4. Completely off plane and which has fully settled into the water and is proceeding without wake or with minimum wake is proceeding at slow speed minimum wake.

Section 43. Present subsections (4) and (5) of section 327.4107, Florida Statutes, are redesignated as subsections (5)

and (6), respectively, a new subsection (4) is added to that section, and present subsection (4) is amended to read:

327.4107 Vessels at risk of becoming derelict on waters of this state.—

(4)(a) Any owner or responsible party who has been issued a citation for a second violation of this section for the same vessel, may not anchor or moor such vessel or allow the vessel to remain anchored or moored within 20 feet of a mangrove or to upland vegetation upon public lands. This distance shall be measured in a straight line from the point of the vessel closest to the outermost branches of the mangrove or vegetation. An owner or responsible party in violation of this subsection commits a noncriminal infraction, punishable as provided in s. 327.73.

(b) The commission, officers of the commission, and any law enforcement agency or officer specified in s. 327.70 are authorized and empowered to relocate or cause to be relocated an at-risk vessel found to be in violation of this subsection to a distance greater than 20 feet from any mangrove or upland vegetation. The commission, officers of the commission, or any other law enforcement agency or officer acting under this subsection to relocate or cause to be relocated an at-risk vessel, upon state waters, away from mangroves or upland vegetation shall be held harmless for all damages to the at-risk vessel resulting from such relocation unless the damage results

from gross negligence or willful misconduct.

(5) ~~(4)~~ The penalties ~~penalty~~ under this section are ~~is~~ in addition to other penalties provided by law.

Section 44. For the purpose of incorporating the amendments made by this act to sections 327.33 and 327.4107, Florida Statutes, in a reference thereto, paragraphs (h) and (aa) of subsection (1) of section 327.73, Florida Statutes, are reenacted to read:

327.73 Noncriminal infractions.—

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

(h) Section 327.33(2), relating to careless operation.

(aa) Section 327.4107, relating to vessels at risk of becoming derelict on waters of this state, for which the civil penalty is:

1. For a first offense, $50.

2. For a second offense occurring 30 days or more after a first offense, $100.

3. For a third or subsequent offense occurring 30 days or more after a previous offense, $250.

Any person cited for a violation of any provision of this subsection shall be deemed to be charged with a noncriminal infraction, shall be cited for such an infraction, and shall be cited to appear before the county court. The civil penalty for

any such infraction is $50, except as otherwise provided in this section. Any person who fails to appear or otherwise properly respond to a uniform boating citation shall, in addition to the charge relating to the violation of the boating laws of this state, be charged with the offense of failing to respond to such citation and, upon conviction, be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083. A written warning to this effect shall be provided at the time such uniform boating citation is issued.

Section 45. By October 1, 2020, the Department of Transportation, each expressway and bridge authority created pursuant to chapter 348, and the Mid-Bay Bridge Authority re-created pursuant to chapter 2000-411, Laws of Florida, shall each submit a report documenting its uncollected customer receivables to the Governor, the President of the Senate, and the Speaker of the House of Representatives. Each report must include an aged summary of customer receivables for electronic toll collection as well as toll-by-plate as of June 30, 2020. Additionally, each report must include a schedule by year of customer receivables written off, sold to a collection agency, or assigned to a collection agency. Each report must include a detailed discussion by each entity from its independent certified public accountant describing the accounting methodology utilized within the entity's audited financial statements to record revenue and bad debt.

Section 46. The Legislature finds and declares that this act fulfills an important state interest.

Section 47. Except as otherwise expressly provided in this act, this act shall take effect July 1, 2020.

COMMITTEE/SUBCOMMITTEE ACTION

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

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

Amendment (with title amendment)

Between lines 897 and 898, insert:

Section 23. Section 338.2277, Florida Statutes, is created to read:

338.2277 Poinciana Parkway Extension turnpike project; financing.—

(1) The Legislature intends that the Poinciana Parkway Extension turnpike project, as described in subsection (2), be given priority in order to address congestion, promote regional connectivity from I-4 to the greater Poinciana area, and enhance mobility of the area's growing population and economy.

(2) Upon a determination no later than June 30, 2021, of economic feasibility, as defined in s. 338.221(8), for the

Poinciana Parkway Extension turnpike project, which extends from the southern terminus of the existing Poinciana Parkway at Cypress Parkway, continues along the existing Poinciana Parkway alignment to the Osceola/Polk County line, and then extends in a general north/northwest direction to connect with I-4, the Department of Transportation shall include a request for the issuance of turnpike revenue bonds to construct the project as part of its next legislative budget request and tentative work program. Such construction shall begin on or before June 30, 2022.

(3) If funding is insufficient to construct the Poinciana Parkway Extension, the project shall be given priority as a project financed from subsequent issuances of turnpike revenue bonds approved by the Legislature, contingent upon the project's meeting all economic feasibility requirements and upon the project's being financed without the use of capitalized interest.

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

Remove line 79 and insert:
of utilities within rights-of-way; creating s. 338.2277, F.S.; providing legislative intent regarding the Poinciana Parkway Extension turnpike project; requiring the department to determine economic

feasibility of the project and to request issuance of turnpike revenue bonds; providing requirements if funding of the project is insufficient; creating s.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCS for CS/HB 1111 Government Accountability
SPONSOR(S): State Affairs Committee
TIED BILLS: **IDEN./SIM. BILLS:** SB 1538

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: State Affairs Committee		Etheridge	Williamson

SUMMARY ANALYSIS

The bill includes various provisions designed to promote integrity in government and identify and eliminate fraud, waste, abuse, mismanagement, and misconduct in government. Specifically, the bill:

- Creates the Florida Integrity Office (FIO) under the Auditor General for the purpose of ensuring accountability and integrity in state and local government and facilitating the elimination of fraud, waste, abuse, mismanagement, and misconduct in government.
- Requires the Chief Inspector General (CIG) and agency inspectors general to determine whether there is reasonable probability that fraud, waste, abuse, mismanagement, or misconduct in government has occurred within six months of initiating an investigation of such activity.
- Specifies the vote required for appointing an executive director for the Department of Law Enforcement and the Department of Veterans' Affairs.
- Provides a mechanism for the state to recover funds when the CIG or an agency inspector general determines a public official, independent contractor, or agency has committed fraud, waste, abuse, mismanagement, or misconduct in government.
- Requires the Chief Financial Officer (CFO) to regularly forward to the Florida Integrity Officer (Officer) copies of suggestions and information submitted through the state's "Get Lean" hotline.
- Provides a financial incentive for agency employees to file "Whistle-blower's Act" complaints and participate in investigations that lead to the recovery of funds.
- Requires specified terms be included in all contracts with public agencies.
- Broadens the competitive solicitation exemption for statewide broadcasting of public service announcements.
- Prohibits state or local tax incentive funds from being used to award or pay a state contractor for services provided or expenditures incurred pursuant to a state contract.
- Prohibits a state employee from lobbying for an appropriation and also participating in awarding any contract funded by the appropriation. The bill provides an exception for a state employee who is an agency head, employed in the Executive Office of the Governor or the Office of Policy and Budget, or an employee who is required to register as a lobbyist but whose primary job responsibilities do not include lobbying.

The bill is projected to have a significant fiscal impact to expenditures of the Auditor General. Provisions of the bill related to the creation of the FIO under the Auditor General are anticipated to cost approximately $2.5 million annually to implement. However, the bill authorizes the Auditor General to use existing carryforward funds to cover any projected expenditures. The fiscal impact of other provisions of the bill on other state agencies are indeterminate, but likely insignificant, and are expected to be absorbed within existing agency resources. *See* Fiscal Comments.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Florida Integrity Office (Sections 1 and 12)

Current Situation

The position of Auditor General is established by Art. III, s. 2 of the State Constitution. The Auditor General is appointed to office to serve at the pleasure of the Legislature, by a majority vote of the members of the Legislative Auditing Committee, subject to confirmation by both houses of the Legislature.[1] The appointment of the Auditor General may be terminated at any time by a majority vote of both houses of the Legislature.[2]

The Auditor General conducts audits, examinations, and reviews of government programs as well as audits the accounts and records of state agencies, state universities, state colleges, district school boards, and others as directed by the Legislative Auditing Committee.[3] The Auditor General conducts operational and performance audits on public records and information technology systems and reviews all audit reports of local governmental entities, charter schools, and charter technical career centers.[4]

Current law authorizes the Legislature, through its committees, to inspect and investigate the books, records, papers, documents, data, operation, and physical plant of any public agency in the state, including any confidential information.[5] Current law also authorizes the Legislature, through its committees, to issue subpoena and other necessary process to compel the attendance of witnesses and issue subpoena duces tecum to compel the production of any books, letters, or other documentary evidence, including any confidential information, in reference to any matter under investigation.[6]

Effect of Proposed Changes

The bill creates the Florida Integrity Office (FIO) under the Auditor General. FIO will be led by the Florida Integrity Officer (Officer), who will be appointed by and serve at the pleasure of the Auditor General. Pursuant to the bill's provisions, the Officer may receive and investigate any complaint alleging fraud, waste, abuse, mismanagement, or misconduct in connection with the expenditure of public funds. The following individuals may submit a complaint: the President of the Senate; the Speaker of the House of Representatives; the chair of an appropriations committee of the Senate or House of Representatives; and the Auditor General.

Upon receipt of a valid complaint, the bill requires the Officer to determine whether the complaint is supported by sufficient information indicating a reasonable probability of fraud, waste, abuse, mismanagement, or misconduct. If the Officer determines that the complaint is not supported by sufficient information indicating a reasonable probability of fraud, waste, abuse, mismanagement, or misconduct, the Officer must notify the complainant in writing, and the complaint must be closed.

If the complaint is supported by sufficient information indicating a reasonable probability of fraud, waste, abuse, mismanagement, or misconduct, the bill requires the Officer to determine whether the matter is under investigation by a law enforcement agency, the Commission on Ethics, the Chief Financial Officer, the Office of the Chief Inspector General, or the applicable agency inspector general. If such an investigation has been initiated, the Officer must notify the complainant in writing, and the complaint may be closed. If such an investigation has not been initiated, the bill requires the Officer to conduct an

[1] S. 11.42(2), F.S.
[2] S. 11.42(5), F.S.
[3] S. 11.45, F.S.
[4] *Id*.
[5] S. 11.143(2), F.S.
[6] S. 11.143(3), F.S.

investigation and issue a report of the investigative findings to the President of the Senate and the Speaker of the House of Representatives. The Officer may also refer the matter to the Auditor General, the appropriate law enforcement agency, the Chief Financial Officer, the Office of the Chief Inspector General, or the applicable agency inspector general.

Similar to the current authority given to legislative committees,[7] the bill gives the Officer the authority to inspect and investigate the books, records, papers, documents, data, operation, and physical location of any public agency in the state, including any confidential information. The bill also gives the Officer the authority to investigate the public records of any entity that has received direct appropriations.

The bill authorizes the Officer to request the Legislative Auditing Committee or any legislative committee to exercise existing powers[8] to issue subpoenas and subpoenas duces tecum to compel testimony or the production of evidence when deemed necessary to an authorized investigation. The bill also provides the means of enforcing any subpoena issued pursuant to the bill's provisions.

Beginning with fiscal year (FY) 2021–2022, the bill requires the Auditor General and the Officer to, within available resources, randomly select and review appropriations projects appropriated in the prior FY and, if appropriate, investigate and recommend an audit of such project. The bill requires that, at a minimum, the investigation or audit must include an evaluation of whether the recipient of the appropriations project administered the project in an efficient and effective manner. Pursuant to the bill, the term "appropriations project" means a specific appropriation or proviso providing funding for a specified entity that is a local government, private entity, or privately-operated program that is named or described. The term does not include an appropriation:

- Specifically authorized by statute;
- That is part of a statewide distribution to local governments;
- Recommended by a commission, council, or other similar entity created in statute to make annual funding recommendations, provided that such appropriation does not exceed the amount of funding recommended by the commission, council, or other similar entity;
- For a specific transportation facility that was part of the Department of Transportation's five-year work program submitted pursuant to s. 339.135, F.S.;
- For an education fixed capital outlay project that was submitted pursuant to s. 1013.60, F.S., or s. 1013.64, F.S.; or
- For a specified program, research initiative, institute, center, or similar entity at a specific state college or university recommended by the Board of Governors or the State Board of Education in its Legislative Budget Request.

The bill's definition of "appropriations project" mirrors the definition of the term in Joint Rule 2.2,[9] adopted for the 2018–2020 biennium.

Beginning with FY 2021–2022, the bill requires the Auditor General and the Officer, within available resources, to select and review, audit, or investigate the financial activities of:

- Political subdivisions, special districts, public authorities, public hospitals, state and local councils or commissions, units of local government, or public education entities in the state; and
- Any authorities, councils, commissions, direct-support organizations, institutions, foundations, or similar entities created by law or ordinance to pursue a public purpose, entitled by law or ordinance to any distribution of tax or fee revenues, or organized for the sole purpose of supporting one of the public entities listed above.

[7] *See* s. 11.143(2), F.S.
[8] *See* s. 11.143(3), F.S.
[9] J.R. 2.2(4), 2018–2020.

Auditor General Responsibilities (Section 2)

Current Situation

The United States Government Accountability Office (GAO) is an independent, nonpartisan agency that works for Congress.[10] Often called the "congressional watchdog," the GAO examines how taxpayer dollars are spent and provides Congress and federal agencies with objective, reliable information to help the government save money and work more efficiently.[11] GAO's publication, *Government Auditing Standards* (known as the "Yellow Book") provides "a framework for performing high-quality audit work with competence, integrity, objectivity, and independence to provide accountability and to help improve government operations and services."[12] Among other things, the Yellow Book provides a standard definition for "abuse."[13]

The Florida Department of Management Services (DMS) has promulgated rules that set forth the minimum standards of conduct that apply to all employees in the State Personnel System, the violation of which may result in dismissal.[14]

Current law requires the Auditor General to conduct operational audits[15] of state agencies, state universities, state colleges, district school boards, the Florida Clerks of Court Operations Corporation, water management districts, and the Florida School for the Deaf and the Blind at least every three years.[16] Current law also requires the Auditor General to conduct a financial audit[17] of all state universities and state colleges on an annual basis.[18] The Auditor General is required to perform a financial audit of district school boards in counties that have populations of 150,000 or more at least once every three years and annually in counties with populations of fewer than 150,000.[19]

If an operational or financial audit report indicates a district school board, state university, or state college has failed to take full corrective action in response to a recommendation that was included in the two preceding operational or financial audit reports, the Auditor General is required to notify the Legislative Auditing Committee.[20] In such cases, the Legislative Auditing Committee may initiate actions that require the audited organization to demonstrate the steps it has taken towards corrective

[10] GAO, https://www.gao.gov/about (last visited Feb. 14, 2020).
[11] *Id.*
[12] GAO, Government Auditing Standards 1 (July 2018).
[13] *Id.* at 114. The GAO defines "abuse" as behavior that is deficient or improper when compared with behavior that a prudent person would consider a reasonable and necessary operational practice given the facts and circumstances. The term includes the misuse of authority or position for personal gain or for the gain of an immediate or close family member or business associate.
[14] R. 60L-36.005, F.A.C., defines "misconduct" as conduct which, though not illegal or inappropriate for a state employee generally, is inappropriate for a person in the employee's particular position.
[15] S. 11.45(1)(g), F.S., defines an "operational audit" as an audit whose purpose is to evaluate management's performance in establishing and maintaining internal controls, including controls designed to prevent and detect fraud, waste, and abuse, and in administering assigned responsibilities in accordance with applicable laws, administrative rules, contracts, grant agreements, and other guidelines. Operational audits must be conducted in accordance with government auditing standards. Such audits examine internal controls that are designed and placed in operation to promote and encourage the achievement of management's control objectives in the categories of compliance, economic and efficient operations, reliability of financial records and reports, and safeguarding of assets, and identify weaknesses in those internal controls.
[16] S. 11.45(2)(f), F.S.
[17] S. 11.45(1)(c), F.S., defines a "financial audit" as an examination of financial statements in order to express an opinion on the fairness with which they are presented in conformity with generally accepted accounting principles and an examination to determine whether operations are properly conducted in accordance with legal and regulatory requirements. Financial audits must be conducted in accordance with auditing standards generally accepted in the United States and government auditing standards as adopted by the Board of Accountancy. When applicable, the scope of financial audits must encompass the additional activities necessary to establish compliance with the Single Audit Act Amendments of 1996, 31 U.S.C. ss. 7501-7507, and other applicable federal law.
[18] S. 11.45(2)(c), F.S.
[19] S. 11.45(2)(d) and (e), F.S.
[20] S. 11.45(7)(j), F.S.

action.[21] This reporting cycle may result in the Legislative Auditing Committee not being notified of one of the above referenced entity's failure to take full corrective action for six or more years.

Effect of Proposed Changes

The bill codifies a definition for "misconduct" and revises the definition for "abuse." The bill defines the term "'abuse"' as behavior that is deficient or improper when compared with behavior that a prudent person would consider a reasonable and necessary operational practice given the facts and circumstances. The term includes the misuse of authority or position for personal gain or for the gain of an immediate or close family member or business associate. The bill defines the term "misconduct" as conduct that, though not illegal, is inappropriate for a person in his or her specified position. The definition for "abuse" mirrors the definition used by GAO in the Yellow Book. The definition for 'misconduct' mirrors the definition promulgated by DMS rule.

The bill revises the Auditor General's notification responsibilities with respect to a district school board, state university, or state college failing to take full corrective action on an audit finding by shortening the cycle from three to two successive operational audits.

The bill requires the Auditor General to publish a report consolidating common operational audit findings for all state agencies, all state universities, all state colleges, and all district school boards at the conclusion of each three-year cycle.

Inspectors General (Sections 3 and 6)

Current Situation

The Office of Chief Inspector General (CIG) is responsible for promoting accountability, integrity, and efficiency in agencies under the Governor's jurisdiction.[22] The CIG monitors the activities of the agency inspectors general under the Governor's jurisdiction and is required to do the following:

- Initiate, supervise, and coordinate investigations, recommend policies, and carry out other activities designed to deter, detect, prevent, and eradicate fraud, waste, abuse, mismanagement, and misconduct in government;
- Investigate, upon receipt of a complaint or for cause, any administrative action of any agency the administration of which is under the direct supervision of the Governor;
- Request such assistance and information as may be necessary for the performance of the CIG's duties;
- Examine the records and reports of any agency the administration of which is under the direct supervision of the Governor;
- Coordinate complaint-handling activities with agencies;
- Coordinate the activities of the Whistle-blower's Act and maintain the whistle-blower's hotline to receive complaints and information concerning the possible violation of law or administrative rules, mismanagement, fraud, waste, abuse of authority, malfeasance, or a substantial or specific danger to the health, welfare, or safety of the public;
- Report expeditiously to and cooperate fully with the Department of Law Enforcement, the Department of Legal Affairs, and other law enforcement agencies when there are recognizable grounds to believe that there has been a violation of criminal law or that a civil action should be initiated;
- Act as liaison with outside agencies and the federal government to promote accountability, integrity, and efficiency in state government;
- Act as liaison and monitor the activities of the inspectors general in the agencies under the Governor's jurisdiction;
- Review, evaluate, and monitor the policies, practices, and operations of the Executive Office of the Governor; and

[21] *Id*.
[22] S. 14.32(1), F.S.

- Conduct special investigations and management reviews at the request of the Governor.[23]

Authorized under s. 20.055, F.S., an Office of Inspector General (OIG) is established in each state agency[24] to provide a central point for the coordination and responsibility for activities that promote accountability, integrity, and efficiency in government. Each agency OIG is responsible for the following:

- Advising in the development of performance measures, standards, and procedures for the evaluation of state agency programs;
- Assessing the reliability and validity of information provided by the agency on performance measures and standards;
- Reviewing the actions taken by the agency to improve agency performance, and making recommendations, if necessary;
- Supervising and coordinating audits, investigations, and reviews relating to the programs and operations of the state agency;
- Conducting, supervising, or coordinating other activities carried out or financed by the agency for the purpose of promoting economy and efficiency in the administration of, or preventing and detecting fraud and abuse in, its programs and operations;
- Providing central coordination of efforts to identify and remedy waste, abuse, and deficiencies to the agency head,[25] or the CIG for agencies under the jurisdiction of the Governor; recommending corrective action concerning fraud, abuses, and deficiencies; and reporting on the progress made in implementing corrective action;
- Coordinating agency-specific audit activities between the Auditor General, federal auditors, and other governmental bodies to avoid duplication;
- Reviewing rules relating to the programs and operations of the agency and making recommendations concerning their impact;
- Ensuring that an appropriate balance is maintained between audit, investigative, and other accountability activities; and
- Complying with the General Principles and Standards for Offices of Inspector General as published and revised by the Association of Inspectors General.[26]

With respect to investigations, each OIG must initiate, conduct, supervise, and coordinate investigations designed to detect, deter, prevent, and eradicate fraud, waste, mismanagement, misconduct, and other abuses in state government.[27] For these purposes, each inspector general must do the following:

- Receive complaints and coordinate all activities of the agency as required by the Whistle-blower's Act;
- Receive and consider the complaints that do not meet the criteria for an investigation under the Whistle-blower's Act and conduct, supervise, or coordinate such inquiries, investigations, or reviews as the inspector general deems appropriate;
- Report expeditiously to the Department of Law Enforcement or other law enforcement agencies, as appropriate, when the inspector general has reasonable grounds to believe there has been a violation of criminal law;

[23] S. 14.32(2), F.S.
[24] S. 20.055(1)(d), F.S., defines the term "state agency" as each department created pursuant to ch. 20, F.S., and the Executive Office of the Governor, the Department of Military Affairs, the Fish and Wildlife Conservation Commission, the Office of Insurance Regulation of the Financial Services Commission, the Office of Financial Regulation of the Financial Services Commission, the Public Service Commission, the Board of Governors of the State University System, the Florida Housing Finance Corporation, the Agency for State Technology, the Office of Early Learning, and the state courts system.
[25] S. 20.055(1)(a), F.S., defines the term "agency head" as the Governor, a Cabinet officer, a secretary as defined in s. 20.03(5), F.S., or an executive director as defined in s. 20.03(6), F.S. It also includes the chair of the Public Service Commission, the Director of the Office of Insurance Regulation of the Financial Services Commission, the Director of the Office of Financial Regulation of the Financial Services Commission, the board of directors of the Florida Housing Finance Corporation, the executive director of the Office of Early Learning, and the Chief Justice of the State Supreme Court.
[26] S. 20.055(2), F.S.
[27] S. 20.055(7), F.S.

- Conduct investigations and other inquiries free of actual or perceived impairment to the independence of the inspector general or the inspector general's office. This must include freedom from any interference with investigations and timely access to records and other sources of information;
- At the conclusion of an investigation, the subject of which is an entity contracting with the state or an individual substantially affected, submit the findings to the contracting entity or the individual substantially affected, who must be advised that they may submit a written response to the findings. The response and the inspector general's rebuttal to the response, if any, must be included in the final audit report; and
- Submit in a timely fashion final reports on investigations conducted by the inspector general to the agency head.[28]

Effect of Proposed Changes

The bill requires the CIG and agency inspectors general to make a reasonable probability determination within six months of initiating an investigation of fraud, waste, abuse, mismanagement, or misconduct in government. Pursuant to the bill's provisions, if the investigation continues in the absence of reasonable probability that fraud, waste, abuse, mismanagement, or misconduct has occurred, the CIG or any agency inspector general must make a new determination every three months until the investigation is closed or reasonable probability is found. The bill provides definitions for the terms "fraud,"[29] "waste,"[30] "abuse,"[31] and "misconduct."[32] The definitions for "fraud," "waste," and "abuse" mirror the definitions used by GAO, as provided in the *Standards for Internal Control in the Federal Government* (known as the "Green Book").[33] The definition for "misconduct" mirrors the definition promulgated by DMS in r. 60L-36.005, F.A.C.

If the CIG or an agency inspector general determines there is reasonable probability to believe a public official, independent contractor, or agency has committed fraud, waste, abuse, mismanagement, or misconduct in government, the bill requires the applicable inspector general to report such determination to the Officer. Pursuant to the bill, such public officer, independent contractor, or agency employee responsible for the fraud, waste, abuse, mismanagement, or misconduct in government is liable for repayment of the funds diverted or lost. If the person liable fails to repay such funds voluntarily and the state does not agree to a settlement, the bill requires the CFO to bring a civil action to recover the funds.

Chief Financial Officer's Office of Fiscal Integrity (Section 4)

Current Situation

The Chief Financial Officer (CFO) is an elected constitutional Cabinet member.[34] The CFO serves as the chief fiscal officer of the state and is responsible for settling and approving accounts against the state and keeping all state funds and securities.[35] Such responsibilities include, but are not limited to,

[28] *Id*.
[29] The bill defines the term "fraud" as obtaining something of value through willful misrepresentation, including, but not limited to, the intentional misstatements or intentional omissions of amounts or disclosures in financial statements to deceive users of financial statements, theft of an entity's assets, bribery, or the use of one's position for personal enrichment through the deliberate misuse or misapplication of an entity's resources.
[30] The bill defines the term "waste" as the act of using or expending resources unreasonably, carelessly, extravagantly, or for no useful purpose.
[31] The bill defines the term "abuse" as behavior that is deficient or improper when compared with behavior that a prudent person would consider a reasonable and necessary operational practice given the facts and circumstances. The term includes the misuse of authority or position for personal gain.
[32] The bill defines the term "misconduct" as conduct which, though not illegal, is inappropriate for a person in his or her specified position.
[33] GAO, Standards for Internal Control in the Federal Government 40 (September 2014).
[34] Art. IV, s. 4(a), Fla. Const.
[35] Art. IV, s. 4(c), Fla. Const.; s. 17.001, F.S.

auditing and adjusting accounts of officers and those indebted to the state,[36] paying state employee salaries,[37] and reporting all disbursements of funds administered by the CFO.[38]

The CFO's Office of Fiscal Integrity (OFI) is a criminal justice agency[39] with full statutory subpoena power.[40] OFI's mission is to detect and investigate the misappropriation or misuse of state assets in a manner that safeguards the interests of the state and its taxpayers.[41]

According to OFI, it conducts criminal investigations into misbehavior by state employees that have been under review by their respective agency inspector general. Upon receiving the referral on the state employee, OFI may begin a full criminal investigation. If criminal charges are warranted, OFI will refer the matter to the proper charging authority.

According to OFI, it does not currently have the authority to commence an investigation based on a complaint from an employee of a state agency or state contractor.

Effect of Proposed Changes

The bill authorizes the CFO to commence an investigation based on a complaint or referral from any source, including an employee of a state agency or state contractor. The bill also explicitly authorizes an employee of a state agency or state contractor who has knowledge of suspected misuse of state funds to report such information to the CFO.

Chief Financial Officer's "Get Lean" Program (Section 5)

Current Situation

The CFO is required to operate a 24-hour statewide toll-free hotline to receive information or suggestions from state residents on how to improve the operation of government, increase governmental efficiency, and eliminate waste in government.[42] The hotline consists of a telephone hotline and website. The CFO is required to advertise the hotline by posting notices in conspicuous places in state agency offices, city halls, county courthouses, and places in which there is exposure to significant numbers of the general public, including, but not limited to, local convenience stores, shopping malls, shopping centers, gas stations, or restaurants.[43] Additionally, the law allows the CFO to advertise the availability of the hotline in newspapers of general circulation within the state.[44] When advertising the hotline, the CFO must use the slogan, "Tell us where we can 'Get Lean.'"[45]

Those that provide tips through the hotline may remain anonymous, but if the tipper provides his or her name, the name is kept confidential.[46] By law, the tipper is immune from liability for any use of the information and may not be subject to any retaliation by any state employee for providing the tip.[47]

When a tip comes in to the hotline, the CFO's office is required to conduct an evaluation to determine if the tip is appropriate to be processed.[48] If the tip is appropriate to be processed, the CFO's office is required to keep a record of each suggestion or item of information received in the tip.[49]

---

[36] S. 17.04, F.S.
[37] S. 17.09, F.S.
[38] S. 17.11, F.S.
[39] S. 20.121(2)(e), F.S.
[40] S. 17.05(2), F.S.
[41] Office of Fiscal Integrity, https://myfloridacfo.com/Division/DIFS/OFI/default.htm (last visited Feb. 19, 2020).
[42] S. 17.325(1), F.S.
[43] S. 17.325(2), F.S.
[44] *Id.*
[45] *Id.*
[46] S. 17.325(3), F.S.
[47] S. 17.325(4), F.S.
[48] S. 17.325(3), F.S.
[49] *Id.*

If the tipper discloses that he or she is a state employee, the CFO's office may refer any information or suggestion from the tipper to an existing state awards program administered by the impacted agency.[50] If forwarded, the impacted agency must conduct a preliminary evaluation of the efficacy of the suggestion or information and provide the CFO's office with a preliminary determination of the amount of revenue the state might save by implementing the suggestion or making use of the information.[51]

Effect of Proposed Changes

The bill requires the CFO's office to provide a copy of each suggestion or item of information processed through the "Get Lean" hotline to the Officer by the 15th of the month following receipt of the suggestion or item of information.

Florida Whistle-blower's Act (Sections 10, 16 - 18)

Current Situation

The "Whistle-blower's Act"[52] protects government employees from adverse actions from their employers or an independent contractor for reporting any act (or suspected act) of gross mismanagement, malfeasance, misfeasance, gross waste of public funds, suspected or actual Medicaid fraud or abuse, or gross neglect of duty; or any violation (or suspected violation) of any federal, state, or local law, rule, or regulation committed by an employee or agent of an agency or independent contractor that creates and presents a substantial and specific danger to the public's health, safety, or welfare.[53] The Whistle-blower's Act, codified in ss. 112.3187 – 112.31895, F.S., governs the complaint filing and resolution process, provides investigatory procedures upon receipt of a complaint and in response to prohibited personnel actions, and provides for confidentiality of the complainant's name or identity.

Effect of Proposed Changes

The bill broadens the category of complaints that may be covered by the Whistle-blower's Act. Specifically, the bill covers complaints alleging "mismanagement," "waste of public funds," and "neglect of duty" as opposed to "gross mismanagement," "gross waste of public funds," and "gross neglect of duty" as under current law. The bill makes conforming changes to other portions of the Whistle-blower's Act consistent with the revised definitions and broader category of complaints.

Vote Requirement – Executive Director (Sections 7 and 8)

Current Situation

The head of both the Department of Law Enforcement (FDLE) and the Department of Veterans' Affairs (DVA) is the Governor and Cabinet.[54] The position of executive director within both agencies is appointed by the Governor with the approval of all three members of the Cabinet, subject to confirmation by the Senate.[55]

Effect of Proposed Changes

The bill specifies that the position of executive director within FDLE and DVA must be appointed by the Governor with approval of two or more members of the Cabinet, subject to Senate confirmation.

[50] *Id.*
[51] *Id.*
[52] Ss. 112.3187–112.31895, F.S.
[53] S. 112.3187(4) and (5), F.S.
[54] Art. IV, ss. 4(g) and 11, Fla. Const.
[55] *See* ss. 20.201 and 20.37, F.S.

Savings Sharing Program (Section 9)

Current Situation

Florida law provides a state "Savings Sharing Program" for the purpose of providing a process by which state agencies can retain a portion of their budget for implementing internally generated program efficiencies and cost reductions and then redirect the savings to employees.[56] By law, DMS must adopt rules that prescribe procedures for the program.[57]

Each state agency is eligible to participate in the Savings Sharing Program, and each agency head is responsible for recommending employees individually or by group to be awarded an amount of money, which must be directly related to the cost savings realized.[58] Each proposed award must be approved by the Legislative Budget Commission before distribution.[59] All employees within the Career Service and Selected Exempt Service are eligible to receive awards, provided they meet the statutory eligibility criteria.[60]

Additionally, the law allows the Chief Justice to establish a savings sharing program for employees in the judicial branch.[61]

Effect of Proposed Changes

The bill creates a reward system for state employees whose reports under the Whistle-blower's Act result in savings or recovery of public funds in excess of $1,000. The amount of the award will be determined by the amount saved or recovered, the employee's employment classification, and when more than one employee makes a relevant report, in proportion to each employee's contribution to the investigation that led to the recovery of such funds. The bill sets the following award amounts:

- Career Service Employee – 10 percent of savings or recovery certified, but not less than $500 and not more than a total of $50,000 in any year.
- Selected Exempt Service Employees and Senior Management Service – 5 percent of savings or recovery certified, but not more than $1,000 in any year.

The agency head must recommend the employee or employees for awards and requires the funds be paid from the specific appropriation or trust fund from which the savings or recovery resulted. The bill provides that these awards are not bonuses and do not require approval by the Legislative Budget Commission.

To protect the identity of the whistle-blower, the bill allows employees to authorize an agent, trustee, or custodian to collect any award for which the employee is eligible on the employee's behalf.

Contracts and the Procurement of Commodities and Services (Sections 11 and 12)

Current Situation

Chapter 287, F.S., regulates state agency[62] procurement of personal property and services. DMS is responsible for overseeing state purchasing activity, including professional and construction services, as well as commodities needed to support agency activities, such as office supplies, vehicles, and

[56] S. 110.1245, F.S.
[57] S. 110.1245(1)(a), F.S.
[58] S. 110.1245(1)(b) and (c), F.S.
[59] S. 110.1245(1)(b), F.S.
[60] S. 110.1245(1)(c) and (2)(b), F.S.
[61] *Id.*
[62] S. 287.012(1), F.S., defines the term "agency" as any of the various state officers, departments, boards, commissions, divisions, bureaus, and councils and any other unit of organization, however designated, of the executive branch of state government. The term does not include the university and college boards of trustees or the state universities and colleges.

information technology.[63] DMS establishes statewide purchasing rules and negotiates contracts and purchasing agreements that are intended to leverage the state's buying power.[64]

Depending on the cost and characteristics of the needed goods or services, agencies may utilize a variety of procurement methods, which include:[65]

- Invitations to bid – used when the agency is capable of specifically defining the scope of work for which a contractual service is required or when the agency is capable of establishing precise specifications defining the actual commodity or group of commodities required. In such cases, the contract is awarded to the responsible and responsive vendor who submits the lowest responsive bid;
- Requests for proposal – used when the purposes and uses for which the commodity, group of commodities, or contractual service being sought can be specifically defined and the agency is capable of identifying necessary deliverables. Various combinations or versions of commodities or contractual services may be proposed by a responsive vendor to meet the specifications of the solicitation document. In such cases, the contract is awarded to the responsible and responsive vendor whose proposal is determined in writing to be the most advantageous to the state, taking into consideration the price and other criteria set forth in the request for proposals; and
- Invitations to negotiate – used when the agency intends to determine the best method for achieving a specific goal or solving a particular problem and identifies one or more responsive vendors with which the agency may negotiate in order to receive the best value; and

For contracts for commodities or services in excess of $35,000, agencies must utilize a competitive solicitation process.[66] However, certain contractual services and commodities are exempt from this requirement.[67] A contract for commodities or contractual services may be awarded without competition if state or federal law prescribes with whom the agency must contract,[68] or the rate of payment or the recipient of the fund may be established during the appropriations process.[69]

Current law contains an exemption from the competitive solicitation requirement for statewide public service announcement programs provided by a Florida statewide nonprofit corporation under s. 501(c)(6) of the Internal Revenue Code that have a guaranteed documented match of at least $3 to $1.[70]

[63] *See* ss. 287.032 and 287.042, F.S.
[64] *Id*.
[65] *See* ss. 287.012(6) and 287.057, F.S.
[66] S. 287.057(1), F.S., requires all projects that exceed the Category Two ($35,000) threshold in s. 287.017, F.S., be competitively bid.
[67] *See* s. 287.057(3), F.S.
[68] S. 287.057(10), F.S.
[69] *Id.*
[70] S. 287.057(3)(e)(13), F.S.

Effect of Proposed Changes

The bill requires all contracts between a contractor and a public agency entered into or amended on or after July 1, 2020, to provide that the public agency may inspect:

- Financial records, papers, and documents of the contractor directly related to the execution of the contract or the expenditure of state funds; and
- Programmatic records, papers, and documents of the contractor that are necessary to monitor the performance of the contract or ensure that the terms of the contract are being met, as determined by the public agency.

The bill specifies that the contract provision must require the contractor to provide any such documents within 10 business days of the request from the public agency.

The bill expands the competitive solicitation exemption for statewide public service announcements. Specifically, the bill removes the provision that required the public service announcement to be statewide and provided by a 501(c)(6) corporation.

The bill also prohibits a state employee from lobbying for funding for a contract and participating in the awarding of such contract. This provision of the bill does not apply to a state employee who is an agency head, employed in the Executive Office of the Governor or the Office of Policy and Budget, or an employee who is required to register as a lobbyist but whose primary job responsibilities do not include lobbying.

Tax Incentives (Section 13)

Current Situation

Chapter 288, F.S., governs the operation of numerous economic development programs, some of which provide tax credits, tax refunds, sales tax exemptions, cash grants, and other similar programs.

Effect of Proposed Changes

The bill prohibits a tax incentive, notwithstanding any other law, from being awarded or paid to a state contractor or any subcontractor for services provided or expenditures incurred pursuant to a state contract.

Department of Education Inspector General Investigations (Section 14)

Current Situation

The Office of Inspector General within the Department of Education (DOE-IG) is responsible for promoting accountability, efficiency, and effectiveness and detecting fraud and abuse within school districts, the Florida School for the Deaf and the Blind, and Florida College System institutions.[71]

If the Commissioner of Education determines that a district school board, the Board of Trustees for the Florida School for the Deaf and the Blind, or a Florida College System institution board of trustees is unwilling or unable to address substantiated allegations made by any person relating to waste, fraud, or financial mismanagement within the school district, the Florida School for the Deaf and the Blind, or the Florida College System institution, the DOE-IG must conduct, coordinate, or request investigations into such substantiated allegations.[72]

Additionally, the DOE-IG must investigate allegations or reports of possible fraud or abuse against a district school board made by any member of the Cabinet; the presiding officer of either house of the

[71] S. 1001.20(4)(e), F.S.
[72] *Id*.

Legislature; a chair of a substantive or appropriations committee with jurisdiction; or a member of the board for which an investigation is sought.[73]

Effect of Proposed Changes

To increase accountability, the bill requires the DOE-IG to also investigate allegations or reports of possible waste, fraud, abuse, or mismanagement against a Florida College System institution made by any member of the Cabinet; the presiding officer of either house of the Legislature; a chair of a substantive or appropriations committee with jurisdiction; or a member of the board for which an investigation is sought. Additionally, the bill requires the DOE-IG to investigate allegations or reports of possible waste or mismanagement against a district school board made by any of the previously referenced members or officers.

B. SECTION DIRECTORY:

Section 1. Creates s. 11.421, F.S., establishing FIO within the Office of Auditor General.

Section 2. Amends s. 11.45, F.S., relating to Auditor General reporting requirements.

Section 3. Amends s. 14.32, F.S., relating to the OIG.

Section 4. Amends s. 17.04, F.S., relating to the CFO's authority to audit and adjust accounts of officers and those indebted to the state.

Section 5. Amends s. 17.325, F.S., relating to Florida's 'Get Lean' hotline.

Section 6. Amends s. 20.055, F.S., relating to agency inspectors general.

Section 7. Amends s. 20.201, F.S., revising the number of votes required for executive director.

Section 8. Amends s. 20.37, F.S., revising the number of votes required for executive director.

Section 9. Amends s. 110.1245, F.S., relating to the state 'Savings Sharing Program.'

Section 10. Amends s. 112.3187, F.S., relating to the 'Whistle-blower's Act.'

Section 11. Creates s. 216.1366, F.S., relating to contract terms.

Section 12. Amends s. 287.057, F.S., relating to the procurement of commodities or contractual services.

Section 13. Creates s. 288.00001, F.S., relating to use of state or local incentive funds.

Section 14. Amends s. 1001.20 F.S., relating to duties of the DOE-IG.

Section 15. Provides authority to the Auditor General to use carryforward funds to fund the establishment and operation of FIO.

Section 16. Amends s. 112.3188, F.S., conforming provisions to changes made by the act.

Section 17. Amends s. 112.3189, F.S., conforming provisions to changes made by the act.

Section 18. Amends s. 112.31895, F.S., conforming provisions to changes made by the act.

Section 19. Provides an effective date of July 1, 2020.

