

Tab 11	SB 702 by Simon (CO-INTRODUCERS) Trumbull ; (Identical to H 00407) Apalachicola Bay Area of Critical State Concern					
Tab 12	SB 742 by Grall (CO-INTRODUCERS) Hooper ; (Similar to CS/CS/H 00713) Administrative Procedures					
914922	D	S	RCS	EN, Grall	Delete everything after	03/27 01:36 PM
Tab 13	SB 1018 by Trumbull ; (Identical to H 00859) Flood Damage Prevention					
Tab 14	CS/SB 1258 by TR, Trumbull (CO-INTRODUCERS) Burgess, Gruters, Ingoglia ; (Identical to CS/H 01191) Use of Phosphogypsum					
Tab 15	SB 1134 by Gruters ; (Identical to H 01505) Outstanding Florida Springs					
Tab 16	SJR 1234 by Brodeur ; (Similar to CS/H 01157) Hunting and Fishing					
841044	D	S L	RCS	EN, Brodeur	Delete everything after	03/27 01:36 PM
Tab 17	SB 1420 by Rodriguez ; (Similar to H 00661) Sanitary Sewer Lateral Inspection Programs					
Tab 18	SB 1502 by Rodriguez ; (Identical to H 01385) Vessel Owner and Operation Requirements					
843964	A	S	WD	EN, Rodriguez	Delete L.24 - 67:	03/24 02:35 PM
Tab 19	SB 1686 by Wright ; (Similar to CS/H 01489) Designation of Brevard Barrier Island Area as an Area of Critical State Concern					
142928	A	S	RCS	EN, Wright	Delete L.67 - 85:	03/27 01:36 PM

The Florida Senate
COMMITTEE MEETING EXPANDED AGENDA

ENVIRONMENT AND NATURAL RESOURCES

Senator Rodriguez, Chair

Senator Harrell, Vice Chair

MEETING DATE: Monday, March 27, 2023

TIME: 11:30 a.m.—2:30 p.m.

PLACE: 301 Senate Building

MEMBERS: Senator Rodriguez, Chair; Senator Harrell, Vice Chair; Senators Albritton, Martin, Mayfield, Polsky, Powell, Stewart, and Wright

TAB	OFFICE and APPOINTMENT (HOME CITY)	FOR TERM ENDING	COMMITTEE ACTION
Senate Confirmation Hearing: A public hearing will be held for consideration of the below-named executive appointments to the offices indicated.			
Secretary of Environmental Protection			
1	Hamilton, Emile DeShawn (Tallahassee)	Pleasure of Governor	Recommend Confirm Yeas 9 Nays 0
Fish and Wildlife Conservation Commission			
2	Hudson, Steven W. (Fort Lauderdale)	08/01/2027	Recommend Confirm Yeas 9 Nays 0
3	Rood, Sonya A. (St. Augustine)	01/06/2027	Recommend Confirm Yeas 9 Nays 0
4	Nicklaus, Gary T. (Tequesta)	08/01/2027	Recommend Confirm Yeas 9 Nays 0
5	Maury, Albert R. (Coral Gables)	08/01/2026	Recommend Confirm Yeas 9 Nays 0
6	Lester, Gary L. (Oxford)	08/01/2027	Recommend Confirm Yeas 9 Nays 0
Governing Board of the Southwest Florida Water Management District			
7	Armstrong, Elijah D. III (Dunedin)	03/01/2026	Recommend Confirm Yeas 9 Nays 0
8	Stern, Robert Gary (Tampa)	03/01/2026	Recommend Confirm Yeas 9 Nays 0
9	Rowland, Dustin (Dade City)	03/01/2027	Recommend Confirm Yeas 9 Nays 0
10	Holton, James W. (St. Petersburg)	03/01/2026	Recommend Confirm Yeas 9 Nays 0

COMMITTEE MEETING EXPANDED AGENDA

Environment and Natural Resources

Monday, March 27, 2023, 11:30 a.m.—2:30 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
11	SB 702 Simon (Identical H 407)	Apalachicola Bay Area of Critical State Concern; Authorizing the Department of Environmental Protection to expend certain funds for the purpose of entering into financial assistance agreements with the City of Apalachicola for specified surface water and groundwater quality improvement projects within the Apalachicola Bay Area of Critical State Concern; providing for expiration of the authorization, etc. EN 03/27/2023 Favorable AEG FP	Favorable Yeas 9 Nays 0
12	SB 742 Grall (Similar CS/H 713)	Administrative Procedures; Applying certain provisions applicable to all rules other than emergency rules to repromulgated rules; requiring that a notice of withdrawal be published in the next available issue of the Florida Administrative Register if a notice of proposed rule is not filed within a certain timeframe; requiring an agency to provide a copy of a proposal for a lower cost regulatory alternative to the committee within a certain timeframe; requiring agency review of rules and repromulgation of rules that do not require substantive changes within a specified timeframe; requiring the Department of Environmental Protection and water management districts to conduct a holistic review of certain permitting processes, etc. GO 03/15/2023 Favorable EN 03/27/2023 Fav/CS FP	Fav/CS Yeas 9 Nays 0
13	SB 1018 Trumbull (Identical H 859)	Flood Damage Prevention; Citing this act as the "Flood Damage Prevention Act of 2023"; providing voluntary freeboard requirements for all new construction and substantial improvements to existing construction; prohibiting voluntary freeboard from being used in the calculation of the maximum allowable height for certain construction in applicable zoning districts; authorizing local governments to adopt by ordinance a minimum freeboard requirement or a maximum voluntary freeboard that exceeds the minimum requirements in the Florida Building Code or established in the act, etc. CA 03/15/2023 Favorable EN 03/27/2023 Favorable RC	Favorable Yeas 9 Nays 0

COMMITTEE MEETING EXPANDED AGENDA

Environment and Natural Resources

Monday, March 27, 2023, 11:30 a.m.—2:30 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
14	CS/SB 1258 Transportation / Trumbull (Identical CS/H 1191)	Use of Phosphogypsum; Authorizing the Department of Transportation to undertake demonstration projects using phosphogypsum in road construction aggregate material to determine its feasibility as a paving material; requiring the department to conduct a study on the suitability of using phosphogypsum as a construction aggregate material; prohibiting phosphogypsum from being regulated as solid waste if used in accordance with an allowed use under specified federal regulations and approvals, etc. TR 03/20/2023 Fav/CS EN 03/27/2023 Favorable FP	Favorable Yeas 9 Nays 0
15	SB 1134 Gruters (Identical H 1505)	Outstanding Florida Springs; Designating Warm Mineral Springs as an Outstanding Florida Spring, etc. EN 03/27/2023 Temporarily Postponed CA RC	Temporarily Postponed
16	SJR 1234 Brodeur (Identical HJR 1157)	Hunting and Fishing; Proposing the creation of Section 28 of Article I of the State Constitution to preserve in perpetuity hunting and fishing as a public right, etc. EN 03/27/2023 Fav/CS JU RC	Fav/CS Yeas 8 Nays 1
17	SB 1420 Rodriguez (Similar H 661)	Sanitary Sewer Lateral Inspection Programs; Authorizing counties and municipalities, respectively, to access sanitary sewer laterals within their jurisdictions for specified purposes; requiring counties and municipalities to notify private property owners within a specified timeframe if the county or municipality intends to access the owner's sanitary sewer lateral; specifying requirements for counties and municipalities repair work; authorizing a program established by a county or a municipality to evaluate and rehabilitate sanitary sewer laterals on residential and commercial properties to use state or local funds allocated for environmental preservation or the protection of water quality, etc. EN 03/27/2023 Favorable CA FP	Favorable Yeas 9 Nays 0

COMMITTEE MEETING EXPANDED AGENDA

Environment and Natural Resources

Monday, March 27, 2023, 11:30 a.m.—2:30 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
18	SB 1502 Rodriguez (Identical H 1385)	Vessel Owner and Operation Requirements; Revising anchoring limitation areas in certain sections of Biscayne Bay in Miami-Dade County; revising the timeframe during which a person may anchor a vessel in an anchoring limitation area within which such anchoring would otherwise be unlawful; requiring law enforcement officers to conduct national criminal background checks for vessel owners who are issued citations for specified violations, etc. EN 03/27/2023 Favorable AEG FP	Favorable Yeas 9 Nays 0
19	SB 1686 Wright (Similar CS/H 1489)	Designation of Brevard Barrier Island Area as an Area of Critical State Concern; Creating the "Brevard Barrier Island Area Protection Act"; designating the Brevard Barrier Island Area as an area of critical state concern; providing guiding principles for development within the area; providing for removal of the designation, etc. EN 03/27/2023 Fav/CS CA RC	Fav/CS Yeas 9 Nays 0

Other Related Meeting Documents

780

**STATE OF FLORIDA
DEPARTMENT OF STATE
Division of Elections**

I, Cord Byrd, Secretary of State,
do hereby certify that

Emile DeShawn Hamilton

is duly appointed

Secretary,

Department of Environmental Protection

for a term beginning on the Third day of January, A.D., 2023, to
serve at the pleasure of the Governor and is subject to be
confirmed by the Senate during the next regular session of the
Legislature.

*Given under my hand and the Great Seal of the
State of Florida, at Tallahassee, the Capital, this
the Seventh day of February, A.D., 2023*



Secretary of State



RON DeSANTIS
GOVERNOR

RECEIVED
DEPARTMENT OF STATE
2023 JAN 20 AM 10:02
DIVISION OF ELECTIONS
TALLAHASSEE, FL

January 3, 2023

Secretary Cord Byrd
Department of State
R.A. Gray Building, Room 316
500 South Bronough Street
Tallahassee, Florida 32399-0250

Dear Secretary Byrd:

Please be advised I have made the following reappointment under the provisions of Section 20.255, Florida Statutes:

Mr. Emile D. Hamilton
2801 Chancellorsville Drive
Unit 1426
Tallahassee, Florida 32312

as Secretary of the Florida Department of Environmental Protection, subject to confirmation by the Senate. This appointment is effective January 3, 2023, for a term ending at the pleasure of the Governor.

Sincerely,

A handwritten signature in black ink, appearing to be "Ron DeSantis", written over a horizontal line.

Ron DeSantis
Governor

RD/ch

OATH OF OFFICE

(Art. II, § 5(b), Fla. Const.)

RECEIVED
DEPARTMENT OF STATE

2023 FEB -3 PM 12:47

STATE OF FLORIDA

County of Leon

DIVISION OF ELECTIONS
TALLAHASSEE, FL

I do solemnly swear (or affirm) that I will support, protect, and defend the Constitution and Government of the United States and of the State of Florida; that I am duly qualified to hold office under the Constitution of the State, and that I will well and faithfully perform the duties of

Secretary, Florida Department of Environmental Protection

(Title of Office)

on which I am now about to enter, so help me God.

[NOTE: If you affirm, you may omit the words "so help me God." See § 92.52, Fla. Stat.]

Elia D. Denson
Signature

Sworn to and subscribed before me by means of ☒ physical presence or
online notarization, this 31 day of January, 2023.

Victoria Lyn Denson

Signature of Officer Administering Oath or of Notary Public

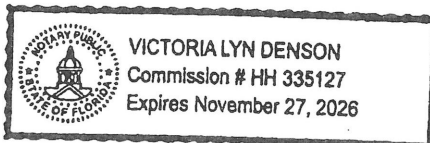
Victoria Lyn Denson

Print, Type, or Stamp Commissioned Name of Notary Public

Personally Known ☒ OR

Produced Identification ☐

Type of Identification Produced _____



ACCEPTANCE

I accept the office listed in the above Oath of Office.

Mailing Address: ☐ Home ☒ Office

3900 Commonwealth Blvd.

Street or Post Office Box

Tallahassee, Florida 32399

City, State, Zip Code

Emile DeShawn Hamilton

Print Name

Emile D. Hamilton
Signature

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

3/27

Meeting Date

Bill Number (if applicable)

Topic Secretary Shawn Hamilton Confirmation

Name Andrew Ketchel

Amendment Barcode (if applicable)

Job Title Consultant

Address 124 W Jefferson Street

Phone _____

City

State

Zip

Email _____

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Everglades Trust

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

3/27/23

Meeting Date

Bill Number (if applicable)

Topic Confirmation

Amendment Barcode (if applicable)

Name Shawn Hamilton

Job Title Secretary

Address 3900 Commonwealth Blvd
Street

Phone

City

State

Zip

Email

Speaking: ☐ For ☐ Against ☒ Information

Waive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Representing FL Dept of Environmental Protection

Appearing at request of Chair: ☒ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

The Florida Senate

APPEARANCE RECORD

Deliver both copies of this form to
Senate professional staff conducting the meeting

3/27/2023

Meeting Date

Environment and Natural Resources

Committee

Appointment of Secretary Hamilton

Bill Number or Topic

Amendment Barcode (if applicable)

Name Garrett Wallace

Phone 850-727-5000

Address 115 East Park Ave

Email Garrett.wallace@TNC.org

Street

Tallahassee

FL

32301

City

State

Zip

Speaking: ☐ For ☐ Against ☐ Information

OR

Waive Speaking: ☒ In Support ☐ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without
compensation or sponsorship.

☒ I am a registered lobbyist,
representing:
The Nature Conservancy

☐ I am not a lobbyist, but received
something of value for my appearance
(travel, meals, lodging, etc.),
sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf \(flsenate.gov\)](#)

This form is part of the public record for this meeting.

S-001 (08/10/2021)

THE FLORIDA SENATE

COMMITTEE WITNESS OATH

CHAIR:

Please raise your right hand and be sworn in as a witness.

Do you swear or affirm that the evidence you are about to give will be the truth, the whole truth, and nothing but the truth?

WITNESS'S NAME: Emile DeShawn Hamilton

ANSWER: I Do

Pursuant to §90.605(1), *Florida Statutes*: "The witness's answer shall be noted in the record."

COMMITTEE NAME: Environment and Natural Resources

DATE: March 27, 2023

850

**STATE OF FLORIDA
DEPARTMENT OF STATE**

Division of Elections

I, Cord Byrd, Secretary of State,
do hereby certify that

Steven W. Hudson

is duly appointed a member of the

Fish and Wildlife Conservation Commission

for a term beginning on the Second day of August, A.D., 2022,
until the First day of August, A.D., 2027 and is subject to be
confirmed by the Senate during the next regular session of the
Legislature.

*Given under my hand and the Great Seal of the
State of Florida, at Tallahassee, the Capital, this
the Sixth day of October, A.D., 2022.*



Secretary of State

If photocopied or chemically altered, the word "VOID" will appear.

"State of Florida" appears in small letters across the face of this 8 1/2 x 11" document.



RON DeSANTIS
GOVERNOR

RECEIVED

2022 AUG -2 AM 9:31

DIVISION OF ELECTIONS
TALLAHASSEE, FL

July 29, 2022

Secretary Cord Byrd
Department of State
R.A. Gray Building, Room 316
500 South Bronough Street
Tallahassee, Florida 32399-0250

Dear Secretary Byrd:

Please be advised I have made the following reappointment under the provisions of Section 379.102, Florida Statutes:

Mr. Steven Hudson
1799 Southeast 9th Street
Fort Lauderdale, Florida 33316

as a member of the Florida Fish and Wildlife Conservation Commission, subject to confirmation by the Senate. This appointment is effective August 2, 2022, for a term ending August 1, 2027.

Sincerely,

A handwritten signature in black ink, appearing to read "Ron DeSantis".

Ron DeSantis
Governor

RD/ch

HAND DELIVERED

OATH OF OFFICE

(Art. II, § 5(b), Fla. Const.)

RECEIVED

STATE OF FLORIDA

County of Broward

2022 SEP 30 AM 11:15

DIVISION OF ELECTIONS
TALLAHASSEE, FL

I do solemnly swear (or affirm) that I will support, protect, and defend the Constitution and Government of the United States and of the State of Florida; that I am duly qualified to hold office under the Constitution of the State, and that I will well and faithfully perform the duties of

Florida Fish and Wildlife Conservation Commission

(Title of Office)

on which I am now about to enter, so help me God.

[NOTE: If you affirm, you may omit the words "so help me God." See § 92.52, Fla. Stat.]

[Signature]
Signature

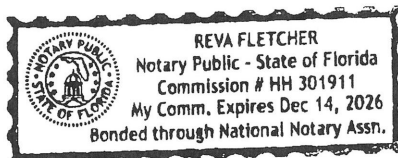
Sworn to and subscribed before me by means of ☒ physical presence or
online notarization, this 21st day of Sept, 2022

Reva Fletcher
Signature of Officer Administering Oath or of Notary Public

Reva Fletcher
Print, Type, or Stamp Commissioned Name of Notary Public

Personally Known ☒ OR Produced Identification ☐

Type of Identification Produced _____



ACCEPTANCE

I accept the office listed in the above Oath of Office.

Mailing Address: ☒ Home ☐ Office

1799 SE 9th Street

Street or Post Office Box

Fort Lauderdale, FL 33316

City, State, Zip Code

Steven W. Hudson

Print Name

[Signature]
Signature

**STATE OF FLORIDA
DEPARTMENT OF STATE
Division of Elections**

I, Cord Byrd, Secretary of State,
do hereby certify that

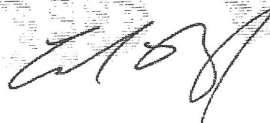
Sonya A. Rood

is duly appointed a member of the

Fish and Wildlife Conservation Commission

for a term beginning on the Twentieth day of May, A.D., 2022,
until the Sixth day of January, A.D., 2027 and is subject to be
confirmed by the Senate during the next regular session of the
Legislature.

*Given under my hand and the Great Seal of the
State of Florida, at Tallahassee, the Capital, this
the Twenty-Ninth day of July, A.D., 2022.*



Secretary of State



RON DeSANTIS
GOVERNOR

RECEIVED

2022 MAY 25 AM 10:47

OFFICE OF ELECTIONS
TALLAHASSEE, FL

May 20, 2022

Secretary Laurel M. Lee
Department of State
R.A. Gray Building, Room 316
500 South Bronough Street
Tallahassee, Florida 32399-0250

Dear Secretary Lee:

Please be advised I have made the following appointment under the provisions of Section 379.102, Florida Statutes:

Mrs. Sonya Rood
153 Catherine Towers Lane
Saint Augustine, Florida 32092

as a member of the Florida Fish and Wildlife Conservation Commission, subject to confirmation by the Senate. This appointment is effective May 20, 2022, for a term ending January 6, 2027.

Sincerely,

A handwritten signature in black ink, appearing to read "Ron DeSantis".

Ron DeSantis
Governor

RD/nb

OATH OF OFFICE

(Art. II, § 5(b), Fla. Const.)

RECEIVED

STATE OF FLORIDA

County of Duval

2022 JUL 26 AM 10:34

DIVISION OF ELECTIONS
TALLAHASSEE, FL

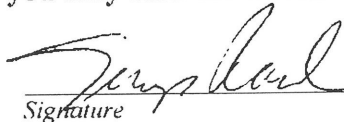
I do solemnly swear (or affirm) that I will support, protect, and defend the Constitution and Government of the United States and of the State of Florida; that I am duly qualified to hold office under the Constitution of the State, and that I will well and faithfully perform the duties of

The Fish and Wildlife Conservation Commission

(Title of Office)

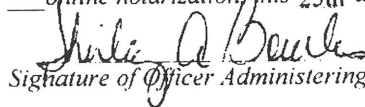
on which I am now about to enter, so help me God.

[NOTE: If you affirm, you may omit the words "so help me God." See § 92.52, Fla. Stat.]



Signature

Sworn to and subscribed before me by means of ☒ physical presence or
☐ online notarization, this 25th day of July, 2022.



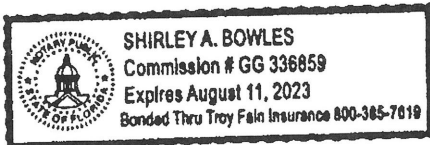
Signature of Officer Administering Oath or of Notary Public

Shirley A. Bowles

Print, Type, or Stamp Commissioned Name of Notary Public

Personally Known ☒ OR Produced Identification ☐

Type of Identification Produced _____



ACCEPTANCE

I accept the office listed in the above Oath of Office.

Mailing Address: ☒ Home ☐ Office

153 Catherine Towers Lane

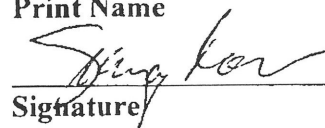
Street or Post Office Box

St. Augustine, FL 32092

City, State, Zip Code

Sonya A. Rood

Print Name



Signature

850

**STATE OF FLORIDA
DEPARTMENT OF STATE**

Division of Elections

I, Cord Byrd, Secretary of State,
do hereby certify that

Gary T. Nicklaus

is duly appointed a member of the

Fish and Wildlife Conservation Commission

for a term beginning on the Second day of August, A.D., 2022,
until the First day of August, A.D., 2027 and is subject to be
confirmed by the Senate during the next regular session of the
Legislature.

