

WEEK 5 REPORT

// 2018 LEGISLATIVE SESSION

+ MARINE INDUSTRIES ASSOCIATION OF FLORIDA
FEB. 5 - FEB. 9, 2018



// WEEK 5 REPORT

CONTENTS

SB 232 // HB 53

Coral Reefs

I am happy to report we are midway through the 2018 Legislative Session. The mood continues to be different than any other Legislative Session I have ever witnessed in my twenty-four years in Tallahassee. The hope is we get out on time and can begin focusing on what will be an interesting campaign year.

SB 632 // HB 247

Vessel Registration

Budgets continue to move. The House and Senate are positioned to begin the budget conference process. Once both sides agree to allocations, members will be appointed to the various conference committees and we will begin. Everything hinges on a balanced budget passing.

SB 388 // HB 1001

Anchoring Limitation Areas

I have added a few extra budget line items for your review. As you will see, not everything is identical. Please review them carefully as these will be budget conference issues.

SB 664 // HB 469

Salvage of Pleasure Vessels

The "Florida Coral Reef Ecosystem Conservation Area" is now an enrolled bill. We will update you when the bill is sent to the Governor for approval.

SB 1132 // HB 915

Vessel Safety Inspection Decals

House Bill 53 by Representative Jacobs passed the House of Representatives 107-0 and passed the Senate 35-0.

The "Salvage Bill" only has one committee stop left in the Senate and is scheduled in its last committee stop in the House of Representatives.

SB 1632 // HB 963

Towing and Immoilization Fees and Charges

As expected, Senate Bill 664 by Senator Young is waiting to be heard in the Senate Rules Committee.

House Bill 469 is on the agenda to be heard in the House Government Accountability Committee February 13th. We anticipate amendments to the bill in committee. We will keep you posted as the bill progresses.

SB 1308 // HB 1149

Environmental Regulation

The environmental regulation bills we added to the report last week are moving right along. SB 1308/HB 1149, Environmental Regulation, contain language relating to dock replacement. SB 1308 is scheduled to be heard in the Senate Community Affairs Committee on February 13th. HB 1149 is also moving in the House and passed the House Agriculture and Natural Resources Appropriations Subcommittee February 6th with a vote of 11-1.

Anchoring is still out there and still has not moved. As we run out of time, it becomes less likely these bills will pass, but we will remain vigilant looking for anchoring amendments.

Budget Highlights

The Florida Senate and the Florida House of Representatives have

passed their respective budgets through their Appropriations Committees. Numerous amendments were offered, some were accepted and many failed. Please note, our line items did not change, but we will watch for amendments on the floor this week.

Below for your information are a few of the boating highlights included in the Governor's recommendations, the Florida Senate proposal (SB 2500) and Florida House of Representative proposal (HB 5001).

Governor Recommendations

1694 SPECIAL CATEGORIES FLORIDA RESILIENT COASTLINE INITIATIVE
 FROM GENERAL REVENUE FUND 3,600,000
 FROM WATER QUALITY ASSURANCE TRUST FUND
 257,834

From the funds in Specific Appropriation 1694, \$3,600,000 is provided for the purpose of assisting local governments with sea level rise planning and coastal resilience projects. Funds may also be used for storm resiliency, including the placement of sand to mitigate erosion and ensure public safety, or for the protection of coral reef health, including restoration and monitoring.

1703 GRANTS AND AIDS TO LOCAL GOVERNMENTS AND NONSTATE ENTITIES - FIXED CAPITAL OUTLAY
 CLEAN MARINA
 FROM FEDERAL GRANTS TRUST FUND 1,960,000
 FROM GRANTS AND DONATIONS TRUST FUND 200,000

1758 SPECIAL CATEGORIES BOATING SAFETY EDUCATION PROGRAM
 FROM MARINE RESOURCES CONSERVATION TRUST FUND 850,650

1759 FIXED CAPITAL OUTLAY BOATING INFRASTRUCTURE
 FROM FEDERAL GRANTS TRUST FUND 3,900,000

1760 GRANTS AND AIDS TO LOCAL GOVERNMENTS AND NONSTATE ENTITIES - FIXED CAPITAL OUTLAY
 DERELICT VESSEL REMOVAL PROGRAM
 FROM GENERAL REVENUE FUND 1,000,000

1761 GRANTS AND AIDS TO LOCAL GOVERNMENTS AND NONSTATE ENTITIES - FIXED CAPITAL OUTLAY
 FLORIDA BOATING IMPROVEMENT PROGRAM
 FROM MARINE RESOURCES CONSERVATION TRUST FUND 2,592,600
 FROM STATE GAME TRUST FUND 1,250,000

1827 GRANTS AND AIDS TO LOCAL GOVERNMENTS AND NONSTATE ENTITIES - FIXED CAPITAL OUTLAY
 ARTIFICIAL FISHING REEF CONSTRUCTION PROGRAM
 FROM FEDERAL GRANTS TRUST FUND 300,000
 FROM MARINE RESOURCES CONSERVATION TRUST FUND 300,000

Senate Budget - SB 2500

1694 SPECIAL CATEGORIES FLORIDA RESILIENT COASTLINE INITIATIVE

FROM WATER QUALITY ASSURANCE TRUST FUND 257,834

1703 GRANTS AND AIDS TO LOCAL GOVERNMENTS AND NONSTATE ENTITIES - FIXED CAPITAL
OUTLAY CLEAN MARINA
FROM FEDERAL GRANTS TRUST FUND 1,960,000
FROM GRANTS AND DONATIONS TRUST FUND 200,000

1758 SPECIAL CATEGORIES BOATING SAFETY EDUCATION PROGRAM
FROM MARINE RESOURCES CONSERVATION TRUST FUND 850,650

1759 FIXED CAPITAL OUTLAY BOATING INFRASTRUCTURE
FROM FEDERAL GRANTS TRUST FUND 3,900,000

1760 GRANTS AND AIDS TO LOCAL GOVERNMENTS AND NONSTATE ENTITIES - FIXED CAPITAL
OUTLAY DERELICT VESSEL REMOVAL PROGRAM
FROM GENERAL REVENUE FUND 1,000,000

1761 GRANTS AND AIDS TO LOCAL GOVERNMENTS AND NONSTATE ENTITIES - FIXED CAPITAL
OUTLAY FLORIDA BOATING IMPROVEMENT PROGRAM
FROM MARINE RESOURCES CONSERVATION TRUST FUND 2,592,600
FROM STATE GAME TRUST FUND 1,250,000

1827 GRANTS AND AIDS TO LOCAL GOVERNMENTS AND NONSTATE ENTITIES - FIXED CAPITAL
OUTLAY ARTIFICIAL FISHING REEF CONSTRUCTION PROGRAM
FROM FEDERAL GRANTS TRUST FUND 300,000
FROM MARINE RESOURCES CONSERVATION TRUST FUND 300,000

House Budget - HB 5001

1694 SPECIAL CATEGORIES FLORIDA RESILIENT COASTLINE INITIATIVE
FROM GENERAL REVENUE FUND 3,600,000

From the funds provided in Specific Appropriation 1694, \$2,600,000 in recurring and \$1,000,000 in nonrecurring funds from the General Revenue Fund are provided for the Florida Resilient Coastline Initiative to assist local governments with storm resiliency, sea level rise planning, coastal resilience projects, and coral reef health.

1703 GRANTS AND AIDS TO LOCAL GOVERNMENTS AND NONSTATE ENTITIES - FIXED CAPITAL
OUTLAY CLEAN MARINA
FROM FEDERAL GRANTS TRUST FUND 1,960,000
FROM GRANTS AND DONATIONS TRUST FUND 200,000

1758 SPECIAL CATEGORIES BOATING SAFETY EDUCATION PROGRAM
FROM MARINE RESOURCES CONSERVATION TRUST FUND 625,650

1759	FIXED CAPITAL OUTLAY BOATING INFRASTRUCTURE	
	FROM FEDERAL GRANTS TRUST FUND . . .	3,900,000
1760	GRANTS AND AIDS TO LOCAL GOVERNMENTS AND NONSTATE ENTITIES - FIXED CAPITAL OUTLAY DERELICT VESSEL REMOVAL PROGRAM	
	FROM MARINE RESOURCES CONSERVATION TRUST FUND	1,000,000
1761	GRANTS AND AIDS TO LOCAL GOVERNMENTS AND NONSTATE ENTITIES - FIXED CAPITAL OUTLAY FLORIDA BOATING IMPROVEMENT PROGRAM	
	FROM MARINE RESOURCES CONSERVATION TRUST FUND	1,296,300
	FROM STATE GAME TRUST FUND	1,250,000
1820A	SPECIAL CATEGORIES NUISANCE WILDLIFE CONTROL	
	FROM MARINE RESOURCES CONSERVATION TRUST FUND	1,000,000

From the funds provided in Specific Appropriation 1820A, \$1,000,000 in nonrecurring funds from the Marine Resources Conservation Trust Fund is provided for the removal of lionfish in the areas of greatest need as determined by the Fish and Wildlife Conservation Commission.

Funds may be used to recruit local dive shops or commercial fishermen to host Fish and Wildlife Conservation Commission sponsored lionfish-specific excursions or dive trips for lionfish removal where they teach anglers how to harvest, safely handle, and clean harvested lionfish, and how to cook lionfish. \$100,000 from the funds provided may be used to partner with local seafood markets and restaurants to market the consumption of lionfish as a food product.

The Fish and Wildlife Conservation Commission shall submit quarterly reports that include the status of the removal process, how many lionfish have been removed, the status of outreach, education and marketing, and how the funds are being utilized. The quarterly reports shall be submitted to the Executive Office of the Governor and the chairs of the Senate Appropriations Committee and the House of Representatives Appropriations Committee no later than 30 days after the close of each quarter.

1827	GRANTS AND AIDS TO LOCAL GOVERNMENTS AND NONSTATE ENTITIES - FIXED CAPITAL OUTLAY ARTIFICIAL FISHING REEF CONSTRUCTION PROGRAM	
	FROM FEDERAL GRANTS TRUST FUND . . .	300,000
	FROM MARINE RESOURCES CONSERVATION TRUST FUND	300,000

As always, thank you for allowing us to represent you in Tallahassee. We appreciate you!



Margaret "Missy" Timmins
 President
 Timmins Consulting, LLC

// CORAL REEFS

Senate Bill 232 // Sen. Lauren Book // Referred to: Environmental Preservation and Conservation; Appropriations Subcommittee on the Environment and Natural Resources; Appropriations

House Bill 53 // Rep. Kristin Jacobs // Referred to: Natural Resources & Public Lands Subcommittee; Agriculture & Natural Resources Appropriations Subcommittee; Government Accountability Committee

HOUSE/SENATE BILL RELATIONSHIP: *IDENTICAL*

Senate Bill 232: SB 232 creates the Southeast Florida Coral Reef Ecosystem Conservation Area. The conservation area consists of the sovereignty submerged lands and state waters offshore of Broward, Martin, Miami-Dade, and Palm Beach Counties from the St. Lucie Inlet to the northern boundary of the Biscayne National Park.

Most Recent Action: Read Second Time; Substituted for HB 0053; Laid on Table, Refer to HB 0053

House Bill 53: Coral reefs in southeast Florida support a rich and diverse assemblage of stony corals, octocorals, macroalgae, sponges, and fishes. These ecological communities run parallel along the coast from the northern border of Biscayne National Park in Miami-Dade County north to the St. Lucie Inlet in Martin County. Coral reefs are valuable natural resources. They protect coastlines by reducing wave energy from storms and hurricanes. They serve as a source of food and shelter and provide critical habitat for over 6,000 species, including important commercial fisheries. Further, people use coral reefs as a resource for recreation, education, scientific research, and public inspiration. Millions of tourists and local residents enjoy scuba diving, snorkeling, and fishing on the coral reefs.

Coral reefs are vulnerable to harmful environmental changes, particularly those resulting from human activities. Globally, 10 percent of all coral reefs are degraded beyond recovery and 30 percent are in critical condition and may die within 10 to 20 years, particularly those near human populations.

The bill establishes the Southeast Florida Coral Reef Ecosystem Conservation Area (conservation area). The conservation area includes the sovereign submerged lands and state waters offshore of Broward, Martin, Miami-Dade, and Palm Beach Counties from the St. Lucie Inlet in the north to the northern boundary of the Biscayne National Park in the south.

Most Recent Action: Read Third Time; Passed (Vote: 35 Yeas / 0 Nays); Enrolled Text (ER) Filed

Attached documents: HB 53 (Enrolled) + staff analysis

// VESSEL REGISTRATION

Senate Bill 632 // Sen. Bill Montford // Referred to: Transportation; Appropriations Subcommittee on Transportation, Tourism, and Economic Development; Appropriations

House Bill 247 // Rep. Lorraine Ausley // Referred to: Transportation & Infrastructure Subcommittee; Transportation & Tourism Appropriations Subcommittee; Government Accountability Committee

HOUSE/SENATE BILL RELATIONSHIP: *SIMILAR*

Senate Bill 632: CS/SB 632 authorizes the Department of Highway Safety and Motor Vehicles (DHSMV) to accept applications for vessel registration by electronic or telephonic means, issue electronic vessel registrations in addition to paper registrations, and collect email addresses and use email for providing vessel registration renewal notices in lieu of the United States Postal Service (USPS). The bill also allows a vessel operator to present the electronic certificate of vessel registration on an electronic device upon inspection of the vessel. The bill provides that presentation of the electronic certificate does not constitute consent for inspection of any other information on the device, and the person who presents the device assumes liability for any damage to the device.

The bill may have a negative fiscal impact to the DHSMV for initial implementation; however, the DHSMV may experience reduced mail costs in the future.

Most Recent Action: Favorable by Appropriations Subcommittee on Transportation, Tourism, and Economic Development; 8 Yeas, 0 Nays

House Bill 247: Currently, the Fish and Wildlife Conservation Commission (FWC) is authorized to accept an application for a vessel certificate of registration by electronic or telephonic means whereas for a motor vehicle certificate of registration the Department of Highway Safety and Motor Vehicles (DHSMV) is authorized to:

- Accept an application for motor vehicle registration by electronic or telephonic means; and
- Collect and use email addresses in lieu of the U.S. Postal Service for providing renewal notices.

Florida does not currently allow a motor vehicle or vessel owner or operator to display an electronic certificate of registration in lieu of a paper registration to law enforcement or any other official requesting to view the vessel registration.

The bill replaces “commission” with “department,” when referring to the state agency who is responsible for accepting vessel registration applications. This change recognizes that DHSMV is the state agency responsible for processing registration applications for vessels, not the FWC. Additionally, the bill allows DHSMV to issue an electronic certificate of registration in lieu of

a paper registration and collect and use email addresses in lieu of U.S. mail for the purpose of providing renewal notices. This provision parallels the existing requirements governing the issuance of vessel and motor vehicle certificates of title.

The bill allows owners and operators of vessels to produce an electronic certificate of registration for inspection. The presentation of the electronic certificate of registration does not create consent to inspect any other information on the electronic device. This will enable owners and operators of vessels to produce an electronic certificate of registration (via cell phone, tablet, laptop, etc.) to law enforcement, or any other official requesting to view the vessel registration, rather than producing a paper copy.

The bill will have an indeterminate, but likely negative fiscal impact to DHSMV.

Most Recent Action: Favorable by Transportation & Infrastructure Subcommittee; 12 Yeas, 0 Nays

Attached documents: CS/SB 632 + staff analysis

// ANCHORING LIMITATION AREAS

Senate Bill 388 // Sen. Gary Farmer // Referred to: Environmental Preservation and Conservation; Community Affairs; Rules

House Bill 1001 // Rep. Joe Geller // Referred to: Local, Federal & Veterans Affairs Subcommittee; Natural Resources & Public Lands Subcommittee; Government Accountability Committee

HOUSE/SENATE BILL RELATIONSHIP: *SIMILAR*

Senate Bill 388: Revising the anchoring limitation areas within the state to include additional specified areas, etc.

Most Recent Action: Referred to Environmental Preservation and Conservation; Community Affairs; Rules

House Bill 1001 Provides exception to general law; provides specified areas are narrow state waterways & anchoring limitation areas.

Most Recent Action: Referred to Local, Federal & Veterans Affairs Subcommittee; Natural Resources & Public Lands Subcommittee; Government Accountability Committee

// SALVAGE OF PLEASURE VESSELS

Senate Bill 664 // Sen. Dana Young // Referred to: Commerce and Tourism; Transportation; Rules

House Bill 469 // Rep. Shawn Harrison // Referred to: Natural Resources & Public Lands Subcommittee; Careers & Competition Subcommittee; Government Accountability Committee

HOUSE/SENATE BILL RELATIONSHIP: *SIMILAR*

Senate Bill 664: CS/CS/SB 664 creates a new section of law relating to salvage of pleasure vessels, applying its provisions to all salvors in the state, with certain exceptions, and defining relevant terms. The bill requires a salvor to provide a customer with verbal and written notice that the salvor's offered service is not covered by any towing contract before a salvor may engage in the salvage operation of a pleasure vessel. The bill requires the written notice to include a specified statement. The bill relieves a salvor of providing the verbal and written notice if there is an imminent threat of injury or death to any person on board the vessel.

The bill provides that a customer injured by a violation of the new section of law may bring an action in the appropriate court and specifies that a prevailing customer in such an action is entitled to damages in an amount that is 1.5 times that charged by the salvor, plus actual damages, court costs, and reasonable attorney fees. The bill provides that a customer may also bring an action for injunctive relief in the circuit court.

Last Action: Favorable with CS by Transportation; 5 Yeas, 2 Nays

House Bill 469: Currently, state law does not require salvors of pleasure vessels to notify customers regarding the potential costs prior to salvage. Salvage is the amount allowed to persons who voluntarily assist a ship at sea or her cargo or both, whether saved in whole or in part from impending sea peril, or in the recovery of such property from actual peril or loss. In determining a salvage award, several factors are considered resulting in awards ranging from a few hundred dollars to thousands of dollars.

The bill defines terms and provides that, before a salvor may engage in the salvage operation of a pleasure vessel, the salvor shall provide the customer with verbal and written notice that the service offered is not covered by any towing contract. The bill specifies that a salvor is not required to provide the verbal and written notice if there is an imminent threat of injury or death to any person on board the vessel. The bill applies, with a few exceptions, to all salvors operating in Florida.

The bill requires that the written notice include specific language, in capital letters of at least 12-point type, which can be summarized as follows::

- Salvage work is not covered by any towing service contract.
- The salvor may present the customer, or their insurance company, with the bill at a later

date.

- The bill will be calculated in accordance with federal salvage law, which may exceed a charge based on time and materials, and may amount to the entire value of the vessel and its contents.
- If the customer agrees to allow the salvor to perform the work, the only recourse for challenging the bill is a lawsuit in federal court or, if customer agrees, binding arbitration.
- The customer may agree to the charges before work begins, and that agreed amount will be the maximum that the salvor may charge. The customer has the right to reject the salvor's offer if the salvor does not agree to a charge before beginning work.

The bill provides that a customer injured by a violation who prevails in court is entitled to damages in the amount of 1.5 times that charged by the salvor, plus actual damages, court costs, reasonable attorney fees, injunctive relief, and any other remedy provided by law.

Most Recent Action: On Committee agenda - Government Accountability Committee, 02/13/18, 3:00 pm

Attached documents: CS/CS/HB 469 + staff analysis

// VESSEL SAFETY INSPECTION DECALS

Senate Bill 1132 // Sen. Travis Hutson // Referred to: Environmental Preservation and Conservation; Appropriations Subcommittee on the Environment and Natural Resources; Appropriations

House Bill 915 // Rep. Patrick Henry // Referred to: Natural Resources & Public Lands Subcommittee; Government Accountability Committee

HOUSE/SENATE BILL RELATIONSHIP: *IDENTICAL*

Senate Bill 1132: PCS/SB 1132 authorizes the Fish and Wildlife Conservation Commission (FWC) to designate by rule the timeframe for the expiration of, and the specific design for, the safety inspection decal for vessels. The bill specifies that the decal may not be valid for more than five years, and, at a minimum, meet the standards specified in s. 327.70(2)(a), F.S., which requires the decal to be displayed:

- Within six inches of the vessel's properly displayed vessel registration decal; or
- For a non-motorized vessel which is not required to be registered, on the forward half of the port side of the vessel above the waterline.

The FWC will have additional workload relating to rulemaking to implement the bill. The associated costs of such workload will be absorbed within the FWC's existing resources.

Most Recent Action: Favorable with CS by Appropriations Subcommittee on the Environment and Natural Resources; 7 Yeas, 0 Nays

House Bill 915: The owner and operator of every vessel on Florida waters must carry, store, maintain, and use safety equipment in accordance with the United States Coast Guard (USCG) safety equipment requirements, unless exempted by the Florida Fish and Wildlife Conservation Commission (FWC). Additionally, all vessels must be equipped with serviceable lights and shapes required under navigation rules.

In general, all vessels are required to have onboard a wearable USCG-approved personal flotation device for each person, which is the appropriate size for the intended wearer, be in serviceable condition, and within easy access. All vessels are also required to carry an efficient sound-producing device (e.g., bell, horn, whistle). Other safety requirements, for instance, the number of fire extinguishers and visual distress signals, vary depending on the length of the vessel.

An operator of a vessel who has demonstrated compliance with safety equipment and use requirements must be issued a safety inspection decal by a law enforcement officer signifying the vessel has met such requirements at the time and location of the inspection. A law enforcement officer may not stop a vessel that properly displays a valid safety inspection decal for the sole purpose of inspecting the vessel for compliance with safety equipment and use requirements, unless there is reasonable suspicion that a violation of such has occurred or is occurring. Current law does not provide for an expiration date of the safety inspection decal or grant FWC rulemaking authority to design the safety inspection decal.

The bill allows FWC to designate by rule the timeframe for expiration of, and the specific design for, the safety inspection decal. The bill also provides that the safety inspection decal may not be valid for more than five years.

The bill may have a minimal negative fiscal impact on FWC because of an increased workload for the rulemaking requirements of the bill and the creation of decals, but this may be handled within existing resources. The bill does not appear to have a fiscal impact on local governments or the private sector.

Most Recent Action: Favorable by Government Accountability Committee; 20 Yeas, 0 Nays; Placed on Calendar, on 2nd reading

// TOWING AND IMMOBILIZATION FEES AND CHARGES

Senate Bill 1632 // Sen. Debbie Mayfield // Referred to: Community Affairs; Transportation; Rules

House Bill 963 // Rep. Bob Cortes // Referred to: Local, Federal & Veterans Affairs Subcommittee; Transportation & Infrastructure Subcommittee; Government Accountability Committee

Senate Bill 1632: Expanding the application of certain provisions related to ordinances and rules imposing price controls to include the towing or immobilization of vessels; prohibiting counties and municipalities from imposing charges, costs, expenses, fines, fees, or penalties on registered owners, other legally authorized persons in control, or lienholders of vehicles or vessels under certain conditions, etc.

Last Action: Favorable by Transportation; 7 Yeas, 0 Nays

House Bill 963: County and municipal governments may contract with wrecker operators to tow or remove wrecked, disabled, or abandoned vehicles from streets, highways, and accident sites within their jurisdiction. Counties and municipalities may establish a wrecker operator system to apportion towing services across multiple wrecker operators. Wrecker operators who participate in the wrecker operator system are known as authorized wrecker operators.

Counties and municipalities are authorized to establish maximum rates for the towing and storage of vehicles pursuant to an ordinance or rule adopted pursuant to s. 125.0103, F.S., or s. 166.043, F.S. Some municipalities impose an administrative fee on vehicles towed by an authorized wrecker operator if the vehicle is seized or towed in connection with certain misdemeanors or felonies. The administrative fee is collected by the towing company on behalf of the municipal government and, in addition to towing and storage fees, must be paid before the vehicle is released to the registered owner or lienholder.

The bill requires a county or municipality to establish maximum rates for the towing and storage of vessels, as well placing a cap on the maximum rate for immobilizing a vehicle or vessel.

The bill prohibits a county or municipality from enacting a rule or ordinance that imposes a fee or charge on authorized wrecker operators. The bill does not prohibit a county or municipality from levying a local business tax on authorized wrecker operators and does not impact the ability of a county or municipality to impose a reasonable administrative fee on the legal owner, legally authorized user, or lienholder of a vehicle or vessel to cover the cost of enforcement actions. The bill provides that an authorized wrecker operator may impose and collect the administrative fee and is only required to remit the fee to the county or municipality after it has been collected.

The bill prohibits counties and municipalities from adopting or enforcing ordinances or rules that impose fees on the registered owner or lienholder of a vehicle or vessel removed and impounded by an authorized wrecker operator.

The bill provides that a wrecker operator who recovers, removes, or stores a vehicle or vessel shall have a lien on the vehicle or vessel that includes the value of the reasonable administrative fee or charge imposed by a county or municipality.

Last Action: Favorable by Government Accountability Committee; 19 Yeas, 0 Nays

Attached documents: SB 1632 (as filed) + staff analysis; HB 963 (as filed) + staff analysis

// ENVIRONMENTAL REGULATION

Senate Bill 1308 // Sen. Keith Perry // Referred to: Environmental Preservation and Conservation; Appropriations Subcommittee on the Environment and Natural Resources; Appropriations

House Bill 1149 // Rep. Bobby Payne // Referred to: Natural Resources & Public Lands Subcommittee; Agriculture & Natural Resources Appropriations Subcommittee; Government Accountability Committee

Senate Bill 1308: The bill revises policies relating to Florida's environmental regulation by:

CS/SB 1308 provides that when a water management district (WMD) evaluates a consumptive use permit (CUP), impact offsets may be created if the applicant proposes reclaimed water use in certain ways to increase the quantity of water available for water supply.

The bill requires DEP to develop criteria for the application of an impact offset or a substitution credit to a CUP or to a minimum flows and levels recovery or prevention strategy and requires DEP and the WMDs to enter into a memorandum of agreement providing for a coordinated review of any reclaimed water project requiring a reclaimed water facility permit, an underground injection control permit, and a CUP.

The bill provides criteria by which counties and municipalities must address the contamination of recyclable material in contracts for the collection, transportation, and processing of residential recyclable material, including that residential recycling collectors and materials recovery facilities may not be required to collect, transport, or process contaminated recyclable material. The criteria apply to contracts between a municipality or county and a residential recycling collector or materials recovery facility executed or renewed after the effective date of the act.

The bill revises the exemption from the requirement to obtain an environmental resource permit (ERP) for the replacement or repair of an existing dock or pier and prevents a local government from requiring further verification from DEP for all of the activities and projects exempted from ERP requirements.

Last Action: Not considered by Community Affairs; On Committee agenda - Community Affairs, 02/13/18, 10:00 am

House Bill 1149: The bill revises policies relating to Florida's environmental regulation by:

- Providing examples of reclaimed water use that may create an impact offset to include those that prevent or stop further saltwater intrusion, raise aquifer levels, improve the water quality of an aquifer, or augment surface water to increase the quantity of water available for water supply;
- Requiring the Department of Environmental Protection (DEP) to revise the water resource implementation rule to create criteria by which an impact offset or

substitution credit may be applied to the issuance, renewal, or extension of a consumptive use permit (CUP) or may be used to address additional water resource constraints imposed by the adoption of a recovery or prevention strategy;

- Including the reuse of reclaimed water through aquifer recharge as a critical component of meeting the state's existing and future water supply needs while sustaining natural systems;
- Requiring DEP and water management districts (WMD) to develop and enter into a memorandum of agreement no later than December 1, 2018, providing for coordinated review of any reclaimed water project requiring a reclaimed water facility permit, an underground injection control permit, and a CUP, to be used solely at the permit applicant's request;
- Requiring counties and municipalities to address the contamination of recyclable material in contracts with residential recycling collectors for collection or transportation of residential recyclable material;
- Defining "residential recycling collector;"
- Requiring counties and municipalities to address the contamination of recyclable material in contracts with material recovery facilities (MRF) for processing of residential recyclable material;
- Requiring local government contracts with a residential recycling collector or MRF to define "contaminated recyclable material" in a manner that is appropriate for the local community, based on available recyclable material markets;
- Requiring local government contracts with a residential recycling collector or MRF to include strategies and obligations of the parties to reduce the amount of contaminated recyclable material being collected or processed, procedures for identifying, documenting, managing, and rejecting contaminated recyclable materials, and remedies that will be used for contaminated recyclable material;
- Providing applicability of these contract requirements in any local government contract with a residential recycling collector or MRF executed or renewed after the effective date of the act;
- Prohibiting local governments from requiring additional verification from DEP that a particular activity meets a permit exception; and
- Revising the permit exception for the replacement or repair of existing docks and piers to allow for the repair or replacement if it is in approximately the same location, no larger in size than the existing dock or pier, and no additional aquatic resources are adversely and permanently impacted.

Last Action: Favorable by Agriculture & Natural Resources Appropriations Subcommittee; 11 Yeas, 1 Nay

Attached documents: CS/SB 1308 + staff analysis; CS/HB 1149 + staff analysis

APPENDIX

// CORAL REEFS

HB 53 (Enrolled) + Analysis

// VESSEL REGISTRATION

CS/SB 632 + Analysis

// ANCHORING LIMITATION AREAS

No attachments

// SALVAGE OF PLEASURE VESSELS

CS/CS/HB 469 + Analysis

// VESSEL SAFETY INSPECTION DECALS

No attachments

// TOWING AND IMMOBILIZATION FEES AND CHARGES

SB 1632 (as filed) + Analysis

HB 963 (as filed) + Analysis

// ENVIRONMENTAL REGULATION

CS/SB 1308 + Analysis

CS/HB 1149 + Analysis

// CURRENT BILL TRACKING LIST

ENROLLED

HB 53

2018 Legislature

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An act relating to coral reefs; establishing the Southeast Florida Coral Reef Ecosystem Conservation Area; providing an effective date.

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

Section 1. There is established the Southeast Florida Coral Reef Ecosystem Conservation Area. The conservation area shall consist of the sovereignty submerged lands and state waters offshore of Broward, Martin, Miami-Dade, and Palm Beach Counties from the St. Lucie Inlet to the northern boundary of the Biscayne National Park.

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 53 Coral Reefs
SPONSOR(S): Jacobs and others
TIED BILLS: IDEN./SIM. **BILLS:** SB 232

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Natural Resources & Public Lands Subcommittee	12 Y, 0 N	Gregory	Shugar
2) Agriculture & Natural Resources Appropriations Subcommittee	11 Y, 0 N	White	Pigott
3) Government Accountability Committee	21 Y, 0 N	Gregory	Williamson

SUMMARY ANALYSIS

Coral reefs in southeast Florida support a rich and diverse assemblage of stony corals, octocorals, macroalgae, sponges, and fishes. These ecological communities run parallel along the coast from the northern border of Biscayne National Park in Miami-Dade County north to the St. Lucie Inlet in Martin County. Coral reefs are valuable natural resources. They protect coastlines by reducing wave energy from storms and hurricanes. They serve as a source of food and shelter and provide critical habitat for over 6,000 species, including important commercial fisheries. Further, people use coral reefs as a resource for recreation, education, scientific research, and public inspiration. Millions of tourists and local residents enjoy scuba diving, snorkeling, and fishing on the coral reefs.

Coral reefs are vulnerable to harmful environmental changes, particularly those resulting from human activities. Globally, 10 percent of all coral reefs are degraded beyond recovery and 30 percent are in critical condition and may die within 10 to 20 years, particularly those near human populations.

The bill establishes the Southeast Florida Coral Reef Ecosystem Conservation Area (conservation area). The conservation area includes the sovereign submerged lands and state waters offshore of Broward, Martin, Miami-Dade, and Palm Beach Counties from the St. Lucie Inlet in the north to the northern boundary of the Biscayne National Park in the south.

The bill does not appear to have a fiscal impact on state or local governments.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

PRESENT SITUATION

Coral Reefs

Coral reefs in southeast Florida support a rich and diverse assemblage of stony corals, octocorals, macroalgae, sponges, and fishes. These ecological communities run parallel along the coast from the northern border of Biscayne National Park in Miami-Dade County north to the St. Lucie Inlet in Martin County. Coral reefs are valuable natural resources. They protect coastlines by reducing wave energy from storms and hurricanes. They serve as a source of food and shelter and provide critical habitat for over 6,000 species, including commercially important fisheries. Many medicines, as well as other health and beauty products, are derived from marine plants, algae, and animals found on coral reefs.¹

People use coral reefs as a resource for recreation, education, scientific research, and public inspiration. Millions of tourists and local residents enjoy scuba diving, snorkeling, and fishing on Florida's coral reefs. These activities provide a source of income for the state and its coastal communities.

Unfortunately, coral reefs are vulnerable to harmful environmental changes, particularly those resulting from human activities. Globally, 10 percent of all coral reefs are degraded beyond recovery and 30 percent are in critical condition and may die within 10 to 20 years, particularly those near human populations.²

The United States Coral Reef Task Force identified eight specific and widely accepted threats to coral reefs as being particularly important and tractable:

- Pollution, including eutrophication and sedimentation from intensive land use, chemical loading, oil and chemical spills, marine debris, and invasive nonnative species;
- Overfishing and over-exploitation of coral reef species for recreational and commercial purposes, and the collateral damage and degradation to habitats and ecosystems from fishing activities;
- Destructive fishing practices, such as cyanide and dynamite fishing that can destroy large sections of reef;
- Dredging and shoreline modification in connection with coastal navigation or development;
- Vessel groundings and anchoring that directly destroy corals and reef framework;
- Disease outbreaks that are increasing in frequency and are affecting a greater diversity of coral reef species; and
- Global climate change and associated impacts including increased coral bleaching, mortality, storm frequency, and sea level rise.³

Corals are highly sensitive to even small temperature changes and can react through bleaching, reduced growth rates, reduced reproduction, increased vulnerability to diseases, and die-offs. Corals have a mutually beneficial or symbiotic relationship with a type of algae known as zooxanthellae. Zooxanthellae live inside the coral and provide them with energy derived from photosynthesis. The

¹ Department of Environmental Protection (DEP), *Coral Reef Conservation Program*, <http://www.dep.state.fl.us/coastal/programs/coral/> (last visited March 15, 2017); *Coral Reef Conservation Program 2011-2016 Strategic Plan*, (July 2011), p. 3, available at: http://www.dep.state.fl.us/coastal/programs/coral/pub/CRCP_Strategic_Plan_2011-2016.pdf (last visited September 5, 2017).

² U.S. Coral Reef Task Force, *The National Action Plan to Conserve Coral*, p. 3, available at: <http://www.coralreef.gov/about/CRTFAxnPlan9.pdf> (last visited September 5, 2017).