[73] *Id*.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   See Fiscal Comments.

2. Expenditures:

   See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

According to the Office of Auditor General, the projected annual fiscal impact is approximately $2.5 million to staff and to fund the newly created FIO. However, only a portion of that amount will be needed in the first year as the office ramps up staffing and associated expenses. Additionally, some of the functions of the FIO will not be fully implemented until FY 2021–2022. The bill authorizes the Auditor General to use existing carryforward funds to fund the office, which are sufficient to cover such costs for more than three years, therefore no appropriation is necessary.

The revisions to the state Savings Sharing Program will have an indeterminate positive fiscal impact on agencies as they provide an incentive for agency employees to file Whistle-blower's Act complaints and participate in investigations that lead to the recovery of state or federal funds. Any award given pursuant to this provision will be paid from the specific appropriation or trust fund from which the savings or recovery resulted.

Additional reporting and tracking requirements assigned to agencies, as well as investigations of complaint referrals and processing whistle-blower complaints, can be absorbed within existing agency resources.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

The bill does not confer rulemaking authority nor does it appear to require the promulgation of rules.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

Not applicable.

A bill to be entitled

An act relating to government accountability; creating s. 11.421, F.S.; creating the Florida Integrity Office under the Auditor General; providing definitions; providing duties and powers of the Florida Integrity Officer and the Auditor General; amending s. 11.45, F.S.; providing a definition; providing and revising Auditor General reporting requirements; amending s. 14.32, F.S.; providing definitions; providing investigative duties of the Chief Inspector General and agency inspectors general; requiring such inspectors general to provide a report to the Chief Financial Officer within a specified timeframe in certain circumstances; providing liability for certain officials, contractors, and persons in certain circumstances; amending s. 17.04, F.S.; authorizing the Chief Financial Officer to commence an investigation based on certain complaints or referrals; authorizing state agency employees and state contractors to report certain information to the Chief Financial Officer; amending s. 17.325, F.S.; requiring certain records to be sent to the Florida Integrity Officer within a specified timeframe; amending s. 20.055, F.S.; requiring agency inspectors general to make certain determinations and reports;

amending ss. 20.201 and 20.37, F.S.; revising the number of cabinet votes required to approve the appointment of the executive director of the Florida Department of Law Enforcement and the executive director of the Department of Veterans' Affairs, respectively; amending s. 110.1245, F.S.; providing requirements for awards given to employees who report under the Whistle-blower's Act; authorizing expenditures for such awards; amending s. 112.3187, F.S.; revising a definition; conforming provisions to changes made by the act; creating s. 216.1366, F.S.; providing requirements for certain public agency contracts; amending s. 287.057, F.S.; revising provisions relating to contractual services and commodities that are not subject to competitive-solicitation requirements; prohibiting certain state employees from participating in the negotiation or award of state contracts; creating s. 288.00001, F.S.; prohibiting tax incentives from being awarded or paid to a state contractor or subcontractor; amending s. 1001.20, F.S.; requiring the Office of Inspector General of the Department of Education to conduct investigations relating to waste, fraud, abuse, or mismanagement against a district school board or Florida College System institution; authorizing the

Office of the Auditor General to use carryforward funds to fund the Florida Integrity Office; amending ss. 112.3188, 112.3189, and 112.31895, F.S.; conforming provisions to changes made by the act; providing an effective date.

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

Section 1. Section 11.421, Florida Statutes, is created to read:

11.421 Florida Integrity Office.—

(1) There is created under the Auditor General the Florida Integrity Office for the purpose of ensuring integrity in state and local government and facilitating the elimination of fraud, waste, abuse, mismanagement, and misconduct in government.

(2) The Florida Integrity Officer shall be a legislative employee and be appointed by and serve at the pleasure of the Auditor General. The Florida Integrity Officer shall oversee the efficient operation of the office and report to and be under the general supervision of the Auditor General.

(3) The Auditor General shall employ qualified individuals for the office pursuant to s. 11.42.

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

(a) "Appropriations project" means a specific appropriation or proviso that provides funding for a specified

entity that is a local government, private entity, or privately operated program. The term does not include an appropriation or proviso:

1. Specifically authorized by statute;

2. That is part of a statewide distribution to local governments;

3. Recommended by a commission, council, or other similar entity created in statute to make annual funding recommendations, provided that such appropriation does not exceed the amount of funding recommended by the commission, council, or other similar entity;

4. For a specific transportation facility that is part of the Department of Transportation's 5-year work program submitted pursuant to s. 339.135;

5. For an education fixed capital outlay project that is submitted pursuant to s. 1013.60 or s. 1013.64; or

6. For a specified program, research initiative, institute, center, or similar entity at a specific state college or university recommended by the Board of Governors or the State Board of Education in its legislative budget request.

(b) "Office" means the Florida Integrity Office.

(5) The Florida Integrity Officer may receive and investigate a complaint alleging fraud, waste, abuse, mismanagement, or misconduct in connection with the expenditure of public funds.

(6) A complaint may be submitted to the office by any of the following persons:

(a) The President of the Senate.

(b) The Speaker of the House of Representatives.

(c) The chair of an appropriations committee of the Senate or the House of Representatives.

(d) The Auditor General.

(7)(a) Upon receipt of a complaint, the Florida Integrity Officer shall determine whether the complaint is supported by sufficient information indicating a reasonable probability of fraud, waste, abuse, mismanagement, or misconduct. If the Florida Integrity Officer determines that the complaint is not supported by sufficient information indicating a reasonable probability of fraud, waste, abuse, mismanagement, or misconduct, the Florida Integrity Officer shall notify the complainant in writing and the complaint shall be closed.

(b) If the complaint is supported by sufficient information indicating a reasonable probability of fraud, waste, abuse, mismanagement, or misconduct, the Florida Integrity Officer shall determine whether an investigation into the matter has already been initiated by a law enforcement agency, the Commission on Ethics, the Chief Financial Officer, the Office of Chief Inspector General, or the applicable agency inspector general. If such an investigation has been initiated, the Florida Integrity Officer shall notify the complainant in

writing and the complaint may be closed.

(c) If the complaint is supported by sufficient information indicating a reasonable probability of fraud, waste, abuse, mismanagement, or misconduct, and an investigation into the matter has not already been initiated as described in paragraph (b), the Florida Integrity Officer shall, within available resources, conduct an investigation and issue a report of the investigative findings to the complainant and to the President of the Senate and the Speaker of the House of Representatives. The Florida Integrity Officer may refer the matter to the Auditor General, the appropriate law enforcement agency, the Chief Financial Officer, the Office of the Chief Inspector General, or the applicable agency inspector general. The Auditor General may provide staff and other resources to assist the Florida Integrity Officer.

(8)(a) The Florida Integrity Officer, or his or her designee, may inspect and investigate the books, records, papers, documents, data, operation, and physical location of any public agency in this state, including any confidential information, and the public records of any entity that has received direct appropriations. The Florida Integrity Officer may agree to retain the confidentiality of confidential information pursuant to s. 11.0431(2)(a).

(b) Upon the request of the Florida Integrity Officer, the Legislative Auditing Committee or any other committee of the

Legislature may issue subpoenas and subpoenas duces tecum, as provided in s. 11.143, to compel testimony or the production of evidence when deemed necessary to an investigation authorized by this section. Consistent with s. 11.143, such subpoenas and subpoenas duces tecum may be issued as provided by applicable legislative rules or, in the absence of applicable legislative rules, by the chair of the Legislative Auditing Committee with the approval of the Legislative Auditing Committee and the President of the Senate and the Speaker of the House of Representatives, or with the approval of the President of the Senate or the Speaker of the House of Representatives if such officer alone designated the Legislative Auditing Committee as defined in s. 1.01.

(c) If a witness fails or refuses to comply with a lawful subpoena or subpoena duces tecum issued pursuant to this subsection at a time when the Legislature is not in session, the subpoena or subpoena duces tecum may be enforced as provided in s. 11.143 and, in addition, the Auditor General, on behalf of the committee issuing the subpoena or subpoena duces tecum, may file a complaint before any circuit court of the state to enforce the subpoena or subpoena duces tecum. Upon the filing of such complaint, the court shall take jurisdiction of the witness and the subject matter of the complaint and shall direct the witness to respond to all lawful questions and to produce all documentary evidence in the possession of the witness which is

lawfully demanded. The failure of a witness to comply with such order constitutes a direct and criminal contempt of court, and the court shall punish the witness accordingly.

(d) When the Legislature is in session, upon the request of the Florida Integrity Officer directed to the committee issuing the subpoena or subpoena duces tecum, either house of the Legislature may seek compliance with the subpoena or subpoena duces tecum in accordance with the State Constitution, general law, the joint rules of the Legislature, or the rules of the house of the Legislature whose committee issued the subpoena or subpoena duces tecum.

(9) The Florida Integrity Officer shall receive copies of all reports required by ss. 14.32, 17.325, and 20.055.

(10)(a) Beginning with the 2021-2022 fiscal year, the Auditor General and the Florida Integrity Officer, within available resources, shall randomly select and review appropriations projects appropriated in the prior fiscal year and, if appropriate, investigate and recommend an audit of such projects. The review, investigation, or audit may be delayed on a selected project until a subsequent year if the timeline of the project warrants such delay. Each review, investigation, or audit must include, but is not limited to, evaluating whether the recipient of the appropriations project administered the project in an efficient and effective manner. When an audit is recommended by the Florida Integrity Officer under this

subsection, the Auditor General shall determine whether the audit is appropriate.

(b) Beginning with the 2021-2022 fiscal year, the Auditor General and the Florida Integrity Officer, within available resources, shall select and review, investigate, or audit the financial activities of any political subdivision, special district, public authority, public hospital, state or local council or commission, unit of local government, or public education entity in this state, as well as any authority, council, commission, direct-support organization, institution, foundation, or similar entity created by law or ordinance to pursue a public purpose, entitled by law or ordinance to any distribution of tax or fee revenues, or organized for the sole purpose of supporting one of the public entities listed in this paragraph.

Section 2. Paragraphs (i) through (m) of subsection (1) of section 11.45, Florida Statutes, are redesignated as paragraphs (j) through (n), respectively, paragraphs (a) and (e) of subsection (1), paragraph (f) of subsection (2), and paragraph (j) of subsection (7) are amended, and a new paragraph (i) is added to subsection (1) of that section, to read:

11.45 Definitions; duties; authorities; reports; rules.—

(1) DEFINITIONS.—As used in ss. 11.40-11.51, the term:

(a) "Abuse" means behavior that is deficient or improper when compared with behavior that a prudent person would consider

a reasonable and necessary operational practice given the facts and circumstances. The term includes the misuse of authority or position for personal gain or for the gain of an immediate or close family member or business associate.

(e) "Fraud" means obtaining something of value through willful misrepresentation, including, but not limited to, intentional misstatements or intentional omissions of amounts or disclosures in financial statements to deceive users of financial statements, theft of an entity's assets, bribery, or the use of one's position for personal enrichment through the deliberate misuse or misapplication of an entity's ~~organization's~~ resources.

(i) "Misconduct" means conduct which, though not illegal, is inappropriate for a person in his or her specified position.

(2) DUTIES.—The Auditor General shall:

(f) At least every 3 years, conduct operational audits of the accounts and records of state agencies, state universities, state colleges, district school boards, the Florida Clerks of Court Operations Corporation, water management districts, and the Florida School for the Deaf and the Blind. At the conclusion of each 3-year cycle, the Auditor General shall publish a report consolidating common operational audit findings for all state agencies, state universities, state colleges, and district school boards.

The Auditor General shall perform his or her duties independently but under the general policies established by the Legislative Auditing Committee. This subsection does not limit the Auditor General's discretionary authority to conduct other audits or engagements of governmental entities as authorized in subsection (3).

(7) AUDITOR GENERAL REPORTING REQUIREMENTS.—

(j) The Auditor General shall notify the Legislative Auditing Committee of any financial or operational audit report prepared pursuant to this section which indicates that a district school board, state university, or Florida College System institution has failed to take full corrective action in response to a recommendation that was included in the two preceding financial ~~or operational~~ audit reports or a preceding operational audit report.

1. The committee may direct the district school board or the governing body of the state university or Florida College System institution to provide a written statement to the committee explaining why full corrective action has not been taken or, if the governing body intends to take full corrective action, describing the corrective action to be taken and when it will occur.

2. If the committee determines that the written statement is not sufficient, the committee may require the chair of the district school board or the chair of the governing body of the

state university or Florida College System institution, or the chair's designee, to appear before the committee.

3. If the committee determines that the district school board, state university, or Florida College System institution has failed to take full corrective action for which there is no justifiable reason or has failed to comply with committee requests made pursuant to this section, the committee shall refer the matter to the State Board of Education or the Board of Governors, as appropriate, to proceed in accordance with s. 1008.32 or s. 1008.322, respectively.

Section 3. Subsections (1) through (5) of section 14.32, Florida Statutes, are renumbered as subsections (2) through (6), respectively, and new subsections (1) and (7) are added to that section to read:

14.32 Office of Chief Inspector General.—

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

(a) "Abuse" means behavior that is deficient or improper when compared with behavior that a prudent person would consider a reasonable and necessary operational practice given the facts and circumstances. The term includes the misuse of authority or position for personal gain or for the benefit of another.

(b) "Fraud" means obtaining something of value through willful misrepresentation, including, but not limited to, the intentional misstatements or intentional omissions of amounts or disclosures in financial statements to deceive users of

financial statements, theft of an entity's assets, bribery, or the use of one's position for personal enrichment through the deliberate misuse or misapplication of an entity's resources.

(c) "Independent contractor" has the same meaning as in s. 112.3187(3)(d).

(d) "Misconduct" means conduct which, though not illegal, is inappropriate for a person in his or her specified position.

(e) "Waste" means the act of using or expending resources unreasonably, carelessly, extravagantly, or for no useful purpose.

(7)(a) Within 6 months after the initiation of an investigation of fraud, waste, abuse, mismanagement, or misconduct in government, the Chief Inspector General or an agency inspector general must determine whether there is reasonable probability that fraud, waste, abuse, mismanagement, or misconduct in government has occurred. If there has not been a determination of such reasonable probability and the investigation continues, a new determination must be made every 3 months until the investigation is closed or such reasonable probability is found to exist.

(b) If the Chief Inspector General or an agency inspector general determines that there is reasonable probability that a public official, independent contractor, or agency has committed fraud, waste, abuse, mismanagement, or misconduct in government, the inspector general shall report such determination to the

Florida Integrity Officer.

(c) If the findings of an investigation conducted pursuant to this subsection conclude that a public official, independent contractor, or agency has committed fraud, waste, abuse, mismanagement, or misconduct in government, the Chief Inspector General or agency inspector general shall report such findings to the Chief Financial Officer within 30 days after the investigation is closed. Such public official, independent contractor, or person responsible within the agency is personally liable for repayment of the funds that were diverted or lost as a result of the fraud, waste, abuse, mismanagement, or misconduct in government. If the person liable fails to repay such funds voluntarily and the state does not agree to a settlement, the Chief Financial Officer shall bring a civil action to recover the funds within 60 days after receipt of such findings.

Section 4. Section 17.04, Florida Statutes, is amended to read:

17.04 To audit and adjust accounts of officers and those indebted to the state.—The Chief Financial Officer, using generally accepted auditing procedures for testing or sampling, shall examine, audit, adjust, and settle the accounts of all the officers of this state, and any other person in anywise entrusted with, or who may have received any property, funds, or moneys of this state, or who may be in anywise indebted or

accountable to this state for any property, funds, or moneys, and require such officer or persons to render full accounts thereof, and to yield up such property or funds according to law, or pay such moneys into the treasury of this state, or to such officer or agent of the state as may be appointed to receive the same, and on failure so to do, to cause to be instituted and prosecuted proceedings, criminal or civil, at law or in equity, against such persons, according to law. The Chief Financial Officer may conduct investigations within or outside of this state as it deems necessary to aid in the enforcement of this section. The Chief Financial Officer may commence an investigation pursuant to this section based on a complaint or referral from any source. An employee of a state agency or a state contractor having knowledge of suspected misuse of state funds may report such information to the Chief Financial Officer. If during an investigation the Chief Financial Officer has reason to believe that any criminal statute of this state has or may have been violated, the Chief Financial Officer shall refer any records tending to show such violation to state or federal law enforcement or prosecutorial agencies and shall provide investigative assistance to those agencies as required.

Section 5. Subsections (4) and (5) of section 17.325, Florida Statutes, are renumbered as subsections (5) and (6), respectively, and a new subsection (4) is added to that section to read:

17.325 Governmental efficiency hotline; duties of Chief Financial Officer.—

(4) A copy of each suggestion or item of information received through the hotline or website that is logged pursuant to this section must be reported to the Florida Integrity Officer by the 15th of the month following receipt of the suggestion or item of information.

Section 6. Paragraph (g) is added to subsection (7) of section 20.055, Florida Statutes, to read:

20.055 Agency inspectors general.—

(7) In carrying out the investigative duties and responsibilities specified in this section, each inspector general shall initiate, conduct, supervise, and coordinate investigations designed to detect, deter, prevent, and eradicate fraud, waste, mismanagement, misconduct, and other abuses in state government. For these purposes, each inspector general shall:

(g) Make determinations and reports as required by s. 14.32(7).

Section 7. Subsection (1) of section 20.201, Florida Statutes, is amended to read:

20.201 Department of Law Enforcement.—

(1) There is created a Department of Law Enforcement. The head of the department is the Governor and Cabinet. The executive director of the department shall be appointed by the

Governor with the approval of two or more ~~three~~ members of the Cabinet and subject to confirmation by the Senate. The executive director shall serve at the pleasure of the Governor and Cabinet. The executive director may establish a command, operational, and administrative services structure to assist, manage, and support the department in operating programs and delivering services.

Section 8. Subsection (1) of section 20.37, Florida Statutes, is amended to read:

20.37 Department of Veterans' Affairs.—There is created a Department of Veterans' Affairs.

(1) The head of the department is the Governor and Cabinet. The executive director of the department shall be appointed by the Governor with the approval of two or more ~~three~~ members of the Cabinet and subject to confirmation by the Senate. The executive director shall serve at the pleasure of the Governor and Cabinet.

Section 9. Paragraphs (a) and (b) of subsection (1) and subsection (2) of section 110.1245, Florida Statutes, are amended, and subsections (6) and (7) are added to that section, to read:

110.1245 Savings sharing program; bonus payments; other awards.—

(1)(a) The Department of Management Services shall adopt rules that prescribe procedures and promote a savings sharing

program for an individual or group of employees who propose procedures or ideas that are adopted and that result in eliminating or reducing state expenditures, including employees reporting under the Whistle-blower's Act, if such proposals are placed in effect and may be implemented under current statutory authority.

(b) Each agency head shall recommend employees individually or by group to be awarded an amount of money, which amount shall be directly related to the cost savings realized. Each proposed award and amount of money must be approved by the Legislative Budget Commission, except an award issued under subsection (6).

(2) In June of each year, bonuses shall be paid to employees from funds authorized by the Legislature in an appropriation specifically for bonuses. For purposes of this subsection, awards issued under subsection (6) are not considered bonuses. Each agency shall develop a plan for awarding lump-sum bonuses, which plan shall be submitted no later than September 15 of each year and approved by the Office of Policy and Budget in the Executive Office of the Governor. Such plan shall include, at a minimum, but is not limited to:

(a) A statement that bonuses are subject to specific appropriation by the Legislature.

(b) Eligibility criteria as follows:

1. The employee must have been employed before ~~prior to~~

July 1 of that fiscal year and have been continuously employed through the date of distribution.

2. The employee must not have been on leave without pay consecutively for more than 6 months during the fiscal year.

3. The employee must have had no sustained disciplinary action during the period beginning July 1 through the date the bonus checks are distributed. Disciplinary actions include written reprimands, suspensions, dismissals, and involuntary or voluntary demotions that were associated with a disciplinary action.

4. The employee must have demonstrated a commitment to the agency mission by reducing the burden on those served, continually improving the way business is conducted, producing results in the form of increased outputs, and working to improve processes.

5. The employee must have demonstrated initiative in work and have exceeded normal job expectations.

6. The employee must have modeled the way for others by displaying agency values of fairness, cooperation, respect, commitment, honesty, excellence, and teamwork.

(c) A periodic evaluation process of the employee's performance.

(d) A process for peer input that is fair, respectful of employees, and affects the outcome of the bonus distribution.

(e) A division of the agency by work unit for purposes of

peer input and bonus distribution.

(f) A limitation on bonus distributions equal to 35 percent of the agency's total authorized positions. This requirement may be waived by the Office of Policy and Budget in the Executive Office of the Governor upon a showing of exceptional circumstances.

(6) Each agency inspector general shall report employees whose reports under the Whistle-blower's Act resulted in savings or recovery of public funds in excess of $1,000. Awards shall be awarded by each agency to the employee, or his or her designee, whose report led to the savings or recovery, and each agency head is authorized to incur expenditures to provide such awards. The award shall be paid from the specific appropriation or trust fund from which the savings or recovery resulted. The agency inspector general to whom the report was made or referred shall certify the savings or recovery resulting from the investigation. If more than one employee makes a relevant report, the award shall be shared in proportion to each employee's contribution to the investigation as certified by the agency inspector general. Awards shall be made in the following amounts:

(a) A career service employee shall receive 10 percent of the savings or recovery certified, but not less than $500 and not more than a total of $50,000 for whistle-blower reports in any 1 year. If the employee had any fault for the misspending or

attempted misspending of public funds identified in the investigation that resulted in the savings or recovery, the award may be denied at the discretion of the agency head. If the award is not denied by the agency head, the award may not exceed $500. The agency inspector general shall certify any fault on the part of the employee.

(b) A Senior Management Service employee or an employee in a select exempt position shall receive 5 percent of the savings or recovery certified, but not more than a total of $1,000 for whistle-blower reports in any 1 year. An employee may not receive an award under this paragraph if he or she had any fault for the misspending or attempted misspending of public funds identified in the investigation that resulted in the savings or recovery. The agency inspector general shall certify any fault on the part of the employee.

(7) Notwithstanding any other provision of law, an employee whose name or identity is confidential or exempt from disclosure under state or federal law may participate in the savings sharing program authorized in this section. To maintain confidentiality, upon notice of eligibility for an award, such employee may designate an authorized agent, trustee, or custodian to accept an award for which the employee is eligible on behalf of the employee.

Section 10. Subsection (2), paragraph (e) of subsection (3), and paragraph (b) of subsection (5) of section 112.3187,

Florida Statutes, are amended to read:

112.3187 Adverse action against employee for disclosing information of specified nature prohibited; employee remedy and relief.—

(2) LEGISLATIVE INTENT.—It is the intent of the Legislature to prevent agencies or independent contractors from taking retaliatory action against an employee who reports to an appropriate agency violations of law on the part of a public employer or independent contractor that create a substantial and specific danger to the public's health, safety, or welfare. It is further the intent of the Legislature to prevent agencies or independent contractors from taking retaliatory action against any person who discloses information to an appropriate agency alleging improper use of governmental office, ~~gross~~ waste of funds, or any other abuse or ~~gross~~ neglect of duty on the part of an agency, public officer, or employee.

(3) DEFINITIONS.—As used in this act, unless otherwise specified, the following words or terms shall have the meanings indicated:

(e) "~~Gross~~ Mismanagement" means a continuous pattern of managerial abuses, wrongful or arbitrary and capricious actions, or fraudulent or criminal conduct which may have a substantial adverse economic impact.

(5) NATURE OF INFORMATION DISCLOSED.—The information disclosed under this section must include:

(b) Any act or suspected act of ~~gross~~ mismanagement, malfeasance, misfeasance, ~~gross~~ waste of public funds, suspected or actual Medicaid fraud or abuse, or ~~gross~~ neglect of duty committed by an employee or agent of an agency or independent contractor.

Section 11. Section 216.1366, Florida Statutes, is created to read:

216.1366 Contract terms.—

(1) In order to preserve the interest of the state in the prudent expenditure of state funds, each public agency contract for services entered into or amended on or after July 1, 2020, shall authorize the public agency to inspect the:

(a) Financial records, papers, and documents of the contractor directly related to the execution of the contract or the expenditure of state funds; and

(b) Programmatic records, papers, and documents of the contractor that are necessary to monitor the performance of the contract or ensure that the terms of the contract are being met, as determined by the public agency.

(2) The contract shall require the contractor to provide any such records, papers, and documents requested by the public agency within 10 business days after such request.

Section 12. Paragraph (e) of subsection (3) of section 287.057, Florida Statutes, is amended, and subsection (24) is added to that section, to read:

287.057 Procurement of commodities or contractual services.—

(3) If the purchase price of commodities or contractual services exceeds the threshold amount provided in s. 287.017 for CATEGORY TWO, purchase of commodities or contractual services may not be made without receiving competitive sealed bids, competitive sealed proposals, or competitive sealed replies unless:

(e) The following contractual services and commodities are not subject to the competitive-solicitation requirements of this section:

1. Artistic services. As used in this subsection, the term "artistic services" does not include advertising or typesetting. As used in this subparagraph, the term "advertising" means the making of a representation in any form in connection with a trade, business, craft, or profession in order to promote the supply of commodities or services by the person promoting the commodities or contractual services.

2. Academic program reviews if the fee for such services does not exceed $50,000.

3. Lectures by individuals.

4. Legal services, including attorney, paralegal, expert witness, appraisal, or mediator services.

5. Health services involving examination, diagnosis, treatment, prevention, medical consultation, or administration.

The term also includes, but is not limited to, substance abuse and mental health services involving examination, diagnosis, treatment, prevention, or medical consultation if such services are offered to eligible individuals participating in a specific program that qualifies multiple providers and uses a standard payment methodology. Reimbursement of administrative costs for providers of services purchased in this manner are also exempt. For purposes of this subparagraph, the term "providers" means health professionals and health facilities, or organizations that deliver or arrange for the delivery of health services.

6. Services provided to persons with mental or physical disabilities by not-for-profit corporations that have obtained exemptions under s. 501(c)(3) of the United States Internal Revenue Code or when such services are governed by Office of Management and Budget Circular A-122. However, in acquiring such services, the agency shall consider the ability of the vendor, past performance, willingness to meet time requirements, and price.

7. Medicaid services delivered to an eligible Medicaid recipient unless the agency is directed otherwise in law.

8. Family placement services.

9. Prevention services related to mental health, including drug abuse prevention programs, child abuse prevention programs, and shelters for runaways, operated by not-for-profit corporations. However, in acquiring such services, the agency

shall consider the ability of the vendor, past performance, willingness to meet time requirements, and price.

10. Training and education services provided to injured employees pursuant to s. 440.491(6).

11. Contracts entered into pursuant to s. 337.11.

12. Services or commodities provided by governmental entities.

13. ~~Statewide~~ Public service announcement programs that ~~provided by a Florida statewide nonprofit corporation under s. 501(c)(6) of the Internal Revenue Code which~~ have a guaranteed documented match of at least $3 to $1.

(24) Notwithstanding any other provision of law, a state employee who is registered to lobby the Legislature, other than an agency head, may not participate in the negotiation or award of any contract required or expressly funded under a specific legislative appropriation or proviso in an appropriation act. This subsection does not apply to a state employee who is:

(a) Registered to lobby the Legislature, but whose primary job responsibilities do not involve lobbying.

(b) Employed by the Executive Office of the Governor.

(c) Employed by the Office of Policy and Budget.

Section 13. Section 288.00001, Florida Statutes, is created to read:

288.00001 Use of state or local incentive funds to pay for services.—Notwithstanding any other provision of law, a tax

incentive may not be awarded or paid to a state contractor or any subcontractor for services provided or expenditures incurred pursuant to a state contract.

Section 14. Paragraph (e) of subsection (4) of section 1001.20, Florida Statutes, is amended to read:

1001.20 Department under direction of state board.—

(4) The Department of Education shall establish the following offices within the Office of the Commissioner of Education which shall coordinate their activities with all other divisions and offices:

(e) Office of Inspector General.—Organized using existing resources and funds and responsible for promoting accountability, efficiency, and effectiveness and detecting fraud and abuse within school districts, the Florida School for the Deaf and the Blind, and Florida College System institutions in Florida. If the Commissioner of Education determines that a district school board, the Board of Trustees for the Florida School for the Deaf and the Blind, or a Florida College System institution board of trustees is unwilling or unable to address substantiated allegations made by any person relating to waste, fraud, abuse, or financial mismanagement within the school district, the Florida School for the Deaf and the Blind, or the Florida College System institution, the office shall conduct, coordinate, or request investigations into such substantiated allegations. The office shall investigate allegations or reports

of possible waste, fraud, ~~or~~ abuse, or mismanagement against a district school board or Florida College System institution made by any member of the Cabinet,~~;~~ the presiding officer of either house of the Legislature,~~;~~ a chair of a substantive or appropriations legislative committee with jurisdiction,~~;~~ or a member of the board for which an investigation is sought. The office shall have access to all information and personnel necessary to perform its duties and shall have all of its current powers, duties, and responsibilities authorized in s. 20.055.

Section 15. The Office of the Auditor General is authorized to use carryforward funds to fund the establishment and operations of the Florida Integrity Office as created by this act.

Section 16. Subsection (1) of section 112.3188, Florida Statutes, is amended to read:

112.3188 Confidentiality of information given to the Chief Inspector General, internal auditors, inspectors general, local chief executive officers, or other appropriate local officials.—

(1) The name or identity of any individual who discloses in good faith to the Chief Inspector General or an agency inspector general, a local chief executive officer, or other appropriate local official information that alleges that an employee or agent of an agency or independent contractor:

(a) Has violated or is suspected of having violated any

federal, state, or local law, rule, or regulation, thereby creating and presenting a substantial and specific danger to the public's health, safety, or welfare; or

(b) Has committed an act of ~~gross~~ mismanagement, malfeasance, misfeasance, ~~gross~~ waste of public funds, or ~~gross~~ neglect of duty

may not be disclosed to anyone other than a member of the Chief Inspector General's, agency inspector general's, internal auditor's, local chief executive officer's, or other appropriate local official's staff without the written consent of the individual, unless the Chief Inspector General, internal auditor, agency inspector general, local chief executive officer, or other appropriate local official determines that: the disclosure of the individual's identity is necessary to prevent a substantial and specific danger to the public's health, safety, or welfare or to prevent the imminent commission of a crime; or the disclosure is unavoidable and absolutely necessary during the course of the audit, evaluation, or investigation.

Section 17. Paragraph (c) of subsection (3), subsection (4), and paragraph (a) of subsection (5) of section 112.3189, Florida Statutes, are amended to read:

112.3189 Investigative procedures upon receipt of whistle-blower information from certain state employees.—

(3) When a person alleges information described in s. 112.3187(5), the Chief Inspector General or agency inspector general actually receiving such information shall within 20 days of receiving such information determine:

(c) Whether the information actually disclosed demonstrates reasonable cause to suspect that an employee or agent of an agency or independent contractor has violated any federal, state, or local law, rule, or regulation, thereby creating and presenting a substantial and specific danger to the public's health, safety, or welfare, or has committed an act of ~~gross~~ mismanagement, malfeasance, misfeasance, ~~gross~~ waste of public funds, or ~~gross~~ neglect of duty.

(4) If the Chief Inspector General or agency inspector general under subsection (3) determines that the information disclosed is not the type of information described in s. 112.3187(5), or that the source of the information is not a person who is an employee or former employee of, or an applicant for employment with, a state agency, as defined in s. 216.011, or that the information disclosed does not demonstrate reasonable cause to suspect that an employee or agent of an agency or independent contractor has violated any federal, state, or local law, rule, or regulation, thereby creating and presenting a substantial and specific danger to the public's health, safety, or welfare, or has committed an act of ~~gross~~ mismanagement, malfeasance, misfeasance, ~~gross~~ waste of public

funds, or ~~gross~~ neglect of duty, the Chief Inspector General or agency inspector general shall notify the complainant of such fact and copy and return, upon request of the complainant, any documents and other materials that were provided by the complainant.

(5)(a) If the Chief Inspector General or agency inspector general under subsection (3) determines that the information disclosed is the type of information described in s. 112.3187(5), that the source of the information is from a person who is an employee or former employee of, or an applicant for employment with, a state agency, as defined in s. 216.011, and that the information disclosed demonstrates reasonable cause to suspect that an employee or agent of an agency or independent contractor has violated any federal, state, or local law, rule, or regulation, thereby creating a substantial and specific danger to the public's health, safety, or welfare, or has committed an act of ~~gross~~ mismanagement, malfeasance, misfeasance, ~~gross~~ waste of public funds, or ~~gross~~ neglect of duty, the Chief Inspector General or agency inspector general making such determination shall then conduct an investigation, unless the Chief Inspector General or the agency inspector general determines, within 30 days after receiving the allegations from the complainant, that such investigation is unnecessary. For purposes of this subsection, the Chief Inspector General or the agency inspector general shall consider

the following factors, but is not limited to only the following factors, when deciding whether the investigation is not necessary:

1. The gravity of the disclosed information compared to the time and expense of an investigation.

2. The potential for an investigation to yield recommendations that will make state government more efficient and effective.

3. The benefit to state government to have a final report on the disclosed information.

4. Whether the alleged whistle-blower information primarily concerns personnel practices that may be investigated under chapter 110.

5. Whether another agency may be conducting an investigation and whether any investigation under this section could be duplicative.

6. The time that has elapsed between the alleged event and the disclosure of the information.

Section 18. Paragraph (a) of subsection (3) of section 112.31895, Florida Statutes, is amended to read:

112.31895 Investigative procedures in response to prohibited personnel actions.—

(3) CORRECTIVE ACTION AND TERMINATION OF INVESTIGATION.—

(a) The Florida Commission on Human Relations, in accordance with this act and for the sole purpose of this act,

is empowered to:

1. Receive and investigate complaints from employees alleging retaliation by state agencies, as the term "state agency" is defined in s. 216.011.

2. Protect employees and applicants for employment with such agencies from prohibited personnel practices under s. 112.3187.

3. Petition for stays and petition for corrective actions, including, but not limited to, temporary reinstatement.

4. Recommend disciplinary proceedings pursuant to investigation and appropriate agency rules and procedures.

5. Coordinate with the Chief Inspector General in the Executive Office of the Governor and the Florida Commission on Human Relations to receive, review, and forward to appropriate agencies, legislative entities, or the Department of Law Enforcement disclosures of a violation of any law, rule, or regulation, or disclosures of ~~gross~~ mismanagement, malfeasance, misfeasance, nonfeasance, neglect of duty, or ~~gross~~ waste of public funds.

6. Review rules pertaining to personnel matters issued or proposed by the Department of Management Services, the Public Employees Relations Commission, and other agencies, and, if the Florida Commission on Human Relations finds that any rule or proposed rule, on its face or as implemented, requires the commission of a prohibited personnel practice, provide a written

comment to the appropriate agency.

7. Investigate, request assistance from other governmental entities, and, if appropriate, bring actions concerning, allegations of retaliation by state agencies under subparagraph 1.

8. Administer oaths, examine witnesses, take statements, issue subpoenas, order the taking of depositions, order responses to written interrogatories, and make appropriate motions to limit discovery, pursuant to investigations under subparagraph 1.

9. Intervene or otherwise participate, as a matter of right, in any appeal or other proceeding arising under this section before the Public Employees Relations Commission or any other appropriate agency, except that the Florida Commission on Human Relations must comply with the rules of the commission or other agency and may not seek corrective action or intervene in an appeal or other proceeding without the consent of the person protected under ss. 112.3187-112.31895.

10. Conduct an investigation, in the absence of an allegation, to determine whether reasonable grounds exist to believe that a prohibited action or a pattern of prohibited action has occurred, is occurring, or is to be taken.

Section 19. This act shall take effect July 1, 2020.

COMMITTEE/SUBCOMMITTEE ACTION

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

Committee/Subcommittee hearing bill: State Affairs Committee

Representative DuBose offered the following:

Amendment (with title amendment)

Remove lines 395-417

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

Remove lines 26-31 and insert:

amending s. 110.1245, F.S.; providing

PCS for HB 1343

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCS for HB 1343 Environmental Resource Management
SPONSOR(S): State Affairs Committee
TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 712

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: State Affairs Committee		Melkun	Williamson

SUMMARY ANALYSIS

The federal Clean Water Act requires states to maintain the quality of their waters. In Florida, water quality is addressed through water quality standards, total maximum daily loads (TMDLs), basin management action plans (BMAPs), and permits. The bill addresses water quality impacts by:

- Transferring the Onsite Sewage Program from the Department of Health to the Department of Environmental Protection (DEP);
- Repealing certain onsite sewage treatment and disposal system (OSTDS) advisory committees;
- Creating an OSTDS technical advisory committee to make recommendations that increase the availability of nutrient-reducing OSTDSs and assist DEP in the development of setback distances;
- Requiring OSTDS remediation plans;
- Requiring DEP staff training to include field inspections of stormwater structural controls;
- Requiring DEP and the water management districts (WMDs) to update the stormwater regulations using the most recent science;
- Requiring the model stormwater management program to contain model ordinances targeting nutrient reduction;
- Requiring local governments to create wastewater treatment plans;
- Requiring sanitary sewage facilities to take steps to prevent sanitary sewer overflows;
- Requiring DEP to establish real-time water quality monitoring;
- Requiring advanced wastewater treatment for domestic wastewater discharges to the Indian River Lagoon;
- Prohibiting the land application of biosolids on certain sites, unless an exception applies;
- Requiring the Department of Agriculture and Consumer Services (DACS) to conduct inspections of producers enrolled in best management practices (BMPs);
- Requiring the University of Florida to develop research plans for developing new BMPs; and
- Creating grant programs for the funding of water quality projects.

The bill requires the Secretary of DEP to be appointed by the Governor with the concurrence of two or more, rather than three, members of the Cabinet.

The bill requires DEP to conduct a study on the bottled water industry in the state and prohibits DEP and the governing board of a WMD from approving certain consumptive use permits that authorize the use of water derived from a spring for bottled water until June 30, 2022.

The bill prohibits a local government regulation from recognizing or granting any legal right to a plant, animal, body of water, or any other part of the natural environment that is not a person or political subdivision; or from granting a person or political subdivision any specific rights relating to the natural environment.