*Given under my hand and the Great Seal of the
State of Florida, at Tallahassee, the Capital, this
the Sixth day of October, A.D., 2022.*



Secretary of State

If photocopied or chemically altered, the word "VOID" will appear.

"State of Florida" appears in small letters across the face of this 8 1/2 x 11" document.



RON DeSANTIS
GOVERNOR

RECEIVED

2022 AUG -2 AM 9:31

DIVISION OF ELECTIONS
TALLAHASSEE, FL

July 29, 2022

Secretary Cord Byrd
Department of State
R.A. Gray Building, Room 316
500 South Bronough Street
Tallahassee, Florida 32399-0250

Dear Secretary Byrd:

Please be advised I have made the following appointment under the provisions of Section 379.102, Florida Statutes:

Mr. Gary Nicklaus
17561 Southeast Conch Bar Avenue
Jupiter, Florida 33469

as a member of the Florida Fish and Wildlife Conservation Commission, subject to confirmation by the Senate. This appointment is effective August 2, 2022, for a term ending August 1, 2027.

Sincerely,

A handwritten signature in black ink, appearing to be "R. DeSantis", written over a horizontal line.

Ron DeSantis
Governor

RD/ch

HAND DELIVERED

OATH OF OFFICE RECEIVED

(Art. II, § 5(b), Fla. Const.)

STATE OF FLORIDA

County of Palm Beach

2022 SEP 30 AM 11:16

DIVISION OF ELECTIONS
TALLAHASSEE, FL

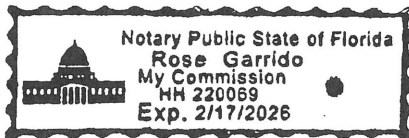
I do solemnly swear (or affirm) that I will support, protect, and defend the Constitution and Government of the United States and of the State of Florida; that I am duly qualified to hold office under the Constitution of the State, and that I will well and faithfully perform the duties of

Fish and Wildlife Conservation Commission

(Title of Office)

on which I am now about to enter, so help me God.

[NOTE: If you affirm, you may omit the words "so help me God." See § 92.52, Fla. Stat.]



Signature

Sworn to and subscribed before me this 14th day of SEPTEMBER, 2022

Signature of Officer Administering Oath or of Notary Public

ROSE GARRIDO

Print, Type, or Stamp Commissioned Name of Notary Public

Personally Known ☒ OR

Produced Identification ☐

Type of Identification Produced _____

ACCEPTANCE

I accept the office listed in the above Oath of Office.

Mailing Address: ☒ Home ☐ Office

17561 SE CONCK BAR AVE

Street or Post Office Box

TEQUESTA, FL 33469

City, State, Zip Code

GARY T. NICKLAUS

Print name as you desire commission issued

Signature

850

A black and white copy of this document is not official

**STATE OF FLORIDA
DEPARTMENT OF STATE**

Division of Elections

I, Laurel M. Lee, Secretary of State,
do hereby certify that

Albert R. Maury

is duly appointed a member of the

Fish and Wildlife Conservation Commission

for a term beginning on the Fourteenth day of April, A.D., 2022,
until the First day of August, A.D., 2026 and is subject to be
confirmed by the Senate during the next regular session of the
Legislature.

*Given under my hand and the Great Seal of the
State of Florida, at Tallahassee, the Capital, this
the Fourth day of May, A.D., 2022.*

Laurel M. Lee

Secretary of State

If photocopied or chemically altered, the word "VOID" will appear.

State of Florida appears in small letters across the face of this 8 1/2 x 11 document.



RON DESANTIS
GOVERNOR

RECEIVED

2022 APR 18 AM 10:02

OFFICE OF THE GOVERNOR
TALLAHASSEE, FL

April 14, 2022

Secretary Laurel M. Lee
Department of State
R.A. Gray Building, Room 316
500 South Bronough Street
Tallahassee, Florida 32399-0250

Dear Secretary Lee:

Please be advised I have made the following appointment under the provisions of Section 379.102, Florida Statutes:

Mr. Albert Maury
8600 Northwest 41st Street
Doral, Florida 33166

as a member of the Florida Fish and Wildlife Conservation Commission, succeeding Michael Sole, subject to confirmation by the Senate. This appointment is effective April 14, 2022, for a term ending August 1, 2026.

Sincerely,

A handwritten signature in black ink, appearing to read "Ron DeSantis".

Ron DeSantis
Governor

RD/ch

OATH OF OFFICE

(Art. II, § 5(b), Fla. Const.)

RECEIVED

STATE OF FLORIDA

County of Miami Dade

2022 APR 29 AM 8:53

DIVISION OF ELECTIONS
TALLAHASSEE, FL

I do solemnly swear (or affirm) that I will support, protect, and defend the Constitution and Government of the United States and of the State of Florida; that I am duly qualified to hold office under the Constitution of the State, and that I will well and faithfully perform the duties of

Florida Fish and Wildlife Conservation Commission - Commissioner

(Title of Office)

on which I am now about to enter, so help me God.

[NOTE: If you affirm, you may omit the words "so help me God." See § 92.52, Fla. Stat.]

Signature

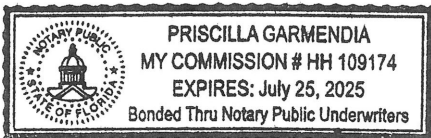
Sworn to and subscribed before me by means of ☒ physical presence or
online notarization, this 28 day of April, 2022

Signature of Officer Administering Oath or of Notary Public

Priscilla Garmendia
Print, Type, or Stamp Commissioned Name of Notary Public

Personally Known ☒ OR Produced Identification ☐

Type of Identification Produced _____



ACCEPTANCE

I accept the office listed in the above Oath of Office.

Mailing Address: ☐ Home ☒ Office

8600 NW 41 Street

Street or Post Office Box

Doral, FL 33166

City, State, Zip Code

Print Name

Signature

Albert R. Maury

850

**STATE OF FLORIDA
DEPARTMENT OF STATE**

Division of Elections

I, Cord Byrd, Secretary of State,
do hereby certify that

Gary L. Lester

is duly appointed a member of the

Fish and Wildlife Conservation Commission

for a term beginning on the Second day of August, A.D., 2022,
until the First day of August, A.D., 2027 and is subject to be
confirmed by the Senate during the next regular session of the
Legislature.

*Given under my hand and the Great Seal of the
State of Florida, at Tallahassee, the Capital, this
the Twenty-Ninth day of August, A.D., 2022.*



Secretary of State



RON DESANTIS
GOVERNOR

RECEIVED

2022 AUG -2 AM 9:31

DIVISION OF ELECTIONS
TALLAHASSEE, FL

July 29, 2022

Secretary Cord Byrd
Department of State
R.A. Gray Building, Room 316
500 South Bronough Street
Tallahassee, Florida 32399-0250

Dear Secretary Byrd:

Please be advised I have made the following appointment under the provisions of Section 379.102, Florida Statutes:

Mr. Gary Lester
8151 Southeast 180th Street
Oxford, Florida 34484

as a member of the Florida Fish and Wildlife Conservation Commission, subject to confirmation by the Senate. This appointment is effective August 2, 2022, for a term ending August 1, 2027.

Sincerely,

A handwritten signature in black ink, appearing to read "Ron DeSantis".

Ron DeSantis
Governor

RD/ch

OATH OF OFFICE

(Art. II, § 5(b), Fla. Const.)

RECEIVED
DEPARTMENT OF STATE

2022 AUG 18 AM 10:24

DIVISION OF ELECTIONS
TALLAHASSEE, FL

STATE OF FLORIDA

County of Sumter

I do solemnly swear (or affirm) that I will support, protect, and defend the Constitution and Government of the United States and of the State of Florida; that I am duly qualified to hold office under the Constitution of the State, and that I will well and faithfully perform the duties of

the Fish and Wildlife Conservation Commission

(Title of Office)

on which I am now about to enter, so help me God.

[NOTE: If you affirm, you may omit the words "so help me God." See § 92.52, Fla. Stat.]

[Signature]
Signature

Sworn to and subscribed before me by means of ☒ physical presence or
online notarization, this 17th day of August, 2022

Laurie B. Mark
Signature of Officer Administering Oath or of Notary Public

Laurie B. Mark
Print, Type, or Stamp Commissioned Name of Notary Public

Personally Known ☒ OR Produced Identification ☐

Type of Identification Produced



ACCEPTANCE

I accept the office listed in the above Oath of Office.

Mailing Address: ☐ Home ☒ Office

3619 Kiessel Rd.
Street or Post Office Box

The Villages, Florida 32163
City, State, Zip Code

Gary L. Lester
Print Name

[Signature]
Signature

STATE OF FLORIDA
DEPARTMENT OF STATE
Division of Elections

I, Cord Byrd, Secretary of State,
do hereby certify that

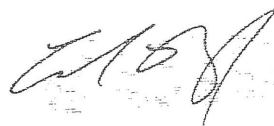
Ed Armstrong, III

is duly appointed a member of the

Governing Board,
Southwest Florida Water Management
District

for a term beginning on the Third day of June, A.D., 2022, until
the First day of March, A.D., 2026 and is subject to be
confirmed by the Senate during the next regular session of the
Legislature.

*Given under my hand and the Great Seal of the
State of Florida, at Tallahassee, the Capital, this
the Twenty-Ninth day of July, A.D., 2022.*



Secretary of State



RON DeSANTIS
GOVERNOR

RECEIVED

2022 JUN 10 PM 2:47

**DIVISION OF ELECTIONS
TALLAHASSEE, FL**

June 3, 2022

Secretary Cord Byrd
Department of State
R.A. Gray Building, Room 316
500 South Bronough Street
Tallahassee, Florida 32399-0250

Dear Secretary Byrd:

Please be advised I have made the following reappointment under the provisions of Section 373.073, Florida Statutes:

Mr. Elijah Armstrong III
1614 Santa Barbara Drive
Dunedin, Florida 34698

as a member of the Southwest Florida Water Management District Governing Board, subject to confirmation by the Senate. This appointment is effective June 3, 2022, for a term ending March 1, 2026.

Sincerely,

A handwritten signature in black ink, appearing to read "Ron DeSantis".

Ron DeSantis
Governor

RD/ch

OATH OF OFFICE

(Art. II, § 5(b), Fla. Const.)

RECEIVED

STATE OF FLORIDA

County of Pinellas

2022 JUL 26 AM 10:33

DIVISION OF ELECTIONS
TALLAHASSEE, FL

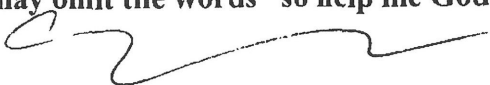
I do solemnly swear (or affirm) that I will support, protect, and defend the Constitution and Government of the United States and of the State of Florida; that I am duly qualified to hold office under the Constitution of the State, and that I will well and faithfully perform the duties of

Southwest Florida Water Management District Governing Board Member

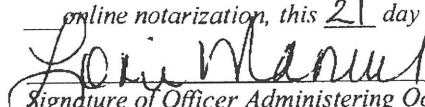
(Title of Office)

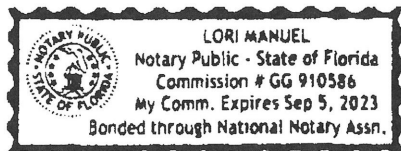
on which I am now about to enter, so help me God.

[NOTE: If you affirm, you may omit the words "so help me God." See § 92.52, Fla. Stat.]


Signature

Sworn to and subscribed before me by means of ☒ physical presence or
online notarization, this 21 day of July, 2022


Signature of Officer Administering Oath or of Notary Public



Print, Type, or Stamp Commissioned Name of Notary Public

Personally Known ☒ OR

Produced Identification ☐

Type of Identification Produced _____

ACCEPTANCE

I accept the office listed in the above Oath of Office.

Mailing Address: ☒ Home ☐ Office

1614 Santa Barbara Drive

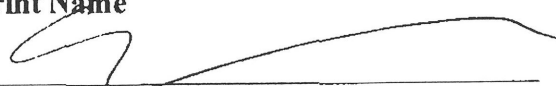
Street or Post Office Box

Dunedin, FL 34698

City, State, Zip Code

Ed Armstrong

Print Name


Signature

2460

**STATE OF FLORIDA
DEPARTMENT OF STATE**

Division of Elections

I, Cord Byrd, Secretary of State,
do hereby certify that

Robert Gary Stern

is duly appointed a member of the

**Governing Board,
Southwest Florida Water Management
District**

for a term beginning on the Seventeenth day of February, A.D.,
2023, until the First day of March, A.D., 2026 and is subject to
be confirmed by the Senate during the next regular session of the
Legislature.

*Given under my hand and the Great Seal of the
State of Florida, at Tallahassee, the Capital, this
the Sixth day of March, A.D., 2023.*



Secretary of State



RON DeSANTIS
GOVERNOR

RECEIVED

2023 FEB 23 AM 10:08

FLORIDA ELECTIONS
TALLAHASSEE, FL

February 17, 2023

Secretary Cord Byrd
Department of State
R.A. Gray Building, Room 316
500 South Bronough Street
Tallahassee, Florida 32399-0250

Dear Secretary Byrd:

Please be advised I have made the following appointment under the provisions of Section 373.073, Florida Statutes:

Mr. Robert Stern
101 East Kennedy Boulevard
Suite 2700
Tampa, Florida 33602

as a member of the Southwest Florida Water Management District, filling a vacant seat previously occupied by Roger Germann, subject to confirmation by the Senate. This appointment is effective February 17, 2023, for a term ending March 1, 2026.

Sincerely,

A handwritten signature in black ink, appearing to read "Ron DeSantis".

Ron DeSantis
Governor

RD/zs

OATH OF OFFICE

(Art. II. § 5(b), Fla. Const.)

RECEIVED

STATE OF FLORIDA

County of Hernando

2023 MAR -1 AM 11:23

DIVISION OF ELECTIONS
TALLAHASSEE, FL

I do solemnly swear (or affirm) that I will support, protect, and defend the Constitution and Government of the United States and of the State of Florida; that I am duly qualified to hold office under the Constitution of the State, and that I will well and faithfully perform the duties of

Southwest Florida Water Management District Governing Board Member

(Title of Office)

on which I am now about to enter, so help me God.

[NOTE: If you affirm, you may omit the words "so help me God." See § 92.52, Fla. Stat.]

Signature

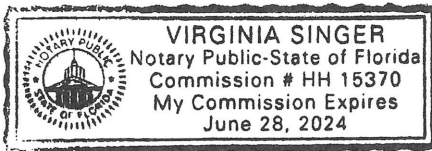
Sworn to and subscribed before me by means of ☒ physical presence or
☐ online notarization, this 28 day of February, 2023.

Signature of Officer Administering Oath or of Notary Public

Print, Type, or Stamp Commissioned Name of Notary Public

Personally Known ☒ OR Produced Identification ☐

Type of Identification Produced _____



ACCEPTANCE

I accept the office listed in the above Oath of Office.

Mailing Address: ☐ Home ☒ Office

101 East Kennedy Blvd STE 2700

Street or Post Office Box

Tampa FL 33602

City, State, Zip Code

Robert Stern

Print Name

Signature

2460

**STATE OF FLORIDA
DEPARTMENT OF STATE**

Division of Elections

I, Cord Byrd, Secretary of State,
do hereby certify that

Dustin Rowland

is duly appointed a member of the

**Governing Board,
Southwest Florida Water Management
District**

for a term beginning on the Second day of March, A.D., 2023,
until the First day of March, A.D., 2027 and is subject to be
confirmed by the Senate during the next regular session of the
Legislature.

*Given under my hand and the Great Seal of the
State of Florida, at Tallahassee, the Capital, this
the Fifteenth day of March, A.D., 2023.*



Secretary of State



RON DeSANTIS
GOVERNOR

RECEIVED

2023 FEB 23 AM 10:08

OFFICE OF ELECTIONS
TALLAHASSEE, FL

February 17, 2023

Secretary Cord Byrd
Department of State
R.A. Gray Building, Room 316
500 South Bronough Street
Tallahassee, Florida 32399-0250

Dear Secretary Byrd:

Please be advised I have made the following reappointment under the provisions of Section 373.073, Florida Statutes:

Mr. Dustin Rowland
41353 Messick Road
Dade City, Florida 33525

as a member of the Southwest Florida Water Management District, subject to confirmation by the Senate. This appointment is effective March 2, 2023, for a term ending March 1, 2027.

Sincerely,

A handwritten signature in black ink, appearing to read "Ron DeSantis".

Ron DeSantis
Governor

RD/zs



RON DeSANTIS
GOVERNOR

RECEIVED

2023 FEB 23 AM 10:08

GOVERNOR'S OFFICE
TALLAHASSEE, FL

February 17, 2023

Secretary Cord Byrd
Department of State
R.A. Gray Building, Room 316
500 South Bronough Street
Tallahassee, Florida 32399-0250

Dear Secretary Byrd:

Please be advised I have made the following appointment under the provisions of Section 373.073, Florida Statutes:

Mr. Dustin Rowland
41353 Messick Road
Dade City, Florida 33525

as a member of the Southwest Florida Water Management District, filling a vacant seat previously occupied by Seth Weightman, subject to confirmation by the Senate. This appointment is effective February 17, 2023, for a term ending March 1, 2023.

Sincerely,

A handwritten signature in black ink, appearing to be "Ron DeSantis".

Ron DeSantis
Governor

RD/zs

2460

**STATE OF FLORIDA
DEPARTMENT OF STATE**

Division of Elections

I, Cord Byrd, Secretary of State,
do hereby certify that

James W. Holton

is duly appointed a member of the

**Governing Board,
Southwest Florida Water Management
District**

for a term beginning on the Seventeenth day of February, A.D.,
2023, until the First day of March, A.D., 2026 and is subject to
be confirmed by the Senate during the next regular session of the
Legislature.

*Given under my hand and the Great Seal of the
State of Florida, at Tallahassee, the Capital, this
the Sixth day of March, A.D., 2023.*



Secretary of State



RON DeSANTIS
GOVERNOR

RECEIVED

2023 FEB 23 AM 10:08

GOVERNOR'S OFFICE
TALLAHASSEE, FL

February 17, 2023

Secretary Cord Byrd
Department of State
R.A. Gray Building, Room 316
500 South Bronough Street
Tallahassee, Florida 32399-0250

Dear Secretary Byrd:

Please be advised I have made the following appointment under the provisions of Section 373.073, Florida Statutes:

Mr. James Holton
100 1st Avenue North
#501
Saint Petersburg, Florida 33701

as a member of the Southwest Florida Water Management District, filling a vacant seat previously occupied by William Hogarth, subject to confirmation by the Senate. This appointment is effective February 17, 2023, for a term ending March 1, 2026.

Sincerely,

A handwritten signature in black ink, appearing to be "Ron DeSantis".

Ron DeSantis
Governor

RD/zs

OATH OF OFFICE

(Art. II, § 5(b), Fla. Const.)

RECEIVED

2023 MAR -1 AM 11:22

DIVISION OF ELECTIONS
TALLAHASSEE, FL

STATE OF FLORIDA

County of Hernando

I do solemnly swear (or affirm) that I will support, protect, and defend the Constitution and Government of the United States and of the State of Florida; that I am duly qualified to hold office under the Constitution of the State, and that I will well and faithfully perform the duties of

Southwest Florida Water Management District Governing Board Member

(Title of Office)

on which I am now about to enter, so help me God.

[NOTE: If you affirm, you may omit the words "so help me God." See § 92.52, Fla. Stat.]

Signature

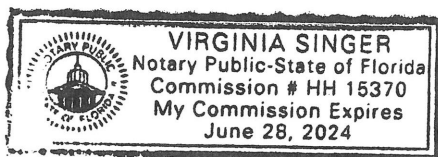
Sworn to and subscribed before me by means of ☒ physical presence or
online notarization, this 28 day of February, 2023.

Signature of Officer Administering Oath or of Notary Public

Print, Type, or Stamp Commissioned Name of Notary Public

Personally Known ☒ OR Produced Identification ☐

Type of Identification Produced _____



ACCEPTANCE

I accept the office listed in the above Oath of Office.