³ *Id.*

coral provides the algae with shelter. Corals can tolerate only a relatively narrow temperature range and prefer water between 73-84 degrees. Water temperatures over 86 degrees or under 64 degrees are stressful and are eventually fatal for coral. When the water gets too warm and the coral becomes stressed, they can expel their zooxanthellae, causing bleaching. Although the coral is still alive, just colorless, they will eventually die from starvation if the zooxanthellae do not return.⁴

Recently, massive, region-wide bleaching events have become more common on the Florida Reef Tract. Since 1987, six extensive coral bleaching events have affected the entire Florida Reef Tract. Substantial mass coral mortality occurred during the global bleaching events of 1997/1998 and 2014/2015. Corals at the northern end of their range, such as those found on the Florida Reef Tract, are also vulnerable to cold winter temperatures. A severe cold snap in 2010 resulted in high mortality of certain coral species on shallow-water patch reefs throughout the Florida Reef Tract.⁵

Coral Reef Conservation Program

The Coral Reef Conservation Program (CRCP) within the Florida Coastal Office of the Department of Environmental Protection (DEP) oversees several programs and initiatives to coordinate research and monitoring, develop management strategies, and promote partnerships to protect the coral reefs, hard bottom communities, and associated reef resources of southeast Florida.⁶ The CRCP implements and coordinates the following:

- *The Southeast Florida Action Network* – This reporting and response system improves the protection and management of southeast Florida's coral reefs by enhancing marine debris clean-up efforts, increasing response to vessel groundings and anchor damage, and providing early detection of potentially harmful biological disturbances.⁷
- *The Southeast Florida Coral Reef Initiative (SEFCRI)* – This program identifies and implements priority action needed to reduce key threats to coral reef resources in southeast Florida using a local action strategy for collaborative action among government and non-governmental partners.⁸
- *The Southeast Florida's Marine Debris Reporting and Removal Program* – Through a partnership with DEP, the Florida Fish and Wildlife Conservation Commission (FWC) and the Palm Beach County Reef Rescue, this program encourages local divers and dive shops to report marine debris. The partnership organizes reef clean-up events to remove the debris.⁹
- *The Reef Injury Prevention and Response Program* – This program leads response to, and management of, coral reef and hard bottom injuries resulting from vessel impacts such as grounding, anchoring, and cable drag events.¹⁰ Section 403.93345, F.S., otherwise known as the Florida Coral Reef Protection Act, requires responsible parties to notify DEP when they run their vessel aground, strike, or otherwise damage coral reefs. The responsible party must remove the vessel and work with DEP to assess the damage and restore the reef.¹¹ DEP may require the responsible party to pay the cost of assessment and restoration, as well as pay a fine.¹²
- *The Florida Reef Resilience Program (FRRP)* – The FRRP addresses climate change and coral reefs. Reef managers, scientists, conservation organizations, and reef users across South

⁴ Fish and Wildlife Conservation Commission (FWC), *Long Term Temperature Monitoring*, <http://myfwc.com/research/habitat/coral/cremp/cremp-temp-monitoring/> (last visited September 5, 2017).

⁵ *Id.*

⁶ DEP, *Coral Reef Conservation Program*, <http://www.dep.state.fl.us/coastal/programs/coral/> (last visited September 5, 2017).

⁷ DEP, *Southeast Florida Action Network*, <http://www.dep.state.fl.us/coastal/programs/coral/seafan.htm> (last visited September 5, 2017).

⁸ SEFCRI, *What is SEFCRI?*, <http://southeastfloridareefs.net/about-us/what-is-sefcri/> (last visited September 5, 2017).

⁹ DEP, *Southeast Florida's Marine Debris Reporting and Removal Program*, <http://www.dep.state.fl.us/coastal/programs/coral/debris1.htm> (last visited September 5, 2017).

¹⁰ DEP, *Reef Injury Prevention and Response Program*, <http://www.dep.state.fl.us/coastal/programs/coral/ripr.htm> (last visited September 5, 2017).

¹¹ Section 403.93345(5), F.S.

¹² Sections 403.93345(6), (7), and (8), F.S.

Florida have developed a *Climate Change Action Plan for the Florida Reef System (2010-2015)* (Action Plan). The goals of the Action Plan are to increase coral reef resilience to climate change impacts through active management of local reef impacts; enhance communication and awareness of climate change impacts on coral reefs and reef users; and conduct targeted research to increase understanding of climate change impacts and develop new intervention measures.¹³

- *The Southeast Marine Event Response Program* – This program responds to potentially harmful biological disturbances along the northern third of the Florida Reef Tract from the northern border of Biscayne National Park in Miami-Dade County to the St. Lucie Inlet in Martin County. Upon notification of an event such as harmful algal blooms, fish kills, coral bleaching, or diseases, DEP coordinates with regional partners to schedule initial site assessments, implement event response protocols, and analyze samples, where possible and appropriate.¹⁴
- *The Southeast Florida Fisheries-Independent Monitoring Program* – This program builds partnerships and obtains funding to implement fisheries-independent monitoring.¹⁵ Fisheries-independent monitoring is a system-wide approach that evaluates marine communities and the populations of fish and invertebrate species that comprise them. Fisheries-independent monitoring also investigates habitat conditions for purposes of learning more about system-wide trends.¹⁶

FWC also plays a role in protecting Florida's coral reefs. Through the Coral Reef Evaluation and Monitoring Project (CREMP), FWC has monitored the condition of coral reef and hard bottom habitats annually throughout the Florida Keys since 1996, southeast Florida since 2003, and the Dry Tortugas since 2004. The CREMP was able to document the temporal changes that occurred in recent years.¹⁷

Coral Reef Disease Water Quality Monitoring

During the 2017 session, DEP received \$1,000,000 in nonrecurring funds for the Coral Reef Disease Water Quality Monitoring Program.¹⁸ The intended use of the funds included high resolution monthly water quality sampling throughout the northern Florida Reef Tract; the purchase, installation, and maintenance of Land/Ocean Biogeochemical Observatories, offshore salinity and temperature sensors, acoustic fish stations; laboratory analyses; data storage and processing; reporting and scientific expertise; coral tissue sampling; regular report writing; and the creation of a public outreach and education program.¹⁹ The recommendations from the Our Florida Reefs program and the Southeast Florida Intergovernmental Coastal Ocean Task Force are the basis for these activities.²⁰

¹³ DEP, *Climate Change and Coral Reefs*, http://www.dep.state.fl.us/coastal/programs/coral/climate_change.htm (last visited September 5, 2017).

¹⁴ DEP, *Southeast Marine Event Response Program*, http://www.dep.state.fl.us/coastal/programs/coral/event_response.htm (last visited September 5, 2017).

¹⁵ DEP, *Southeast Florida Fisheries-Independent Monitoring Program*, <http://www.dep.state.fl.us/coastal/programs/coral/fisheries-independent.htm> (last visited September 5, 2017).

¹⁶ Sarasota County Wateratlas, *Fisheries Independent Monitoring*, http://www.sarasota.wateratlas.usf.edu/shared/learnmore.asp?toolsection=lm_fishindep (last visited September 5, 2017).

¹⁷ FWC, *Coral Reef Evaluation and Monitoring Project (CREMP)*, <http://myfwc.com/research/habitat/coral/cremp/> (last visited September 5, 2017).

¹⁸ Chapter 2017-70, specific appropriation 1708, Laws of Fla.

¹⁹ Second Revised Meeting Packet Part 4 & 5, p. 128, Agriculture and Natural Resources Appropriations Subcommittee, March 21, 2017, available at:

<http://www.myfloridahouse.gov/Sections/Documents/loadoc.aspx?PublicationType=Committees&CommitteeId=2893&Session=2017&DocumentType=Meeting%20Packets&FileName=anr%203-21-17%202nd%20REVISED.pdf>.

²⁰ *Id.*; Our Florida Reefs, *Recommended Management Actions*, <http://ourfloridareefs.org/rmacomment/> (last visited September 5, 2017); Broward County, *Southeast Florida Intergovernmental Coastal Ocean Task Force Final Recommendation Report*, http://cragenda.broward.org/docs/2016/CCCM/20161206_525/23351_Exhibit%201%20-%20COTF%20Report.pdf p. 31 (last visited September 5, 2017).

EFFECT OF THE PROPOSED CHANGES

The bill establishes the Southeast Florida Coral Reef Ecosystem Conservation Area (conservation area). The conservation area includes the sovereign submerged lands²¹ and state waters²² offshore of Broward, Martin, Miami-Dade, and Palm Beach Counties from St. Lucie Inlet in the north to the northern boundary of the Biscayne National Park in the south.²³

B. SECTION DIRECTORY:

Section 1. Creates the Southeast Florida Coral Reef Ecosystem Conservation Area.

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

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

By making the designated coral reef ecosystem a conservation area, the bill may enhance the ability for the Southeast Florida Coral Reef Ecosystem Conservation Area to receive grant funding.

²¹ "Sovereignty submerged lands" means those lands including but not limited to, tidal lands, islands, sand bars, shallow banks, and lands waterward of the ordinary or mean high water line, beneath navigable fresh water or beneath tidally-influenced waters, to which the State of Florida acquired title on March 3, 1845, by virtue of statehood, and that have not been conveyed or alienated. Sovereignty submerged lands includes all submerged lands title to which is held by the Board of Trustees of the Internal Improvement Trust Fund. Rule 18-21.003(61), F.A.C.

²² Section 373.019(22), F.S., defines "water" or "waters in the state" as 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.

²³ Florida's seaward boundary extends three nautical miles in the Atlantic; Fla. Const. art. II, s. 1.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

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

None.

By the Committee on Transportation; and Senator Montford

596-01810-18

2018632c1

1 A bill to be entitled
2 An act relating to vessel registration; amending s.
3 328.80, F.S.; authorizing the Department of Highway
4 Safety and Motor Vehicles to issue an electronic
5 certificate of registration for a vessel, to collect
6 electronic mail addresses, and to use electronic mail
7 for certain purposes; amending s. 328.48, F.S.;
8 authorizing a vessel operator to present such
9 electronic certificate for inspection under certain
10 circumstances; providing construction; providing that
11 the person displaying the device assumes the liability
12 for any resulting damage to the device; providing an
13 effective date.

14
15 Be It Enacted by the Legislature of the State of Florida:

16
17 Section 1. Section 328.80, Florida Statutes, is amended to
18 read:

19 328.80 Transactions by electronic or telephonic means.—

20 (1) The Department of Highway Safety and Motor Vehicles may
21 ~~commission is authorized to~~ accept any application provided for
22 under this chapter by electronic or telephonic means.

23 (2) The Department of Highway Safety and Motor Vehicles may
24 issue an electronic certificate of registration in addition to
25 printing a paper registration.

26 (3) The Department of Highway Safety and Motor Vehicles may
27 collect electronic mail addresses and use electronic mail in
28 lieu of the United States Postal Service for the purpose of
29 providing renewal notices.

596-01810-18

2018632c1

30 Section 2. Subsection (4) of section 328.48, Florida
31 Statutes, is amended to read:

32 328.48 Vessel registration, application, certificate,
33 number, decal, duplicate certificate.-

34 (4) Each certificate of registration issued shall state
35 among other items the numbers awarded to the vessel, the hull
36 identification number, the name and address of the owner, and a
37 description of the vessel, except that certificates of
38 registration for vessels constructed or assembled by the owner
39 registered for the first time shall state all the foregoing
40 information except the hull identification number. The numbers
41 shall be placed on each side of the forward half of the vessel
42 in such position as to provide clear legibility for
43 identification, except, if the vessel is an airboat, the numbers
44 may be placed on each side of the rudder. The numbers awarded to
45 the vessel shall read from left to right and shall be in block
46 characters of good proportion not less than 3 inches in height.
47 The numbers shall be of a solid color which will contrast with
48 the color of the background and shall be so maintained as to be
49 clearly visible and legible; i.e., dark numbers on a light
50 background or light numbers on a dark background. The
51 certificate of registration shall be pocket-sized and shall be
52 available for inspection on the vessel for which issued whenever
53 such vessel is in operation. If the certificate of registration
54 is not available for inspection on the vessel or is damaged or
55 otherwise illegible, the operator may present for inspection an
56 electronic device displaying an electronic certificate issued
57 pursuant to s. 328.80. Such presentation does not constitute
58 consent for inspection of any information on the device other

596-01810-18

2018632c1

59 than the displayed certificate. The person who presents the
60 device to the officer assumes the liability for any resulting
61 damage to the device.

62 Section 3. This act shall take effect October 1, 2018.

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Appropriations Subcommittee on Transportation, Tourism, and Economic Development

BILL: CS/SB 632

INTRODUCER: Transportation Committee and Senator Montford

SUBJECT: Vessel Registration

DATE: January 24, 2018

REVISED: 02/08/18

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Jones	Miller	TR	Fav/CS
2.	Wells	Hrdlicka	ATD	Recommend: Favorable
3.			AP	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 632 authorizes the Department of Highway Safety and Motor Vehicles (DHSMV) to accept applications for vessel registration by electronic or telephonic means, issue electronic vessel registrations in addition to paper registrations, and collect email addresses and use email for providing vessel registration renewal notices in lieu of mailing the notices. The bill also allows a vessel operator to present the electronic certificate of vessel registration on an electronic device upon inspection of the vessel. The bill provides that presentation of the electronic certificate does not constitute consent for inspection of any other information on the device, and the person who presents the device assumes liability for any damage to the device.

The DHSMV may incur additional costs for initial implementation; however, the DHSMV may experience reduced mail costs in the future.

The bill takes effect October 1, 2018.

II. Present Situation:

The term “vessel” includes every description of watercraft, barge, or airboat, other than a seaplane on the water, used or capable of being used as a means of transportation on water.¹ A vessel operated, used, or stored on the waters of this state must be registered with the DHSMV as

¹ Section 327.02(46), F.S.

a commercial² or recreational³ vessel within 30 days after the purchase of the vessel, unless the vessel is:

- Operated, used, and stored exclusively on private lakes and ponds;
- Owned by the U.S. Government;
- Used exclusively as a ship's lifeboat; or
- Non-motor-powered and less than 16 feet in length or is a non-motor-powered canoe, kayak, racing shell, or rowing scull, regardless of length.⁴

Vessel Registrations

A vessel registration must be available for inspection on the vessel for which it is issued whenever the vessel is in operation. State law requires the registration to be “pocket-sized.”⁵ It is a noncriminal infraction, punishable as a \$50 civil citation, for a person operating a vessel required to be registered to be unable to present the vessel's certificate of registration upon inspection of the vessel by law enforcement.⁶

As of October 2017, there were 853,107 active vessel registrations in Florida.⁷ The Fish and Wildlife Conservation Commission (FWC) conducted 174,947 vessel and resource inspections in 2016, but the number of inspections conducted by other law enforcement agency personnel is unknown.⁸

Federal Requirements

Federal law also requires a person who is operating a vessel that is required to be registered with the state to have a “certificate of number” (the certificate of vessel registration) for that vessel onboard the vessel.⁹ Such certificate must be approximately 2.5 by 3.5 inches.¹⁰ A person operating such vessel shall present the certificate to any federal, state, or local law enforcement officer for inspection in such a manner that it can be handed to the person upon request.¹¹

Electronic Registrations

Currently, the DHSMV is authorized to accept motor vehicle registration applications by electronic or telephonic means, as well as collect email addresses and use email in lieu of the USPS for the purpose of providing renewal notices.¹² Similarly, s. 328.80, F.S., authorizes the FWC to accept vessel registration applications by electronic or telephonic means, however,

² Section 327.02(8), F.S., defines the term “commercial vessel.”

³ Section 327.02(40), F.S., defines the term “recreational vessel.”

⁴ Sections 328.48(2) and 328.46, F.S.

⁵ Section 328.48(4), F.S.

⁶ Section 327.73(1)(b), F.S.

⁷ DHSMV, *2018 Agency Legislative Bill Analysis – SB 632 – Vessel Registration* (Dec. 5, 2017) (on file with the Senate Committee on Transportation).

⁸ FWC, *2018 Agency Legislative Bill Analysis – HB 247 – Vessel Registration* (Nov. 14, 2017) (on file with the Senate Committee on Transportation).

⁹ 33 C.F.R. s. 173.21.

¹⁰ 33 C.F.R. s. 174.25.

¹¹ 33 C.F.R. ss. 173.23 and 173.25.

¹² Section 320.95, F.S.

DHSMV is the state department responsible for accepting such applications and issuing certificates of vessel registration.

III. Effect of Proposed Changes:

Section 1 amends s. 328.80, F.S., to authorize the DHSMV to accept vessel registration applications by electronic or telephonic means, issue electronic certificates of vessel registrations in addition to paper registrations, and collect email addresses and use email in lieu of mailing vessel registration renewal notices.

Section 2 amends s. 328.48, F.S., to allow a vessel operator to present the vessel's electronic certificate of registration on an electronic device in lieu of a paper certificate when the vessel is being inspected. The bill provides that such presentation does not constitute consent for inspection of any information on the device other than the displayed certificate, and the person who presents the device assumes liability for any resulting damage to the device.

According to the FWC, Florida is the first state to propose a statutory change to allow an electronic certificate of vessel registration; therefore, it is unclear how the bill would affect vessel inspections conducted by United States Coast Guard (USCG) personnel and audits by the USCG of state compliance with federal requirements.¹³

Section 3 provides that the bill takes effect October 1, 2018.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill does not appear to have a fiscal impact on the private sector.

¹³ FWC bill analysis, *supra* note 8.

C. Government Sector Impact:

The DHSMV may incur additional costs for initial implementation; however, the DHSMV may experience reduced mail costs in the future.

VI. Technical Deficiencies:

None.

VII. Related Issues:

Email addresses collected by the DHSMV pursuant to the bill will not be exempt from inspection or copying under Florida's public records laws. Currently, s. 119.0712(2)(c), F.S., provides public records exemptions for email addresses collected by the DHSMV pursuant to ss. 319.40, 320.95(2), and 322.08(9), F.S.¹⁴

SB 1920 has been filed and if it becomes a law it will provide an exemption for electronic mail addresses of vessel registrants collected by the DHSMV.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 328.80 and 328.48.

IX. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)**CS by Transportation on December 5, 2017:**

The CS amends:

- Section 1 of the bill, providing that DHSMV may issue an electronic certificate of vessel registration *in addition to* printing a paper registration, instead of the electronic certificate being issued *in lieu of* a paper registration;
- Section 2, providing that the person who presents the device displaying the electronic certificate of vessel registration assumes the liability for any resulting damage to the device; and
- The effective date, which is changed from July 1, 2018, to October 1, 2018.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

¹⁴ Such email addresses are collected by the DHSMV for issuing motor vehicle certificates of title, motor vehicle registration renewals, and for U.S. Veterans who provide their email address with the DHSMV for veteran outreach on federal, state, and local benefits and services available to veterans.

1 A bill to be entitled
 2 An act relating to the salvage of pleasure vessels;
 3 creating s. 559.9602, F.S.; providing scope and
 4 applicability; providing definitions; requiring
 5 salvors of pleasure vessels to provide specified
 6 verbal and written notice; providing an exception;
 7 providing remedies; specifying that such remedies are
 8 in addition to others provided by law; providing an
 9 effective date.

10
 11 Be It Enacted by the Legislature of the State of Florida:

12
 13 Section 1. Section 559.9602, Florida Statutes, is created
 14 to read:

15 559.9602 Salvage of pleasure vessels.-

16 (1) This section applies to all salvors operating in this
 17 state, except:

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

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

22 1. Pleasure vessels that are owned, maintained, and
 23 operated exclusively by such person and for that person's own
 24 use; or

25 2. For-hire pleasure vessels that are rented for periods
26 of 30 days or less.

27 (c) Any person who owns or operates a marina or shore-
28 based repair facility and is in the business of repairing
29 pleasure vessels, where the salvage work takes place exclusively
30 at that person's facility.

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

34 (e) Any person who is in the business of recovering,
35 storing, or selling pleasure vessels on behalf of insurance
36 companies that insure the vessels.

37 (2) As used in this section, the term:

38 (a) "Customer" means the person to whom a salvor offers
39 salvage work.

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

42 (c) "Pleasure vessel" means any watercraft no more than 60
43 feet in length which is used solely for personal pleasure,
44 family use, or the transportation of executives, persons under
45 the employment, and guests of the owner.

46 (d) "Salvage work" means any assistance, services,
47 repairs, or other efforts rendered by a salvor relating to
48 saving, preserving, or rescuing a pleasure vessel or its

49 passengers and crew which are in marine peril. Salvage work does
 50 not include towing a pleasure vessel.

51 (e) "Salvor" means a person in the business of voluntarily
 52 providing assistance, services, repairs, or other efforts
 53 relating to saving, preserving, or rescuing a pleasure vessel or
 54 the vessel's passengers and crew which are in marine peril, in
 55 exchange for compensation.

56 (3) (a) Before a salvor may engage in the salvage operation
 57 of a pleasure vessel, the salvor shall provide the customer with
 58 verbal and written notice that the service offered is not
 59 covered by any towing contract. The written notice must include
 60 the following statement, in capital letters of at least 12-point
 61 type:

63 THE SERVICE OFFERED BY THE SALVOR IS CONSIDERED SALVAGE
 64 WORK AND IS NOT COVERED BY ANY TOWING SERVICE CONTRACT. SALVAGE
 65 WORK ALLOWS THE SALVOR TO PRESENT YOU, OR YOUR INSURANCE
 66 COMPANY, WITH A BILL FOR THE CHARGES AT A LATER DATE. THE SALVOR
 67 SHALL CALCULATE THE CHARGES ACCORDING TO FEDERAL SALVAGE LAW AND
 68 SUCH CHARGES MAY EXCEED A CHARGE BASED ON A TIME AND MATERIALS
 69 CALCULATION. THE CHARGES COULD AMOUNT TO AS MUCH AS THE ENTIRE
 70 VALUE OF YOUR VESSEL AND ITS CONTENTS.

71 IF YOU AGREE TO ALLOW THE SALVOR TO PERFORM THE OFFERED
 72 WORK, YOUR ONLY RECOURSE TO CHALLENGE THE ASSESSED CHARGES IS BY

73 A LAWSUIT IN FEDERAL COURT OR, IF YOU AGREE, BY BINDING
74 ARBITRATION.

75 YOU MAY AGREE TO THE CHARGES WITH THE SALVOR BEFORE WORK
76 BEGINS, AND THAT AGREED AMOUNT SHALL BE THE MAXIMUM AMOUNT THE
77 SALVOR MAY CHARGE. YOU HAVE A RIGHT TO REJECT THE SALVOR'S OFFER
78 OF SERVICES IF THE SALVOR WILL NOT AGREE TO A CHARGE BEFORE
79 BEGINNING WORK.

80
81 (b) The salvor is relieved of providing the verbal and
82 written notice pursuant to this subsection if there is an
83 imminent threat of injury or death to any person on board the
84 vessel.

85 (4) (a) Any customer injured by a violation of this section
86 may bring an action in the appropriate court for relief. A
87 customer who prevails in such an action is entitled to damages
88 equal to 1.5 times the amount charged by the salvor, plus actual
89 damages, court costs, and reasonable attorney fees. The customer
90 may also bring an action for injunctive relief in the circuit
91 court.

92 (b) The remedies provided for in this subsection shall be
93 in addition to any other remedy provided by law.

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 469 Salvage of Pleasure Vessels

SPONSOR(S): Careers & Competition Subcommittee, Natural Resources & Public Lands Subcommittee, and Harrison

TIED BILLS: **IDEN./SIM. BILLS:** CS/CS/SB 664

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Natural Resources & Public Lands Subcommittee	13 Y, 0 N, As CS	Moore	Shugar
2) Careers & Competition Subcommittee	9 Y, 2 N, As CS	Willson	Anstead
3) Government Accountability Committee		Moore	Williamson

SUMMARY ANALYSIS

Salvage is the voluntary assistance to a ship at sea or its cargo, from impending sea peril or the recovery of such property from actual peril or loss. In determining a salvage award, several factors are considered resulting in awards ranging from a few hundred dollars to thousands of dollars. Currently, state law does not require salvors of pleasure vessels to notify customers regarding the potential costs prior to salvage.

The bill applies to salvors operating in Florida, with certain exceptions. The bill defines terms and provides that, before a salvor may engage in the salvage operation of a pleasure vessel, the salvor must provide the customer with verbal and written notice that the service offered is not covered by any towing contract. The bill specifies that a salvor is not required to provide the verbal and written notice if there is an imminent threat of injury or death to any person on board the vessel.

The bill requires that the written notice include specific language, in capital letters of at least 12-point type that includes, but is not limited to:

- The service offered is considered salvage work and is not covered by any towing service contract;
- The salvor may present the customer or the customer's insurance company with the bill at a later date;
- Salvage charges must be calculated according to federal law, which may exceed a charge based on time and materials calculation, and may amount to the entire value of the vessel and its contents;
- If the customer agrees to allow the salvor to perform the work, the only recourse for challenging the bill is by a lawsuit in federal court or, if the customer agrees, binding arbitration;
- The customer may agree to the charges before work begins, and that agreed amount will be the maximum that the salvor may charge; and
- The customer has the right to reject the salvor's offer if the salvor does not agree to a charge before beginning work.

The bill provides that a customer injured by a violation may bring an action in an appropriate court for relief. A customer who prevails is entitled to damages in the amount of 1.5 times that charged by the salvor, plus actual damages, court costs, reasonable attorney fees, injunctive relief, and any other remedy provided by law.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Salvage

Generally, only a vessel of the United States or a numbered motorboat owned by a citizen may engage in any salvage operation in territorial waters of the United States.¹ Salvage is the voluntary assistance to a ship at sea or its cargo, from impending sea peril or the recovery of such property from actual peril or loss (e.g., shipwreck, dereliction, recapture).²

Public policy favors liberally rewarding a person for salvage services, because of the humanitarian and commercial importance of aiding persons and ships in distress and maintaining navigable waterways. Accordingly, salvage awards are viewed as a reward for providing dangerous services, voluntarily rendered, and as an inducement to embark on these life and property saving undertakings.³

Jurisdiction

Salvage claims fall within the admiralty jurisdiction of the federal courts⁴ and are governed by the Supplemental Rules for Certain Admiralty and Maritime Claims (Supplemental Rules) and the Federal Rules of Civil Procedure to the extent they are inconsistent with the Supplemental Rules.⁵ Jurisdiction extends to all waters that are navigable for trade and commerce, and includes:

- Claims against proceeds of salvaged property;
- Claims where the owner of the vessel or cargo has made himself or herself personally liable to pay for salvage services;
- Contracts relating to salvage service;
- Disputes between would-be salvors who submit themselves to the court's jurisdiction;
- Requests by current salvors for exclusive possession and salvage of certain property or wrecks;
- Claims arising out of salvage operations at sea beyond the territorial limits of the United States;
- Claims as to recoveries of salvaged property from state waters, excluding determinations of the state's ownership of any artifacts recovered in state waters;
- Salvage claims for services rendered by one warship to another warship; and
- Liens for salvage services.⁶

While federal courts have exclusive jurisdiction over salvage actions directly against property (e.g., where a vessel or thing is itself treated as the offender and made the defendant by name or description), state courts have concurrent jurisdiction in actions against a person.⁷ State courts, under concurrent jurisdiction, must apply federal maritime law. Generally, state courts may apply state law to maritime actions so long as there is no conflict with federal law.⁸ State courts applying state statutes

¹ 19 C.F.R. § 4.97(a) (1969).

² 67B Am. Jur. 2d *Salvage* § 1 (2017); *see also* 33 CFR § 155.4025, defining salvage to mean any act undertaken to assist a vessel in potential or actual danger, to prevent loss of life, damage or destruction of the vessel and release of its contents into the marine environment.

³ 67B Am. Jur. 2d *Salvage* § 1 (2017).

⁴ 28 U.S.C. § 1333.

⁵ 67B Am. Jur. 2d *Salvage* § 58 (2017).

⁶ 67B Am. Jur. 2d *Salvage* § 61 (2017).

⁷ 28 U.S.C. § 1333; U.S. Const. art. III, § 2.

⁸ John Howard Thomas, Andrew W. Anderson, *Maritime Law and Practice* ch. 8, § 8.2, 3-4 (5th ed., The Florida Bar 2017).

authorizing the payment of a reasonable salvage may look to federal maritime law for the elements or definition of salvage in interpreting state salvage laws.⁹

Actions for common-law remedies can also be brought in state court. For instance, if parties have entered into a contract, which provides a means for measurement of a salvage award, the action can proceed as a contract claim in state court.¹⁰ State courts have also heard salvage claims based on an oral contract for salvage services, however, damages in these cases must be made on contract principles rather than on salvage principles or on state laws pertaining to the payment of salvage.¹¹

Salvage Claim

To have a valid salvage claim, the maritime property must be in peril. It is not necessary that the danger be actual or imminent. It is sufficient if there is a state of difficulty and reasonable apprehension of danger. Some courts add that the peril must be such that, without the salvor's assistance, the property would have been lost.¹²

A defense routinely used against a salvage claim is that the services rendered were for towing, not salvage. Towing service is rendered to expedite a vessel's voyage without reference to any circumstances of danger. Whether the service is one of towage or salvage, and when a towage operation becomes a salvage service, are questions of fact. When the elements of salvage are present, courts will treat the services rendered as salvage regardless of whether a contract is characterized as a towage contract or whether one of the parties refers to it as a towage service; the converse is also true.¹³

Salvage Award

Computation of salvage awards have traditionally considered the following factors:

- Labor and material costs expended by the salvor in rendering the salvage service;
- Promptitude, skill, and energy displayed by the salvor in rendering services and saving the property;
- Value of the property employed by the salvor in rendering the service, and the danger to which the property was exposed;
- Risk incurred by the salvor in securing the property from the impending peril;
- Post-casualty value of the property saved; and
- Degree of danger from which the property was rescued.¹⁴

In weighing these factors, a salvage award can vary greatly from a few hundred dollars to thousands of dollars. Salvage awards have also exceeded the value of the vessel. Additional factors created by the International Convention on Salvage, 1989, to which the United States is a party,¹⁵ include consideration for prevention or minimization of environmental damage and life salvage.¹⁶ In weighing

⁹ 67B Am. Jur. 2d *Salvage* § 58 (2017).

¹⁰ John Howard Thomas, Andrew W. Anderson, *Maritime Law and Practice* ch. 8, § 8.2, 3-4 (5th ed., The Florida Bar 2017).

¹¹ 67B Am. Jur. 2d *Salvage* § 62 (2017).

¹² 67B Am. Jur. 2d *Salvage* § 6 (2017).

¹³ John Howard Thomas, Andrew W. Anderson, *Maritime Law and Practice* ch. 8, § 8.10, 10 (5th ed., The Florida Bar 2017); 67B Am. Jur. 2d *Salvage* § 4 (2017).

¹⁴ *The Blackwall*, 77 US. 1 (1869); John Howard Thomas, Andrew W. Anderson, *Maritime Law and Practice* ch. 8, § 8.18, 17 (5th ed., The Florida Bar 2017).

¹⁵ United Nations, *International Convention on Salvage*, <https://treaties.un.org/doc/Publication/UNTS/Volume%201953/v1953.pdf>, (last visited Nov. 17, 2017).

¹⁶ *International Convention on Salvage, 1989*, <http://treaties.fco.gov.uk/docs/pdf/1996/TS0093.pdf> (last visited Nov. 17, 2017);

International Maritime Organization, *International Convention on Salvage*.

<http://www.imo.org/en/About/Conventions/ListOfConventions/Pages/International-Convention-on-Salvage.aspx>, (last visited Nov. 17, 2017).

these factors, a salvage award can vary greatly from a few hundred dollars to thousands of dollars. Salvage awards have also exceeded the value of the vessel.¹⁷

The court will adjust a salvage award so that the salvor is fairly compensated without undue hardship to the vessel owner. Courts recognize that a generous award should be allowed when the salvaged property value justifies a high award; this is used to compensate salvors for services that are frequently performed when the property is so small that an adequate award cannot be given without hardship to the owner. The value of the salvaged property is usually determined by the fair market value. If the salvaged property is sold in a commercially reasonable manner, then the selling price is the fair market value. If the court determines that the proceeds of the sale would be inadequate to pay the salvor its full reward, the court may award the salvor title to the property, thereby saving the costs of sale.¹⁸

In addition, as in other maritime cases, the award of attorney fees is discretionary and may be awarded by the court or arbitrator for acts of bad faith, either in the salvage action itself or in litigation or arbitration of the dispute.¹⁹

Pure Salvage

Without an express contract defining the rights and duties of the parties, a pure salvage claim arises. The elements of a valid pure salvage claim include a maritime peril; a voluntary act by a salvor, who is under no preexisting official or contractual duty to the owner; and success in saving, or in helping to save, at least part of the property at risk. Some admiralty courts have also required the peril be such that the ship would not have been rescued without the salvor's assistance.²⁰

Salvage Contracts

General contract law principles govern salvage contracts. A formal agreement of the parties will not prevent a court from reaching the merits of the transaction, but salvage contracts for a definite amount of compensation are generally enforced, absent a finding of fraud or duress.²¹ A salvage contract may regulate the compensation paid to the salvor or require arbitration for determining salvage claims. The contract must be clear, definite, and explicit as to the amount of compensation.²²

When the existence of a salvage contract is raised as a defense to a pure salvage claim, the burden is on the party attempting to escape the pure salvage law to prove that a contract exists.²³

Arbitration

Primarily the Federal Arbitration Act²⁴ and the 1958 Convention on the Recognition and Enforcement of Foreign Arbitral Awards²⁵ govern arbitration under maritime law. Many salvage contracts include binding arbitration²⁶ as a means for resolving disputes as to a salvor's compensation. When there is an

¹⁷ John Howard Thomas, Andrew W. Anderson, *Maritime Law and Practice* ch. 8, § 8.18, 17-18 (5th ed., The Florida Bar 2017).

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ 67B Am. Jur. 2d *Salvage* § 5 (2017); *see, Klein v. Unidentified Wrecked and abandoned Sailing Vessel*, 758 F.2d 1511 (11th Cir. 1985).

²¹ 67B Am. Jur. 2d *Salvage* § 15 (2017).

²² 67B Am. Jur. 2d *Salvage* § 14 (2017).

²³ 67B Am. Jur. 2d *Salvage* § 17 (2017).

²⁴ 9 U.S.C. §§ 1-16

²⁵ 21 U.S.T. 2517; 330 U.N.T.S. 38.

²⁶ *See, The Society of Maritime Arbitrators, U.S. Open Form Salvage Agreement*, <http://www.smany.org/salvage-rules-agreement-form.html>; *Lloyd's Open Form, Form*, <https://www.lloyds.com/the-market/tools-and-resources/lloyds-agency-department/salvage-arbitration-branch/lloyds-open-form-lof> (last visited Jan. 22, 2018).

arbitration clause in a signed contract, the parties have presumptively agreed to arbitrate any disputes arising from the contract, including those disputes about the validity of the contract.²⁷

Notice of Salvage Services

When a vessel is exposed to marine peril and no one is on board a salvor is not required to attempt to locate the owner or obtain permission before undertaking salvage services. On the other hand, a salvor must obtain permission before beginning salvage services when there are people on board the vessel and salvage services can be refused.²⁸ Currently, neither federal nor state law require salvors to notify customers of the potential costs involved in the salvage of their vessel.

Effect of Proposed Changes

The bill creates s. 559.9602, F.S., relating to the salvage of pleasure vessels. The bill requires a salvor to provide certain information to a potential customer before engaging in a salvage operation.

The bill applies to all salvors operating in Florida, but excludes a person who:

- Performs salvage work while employed by a municipal, county, state, or federal government when carrying out the functions of that government;
- Engages solely in salvage work for pleasure vessels that are owned, maintained, and operated exclusively by such person and for that person's own use or for-hire pleasure vessels that are rented for periods of 30 days or less;
- Owns or operates a marina or shore-based repair facility and is in the business of repairing pleasure vessels, where the salvage work takes place exclusively at that person's facility;
- Is in the business of repairing pleasure vessels who performs the repair work at a landside or shoreside location designated by the customer; and
- Is in the business of recovering, storing, or selling pleasure vessels on behalf of insurance companies that insure the vessels.

The bill defines the term:

- "Customer" to mean the person to whom a salvor offers salvage work.
- "Employee" to mean an individual who is employed full-time or part-time by a salvor and performs salvage work.
- "Pleasure vessel" to mean any watercraft no more than 60 feet in length that is used solely for personal pleasure, family use, or the transportation of executives, persons under the employment, and guests of the owner.
- "Salvage work" to mean any assistance, services, repairs, or other efforts rendered by a salvor relating to saving, preserving, or rescuing a pleasure vessel or its passengers and crew, which are in marine peril. Salvage work does not include towing a pleasure vessel.
- "Salvor" to mean a person in the business of voluntarily providing assistance, services, repairs, or other efforts relating to saving, preserving, or rescuing a pleasure vessel or the vessel's passengers and crew, which are in marine peril, in exchange for compensation.