The bill may have an indeterminate negative fiscal impact to the state and local governments. The proposed House of Representatives' Fiscal Year 2020-2021 General Appropriations Act appropriates funding within DEP and DACS for the increase in the number of required site visits, water quality improvement cost share grants, water quality monitoring, and TMDLs.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Water Quality

Background

The federal Clean Water Act (CWA) requires states to adopt water quality standards (WQS) for navigable waters.[1] The CWA also requires states to develop lists of water bodies that do not meet WQS, which are called impaired waters. States must then develop a total maximum daily load (TMDL) for the particular pollutants causing the impairment. The TMDL is the maximum allowable amount of the pollutants the water body can receive while still maintaining WQS.[2]

Total Maximum Daily Loads and Basin Management Action Plans

The Florida Watershed Restoration Act guides the development and implementation of TMDLs.[3] TMDLs must include reasonable and equitable pollutant load allocations between or among point sources (e.g., pipes and culverts discharging from a permitted facility, such as a domestic wastewater treatment facility) and nonpoint sources (e.g., agriculture, septic tanks, golf courses) that will alone, or in conjunction with other management and restoration activities, reduce pollutants and achieve WQS.[4] The allocation must consider cost-effective approaches coordinated between contributing point and nonpoint sources of pollution for impaired water bodies and may include both non-regulatory and incentive-based programs.[5] However, under the Florida Watershed Restoration Act, the Department of Environmental Protection (DEP) is not required to develop a TMDL if there is existing reasonable assurance that there are existing or proposed pollution control mechanisms or programs that will effectively address the impairment.[6]

DEP is the lead agency coordinating the development and implementation of TMDLs.[7] Once a TMDL is adopted,[8] DEP may develop and implement a basin management action plan (BMAP), which is a restoration plan for the watersheds and basins connected to the impaired water body.[9] A BMAP must integrate appropriate management strategies available to the state through existing water quality protection programs to achieve the TMDL.[10] The BMAP must also include milestones for implementation and water quality improvement, and associated water quality monitoring, which determine whether there has been reasonable progress in pollutant load reductions. DEP must conduct an assessment of progress every five years, and revisions to the BMAP must be made as appropriate.[11]

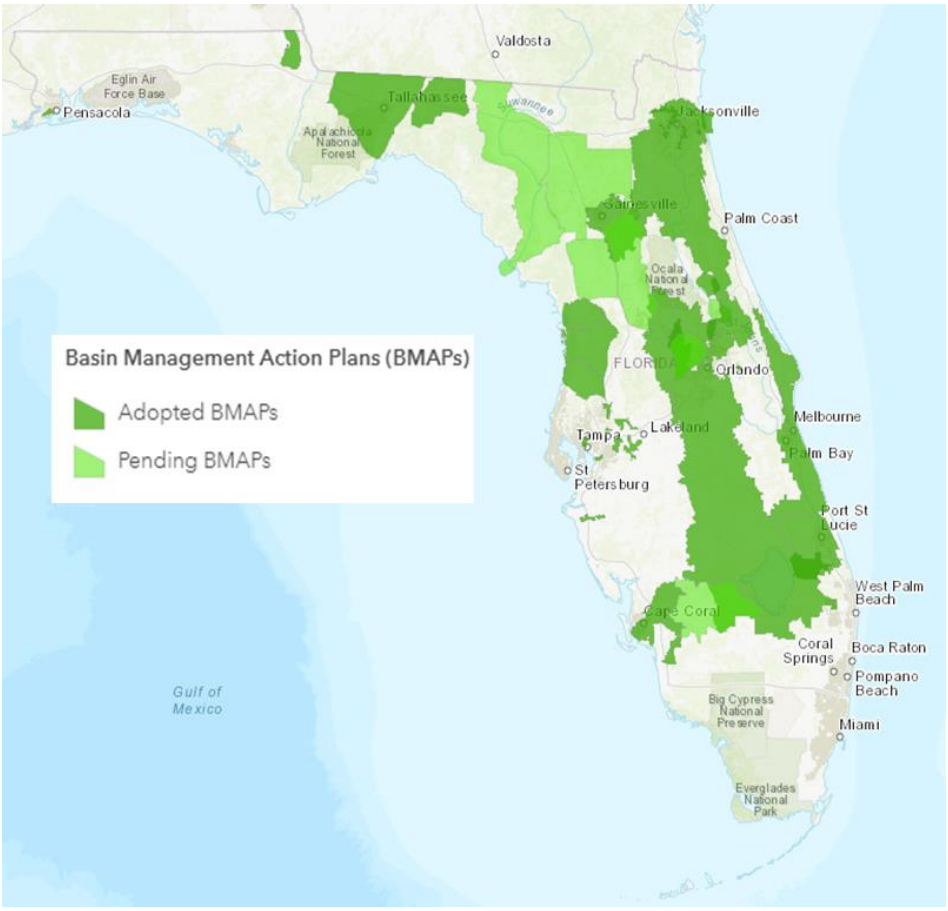
For point source discharges, any management strategies and pollutant reduction requirements associated with a TMDL must be incorporated into subsequent permits or permit modifications. DEP may not impose limits or conditions implementing an adopted TMDL in a permit until the permit expires, the discharge is modified, or the permit is reopened pursuant to an adopted BMAP.[12]

---

[1] 33 U.S.C. s. 1313.
[2] 33 U.S.C. s. 1313; *see* s. 403.067, F.S.
[3] Section 403.067, F.S.; ch. 99-223, Laws of Fla.
[4] Section 403.067(6)(b), F.S.
[5] Section 403.067(1), F.S.
[6] *Id*. at 2.
[7] Section 403.061, F.S. DEP has the power and the duty to control and prohibit pollution of air and water in accordance with the law and rules adopted and promulgated by it. Section 403.061(21), F.S., allows DEP to advise, consult, cooperate, and enter into agreements with other state agencies, the federal government, other states, interstate agencies, etc.
[8] Section 403.067(6)(c), F.S.
[9] Section 403.067(7)(a)1., F.S.
[10] *Id.*
[11] Section 403.067(7)(a)6., F.S.
[12] Section 403.067(7)(b)2., F.S.

A best management practice (BMP) is a practice or combination of practices adopted by rule by the Department of Agriculture and Consumer Services (DACS), DEP, or the applicable water management district (WMD) as an effective and practicable means for reducing nutrient inputs and improving water quality, taking into account economic and technological considerations.[13] Where there is an adopted BMP for a nonpoint source, the BMAP must require the nonpoint source to implement the applicable BMPs. The nonpoint source discharger must demonstrate compliance with BMP implementation or conduct water quality monitoring prescribed by DEP or the WMD. If the discharger fails to demonstrate compliance, the discharger may be subject to enforcement action.[14]

The adopted and pending BMAPs are illustrated in the graphic below:[15]



Agricultural Best Management Practices

Agricultural BMPs are practical measures that agricultural producers undertake to reduce the impacts of fertilizer and water use and otherwise manage the landscape to further protect water resources. Agricultural BMPs are implemented by DACS. Since the implementation of the BMP program in 1999, DACS has adopted nine BMP manuals that cover nearly all major agricultural commodities in Florida. The University of Florida's Institute of Food and Agricultural Sciences (UF/IFAS) is also involved in the adoption and implementation of agricultural BMPs. UF/IFAS provides expertise to both DACS and agricultural producers, holds summits and workshops on agricultural BMPs,[16] conducts research to issue recommendations for improving agricultural BMPs,[17] and issues training certificates for

[13] Rule 62-306.200(2), F.A.C.; r. 62-503.200(4), F.A.C., defines "best management practice" as a control technique used for a given set of conditions to achieve water quality and water quantity enhancement at a feasible cost.
[14] Sections 403.067(7)(b)2.g. and 2.h., F.S.
[15] DEP, *Impaired Waters, TMDLs, and Basin Management Action Plans Interactive Map*, available at https://floridadep.gov/dear/water-quality-restoration/content/impaired-waters-tmdls-and-basin-management-action-plans (last visited Jan. 17, 2020).
[16] UF/IFAS, *Best Management Practices Resource*, available at https://bmp.ifas.ufl.edu/ (last visited Jan. 21, 2020).
[17] UF/IFAS, *Best Management Practices & Water Resources*, available at https://erec.ifas.ufl.edu/featured-3-menus/research-/best-management-practices--water-resources/ (last visited Jan. 21, 2020).

agricultural BMPs that require licenses, such as Green Industry BMPs.[18] It is estimated that approximately 54 percent of the state's agricultural acreage is enrolled in the DACS BMP program.[19]

Producers implementing agricultural BMPs receive a presumption of compliance with WQS for the pollutants addressed by the BMPs,[20] and those who enroll in the BMP program are eligible for technical assistance and cost-share funding for BMP implementation. To enroll in the BMP program, a producer must meet with the Office of Agricultural Water Policy (OAWP) within DACS to determine the BMPs that are applicable to its operation and must submit a Notice of Intent to Implement the BMPs, along with the BMP checklist from the applicable manual. Where DEP adopts a BMAP that includes agriculture, producers must either implement DACS-adopted BMPs or conduct water quality monitoring (prescribed by DEP or the WMD and paid for by the producer) to show they are not violating WQS.[21]

DACS also has an implementation verification program to follow up with producers and help ensure that BMPs are being implemented properly. Representatives of DACS conduct site visits to enrolled operations, and some producers are asked to complete online surveys.[22]

Effect of the Bill

The bill requires DACS to conduct onsite inspections at least every two years for each agricultural producer enrolled in a BMP to ensure proper implementation of the BMPs. The bill further requires verification to include a collection and review of BMP documentation from the previous two years, including nitrogen and phosphorus fertilizer application records. The bill requires DACS to initially prioritize the inspection of agricultural producers located in BMAPs for Lake Okeechobee, the Indian River Lagoon, the Caloosahatchee River and Estuary, and Silver Springs. The bill requires DACS to provide all documentation regarding BMPs to DEP.

The bill requires DEP, DACS, and owners of agricultural operations in a basin to develop a cooperative agricultural regional water quality improvement element as part of the BMAP if:

- Agricultural measures adopted by DACS have been implemented and the waterbody remains impaired;
- Agricultural nonpoint sources contribute to at least 20 percent of nonpoint source nutrient discharges; and
- DEP determines that additional measures, in combination with state-sponsored regional projects and other management strategies included in the BMAP, are necessary to achieve the TMDL.

The bill requires the cooperative agricultural regional water quality improvement element to be implemented through a cost-sharing program. The element must include cost-effective and technically and financially practical cooperative regional agricultural nutrient reduction projects that can be implemented on private properties on a site-specific, cooperative basis. Such projects may include land acquisition in fee or conservation easements on the lands of willing sellers and site-specific water quality improvement or dispersed water management projects on the lands of project participants. To qualify for participation in the element, the bill requires a participant to have already implemented the interim measures, BMPs, or other measures adopted by DACS. The bill allows the element to be included in the BMAP as a part of the next five-year assessment and authorizes DEP to submit a legislative budget request to fund projects developed pursuant to the cooperative element.

The bill requires DACS, in cooperation with UF/IFAS, and other state universities and Florida College System institutions with agricultural research programs to annually develop research plans and legislative budget requests related to evaluating and developing BMPs. The bill further requires

[18] UF/IFAS, *GI-BMP Training Program Overview*, available at https://ffl.ifas.ufl.edu/professionals/BMP_overview.htm (last visited Jan. 21, 2020).
[19] *Id*. at 2.
[20] Section 403.067(7), F.S.
[21] DACS, *Agricultural Best Management Practices*, available at https://www.fdacs.gov/Agriculture-Industry/Water/Agricultural-Best-Management-Practices (last visited Jan. 21, 2020).
[22] *Id*.

UF/IFAS and the other universities and colleges to submit such research plans to DEP and DACS by August 1, 2021, and each May 1 thereafter to be considered for funding.

The bill requires DEP to work with UF/IFAS and regulated entities to consider the adoption of BMPs for nutrient impacts from golf courses.

Wastewater

Background

A person generates approximately 100 gallons of domestic wastewater[23] per day.[24] This wastewater must be managed to protect public health, water quality, recreation, fish, wildlife, and the aesthetic appeal of the state's waterways.[25]

Onsite Sewage Treatment and Disposal Systems

One of the methods utilized to treat domestic wastewater is an onsite sewage treatment and disposal system (OSTDS),[26] commonly referred to as a septic system.[27] Approximately 30 percent of the population in Florida uses an OSTDS.[28]

An OSTDS must be permitted and inspected by the Department of Health (DOH) before it is placed into operation and must be located and installed so that, along with proper maintenance, the system functions in a sanitary manner, does not create a sanitary nuisance or health hazard, and does not endanger the safety of any domestic water supply, groundwater, or surface water.[29] Sewage waste and effluent from an OSTDS may not be discharged onto the ground surface or directly or indirectly discharged into ditches, drainage structures, groundwaters, surface waters, or aquifers.[30] DOH regulates an estimated 2.6 million OSTDSs.[31] The permitting and inspection of OSTDSs is handled mainly by county health departments with support from the Bureau of Onsite Sewage within DOH.[32]

DOH OSTDS Advisory Committees

DOH operates and serves three advisory organizations related to OSTDSs: the Research Review and Advisory Committee (RRAC),[33] the Technical Review and Advisory Panel (TRAP),[34] and the Variance Review and Advisory Committee (VRAC).[35] The TRAP assists in the adoption of rules for OSTDSs and reviews and comments on any legislation or existing policy related to OSTDSs. All rules proposed by DOH that relate to OSTDSs must be presented to the TRAP for review and comment prior to

[23] Section 367.021(5), F.S., defines "domestic wastewater" as wastewater principally from dwellings, business buildings, institutions, and sanitary wastewater or sewage treatment plants.
[24] DEP, *Domestic Wastewater Program*, available at https://floridadep.gov/water/domestic-wastewater (last visited Jan. 21, 2020).
[25] Sections 381.0065(1) and 403.021, F.S.
[26] Section 381.0065(2)(k), F.S., defines an "onsite sewage treatment and disposal system" as a system that contains a standard subsurface, filled, or mound drainfield system; an aerobic treatment unit; a graywater system tank; a laundry wastewater system tank; a septic tank; a grease interceptor; a pump tank; a solids or effluent pump; a waterless, incinerating, or organic waste-composting toilet; or a sanitary pit privy that is installed or proposed to be installed beyond the building sewer on land of the owner or on other land to which the owner has the legal right to install a system. The term includes any item placed within, or intended to be used as a part of or in conjunction with, the system. This term does not include package sewage treatment facilities and other treatment works regulated under ch. 403, F.S.
[27] Sections 381.0065(2)(k) and (3), F.S.; chs. 62-600 and 62-701, F.A.C.
[28] DOH, *Onsite Sewage*, available at http://www.floridahealth.gov/environmental-health/onsite-sewage/index.html (last visited Jan. 21, 2020).
[29] Section 381.0065(4), F.S.; rr. 64E-6.003 and 64E-6.004, F.A.C.
[30] Rule 64E-6.005, F.A.C.
[31] DOH, *Onsite Sewage*, available at http://www.floridahealth.gov/environmental-health/onsite-sewage/index.html (last visited Jan. 21, 2020).
[32] Sections 381.006(7) and 381.0065, F.S.; r. 62-600.120, F.A.C.; *see* DEP, *Domestic Wastewater - Septic Systems*, available at https://floridadep.gov/water/domestic-wastewater/content/septic-systems (last visited Jan. 21, 2020).
[33] Section 381.0065(4)(o), F.S.
[34] Section 381.0068, F.S.
[35] Section 381.0065(4)(h)2., F.S.; *see also*, DOH, *Boards, Councils and Committees*, available at http://www.floridahealth.gov/provider-and-partner-resources/advisory-councils-stakeholder-groups/index.html (last visited Jan. 21, 2020).

adoption.[36] The RRAC advises on new research, reviews and ranks proposals for research contracts, and reviews and provides comments on draft research reports regarding the OSTDS industry.[37]

The VRAC recommends agency action on variance requests. A person who applies for an OSTDS construction permit but cannot meet the requirements of the rule or statute will not be issued a permit; however, a person may request a variance from the standards.[38] DOH, in hardship cases, may grant variances, which may be less restrictive than the OSTDS provisions required by statute and rule.[39]

Outstanding Florida Springs

Nutrients, specifically nitrogen and phosphorous, are naturally present in the water and are necessary for the growth of plant and animal life. However, too much nitrogen or phosphorous can harm water quality. In some areas, the wastewater leaving OSTDSs has been identified as a contributor to nitrogen pollution.[40]

In 2016, the Legislature enacted the Springs and Aquifer Protection Act (act), which established additional protections to conserve and protect 30 Outstanding Florida Springs.[41] The act directed DEP to assess the Outstanding Florida Springs for nutrient impairment and, in collaboration with other state agencies and local governments, develop BMAPs by July 1, 2016.[42] Each BMAP was required to identify the sources of nitrogen pollution within the springshed and identify projects and strategies that will achieve the reductions needed to improve water quality in the region, including, as necessary, an OSTDS remediation plan that identifies cost-effective and financially feasible projects to reduce nitrogen contributions from OSTDSs.[43]

Further, the act prohibited new homes or businesses with new OSTDSs on lots less than one acre in priority focus areas[44] from installing conventional non-nitrogen reducing OSTDSs if the installation is inconsistent with a BMAP.[45] Instead, new construction must either connect to available central sewer lines, install a nitrogen-reducing OSTDS, such as "in-ground, passive nitrogen-reducing systems" that use additional soil and media layers to reduce nitrogen flowing into the aquifer, or install nitrogen-reducing Aerobic Treatment Units and Performance-Based Treatment Systems.[46]

Wastewater Treatment Facilities

Because domestic wastewater treatment facilities are stationary installations that are reasonably expected to be sources of water pollution, they must be operated, maintained, constructed, expanded, or modified with a permit issued by DEP.[47] Approximately 2,000 domestic wastewater treatment

---

[36] Section 381.0068, F.S.
[37] Section 381.0065(4)(o), F.S.
[38] DOH, *Variances*, available at http://www.floridahealth.gov/environmental-health/onsite-sewage/variances/index.html (last visited Jan. 21, 2020).
[39] Section 381.0065(4)(h), F.S.
[40] DEP, *Meeting the Septic System Permitting Requirements: Springs and Aquifer Protection Act*, available at https://floridadep.gov/sites/default/files/Springs%20and%20Aquifer%20Protection%20Act_0.pdf (last visited Jan. 21, 2020).
[41] Section 373.802(4),F.S., defines an "Outstanding Florida Spring" as all historic first magnitude springs, including their associated spring runs, as determined by DEP using the most recent Florida Geological Survey springs bulletin, and the following additional springs, including their associated spring runs: De Leon Springs, Peacock Springs, Poe Springs, Rock Springs, Wekiwa Springs, and Gemini Springs. The term does not include submarine springs or river rises; ch. 2016-001, Laws of Fla.
[42] DEP, *Meeting the Septic System Permitting Requirements: Springs and Aquifer Protection Act*, available at https://floridadep.gov/sites/default/files/Springs%20and%20Aquifer%20Protection%20Act_0.pdf (last visited Jan. 21, 2020).
[43] Section 373.807, F.S.; DEP, *Meeting the Septic System Permitting Requirements: Springs and Aquifer Protection Act*, available at https://floridadep.gov/sites/default/files/Springs%20and%20Aquifer%20Protection%20Act_0.pdf (last visited Jan. 21, 2020).
[44] Section 373.802(5), F.S., defines a "priority focus area" as the area or areas of a basin where the Floridan Aquifer is generally most vulnerable to pollutant inputs where there is a known connectivity between groundwater pathways and an Outstanding Florida Spring, as determined by DEP in consultation with the appropriate WMDs, and delineated in a BMAP.
[45] DOH, *OSTDS Permitting in a County affected by the Florida Springs and Aquifer Protection Act* (May 14, 2018), available at http://www.floridahealth.gov/environmental-health/onsite-sewage/_documents/letter-to-builders-springs.pdf (last visited Jan. 21, 2020).
[46] *Id*.
[47] Section 403.087(1), F.S.

facilities in the state serve roughly two-thirds of the state's population.[48] Each day over 1.5 billion gallons of treated wastewater effluent[49] and reclaimed water[50] are disposed of from these facilities.[51] Methods of disposal include reuse and land application systems, groundwater disposal by underground injection, groundwater recharge using injection wells, surface water discharges, disposal to coastal and open ocean waters, and wetland discharges.[52]

Most domestic wastewater treatment facilities must meet either basic disinfection or high-level disinfection requirements, depending upon the type of discharge.[53] Basic disinfection requires the effluent to contain less than 200 fecal coliforms per 100 micrograms per milliliter,[54] while high-level disinfection requires fecal coliforms to be reduced below detection.[55] Domestic wastewater treatment facilities that discharge to surface waters[56] must also obtain a National Pollutant Discharge Elimination System (NPDES) permit, which is established by the CWA to control point source discharges.[57] NPDES permit requirements for most domestic wastewater facilities are incorporated into the DEP-issued permit.[58] DEP issues operation permits for a period of five years for facilities regulated under the NPDES program and up to 10 years for other domestic wastewater treatment facilities meeting certain statutory requirements.[59]

Advanced Waste Treatment

Under Florida law, facilities for sanitary sewage disposal are required to provide for advanced waste treatment, as deemed necessary by DEP.[60] The standard for advanced waste treatment requires high-level disinfection and is defined using the maximum concentrations of nutrients or contaminants that a reclaimed water product may contain, which are outlined in the following table:[61]

Nutrient or Contaminant	Maximum Concentration Annually
Biochemical Oxygen Demand	5 mg/L
Suspended Solids	5 mg/L
Total Nitrogen	3 mg/L
Total Phosphorus	1 mg/L

Facilities for sanitary sewage disposal are prohibited from disposing of waste into certain waters without providing advanced waste treatment approved by DEP.[62]

---

[48] DEP, *General Facts and Statistics about Wastewater in Florida*, available at https://floridadep.gov/water/domestic-wastewater/content/general-facts-and-statistics-about-wastewater-florida (last visited Jan. 21, 2020).

[49] Rule 62-600.200(22), F.A.C., defines the term "effluent" as, unless specifically stated otherwise, water that is not reused after flowing out of any plant or other works used for the purpose of treating, stabilizing, or holding wastes.

[50] Rule 62-600.200(54), F.A.C., defines the term "reclaimed water" as water that has received at least secondary treatment and basic disinfection and is reused after flowing out of a domestic wastewater treatment facility.

[51] DEP, *General Facts and Statistics about Wastewater in Florida*, available at https://floridadep.gov/water/domestic-wastewater/content/general-facts-and-statistics-about-wastewater-florida (last visited Jan. 21, 2020).

[52] Rule 62-600.440(4), F.A.C.

[53] DEP, *Ultraviolet Disinfection for Domestic Wastewater*, available at https://floridadep.gov/water/domestic-wastewater/content/ultraviolet-uv-disinfection-domestic-wastewater (last visited Jan. 21, 2020).

[54] Rules 62-600.510(1) and 62-600.440(5), F.A.C.

[55] Rule 62-600.440(6), F.A.C.

[56] Section 373.019(21), F.S., defines the term "surface water" as water upon the surface of the earth, whether contained in bounds created naturally or artificially or diffused. Water from natural springs is classified as surface water when it exits from the spring onto the earth's surface; s. 403.031(13), F.S., defines the term "waters" as rivers, lakes, streams, springs, impoundments, wetlands, and all other waters or bodies of water, including fresh, brackish, saline, tidal, surface, or underground waters; r. 62-620.200(56), F.A.C.

[57] 33 U.S.C. s. 1342.

[58] Section 403.0885, F.S.; ch. 62-620, F.A.C.; DEP, *Wastewater Permitting*, available at https://floridadep.gov/water/domestic-wastewater/content/wastewater-permitting (last visited Jan. 21, 2020); Florida's Water Permitting Portal, *Types of Permits*, available at http://flwaterpermits.com/typesofpermits.html (last visited Jan. 21, 2020).

[59] Section 403.087(3), F.S.

[60] Section 403.086(2), F.S.

[61] Sections 403.086(4) and (4)(b), F.S.; r. 62-600.440(6), F.A.C.

[62] Section 403.086(1)(c), F.S. Facilities for sanitary sewage disposal may not dispose of any wastes into Old Tampa Bay, Tampa Bay, Hillsborough Bay, Boca Ciega Bay, St. Joseph Sound, Clearwater Bay, Sarasota Bay, Little Sarasota Bay, Roberts Bay, Lemon Bay, or Charlotte Harbor Bay, or into any river, stream, channel, canal, bay, bayou, sound, or other water tributary thereto, without providing advanced waste treatment approved by DEP. This prohibition does not apply to facilities permitted before February 1, 1987,

Sanitary Sewer Overflows, Leakages, and Inflow and Infiltration

Although domestic wastewater treatment facilities are permitted and designed to safely and properly collect and manage a specified wastewater capacity, obstructions or extreme conditions can cause a sanitary sewer overflow (SSO). Any overflow, spill, release, discharge, or diversion of untreated or partially treated wastewater from a sanitary sewer system is considered a SSO.[63] Factors contributing to SSOs may include:

- Build-up of solids, fats, oils, and greases in the wastewater collection system that impede flow;
- Too much rainfall infiltrating the system through leaky infrastructure, roof drains, or poorly connected wastewater lines;
- Blocked, broken, or cracked pipes and other equipment or power failures that keep the system from functioning properly (e.g., tree roots growing into the system, pipe settling or shifting so pipe joints no longer match, buildup of sediment and other material causing pipes to break or collapse); and
- A deteriorating or aging system.[64]

A SSO may subject the owner or operator of a facility to civil penalties of not more than $10,000 for each offense, a criminal conviction or fines, and additional administrative penalties.[65] Each day during the period in which a violation occurs constitutes a separate offense.[66] However, administrative penalties are capped at $10,000.[67]

A key concern with SSOs entering rivers, lakes, or streams is their negative effect on water quality. Because SSOs contain partially treated or potentially untreated domestic wastewater, ingestion or similar contact may cause illness. People can be exposed through direct contact in areas of high public access, food that has been contaminated, inhalation, and skin absorption. DOH may issue health advisories when bacteria levels present a risk to human health, and may post warning signs when bacteria affect public beaches or other areas where there is a risk of human exposure.[68]

Reduction of SSOs can be achieved through cleaning and maintaining the sewer system; reducing inflow and infiltration through rehabilitation and repairing broken or leaking lines; enlarging or upgrading sewer, pump station, or sewage treatment plant capacity and reliability; and constructing wet weather storage and treatment facilities to treat excess flows.[69]

Inflow and Infiltration (I&I) occurs when groundwater and/or rainwater enters the sanitary sewer system and ends up at the wastewater treatment facility, necessitating its treatment as if it were wastewater.[70] I&I can be caused by groundwater infiltrating the sewer system through faulty pipes or infrastructure, or any inflows of rainwater or non-wastewater into the sewer system.

I&I is a major cause of SSOs in Florida.[71] When domestic wastewater facilities are evaluated for permit renewal, collection systems are not evaluated for issues such as excessive I&I, unless problems result

---

that discharge secondary treated effluent, followed by water hyacinth treatment, to tributaries of the named waters; or to facilities permitted to discharge to the nontidally influenced portions of the Peace River.

[63] DEP, *SSOs*, available at https://floridadep.gov/sites/default/files/sanitary-sewer-overflows.pdf (last visited Jan. 21, 2020).

[64] DEP, *Preventing SSOs*, available at https://floridadep.gov/sites/default/files/preventing-sanitary-sewer-overflows.pdf (last visited Jan. 21, 2020); DEP, *SSOs*, available at https://floridadep.gov/sites/default/files/sanitary-sewer-overflows.pdf (last visited Jan. 21, 2020).

[65] Sections 403.121 and 403.141, F.S.

[66] *Id*.

[67] Sections 403.121(2)(b), (8), and (9), F.S.

[68] DEP, *SSOs*, available at https://floridadep.gov/sites/default/files/sanitary-sewer-overflows.pdf (last visited Jan. 21, 2020).

[69] *Id*.

[70] City of St. Augustine, *Inflow & Infiltration Elimination Program*, available at https://www.citystaug.com/549/Inflow-Infiltration-Elimination-Program (last visited Jan. 21, 2020).

[71] *See* RS&H, Inc., *Evaluation of Sanitary Sewer Overflows and Unpermitted Discharges Associated with Hurricanes Hermine and Matthew* (Jan. 2017), available at https://floridadep.gov/sites/default/files/Final%20Report_Evaluation%20of%20SSO%20and%20Unpermitted%20Discharges%2001_06_17.pdf (last visited Jan. 21, 2020).

at the treatment plant.[72] Another major cause of SSOs is the loss of electricity to the infrastructure for the collection and transmission of wastewater, such as pump stations, especially during storms.[73] Pump stations receiving flow from another station through a force main, or those discharging through pipes 12 inches or larger, must have emergency generators.[74] All other pump stations must have emergency pumping capability through one of three specified arrangements.[75] These requirements for emergency pumping capacity only apply to domestic wastewater collection/transmission facilities existing after November 6, 2003, unless facilities existing prior to that date are modified.[76]

Wastewater Asset Management

Asset management is the practice of managing infrastructure capital assets to minimize the total cost of owning and operating these assets while delivering the desired service levels.[77] Many utilities use asset management to pursue and achieve sustainable infrastructure. A high-performing asset management program includes detailed asset inventories, operation and maintenance tasks, and long-range financial planning.[78]

Each utility is responsible for making sure that its system stays in good working order, regardless of the age of its components or the availability of additional funds.[79] Asset management programs with good data can be the most efficient method of meeting this requirement. Some key steps for asset management are making an inventory of critical assets, evaluating the condition and performance of such assets, and developing plans to maintain, repair, and replace assets and to fund these activities.[80] The United States Environmental Protection Agency (EPA) provides guidance and reference manuals for utilities to aid in developing asset management plans.[81]

Many states, including Florida, provide financial incentives for the development and implementation of an asset management plan when requesting funding under a State Revolving Fund or other state funding mechanism.[82] Florida's incentives include priority scoring,[83] reduction of interest rates,[84] principal forgiveness for financially disadvantaged small communities,[85] and eligibility for small community wastewater facilities grants.[86]

In 2016, the Legislature authorized the Public Service Commission (PSC) to allow a utility to create a utility reserve fund for repair and replacement of existing distribution and collection infrastructure that is nearing the end of its useful life or is detrimental to water quality or reliability of service.[87] The utility

---

[72] Rule 62-600.735, F.A.C.; *see* r. 62-600.200, F.A.C. "Collection/transmission systems" are defined as sewers, pipelines, conduits, pumping stations, force mains, and all other facilities used for collection and transmission of wastewater from individual service connections to facilities intended for the purpose of providing treatment prior to release to the environment.

[73] *See* RS&H, Inc., *Evaluation of Sanitary Sewer Overflows and Unpermitted Discharges Associated with Hurricanes Hermine and Matthew* (Jan. 2017), available at https://floridadep.gov/sites/default/files/Final%20Report_Evaluation%20of%20SSO%20and%20Unpermitted%20Discharges%2001_06_17.pdf (last visited Jan. 21, 2020).

[74] Rule 62-604.400, F.A.C.

[75] *Id.*

[76] Rule 62-604.100, F.A.C.

[77] EPA, *Sustainable Water Infrastructure - Asset Management for Water and Wastewater Utilities*, available at https://www.epa.gov/sustainable-water-infrastructure/asset-management-water-and-wastewater-utilities (last visited Jan. 22, 2020).

[78] *Id*.

[79] *Id*.

[80] *Id*.

[81] EPA, *Asset Management: A Best Practices Guide* (2008), available at https://nepis.epa.gov/Exe/ZyPDF.cgi/P1000LP0.PDF?Dockey=P1000LP0.PDF (last visited Jan. 22, 2020); EPA, *Reference Guide for Asset Management Tools/Asset Management Plan Components and Implementation Tools for Small and Medium Sized Drinking Water and Wastewater Systems* (May 2014), available at https://www.epa.gov/sites/production/files/2016-04/documents/am_tools_guide_may_2014.pdf (last visited Jan. 22, 2020).

[82] EPA, *State Asset Management Initiatives* (Aug. 2012), available at https://www.epa.gov/sites/production/files/2016-04/documents/state_asset_management_initiatives_11-01-12.pdf (last visited Jan. 22, 2020).

[83] Rule 62-503.300(e), F.A.C.

[84] Rules 62-503.300(5)(b)1. and 62-503.700(7), F.A.C.

[85] Rule 62-503.500(4), F.A.C.

[86] Rules 62-505.300(d) and 62-505.350(5)(c), F.A.C.

[87] Chapter 2016-226, Laws of Fla.; s. 367.081(2)(c), F.S.

reserve fund is funded by a portion of the rates charged by the utility, by a secured escrow account, or through a letter of credit.[88]

The PSC adopted rules governing the implementation, management, and use of the fund, including expenses for which the fund may be used, segregation of reserve account funds, requirements for a capital improvement plan, and requirements for the PSC authorization before fund disbursements.[89] The PSC requires an applicant to provide a capital improvement plan or an asset management plan in seeking authorization to create a utility reserve fund.[90]

Biosolids

When domestic wastewater is treated, a solid byproduct accumulates in the wastewater treatment plant and must be removed periodically to keep the plant operating properly. The collected material, called biosolids or "sewage sludge," is high in organic content and contains moderate amounts of nutrients.[91] Wastewater facilities can dispose of biosolids by transferring them to another facility, placing them in a landfill, incinerating them, distributing them as fertilizer, or land applying them to permitted sites.[92] The option selected for use or disposal is typically stated in the permit issued to the wastewater treatment facility by DEP.[93] Florida produces a total of 340,000 dry tons of biosolids annually, of which approximately two-thirds are beneficially used and one-third is landfilled.[94]

Three classes of biosolids are regulated for beneficial use and are categorized based on treatment and quality: Class B, Class A, and Class AA.[95] Treatment is required to either reduce or completely eliminate pathogens. Class B treatment significantly reduces pathogens, but does not completely eliminate them. Class AA treatment essentially eliminates pathogens and meets strict concentration limits for heavy metals. The Class A treatment level is between Class B and Class AA. While Class A and Class AA can be used for a variety of beneficial purposes, Class B, the lowest quality of biosolids, is typically only used for land application.[96]

Land application is the use of biosolids at a permitted site, such as agricultural land or a golf course, forest, park, or reclamation site, to provide nutrients or organic matter to the soil. The biosolids are applied in accordance with restrictions based on crop nutrient needs, phosphorus limits in the area, and soil fertility.[97] Biosolids contain macronutrients (such as nitrogen and phosphorus) and micronutrients (such as copper, iron, and manganese) that are utilized by crops. The application of these nutrient-rich biosolids increases the organic content of the soil, fostering more productive plant growth.[98] To prevent odor or the contamination of soils, crops, and livestock, land application sites must meet site

[88] Section 367.081(2)(c), F.S.
[89] Rule 25-30.444, F.A.C.
[90] Rules 25-30.444(2)(e) and 25-30.444(2)(m), F.A.C.
[91] DEP, *Domestic Wastewater Biosolids*, available at https://floridadep.gov/water/domestic-wastewater/content/domestic-wastewater-biosolids (last visited Jan. 21, 2020); r. 62-640.200(6), F.A.C., defines the term "biosolids" to mean the solid, semisolid, or liquid residue generated during the treatment of domestic wastewater in a domestic wastewater treatment facility, formerly known as "domestic wastewater residuals" or "residuals." The treated effluent or reclaimed water from a domestic wastewater treatment plant is not included. Also, solids removed from pump stations and lift stations, screenings and grit removed from the preliminary treatment components of domestic wastewater treatment facilities, other solids as defined in subsection 62-640.200(31), F.A.C., and ash generated during the incineration of biosolids are not included.
[92] DEP, *Biosolids Use and Regulations in Florida* (Sept. 2018), slide 3, available at https://floridadep.gov/sites/default/files/Biosolids101-TAC-090518.pdf (last visited Jan. 21, 2020).
[93] *Id*. at slide 4.
[94] *Id*. at slide 5.
[95] *Id*. at slide 6.
[96] *Id*. at slide 7.
[97] DEP, *Biosolids Use and Regulations in Florida* (Sept. 2018), slide 23, available at https://floridadep.gov/sites/default/files/Biosolids101-TAC-090518.pdf (last visited Jan. 21, 2020); *see also*, EPA, *A Plain English Guide to the EPA Part 503 Biosolids Rule* (Sept. 1994), 26, available at https://www.epa.gov/sites/production/files/2018-12/documents/plain-english-guide-part503-biosolids-rule.pdf (last visited Jan. 21, 2020).
[98] DEP, *Biosolids Use and Regulations in Florida* (Sept. 2018), slide 20, available at https://floridadep.gov/sites/default/files/Biosolids101-TAC-090518.pdf (last visited Jan. 21, 2020).

management requirements such as the construction of site slopes and establishment of setback distances.[99] There are approximately 140 permitted land application sites in Florida.[100]

Class AA biosolids can be land applied or can be distributed and marketed as a commercial fertilizer.[101] Class AA biosolids products are also not subject to site management requirements if distributed and marketed as a fertilizer or distributed and marketed to a person or entity that will sell or give away the biosolids products as a fertilizer or component of a fertilizer.[102] There are approximately 39 facilities in Florida that produce Class AA biosolids.[103] In 2016, 197,115 dry tons of Class AA biosolids product was distributed and marketed in Florida.[104]

The beneficial use of biosolids is regulated by DEP under ch. 62-640, F.A.C., and by the EPA under Title 40 Code of Federal Regulations Part 503 (Part 503).[105] Adopted in 1993, Part 503 created standards for the final use or disposal of biosolids generated during domestic wastewater treatment. The standards included general requirements, pollutant limits, management practices, and operational standards for biosolids. Standards were also included for biosolids applied to the land, placed on a surface disposal site, or fired in a sewage sludge incinerator.[106]

In 1990, DEP adopted rules governing biosolids based on the draft of Part 503 and previously adopted solid waste rules.[107] DEP's rules were revised in 1998 to be consistent with the final version of Part 503. Part 503, a self-implementing program, did not address phosphorus, a major pollutant in Florida.[108] As a result, DEP amended its rules in 2010 to improve site accountability and nutrient management by requiring site permits for the land application of biosolids, requiring nutrient management plans (NMPs), establishing phosphorus limitations, and specifying site management requirements.[109] Additionally, the rules clarified that the disposal and incineration of biosolids must be in accordance with DEP's solid waste[110] and air[111] rules to protect water quality and human health.

NMPs are site-specific plans that specify the rate at which biosolids can be applied in the area, the method of application allowed (i.e., surface application, injection, incorporation, etc.), the zone in which biosolids can be applied, pollutant concentration targets, and cumulative pollutant loading limits from all sources at the application site.[112] NMPs are submitted to DEP along with the permit application for each agricultural site.

Agricultural sites that are required to have a NMP for the application of biosolids are also often required to participate in DACS's agricultural BMP program if the site is located in an impaired watershed because of the potential impact biosolids may have on water quality.[113] Typical BMP practices include

---

[99] *Id*. at slides 8-9.
[100] *Id*. at slide 20.
[101] *Id.* at slide 6.
[102] DEP, *Biosolids in Florida: 2013 Summary* (Dec. 2014), 4, available at https://floridadep.gov/sites/default/files/BiosolidsFlorida-2013-Summary_2.pdf (last visited Jan. 21, 2020).
[103] DEP, *Biosolids Use and Regulations in Florida* (Sept. 2018), slide 13, available at https://floridadep.gov/sites/default/files/Biosolids101-TAC-090518.pdf (last visited Jan. 21, 2020).
[104] *Id*. at slide 19.
[105] EPA, *Biosolids Laws and Regulations*, available at https://www.epa.gov/biosolids/biosolids-laws-and-regulations (last visited Jan. 21, 2020).
[106] 40 C.F.R. Part 503.
[107] Chapters 62-701 and 62-709, F.A.C.
[108] DEP, *Biosolids Rule/Permitting* (Nov. 2018), slide 2, available at https://floridadep.gov/water/domestic-wastewater/documents/tac-3-biosolids-rulepermitting (last visited Jan. 21, 2020); *see also*, DEP, *Biosolids Use and Regulations in Florida* (Sept. 2018), slide 11, available at https://floridadep.gov/sites/default/files/Biosolids101-TAC-090518.pdf (last visited Jan. 21, 2020).
[109] DEP, *Biosolids Rule/Permitting* (Nov. 2018), slide 2, available at https://floridadep.gov/water/domestic-wastewater/documents/tac-3-biosolids-rulepermitting (last visited Jan. 21, 2020); *see* ch. 62-640, F.A.C.
[110] Chapter 62-701, F.A.C.
[111] *See* Chapters 62-204, 62-210, 62-212, 62-213, 62-296, and 62-297, F.A.C.
[112] DEP, *NMPs*, available at https://floridadep.gov/water/domestic-wastewater/documents/nutrient-management-plans-biosolids (last visited Jan. 21, 2020); *see also,* r. 62-640.500, F.A.C.
[113] Rule 62-303.200(7), F.A.C., defines "impaired water" to mean a waterbody or waterbody segment that does not meet its applicable water quality standards […] due in whole or in part to discharges of pollutants from point or nonpoint sources.

nutrient management, irrigation and water table management, and water resource protection. Nutrient management practices for biosolids land application address appropriate source, rate, timing, and placement of nutrients to minimize impacts to water resources. Irrigation and water table management practices address methods for irrigating to reduce water and nutrient losses to the environment and to maximize the efficient use and distribution of water. Finally, water resource protection practices, such as the site management requirements for biosolids, help to reduce or prevent the transport of nutrients and sediments from production areas to water resources.[114] The BMPs for the site are typically included in facility permits.[115]

Biosolids Technical Advisory Committee

In 2018, DEP created a Biosolids Technical Advisory Committee (Biosolids TAC) to evaluate current management practices and explore opportunities to better protect Florida's water resources.[116] The Biosolids TAC was composed of various stakeholders, including environmental and agricultural industry experts, representatives of large and small utilities, waste haulers, consultants, and academics.[117] The meetings included presentations and public comments as well as discussions among the Biosolids TAC members, the audience, and DEP.