Mailing Address: ☐ Home ☒ Office

9800 Fourth Street North STE 200

Street or Post Office Box

St Pete FL 33702

City, State, Zip Code

James Holton

Print Name

Signature



The Florida Senate

Committee Agenda Request

To: Senator Ana Maria Rodriguez, Chair
Committee on Environment and Natural Resources

Subject: Committee Agenda Request

Date: March 8, 2023

I respectfully request that **Senate Bill # 702**, relating to Apalachicola Bay Area of Critical State Concern, be placed on the:

- ☐ committee agenda at your earliest possible convenience.
- ☒ next committee agenda.

Corey Simon

Senator Corey Simon
Florida Senate, District 3

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Education Pre-K -12, *Chair*
Agriculture
Appropriations Committee on Education
Appropriations Committee on Health
and Human Services
Education Postsecondary
Fiscal Policy
Regulated Industries
Rules

JOINT COMMITTEE:
Joint Legislative Auditing Committee

SENATOR COREY SIMON

3rd District

March 27, 2023

RE: SB 702

Dear Chair Rodriguez,

I am respectfully requesting that Senator Trumbull be allowed to present my bill, Senate Bill 702 related to Apalachicola Bay Area of Critical State Concern, in your committee on Environment and Natural Resources.

I appreciate your consideration of this request. If there are any questions or concerns, please do not hesitate to call my office at (850) 487-5003.

Thank You,

Corey Simon

Senator Corey Simon

District 3

□ 302 Senate Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5003

KATHLEEN PASSIDOMO
President of the Senate

DENNIS BAXLEY
President Pro Tempore

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

3/27/23

Meeting Date

702

Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name Brenda Ash

Job Title Mayor of Apalachicola

Address 192 Pip Wagner Blvd

Street

Apalachicola

City

FL

State

32320

Zip

Phone 850.453-9319

Email _____

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against
(The Chair will read this information into the record.)

Representing City of Apalachicola

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL: SB 702

INTRODUCER: Senator Simon

SUBJECT: Apalachicola Bay Area of Critical State Concern

DATE: March 24, 2023

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Carroll	Rogers	EN	Favorable
2. _____	_____	AEG	_____
3. _____	_____	FP	_____

I. Summary:

SB 702 permits the Department of Environmental Protection to expend up to \$5 million each fiscal year, beginning in fiscal year 2023-2024 and continuing through fiscal year 2027-2028, for the purpose of entering into financial assistance agreements with the City of Apalachicola to implement projects that improve surface water and groundwater quality within the Apalachicola Bay Area of Critical State Concern. The bill provides project examples. The funding will expire on June 30, 2028.

II. Present Situation:

Areas of Critical State Concern

The Areas of Critical State Concern Program was created in the Florida Environmental Land and Water Management Act of 1972.¹ The program is intended to protect resources and public facilities of major statewide significance, within designated geographic areas, from uncontrolled development that would cause substantial deterioration of such resources.² An area of critical state concern may be designated for:

- An area containing, or having a significant impact upon, environmental or natural resources of regional or statewide importance, the uncontrolled private or public development of which would cause substantial deterioration of such resources;
- An area containing, or having a significant impact upon, historical or archaeological resources, sites, or statutorily defined historical or archaeological districts, the private or public development of which would cause substantial deterioration or complete loss of such resources, sites, or districts; or

¹ Chapter 72-317, Laws of Fla.; Department of Economic Opportunity (DEO), *Areas of Critical State Concern Program*, <https://www.floridajobs.org/community-planning-and-development/programs/community-planning-table-of-contents/areas-of-critical-state-concern> (last visited Mar. 21, 2023).

² DEO, *Areas of Critical State Concern Program*.

- An area having a significant impact upon, or being significantly impacted by, an existing or proposed major public facility or other area of major public investment.³

Areas of critical state concern currently designated in the state include the Big Cypress,⁴ Green Swamp,⁵ Florida Keys,⁶ and Apalachicola Bay⁷ areas of critical state concern.

Apalachicola Bay Area of Critical State Concern

The Apalachicola Bay Area of Critical State Concern was designated in 1985.⁸ The original designation included the City of Apalachicola, the City of Carrabelle, and unincorporated Franklin County, excluding Alligator Point. In 1993, all of that designation was repealed except for the City of Apalachicola.⁹

The Apalachicola River is the largest river in Florida and provides 35 percent of the freshwater entering the northeastern Gulf of Mexico.¹⁰ The Apalachicola River and the adjoining Chattahoochee and Flint Rivers comprise a drainage system encompassing more than 19,000 square miles of southern Georgia, eastern Alabama, and northern Florida. The Apalachicola-Chattahoochee-Flint River Basin harbors one of the highest concentrations of threatened and endangered species in the United States. The Apalachicola Bay is an important nursery ground for numerous commercially and recreationally important fish and invertebrate species.¹¹

The Apalachicola Bay supported a thriving oyster fishery for decades and at one time supplied approximately 90 percent of the oysters sold in Florida and 10 percent sold nationally.¹² That ended in 2012 with the total collapse of the fishery due to drought, climate change, dams, and other pressures.¹³ In response to the devastated oyster population in the Bay, the Florida Fish and Wildlife Conservation Commission suspended harvest of wild oysters for five years, beginning in 2020.¹⁴

³ Section 380.05(2), F.S.

⁴ Section 380.055, F.S.

⁵ Section 380.0551, F.S.

⁶ Section 380.0552, F.S.

⁷ Section 380.0555, F.S.

⁸ Florida Department of Economic Opportunity (DEO), *Apalachicola Bay Area*, <https://floridajobs.org/community-planning-and-development/programs/community-planning-table-of-contents/areas-of-critical-state-concern/city-of-apalachicola> (last visited Mar. 22, 2023).

⁹ *Id.*

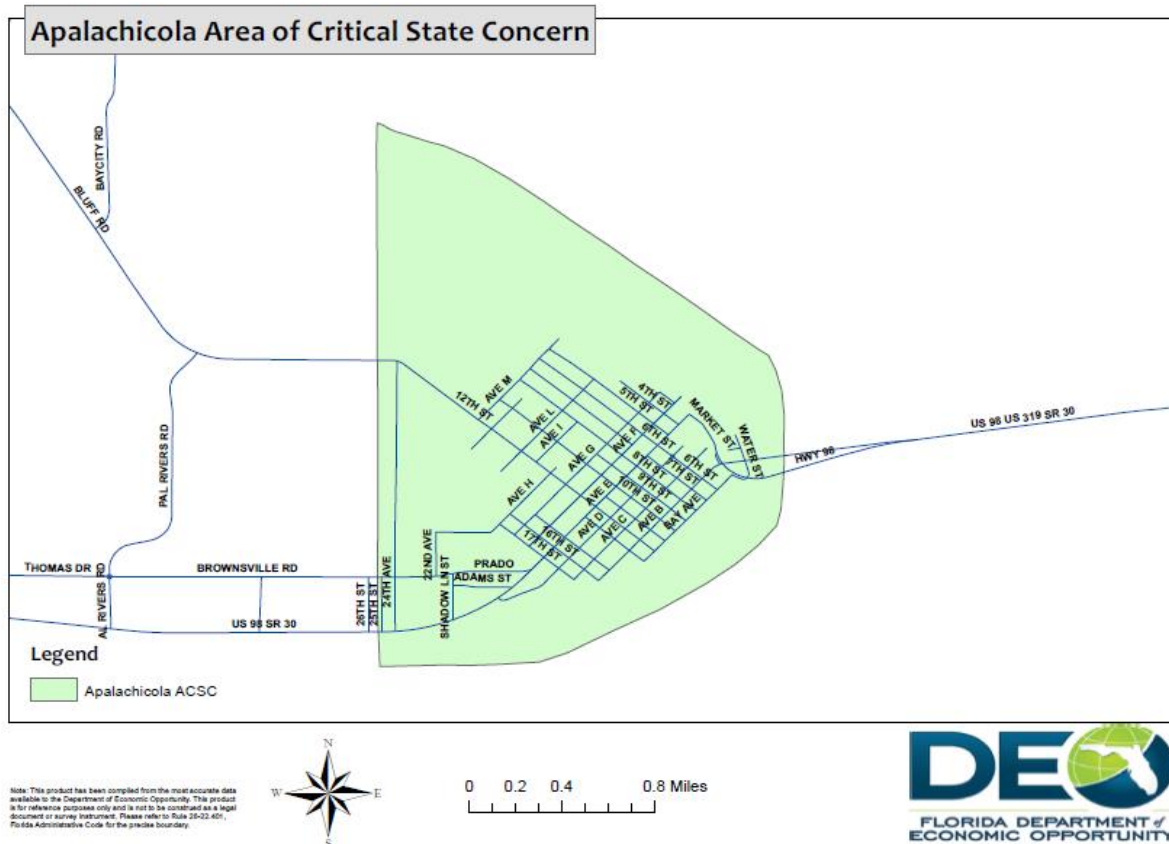
¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

¹³ Debbie Elliot, NPR, *Florida Closes Iconic Apalachicola Oyster Fishery*, <https://www.npr.org/2020/07/22/894074674/floridas-oyster-beds-devastated-by-years-of-drought-other-pressures> (last visited Mar. 22, 2023); Kevin Spear, WUSF Public Media, *Crippled Apalachicola River leaves Wetland Forests in Peril, Famous Oysters Extinct*, <https://wusfnews.wusf.usf.edu/environment/2021-01-01/crippled-apalachicola-river-leaves-wetland-forests-in-peril-famous-oysters-extinct> (last visited Mar. 22, 2023).

¹⁴ Florida Fish and Wildlife Conservation Commission, *FWC approves measures to support recovery and restoration of oysters in Apalachicola Bay*, <https://myfwc.com/news/all-news/oyster-commission-1220/> (last visited Mar. 22, 2023). The map shown on the following page may be found at: <https://floridajobs.org/community-planning-and-development/programs/community-planning-table-of-contents/areas-of-critical-state-concern/city-of-apalachicola>.



The legislative intent of the designation is to:

- Protect the water quality of the Apalachicola Bay Area to ensure a healthy environment and thriving economy for area and state residents;
- Financially assist Franklin County and its municipalities in upgrading and expanding their sewerage systems;
- Protect the Apalachicola Bay Area's natural and economic resources by implementing and enforcing comprehensive plans and land development regulations;
- Assist Franklin County and its municipalities with technical and advisory assistance in formulating land development regulations and modifications to comprehensive plans;
- Monitor activities within the Apalachicola Bay Area to ensure the long-term protection of all the area's resources;
- Promote a broad base of economic growth that is compatible with the protection and conservation of the natural resources of the Apalachicola Bay Area;
- Educate the residents of the Apalachicola Bay Area in order to protect and preserve its natural resources;
- Provide affordable housing in close proximity to places of employment in the Apalachicola Bay Area; and
- Protect and improve the water quality of the Apalachicola Bay Area through federal, state, and local funding of water quality improvement projects, including the construction and operation of wastewater management facilities that meet state requirements.¹⁵

¹⁵ Section 380.0555(2), F.S.

State, regional, and local agencies and units of government in the Apalachicola Bay Area are required to coordinate their plans and conduct their programs and regulatory activities consistently using principles for guiding development of the area.¹⁶ These principles require that:

- Land development be guided so that the basic functions and productivity of the Apalachicola Bay Area's natural land and water systems be conserved to reduce or avoid health, safety, and economic problems for present and future residents of the Apalachicola Bay Area;
- Land development be consistent with a safe environment, adequate community facilities, a superior quality of life, and a desire to minimize environmental hazards;
- Growth and diversification of the local economy be fostered only if it is consistent with protecting the natural resources of the Apalachicola Bay Area through appropriate management of the land and water systems;
- Aquatic habitats and wildlife resources of the Apalachicola Bay Area be conserved and protected;
- Water quantity be managed to conserve and protect the natural resources and the scenic beauty of the Apalachicola Bay Area;
- Water quality be protected, maintained, and improved for public water supply, propagation of aquatic life, and recreational and other uses;
- No wastes be discharged into any waters of the Apalachicola Bay Area without first being given the degree of treatment necessary to protect water uses;
- Stormwater discharges be managed in order to minimize impacts on the Bay system and protect its uses;
- Coastal dune systems, specifically the area extending landward from the extreme high-tide line to the beginning of the pinelands of the Apalachicola Bay Area, be protected; and
- Public lands be managed, enhanced, and protected so that the public may continue to enjoy the traditional use of such lands.¹⁷

III. Effect of Proposed Changes:

Section 1 amends s. 380.0555, F.S., to permit the Department of Environmental Protection to expend up to \$5 million each fiscal year, beginning in fiscal year 2023-2024 and continuing through fiscal year 2027-2028, for the purpose of entering into financial assistance agreements with the City of Apalachicola to implement projects that improve surface water and groundwater quality within the Apalachicola Bay Area of Critical State Concern. These projects may include the construction of stormwater management facilities and central sewage collection facilities, installation of onsite sewage treatment and disposal systems,¹⁸ direct and indirect potable reuse, and other water quality and water supply projects. This provision expires on June 30, 2028.

Section 2 provides an effective date of July 1, 2023.

¹⁶ Section 380.0555(7), F.S.

¹⁷ *Id.*

¹⁸ Onsite sewage treatment and disposal systems, commonly known as septic systems, consist of a septic tank and drainfield. Waste from toilets, sinks, washing machines, and showers flows into the septic tank where bacteria breaks down solids into liquids. Then, the wastewater flows into the drainfield where it undergoes secondary treatment and filtration. Florida Department of Health (DOH), *Septic System Information and Care*, <http://columbia.floridahealth.gov/programs-and-services/environmental-health/onsite-sewage-disposal/septic-information-and-care.html> (last visited Mar. 22, 2023).

IV. Constitutional Issues:**A. Municipality/County Mandates Restrictions:**

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The City of Apalachicola may receive funding from the Department of Environmental Protection from fiscal year 2023-2024 to fiscal year 2027-2028 through financial assistance agreements for certain projects.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 380.0555 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

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

None.

B. Amendments:

None.

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

By Senator Simon

3-01152-23

2023702__

1 A bill to be entitled
2 An act relating to the Apalachicola Bay Area of
3 Critical State Concern; amending s. 380.0555, F.S.;
4 authorizing the Department of Environmental Protection
5 to expend certain funds for the purpose of entering
6 into financial assistance agreements with the City of
7 Apalachicola for specified surface water and
8 groundwater quality improvement projects within the
9 Apalachicola Bay Area of Critical State Concern;
10 providing for expiration of the authorization;
11 providing an effective date.

12
13 Be It Enacted by the Legislature of the State of Florida:

14
15 Section 1. Subsection (11) is added to section 380.0555,
16 Florida Statutes, to read:

17 380.0555 Apalachicola Bay Area; protection and designation
18 as area of critical state concern.—

19 (11) FINANCIAL ASSISTANCE AGREEMENTS.—Beginning in the
20 2023-2024 fiscal year and continuing through the 2027-2028
21 fiscal year, the Department of Environmental Protection may
22 expend up to \$5 million each fiscal year for the purpose of
23 entering into financial assistance agreements with the City of
24 Apalachicola to implement projects that improve surface water
25 and groundwater quality within the Apalachicola Bay Area of
26 Critical State Concern, including the construction of stormwater
27 management facilities and central sewage collection facilities,
28 installation of onsite sewage treatment and disposal systems,
29 direct and indirect potable reuse, and other water quality and

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30 water supply projects. This subsection expires on June 30, 2028.

31 Section 2. This act shall take effect July 1, 2023.

SB 742

JAPC REVIEW/COMMENTS/RECOMMENDATIONS

Between Lines 178 and 179:

Insert the following:

(b) Whenever an act of the Legislature is enacted which requires implementation of the act by rules of an agency within the executive branch of state government, such rules shall be drafted and formally proposed as provided in this section within the timeframe provided by statute, s. 120.74(4) and (5), or within 180 days of the effective date of the act granting rulemaking authority.

Rationale:

Unless the timeframe for adopting rules is specifically prescribed by statute, s. 120.74(4) and (5), allows an agency to set the timeframe and unilaterally extend the timeframe for adoption of the rules. This amendment will limit the timeframe for rule adoption and provide the legislature with greater oversight, as the amendment provides a default date for the adoption of rules.

Line 191:

Insert the following: “. . . amended or repromulgated on or after July 1, 2023. . . .”

Rationale: Clarifies that the term “rules adopted” includes rules amended and does not revert to the date of the original adoption of the rule.

Line 240:

Insert the following: “the Florida Administrative Register at least 7 days before providing notice . . .”

Rationale: The amendment removes the language from lines 366-367 of the bill and moves it to paragraph (2)(a), which outlines the rule development procedure that must be followed prior to the publication of a notice of proposed rule.

Lines 257-261:

Replace with: “A notice of a proposed rule must be published in the Florida Administrative Register within 12 months after the most recent notice of rule development.”

Rationale: As a general rule, notices of rule development are not withdrawn, nor do they always contain the language of the proposed rule; therefore, there may be no proposed rule to withdraw.

The notice of rule development may be republished or amended if necessary after the 12 months has expired.

Line 336:

Insert the following: “. . . the **proposed** rule number and. . .”

Rationale: The notice is for a proposed rule, which may or may not ultimately become effective and retain the same rule number.

Lines 366-367:

Amend as follows: “. . . Administrative Register **at least 7 days after the publication of the notice of rule development** and at least. . .”

Rationale: The language has been added to the paragraph outlining the rule development process. (See comment re line 240.)

Line 376:

Insert the following: “The notice must ~~shall~~ be mailed **or delivered electronically** to all persons named. . .”

Rationale: Consistency with the requirement in line 377.

Lines 399:

Insert the following: “. . . estimated regulatory costs for a **proposed** rule. . .”

Rationale: Clarification that the notice is for a proposed rule repeal.

Line 401:

Insert the following: “. . . challenge to a **proposed** rule repeal, a **proposed** rule repeal. . .”

Rationale: Clarification that the notice is for a proposed rule repeal.

Line 403:

Amend to read: “. . . **presently** regulated by the **existing** rule must be presumptively. . .”

Rationale: “Presently” does not add to the statute; existing rules regulate individuals and entities.

Line 480:

Insert the following: “. . . before filing the **proposed** rule for adoption.

Rationale: The notice is for a proposed rule, which may or may not ultimately become effective.

Line 535:

Amend to read: “. . . **the timelines resuming on shall resume** the day after conclusion of the separate proceedings, **notice of which shall be provided to the committee.**”

Rationale: Notice to the committee is necessary, as the committee maintains a timeframe for all rulemaking.

Line 572:

Add the following to the end of the sentence: “. . . **and a summary of substantive revisions to any material proposed to be incorporated by reference in the proposed rule.**”

Rationale: This clarifies the requirements of a notice of change.

Line 582:

Insert the following: “. . . the withdrawal of the **proposed** rule. . . .”

Rationale: Proposed rules must be withdrawn.

Lines 614-615:

Insert the following: “. . . the agency head, ~~must shall~~ **electronically** file with the Department of State ~~three a~~ certified **copy copies** of the rule. . . .”

Rationale: The requirement for filing three certified (hard) copies of the rule is no longer necessary. The pandemic necessitated moving to a more electronic-friendly filing process, thus eliminating the need for filing multiple hard copies of a rule.

Line 673:

Add the following: “If the agency, 30 days after notice by the committee that the agency has failed to withdraw the rule, has not published notice of withdrawal of the rule, the committee must notify the Department of State that the date for adoption of the rule has expired, and the Department of State must publish a notice of withdrawal of the rule.”

Rationale: Language consistent with that in lines 576-585.

Between lines 693 and 694:

Insert the following:

(c) Unless otherwise provided by law, an emergency rule ~~adopted under this subsection may shall~~ not be effective for a period longer than 90 days and is shall not ~~be~~ renewable, except when the agency has initiated rulemaking to adopt rules addressing the subject of the emergency rule and either:

1. A challenge to the proposed rules has been filed and remains pending; or
2. The proposed rules are awaiting ratification by the Legislature pursuant to s. 120.541(3).

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

Rationale: The phrase “adopted under this subsection” indicates emergency rules adopted by agencies upon finding “an immediate danger to the public health, safety, or welfare requires emergency action. . . .” Over the past few years, the term “emergency rule” has been expanded to encompass rulemaking authority with an exemption for such a finding, with or without any limitation on the 90 day effective period. The proposed change accommodates the evolving changes in the use of the term “emergency rule.”

Lines 696-689:

Insert the following: “(f) An agency may ~~not~~ supersede an emergency rule currently in effect through adoption of another emergency rule. The reason for adopting the new rule must be stated in accordance with the procedures set forth in paragraph (a), and the new rule shall be in effect for the duration of the effective period of the superseded rule. Technical changes to an emergency rule may be made within the first 7 days after adoption of the rule.”