The bill provides that, before a salvor may engage in the salvage operation of a pleasure vessel, the salvor must provide the customer with verbal and written notice that the service offered is not covered by any towing contract. The bill provides that the written notice must include the following statement, in capital letters of at least 12-point type:

THE SERVICE OFFERED BY THE SALVOR IS CONSIDERED SALVAGE WORK AND IS NOT COVERED BY ANY TOWING SERVICE CONTRACT. SALVAGE WORK ALLOWS THE SALVOR TO PRESENT YOU, OR YOUR INSURANCE COMPANY, WITH A BILL FOR THE CHARGES AT A LATER

²⁷ John Howard Thomas, Andrew W. Anderson, *Maritime Law and Practice* ch. 8, § 8.24, 25 (5th ed., The Florida Bar 2017).

²⁸ John Howard Thomas, Andrew W. Anderson, *Maritime Law and Practice* ch. 8, § 8.19, 19 (5th ed., The Florida Bar 2017).

DATE. THE SALVOR SHALL CALCULATE THE CHARGES ACCORDING TO FEDERAL SALVAGE LAW AND SUCH CHARGES MAY EXCEED A CHARGE BASED ON A TIME AND MATERIALS CALCULATION. THE CHARGES COULD AMOUNT TO AS MUCH AS THE ENTIRE VALUE OF YOUR VESSEL AND ITS CONTENTS.

IF YOU AGREE TO ALLOW THE SALVOR TO PERFORM THE OFFERED WORK, YOUR ONLY RECOURSE TO CHALLENGE THE ASSESSED CHARGES IS BY A LAWSUIT IN FEDERAL COURT OR, IF YOU AGREE, BY BINDING ARBITRATION.

YOU MAY AGREE TO THE CHARGES WITH THE SALVOR BEFORE WORK BEGINS, AND THAT AGREED AMOUNT SHALL BE THE MAXIMUM AMOUNT THE SALVOR MAY CHARGE. YOU HAVE A RIGHT TO REJECT THE SALVOR'S OFFER OF SERVICES IF THE SALVOR WILL NOT AGREE TO A CHARGE BEFORE BEGINNING WORK.

The bill specifies that a salvor is not required to provide the verbal and written notice if there is an imminent threat of injury or death to any person on board the vessel.

The bill provides that a customer injured by a violation may bring an action in the appropriate court for relief. A customer who prevails is entitled to damages equal to 1.5 times that charged by the salvor, plus actual damages, court costs, and reasonable attorney fees. The customer may also bring an action for injunctive relief in circuit court. The bill provides that these remedies are in addition to any other remedy provided by law.

B. SECTION DIRECTORY:

Section 1. Creates s. 559.9602, F.S., relating to the salvage of pleasure vessels.

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

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may have an indeterminate fiscal impact on the private sector. The required notice may result in a positive fiscal impact to customers and salvors who agree upon an amount for salvage services,

resulting in a reduction in legal disputes over the amount paid for services rendered. The bill may have a negative fiscal impact on salvors if by providing the required notice they experience a reduction in customers seeking salvage services. The bill may have a positive fiscal impact on customers if by providing the required notice they choose other alternatives to cure their vessel situation.

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:

While federal courts have exclusive jurisdiction over salvage actions directly against property, state courts have concurrent jurisdiction in actions against a person.²⁹ State courts under concurrent jurisdiction must apply federal maritime law. Generally, state courts may apply state law to maritime actions so long as there is no conflict with federal law.³⁰ State courts applying state statutes authorizing the payment of a reasonable salvage may look to federal maritime law for the elements or definition of salvage in interpreting state salvage laws.³¹

Actions for common-law remedies can also be brought in state court. For instance, if parties have entered into a contract, which provides a means for measurement of a salvage award, the action can proceed as a contract claim in state court.³² State courts have also heard salvage claims based on an oral contract for salvage services; however, damages in these cases must be made on contract principles rather than on salvage principles or on state laws pertaining to the payment of salvage.³³

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Lines 72-74 of the bill require the written notice to state "...YOUR ONLY RECOURSE TO CHALLENGE THE ASSESSED CHARGES IS BY A LAWSUIT IN FEDERAL COURT OR, IF YOU AGREE, BY BINDING ARBITRATION." This statement seems to contradict the remedy language in lines 85-93 of the bill, which provides that:

(4)(a) Any customer injured by a violation of this section may bring an action in the appropriate court for relief. A customer who prevails in such an action is entitled to damages equal to 1.5 times the amount charged by the salvor, plus actual damages, court costs, and reasonable attorney fees. The customer may also bring an action for injunctive relief in the circuit court.

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

²⁹ 28 U.S.C. § 1333; U.S. Const. art. III, § 2.

³⁰ John Howard Thomas, Andrew W. Anderson, *Maritime Law and Practice* ch. 8, § 8.2, 3-4 (5th ed., The Florida Bar 2017).

³¹ 67B Am. Jur. 2d *Salvage* § 58 (2017).

³² John Howard Thomas, Andrew W. Anderson, *Maritime Law and Practice* ch. 8, § 8.2, 3-4 (5th ed., The Florida Bar 2017).

³³ 67B Am. Jur. 2d *Salvage* § 62 (2017).

While it appears clear that a challenge to the assessed salvage charges would be brought under federal jurisdiction, it is unclear what would otherwise be considered an actionable “violation” under the bill. Presumably, it could include failing to provide notice required under the bill or providing notice language that differs from the bill, which would appear to be within state jurisdiction.

Also, lines 75-79 of the bill provide that the written notice must state:

YOU MAY AGREE TO THE CHARGES WITH THE SALVOR BEFORE WORK BEGINS, AND THAT AGREED AMOUNT SHALL BE THE MAXIMUM AMOUNT THE SALVOR MAY CHARGE. YOU HAVE A RIGHT TO REJECT THE SALVOR'S OFFER OF SERVICES IF THE SALVOR WILL NOT AGREE TO A CHARGE BEFORE BEGINNING WORK.

However, there is no requirement in the bill that an agreed upon amount be documented in writing, nor does the bill require that a customer acknowledge receipt of the notice. Having a customer provide written acknowledgment of having received the required notice and a requirement that an agreed upon amount be in writing may benefit both parties and result in less litigation.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On December 6, 2017, the Natural Resources & Public Lands Subcommittee adopted two amendments and reported the bill favorable with committee substitute. The amendments:

- Direct the Division of Law Revision and Information to change the title of part XII of ch. 559, F.S., from “Miscellaneous Provisions” to “Internet Sales,” and to create a new part XIII of ch. 559, F.S., consisting of ss. 559.9601-559.9608, F.S., to be entitled “Salvage of Pleasure Vessels;”
- Exempt any person who is in the business of recovering, storing, or selling pleasure vessels on behalf of insurance companies that insure the vessels from the Act;
- Clarify the definition of “pleasure vessel;” and
- Require a salvor to present a written disclosure statement to the customer if the salvage work will exceed \$500, the customer is present on the vessel, and there is no imminent threat of injury or death to any person.

On January 16, 2018, the Careers and Competition Subcommittee adopted a strike-all amendment and reported the bill favorably as a committee substitute. The strike-all amendment makes the following changes:

- Redefines “customer” to mean the person to whom a salvor offers salvage work;
- Revises the disclosure provision to only require that, before a salvor may engage in the salvage operation of a pleasure vessel, the salvor shall provide the customer with verbal and written notice that the service offered is not covered by any towing contract;
- Substantially revises the content of the written notice;
- Removes all provisions relating to the salvage work estimate;
- Removes all provisions relating to the notification of charges in excess of the salvage estimate and to unlawful charges;
- Removes provisions relating to required signs posted on salvor vessels informing customers of the right to an estimate for services;
- Removes all provisions relating to unlawful acts and practices;
- Removes the provision directing the Division of Law Revision and Information to re-designate statutes; and
- Reduces the damages multiplier in the remedies provision, from “three times that” to “1.5 times that” charged by the salvor.

This analysis is drafted to the committee substitute to the committee substitute as adopted by the Careers and Competition Subcommittee.

By Senator Mayfield

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1 A bill to be entitled
2 An act relating to towing and immobilization fees and
3 charges; amending ss. 125.0103 and 166.043, F.S.;
4 expanding the application of certain provisions
5 related to ordinances and rules imposing price
6 controls to include the towing or immobilization of
7 vessels; establishing a maximum rate that counties and
8 municipalities may charge for the immobilization of
9 vehicles or vessels under certain conditions; defining
10 the term "immobilize"; creating ss. 125.01047 and
11 166.04465, F.S.; prohibiting counties and
12 municipalities from enacting certain ordinances or
13 rules that impose fees or charges on authorized
14 wrecker operators or towing businesses; defining the
15 term "towing business"; providing exceptions to the
16 prohibition; amending s. 323.002, F.S.; prohibiting
17 counties and municipalities from imposing charges,
18 costs, expenses, fines, fees, or penalties on
19 registered owners, other legally authorized persons in
20 control, or lienholders of vehicles or vessels under
21 certain conditions; providing an exception; amending
22 s. 713.78, F.S.; authorizing certain persons to place
23 liens on vehicles or vessels to recover specified fees
24 or charges; providing an effective date.

25
26 Be It Enacted by the Legislature of the State of Florida:
27

28 Section 1. Paragraphs (b) and (c) of subsection (1) of
29 section 125.0103, Florida Statutes, are amended to read:

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30 125.0103 Ordinances and rules imposing price controls;
31 findings required; procedures.—

32 (1)

33 (b) The provisions of this section shall not prevent the
34 enactment by local governments of public service rates otherwise
35 authorized by law, including water, sewer, solid waste, public
36 transportation, taxicab, or port rates, rates for towing of
37 vehicles or vessels from or immobilization of vehicles or
38 vessels on private property, or rates for removal and storage of
39 wrecked or disabled vehicles or vessels from an accident scene
40 or the removal and storage of vehicles or vessels in the event
41 the owner or operator is incapacitated, unavailable, leaves the
42 procurement of wrecker service to the law enforcement officer at
43 the scene, or otherwise does not consent to the removal of the
44 vehicle or vessel.

45 (c) Counties must establish maximum rates which may be
46 charged on the towing of vehicles or vessels from or
47 immobilization of vehicles or vessels on private property,
48 removal and storage of wrecked or disabled vehicles or vessels
49 from an accident scene or for the removal and storage of
50 vehicles or vessels, in the event the owner or operator is
51 incapacitated, unavailable, leaves the procurement of wrecker
52 service to the law enforcement officer at the scene, or
53 otherwise does not consent to the removal of the vehicle or
54 vessel. The maximum rate to immobilize a vehicle or vessel on
55 public or private property may not exceed 20 percent of the
56 maximum rate to tow a vehicle or vessel from private property.
57 However, if a municipality chooses to enact an ordinance
58 establishing the maximum rates ~~fees~~ for the towing or

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59 immobilization of vehicles or vessels as described in paragraph
60 (b), the county's ordinance shall not apply within such
61 municipality. For purposes of this paragraph, the term
62 "immobilize" means the act of rendering a vehicle or vessel
63 inoperable by the use of a device such as a "boot" or "club,"
64 the "Barnacle," or any other device that renders a vehicle or
65 vessel inoperable.

66 Section 2. Section 125.01047, Florida Statutes, is created
67 to read:

68 125.01047 Rules and ordinances relating to towing
69 services.—

70 (1) A county may not enact an ordinance or rule that would
71 impose a fee or charge on an authorized wrecker operator, as
72 defined in s. 323.002(1), or on a towing business for towing,
73 impounding, or storing a vehicle or vessel. As used in this
74 section, the term "towing business" means a business that
75 provides towing services for monetary gain.

76 (2) The prohibition set forth in subsection (1) does not
77 affect a county's authority to:

78 (a) Levy a reasonable business tax under s. 205.0315, s.
79 205.033, or s. 205.0535.

80 (b) Impose and collect a reasonable administrative fee or
81 charge on the registered owner or other legally authorized
82 person in control of a vehicle or vessel, or the lienholder of a
83 vehicle or vessel, not to exceed 25 percent of the maximum
84 towing rate, to cover the cost of enforcement, including parking
85 enforcement, by the county when the vehicle or vessel is towed
86 from public property. However, an authorized wrecker operator or
87 towing business may impose and collect the administrative fee or

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88 charge on behalf of the county and shall remit such fee or
89 charge to the county only after it is collected.

90 Section 3. Paragraphs (b) and (c) of subsection (1) of
91 section 166.043, Florida Statutes, are amended to read:

92 166.043 Ordinances and rules imposing price controls;
93 findings required; procedures.—

94 (1)

95 (b) The provisions of this section shall not prevent the
96 enactment by local governments of public service rates otherwise
97 authorized by law, including water, sewer, solid waste, public
98 transportation, taxicab, or port rates, rates for towing of
99 vehicles or vessels from or immobilization of vehicles or
100 vessels on private property, or rates for removal and storage of
101 wrecked or disabled vehicles or vessels from an accident scene
102 or the removal and storage of vehicles or vessels in the event
103 the owner or operator is incapacitated, unavailable, leaves the
104 procurement of wrecker service to the law enforcement officer at
105 the scene, or otherwise does not consent to the removal of the
106 vehicle or vessel.

107 (c) Counties must establish maximum rates which may be
108 charged on the towing of vehicles or vessels from or
109 immobilization of vehicles or vessels on private property,
110 removal and storage of wrecked or disabled vehicles or vessels
111 from an accident scene or for the removal and storage of
112 vehicles or vessels, in the event the owner or operator is
113 incapacitated, unavailable, leaves the procurement of wrecker
114 service to the law enforcement officer at the scene, or
115 otherwise does not consent to the removal of the vehicle or
116 vessel. The maximum rate to immobilize a vehicle or vessel on

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117 public or private property may not exceed 20 percent of the
118 maximum rate to tow a vehicle or vessel from private property.
119 However, if a municipality chooses to enact an ordinance
120 establishing the maximum rates ~~fees~~ for the towing or
121 immobilization of vehicles or vessels as described in paragraph
122 (b), the county's ordinance established under s. 125.0103 shall
123 not apply within such municipality. For purposes of this
124 paragraph, the term "immobilize" means the act of rendering a
125 vehicle or vessel inoperable by the use of a device such as a
126 "boot" or "club," the "Barnacle," or any other device that
127 renders a vehicle or vessel inoperable.

128 Section 4. Section 166.04465, Florida Statutes, is created
129 to read:

130 166.04465 Rules and ordinances relating to towing
131 services.-

132 (1) A municipality may not enact an ordinance or rule that
133 would impose a fee or charge on an authorized wrecker operator,
134 as defined in s. 323.002(1), or on a towing business for towing,
135 impounding, or storing a vehicle or vessel. As used in this
136 section, the term "towing business" means a business that
137 provides towing services for monetary gain.

138 (2) The prohibition set forth in subsection (1) does not
139 affect a municipality's authority to:

140 (a) Levy a reasonable business tax under s. 205.0315, s.
141 205.043, or s. 205.0535.

142 (b) Impose and collect a reasonable administrative fee or
143 charge on the registered owner or other legally authorized
144 person in control of a vehicle or vessel, or the lienholder of a
145 vehicle or vessel, not to exceed 25 percent of the maximum

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146 towing rate, to cover the cost of enforcement, including parking
147 enforcement, by the municipality when the vehicle or vessel is
148 towed from public property. However, an authorized wrecker
149 operator or towing business may impose and collect the
150 administrative fee or charge on behalf of the municipality and
151 shall remit such fee or charge to the municipality only after it
152 is collected.

153 Section 5. Subsection (4) of section 323.002, Florida
154 Statutes, is renumbered as subsection (5), and a new subsection
155 (4) is added to that section, to read:

156 323.002 County and municipal wrecker operator systems;
157 penalties for operation outside of system.—

158 (4) (a) Except as provided in paragraph (b), a county or
159 municipality may not adopt or maintain in effect an ordinance or
160 rule that imposes a charge, cost, expense, fine, fee, or penalty
161 on a registered owner or other legally authorized person in
162 control of a vehicle or vessel, or the lienholder of a vehicle
163 or vessel, when the vehicle or vessel is towed by an authorized
164 wrecker operator under this chapter.

165 (b) A county or municipality may adopt or maintain an
166 ordinance or rule that imposes a reasonable administrative fee
167 or charge on the registered owner or other legally authorized
168 person in control of a vehicle or vessel, or the lienholder of a
169 vehicle or vessel, which is towed by an authorized wrecker
170 operator, not to exceed 25 percent of the maximum towing rate,
171 to cover the cost of enforcement, including parking enforcement,
172 by the county or municipality when the vehicle or vessel is
173 towed from public property. However, an authorized wrecker
174 operator or towing business may impose and collect the

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175 administrative fee or charge on behalf of the county or
176 municipality and shall remit such fee or charge to the county or
177 municipality only after it is collected.

178 Section 6. Subsection (2) of section 713.78, Florida
179 Statutes, is amended to read:

180 713.78 Liens for recovering, towing, or storing vehicles
181 and vessels.—

182 (2) Whenever a person regularly engaged in the business of
183 transporting vehicles or vessels by wrecker, tow truck, or car
184 carrier recovers, removes, or stores a vehicle or vessel upon
185 instructions from:

186 (a) The owner thereof;

187 (b) The owner or lessor, or a person authorized by the
188 owner or lessor, of property on which such vehicle or vessel is
189 wrongfully parked, and the removal is done in compliance with s.
190 715.07;

191 (c) The landlord or a person authorized by the landlord,
192 when such motor vehicle or vessel remained on the premises after
193 the tenancy terminated and the removal is done in compliance
194 with s. 83.806 or s. 715.104; or

195 (d) Any law enforcement agency,

196

197 she or he shall have a lien on the vehicle or vessel for a
198 reasonable towing fee, for a reasonable administrative fee or
199 charge imposed by a county or municipality, and for a reasonable
200 storage fee; except that no storage fee shall be charged if the
201 vehicle or vessel is stored for less than 6 hours.

202 Section 7. This act shall take effect July 1, 2018.

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Transportation

BILL: SB 1632

INTRODUCER: Senator Mayfield

SUBJECT: Towing and Immobilization Fees and Charges

DATE: February 2, 2018

REVISED: 02/06/18

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Cochran	Yeatman	CA	Favorable
2.	Jones	Miller	TR	Favorable
3.			RC	

I. Summary:

SB 1632 requires a county or municipality to establish maximum rates for the towing and storage of vessels, as well as placing a cap on the maximum rate for immobilizing a vehicle or vessel. The bill prohibits a county or municipality from enacting a rule or ordinance that imposes a fee or charge on authorized wrecker operators. The bill does not impact the ability of a county or municipality to impose a reasonable administrative fee on the legal owner, legally authorized user, or lienholder of a vehicle or vessel to cover the cost of enforcement actions. The bill provides that an authorized wrecker operator may impose and collect the administrative fee and is only required to remit the fee to the county or municipality after it has been collected.

The bill prohibits counties and municipalities from adopting or enforcing ordinances or rules that impose additional fees on the registered owner or lienholder of a vehicle or vessel removed and impounded by an authorized wrecker operator. The bill provides that a wrecker operator who recovers, removes, or stores a vehicle or vessel shall have a lien on the vehicle or vessel that includes the value of the reasonable administrative fee or charge imposed by a county or municipality

The bill takes effect July 1, 2018.

II. Present Situation:

County and Municipal Wrecker Operator Systems

A county or municipal government may contract with one or more wrecker operators to tow or remove wrecked, disabled, or abandoned vehicles from streets, highways, and accident sites.¹

¹ Section 323.002(1)(c), F.S. The definition of “vehicle” does not include a vessel or trailer intended for the transport on land of a vessel. *See s. 320.01, F.S.* (defining “motor vehicle” for the purpose of issuance of motor vehicle licenses and separately

After the establishment of such contract(s), the county or municipality must create a “wrecker operator system” to apportion towing assignments between the contracted wrecker services. This apportionment may occur through the creation of geographic zones, a rotation schedule, or a combination of those methods.² Any wrecker operator that is included in the wrecker operator system is an “authorized wrecker operator” in the jurisdiction, while any wrecker operation not included is an “unauthorized wrecker operator.”³

Unauthorized wrecker operators are not permitted to initiate contact with the owner or operator of a wrecked or disabled vehicle.⁴ If the owner or operator initiates contact, the unauthorized wrecker operator must disclose in writing, before the vehicle is connected to the towing apparatus:

- His or her full name;
- Driver license number;
- That he or she is not a member of the wrecker operator system;
- That the vehicle is not being towed for the owner’s or operator’s insurance company or lienholder;
- Whether he or she has an insurance policy providing at least \$300,000 in liability coverage and \$50,000 in on-hook cargo coverage; and
- The maximum charges for towing and storage.⁵

The unauthorized wrecker operator must disclose this information to the owner or operator in the presence of a law enforcement officer if an officer is present at the scene of the accident.⁶ It is a second degree misdemeanor for an unauthorized wrecker operator to initiate contact or to fail to provide required information after contact has been initiated.⁷ An unauthorized wrecker operator misrepresenting his or her status as an authorized wrecker operator commits a first degree misdemeanor.⁸ In either instance, the unauthorized wrecker operator’s wrecker, tow truck, or other motor vehicle used during the offense may be immediately removed and impounded.⁹ Unauthorized wrecker operators also are prohibited from monitoring police radios to determine the location of wrecked or disabled vehicles.¹⁰

Counties must establish maximum rates for the towing of vehicles removed from private property, as well as the towing and storage of vehicles removed from the scene of an accident or where the vehicle is towed at the request of a law enforcement officer. Municipalities are also authorized to adopt maximum rate ordinances. If a municipality enacts an ordinance to establish

defining a “marine boat trailer dealer” as a person engaged in “business of buying ... trailers specifically designed to be drawn by another vehicle and used for the transportation on land of vessels.”)

² *Id.*

³ Section 323.002(1)(a)-(b), F.S.

⁴ Section 323.002(2)(b), F.S.

⁵ Section 323.002(2)(c), F.S.

⁶ *Id.*

⁷ *Id.*

⁸ Section 323.002(2)(d), F.S.

⁹ Section 323.002(2)(c) and (d), F.S.

¹⁰ Section 323.002(2)(a), F.S.

towing fees, the county ordinance will not apply within the municipality.¹¹ A county or municipality may not establish rates, including a maximum rate, for the towing of vessels.¹²

Vehicle Holds, Wrecker Operator Storage Facilities, and Liens

An investigating agency may place a hold on a motor vehicle stored within a wrecker operator's storage facility for up to five business days.¹³ A hold may be applied where the officer has probable cause to believe the vehicle:

- Should be seized under the Florida Contraband Forfeiture Act¹⁴ or ch. 379, F.S.¹⁵;
- Was used as the means of committing a crime;
- Is evidence that tends to show a crime has been committed; or
- Was involved in a traffic accident resulting in death or personal injury.¹⁶

An officer may also apply a hold when the vehicle is impounded pursuant to ss. 316.193 or 322.34, F.S., and when the officer is complying with a court order.¹⁷ The hold must be in writing and include the name and agency of the law enforcement officer placing the hold, the date and time the hold is placed on the vehicle, a general description of the vehicle, the specific reason for the hold, the condition of the vehicle, the location where the vehicle is being held, and the name and contact information for the wrecker operator and storage facility.¹⁸

The investigating agency must inform the wrecker operator within the five day holding period if the agency intends to hold the vehicle for a longer period of time.¹⁹ The vehicle owner is liable for towing and storage charges for the first five days. If the vehicle will be held beyond five days, the investigating agency may choose to have the vehicle stored at a designated impound lot or to pay for storage at the wrecker operator's storage facility.²⁰

A wrecker operator or other person engaged in the business of transporting vehicles or vessels who recovers, removes, or stores a vehicle or vessel possesses a lien on the vehicle or vessel for a reasonable towing fee and storage fee, if the vehicle or vessel is removed upon instructions from:

- The owner of the vehicle or vessel;
- The owner, lessor, or authorized person acting on behalf of the owner or lessor of property on which the vehicle or vessel is wrongly parked (as long as the removal is performed in compliance with s. 715.07, F.S.);

¹¹ Sections 125.0103(1)(c) and 166.043(1)(c), F.S.

¹² Compare 125.0103(c), F.S. (requiring a county to establish maximum rates for towing of vehicles) with s. 715.07, F.S. (towing of vehicles or vessels parked on private property).

¹³ Section 323.001(1), F.S.

¹⁴ Sections 932.701-932.7062, F.S.

¹⁵ Chapter 379, F.S., includes multiple instances when a vehicle or vessel may be forfeited due to unlawful acts committed with such vehicle or vessel concerning fish and wildlife conservation.

¹⁶ Section 323.001(4)(a)-(e), F.S.

¹⁷ Section 323.001(4)(f)-(g), F.S.

¹⁸ Section 323.001(5), F.S.

¹⁹ Section 323.001(2), F.S.

²⁰ Section 323.001(2)(a)-(b), F.S.

- The landlord or authorized person acting on behalf of a landlord, when the vehicle or vessel remains on the property after the expiration of tenancy (and the removal is performed pursuant to ss. 83.806 or 715.104, F.S.); or
- Any law enforcement agency.²¹

Authority for Local Governments to Charge Fees

Counties and municipalities do not have authority to levy taxes, other than ad valorem taxes, except as provided by general law.²² However, local governments possess the authority to impose user fees or assessments by local ordinance as such authority is within the constitutional and statutory home rule powers of local governments.²³ The key distinction between a tax and a fee is that fees are voluntary and benefit particular individuals in a manner not shared by others in the public.²⁴ On the other hand, a tax is a “forced charge or imposition, operating whether we like it or not and in no sense depends on the will or contract of the one on whom it is imposed.”²⁵ Usually a fee is applied for the use of a service and is tied directly to the cost of maintaining the service. Money collected from a fee is not applied to uses other than to provide the service for which the fee is applied. An administrative fee for towing and storage services may be permissible to the extent the fee provides a specific benefit to vehicle owners.²⁶

Fees Related to Towing, Storage, and Wrecker Operators

Some municipalities impose an administrative fee on vehicles towed by an authorized wrecker operator if the vehicle is seized or towed in connection with certain misdemeanors or felonies. The administrative fee is collected by the towing company on behalf of the municipal government and, in addition to towing and storage fees, must be paid before the vehicle is released to the registered owner or lienholder.

The City of Sarasota seizes the vehicle of those arrested for crimes related to drugs or prostitution.²⁷ The registered owner of the vehicle is then given two options:

- The registered owner may request a hearing where the city must show by a preponderance of the evidence that the vehicle was used to facilitate the commission of an act of prostitution or any violation of ch. 893, F.S., the Florida Comprehensive Drug Abuse Prevention and Control Act. The owner may post a bond equal to the civil penalty (\$500), hearing costs (\$50), and towing and storage fees (\$125 plus \$25 per day) to receive the vehicle back pending the outcome of the hearing, or the owner may leave the vehicle in impound, incurring additional fees; or
- The registered owner may waive the right to a hearing and pay the civil penalty (\$500).

²¹ Section 713.78(2), F.S.

²² Art. VII, s. 1(a), Fla. Const.

²³ *City of Boca Raton v. State*, 595 So. 2d 25, 30 (Fla. 1992).

²⁴ *City of Miami v. Quik Cash Jewelry & Pawn, Inc.*, 811 So.2d 756, 758 (Fla. 3rd DCA 2002).

²⁵ *Id.* at 758-59.

²⁶ See *Jasinski v. City of Miami*, 269 F. Supp. 2d 1341, 1348 (S.D. Fla. 2003).

²⁷ Sarasota Police Department, *Vehicle Seizure Program*, available at <http://www.sarasotapd.org/vehicle-seizure-program/> (last visited Feb. 1, 2018).

If the registered owner of the vehicle is unable to pay the administrative penalty within 35 days, the city disposes of the vehicle. The City of Bradenton uses the same process and rate structure.²⁸

Other municipalities have enacted ordinances charging an administrative fee for any vehicle impoundment associated with an arrest. For example, the City of Sweetwater imposes an “impoundment administrative fee” on all vehicles seized incident to an arrest. The fee is \$500 if the impoundment stems from a felony arrest and \$250 if the impoundment stems from a misdemeanor.²⁹

The City of Winter Springs imposes an administrative fee for impoundment arising from twelve offenses enumerated in the authorizing ordinance, ranging from prostitution to dumping litter weighing more than 15 pounds.³⁰ The registered owner may request a hearing, either accruing additional storage fees pending the hearing or posting a bond equal to the amount of the administrative fee (\$550). If the registered owner waives the right to hearing, the administrative fee is reduced to \$250. These fees are payable to the city but are collected by towing companies.³¹

By contract, some municipalities require wrecker services to pay a monthly fee for serving as authorized wrecker operators. For example, the contract between the City of Sarasota and a wrecker operator requires the operator to pay the city \$10,151 per month for “the opportunity to provide” wrecker services, as well as \$500 for each impounded vehicle sold by the wrecker service.³²

Additionally, a county or municipality may require a fee from a towing business in order to be licensed to operate within that county or municipality. For example, to operate a towing business in Miami-Dade County a person or corporation must apply to be a registered towing business with the county, which includes a \$403 annual fee, a vehicle safety inspection with a \$92 decal fee, proof of insurance requirements, and background checks of the owners of the towing business.³³

III. Effect of Proposed Changes:

Sections 1 and 3 amend ss. 125.0103 and 166.043, F.S., to authorize a county or municipality to regulate the rates for the towing or immobilization of vessels. A county or municipality is required to establish a maximum rate that may be charged for the towing, immobilization or storage of vehicles and vessels. The bill provides that the maximum rate to immobilize a vehicle or vessel may not exceed 20 percent of the maximum rate allowed by the county or municipality for towing a vehicle or vessel from private property. The bill defines immobilization as the act of

²⁸ Bradenton, Fla. Code of Ordinances, ch. 54, art. IV (2016).

²⁹ Sweetwater, Fla. Code of Ordinances, ch. 42-1, s. 42.1(c) (2017).

³⁰ Winter Springs, Fla. Code of Ordinances ch. 12, art. V., s. 12-100 (2017).

³¹ Winter Springs Police, *Notice of Right to Hearing Form* (on file with the Senate Committee on Transportation).

³² City of Sarasota, *Agreement for Wrecker Towing and Storage Services* (May 5, 2010) (on file with the Senate Committee on Transportation).

³³ Miami-Dade website, *Towing Business Registration* (Sept. 9, 2017), <http://www.miamidade.gov/licenses/towing.asp> (last visited Feb. 6, 2018).

rendering a vehicle or vessel inoperable by the use of a device such as a “boot,” “club,” “Barnacle,” or any other device that renders a vehicle or vessel inoperable.

Sections 2 and 4 create ss. 125.01047 and 166.04465, F.S., to prohibit a county or municipality from enacting a rule or ordinance that imposes a fee or charge on authorized wrecker operators or on a towing business for towing, impounding, or storing a vehicle or vessel. The prohibition does not affect the county’s or municipality’s ability to levy a business tax under ss. 205.0315, 205.033, 205.043, or 205.0535, F.S., or to impose a reasonable administrative fee or charge on the legal or authorized owner or lienholder of a vehicle or vessel to cover the cost of enforcement by the county when the vehicle or vessel is towed from public property. The administrative fee may not exceed 25 percent of the maximum towing rate. The bill authorizes an authorized wrecker operator or towing business to impose and collect the administrative fee or charge on behalf of the county or municipality, but only remits such fee or charge after it is collected.

Section 5 amends s. 332.002, F.S., to prohibit a county or municipality from adopting or enforcing an ordinance or rule that imposes any charge, cost, expense, fine, fee, or penalty, on the owner or lienholder of a vehicle or vessel towed by an authorized wrecker operator. This prohibition does not apply to a reasonable administrative fee or charge, not to exceed 25 percent of the maximum towing rate, to cover the cost of enforcement when the vehicle or vessel is towed from public property.

Section 6 amends s. 713.78, F.S., to provide that the administrative fee shall be included as part of the lien on the vehicle or vessel held by the towing operator.

Section 7 provides an effective date of July 1, 2018.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill will reduce expenses for towing companies that are located in counties or municipalities currently charging a fee on authorized wrecker operators.

C. Government Sector Impact:

The bill will have an indeterminate impact on local government revenue. The bill prohibits counties and municipalities from charging certain fees to authorized wrecker operators and towing companies which are currently charged by some jurisdictions, while authorizing the collection of administrative fees for the cost of enforcement.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 125.0103, 166.043, 323.002, and 713.78.

This bill creates the following sections of the Florida Statutes: 125.01047 and 166.04465.

IX. Additional Information:**A. Committee Substitute – Statement of Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

1 A bill to be entitled
 2 An act relating to towing and immobilizing fees and
 3 charges; amending ss. 125.0103 and 166.043, F.S.;
 4 establishing a maximum rate that counties or
 5 municipalities may charge to immobilize vehicles or
 6 vessels under certain conditions; defining the term
 7 "immobilize"; creating ss. 125.01047 and 166.04465,
 8 F.S.; prohibiting counties or municipalities from
 9 enacting certain ordinances or rules that impose fees
 10 or charges on authorized wrecker operators or towing
 11 businesses; defining the term "towing business";
 12 providing exceptions; amending s. 323.002, F.S.;
 13 prohibiting counties or municipalities from imposing
 14 charges, costs, expenses, fines, fees, or penalties on
 15 registered owners, other legally authorized persons in
 16 control, or lienholders of vehicles or vessels under
 17 certain conditions; providing an exception; amending
 18 s. 713.78, F.S.; authorizing certain persons to place
 19 liens on vehicles or vessels to recover specified fees
 20 or charges; providing an effective date.

21
22 Be It Enacted by the Legislature of the State of Florida:

23
24 Section 1. Paragraphs (b) and (c) of subsection (1) of
25 section 125.0103, Florida Statutes, are amended to read:

26 | 125.0103 Ordinances and rules imposing price controls;
27 | findings required; procedures.—

28 | (1)

29 | (b) The provisions of this section shall not prevent the
30 | enactment by local governments of public service rates otherwise
31 | authorized by law, including water, sewer, solid waste, public
32 | transportation, taxicab, or port rates, rates for towing of
33 | vehicles or vessels from or immobilization of vehicles or
34 | vessels on private property, or rates for removal and storage of
35 | wrecked or disabled vehicles or vessels from an accident scene
36 | or the removal and storage of vehicles or vessels in the event
37 | the owner or operator is incapacitated, unavailable, leaves the
38 | procurement of wrecker service to the law enforcement officer at
39 | the scene, or otherwise does not consent to the removal of the
40 | vehicle or vessel.

41 | (c) Counties must establish maximum rates which may be
42 | charged on the towing of vehicles or vessels from or
43 | immobilization of vehicles or vessels on private property,
44 | removal and storage of wrecked or disabled vehicles or vessels
45 | from an accident scene or for the removal and storage of
46 | vehicles or vessels, in the event the owner or operator is
47 | incapacitated, unavailable, leaves the procurement of wrecker
48 | service to the law enforcement officer at the scene, or
49 | otherwise does not consent to the removal of the vehicle or
50 | vessel. The maximum rate to immobilize a vehicle or vessel on

51 public or private property may not exceed 20 percent of the
52 maximum rate to tow a vehicle or vessel from private property.
53 However, if a municipality chooses to enact an ordinance
54 establishing the maximum rates ~~fees~~ for the towing or
55 immobilization of vehicles or vessels as described in paragraph
56 (b), the county's ordinance shall not apply within such
57 municipality. For purposes of this paragraph, the term
58 "immobilize" means the act of rendering a vehicle or vessel
59 inoperable by the use of a device such as a "boot" or "club,"
60 the "Barnacle," or any other device which renders a vehicle or
61 vessel inoperable.