Based on the deliberations of the Biosolids TAC and feedback from public participants, the Biosolids TAC recommended that DEP take the following actions:

- Permit biosolids in a manner that minimizes migration of nutrients to prevent impairment to waterbodies and amend current permitting rules to:
    - Establish the rate of biosolids application based on site specifics, such as soil characteristics/adsorption capacity, water table, hydrogeology, site use, and distance to surface water;
    - Evaluate the percentage of water extractable phosphorus in all biosolids to inform the appropriate application rate; and
    - Establish criteria for low, medium, and high-risk sites that guide application practices and required water quality monitoring.
- Increase the inspection rate of land application.
- Develop site-specific groundwater and surface water monitoring protocols to detect nutrient migration.
- Develop and conduct biosolids and nutrient management research on nutrient run-off through surface and groundwater flow using various application rates, types of biosolids application, and different geologic conditions.
- Promote innovative technology pilot projects for biosolids processing that could provide a wider range of beneficial end products.[118]

DEP published a notice of rule development to amend its biosolids rules[119] on March 22, 2019. DEP held rulemaking workshops on June 25, 26, and 27, 2019, in various locations across the state and accepted public comments until August 15, 2019. A notice of proposed rule was published on October 29, 2019.[120]

[114] DACS, *Agriculture and Water Quality*, available at https://www.freshfromflorida.com/content/download/33106/813038/Agriculture_and_water_quality_2018.pdf (last visited Jan. 21, 2020).
[115] Section 403.067(7)(c), F.S.; *see* ch. 2016-1, Laws of Fla.
[116] DEP, *DEP Biosolids Technical Advisory Committee*, available at https://floridadep.gov/water/domestic-wastewater/content/dep-biosolids-technical-advisory-committee (last visited Jan. 21, 2020).
[117] *Id*.
[118] DEP, *Biosolids Technical Advisory Committee Recommendations* (January 2019), available at https://floridadep.gov/water/domestic-wastewater/documents/tac-4-biosolids-tac-considerations (last visited Jan. 21, 2020).
[119] Chapter 62-640, F.A.C.
[120] The public comment period was originally scheduled to end July 29, 2019, but the deadline was extended; *see* Florida Administrative Register, *Notice List: 62-640*, available at https://www.flrules.org/gateway/result.asp (last visited Jan. 21, 2020).

The statement of estimated regulatory costs (SERC) for the proposed rule includes the following statewide cost estimates:

- $10 million in capital costs for new permitting and land application sites;
- At least $31 million in recurring costs for additional sites and transportation of wet biosolids; and
- $1 million in additional monitoring costs.[121]

DEP expects more biosolids to be converted to Class AA biosolids/fertilizer as a result of the proposed rule and estimates the capital cost for additional Class AA biosolids projects to be between $300 and $400 million.[122] DEP is currently reviewing lower cost regulatory alternatives that have been submitted. Because the SERC shows that the adverse impact or regulatory cost of the proposed rule exceeds $1 million in the aggregate within five years after implementation, the proposed rule must be submitted to the Legislature for ratification and may not take effect until it is ratified by the Legislature.[123]

Consolidated WMD Annual Reports

By March 1 of each year, the WMDs must submit a consolidated annual report to the Governor, the Legislature, and DEP. The WMDs must also provide copies of the report to the chairs of the legislative committees having substantive or fiscal jurisdiction over the WMDs and to the governing boards of all county entities having jurisdiction or deriving any funds for operations of the district. The report must also be made available to the public in either a printed or an electronic format.[124]

The consolidated annual report includes several legislatively mandated plans and reports regarding the status of water resource programs. The consolidated annual report includes: the Strategic Water Management Plan Annual Work Plan Report; the Minimum Flows and Minimum Water Levels Annual Priority List and Schedule; the Annual Five-Year Capital Improvement Plan; the Alternative Water Supplies Annual Report; the Five-Year Water Resource Development Work Program; the Florida Forever WMD Work Plan Annual Report; the Mitigation Donation Annual Report; the Water Projects in the Five-Year Water Resources Development Work Program; and the Surface Water Improvement and Management Program Annual Report.[125]

Indian River Lagoon

The Indian River Lagoon (IRL) system is an estuary[126] that runs along 156 miles of Florida's east coast and borders Volusia, Brevard, Indian River, St. Lucie, and Martin Counties.[127] The IRL system is composed of three main waterbodies: Mosquito Lagoon, Banana River, and the Indian River Lagoon.[128] Four BMAPs have been adopted for the IRL region.[129]

The IRL is one of the most biologically diverse estuaries in North America and is home to more than 2,000 species of plants, 600 species of fish, 300 species of birds, and 53 endangered or threatened species.[130] The estimated economic value received from the IRL in 2014 was approximately $7.6 billion.[131] Industry groups that are directly influenced by the IRL support nearly 72,000 jobs.[132]

---

[121] *Id*.
[122] *Id*.
[123] Section 120.541, F.S.
[124] Northwest Florida WMD, *Consolidated Annual Reports*, available at https://www.nwfwater.com/Data-Publications/Reports-Plans/Consolidated-Annual-Reports (last visited Jan. 21, 2020).
[125] Section 373.036(7), F.S.
[126] An estuary is a partially enclosed coastal waterbody where freshwater from rivers and streams mixes with saltwater from the ocean. EPA, *What Is An Estuary?*, available at https://www.epa.gov/nep/basic-information-about-estuaries (last visited Jan. 21, 2020).
[127] IRL National Estuary Program, *About the Indian River Lagoon*, available at http://www.irlcouncil.com/ (last visited Jan. 21, 2020).
[128] *Id*.
[129] East Central Florida Regional Planning Council and the Treasure Coast Regional Planning Council, *Indian River Lagoon Economic Valuation Update* (Aug. 26, 2016), x, available at http://tcrpc.org/special_projects/IRL_Econ_Valu/FinalReportIRL08_26_2016.pdf (last visited Jan. 21, 2020); DEP, *Basin Management Action Plans (BMAPs)*, available at https://floridadep.gov/dear/water-quality-restoration/content/basin-management-action-plans-bmaps (last visited Jan. 21, 2020).
[130] IRL National Estuary Program, *About the Indian River Lagoon*, available at http://www.irlcouncil.com/ (last visited Jan. 21, 2020).
[131] East Central Florida Regional Planning Council and the Treasure Coast Regional Planning Council, *Indian River Lagoon Economic Valuation Update* (Aug. 26, 2016), x, available at http://tcrpc.org/special_projects/IRL_Econ_Valu/FinalReportIRL08_26_2016.pdf (last visited Jan. 21, 2020).
[132] *Id.* at ix.

The IRL ecosystem has been harmed by human activities in the region. Specifically, stormwater runoff from urban and agricultural areas, wastewater treatment facility discharges, canal discharges, septic systems, animal waste, and fertilizer applications have led to harmful levels of nutrients and sediments entering the lagoon.[133] These pollutants create cloudy conditions, feed algal blooms, and lead to muck accumulation, all of which negatively impact the seagrass that provides habitat for much of the IRL's marine life.[134]

Effect of the Bill

OSTDSs

The bill requires the consolidated WMD annual report to be submitted to the Office of Economic and Demographic Research (EDR)[135] in addition to DEP, the Governor, and the Legislature and requires the report to include projects to connect OSTDSs to central sewerage systems and to convert OSTDSs to enhanced nutrient reducing OSTDSs.

The bill requires DEP and DOH to include all portions of a lot subject to any easement, right-of-way, and right of entry when calculating the size of the lot when determining whether an OSTDS can be installed on lots of less than one acre in priority focus areas.

The bill repeals the TRAP and the RRAC.

Before July 1, 2020, the bill requires DOH to implement a fast-track approval process of no longer than six months for the determination of the use of American National Standards Institute 245 systems approved by the National Sanitation Foundation International (NSF/ANSI 245).[136]

The bill creates an OSTDS TAC to provide recommendations to increase the availability of enhanced nutrient reducing OSTDSs in the marketplace, to consider and recommend regulatory options to facilitate the use of enhanced nutrient reducing OSTDSs approved by a national agency or organization, and provide recommendations on appropriate setback distances for OSTDSs from surface water, groundwater, and wells. The bill requires DEP to use existing and available resources to administer and support the activities of the TAC.

By August 1, 2021, the bill requires DEP, in consultation with DOH, to appoint no more than 10 members to the TAC, who must include:

- A professional engineer;
- A septic tank contractor;
- Two representatives from the home building industry;
- A representative from the real estate industry;
- A representative from the OSTDS industry;
- A representative from local government;
- Two representatives from the environmental community; and

[133] Tetra Tech, Inc. & Closewaters, LLC, *Draft Save Our Indian River Lagoon Project Plan 2019 Update for Brevard County, Florida* (Mar. 2019), xii, available at https://www.dropbox.com/s/j9pxd59mt1baf7q/Revised%202019%20Save%20Our%20Indian%20River%20Lagoon%20Project%20Plan%20Update%20032519.pdf?dl=0 (last visited Jan. 21, 2020).

[134] *Id*.

[135] EDR is a research arm of the Legislature that is principally concerned with forecasting economic and social trends that affect policymaking, revenues, and appropriations. EDR publishes the official economic, demographic, revenue, and agency workload forecasts that are developed by Consensus Estimating Conferences and makes them available to the Legislature, state agencies, universities, research organizations, and the general public. *See* EDR, *Welcome*, available at http://edr.state.fl.us/Content/ (last visited Jan. 21, 2020); EDR, *About Us*, available at http://edr.state.fl.us/Content/about/index.cfm (last visited Jan. 21, 2020).

[136] NSF/ANSI 245 is a certification applied to an OSTDS that defines total nitrogen reduction requirements. A NSF/ANSI 245 certified system covers residential wastewater treatment systems with rated capacities between 400 and 1,500 gallons per day. To achieve certification, treatment systems must produce an acceptable quality of effluent during a six-month (26-week) test; *see also*, The Public Health and Safety Organization, *NSF/ANSI 245: Nitrogen Reduction*, available at http://www.nsf.org/services/by-industry/water-wastewater/onsite-wastewater/nitrogen-reduction (last visited Jan. 21, 2020).

- A representative of the scientific and technical community who has expertise in water pollutants, toxicology, epidemiology, geology, biology, or environmental sciences.

The bill requires the TAC to submit its recommendations to the Governor and the Legislature by January 1, 2022, and requires the TAC to expire August 15, 2022.

The bill requires DEP to adopt rules relating to the location of OSTDSs, including establishing setback distances, to prevent surface water and groundwater contamination. The bill further requires the rulemaking process for such rules to be completed by July 1, 2022, and requires DEP to notify the Division of Law Revision of the date such rules take effect. The bill requires the rules to consider conventional and enhanced nutrient-reducing OSTDS designs, impaired or degraded water bodies, domestic wastewater and drinking water infrastructure, potable water sources, non-potable wells, stormwater infrastructure, OSTDS remediation plans, nutrient pollution, and recommendations by the OSTDS TAC. The rules must also allow a person to apply for and receive a variance from a rule requirement upon demonstration that the requirement would cause an undue hardship and granting the variance would not cause or contribute to the exceedance of a total maximum daily load. The bill specifies that OSTDSs permitted before the rules take effect must comply with the statutory setback distances.

Wastewater Treatment Facilities
The bill requires DEP to adopt rules to reasonably limit, reduce, and eliminate domestic wastewater collection and transmission system pipe leakages and inflow and infiltration.

The bill requires public utilities, or their affiliated companies, holding, applying for, or renewing a domestic wastewater discharge permit to file annual reports regarding transactions or allocations of common costs and expenditures on pollution mitigation and prevention among the utility's permitted systems. DEP must adopt rules to implement the reporting requirement.

The bill requires DEP, subject to appropriation, to establish a real-time water quality monitoring program to assist in the restoration, preservation, and enhancement of impaired waterbodies and coastal resources. The bill encourages DEP to form public-private partnerships with established scientific entities that have proven existing real-time water quality monitoring equipment in order to expedite creation of the program.

The bill requires BMAPs for nutrient TMDLs to include a wastewater treatment plan developed by a local government in consultation with DEP, the WMD, and the public and private domestic wastewater facilities within the local government's jurisdiction if DEP identifies domestic wastewater facilities or OSTDSs as contributors of at least 20 percent of point source or nonpoint source nutrient pollution or if DEP determines remediation is necessary to achieve nutrient TMDLs. The bill requires the wastewater treatment plan to be adopted as part of the BMAP no later than July 1, 2025.

The bill requires the wastewater treatment plan to provide for construction, expansion, or upgrades necessary to achieve the TMDL requirements applicable to the domestic wastewater treatment facility and include the permitted capacity in average annual gallons per day for the domestic wastewater treatment facility, the average nutrient concentration and the estimated average nutrient load of the domestic wastewater, a projected timeline of the dates by which the construction of any facility improvements will begin and be completed, the date by which operations of the improved facility will begin, the estimated cost of the improvements, and the identity of responsible parties.

The bill specifies that a local government that does not have a domestic wastewater treatment facility in its jurisdiction is not required to develop a wastewater treatment plan unless there is a demonstrated need to establish a domestic wastewater treatment facility within its jurisdiction to improve water quality necessary to achieve a TMDL. The bill further specifies that a local government is not responsible for a private domestic wastewater facility's compliance with a BMAP unless such facility is operated through a public-private partnership to which the local government is a party.

The bill requires BMAPs to include an OSTDS remediation plan developed by a local government, in consultation with DOH, the WMD, DEP, and public and private domestic wastewater facilities, if DEP determines that OSTDSs contribute to at least 20 percent of nonpoint source nutrient pollution or that the plan is necessary to achieve the TMDL.

The bill requires an OSTDS remediation plan to include an inventory of OSTDSs; identify OSTDSs that would be upgraded to enhanced nutrient reducing systems, that would be connected to existing or future central domestic wastewater infrastructure in the jurisdiction or domestic wastewater service area of the local government, or that would remain conventional; estimate the cost of these upgrades; and identify deadlines and interim milestones for the planning, design, and construction of projects. The bill further requires DEP to adopt the OSTDS remediation plan as part of a BMAP by July 1, 2025, or as required for Outstanding Florida Springs.

When identifying wastewater projects in a BMAP, the bill prohibits DEP from requiring the higher cost project if a lower cost option achieves the same nutrient load reduction. However, the bill allows the regulated entity to choose a different cost option if it complies with the pollutant reduction requirements of an adopted TMDL.

By July 1, 2021, the bill requires DEP, in consultation with county health departments, wastewater treatment facilities, and other governmental entities, to submit a report to the Governor and the Legislature evaluating the costs of wastewater projects identified in BMAPs, OSTDS remediation plans, and other restoration plans developed to meet TMDLs. The report must include:

- Projects to replace OSTDSs with enhanced nutrient reducing OSTDSs; install or retrofit OSTDSs with enhanced nutrient reducing technologies; construct, upgrade, or expand domestic wastewater treatment facilities to meet the wastewater treatment plan; and connect OSTDSs to domestic wastewater treatment facilities;
- The estimated costs, nutrient load reduction estimates, and other benefits of each project;
- The estimated implementation timeline for each project;
- A proposed five-year funding plan for each project and the source and amount of financial assistance DEP, the WMD, or other project partner will make available to fund the project; and
- The projected costs of installing enhanced nutrient reducing OSTDSs on buildable lots in priority focus areas to comply with statutory restrictions on the activities allowed in such areas.

The bill requires DEP to submit a report to the Governor and the Legislature by July 1, 2021, that provides an assessment of the water quality monitoring being conducted for each BMAP implementing a nutrient TMDL. The bill specifies that DEP may coordinate with the WMDs and any applicable university in developing the report. The bill requires the report to:

- Evaluate the water quality monitoring prescribed for each BMAP to determine if it is sufficient to detect changes in water quality caused by the implementation of a project;
- Identify gaps in water quality monitoring; and
- Recommend water quality needs.

The bill requires DEP, beginning January 1, 2022, to submit annual cost estimates for projects listed in the wastewater treatment plans or OSTDS remediation plans to EDR, and requires EDR to include the estimates in its annual assessment of water resources and conservation lands.

The bill creates a wastewater grant program and allows DEP, in consultation with the WMDs, to provide grants, subject to appropriation, for projects within BMAPs, alternative restoration plans adopted by final order, or rural areas of opportunity (RAOs)[137] that will reduce excess nutrient pollution. Projects eligible for funding include projects to retrofit OSTDSs to upgrade them to enhanced nutrient-reducing OSTDSs; projects to provide advanced waste treatment; and projects to connect OSTDSs to central

[137] A RAO is a rural community or region of rural communities that presents a unique economic development opportunity of regional impact or that has been adversely affected by an extraordinary economic event, severe or chronic distress, or a natural disaster. By executive order, the Governor may designate up to three RAOs, establishing each region as a priority assignment for Rural Economic Development Initiative agencies. The Governor can waive the criteria, requirements, or any similar provisions of any state economic development incentive for projects in a RAO. Sections 288.0656(2)(d) and (7), F.S.

sewer facilities. The bill requires each grant for a project to have a minimum 50 percent local match, but allows DEP to waive such match for projects within an area designated as a RAO. The bill establishes the following priority for funding projects:

- First priority must be given to projects that subsidize the connection of OSTDSs to a wastewater treatment facility;
- Second priority must be given to projects that expand a collection or transmission system that promotes efficiency by planning the installation of wastewater transmission facilities to be constructed concurrently with other construction projects occurring within or along a transportation facility right-of-way; and
- Third priority must be given to projects that otherwise connect OSTDSs to wastewater treatment facilities.

The bill further requires DEP, in determining priorities, to consider the estimated reduction in nutrient load per project; project readiness; cost-effectiveness of the project; overall environmental benefit of a project; the location of a project; the availability of local matching funds; and projected water savings or quantity improvements associated with a project. The bill requires DEP, beginning January 1, 2021, and each January 1 thereafter, to submit a report to the Governor and the Legislature regarding the projects funded pursuant to the grant program.

Beginning July 1, 2025, the bill prohibits wastewater treatment facilities from discharging into the IRL without providing advanced waste treatment.

The bill requires DEP, by December 31, 2020, to submit a report to the Governor and the Legislature that provides the status of upgrades made by each wastewater treatment facility discharging into specified waterbodies to meet the advanced waste treatment requirements. The report must include a list of wastewater treatment facilities that will be required to upgrade to advanced waste treatment, the preliminary cost estimates for the upgrades, and a projected timeline for the upgrades.

The bill requires any facility for sanitary sewage disposal to have a power outage contingency plan that mitigates the impacts of power outages on the utility's collection system and pump stations.

The bill requires sanitary sewage disposal facilities that control a collection or transmission system of pipes and pumps to collect or transmit wastewater from domestic or industrial sources to the facility to take steps to prevent SSOs or underground pipe leaks and ensure collected wastewater reaches the facility. The bill further requires these facilities to use I&I studies and leakage surveys to develop pipe assessment, repair, and replacement action plans on a five-year planning horizon. The facilities must report such plans to DEP and include information regarding the annual expenditures dedicated to the I&I studies and replacement action plans; expenditures dedicated to pipe assessment, repair, and replacement; and expenditures designed to limit the presence of fats, roots, oils, and grease in the facility's collection system. The bill requires DEP to adopt rules regarding the implementation of I&I studies and leakage surveys but prohibits such rules from fixing or revising utility rates or budgets. The bill specifies that substantial compliance with these replacement action plan requirements must be considered evidence in mitigation for the purposes of assessing penalties.

The bill requires DEP to issue an operation permit for a domestic wastewater treatment facility not regulated under the NPDES program for a term of up to 10 years if the facility is meeting the goals stated in its action plan.

The bill requires water pollution operation permits to include procedures to investigate or survey a significant percentage of the domestic wastewater collection system throughout the duration of the permit to determine pipe integrity. The bill further requires the permittee to submit an annual report to DEP including annual facility revenues and expenditures and detailing any deviation from annual expenditures related to I&I studies; model pipe assessment, repair, and replacement action plans; and pipe assessment, repair, and replacement. The bill directs DEP to adopt rules establishing requirements for the annual report. The bill specifies that substantial compliance with these requirements must be considered evidence in mitigation for the purposes of assessing penalties.

The bill requires DEP, by March 1 of each year, to submit a report to the Governor and the Legislature identifying all domestic wastewater utilities that experienced a SSO in the preceding calendar year. The report must include the name of the utility or responsible entity, permitted capacity in annual average gallons per day, number of overflows, type of water discharged, and total volume of sewage released. To the extent known and available, the report must also include the volume of sewage recovered, the volume of sewage discharged to surface waters, and the cause of the SSO. The bill further requires that, for each facility that experienced an overflow, DEP submit with the SSO report the annual report required for water pollution operation permits regarding facility revenues and expenditures.

Biosolids
The bill requires DEP to adopt rules for biosolids management and specifies that such rules may not take effect until ratified by the Legislature.

For a new land application site permit or permit renewal issued after July 1, 2020, the bill requires the permittee of the biosolids land application site to ensure a minimum unsaturated soil depth of 2 feet between the depth of biosolids placement and the water table level at the time the Class A or Class B biosolids are applied to the soil. The bill specifies that biosolids may not be applied on soils that have a seasonal high-water table less than six inches from the soil surface or within six inches of the intended depth of biosolids placement, unless a DEP-approved NMP and water quality monitoring plan provide reasonable assurances that the land application of biosolids at the site will not cause or contribute to a violation of the state's surface WQS or groundwater standards. The bill defines the term "seasonal high water" to mean the elevation to which the ground and surface water may be expected to rise due to a normal wet season.

The bill also requires a new land application site permit or permit renewal submitted after July 1, 2020, to be enrolled in DACS's BMP program or be within an agricultural operation enrolled in the program for the applicable commodity type. The bill requires all permits to comply with these statutory requirements by July 1, 2022.

The bill requires new or renewed biosolids land application site or facility permits issued after July 1, 2020, to include a permit condition that requires the permit to be reopened to insert a compliance date of no later than one year after the effective date of the biosolids rules adopted by DEP. The bill specifies that all permits must meet the requirements of the biosolids rules adopted by DEP no later than two years after the effective date of such rules.

The bill authorizes a municipality or county to enforce or extend a local ordinance, regulation, resolution, rule, moratorium, or policy relating to the land application of Class A or Class B biosolids if it was adopted before November 1, 2019. The bill specifies that such local ordinance, regulation, resolution, rule, moratorium, or policy is effective until repealed by the municipality or county.

Stormwater

Background
Stormwater is the flow of water resulting from, and immediately following, a rainfall event.[138] When stormwater falls on pavement, buildings, and other impermeable surfaces, the runoff flows quickly and can pick up sediment, nutrients (such as nitrogen and phosphorous), chemicals, and other pollutants.[139] A stormwater management system is a system designed to control discharges necessitated by rainfall events, incorporating methods to collect, convey, store, treat, use, or reuse water to prevent or reduce flooding, overdrainage, environmental degradation, and water pollution.[140] Most activities that create

[138] DEP, *Environmental Resource Permit Applicant's Handbook Volume I (General and Environmental)* (June 1, 2018), 2-10, available at https://www.swfwmd.state.fl.us/sites/default/files/medias/documents/Appliicant_Hanbook_I_-_Combined.pd_0.pdf (last visited Jan. 21, 2020).
[139] DEP, *Stormwater Management* (2016), 1, available at https://floridadep.gov/sites/default/files/stormwater-management_0.pdf (last visited Jan. 21, 2020).
[140] Section 373.403(10), F.S.

new impermeable surfaces or alter surface water flows will involve a stormwater management system.[141]

Effective stormwater management is essential to reducing nonpoint source pollution.[142] Methods such as low-impact design technologies and BMPs can be implemented to address pollution in stormwater discharges.[143] Low-impact development refers to systems and practices that mimic or preserve natural drainage processes to manage stormwater.[144] This approach is also known as "green infrastructure," and instead of moving stormwater away from the built environment, these methods treat stormwater at its source.[145] Low-impact designs, including green roofs, permeable pavements, or bioswales, can result in stormwater being reused, soaking into vegetation that performs evaporative cooling, or infiltrating the soil and replenishing groundwater.[146]

Since the 1980s, Florida has regulated the discharge of stormwater to prevent pollution of the waters of the state and protect the designated beneficial use of surface waters.[147] Florida has established minimum stormwater treatment performance standards, which require design and performance criteria for new stormwater management systems to achieve at least an 80 percent reduction of the average annual load of pollutants that would cause or contribute to violations of state WQS and further achieve at least a 95 percent reduction of the average annual load of pollutants that would cause or contribute to violations of state WQS in Outstanding Florida Waters.[148] When a stormwater management system complies with rules establishing applicable design and performance criteria, there is a rebuttable presumption that the system's discharge will comply with WQS.[149]

Through its Environmental Resource Permitting (ERP) program, DEP regulates activities that create stormwater runoff, as well as dredging and filling in wetlands and other surface waters.[150] ERPs are designed to prevent flooding, protect wetlands and other surface waters, and protect Florida's water quality from stormwater pollution.[151] DEP implements the statewide ERP program in conjunction with the WMDs and certain local governments. The ERP Applicant Handbook, which is incorporated by reference into DEP rules, provides guidance on DEP's ERP program, including stormwater topics such as the design of stormwater management systems.[152]

---

[141] DEP, *Environmental Resource Permit Applicant's Handbook Volume I (General and Environmental)* (June 1, 2018), 1-5, available at https://www.swfwmd.state.fl.us/sites/default/files/medias/documents/Appliicant_Hanbook_I_-_Combined.pd_0.pdf (last visited Jan. 21, 2020).
[142] Rule 62-40.431(1), F.A.C.
[143] South Florida WMD, *Quick Facts on the Statewide Unified Stormwater Rule* (2009), available at https://www.sfwmd.gov/sites/default/files/documents/spl_stormwater_rule.pdf (last visited Jan. 21, 2020).
[144] EPA, *Benefits of Low Impact Development* (2012), 1, available at https://www.epa.gov/sites/production/files/2015-09/documents/bbfs1benefits.pdf (last visited Jan. 21, 2020); EPA, *Urban Runoff: Low Impact Development*, available at https://www.epa.gov/nps/urban-runoff-low-impact-development (last visited Jan. 21, 2020).
[145] DEP, *Green Infrastructure*, available at https://floridadep.gov/wra/319-tmdl-fund/content/green-infrastructure (last visited Jan. 21, 2020).
[146] EPA, *Benefits of Low Impact Development* (2012), 1, available at https://www.epa.gov/sites/production/files/2015-09/documents/bbfs1benefits.pdf (last visited Jan. 21, 2020); South Florida WMD, *Quick Facts on the Statewide Unified Stormwater Rule* (2009), available at https://www.sfwmd.gov/sites/default/files/documents/spl_stormwater_rule.pdf (last visited Jan. 21, 2020).
[147] DEP, *Evaluation of Current Stormwater Design Criteria within the State of Florida* (2007), 1-1, available at https://www.sfwmd.gov/sites/default/files/documents/sw%20treatment%20report-final71907.pdf (last visited Jan. 21, 2020).
[148] Rule 62-40.432(2), F.A.C.; DEP, *Outstanding Florida Waters*, available at https://floridadep.gov/dear/water-quality-standards/content/outstanding-florida-waters (last visited Jan. 21, 2020). Rule 62-302.200(26), F.A.C., defines "Outstanding Florida Water" to mean waters designated by the Environmental Regulation Commission as worthy of special protection because of their natural attributes.
[149] Rule 62-40.432(2), F.A.C.
[150] DEP, *DEP 101: Environmental Resource Permitting*, available at https://floridadep.gov/comm/press-office/content/dep-101-environmental-resource-permitting (last visited Jan. 22, 2020).
[151] South Florida WMD, *Environmental Resource Permits*, available at https://www.sfwmd.gov/doing-business-with-us/permits/environmental-resource-permits (last visited Jan. 22, 2020).
[152] Rule 62-330.010(4), F.A.C.; DEP, *Environmental Resource Permit Applicant's Handbook Volume I (General and Environmental)* (June 1, 2018), 2-10, available at https://www.swfwmd.state.fl.us/sites/default/files/medias/documents/Appliicant_Hanbook_I_-_Combined.pd_0.pdf (last visited Jan. 22, 2020).

2010 Stormwater Rulemaking

From 2008 to 2010, DEP and the WMDs worked together to develop a statewide unified stormwater rule to protect Florida's surface waters from the effects of excessive nutrients in stormwater runoff.[153] A technical advisory committee was established and, in 2010, DEP announced a series of workshops to allow for public comment on the statewide stormwater quality draft rule.[154] The goal of the rule was to increase the level of nutrient treatment in stormwater discharges and provide statewide consistency by establishing revised stormwater quality treatment performance standards and BMP design criteria.[155]

These rulemaking efforts produced a draft document called the "ERP Stormwater Quality Applicant's Handbook: Design Requirements for Stormwater Treatment in Florida."[156] The 2010 draft handbook provided for different stormwater treatment performance standards based on various classifications of water quality;[157] included instructions for calculating a project's required nutrient load reduction based on comparing the predevelopment and post-development loadings;[158] provided the required criteria for stormwater BMPs; and listed 15 different types of stormwater treatment systems, including low impact design, pervious pavements, and stormwater harvesting.[159]

The proposed rule and revised handbook were expected to be adopted in 2011; however, neither the rules nor a revised handbook were ever adopted.

Effect of the Bill

The bill requires DEP local pollution control staff training to include coordinating field inspections of public and privately-owned stormwater structural controls.

The bill requires DEP and the WMDs to initiate rulemaking by January 1, 2021, to update the stormwater design and operation regulations using the most recent scientific information available. As part of rule development, the bill requires DEP to consider and address low-impact design BMPs and design criteria that increase the removal of nutrients from stormwater discharges, and measures for consistent application of the net performance standard to ensure significant reductions of any pollutant loadings to a waterbody.

In addition, the bill requires DEP to evaluate inspection data relating to compliance by entities that submit self-certifications for the construction, alteration, and maintenance of a stormwater management system serving a total project area of up to 10 acres. DEP must recommend improvements to the self-certification process to the Legislature.

The bill requires the model stormwater management program to contain model ordinances targeting nutrient reduction practices and utilizing green infrastructure.

Consumptive Use of Water

Background

Consumptive Use Permits

[153] South Florida WMD, *Quick Facts on the Statewide Unified Stormwater Rule*, available at https://www.sfwmd.gov/sites/default/files/documents/spl_stormwater_rule.pdf (last visited Jan. 21, 2020).
[154] Chapter 62-347, F.A.C.; Florida Administrative Register, *Notice of Rescheduling* (Apr. 23, 2010), 1885, available at https://www.flrules.org/Faw/FAWDocuments/FAWVOLUMEFOLDERS2010/3616/3616doc.pdf (last visited Jan. 21, 2020).
[155] *Id.*
[156] DEP, *March 2010 Draft, Environmental Resource Permit Stormwater Quality Applicant's Handbook, Design Requirements for Stormwater Treatment Systems in Florida* (2010), available at https://fdotwww.blob.core.windows.net/sitefinity/docs/default-source/content2/roadway/drainage/files/stormwaterqualityapphb-draft.pdf?sfvrsn=579bf184_0 (last visited Jan. 21, 2020).
[157] *Id.* at 6-7.
[158] *Id.* at 8-11.
[159] *Id.* at 3.

Before using waters of the state,[160] a person must apply for and obtain a consumptive use permit (CUP) from the applicable WMD[161] or DEP. The WMD or DEP may impose reasonable conditions necessary to assure that the proposed use is consistent with the overall objectives of the WMD or DEP and is not harmful to the water resources of the area.[162] To obtain a CUP, an applicant must establish that the proposed use of water is a reasonable-beneficial use,[163] will not interfere with any presently existing legal use of water, and is consistent with the public interest.[164]

It is possible for consumptive use to lower the flows and levels of water bodies to a point that the resource values are significantly harmed. To prevent this harm, the WMDs must identify and establish the limit at which further water withdrawals would be significantly harmful to the water resources or ecology of the area, known as the minimum flow[165] and minimum level (MFL).[166]

For water bodies that are below their MFL, or are projected to fall below it within 20 years, the WMDs are required to implement a recovery or prevention strategy to ensure the MFL is maintained.[167] A recovery or prevention strategy must include the development of additional water supplies and other actions to achieve recovery to the established MFL as soon as practicable or prevent the existing flow or water level from falling below the established MFL.[168] A recovery or prevention strategy must also include a phased-in approach or a timetable that will allow for the provision of sufficient water supplies for all existing and projected reasonable-beneficial uses, including implementation of conservation and other efficiency measures to offset reductions in permitted withdrawals.[169]

Bottled Water

The U.S. Food and Drug Administration regulates the bottled water industry for safety and water quality.[170] Bottled water is water intended for human consumption that is sealed in bottles or other containers with no added ingredients except that it may optionally contain safe and suitable antimicrobial agents.[171] A "bottled water plant" is an establishment in which bottled water is prepared for sale.[172]

Florida law requires that bottled water come from an "approved source," which is defined as any source of water that complies with the federal Safe Drinking Water Act.[173] Bottled water must be processed in conformance with applicable federal regulations such as standards for water quality and label

---

[160] Section 373.019(22), F.S., defines the term "water" or "waters in the state" to mean any and all water on or beneath the surface of the ground or in the atmosphere, including natural or artificial watercourses, lakes, ponds, or diffused surface water and water percolating, standing, or flowing beneath the surface of the ground, as well as all coastal waters within the jurisdiction of the state.
[161] Section 373.216, F.S.; *see* chs. 40A-2, 40B-2, 40C-2, 40D-2, and 40E-2, F.A.C., for CUP permitting requirements.
[162] Section 373.219(1), F.S.; an individual solely using water for domestic consumption is exempt from CUP requirements.
[163] Section 373.019(16), F.S., defines the term "reasonable-beneficial use" to mean the use of water in such quantity as is necessary for economic and efficient utilization for a purpose and in a manner that is both reasonable and consistent with the public interest.
[164] Section 373.223(1), F.S.
[165] Section 373.042(1)(a), F.S., provides that the minimum flow for a given watercourse is the limit at which further water withdrawals would be significantly harmful to the water resources or ecology of the area.
[166] Section 373.042(1)(b), F.S., provides that the minimum level is the level of groundwater in an aquifer or the level of a surface waterbody at which further withdrawals will significantly harm the water resources of the area. DEP, *Minimum Flows and Minimum Water Levels and Reservations*, available at https://floridadep.gov/water-policy/water-policy/content/minimum-flows-and-minimum-water-levels-and-reservations (last visited Jan. 27, 2020).
[167] DEP, *Minimum Flows and Minimum Water Levels and Reservations*, available at https://floridadep.gov/water-policy/water-policy/content/minimum-flows-and-minimum-water-levels-and-reservations (last visited Jan. 27, 2020).
[168] Section 373.0421(2), F.S.
[169] *Id*.
[170] 21 C.F.R. Part 129; Food and Drug Administration, *FDA Regulates the Safety of Bottled Water Beverages Including Flavored Water and Nutrient-Added Water Beverages*, available at https://www.fda.gov/food/buy-store-serve-safe-food/fda-regulates-safety-bottled-water-beverages-including-flavored-water-and-nutrient-added-water (last visited Feb. 19, 2020).
[171] Section 500.03(1)(d), F.S. Florida law defines "bottled water" using the description provided in federal regulation; 21 C.F.R. s. 165.110(a)(1).
[172] Sections 500.03(1)(e), (n), and (p), F.S.
[173] Sections 500.03(1)(c) and 500.147(3), F.S.; s. 500.03(1)(w), F.S., defines the term "natural water" to mean bottled spring water, artesian well water, or well water that has not been altered with water from another source or that has not been modified by mineral addition or deletion, except for alteration that is necessary to treat the water through ozonation or an equivalent disinfection and filtration process.

statements.[174] If the label bears a name or trademark containing terms such as "springs," "well," or "natural," then the label must also state the source of the water.[175]

Effect of the Bill

The bill requires DEP, in coordination with the WMDs, to conduct a study on the bottled water industry in the state. The study must identify all springs statewide that have an associated CUP for a bottled water facility producing its product with water derived from a spring. Such identification must include the magnitude of the spring; whether the spring has been identified as an Outstanding Florida Spring; any DEP or WMD adopted MFLs, the status of any adopted MFLs, and any associated recovery or prevention strategy; the permitted and actual use associated with the CUPs; the reduction in flow associated with the permitted and actual use associated with the CUPs; the impact on springs of bottled water facilities as compared to other users; and the types of water conservation measures employed at bottled water facilities permitted to derive water from a spring.

The study must also:

- Identify the labeling and marketing regulations associated with the identification of bottled water as spring water, including whether these regulations incentivize the withdrawal of water from springs;
- Evaluate the direct and indirect economic benefits to the local communities resulting from bottled water facilities that derive water from springs, including, but not limited to, tax revenue, job creation, and wages;
- Evaluate the direct and indirect costs to the local communities located in proximity to springs impacted by withdrawals from bottled water production, including, but not limited to, the decreased recreational value of the spring and the cost to other users for the development of alternative water supply or reductions in permit durations and allocations;
- Include a cost-benefit analysis of withdrawing, producing, marketing, selling, and consuming spring water as compared to other sources of bottled water; and
- Evaluate how much bottled water derived from Florida springs is sold in the state.

The bill requires DEP to submit a report containing the findings of the study to the Governor, the Legislature, and EDR by June 30, 2021.

Beginning July 1, 2020, the bill prohibits the governing board of a WMD from approving a new CUP, or the renewal or modification of a CUP, that authorizes the use of water derived from a spring for bottled water unless, in the case of a renewal or modification, the application was submitted to DEP or the WMD prior to January 1, 2020. The bill specifies that this prohibition expires on June 30, 2022.

Water Quality Funding Sources

Background

Clean Water State Revolving Fund

Florida's Clean Water State Revolving Fund (CWSRF) is a federal-state partnership that provides communities a permanent, independent source of low-cost financing for a wide-range of water quality infrastructure projects.[176] The CWSRF is funded through money received from federal grants as well as state contributions, which then "revolve" through the repayment of previous loans and interest earned. While these programs offer loans, grant-like funding is also available for qualified small, disadvantaged communities, which reduces the amount owed on loans by the percentage for which the community qualifies.[177]

[174] Section 500.147(3), F.S.; 21 C.F.R. Part 129; 21 C.F.R. § 165.110; *see* DACS, *Bottled Water Testing Requirements*, available at https://www.fdacs.gov/content/download/72733/file/Bottled-Water-Testing-Requirements.pdf (last visited Feb. 19, 2020).
[175] Section 500.11(1)(o), F.S.
[176] 33 USC s. 1383; EPA, *CWSRF*, available at https://www.epa.gov/cwsrf (last visited Feb. 21, 2020); EPA, *Learn about the CWSRF*, available at https://www.epa.gov/cwsrf/learn-about-clean-water-state-revolving-fund-cwsrf (last visited Feb. 21, 2020).
[177] *Id*.

The CWSRF provides low-interest loans to local governments to plan, design, and build or upgrade wastewater, stormwater, and nonpoint source pollution prevention projects. Interest rates on loans are below market rates and vary based on the economic means of the community. Generally, local governments and special districts are considered eligible loan sponsors.[178] The EPA classifies 11 types of projects that are eligible to receive CWSRF assistance. They include projects for:

- A publicly owned treatment works;
- A public, private, or nonprofit entity to implement a state nonpoint source pollution management program;
- A public, private, or nonprofit entity to develop and implement a conservation and management plan;
- A public, private, or nonprofit entity to construct, repair, or replace decentralized wastewater treatment systems that treat municipal wastewater or domestic sewage;
- A public, private, or nonprofit entity to manage, reduce, treat, or recapture stormwater or subsurface drainage water;
- A public entity to reduce the demand for publicly owned treatment works capacity through water conservation, efficiency, or reuse;
- A public, private, or nonprofit entity to develop and implement watershed projects;
- A public entity to reduce the energy consumption needs for publicly owned treatment works;
- A public, private, or nonprofit entity for projects for reusing or recycling wastewater, stormwater, or subsurface drainage water;
- A public, private, or nonprofit entity to increase the security of publicly owned treatment works; and
- Any qualified nonprofit entity to provide technical assistance to owners and operators of small and medium sized publicly owned treatment works to plan, develop, and obtain financing for CWSRF eligible projects and to assist each treatment works in achieving compliance with the Clean Water Act.[179]

Of these eligible projects, DEP must give priority to projects that: eliminate public health hazards; enable compliance with laws requiring the elimination of discharges to specific water bodies, including the requirements for domestic wastewater ocean outfalls; assist in the implementation of TMDLs adopted under BMAPs; enable compliance with other pollution control requirements, including toxics control, wastewater residuals management, and reduction of nutrients and bacteria; assist in the implementation of surface water improvement and management plans and pollutant load reduction goals developed under state water policy; promote reclaimed water reuse; eliminate failing OSTDSs or those that are causing environmental damage; or reduce pollutants to and otherwise promote the restoration of surface and ground waters.[180]

Small Community Sewer Construction Assistance Act

The Small Community Sewer Construction Assistance Act is a grant program established as part of the CWSRF program that requires DEP to award grants to assist financially disadvantaged small communities[181] with their needs for adequate domestic wastewater facilities.[182]

In accordance with rules adopted by the Environmental Regulation Commission (ERC), DEP may provide grants for up to 100 percent of the costs of planning, designing, constructing, upgrading, or replacing wastewater collection, transmission, treatment, disposal, and reuse facilities, including necessary legal and administrative expenses.[183] The rules of the ERC must also:

[178] DEP, *State Revolving Fund,* available at https://floridadep.gov/wra/srf (last visited Feb. 21, 2020).
[179] EPA, *Learn about the CWSRF*, available at https://www.epa.gov/cwsrf/learn-about-clean-water-state-revolving-fund-cwsrf (last visited Feb. 21, 2020).
[180] Section 403.1835(7), F.S.
[181] Section 403.1838(2), F.S., defines the term "financially disadvantaged small community" to mean a county, municipality, or special district that has a population of 10,000 or fewer, according to the latest decennial census, and a per capita annual income less than the state per capita annual income as determined by the U. S. Department of Commerce.
[182] Sections 403.1835(3)(d) and 403.1838, F.S.
[183] Section 403.1838(3)(a), F.S.