Rationale: Mistakes can be made with the adoption of emergency rules but, unlike regular rules, such mistakes cannot be corrected by means of a notice of correction. The proposed language allows an agency to react to any mistakes or changing conditions.

Over the past few years, the concept of emergency rules has expanded to include rules effective for a period greater than 90 days, and rules that may remain in effect until such time as replaced by permanent rules. The rulemaking process can be lengthy and subject to challenge, while there is no mechanism to amend the emergency rule. For example, certain agencies receive exceptions to the provisions of section 120.54(4), F.S., which enable them to adopt emergency rules that either exceed the 90-day time period of effectiveness for standard emergency rules, or in the instance of the Department of the Lottery, remain effective indefinitely. *See e.g.* § 41, ch. 2022-97, L.O.F., § 24.109(1), Fla. Stat. (2022). The inability to supersede existing emergency rules may impede the ability for an agency, especially in the above scenarios, to correct errors in existing rules or to revise existing standards found in these emergency rules. The proposed language accommodates the changes in legislative rulemaking authority.

Between lines 698 and 699:

Insert the following:

(g) Any notice of the renewal of an emergency rule must be published in the Florida Administrative Register before the expiration of the existing emergency rule. The notice of renewal must state the specific facts and reasons for the renewal pursuant to paragraph (c).

(h) All emergency rules shall be published in the Florida Administrative Code in the section of the code dealing with the agency.

(i) For emergency rules with an effective period greater than 90 days which are intended to replace existing rules, a note must be added to the history note of the existing rule which specifically identifies the emergency rule that is intended to supersede the existing rule and includes the date that the emergency rule was filed with the Department of State.

(j) An emergency rule adopted under this subsection may be repealed at any time while the rule is in effect by publishing a notice in the Florida Administrative Register citing the reason for the repeal and the effective date of the repeal.

Rationale: The proposed language accommodates the changes in the use of emergency rules. The proposed changes also provide for greater transparency as to what agency rules are in effect.

Line 722:

Insert the following: “. . . proposed rule for adoption,”

Rationale: This provision addresses a proposed rule.

Line 928:

Insert the following: “. . . has been made in the manner provided under s. 120.54(3)(d)1. Such notice must also include. . .”

Rationale: The revision to section 120.54(3)(d)1. in this bill requires any revision to a SERC to be published in a notice of change.

Lines 938-942:

Amend as follows:

“. . . repromulgate the rule to reflect the date of the review. All rules adopted, amended, or repromulgated on or after July 1, 2023, must be reviewed within 5 years of their effective dates. Each agency shall review its all existing rules pursuant to this section no later than December 31, 2028. Any variation from this schedule shall be reflected in the agency’s regulatory plan. No later than December 31, 2023, the committee shall provide each agency with a list of existing rules and their effective dates. either 5 years after July 1, 2023; if the rule was adopted before January 1, 2021, or 10 years after the rule was adopted on or after January 1, 2010.”

Rationale: As written, the agency review schedule is somewhat confusing. The suggested changes provide a timeline for all rules to be reviewed/repromulgated within the next 5 years.

Lines 942-951:

Delete all, beginning with the word “Failure” and replace with:

“Failure of an agency to adhere to the deadlines imposed in this section shall be a material failure to follow the applicable rulemaking procedures or requirements of this chapter and shall be the basis of an objection under s. 120.545.”

Rationale: Since repromulgated rules are not subject to challenge under section 120.56(2), Fla. Stat., or an administrative hearing under section 120.54, Fla. Stat., the provision provides no discernable relief to any affected party. An interested party still has the ability to challenge the existing rule at the Division of Administrative Hearings under chapter 120, as well as an agency’s failure to meet the statutory repromulgation requirement. Also, since repromulgation is mandated by chapter 120, the procedure is material and subject to a committee objection.

Lines 972-973:

Insert the following: “. . . shall electronically file with the Department of State ~~three~~ a certified copy ~~copies~~ of the repromulgated rule. . . .”

Rationale: The requirement for filing three certified copies is no longer necessary. The pandemic necessitated moving to a more electronic-friendly filing process, thus eliminating the need for filing multiple hard copies of a rule.

Lines 976-978:

Delete and replace with: “The rule is considered to be repromulgated upon filing with the Department of State.”

Rationale: A repromulgated rule is already in effect; therefore, it does not have to be readopted. The rule remains an “existing rule” throughout the repromulgation process.

Line 981:

Amend as follows: “. . . effective adoption filing date of the repromulgated rule.”

Rationale: The rule is already in effect at the time of repromulgation, so the applicable date is the adoption date.

Lines 982-988:

Delete in its entirety.

Rationale: As written, the language is ambiguous as to when an agency decides not to promulgate a rule. The proposed changes to lines 933-942 provide legislative oversight to the repromulgation process as currently provided under chapter 120, F.S., compete with a notification process to the Speaker of the House and the President of the Senate.

Lines 1093-1099:

Rewrite as follows:

“The Florida Administrative Register Code must be published once each business day ~~daily~~ by 8 a.m., with the exception of state holidays or emergency closures of state agencies. If a rule, proposed rule, or notice of rule development is corrected and replaced, the corrected rule or notice must be published in the next available Florida Administrative Register Code with a notation ~~must~~ indicating : ~~a. That the Florida Administrative Code has been republished; and b. that the rule,~~ proposed rule, or notice has been corrected by the Department of State. Any timeframes for rulemaking set forth in this chapter refer shall revert to the initial date of publication.

Rationale: Notices are published in the Florida Administrative Register, which may be updated during the course of the day, without any notification that changes have occurred in the Register.

Once rules are adopted and become effective, they become part of the official Florida Administrative Code. The Florida Administrative Code is not published on a daily basis.

Lines 1113:

Amend as follows: “. . . department, ~~the agency department~~ **shall** publish the address and. . .”

Rationale: The agency has this information more readily available than the department.

Line 1138:

Insert the following: “. . . When a **proposed** rule is filed for adoption. . .”

Rationale: Clarifies that the proposed rule shall be filed for adoption, as a proposed rule does not become a rule until it is adopted.

Line 1253:

Insert the following: “The total number of rules adopted and ~~repealed,~~ **repromulgated.** . . .”

Rationale: “Adopted” rules include rules repealed.

KJP: 3.2.23



The Florida Senate

Committee Agenda Request

To: Senator Ana Maria Rodriguez, Chair
Committee on Environment and Natural Resources

Subject: Committee Agenda Request

Date: March 16, 2023

I respectfully request that **Senate Bill #742**, relating to Administrative Procedures, be placed on the:

- ☒ committee agenda at your earliest possible convenience.
- ☐ next committee agenda.

A handwritten signature in blue ink that reads "Erin K. Grall".

Senator Erin Grall
Florida Senate, District 29

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

3/27/23

Meeting Date

742

Bill Number (if applicable)

Topic Admin Procedures

Amendment Barcode (if applicable)

Name Chris Stranburg

Job Title Legislative Affairs Director

Address 701 E. College Ave

Phone 813-767-9667

Street

Tallahassee

FL

32301

City

State

Zip

Email CStranburg@alpha.org

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Americans for Prosperity

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL: CS/SB 742

INTRODUCER: Environment and Natural Resources Committee and Senators Grall and Hooper

SUBJECT: Administrative Procedures

DATE: March 28, 2023 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Harmsen</u>	<u>McVaney</u>	<u>GO</u>	Favorable
2.	<u>Barriero</u>	<u>Rogers</u>	<u>EN</u>	Fav/CS
3.	<u> </u>	<u> </u>	<u>FP</u>	<u> </u>

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 742 amends the Administrative Procedures Act (APA). The APA contains a uniform set of procedures that agencies must follow when exercising rulemaking authority delegated by the Legislature. This bill amends the APA rulemaking process and provides a new mechanism for an agency to review, revise, and repeal its rules. The bill:

- Requires each agency to review its rules for consistency with the powers and duties granted by the agency's enabling statutes. If no substantive changes are required, the agency must repromulgate the rule;
- Requires agencies to prepare a statement of estimated regulatory costs (SERC) before adopting or amending a rule, other than an emergency rule, and specifies the economic impacts and compliance costs an agency must consider in creating a SERC. Each agency is required to have a website where each of its SERCs may be viewed in their entirety;
- Authorizes an agency to hold workshops and to survey the public to gather information pertinent to the creation of a SERC;
- Requires an agency, in all notices of rulemaking which include material incorporated by reference, to submit the incorporated material in the prescribed electronic format to the Department of State with the full text available on the Internet for free public access. A notice of change must include a summary of substantive revisions to any material proposed to be incorporated by reference in the proposed rule. For rules amended on or after July 1, 2023, material may not be incorporated by reference unless certain criteria are met;
- Requires annual regulatory plans to identify each rule the agency expects to develop, adopt, or repeal for the 12-month period beginning October 1 and ending September 30;

- Specifies that an adverse impact on small business exists if certain specific criteria are met;
- Specifies that a lower cost regulatory alternative may be submitted after a notice of proposed rule or a notice of change;
- Requires at least seven days to pass between the publication of a notice of rule development and a notice of proposed rule; and
- Requires the Department of Environmental Protection and each water management districts to review and report on their permitting processes.

II. Present Situation:

The Administrative Procedure Act

The Administrative Procedure Act (APA) is contained in Chapter 120, F.S. The first version of the APA was adopted in 1961 in an attempt to produce a comprehensive and uniform administrative process to govern executive branch agency actions.¹ The modern version of the APA was adopted in 1974 and is amended almost every year. In addition to creating a standardized process for agencies to enact rules and issue orders, the APA also provides citizens the opportunity to be involved and challenge agency decisions.²

Delegation of Authority

The Legislature, as the sole branch of government having the inherent power to create laws,³ may delegate to agencies in the executive branch the quasi-legislative ability, or authority, to create rules.⁴ A rule is an agency statement of general applicability that interprets, implements, or prescribes law or policy, including the procedure and practice requirements of an agency.⁵ An agency is empowered to adopt rules if two requirements are satisfied. First, there must be a statutory grant of rulemaking authority,⁶ and second, there must be a specific law to be implemented.⁷ The APA⁸ sets forth the uniform set of procedures agencies must follow when exercising delegated rulemaking authority.

Rulemaking Process – Filing a Notice of Rule Development

An agency begins the formal rulemaking process⁹ by filing a notice of rule development of a proposed rule in the Florida Administrative Register (FAR), which must indicate the subject area that will be addressed by the rule development and include a short, plain explanation of the purpose and effect of the proposed rule.¹⁰ The notice may include the preliminary text of the

¹ Joint Administrative Procedures Committee, *A Pocket Guide to Florida's Administrative Procedure Act*, 1 (2020), <https://www.japc.state.fl.us/Documents/Publications/PocketGuideFloridaAPA.pdf> (last visited Mar. 20, 2023).

² *Id.*

³ FLA. CONST. art. III, s. 1; see also FLA. CONST. art. II, s. 3.

⁴ See *Whiley v. Scott*, 79 So. 3d 702, 710 (Fla. 2011).

⁵ Section 120.52(16), F.S.

⁶ “Rulemaking authority” means statutory language that explicitly authorizes or requires an agency to adopt, develop, establish, or otherwise create any statement coming within the definition of the term “rule.” Section 120.52(17), F.S.

⁷ *Id.*

⁸ Chapter 120, F.S.

⁹ Alternatively, a person regulated by an agency or having a substantial interest in an agency rule may petition the agency to adopt, amend, or repeal a rule. Section 120.54(7)(a), F.S.

¹⁰ Section 120.54(2)(a), F.S.

proposed rule, if available, or a statement of how a person may promptly obtain, without cost, a copy of any preliminary draft.¹¹ Such notice is required for all rulemaking, except for rule repeals.¹²

An agency may hold public workshops for purposes of rule development; however, an agency is required to hold such workshops if requested in writing by any affected person, unless the agency head explains in writing why a workshop is unnecessary.¹³

Rulemaking Process – Filing a Notice of Proposed Rule

Next, an agency must file, upon approval of the agency head, a notice of proposed rule.¹⁴ The notice of proposed rule is published by the Department of State (DOS) in the FAR¹⁵ and must contain the full text of the proposed rule or amendment and a summary thereof.¹⁶ Before 2012, the FAR was published weekly, which could result in a period of at least seven days between the publication of a notice of rule development and actual notice of the proposed rule.¹⁷ In 2012, the Legislature changed the FAR from a weekly publication to a publication that is continuously revised and, as a result, eliminated the seven-day period between the two notices.¹⁸

The adopting agency must file with the Joint Administrative Procedures Committee (JAPC), at least 21 days prior to the proposed adoption date, a copy of each rule it proposes to adopt; a copy of any material incorporated by reference in the rule; a detailed written statement of the facts and circumstances justifying the proposed rule; a copy of any SERC that has been prepared; a statement of the extent to which the proposed rule relates to federal standards or rules on the same subject; and the notice of proposed rule.¹⁹

Agency Hearing

An agency must hold a hearing on the proposed rule if a person requests one within 21 days of publication of the notice of proposed rule in the FAR.²⁰ If the agency does not substantively change the rule after the hearing (or if no hearing was timely requested), the agency must file a notice with the JAPC stating that it did not make any changes to the rule.²¹ This notice must be filed at least seven days before the agency can file the rule for adoption with the DOS.²²

However, if a hearing is requested, the agency may, based upon the comments received at the hearing, publish a notice of change.²³ Any notice of substantive change triggers a 21-day waiting

¹¹ *Id.*

¹² *Id.*

¹³ Section 120.54(2)(c), F.S.

¹⁴ Section 120.54(3), F.S.

¹⁵ Section 120.55(1)(b), F.S.

¹⁶ Section 120.54(3)(a)1., F.S.

¹⁷ Chapter 2012-63, Laws of Fla.

¹⁸ *Id.*

¹⁹ Section 120.54(3)(a)4., F.S.

²⁰ Section 120.54(3)(c), F.S.

²¹ Section 120.54(3)(d)1., F.S.

²² *Id.*

²³ *Id.*

period before the agency may file the rule for adoption with the DOS, thereby allowing further input from the public.²⁴

Alternatively, if a person whose substantial interests will be affected by the agency action cannot be provided adequate opportunity to protect his or her interests in the agency hearing described above (or otherwise), and if the agency agrees, then the agency must suspend the rulemaking proceeding and initiate a hearing at the Division of Administrative Hearings (DOAH)²⁵ pursuant to ss. 120.569 and 120.57, F.S. The rulemaking proceeding cannot be resumed until this separate hearing is concluded.²⁶

Petition Alternative

As an alternative to the agency initiated process delineated above, a person who is regulated by the agency or who has a substantial interest in an agency rule may petition the agency to adopt, amend, or repeal a rule.²⁷ The petitioner must specify the proposed rule and action requested.²⁸ The agency can initiate rulemaking or decline to do so; however, if the agency chooses the latter, it must issue a written statement of its reasons for the denial.²⁹

Rule Adoption

Once an agency has completed the steps of rulemaking, the agency may file the rule for adoption with the DOS, and the rule becomes effective 20 days later, unless a different date is indicated in the rule.³⁰ Most adopted rules are published in the Florida Administrative Code (FAC).³¹

Challenging a Rule for Invalid Delegation of Authority

An interested party may challenge the validity of a rule or a proposed rule at DOAH as an invalid delegation of legislative authority.³² An invalid delegation of legislative authority is an action that goes beyond the powers, functions, and duties delegated by the Legislature.³³ A rule or proposed rule is an invalid delegation of legislative authority if any of the following applies:³⁴

- The agency has materially failed to follow the rulemaking procedures or requirements in the APA;
- The agency has exceed its grant of rulemaking authority;
- The rule enlarges, modifies, or contravenes the specific provisions of the law implemented;

²⁴ *Id.*

²⁵ DOAH is an agency in the executive branch, administratively housed under the Department of Management Services but not subject to its control. The DOAH employs administrative law judges who serve as neutral arbiters presiding over disputes arising under the APA. Section 120.65, F.S.

²⁶ Section 120.54(3)(c)2., F.S.

²⁷ Section 120.54(7)(a), F.S.

²⁸ *Id.*

²⁹ *Id.*

³⁰ Section 120.54(3)(e)6., F.S.

³¹ Rules general in form but applicable to only one school district, community college district, or county, or a part thereof, or a state university rules relating to internal personnel or business and finance are not published in the FAC. Forms are not published in the FAC. Section 120.55(1)(a), F.S. Emergency rules are also not published in the FAC.

³² Section 120.56(1), F.S.

³³ Section 120.52(8), F.S.

³⁴ Section 120.52(8)(a)-(f), F.S.

- The rule is vague, fails to establish adequate standards for agency decisions, or vests the agency with unbridled discretion;
- The rule is arbitrary or capricious; or
- The rule imposes regulatory costs on the regulated person, county, municipality that could have been reduced by the adoption of less costly alternatives that substantially accomplish the statutory objectives.

Hearing Before an Administrative Law Judge

An administrative law judge (ALJ) at the DOAH hears the rule challenge in a de novo proceeding and, within 30 days after the hearing, makes a determination on the rule's validity based upon a preponderance of the evidence standard.³⁵ The petitioner and the agency whose rule is challenged are adverse parties.³⁶ The ALJ's decision constitutes final agency action, which means an agency may not alter the decision after its issuance,³⁷ but an agency may appeal the decision to the District Court of Appeal where the agency maintains its headquarters.³⁸

Statement of Estimated Regulatory Cost

A statement of estimated regulatory cost (SERC) is an agency estimate of the potential impact of a proposed rule on the public, particularly the potential costs of complying with and implementing the rule.³⁹ Agencies are encouraged to prepare a SERC before adopting, amending, or repealing any rule.⁴⁰ The agency must seek public input in its creation of the SERC. For example, in its notice of proposed rule, an agency must give notice that the public may submit information relating to the agency SERC.⁴¹ A SERC is required if the proposed rule will have an adverse impact on small businesses or increase regulatory costs by more than \$200,000 in the aggregate in this state within 1 year after implementation of the rule.⁴² If the agency revises a rule before adoption and the revision increases the regulatory costs of the rule, the agency must revise the SERC to reflect that alteration.⁴³

A SERC must include:⁴⁴

- A good faith estimate of the number of people and entities affected by the proposed rule;
- A good faith estimate of the cost to the agency and other governmental entities to implement the proposed rule;
- A good faith estimate of transactional costs likely to be incurred by people, entities, and governmental agencies for compliance; and
- An analysis of the proposed rule's impact on small businesses, small counties, and small municipalities.

³⁵ Section 120.56(1), F.S.

³⁶ Section 120.56(1)(e), F.S.

³⁷ *Id.*

³⁸ Section 120.68(2)(a), F.S.

³⁹ Section 120.541(2), F.S.

⁴⁰ Section 120.54(3)(b)1., F.S.

⁴¹ Section 120.54(3)(a)1., F.S.

⁴² Sections 120.54(3)(b) and 120.541(1)(b), F.S.

⁴³ Section 120.541(1)(c), F.S.

⁴⁴ Section 120.541(2)(b)-(e), F.S.

The SERC must also include an economic analysis on the likelihood that the proposed rule will have an adverse impact in excess of \$1 million within the first five years after implementation on.⁴⁵

- Economic growth, private-sector job creation or employment, or private-sector investment;
- Business competitiveness, productivity, or innovation; or
- Regulatory costs, including any transactional costs.

If the economic analysis results in an adverse impact or regulatory costs in excess of \$1 million within five years after implementation of the rule, then the rule must be ratified by the Legislature in order to take effect.⁴⁶

An agency's failure to prepare an SERC can be raised in a proceeding at the DOAH to invalidate a rule as an invalid exercise of delegated legislative authority, if it is raised within one year after the effective date of the rule and is raised by a person whose substantial interests are affected by the regulatory costs of the rule.⁴⁷

Small Business Impact in Rulemaking

Each agency, before the adoption, amendment, or repeal of a rule, must consider the impact of the rule on small businesses.⁴⁸ If the agency determines that the proposed action will affect small businesses, the agency must send written notice to the rules ombudsman⁴⁹ in the Executive Office of the Governor at least 28 days before the intended action.⁵⁰ The agency must adopt the regulatory alternatives that the rules ombudsman offers if the alternatives are feasible and consistent with the stated objectives of the proposed rule, and would reduce the impact on small businesses.⁵¹

If the agency does not adopt the alternatives offered, before rule adoption or amendment, the agency must file a detailed written statement with the JAPC explaining the reasons for failure to adopt such alternatives.⁵²

Lower Cost Regulatory Alternative

A person substantially affected by a proposed rule may, within 21 days after the publication of a notice of adoption, amendment, or repeal of a rule, submit a lower cost regulatory alternative

⁴⁵ Section 120.541(2)(a), F.S.