62 Section 2. Section 125.01047, Florida Statutes, is created
63 to read:

64 125.01047 Rules and ordinances relating to towing
65 services.—

66 (1) A county may not enact an ordinance or rule that would
67 impose a fee or charge on an authorized wrecker operator, as
68 defined in s. 323.002(1), or on a towing business for towing,
69 impounding, or storing a vehicle or vessel. As used in this
70 section, the term "towing business" means a business that
71 provides towing services for monetary gain.

72 (2) The prohibition set forth in subsection (1) does not
73 affect a county's authority to:

74 (a) Levy a reasonable business tax under s. 205.0315, s.
75 205.033, or s. 205.0535.

76 (b) Impose and collect a reasonable administrative fee or
 77 charge on the registered owner or other legally authorized
 78 person in control of a vehicle or vessel, or the lienholder of a
 79 vehicle or vessel, not to exceed 25 percent of the maximum
 80 towing rate, to cover the cost of enforcement, including parking
 81 enforcement, by the county when the vehicle or vessel is towed
 82 from public property. However, an authorized wrecker operator or
 83 towing business may impose and collect the administrative fee or
 84 charge on behalf of the county and shall remit such fee or
 85 charge to the county only after it is collected.

86 Section 3. Paragraphs (b) and (c) of subsection (1) of
 87 section 166.043, Florida Statutes, are amended to read:

88 166.043 Ordinances and rules imposing price controls;
 89 findings required; procedures.—

90 (1)

91 (b) The provisions of this section shall not prevent the
 92 enactment by local governments of public service rates otherwise
 93 authorized by law, including water, sewer, solid waste, public
 94 transportation, taxicab, or port rates, rates for towing of
 95 vehicles or vessels from or immobilization of vehicles or
 96 vessels on private property, or rates for removal and storage of
 97 wrecked or disabled vehicles or vessels from an accident scene
 98 or the removal and storage of vehicles or vessels in the event
 99 the owner or operator is incapacitated, unavailable, leaves the
 100 procurement of wrecker service to the law enforcement officer at

101 the scene, or otherwise does not consent to the removal of the
102 vehicle or vessel.

103 (c) Counties must establish maximum rates which may be
104 charged on the towing of vehicles or vessels from or
105 immobilization of vehicles or vessels on private property,
106 removal and storage of wrecked or disabled vehicles or vessels
107 from an accident scene or for the removal and storage of
108 vehicles or vessels, in the event the owner or operator is
109 incapacitated, unavailable, leaves the procurement of wrecker
110 service to the law enforcement officer at the scene, or
111 otherwise does not consent to the removal of the vehicle or
112 vessel. The maximum rate to immobilize a vehicle or vessel on
113 public or private property may not exceed 20 percent of the
114 maximum rate to tow a vehicle or vessel from private property.
115 However, if a municipality chooses to enact an ordinance
116 establishing the maximum rates ~~fees~~ for the towing or
117 immobilization of vehicles or vessels as described in paragraph
118 (b), the county's ordinance established under s. 125.0103 shall
119 not apply within such municipality. For purposes of this
120 paragraph, the term "immobilize" means the act of rendering a
121 vehicle or vessel inoperable by the use of a device such as a
122 "boot" or "club," the "Barnacle," or any other device which
123 renders a vehicle or vessel inoperable.

124 Section 4. Section 166.04465, Florida Statutes, is created
125 to read:

126 166.04465 Rules and ordinances relating to towing
127 services.—

128 (1) A municipality may not enact an ordinance or rule that
129 would impose a fee or charge on an authorized wrecker operator,
130 as defined in s. 323.002(1), or on a towing business for towing,
131 impounding, or storing a vehicle or vessel. As used in this
132 section, the term "towing business" means a business that
133 provides towing services for monetary gain.

134 (2) The prohibition set forth in subsection (1) does not
135 affect a municipality's authority to:

136 (a) Levy a reasonable business tax under s. 205.0315, s.
137 205.043, or s. 205.0535.

138 (b) Impose and collect a reasonable administrative fee or
139 charge on the registered owner or other legally authorized
140 person in control of a vehicle or vessel, or the lienholder of a
141 vehicle or vessel, not to exceed 25 percent of the maximum
142 towing rate, to cover the cost of enforcement, including parking
143 enforcement, by the municipality when the vehicle or vessel is
144 towed from public property. However, an authorized wrecker
145 operator or towing business may impose and collect the
146 administrative fee or charge on behalf of the municipality and
147 shall remit such fee or charge to the municipality only after it
148 is collected.

149 Section 5. Subsection (4) of section 323.002, Florida
150 Statutes, is renumbered as subsection (5), and a new subsection

151 (4) is added to that section to read:

152 323.002 County and municipal wrecker operator systems;
153 penalties for operation outside of system.-

154 (4) (a) Except as provided in paragraph (b), a county or
155 municipality may not adopt or maintain in effect an ordinance or
156 rule that imposes a charge, cost, expense, fine, fee, or penalty
157 on a registered owner or other legally authorized person in
158 control of a vehicle or vessel, or the lienholder of a vehicle
159 or vessel, when the vehicle or vessel is towed by an authorized
160 wrecker operator under this chapter.

161 (b) A county or municipality may adopt or maintain an
162 ordinance or rule that imposes a reasonable administrative fee
163 or charge on the registered owner or other legally authorized
164 person in control of a vehicle or vessel, or the lienholder of a
165 vehicle or vessel, that is towed by an authorized wrecker
166 operator, not to exceed 25 percent of the maximum towing rate,
167 to cover the cost of enforcement, including parking enforcement,
168 by the county or municipality when the vehicle or vessel is
169 towed from public property. However, an authorized wrecker
170 operator or towing business may impose and collect the
171 administrative fee or charge on behalf of the county or
172 municipality and shall remit such fee or charge to the county or
173 municipality only after it is collected.

174 Section 6. Subsection (2) of section 713.78, Florida
175 Statutes, is amended to read:

176 713.78 Liens for recovering, towing, or storing vehicles
177 and vessels.—

178 (2) Whenever a person regularly engaged in the business of
179 transporting vehicles or vessels by wrecker, tow truck, or car
180 carrier recovers, removes, or stores a vehicle or vessel upon
181 instructions from:

182 (a) The owner thereof;

183 (b) The owner or lessor, or a person authorized by the
184 owner or lessor, of property on which such vehicle or vessel is
185 wrongfully parked, and the removal is done in compliance with s.
186 715.07;

187 (c) The landlord or a person authorized by the landlord,
188 when such motor vehicle or vessel remained on the premises after
189 the tenancy terminated and the removal is done in compliance
190 with s. 83.806 or s. 715.104; or

191 (d) Any law enforcement agency,

192
193 she or he shall have a lien on the vehicle or vessel for a
194 reasonable towing fee, for a reasonable administrative fee or
195 charge imposed by a county or municipality, and for a reasonable
196 storage fee; except that no storage fee shall be charged if the
197 vehicle or vessel is stored for less than 6 hours.

198 Section 7. This act shall take effect July 1, 2018.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 963 Towing and Immobilizing Fees and Charges

SPONSOR(S): Cortes, B.

TIED BILLS: **IDEN./SIM. BILLS:** SB 1632

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Local, Federal & Veterans Affairs Subcommittee	10 Y, 0 N	Darden	Miller
2) Transportation & Infrastructure Subcommittee	10 Y, 2 N	Roth	Vickers
3) Government Accountability Committee	19 Y, 0 N	Darden	Williamson

SUMMARY ANALYSIS

County and municipal governments may contract with wrecker operators to tow or remove wrecked, disabled, or abandoned vehicles from streets, highways, and accident sites within their jurisdiction. Counties and municipalities may establish a wrecker operator system to apportion towing services across multiple wrecker operators. Wrecker operators who participate in the wrecker operator system are known as authorized wrecker operators.

Counties and municipalities are authorized to establish maximum rates for the towing and storage of vehicles pursuant to an ordinance or rule adopted pursuant to s. 125.0103, F.S., or s. 166.043, F.S.

Some municipalities impose an administrative fee on vehicles towed by an authorized wrecker operator if the vehicle is seized or towed in connection with certain misdemeanors or felonies. The administrative fee is collected by the towing company on behalf of the municipal government and, in addition to towing and storage fees, must be paid before the vehicle is released to the registered owner or lienholder.

The bill requires a county or municipality to establish maximum rates for the towing and storage of vessels, as well as to place a cap on the maximum rate for immobilizing a vehicle or vessel.

The bill prohibits a county or municipality from enacting a rule or ordinance that imposes a fee or charge on authorized wrecker operators. The bill does not prohibit a county or municipality from levying a local business tax on authorized wrecker operators and does not impact the ability of a county or municipality to impose a reasonable administrative fee on the legal owner, legally authorized user, or lienholder of a vehicle or vessel to cover the cost of enforcement actions. The bill provides that an authorized wrecker operator may impose and collect the administrative fee and is only required to remit the fee to the county or municipality after it has been collected.

The bill prohibits counties and municipalities from adopting or enforcing ordinances or rules that impose fees on the registered owner or lienholder of a vehicle or vessel removed and impounded by an authorized wrecker operator.

The bill provides that a wrecker operator who recovers, removes, or stores a vehicle or vessel shall have a lien on the vehicle or vessel that includes the value of the reasonable administrative fee or charge imposed by a county or municipality.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

County and Municipal Wrecker Operator Systems

A county or municipal government may contract with one or more wrecker operators to tow or remove wrecked, disabled, or abandoned vehicles from streets, highways, and accident sites.¹ After the establishment of such contract(s), the county or municipality must create a “wrecker operator system” to apportion towing assignments between the contracted wrecker services. This apportionment may occur through the creation of geographic zones, a rotation schedule, or a combination of those methods.² Any wrecker operator that is included in the wrecker operator system is an “authorized wrecker operator” in the jurisdiction, while any wrecker operation not included is an “unauthorized wrecker operator.”³

Unauthorized wrecker operators are not permitted to initiate contact with the owner or operator of a wrecked or disabled vehicle.⁴ If the owner or operator initiates contact, the unauthorized wrecker operator must disclose in writing, before the vehicle is connected to the towing apparatus:

- His or her full name;
- Driver license number;
- That he or she is not a member of the wrecker operator system;
- That the vehicle is not being towed for the owner’s or operator’s insurance company or lienholder;
- Whether he or she has an insurance policy providing \$300,000 in liability coverage and \$50,000 in on-hook cargo coverage; and
- The maximum charges for towing and storage.⁵

The unauthorized wrecker operator must disclose this information to the owner or operator in the presence of a law enforcement officer if an officer is present at the scene of the accident.⁶

It is a second degree misdemeanor for an unauthorized wrecker operator to initiate contact or to fail to provide required information after contact has been initiated.⁷ An unauthorized wrecker operator misrepresenting his or her status as an authorized wrecker operator commits a first degree misdemeanor.⁸ In either instance, the unauthorized wrecker operator’s wrecker, tow truck, or other motor vehicle used during the offense may be immediately removed and impounded.⁹

Unauthorized wrecker operators also are prohibited from monitoring police radios to determine the location of wrecked or disabled vehicles.¹⁰

¹ Section 323.002(1)(c), F.S. The definition of “vehicle” does not include a vessel or trailer intended for the transport on land of a vessel. *See* s. 320.01, F.S. (defining “motor vehicle” for the purpose of issuance of motor vehicle licenses and separately defining a “marine boat trailer dealer” as a person engaged in “business of buying ... trailers specifically designed to be drawn by another vehicle and used for the transportation on land of vessels.”)

² *Id.*

³ Section 323.002(1)(a)-(b), F.S.

⁴ Section 323.002(2)(b), F.S.

⁵ Section 323.002(2)(c), F.S.

⁶ *Id.*

⁷ *Id.*

⁸ Section 323.002(2)(d), F.S.

⁹ Section 323.002(2)(c) and (d), F.S.

¹⁰ Section 323.002(2)(a), F.S.

Counties must establish maximum rates for the towing of vehicles removed from private property, as well as the towing and storage of vehicles removed from the scene of an accident or where the vehicle is towed at the request of a law enforcement officer. Municipalities are also authorized to adopt maximum rate ordinances. If a municipality enacts an ordinance to establish towing fees, the county ordinance will not apply within the municipality.¹¹ A county or municipality may not establish rates, including a maximum rate, for the towing of vessels.¹²

Vehicle Holds, Wrecker Operator Storage Facilities, and Liens

An investigating agency may place a hold on a motor vehicle stored within a wrecker operator's storage facility for up to five business days.¹³ A hold may be applied when the officer has probable cause to believe the vehicle:

- Should be seized under the Florida Contraband Forfeiture Act or Ch. 379, F.S.;
- Was used as the means of committing a crime;
- Is evidence that tends to show a crime has been committed; or
- Was involved in a traffic accident resulting in death or personal injury.¹⁴

An officer may also apply a hold when the vehicle is impounded pursuant to ss. 316.193 or 322.34, F.S., and when the officer is complying with a court order.¹⁵ The hold must be in writing and include the name and agency of the law enforcement officer placing the hold, the date and time the hold is placed on the vehicle, a general description of the vehicle, the specific reason for the hold, the condition of the vehicle, the location where the vehicle is being held, and the name and contact information for the wrecker operator and storage facility.¹⁶

The investigating agency must inform the wrecker operator within the five-day holding period if the agency intends to hold the vehicle for a longer period of time.¹⁷ The vehicle owner is liable for towing and storage charges for the first five days. If the vehicle will be held beyond five days, the investigating agency may choose to have the vehicle stored at a designated impound lot or to pay for storage at the wrecker operator's storage facility.¹⁸

A wrecker operator or other person engaged in the business of transporting vehicles or vessels who recovers, removes, or stores a vehicle or vessel, possesses a lien on the vehicle or vessel for a reasonable towing fee and storage fee if the vehicle or vessel is removed upon instructions from:

- The owner of the vehicle or vessel;
- The owner, lessor, or authorized person acting on behalf of the owner/lessor of property on which the vehicle or vessel is wrongly parked (as long as the removal is performed pursuant to s. 715.07, F.S.);
- The landlord or authorized person acting on behalf of a landlord, when the vehicle or vessel remains on the property after the expiration of tenancy and the removal is performed pursuant to s. 83.806, F.S., or s. 715.104, F.S.; or
- Any law enforcement agency.¹⁹

Authority for Local Governments to Charge Fees

Counties and municipalities do not have authority to levy taxes, other than ad valorem taxes, except as provided by general law.²⁰ However, local governments possess the authority to impose user fees or

¹¹ Sections 125.0103(1)(c) and 166.043(1)(c), F.S.

¹² Compare 125.0103(1)(c), F.S. (requiring a county to establish maximum rates for towing of vehicles) with s. 715.07, F.S. (towing of vehicles or vessels parked on private property).

¹³ Section 323.001(1), F.S.

¹⁴ Section 323.001(4)(a)-(e), F.S.

¹⁵ Section 323.001(4)(f)-(g), F.S.

¹⁶ Section 323.001(5), F.S.

¹⁷ Section 323.001(2), F.S.

¹⁸ Section 323.001(2)(a)-(b), F.S.

¹⁹ Section 713.78(2), F.S.

²⁰ Art. VII, s. 1(a), Fla. Const.

assessments by local ordinance as such authority is within the constitutional and statutory home rule powers of local governments.²¹ The key distinction between a tax and a fee is that fees are voluntary and benefit particular individuals in a manner not shared by others in the public.²² On the other hand, a tax is a “forced charge or imposition, operating whether we like it or not and in no sense depends on the will or contract of the one on whom it is imposed.”²³ Usually a fee is charged for the use of a service and is tied directly to the cost of maintaining the service. Money collected from a fee is not applied to uses other than to provide the service for which the fee is applied. An administrative fee for towing and storage services may be permissible to the extent the fee provides a specific benefit to vehicle owners.²⁴

Administrative Fees Related to Towing and Storage

Some municipalities charge administrative fees when a vehicle is towed in connection with certain misdemeanors or felonies.

The City of Sarasota seizes the vehicle of those arrested for crimes related to drugs or prostitution.²⁵ The registered owner of the vehicle is then given two options:

- The registered owner may request a hearing where the city must show by a preponderance of the evidence that the vehicle was used to facilitate the commission of an act of prostitution or any violation of ch. 893, F.S., the Florida Comprehensive Drug Abuse Prevention and Control Act. The owner may post a bond equal to the civil penalty (\$500.00), hearing costs (\$50.00), and towing and storage fees (\$125.00 plus \$25.00 per day) to receive the vehicle back pending the outcome of the hearing, or the owner may leave the vehicle in impound, incurring additional fees.
- The registered owner may waive the right to a hearing and pay the civil penalty (\$500.00).

If the registered owner of the vehicle is unable to pay the administrative penalty within 35 days, the city disposes of the vehicle. The City of Bradenton uses the same process and rate structure.²⁶

Other municipalities have enacted ordinances charging an administrative fee for any vehicle impoundment associated with an arrest. For example, the City of Sweetwater imposes an “impoundment administrative fee” on all vehicles seized incident to an arrest. The fee is \$500 if the impoundment stems from a felony arrest and \$250 if the impoundment stems from a misdemeanor.²⁷

The City of Winter Springs imposes an administrative fee for impoundment arising from 12 offenses enumerated in the authorizing ordinance, ranging from prostitution to dumping litter weighing more than 15 pounds.²⁸ The registered owner may request a hearing, either accruing additional storage fees pending the hearing or posting a bond equal to the amount of the administrative fee (\$550.00). If the registered owner waives the right to hearing, the administrative fee is reduced to \$250.00. These fees are payable to the city but are collected by towing companies.²⁹

By contract, some municipalities require wrecker services to pay a monthly fee for serving as authorized wrecker operators. For example, the contract between the City of Sarasota and a wrecker

²¹ *City of Boca Raton v. State*, 595 So. 2d 25, 30 (Fla. 1992).

²² *City of Miami v. Quik Cash Jewelry & Pawn, Inc.*, 811 So.2d 756, 758 (Fla. 3rd DCA 2002).

²³ *Id.* at 758-59.

²⁴ *See Jasinski v. City of Miami*, 269 F. Supp. 2d 1341, 1348 (S.D. Fla. 2003).

²⁵ Sarasota Police Department, *Vehicle Seizure Program*, available at <http://www.sarasotapd.org/vehicle-seizure-program/> (last accessed Jan. 17, 2018).

²⁶ Bradenton, Fla. Code of Ordinances, ch. 54, art. IV (2016).

²⁷ Sweetwater, Fla. Code of Ordinances, ch. 42-1, s. 42.1(c) (2017).

²⁸ Winter Springs, Fla. Ordinance No. 2016-01 (effective October 23, 2016).

²⁹ Winter Springs, Fla. Notice of Right to Hearing Form. A copy of this form is attached as Appendix A.

operator requires the operator to pay the city \$10,151 per month for “the opportunity to provide” wrecker services, as well as \$500 for each impounded vehicle sold by the wrecker service.³⁰

Effect of Proposed Changes

The bill authorizes a county or municipality to regulate the rates for the towing or immobilization of vessels. A county or municipality is required to establish a maximum rate that may be charged for the towing or immobilization of a vessel. The bill provides that the maximum rate to immobilize a vehicle or vessel may not exceed 20 percent of the maximum rate allowed by the county or municipality for towing a vehicle or vessel from private property. The bill defines immobilization as the act of rendering a vehicle or vessel inoperable by the use of a device such as a “boot,” “club,” “Barnacle,” or any other device that renders the vehicle or vessel inoperable.

The bill prohibits a county or municipality from enacting a rule or ordinance that imposes a fee or charge on authorized wrecker operators. The prohibition would not impact the ability of the county or municipality to levy a business tax under ss. 205.0315, 205.033, or 205.0535, F.S. It also would not impact the ability of the county to impose a reasonable administrative fee or charge by ordinance on the legal owner of a vehicle if a county or municipal law enforcement officer has caused the owner’s vehicle to be towed to and impounded at a facility owned by the county or municipality. The administrative fee imposed under this section may not exceed 25 percent of the maximum towing rate.

The bill authorizes an authorized wrecker operator or towing business to impose and collect the administrative fee and provides that the authorized wrecker operator or towing business is not required to remit the fee to the county or municipality until it is actually collected. The bill requires the administrative fee to be included as part of the lien on the vehicle or vessel held by the towing operator.

The bill also prohibits a county or municipality from adopting or enforcing an ordinance that imposes any charge, cost, expense, fine, fee, or penalty on the registered owner or lienholder of a vehicle removed and impounded by an authorized wrecker operator. This prohibition does not apply to a reasonable administrative fee or charge, limited to 25 percent of the maximum towing rate, to cover the cost of enforcement.

B. SECTION DIRECTORY:

- Section 1: Amends s. 125.0103, F.S., requiring counties to establish maximum rates for the towing of vessels and placing a cap on the maximum rate for immobilizing a vehicle or vessel.
- Section 2: Creates s. 125.01047, F.S., prohibiting counties from enacting ordinances imposing specific fees and charges on authorized wrecker operators.
- Section 3: Amends s. 166.043, F.S., requiring municipalities to establish maximum rates for the towing of vessels and placing a cap on the maximum rate for immobilizing a vehicle or vessel.
- Section 4: Creates s. 166.04465, F.S., prohibiting municipalities from enacting ordinances imposing specific fees and charges on authorized wrecker operators.
- Section 5: Amends s. 323.002, F.S., prohibiting counties and municipalities from imposing fees and charges on the registered owner or lienholder of a vehicle removed and impounded pursuant to Ch. 323, F.S.
- Section 6: Amends s. 713.78, F.S., providing that a wrecker operation has a lien for a reasonable administrative fee or charge imposed by a county or municipality.

³⁰ Agreement for Wrecker Towing and Storage Services, City of Sarasota and J&G WFR, Inc. dba Direct Towing. A copy of the relevant portions of the contract is attached as Appendix B.

Section 7: Provides that the bill takes effect July 1, 2018.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill will have an indeterminate impact on local government revenue. The bill prohibits counties and municipalities from charging certain fees to authorized wrecker operators and towing companies that are currently charged by some jurisdictions, while authorizing the collection of administrative fees for the cost of enforcement.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill will reduce expenses for towing companies that are located in counties or municipalities currently charging a fee.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill does not appear to require counties or municipalities to spend funds or take 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:

The Florida Constitution prohibits the passage of any law that would impair the obligation of contracts.³¹ The bill does not appear to implicate this provision, as the bill does not address the enforcement of current contracts. The retroactive application of a statutory provision generally only occurs upon an express statement of intent by the Legislature and is limited to the extent retroactive application would impair a vested right, create a new obligation, or impose a new penalty.³²

³¹ Art. I, s. 10, Fla. Const.

³² *Menendez v. Progressive Exp. Ins. Co, Inc.*, 35 So. 3d 873, 877 (Fla. 2010).

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

None.

APPENDIX A



NOTICE OF RIGHT TO HEARING

Case#: _____
Dated this _____ day of _____, 20____

HAND DELIVERED TO:

NAME: _____ DOB: _____
ADDRESS: _____
D/L # _____ Sex: _____ Race: _____

SECTION 1:

The following property was taken on the _____ day of _____, 20____, on or about _____ hours by members of the Winter Springs Police in the vicinity of _____ because the undersigned police officer has probable cause to believe that the vehicle:

- Was used to facilitate the commission or attempted commission of an act of prostitution, assignation or lewdness as defined in §796.07, F.S. or the exposure of sexual organs as set forth in section 800.03 F.S.
- Was knowingly used in the commission of any misdemeanor act of possession or attempted possession of any controlled substance as defined in section 893.02 F.S.
- Was used, intended or attempted to be used, to facilitate the commission of any misdemeanor violation of Chapter 893 F.S.
- Was used, intended or attempted to be used, to facilitate the commission of any misdemeanor violation of section 316.061 F.S.
- Was used, intended or attempted to be used, to facilitate the commission of any misdemeanor violation of section 322.34 F.S.
- Was operated by a person driving under the influence defined in section 316.193 F.S. when such violation is a misdemeanor.
- Was used in the commission of the offense of driving without a valid license or permit in violation of 322.03 F.S.
- Was being operated on a public street and is not covered by liability insurance as required by Chapter 324 F.S.
- Was used in the commission of the misdemeanor offense of criminal mischief in violation section 806.13 F.S.
- Was used to dump litter in any manner prohibited by section 403.413(4) F.S. exceeding 15 lbs. or 27 cu. ft. in volume not exceeding 500 lbs. or 100 cu. ft. and not for commercial purposes.
- Was being operated by a person presenting proof of insurance in violation of section 316.646(4) F.S. knowingly not in force.
- Was parked in a way impeding traffic, creating a hazard, obstructing a street or city utility or left unattended because the driver was taken into custody by law enforcement.

Such property is being held pending civil proceedings under Winter Springs Code, Section 12 and is described as: YEAR _____ MAKE _____ MODEL _____ COLOR _____ TAG _____ VIN/HIN _____ STATE _____

Other _____

And is currently being held at:

Tri-County Towing
1155 Belle Ave.
Winter Springs, FL 32708
(407) 695-4400

Winter Springs Police Department
300 N. Moss Rd.
Winter Springs, FL 32708
(407) 327-1000

Received By (Operator/Owner) *Signed* _____

Received By (Operator/Owner) *Print* _____

Delivered By (Officer/Clerk) *Signed* _____

Delivered By (Officer/Clerk) *Print* _____

SECTION 2:

Pursuant to City Code, Section 12-100 the owner has the right to request a hearing in the following manner:

Within seven (7) business days of receipt of this notice, the owner, co-owner or lienholder may request a hearing by delivering to the Police Department, at 300 N. Moss Rd., Seminole County, Winter Springs, Florida 32708, a written request for a hearing.

Such request for a hearing shall include a valid telephone number and correct address where the owner, co-owner, or lienholder may be contacted.

The written notice must be received by the Police Department within the allotted time or the right to a hearing shall be deemed to be waived.

SECTION 3:

In order to retrieve the above described vehicle, the owner has the below options:

Owner, Co-Owner, or Lienholder Requesting a Hearing:

The Owner, Co-Owner, or Lienholder may secure release of the vehicle by posting a bond (cash, money order, or certified check payable to the City of Winter Springs) in the amount of \$550.00 submitted to the towing company. The Owner, Co-Owner, or Lienholder may then take possession of the vehicle from the towing company after payment of towing and storage charges payable to the towing company.

The Owner, Co-Owner, or Lienholder may leave the vehicle impounded and request a hearing directly from the police department Support Services Bureau.

Owner, Co-Owner, or Lienholder Waiving a Hearing and Submitting Civil Penalty:

The Owner, Co-Owner, or Lienholder may secure release of the vehicle by submitting a civil penalty (cash, money order, or certified check payable to the City of Winter Springs) in the amount of \$250.00 and submitted to the towing company during business hours.

The Owner, Co-Owner, or Lienholder then may receive the vehicle from the towing company after payment of towing and storage charges payable to the the towing company.

An executed written waiver shall bind both the owner and co-owner except as otherwise provided herein.

APPENDIX B

AGREEMENT FOR WRECKER TOWING AND STORAGE SERVICES

THIS AGREEMENT FOR WRECKER TOWING AND STORAGE SERVICES, made and entered into this 5 day of MAY, 2010 by and between the CITY OF SARASOTA, FLORIDA, a municipal corporation, hereinafter referred to as "CITY," and J & G WFR, INC. DBA DIRECT TOWING, a Florida corporation, hereinafter referred to as "DIRECT".

WITNESSETH:

WHEREAS, CITY has publicly announced an Invitation to Bid to obtain annual wrecker towing and storage services on an as needed basis pursuant to Invitation to Bid No. 10-08MK; and

WHEREAS, DIRECT has submitted a responsive bid which has been accepted by CITY to provide the CITY with the annual wrecker towing and storage services on an as needed basis; and

WHEREAS, CITY and DIRECT desire to formalize the terms and conditions of DIRECT's performance of such services as set forth herein; and

WHEREAS, the City Manager, pursuant to *Sarasota City Code* Section 2-5 (3) v. is authorized to administratively approve and execute this Agreement on behalf of CITY so long as the total compensation paid to DIRECT during the entire term of this Agreement, as may be extended, does not exceed Two Hundred Thousand Dollars (\$200,000.00).

NOW, THEREFORE, IN CONSIDERATION OF THE FOREGOING AND THE MUTUAL COVENANTS CONTAINED HEREIN, IT IS AGREED AS FOLLOWS:

1. Definitions: The following terms shall have the meanings herein ascribed to them:

A. *City Manager* shall mean the City manager of the City of Sarasota, Florida, or his designee.

B. *Police Chief* shall mean the Chief of Police of the City of Sarasota, Florida, or his designee.

C. *Project* shall mean the Scope of Services to be performed by DIRECT in furtherance of this Agreement. The Scope of Services shall include all labor, materials, tools, equipment, insurance and the like required to perform vehicle and vessel towing and storage services within the boundaries of the towing area on an as needed basis for CITY. A more detailed description of the Scope of Services is set forth in the City of Sarasota Police Department Vehicle and Vessel Towing and Storage Services section found on pages 13 through 20, inclusive, of Invitation to Bid No. 10-08MK. A copy of Invitation to Bid No. 10-08MK, as well as the Bid Form submitted by DIRECT in response thereto, are on file in the offices of

the Financial Administration Purchasing Division of CITY. Invitation to Bid No. 10-08MK, as well as DIRECT's Bid Form submitted in response thereto are deemed incorporated by reference into this Agreement. DIRECT covenants to strictly comply with all of the terms and conditions of Bid No. 10-08MK as well as DIRECT's Bid Form submitted in response thereto. In the event of any conflict between the terms set forth in the main body of this Agreement and Invitation to Bid No. 10-08MK, the terms and conditions set forth in the main body of this Agreement shall control.

2. Scope of Services: DIRECT shall diligently and timely provide all labor, material and equipment required for the Scope of Services for the Project in strict conformance with Bid No. 10-08MK as well as DIRECT's Bid Form submitted in response thereto and in strict conformance with all the terms and conditions of this Agreement. The parties hereby agree to be bound by the terms and conditions set forth in Bid No. 10-08MK as well as DIRECT's Bid Form submitted in response thereto. The Police Chief will notify DIRECT when an assignment within the Project Scope of Services may be available. DIRECT covenants to provide the Project Scope of Services within the time limits set forth in Invitation to Bid No. 10-08MK.

3. Payment: In consideration for CITY providing DIRECT the opportunity to provide the Scope of Services, DIRECT agrees to pay CITY a fee in the amount of Ten Thousand One Hundred Fifty One and 00/100 Dollars (\$10,151.00) per month. Said payment shall be submitted to the CITY prior to the 10th day of each month. This monthly payment shall be due and payable by DIRECT to CITY in advance for each month during the term of this Agreement. Furthermore, in consideration of the CITY not placing, attempting to foreclose or foreclosing a vehicle impoundment lien upon a vehicle impounded pursuant to Section 33-271 of the Sarasota City Code, DIRECT agrees to waive any and all storage charges to which the CITY would be obligated to pay as a result of the operation of any provision of Chapter 323, Florida Statutes, on any vehicles impounded by the City and stored by DIRECT. As further

consideration, DIRECT shall pay CITY Five Hundred Dollars (\$500.00) for each sale by DIRECT of a vehicle that was sold subsequent to a seizure initiated by the police department of CITY. Said payment shall be made to CITY within thirty (30) days of DIRECT'S sale of a vehicle which had been seized.

4. Term: This Agreement shall be effective upon complete execution by each of the parties hereto. The initial term of this Agreement shall expire one year thereafter. This Agreement may be extended upon mutual agreement of the parties for up to two additional one year periods under the same terms and conditions pursuant to an amendment to this Agreement.

5. Public Records: DIRECT acknowledges that it shall be responsible to totally and fully comply with the Florida Public Records Law as set forth in Chapter 119, Florida Statutes and all other relevant laws, rules and regulations regarding public records.

6. Termination Without Default: The City Manager shall have the right at any time upon fifteen (15) days written notice to DIRECT to terminate the services of DIRECT hereunder for any reason whatsoever. If the City Manager terminates this Agreement pursuant to this Section 6, DIRECT shall be entitled to a pro-rated refund of the monthly payment required by Section 3 above. The amount of the refund shall be pro-rated based upon the number of days remaining in the calendar month starting with the day after the effective date of termination.

7. Termination With Default: DIRECT acknowledges that the conditions, covenants and requirements on its part to be kept, as set forth herein, are material inducements to CITY entering into this Agreement. Should DIRECT fail to perform any of the conditions, covenants and requirements on its part to be kept, the City Manager shall give written notice thereof to DIRECT specifying those acts or things which must occur in order to cure said default, including the time within which such cure shall occur. DIRECT shall have seventy two (72) hours measured from the date and time of the written notice within which to cure the default.

By the Committee on Environmental Preservation and Conservation;
and Senator Perry

592-02315-18

20181308c1

1 A bill to be entitled
2 An act relating to environmental regulation; amending
3 s. 373.250, F.S.; deleting an obsolete provision;
4 providing examples of reclaimed water use that may
5 create an impact offset; revising the required
6 provisions of the water resource implementation rule;
7 amending s. 403.064, F.S.; revising legislative
8 findings; requiring the Department of Environmental
9 Protection and the water management districts to
10 develop and enter into a memorandum of agreement
11 providing for a coordinated review of any reclaimed
12 water project requiring a reclaimed water facility
13 permit, an underground injection control permit, and a
14 consumptive use permit; specifying the required
15 provisions of such memorandum; specifying the date by
16 which the memorandum must be developed and executed;
17 amending s. 403.706, F.S.; requiring counties and
18 municipalities to address contamination of recyclable
19 material in specified contracts; prohibiting counties
20 and municipalities from requiring the collection or
21 transport of contaminated recyclable material by
22 residential recycling collectors; defining the term
23 "residential recycling collector"; specifying required
24 contract provisions in residential recycling collector
25 and materials recovery facility contracts with
26 counties and municipalities; providing applicability;
27 amending s. 403.813, F.S.; providing that a local
28 government may not require further verification from
29 the department for certain projects; revising the

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30 types of dock and pier replacements and repairs that
31 are exempt from such verification and certain
32 permitting requirements; providing a directive to the
33 Division of Law Revision and Information; providing an
34 effective date.

35
36 Be It Enacted by the Legislature of the State of Florida:

37
38 Section 1. Subsection (5) of section 373.250, Florida
39 Statutes, is amended to read:

40 373.250 Reuse of reclaimed water.—

41 (5) (a) ~~No later than October 1, 2012, the department shall~~
42 ~~initiate rulemaking to adopt revisions to~~ The water resource
43 implementation rule, as defined in s. 373.019(25), must which
44 shall include:

45 1. Criteria for the use of a proposed impact offset derived
46 from the use of reclaimed water when a water management district
47 evaluates an application for a consumptive use permit. As used
48 in this subparagraph, the term "impact offset" means the use of
49 reclaimed water to reduce or eliminate a harmful impact that has
50 occurred or would otherwise occur as a result of other surface
51 water or groundwater withdrawals. Examples of reclaimed water
52 use that may create an impact offset include, but are not
53 limited to, the use of reclaimed water to:

54 a. Prevent or stop further saltwater intrusion;
55 b. Raise aquifer levels;
56 c. Improve the water quality of an aquifer; or
57 d. Augment surface water to increase the quantity of water
58 available for water supply.