- Require that projects to plan, design, construct, upgrade, or replace wastewater collection, transmission, treatment, disposal, and reuse facilities be cost-effective, environmentally sound, permittable, and implementable;
- Require appropriate user charges, connection fees, and other charges to ensure the long-term operation, maintenance, and replacement of the facilities constructed under each grant;
- Require grant applications to be submitted on appropriate forms with appropriate supporting documentation and require records to be maintained;
- Establish a system to determine eligibility of grant applications;
- Establish a system to determine the relative priority of grant applications, which must consider public health protection and water pollution abatement;
- Establish requirements for competitive procurement of engineering and construction services, materials, and equipment; and
- Provide for termination of grants when program requirements are not met.[184]

Effect of the Bill

For projects funded by the CWSRF, the bill requires DEP to prioritize projects that are identified in sewage disposal facility action plans or water pollution operation facility reports or that promote efficiency by planning for the installation of wastewater transmission facilities to be constructed concurrently with other construction projects occurring within or along a transportation facility right-of-way.

The bill requires the system established by ERC rule that determines the priority of grant applications for funding under the Small Community Sewer Construction Assistance Act to consider water pollution prevention or abatement and further requires such system to prioritize projects that plan for the installation of wastewater transmission facilities to be constructed concurrently with other construction projects occurring within or along a transportation facility right-of-way.

Type Two Transfer

Background

A type two transfer is the merging of an existing department, program, or activity into another department.[185] Any program or activity transferred by a type two transfer retains all the statutory powers, duties, and functions it held before the transfer. The program or activity also retains its records, personnel, property, and unexpended balances of appropriations, allocations, or other funds, unless otherwise provided by law. The transfer of segregated funds must be made in such a manner that the relation between the program and the revenue source is retained.[186]

Effect of the Bill

Effective July 1, 2021, the bill transfers the duties and powers related to regulation of the Onsite Sewage Program from DOH to DEP by a type two transfer and requires DEP and DOH to submit recommendations to the Governor and the Legislature regarding the transfer by December 31, 2020. The bill further requires DOH to submit a report by July 1, 2020, detailing the number of permits issued per year, costs and expenditures related to equipment and contracting, and other employee-related information.

The bill requires DEP and DOH, by June 30, 2021, to enter into an interagency agreement that addresses agency cooperation following the transfer. The bill allows employees transferred from DOH to DEP to retain any accrued leave.

Environmental Violations

Background

[184] Section 403.1838(3)(b), F.S.; ch. 62-505, F.A.C.
[185] Section 20.06(2), F.S.
[186] Section 20.06(2), F.S.

In accordance with the state's numerous environmental laws, DEP is responsible for compliance and enforcement.[187] In addition to damages, a violator can be liable for penalties. Penalties differ from damages in that they are designed to punish the wrongdoer rather than to address the harm caused by the violation.[188] In environmental enforcement, penalties should create incentives to bring immediate compliance and curb future violations.[189] In current law, several types of violations impose a penalty for each offense, with each day during which a violation occurs constituting a separate offense.

Administrative penalties may be levied directly by DEP or in a proceeding in the Division of Administrative Hearings.[190] The formal administrative enforcement process is typically initiated by serving a notice of violation and is finalized through entry of a consent order or final order.[191] In most administrative proceedings, DEP has the final decision.[192] An administrative law judge has the final decision for administrative proceedings involving the Environmental Litigation Reform Act (Reform Act), codified in s. 403.121, F.S., which is the primary statute addressing DEP's administrative penalties.[193] Compared to the judicial process, the administrative process is generally considered less expensive, faster, and more conducive to negotiated settlement.[194] However, if DEP is seeking immediate injunctive relief, which compels a party to act or stop acting, an order must be obtained from a court.[195]

DEP must proceed administratively when it seeks administrative penalties that do not exceed $10,000 per assessment; DEP is prohibited from imposing administrative penalties in excess of $10,000 in a single notice of violation.[196] DEP also may not have more than one notice of violation pending against a party unless the additional violation occurred at a different site or was discovered subsequent to the filing of a previous notice of violation.[197]

Civil penalties are noncriminal fines that are generally levied by a court, but certain agencies may impose them under certain circumstances. The Reform Act allows DEP to seek civil penalties of up to $10,000 through the administrative process for most environmental violations.[198]

In state court, DEP may pursue two forms of action: a petition to enforce an order previously entered through the administrative process, or a complaint for violations of statutes or rules.[199] Under both actions, DEP may seek injunctive relief, civil penalties, damages, and costs and expenses.[200] For judicially imposed civil penalties, DEP is authorized to recover up to $10,000 per offense, with each day during any portion of which a violation occurs constituting a separate offense.[201]

A court or an administrative law judge may receive evidence in mitigation, which may result in the decrease or elimination of penalties.[202]

---

[187] DEP, *Enforcement Manual: DEP Regulatory Enforcement Organization* (2017), available at https://floridadep.gov/sites/default/files/Chapter%201%20October%202017.pdf (last visited Jan. 27, 2020).
[188] *See* BLACK'S LAW DICTIONARY 1247 (9th ed. 2009).
[189] DEP, *Enforcement Manual: Judicial Process and Remedies, Collections, and Bankruptcies* (2014), 89, available at https://floridadep.gov/sites/default/files/chapter6.pdf (last visited Jan. 27, 2020).
[190] *See* ch. 120, F.S. The administrative process is formalized in the Administrative Procedure Act.
[191] DEP, *Enforcement Manual: The Administrative Process and Remedies* (2014), 58, available at https://floridadep.gov/sites/default/files/chapter5_0.pdf (last visited Jan. 27, 2020).
[192] *Id.*
[193] *Id.* at 58-59, 66-70; ch. 2001-258, Laws of Fla.
[194] DEP, *Enforcement Manual: The Administrative Process and Remedies* (2014), 59, available at https://floridadep.gov/sites/default/files/chapter5_0.pdf (last visited Jan. 27, 2020).
[195] *Id.* at 59-60.
[196] Section 403.121(2)(b), F.S.; DEP, *Enforcement Manual: The Administrative Process and Remedies* (2014), 66-67, available at https://floridadep.gov/sites/default/files/chapter5_0.pdf (last visited Jan. 27, 2020). This requirement does not apply to underground injection, hazardous waste, or asbestos programs.
[197] *Id.*
[198] Section 403.121, F.S.
[199] DEP, *Enforcement Manual: Judicial Process and Remedies, Collections, and Bankruptcies* (2014), 86, available at https://floridadep.gov/sites/default/files/chapter6.pdf (last visited Jan. 27, 2020).
[200] *Id.*
[201] Section 403.121(1)(b), F.S.
[202] Section 403.121, F.S.

In addition to DEP, the Department of Legal Affairs, any political subdivision or municipality of the state, and any citizen of the state also have the authority to bring an action for injunctive relief against violators of environmental laws.[203]

Effect of the Bill
The bill requires DEP to assess a penalty of $4,000 for failure to comply with the pollution prevention and mitigation report or the facility action plan.

The bill increases the administrative penalties for: the failure to obtain certain wastewater permits from $1,000 to $2,000; an unpermitted or unauthorized discharge not involving a surface water or groundwater quality violation from $2,000 to $4,000; and an unpermitted or unauthorized discharge involving a surface water or groundwater quality violation from $5,000 to $10,000.

The bill increases the cap of administrative penalties that may be assessed by DEP per violator from $5,000 to $10,000, unless the economic benefit of the violation exceeds $10,000, and the cap for all violations attributable to one person from $10,000 per assessment to $50,000 per assessment.

Secretary of DEP

Background
Current law requires the Secretary of DEP to be appointed by the Governor, with the concurrence of three members of the Cabinet.[204] The Cabinet consists of the Attorney General, the Chief Financial Officer, and the Commissioner of Agriculture.[205]

Effect of the Bill
The bill requires the Secretary of DEP to be appointed by the Governor with the concurrence of two or more members of the Cabinet.

Environmental Rights

Background

Environmental Protection Act
Florida's Environmental Protection Act (Protection Act) authorizes the Department of Legal Affairs, any political subdivision or municipality of the state, or a citizen of the state to take legal action seeking to:[206]

- Compel a governmental agency or authority to enforce laws, rules, and regulations protecting Florida's air, water, and other natural resources; or
- Prevent any person or governmental agency or authority from violating any laws, rules, or regulations protecting Florida's air, water, and other natural resources.

In an administrative, licensing, or other legal proceeding to protect Florida's air, water, or other natural resources from pollution, impairment, or destruction, the Department of Legal Affairs, a political subdivision or municipality of the state, or a citizen of the state is authorized to intervene[207] as a party to the legal action. To intervene, the party must file a verified pleading asserting that the particular activity, conduct, or product will impair, pollute, or otherwise injure the air, water, or other natural resources of the state.[208] A citizen may not institute, initiate, petition for, or request such a proceeding unless he or

[203] Section 403.412, F.S.
[204] Section 20.255(1), F.S.
[205] Section 20.03(1), F.S.
[206] Section 403.412(2), F.S.
[207] Section 403.412(5), F.S., defines "intervene" to mean to join an ongoing ss. 120.569 or 120.57, F.S., proceeding, and does not authorize a citizen to institute, initiate, petition for, or request a proceeding under ss. 120.569 or 120.57, F.S. Nothing herein limits or prohibits a citizen whose substantial interests will be determined or affected by a proposed agency action from initiating a formal administrative proceeding under the Administrative Procedure Act.
[208] Section 403.412(5), F.S.

she will suffer a sufficiently immediate injury which is of the type and nature intended to be protected by law. However, a citizen is not required to demonstrate that his or her injury is different than that which the general public is required to show. A citizen's substantial interest injury is sufficient if the proposed activity, conduct, or product will affect his or her use or enjoyment of air, water, or natural resources protected by law.[209]

The Florida Supreme Court has held that the Protection Act is not an impermissible intrusion by the Legislature into the court's power over practice and procedure in state courts, but instead creates a new cause of action setting out substantive rights not previously possessed by enabling a Florida citizen to take legal action to protect the environment without a showing of special injury.[210]

Rights of Nature

While Florida authorizes a citizen to assert standing to enjoin an activity that will affect his or her use or enjoyment of air, water, or natural resources, some court rulings and legislation in the U.S. and worldwide[211] have authorized specific legal rights of nature authorizing a person to assert standing on behalf of natural resources.[212]

The U.S. Supreme Court's ruling in *Sierra Club v. Morton* is the closest the U.S. federal government has come to granting personhood to natural resources. In *Sierra Club*, a conservation group took legal action to prevent the U.S. Forest Service from approving a ski development proposed by Walt Disney Productions near the Sequoia National Forest.[213] The Sierra Club (Club) argued that the ski development would adversely affect the forest, but did not allege any personal injury to any specific member of the Club.[214] The court held that because there was no injury in fact to any member of the Club, the Club had no standing to sue on behalf of the forest.[215] The court determined that because the Club did not "have a direct stake in the outcome…authoriz[ing] judicial review at the behest of organizations or individuals who seek to do no more than vindicate their own value preferences through the judicial process" would undermine the goal of the Administrative Procedure Act.[216]

Despite the court's ruling, Justice Douglas's dissenting opinion suggests that "contemporary public concern for protecting nature's ecological equilibrium should lead to the conferral of standing upon environmental objects to sue for their own preservation."[217] In a separate dissent, Justice Blackmun expressed similar concern and urged the court to consider the dangers of limiting judicial review solely to human injuries.[218]

While the *Sierra Club* opinion clearly limits standing in environmental actions to action causing injury to a human, the dissenting opinions by Justice Douglas and Justice Blackmun have recently garnered the attention of environmental activists attempting to assert standing on behalf of the environment. For example, in September 2017, the environmental group Deep Green Resistance (DGR) relied on Justice Douglas's dissent when petitioning the federal District Court of Colorado to recognize legal personhood for the Colorado River System.[219] Joined by citizens of Colorado and Utah, DGR asked the U.S. District Court in Denver to declare the Colorado River ecosystem a "person," such that the river system's

---

[209] *Id*.
[210] *Florida Wildlife Federation v. State Dept. of Environmental Regulation*, 390 So. 2d 64 (Fla. 1980).
[211] In 2008, Ecuador granted legal rights to all of nature, and in 2017, four rivers were granted legal rights: the Whanganui River in New Zealand, the Ganges and Yamuna rivers in India, and the Rio Atrato in Colombia. Dr. Julia Talbot-Jones, *Flowing from Fiction to Fact: The Challenges of Implementing Legal Rights for Rivers*, Global Water Forum, available at https://globalwaterforum.org/2018/05/14/flowing-from-fiction-to-fact-the-challenges-of-implementing-legal-rights-for-rivers/ (last visited Jan. 30, 2020).
[212] Lidia Cano Pecharroman, *Rights of Nature: Rivers That Can Stand in Court* (Feb 14, 2018), available at https://www.mdpi.com/2079-9276/7/1/13/htm (last visited Jan. 30, 2020).
[213] *Sierra Club v. Morton*, 405 U.S. 727 (1972).
[214] *Id*. at 734.
[215] *Id*. at 735.
[216] *Id*. at 740.
[217] *Id*. at 741-42.
[218] *Id*. at 755–56.
[219] Complaint for Declaratory Relief, Colorado River Ecosystem et al. v. State of Colorado, No. 1:17-cv-02316-RPM (D. Colo. Sept. 25, 2017), at 12–13.

interest could be represented in court.[220] DGR claimed that the Colorado River System has "the right to exist, flourish, regenerate, and naturally evolve," and that current laws did not protect the natural environment on which persons depend for survival and livelihood.[221] Following lengthy litigation, DGR voluntarily dismissed its case after the Colorado Attorney General set forth numerous reasons the court did not have jurisdiction and opined that the determination of whether the rights of nature exist should be reserved to Congress.[222]

Similar attempts to assert the rights of nature have been made on the local level. For example, in New Mexico in 2013, the Mora County Board of Commissioners passed an ordinance protecting the rights of human communities, nature, and natural water.[223] However, an energy exploration firm challenged the ordinance, and the U.S. district court struck down the ordinance, holding the ordinance violated the Supremacy Clause and was impermissibly overbroad, in violation of the First Amendment.[224]

In 2013, Colorado voters attempted to impose a similar measure targeting oil extraction by hydraulic fracturing ("fracking") and proposed "certain rights for city residents and ecosystems as part of the city charter such as clean water, air and freedom from certain chemicals and oil and gas industry byproducts."[225] When challenged by the Colorado Oil and Gas Association, the Boulder District Court held that Lafayette did not have the authority to prohibit practices authorized and permitted by the state.[226]

More recently, the Orange County, Florida Charter Review Commission approved a request to establish a committee to assess adding rights for the Wekiva River and Econlockhatchee River to the county charter.[227]

Effect of the Bill

The bill amends the Protection Act to prohibit, unless otherwise authorized by law or specifically granted in the State Constitution, a local government regulation, ordinance, code, rule, comprehensive plan, charter, or any other provision of law:

- From recognizing or granting any legal right to a plant, animal, body of water, or any other part of the natural environment that is not a person[228] or political subdivision;[229] or
- From granting a person or political subdivision any specific rights relating to the natural environment.

The bill provides that the prohibition on granting rights to nonpersons may not be interpreted to limit:

- The power of an adversely affected party to challenge the consistency of a development order with a comprehensive plan, or to file an action for injunctive relief to enforce the terms of a development agreement or to challenge compliance of the agreement with the Florida Local Government Development Agreement Act; or
- The standing of the Department of Legal Affairs, a political subdivision or municipality of the state, or a citizen of the state to maintain an action for injunctive relief as otherwise provided by the Protection Act.

---

[220] *Id*. at 12.
[221] *Id*. at 2.
[222] Motion to Dismiss, No. 1:17-cv-02316-NYW (D. Colo. Oct. 17, 2017).
[223] *Swepi, LP v. Mora Cty*., 81 F. Supp. 3d 1075, 1090 (D.N.M. 2015).
[224] *Swepi*, 81 F. Supp. 3d at 1088
[225] *City of Lafayette "Community Rights Act" Fracking Ban Amendment, Question 300* (November 2013), BALLOTOPEDIA (Nov. 2013), available at https://ballotpedia.org/City_of_Lafayette_%22Community_Rights_Act%22_Fracking_Ban_Amendment,_Question_300_(November_2013) (last visited Jan. 30, 2020).
[226] *Id*.
[227] Orange County Comptroller, *2020-01-22 Rights of the Wekiva River and Econlockhatchee River Committee*, available at https://www.occompt.com/meetings/meeting/2020-01-22-rights-of-the-wekiva-river-and-econlockhatchee-river-committee/ (last visited Jan. 30, 2020).
[228] Section 1.01(3), F.S., defines the term "person" to include individuals, children, firms, associations, joint adventures, partnerships, estates trusts, business trusts, syndicates, fiduciaries, corporations, and all other groups or combinations.
[229] Section 1.01(8), F.S., defines the term "political subdivision" to include counties, cities, towns, villages, special tax school districts, special road and bridge districts, bridge districts, and all other districts in Florida.

Important State Interest
The bill specifies that the Legislature determines that the bill fulfills an important state interest.

B. SECTION DIRECTORY:

Section 1. Provides the title “Clean Waterways Act.”

Section 2. Transfers the authority of the Onsite Sewage Program from DOH to DEP via a type two transfer.

Section 3. Amends s. 20.255, F.S., relating to the Secretary of DEP.

Section 4. Amends s. 373.036, F.S., relating to consolidated WMD annual reports.

Section 5. Amends s. 373.223, F.S., relating to conditions for a permit

Section 6. Amends s. 373.4131, F.S., relating to statewide ERP rules.

Section 7. Amends s. 381.0065, F.S., relating to OSTDSs.

Section 8. Amends s. 381.0065, F.S., relating to OSTDSs.

Section 9. Amends s. 381.00651, F.S., relating to periodic evaluation and assessment of OSTDSs.

Section 10. Creates s. 381.00652, F.S., creating the OSTDS TAC.

Section 11. Repeals s. 381.0068, F.S., relating to the TRAP.

Section 12. Amends s. 403.061, F.S., relating to DEP powers and duties.

Section 13. Creates s. 403.0616, F.S., to create a real-time water quality monitoring program.

Section 14. Amends s. 403.067, F.S., relating to the establishment of BMAPs and implementation of TMDLs.

Section 15. Creates s. 403.0671, F.S., relating to BMAP wastewater reports.

Section 16. Creates s. 403.0673, F.S., relating to the wastewater grant program.

Section 17. Creates s. 403.0855, F.S., relating to biosolids management.

Section 18. Amends s. 403.086, F.S., relating to sewage disposal facilities.

Section 19. Amends s. 403.087, F.S., relating to permits.

Section 20. Amends s. 403.088, F.S., relating to water pollution operation permits.

Section 21. Amends s. 403.0891, F.S., relating to state, regional, and local stormwater management plans and programs.

Section 22. Amends s. 403.121, F.S., relating to enforcement, procedure, and remedies.

Section 23. Amends s. 403.1835, F.S., relating to water pollution control financial assistance.

Section 24. Amends s. 403.1838, F.S., relating to the Small Community Sewer Construction Assistance Act.

Section 25. Amends s. 403.412, F.S., relating to the Protection Act.

Section 26. Provides an important state interest.

Section 27. Amends s. 153.54, F.S., to make conforming changes.

Section 28. Amends s. 153.73, F.S., to make conforming changes.

Section 29. Amends s. 163.3180, F.S., to make conforming changes.

Section 30. Amends s. 180.03, F.S., to make conforming changes.

Section 31. Amends s. 311.105, F.S., to make conforming changes.

Section 32. Amends s. 327.46, F.S., to make conforming changes.

Section 33. Amends s. 373.250, F.S., to make conforming changes.

Section 34. Amends s. 373.414, F.S., to make conforming changes.

Section 35. Amends s. 373.705, F.S., to make conforming changes.

Section 36. Amends s. 373.707, F.S., to make conforming changes.

Section 37. Amends s. 373.709, F.S., to make conforming changes.

Section 38. Amends s. 373.807, F.S., to make conforming changes.

Section 39. Amends s. 376.307, F.S., to make conforming changes.

Section 40. Amends s. 380.0552, F.S., to make conforming changes.

Section 41. Amends s. 381.006, F.S., to make conforming changes.

Section 42. Amends s. 381.0061, F.S., to make conforming changes.

Section 43. Amends s. 381.0064, F.S., to make conforming changes.

Section 44. Amends s. 381.0101, F.S., to make conforming changes.

Section 45. Amends s. 403.08601, F.S., to make conforming changes.

Section 46. Amends s. 403.0871, F.S., to make conforming changes.

Section 47. Amends s. 403.0872, F.S., to make conforming changes.

Section 48. Amends s. 403.707, F.S., to make conforming changes.

Section 49. Amends s. 403.861, F.S., to make conforming changes.

Section 50. Amends s. 489.551, F.S., to make conforming changes.

Section 51. Amends s. 590.02, F.S., to make conforming changes.

Section 52. Provides a directive to the Division of Law Revision.

Section 53. Provides an effective date of July 1, 2020, except as otherwise expressly provided.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill may have an indeterminate positive impact on state government revenues because some revenue could be realized from enforcement citations and fines.

2. Expenditures:

The bill may have an insignificant negative fiscal impact on DEP and DOH that can be absorbed within existing resources to complete recommendations on the type two transfer. The bill transfers all of the resources and personnel for the OSTDS program by a type two transfer from DOH to DEP, so DEP would use these resources to regulate the OSTDS program beginning July 1, 2021. There may also be an insignificant negative fiscal impact on DEP that can be absorbed within existing resources to administer and support the OSTDS TAC.

The bill requires DEP to make changes to multiple regulatory programs, update BMAPs, and develop, submit, and review multiple new reports.

The bill requires DEP to establish a real-time water quality monitoring program. The bill also requires DEP to create a wastewater grant program. These requirements are subject to appropriation, so there is no fiscal impact.

The bill requires DACS to conduct onsite inspections at least every two years for agricultural producers enrolled in a BMP.

The proposed House of Representatives' Fiscal Year 2020-2021 General Appropriations Act appropriates $955,592 in trust funds and 8.00 full-time employees (FTE) to DACS for the expected increase in the number of required site visits to be conducted; $122 million in nonrecurring general revenue funds for water quality improvement cost share grants; $10.8 million in nonrecurring general revenue funds for water quality improvements and monitoring; and $50 million in nonrecurring general revenue and trust funds for TMDLs.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

The bill may have an indeterminate negative fiscal impact on local governments because they will be required to create wastewater treatment plans and OSTDS remediation plans.

The bill may have an indeterminate negative fiscal impact to any local government-owned wastewater facilities discharging into the IRL because they must upgrade to provide advanced waste treatment.

The bill may have an indeterminate negative fiscal impact to any local government-owned wastewater facilities that land apply biosolids on a site that does not meet the minimum requirements for land application established by the bill.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

It is unclear whether the transfer of the OSTDS program to DEP on July 1, 2021, will result in changes to the program that could affect the private sector, such as changes in the cost of permit fees or the approval of using lower cost, nutrient reducing OSTDSs.

The bill may have an indeterminate negative fiscal impact to the private sector because the bill requires updates to stormwater rules and the adoption of new OSTDS and wastewater rules. However, if that impact exceeds $1 million over five years, the rules will require legislative ratification.

The additional requirements of OSTDS remediation plans and wastewater treatment plans may result in a negative fiscal impact on the private sector entities within BMAPs that must address OSTDS or wastewater pollution to meet the TMDL.

The bill may have an indeterminate negative fiscal impact to any private wastewater facilities discharging into the IRL because the facility must make facility improvements to provide advanced waste treatment.

The bill may have an indeterminate negative fiscal impact to any privately-owned wastewater facilities or land application sites that will no longer be permitted to land apply biosolids in certain locations.

D. FISCAL COMMENTS:

The bill may prevent costly litigation related to granting rights to natural resources, when current legal precedent suggests such rights may not be granted at the state or local level.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The county/municipality mandates provision of Art. VII, s. 18 of the Florida Constitution may apply because this bill requires local governments to develop wastewater treatment plans and OSTDS remediation plans. An exemption may apply if the requirement results in an insignificant fiscal impact. In addition, an exception may apply because the requirement applies to similarly situated persons and the bill provides a legislative finding that the requirements of the bill fulfill an important state interest.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill requires DEP and the WMDs to adopt rules to implement the various programs, reports, and other requirements related to water quality that are established by the bill. DEP and the WMDs appear to have sufficient rulemaking authority to adopt the rules required by the bill. In addition, the bill requires the rules for biosolids management to be ratified by the Legislature; as such, the biosolids rules will not take effect until ratified.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

Not applicable.

A bill to be entitled

An act relating to environmental resource management; providing a short title; requiring the Department of Health to provide a report regarding the Onsite Sewage Program to the Governor and Legislature by a specified date; directing the Department of Health and the Department of Environmental Protection to submit recommendations regarding the transfer of the program to the Governor and Legislature by a specified date; requiring the departments to enter into an interagency agreement that meets certain requirements by a specified date; transferring the Onsite Sewage Program in the Department of Health to the Department of Environmental Protection; providing that certain employees retain and transfer certain types of leave upon the transfer; amending s. 20.255, F.S.; revising the number of Cabinet members required to concur with the appointment of the Secretary of Environmental Protection; amending s. 373.036, F.S.; directing water management districts to submit consolidated annual reports to the Office of Economic and Demographic Research; requiring such reports to include connection and conversion projects for onsite sewage treatment and disposal systems; amending s. 373.223, F.S.; requiring the Department of Environmental Protection,

in coordination with the water management districts, to conduct a study on the bottled water industry in this state; providing requirements for the study; requiring the department to submit a report containing the findings of the study to the Governor and the Legislature by a specified date; prohibiting the approval of certain permits; providing exceptions; amending s. 373.4131, F.S.; requiring the Department of Environmental Protection to include stormwater structural control inspections as part of its regular staff training; requiring the department and the water management districts to adopt rules regarding stormwater design and operation regulations by a specified date and address specified information as part of such rule development; requiring the department to evaluate data relating to self-certification and provide the Legislature with recommendations for improvements; amending s. 381.0065, F.S.; authorizing the use of specified nutrient reducing onsite sewage treatment and disposal systems to meet certain total maximum daily load requirements; requiring the Department of Environmental Protection to adopt rules relating to the location of onsite sewage treatment and disposal systems and complete such rulemaking by a specified

date; providing requirements for such rules; requiring the department to determine that a hardship exists for certain variance applicants; providing a definition; providing that certain provisions relating to existing setback requirements are applicable to permits only until the effective date of certain rules adopted by the department; removing provisions requiring certain onsite sewage treatment and disposal system research projects to be approved by a Department of Health technical review and advisory panel; removing provisions prohibiting the award of research projects to certain entities; removing provisions establishing a Department of Health onsite sewage treatment and disposal system research review and advisory committee; conforming provisions to changes made by the act; amending s. 381.00651, F.S.; directing county health departments to coordinate with the Department of Environmental Protection to administer onsite sewage treatment and disposal system evaluation and assessment programs; conforming provisions to changes made by the act; creating s. 381.00652, F.S.; authorizing the Department of Environmental Protection, in consultation with the Department of Health, to appoint an onsite sewage treatment and disposal systems technical advisory committee;

providing for committee purpose, membership, and expiration; requiring the committee to submit its recommendations to the Governor and Legislature; repealing s. 381.0068, F.S., relating to the Department of Health onsite sewage treatment and disposal systems technical review and advisory panel; amending s. 403.061, F.S.; requiring the department to adopt rules relating to domestic wastewater collection and transmission system pipe leakages and inflow and infiltration; requiring the department to adopt rules to require public utilities or their affiliated companies holding, applying for, or renewing a domestic wastewater discharge permit to file certain annual reports and data with the department; creating s. 403.0616, F.S.; requiring the department, subject to legislative appropriation, to establish a real-time water quality monitoring program; encouraging the formation of public-private partnerships; amending s. 403.067, F.S.; requiring basin management action plans for nutrient total maximum daily loads to include wastewater treatment and onsite sewage treatment and disposal system remediation plans that meet certain requirements; requiring the Department of Agriculture and Consumer Services to collect fertilizer application records from certain agricultural

producers and provide the information to the department annually by a specified date; requiring the Department of Agriculture and Consumer Services to perform onsite inspections of the agricultural producers at specified intervals; providing for prioritization of such inspections; requiring certain basin management action plans to include cooperative agricultural regional water quality improvement elements; authorizing the Department of Agriculture and Consumer Services, in cooperation with specified entities, to annually develop research plans and legislative budget requests relating to best management practices by a specified date; requiring such entities to submit such plans to the Department of Environmental Protection and the Department of Agriculture and Consumer Services by a specific date; requiring the Department of Environmental Protection to work with specified entities to consider the adoption of best management practices for nutrient impacts from golf courses; creating s. 403.0671, F.S.; directing the Department of Environmental Protection, in coordination with specified entities, to submit a report regarding wastewater projects identified in the basin management action plans to the Governor and Legislature by a specified date and to submit certain

wastewater project cost estimates to the Office of Economic and Demographic Research; creating s. 403.0673, F.S.; establishing a wastewater grant program within the Department of Environmental Protection; authorizing the department to distribute appropriated funds for certain projects; providing requirements for the distribution; requiring the department to coordinate with each water management district to identify grant recipients; requiring an annual report to the Governor and Legislature by a specified date; creating s. 403.0855, F.S.; providing legislative findings regarding the regulation of biosolids management in this state; requiring the department to adopt rules for biosolids management; providing that such rules are not effective until ratified by the Legislature; providing permitting requirements for biosolids land application sites and facilities; requiring biosolids application sites and facilities to be enrolled in a specified best management practices program or be within a specified agricultural operation; providing requirements for the land application of biosolids; providing a definition; authorizing the enforcement or extension of certain local government regulations relating to the land application of biosolids until such regulations are

repealed; amending s. 403.086, F.S.; prohibiting sewage disposal facilities from disposing waste into the Indian River Lagoon beginning on a specified date without certain advanced waste treatment; directing the Department of Environmental Protection, in consultation with specified entities, to submit a report to the Governor and Legislature by a specified date; requiring sewage disposal facilities to have a power outage contingency plan, to take steps to prevent overflows and leaks and ensure that the wastewater reaches the facility for appropriate treatment, and to provide the Department of Environmental Protection with certain information; requiring the department to adopt rules; limiting the scope of such rules; authorizing utilities and operating entities to consolidate certain reports; providing that specified compliance is evidence in mitigation for assessment of certain penalties; amending s. 403.087, F.S.; requiring the department to issue operation permits for certain domestic wastewater treatment facilities under certain circumstances; amending s. 403.088, F.S.; revising the permit conditions for a water pollution operation permit; requiring the department to submit a report identifying all domestic wastewater treatment

facilities that experienced sanitary sewer overflows to the Governor and Legislature by a specified date; amending s. 403.0891, F.S.; requiring model stormwater management programs to contain model ordinances for nutrient reduction practices and green infrastructure; amending s. 403.121, F.S.; revising administrative penalties for violations of ch. 403, F.S.; amending ss. 403.1835 and 403.1838, F.S.; requiring the Department of Environmental Protection to give funding priority to certain domestic wastewater utility projects; amending s. 403.412, F.S.; prohibiting local governments from recognizing or granting certain legal rights to the natural environment or granting such rights relating to the natural environment to a person or political subdivision; providing construction; providing a determination and declaration of important state interest; amending ss. 153.54, 153.73, 163.3180, 180.03, 311.105, 327.46, 373.250, 373.414, 373.705, 373.707, 373.709, 373.807, 376.307, 380.0552, 381.006, 381.0061, 381.0064, 381.0101, 403.08601, 403.0871, 403.0872, 403.707, 403.861, 489.551, and 590.02, F.S.; conforming cross-references and provisions to changes made by the act; providing a directive to the Division of Law Revision; providing effective dates.

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

Section 1. This act may be cited as the "Clean Waterways Act."

Section 2. (1) By July 1, 2020, the Department of Health must provide a report to the Governor, the President of the Senate, and the Speaker of the House of Representatives detailing the following information regarding the Onsite Sewage Program:

(a) The average number of permits issued each year;

(b) The number of department employees conducting work on or related to the program each year; and

(c) The program's costs and expenditures, including, but not limited to, salaries and benefits, equipment costs, and contracting costs.

(2) By December 31, 2020, the Department of Health and the Department of Environmental Protection shall submit recommendations to the Governor, the President of the Senate, and the Speaker of the House of Representatives regarding the type two transfer of the Onsite Sewage Program in subsection (4). The recommendations must address all aspects of the type two transfer, including the continued role of the county health departments in the permitting, inspection, and tracking of onsite sewage treatment and disposal systems under the direction of the Department of Environmental Protection.

(3) By June 30, 2021, the Department of Health and the Department of Environmental Protection shall enter into an interagency agreement based on the recommendations required under subsection (2) and on recommendations from a plan that must address all agency cooperation for a period of not less than 5 years after the transfer, including:

(a) The continued role of the county health departments in the permitting, inspection, data management, and tracking of onsite sewage treatment and disposal systems under the direction of the Department of Environmental Protection.

(b) The appropriate proportionate number of administrative, auditing, inspector general, attorney, and operational support positions, and their related funding levels and sources and assigned property, to be transferred from the Office of General Counsel, the Office of Inspector General, and the Division of Administrative Services or other relevant offices or divisions within the Department of Health to the Department of Environmental Protection.

(c) The development of a recommended plan to address the transfer or shared use of buildings, regional offices, and other facilities used or owned by the Department of Health.

(d) Any operating budget adjustments that are necessary to implement the requirements of this act. Adjustments made to the operating budgets of the agencies in the implementation of this act must be made in consultation with the appropriate

substantive and fiscal committees of the Senate and the House of Representatives. The revisions to the approved operating budgets for the 2021-2022 fiscal year which are necessary to reflect the organizational changes made by this act must be implemented pursuant to s. 216.292(4)(d), Florida Statutes, and are subject to s. 216.177, Florida Statutes. Subsequent adjustments between the Department of Health and the Department of Environmental Protection which are determined necessary by the respective agencies and approved by the Executive Office of the Governor are authorized and subject to s. 216.177, Florida Statutes. The appropriate substantive committees of the Senate and the House of Representatives must also be notified of the proposed revisions to ensure their consistency with legislative policy and intent.

(4) Effective July 1, 2021, all powers, duties, functions, records, offices, personnel, associated administrative support positions, property, pending issues, existing contracts, administrative authority, administrative rules, and unexpended balances of appropriations, allocations, and other funds for the regulation of onsite sewage treatment and disposal systems relating to the Onsite Sewage Program in the Department of Health are transferred by a type two transfer, as defined in s. 20.06(2), Florida Statutes, to the Department of Environmental Protection.

(5) Notwithstanding chapter 60L-34, Florida Administrative

Code, or any law to the contrary, employees who are transferred from the Department of Health to the Department of Environmental Protection to fill positions transferred by this act retain and transfer any accrued annual leave, sick leave, and regular and special compensatory leave balances.

Section 3. Subsection (1) of section 20.255, Florida Statutes, is amended to read:

20.255 Department of Environmental Protection.—There is created a Department of Environmental Protection.

(1) The head of the Department of Environmental Protection shall be a secretary, who shall be appointed by the Governor, with the concurrence of two or more ~~three~~ members of the Cabinet. The secretary shall be confirmed by the Florida Senate. The secretary shall serve at the pleasure of the Governor.

Section 4. Paragraphs (a) and (b) of subsection (7) of section 373.036, Florida Statutes, are amended to read:

373.036 Florida water plan; district water management plans.—

(7) CONSOLIDATED WATER MANAGEMENT DISTRICT ANNUAL REPORT.—

(a) By March 1, annually, each water management district shall prepare and submit to the Office of Economic and Demographic Research, the department, the Governor, the President of the Senate, and the Speaker of the House of Representatives a consolidated water management district annual report on the management of water resources. In addition, copies

must be provided by the water management districts to the chairs of all legislative committees having substantive or fiscal jurisdiction over the districts and the governing board of each county in the district having jurisdiction or deriving any funds for operations of the district. Copies of the consolidated annual report must be made available to the public, either in printed or electronic format.

(b) The consolidated annual report shall contain the following elements, as appropriate to that water management district:

1. A district water management plan annual report or the annual work plan report allowed in subparagraph (2)(e)4.

2. The department-approved minimum flows and minimum water levels annual priority list and schedule required by s. 373.042(3).

3. The annual 5-year capital improvements plan required by s. 373.536(6)(a)3.

4. The alternative water supplies annual report required by s. 373.707(8)(n).

5. The final annual 5-year water resource development work program required by s. 373.536(6)(a)4.

6. The Florida Forever Water Management District Work Plan annual report required by s. 373.199(7).

7. The mitigation donation annual report required by s. 373.414(1)(b)2.

8. Information on all projects related to water quality or water quantity as part of a 5-year work program, including:

a. A list of all specific projects identified to implement a basin management action plan, including any projects to connect onsite sewage treatment and disposal systems to central sewerage systems and convert onsite sewage treatment and disposal systems to enhanced nutrient reducing onsite sewage treatment and disposal systems, or a recovery or prevention strategy;

b. A priority ranking for each listed project for which state funding through the water resources development work program is requested, which must be made available to the public for comment at least 30 days before submission of the consolidated annual report;

c. The estimated cost for each listed project;

d. The estimated completion date for each listed project;

e. The source and amount of financial assistance to be made available by the department, a water management district, or other entity for each listed project; and

f. A quantitative estimate of each listed project's benefit to the watershed, water body, or water segment in which it is located.

9. A grade for each watershed, water body, or water segment in which a project listed under subparagraph 8. is located representing the level of impairment and violations of

adopted minimum flow or minimum water levels. The grading system must reflect the severity of the impairment of the watershed, water body, or water segment.

Section 5. Subsections (7) and (8) are added to section 373.223, Florida Statutes, to read:

373.223 Conditions for a permit.—

(7) The department shall, in coordination with the water management districts, conduct a study on the bottled water industry in the state.

(a) The study shall:

1. Identify all springs statewide that have an associated consumptive use permit for a bottled water facility producing its product with water derived from a spring. Such identification must include:

a. The magnitude of the spring;

b. Whether the spring has been identified as an Outstanding Florida Spring as defined in s. 373.802;

c. Any department or water management district adopted minimum flow or minimum water levels, the status of any adopted minimum flow or minimum water levels, and any associated recovery or prevention strategy;

d. The permitted and actual use associated with the consumptive use permits;

e. The reduction in flow associated with the permitted and actual use associated with the consumptive use permits;

f. The impact on springs of bottled water facilities as compared to other users; and

g. Types of water conservation measures employed at bottled water facilities permitted to derive water from a spring.

2. Identify the labeling and marketing regulations associated with the identification of bottled water as spring water, including whether these regulations incentivize the withdrawal of water from springs.

3. Evaluate the direct and indirect economic benefits to the local communities resulting from bottled water facilities that derive water from springs, including, but not limited to, tax revenue, job creation, and wages.