⁴⁶ Section 120.541(3), F.S.

⁴⁷ Section 120.541(1)(f), F.S.

⁴⁸ Section 120.54(3)(b)2., F.S.

⁴⁹ The Governor must appoint a rules ombudsman in the Executive Office of the Governor for purposes of considering the impact of agency rules on the state citizens and businesses. The rules ombudsman must carry out the duties related to rule adoption procedures with respect to small businesses; review agency rules that adversely or disproportionately impact businesses, particularly those relating to small and minority businesses; and make recommendations on any existing or proposed rules to alleviate unnecessary or disproportionate adverse effects to business. Each agency must cooperate fully with the rules ombudsman in identifying such rules and take the necessary steps to waive, modify, or otherwise minimize the adverse effects of any such rules. Section 288.7015, F.S.

⁵⁰ Section 120.54(3)(b)2.b.(I), F.S.

⁵¹ Section 120.54(3)(b)2.b.(II), F.S.

⁵² Section 120.54(3)(b)2.b.(III), F.S.

(LCRA).⁵³ The LCRA must be a written proposal, made in good faith, which substantially accomplishes the objectives of the law being implemented.⁵⁴ A LCRA may recommend that a rule not be adopted at all, if it explains how the lower costs and objectives of the law will be achieved by not adopting any rule.⁵⁵ If a LCRA is submitted to an agency, the agency must prepare an SERC if one has not been previously prepared, or revise its prior SERC, and either adopt the LCRA or provide a statement to explain the reasons for rejecting the LCRA.⁵⁶

Additionally, if a LCRA is submitted, the 90-day period for filing a rule is extended an additional 21 days.⁵⁷ At least 21 days before filing a rule for adoption, an agency that is required to revise an SERC in response to a LCRA must provide the SERC to the person who submitted the LCRA and to the JAPC and must provide notice on the agency's website that it is available to the public.⁵⁸

An agency's failure to respond to a LCRA may be raised in a proceeding at the DOAH to invalidate a rule as an invalid delegation of legislative authority if it is raised within one year after the effective date of the rule and is raised by a person whose substantial interests are affected by the regulatory costs of the rule.⁵⁹

Joint Administrative Procedures Committee

The JAPC is a standing committee of the Legislature established by joint rule and created to maintain a continuous review of administrative rules, the statutory authority upon which those rules are based, and the administrative rulemaking process.⁶⁰ Specifically, the JAPC may examine existing rules and must examine each proposed rule to determine whether:⁶¹

- The rule is an invalid exercise of delegated legislative authority.
- The statutory authority for the rule has been repealed.
- The rule reiterates or paraphrases statutory material.
- The rule is in proper form.
- The notice given prior to adoption was sufficient.
- The rule is consistent with expressed legislative intent.
- The rule is necessary to accomplish the apparent or expressed objectives of the specific provision of law that the rule implements.
- The rule is a reasonable implementation of the law as it affects the convenience of the general public or persons particularly affected by the rule.
- The rule could be made less complex or more easily comprehensible to the general public.
- The rule's statement of estimated regulatory cost complies with the requirements of the APA and whether the rule does not impose regulatory costs on the regulated person, county, or

⁵³ Section 120.541(1)(a), F.S.

⁵⁴ *Id.*

⁵⁵ *Id.*

⁵⁶ *Id.*

⁵⁷ *Id.*

⁵⁸ Section 120.541(1)(d), F.S.

⁵⁹ Section 120.541(1)(f), F.S.

⁶⁰ Fla. Leg. J. Rule 4.6; see also s. 120.545, F.S.

⁶¹ Section 120.545(1), F.S.

municipality that could be reduced by the adoption of less costly alternatives that substantially accomplish the statutory objectives.

- The rule will require additional appropriations.

Annual Regulatory Review

Annually, each agency must prepare a regulatory plan that includes a list of each law enacted during the previous 12 months, which creates or modifies the duties or authority of the agency, and state whether the agency must adopt rules to implement the newly adopted laws.⁶² The plan must also include a list of each additional law not otherwise listed that the agency expects to implement by rulemaking before the following July 1, except emergency rules.⁶³ The plan must include a certification by the agency head or, if the agency head is a collegial body, the presiding officer, and the individual acting as principal legal advisor to the agency verifying the persons have reviewed the plan, verifying the agency regularly reviews all of its rules, and identifying the period during which all rules have most recently been reviewed to determine if the rules remain consistent with the agency's rulemaking authority and the laws implemented.⁶⁴ By October 1 of each year, the plan must be published on the agency's website or on another state website established for publication of administrative law records with a hyperlink to the plan.⁶⁵ The agency must also deliver a copy of the certification to the JAPC and publish a notice in the FAR identifying the date of publication of the agency's regulatory plan.⁶⁶

Repromulgation

The APA requires each agency to annually review its rules.⁶⁷ Although an agency may amend or repeal the rule, rules generally do not expire or sunset and many agencies have adopted rules that have not been updated in years.

Incorporation by Reference

The APA allows an agency to incorporate material external to the text of the rule by reference.⁶⁸ The material to be incorporated must exist on the date the rule is adopted.⁶⁹ If after the rule has been adopted the agency wishes to alter the material incorporated by reference, the rule itself must be amended for the change to be effective.⁷⁰ However, an agency rule that incorporates another rule by reference automatically incorporates subsequent amendments to the referenced rule.⁷¹ A rule cannot be amended by reference only.⁷² An agency may not incorporate a rule by reference unless:

⁶² Section 120.74(1)(a), F.S.

⁶³ Section 120.74(1)(b), F.S.

⁶⁴ Section 120.74(1)(d), F.S.

⁶⁵ Section 120.74(2)(a)1., F.S.

⁶⁶ Sections 120.74(2)(a)2. and 120.74(2)(a)3., F.S.

⁶⁷ See section 120.74, F.S.

⁶⁸ Section 120.54(1)(i)1., F.S.; see also Fla. Admin. Code R. 1-1.013.

⁶⁹ Section 120.54(1)(i)1., F.S.

⁷⁰ *Id.*

⁷¹ Section 120.54(1)(i)2., F.S.

⁷² Section 120.54(1)(i)4., F.S.

- The material has been submitted in the prescribed electronic format to the DOS and the full text of the material can be made available for free public access through an electronic hyperlink from the rule making the reference in the FAC; or
- The agency has determined that posting the material publicly on the Internet would constitute a violation of federal copyright law, in which case a statement stating such, along with the address of locations at the DOS and the agency at which the material is available for public inspection and examination, must be included in the notice.⁷³

The DOS has adopted a rule governing the requirements for materials incorporated by reference through an adopted rule.⁷⁴ The rule requires each agency incorporating material by reference in an administrative rule to certify that the materials incorporated have been filed with the DOS electronically or, if the agency claims the posting of the material would constitute a violation of federal copyright law, the location where the public may view the material.⁷⁵

Emergency Rules

Agencies are authorized to respond to immediate dangers to the public health, safety, or welfare by adopting emergency rules.⁷⁶ Emergency rules are not adopted using the same procedures required of other rules.⁷⁷ The notice of the emergency rule and the text of the rule is published in the first available issue of the FAR, however, there is no requirement that an emergency rule be published in the FAC.⁷⁸ The agency must publish prior to, or contemporaneous with, the rule's promulgation the specific facts and reasons for finding an immediate danger to the public health, safety, or welfare.⁷⁹ The agency's findings of immediate danger are judicially reviewable.⁸⁰

Emergency rules are effective immediately, or on a date less than 20 days after filing if specified in rule,⁸¹ but are only effective for a period of no longer than 90 days.⁸² An emergency rule is not renewable, except when the agency has initiated rulemaking to adopt rules relating to the subject of the emergency rule and a challenge to the proposed rules has been filed and remains pending or the proposed rules are awaiting ratification by the Legislature.⁸³

Florida Administrative Code

The FAC is an electronic compilation of all rules adopted by each agency and maintained by the DOS.⁸⁴ The DOS retains the copyright over the FAC.⁸⁵

⁷³ Section 120.54(1)(i)3., F.S.

⁷⁴ Fla. Admin. Code R. 1-1.013.

⁷⁵ Fla. Admin. Code R. 1-1.013(5)(d).

⁷⁶ Section 120.54(4), F.S.

⁷⁷ Section 120.54(4)(a), F.S.

⁷⁸ Section 120.54(4)(a)3., F.S.

⁷⁹ *Id.*

⁸⁰ *Id.*

⁸¹ Section 120.54(4)(d), F.S.

⁸² Section 120.54(4)(c), F.S.

⁸³ *Id.*

⁸⁴ Section 120.55(1)(a)1., F.S.

⁸⁵ *Id.*

Each rule in the FAC must cite the grant of rulemaking authority and the specific law implemented.⁸⁶ Rules applicable to only one school district, community college district, or county or state university rules relating to internal personnel or business and finance are not required to be included in the FAC.⁸⁷ The DOS is required to publish the following information at the beginning of each section of the code concerning an agency:

- The address and telephone number of the executive offices of the agency.
- The manner by which the agency indexes its rules.
- A listing of all rules of that agency excluded from publication in the FAC and a statement as to where those rules may be inspected.⁸⁸

The DOS is required to adopt rules allowing adopted rules and materials incorporated by reference to be filed in electronic form.⁸⁹ Further, the DOS is required to prescribe by rule the style and form required for rules, notices, and other materials submitted for filing in the FAC.⁹⁰ The rule the DOS has adopted requires rules that are being amended to be coded by underlining new text and by striking through deleted text.⁹¹

Infrastructure Permitting Process Review

Coastal Construction Permits

Coastal construction is regulated by the Department of Environmental Protection (DEP) in order to protect Florida's beaches and dunes from imprudent construction that may jeopardize the stability of Florida's natural resources.⁹² The coastal construction control line (CCCL) defines the portion of the beach-dune system that is subject to severe fluctuations caused by a 100-year storm surge, storm waves, or other forces such as wind, wave, or water level changes.⁹³ Seaward of the CCCL, new construction and improvements to existing structures require a CCCL permit from DEP.⁹⁴ The line defines the landward limit of DEP's authority to regulate construction.⁹⁵ DEP's CCCL Program regulates structures and activities which can cause beach erosion, destabilize dunes, damage upland properties, or interfere with public access.⁹⁶ CCCLs currently exist for large portions of Florida's coast.⁹⁷

⁸⁶ *Id.*

⁸⁷ Section 120.55(1)(a)2., F.S.

⁸⁸ Section 120.55(1)(a)3., F.S.

⁸⁹ Section 120.55(1)(a)5., F.S.

⁹⁰ Section 120.55(1)(c), F.S.

⁹¹ Fla. Admin. Code R. 1-1.010(5)(a) (referencing Fla. Admin. Code R. 1-1.011(3)(c)).

⁹² Section 161.053(1)(a), F.S.

⁹³ Section 161.053, F.S.; Fla. Admin. Code R. 62B-33.005(1); DEP, *The Homeowner's Guide to the Coastal Construction Control Line Program*, 3 (2017), available at

https://floridadep.gov/sites/default/files/Homeowner%27s%20Guide%20to%20the%20CCCL%20Program%206_2012%20%28002%29_0.pdf.

⁹⁴ DEP, *The Homeowner's Guide to the Coastal Construction Control Line Program* at 2.

⁹⁵ *Id.*

⁹⁶ DEP, *Coastal Construction Control Line Program*, <https://floridadep.gov/water/coastal-construction-control-line> (last visited Mar. 20, 2023).

⁹⁷ DEP, *Geospatial Open Data, CCCL*, https://geodata.dep.state.fl.us/datasets/4674ee6d93894168933e99aa2f14b923_2/explore (last visited Mar. 20, 2023).

Due to the potential environmental impacts and greater risk of hazards from wind and flood, the standards for construction seaward of the CCCL are often more stringent than those applied in the rest of the coastal building zone.⁹⁸ Approval or denial of a permit application is based upon a review of factors such as the location of structures and their potential impacts on the surrounding area.⁹⁹ CCCLs are established by DEP on a county basis, but only after such a line has been determined necessary for protecting upland structures and controlling beach erosion, and after a public hearing has been held in the affected county.¹⁰⁰ These hearings are conducted in the manner described in s. 120.54(3)(c), F.S., must be published in the FAR in the same manner as a rule, and are subject to an invalidity challenge as described in s. 120.56(3), F.S. A petitioner may challenge a rule under s. 120.56(3), F.S., on the basis that it is an invalid delegation of legislative authority, and must substantiate this allegation by a preponderance of the evidence.

Joint Costal Permitting (JCP)

DEP implements a concurrent processing of applications for coastal construction permits, environmental resource permits and sovereign submerged lands authorizations.¹⁰¹ A JCP is required for activities that meet all of the following criteria:

- Located on Florida's natural sandy beaches facing the Atlantic Ocean, the Gulf of Mexico, the Straits of Florida or associated inlets.
- Activities that extend seaward of the mean high water line.
- Activities that extend into sovereign submerged lands.
- Activities that are likely to affect the distribution of sand along the beach.

Activities that require a JCP include beach restoration or nourishment; construction of erosion control structures such as groins and breakwaters; public fishing piers; maintenance of inlets and inlet-related structures; and dredging of navigation channels that include disposal of dredged material onto the beach or in the nearshore area.¹⁰²

Environmental Resource Permits

Part IV of Chapter 373 F.S., regulates the construction, alteration, operation, maintenance, abandonment, and removal of stormwater management systems, dams, impoundments, reservoirs, works, and appurtenant works. DEP regulates activities in, on, or over surface waters, as well as any activity that alters surface water flows, through environmental resource permits (ERPs). ERPs are generally required for the construction or alteration of any stormwater management system, dam, impoundment, reservoir, or appurtenant work.¹⁰³ A water management district (WMD) or the DEP may require an ERP and impose conditions necessary to assure that the construction or alteration of any water management system¹⁰⁴ complies with state law and rules, and will not be harmful to water resources.¹⁰⁵ Generally, to receive a permit

⁹⁸ Fla. Admin. Code Ch. 62B-33.

⁹⁹ Fla. Admin. Code R. 62B-33.005.

¹⁰⁰ Section 161.053(2), F.S.

¹⁰¹ Section 161.055, F.S.; see also DEP, *Beaches, Inlets and Ports*, <https://floridadep.gov/rcp/beaches-inlets-ports> (last visited Mar. 21, 2023).

¹⁰² *Id.*

¹⁰³ Section 373.413(1), F.S.

¹⁰⁴ Section 373.403(10), F.S.

¹⁰⁵ Section 373.413(1), F.S.

for a proposed use of water resources, an applicant must demonstrate that the proposed activity is a reasonable-beneficial use, will not interfere with any existing legal use of water, and is consistent with the public interest.¹⁰⁶

Pursuant to statutory authority,¹⁰⁷ DEP adopted a comprehensive chapter of rules that govern the permitting process.¹⁰⁸

State Administered Federal Section 404 Dredge and Fill Permits

In 2020,¹⁰⁹ Florida assumed responsibility under section 404 of the federal Clean Water Act¹¹⁰ for dredge and fill permitting.¹¹¹ DEP adopted rules to implement the section 404 program.¹¹² The State 404 Program is responsible for overseeing the permitting for any project that proposes dredge or fill activities within state assumed waters.¹¹³ There is significant overlap between the federal 404 permitting program and the ERP program.

Permitting Process

Upon receiving a permit application for use of water resources, DEP or the WMD evaluates the material to determine if the application is complete.¹¹⁴ If it is incomplete, DEP or the WMD must request additional information within 30 days after its receipt of the application.¹¹⁵ DEP's rules allow an applicant up to 90 days to respond to such a request.¹¹⁶ Within 30 days after its receipt of additional information, the DEP or the WMD must review the submissions.¹¹⁷ If the application is complete, the DEP or WMD must decide whether to issue or deny the ERP within 60 days.¹¹⁸ Except for permits delegated through the 404 program,¹¹⁹ any application that the DEP or WMD does not approve or deny within 60 days of completion of the application is deemed approved by default.¹²⁰

¹⁰⁶ Section 373.223(1), F.S.

¹⁰⁷ Section 373.4131, F.S.

¹⁰⁸ Fla. Admin. Code Ch. 62-330.

¹⁰⁹ See generally DEP, *State 404 Program*, <https://floridadep.gov/water/submerged-lands-environmental-resources-coordination/content/state-404-program> (last visited Mar. 21, 2023) (citing 85 FR 83553).

¹¹⁰ 33 U.S.C. s. 1251 et seq.

¹¹¹ Section 373.4146, F.S.

¹¹² See Fla. Admin. Code Ch. 62-331.

¹¹³ DEP, *State 404 Program*, <https://floridadep.gov/water/submerged-lands-environmental-resources-coordination/content/state-404-program> (last visited Mar. 20, 2023).

¹¹⁴ DEP, *Environmental Resource Permit Applicant's Handbook, Vol. 1*, AH 5.5.3, incorporated by reference in Fla. Admin. Code R. 62- 330.010(4) (Oct. 1, 2013), available at <https://www.flrules.org/Gateway/reference.asp?No=Ref-03174>.

¹¹⁵ Section 373.4141(1), F.S.

¹¹⁶ DEP, *Environmental Resource Permit Applicant's Handbook, Vol. 1* at AH 5.5.3.5.

¹¹⁷ Section 373.4141(1), F.S.

¹¹⁸ Section 373.4141(2), F.S. Most state licensure decisions must be made within 90 days. Section 120.60(1), F.S.

¹¹⁹ Section 373.4146(5)(a), F.S.

¹²⁰ Section 120.60(1), F.S.

III. Effect of Proposed Changes:

Section 1 amends s. 120.52, F.S., which defines terms within the Administrative Procedure Act (APA), to include the following definitions:

- “Repromulgation” means the publication and adoption of an existing rule following an agency’s review of the rule for consistency with the powers and duties granted by its enabling statutes.
- “Technical change” means a change limited to correcting grammatical, typographical, and similar errors not affecting the substance of the rule.

Section 2 amends s. 120.54, F.S., regarding rulemaking procedures. Currently, for rules adopted after December 31, 2010, material may not be incorporated by reference unless certain conditions are met, including that the material has been submitted in the prescribed electronic format and made available for free public access or, if an agency determines that posting the incorporated material online would violate federal copyright law, the agency must include in the notice a statement to that effect, along with the addresses of locations at the Department of State (DOS) and the agency at which the material is available for public inspection and examination. The bill applies these conditions to rules repromulgated on or after July 1, 2023.

The bill provides that a notice of rule development must cite the grant of rulemaking authority for the proposed rule and the law being implemented and include the proposed rule number. The notice must also include a request for the submission of any information that would be helpful to the agency in preparing the statement of estimated regulatory costs (SERC) and a statement of how a person may submit comments to the proposal and how a person may provide information regarding the potential regulatory costs. A notice of a proposed rule must be published in the Florida Administrative Register (FAR) within 12 months after the most recent notice of rule development.

The bill amends the information required in a notice of proposed rule to include a concise summary of the SERC describing the regulatory impact of the proposed rule in readable language; an agency website address where the SERC can be viewed in its entirety; and a request for submission of any information that could help the agency regarding the SERC.

The bill provides that a notice of a proposed rule must be published in FAR at least seven days after the publication of the notice of rule development. Currently, a proposed rule must be available for inspection and copying at the time the notice is published. The bill provides that the SERC and all materials proposed to be incorporated by reference must also be made available in the prescribed format.

Currently, the notice must be mailed to all persons named in the proposed rule and to all persons who, at least 14 days prior to such mailing, have made requests of the agency for advance notice of its proceedings. The bill permits electronic delivery of such notices.

The bill requires an agency to prepare a SERC before adopting or amending a rule, other than an emergency rule (agencies are currently only encouraged to do so). However, an agency is not required to prepare a SERC for a proposed rule repeal process unless the repeal would impose a regulatory cost. In any challenge to a proposed rule repeal, a proposed rule repeal that only

reduces or eliminates regulations on those individuals or entities regulated by the existing rule must be considered presumptively correct in any proceeding before the division or in any proceeding before a court of competent jurisdiction.

The bill allows agencies to hold public workshops for the purpose of gathering information pertinent to its preparation of the SERC. However, the bill requires such a workshop if requested in writing by any affected person. When a workshop or public hearing is held, the bill requires the agency to ensure that the person responsible for preparing the proposed rule and the SERC is available to receive public input and respond to questions or comments regarding the SERC. The bill makes conforming changes throughout to reflect that a SERC must be performed in all rule amendments or proposed rulemaking, and to accommodate public workshops regarding the SERC.