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20181308c1

59 2. Criteria for the use of substitution credits where a
60 water management district has adopted rules establishing
61 withdrawal limits from a specified water resource within a
62 defined geographic area. As used in this subparagraph, the term
63 "substitution credit" means the use of reclaimed water to
64 replace all or a portion of an existing permitted use of
65 resource-limited surface water or groundwater, allowing a
66 different user or use to initiate a withdrawal or increase its
67 withdrawal from the same resource-limited surface water or
68 groundwater source provided that the withdrawal creates no net
69 adverse impact on the limited water resource or creates a net
70 positive impact if required by water management district rule as
71 part of a strategy to protect or recover a water resource.

72 3. Criteria by which an impact offset or substitution
73 credit may be applied to the issuance, renewal, or extension of
74 the utility's or another user's consumptive use permit or may be
75 used to address additional water resource constraints imposed
76 through the adoption of a recovery or prevention strategy under
77 s. 373.0421.

78 (b) Within 60 days after the final adoption by the
79 department of the revisions to the water resource implementation
80 rule required under paragraph (a), each water management
81 district must ~~shall~~ initiate rulemaking to incorporate those
82 revisions by reference into the rules of the district.

83 Section 2. Subsection (1) of section 403.064, Florida
84 Statutes, is amended, and subsection (17) is added to that
85 section, to read:

86 403.064 Reuse of reclaimed water.—

87 (1) The encouragement and promotion of water conservation,

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88 and reuse of reclaimed water, as defined by the department, are
89 state objectives and are considered to be in the public
90 interest. The Legislature finds that the reuse of reclaimed
91 water, including reuse through aquifer recharge, is a critical
92 component of meeting the state's existing and future water
93 supply needs while sustaining natural systems. The Legislature
94 further finds that for those wastewater treatment plants
95 permitted and operated under an approved reuse program by the
96 department, the reclaimed water shall be considered
97 environmentally acceptable and not a threat to public health and
98 safety. The Legislature encourages the development of incentive-
99 based programs for reuse implementation.

100 (17) The department and the water management districts
101 shall develop and enter into a memorandum of agreement providing
102 for a coordinated review of any reclaimed water project
103 requiring a reclaimed water facility permit, an underground
104 injection control permit, and a consumptive use permit. The
105 memorandum of agreement must provide that the coordinated review
106 is performed only if the applicant for such permits requests a
107 coordinated review. The goal of the coordinated review is to
108 share information, avoid requesting the applicant to submit
109 redundant information, and ensure, to the extent feasible, a
110 harmonized review of the reclaimed water project under these
111 various permitting programs, including the use of a proposed
112 impact offset or substitution credit in accordance with s.
113 373.250(5). The department and the water management districts
114 must develop and execute such memorandum of agreement no later
115 than December 1, 2018.

116 Section 3. Present subsection (22) of section 403.706,

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117 Florida Statutes, is renumbered as subsection (23), and a new
118 subsection (22) is added to that section, to read:

119 403.706 Local government solid waste responsibilities.—

120 (22) Counties and municipalities shall address the
121 contamination of recyclable material in contracts for the
122 collection, transportation, and processing of residential
123 recyclable material based upon the following:

124 (a) A residential recycling collector may not be required
125 to collect or transport contaminated recyclable material. As
126 used in this subsection, the term "residential recycling
127 collector" means a for-profit business entity that collects and
128 transports residential recyclable material on behalf of a county
129 or municipality.

130 (b) A materials recovery facility may not be required to
131 process contaminated recyclable material.

132 (c) Each contract between a residential recycling collector
133 and a county or municipality for the collection or transport of
134 residential recyclable material, and each request for proposal
135 for residential recyclable material, must define the term
136 "contaminated recyclable material" in a manner that is
137 appropriate for the local community, based on the available
138 markets for recyclable material. The contract and request for
139 proposal must include:

140 1. The respective strategies and obligations of the county
141 or municipality and the collector to reduce the amount of
142 contaminated recyclable material being collected;

143 2. The procedures for identifying, documenting, managing,
144 and rejecting residential recycling containers, carts, or bins
145 that contain contaminated recyclable material;

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146 3. The remedies that will be used if a container, cart, or
147 bin contains contaminated recyclable material; and

148 4. The education and enforcement measures that will be used
149 to reduce the amount of contaminated recyclable material.

150 (d) Each contract between a materials recovery facility and
151 a county or municipality for processing residential recyclable
152 material must define the term "contaminated recyclable material"
153 in a manner that is appropriate for the local community, based
154 on the available markets for recyclable material. The contract
155 must include:

156 1. The respective strategies and obligations of the parties
157 to reduce the amount of contaminated recyclable material being
158 processed;

159 2. The procedures for identifying, documenting, managing,
160 and rejecting residential recycling containers or loads that
161 contain contaminated recyclable material; and

162 3. The remedies that will be used if a container or load
163 contains contaminated recyclable material.

164 (e) This subsection shall apply to each contract between a
165 municipality or county and a residential recycling collector or
166 materials recovery facility executed or renewed after the
167 effective date of this act.

168 Section 4. Subsection (1) of section 403.813, Florida
169 Statutes, is amended to read:

170 403.813 Permits issued at district centers; exceptions.—

171 (1) A permit is not required under this chapter, chapter
172 373, chapter 61-691, Laws of Florida, or chapter 25214 or
173 chapter 25270, 1949, Laws of Florida, and a local government may
174 not require further verification from the department, for

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175 activities associated with the following types of projects;
176 however, except as otherwise provided in this subsection, this
177 subsection does not relieve an applicant from any requirement to
178 obtain permission to use or occupy lands owned by the Board of
179 Trustees of the Internal Improvement Trust Fund or a water
180 management district in its governmental or proprietary capacity
181 or from complying with applicable local pollution control
182 programs authorized under this chapter or other requirements of
183 county and municipal governments:

184 (a) The installation of overhead transmission lines, having
185 ~~with~~ support structures that ~~which~~ are not constructed in waters
186 of the state and which do not create a navigational hazard.

187 (b) The installation and repair of mooring pilings and
188 dolphins associated with private docking facilities or piers and
189 the installation of private docks, piers, and recreational
190 docking facilities, or piers and recreational docking facilities
191 of local governmental entities when the local governmental
192 entity's activities will not take place in any manatee habitat,
193 any of which docks:

194 1. Has 500 square feet or less of over-water surface area
195 for a dock ~~which is~~ located in an area designated as Outstanding
196 Florida Waters or 1,000 square feet or less of over-water
197 surface area for a dock ~~which is~~ located in an area that ~~which~~
198 is not designated as Outstanding Florida Waters;

199 2. Is constructed on or held in place by pilings or is a
200 floating dock ~~which is~~ constructed so as not to involve filling
201 or dredging other than that necessary to install the pilings;

202 3. May ~~Shall~~ not substantially impede the flow of water or
203 create a navigational hazard;

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204 4. Is used for recreational, noncommercial activities
205 associated with the mooring or storage of boats and boat
206 paraphernalia; and

207 5. Is the sole dock constructed pursuant to this exemption
208 as measured along the shoreline for a distance of 65 feet,
209 unless the parcel of land or individual lot as platted is less
210 than 65 feet in length along the shoreline, in which case there
211 may be one exempt dock allowed per parcel or lot.

212

213 ~~Nothing in~~ This paragraph does not shall prohibit the department
214 from taking appropriate enforcement action pursuant to this
215 chapter to abate or prohibit any activity otherwise exempt from
216 permitting pursuant to this paragraph if the department can
217 demonstrate that the exempted activity has caused water
218 pollution in violation of this chapter.

219 (c) The installation and maintenance to design
220 specifications of boat ramps on artificial bodies of water where
221 navigational access to the proposed ramp exists or the
222 installation of boat ramps open to the public in any waters of
223 the state where navigational access to the proposed ramp exists
224 and where the construction of the proposed ramp will be less
225 than 30 feet wide and will involve the removal of less than 25
226 cubic yards of material from the waters of the state, and the
227 maintenance to design specifications of such ramps; however, the
228 material to be removed shall be placed upon a self-contained
229 upland site so as to prevent the escape of the spoil material
230 into the waters of the state.

231 (d) The replacement or repair of existing docks and piers,
232 except that fill material may not be used and the replacement or

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233 repaired dock or pier must be in approximately the same location
234 and no larger in size than the existing dock or pier, and no
235 additional aquatic resources may be adversely and permanently
236 impacted by such replacement or repair ~~the same location and of~~
237 ~~the same configuration and dimensions as the dock or pier being~~
238 ~~replaced or repaired.~~ This does not preclude the use of
239 different construction materials or minor deviations to allow
240 upgrades to current structural and design standards.

241 (e) The restoration of seawalls at their previous locations
242 or upland of, or within 18 inches waterward of, their previous
243 locations. However, this may ~~shall~~ not affect the permitting
244 requirements of chapter 161, and department rules shall clearly
245 indicate that this exception does not constitute an exception
246 from the permitting requirements of chapter 161.

247 (f) The performance of maintenance dredging of existing
248 manmade canals, channels, intake and discharge structures, and
249 previously dredged portions of natural water bodies within
250 drainage rights-of-way or drainage easements which have been
251 recorded in the public records of the county, where the spoil
252 material is to be removed and deposited on a self-contained,
253 upland spoil site which will prevent the escape of the spoil
254 material into the waters of the state, provided that no more
255 dredging is to be performed than is necessary to restore the
256 canals, channels, and intake and discharge structures, and
257 previously dredged portions of natural water bodies, to original
258 design specifications or configurations, provided that the work
259 is conducted in compliance with s. 379.2431(2)(d), provided that
260 no significant impacts occur to previously undisturbed natural
261 areas, and provided that control devices for return flow and

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262 best management practices for erosion and sediment control are
263 utilized to prevent bank erosion and scouring and to prevent
264 turbidity, dredged material, and toxic or deleterious substances
265 from discharging into adjacent waters during maintenance
266 dredging. Further, for maintenance dredging of previously
267 dredged portions of natural water bodies within recorded
268 drainage rights-of-way or drainage easements, an entity that
269 seeks an exemption must notify the department or water
270 management district, as applicable, at least 30 days before
271 ~~prior to~~ dredging and provide documentation of original design
272 specifications or configurations where such exist. This
273 exemption applies to all canals and previously dredged portions
274 of natural water bodies within recorded drainage rights-of-way
275 or drainage easements constructed before ~~prior to~~ April 3, 1970,
276 and to those canals and previously dredged portions of natural
277 water bodies constructed on or after April 3, 1970, pursuant to
278 all necessary state permits. This exemption does not apply to
279 the removal of a natural or manmade barrier separating a canal
280 or canal system from adjacent waters. When no previous permit
281 has been issued by the Board of Trustees of the Internal
282 Improvement Trust Fund or the United States Army Corps of
283 Engineers for construction or maintenance dredging of the
284 existing manmade canal or intake or discharge structure, such
285 maintenance dredging shall be limited to a depth of no more than
286 5 feet below mean low water. The Board of Trustees of the
287 Internal Improvement Trust Fund may fix and recover from the
288 permittee an amount equal to the difference between the fair
289 market value and the actual cost of the maintenance dredging for
290 material removed during such maintenance dredging. However, no

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291 charge shall be exacted by the state for material removed during
292 such maintenance dredging by a public port authority. The
293 removing party may subsequently sell such material; however,
294 proceeds from such sale that exceed the costs of maintenance
295 dredging shall be remitted to the state and deposited in the
296 Internal Improvement Trust Fund.

297 (g) The maintenance of existing insect control structures,
298 dikes, and irrigation and drainage ditches, provided that spoil
299 material is deposited on a self-contained, upland spoil site
300 which will prevent the escape of the spoil material into waters
301 of the state. In the case of insect control structures, if the
302 cost of using a self-contained upland spoil site is so
303 excessive, as determined by the Department of Health, pursuant
304 to s. 403.088(1), that it will inhibit proposed insect control,
305 then-existing spoil sites or dikes may be used, upon
306 notification to the department. In the case of insect control
307 where upland spoil sites are not used pursuant to this
308 exemption, turbidity control devices shall be used to confine
309 the spoil material discharge to that area previously disturbed
310 when the receiving body of water is used as a potable water
311 supply, is designated as shellfish harvesting waters, or
312 functions as a habitat for commercially or recreationally
313 important shellfish or finfish. In all cases, no more dredging
314 is to be performed than is necessary to restore the dike or
315 irrigation or drainage ditch to its original design
316 specifications.

317 (h) The repair or replacement of existing functional pipes
318 or culverts the purpose of which is the discharge or conveyance
319 of stormwater. In all cases, the invert elevation, the diameter,

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320 and the length of the culvert may ~~shall~~ not be changed. However,
321 the material used for the culvert may be different from the
322 original.

323 (i) The construction of private docks of 1,000 square feet
324 or less of over-water surface area and seawalls in artificially
325 created waterways where such construction will not violate
326 existing water quality standards, impede navigation, or affect
327 flood control. This exemption does not apply to the construction
328 of vertical seawalls in estuaries or lagoons unless the proposed
329 construction is within an existing manmade canal where the
330 shoreline is currently occupied in whole or part by vertical
331 seawalls.

332 (j) The construction and maintenance of swales.

333 (k) The installation of aids to navigation and buoys
334 associated with such aids, provided the devices are marked
335 pursuant to s. 327.40.

336 (l) The replacement or repair of existing open-trestle foot
337 bridges and vehicular bridges that are 100 feet or less in
338 length and two lanes or less in width, provided that no more
339 dredging or filling of submerged lands is performed other than
340 that which is necessary to replace or repair pilings and that
341 the structure to be replaced or repaired is the same length, the
342 same configuration, and in the same location as the original
343 bridge. No debris from the original bridge shall be allowed to
344 remain in the waters of the state.

345 (m) The installation of subaqueous transmission and
346 distribution lines laid on, or embedded in, the bottoms of
347 waters in the state, except in Class I and Class II waters and
348 aquatic preserves, provided no dredging or filling is necessary.

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349 (n) The replacement or repair of subaqueous transmission
350 and distribution lines laid on, or embedded in, the bottoms of
351 waters of the state.

352 (o) The construction of private seawalls in wetlands or
353 other surface waters where such construction is between and
354 adjoins at both ends existing seawalls; follows a continuous and
355 uniform seawall construction line with the existing seawalls; is
356 no more than 150 feet in length; and does not violate existing
357 water quality standards, impede navigation, or affect flood
358 control. However, in estuaries and lagoons the construction of
359 vertical seawalls is limited to the circumstances and purposes
360 stated in s. 373.414(5)(b)1.-4. This paragraph does not affect
361 the permitting requirements of chapter 161, and department rules
362 must clearly indicate that this exception does not constitute an
363 exception from the permitting requirements of chapter 161.

364 (p) The restoration of existing insect control impoundment
365 dikes which are less than 100 feet in length. Such impoundments
366 shall be connected to tidally influenced waters for 6 months
367 each year beginning September 1 and ending February 28 if
368 feasible or operated in accordance with an impoundment
369 management plan approved by the department. A dike restoration
370 may involve no more dredging than is necessary to restore the
371 dike to its original design specifications. For the purposes of
372 this paragraph, restoration does not include maintenance of
373 impoundment dikes of operating insect control impoundments.

374 (q) The construction, operation, or maintenance of
375 stormwater management facilities which are designed to serve
376 single-family residential projects, including duplexes,
377 triplexes, and quadruplexes, if they are less than 10 acres

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378 total land and have less than 2 acres of impervious surface and
379 if the facilities:

380 1. Comply with all regulations or ordinances applicable to
381 stormwater management and adopted by a city or county;

382 2. Are not part of a larger common plan of development or
383 sale; and

384 3. Discharge into a stormwater discharge facility exempted
385 or permitted by the department under this chapter which has
386 sufficient capacity and treatment capability as specified in
387 this chapter and is owned, maintained, or operated by a city,
388 county, special district with drainage responsibility, or water
389 management district; however, this exemption does not authorize
390 discharge to a facility without the facility owner's prior
391 written consent.

392 (r) The removal of aquatic plants, the removal of tussocks,
393 the associated replanting of indigenous aquatic plants, and the
394 associated removal from lakes of organic detrital material when
395 such planting or removal is performed and authorized by permit
396 or exemption granted under s. 369.20 or s. 369.25, provided
397 that:

398 1. Organic detrital material that exists on the surface of
399 natural mineral substrate shall be allowed to be removed to a
400 depth of 3 feet or to the natural mineral substrate, whichever
401 is less;

402 2. All material removed pursuant to this paragraph shall be
403 deposited in an upland site in a manner that will prevent the
404 reintroduction of the material into waters in the state except
405 when spoil material is permitted to be used to create wildlife
406 islands in freshwater bodies of the state when a governmental

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407 entity is permitted pursuant to s. 369.20 to create such islands
408 as a part of a restoration or enhancement project;

409 3. All activities are performed in a manner consistent with
410 state water quality standards; and

411 4. No activities under this exemption are conducted in
412 wetland areas, as defined in s. 373.019(27), which are supported
413 by a natural soil as shown in applicable United States
414 Department of Agriculture county soil surveys, except when a
415 governmental entity is permitted pursuant to s. 369.20 to
416 conduct such activities as a part of a restoration or
417 enhancement project.

418

419 The department may not adopt implementing rules for this
420 paragraph, notwithstanding any other provision of law.

421 (s) The construction, installation, operation, or
422 maintenance of floating vessel platforms or floating boat lifts,
423 provided that such structures:

424 1. Float at all times in the water for the sole purpose of
425 supporting a vessel so that the vessel is out of the water when
426 not in use;

427 2. Are wholly contained within a boat slip previously
428 permitted under ss. 403.91-403.929, 1984 Supplement to the
429 Florida Statutes 1983, as amended, or part IV of chapter 373, or
430 do not exceed a combined total of 500 square feet, or 200 square
431 feet in an Outstanding Florida Water, when associated with a
432 dock that is exempt under this subsection or associated with a
433 permitted dock with no defined boat slip or attached to a
434 bulkhead on a parcel of land where there is no other docking
435 structure;

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436 3. Are not used for any commercial purpose or for mooring
437 vessels that remain in the water when not in use, and do not
438 substantially impede the flow of water, create a navigational
439 hazard, or unreasonably infringe upon the riparian rights of
440 adjacent property owners, as defined in s. 253.141;

441 4. Are constructed and used so as to minimize adverse
442 impacts to submerged lands, wetlands, shellfish areas, aquatic
443 plant and animal species, and other biological communities,
444 including locating such structures in areas where seagrasses are
445 least dense adjacent to the dock or bulkhead; and

446 5. Are not constructed in areas specifically prohibited for
447 boat mooring under conditions of a permit issued in accordance
448 with ss. 403.91-403.929, 1984 Supplement to the Florida Statutes
449 1983, as amended, or part IV of chapter 373, or other form of
450 authorization issued by a local government.

451
452 Structures that qualify for this exemption are relieved from any
453 requirement to obtain permission to use or occupy lands owned by
454 the Board of Trustees of the Internal Improvement Trust Fund
455 and, with the exception of those structures attached to a
456 bulkhead on a parcel of land where there is no docking
457 structure, may ~~shall~~ not be subject to any more stringent
458 permitting requirements, registration requirements, or other
459 regulation by any local government. Local governments may
460 require either permitting or one-time registration of floating
461 vessel platforms to be attached to a bulkhead on a parcel of
462 land where there is no other docking structure as necessary to
463 ensure compliance with local ordinances, codes, or regulations.
464 Local governments may require either permitting or one-time

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465 registration of all other floating vessel platforms as necessary
466 to ensure compliance with the exemption criteria in this
467 section; to ensure compliance with local ordinances, codes, or
468 regulations relating to building or zoning, which are no more
469 stringent than the exemption criteria in this section or address
470 subjects other than subjects addressed by the exemption criteria
471 in this section; and to ensure proper installation, maintenance,
472 and precautionary or evacuation action following a tropical
473 storm or hurricane watch of a floating vessel platform or
474 floating boat lift that is proposed to be attached to a bulkhead
475 or parcel of land where there is no other docking structure. The
476 exemption provided in this paragraph shall be in addition to the
477 exemption provided in paragraph (b). The department shall adopt
478 a general permit by rule for the construction, installation,
479 operation, or maintenance of those floating vessel platforms or
480 floating boat lifts that do not qualify for the exemption
481 provided in this paragraph but do not cause significant adverse
482 impacts to occur individually or cumulatively. The issuance of
483 such general permit shall also constitute permission to use or
484 occupy lands owned by the Board of Trustees of the Internal
485 Improvement Trust Fund. No local government shall impose a more
486 stringent regulation, permitting requirement, registration
487 requirement, or other regulation covered by such general permit.
488 Local governments may require either permitting or one-time
489 registration of floating vessel platforms as necessary to ensure
490 compliance with the general permit in this section; to ensure
491 compliance with local ordinances, codes, or regulations relating
492 to building or zoning that are no more stringent than the
493 general permit in this section; and to ensure proper

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494 installation and maintenance of a floating vessel platform or
495 floating boat lift that is proposed to be attached to a bulkhead
496 or parcel of land where there is no other docking structure.

497 (t) The repair, stabilization, or paving of existing county
498 maintained roads and the repair or replacement of bridges that
499 are part of the roadway, within the Northwest Florida Water
500 Management District and the Suwannee River Water Management
501 District, provided:

502 1. The road and associated bridge were in existence and in
503 use as a public road or bridge, and were maintained by the
504 county as a public road or bridge on or before January 1, 2002;

505 2. The construction activity does not realign the road or
506 expand the number of existing traffic lanes of the existing
507 road; however, the work may include the provision of safety
508 shoulders, clearance of vegetation, and other work reasonably
509 necessary to repair, stabilize, pave, or repave the road,
510 provided that the work is constructed by generally accepted
511 engineering standards;

512 3. The construction activity does not expand the existing
513 width of an existing vehicular bridge in excess of that
514 reasonably necessary to properly connect the bridge with the
515 road being repaired, stabilized, paved, or repaved to safely
516 accommodate the traffic expected on the road, which may include
517 expanding the width of the bridge to match the existing
518 connected road. However, no debris from the original bridge
519 shall be allowed to remain in waters of the state, including
520 wetlands;

521 4. Best management practices for erosion control shall be
522 employed as necessary to prevent water quality violations;

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523 5. Roadside swales or other effective means of stormwater
524 treatment must be incorporated as part of the project;

525 6. No more dredging or filling of wetlands or water of the
526 state is performed than that which is reasonably necessary to
527 repair, stabilize, pave, or repave the road or to repair or
528 replace the bridge, in accordance with generally accepted
529 engineering standards; and

530 7. Notice of intent to use the exemption is provided to the
531 department, if the work is to be performed within the Northwest
532 Florida Water Management District, or to the Suwannee River
533 Water Management District, if the work is to be performed within
534 the Suwannee River Water Management District, 30 days before
535 ~~prior to~~ performing any work under the exemption.

536
537 Within 30 days after this act becomes a law, the department
538 shall initiate rulemaking to adopt a no fee general permit for
539 the repair, stabilization, or paving of existing roads that are
540 maintained by the county and the repair or replacement of
541 bridges that are part of the roadway where such activities do
542 not cause significant adverse impacts to occur individually or
543 cumulatively. The general permit shall apply statewide and, with
544 no additional rulemaking required, apply to qualified projects
545 reviewed by the Suwannee River Water Management District, the
546 St. Johns River Water Management District, the Southwest Florida
547 Water Management District, and the South Florida Water
548 Management District under the division of responsibilities
549 contained in the operating agreements applicable to part IV of
550 chapter 373. Upon adoption, this general permit shall, pursuant
551 to ~~the provisions of~~ subsection (2), supersede and replace the

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552 exemption in this paragraph.

553 (u) Notwithstanding any provision to the contrary in this
554 subsection, a permit or other authorization under chapter 253,
555 chapter 369, chapter 373, or this chapter is not required for an
556 individual residential property owner for the removal of organic
557 detrital material from freshwater rivers or lakes that have a
558 natural sand or rocky substrate and that are not Aquatic
559 Preserves or for the associated removal and replanting of
560 aquatic vegetation for the purpose of environmental enhancement,
561 providing that:

562 1. No activities under this exemption are conducted in
563 wetland areas, as defined in s. 373.019(27), which are supported
564 by a natural soil as shown in applicable United States
565 Department of Agriculture county soil surveys.

566 2. No filling or peat mining is allowed.

567 3. No removal of native wetland trees, including, but not
568 limited to, ash, bay, cypress, gum, maple, or tupelo, occurs.

569 4. When removing organic detrital material, no portion of
570 the underlying natural mineral substrate or rocky substrate is
571 removed.

572 5. Organic detrital material and plant material removed is
573 deposited in an upland site in a manner that will not cause
574 water quality violations.

575 6. All activities are conducted in such a manner, and with
576 appropriate turbidity controls, so as to prevent any water
577 quality violations outside the immediate work area.

578 7. Replanting with a variety of aquatic plants native to
579 the state shall occur in a minimum of 25 percent of the
580 preexisting vegetated areas where organic detrital material is

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581 removed, except for areas where the material is removed to bare
582 rocky substrate; however, an area may be maintained clear of
583 vegetation as an access corridor. The access corridor width may
584 not exceed 50 percent of the property owner's frontage or 50
585 feet, whichever is less, and may be a sufficient length
586 waterward to create a corridor to allow access for a boat or
587 swimmer to reach open water. Replanting must be at a minimum
588 density of 2 feet on center and be completed within 90 days
589 after removal of existing aquatic vegetation, except that under
590 dewatered conditions replanting must be completed within 90 days
591 after reflooding. The area to be replanted must extend waterward
592 from the ordinary high water line to a point where normal water
593 depth would be 3 feet or the preexisting vegetation line,
594 whichever is less. Individuals are required to make a reasonable
595 effort to maintain planting density for a period of 6 months
596 after replanting is complete, and the plants, including
597 naturally recruited native aquatic plants, must be allowed to
598 expand and fill in the revegetation area. Native aquatic plants
599 to be used for revegetation must be salvaged from the
600 enhancement project site or obtained from an aquatic plant
601 nursery regulated by the Department of Agriculture and Consumer
602 Services. Plants that are not native to the state may not be
603 used for replanting.

604 8. No activity occurs any farther than 100 feet waterward
605 of the ordinary high water line, and all activities must be
606 designed and conducted in a manner that will not unreasonably
607 restrict or infringe upon the riparian rights of adjacent upland
608 riparian owners.

609 9. The person seeking this exemption notifies the

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610 applicable department district office in writing at least 30
611 days before commencing work and allows the department to conduct
612 a preconstruction site inspection. Notice must include an
613 organic-detrital-material removal and disposal plan and, if
614 applicable, a vegetation-removal and revegetation plan.

615 10. The department is provided written certification of
616 compliance with the terms and conditions of this paragraph
617 within 30 days after completion of any activity occurring under
618 this exemption.

619 (v) Notwithstanding any other provision in this chapter,
620 chapter 373, or chapter 161, a permit or other authorization is
621 not required for the following exploratory activities associated
622 with beach restoration and nourishment projects and inlet
623 management activities:

624 1. The collection of geotechnical, geophysical, and
625 cultural resource data, including surveys, mapping, acoustic
626 soundings, benthic and other biologic sampling, and coring.

627 2. Oceanographic instrument deployment, including temporary
628 installation on the seabed of coastal and oceanographic data
629 collection equipment.

630 3. Incidental excavation associated with any of the
631 activities listed under subparagraph 1. or subparagraph 2.

632 Section 5. The Division of Law Revision and Information is
633 directed to replace the phrase "the effective date of this act"
634 wherever it occurs in this act with the date the act becomes a
635 law.

636 Section 6. This act shall take effect upon becoming a law.

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Community Affairs

BILL: CS/SB 1308

INTRODUCER: Environmental Preservation and Conservation Committee and Senator Perry

SUBJECT: Environmental Regulation

DATE: February 5, 2018

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Mitchell</u>	<u>Rogers</u>	<u>EP</u>	Fav/CS
2.	<u>Cochran</u>	<u>Yeatman</u>	<u>CA</u>	Pre-meeting
3.	_____	_____	<u>AP</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1308 provides that when a water management district (WMD) evaluates a consumptive use permit (CUP), impact offsets may be created if the applicant proposes reclaimed water use in certain ways to increase the quantity of water available for water supply.

The bill requires DEP to develop criteria for the application of an impact offset or a substitution credit to a CUP or to a minimum flows and levels recovery or prevention strategy and requires DEP and the WMDs to enter into a memorandum of agreement providing for a coordinated review of any reclaimed water project requiring a reclaimed water facility permit, an underground injection control permit, and a CUP.

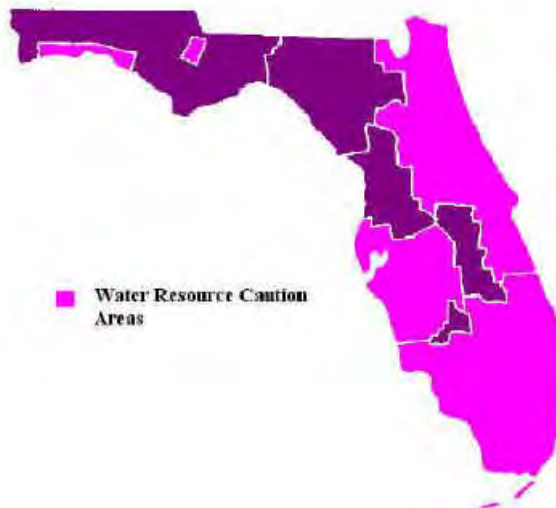
The bill provides criteria by which counties and municipalities must address the contamination of recyclable material in contracts for the collection, transportation, and processing of residential recyclable material, including that residential recycling collectors and materials recovery facilities may not be required to collect, transport, or process contaminated recyclable material. The criteria apply to contracts between a municipality or county and a residential recycling collector or materials recovery facility executed or renewed after the effective date of the act.

The bill revises the exemption from the requirement to obtain an environmental resource permit (ERP) for the replacement or repair of an existing dock or pier and prevents a local government from requiring further verification from DEP for all of the activities and projects exempted from ERP requirements.

II. Present Situation:

Water Supply and Constraints

By 2030, Florida's population is estimated to reach 23,609,000 – almost a 26 percent increase over 2010.¹ Fresh water demand is projected to reach 7.7 billion gallons per day by 2030, an additional 1.3 billion gallons more than the water use for the state in 2010.² In Florida, groundwater accounts for about 90 percent of public and domestic water supply.³ The major source of groundwater supply in Florida is the Floridan Aquifer System, which underlies the entire state.⁴



Water Management Districts (WMDs) are required to ensure an adequate supply of water and water resources for all citizens and natural features, provide protection and improvement of natural systems and water quality, minimize harm to water resources, and promote the reuse of reclaimed water.⁵ The WMDs set minimum flows and minimum levels (MFLs) for surface waters and groundwater, respectively. The purpose of setting MFLs is to prevent significant harm to the water resources or ecology of an area as a result of water withdrawals.⁶ The WMDs regulate consumptive use of water through a permitting process.⁷ WMD governing boards are required to conduct regional water supply planning for areas where existing water sources are insufficient to meet projected 20-year demands while sustaining water resources and related natural systems. Those areas are also to be designated as Water

Resource Caution Areas. Chapter 62-40 of the Florida Administrative Code, requires the reuse of reclaimed water in these areas.⁸

Consumptive Use Permits (CUPs)

A consumptive use permit (CUP) establishes the duration and type of water use as well as the maximum amount of water that may be withdrawn daily. Pursuant to s. 373.219, F.S., each CUP must be consistent with the objectives of the issuing WMD or the Department of Environmental Protection (DEP) and may not be harmful to the water resources of the area. To obtain a CUP, an

¹ Department of Environmental Protection (DEP), *Report on Expansion of Beneficial Use of Reclaimed Water, Stormwater and Excess Surface Water*, 11 (December 1, 2015) available at <https://floridadep.gov/sites/default/files/SB536%20Final%20Report.pdf>.

² *Id.*

³ *Id.* at 14.

⁴ DEP, *Aquifers*, available at <https://fldep.dep.state.fl.us/swapp/Aquifer.asp#> (last visited Feb. 1, 2018).

⁵ Section 373.036, F.S.

⁶ Section 373.042, F.S.

⁷ Section 373.219, F.S. Note that a water management district may not require a permit for the use of reclaimed water. Section 373.250 (3)(b), F.S.

⁸ See also s. 403.064(2), F.S.

applicant must establish that the proposed use of water satisfies the statutory test, commonly referred to as “the three-prong test.” Specifically, the proposed water use must:

- Be a “reasonable-beneficial use;”⁹
- Not interfere with any presently existing legal use of water; and
- Be consistent with the public interest.¹⁰

If two or more competing applications qualify equally, the applicable WMD or the DEP must give preference to a renewal application over an initial application.¹¹ If neither application is a renewal, preference is given to the applicant nearest the source.¹²

Reclaimed Water

Section 373.019(17), F.S., 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.” Water conservation and the promotion of reuse of reclaimed water have been established as formal state objectives in ss. 403.064 and 373.250, F.S. Florida tracks its reuse inventory in an annual report compiled by DEP.¹³ In 2016, a total of 478 domestic wastewater treatment facilities reported making reclaimed water available for reuse.¹⁴ The 760 million gallons per day (mgd) of reclaimed water use represents approximately 44 percent of the total domestic wastewater flow in the state.¹⁵ The 1,645 mgd of reuse capacity represents approximately 64 percent of the total domestic wastewater treatment capacity in the state.¹⁶ Reclaimed water from these systems was used to irrigate 397,750 residences, 574 golf courses, 1,053 parks, and 381 schools.¹⁷ Over 12,739 acres of edible crops on 65 farms were reported to be irrigated with reclaimed water.¹⁸ Approximately 43 wastewater treatment facilities do not provide reuse of any kind.¹⁹ Reclaimed water is a type of alternative water supply as defined in s. 373.019(1), F.S., and is eligible for alternative water supply funding.

Originally, water reuse was required only within water resource caution areas, unless such reuse was not economically, environmentally, or technically feasible as determined by a reuse feasibility study. Currently, ch. 62-40 of the Florida Administrative Code requires use of reclaimed water statewide. A domestic wastewater facility located within, discharging within, or serving a population within designated water resource caution areas is required to prepare a reuse

⁹ Section 373.019(16), F.S., defines reasonable-beneficial use as, “the use of water in such quantity as is necessary for economic and efficient utilization for a purpose and in a manner which is both reasonable and consistent with the public interest.” *See also* Fla. Admin. Code R. 62-40.410(2) for additional factors to help determine if a water use is a reasonable-beneficial use.

¹⁰ Fla. Admin. Code R. 62-40.410(1).

¹¹ Section 373.233(2), F.S.

¹² *Id.*

¹³ DEP, *2016 Reuse Inventory*, available at https://floridadep.gov/sites/default/files/2016_reuse-report_0.pdf (last visited Feb. 1, 2018); compiled from reports collected pursuant to Fla. Admin. Code R. Ch. 62-610 (note that this report tracks wastewater facilities with permitted capacities of 0.1 million gallons per day or greater).

¹⁴ *Id.* at 2.

¹⁵ *Id.* at 3.

¹⁶ *Id.*

¹⁷ *Id.* at 2.

¹⁸ *Id.*, noting that “[a]round 79 percent of the farmland was dedicated to the production of citrus (i.e., oranges, tangerines, grapefruit, etc.).”

¹⁹ *Id.* at 3.

feasibility study before receiving a domestic wastewater permit.²⁰ Section 403.064, F.S., provides that if the study shows that reuse is feasible, the permit applicant must give significant consideration to making reuse available.