4. Evaluate the direct and indirect costs to the local communities located in proximity to springs impacted by withdrawals from bottled water production, including, but not limited to, the decreased recreational value of the spring and the cost to other users for the development of alternative water supply or reductions in permit durations and allocations.

5. Include a cost-benefit analysis of withdrawing, producing, marketing, selling, and consuming spring water as compared to other sources of bottled water.

6. Evaluate how much bottled water derived from Florida springs is sold in this state.

(b) By June 30, 2021, the department shall submit a report

containing the findings of the study to the Governor, the President of the Senate, the Speaker of the House of Representatives, and the Office of Economic and Demographic Research.

(c) As used in this section, the term "bottled water" has the same meaning as in s. 500.03, and the term "water derived from a spring" means water derived from an underground formation from which water flows naturally to the surface of the earth in the manner described in 21 C.F.R. 165.110(a)(2)(vi).

(8) Beginning July 1, 2020, a new consumptive use permit, or the renewal or modification of a consumptive use permit, that authorizes the use of water derived from a spring for bottled water may not be approved by the governing board or the department unless, in the case of a renewal or modification, the application for renewal or modification was submitted to the department or water management district prior to January 1, 2020. This subsection shall expire on June 30, 2022.

Section 6. Subsection (5) of section 373.4131, Florida Statutes, is amended, and subsection (6) is added to that section, to read:

373.4131 Statewide environmental resource permitting rules.—

(5) To ensure consistent implementation and interpretation of the rules adopted pursuant to this section, the department shall conduct or oversee regular assessment and training of its

staff and the staffs of the water management districts and local governments delegated local pollution control program authority under s. 373.441. The training must include coordinating field inspections of publicly and privately owned stormwater structural controls, such as stormwater retention and detention ponds.

(6) By January 1, 2021:

(a) The department and the water management districts shall initiate rulemaking to update the stormwater design and operation regulations, including updates to the Environmental Resource Permit Applicant's Handbooks, using the most recent scientific information available. As part of rule development, the department shall consider and address low-impact design best management practices and design criteria that increase the removal of nutrients from stormwater discharges, and measures for consistent application of the net improvement performance standard to ensure significant reductions of any pollutant loadings to a waterbody.

(b) The department shall evaluate inspection data relating to compliance by those entities that submit a self-certification under s. 403.814(12) and provide the Legislature with recommendations for improvements to the self-certification process.

Section 7. Subsection (7) is added to section 381.0065, Florida Statutes, to read:

381.0065 Onsite sewage treatment and disposal systems; regulation.—

(7) USE OF ENHANCED NUTRIENT REDUCING ONSITE SEWAGE TREATMENT AND DISPOSAL SYSTEMS.-To meet the requirements of a total maximum daily load, the department shall implement a fast-track approval process of no longer than 6 months for the determination of the use of American National Standards Institute 245 systems approved by the NSF International before July 1, 2020.

Section 8. Effective July 1, 2021, paragraphs (d) and (e) and (g) through (q) of subsection (2) of section 381.0065, Florida Statutes, are redesignated as paragraphs (e) and (g) and (h) through (r), respectively, subsections (3) and (4) are amended, and a new paragraph (d) is added to subsection (2) of that section, to read:

381.0065 Onsite sewage treatment and disposal systems; regulation.—

(2) DEFINITIONS.—As used in ss. 381.0065-381.0067, the term:

(d) "Department" means the Department of Environmental Protection.

(3) DUTIES AND POWERS OF THE DEPARTMENT OF ENVIRONMENTAL PROTECTION ~~HEALTH~~.—The department shall:

(a) Adopt rules to administer ss. 381.0065-381.0067, including definitions that are consistent with the definitions

in this section, ~~decreases to setback requirements where no health hazard exists,~~ increases for the lot-flow allowance for performance-based systems, requirements for separation from water table elevation during the wettest season, requirements for the design and construction of any component part of an onsite sewage treatment and disposal system, application and permit requirements for persons who maintain an onsite sewage treatment and disposal system, requirements for maintenance and service agreements for aerobic treatment units and performance-based treatment systems, and recommended standards, including disclosure requirements, for voluntary system inspections to be performed by individuals who are authorized by law to perform such inspections and who shall inform a person having ownership, control, or use of an onsite sewage treatment and disposal system of the inspection standards and of that person's authority to request an inspection based on all or part of the standards.

(b) Perform application reviews and site evaluations, issue permits, and conduct inspections and complaint investigations associated with the construction, installation, maintenance, modification, abandonment, operation, use, or repair of an onsite sewage treatment and disposal system for a residence or establishment with an estimated domestic sewage flow of 10,000 gallons or less per day, or an estimated commercial sewage flow of 5,000 gallons or less per day, which

is not currently regulated under chapter 403.

(c) Develop a comprehensive program to ensure that onsite sewage treatment and disposal systems regulated by the department are sized, designed, constructed, installed, sited, repaired, modified, abandoned, used, operated, and maintained in compliance with this section and rules adopted under this section to prevent groundwater contamination, including impacts from nutrient pollution, and surface water contamination and to preserve the public health. The department is the final administrative interpretive authority regarding rule interpretation. In the event of a conflict regarding rule interpretation, the Secretary of Environmental Protection ~~State Surgeon General~~, or his or her designee, shall timely assign a staff person to resolve the dispute.

(d) Grant variances in hardship cases under the conditions prescribed in this section and rules adopted under this section.

(e) Permit the use of a limited number of innovative systems for a specific period of time, when there is compelling evidence that the system will function properly and reliably to meet the requirements of this section and rules adopted under this section.

(f) Issue annual operating permits under this section.

(g) Establish and collect fees as established under s. 381.0066 for services provided with respect to onsite sewage treatment and disposal systems.

(h) Conduct enforcement activities, including imposing fines, issuing citations, suspensions, revocations, injunctions, and emergency orders for violations of this section, part I of chapter 386, or part III of chapter 489 or for a violation of any rule adopted under this section, part I of chapter 386, or part III of chapter 489.

(i) Provide or conduct education and training of department personnel, service providers, and the public regarding onsite sewage treatment and disposal systems.

(j) Supervise research on, demonstration of, and training on the performance, environmental impact, and public health impact of onsite sewage treatment and disposal systems within this state. Research fees collected under s. 381.0066(2)(k) must be used to develop and fund hands-on training centers designed to provide practical information about onsite sewage treatment and disposal systems to septic tank contractors, master septic tank contractors, contractors, inspectors, engineers, and the public and must also be used to fund research projects which focus on improvements of onsite sewage treatment and disposal systems, including use of performance-based standards and reduction of environmental impact. Research projects shall be ~~initially approved by the technical review and advisory panel and shall be~~ applicable to and reflect the soil conditions specific to the state ~~Florida~~. Such projects shall be awarded through competitive negotiation, using the procedures provided

in s. 287.055, to public or private entities that have experience in onsite sewage treatment and disposal systems in the state ~~Florida~~ and that are principally located in the state ~~Florida~~. ~~Research projects shall not be awarded to firms or entities that employ or are associated with persons who serve on either the technical review and advisory panel or the research review and advisory committee.~~

(k) Approve the installation of individual graywater disposal systems in which blackwater is treated by a central sewerage system.

(l) Regulate and permit the sanitation, handling, treatment, storage, reuse, and disposal of byproducts from any system regulated under this chapter ~~and not regulated by the Department of Environmental Protection~~.

(m) Permit and inspect portable or temporary toilet services and holding tanks. The department shall review applications, perform site evaluations, and issue permits for the temporary use of holding tanks, privies, portable toilet services, or any other toilet facility that is intended for use on a permanent or nonpermanent basis, including facilities placed on construction sites when workers are present. The department may specify standards for the construction, maintenance, use, and operation of any such facility for temporary use.

(n) Regulate and permit maintenance entities for

performance-based treatment systems and aerobic treatment unit systems. To ensure systems are maintained and operated according to manufacturer's specifications and designs, the department shall establish by rule minimum qualifying criteria for maintenance entities. The criteria shall include~~:~~ training, access to approved spare parts and components, access to manufacturer's maintenance and operation manuals, and service response time. The maintenance entity shall employ a contractor licensed under s. 489.105(3)(m), or part III of chapter 489, or a state-licensed wastewater plant operator, who is responsible for maintenance and repair of all systems under contract.

(4) PERMITS; INSTALLATION; AND CONDITIONS.—A person may not construct, repair, modify, abandon, or operate an onsite sewage treatment and disposal system without first obtaining a permit approved by the department. The department may issue permits to carry out this section~~, but shall not make the issuance of such permits contingent upon prior approval by the department of Environmental Protection~~, except that the issuance of a permit for work seaward of the coastal construction control line established under s. 161.053 shall be contingent upon receipt of any required coastal construction control line permit from the department ~~of Environmental Protection~~. A construction permit is valid for 18 months after ~~from~~ the date of issuance ~~date~~ and may be extended by the department for one 90-day period under rules adopted by the department. A repair permit is valid

for 90 days after ~~from~~ the date of issuance. An operating permit must be obtained before ~~prior to~~ the use of any aerobic treatment unit or if the establishment generates commercial waste. Buildings or establishments that use an aerobic treatment unit or generate commercial waste shall be inspected by the department at least annually to assure compliance with the terms of the operating permit. The operating permit for a commercial wastewater system is valid for 1 year after ~~from~~ the date of issuance and must be renewed annually. The operating permit for an aerobic treatment unit is valid for 2 years after ~~from~~ the date of issuance and must be renewed every 2 years. If all information pertaining to the siting, location, and installation conditions or repair of an onsite sewage treatment and disposal system remains the same, a construction or repair permit for the onsite sewage treatment and disposal system may be transferred to another person, if the transferee files, within 60 days after the transfer of ownership, an amended application providing all corrected information and proof of ownership of the property. A ~~There is no~~ fee is not associated with the processing of this supplemental information. A person may not contract to construct, modify, alter, repair, service, abandon, or maintain any portion of an onsite sewage treatment and disposal system without being registered under part III of chapter 489. A property owner who personally performs construction, maintenance, or repairs to a system serving his or her own

owner-occupied single-family residence is exempt from registration requirements for performing such construction, maintenance, or repairs on that residence, but is subject to all permitting requirements. A municipality or political subdivision of the state may not issue a building or plumbing permit for any building that requires the use of an onsite sewage treatment and disposal system unless the owner or builder has received a construction permit for such system from the department. A building or structure may not be occupied and a municipality, political subdivision, or any state or federal agency may not authorize occupancy until the department approves the final installation of the onsite sewage treatment and disposal system. A municipality or political subdivision of the state may not approve any change in occupancy or tenancy of a building that uses an onsite sewage treatment and disposal system until the department has reviewed the use of the system with the proposed change, approved the change, and amended the operating permit.

(a) Subdivisions and lots in which each lot has a minimum area of at least one-half acre and either a minimum dimension of 100 feet or a mean of at least 100 feet of the side bordering the street and the distance formed by a line parallel to the side bordering the street drawn between the two most distant points of the remainder of the lot may be developed with a water system regulated under s. 381.0062 and onsite sewage treatment and disposal systems, provided the projected daily sewage flow

does not exceed an average of 1,500 gallons per acre per day, and provided satisfactory drinking water can be obtained and all distance and setback, soil condition, water table elevation, and other related requirements of this section and rules adopted under this section can be met.

(b) Subdivisions and lots using a public water system as defined in s. 403.852 may use onsite sewage treatment and disposal systems, provided there are no more than four lots per acre, provided the projected daily sewage flow does not exceed an average of 2,500 gallons per acre per day, and provided that all distance and setback, soil condition, water table elevation, and other related requirements that are generally applicable to the use of onsite sewage treatment and disposal systems are met.

(c) Notwithstanding paragraphs (a) and (b), for subdivisions platted of record on or before October 1, 1991, when a developer or other appropriate entity has previously made or makes provisions, including financial assurances or other commitments, acceptable to the department ~~of Health~~, that a central water system will be installed by a regulated public utility based on a density formula, private potable wells may be used with onsite sewage treatment and disposal systems until the agreed-upon densities are reached. In a subdivision regulated by this paragraph, the average daily sewage flow may not exceed 2,500 gallons per acre per day. This section does not affect the validity of existing prior agreements. After October 1, 1991,

the exception provided under this paragraph is not available to a developer or other appropriate entity.

(d) Paragraphs (a) and (b) do not apply to any proposed residential subdivision with more than 50 lots or to any proposed commercial subdivision with more than 5 lots where a publicly owned or investor-owned sewage treatment ~~sewerage~~ system is available. ~~It is the intent of~~ This paragraph does not ~~to~~ allow development of additional proposed subdivisions in order to evade the requirements of this paragraph.

(e) The department shall adopt rules relating to the location of onsite sewage treatment and disposal systems, including establishing setback distances, to prevent groundwater contamination and surface water contamination and to preserve the public health. The rulemaking process for such rules must be completed by July 1, 2022, and the department shall notify the Division of Law Revision of the date such rules take effect. The rules must consider conventional and enhanced nutrient reducing onsite sewage treatment and disposal system designs, impaired or degraded water bodies, domestic wastewater and drinking water infrastructure, potable water sources, nonpotable wells, stormwater infrastructure, the onsite sewage treatment and disposal system remediation plans developed pursuant to s. 403.067(7)(a)9.b., nutrient pollution, and the recommendations of the onsite sewage treatment and disposal systems technical advisory committee established pursuant to s. 381.00652. The

rules must also allow a person to apply for and receive a variance from a rule requirement upon demonstration that the requirement would cause an undue hardship and granting the variance would not cause or contribute to the exceedance of a total maximum daily load.

(f) ~~(e)~~ Onsite sewage treatment and disposal systems that are permitted before the rules in paragraph (e) take effect may ~~must~~ not be placed closer than:

1. Seventy-five feet from a private potable well.

2. Two hundred feet from a public potable well serving a residential or nonresidential establishment having a total sewage flow of greater than 2,000 gallons per day.

3. One hundred feet from a public potable well serving a residential or nonresidential establishment having a total sewage flow of less than or equal to 2,000 gallons per day.

4. Fifty feet from any nonpotable well.

5. Ten feet from any storm sewer pipe, to the maximum extent possible, but in no instance shall the setback be less than 5 feet.

6. Seventy-five feet from the mean high-water line of a tidally influenced surface water body.

7. Seventy-five feet from the mean annual flood line of a permanent nontidal surface water body.

8. Fifteen feet from the design high-water line of retention areas, detention areas, or swales designed to contain

standing or flowing water for less than 72 hours after a rainfall or the design high-water level of normally dry drainage ditches or normally dry individual lot stormwater retention areas.

~~(f) Except as provided under paragraphs (e) and (t), no limitations shall be imposed by rule, relating to the distance between an onsite disposal system and any area that either permanently or temporarily has visible surface water.~~

(g) ~~All provisions of~~ This section and rules adopted under this section relating to soil condition, water table elevation, distance, and other setback requirements must be equally applied to all lots, with the following exceptions:

1. Any residential lot that was platted and recorded on or after January 1, 1972, or that is part of a residential subdivision that was approved by the appropriate permitting agency on or after January 1, 1972, and that was eligible for an onsite sewage treatment and disposal system construction permit on the date of such platting and recording or approval shall be eligible for an onsite sewage treatment and disposal system construction permit, regardless of when the application for a permit is made. If rules in effect at the time the permit application is filed cannot be met, residential lots platted and recorded or approved on or after January 1, 1972, shall, to the maximum extent possible, comply with the rules in effect at the time the permit application is filed. At a minimum, however,

those residential lots platted and recorded or approved on or after January 1, 1972, but before January 1, 1983, shall comply with those rules in effect on January 1, 1983, and those residential lots platted and recorded or approved on or after January 1, 1983, shall comply with those rules in effect at the time of such platting and recording or approval. In determining the maximum extent of compliance with current rules that is possible, the department shall allow structures and appurtenances thereto which were authorized at the time such lots were platted and recorded or approved.

2. Lots platted before 1972 are subject to a 50-foot minimum surface water setback and are not subject to lot size requirements. The projected daily flow for onsite sewage treatment and disposal systems for lots platted before 1972 may not exceed:

a. Two thousand five hundred gallons per acre per day for lots served by public water systems as defined in s. 403.852.

b. One thousand five hundred gallons per acre per day for lots served by water systems regulated under s. 381.0062.

(h)1. The department may grant variances in hardship cases which may be less restrictive than the provisions specified in this section. If a variance is granted and the onsite sewage treatment and disposal system construction permit has been issued, the variance may be transferred with the system construction permit, if the transferee files, within 60 days

after the transfer of ownership, an amended construction permit application providing all corrected information and proof of ownership of the property and if the same variance would have been required for the new owner of the property as was originally granted to the original applicant for the variance. A ~~There is no~~ fee is not associated with the processing of this supplemental information. A variance may not be granted under this section until the department is satisfied that:

a. The hardship was not caused intentionally by the action of the applicant;

b. A ~~No~~ reasonable alternative, taking into consideration factors such as cost, does not exist ~~exists~~ for the treatment of the sewage; and

c. The discharge from the onsite sewage treatment and disposal system will not adversely affect the health of the applicant or the public or significantly degrade the groundwater or surface waters.

Where soil conditions, water table elevation, and setback provisions are determined by the department to be satisfactory, special consideration must be given to those lots platted before 1972.

2. The department shall appoint and staff a variance review and advisory committee, which shall meet monthly to recommend agency action on variance requests. The committee

shall make its recommendations on variance requests at the meeting in which the application is scheduled for consideration, except for an extraordinary change in circumstances, the receipt of new information that raises new issues, or when the applicant requests an extension. The committee shall consider the criteria in subparagraph 1. in its recommended agency action on variance requests and shall also strive to allow property owners the full use of their land where possible. The committee consists of the following:

a. The Secretary of Environmental Protection ~~State Surgeon General~~ or his or her designee.

b. A representative from the county health departments.

c. A representative from the home building industry recommended by the Florida Home Builders Association.

d. A representative from the septic tank industry recommended by the Florida Onsite Wastewater Association.

e. A representative from the Department of Health ~~Environmental Protection~~.

f. A representative from the real estate industry who is also a developer in this state who develops lots using onsite sewage treatment and disposal systems, recommended by the Florida Association of Realtors.

g. A representative from the engineering profession recommended by the Florida Engineering Society.

Members shall be appointed for a term of 3 years, with such appointments being staggered so that the terms of no more than two members expire in any one year. Members shall serve without remuneration, but if requested, shall be reimbursed for per diem and travel expenses as provided in s. 112.061.

(i) A construction permit may not be issued for an onsite sewage treatment and disposal system in any area zoned or used for industrial or manufacturing purposes, or its equivalent, where a publicly owned or investor-owned sewage treatment system is available, or where a likelihood exists that the system will receive toxic, hazardous, or industrial waste. An existing onsite sewage treatment and disposal system may be repaired if a publicly owned or investor-owned sewage treatment ~~sewerage~~ system is not available within 500 feet of the building sewer stub-out and if system construction and operation standards can be met. This paragraph does not require publicly owned or investor-owned sewage ~~sewerage~~ treatment systems to accept anything other than domestic wastewater.

1. A building located in an area zoned or used for industrial or manufacturing purposes, or its equivalent, when such building is served by an onsite sewage treatment and disposal system, must not be occupied until the owner or tenant has obtained written approval from the department. The department may ~~shall~~ not grant approval when the proposed use of the system is to dispose of toxic, hazardous, or industrial

wastewater or toxic or hazardous chemicals.

2. Each person who owns or operates a business or facility in an area zoned or used for industrial or manufacturing purposes, or its equivalent, or who owns or operates a business that has the potential to generate toxic, hazardous, or industrial wastewater or toxic or hazardous chemicals, and uses an onsite sewage treatment and disposal system that is installed on or after July 5, 1989, must obtain an annual system operating permit from the department. A person who owns or operates a business that uses an onsite sewage treatment and disposal system that was installed and approved before July 5, 1989, does not need to ~~not~~ obtain a system operating permit. However, upon change of ownership or tenancy, the new owner or operator must notify the department of the change, and the new owner or operator must obtain an annual system operating permit, regardless of the date that the system was installed or approved.

3. The department shall periodically review and evaluate the continued use of onsite sewage treatment and disposal systems in areas zoned or used for industrial or manufacturing purposes, or its equivalent, and may require the collection and analyses of samples from within and around such systems. If the department finds that toxic or hazardous chemicals or toxic, hazardous, or industrial wastewater have been or are being disposed of through an onsite sewage treatment and disposal

system, the department shall initiate enforcement actions against the owner or tenant to ensure adequate cleanup, treatment, and disposal.

(j) An onsite sewage treatment and disposal system designed by a professional engineer registered in the state and certified by such engineer as complying with performance criteria adopted by the department must be approved by the department subject to the following:

1. The performance criteria applicable to engineer-designed systems must be limited to those necessary to ensure that such systems do not adversely affect the public health or significantly degrade the groundwater or surface water. Such performance criteria shall include consideration of the quality of system effluent, the proposed total sewage flow per acre, wastewater treatment capabilities of the natural or replaced soil, water quality classification of the potential surface-water-receiving body, and the structural and maintenance viability of the system for the treatment of domestic wastewater. However, performance criteria shall address only the performance of a system and not a system's design.

2. A person electing to use ~~utilize~~ an engineer-designed system shall, upon completion of the system design, submit such design, certified by a registered professional engineer, to the county health department. The county health department may use ~~utilize~~ an outside consultant to review the engineer-designed

system, with the actual cost of such review to be borne by the applicant. Within 5 working days after receiving an engineer-designed system permit application, the county health department shall request additional information if the application is not complete. Within 15 working days after receiving a complete application for an engineer-designed system, the county health department ~~either~~ shall issue the permit or, if it determines that the system does not comply with the performance criteria, shall notify the applicant of that determination and refer the application to the department for a determination as to whether the system should be approved, disapproved, or approved with modification. The department engineer's determination shall prevail over the action of the county health department. The applicant shall be notified in writing of the department's determination and of the applicant's rights to pursue a variance or seek review under the provisions of chapter 120.

3. The owner of an engineer-designed performance-based system must maintain a current maintenance service agreement with a maintenance entity permitted by the department. The maintenance entity shall inspect each system at least twice each year and shall report quarterly to the department on the number of systems inspected and serviced. The reports may be submitted electronically.

4. The property owner of an owner-occupied, single-family residence may be approved and permitted by the department as a

maintenance entity for his or her own performance-based treatment system upon written certification from the system manufacturer's approved representative that the property owner has received training on the proper installation and service of the system. The maintenance service agreement must conspicuously disclose that the property owner has the right to maintain his or her own system and is exempt from contractor registration requirements for performing construction, maintenance, or repairs on the system but is subject to all permitting requirements.

5. The property owner shall obtain a biennial system operating permit from the department for each system. The department shall inspect the system at least annually, or on such periodic basis as the fee collected permits, and may collect system-effluent samples if appropriate to determine compliance with the performance criteria. The fee for the biennial operating permit shall be collected beginning with the second year of system operation.

6. If an engineer-designed system fails to properly function or fails to meet performance standards, the system shall be re-engineered, if necessary, to bring the system into compliance with the provisions of this section.

(k) An innovative system may be approved in conjunction with an engineer-designed site-specific system that ~~which~~ is certified by the engineer to meet the performance-based criteria

adopted by the department.

(l) For the Florida Keys, the department shall adopt a special rule for the construction, installation, modification, operation, repair, maintenance, and performance of onsite sewage treatment and disposal systems which considers the unique soil conditions and water table elevations, densities, and setback requirements. On lots where a setback distance of 75 feet from surface waters, saltmarsh, and buttonwood association habitat areas cannot be met, an injection well, approved and permitted by the department, may be used for disposal of effluent from onsite sewage treatment and disposal systems. The following additional requirements apply to onsite sewage treatment and disposal systems in Monroe County:

1. The county, each municipality, and those special districts established for the purpose of the collection, transmission, treatment, or disposal of sewage shall ensure, in accordance with the specific schedules adopted by the Administration Commission under s. 380.0552, the completion of onsite sewage treatment and disposal system upgrades to meet the requirements of this paragraph.

2. Onsite sewage treatment and disposal systems must cease discharge by December 31, 2015, or must comply with department rules and provide the level of treatment which, on a permitted annual average basis, produces an effluent that contains no more than the following concentrations:

a. Biochemical Oxygen Demand (CBOD5) of 10 mg/l.

b. Suspended Solids of 10 mg/l.

c. Total Nitrogen, expressed as N, of 10 mg/l or a reduction in nitrogen of at least 70 percent. A system that has been tested and certified to reduce nitrogen concentrations by at least 70 percent shall be deemed to be in compliance with this standard.

d. Total Phosphorus, expressed as P, of 1 mg/l.

In addition, onsite sewage treatment and disposal systems discharging to an injection well must provide basic disinfection as defined by department rule.

3. In areas not scheduled to be served by a central sewerage system ~~sewer~~, onsite sewage treatment and disposal systems must, by December 31, 2015, comply with department rules and provide the level of treatment described in subparagraph 2.

4. In areas scheduled to be served by a central sewerage system ~~sewer~~ by December 31, 2015, if the property owner has paid a connection fee or assessment for connection to the central sewerage ~~sewer~~ system, the property owner may install a holding tank with a high water alarm or an onsite sewage treatment and disposal system that meets the following minimum standards:

a. The existing tanks must be pumped and inspected and certified as being watertight and free of defects in accordance

with department rule; and

b. A sand-lined drainfield or injection well in accordance with department rule must be installed.

5. Onsite sewage treatment and disposal systems must be monitored for total nitrogen and total phosphorus concentrations as required by department rule.

6. The department shall enforce proper installation, operation, and maintenance of onsite sewage treatment and disposal systems pursuant to this chapter, including ensuring that the appropriate level of treatment described in subparagraph 2. is met.

7. The authority of a local government, including a special district, to mandate connection of an onsite sewage treatment and disposal system is governed by s. 4, chapter 99-395, Laws of Florida.

8. Notwithstanding any other ~~provision of~~ law, an onsite sewage treatment and disposal system installed after July 1, 2010, in unincorporated Monroe County, excluding special wastewater districts, that complies with the standards in subparagraph 2. is not required to connect to a central sewerage ~~sewer~~ system until December 31, 2020.

(m) A ~~No~~ product sold in the state for use in onsite sewage treatment and disposal systems may not contain any substance in concentrations or amounts that would interfere with or prevent the successful operation of such system, or that

would cause discharges from such systems to violate applicable water quality standards. The department shall publish criteria for products known or expected to meet the conditions of this paragraph. If ~~In the event~~ a product does not meet such criteria, such product may be sold if the manufacturer satisfactorily demonstrates to the department that the conditions of this paragraph are met.

(n) Evaluations for determining the seasonal high-water table elevations or the suitability of soils for the use of a new onsite sewage treatment and disposal system shall be performed by department personnel, professional engineers registered in the state, or such other persons with expertise, as defined by rule, in making such evaluations. Evaluations for determining mean annual flood lines shall be performed by those persons identified in paragraph (2)(k) ~~(2)(j)~~. The department shall accept evaluations submitted by professional engineers and such other persons as meet the expertise established by this section or by rule unless the department has a reasonable scientific basis for questioning the accuracy or completeness of the evaluation.

~~(o) The department shall appoint a research review and advisory committee, which shall meet at least semiannually. The committee shall advise the department on directions for new research, review and rank proposals for research contracts, and review draft research reports and make comments. The committee~~

~~is comprised of:~~

~~1. A representative of the State Surgeon General, or his or her designee.~~

~~2. A representative from the septic tank industry.~~

~~3. A representative from the home building industry.~~

~~4. A representative from an environmental interest group.~~

~~5. A representative from the State University System, from a department knowledgeable about onsite sewage treatment and disposal systems.~~

~~6. A professional engineer registered in this state who has work experience in onsite sewage treatment and disposal systems.~~

~~7. A representative from local government who is knowledgeable about domestic wastewater treatment.~~

~~8. A representative from the real estate profession.~~

~~9. A representative from the restaurant industry.~~

~~10. A consumer.~~

~~Members shall be appointed for a term of 3 years, with the appointments being staggered so that the terms of no more than four members expire in any one year. Members shall serve without remuneration, but are entitled to reimbursement for per diem and travel expenses as provided in s. 112.061.~~

(o) ~~(p)~~ An application for an onsite sewage treatment and disposal system permit shall be completed in full, signed by the

owner or the owner's authorized representative, or by a contractor licensed under chapter 489, and shall be accompanied by all required exhibits and fees. ~~No~~ Specific documentation of property ownership is not ~~shall be~~ required as a prerequisite to the review of an application or the issuance of a permit. The issuance of a permit does not constitute determination by the department of property ownership.

(p) ~~(q)~~ The department may not require any form of subdivision analysis of property by an owner, developer, or subdivider before ~~prior to~~ submission of an application for an onsite sewage treatment and disposal system.

(q) ~~(r)~~ ~~Nothing in~~ This section does not limit ~~limits~~ the power of a municipality or county to enforce other laws for the protection of the public health and safety.

(r) ~~(s)~~ In the siting of onsite sewage treatment and disposal systems, including drainfields, shoulders, and slopes, guttering may ~~shall~~ not be required on single-family residential dwelling units for systems located greater than 5 feet from the roof drip line of the house. If guttering is used on residential dwelling units, the downspouts shall be directed away from the drainfield.

(s) ~~(t)~~ Notwithstanding ~~the provisions of~~ subparagraph (g)1., onsite sewage treatment and disposal systems located in floodways of the Suwannee and Aucilla Rivers must adhere to the following requirements:

1. The absorption surface of the drainfield may ~~shall~~ not be subject to flooding based on 10-year flood elevations. Provided, however, for lots or parcels created by the subdivision of land in accordance with applicable local government regulations before ~~prior to~~ January 17, 1990, if an applicant cannot construct a drainfield system with the absorption surface of the drainfield at an elevation equal to or above 10-year flood elevation, the department shall issue a permit for an onsite sewage treatment and disposal system within the 10-year floodplain of rivers, streams, and other bodies of flowing water if all of the following criteria are met:

a. The lot is at least one-half acre in size;

b. The bottom of the drainfield is at least 36 inches above the 2-year flood elevation; and

c. The applicant installs ~~either:~~ a waterless, incinerating, or organic waste composting toilet and a graywater system and drainfield in accordance with department rules; an aerobic treatment unit and drainfield in accordance with department rules; a system ~~approved by the State Health Office~~ that is capable of reducing effluent nitrate by at least 50 percent in accordance with department rules; or a system other than a system using alternative drainfield materials in accordance with department rules ~~approved by the county health department pursuant to department rule other than a system using alternative drainfield materials~~. The United States Department

of Agriculture Soil Conservation Service soil maps, State of Florida Water Management District data, and Federal Emergency Management Agency Flood Insurance maps are resources that shall be used to identify flood-prone areas.

2. The use of fill or mounding to elevate a drainfield system out of the 10-year floodplain of rivers, streams, or other bodies of flowing water may ~~shall~~ not be permitted if such a system lies within a regulatory floodway of the Suwannee and Aucilla Rivers. In cases where the 10-year flood elevation does not coincide with the boundaries of the regulatory floodway, the regulatory floodway will be considered for the purposes of this subsection to extend at a minimum to the 10-year flood elevation.

(t)1.~~(u)1.~~ The owner of an aerobic treatment unit system shall maintain a current maintenance service agreement with an aerobic treatment unit maintenance entity permitted by the department. The maintenance entity shall inspect each aerobic treatment unit system at least twice each year and shall report quarterly to the department on the number of aerobic treatment unit systems inspected and serviced. The reports may be submitted electronically.

2. The property owner of an owner-occupied, single-family residence may be approved and permitted by the department as a maintenance entity for his or her own aerobic treatment unit system upon written certification from the system manufacturer's

approved representative that the property owner has received training on the proper installation and service of the system. The maintenance entity service agreement must conspicuously disclose that the property owner has the right to maintain his or her own system and is exempt from contractor registration requirements for performing construction, maintenance, or repairs on the system but is subject to all permitting requirements.

3. A septic tank contractor licensed under part III of chapter 489, if approved by the manufacturer, may not be denied access by the manufacturer to aerobic treatment unit system training or spare parts for maintenance entities. After the original warranty period, component parts for an aerobic treatment unit system may be replaced with parts that meet manufacturer's specifications but are manufactured by others. The maintenance entity shall maintain documentation of the substitute part's equivalency for 2 years and shall provide such documentation to the department upon request.

4. The owner of an aerobic treatment unit system shall obtain a system operating permit from the department and allow the department to inspect during reasonable hours each aerobic treatment unit system at least annually, and such inspection may include collection and analysis of system-effluent samples for performance criteria established by rule of the department.

(u) ~~(v)~~ The department may require the submission of

detailed system construction plans that are prepared by a professional engineer registered in this state. The department shall establish by rule criteria for determining when such a submission is required.

(v) ~~(w)~~ Any permit issued and approved by the department for the installation, modification, or repair of an onsite sewage treatment and disposal system shall transfer with the title to the property in a real estate transaction. A title may not be encumbered at the time of transfer by new permit requirements by a governmental entity for an onsite sewage treatment and disposal system which differ from the permitting requirements in effect at the time the system was permitted, modified, or repaired. An inspection of a system may not be mandated by a governmental entity at the point of sale in a real estate transaction. This paragraph does not affect a septic tank phase-out deferral program implemented by a consolidated government as defined in s. 9, Art. VIII of the State Constitution (1885).

(w) ~~(x)~~ A governmental entity, including a municipality, county, or statutorily created commission, may not require an engineer-designed performance-based treatment system, excluding a passive engineer-designed performance-based treatment system, before the completion of the Florida Onsite Sewage Nitrogen Reduction Strategies Project. This paragraph does not apply to a governmental entity, including a municipality, county, or

statutorily created commission, which adopted a local law, ordinance, or regulation on or before January 31, 2012. Notwithstanding this paragraph, an engineer-designed performance-based treatment system may be used to meet the requirements of the variance review and advisory committee recommendations.

(x)1.~~(y)1.~~ An onsite sewage treatment and disposal system is not considered abandoned if the system is disconnected from a structure that was made unusable or destroyed following a disaster and if the system was properly functioning at the time of disconnection and was not adversely affected by the disaster. The onsite sewage treatment and disposal system may be reconnected to a rebuilt structure if:

a. The reconnection of the system is to the same type of structure which contains the same number of bedrooms or fewer, if the square footage of the structure is less than or equal to 110 percent of the original square footage of the structure that existed before the disaster;

b. The system is not a sanitary nuisance; and

c. The system has not been altered without prior authorization.

2. An onsite sewage treatment and disposal system that serves a property that is foreclosed upon is not considered abandoned.

(y)~~(z)~~ If an onsite sewage treatment and disposal system

permittee receives, relies upon, and undertakes construction of a system based upon a validly issued construction permit under rules applicable at the time of construction but a change to a rule occurs within 5 years after the approval of the system for construction but before the final approval of the system, the rules applicable and in effect at the time of construction approval apply at the time of final approval if fundamental site conditions have not changed between the time of construction approval and final approval.

(z) ~~(aa)~~ An existing-system inspection or evaluation and assessment, or a modification, replacement, or upgrade of an onsite sewage treatment and disposal system is not required for a remodeling addition or modification to a single-family home if a bedroom is not added. However, a remodeling addition or modification to a single-family home may not cover any part of the existing system or encroach upon a required setback or the unobstructed area. To determine if a setback or the unobstructed area is impacted, the local health department shall review and verify a floor plan and site plan of the proposed remodeling addition or modification to the home submitted by a remodeler which shows the location of the system, including the distance of the remodeling addition or modification to the home from the onsite sewage treatment and disposal system. The local health department may visit the site or otherwise determine the best means of verifying the information submitted. A verification of

the location of a system is not an inspection or evaluation and assessment of the system. The review and verification must be completed within 7 business days after receipt by the local health department of a floor plan and site plan. If the review and verification is not completed within such time, the remodeling addition or modification to the single-family home, for the purposes of this paragraph, is approved.

Section 9. Effective July 1, 2021, paragraph (d) of subsection (7) and subsections (8) and (9) of section 381.00651, Florida Statutes, are amended to read:

381.00651 Periodic evaluation and assessment of onsite sewage treatment and disposal systems.—

(7) The following procedures shall be used for conducting evaluations:

(d) Assessment procedure.—All evaluation procedures used by a qualified contractor shall be documented in the environmental health database of the department ~~of Health~~. The qualified contractor shall provide a copy of a written, signed evaluation report to the property owner upon completion of the evaluation and to the county health department within 30 days after the evaluation. The report shall contain the name and license number of the company providing the report. A copy of the evaluation report shall be retained by the local county health department for a minimum of 5 years and until a subsequent inspection report is filed. The front cover of the

report must identify any system failure and include a clear and conspicuous notice to the owner that the owner has a right to have any remediation of the failure performed by a qualified contractor other than the contractor performing the evaluation. The report must further identify any crack, leak, improper fit, or other defect in the tank, manhole, or lid, and any other damaged or missing component; any sewage or effluent visible on the ground or discharging to a ditch or other surface water body; any downspout, stormwater, or other source of water directed onto or toward the system; and any other maintenance need or condition of the system at the time of the evaluation which, in the opinion of the qualified contractor, would possibly interfere with or restrict any future repair or modification to the existing system. The report shall conclude with an overall assessment of the fundamental operational condition of the system.

(8) The county health department, in coordination with the department, shall administer any evaluation program on behalf of a county, or a municipality within the county, that has adopted an evaluation program pursuant to this section. In order to administer the evaluation program, the county or municipality, in consultation with the county health department, may develop a reasonable fee schedule to be used solely to pay for the costs of administering the evaluation program. Such a fee schedule shall be identified in the ordinance that adopts the evaluation

program. When arriving at a reasonable fee schedule, the estimated annual revenues to be derived from fees may not exceed reasonable estimated annual costs of the program. Fees shall be assessed to the system owner during an inspection and separately identified on the invoice of the qualified contractor. Fees shall be remitted by the qualified contractor to the county health department. The county health department's administrative responsibilities include the following:

(a) Providing a notice to the system owner at least 60 days before the system is due for an evaluation. The notice may include information on the proper maintenance of onsite sewage treatment and disposal systems.

(b) In consultation with the department ~~of Health~~, providing uniform disciplinary procedures and penalties for qualified contractors who do not comply with the requirements of the adopted ordinance, including, but not limited to, failure to provide the evaluation report as required in this subsection to the system owner and the county health department. Only the county health department may assess penalties against system owners for failure to comply with the adopted ordinance, consistent with existing requirements of law.

(9)(a) A county or municipality that adopts an onsite sewage treatment and disposal system evaluation and assessment program pursuant to this section shall notify the Secretary of Environmental Protection, the Department of Health, and the

applicable county health department upon the adoption of its ordinance establishing the program.

(b) Upon receipt of the notice under paragraph (a), the department ~~of Environmental Protection~~ shall, within existing resources, notify the county or municipality of the potential use of, and access to, program funds under the Clean Water State Revolving Fund or s. 319 of the Clean Water Act, provide guidance in the application process to receive such moneys, and provide advice and technical assistance to the county or municipality on how to establish a low-interest revolving loan program or how to model a revolving loan program after the low-interest loan program of the Clean Water State Revolving Fund. This paragraph does not obligate the department ~~of Environmental Protection~~ to provide any county or municipality with money to fund such programs.

(c) The department ~~of Health~~ may not adopt any rule that alters the provisions of this section.

(d) The department ~~of Health~~ must allow county health departments and qualified contractors access to the environmental health database to track relevant information and assimilate data from assessment and evaluation reports of the overall condition of onsite sewage treatment and disposal systems. The environmental health database must be used by contractors to report each service and evaluation event and by a county health department to notify owners of onsite sewage

treatment and disposal systems when evaluations are due. Data and information must be recorded and updated as service and evaluations are conducted and reported.

Section 10. Section 381.00652, Florida Statutes, is created to read:

381.00652 Onsite sewage treatment and disposal systems technical advisory committee.—

(1) As used in this section, the term "department" means the Department of Enviornmental Protection.

(2) An onsite sewage treatment and disposal systems technical advisory committee, a committee as defined in s. 20.03(8), is created within the department. The committee shall:

(a) Provide recommendations to increase the availability of enhanced nutrient reducing onsite sewage treatment and disposal systems in the marketplace, including such systems that are cost-effective, low maintenance, and reliable.

(b) Consider and recommend regulatory options, such as fast-track approval, prequalification, or expedited permitting, to facilitate the introduction and use of enhanced nutrient reducing onsite sewage treatment and disposal systems that have been reviewed and approved by a national agency or organization, such as the American National Standards Institute 245 systems approved by the NSF International.