Regarding small business impacts, the bill provides that an adverse impact on small business exists if, for any small business:

- An owner, officer, operator, or manager must complete any education, training, or testing to comply, or is likely to spend at least 10 hours or purchase professional advice to understand and comply, with the rule in the first year;
- Taxes or fees assessed on transactions are likely to increase by \$500 or more in the aggregate in one year;
- Prices charged for goods and services are restricted or are likely to increase because of the rule;
- Specially trained, licensed, or tested employees will be required because of the rule;
- Operating costs are expected to increase by at least \$1,000 annually because of the rule; or
- Capital expenditures in excess of \$1,000 are necessary to comply with the rule.

If the rules ombudsman of the Executive Office of the Governor provides a regulatory alternative to the agency to lessen the impact of the rule on small businesses, the bill requires the agency to provide the regulatory alternative to the Joint Administrative Procedures Committee (JAPC) at least 21 days before filing the proposed rule for adoption.

Regarding hearings, the law currently provides that if the agency determines that the rulemaking proceeding is not adequate to protect a person's interests, it must suspend the rulemaking proceeding and convene a separate proceeding. The bill requires the agency to publish notice of convening a separate proceeding in the FAR. The bill also provides that all timelines are tolled during any suspension of the rulemaking proceedings, beginning on the date the notice of convening a separate proceeding is published and resuming on the day after conclusion of the separate proceedings, notice of which must be provided to JAPC. Additionally, an agency must ensure that a person who is responsible for preparing the proposed rule and the SERC are present to respond to questions or comments regarding the agency's decision to adopt or reject a submitted lower cost regulatory alternative.

Regarding the modification or withdrawal of proposed rules, the bill provides that any change, other than a technical change, to a SERC requires a notice of change. In addition, any change to materials incorporated by reference requires the agency to provide a copy of a notice of change upon request. The notice of change must include a summary of any revision of the SERC. Material proposed to be incorporated by reference must be made publicly available in the

prescribed format and include a summary of the substantive revisions to any material proposed to be incorporated by reference in the proposed rule. After the notice of proposed rule is published, the agency must withdraw the proposed rule if the agency has failed to adopt it within the prescribed timeframes in Chapter 120, F.S. If the agency, 30 days after notice by the JAPC that the agency has failed to adopt the proposed rule within the prescribed timeframes, has not given notice of the withdrawal of the proposed rule, the JAPC must notify the DOS that the date for adoption of the rule has expired, and the DOS must publish a notice of withdrawal of the proposed rule.

In addition, the bill requires emergency rules to be published in the Florida Administrative Code (FAC) in the section of the code dealing with the agency. The bill provides that an agency may supersede an emergency rule currently in effect through adoption of another emergency rule. The agency must state the reason for adopting the new rule, and the new rule must be in effect for the duration of the effective period of the superseded rule. The bill allows an agency to make technical changes to the emergency rule within the first seven days after adoption. Any notice of the renewal of an emergency rule must be published in the FAR before the expiration of the existing emergency rule and state the specific facts and reasons for renewal.

The bill also provides that, for emergency rules with an effective period longer than 90 days which are intended to replace existing rules, a note must be added to the history note of the existing rule which specifically identifies the emergency rule that is intended to supersede the existing rule and includes the date that the emergency rule was filed with the DOS. An emergency rule may be repealed at any time while the rule is in effect by publishing a notice in the FAR citing the reason and effective date of the repeal.

Regarding a petition to initiate rulemaking, the bill provides that the agency must file a copy of the petition with the JAPC.

Section 3 amends s. 120.541, F.S., regarding SERCs. The bill specifies that a lower cost regulatory alternative (LCRA) may be submitted after publication of a notice of proposed rule or a notice of change. The agency must provide a copy of any proposal for a LCRA to JAPC at least 21 days before filing the proposed rule for adoption.

The bill provides that, if submitted after a notice of change, a proposal for a LCRA is deemed to have been made in good faith only if the person reasonably believes, and the proposal states the reasons for believing, that the proposed rule as changed increases the regulatory costs or creates an adverse impact on small business. The bill provides that if an agency that receives a LCRA may reject the alternative proposal or modify the proposed rule to reduce the regulatory costs. If the agency rejects or modifies the proposed rule, it must state its reasons for doing so. If the rule is modified in response to an LCRA, the agency must revise its SERC. A summary of the revised SERC must be included in subsequent published rulemaking notices.

Currently, a revised SERC must be provided to the person who submitted the LCRA and to the JAPC. The bill provides it must also be provided to the rules ombudsman in the Executive Office of the Governor and published in the same manner as the original SERC. The bill provides that failure publish a SERC is a material failure to follow the applicable rulemaking procedures.

Currently, a SERC must include an economic analysis showing whether the rule directly or indirectly is likely to increase any “transactional costs” in excess of \$1 million in the aggregate within five years after the implementation of the rule. The bill replaces “transactional costs” with “all costs and impacts estimated in the statement.”

Under existing law, a SERC must include a good faith estimate of the “transactional costs”¹²¹ likely to be incurred by individuals and entities required to comply with the rule. The bill replaces “transactional costs” with “compliance costs.” In estimating compliance costs, the agency must consider, among other matters, all direct and indirect costs necessary to comply with the proposed rule which are readily ascertainable based upon standard business practices, including, but not limited to, costs related to:

- Filing fees.
- Expenses to obtain a license.
- Necessary equipment.
- Installation, utilities, and maintenance of necessary equipment.
- Necessary operations and procedures.
- Accounting, financial, information management, and other administrative processes.
- Other processes.
- Labor based on relevant rates of wages, salaries, and benefits.
- Materials and supplies.
- Capital expenditures, including financing costs.
- Professional and technical services, including contracted services necessary to implement and maintain compliance.
- Monitoring and reporting.
- Qualifying and recurring education, training, and testing.
- Travel.
- Insurance and surety requirements.
- A fair and reasonable allocation of administrative costs and other overhead.
- Reduced sales or other revenues.
- Other items suggested by the rules ombudsman in the Executive Office of the Governor or by any interested person, business organization, or business representative.

The bill clarifies that an emergency rule is not subject to the legislative ratification process.¹²²

The bill provides that, in evaluating the impacts related to an economic analysis required under s. 120.541(2)(a), F.S., or an analysis of the impact to small businesses, counties, or cities under s.

¹²¹ “Transactional costs” are direct costs that are readily ascertainable based upon standard business practices, and include filing fees, the cost of obtaining a license, the cost of equipment required to be installed or used or procedures required to be employed in complying with the rule, additional operating costs incurred, the cost of monitoring and reporting, and any other costs necessary to comply with the rule. Section 120.541(2)(d), F.S.

¹²² In 2011, the Legislature passed two bills, CS/CS/CS/HB 993 (2011) and CS/CS/CS/HB 849 (2011) that contained conflicting provisions concerning the exemption of emergency rules from the legislative ratification process. In one bill, CS/CS/CS/HB 993 (2011), the provision exempting emergency rules in s. 120.541(4), F.S., from the legislative ratification process was expressly included in the bill. In the other, CS/CS/CS/HB 849 (2011), the provision was erroneously deleted, leading to a statutory conflict. In 2013, the Legislature passed CS/CS/SB 1410 (2013), which amended s. 120.541(4), F.S., to correct a cross reference and in the process the bill erroneously continued the omission of the provision exempting emergency rules. This bill corrects those previous errors by reinstating the provision exempting emergency rules from the legislative ratification process.

120.541(2)(e), F.S., an agency must include good faith estimates of market impacts likely to result from compliance with the proposed rule, including:

- Increased customer charges for goods or services.
- Decreased market value of goods or services produced, provided, or sold.
- Increased costs resulting from the purchase of substitute or alternative goods or services.
- The reasonable value of time to be spent by owners, officers, operators, and managers to understand and comply with the proposed rule, including, but not limited to, time to be spent completing required education, training, or testing.
- Capital costs.
- Any other impacts suggested by the rules ombudsman in the Executive Office of the Governor or by any interested persons.

The bill provides that, in estimating the information related to good faith estimates, the agency may use surveys of individuals, businesses, business organizations, counties, and municipalities to collect data helpful to estimate the costs and impacts.

The bill requires the Department of State (DOS) to include on the FAR website addresses where SERCs can be viewed in their entirety. An agency that prepares a SERC must provide, as part of the notice of proposed rule, the agency website address where the SERC can be read in its entirety to the DOS for publication in the FAR. If an agency revises its statement of estimated regulatory costs, the agency must provide notice that a revision has been made. Such notice must also include the agency website address where the revision can be viewed in its entirety.

Section 4 creates s. 120.5435, F.S., which provides for a “repromulgation” process. The bill provides that the legislative intent that each agency periodically review its rules for consistency with the powers and duties granted by its enabling statutes.

If, after reviewing a rule, the agency determines that substantive changes to update the rule are not required, the agency must repromulgate the rule to reflect the date of the review. The bill defines the term “repromulgation” to mean the publication and adoption of an existing rule following an agency’s review of the rule for consistency with the powers and duties granted by its enabling statute.

All rules adopted, amended, or repromulgated on or after July 1, 2023, must be reviewed within five years after their effective dates and every five years thereafter. Each agency must review all existing rules no later than December 31, 2028. Any variation from this schedule must be reflected in the agency’s regulatory plan. In addition, by December 31, 2023, JAPC must provide each agency with a list of existing rules and their effective dates.

Failure of an agency to adhere to these deadlines constitutes a material failure to follow the applicable rulemaking procedures or requirements and may be the basis of an objection.

The bill requires an agency, before repromulgation of a rule and upon approval by the agency head, to:

- Publish a notice of repromulgation in the FAR, which is not required to include the text of the rule; and

- File the rule with the DOS. The rule may not be filed for repromulgation less than 28 days before or more than 90 days after the publication of the notice.

An agency must file a notice of repromulgation with the JAPC at least 14 days before filing the rule with the DOS. The JAPC must certify at the time of filing whether the agency has responded to all of the JAPC's material or written inquiries made on behalf of JAPC. The bill specifies that a repromulgated rule is not subject to the hearing requirements of the APA, nor is it subject to challenge as a proposed rule.

The bill requires each agency, upon approval of the agency head, to submit certified copies of the repromulgated rule it proposes to adopt with the DOS and any material incorporated by reference in the rule. The rule is considered to be repromulgated upon its filing with the DOS. The DOS must then update the history note of the rule in the FAC to reflect the filing date of the repromulgated rule.

At least 30 days before each legislative session, JAPC must submit to the Legislature a list of all rules that have not been repromulgated in accordance with this section and identify whether the statutory rulemaking authority for each rule remains in effect. If no action is taken by the Legislature with regard to a rule during the next regular legislative session, each agency must initiate rulemaking proceedings to repeal the rule within 14 days after the close of the session.

The bill requires the DOS to adopt rules to implement the bill's repromulgation provision by December 31, 2023.

Section 5 creates s. 120.5436, F.S., regarding infrastructure and environmental permitting review. The bill provides that the Legislature intends to:

- Build a more resilient and responsive government infrastructure to allow for quick recovery after natural disasters, including hurricanes and tropical storms.
- Promote efficiency in state government across branches, agencies, and other governmental entities and to identify any area of improvement within each that allows for quick, effective delivery of services.
- Seek out ways to improve the state's administrative procedures in relevant fields to build a streamlined permitting process that withstands disruptions caused by natural disasters, including hurricanes and tropical storms.

The bill directs the Department of Environmental Protection (DEP) and each water management district (WMD) to conduct a holistic review of their current coastal permitting programs and other permit programs in order to increase efficiency within each process. These permitting processes must include, but are not limited to:

- Coastal construction control line permits;
- Joint coastal permits;
- Environmental resource permits;
- State-administered section 404 permits (consistent with the terms of the Environmental Protection Agency's approval); and
- Permitting processes related to water supply infrastructure, wastewater infrastructure, and onsite sewage treatment and disposal systems.

The scope and purpose of the review is to identify areas of improvement and to increase efficiency within each process. Factors that must be considered in the review include the following:

- Requirements to obtain a permit.
- Time periods for permit review, including by commenting agencies, and approval of the permit application.
- Areas for improved efficiency and decision-point consolidation within a single project's process.
- Areas of duplication across one or more permit programs.
- Methods of requesting permits.
- Any other factors that may increase the efficiency of the permitting process and may allow improved storm recovery.

The bill directs DEP and each WMD to submit a report with their findings to the Governor and Legislature by December 31, 2023.

Section 6 amends s. 120.545, F.S., regarding committee review of agency rules. The bill requires JAPC to examine existing rules.

Section 7 amends s. 120.55, F.S., regarding publication of rules. The bill requires the FAR be published each business day by 8 a.m., with the exception of state holidays or emergency closures of state agencies. If a rule, proposed rule, or notice of rule development is corrected and replaced, the corrected rule or notice must be published in the next FAR with a notation indicating that the rule, proposed rule, or notice has been corrected by the DOS. Any timeframes for rulemaking must revert to the initial date of publication.

The bill also requires all materials incorporated by reference in any part of an adopted or repromulgated rule to be filed in the prescribed electronic with the full text available on the Internet for free public access (unless it's violation of federal copyright law). In addition, the bill requires the history note appended to each rule include the date of any technical changes to the rule and provide that such change does not affect the rule's effective date.

The bill also amends the types of publications contained in the FAR to include the full text of each emergency rule in effect on the date of publication and any other material required or authorized by law or deemed useful by DEP.

Section 8 makes conforming changes.

Section 9 amends s. 120.74, F.S., regarding agency annual rulemaking and regulatory plans. The bill replaces the requirement that the annual regulatory plan include a listing of each law it expects to implement with rulemaking with a requirement that the plan identify and describe each rule, by rule number or proposed rule number, that the agency expects to develop, adopt, or repeal for the 12-month period beginning October 1 and ending September 30. The annual regulatory plan must identify any rules required to be repromulgated for the 12-month period.

The bill also requires that the annual regulatory plan contain a declaration that the agency head and the principal legal advisor understand that regulatory accountability is necessary to ensure

public confidence in the integrity of state government and, to that end, the agency is diligently working toward lowering the total number of rules adopted. The bill requires the declaration to contain the total number of rules adopted and repealed during the previous 12 months.

Sections 10 through 14 make conforming changes.

Section 15 provides an effective date of July 1, 2023.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The bill may have an indeterminate, negative fiscal impact on state government. The bill requires each agency to review and repromulgate its rules, includes additional requirements to comply with notice, publication, and hearing requirements of rules, and includes additional requirements for statements for estimated regulatory costs. Agencies will likely be required to spend funds to implement the requirements of the bill. Whether these new requirements could be absorbed within each agency's existing resources is not known.

However, the bill specifies that agencies have to complete rule review within five years for rules adopted, amended, or repromulgated on or after July 1, 2023. Agencies should have sufficient time to request additional funding or personnel through the Legislative

Budget Request process should it be determined additional funding or personnel will be required to implement the provisions of the bill.

The Department of State may have additional costs associated with publishing the specified material in the bill.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The bill's amendment to s. 120.54(3)(d)3., F.S., requires the Joint Administrative Procedures Committee (JAPC) to notify the Department of State of the expiration of an agency's timeframe in which it may act to adopt a rule if the agency fails to withdraw its notice of a proposed rule within 30 days of a notice from the JAPC about the expiration. However, the bill does not direct the JAPC to send any notice to delinquent agencies.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 120.52, 120.54, 120.541, 120.545, 120.55, 120.56, 120.74, 120.80, 120.81, 420.9072, 420.9075, and 443.091.

This bill creates the following sections of the Florida Statutes: 120.5435 and 120.5436.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

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

CS by Environment and Natural Resources Committee on March 27, 2023:

The amendment provides that:

- For rules amended on or after July 1, 2023, material may not be incorporated by reference unless certain criteria are met.
- If an agency does not publish a notice of withdrawal within a certain timeframe, the Joint Administrative Procedures Committee (JAPC) must notify the Department of State (DOS), and the DOS must publish a notice of withdrawal.
- A notice of change must include a summary of substantive revisions to any material proposed to be incorporated by reference in the proposed rule.
- An agency may only supersede an emergency rule through adoption of another emergency rule.
- For emergency rules with an effective period longer than 90 days which are intended to replace existing rules, a note must be added to the history note of the existing rule identifying the emergency rule that is intended to supersede the existing rule.
- An emergency rule may be repealed by publishing a notice in the Florida Administrative Register (FAR) with the reason for repeal.

- At least 30 days before the legislative session, JAPC must submit a list of all rules that have not been repromulgated and identify whether the statutory rulemaking authority remains in effect. If no action is taken by the Legislature, each agency must initiate rulemaking to repeal the rule within 14 days after the close of session.
- Each agency must review all existing rules by December 31, 2028.

The amendment also:

- Replaces the timeline for repromulgation of rules and provides that all rules adopted, amended, or repromulgated on or after July 1, 2023, must be reviewed within five years after their effective dates and every five years thereafter.
- Amends the types of coastal permitting processes the Department of Environmental Protection (DEP) and water management districts must review to include processes related to water supply infrastructure, wastewater infrastructure, and onsite sewage treatment and disposal systems.
- Amends the types of publications contained in FAR to include the full text of each emergency rule in effect on the date of publication and any material required or authorized by law or deemed useful by DEP.

B. Amendments:

None.



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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/27/2023	.	
	.	
	.	
	.	

The Committee on Environment and Natural Resources (Grall)
recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Present subsections (16) through (19) and (20),
(21), and (22) of section 120.52, Florida Statutes, are
redesignated as subsections (17) through (20) and (22), (23),
and (24), respectively, and new subsections (16) and (21) are
added to that section, to read:

120.52 Definitions.—As used in this act:



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11 (16) "Repromulgation" means the publication and adoption of
12 an existing rule following an agency's review of the rule for
13 consistency with the powers and duties granted by its enabling
14 statute.

15 (21) "Technical change" means a change limited to
16 correcting grammatical, typographical, and similar errors not
17 affecting the substance of a rule.

18 Section 2. Paragraph (i) of subsection (1), subsections (2)
19 and (3), paragraph (c) of subsection (4), and paragraph (a) of
20 subsection (7) of section 120.54, Florida Statutes, are amended,
21 and paragraphs (e) through (j) are added to subsection (4) of
22 that section, to read:

23 120.54 Rulemaking.—

24 (1) GENERAL PROVISIONS APPLICABLE TO ALL RULES OTHER THAN
25 EMERGENCY RULES.—

26 (i)1. A rule may incorporate material by reference but only
27 as the material exists on the date the rule is adopted. For
28 purposes of the rule, changes in the material are not effective
29 unless the rule is amended to incorporate the changes.

30 2. An agency rule that incorporates by specific reference
31 another rule of that agency automatically incorporates
32 subsequent amendments to the referenced rule unless a contrary
33 intent is clearly indicated in the referencing rule. A notice of
34 amendments to a rule that has been incorporated by specific
35 reference in other rules of that agency must explain the effect
36 of those amendments on the referencing rules.

37 3. In rules adopted after December 31, 2010, and rules
38 amended or repromulgated on or after July 1, 2023, material may
39 not be incorporated by reference unless:



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40 a. The material has been submitted in the prescribed
41 electronic format to the Department of State and the full text
42 of the material can be made available for free public access
43 through an electronic hyperlink from the rule making the
44 reference in the Florida Administrative Code; or

45 b. The agency has determined that posting the material on
46 the Internet for purposes of public examination and inspection
47 would constitute a violation of federal copyright law, in which
48 case a statement to that effect, along with the address of
49 locations at the Department of State and the agency at which the
50 material is available for public inspection and examination,
51 must be included in the notice required by subparagraph (3)(a)1.

52 4. A rule may not be amended by reference only. Amendments
53 must set out the amended rule in full in the same manner as
54 required by the State Constitution for laws.

55 5. Notwithstanding any contrary provision in this section,
56 when an adopted rule of the Department of Environmental
57 Protection or a water management district is incorporated by
58 reference in the other agency's rule to implement a provision of
59 part IV of chapter 373, subsequent amendments to the rule are
60 not effective as to the incorporating rule unless the agency
61 incorporating by reference notifies the committee and the
62 Department of State of its intent to adopt the subsequent
63 amendment, publishes notice of such intent in the Florida
64 Administrative Register, and files with the Department of State
65 a copy of the amended rule incorporated by reference. Changes in
66 the rule incorporated by reference are effective as to the other
67 agency 20 days after the date of the published notice and filing
68 with the Department of State. The Department of State shall



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69 amend the history note of the incorporating rule to show the
70 effective date of such change. Any substantially affected person
71 may, within 14 days after the date of publication of the notice
72 of intent in the Florida Administrative Register, file an
73 objection to rulemaking with the agency. The objection must
74 ~~shall~~ specify the portions of the rule incorporated by reference
75 to which the person objects and the reasons for the objection.
76 The agency does ~~shall~~ not have the authority under this
77 subparagraph to adopt those portions of the rule specified in
78 such objection. The agency shall publish notice of the objection
79 and of its action in response in the next available issue of the
80 Florida Administrative Register.