Discharges of Reclaimed Water into Surface Waters

DEP may issue permits for backup discharges. A “backup discharge” is a surface water discharge that occurs as part of a functioning reuse system which has been permitted under DEP rules and which provides reclaimed water for irrigation of public access areas, residential properties, or edible food crops, or for industrial cooling or other acceptable reuse purposes. Backup discharges may occur during periods of reduced demand for reclaimed water in the reuse system. Backup discharges of reclaimed water meeting advanced water treatment standards are presumed to be allowable and are permitted in all waters in the state at a reasonably accessible point where such discharge results in minimal negative impact. Discharges of reclaimed water must meet applicable water quality standards.²¹

Impact Offsets and Substitution Credits

The water resource implementation rule (Florida Administrative Code Chapter 62-40), formerly known as the state water policy rule, is part of the Florida water plan and sets forth the goals, objectives, and guidance for the development and review of programs, rules, and plans relating to water resources, based on statutory policies and directives.²² DEP adopts changes or additions to the water resource implementation rule and has adopted a rule establishing criteria for the use of proposed impact offsets and substitution credits when a water management district evaluates applications for CUPs.²³ Substitution credits may be considered if a water management district has adopted rules establishing withdrawal limits from a specified water resource within a defined geographic area.

An impact offset is the use of reclaimed water to reduce or eliminate a harmful impact that has occurred or would otherwise occur as a result of other surface water or groundwater withdrawals. A substitution credit is the use of reclaimed water to replace all or a portion of an existing permitted use of resource-limited surface water or groundwater which then allows a different user or use to initiate a withdrawal or increase its withdrawal from the same resource-limited surface water or groundwater source.²⁴ CUP permit applicants may propose impact offsets or substitution credits as part of a permit application. The portion of a surface water or groundwater allocation made available by an impact offset will be based on the beneficial water resource impact provided by the impact offset project. The proposed withdrawal, after application of a substitution credit, must result in no net adverse impact on the limited water resource or create a net positive impact if required by district rule as part of a strategy to protect or recover a water resource.²⁵

²⁰ *Id.* at 20

²¹ Section 403.086, F.S.

²² Section 373.036(1), F.S.

²³ Fla. Admin. Code R. 62-40.416.

²⁴ Section 373.250(5), F.S.

²⁵ Fla. Admin. Code R. 62-40.416.

Ground Water Regulations

DEP regulates underground injection;²⁶ water well permitting;²⁷ water well construction;²⁸ source water and wellhead protection programs;²⁹ and ground water classes, standards, and monitoring.³⁰ DEP's Aquifer Protection Program is responsible for regulatory programs affecting ground water.³¹ DEP exercises regulatory authority over ground water quality under Chapter 62-520 of the Florida Administrative Code. In Florida, ground water standards are equivalent to the drinking water standards. By definition, a violation of any ground water standard or criterion constitutes pollution.³²

The Safe Drinking Water Act

The Safe Drinking Water Act (SDWA) is the federal law that protects public drinking water supplies throughout the nation.³³ Under the SDWA, the U.S. Environmental Protection Agency (EPA) sets standards for drinking water quality and, with its partners, implements various technical and financial programs to ensure drinking water safety.³⁴ Florida has the primary authority to implement the SDWA, having adopted a Florida SDWA that has been demonstrated to be at least as stringent as the federal law.³⁵ These statutes direct DEP to formulate and enforce rules pertaining to drinking water. The rules adopt the federal primary and secondary drinking water standards and create additional rules to fulfill state requirements. Drinking water standards are set out in ch. 62-550 of the Florida Administrative Code.

Local Government Solid Waste Responsibilities

The governing body of a county has the responsibility and power to provide for the operation of solid waste disposal facilities to meet the needs of all incorporated and unincorporated areas of the county.³⁶ Municipalities are responsible for collecting and transporting solid waste from their jurisdictions to a solid waste disposal facility operated by a county or operated under a contract with a county. Counties may charge reasonable fees for the handling and disposal of solid waste at their facilities. Each county must have a recyclable materials recycling program that has a goal of recycling 40 percent of recyclable solid waste by December 31, 2012; 50 percent by December 31, 2014; 60 percent by December 31, 2016; 70 percent by December 31, 2018; and 75 percent by December 31, 2020.³⁷

²⁶ Fla. Admin. Code R. Ch. 62-528.

²⁷ Fla. Admin. Code R. Ch. 62-532.

²⁸ Fla. Admin. Code R. Chs. 62-531 (Water Well Contractors) and 62-532 (Water Well Permitting and Construction Requirements)

²⁹ Fla. Admin. Code R. Ch. 62-521.

³⁰ Fla. Admin. Code R. Ch. 62-520

³¹ DEP, *Aquifer Protection Program- UIC*, available at <https://floridadep.gov/water/aquifer-protection> (last visited Feb. 1, 2018).

³² Florida Admin. Code s. 62-520.310.

³³ The Public Health Service Act, 42 U.S. ss. 300f to 300j-26 (2016).

³⁴ U.S. Environmental Protection Agency, *Summary of the Safe Water Drinking Act*, available at <https://www.epa.gov/laws-regulations/summary-safe-drinking-water-act> (last visited Feb. 1, 2018).

³⁵ Sections 403.850-403.864, F.S.

³⁶ Section 403.706(1), F.S.

³⁷ Section 403.706(2), F.S.

Counties and municipalities are encouraged to form cooperative arrangements for implementing recycling programs. Each county must implement a program for recycling construction and demolition debris. If the state's recycling rate is below 60 percent by January 1, 2017; below 70 percent by January 1, 2019; or below 75 percent by January 1, 2021, DEP must provide a report to the President of the Senate and the Speaker of the House of Representatives. The report must identify those additional programs or statutory changes needed to achieve the state's recycling goals. The programs must be designed to recover a significant portion of at least four of the following materials from the solid waste stream prior to final disposal at a solid waste disposal facility and to offer these materials for recycling:

- Newspapers;
- Aluminum cans;
- Steel cans;
- Glass;
- Plastic bottles;
- Cardboard;
- Office paper; and
- Yard trash.³⁸

Each county must ensure, to the maximum extent possible, that municipalities within its boundaries participate in the preparation and implementation of recycling and solid waste management programs through interlocal agreements or other means provided by law.³⁹

“Municipal solid waste” includes any solid waste, except for sludge, resulting from the operation of residential, commercial, governmental, or institutional establishments that would normally be collected, processed, and disposed of through a public or private solid waste management service. The term includes yard trash but does not include solid waste from industrial, mining, or agricultural operations.⁴⁰ DEP may reduce or modify the municipal solid waste recycling goal that a county is required to achieve if the county demonstrates to DEP that:

- The achievement of the goal would have an adverse effect on the financial obligations of the county that are directly related to the county's waste-to-energy facility; and
- The county cannot remove normally combustible materials from solid waste that is to be processed at a waste-to-energy facility because of the need to maintain a sufficient amount of solid waste to ensure the financial viability of the facility.

The goal may only be reduced or modified to the extent necessary to alleviate the adverse effects on the financial viability of a county's waste-to-energy facility.⁴¹

In the development and implementation of a curbside recyclable materials collection program, a county or municipality must enter into negotiations with a franchisee who is operating to exclusively collect solid waste within a service area of a county or municipality to undertake curbside recyclable materials collection responsibilities for a county or municipality. Local governments are authorized to enact ordinances that require and direct all residential properties, multifamily dwellings, and apartment complexes and industrial, commercial, and institutional

³⁸ Section 403.706(2)(f), F.S.

³⁹ Section 403.706(3), F.S.

⁴⁰ Section 403.706(5), F.S.

⁴¹ Section 403.706(6), F.S.

establishments as defined by the local government to establish programs for the separation of recyclable materials designated by the local government. A market must exist for the recyclable materials and the local government must specifically intend for them to be recycled. Local governments are authorized to provide for the collection of the recyclable materials. Such ordinances may include, but are not limited to, provisions that prohibit any person from knowingly disposing of recyclable materials designated by the local government and that ensure the collection of recovered materials as necessary to protect public health and safety.⁴²

A local government may not:

- Require a commercial establishment that generates source-separated recovered materials to sell or otherwise convey its recovered materials to the local government or to a facility designated by the local government;
- Restrict such a generator's right to sell or otherwise convey such recovered materials to any properly certified recovered materials dealer who has registered with DEP; and
- Enact any ordinance that prevents such a dealer from entering into a contract with a commercial establishment to purchase, collect, transport, process, or receive source-separated recovered materials.⁴³

Local governments may require a commercial establishment to source separate the recovered materials generated on the premises.⁴⁴

Florida's Recycling Goal

In recognition of the volume of waste generated by Floridians and visitors every year and the value of some of these discarded commodities, the Legislature set a goal to recycle at least 75 percent of the municipal solid waste that would otherwise be disposed of in waste management facilities, landfills, or incineration facilities by 2020.⁴⁵ DEP established several programs and initiatives to reach that goal. In 2015, Florida's recycling rate was 54 percent, meeting the 50 percent target rate specified in statute.⁴⁶

Florida achieved the interim recycling goals established for 2012 and 2014, but Florida's recycling rate for 2016 was 56 percent, falling short of the 2016 interim recycling goal of 60 percent. The current practices in Florida are not expected to significantly increase the recycling rate beyond the 56 percent rate. Without significant changes to Florida's current approach, the state's recycling rate will likely fall short of the 2020 goal of 75 percent.⁴⁷

DEP, in partnership with material recycling facilities (MRFs) across the state, has developed a statewide public education campaign, entitled "Rethink. Reset. Recycle." The campaign addresses the need to educate Florida residents on how to reduce single stream curbside

⁴² Section 403.706(21), F.S.

⁴³ Section 403.7046(3), F.S.

⁴⁴ Section 403.7046(3)(a), F.S.

⁴⁵ Section 403.7032, F.S.; DEP, *Florida and the 2020 75% Recycling Goal* (2017) 5

https://floridadep.gov/sites/default/files/FinalRecyclingReportVolume1_0_0.pdf (last visited Feb. 1, 2018).

⁴⁶ DEP, *Recycling*, <http://www.dep.state.fl.us/waste/categories/recycling/default.htm> (last visited Feb. 1, 2018).

⁴⁷ DEP, *Florida and the 2020 75% Recycling Goal* (2017) 5

https://floridadep.gov/sites/default/files/FinalRecyclingReportVolume1_0_0.pdf (last visited Feb. 1, 2018).

recycling contamination. Plastic bags, cords, clothing and packaging are causing contamination problems that can shut down MRF operations and cause good loads of recyclables to become trash. The campaign also serves to remind Florida residents of the basics of curbside recycling: clean and dry aluminum and steel cans, plastic bottles and jugs and paper and cardboard. DEP is also working on the following recycling options:

- Evaluating the implications of shifting from a weight-based recycling goal to sustainable materials management processes;
- Researching the concept of moving from a weight-based recycling goal of 75 percent by 2020, to market specific goals such as a food diversion goal or an organics recycling goal;
- Engaging Florida's state universities and the Florida Department of Education to review potential K-12 curriculum programs emphasizing waste reduction and recycling practices;
- Continuing to work with state agencies to identify recycling/cost saving measures specific to their operations; and
- Providing counties not achieving the 2016 interim recycling goal with assistance in analyzing, planning and executing opportunities to increase recycling.⁴⁸

A number of counties and municipalities have instituted single stream recycling programs. Single stream recycling programs allow all accepted recyclables to be placed in a single, curbside recycling cart, comingling materials from paper and plastic bottles to metal cans and glass containers. Single stream recycling programs have been marginally successful in providing curbside collection efficiency by increasing the amount of recyclables collected and residential participation. While there are many advantages to single stream recycling, it has not consistently yielded positive results for the recycling industry. The unexpected consequence of single stream recycling has been the collection of unwanted materials and poorly sorted recyclables, resulting in increased contamination originating in the curbside recycling cart.⁴⁹

Contamination hinders processing at MRFs when unwanted items are placed into recycling carts. Those items are often harmful to the automated equipment typically used to process and separate recyclable materials from single stream collections. While MRFs are equipped to handle some non-recyclable materials, excessive contamination can undermine the recycling process resulting in additional sorting, processing, energy consumption, and other increased costs due to equipment downtime, repair or replacement costs and delays. In addition to increased recycling processing costs, contamination also results in poorer quality recyclables, and increased rejection and landfilling on unusable materials. Although some local governments have implemented successful single stream recycling programs with low contamination rates, contamination rates for other programs have continued to rise, in some case reaching contamination rates of more than 30-40 percent by weight.⁵⁰

Exceptions to Requirements for Environmental Permits

An environmental resource permit (ERP) is required, if a project exceeds certain thresholds, for surface water management systems and, more specifically, for the construction, alteration, operation, maintenance, repair, abandonment, and removal of stormwater management systems,

⁴⁸ *Id.* at 11.

⁴⁹ *Id.* at 13.

⁵⁰ *Id.*

dams, impoundments, reservoirs, appurtenant works, and works (including docks, piers, structures, dredging, and filling located in, on or over wetlands or other surface waters).⁵¹ However, for a number of low impact activities and projects that are narrow in scope, an environmental permit under state law is not required.⁵² Engaging in these activities and projects requires compliance with applicable local requirements, but generally requires no notice to an agency.⁵³ Activities exempted from an ERP are varied and include the installation of overhead transmission lines, installation and maintenance of boat ramps, work on sea walls and mooring pilings, swales, and foot bridges, the removal of aquatic plants, construction of floating vessel platforms, and work on county roads and bridges, among many others.⁵⁴ Included among activities exempt from the requirement to obtain a permit is the replacement or repair of existing docks and piers, if fill material is not used and the replacement or repaired dock or pier is in the same location and of the same configuration and dimensions as the dock or pier being replaced or repaired.⁵⁵ Although permitting is not required for these activities, there may be a requirement to obtain permission to use or occupy lands owned by the Board of Trustees of the Internal Improvement Trust Fund or a water management district in its governmental or proprietary capacity.⁵⁶

III. Effect of Proposed Changes:

Impact Offsets and Substitution Credits

CS/SB 1308 provides that when a water management district (WMD) evaluates a consumptive use permit (CUP), impact offsets may be created if the applicant proposes reclaimed water use to:

- Prevent or stop further saltwater intrusion;
- Raise aquifer levels;
- Improve the water quality of an aquifer; or
- Augment surface water to increase the quantity of water available for water supply.

The bill requires the water resource implementation rule to include criteria for the application of an impact offset or a substitution credit to a consumptive use permit or to a minimum flows and levels recovery or prevention strategy.

Memorandum of Agreement

The bill includes a legislative finding that reuse through aquifer recharge is a critical component of meeting the state's existing and future water supply needs while sustaining natural systems. The bill requires the Department of Environmental Protection (DEP) and the WMDs to develop and enter into a memorandum of agreement (MOA) no later than December 1, 2018 providing for a coordinated review of any reclaimed water project requiring a reclaimed water facility permit, an underground injection control permit, and a consumptive use permit. The MOA must

⁵¹ Fla. Admin. Code R. 62-330.010.

⁵² Section 403.813, F.S.

⁵³ Fla. Admin. Code R. 62-330.50.

⁵⁴ Section 403.813, F.S., Fla. Admin. Code R. 62-330.051.

⁵⁵ Section 403.813(1)(d), F.S.

⁵⁶ Section 403.813(1), F.S.

provide that the coordinated review is performed only if the applicant for such permits requests a coordinated review. The goal of the coordinated review is to share information, avoid the need for an applicant to submit redundant information, and ensure, to the extent feasible, a harmonized review of the reclaimed water project under these various permitting programs, including the use of a proposed impact offset or substitution credit.

Contaminated Recyclable Material

The bill provides the following criteria by which counties and municipalities must address the contamination of recyclable material in contracts for the collection, transportation, and processing of residential recyclable material:

- A residential recycling collector may not be required to collect or transport contaminated recyclable material.
- A materials recovery facility may not be required to process contaminated recyclable material.
- Contracts between a residential recycling collector and a county or municipality, each request for proposal for residential recyclable material, and contracts between a materials recovery facility and a county or municipality must include:
 - A definition of the term “contaminated recyclable material” that is appropriate for the local community, based on the available markets for recyclable material.
 - The respective strategies and obligations of the parties to reduce the amount of contaminated recyclable material being collected or processed;
 - The procedures for identifying, documenting, managing, and rejecting residential recycling containers, carts, bins, or loads that contain contaminated recyclable material; and
 - The remedies that will be used if a container, cart, bin, or load contains contaminated recyclable material.
- Contracts between a collector and a county or municipality and each request for proposal for residential recyclable material must include the education and enforcement measures that will be used to reduce the amount of contaminated recyclable material.
- Provides that the above criteria apply to contracts between a municipality or county and a residential recycling collector or materials recovery facility executed or renewed after the effective date of the act.

The bill provides that “residential recycling collector” means a for-profit business entity that collects and transports residential recyclable material on behalf of a county or municipality.

ERP Exemptions for Repair or Replacement of Existing Docks or Piers/Verification from DEP

The bill revises the ERP exemption for the repair or replacement of existing docks and piers. Existing law requires the replaced or repaired dock or pier to be in the same location and of the same configuration and dimensions as the deck or pier being replaced or repaired. The bill provides that, in order to be exempt from permitting, the replaced or repaired dock or pier must be in approximately the same location and no larger in size than the existing dock or pier. It also requires that no additional aquatic resources be adversely and permanently impacted by the replacement or repair. The bill provides that for all of the activities and projects excluded from

the requirement to obtain a permit, a local government may not require further verification from DEP.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The county and municipality mandates provision of Art. VII, section 18, of the Florida Constitution may apply because the bill requires counties and municipalities to address the contamination of recyclable material in contracts for the collection, transportation, and processing of residential recyclable material according to certain restrictions and criteria specified in the bill. This may affect the revenue stream or the costs of operating recycling or waste collection programs for counties and municipalities. However, an exemption to the mandates provision may apply if revenue stream and cost effects result in insignificant fiscal impacts to local governments. These effects are indeterminate at this time.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

The bill may have an indeterminate fiscal effect on local government recycling and waste removal services.

The bill may have an indeterminate, negative fiscal impact on DEP as a result of the costs of rulemaking to develop criteria for use of impact offsets or substitution credits. The bill may also have indeterminate negative fiscal impacts on DEP and the WMDs as a result of the costs of developing an MOA for a coordinated review of any reclaimed water project requiring a reclaimed water facility permit, an underground injection control permit, and a consumptive use permit.

D. Other Constitutional Issues:

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

C. Government Sector Impact:

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 373.250, 403.064, 403.706, and 403.813.

IX. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Environmental Preservation and Conservation on January 22, 2018:

The amendment removes provisions in the bill related to contaminated recycling and adds the following criteria by which counties and municipalities must address the contamination of recyclable material in contracts for the collection, transportation, and processing of residential recyclable material:

- A residential recycling collector may not be required to collect or transport contaminated recyclable material.
- A materials recovery facility may not be required to process contaminated recyclable material.
- Each contract between a residential recycling collector and a county or municipality for the collection or transport of residential recyclable material, and each request for proposal for residential recyclable material, must define the term “contaminated recyclable material” in a manner that is appropriate for the local community, based on the available markets for recyclable material. The amendment specifies elements that the contract and request for proposal must include.
- Each contract between a materials recovery facility and a county or municipality for processing residential recyclable material must define the term “contaminated recyclable material” in a manner that is appropriate for the local community, based on the available markets for recyclable material. The amendment specifies elements that the contract must include.
- Provides that the above criteria apply to contracts between a municipality or county and a residential recycling collector or materials recovery facility executed or renewed after the effective date of the act.

The amendment provides that “residential recycling collector” means a for-profit business entity that collects and transports residential recyclable material on behalf of a county or municipality.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill’s introducer or the Florida Senate.

1 A bill to be entitled
2 An act relating to environmental regulation; amending
3 s. 373.250, F.S.; deleting an obsolete provision;
4 providing examples of reclaimed water use that may
5 create an impact offset; revising the required
6 provisions of the water resource implementation rule;
7 amending s. 403.064, F.S.; revising legislative
8 findings; requiring the Department of Environmental
9 Protection and the water management districts to
10 develop and enter into a memorandum of agreement
11 providing for a coordinated review of any reclaimed
12 water project requiring a reclaimed water facility
13 permit, an underground injection control permit, and a
14 consumptive use permit; specifying the required
15 provisions of such memorandum; specifying the date by
16 which the memorandum must be developed and executed;
17 amending s. 403.706, F.S.; requiring counties and
18 municipalities to address contamination of recyclable
19 material in specified contracts; prohibiting counties
20 and municipalities from requiring the collection or
21 transport of contaminated recyclable material by
22 residential recycling collectors; defining the term
23 "residential recycling collector"; specifying required
24 contract provisions in residential recycling collector
25 and materials recovery facility contracts with

26 | counties and municipalities; providing applicability;
 27 | amending s. 403.813, F.S.; providing that a local
 28 | government may not require further verification from
 29 | the department for certain projects; revising the
 30 | types of dock and pier replacements and repairs that
 31 | are exempt from such verification and certain
 32 | permitting requirements; providing a directive to the
 33 | Division of Law Revision and Information; providing an
 34 | effective date.

35 |

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

37 |

38 | Section 1. Subsection (5) of section 373.250, Florida
 39 | Statutes, is amended to read:

40 | 373.250 Reuse of reclaimed water.—

41 | (5) (a) ~~No later than October 1, 2012, the department shall~~
 42 | ~~initiate rulemaking to adopt revisions to~~ The water resource
 43 | implementation rule, as defined in s. 373.019(25), must ~~which~~
 44 | ~~shall~~ include:

45 | 1. Criteria for the use of a proposed impact offset
 46 | derived from the use of reclaimed water when a water management
 47 | district evaluates an application for a consumptive use permit.
 48 | As used in this subparagraph, the term "impact offset" means the
 49 | use of reclaimed water to reduce or eliminate a harmful impact
 50 | that has occurred or would otherwise occur as a result of other

51 surface water or groundwater withdrawals. Examples of reclaimed
52 water use that may create an impact offset include, but are not
53 limited to, the use of reclaimed water to:

54 a. Prevent or stop further saltwater intrusion;

55 b. Raise aquifer levels;

56 c. Improve the water quality of an aquifer; or

57 d. Augment surface water to increase the quantity of water
58 available for water supply.

59 2. Criteria for the use of substitution credits where a
60 water management district has adopted rules establishing
61 withdrawal limits from a specified water resource within a
62 defined geographic area. As used in this subparagraph, the term
63 "substitution credit" means the use of reclaimed water to
64 replace all or a portion of an existing permitted use of
65 resource-limited surface water or groundwater, allowing a
66 different user or use to initiate a withdrawal or increase its
67 withdrawal from the same resource-limited surface water or
68 groundwater source provided that the withdrawal creates no net
69 adverse impact on the limited water resource or creates a net
70 positive impact if required by water management district rule as
71 part of a strategy to protect or recover a water resource.

72 3. Criteria by which an impact offset or substitution
73 credit may be applied to the issuance, renewal, or extension of
74 the utility's or another user's consumptive use permit or may be
75 used to address additional water resource constraints imposed

76 | through the adoption of a recovery or prevention strategy under
77 | s. 373.0421.

78 | (b) Within 60 days after the final adoption by the
79 | department of the revisions to the water resource implementation
80 | rule required under paragraph (a), each water management
81 | district must ~~shall~~ initiate rulemaking to incorporate those
82 | revisions by reference into the rules of the district.

83 | Section 2. Subsection (1) of section 403.064, Florida
84 | Statutes, is amended, and subsection (17) is added to that
85 | section, to read:

86 | 403.064 Reuse of reclaimed water.—

87 | (1) The encouragement and promotion of water conservation,
88 | and reuse of reclaimed water, as defined by the department, are
89 | state objectives and are considered to be in the public
90 | interest. The Legislature finds that the reuse of reclaimed
91 | water, including reuse through aquifer recharge, is a critical
92 | component of meeting the state's existing and future water
93 | supply needs while sustaining natural systems. The Legislature
94 | further finds that for those wastewater treatment plants
95 | permitted and operated under an approved reuse program by the
96 | department, the reclaimed water shall be considered
97 | environmentally acceptable and not a threat to public health and
98 | safety. The Legislature encourages the development of incentive-
99 | based programs for reuse implementation.

100 | (17) The department and the water management districts

101 shall develop and enter into a memorandum of agreement providing
102 for a coordinated review of any reclaimed water project
103 requiring a reclaimed water facility permit, an underground
104 injection control permit, and a consumptive use permit. The
105 memorandum of agreement must provide that the coordinated review
106 is performed only if the applicant for such permits requests a
107 coordinated review. The goal of the coordinated review is to
108 share information, avoid requesting the applicant to submit
109 redundant information, and ensure, to the extent feasible, a
110 harmonized review of the reclaimed water project under these
111 various permitting programs, including the use of a proposed
112 impact offset or substitution credit in accordance with s.
113 373.250(5). The department and the water management districts
114 must develop and execute such memorandum of agreement no later
115 than December 1, 2018.

116 Section 3. Present subsection (22) of section 403.706,
117 Florida Statutes, is renumbered as subsection (23), and a new
118 subsection (22) is added to that section, to read:

119 403.706 Local government solid waste responsibilities.—

120 (22) Counties and municipalities shall address the
121 contamination of recyclable material in contracts for the
122 collection, transportation, and processing of residential
123 recyclable material based upon the following:

124 (a) A residential recycling collector may not be required
125 to collect or transport contaminated recyclable material. As

126 used in this subsection, the term "residential recycling
127 collector" means a for-profit business entity that collects and
128 transports residential recyclable material on behalf of a county
129 or municipality.

130 (b) A materials recovery facility may not be required to
131 process contaminated recyclable material.

132 (c) Each contract between a residential recycling
133 collector and a county or municipality for the collection or
134 transport of residential recyclable material, and each request
135 for proposal for residential recyclable material, must define
136 the term "contaminated recyclable material" in a manner that is
137 appropriate for the local community, based on the available
138 markets for recyclable material. The contract and request for
139 proposal must include:

140 1. The respective strategies and obligations of the county
141 or municipality and the collector to reduce the amount of
142 contaminated recyclable material being collected;

143 2. The procedures for identifying, documenting, managing,
144 and rejecting residential recycling containers, carts, or bins
145 that contain contaminated recyclable material;

146 3. The remedies that will be used if a container, cart, or
147 bin contains contaminated recyclable material; and

148 4. The education and enforcement measures that will be
149 used to reduce the amount of contaminated recyclable material.

150 (d) Each contract between a materials recovery facility

151 and a county or municipality for processing residential
152 recyclable material must define the term "contaminated
153 recyclable material" in a manner that is appropriate for the
154 local community, based on the available markets for recyclable
155 material. The contract must include:

156 1. The respective strategies and obligations of the
157 parties to reduce the amount of contaminated recyclable material
158 being processed;

159 2. The procedures for identifying, documenting, managing,
160 and rejecting residential recycling containers or loads that
161 contain contaminated recyclable material; and

162 3. The remedies that will be used if a container or load
163 contains contaminated recyclable material.

164 (e) This subsection shall apply to each contract between a
165 municipality or county and a residential recycling collector or
166 materials recovery facility executed or renewed after the
167 effective date of this act.

168 Section 4. Subsection (1) of section 403.813, Florida
169 Statutes, is amended to read:

170 403.813 Permits issued at district centers; exceptions.—

171 (1) A permit is not required under this chapter, chapter
172 373, chapter 61-691, Laws of Florida, or chapter 25214 or
173 chapter 25270, 1949, Laws of Florida, and a local government may
174 not require further verification from the department, for
175 activities associated with the following types of projects;

176 however, except as otherwise provided in this subsection, this
 177 subsection does not relieve an applicant from any requirement to
 178 obtain permission to use or occupy lands owned by the Board of
 179 Trustees of the Internal Improvement Trust Fund or a water
 180 management district in its governmental or proprietary capacity
 181 or from complying with applicable local pollution control
 182 programs authorized under this chapter or other requirements of
 183 county and municipal governments:

184 (a) The installation of overhead transmission lines,
 185 having ~~with~~ support structures that ~~which~~ are not constructed in
 186 waters of the state and which do not create a navigational
 187 hazard.

188 (b) The installation and repair of mooring pilings and
 189 dolphins associated with private docking facilities or piers and
 190 the installation of private docks, piers, and recreational
 191 docking facilities, or piers and recreational docking facilities
 192 of local governmental entities when the local governmental
 193 entity's activities will not take place in any manatee habitat,
 194 any of which docks:

195 1. Has 500 square feet or less of over-water surface area
 196 for a dock ~~which is~~ located in an area designated as Outstanding
 197 Florida Waters or 1,000 square feet or less of over-water
 198 surface area for a dock ~~which is~~ located in an area that ~~which~~
 199 is not designated as Outstanding Florida Waters;

200 2. Is constructed on or held in place by pilings or is a

201 floating dock ~~which is~~ constructed so as not to involve filling
202 or dredging other than that necessary to install the pilings;

203 3. May ~~shall~~ not substantially impede the flow of water or
204 create a navigational hazard;

205 4. Is used for recreational, noncommercial activities
206 associated with the mooring or storage of boats and boat
207 paraphernalia; and

208 5. Is the sole dock constructed pursuant to this exemption
209 as measured along the shoreline for a distance of 65 feet,
210 unless the parcel of land or individual lot as platted is less
211 than 65 feet in length along the shoreline, in which case there
212 may be one exempt dock allowed per parcel or lot.

213
214 ~~Nothing in~~ This paragraph does not ~~shall~~ prohibit the department
215 from taking appropriate enforcement action pursuant to this
216 chapter to abate or prohibit any activity otherwise exempt from
217 permitting pursuant to this paragraph if the department can
218 demonstrate that the exempted activity has caused water
219 pollution in violation of this chapter.

220 (c) The installation and maintenance to design
221 specifications of boat ramps on artificial bodies of water where
222 navigational access to the proposed ramp exists or the
223 installation of boat ramps open to the public in any waters of
224 the state where navigational access to the proposed ramp exists
225 and where the construction of the proposed ramp will be less

226 | than 30 feet wide and will involve the removal of less than 25
227 | cubic yards of material from the waters of the state, and the
228 | maintenance to design specifications of such ramps; however, the
229 | material to be removed shall be placed upon a self-contained
230 | upland site so as to prevent the escape of the spoil material
231 | into the waters of the state.

232 | (d) The replacement or repair of existing docks and piers,
233 | except that fill material may not be used and the replacement or
234 | repaired dock or pier must be in approximately the same location
235 | and no larger in size than the existing dock or pier, and no
236 | additional aquatic resources may be adversely and permanently
237 | impacted by such replacement or repair ~~the same location and of~~
238 | ~~the same configuration and dimensions as the dock or pier being~~
239 | ~~replaced or repaired.~~ This does not preclude the use of
240 | different construction materials or minor deviations to allow
241 | upgrades to current structural and design standards.

242 | (e) The restoration of seawalls at their previous
243 | locations or upland of, or within 18 inches waterward of, their
244 | previous locations. However, this may ~~shall~~ not affect the
245 | permitting requirements of chapter 161, and department rules
246 | shall clearly indicate that this exception does not constitute
247 | an exception from the permitting requirements of chapter 161.

248 | (f) The performance of maintenance dredging of existing
249 | manmade canals, channels, intake and discharge structures, and
250 | previously dredged portions of natural water bodies within

251 drainage rights-of-way or drainage easements which have been
252 recorded in the public records of the county, where the spoil
253 material is to be removed and deposited on a self-contained,
254 upland spoil site which will prevent the escape of the spoil
255 material into the waters of the state, provided that no more
256 dredging is to be performed than is necessary to restore the
257 canals, channels, and intake and discharge structures, and
258 previously dredged portions of natural water bodies, to original
259 design specifications or configurations, provided that the work
260 is conducted in compliance with s. 379.2431(2)(d), provided that
261 no significant impacts occur to previously undisturbed natural
262 areas, and provided that control devices for return flow and
263 best management practices for erosion and sediment control are
264 utilized to prevent bank erosion and scouring and to prevent
265 turbidity, dredged material, and toxic or deleterious substances
266 from discharging into adjacent waters during maintenance
267 dredging. Further, for maintenance dredging of previously
268 dredged portions of natural water bodies within recorded
269 drainage rights-of-way or drainage easements, an entity that
270 seeks an exemption must notify the department or water
271 management district, as applicable, at least 30 days before
272 ~~prior to~~ dredging and provide documentation of original design
273 specifications or configurations where such exist. This
274 exemption applies to all canals and previously dredged portions
275 of natural water bodies within recorded drainage rights-of-way

276 or drainage easements constructed before ~~prior to~~ April 3, 1970,
277 and to those canals and previously dredged portions of natural
278 water bodies constructed on or after April 3, 1970, pursuant to
279 all necessary state permits. This exemption does not apply to
280 the removal of a natural or manmade barrier separating a canal
281 or canal system from adjacent waters. When no previous permit
282 has been issued by the Board of Trustees of the Internal
283 Improvement Trust Fund or the United States Army Corps of
284 Engineers for construction or maintenance dredging of the
285 existing manmade canal or intake or discharge structure, such
286 maintenance dredging shall be limited to a depth of no more than
287 5 feet below mean low water. The Board of Trustees of the
288 Internal Improvement Trust Fund may fix and recover from the
289 permittee an amount equal to the difference between the fair
290 market value and the actual cost of the maintenance dredging for
291 material removed during such maintenance dredging. However, no
292 charge shall be exacted by the state for material removed during
293 such maintenance dredging by a public port authority. The
294 removing party may subsequently sell such material; however,
295 proceeds from such sale that exceed the costs of maintenance
296 dredging shall be remitted to the state and deposited in the
297 Internal Improvement Trust Fund.

298 (g) The maintenance of existing insect control structures,
299 dikes, and irrigation and drainage ditches, provided that spoil
300 material is deposited on a self-contained, upland spoil site

301 which will prevent the escape of the spoil material into waters
302 of the state. In the case of insect control structures, if the
303 cost of using a self-contained upland spoil site is so
304 excessive, as determined by the Department of Health, pursuant
305 to s. 403.088(1), that it will inhibit proposed insect control,
306 then-existing spoil sites or dikes may be used, upon
307 notification to the department. In the case of insect control
308 where upland spoil sites are not used pursuant to this
309 exemption, turbidity control devices shall be used to confine
310 the spoil material discharge to that area previously disturbed
311 when the receiving body of water is used as a potable water
312 supply, is designated as shellfish harvesting waters, or
313 functions as a habitat for commercially or recreationally
314 important shellfish or finfish. In all cases, no more dredging
315 is to be performed than is necessary to restore the dike or
316 irrigation or drainage ditch to its original design
317 specifications.

318 (h) The repair or replacement of existing functional pipes
319 or culverts the purpose of which is the discharge or conveyance
320 of stormwater. In all cases, the invert elevation, the diameter,
321 and the length of the culvert may ~~shall~~ not be changed. However,
322 the material used for the culvert may be different from the
323 original.

324 (i) The construction of private docks of 1,000 square feet
325 or less of over-water surface area and seawalls in artificially

326 created waterways where such construction will not violate
327 existing water quality standards, impede navigation, or affect
328 flood control. This exemption does not apply to the construction
329 of vertical seawalls in estuaries or lagoons unless the proposed
330 construction is within an existing manmade canal where the
331 shoreline is currently occupied in whole or part by vertical
332 seawalls.

333 (j) The construction and maintenance of swales.

334 (k) The installation of aids to navigation and buoys
335 associated with such aids, provided the devices are marked
336 pursuant to s. 327.40.

337 (l) The replacement or repair of existing open-trestle
338 foot bridges and vehicular bridges that are 100 feet or less in
339 length and two lanes or less in width, provided that no more
340 dredging or filling of submerged lands is performed other than
341 that which is necessary to replace or repair pilings and that
342 the structure to be replaced or repaired is the same length, the
343 same configuration, and in the same location as the original
344 bridge. No debris from the original bridge shall be allowed to
345 remain in the waters of the state.