(c) Provide recommendations for appropriate setback distances for onsite sewage treatment and disposal systems from

surface water, groundwater, and wells.

(2) The department shall use existing and available resources to administer and support the activities of the committee.

(3)(a) By August 1, 2021, the department, in consultation with the Department of Health, shall appoint no more than 10 members to the committee, as follows:

1. A professional engineer.

2. A septic tank contractor.

3. Two representatives from the home building industry.

4. A representative from the real estate industry.

5. A representative from the onsite sewage treatment and disposal system industry.

6. A representative from local government.

7. Two representatives from the environmental community.

8. A representative of the scientific and technical community who has substantial expertise in the areas of the fate and transport of water pollutants, toxicology, epidemiology, geology, biology, or environmental sciences.

(b) Members shall serve without compensation and are not entitled to reimbursement for per diem or travel expenses.

(4) By January 1, 2022, the committee shall submit its recommendations to the Governor, the President of the Senate, and the Speaker of the House of Representatives.

(5) This section expires August 15, 2022.

Section 11. Effective July 1, 2021, section 381.0068, Florida Statutes, is repealed.

Section 12. Subsections (14) through (44) of section 403.061, Florida Statutes, are renumbered as subsections (15) through (45), respectively, subsection (7) is amended, and a new subsection (14) is added to that section, to read:

403.061 Department; powers and duties.—The department shall have the power and the duty to control and prohibit pollution of air and water in accordance with the law and rules adopted and promulgated by it and, for this purpose, to:

(7) Adopt rules ~~pursuant to ss. 120.536(1) and 120.54~~ to implement ~~the provisions of~~ this act. Any rule adopted pursuant to this act must ~~shall~~ be consistent with the provisions of federal law, if any, relating to control of emissions from motor vehicles, effluent limitations, pretreatment requirements, or standards of performance. A ~~No~~ county, municipality, or political subdivision may not ~~shall~~ adopt or enforce any local ordinance, special law, or local regulation requiring the installation of Stage II vapor recovery systems, as currently defined by department rule, unless such county, municipality, or political subdivision is or has been in the past designated by federal regulation as a moderate, serious, or severe ozone nonattainment area. Rules adopted pursuant to this act may ~~shall~~ not require dischargers of waste into waters of the state to improve natural background conditions. The department shall

adopt rules to reasonably limit, reduce, and eliminate domestic wastewater collection and transmission system pipe leakages and inflow and infiltration. Discharges from steam electric generating plants existing or licensed under this chapter on July 1, 1984, may ~~shall~~ not be required to be treated to a greater extent than may be necessary to assure that the quality of nonthermal components of discharges from nonrecirculated cooling water systems is as high as the quality of the makeup waters; that the quality of nonthermal components of discharges from recirculated cooling water systems is no lower than is allowed for blowdown from such systems; or that the quality of noncooling system discharges which receive makeup water from a receiving body of water which does not meet applicable department water quality standards is as high as the quality of the receiving body of water. The department may not adopt standards more stringent than federal regulations, except as provided in s. 403.804.

(14) In order to promote resilient utilities, require public utilities or their affiliated companies holding, applying for, or renewing a domestic wastewater discharge permit to file annual reports and other data regarding transactions or allocations of common costs and expenditures on pollution mitigation and prevention among the utility's permitted systems, including, but not limited to, the prevention of sanitary sewer overflows, collection and transmission system pipe leakages, and

inflow and infiltration. The department shall adopt rules to implement this subsection.

The department shall implement such programs in conjunction with its other powers and duties and shall place special emphasis on reducing and eliminating contamination that presents a threat to humans, animals or plants, or to the environment.

Section 13. Section 403.0616, Florida Statutes, is created to read:

403.0616 Real-time water quality monitoring program.-

(1) Subject to appropriation, the department shall establish a real-time water quality monitoring program to assist in the restoration, preservation, and enhancement of impaired water bodies and coastal resources.

(2) In order to expedite the creation and implementation of the program, the department is encouraged to form public-private partnerships with established scientific entities that have proven existing real-time water quality monitoring equipment and experience in deploying the equipment.

Section 14. Subsection (7) of section 403.067, Florida Statutes, is amended to read:

403.067 Establishment and implementation of total maximum daily loads.—

(7) DEVELOPMENT OF BASIN MANAGEMENT PLANS AND IMPLEMENTATION OF TOTAL MAXIMUM DAILY LOADS.—

(a) *Basin management action plans.*—

1. In developing and implementing the total maximum daily load for a water body, the department, or the department in conjunction with a water management district, may develop a basin management action plan that addresses some or all of the watersheds and basins tributary to the water body. Such plan must integrate the appropriate management strategies available to the state through existing water quality protection programs to achieve the total maximum daily loads and may provide for phased implementation of these management strategies to promote timely, cost-effective actions as provided for in s. 403.151. The plan must establish a schedule implementing the management strategies, establish a basis for evaluating the plan's effectiveness, and identify feasible funding strategies for implementing the plan's management strategies. The management strategies may include regional treatment systems or other public works, when ~~where~~ appropriate, and voluntary trading of water quality credits to achieve the needed pollutant load reductions.

2. A basin management action plan must equitably allocate, pursuant to paragraph (6)(b), pollutant reductions to individual basins, as a whole to all basins, or to each identified point source or category of nonpoint sources, as appropriate. For nonpoint sources for which best management practices have been adopted, the initial requirement specified by the plan must be

those practices developed pursuant to paragraph (c). When ~~Where~~ appropriate, the plan may take into account the benefits of pollutant load reduction achieved by point or nonpoint sources that have implemented management strategies to reduce pollutant loads, including best management practices, before the development of the basin management action plan. The plan must also identify the mechanisms that will address potential future increases in pollutant loading.

3. The basin management action planning process is intended to involve the broadest possible range of interested parties, with the objective of encouraging the greatest amount of cooperation and consensus possible. In developing a basin management action plan, the department shall assure that key stakeholders, including, but not limited to, applicable local governments, water management districts, the Department of Agriculture and Consumer Services, other appropriate state agencies, local soil and water conservation districts, environmental groups, regulated interests, and affected pollution sources, are invited to participate in the process. The department shall hold at least one public meeting in the vicinity of the watershed or basin to discuss and receive comments during the planning process and shall otherwise encourage public participation to the greatest practicable extent. Notice of the public meeting must be published in a newspaper of general circulation in each county in which the

watershed or basin lies at least ~~not less than~~ 5 days, but not ~~nor~~ more than 15 days, before the public meeting. A basin management action plan does not supplant or otherwise alter any assessment made under subsection (3) or subsection (4) or any calculation or initial allocation.

4. Each new or revised basin management action plan shall include:

a. The appropriate management strategies available through existing water quality protection programs to achieve total maximum daily loads, which may provide for phased implementation to promote timely, cost-effective actions as provided for in s. 403.151;

b. A description of best management practices adopted by rule;

c. A list of projects in priority ranking with a planning-level cost estimate and estimated date of completion for each listed project;

d. The source and amount of financial assistance to be made available by the department, a water management district, or other entity for each listed project, if applicable; and

e. A planning-level estimate of each listed project's expected load reduction, if applicable.

5. The department shall adopt all or any part of a basin management action plan and any amendment to such plan by secretarial order pursuant to chapter 120 to implement ~~the~~

~~provisions of~~ this section.

6. The basin management action plan must include milestones for implementation and water quality improvement, and an associated water quality monitoring component sufficient to evaluate whether reasonable progress in pollutant load reductions is being achieved over time. An assessment of progress toward these milestones shall be conducted every 5 years, and revisions to the plan shall be made as appropriate. Revisions to the basin management action plan shall be made by the department in cooperation with basin stakeholders. Revisions to the management strategies required for nonpoint sources must follow the procedures ~~set forth~~ in subparagraph (c)4. Revised basin management action plans must be adopted pursuant to subparagraph 5.

7. In accordance with procedures adopted by rule under paragraph (9)(c), basin management action plans, and other pollution control programs under local, state, or federal authority as provided in subsection (4), may allow point or nonpoint sources that will achieve greater pollutant reductions than required by an adopted total maximum daily load or wasteload allocation to generate, register, and trade water quality credits for the excess reductions to enable other sources to achieve their allocation; however, the generation of water quality credits does not remove the obligation of a source or activity to meet applicable technology requirements or

adopted best management practices. Such plans must allow trading between NPDES permittees, and trading that may or may not involve NPDES permittees, where the generation or use of the credits involve an entity or activity not subject to department water discharge permits whose owner voluntarily elects to obtain department authorization for the generation and sale of credits.

8. ~~The provisions of~~ The department's rule relating to the equitable abatement of pollutants into surface waters do not apply to water bodies or water body segments for which a basin management plan that takes into account future new or expanded activities or discharges has been adopted under this section.

9. In order to promote resilient wastewater utilities, if the department identifies domestic wastewater treatment facilities or onsite sewage treatment and disposal systems as contributors of at least 20 percent of point source or nonpoint source nutrient pollution or if the department determines remediation is necessary to achieve the total maximum daily load, a basin management action plan for a nutrient total maximum daily load must include the following:

a. A wastewater treatment plan developed by each local government, in cooperation with the department, the water management district, and the public and private domestic wastewater treatment facilities within the jurisdiction of the local government, that addresses domestic wastewater. The wastewater treatment plan must:

(I) Provide for construction, expansion, or upgrades necessary to achieve the total maximum daily load requirements applicable to the domestic wastewater treatment facility.

(II) Include the permitted capacity in average annual gallons per day for the domestic wastewater treatment facility; the average nutrient concentration and the estimated average nutrient load of the domestic wastewater; a projected timeline of the dates by which the construction of any facility improvements will begin and be completed and the date by which operations of the improved facility will begin; the estimated cost of the improvements; and the identity of responsible parties.

The wastewater treatment plan must be adopted as part of the basin management action plan no later than July 1, 2025. A local government that does not have a domestic wastewater treatment facility in its jurisdiction is not required to develop a wastewater treatment plan unless there is a demonstrated need to establish a domestic wastewater treatment facility within its jurisdiction to improve water quality necessary to achieve a total maximum daily load. A local government is not responsible for a private domestic wastewater facility's compliance with a basin management action plan unless such facility is operated through a public-private partnership to which the local government is a party.

b. An onsite sewage treatment and disposal system remediation plan developed by each local government in cooperation with the department, the Department of Health, water management districts, and public and private domestic wastewater treatment facilities.

(I) The onsite sewage treatment and disposal system remediation plan must identify cost-effective and financially feasible projects necessary to achieve the nutrient load reductions required for onsite sewage treatment and disposal systems. To identify cost-effective and financially feasible projects for remediation of onsite sewage treatment and disposal systems, the local government shall:

(A) Include an inventory of onsite sewage treatment and disposal systems based on the best information available;

(B) Identify onsite sewage treatment and disposal systems that would be eliminated through connection to existing or future central domestic wastewater infrastructure in the jurisdiction or domestic wastewater service area of the local government, that would be replaced with or upgraded to enhanced nutrient reducing onsite sewage treatment and disposal systems, or that would remain on conventional onsite sewage treatment and disposal systems;

(C) Estimate the costs of potential onsite sewage treatment and disposal system connections, upgrades, or replacements; and

(D) Identify deadlines and interim milestones for the planning, design, and construction of projects.

(II) The department shall adopt the onsite sewage treatment and disposal system remediation plan as part of the basin management action plan no later than July 1, 2025, or as required for Outstanding Florida Springs under s. 373.807.

10. When identifying wastewater projects in a basin management action plan, the department may not require the higher cost option if it achieves the same nutrient load reduction as a lower cost option. A regulated entity may choose a different cost option if it complies with the pollutant reduction requirements of an adopted total maximum daily load.

(b) *Total maximum daily load implementation.*—

1. The department shall be the lead agency in coordinating the implementation of the total maximum daily loads through existing water quality protection programs. Application of a total maximum daily load by a water management district must be consistent with this section and does not require the issuance of an order or a separate action pursuant to s. 120.536(1) or s. 120.54 for the adoption of the calculation and allocation previously established by the department. Such programs may include, but are not limited to:

a. Permitting and other existing regulatory programs, including water-quality-based effluent limitations;

b. Nonregulatory and incentive-based programs, including

best management practices, cost sharing, waste minimization, pollution prevention, agreements established pursuant to s. 403.061(22) ~~s. 403.061(21)~~, and public education;

c. Other water quality management and restoration activities, for example surface water improvement and management plans approved by water management districts or basin management action plans developed pursuant to this subsection;

d. Trading of water quality credits or other equitable economically based agreements;

e. Public works including capital facilities; or

f. Land acquisition.

2. For a basin management action plan adopted pursuant to paragraph (a), any management strategies and pollutant reduction requirements associated with a pollutant of concern for which a total maximum daily load has been developed, including effluent limits ~~set forth~~ for a discharger subject to NPDES permitting, if any, must be included in a timely manner in subsequent NPDES permits or permit modifications for that discharger. The department may not impose limits or conditions implementing an adopted total maximum daily load in an NPDES permit until the permit expires, the discharge is modified, or the permit is reopened pursuant to an adopted basin management action plan.

a. Absent a detailed allocation, total maximum daily loads must be implemented through NPDES permit conditions that provide for a compliance schedule. In such instances, a facility's NPDES

permit must allow time for the issuance of an order adopting the basin management action plan. The time allowed for the issuance of an order adopting the plan may not exceed 5 years. Upon issuance of an order adopting the plan, the permit must be reopened or renewed, as necessary, and permit conditions consistent with the plan must be established. Notwithstanding the other provisions of this subparagraph, upon request by an NPDES permittee, the department as part of a permit issuance, renewal, or modification may establish individual allocations before the adoption of a basin management action plan.

b. For holders of NPDES municipal separate storm sewer system permits and other stormwater sources, implementation of a total maximum daily load or basin management action plan must be achieved, to the maximum extent practicable, through the use of best management practices or other management measures.

c. The basin management action plan does not relieve the discharger from any requirement to obtain, renew, or modify an NPDES permit or to abide by other requirements of the permit.

d. Management strategies ~~set forth~~ in a basin management action plan to be implemented by a discharger subject to permitting by the department must be completed pursuant to the schedule ~~set forth~~ in the basin management action plan. This implementation schedule may extend beyond the 5-year term of an NPDES permit.

e. Management strategies and pollution reduction

requirements ~~set forth~~ in a basin management action plan for a specific pollutant of concern are not subject to challenge under chapter 120 at the time they are incorporated, in an identical form, into a subsequent NPDES permit or permit modification.

f. For nonagricultural pollutant sources not subject to NPDES permitting but permitted pursuant to other state, regional, or local water quality programs, the pollutant reduction actions adopted in a basin management action plan must be implemented to the maximum extent practicable as part of those permitting programs.

g. A nonpoint source discharger included in a basin management action plan must demonstrate compliance with the pollutant reductions established under subsection (6) by implementing the appropriate best management practices established pursuant to paragraph (c) or conducting water quality monitoring prescribed by the department or a water management district. A nonpoint source discharger may, in accordance with department rules, supplement the implementation of best management practices with water quality credit trades in order to demonstrate compliance with the pollutant reductions established under subsection (6).

h. A nonpoint source discharger included in a basin management action plan may be subject to enforcement action by the department or a water management district based upon a failure to implement the responsibilities ~~set forth~~ in sub-

subparagraph g.

i. A landowner, discharger, or other responsible person who is implementing applicable management strategies specified in an adopted basin management action plan may not be required by permit, enforcement action, or otherwise to implement additional management strategies, including water quality credit trading, to reduce pollutant loads to attain the pollutant reductions established pursuant to subsection (6) and shall be deemed to be in compliance with this section. This subparagraph does not limit the authority of the department to amend a basin management action plan as specified in subparagraph (a)6.

(c) *Best management practices.*—

1. The department, in cooperation with the water management districts and other interested parties, as appropriate, may develop suitable interim measures, best management practices, or other measures necessary to achieve the level of pollution reduction established by the department for nonagricultural nonpoint pollutant sources in allocations developed pursuant to subsection (6) and this subsection. These practices and measures may be adopted by rule by the department and the water management districts and, where adopted by rule, shall be implemented by those parties responsible for nonagricultural nonpoint source pollution.

2. The Department of Agriculture and Consumer Services may develop and adopt by rule pursuant to ss. 120.536(1) and 120.54

suitable interim measures, best management practices, or other measures necessary to achieve the level of pollution reduction established by the department for agricultural pollutant sources in allocations developed pursuant to subsection (6) and this subsection or for programs implemented pursuant to paragraph (12)(b). These practices and measures may be implemented by those parties responsible for agricultural pollutant sources and the department, the water management districts, and the Department of Agriculture and Consumer Services shall assist with implementation. In the process of developing and adopting rules for interim measures, best management practices, or other measures, the Department of Agriculture and Consumer Services shall consult with the department, the Department of Health, the water management districts, representatives from affected farming groups, and environmental group representatives. Such rules must also incorporate provisions for a notice of intent to implement the practices and a system to assure the implementation of the practices, including site inspection and recordkeeping requirements.

3. When ~~Where~~ interim measures, best management practices, or other measures are adopted by rule, the effectiveness of such practices in achieving the levels of pollution reduction established in allocations developed by the department pursuant to subsection (6) and this subsection or in programs implemented pursuant to paragraph (12)(b) must be verified at representative

sites by the department. The department shall use best professional judgment in making the initial verification that the best management practices are reasonably expected to be effective and, when ~~where~~ applicable, shall ~~must~~ notify the appropriate water management district or the Department of Agriculture and Consumer Services of its initial verification before the adoption of a rule proposed pursuant to this paragraph. Implementation, in accordance with rules adopted under this paragraph, of practices that have been initially verified to be effective, or verified to be effective by monitoring at representative sites, by the department, shall provide a presumption of compliance with state water quality standards and release from ~~the provisions of~~ s. 376.307(5) for those pollutants addressed by the practices, and the department is not authorized to institute proceedings against the owner of the source of pollution to recover costs or damages associated with the contamination of surface water or groundwater caused by those pollutants. Research projects funded by the department, a water management district, or the Department of Agriculture and Consumer Services to develop or demonstrate interim measures or best management practices shall be granted a presumption of compliance with state water quality standards and a release from ~~the provisions of~~ s. 376.307(5). The presumption of compliance and release is limited to the research site and only for those pollutants addressed by the interim measures or best management

practices. Eligibility for the presumption of compliance and release is limited to research projects on sites where the owner or operator of the research site and the department, a water management district, or the Department of Agriculture and Consumer Services have entered into a contract or other agreement that, at a minimum, specifies the research objectives, the cost-share responsibilities of the parties, and a schedule that details the beginning and ending dates of the project.

4. When ~~Where~~ water quality problems are demonstrated, despite the appropriate implementation, operation, and maintenance of best management practices and other measures required by rules adopted under this paragraph, the department, a water management district, or the Department of Agriculture and Consumer Services, in consultation with the department, shall institute a reevaluation of the best management practice or other measure. If ~~Should~~ the reevaluation determines ~~determine~~ that the best management practice or other measure requires modification, the department, a water management district, or the Department of Agriculture and Consumer Services, as appropriate, shall revise the rule to require implementation of the modified practice within a reasonable time period as specified in the rule.

5. Subject to the provisions of subparagraph 6., the Department of Agriculture and Consumer Services shall provide to the department information obtained pursuant to subparagraph

(d)3.

6.~~5.~~ Agricultural records relating to processes or methods of production, and costs of production, profits, or other financial information held by the Department of Agriculture and Consumer Services pursuant to subparagraphs 3.-5. ~~3. and 4.~~ or pursuant to any rule adopted pursuant to subparagraph 2. are confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. Upon request, records made confidential and exempt pursuant to this subparagraph shall be released to the department or any water management district provided that the confidentiality specified by this subparagraph for such records is maintained.

7.~~6.~~ ~~The provisions of~~ Subparagraphs 1. and 2. do not preclude the department or water management district from requiring compliance with water quality standards or with current best management practice requirements ~~set forth~~ in any applicable regulatory program authorized by law for the purpose of protecting water quality. Additionally, subparagraphs 1. and 2. are applicable only to the extent that they do not conflict with any rules adopted by the department that are necessary to maintain a federally delegated or approved program.

(d) *Enforcement and verification of basin management action plans and management strategies.*—

1. Basin management action plans are enforceable pursuant to this section and ss. 403.121, 403.141, and 403.161.

Management strategies, including best management practices and water quality monitoring, are enforceable under this chapter.

2. No later than January 1, 2017:

a. The department, in consultation with the water management districts and the Department of Agriculture and Consumer Services, shall initiate rulemaking to adopt procedures to verify implementation of water quality monitoring required in lieu of implementation of best management practices or other measures pursuant to sub-subparagraph (b)2.g.;

b. The department, in consultation with the water management districts and the Department of Agriculture and Consumer Services, shall initiate rulemaking to adopt procedures to verify implementation of nonagricultural interim measures, best management practices, or other measures adopted by rule pursuant to subparagraph (c)1.; and

c. The Department of Agriculture and Consumer Services, in consultation with the water management districts and the department, shall initiate rulemaking to adopt procedures to verify implementation of agricultural interim measures, best management practices, or other measures adopted by rule pursuant to subparagraph(c)2.

The rules required under this subparagraph shall include enforcement procedures applicable to the landowner, discharger, or other responsible person required to implement applicable

management strategies, including best management practices or water quality monitoring as a result of noncompliance.

3. At least every 2 years, the Department of Agriculture and Consumer Services shall perform onsite inspections of each agricultural producer that enrolls in a best management practice to ensure that such practice is being properly implemented. Such verification must include a collection and review of the best management practice documentation from the previous 2 years required by rules adopted pursuant to subparagraph (c)2., including, but not limited to, nitrogen and phosphorus fertilizer application records, which must be collected and retained pursuant to subparagraphs (c)3., 4., and 6. The Department of Agriculture and Consumer Services shall initially prioritize the inspection of agricultural producers located in the basin management action plans for Lake Okeechobee, the Indian River Lagoon, the Caloosahatchee River and Estuary, and Silver Springs.

(e) *Cooperative agricultural regional water quality improvement element.*—

1. The department, the Department of Agriculture and Consumer Services, and owners of agricultural operations in the basin shall develop a cooperative agricultural regional water quality improvement element as part of a basin management action plan only if:

a. Agricultural measures have been adopted by the

Department of Agriculture and Consumer Services pursuant to subparagraph (c)2. and have been implemented and the waterbody remains impaired;

b. Agricultural nonpoint sources contribute to at least 20 percent of nonpoint source nutrient discharges; and

c. The department determines that additional measures, in combination with state-sponsored regional projects and other management strategies included in the basin management action plan, are necessary to achieve the total maximum daily load.

2. The element will be implemented through the use of cost-sharing projects. The element must include cost-effective and technically and financially practical cooperative regional agricultural nutrient reduction projects that can be implemented on private properties on a site-specific, cooperative basis. Such cooperative regional agricultural nutrient reduction projects may include land acquisition in fee or conservation easements on the lands of willing sellers and site-specific water quality improvement or dispersed water management projects on the lands of project participants.

3. To qualify for participation in the cooperative agricultural regional water quality improvement element, the participant must have already implemented the interim measures, best management practices, or other measures adopted by the Department of Agriculture and Consumer Services pursuant to subparagraph (c)2. The element may be included in the basin

management action plan as a part of the next 5-year assessment under subparagraph (a)6.

4. The department may submit a legislative budget request to fund projects developed pursuant to this paragraph.

(f) *Data collection and research.*—

1. The Department of Agriculture and Consumer Services, in cooperation with the University of Florida Institute of Food and Agricultural Sciences and other state universities and Florida College System institutions that have agricultural research programs, shall annually develop research plans and legislative budget requests to:

a. Evaluate and suggest enhancements to the existing adopted agricultural best management practices to reduce nutrient runoff;

b. Develop new best management practices that, if proven effective, the Department of Agriculture and Consumer Services may adopt by rule pursuant to subparagraph (c)2.; and

c. Develop agricultural nutrient runoff reduction projects that willing participants could implement on a site-specific, cooperative basis, in addition to best management practices. The department may consider these projects for inclusion in a basin management action plan. These nutrient runoff reduction projects must reduce the nutrient impacts from agricultural operations on water quality when evaluated with the projects and management strategies currently included in the basin management action

plan.

2. To be considered for funding, the University of Florida Institute of Food and Agricultural Sciences and other state universities and Florida College System institutions that have agricultural research programs must submit such plans to the department and the Department of Agriculture and Consumer Services by August 1, 2021, and each May 1 thereafter.

3. The department shall work with the University of Florida Institute of Food and Agricultural Sciences and regulated entities to consider the adoption by rule of best management practices for nutrient impacts from golf courses. Such adopted best management practices are subject to the requirements of paragraph (c).

Section 15. Section 403.0671, Florida Statutes, is created to read:

403.0671 Basin management action plan wastewater reports.—

(1) By July 1, 2021, the department, in coordination with the county health departments, wastewater treatment facilities, and other governmental entities, shall submit a report to the Governor, the President of the Senate, and the Speaker of the House of Representatives evaluating the costs of wastewater projects identified in the basin management action plans developed pursuant to ss. 373.807 and 403.067(7) and the onsite sewage treatment and disposal system remediation plans and other restoration plans developed to meet the total maximum daily

loads required under s. 403.067. The report must include:

(a) Projects to:

1. Replace onsite sewage treatment and disposal systems with enhanced nutrient reducing onsite sewage treatment and disposal systems.

2. Install or retrofit onsite sewage treatment and disposal systems with enhanced nutrient reducing technologies.

3. Construct, upgrade, or expand domestic wastewater treatment facilities to meet the wastewater treatment plan required under s. 403.067(7)(a)9.

4. Connect onsite sewage treatment and disposal systems to domestic wastewater treatment facilities;

(b) The estimated costs, nutrient load reduction estimates, and other benefits of each project;

(c) The estimated implementation timeline for each project;

(d) A proposed 5-year funding plan for each project and the source and amount of financial assistance the department, a water management district, or other project partner will make available to fund the project; and

(e) The projected costs of installing enhanced nutrient reducing onsite sewage treatment and disposal systems on buildable lots in priority focus areas to comply with s. 373.811.

(2) By July 1, 2021, the department shall submit a report

to the Governor, the President of the Senate, and the Speaker of the House of Representatives that provides an assessment of the water quality monitoring being conducted for each basin management action plan implementing a nutrient total maximum daily load. In developing the report, the department may coordinate with water management districts and any applicable university. The report must:

(a) Evaluate the water quality monitoring prescribed for each basin management action plan to determine if it is sufficient to detect changes in water quality caused by the implementation of a project.

(b) Identify gaps in water quality monitoring.

(c) Recommend water quality monitoring needs.

(3) Beginning January 1, 2022, and each January 1 thereafter, the department shall submit to the Office of Economic and Demographic Research the cost estimates for projects required in s. 403.067(7)(a)9. The office shall include the project cost estimates in its annual assessment conducted pursuant to s. 403.928.

Section 16. Section 403.0673, Florida Statutes, is created to read:

403.0673 Wastewater grant program.—A wastewater grant program is established within the Department of Environmental Protection.

(1) Subject to the appropriation of funds by the

Legislature, the department may provide grants for the following projects within a basin management action plan, an alternative restoration plan adopted by final order, or a rural area of opportunity under s. 288.0656 which will individually or collectively reduce excess nutrient pollution:

(a) Projects to retrofit onsite sewage treatment and disposal systems to upgrade such systems to enhanced nutrient reducing onsite sewage treatment and disposal systems.

(b) Projects to construct, upgrade, or expand facilities to provide advanced waste treatment, as defined in s. 403.086(4).

(c) Projects to connect onsite sewage treatment and disposal systems to central sewer facilities.

(2) In allocating such funds, priority must be given to projects that subsidize the connection of onsite sewage treatment and disposal systems to wastewater treatment facilities. First priority must be given to subsidize the connection of onsite sewage treatment and disposal systems to existing infrastructure. Second priority must be given to any expansion of a collection or transmission system that promotes efficiency by planning the installation of wastewater transmission facilities to be constructed concurrently with other construction projects occurring within or along a transportation facility right-of-way. Third priority must be given to all other connections of onsite sewage treatment and

disposal systems to wastewater treatment facilities. The department shall consider the estimated reduction in nutrient load per project; project readiness; cost-effectiveness of the project; overall environmental benefit of a project; the location of a project; the availability of local matching funds; and projected water savings or quantity improvements associated with a project.

(3) Each grant for a project described in subsection (1) must require a minimum of a 50 percent local match of funds. However, the department may, at its discretion, waive, in whole or in part, this consideration of the local contribution for proposed projects within an area designated as a rural area of opportunity under s. 288.0656.

(4) The department shall coordinate with each water management district, as necessary, to identify grant recipients in each district.

(5) Beginning January 1, 2021, and each January 1 thereafter, the department shall submit a report regarding the projects funded pursuant to this section to the Governor, the President of the Senate, and the Speaker of the House of Representatives.

Section 17. Section 403.0855, Florida Statutes, is created to read:

403.0855 Biosolids management.—

(1) The Legislature finds that it is in the best interest

of this state to regulate biosolids management in order to minimize the migration of nutrients that impair water bodies. The Legislature further finds that permitting according to site-specific application conditions, an increased inspection rate, groundwater and surface water monitoring protocols, and nutrient management research, will improve biosolids management and assist in protecting this state's water resources and water quality.

(2) The department shall adopt rules for biosolids management. Rules adopted by the department pursuant to this section may not take effect until ratified by the Legislature.

(3) For a new land application site permit or a permit renewal issued after July 1, 2020, the permittee of a biosolids land application site shall:

(a) Ensure a minimum unsaturated soil depth of 2 feet between the depth of biosolids placement and the water table level at the time the Class A or Class B biosolids are applied to the soil. Biosolids may not be applied on soils that have a seasonal high-water table less than 6 inches from the soil surface or within 6 inches of the intended depth of biosolids placement, unless a department-approved nutrient management plan and water quality monitoring plan provide reasonable assurances that the land application of biosolids at the site will not cause or contribute to a violation of the state's surface water quality standards or groundwater standards. As used in this

subsection, the term "seasonal high water" means the elevation to which the ground and surface water may be expected to rise due to a normal wet season.

(b) Be enrolled in the Department of Agriculture and Consumer Service's best management practices program or be within an agricultural operation enrolled in the program for the applicable commodity type.

(4) All permits shall comply with the requirements of subsection (3) by July 1, 2022.

(5) New or renewed biosolids land application site or facility permits issued after July 1, 2020, must comply with this section and include a permit condition that requires the permit to be reopened to insert a compliance date of no later than one year after the effective date of the rules adopted pursuant to subsection (2). All permits must meet the requirements of the rules adopted pursuant to subsection (2) no later than two years after the effective date of such rules.

(6) A municipality or county may enforce or extend a local ordinance, regulation, resolution, rule, moratorium, or policy, any of which was adopted before November 1, 2019, relating to the land application of Class A or Class B biosolids until the ordinance, regulation, resolution, rule, moratorium, or policy is repealed by the municipality or county.

Section 18. Subsections (7) through (10) of section 403.086, Florida Statutes, are renumbered as subsections (8)

through (11), respectively, subsections (1) and (2) are amended, and a new subsection (7) is added to that section, to read:

403.086 Sewage disposal facilities; advanced and secondary waste treatment.—

(1)(a) ~~Neither~~ The Department of Health or ~~nor~~ any other state agency, county, special district, or municipality may not ~~shall~~ approve construction of any sewage disposal facilities ~~for sanitary sewage disposal~~ which do not provide for secondary waste treatment and~~, in addition thereto,~~ advanced waste treatment as deemed necessary and ordered by the department.

(b) Sewage disposal ~~No~~ facilities ~~for sanitary sewage disposal~~ constructed after June 14, 1978, may not ~~shall~~ dispose of any wastes by deep well injection without providing for secondary waste treatment and~~, in addition thereto,~~ advanced waste treatment deemed necessary by the department to protect adequately the beneficial use of the receiving waters.

(c) Notwithstanding ~~any other provisions of~~ this chapter or chapter 373, sewage disposal facilities ~~for sanitary sewage disposal~~ may not dispose of any wastes into Old Tampa Bay, Tampa Bay, Hillsborough Bay, Boca Ciega Bay, St. Joseph Sound, Clearwater Bay, Sarasota Bay, Little Sarasota Bay, Roberts Bay, Lemon Bay, ~~or~~ Charlotte Harbor Bay, or, beginning July 1, 2025, Indian River Lagoon, or into any river, stream, channel, canal, bay, bayou, sound, or other water tributary thereto, without providing advanced waste treatment, as defined in subsection

(4), approved by the department. This paragraph does ~~shall~~ not apply to facilities which were permitted by February 1, 1987, and which discharge secondary treated effluent, followed by water hyacinth treatment, to tributaries of tributaries of the named waters; or to facilities permitted to discharge to the nontidally influenced portions of the Peace River.

(d) By December 31, 2020, the department, in consultation with the water management districts and sewage disposal facilities, shall submit to the Governor, the President of the Senate, and the Speaker of the House of Representatives a progress report on the status of upgrades made by each facility to meet the advanced waste treatment requirements under paragraph (c). The report must include a list of sewage disposal facilities required to upgrade to advanced waste treatment, the preliminary cost estimates for the upgrades, and a projected timeline of the dates by which the upgrades will begin and be completed and the date by which operations of the upgraded facility will begin.

(2) All sewage disposal ~~Any~~ facilities ~~for sanitary sewage disposal~~ shall provide for secondary waste treatment, a power outage contingency plan that mitigates the impacts of power outages on the utility's collection system and pump stations, and~~, in addition thereto,~~ advanced waste treatment as deemed necessary and ordered by the Department of Environmental Protection. Failure to conform is ~~shall be~~ punishable by a civil

penalty of $500 for each 24-hour day or fraction thereof that such failure is allowed to continue thereafter.

(7) All sewage disposal facilities under subsection (2) which control a collection or transmission system of pipes and pumps to collect and transmit wastewater from domestic or industrial sources to the facility shall take steps to prevent sanitary sewer overflows or underground pipe leaks and ensure that collected wastewater reaches the facility for appropriate treatment. Facilities must use inflow and infiltration studies and leakage surveys to develop pipe assessment, repair, and replacement action plans with a 5-year planning horizon that comply with department rule to limit, reduce, and eliminate leaks, seepages, or inputs into wastewater treatment systems' underground pipes. The pipe assessment, repair, and replacement action plans must be reported to the department. The facility action plans must include information regarding the annual expenditures dedicated to the inflow and infiltration studies and the required replacement action plans; expenditures that are dedicated to pipe assessment, repair, and replacement; and expenditures designed to limit the presence of fats, roots, oils, and grease in the facility's collection system. The department shall adopt rules regarding the implementation of inflow and infiltration studies and leakage surveys; however, such rules may not fix or revise utility rates or budgets. A utility or an operating entity subject to this subsection and s.

403.061(14) may submit one report to comply with both requirements. Substantial compliance with this subsection is evidence in mitigation for the purposes of assessing penalties pursuant to ss. 403.121 and 403.141.

Section 19. Subsections (4) through (10) of section 403.087, Florida Statutes, are renumbered as subsections (5) through (11), respectively, and a new subsection (4) is added to that section to read:

403.087 Permits; general issuance; denial; revocation; prohibition; penalty.—

(4) The department shall issue an operation permit for a domestic wastewater treatment facility other than a facility regulated under the National Pollutant Discharge Elimination System Program under s. 403.0885 for a term of up to 10 years if the facility is meeting the stated goals in its action plan adopted pursuant to s. 403.086(7).

Section 20. Subsections (3) and (4) of section 403.088, Florida Statutes, are renumbered as subsections (4) and (5), respectively, paragraph (c) of subsection (2) is amended, and a new subsection (3) is added to that section, to read:

403.088 Water pollution operation permits; conditions.—

(2)

(c) A permit shall:

1. Specify the manner, nature, volume, and frequency of the discharge permitted;

2. Require proper operation and maintenance of any pollution abatement facility by qualified personnel in accordance with standards established by the department;

3. Require a deliberate, proactive approach to investigating or surveying a significant percentage of the domestic wastewater collection system throughout the duration of the permit to determine pipe integrity, which must be accomplished in an economically feasible manner. The permittee shall submit an annual report to the department which details facility revenues and expenditures in a manner prescribed by department rule. The report must detail any deviation of annual expenditures from identified system needs related to inflow and infiltration studies; model plans for pipe assessment, repair, and replacement; and pipe assessment, repair, and replacement required under s. 403.086(7). Substantial compliance with this subsection is evidence in mitigation for the purposes of assessing penalties pursuant to ss. 403.121 and 403.141;

4.~~3.~~ Contain such additional conditions, requirements, and restrictions as the department deems necessary to preserve and protect the quality of the receiving waters;

5.~~4.~~ Be valid for the period of time specified therein; and

6.~~5.~~ Constitute the state National Pollutant Discharge Elimination System permit when issued pursuant to the authority in s. 403.0885.

(3) No later than March 1 of each year, the department shall submit a report to the Governor, the President of the Senate, and the Speaker of the House of Representatives which identifies all domestic wastewater treatment facilities that experienced a sanitary sewer overflow in the preceding calendar year. The report must identify the name of the utility or responsible operating entity, permitted capacity in annual average gallons per day, number of overflows, type of water discharged, total volume of sewage released, and, to the extent known and available, volume of sewage recovered, volume of sewage discharged to surface waters, and cause of the sanitary sewer overflow, including whether the overflow was caused by a third party. The department shall include with this report the annual report specified under subparagraph (2)(c)3. for each utility that experienced an overflow.

Section 21. Subsection (6) of section 403.0891, Florida Statutes, is amended to read:

403.0891 State, regional, and local stormwater management plans and programs.—The department, the water management districts, and local governments shall have the responsibility for the development of mutually compatible stormwater management programs.

(6) The department and the Department of Economic Opportunity, in cooperation with local governments in the coastal zone, shall develop a model stormwater management

program that could be adopted by local governments. The model program must contain model ordinances that target nutrient reduction practices and use green infrastructure. The model program shall contain dedicated funding options, including a stormwater utility fee system based upon an equitable unit cost approach. Funding options shall be designed to generate capital to retrofit existing stormwater management systems, build new treatment systems, operate facilities, and maintain and service debt.

Section 22. Paragraphs (b) and (g) of subsection (2), paragraph (b) of subsection (3), and subsections (8) and (9) of section 403.121, Florida Statutes, are amended to read:

403.121 Enforcement; procedure; remedies.—The department shall have the following judicial and administrative remedies available to it for violations of this chapter, as specified in s. 403.161(1).

(2) Administrative remedies:

(b) If the department has reason to believe a violation has occurred, it may institute an administrative proceeding to order the prevention, abatement, or control of the conditions creating the violation or other appropriate corrective action. Except for violations involving hazardous wastes, asbestos, or underground injection, the department shall proceed administratively in all cases in which the department seeks administrative penalties that do not exceed $50,000 ~~$10,000~~ per

assessment as calculated in accordance with subsections (3), (4), (5), (6), and (7). Pursuant to 42 U.S.C. s. 300g-2, the administrative penalty assessed pursuant to subsection (3), subsection (4), or subsection (5) against a public water system serving a population of more than 10,000 may not ~~shall~~ be ~~not~~ less than $1,000 per day per violation. The department may ~~shall~~ not impose administrative penalties in excess of $50,000 ~~$10,000~~ in a notice of violation. The department may ~~shall~~ not have more than one notice of violation seeking administrative penalties pending against the same party at the same time unless the violations occurred at a different site or the violations were discovered by the department subsequent to the filing of a previous notice of violation.

(g) This subsection does not prevent ~~Nothing herein shall be construed as preventing~~ any other legal or administrative action in accordance with law and does not~~. Nothing in this subsection shall~~ limit the department's authority provided in s. ~~ss.~~ 403.131, s. 403.141, and this section to judicially pursue injunctive relief. When the department exercises its authority to judicially pursue injunctive relief, penalties in any amount up to the statutory maximum sought by the department must be pursued as part of the state court action and not by initiating a separate administrative proceeding. The department retains the authority to judicially pursue penalties in excess of $50,000 ~~$10,000~~ for violations not specifically included in the

administrative penalty schedule, or for multiple or multiday violations alleged to exceed a total of $50,000 ~~$10,000~~. The department also retains the authority provided in ss. 403.131, 403.141, and this section to judicially pursue injunctive relief and damages, if a notice of violation seeking the imposition of administrative penalties has not been issued. The department has the authority to enter into a settlement, ~~either~~ before or after initiating a notice of violation, and the settlement may include a penalty amount different from the administrative penalty schedule. Any case filed in state court because it is alleged to exceed a total of $50,000 ~~$10,000~~ in penalties may be settled in the court action for less than $50,000 ~~$10,000~~.