81 6. The Department of State may adopt by rule requirements
82 for incorporating materials pursuant to this paragraph.

83 (2) RULE DEVELOPMENT; WORKSHOPS; NEGOTIATED RULEMAKING.—

84 (a) 1. Except when the intended action is the repeal of a
85 rule, agencies shall provide notice of the development of
86 proposed rules by publication of a notice of rule development in
87 the Florida Administrative Register at least 7 days before
88 providing notice of a proposed rule as required by paragraph

89 (3)(a). The notice of rule development must ~~shall~~ indicate the
90 subject area to be addressed by rule development, provide a
91 short, plain explanation of the purpose and effect of the
92 proposed rule, cite the grant of rulemaking authority for the
93 proposed rule and the law being implemented ~~specific legal~~
94 ~~authority for the proposed rule~~, and include the proposed rule
95 number and the preliminary text of the proposed rules, if
96 available, or a statement of how a person may promptly obtain,
97 without cost, a copy of any preliminary draft, when ~~if~~



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available. The notice must also include a request for the submission of any information that would be helpful to the agency in preparing the statement of estimated regulatory costs required pursuant to paragraph (3)(b) and a statement of how a person may submit comments on the proposal and how a person may provide information regarding the potential regulatory costs.

2. A notice of a proposed rule must be published in the Florida Administrative Register within 12 months after the most recent notice of rule development.

(b) All rules should be drafted in readable language. The language is readable if it:

1. ~~It~~ Avoids the use of obscure words and unnecessarily long or complicated constructions; and

2. ~~It~~ Avoids the use of unnecessary technical or specialized language that is understood only by members of particular trades or professions.

(c) An agency may hold public workshops for purposes of rule development and information gathering for the preparation of the statement of estimated regulatory costs. If requested in writing by any affected person, an agency must hold public workshops, including workshops in various regions of this ~~the~~ state or the agency's service area, for purposes of rule development and information gathering for the preparation of the statement of estimated regulatory costs ~~if requested in writing by any affected person,~~ unless the agency head explains in writing why a workshop is unnecessary. The explanation is not final agency action subject to review pursuant to ss. 120.569 and 120.57. The failure to provide the explanation when required may be a material error in procedure pursuant to s.



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120.56(1)(c). When a workshop or public hearing is held, the agency must ensure that the persons responsible for preparing the proposed rule and the statement of estimated regulatory costs are available to receive public input, to explain the agency's proposal, and to respond to questions or comments regarding the rule being developed and the statement of estimated regulatory costs. The workshop may be facilitated or mediated by a neutral third person, or the agency may employ other types of dispute resolution alternatives for the workshop that are appropriate for rule development and for preparation of the statement of estimated regulatory costs. Notice of a workshop for rule development and for preparation of the statement of estimated regulatory costs must ~~workshop shall~~ be by publication in the Florida Administrative Register not less than 14 days before ~~prior to~~ the date on which the workshop is scheduled to be held and must ~~shall~~ indicate the subject area that ~~which~~ will be addressed; the agency contact person; and the place, date, and time of the workshop.

(d)1. An agency may use negotiated rulemaking in developing and adopting rules. The agency should consider the use of negotiated rulemaking when complex rules are being drafted or strong opposition to the rules is anticipated. The agency should consider, but is not limited to considering, whether a balanced committee of interested persons who will negotiate in good faith can be assembled, whether the agency is willing to support the work of the negotiating committee, and whether the agency can use the group consensus as the basis for its proposed rule. Negotiated rulemaking uses a committee of designated representatives to draft a mutually acceptable proposed rule and



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to develop information necessary to prepare a statement of
estimated regulatory costs, when applicable.

2. An agency that chooses to use the negotiated rulemaking process described in this paragraph shall publish in the Florida Administrative Register a notice of negotiated rulemaking that includes a listing of the representative groups that will be invited to participate in the negotiated rulemaking process. Any person who believes that his or her interest is not adequately represented may apply to participate within 30 days after publication of the notice. All meetings of the negotiating committee must ~~shall~~ be noticed and open to the public pursuant to ~~the provisions of~~ this chapter. The negotiating committee shall be chaired by a neutral facilitator or mediator.

3. The agency's decision to use negotiated rulemaking, its selection of the representative groups, and approval or denial of an application to participate in the negotiated rulemaking process are not agency action. ~~Nothing in~~ This subparagraph is not intended to affect the rights of a substantially ~~an~~ affected person to challenge a proposed rule developed under this paragraph in accordance with s. 120.56(2).

(3) ADOPTION PROCEDURES.—

(a) *Notices.*—

1. Before ~~Prior to~~ the adoption, amendment, or repeal of any rule other than an emergency rule, an agency, upon approval of the agency head, shall give notice of its intended action, setting forth a short, plain explanation of the purpose and effect of the proposed action; the proposed rule number and full text of the proposed rule or amendment and a summary thereof; a reference to the grant of rulemaking authority pursuant to which



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the rule is adopted; and a reference to the section or subsection of the Florida Statutes or the Laws of Florida being implemented or interpreted. The notice must include a concise summary of the agency's statement of the estimated regulatory costs, ~~if one has been prepared,~~ based on the factors set forth in s. 120.541(2), which describes the regulatory impact of the rule in readable language; an agency website address where the statement of estimated regulatory costs can be viewed in its entirety; a statement that any person who wishes to provide the agency with information regarding the statement of estimated regulatory costs, or to provide a proposal for a lower cost regulatory alternative as provided by s. 120.541(1), must do so in writing within 21 days after publication of the notice; a request for the submission of any information that could be helpful to the agency regarding the statement of estimated regulatory costs; and a statement as to whether, based on the statement of the estimated regulatory costs ~~or other information expressly relied upon and described by the agency if no statement of regulatory costs is required,~~ the proposed rule is expected to require legislative ratification pursuant to s. 120.541(3). The notice must state the procedure for requesting a public hearing on the proposed rule. Except when the intended action is the repeal of a rule, the notice must include a reference both to the date on which and to the place where the notice of rule development that is required by subsection (2) appeared.

2. The notice must ~~shall~~ be published in the Florida Administrative Register at least ~~not less than~~ 28 days before ~~prior to~~ the intended action. The proposed rule, including all



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materials proposed to be incorporated by reference and the statement of estimated regulatory costs, must ~~shall~~ be available for inspection and copying by the public at the time of the publication of notice. Material proposed to be incorporated by reference in the notice must be made available in the manner prescribed by sub-subparagraph (1)(i)3.a. or sub-subparagraph (1)(i)3.b.

3. The notice must ~~shall~~ be mailed or delivered electronically to all persons named in the proposed rule and mailed or delivered electronically to all persons who, at least 14 days before publication of the notice ~~prior to such mailing~~, have made requests of the agency for advance notice of its proceedings. The agency shall also give such notice as is prescribed by rule to those particular classes of persons to whom the intended action is directed.

4. The adopting agency shall file with the committee, at least 21 days before ~~prior to~~ the proposed adoption date, a copy of each rule it proposes to adopt; a copy of any material incorporated by reference in the rule; a detailed written statement of the facts and circumstances justifying the proposed rule; a copy of the ~~any~~ statement of estimated regulatory costs ~~that has been~~ prepared pursuant to s. 120.541; a statement of the extent to which the proposed rule relates to federal standards or rules on the same subject; and the notice required by subparagraph 1.

(b) *Special matters to be considered in rule adoption.—*

1. Statement of estimated regulatory costs.—Before the adoption or, amendment, ~~or repeal~~ of any rule, other than an emergency rule, an agency must ~~is encouraged to~~ prepare a



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statement of estimated regulatory costs of the proposed rule, as provided by s. 120.541. However, an agency is not required to prepare a statement of estimated regulatory costs for a proposed rule repeal unless such repeal would impose a regulatory cost.

In any challenge to a proposed rule repeal, a proposed rule repeal that only reduces or eliminates regulations on those individuals or entities regulated by the existing rule must be considered presumptively correct in any proceeding before the division or in any proceeding before a court of competent jurisdiction ~~However, an agency must prepare a statement of estimated regulatory costs of the proposed rule, as provided by s. 120.541, if:~~

~~a. The proposed rule will have an adverse impact on small business; or~~

~~b. The proposed rule is likely to directly or indirectly increase regulatory costs in excess of \$200,000 in the aggregate in this state within 1 year after the implementation of the rule.~~

2. Small businesses, small counties, and small cities.—

a. For purposes of this subsection and s. 120.541(2), an adverse impact on small businesses, as defined in s. 288.703 or sub-subparagraph b., exists if, for any small business:

(I) An owner, officer, operator, or manager must complete any education, training, or testing to comply, or is likely to spend at least 10 hours or purchase professional advice to understand and comply, with the rule in the first year;

(II) Taxes or fees assessed on transactions are likely to increase by \$500 or more in the aggregate in 1 year;

(III) Prices charged for goods and services are restricted



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or are likely to increase because of the rule;

(IV) Specially trained, licensed, or tested employees will be required because of the rule;

(V) Operating costs are expected to increase by at least \$1,000 annually because of the rule; or

(VI) Capital expenditures in excess of \$1,000 are necessary to comply with the rule.

b. Each agency, before the adoption, amendment, or repeal of a rule, shall consider the impact of the rule on small businesses as defined in ~~by~~ s. 288.703 and the impact of the rule on small counties or small cities as defined in ~~by~~ s. 120.52. Whenever practicable, an agency shall tier its rules to reduce disproportionate impacts on small businesses, small counties, or small cities to avoid regulating small businesses, small counties, or small cities that do not contribute significantly to the problem the rule is designed to address. An agency may define "small business" to include businesses employing more than 200 persons, may define "small county" to include those with populations of more than 75,000, and may define "small city" to include those with populations of more than 10,000, if it finds that such a definition is necessary to adapt a rule to the needs and problems of small businesses, small counties, or small cities. The agency shall consider each of the following methods for reducing the impact of the proposed rule on small businesses, small counties, and small cities, or any combination of these entities:

(I) Establishing less stringent compliance or reporting requirements in the rule.

(II) Establishing less stringent schedules or deadlines in



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the rule for compliance or reporting requirements.

(III) Consolidating or simplifying the rule's compliance or reporting requirements.

(IV) Establishing performance standards or best management practices to replace design or operational standards in the rule.

(V) Exempting small businesses, small counties, or small cities from any or all requirements of the rule.

c.(I)~~b.(I)~~ If the agency determines that the proposed action will affect small businesses as defined by the agency as provided in sub-subparagraph b. a., the agency must ~~shall~~ send written notice of the rule to the rules ombudsman in the Executive Office of the Governor at least 28 days before the intended action.

(II) Each agency shall adopt those regulatory alternatives offered by the rules ombudsman in the Executive Office of the Governor and provided to the agency no later than 21 days after the rules ombudsman's receipt of the written notice of the rule which it finds are feasible and consistent with the stated objectives of the proposed rule and which would reduce the impact on small businesses. When regulatory alternatives are offered by the rules ombudsman in the Executive Office of the Governor, the 90-day period for filing the rule in subparagraph (e)2. is extended for a period of 21 days. The agency shall provide notice to the committee of any regulatory alternative offered to the agency pursuant to this sub-subparagraph at least 21 days before filing the proposed rule for adoption.

(III) If an agency does not adopt all alternatives offered pursuant to this sub-subparagraph, it must ~~shall~~, before rule



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adoption or amendment and pursuant to subparagraph (d)1., file a detailed written statement with the committee explaining the reasons for failure to adopt such alternatives. Within 3 working days after the filing of such notice, the agency shall send a copy of such notice to the rules ombudsman in the Executive Office of the Governor.

(c) *Hearings.*—

1. If the intended action concerns any rule other than one relating exclusively to procedure or practice, the agency must ~~shall~~, on the request of any affected person received within 21 days after the date of publication of the notice of intended agency action, give affected persons an opportunity to present evidence and argument on all issues under consideration. The agency may schedule a public hearing on the proposed rule and, if requested by any affected person, must ~~shall~~ schedule a public hearing on the proposed rule. When a public hearing is held, the agency must ensure that the persons responsible for preparing the proposed rule and the statement of estimated regulatory costs ~~staff~~ are in attendance ~~available~~ to explain the agency's proposal and to respond to questions or comments regarding the proposed rule, the statement of estimated regulatory costs, and the agency's decision on whether to adopt a lower cost regulatory alternative submitted pursuant to s. 120.541(1)(a). If the agency head is a board or other collegial body created under s. 20.165(4) or s. 20.43(3)(g), and one or more requested public hearings is scheduled, the board or other collegial body must ~~shall~~ conduct at least one of the public hearings itself and may not delegate this responsibility without the consent of those persons requesting the public hearing. Any



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material pertinent to the issues under consideration submitted to the agency within 21 days after the date of publication of the notice or submitted to the agency between the date of publication of the notice and the end of the final public hearing must ~~shall~~ be considered by the agency and made a part of the record of the rulemaking proceeding.

2. Rulemaking proceedings are ~~shall be~~ governed solely by ~~the provisions of~~ this section unless a person timely asserts that the person's substantial interests will be affected in the proceeding and affirmatively demonstrates to the agency that the proceeding does not provide adequate opportunity to protect those interests. If the agency determines that the rulemaking proceeding is not adequate to protect the person's interests, it must ~~shall~~ suspend the rulemaking proceeding and convene a separate proceeding under ~~the provisions of~~ ss. 120.569 and 120.57. The agency shall publish notice of convening a separate proceeding in the Florida Administrative Register. Similarly situated persons may be requested to join and participate in the separate proceeding. Upon conclusion of the separate proceeding, the rulemaking proceeding shall be resumed. All timelines in this section are tolled during any suspension of the rulemaking proceeding under this subparagraph, beginning on the date the notice of convening a separate proceeding is published, and the timelines shall resume the day after conclusion of the separate proceedings, notice of which must be provided to the committee.

(d) *Modification or withdrawal of proposed rules.—*

1. After the final public hearing on the proposed rule, or after the time for requesting a hearing has expired, if the proposed rule has not been changed from the proposed rule as



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previously filed with the committee, or contains only technical changes, the adopting agency shall file a notice to that effect with the committee at least 7 days before ~~prior to~~ filing the proposed rule for adoption. Any change, other than a technical change ~~that does not affect the substance of the rule~~, must be supported by the record of public hearings held on the proposed rule, must be in response to written material submitted to the agency within 21 days after the date of publication of the notice of intended agency action or submitted to the agency between the date of publication of the notice and the end of the final public hearing, or must be in response to a proposed objection by the committee. Any change, other than a technical change, to a statement of estimated regulatory costs requires a notice of change. In addition, ~~when~~ any change, other than a technical change, to is made in a proposed rule text or any material incorporated by reference requires, other than a technical change, the adopting agency to ~~shall~~ provide a copy of a notice of change by certified mail or actual delivery to any person who requests it in writing no later than 21 days after the notice required in paragraph (a). The agency shall file the notice of change with the committee, along with the reasons for the change, and provide the notice of change to persons requesting it, at least 21 days before ~~prior to~~ filing the proposed rule for adoption. The notice of change must ~~shall~~ be published in the Florida Administrative Register at least 21 days before ~~prior to~~ filing the proposed rule for adoption. The notice of change must include a summary of any revision of the statement of estimated regulatory costs required by s. 120.541(1)(c). This subparagraph does not apply to emergency



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rules adopted pursuant to subsection (4). Material proposed to be incorporated by reference in the notice required by this subparagraph must be made available in the manner prescribed by sub-subparagraph (1)(i)3.a. or sub-subparagraph (1)(i)3.b. and include a summary of substantive revisions to any material proposed to be incorporated by reference in the proposed rule.

2. After the notice required by paragraph (a) and before ~~prior to~~ adoption, the agency may withdraw the proposed rule in whole or in part.

3. After the notice required by paragraph (a), the agency must withdraw the proposed rule if the agency has failed to adopt it within the prescribed timeframes in this chapter. If the agency, 30 days after notice by the committee that the agency has failed to adopt the proposed rule within the prescribed timeframes in this chapter, has not given notice of the withdrawal of the proposed rule, the committee must notify the Department of State that the date for adoption of the rule has expired, and the Department of State must publish a notice of withdrawal of the proposed rule.

4. After adoption and before the rule becomes effective, a rule may be modified or withdrawn only in the following circumstances:

a. When the committee objects to the rule;

b. When a final order, which is not subject to further appeal, is entered in a rule challenge brought pursuant to s. 120.56 after the date of adoption but before the rule becomes effective pursuant to subparagraph (e)6.;

c. If the rule requires ratification, when more than 90 days have passed since the rule was filed for adoption without



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the Legislature ratifying the rule, in which case the rule may be withdrawn but may not be modified; or

d. When the committee notifies the agency that an objection to the rule is being considered, in which case the rule may be modified to extend the effective date by not more than 60 days.

5.4. The agency shall give notice of its decision to withdraw or modify a rule in the first available issue of the publication in which the original notice of rulemaking was published, shall notify those persons described in subparagraph (a)3. in accordance with the requirements of that subparagraph, and shall notify the Department of State if the rule is required to be filed with the Department of State.

6.5. After a rule has become effective, it may be repealed or amended only through the rulemaking procedures specified in this chapter.

(e) *Filing for final adoption; effective date.*—

1. If the adopting agency is required to publish its rules in the Florida Administrative Code, the agency, upon approval of the agency head, must electronically ~~shall~~ file with the Department of State a three ~~three~~ certified copy ~~copies~~ of the rule it proposes to adopt; one copy of any material incorporated by reference in the rule, certified by the agency; a summary of the rule; a summary of any hearings held on the rule; and a detailed written statement of the facts and circumstances justifying the rule. Agencies not required to publish their rules in the Florida Administrative Code shall file one certified copy of the proposed rule, and the other material required by this subparagraph, in the office of the agency head, and such rules must ~~shall~~ be open to the public.



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2. A rule may not be filed for adoption less than 28 days or more than 90 days after the notice required by paragraph (a), until 21 days after the notice of change required by paragraph (d), until 14 days after the final public hearing, until 21 days after a statement of estimated regulatory costs required under s. 120.541 has been provided to all persons who submitted a lower cost regulatory alternative and made available to the public at a readily accessible page on the agency's website, or until the administrative law judge has rendered a decision under s. 120.56(2), whichever applies. When a required notice of change is published before ~~prior to~~ the expiration of the time to file the rule for adoption, the period during which a rule must be filed for adoption is extended to 45 days after the date of publication. If notice of a public hearing is published before ~~prior to~~ the expiration of the time to file the rule for adoption, the period during which a rule must be filed for adoption is extended to 45 days after adjournment of the final hearing on the rule, 21 days after receipt of all material authorized to be submitted at the hearing, or 21 days after receipt of the transcript, if one is made, whichever is latest. The term "public hearing" includes any public meeting held by any agency at which the rule is considered. If a petition for an administrative determination under s. 120.56(2) is filed, the period during which a rule must be filed for adoption is extended to 60 days after the administrative law judge files the final order with the clerk or until 60 days after subsequent judicial review is complete.

3. At the time a rule is filed, the agency shall certify that the time limitations prescribed by this paragraph have been



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504 complied with, that all statutory rulemaking requirements have
505 been met, and that there is no administrative determination
506 pending on the rule.

507 4. At the time a rule is filed, the committee shall certify
508 whether the agency has responded in writing to all material and
509 timely written comments or written inquiries made on behalf of
510 the committee. The Department of State shall reject any rule
511 that is not filed within the prescribed time limits; that does
512 not comply with all statutory rulemaking requirements and rules
513 of the Department of State; upon which an agency has not
514 responded in writing to all material and timely written
515 inquiries or written comments; upon which an administrative
516 determination is pending; or which does not include a statement
517 of estimated regulatory costs, if required.

518 5. If a rule has not been adopted within the time limits
519 imposed by this paragraph or has not been adopted in compliance
520 with all statutory rulemaking requirements, the agency proposing
521 the rule must ~~shall~~ withdraw the proposed rule and give notice
522 of its action in the next available issue of the Florida
523 Administrative Register. If the agency has not published notice
524 of withdrawal of the rule during the 30 days after receiving
525 notice from the committee that the agency has failed to withdraw
526 the rule, the committee must notify the Department of State that
527 the date for adoption of the rule has expired, and the
528 Department of State must publish a notice of withdrawal of the
529 rule.