346 (m) The installation of subaqueous transmission and
347 distribution lines laid on, or embedded in, the bottoms of
348 waters in the state, except in Class I and Class II waters and
349 aquatic preserves, provided no dredging or filling is necessary.

350 (n) The replacement or repair of subaqueous transmission

351 and distribution lines laid on, or embedded in, the bottoms of
352 waters of the state.

353 (o) The construction of private seawalls in wetlands or
354 other surface waters where such construction is between and
355 adjoins at both ends existing seawalls; follows a continuous and
356 uniform seawall construction line with the existing seawalls; is
357 no more than 150 feet in length; and does not violate existing
358 water quality standards, impede navigation, or affect flood
359 control. However, in estuaries and lagoons the construction of
360 vertical seawalls is limited to the circumstances and purposes
361 stated in s. 373.414(5)(b)1.-4. This paragraph does not affect
362 the permitting requirements of chapter 161, and department rules
363 must clearly indicate that this exception does not constitute an
364 exception from the permitting requirements of chapter 161.

365 (p) The restoration of existing insect control impoundment
366 dikes which are less than 100 feet in length. Such impoundments
367 shall be connected to tidally influenced waters for 6 months
368 each year beginning September 1 and ending February 28 if
369 feasible or operated in accordance with an impoundment
370 management plan approved by the department. A dike restoration
371 may involve no more dredging than is necessary to restore the
372 dike to its original design specifications. For the purposes of
373 this paragraph, restoration does not include maintenance of
374 impoundment dikes of operating insect control impoundments.

375 (q) The construction, operation, or maintenance of

376 stormwater management facilities which are designed to serve
377 single-family residential projects, including duplexes,
378 triplexes, and quadruplexes, if they are less than 10 acres
379 total land and have less than 2 acres of impervious surface and
380 if the facilities:

381 1. Comply with all regulations or ordinances applicable to
382 stormwater management and adopted by a city or county;

383 2. Are not part of a larger common plan of development or
384 sale; and

385 3. Discharge into a stormwater discharge facility exempted
386 or permitted by the department under this chapter which has
387 sufficient capacity and treatment capability as specified in
388 this chapter and is owned, maintained, or operated by a city,
389 county, special district with drainage responsibility, or water
390 management district; however, this exemption does not authorize
391 discharge to a facility without the facility owner's prior
392 written consent.

393 (r) The removal of aquatic plants, the removal of
394 tussocks, the associated replanting of indigenous aquatic
395 plants, and the associated removal from lakes of organic
396 detrital material when such planting or removal is performed and
397 authorized by permit or exemption granted under s. 369.20 or s.
398 369.25, provided that:

399 1. Organic detrital material that exists on the surface of
400 natural mineral substrate shall be allowed to be removed to a

401 depth of 3 feet or to the natural mineral substrate, whichever
 402 is less;

403 2. All material removed pursuant to this paragraph shall
 404 be deposited in an upland site in a manner that will prevent the
 405 reintroduction of the material into waters in the state except
 406 when spoil material is permitted to be used to create wildlife
 407 islands in freshwater bodies of the state when a governmental
 408 entity is permitted pursuant to s. 369.20 to create such islands
 409 as a part of a restoration or enhancement project;

410 3. All activities are performed in a manner consistent
 411 with state water quality standards; and

412 4. No activities under this exemption are conducted in
 413 wetland areas, as defined in s. 373.019(27), which are supported
 414 by a natural soil as shown in applicable United States
 415 Department of Agriculture county soil surveys, except when a
 416 governmental entity is permitted pursuant to s. 369.20 to
 417 conduct such activities as a part of a restoration or
 418 enhancement project.

419

420 The department may not adopt implementing rules for this
 421 paragraph, notwithstanding any other provision of law.

422 (s) The construction, installation, operation, or
 423 maintenance of floating vessel platforms or floating boat lifts,
 424 provided that such structures:

425 1. Float at all times in the water for the sole purpose of

426 supporting a vessel so that the vessel is out of the water when
 427 not in use;

428 2. Are wholly contained within a boat slip previously
 429 permitted under ss. 403.91-403.929, 1984 Supplement to the
 430 Florida Statutes 1983, as amended, or part IV of chapter 373, or
 431 do not exceed a combined total of 500 square feet, or 200 square
 432 feet in an Outstanding Florida Water, when associated with a
 433 dock that is exempt under this subsection or associated with a
 434 permitted dock with no defined boat slip or attached to a
 435 bulkhead on a parcel of land where there is no other docking
 436 structure;

437 3. Are not used for any commercial purpose or for mooring
 438 vessels that remain in the water when not in use, and do not
 439 substantially impede the flow of water, create a navigational
 440 hazard, or unreasonably infringe upon the riparian rights of
 441 adjacent property owners, as defined in s. 253.141;

442 4. Are constructed and used so as to minimize adverse
 443 impacts to submerged lands, wetlands, shellfish areas, aquatic
 444 plant and animal species, and other biological communities,
 445 including locating such structures in areas where seagrasses are
 446 least dense adjacent to the dock or bulkhead; and

447 5. Are not constructed in areas specifically prohibited
 448 for boat mooring under conditions of a permit issued in
 449 accordance with ss. 403.91-403.929, 1984 Supplement to the
 450 Florida Statutes 1983, as amended, or part IV of chapter 373, or

451 other form of authorization issued by a local government.
452
453 Structures that qualify for this exemption are relieved from any
454 requirement to obtain permission to use or occupy lands owned by
455 the Board of Trustees of the Internal Improvement Trust Fund
456 and, with the exception of those structures attached to a
457 bulkhead on a parcel of land where there is no docking
458 structure, may ~~shall~~ not be subject to any more stringent
459 permitting requirements, registration requirements, or other
460 regulation by any local government. Local governments may
461 require either permitting or one-time registration of floating
462 vessel platforms to be attached to a bulkhead on a parcel of
463 land where there is no other docking structure as necessary to
464 ensure compliance with local ordinances, codes, or regulations.
465 Local governments may require either permitting or one-time
466 registration of all other floating vessel platforms as necessary
467 to ensure compliance with the exemption criteria in this
468 section; to ensure compliance with local ordinances, codes, or
469 regulations relating to building or zoning, which are no more
470 stringent than the exemption criteria in this section or address
471 subjects other than subjects addressed by the exemption criteria
472 in this section; and to ensure proper installation, maintenance,
473 and precautionary or evacuation action following a tropical
474 storm or hurricane watch of a floating vessel platform or
475 floating boat lift that is proposed to be attached to a bulkhead

476 or parcel of land where there is no other docking structure. The
477 exemption provided in this paragraph shall be in addition to the
478 exemption provided in paragraph (b). The department shall adopt
479 a general permit by rule for the construction, installation,
480 operation, or maintenance of those floating vessel platforms or
481 floating boat lifts that do not qualify for the exemption
482 provided in this paragraph but do not cause significant adverse
483 impacts to occur individually or cumulatively. The issuance of
484 such general permit shall also constitute permission to use or
485 occupy lands owned by the Board of Trustees of the Internal
486 Improvement Trust Fund. No local government shall impose a more
487 stringent regulation, permitting requirement, registration
488 requirement, or other regulation covered by such general permit.
489 Local governments may require either permitting or one-time
490 registration of floating vessel platforms as necessary to ensure
491 compliance with the general permit in this section; to ensure
492 compliance with local ordinances, codes, or regulations relating
493 to building or zoning that are no more stringent than the
494 general permit in this section; and to ensure proper
495 installation and maintenance of a floating vessel platform or
496 floating boat lift that is proposed to be attached to a bulkhead
497 or parcel of land where there is no other docking structure.

498 (t) The repair, stabilization, or paving of existing
499 county maintained roads and the repair or replacement of bridges
500 that are part of the roadway, within the Northwest Florida Water

501 Management District and the Suwannee River Water Management
502 District, provided:

503 1. The road and associated bridge were in existence and in
504 use as a public road or bridge, and were maintained by the
505 county as a public road or bridge on or before January 1, 2002;

506 2. The construction activity does not realign the road or
507 expand the number of existing traffic lanes of the existing
508 road; however, the work may include the provision of safety
509 shoulders, clearance of vegetation, and other work reasonably
510 necessary to repair, stabilize, pave, or repave the road,
511 provided that the work is constructed by generally accepted
512 engineering standards;

513 3. The construction activity does not expand the existing
514 width of an existing vehicular bridge in excess of that
515 reasonably necessary to properly connect the bridge with the
516 road being repaired, stabilized, paved, or repaved to safely
517 accommodate the traffic expected on the road, which may include
518 expanding the width of the bridge to match the existing
519 connected road. However, no debris from the original bridge
520 shall be allowed to remain in waters of the state, including
521 wetlands;

522 4. Best management practices for erosion control shall be
523 employed as necessary to prevent water quality violations;

524 5. Roadside swales or other effective means of stormwater
525 treatment must be incorporated as part of the project;

526 6. No more dredging or filling of wetlands or water of the
 527 state is performed than that which is reasonably necessary to
 528 repair, stabilize, pave, or repave the road or to repair or
 529 replace the bridge, in accordance with generally accepted
 530 engineering standards; and

531 7. Notice of intent to use the exemption is provided to
 532 the department, if the work is to be performed within the
 533 Northwest Florida Water Management District, or to the Suwannee
 534 River Water Management District, if the work is to be performed
 535 within the Suwannee River Water Management District, 30 days
 536 before ~~prior to~~ performing any work under the exemption.

537
 538 Within 30 days after this act becomes a law, the department
 539 shall initiate rulemaking to adopt a no fee general permit for
 540 the repair, stabilization, or paving of existing roads that are
 541 maintained by the county and the repair or replacement of
 542 bridges that are part of the roadway where such activities do
 543 not cause significant adverse impacts to occur individually or
 544 cumulatively. The general permit shall apply statewide and, with
 545 no additional rulemaking required, apply to qualified projects
 546 reviewed by the Suwannee River Water Management District, the
 547 St. Johns River Water Management District, the Southwest Florida
 548 Water Management District, and the South Florida Water
 549 Management District under the division of responsibilities
 550 contained in the operating agreements applicable to part IV of

551 chapter 373. Upon adoption, this general permit shall, pursuant
552 to ~~the provisions of~~ subsection (2), supersede and replace the
553 exemption in this paragraph.

554 (u) Notwithstanding any provision to the contrary in this
555 subsection, a permit or other authorization under chapter 253,
556 chapter 369, chapter 373, or this chapter is not required for an
557 individual residential property owner for the removal of organic
558 detrital material from freshwater rivers or lakes that have a
559 natural sand or rocky substrate and that are not Aquatic
560 Preserves or for the associated removal and replanting of
561 aquatic vegetation for the purpose of environmental enhancement,
562 providing that:

563 1. No activities under this exemption are conducted in
564 wetland areas, as defined in s. 373.019(27), which are supported
565 by a natural soil as shown in applicable United States
566 Department of Agriculture county soil surveys.

567 2. No filling or peat mining is allowed.

568 3. No removal of native wetland trees, including, but not
569 limited to, ash, bay, cypress, gum, maple, or tupelo, occurs.

570 4. When removing organic detrital material, no portion of
571 the underlying natural mineral substrate or rocky substrate is
572 removed.

573 5. Organic detrital material and plant material removed is
574 deposited in an upland site in a manner that will not cause
575 water quality violations.

576 6. All activities are conducted in such a manner, and with
577 appropriate turbidity controls, so as to prevent any water
578 quality violations outside the immediate work area.

579 7. Replanting with a variety of aquatic plants native to
580 the state shall occur in a minimum of 25 percent of the
581 preexisting vegetated areas where organic detrital material is
582 removed, except for areas where the material is removed to bare
583 rocky substrate; however, an area may be maintained clear of
584 vegetation as an access corridor. The access corridor width may
585 not exceed 50 percent of the property owner's frontage or 50
586 feet, whichever is less, and may be a sufficient length
587 waterward to create a corridor to allow access for a boat or
588 swimmer to reach open water. Replanting must be at a minimum
589 density of 2 feet on center and be completed within 90 days
590 after removal of existing aquatic vegetation, except that under
591 dewatered conditions replanting must be completed within 90 days
592 after reflooding. The area to be replanted must extend waterward
593 from the ordinary high water line to a point where normal water
594 depth would be 3 feet or the preexisting vegetation line,
595 whichever is less. Individuals are required to make a reasonable
596 effort to maintain planting density for a period of 6 months
597 after replanting is complete, and the plants, including
598 naturally recruited native aquatic plants, must be allowed to
599 expand and fill in the revegetation area. Native aquatic plants
600 to be used for revegetation must be salvaged from the

601 enhancement project site or obtained from an aquatic plant
602 nursery regulated by the Department of Agriculture and Consumer
603 Services. Plants that are not native to the state may not be
604 used for replanting.

605 8. No activity occurs any farther than 100 feet waterward
606 of the ordinary high water line, and all activities must be
607 designed and conducted in a manner that will not unreasonably
608 restrict or infringe upon the riparian rights of adjacent upland
609 riparian owners.

610 9. The person seeking this exemption notifies the
611 applicable department district office in writing at least 30
612 days before commencing work and allows the department to conduct
613 a preconstruction site inspection. Notice must include an
614 organic-detrital-material removal and disposal plan and, if
615 applicable, a vegetation-removal and revegetation plan.

616 10. The department is provided written certification of
617 compliance with the terms and conditions of this paragraph
618 within 30 days after completion of any activity occurring under
619 this exemption.

620 (v) Notwithstanding any other provision in this chapter,
621 chapter 373, or chapter 161, a permit or other authorization is
622 not required for the following exploratory activities associated
623 with beach restoration and nourishment projects and inlet
624 management activities:

625 1. The collection of geotechnical, geophysical, and

626 | cultural resource data, including surveys, mapping, acoustic
627 | soundings, benthic and other biologic sampling, and coring.

628 | 2. Oceanographic instrument deployment, including
629 | temporary installation on the seabed of coastal and
630 | oceanographic data collection equipment.

631 | 3. Incidental excavation associated with any of the
632 | activities listed under subparagraph 1. or subparagraph 2.

633 | Section 5. The Division of Law Revision and Information is
634 | directed to replace the phrase "the effective date of this act"
635 | wherever it occurs in this act with the date the act becomes a
636 | law.

637 | Section 6. This act shall take effect upon becoming a law.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1149 Environmental Regulation
SPONSOR(S): Natural Resources & Public Lands Subcommittee; Payne
TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 1308

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Natural Resources & Public Lands Subcommittee	12 Y, 1 N, As CS	Moore	Shugar
2) Agriculture & Natural Resources Appropriations Subcommittee	11 Y, 1 N	White	Pigott
3) Government Accountability Committee			

SUMMARY ANALYSIS

The bill revises policies relating to Florida's environmental regulation by:

- Providing examples of reclaimed water use that may create an impact offset to include those that prevent or stop further saltwater intrusion, raise aquifer levels, improve the water quality of an aquifer, or augment surface water to increase the quantity of water available for water supply;
- Requiring the Department of Environmental Protection (DEP) to revise the water resource implementation rule to create criteria by which an impact offset or substitution credit may be applied to the issuance, renewal, or extension of a consumptive use permit (CUP) or may be used to address additional water resource constraints imposed by the adoption of a recovery or prevention strategy;
- Including the reuse of reclaimed water through aquifer recharge as a critical component of meeting the state's existing and future water supply needs while sustaining natural systems;
- Requiring DEP and water management districts (WMD) to develop and enter into a memorandum of agreement no later than December 1, 2018, providing for coordinated review of any reclaimed water project requiring a reclaimed water facility permit, an underground injection control permit, and a CUP, to be used solely at the permit applicant's request;
- Requiring counties and municipalities to address the contamination of recyclable material in contracts with residential recycling collectors for collection or transportation of residential recyclable material;
- Defining "residential recycling collector;"
- Requiring counties and municipalities to address the contamination of recyclable material in contracts with material recovery facilities (MRF) for processing of residential recyclable material;
- Requiring local government contracts with a residential recycling collector or MRF to define "contaminated recyclable material" in a manner that is appropriate for the local community, based on available recyclable material markets;
- Requiring local government contracts with a residential recycling collector or MRF to include strategies and obligations of the parties to reduce the amount of contaminated recyclable material being collected or processed, procedures for identifying, documenting, managing, and rejecting contaminated recyclable materials, and remedies that will be used for contaminated recyclable material;
- Providing applicability of these contract requirements in any local government contract with a residential recycling collector or MRF executed or renewed after the effective date of the act;
- Prohibiting local governments from requiring additional verification from DEP that a particular activity meets a permit exception; and
- Revising the permit exception for the replacement or repair of existing docks and piers to allow for the repair or replacement if it is in approximately the same location, no larger in size than the existing dock or pier, and no additional aquatic resources are adversely and permanently impacted.

The bill has an insignificant negative fiscal impact on state government and a positive fiscal impact on local governments and the private sector.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

STORAGE NAME: h1149c.ANR

DATE: 2/6/2018

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Reuse of Reclaimed Water in Consumptive Use Permitting

Present Situation

Reclaimed Water

Reclaimed water¹ is water from a domestic wastewater² treatment facility, which has received at least secondary treatment³ and basic disinfection for reuse.⁴

Water Resource Implementation Rule

The water resource implementation rule, ch. 62-40, F.A.C., sets forth goals, objectives, and guidance for the development and review of programs, rules, and plans relating to water resources, based on statutory policies and directives.⁵ The Legislature required the Department of Environmental Protection (DEP) to initiate rulemaking by October 1, 2012, to revise the rule to include:

- Criteria for the use of a proposed impact offset⁶ derived from the use of reclaimed water when a water management district (WMD) evaluated an application for a consumptive use permit (CUP); and
- Criteria for the use of substitution credits⁷ where a WMD had adopted rules establishing withdrawal limits from a specified water resource within a defined geographic area.⁸

The revisions to the water resource implementation rule can be found in rules 62-40.416(7) and (8), F.A.C., respectively.

Consumptive Use Permitting

Before using waters of the state,⁹ a person must apply for and obtain a CUP from the applicable WMD¹⁰ or the DEP. The WMD or DEP may impose reasonable conditions necessary to assure that such use is consistent with the overall objectives of the WMD or DEP and is not harmful to the water resources of the area.¹¹ To obtain a CUP, an applicant must establish that the proposed use of water is

¹ s. 373.019(17), F.S.; Rule 62-610.200(48), F.A.C.

² Rule 62-610.200(15), F.A.C.

³ Rule 62-610.200(54), F.A.C.

⁴ Rules 62-610.200(12), 62-600.200(18), and 62-600.440(5), F.A.C.

⁵ s. 373.019(25), and 373.036, F.S.

⁶ s. 373.250(5)(a)1, F.S., defines “impact offset” to mean the use of reclaimed water to reduce or eliminate a harmful impact that has occurred or would otherwise occur as a result of other surface water or groundwater withdrawals.

⁷ s. 373.250(5)(a)2, F.S., defines “substitution credit” to mean the use of reclaimed water to replace all or a portion of an existing permitted use of resource-limited surface water or groundwater, allowing a different user or use to initiate a withdrawal or increase its withdrawal from the same resource-limited surface water or groundwater source provided that the withdrawal creates no net adverse impact on the limited water resource or creates a net positive impact if required by water management district rule as part of a strategy to protect or recover a water resource.

⁸ s. 373.250(5)(a)1-2, F.S.

⁹ s. 373.019(22), F.S., defines “water” or “waters of 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.

¹⁰ s. 373.216, F.S.; see chs. 40A-2, 40B-2, 40C-2, 40D-2, and 40E-2, F.A.C., for CUP permitting requirements.

¹¹ s. 373.219(1), F.S.; An individual solely using water for domestic consumption is exempt from CUP requirements.

a reasonable-beneficial use,¹² will not interfere with any presently existing legal use of water, and is consistent with the public interest.¹³

Recovery or Prevention Strategy

If, at the time a minimum flow¹⁴ or minimum water level¹⁵ (MFL) is initially established for a water body or is revised, and the existing flow or water level in the water body is below, or is projected to fall within 20 years below, the applicable MFL, the DEP or WMD must concurrently adopt or modify and implement a recovery or prevention strategy. If a MFL has been established for a water body and the existing flow or water level in the water body falls below, or is projected to fall within 20 years below, the applicable MFL, the DEP or the WMD must expeditiously adopt a recovery or prevention strategy.¹⁶

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. 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.¹⁷

Effect of the Proposed Changes

The bill amends s. 373.250(5), F.S., regarding the reuse of reclaimed water, to delete the obsolete rulemaking provision that directs DEP to initiate rulemaking to develop criteria for the use of impact offsets and substitution credits under the water resource implementation rule.

The bill amends s. 373.250(5)(a)1., F.S., providing examples of reclaimed water use that may create an impact offset to include those that prevent or stop further saltwater intrusion; raise aquifer levels; improve the water quality of an aquifer; or augment surface water to increase the quantity of water available for water supply.

The bill creates s. 373.250(5)(a)3., F.S., requiring the water resource implementation rule to include criteria by which an impact offset or substitution credit may be applied to the issuance, renewal, or extension of a utility's or another user's CUP or may be used to address additional water resource constraints imposed through the adoption of a recovery or prevention strategy.

Reuse of Reclaimed Water and Pollution Control

Present Situation

Aquifer Recharge

Aquifer recharge is the underground injection and storage of water into an aquifer. It is primarily considered a water resource development and conservation strategy used to preserve and enhance

¹² s. 373.019(16), F.S., defines "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 which is both reasonable and consistent with the public interest.

¹³ s. 373.223(1), F.S.

¹⁴ s. 373.042(1)(a), F.S., the minimum flow is the limit at which further water withdrawals would be significantly harmful to the water resources or ecology of the area.

¹⁵ s. 373.042(1)(b), F.S., 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..

¹⁶ s. 373.0421(2), F.S.

¹⁷ *Id.*

water resources and natural systems (e.g., sustain water levels, meet MFLs) and to attenuate flooding.¹⁸ Aquifer recharge wells include:

- Recharge wells used to replenish, augment, or store water in an aquifer;
- Salt water intrusion barrier wells used to inject water into a fresh water aquifer to prevent the intrusion of salt water into the fresh water;
- Subsidence control wells used to inject fluids into a zone which does not produce oil or gas to reduce or eliminate subsidence associated with the overdraft of fresh water; and
- Connector wells used to connect two aquifers to allow interchange of water between those aquifers.¹⁹

Reclaimed Water Facility Permitting

Any facility or activity that discharges wastes into waters of the state, or which will reasonably be expected to be a source of water pollution, must obtain a wastewater permit from DEP.²⁰ DEP may issue construction permits for wastewater systems, treatment works, or reuse or disposal systems based upon review of a preliminary design report, application forms, and other required information, all of which shall be formulated by DEP rule. Upon a demonstration that a system constructed in accordance with a construction permit issued operates as designed, DEP must issue a permit for operation of the system.²¹

Underground Injection Control Permitting

DEP has general control and supervision over underground water, lakes, rivers, streams, canals, ditches, and coastal waters under the jurisdiction of the state insofar as their pollution may affect the public health or impair the interest of the public or persons lawfully using them.²² DEP regulates the disposal of appropriately treated fluids via underground injection wells through its underground injection control (UIC) program. The UIC permitting program prevents degradation of the quality of aquifers adjacent to the injection zone. Subsurface injection, the practice of emplacing fluids in a permeable underground aquifer by gravity flow or under pressure through an injection well, is one of a variety of wastewater disposal or reuse methods used in the state.²³

Effect of the Proposed Changes

The bill amends s. 403.064(1), F.S., providing legislative findings, regarding the reuse of reclaimed water, to include reuse through aquifer recharge as a critical component of meeting the state's existing and future water supply needs while sustaining natural systems.

The bill creates s. 403.064(17), F.S., requiring DEP and the WMDs to develop and enter into a memorandum of agreement (MOA) providing for coordinated review of any reclaimed water project requiring a reclaimed water facility permit, a UIC permit, and a CUP no later than December 1, 2018. The bill requires the MOA to provide such coordinated review solely at the applicant's request. The bill provides that the goal of the coordinated review is to share information, avoid requesting the applicant to submit redundant information, and ensure, to the extent feasible, a harmonized review of the reclaimed water project under these various permitting programs, including the use of a proposed impact offset or substitution credit.

¹⁸ DEP, *Report on Expansion of Beneficial Use of Reclaimed Water, Stormwater and Excess Surface Water*, pg. 83, <https://floridadep.gov/sites/default/files/SB536%20Final%20Report.pdf> (last visited Jan. 25, 2018).

¹⁹ Rule 62-528.300(1)(e), F.A.C.

²⁰ s. 403.087(1), F.S.; Florida Water Permits, *Florida's Water Permitting Portal*, <http://flwaterpermits.com/typesofpermits.html> (last visited Jan. 25, 2018).

²¹ s. 403.0881, F.S.; see chs. 62-610, and 62-620, F.A.C., for reuse and wastewater permitting requirements, respectively.

²² s. 403.062, F.S.

²³ Florida Water Permits, *Florida's Water Permitting Portal*. <http://flwaterpermits.com/typesofpermits.html> (last visited Jan. 25, 2018); see ch. 62-528, F.A.C., for UIC permitting requirements.

Recyclable Materials and Contamination

Present Situation

Recycling is any process by which solid waste²⁴ or materials that would otherwise become solid waste are collected, separated or processed and reused or returned to use in the form of raw materials or intermediate or final products (e.g., crude oil, fuels, and fuel substitutes).²⁵ Recyclable materials are those materials that are capable of being recycled and would otherwise be processed or disposed of as solid waste.²⁶

Local Government Recycling Programs

Counties and municipalities are encouraged to form cooperative arrangements for implementing recycling programs.²⁷ Recycling programs must recover a significant portion of at least four of the following materials from the solid waste stream prior to final disposal at a solid waste disposal facility, and to offer these materials for recycling:

- Newspaper;
- Aluminum cans;
- Steel cans;
- Glass;
- Plastic bottles;
- Cardboard;
- Office paper; and
- Yard trash.

Local governments are also encouraged to separate all plastics, metal, and all grades of paper for recycling prior to final disposal and are further encouraged to recycle yard trash and other mechanically treated solid waste into compost available for agricultural and other acceptable uses.²⁸

Recycling Goal

Each county must implement a recyclable materials recycling program with a goal of recycling recyclable solid waste by 40 percent by December 31, 2012; 50 percent by December 31, 2014; 60 percent by December 31, 2016; 70 percent by December 31, 2018; and 75 percent by December 31, 2020 (recycling goal).²⁹ To assess the progress in meeting the recycling goal, counties are annually required to provide information to DEP regarding their annual solid waste management program and recycling activities.³⁰ The recycling goal for 2016 fell short, having achieving 56 percent.³¹

Local Government Contracting for Solid Waste

A county or municipality may enter into a written agreement with other persons to fulfill some or all of its solid waste responsibilities.³² In developing and implementing recycling programs, counties and municipalities are required to give consideration to the collection, marketing, and disposition of

²⁴ s. 403.703(36), F.S., defines solid waste.

²⁵ s. 403.703(31), F.S.

²⁶ s. 403.706(30), F.S.

²⁷ s. 403.706(2)(a), F.S.

²⁸ s. 403.706(2)(g), F.S.

²⁹ s. 403.706(2)(a), F.S.

³⁰ s. 403.706(7), F.S.

³¹ DEP, *Florida and the 2020 75% Recycling Goal*, https://floridadep.gov/sites/default/files/FinalRecyclingReportVolume1_0_0.pdf (last visited Jan. 25, 2018).

³² s. 403.706(8), F.S.

recyclable materials by persons engaged in the business of recycling, whether or not the persons are operating for profit. Counties and municipalities are encouraged to use for-profit and nonprofit organizations in fulfilling their solid waste responsibilities.³³

Curbside Recyclable Materials Collection

In the development and implementation of a curbside recyclable materials collection program, a county or municipality is required to enter into negotiations with a franchisee who is operating to exclusively collect solid waste within a service area of a county or municipality to undertake curbside recyclable materials collection responsibilities for a county or municipality. If the county or municipality and such franchisee fail to reach an agreement within 60 days from the initiation of such negotiations, the county or municipality may solicit proposals (RFP) from other persons to undertake curbside recyclable materials collection responsibilities for the county or municipality as it may require. Upon the determination of the lowest responsible proposal, the county or municipality may undertake, or enter into a written agreement with the person who submitted the lowest responsible proposal to undertake, the curbside recyclable materials collection responsibilities for the county or municipality, notwithstanding the exclusivity of such franchise agreement.³⁴

Contamination of Recyclable Material

Contamination of recyclable material occurs when residents place materials that are not recyclable into curbside recycling bins (e.g., plastic bags, styrofoam peanuts, and other increasingly popular thin plastics). While a material recovery facility (MRF)³⁵ is equipped to handle some non-recyclable materials, excessive contamination can undermine the recycling process resulting in additional sorting, processing, energy consumption, and other increased costs due to equipment downtime, repair or replacement needs. In addition to increased recycling processing costs, contamination also results in poorer quality recyclables, and increased rejection and landfilling of unusable materials.³⁶

Effect of the Proposed Changes

The bill creates s. 403.706(22), F.S., requiring counties and municipalities to address the contamination of recyclable material in contracts with residential recycling collectors for collection or transportation of residential recyclable material, and with MRFs for processing of residential recyclable material. The bill requires that the contracts define the term, “contaminated recyclable material” in a manner that is appropriate for the local community, based on the available markets for recyclable material.

The bill provides that a residential recycling collector may not be required to collect or transport contaminated recyclable material and defines a “residential recycling collector” as a for-profit business entity that collects and transports residential recyclable material on behalf of a county or municipality. The bill requires that contracts between a residential recycling collector and a county or municipality for the collection or transportation of residential recyclable material, and each RFP for residential recyclable material include:

- The respective strategies and obligations of the county or municipality and the collector to reduce the amount of contaminated recyclable material being collected;
- The procedures for identifying, documenting, managing, and rejecting residential recycling containers, carts, or bins that contain contaminated recyclable material;
- The remedies that will be used if a container, cart, or bin contains contaminated recyclable material; and

³³ s. 403.706(10), F.S.

³⁴ s. 403.706(9), F.S.

³⁵ s. 403.703(20), F.S., defines a MRF to mean a solid waste management facility that provides for the extraction from solid waste of recyclable materials, materials suitable for use as a fuel or soil amendment, or any combination of such materials.

³⁶ DEP, *Florida and the 2020 75% Recycling Goal*, https://floridadep.gov/sites/default/files/FinalRecyclingReportVolume1_0_0.pdf (last visited Jan. 25, 2018).

- The education and enforcement measures that will be used to reduce the amount of contaminated recyclable material.

The bill provides that a MRF is not required to process contaminated recyclable material. The bill requires that contracts between a MRF and a county or municipality for processing residential recyclable material define the term “contaminated recyclable material” and include:

- The respective strategies and obligations of the parties to reduce the amount of contaminated recyclable material being processed;
- The procedures for identifying, documenting, managing, and rejecting residential recycling containers or loads that contain contaminated recyclable material; and
- The remedies that will be used if a container or load contains contaminated recyclable material.

The bill provides that the contract requirements apply to each contract between a municipality or county and a residential recycling collector or MRF executed or renewed after the effective date of the act.

Verification of State Permit Exceptions

Present Situation

Current law provides exceptions from state environmental permitting³⁷ for certain types of projects.³⁸ Generally, these permit exceptions restrict how the project is undertaken, provide size and location requirements, or provide for maintenance, repair, or replacement of existing structures.³⁹ These exceptions do not relieve an applicant from obtaining permission to use or occupy lands owned by the Board of Trustees of the Internal Improvement Trust Fund or a WMD or from complying with local pollution control programs, or other requirements of local governments.⁴⁰

Effect of Proposed Changes

The bill amends s. 403.813(1), F.S., prohibiting local governments from requiring additional verification from DEP that a particular activity meets a permit exception.

Dock and Pier Replacement and Repair Permit Exception

Present Situation

Currently, an exception from environmental permitting applies for the replacement or repair of existing docks and piers if fill⁴¹ material is not used and the replacement or repaired dock or pier is in the same location and of the same configuration and dimensions as the dock or pier being replaced or repaired. The exception allows the use of different construction materials or minor deviations to allow upgrades to current structural and design standards.⁴² Other permit exceptions that allow for repair or replacement also require the repair or replacement to be of the same configuration, location, length, and dimensions. These include the repair or replacement of stormwater pipes or culverts,⁴³ open-trestle foot bridges and vehicular bridges that are 100 feet or less in length and two lanes or less in width,⁴⁴ and insect control impoundment dikes, which are less than 100 feet in length.⁴⁵ Another permit

³⁷ See chs. 373 and 403, F.S.

³⁸ s. 403.803(1), F.S.

³⁹ s. 403.803(1)(a)-(v), F.S.

⁴⁰ s. 403.813(1), F.S.

⁴¹ Filling means deposition of any material (such as sand, dock pilings or seawalls) in wetlands or other surface waters;

<https://floridadep.gov/water/submerged-lands-environmental-resources-coordination/content/erp-dredging-and-filling> (last visited Jan. 25, 2018).

⁴² s. 403.813(1)(d), F.S.

⁴³ s. 403.813(1)(h), F.S.

⁴⁴ s. 403.813(1)(l), F.S.

⁴⁵ s. 403.813(1)(p), F.S.

exception, regarding the restoration of seawalls, allows for the restoration of the seawall to take place at the previous location or upland of, or within 18 inches waterward of the previous location.⁴⁶

Effect of the Proposed Changes

The bill amends s. 403.813(1)(d), F.S., regarding the exception for replacement or repair of existing docks or piers. The bill removes the requirement that a dock or pier replacement or repair remain in the same location and be of the same configuration and dimensions as the existing dock or pier. The bill provides that the repair or replacement of the dock or pier must be in *approximately* the same location and no larger in size than the existing dock or pier, and no additional aquatic resources may be adversely and permanently impacted by the replacement.

B. SECTION DIRECTORY:

- Section 1. Amends s. 327.250, F.S., relating to reuse of reclaimed water.
- Section 2. Amends s. 403.064, F.S., relating to reuse of reclaimed water.
- Section 3. Amends s. 403.706, F.S., relating to local government solid waste responsibilities.
- Section 4. Amends s. 403.813, F.S., relating to permit exceptions.
- Section 5. Directs the Division of Law Revision and Information to replace the effective date of the act with the date the act becomes a law.
- Section 6. Provides an effective date of upon becoming law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The bill will have an insignificant negative fiscal impact on the DEP related to rule-making. DEP indicates that this impact can be absorbed within existing resources.⁴⁷

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill may have a positive fiscal impact on local governments that are no longer required to collect, transport, or process contaminated recyclable material. The bill may have a positive fiscal impact on local governments resulting from revisions to the water resource implementation rule creating criteria by which an impact offset or substitution credit may be applied to the issuance, renewal, or extension of a utility's or another user's CUP or may be used to address additional water resource constraints imposed through the adoption of a MFL recovery or prevention strategy.

⁴⁶ s. 403.813(1)(e), F.S.

⁴⁷ Department of Environmental Protection, Agency Analysis of House Bill 1149, p. 6 (January 22, 2018).

The bill may have a positive fiscal impact on the local governments who implement a reclaimed water project that requires a reclaimed water facility permit, a UIC permit, and a CUP by utilizing the coordinated review process established by DEP and WMD MOA required by the bill.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may have a positive fiscal impact on the private sector resulting from revisions to the water resource implementation rule creating criteria by which an impact offset or substitution credit may be applied to the issuance, renewal, or extension of a utility's or another user's CUP or may be used to address additional water resource constraints imposed through the adoption of a MFL recovery or prevention strategy.