(3) Except for violations involving hazardous wastes, asbestos, or underground injection, administrative penalties must be calculated according to the following schedule:

(b) For failure to obtain a required wastewater permit, other than a permit required for surface water discharge, the department shall assess a penalty of $2,000 ~~$1,000~~. For a domestic or industrial wastewater violation not involving a surface water or groundwater quality violation, the department shall assess a penalty of $4,000 ~~$2,000~~ for an unpermitted or unauthorized discharge or effluent-limitation exceedance or for failure to comply with s. 403.061(14) or s. 403.086(7) or rules adopted thereunder. For an unpermitted or unauthorized discharge or effluent-limitation exceedance that resulted in a surface

water or groundwater quality violation, the department shall assess a penalty of $10,000 ~~$5,000~~.

(8) The direct economic benefit gained by the violator from the violation, where consideration of economic benefit is provided by Florida law or required by federal law as part of a federally delegated or approved program, must ~~shall~~ be added to the scheduled administrative penalty. The total administrative penalty, including any economic benefit added to the scheduled administrative penalty, may ~~shall~~ not exceed $10,000.

(9) The administrative penalties assessed for any particular violation may ~~shall~~ not exceed $10,000 ~~$5,000~~ against any one violator, unless the violator has a history of noncompliance, the economic benefit of the violation as described in subsection (8) exceeds $10,000 ~~$5,000~~, or there are multiday violations. The total administrative penalties may ~~shall~~ not exceed $50,000 ~~$10,000~~ per assessment for all violations attributable to a specific person in the notice of violation.

Section 23. Subsection (7) of section 403.1835, Florida Statutes, is amended to read:

403.1835 Water pollution control financial assistance.—

(7) Eligible projects must be given priority according to the extent each project is intended to remove, mitigate, or prevent adverse effects on surface or ground water quality and public health. The relative costs of achieving environmental and

public health benefits must be taken into consideration during the department's assignment of project priorities. The department shall adopt a priority system by rule. In developing the priority system, the department shall give priority to projects that:

(a) Eliminate public health hazards;

(b) Enable compliance with laws requiring the elimination of discharges to specific water bodies, including the requirements of s. 403.086(10) ~~s. 403.086(9)~~ regarding domestic wastewater ocean outfalls;

(c) Assist in the implementation of total maximum daily loads adopted under s. 403.067;

(d) Enable compliance with other pollution control requirements, including, but not limited to, toxics control, wastewater residuals management, and reduction of nutrients and bacteria;

(e) Assist in the implementation of surface water improvement and management plans and pollutant load reduction goals developed under state water policy;

(f) Promote reclaimed water reuse;

(g) Eliminate failing onsite sewage treatment and disposal systems or those that are causing environmental damage; ~~or~~

(h) Reduce pollutants to and otherwise promote the restoration of Florida's surface and ground waters;

(i) Implement the requirements of s. 403.086(7) or s.

403.088(2)(c); or

(j) Promote efficiency by planning for the installation of wastewater transmission facilities to be constructed concurrently with other construction projects occurring within or along a transportation facility right-of-way.

Section 24. Paragraph (b) of subsection (3) of section 403.1838, Florida Statutes, is amended to read:

403.1838 Small Community Sewer Construction Assistance Act.—

(3)

(b) The rules of the Environmental Regulation Commission must:

1. Require that projects to plan, design, construct, upgrade, or replace wastewater collection, transmission, treatment, disposal, and reuse facilities be cost-effective, environmentally sound, permittable, and implementable.

2. Require appropriate user charges, connection fees, and other charges sufficient to ensure the long-term operation, maintenance, and replacement of the facilities constructed under each grant.

3. Require grant applications to be submitted on appropriate forms with appropriate supporting documentation, and require records to be maintained.

4. Establish a system to determine eligibility of grant applications.

5. Establish a system to determine the relative priority of grant applications. The system must consider public health protection and water pollution prevention or abatement and must prioritize projects that plan for the installation of wastewater transmission facilities to be constructed concurrently with other construction projects occurring within or along a transportation facility right-of-way.

6. Establish requirements for competitive procurement of engineering and construction services, materials, and equipment.

7. Provide for termination of grants when program requirements are not met.

Section 25. Subsection (9) is added to section 403.412, Florida Statutes, to read:

403.412 Environmental Protection Act.—

(9)(a) A local government regulation, ordinance, code, rule, comprehensive plan, charter, or any other provision of law may not recognize or grant any legal rights to a plant, an animal, a body of water, or any other part of the natural environment that is not a person or political subdivision as defined in s. 1.01 or grant such person or political subdivision any specific rights relating to the natural environment not otherwise authorized in general law or specifically granted in the State Constitution.

(b) This subsection does not limit the power of an adversely affected party to challenge the consistency of a

development order with a comprehensive plan as provided in s. 163.3215 or to file an action for injunctive relief to enforce the terms of a development agreement or challenge compliance of the agreement as provided in s. 163.3243.

(c) This subsection does not limit the standing of the Department of Legal Affairs, a political subdivision or municipality of the state, or a citizen of the state to maintain an action for injunctive relief as provided in this section.

Section 26. The Legislature determines and declares that this act fulfills an important state interest.

Section 27. Effective July 1, 2021, subsection (5) of section 153.54, Florida Statutes, is amended to read:

153.54 Preliminary report by county commissioners with respect to creation of proposed district.—Upon receipt of a petition duly signed by not less than 25 qualified electors who are also freeholders residing within an area proposed to be incorporated into a water and sewer district pursuant to this law and describing in general terms the proposed boundaries of such proposed district, the board of county commissioners if it shall deem it necessary and advisable to create and establish such proposed district for the purpose of constructing, establishing or acquiring a water system or a sewer system or both in and for such district (herein called "improvements"), shall first cause a preliminary report to be made which such report together with any other relevant or pertinent matters,

shall include at least the following:

(5) For the construction of a new proposed central sewerage system or the extension of an existing central sewerage system that was not previously approved, the report shall include a study that includes the available information from the Department of Environmental Protection ~~Health~~ on the history of onsite sewage treatment and disposal systems currently in use in the area and a comparison of the projected costs to the owner of a typical lot or parcel of connecting to and using the proposed central sewerage system versus installing, operating, and properly maintaining an onsite sewage treatment and disposal system that is approved by the Department of Environmental Protection ~~Health~~ and that provides for the comparable level of environmental and health protection as the proposed central sewerage system; consideration of the local authority's obligations or reasonably anticipated obligations for water body cleanup and protection under state or federal programs, including requirements for water bodies listed under s. 303(d) of the Clean Water Act, Pub. L. No. 92-500, 33 U.S.C. ss. 1251 et seq.; and other factors deemed relevant by the local authority.

Such report shall be filed in the office of the clerk of the circuit court and shall be open for the inspection of any taxpayer, property owner, qualified elector or any other

interested or affected person.

Section 28. Effective July 1, 2021, paragraph (c) of subsection (2) of section 153.73, Florida Statutes, is amended to read:

153.73 Assessable improvements; levy and payment of special assessments.—Any district may provide for the construction or reconstruction of assessable improvements as defined in s. 153.52, and for the levying of special assessments upon benefited property for the payment thereof, under the provisions of this section.

(2)

(c) For the construction of a new proposed central sewerage system or the extension of an existing central sewerage system that was not previously approved, the report shall include a study that includes the available information from the Department of Environmental Protection ~~Health~~ on the history of onsite sewage treatment and disposal systems currently in use in the area and a comparison of the projected costs to the owner of a typical lot or parcel of connecting to and using the proposed central sewerage system versus installing, operating, and properly maintaining an onsite sewage treatment and disposal system that is approved by the Department of Environmental Protection ~~Health~~ and that provides for the comparable level of environmental and health protection as the proposed central sewerage system; consideration of the local authority's

obligations or reasonably anticipated obligations for water body cleanup and protection under state or federal programs, including requirements for water bodies listed under s. 303(d) of the Clean Water Act, Pub. L. No. 92-500, 33 U.S.C. ss. 1251 et seq.; and other factors deemed relevant by the local authority.

Section 29. Effective July 1, 2021, subsection (2) of section 163.3180, Florida Statutes, is amended to read:

163.3180 Concurrency.—

(2) Consistent with public health and safety, sanitary sewer, solid waste, drainage, adequate water supplies, and potable water facilities shall be in place and available to serve new development no later than the issuance by the local government of a certificate of occupancy or its functional equivalent. Before ~~Prior to~~ approval of a building permit or its functional equivalent, the local government shall consult with the applicable water supplier to determine whether adequate water supplies to serve the new development will be available no later than the anticipated date of issuance by the local government of a certificate of occupancy or its functional equivalent. A local government may meet the concurrency requirement for sanitary sewer through the use of onsite sewage treatment and disposal systems approved by the Department of Environmental Protection ~~Health~~ to serve new development.

Section 30. Effective July 1, 2021, subsection (3) of

section 180.03, Florida Statutes, is amended to read:

180.03 Resolution or ordinance proposing construction or extension of utility; objections to same.—

(3) For the construction of a new proposed central sewerage system or the extension of an existing central sewerage system that was not previously approved, the report shall include a study that includes the available information from the Department of Environmental Protection ~~Health~~ on the history of onsite sewage treatment and disposal systems currently in use in the area and a comparison of the projected costs to the owner of a typical lot or parcel of connecting to and using the proposed central sewerage system versus installing, operating, and properly maintaining an onsite sewage treatment and disposal system that is approved by the Department of Environmental Protection ~~Health~~ and that provides for the comparable level of environmental and health protection as the proposed central sewerage system; consideration of the local authority's obligations or reasonably anticipated obligations for water body cleanup and protection under state or federal programs, including requirements for water bodies listed under s. 303(d) of the Clean Water Act, Pub. L. No. 92-500, 33 U.S.C. ss. 1251 et seq.; and other factors deemed relevant by the local authority. The results of the ~~such a~~ study shall be included in the resolution or ordinance required under subsection (1).

Section 31. Subsections (2), (3), and (6) of section

311.105, Florida Statutes, are amended to read:

311.105 Florida Seaport Environmental Management Committee; permitting; mitigation.—

(2) Each application for a permit authorized pursuant to s. 403.061(38) ~~s. 403.061(37)~~ must include:

(a) A description of maintenance dredging activities to be conducted and proposed methods of dredged-material management.

(b) A characterization of the materials to be dredged and the materials within dredged-material management sites.

(c) A description of dredged-material management sites and plans.

(d) A description of measures to be undertaken, including environmental compliance monitoring, to minimize adverse environmental effects of maintenance dredging and dredged-material management.

(e) Such scheduling information as is required to facilitate state supplementary funding of federal maintenance dredging and dredged-material management programs consistent with beach restoration criteria of the Department of Environmental Protection.

(3) Each application for a permit authorized pursuant to s. 403.061(39) ~~s. 403.061(38)~~ must include ~~the provisions of~~ paragraphs (2)(b)-(e) and the following:

(a) A description of dredging and dredged-material management and other related activities associated with port

development, including the expansion of navigation channels, dredged-material management sites, port harbors, turning basins, harbor berths, and associated facilities.

(b) A discussion of environmental mitigation as is proposed for dredging and dredged-material management for port development, including the expansion of navigation channels, dredged-material management sites, port harbors, turning basins, harbor berths, and associated facilities.

(6) Dredged-material management activities authorized pursuant to s. 403.061(38) or (39) ~~s. 403.061(37) or (38)~~ shall be incorporated into port master plans developed pursuant to s. 163.3178(2)(k).

Section 32. Paragraph (d) of subsection (1) of section 327.46, Florida Statutes, is amended to read:

327.46 Boating-restricted areas.—

(1) Boating-restricted areas, including, but not limited to, restrictions of vessel speeds and vessel traffic, may be established on the waters of this state for any purpose necessary to protect the safety of the public if such restrictions are necessary based on boating accidents, visibility, hazardous currents or water levels, vessel traffic congestion, or other navigational hazards or to protect seagrasses on privately owned submerged lands.

(d) Owners of private submerged lands that are adjacent to Outstanding Florida Waters, as defined in s. 403.061(28) ~~s.~~

~~403.061(27)~~, or an aquatic preserve established under ss. 258.39-258.399 may request that the commission establish boating-restricted areas solely to protect any seagrass and contiguous seagrass habitat within their private property boundaries from seagrass scarring due to propeller dredging. Owners making a request pursuant to this paragraph must demonstrate to the commission clear ownership of the submerged lands. The commission shall adopt rules to implement this paragraph, including, but not limited to, establishing an application process and criteria for meeting the requirements of this paragraph. Each approved boating-restricted area shall be established by commission rule. For marking boating-restricted zones established pursuant to this paragraph, owners of privately submerged lands shall apply to the commission for a uniform waterway marker permit in accordance with ss. 327.40 and 327.41, and shall be responsible for marking the boating-restricted zone in accordance with the terms of the permit.

Section 33. Paragraph (d) of subsection (3) of section 373.250, Florida Statutes, is amended to read:

373.250 Reuse of reclaimed water.—

(3)

(d) The South Florida Water Management District shall require the use of reclaimed water made available by the elimination of wastewater ocean outfall discharges as provided for in s. 403.086(10) ~~s. 403.086(9)~~ in lieu of surface water or

groundwater when the use of reclaimed water is available; is environmentally, economically, and technically feasible; and is of such quality and reliability as is necessary to the user. Such reclaimed water may also be required in lieu of other alternative sources. In determining whether to require such reclaimed water in lieu of other alternative sources, the water management district shall consider existing infrastructure investments in place or obligated to be constructed by an executed contract or similar binding agreement as of July 1, 2011, for the development of other alternative sources.

Section 34. Subsection (9) of section 373.414, Florida Statutes, is amended to read:

373.414 Additional criteria for activities in surface waters and wetlands.—

(9) The department and the governing boards, on or before July 1, 1994, shall adopt rules to incorporate ~~the provisions of~~ this section, relying primarily on the existing rules of the department and the water management districts, into the rules governing the management and storage of surface waters. Such rules shall seek to achieve a statewide, coordinated and consistent permitting approach to activities regulated under this part. Variations in permitting criteria in the rules of individual water management districts or the department shall only be provided to address differing physical or natural characteristics. Such rules adopted pursuant to this subsection

shall include the special criteria adopted pursuant to s. 403.061(30) ~~s. 403.061(29)~~ and may include the special criteria adopted pursuant to s. 403.061(35) ~~s. 403.061(34)~~. Such rules shall include a provision requiring that a notice of intent to deny or a permit denial based upon this section shall contain an explanation of the reasons for such denial and an explanation, in general terms, of what changes, if any, are necessary to address such reasons for denial. Such rules may establish exemptions and general permits, if such exemptions and general permits do not allow significant adverse impacts to occur individually or cumulatively. Such rules may require submission of proof of financial responsibility which may include the posting of a bond or other form of surety prior to the commencement of construction to provide reasonable assurance that any activity permitted pursuant to this section, including any mitigation for such permitted activity, will be completed in accordance with the terms and conditions of the permit once the construction is commenced. Until rules adopted pursuant to this subsection become effective, existing rules adopted under this part and rules adopted pursuant to the authority of ss. 403.91-403.929 shall be deemed authorized under this part and shall remain in full force and effect. Neither the department nor the governing boards are limited or prohibited from amending any such rules.

Section 35. Paragraph (b) of subsection (4) of section

373.705, Florida Statutes, is amended to read:

373.705 Water resource development; water supply development.—

(4)

(b) Water supply development projects that meet the criteria in paragraph (a) and that meet one or more of the following additional criteria shall be given first consideration for state or water management district funding assistance:

1. The project brings about replacement of existing sources in order to help implement a minimum flow or minimum water level;

2. The project implements reuse that assists in the elimination of domestic wastewater ocean outfalls as provided in s. 403.086(10) ~~s. 403.086(9)~~; or

3. The project reduces or eliminates the adverse effects of competition between legal users and the natural system.

Section 36. Paragraph (f) of subsection (8) of section 373.707, Florida Statutes, is amended to read:

373.707 Alternative water supply development.—

(8)

(f) The governing boards shall determine those projects that will be selected for financial assistance. The governing boards may establish factors to determine project funding; however, significant weight shall be given to the following factors:

1. Whether the project provides substantial environmental benefits by preventing or limiting adverse water resource impacts.

2. Whether the project reduces competition for water supplies.

3. Whether the project brings about replacement of traditional sources in order to help implement a minimum flow or level or a reservation.

4. Whether the project will be implemented by a consumptive use permittee that has achieved the targets contained in a goal-based water conservation program approved pursuant to s. 373.227.

5. The quantity of water supplied by the project as compared to its cost.

6. Projects in which the construction and delivery to end users of reuse water is a major component.

7. Whether the project will be implemented by a multijurisdictional water supply entity or regional water supply authority.

8. Whether the project implements reuse that assists in the elimination of domestic wastewater ocean outfalls as provided in s. 403.086(10) ~~s. 403.086(9)~~.

9. Whether the county or municipality, or the multiple counties or municipalities, in which the project is located has implemented a high-water recharge protection tax assessment

program as provided in s. 193.625.

Section 37. Subsection (4) of section 373.709, Florida Statutes, is amended to read:

373.709 Regional water supply planning.—

(4) The South Florida Water Management District shall include in its regional water supply plan water resource and water supply development projects that promote the elimination of wastewater ocean outfalls as provided in s. 403.086(10) ~~s. 403.086(9)~~.

Section 38. Effective July 1, 2021, subsection (3) of section 373.807, Florida Statutes, is amended to read:

373.807 Protection of water quality in Outstanding Florida Springs.—By July 1, 2016, the department shall initiate assessment, pursuant to s. 403.067(3), of Outstanding Florida Springs or spring systems for which an impairment determination has not been made under the numeric nutrient standards in effect for spring vents. Assessments must be completed by July 1, 2018.

(3) As part of a basin management action plan that includes an Outstanding Florida Spring, the department, ~~the Department of Health,~~ relevant local governments, and relevant local public and private wastewater utilities shall develop an onsite sewage treatment and disposal system remediation plan for a spring if the department determines onsite sewage treatment and disposal systems within a priority focus area contribute at least 20 percent of nonpoint source nitrogen pollution or if the

department determines remediation is necessary to achieve the total maximum daily load. The plan shall identify cost-effective and financially feasible projects necessary to reduce the nutrient impacts from onsite sewage treatment and disposal systems and shall be completed and adopted as part of the basin management action plan no later than the first 5-year milestone required by subparagraph (1)(b)8. The department is the lead agency in coordinating the preparation of and the adoption of the plan. The department shall:

(a) Collect and evaluate credible scientific information on the effect of nutrients, particularly forms of nitrogen, on springs and springs systems; and

(b) Develop a public education plan to provide area residents with reliable, understandable information about onsite sewage treatment and disposal systems and springs.

In addition to the requirements in s. 403.067, the plan shall include options for repair, upgrade, replacement, drainfield modification, addition of effective nitrogen reducing features, connection to a central sewerage system, or other action for an onsite sewage treatment and disposal system or group of systems within a priority focus area that contribute at least 20 percent of nonpoint source nitrogen pollution or if the department determines remediation is necessary to achieve a total maximum daily load. For these systems, the department shall include in

the plan a priority ranking for each system or group of systems that requires remediation and shall award funds to implement the remediation projects contingent on an appropriation in the General Appropriations Act, which may include all or part of the costs necessary for repair, upgrade, replacement, drainfield modification, addition of effective nitrogen reducing features, initial connection to a central sewerage system, or other action. In awarding funds, the department may consider expected nutrient reduction benefit per unit cost, size and scope of project, relative local financial contribution to the project, and the financial impact on property owners and the community. The department may waive matching funding requirements for proposed projects within an area designated as a rural area of opportunity under s. 288.0656.

Section 39. Paragraph (k) of subsection (1) of section 376.307, Florida Statutes, is amended to read:

376.307 Water Quality Assurance Trust Fund.—

(1) The Water Quality Assurance Trust Fund is intended to serve as a broad-based fund for use in responding to incidents of contamination that pose a serious danger to the quality of groundwater and surface water resources or otherwise pose a serious danger to the public health, safety, or welfare. Moneys in this fund may be used:

(k) For funding activities described in s. 403.086(10) ~~s. 403.086(9)~~ which are authorized for implementation under the

Leah Schad Memorial Ocean Outfall Program.

Section 40. Paragraph (i) of subsection (2), paragraph (b) of subsection (4), paragraph (j) of subsection (7), and paragraph (a) of subsection (9) of section 380.0552, Florida Statutes, are amended to read:

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

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

(i) Protect and improve the nearshore water quality of the Florida Keys through federal, state, and local funding of water quality improvement projects, including the construction and operation of wastewater management facilities that meet the requirements of ss. 381.0065(4)(l) and 403.086(11) ~~403.086(10)~~, as applicable.

(4) REMOVAL OF DESIGNATION.—

(b) Beginning November 30, 2010, the state land planning agency shall annually submit a written report to the Administration Commission describing the progress of the Florida Keys Area toward completing the work program tasks specified in commission rules. The land planning agency shall recommend removing the Florida Keys Area from being designated as an area of critical state concern to the commission if it determines that:

1. All of the work program tasks have been completed,

including construction of, operation of, and connection to central wastewater management facilities pursuant to s. 403.086(11) ~~s. 403.086(10)~~ and upgrade of onsite sewage treatment and disposal systems pursuant to s. 381.0065(4)(l);

2. All local comprehensive plans and land development regulations and the administration of such plans and regulations are adequate to protect the Florida Keys Area, fulfill the legislative intent specified in subsection (2), and are consistent with and further the principles guiding development; and

3. A local government has adopted a resolution at a public hearing recommending the removal of the designation.

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

repealed 18 months from July 1, 1986. After repeal, any plan amendments must be consistent with the following principles:

(j) Ensuring the improvement of nearshore water quality by requiring the construction and operation of wastewater management facilities that meet the requirements of ss. 381.0065(4)(l) and s. 403.086(11) ~~403.086(10)~~, as applicable, and by directing growth to areas served by central wastewater treatment facilities through permit allocation systems.

(9) MODIFICATION TO PLANS AND REGULATIONS.—

(a) Any land development regulation or element of a local comprehensive plan in the Florida Keys Area may be enacted, amended, or rescinded by a local government, but the enactment, amendment, or rescission becomes effective only upon approval by the state land planning agency. The state land planning agency shall review the proposed change to determine if it is in compliance with the principles for guiding development specified in chapter 27F-8, Florida Administrative Code, as amended effective August 23, 1984, and must approve or reject the requested changes within 60 days after receipt. Amendments to local comprehensive plans in the Florida Keys Area must also be reviewed for compliance with the following:

1. Construction schedules and detailed capital financing plans for wastewater management improvements in the annually adopted capital improvements element, and standards for the construction of wastewater treatment and disposal facilities or

collection systems that meet or exceed the criteria in s. 403.086(11) ~~s. 403.086(10)~~ for wastewater treatment and disposal facilities or s. 381.0065(4)(l) for onsite sewage treatment and disposal systems.

2. Goals, objectives, and policies to protect public safety and welfare in the event of a natural disaster by maintaining a hurricane evacuation clearance time for permanent residents of no more than 24 hours. The hurricane evacuation clearance time shall be determined by a hurricane evacuation study conducted in accordance with a professionally accepted methodology and approved by the state land planning agency.

Section 41. Effective July 1, 2021, section 381.006, Florida Statutes, is amended to read:

381.006 Environmental health.—The Department of Health shall conduct an environmental health program as part of fulfilling the state's public health mission. The purpose of this program is to detect and prevent disease caused by natural and manmade factors in the environment. The environmental health program shall include, but not be limited to:

(1) A drinking water function.

(2) An environmental health surveillance function which shall collect, compile, and correlate information on public health and exposure to hazardous substances through sampling and testing of water, air, or foods. Environmental health surveillance shall include a comprehensive assessment of

drinking water under the department's supervision and an indoor air quality testing and monitoring program to assess health risks from exposure to chemical, physical, and biological agents in the indoor environment.

(3) A toxicology and hazard assessment function which shall conduct toxicological and human health risk assessments of exposure to toxic agents, for the purposes of:

(a) Supporting determinations by the State Health Officer of safe levels of contaminants in water, air, or food if applicable standards or criteria have not been adopted. These determinations shall include issuance of health advisories to protect the health and safety of the public at risk from exposure to toxic agents.

(b) Provision of human toxicological health risk assessments to the public and other governmental agencies to characterize the risks to the public from exposure to contaminants in air, water, or food.

(c) Consultation and technical assistance to the Department of Environmental Protection and other governmental agencies on actions necessary to ameliorate exposure to toxic agents, including the emergency provision by the Department of Environmental Protection of drinking water in cases of drinking water contamination that present an imminent and substantial threat to the public's health, as required by s. 376.30(3)(c)1.a.

(d) Monitoring and reporting the body burden of toxic agents to estimate past exposure to these toxic agents, predict future health effects, and decrease the incidence of poisoning by identifying and eliminating exposure.

(4) A sanitary nuisance function, as that term is defined in chapter 386.

(5) A migrant labor function.

(6) A public facilities function, including sanitary practices relating to state, county, municipal, and private institutions serving the public; jointly with the Department of Education, publicly and privately owned schools; all places used for the incarceration of prisoners and inmates of state institutions for the mentally ill; toilets and washrooms in all public places and places of employment; any other condition, place, or establishment necessary for the control of disease or the protection and safety of public health.

~~(7) An onsite sewage treatment and disposal function.~~

(7) ~~(8)~~ A biohazardous waste control function.

(8) ~~(9)~~ A function to control diseases transmitted from animals to humans, including the segregation, quarantine, and destruction of domestic pets and wild animals having or suspected of having such diseases.

(9) ~~(10)~~ An environmental epidemiology function which shall investigate food-borne disease, waterborne disease, and other diseases of environmental causation, whether of chemical,

radiological, or microbiological origin. A $10 surcharge for this function shall be assessed upon all persons permitted under chapter 500. This function shall include an educational program for physicians and health professionals designed to promote surveillance and reporting of environmental diseases, and to further the dissemination of knowledge about the relationship between toxic substances and human health which will be useful in the formulation of public policy and will be a source of information for the public.

(10) ~~(11)~~ Mosquito and pest control functions as provided in chapters 388 and 482.

(11) ~~(12)~~ A radiation control function as provided in chapter 404 and part IV of chapter 468.

(12) ~~(13)~~ A public swimming and bathing facilities function as provided in chapter 514.

(13) ~~(14)~~ A mobile home park, lodging park, recreational vehicle park, and recreational camp function as provided in chapter 513.

(14) ~~(15)~~ A sanitary facilities function, which shall include minimum standards for the maintenance and sanitation of sanitary facilities; public access to sanitary facilities; and fixture ratios for special or temporary events and for homeless shelters.

(15) ~~(16)~~ A group-care-facilities function. As used in this subsection, the term "group care facility" means any public or

private school, assisted living facility, adult family-care home, adult day care center, short-term residential treatment center, residential treatment facility, home for special services, transitional living facility, crisis stabilization unit, hospice, prescribed pediatric extended care center, intermediate care facility for persons with developmental disabilities, or boarding school. The department may adopt rules necessary to protect the health and safety of residents, staff, and patrons of group care facilities. Rules related to public and private schools shall be developed by the Department of Education in consultation with the department. Rules adopted under this subsection may include definitions of terms; provisions relating to operation and maintenance of facilities, buildings, grounds, equipment, furnishings, and occupant-space requirements; lighting; heating, cooling, and ventilation; food service; water supply and plumbing; sewage; sanitary facilities; insect and rodent control; garbage; safety; personnel health, hygiene, and work practices; and other matters the department finds are appropriate or necessary to protect the safety and health of the residents, staff, students, faculty, or patrons. The department may not adopt rules that conflict with rules adopted by the licensing or certifying agency. The department may enter and inspect at reasonable hours to determine compliance with applicable statutes or rules. In addition to any sanctions that the department may impose for violations of rules

adopted under this section, the department shall also report such violations to any agency responsible for licensing or certifying the group care facility. The licensing or certifying agency may also impose any sanction based solely on the findings of the department.

(16) ~~(17)~~ A function for investigating elevated levels of lead in blood. Each participating county health department may expend funds for federally mandated certification or recertification fees related to conducting investigations of elevated levels of lead in blood.

(17) ~~(18)~~ A food service inspection function for domestic violence centers that are certified by the Department of Children and Families and monitored by the Florida Coalition Against Domestic Violence under part XII of chapter 39 and group care homes as described in subsection (15) ~~(16)~~, which shall be conducted annually and be limited to the requirements in department rule applicable to community-based residential facilities with five or fewer residents.

The department may adopt rules to carry out ~~the provisions of~~ this section.

Section 42. Effective July 1, 2021, subsection (1) of section 381.0061, Florida Statutes, is amended to read:

381.0061 Administrative fines.—

(1) In addition to any administrative action authorized by

chapter 120 or by other law, the department may impose a fine, which shall not exceed $500 for each violation, for a violation of s. 381.006(15) ~~s. 381.006(16)~~, s. 381.0065, s. 381.0066, s. 381.0072, or part III of chapter 489, for a violation of any rule adopted under this chapter, or for a violation of any of the provisions of chapter 386. Notice of intent to impose such fine shall be given by the department to the alleged violator. Each day that a violation continues may constitute a separate violation.

Section 43. Effective July 1, 2021, subsection (1) of section 381.0064, Florida Statutes, is amended to read:

381.0064 Continuing education courses for persons installing or servicing septic tanks.—

(1) The Department of Environmental Protection ~~Health~~ shall establish a program for continuing education which meets the purposes of ss. 381.0101 and 489.554 regarding the public health and environmental effects of onsite sewage treatment and disposal systems and any other matters the department determines desirable for the safe installation and use of onsite sewage treatment and disposal systems. The department may charge a fee to cover the cost of such program.

Section 44. Effective July 1, 2021, paragraph (g) of subsection (1) of section 381.0101, Florida Statutes, is amended to read:

381.0101 Environmental health professionals.—

(1) DEFINITIONS.—As used in this section:

(g) "Primary environmental health program" means those programs determined by the department to be essential for providing basic environmental and sanitary protection to the public. At a minimum, these programs shall include food protection program work ~~and onsite sewage treatment and disposal system evaluations~~.

Section 45. Section 403.08601, Florida Statutes, is amended to read:

403.08601 Leah Schad Memorial Ocean Outfall Program.—The Legislature declares that as funds become available the state may assist the local governments and agencies responsible for implementing the Leah Schad Memorial Ocean Outfall Program pursuant to s. 403.086(10) ~~s. 403.086(9)~~. Funds received from other sources provided for in law, the General Appropriations Act, from gifts designated for implementation of the plan from individuals, corporations, or other entities, or federal funds appropriated by Congress for implementation of the plan, may be deposited into an account of the Water Quality Assurance Trust Fund.

Section 46. Section 403.0871, Florida Statutes, is amended to read:

403.0871 Florida Permit Fee Trust Fund.—There is established within the department a nonlapsing trust fund to be known as the "Florida Permit Fee Trust Fund." All funds received

from applicants for permits pursuant to ss. 161.041, 161.053, 161.0535, 403.087(7) ~~403.087(6)~~, and 403.861(7)(a) shall be deposited in the Florida Permit Fee Trust Fund and shall be used by the department with the advice and consent of the Legislature to supplement appropriations and other funds received by the department for the administration of its responsibilities under this chapter and chapter 161. In no case shall funds from the Florida Permit Fee Trust Fund be used for salary increases without the approval of the Legislature.

Section 47. Paragraph (a) of subsection (11) of section 403.0872, Florida Statutes, is amended to read:

403.0872 Operation permits for major sources of air pollution; annual operation license fee.—Provided that program approval pursuant to 42 U.S.C. s. 7661a has been received from the United States Environmental Protection Agency, beginning January 2, 1995, each major source of air pollution, including electrical power plants certified under s. 403.511, must obtain from the department an operation permit for a major source of air pollution under this section. This operation permit is the only department operation permit for a major source of air pollution required for such source; provided, at the applicant's request, the department shall issue a separate acid rain permit for a major source of air pollution that is an affected source within the meaning of 42 U.S.C. s. 7651a(1). Operation permits for major sources of air pollution, except general permits

issued pursuant to s. 403.814, must be issued in accordance with the procedures contained in this section and in accordance with chapter 120; however, to the extent that chapter 120 is inconsistent with ~~the provisions of~~ this section, the procedures contained in this section prevail.

(11) Each major source of air pollution permitted to operate in this state must pay between January 15 and April 1 of each year, upon written notice from the department, an annual operation license fee in an amount determined by department rule. The annual operation license fee shall be terminated immediately in the event the United States Environmental Protection Agency imposes annual fees solely to implement and administer the major source air-operation permit program in Florida under 40 C.F.R. s. 70.10(d).

(a) The annual fee must be assessed based upon the source's previous year's emissions and must be calculated by multiplying the applicable annual operation license fee factor times the tons of each regulated air pollutant actually emitted, as calculated in accordance with the department's emissions computation and reporting rules. The annual fee shall only apply to those regulated pollutants, except carbon monoxide and greenhouse gases, for which an allowable numeric emission limiting standard is specified in the source's most recent construction or operation permit; provided, however, that:

1. The license fee factor is $25 or another amount

determined by department rule which ensures that the revenue provided by each year's operation license fees is sufficient to cover all reasonable direct and indirect costs of the major stationary source air-operation permit program established by this section. The license fee factor may be increased beyond $25 only if the secretary of the department affirmatively finds that a shortage of revenue for support of the major stationary source air-operation permit program will occur in the absence of a fee factor adjustment. The annual license fee factor may never exceed $35.

2. The amount of each regulated air pollutant in excess of 4,000 tons per year emitted by any source, or group of sources belonging to the same Major Group as described in the Standard Industrial Classification Manual, 1987, may not be included in the calculation of the fee. Any source, or group of sources, which does not emit any regulated air pollutant in excess of 4,000 tons per year, is allowed a one-time credit not to exceed 25 percent of the first annual licensing fee for the prorated portion of existing air-operation permit application fees remaining upon commencement of the annual licensing fees.

3. If the department has not received the fee by March 1 of the calendar year, the permittee must be sent a written warning of the consequences for failing to pay the fee by April 1. If the fee is not postmarked by April 1 of the calendar year, the department shall impose, in addition to the fee, a penalty

of 50 percent of the amount of the fee, plus interest on such amount computed in accordance with s. 220.807. The department may not impose such penalty or interest on any amount underpaid, provided that the permittee has timely remitted payment of at least 90 percent of the amount determined to be due and remits full payment within 60 days after receipt of notice of the amount underpaid. The department may waive the collection of underpayment and may ~~shall~~ not be required to refund overpayment of the fee, if the amount due is less than 1 percent of the fee, up to $50. The department may revoke any major air pollution source operation permit if it finds that the permitholder has failed to timely pay any required annual operation license fee, penalty, or interest.

4. Notwithstanding the computational provisions of this subsection, the annual operation license fee for any source subject to this section may ~~shall~~ not be less than $250, except that the annual operation license fee for sources permitted solely through general permits issued under s. 403.814 may ~~shall~~ not exceed $50 per year.

5. Notwithstanding s. 403.087(7)(a)5.a., which authorizes ~~the provisions of s. 403.087(6)(a)5.a., authorizing~~ air pollution construction permit fees, the department may not require such fees for changes or additions to a major source of air pollution permitted pursuant to this section, unless the activity triggers permitting requirements under Title I, Part C

or Part D, of the federal Clean Air Act, 42 U.S.C. ss. 7470-7514a. Costs to issue and administer such permits shall be considered direct and indirect costs of the major stationary source air-operation permit program under s. 403.0873. The department shall, however, require fees pursuant to s. 403.087(7)(a)5.a. ~~the provisions of s. 403.087(6)(a)5.a.~~ for the construction of a new major source of air pollution that will be subject to the permitting requirements of this section once constructed and for activities triggering permitting requirements under Title I, Part C or Part D, of the federal Clean Air Act, 42 U.S.C. ss. 7470-7514a.

Section 48. Paragraph (d) of subsection (3) of section 403.707, Florida Statutes, is amended to read:

403.707 Permits.—

(3)

(d) The department may adopt rules to administer this subsection. However, the department is not required to submit such rules to the Environmental Regulation Commission for approval. Notwithstanding the limitations of s. 403.087(7)(a) ~~s. 403.087(6)(a)~~, permit fee caps for solid waste management facilities shall be prorated to reflect the extended permit term authorized by this subsection.

Section 49. Subsections (8) and (21) of section 403.861, Florida Statutes, are amended to read:

403.861 Department; powers and duties.—The department

shall have the power and the duty to carry out the provisions and purposes of this act and, for this purpose, to:

(8) Initiate rulemaking to increase each drinking water permit application fee authorized under s. 403.087(7) ~~s. 403.087(6)~~ and this part and adopted by rule to ensure that such fees are increased to reflect, at a minimum, any upward adjustment in the Consumer Price Index compiled by the United States Department of Labor, or similar inflation indicator, since the original fee was established or most recently revised.

(a) The department shall establish by rule the inflation index to be used for this purpose. The department shall review the drinking water permit application fees authorized under s. 403.087(7) ~~s. 403.087(6)~~ and this part at least once every 5 years and shall adjust the fees upward, as necessary, within the established fee caps to reflect changes in the Consumer Price Index or similar inflation indicator. In the event of deflation, the department shall consult with the Executive Office of the Governor and the Legislature to determine whether downward fee adjustments are appropriate based on the current budget and appropriation considerations. The department shall also review the drinking water operation license fees established pursuant to paragraph (7)(b) at least once every 5 years to adopt, as necessary, the same inflationary adjustments provided for in this subsection.

(b) The minimum fee amount shall be the minimum fee

prescribed in this section, and such fee amount shall remain in effect until the effective date of fees adopted by rule by the department.

(21)(a) Upon issuance of a construction permit to construct a new public water system drinking water treatment facility to provide potable water supply using a surface water that, at the time of the permit application, is not being used as a potable water supply, and the classification of which does not include potable water supply as a designated use, the department shall add treated potable water supply as a designated use of the surface water segment in accordance with s. 403.061(30)(b) ~~s. 403.061(29)(b)~~.

(b) For existing public water system drinking water treatment facilities that use a surface water as a treated potable water supply, which surface water classification does not include potable water supply as a designated use, the department shall add treated potable water supply as a designated use of the surface water segment in accordance with s. 403.061(30)(b) ~~s. 403.061(29)(b)~~.

Section 50. Effective July 1, 2021, subsection (1) of section 489.551, Florida Statutes, is amended to read:

489.551 Definitions.—As used in this part:

(1) "Department" means the Department of Environmental Protection ~~Health~~.

Section 51. Paragraph (b) of subsection (10) of section

590.02, Florida Statutes, is amended to read:

590.02 Florida Forest Service; powers, authority, and duties; liability; building structures; Withlacoochee Training Center.—

(10)

(b) The Florida Forest Service may delegate to a county, municipality, or special district its authority:

1. As delegated by the Department of Environmental Protection pursuant to ss. 403.061(29) ~~ss. 403.061(28)~~ and 403.081, to manage and enforce regulations pertaining to the burning of yard trash in accordance with s. 590.125(6).

2. To manage the open burning of land clearing debris in accordance with s. 590.125.

Section 52. The Division of Law Revision is directed to replace the phrase "before the rules in paragraph (e) take effect" as it is used in the amendment made by this act to s. 381.0065(4)(f), Florida Statutes, with the date such rules are adopted, as provided by the Department of Environmental Protection pursuant to s. 381.0065(4)(f), Florida Statutes, as amended by this act.

Section 53. Except as otherwise expressly provided in this act, this act shall take effect July 1, 2020.

Amendment No.

COMMITTEE/SUBCOMMITTEE ACTION

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

Committee/Subcommittee hearing bill: State Affairs Committee

Representative DuBose offered the following:

Amendment (with title amendment)

Remove lines 281-289

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

Remove lines 16-19 and insert:

upon the transfer; amending s. 373.036, F.S.; directing water