The bill may have a positive fiscal impact on members of the private sector who implement a reclaimed water project that requires a reclaimed water facility permit, a UIC permit, and a CUP by utilizing the coordinated review process established by DEP and WMD MOA required by the bill.

The bill may have a positive fiscal impact on MRFs if the bill results in less contaminated recyclable material coming into the facility undermining their recycling processes.

The bill may have a positive fiscal impact on the private sector by prohibiting a local government from requiring verification from DEP or WMD on a permit exception under s. 403.813, F.S. The bill may also have a positive fiscal impact on the private sector by expanding the permit exception for the replacement or repair of existing docks and piers.

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 requires DEP to revise the water resource implementation rule to create criteria by which an impact offset or substitution credit may be applied to the issuance, renewal, or extension of a utility's or another user's CUP or may be used to address additional water resource constraints imposed through the adoption of a recovery or prevention strategy.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Recyclable Materials and Contamination

The bill may further hinder the recycling goal by requiring the definition of "contaminated recyclable material" to be appropriate for the local community, based on available markets for recyclable material. This could result in recyclable materials not being recycled simply because there is no market for them in the local community, however there may be a market outside of the local community.

The bill also uses the term “contaminated” in reference to recyclable materials, which may cause unintended confusion. Contamination traditionally has been associated with spills, discharges, and escapes of pollutants, dry cleaning solvents, and hazardous substances into the environment. The term “contaminant” means any physical, chemical, biological, or radiological substance present in any medium which may result in adverse effects to human health or the environment or which creates an adverse nuisance, organoleptic, or aesthetic condition in groundwater.⁴⁸ The term “contaminated site” means any contiguous land, sediment, surface water, or groundwater areas that contain contaminants that may be harmful to human health or the environment.⁴⁹ Contaminated sites trigger site rehabilitation⁵⁰ requirements⁵¹ and contamination notification requirements.⁵²

Verification of State Permit Exceptions

It is unclear as to what extent local governments are prohibited from verifying that a particular activity meets a permit exception from DEP or WMD. The bill appears to prohibit any verification, including a local government verifying with DEP or WMD whether a potential permit exception violation has occurred.

Dock and Pier Replacement and Repair Permit Exception

The bill allows the location of a replaced or repaired dock or pier to be in approximately the same location, which could make verification of this exception difficult to measure. Perhaps adding some measurable information such as that provided for the allowable placements for the restoration of seawalls⁵³ would be helpful.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On January 23, 2018, the Natural Resources & Public Lands Subcommittee adopted one amendment and reported the bill favorable with a committee substitute. The amendment removed and replaced section 3 of the bill, and provides as follows:

- Requires counties and municipalities to address the contamination of recyclable material in contracts with residential recycling collectors for collection or transportation of residential recyclable material, and with MRFs for processing of residential recyclable material;
- Requires that the contracts define the term “contaminated recyclable material” in a manner that is appropriate for the local community, based on the available markets for recyclable material;
- Provides that a residential recycling collector is not required to collect or transport contaminated recyclable material;
- Defines a “residential recycling collector” to mean a for-profit business entity that collects and transports residential recyclable material on behalf of a county or municipality;
- Requires that contracts between a residential recycling collector and a county or municipality for the collection or transportation of residential recyclable material, and each RFP for residential recyclable material include:
 - The respective strategies and obligations of the county or municipality and the collector to reduce the amount of contaminated recyclable material being collected;
 - The procedures for identifying, documenting, managing, and rejecting residential recycling containers, carts, or bins that contain contaminated recyclable material;
 - The remedies that will be used if a container, cart, or bin contains contaminated recyclable material; and

⁴⁸ s. 376.301(10) and 376.79(6), F.S.

⁴⁹ s. 376.301(11), F.S.

⁵⁰ s. 376.301(43), F.S., defines site rehabilitation.

⁵¹ See s. 376.30701, F.S., for site rehabilitation requirements.

⁵² See s. 376.30702, F.S., for contamination notification requirements.

⁵³ s. 403.813(1)(e), F.S.

- The education and enforcement measures that will be used to reduce the amount of contaminated recyclable material.
- Provides that a MRF is not required to process contaminated recyclable material;
- Requires that contracts between a MRF and a county or municipality for processing residential recyclable material include:
 - The respective strategies and obligations of the parties to reduce the amount of contaminated recyclable material being processed;
 - The procedures for identifying, documenting, managing, and rejecting residential recycling containers or loads that contain contaminated recyclable material; and
 - The remedies that will be used if a container or load contains contaminated recyclable material; and
- Provides that the contract requirements apply to each contract between a municipality or county and a residential recycling collector or MRF executed or renewed after the effective date of the act.

MIAF Bill Tracking

Sorted by Bill Number

<u>HB 3</u>	Economic Development and Tourism Promotion Accountability	Grant (M)
	Economic Development and Tourism Promotion Accountability: Authorizes & requires Auditor General to conduct certain audits; provides transparency & accountability provisions applicable to economic development agencies & tourism promotion agencies; provides penalties; requires county governing board to review certain proposed contracts & certifications. Effective Date: October 1, 2018 2/1/2018 SENATE Received; Referred to Commerce and Tourism; Appropriations Subcommittee on Transportation, Tourism, and Economic Development; Appropriations; Rules	
<u>HB 7</u>	Local Government Fiscal Transparency	Burton
	Local Government Fiscal Transparency: Revises Legislative Auditing Committee duties; specifies purpose of local government fiscal transparency requirements; requires local governments to post certain voting record information on websites; requires property appraisers & local governments to post certain property tax information & history on websites; requires public notices for public hearings & meetings prior to certain increases of local government tax levies; specifies noticing & advertising requirements; requires local governments to conduct debt affordability analyses under specified conditions; provides method for local governments that do not operate website to post certain required information. Effective Date: July 1, 2018 1/30/2018 SENATE Received; Referred to Community Affairs; Appropriations; Rules	
<u>HB 17</u>	Community Redevelopment Agencies	Raburn
	Community Redevelopment Organizations: Provides reporting requirements; revises requirements for operating community redevelopment agencies; prohibits creation of community redevelopment agencies after date certain; provides phase-out period; creates criteria for determining whether community redevelopment agency is inactive; provides hearing procedures; authorizes certain financial activity from inactive community redevelopment agencies; revises requirements for use of redevelopment trust fund proceeds; revises county & municipal government reporting requirements; revises criteria for finding that county or municipality failed to file report; requires DFS to provide report to DEO concerning community redevelopment agencies with no revenues, no expenditures, & no debts. Effective Date: October 1, 2018 1/30/2018 SENATE Received; Referred to Community Affairs; Appropriations Subcommittee on Transportation, Tourism, and Economic Development; Appropriations; Rules	
<u>HB 51</u>	Background Screening	Jones
	Background Screening: Prohibits employers from excluding applicant from initial interview for employment under certain conditions; provides applicability; provides exceptions; requires DEO to enforce act. Effective Date: July 1, 2018 11/7/2017 HOUSE Withdrawn prior to introduction	
<u>HB 53</u>	Coral Reefs	Jacobs
	Coral Reefs: Establishes Southeast Florida Coral Reef Ecosystem Conservation Area. Effective Date: July 1, 2018 2/9/2018 HOUSE Enrolled Text (ER) Filed	
<u>SB 76</u>	Small Business Saturday Sales Tax Holiday	Garcia
	Small Business Saturday Sales Tax Holiday; Defining the term "small business"; providing that small businesses are not required to collect the sales and use tax on the retail sale of certain items of tangible personal property during a specified timeframe, etc. APPROPRIATION: \$200,000.00 Effective Date: 7/1/2018 11/7/2017 SENATE Now in Appropriations Subcommittee on Finance and Tax	
<u>HB 83</u>	Agency Rulemaking	Spano
	Agency Rulemaking: Requires certain notices to include agency website address for specified purpose; requires agency to prepare statement of estimated regulatory costs before adopting or amending rule other than emergency rule; requires agency to prepare statement of estimated regulatory costs before repealing rule in certain circumstances; requires DOS to include on Florida Administrative Register website agency website addresses where statements of estimated regulatory costs can be viewed. Effective Date: July 1, 2018 2/8/2018 SENATE Received; Referred to Governmental Oversight and Accountability; Appropriations Subcommittee on Transportation, Tourism, and Economic Development; Appropriations	
<u>SB 102</u>	Discrimination in Employment Screening	Bracy
	Discrimination in Employment Screening; Prohibiting an employer from inquiring into or considering an applicant's criminal history on an initial employment application unless otherwise required to do so by law, etc. Effective Date: 7/1/2018 8/28/2017 SENATE Referred to Commerce and Tourism; Governmental Oversight and Accountability; Criminal Justice; Rules	
<u>SB 110</u>	Language Requirements for State Agency Websites and Advertisements	Campbell
	Language Requirements for State Agency Websites and Advertisements; Requiring specified information to be published on state agency websites in certain languages; requiring state agencies to disseminate certain advertisements to the public in languages other than English through specified media outlets in certain counties; requiring the Office of Economic and Demographic Research to publish certain information on its website, etc. Effective Date: 10/1/2018 8/28/2017 SENATE Referred to Governmental Oversight and Accountability; Appropriations; Rules	

<u>HB 131</u>	Coastal Management	Peters
	Coastal Management: Revises criteria for state & local participation in authorized projects & studies relating to beach management & erosion control; revises procedures for prioritizing & funding beach restoration, beach management, & inlet management projects; requires certain funds from Land Acquisition Trust Fund be used for beach preservation & restoration projects. Effective Date: July 1, 2018 9/14/2017 HOUSE Now in Natural Resources & Public Lands Subcommittee	
<u>SB 156</u>	Florida Black Bears	Stewart
	Florida Black Bears; Creating the "Florida Black Bear Protection Act"; prohibiting the Fish and Wildlife Conservation Commission from allowing the recreational hunting of Florida black bears mothering cubs that weigh less than 100 pounds under a black bear hunting permit; prohibiting prescribed burns in certain designated habitats during specified times, etc. Effective Date: 7/1/2018 8/28/2017 SENATE Referred to Environmental Preservation and Conservation; Criminal Justice; Appropriations Subcommittee on the Environment and Natural Resources; Appropriations	
<u>SB 166</u>	Minimum Wage	Rodriguez (J)
	Minimum Wage; Revising the formula for the adjusted state minimum wage, etc. Effective Date: 7/1/2018 8/28/2017 SENATE Referred to Commerce and Tourism; Community Affairs; Appropriations Subcommittee on Transportation, Tourism, and Economic Development; Appropriations	
<u>SB 174</u>	Coastal Management	Hukill
	Coastal Management; Revising the criteria to be considered by the Department of Environmental Protection in determining and assigning annual funding priorities for beach management and erosion control projects; requiring that certain projects be considered separate and apart from other specified projects; revising requirements for the comprehensive long-term management plan, etc. Effective Date: Except as otherwise provided in this act, this act shall take effect July 1, 2018 2/5/2018 SENATE Placed on Calendar, on 2nd reading	
<u>HB 203</u>	Environmental Regulation Commission	Willhite
	Environmental Regulation Commission: Requires Governor to make appointments to fill commission vacancies within certain time frame; requires that specified rules submitted to commission receive certain vote totals for approval or modification. Effective Date: July 1, 2018 11/6/2017 HOUSE Now in Judiciary Committee	
<u>HB 207</u>	Growth Management	McClain
	Growth Management: Requires local governments to address protection of private property rights in their comprehensive plans; requires comprehensive plan to include private property rights element; requires counties & municipalities to adopt or amend land development regulations consistent with private property rights element; provides deadlines; requires state land planning agency to approve private property rights element if it is substantially in specified form. Effective Date: July 1, 2018 10/12/2017 HOUSE Now in Agriculture & Property Rights Subcommittee	
<u>SB 232</u>	Coral Reefs	Book
	Coral Reefs; Establishing the Southeast Florida Coral Reef Ecosystem Conservation Area, etc. Effective Date: 7/1/2018 2/1/2018 SENATE Read Second Time; Substituted for HB 0053; Laid on Table, Refer to HB 0053	
<u>HB 247</u>	Vessel Registration	Ausley
	Vessel Registration: Authorizes DHSMV to issue electronic certificate of registration for vessel & use electronic mail for certain purposes; authorizes vessel operator to present such electronic certificate for inspection under certain circumstances. Effective Date: July 1, 2018 11/15/2017 HOUSE Now in Transportation & Tourism Appropriations Subcommittee	
<u>SB 316</u>	Environmental Regulation Commission	Stewart
	Environmental Regulation Commission; Requiring the Governor to appoint a new member to the commission within a certain timeframe after the occurrence of a vacancy; requiring certain proposed rules submitted to the commission to receive specified vote totals for approval or modification, etc. Effective Date: 7/1/2018 2/8/2018 SENATE On Committee agenda - Ethics and Elections, 02/13/18, 2:00 pm, 412 K	
<u>HB 319</u>	Gulf of Mexico Range Complex	Ponder
	Gulf of Mexico Range Complex: Supports extension of current moratorium on drilling in Gulf of Mexico east of Military Mission Line. 1/31/2018 HOUSE Read Second Time; Adopted	
<u>HB 337</u>	Community Development Districts	Cortes (J)
	Community Development Districts: Requires community development districts to obtain a valuation before acquiring certain property. Effective Date: July 1, 2018 10/26/2017 HOUSE Now in Local, Federal & Veterans Affairs Subcommittee	
<u>HB 339</u>	Land Acquisition Trust Fund	Harrell

Land Acquisition Trust Fund: Provides appropriation for certain projects related to Indian River Lagoon Comprehensive Conservation & Management Plan; authorizes DEP to make grants for such projects; directs DEP to submit annual report to Governor & Legislature. Effective Date: July 1, 2018

10/26/2017 HOUSE Now in Agriculture & Natural Resources Appropriations Subcommittee

HB 345	Duty to Provide Emergency Assistance	Goodson
	Duty to Provide Emergency Assistance: Requires person at scene of emergency to provide reasonable assistance to endangered person; provides criminal penalties; provides immunity from liability for providing reasonable assistance. Effective Date: October 1, 2018	
	1/25/2018 Bill to be Discussed During the Office of EDR's Criminal Justice Impact Conference, 01/29/18, 3:00 pm, 117 K (No Votes Will Be Taken)	
SB 362	Growth Management	Perry
	Growth Management; Requiring local governments to address the protection of private property rights in their comprehensive plans; requiring the comprehensive plan to include a private property rights element that sets forth principles, guidelines, standards, and strategies to achieve certain objectives; providing a deadline by which each local government must adopt a private property rights element; requiring the state land planning agency to approve the private property rights element adopted by each local government if it is substantially in a specified form, etc. Effective Date: 7/1/2018	
	10/16/2017 SENATE Referred to Community Affairs; Environmental Preservation and Conservation; Rules	
SB 370	Land Acquisition Trust Fund	Bradley
	Land Acquisition Trust Fund; Requiring a specified annual appropriation to the Florida Forever Trust Fund; prohibiting moneys from the Land Acquisition Trust Fund from being used for specified costs, etc. APPROPRIATION: \$100,000,000.00 Effective Date: 7/1/2018	
	2/1/2018 HOUSE In Messages	
SB 380	Criminal History Records in Applications for Public Employment and Admission to Public Postsecondary Educational Institutions	Clemens (J)
	Criminal History Records in Applications for Public Employment and Admission to Public Postsecondary Educational Institutions; Prohibiting a public employer from inquiring into or considering an applicant's criminal history on an initial employment application unless required to do so by law; prohibiting public postsecondary educational institutions from inquiring into or considering the criminal history of an applicant seeking admission, etc. Effective Date: 7/1/2018	
	11/3/2017 SENATE Withdrawn from further consideration	
SB 388	Anchoring Limitation Areas	Farmer
	Anchoring Limitation Areas; Revising the anchoring limitation areas within the state to include additional specified areas, etc. Effective Date: 7/1/2018	
	10/25/2017 SENATE Referred to Environmental Preservation and Conservation; Community Affairs; Rules	
HB 409	Tax on Commercial Real Property	Ahern
	Tax on Commercial Real Property: Provides certain exemptions from tax imposed on rental or license fees charged for use of commercial real property; provides for future repeal of tax. Effective Date: July 1, 2018	
	12/18/2017 Bill to be Discussed During the Office of EDR's Revenue Estimating Impact Conference, 12/20/17, 1:30 pm, 117 K (No Votes Will Be Taken)	
SB 432	Community Redevelopment Agencies	Lee (T)
	Community Redevelopment Agencies; Prohibiting a person from lobbying a community redevelopment agency until he or she has registered as a lobbyist with that agency; authorizing community redevelopment agencies to adopt rules to govern the registration of lobbyists; requiring ethics training for community redevelopment agency commissioners, etc. Effective Date: 7/1/2018	
	11/8/2017 SENATE Now in Appropriations Subcommittee on Transportation, Tourism, and Economic Development	
HB 469	Salvage of Pleasure Vessels	Harrison
	Salvage of Pleasure Vessels: Requires salvors of pleasure vessels to provide specified verbal & written notice; provides exception; provides remedies for violations. Effective Date: July 1, 2018	
	2/9/2018 HOUSE On Committee agenda - Government Accountability Committee, 02/13/18, 3:00 pm, 17 H	
SB 516	Duty to Provide Emergency Assistance	Mayfield
	Duty to Provide Emergency Assistance; Requiring a person at the scene of an emergency to provide reasonable assistance to an endangered person; providing a criminal penalty; providing immunity from liability for providing reasonable assistance, etc. Effective Date: 10/1/2018	
	1/25/2018 Bill to be Discussed During the Office of EDR's Criminal Justice Impact Conference, 01/29/18, 3:00 pm, 117 K (No Votes Will Be Taken)	
HB 525	High-Speed Passenger Rail	Grall
	High-Speed Passenger Rail: Requires railroad company operating high-speed passenger rail system to be responsible for certain maintenance, improvement, & upgrade costs; specifies that governmental entity is not responsible for such costs unless it consents in writing. Effective Date: July 1, 2018	
	11/15/2017 HOUSE Now in Transportation & Infrastructure Subcommittee	

<u>SB 542</u>	Public Financing of Construction Projects	Rodriguez (J)
	Public Financing of Construction Projects; Prohibiting state-financed constructors from commencing construction of certain structures in coastal areas without first conducting a sea level impact projection study and having such study published and approved by the Department of Environmental Protection; requiring the department to publish such studies on its website, subject to certain conditions, etc. Effective Date: 7/1/2018 11/2/2017 SENATE Referred to Environmental Preservation and Conservation; Governmental Oversight and Accountability; Appropriations Subcommittee on the Environment and Natural Resources; Appropriations	
<u>SB 544</u>	Procurement Procedures	Brandes
	Procurement Procedures; Specifying the applicability of procedures for the resolution of protests arising from the contract solicitation or award process for certain procurements by specified transportation, expressway, and bridge authorities, etc.; Effective Date: 7/1/2018 12/5/2017 SENATE Now in Appropriations Subcommittee on Transportation, Tourism, and Economic Development	
<u>SB 550</u>	Gulf of Mexico Range Complex	Broxson
	Gulf of Mexico Range Complex; Supporting an extension of the current moratorium on drilling in the Gulf of Mexico east of the Military Mission Line, etc. 2/8/2018 SENATE Read Second Time; Adopted	
<u>HB 559</u>	Florida Black Bears	Olszewski
	Florida Black Bears: Prohibits FWCC from allowing recreational hunting of certain Florida black bears; provides penalty for certain harvesting of saw palmetto berries; authorizes FWCC to designate certain habitats; prohibits prescribed burns in such habitats during specified times. Effective Date: July 1, 2018 11/15/2017 HOUSE Now in Natural Resources & Public Lands Subcommittee	
<u>SB 572</u>	High-speed Passenger Rail	Mayfield
	High-speed Passenger Rail; Designating the "Florida High-Speed Passenger Rail Safety Act"; providing powers and duties of the Florida Department of Transportation; requiring the Florida Division of Emergency Management to offer, under certain circumstances, the local communities and local emergency services located along the rail corridor training specifically designed to help them respond to an accident involving rail passengers or hazardous materials; requiring a railroad company operating a high-speed passenger rail system to be solely responsible for certain maintenance, improvement, and upgrade costs, etc. Effective Date: 7/1/2018 1/23/2018 SENATE Workshopped by Community Affairs	
<u>HB 585</u>	Tourist Development Tax	Fine
	Tourist Development Tax: Authorizes counties imposing a tourist development tax to use tax revenues for specified purposes; provides criteria. Effective Date: July 1, 2018 2/8/2018 HOUSE Placed on Special Order Calendar, 02/14/18	
<u>SB 620</u>	Disaster Preparedness Tax Exemption	Passidomo
	Disaster Preparedness Tax Exemption; Providing a sales and use tax exemption for certain tangible personal property related to disaster preparedness during a specified period, etc. APPROPRIATION: \$70,072.00 Effective Date: Upon becoming a law 1/18/2018 SENATE Now in Appropriations	
<u>SB 632</u>	Vessel Registration	Montford
	Vessel Registration; Authorizing the Department of Highway Safety and Motor Vehicles to issue an electronic certificate of registration for a vessel, to collect electronic mail addresses, and to use electronic mail for certain purposes; authorizing a vessel operator to present such electronic certificate for inspection under certain circumstances; providing that the person displaying the device assumes the liability for any resulting damage to the device, etc. Effective Date: 7/1/2018 2/8/2018 SENATE Now in Appropriations	
<u>SB 658</u>	Tourist Development Tax	Brandes
	Tourist Development Tax; Authorizing counties imposing the tax to use the tax revenues, under certain circumstances, for specified purposes and costs relating to public facilities, etc. Effective Date: 7/1/2018 2/7/2018 SENATE Now in Appropriations	
<u>SB 664</u>	Salvage of Pleasure Vessels	Young
	Salvage of Pleasure Vessels; Designating the "Florida Salvage of Pleasure Vessels Act"; requiring salvors of pleasure vessels to provide a specified written disclosure statement and salvage work estimate; requiring such salvors to obtain customer permission before exceeding the written estimate by more than a specified amount; requiring salvors to post specified signage on their vessels, etc. Effective Date: This act shall take effect July 1, 2018 1/29/2018 SENATE Now in Rules	
<u>SB 726</u>	Smoking Marijuana for Medical Use	Farmer
	Smoking Marijuana for Medical Use; Redefining terms to authorize the production, processing, transportation, sale, possession, and administration of marijuana in a form for smoking for medical use, etc. Effective Date: 7/1/2018 11/15/2017 SENATE Referred to Health Policy; Appropriations; Rules	

<u>SB 740</u>	Department of Agriculture and Consumer Services	Stargel
	Department of Agriculture and Consumer Services; Transferring authority to issue licenses for oyster harvesting in Apalachicola Bay from the department to the City of Apalachicola; revising permitting requirements and operating standards for water vending machines; revising the circumstances under which liquefied petroleum gas bulk delivery vehicles must be registered with the department; repealing provisions relating to packet vegetable and flower seed; creating the "Government Impostor and Deceptive Advertisements Act", etc. Effective Date: 7/1/2018 1/25/2018 SENATE Now in Appropriations	
<u>SB 798</u>	Background Screening	Braynon II
	Background Screening; Prohibiting employers from excluding an applicant from an initial interview for employment under certain conditions; requiring the Department of Economic Opportunity to enforce the act, etc. Effective Date: 7/1/2018 11/17/2017 SENATE Referred to Commerce and Tourism; Criminal Justice; Rules	
<u>SB 804</u>	Possession of Real Property	Passidomo
	Possession of Real Property; Authorizing a person with a superior right to possession of real property to recover possession by ejectment; providing that a person entitled to possession of real property has a cause of action to regain possession from another person who obtained possession of real property by forcible entry, unlawful entry, or unlawful detainer; requiring that the court determine the right of possession and damages, etc. Effective Date: 7/1/2018 1/11/2018 SENATE Now in Community Affairs	
<u>SB 902</u>	Tax on Commercial Real Property	Perry
	Tax on Commercial Real Property; Providing a specified exemption from the tax imposed on rental or license fees charged for the use of commercial real property; authorizing the Department of Revenue to review any lease, license, or other information for certain purposes; providing for the future repeal of provisions relating to the imposition of a tax on the rental or license fees charged for the use of commercial real property, etc. Effective Date: Except as otherwise expressly provided in this act, this act shall take effect July 1, 2018 12/18/2017 Bill to be Discussed During the Office of EDR's Revenue Estimating Impact Conference, 12/20/17, 1:30 pm, 117 K (No Votes Will Be Taken)	
<u>HB 915</u>	Vessel Safety Inspection Decals	Henry
	Vessel Safety Inspection Decals: Authorizes FWCC to adopt specified rules for vessel safety inspection decals. Effective Date: July 1, 2018 1/18/2018 HOUSE Placed on Calendar, on 2nd reading	
<u>HB 963</u>	Towing and Immobilizing Fees and Charges	Cortes (B)
	Towing and Immobilizing Fees and Charges: Establishes maximum rate that local governments may charge to immobilize vehicles or vessels; defines "immobilize"; prohibits local governments from enacting certain ordinances or rules that impose fees or charges on specified entities; provides exceptions; prohibits local governments from imposing charges on certain entities related to vehicles or vessels; provides exception; authorizes certain persons to place liens on vehicles or vessels to recover specified fees or charges. Effective Date: July 1, 2018 2/8/2018 HOUSE Placed on Calendar, on 2nd reading	
<u>SB 992</u>	C-51 Reservoir Project	Book
	C-51 Reservoir Project; Revising requirements related to the operation of water storage and use for Phase I and Phase II of the C-51 reservoir project if state funds are appropriated for such phases; authorizing the South Florida Water Management District to enter into certain capacity allocation agreements and to request a waiver for repayment of certain loans; authorizing the Department of Environmental Protection to waive such loan repayment under certain conditions, etc. Effective Date: 7/1/2018 2/9/2018 SENATE On Committee agenda - Appropriations Subcommittee on the Environment and Natural Resources, 02/14/18, 1:30 pm, 301 S	
<u>SB 1132</u>	Vessel Safety Inspection Decals	Hutson
	Vessel Safety Inspection Decals; Providing rulemaking authority to the Fish and Wildlife Conservation Commission regarding expiration and design of safety inspection decals, etc. Effective Date: 7/1/2018 1/29/2018 SENATE Now in Appropriations	
<u>HB 1149</u>	Environmental Regulation	Payne
	Environmental Regulation: Provides examples of reclaimed water use that may create impact offset; revises required provisions of water resource implementation rule; requires DEP & water management districts to develop & enter into certain memorandum of agreement; requires counties & municipalities to address contamination of recyclable material in specified contracts; prohibits counties & municipalities from requiring certain collection & transport of contaminated recyclable material; requires specified provisions in contracts between residential recycling collectors & materials recovery facilities & counties & municipalities; provides that local government may not require further verification from department for certain projects; revises types of dock & pier replacements & repairs that are exempt from such verification & certain permitting requirements. Effective Date: upon becoming a law 2/6/2018 HOUSE Now in Government Accountability Committee	
<u>HB 1151</u>	Developments of Regional Impact	La Rosa
	Developments of Regional Impact: Repeals, creates, and revises provisions for statewide guidelines, standards, &	

requirements for developments of regional impact relating to authorizations to develop; applications for approval of development; concurrent plan amendments; preapplication procedures; preliminary development agreements; conceptual agency reviews; local notice & regional reports; developments inside & outside areas of critical state concern; local government development orders; construction of mitigation facilities; impact fee & exaction credits; comprehensive development applications & master plan development orders; abandonment of developments; dense urban land area exemptions; Florida Quality Developments & Quality Developments Review Board; Administration Commission guidelines & standards; state land planning agency agreements; Florida Land & Water Adjudicatory Commission requirements; local government permit approvals & extensions, reviews & certifications; uniform reviews of developments by state land planning agency & regional planning agencies. Effective Date: upon becoming a law 2/8/2018 HOUSE Favorable with CS by Commerce Committee; 26 Yeas, 0 Nays

<u>SB 1188</u>	The Strategic Intermodal System	Rouson
	Strategic Intermodal System; Specifying that the Strategic Intermodal System and the Emerging Strategic Intermodal System include existing or planned corridors that are managed lanes of transit, etc. Effective Date: 7/1/2018 2/8/2018 SENATE On Committee agenda - Transportation, 02/13/18, 2:00 pm, 401 S	
<u>HB 1211</u>	Airboat Regulation	Abruzzo
	Airboat Regulation: Requires commercial airboat operator to have specified documents onboard; provides exception & penalty. Effective Date: upon becoming a law 2/5/2018 HOUSE Now in Government Accountability Committee	
<u>HB 1223</u>	Background Screening	McGhee
	Background Screening: Prohibits employers from excluding applicants from initial interviews for employment under certain conditions; provides applicability & exceptions; requires DEO to enforce act. Effective Date: July 1, 2018 1/12/2018 HOUSE Now in Careers & Competition Subcommittee	
<u>SB 1244</u>	Growth Management	Lee (T)
	Growth Management; Adding a minimum population standard as a criteria that must be met before qualified electors of an independent special district commence a certain municipal conversion proceeding; revising the statewide guidelines and standards for developments of regional impact; specifying that amendments to a development order for an approved development may not alter the dates before which a development would be subject to downzoning, unit density reduction, or intensity reduction, except under certain conditions; requiring local governments to file a notice of abandonment under certain conditions, etc. Effective Date: Upon becoming a law 2/9/2018 SENATE Now in Appropriations	
<u>HB 1277</u>	Strategic Intermodal System	Willhite
	Strategic Intermodal System: Specifies that Strategic Intermodal System & Emerging Strategic Intermodal System include existing or planned corridors that are managed lanes of transit. Effective Date: July 1, 2018 1/12/2018 HOUSE Now in Transportation & Infrastructure Subcommittee	
<u>SB 1308</u>	Environmental Regulation	Perry
	Environmental Regulation; Revising the required provisions of the water resource implementation rule; requiring the Department of Environmental Protection and the water management districts to develop and enter into a memorandum of agreement providing for a coordinated review of any reclaimed water project requiring a reclaimed water facility permit, an underground injection control permit, and a consumptive use permit; requiring counties and municipalities to address contamination of recyclable material in specified contracts; prohibiting counties and municipalities from requiring the collection or transport of contaminated recyclable material by residential recycling collectors, etc. Effective Date: Upon becoming a law 2/8/2018 SENATE On Committee agenda - Community Affairs, 02/13/18, 10:00 am, 301 S	
<u>HB 1353</u>	Land Acquisition Trust Fund	Beshears
	Land Acquisition Trust Fund: Requires specified annual appropriation to Florida Forever Trust Fund. Effective Date: July 1, 2018 1/12/2018 HOUSE Now in Agriculture & Natural Resources Appropriations Subcommittee	
<u>SB 1402</u>	State Assumption of Federal Section 404 Dredge and Fill Permitting Authority	Simmons
	State Assumption of Federal Section 404 Dredge and Fill Permitting Authority; Defining the term "state assumed waters"; providing the Department of Environmental Protection with the power and authority to adopt rules to assume and implement the section 404 dredge and fill permitting program pursuant to the federal Clean Water Act; requiring the department to adopt rules to create an expedited permit review process, etc. Effective Date: Upon becoming a law 2/9/2018 SENATE On Committee agenda - Appropriations Subcommittee on the Environment and Natural Resources, 02/14/18, 1:30 pm, 301 S	
<u>SB 1612</u>	Airboat Regulation	Rader
	Airboat Regulation; Citing this act as "Ellie's Law"; requiring, by a specified date, a commercial airboat operator to have specified documents on board the airboat while carrying passengers for hire; providing a penalty for violation of airboat operation requirements, etc. Effective Date: Upon becoming a law 2/9/2018 SENATE On Committee agenda - Appropriations Subcommittee on the Environment and Natural Resources, 02/14/18, 1:30 pm, 301 S	

<u>SB 1632</u>	Towing and Immobilization Fees and Charges	Mayfield
	Towing and Immobilization Fees and Charges; Expanding the application of certain provisions related to ordinances and rules imposing price controls to include the towing or immobilization of vessels; prohibiting counties and municipalities from imposing charges, costs, expenses, fines, fees, or penalties on registered owners, other legally authorized persons in control, or lienholders of vehicles or vessels under certain conditions, etc. Effective Date: 7/1/2018 2/6/2018 SENATE Now in Rules	
<u>SB 1714</u>	Economic Development and Tourism Promotion Accountability	Perry
	Economic Development and Tourism Promotion Accountability; Authorizing the Auditor General to audit certain accounts and records; requiring the Auditor General to conduct certain audits and report to certain persons if certain violations are found; requiring the governing board of a county to review certain proposed contracts and certifications relating to potential conflicts of interest and mitigation plans, etc. Effective Date: 10/1/2018 2/1/2018 SENATE Now in Appropriations Subcommittee on Transportation, Tourism, and Economic Development	
<u>HB 3655</u>	Pinellas County Orphan Vessel Grounding Restoration	Peters
	Pinellas County Orphan Vessel Grounding Restoration: Provides an appropriation for the Pinellas County Orphan Vessel Grounding Restoration. APPROPRIATION: \$604,735.00 Effective Date: July 1, 2018 12/5/2017 HOUSE Now in Agriculture & Natural Resources Appropriations Subcommittee	
<u>HB 4359</u>	Monroe County Mobile Vessel Pumpout Service	Raschein
	Monroe County Mobile Vessel Pumpout Service: Provides an appropriation for the Monroe County Mobile Vessel Pumpout Service. APPROPRIATION: \$500,000.00 Effective Date: July 1, 2018 1/19/2018 HOUSE Now in Appropriations Committee	
<u>HB 7009</u>	Workers' Compensation	Commerce Committee
	Workers' Compensation: Requires panel to annually adopt statewide workers' compensation schedules of maximum reimbursement allowances; extends timeframes in which employees may receive certain workers' compensation benefits & in which carrier must notify treating doctor of certain requirements; revises provisions relating to retainer agreements & awarding attorney fees. Effective Date: July 1, 2018 1/31/2018 SENATE Referred to Banking and Insurance; Appropriations; Rules	
<u>HB 7043</u>	State Assumption of Federal Section 404 Dredge and Fill Permitting Authority	Natural Resources & Public Lands Subcommittee
	State Assumption of Federal Section 404 Dredge and Fill Permitting Authority: Provides DEP, upon approval of U.S. Environmental Protection Agency, with power & authority to adopt rules to assume & implement permitting program pursuant to federal Clean Water Act for dredge & fill activities in certain state waters; provides applicability of state laws, exemptions, & administrative procedures; provides permit requirements; provides for delegation of certain activities. Effective Date: upon becoming a law 2/8/2018 HOUSE Placed on Calendar, on 2nd reading	
<u>HB 7063</u>	Natural Resources	Government Accountability Committee
	Natural Resources; Revises, creates, & repeals various provisions relating to acquisition, management, & disposition of conservation lands; water supply facilities, public water systems, & domestic wastewater systems; water resource development & capital improvement projects; distribution & use of funds from Florida Forever Trust Fund & Land Acquisition Trust Fund; rural-lands-protection easement programs; reservoir projects; & beneficial use of stormwater resulting from road construction; provides statement of important state interest. APPROPRIATION: Indeterminate Effective Date: 7/1/2018. 2/6/2018 HOUSE Favorable with CS by Agriculture & Natural Resources Appropriations Subcommittee; 13 Yeas, 0 Nays	
<u>NRPL2</u>	State assumption of federal section 404 dredge and fill permitting authority	Natural Resources & Public Lands Subcommittee
	PCB NRPL 18-02 -- State assumption of federal section 404 dredge and fill permitting authority. This act shall take effect upon becoming a law 1/18/2018 HOUSE Committee Bill Filed as H 7043	