530 6. The proposed rule shall be adopted on being filed with
531 the Department of State and becomes ~~become~~ effective 20 days
532 after being filed, on a later date specified in the notice



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required by subparagraph (a)1., on a date required by statute, or upon ratification by the Legislature pursuant to s. 120.541(3). Rules not required to be filed with the Department of State ~~shall~~ become effective when adopted by the agency head, on a later date specified by rule or statute, or upon ratification by the Legislature pursuant to s. 120.541(3). If the committee notifies an agency that an objection to a rule is being considered, the agency may postpone the adoption of the rule to accommodate review of the rule by the committee. When an agency postpones adoption of a rule to accommodate review by the committee, the 90-day period for filing the rule is tolled until the committee notifies the agency that it has completed its review of the rule.

For the purposes of this paragraph, the term "administrative determination" does not include subsequent judicial review.

(4) EMERGENCY RULES.—

(c) Unless otherwise provided by law, an emergency rule may ~~adopted under this subsection shall~~ not be effective for a period longer than 90 days and is ~~shall~~ not ~~be~~ renewable, except when the agency has initiated rulemaking to adopt rules addressing the subject of the emergency rule and either:

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

2. The proposed rules are awaiting ratification by the Legislature pursuant to s. 120.541(3).

~~Nothing in~~ This paragraph does not prohibit ~~prohibits~~ the agency from adopting a rule or rules identical to the emergency rule



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through the rulemaking procedures specified in subsection (3).

(e) Emergency rules must be published in the Florida Administrative Code.

(f) An agency may supersede an emergency rule currently in effect through adoption of another emergency rule. The agency must state the reason for adopting the new rule, in accordance with the procedures set forth in paragraph (a), and the new rule must be in effect for the duration of the effective period of the superseded rule. Technical changes to an emergency rule may be made within the first 7 days after adoption of the rule.

(g) Any notice of the renewal of an emergency rule must be published in the Florida Administrative Register before the expiration of the existing emergency rule. The notice of renewal must state the specific facts and reasons for the renewal pursuant to paragraph (c).

(h) All emergency rules must be published in the Florida Administrative Code in the section of the code dealing with the agency.

(i) For emergency rules with an effective period longer than 90 days which are intended to replace existing rules, a note must be added to the history note of the existing rule which specifically identifies the emergency rule that is intended to supersede the existing rule and includes the date that the emergency rule was filed with the Department of State.

(j) An emergency rule adopted under this subsection may be repealed at any time while the rule is in effect by publishing a notice in the Florida Administrative Register citing the reason for the repeal and the effective date of the repeal.

(7) PETITION TO INITIATE RULEMAKING.—



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(a) Any person regulated by an agency or having substantial interest in an agency rule may petition an agency to adopt, amend, or repeal a rule or to provide the minimum public information required by this chapter. The petition must ~~shall~~ specify the proposed rule and action requested. The agency shall file a copy of the petition with the committee. No ~~Not~~ later than 30 calendar days after ~~following the date of~~ filing a petition, the agency shall initiate rulemaking proceedings under this chapter, otherwise comply with the requested action, or deny the petition with a written statement of its reasons for the denial.

Section 3. Section 120.541, Florida Statutes, is amended to read:

120.541 Statement of estimated regulatory costs.—

(1)(a) Within 21 days after publication of the notice of a proposed rule or notice of change ~~required under s.~~ ~~120.54(3)(a)~~, a substantially affected person may submit to an agency a good faith written proposal for a lower cost regulatory alternative to a proposed rule which substantially accomplishes the objectives of the law being implemented. The agency shall provide a copy of any proposal for a lower cost regulatory alternative to the committee at least 21 days before filing the proposed rule for adoption. The proposal may include the alternative of not adopting any rule if the proposal explains how the lower costs and objectives of the law will be achieved by not adopting any rule. If submitted after a notice of change, a proposal for a lower cost regulatory alternative is deemed to be made in good faith only if the person reasonably believes, and the proposal states the person's reasons for believing, that



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the proposed rule as changed by the notice of change increases the regulatory costs or creates an adverse impact on small businesses which was not created by the previous proposed rule. If such a proposal is submitted, the 90-day period for filing the rule is extended 21 days. Upon the submission of the lower cost regulatory alternative, the agency shall ~~prepare a statement of estimated regulatory costs as provided in subsection (2), or shall~~ revise its prior statement of estimated regulatory costs, and either adopt the alternative proposal, reject the alternative proposal, or modify the proposed rule to reduce the regulatory costs. If the agency rejects the alternative proposal or modifies the proposed rule, the agency must ~~or~~ provide a statement of the reasons for rejecting the alternative in favor of the proposed rule.

~~(b) If a proposed rule will have an adverse impact on small business or if the proposed rule is likely to directly or indirectly increase regulatory costs in excess of \$200,000 in the aggregate within 1 year after the implementation of the rule, the agency shall prepare a statement of estimated regulatory costs as required by s. 120.54(3)(b).~~

~~(b)(c)~~ The agency must ~~shall~~ revise a statement of estimated regulatory costs if any change to the rule made under s. 120.54(3)(d) increases the regulatory costs of the rule or if the rule is modified in response to the submission of a lower cost regulatory alternative. A summary of the revised statement must be included with any subsequent notice published under s. 120.54(3).

~~(c)(d)~~ At least 21 days before filing the proposed rule for adoption, an agency that is required to revise a statement of



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estimated regulatory costs shall provide the statement to the person who submitted the lower cost regulatory alternative, to the rules ombudsman in the Executive Office of the Governor, and to the committee. The revised statement must be published and made available in the same manner as the original statement of estimated regulatory costs ~~and shall provide notice on the agency's website that it is available to the public.~~

(d) ~~(e)~~ Notwithstanding s. 120.56(1)(c), the failure of the agency to prepare and publish a statement of estimated regulatory costs or to respond to a written lower cost regulatory alternative as provided in this subsection is a material failure to follow the applicable rulemaking procedures or requirements set forth in this chapter.

(e) ~~(f)~~ An agency's failure to prepare a statement of estimated regulatory costs or to respond to a written lower cost regulatory alternative may not be raised in a proceeding challenging the validity of a rule pursuant to s. 120.52(8)(a) unless:

1. Raised in a petition filed no later than 1 year after the effective date of the rule; and

2. Raised by a person whose substantial interests are affected by the rule's regulatory costs.

(f) ~~(g)~~ A rule that is challenged pursuant to s. 120.52(8)(f) may not be declared invalid unless:

1. The issue is raised in an administrative proceeding within 1 year after the effective date of the rule;

2. The challenge is to the agency's rejection of a lower cost regulatory alternative offered under paragraph (a) or s. 120.54(3)(b)2.c. ~~s. 120.54(3)(b)2.b.~~; and



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678 3. The substantial interests of the person challenging the
679 rule are materially affected by the rejection.

680 (2) A statement of estimated regulatory costs must ~~shall~~
681 include:

682 (a) An economic analysis showing whether the rule directly
683 or indirectly:

684 1. Is likely to have an adverse impact on economic growth,
685 private sector job creation or employment, or private sector
686 investment in excess of \$1 million in the aggregate within 5
687 years after the implementation of the rule;

688 2. Is likely to have an adverse impact on business
689 competitiveness, including the ability of persons doing business
690 in this ~~the~~ state to compete with persons doing business in
691 other states or domestic markets, productivity, or innovation in
692 excess of \$1 million in the aggregate within 5 years after the
693 implementation of the rule; or

694 3. Is likely to increase regulatory costs, including all
695 ~~any transactional~~ costs and impacts estimated in the statement,
696 in excess of \$1 million in the aggregate within 5 years after
697 the implementation of the rule.

698 (b) A good faith estimate of the number of individuals,
699 small businesses, and other entities likely to be required to
700 comply with the rule, together with a general description of the
701 types of individuals likely to be affected by the rule.

702 (c) A good faith estimate of the cost to the agency, and to
703 any other state and local government entities, of implementing
704 and enforcing the proposed rule, and any anticipated effect on
705 state or local revenues.

706 (d) A good faith estimate of the compliance ~~transactional~~



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costs likely to be incurred by individuals and entities, including local government entities, required to comply with the requirements of the rule. ~~As used in this section, "transactional costs" are direct costs that are readily ascertainable based upon standard business practices, and include filing fees, the cost of obtaining a license, the cost of equipment required to be installed or used or procedures required to be employed in complying with the rule, additional operating costs incurred, the cost of monitoring and reporting, and any other costs necessary to comply with the rule.~~

(e) An analysis of the impact on small businesses as defined by s. 288.703, and an analysis of the impact on small counties and small cities as defined in s. 120.52. The impact analysis for small businesses must include the basis for the agency's decision not to implement alternatives that would reduce adverse impacts on small businesses.

(f) Any additional information that the agency determines may be useful.

(g) In the ~~statement or~~ revised statement, ~~whichever applies,~~ a description of any regulatory alternatives submitted under paragraph (1)(a) and a statement adopting the alternative or a statement of the reasons for rejecting the alternative in favor of the proposed rule.

(3) If the adverse impact or regulatory costs of the rule exceed any of the criteria established in paragraph (2)(a), the rule must ~~shall~~ be submitted to the President of the Senate and Speaker of the House of Representatives no later than 30 days before ~~prior to~~ the next regular legislative session, and the rule may not take effect until it is ratified by the



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Legislature.

(4) Subsection (3) does not apply to the adoption of:

(a) Federal standards pursuant to s. 120.54(6).

(b) Triennial updates of and amendments to the Florida Building Code which are expressly authorized by s. 553.73.

(c) Triennial updates of and amendments to the Florida Fire Prevention Code which are expressly authorized by s. 633.202.

(d) Emergency rules adopted pursuant to s. 120.54(4).

(5) For purposes of subsections (2) and (3), adverse impacts and regulatory costs likely to occur within 5 years after implementation of the rule include adverse impacts and regulatory costs estimated to occur within 5 years after the effective date of the rule. However, if any provision of the rule is not fully implemented upon the effective date of the rule, the adverse impacts and regulatory costs associated with such provision must be adjusted to include any additional adverse impacts and regulatory costs estimated to occur within 5 years after implementation of such provision.

(6) (a) In evaluating the impacts described in paragraphs (2) (a) and (e), an agency shall include good faith estimates of market impacts likely to result from compliance with the proposed rule, including:

1. Increased customer charges for goods or services.

2. Decreased market value of goods or services produced, provided, or sold.

3. Increased costs resulting from the purchase of substitute or alternative goods or services.

4. The reasonable value of time to be spent by owners, officers, operators, and managers to understand and comply with



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the proposed rule, including, but not limited to, time to be
spent completing required education, training, or testing.

5. Capital costs.

6. Any other impacts suggested by the rules ombudsman in
the Executive Office of the Governor or by any interested
persons.

(b) In estimating the information required in paragraphs
(2) (b)-(e), the agency may use surveys of individuals,
businesses, business organizations, counties, and municipalities
to collect data helpful to estimate the costs and impacts.

(c) In estimating compliance costs under paragraph (2) (d),
the agency shall consider, among other matters, all direct and
indirect costs necessary to comply with the proposed rule which
are readily ascertainable based upon standard business
practices, including, but not limited to, costs related to:

1. Filing fees.

2. Expenses to obtain a license.

3. Necessary equipment.

4. Installation, utilities, and maintenance of necessary
equipment.

5. Necessary operations and procedures.

6. Accounting, financial, information management, and other
administrative processes.

7. Other processes.

8. Labor based on relevant rates of wages, salaries, and
benefits.

9. Materials and supplies.

10. Capital expenditures, including financing costs.

11. Professional and technical services, including



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contracted services necessary to implement and maintain
compliance.

12. Monitoring and reporting.

13. Qualifying and recurring education, training, and
testing.

14. Travel.

15. Insurance and surety requirements.

16. A fair and reasonable allocation of administrative
costs and other overhead.

17. Reduced sales or other revenues.

18. Other items suggested by the rules ombudsman in the
Executive Office of the Governor or by any interested person,
business organization, or business representative.

(7) (a) The Department of State shall include on the Florida
Administrative Register website the agency website addresses
where statements of estimated regulatory costs can be viewed in
their entirety.

(b) An agency that prepares a statement of estimated
regulatory costs must provide, as part of the notice required
under s. 120.54(3) (a), the agency website address where the
statement of estimated regulatory costs can be read in its
entirety to the Department of State for publication in the
Florida Administrative Register.

(c) If an agency revises its statement of estimated
regulatory costs, the agency must provide notice that a revision
has been made in the manner provided under s. 120.54(3) (d)1.
Such notice must also include the agency website address where
the revision can be viewed in its entirety.

Section 4. Section 120.5435, Florida Statutes, is created



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to read:

120.5435 Repromulgation of rules.—

(1) It is the intent of the Legislature that each agency periodically review its rules for consistency with the powers and duties granted by its enabling statutes.

(2) If an agency determines after review that substantive changes to update a rule are not required, such agency must repromulgate the rule to reflect the date of the review. All rules adopted, amended, or repromulgated on or after July 1, 2023, must be reviewed within 5 years after their effective dates and every 5 years thereafter. Each agency shall review all existing rules pursuant to this section no later than December 31, 2028. Any variation from this schedule must be reflected in the agency's regulatory plan. No later than December 31, 2023, the committee shall provide each agency with a list of existing rules and their effective dates. Failure of an agency to adhere to the deadlines imposed in this section constitutes a material failure to follow the applicable rulemaking procedures or requirements of this chapter and shall be the basis of an objection under s. 120.545.

(3) Before repromulgation of a rule, the agency must, upon approval by the agency head or his or her designee:

(a) Publish a notice of repromulgation in the Florida Administrative Register. A notice of repromulgation is not required to include the text of the rule being repromulgated.

(b) File the rule for repromulgation with the Department of State. A rule may not be filed for repromulgation less than 28 days, or more than 90 days, after the date of publication of the notice required by paragraph (a).



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(4) The agency must file a notice of repromulgation with the committee at least 14 days before filing the rule for repromulgation. At the time the rule is filed for repromulgation, the committee shall certify whether the agency has responded in writing to all material and timely written comments or written inquiries made on behalf of the committee.

(5) A repromulgated rule is not subject to challenge as a proposed rule pursuant to s. 120.56(2).

(6) The hearing requirements of s. 120.54 do not apply to repromulgation of a rule.

(7) (a) The agency, upon approval of the agency head or his or her designee, shall electronically file with the Department of State a certified copy of the repromulgated rule it proposes to adopt and one certified copy of any material incorporated by reference in the rule.

(b) The rule is considered to be repromulgated upon its filing with the Department of State.

(c) The Department of State shall update the history note of the rule in the Florida Administrative Code to reflect the filing date of the repromulgated rule.

(8) At least 30 days before each legislative session, the committee shall submit to the President of the Senate and the Speaker of the House of Representatives a list of all rules that have not been repromulgated in accordance with this section, and identify whether the statutory rulemaking authority for each rule remains in effect. If no action is taken by the Legislature with regard to a rule during the next regular legislative session, each agency, within 14 days after the close of the session, must initiate rulemaking proceedings under chapter 120



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to repeal the rule.

(9) The Department of State shall adopt rules to implement this section by December 31, 2023.

Section 5. Section 120.5436, Florida Statutes, is created to read:

120.5436 Infrastructure and environmental permitting review.—

(1)(a) It is the intent of the Legislature to build a more resilient and responsive government infrastructure to allow for quick recovery after natural disasters, including hurricanes and tropical storms.

(b) It is further the intent of the Legislature to promote efficiency in state government across branches, agencies, and other governmental entities and to identify any area of improvement within each that allows for quick, effective delivery of services.

(c) Further, the Legislature intends for the state to seek out ways to improve its administrative procedures in relevant fields to build a streamlined permitting process that withstands disruptions caused by natural disasters, including hurricanes and tropical storms.

(2)(a) The Department of Environmental Protection and water management districts shall conduct a holistic review of their current coastal permitting processes and other permit programs. These permitting processes must include, but are not limited to, coastal construction control line permits; joint coastal permits; environmental resource permits; consistent with the terms of the United States Environmental Protection Agency's approval, state-administered section 404 permits; and permitting



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processes related to water supply infrastructure, wastewater infrastructure, and onsite treatment and disposal systems.

(b) The scope and purpose of the review is to identify areas of improvement and to increase efficiency within each process. Factors that must be considered in the review include the following:

1. The requirements to obtain a permit.

2. Time periods for review, including by commenting agencies, and approval of the permit application.

3. Areas for improved efficiency and decision-point consolidation within a single project's process.

4. Areas of duplication across one or more permit programs.

5. The methods of requesting permits.

6. Any other factors that may increase the efficiency of the permitting processes and may allow improved storm recovery.

(c) By December 31, 2023, the department and water management districts shall provide their findings and proposed solutions in a report to the Governor, the President of the Senate, and the Speaker of the House of Representatives.

Section 6. Subsection (1) of section 120.545, Florida Statutes, is amended to read:

120.545 Committee review of agency rules.—

(1) As a legislative check on legislatively created authority, the committee shall examine each existing rule and proposed rule, except for those proposed rules exempted by s. 120.81(1)(e) and (2), and its accompanying material, and each emergency rule, ~~and may examine any existing rule,~~ for the purpose of determining whether:

(a) The rule is an invalid exercise of delegated



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legislative authority.

(b) The statutory authority for the rule has been repealed.

(c) The rule reiterates or paraphrases statutory material.

(d) The rule is in proper form.

(e) The notice given before ~~prior to~~ its adoption was sufficient to give adequate notice of the purpose and effect of the rule.

(f) The rule is consistent with expressed legislative intent pertaining to the specific provisions of law which the rule implements.

(g) The rule is necessary to accomplish the apparent or expressed objectives of the specific provision of law which the rule implements.

(h) The rule is a reasonable implementation of the law as it affects the convenience of the general public or persons particularly affected by the rule.

(i) The rule could be made less complex or more easily comprehensible to the general public.

(j) The rule's statement of estimated regulatory costs complies with the requirements of s. 120.541 and whether the rule does not impose regulatory costs on the regulated person, county, or city which could be reduced by the adoption of less costly alternatives that substantially accomplish the statutory objectives.

(k) The rule will require additional appropriations.

(l) If the rule is an emergency rule, there exists an emergency justifying the adoption of such rule, the agency is within its statutory authority, and the rule was adopted in compliance with the requirements and limitations of s.



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120.54(4).

Section 7. Paragraphs (a), (b), and (c) of subsection (1) of section 120.55, Florida Statutes, are amended to read:

120.55 Publication.—

(1) The Department of State shall:

(a)1. Through a continuous revision and publication system, compile and publish electronically, on a website managed by the department, the "Florida Administrative Code." The Florida Administrative Code must ~~shall~~ contain all rules adopted by each agency, citing the grant of rulemaking authority and the specific law implemented pursuant to which each rule was adopted, all history notes as authorized in s. 120.545(7), complete indexes to all rules contained in the code, and any other material required or authorized by law or deemed useful by the department. The electronic code must ~~shall~~ display each rule chapter currently in effect in browse mode and allow full text search of the code and each rule chapter. The department may contract with a publishing firm for a printed publication; however, the department shall retain responsibility for the code as provided in this section. The electronic publication is ~~shall~~ ~~be~~ the official compilation of the administrative rules of this state. The Florida Administrative Register must be published once each business day by 8 a.m., with the exception of state holidays or emergency closures of state agencies. If a rule, proposed rule, or notice of rule development is corrected and replaced, the corrected rule or notice must be published in the next available Florida Administrative Register with a notation indicating that the rule, proposed rule, or notice has been corrected by the Department of State. Any timeframes for



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rulemaking set forth in this chapter must revert to the initial
date of publication.

The Department of State retains ~~shall retain~~ the copyright over
the Florida Administrative Code.

2. Not publish rules in the Florida Administrative Code
which are general in form but applicable to only one school
district, community college district, or county, or a part
thereof, or state university rules relating to internal
personnel or business and finance ~~shall not be published in the~~
~~Florida Administrative Code~~. Exclusion from publication in the
Florida Administrative Code does ~~shall~~ not affect the validity
or effectiveness of such rules.

3. At the beginning of the section of the code dealing with
an agency that files copies of its rules with the department,
the agency ~~department~~ shall publish the address and telephone
number of the executive offices of each agency, the manner by
which the agency indexes its rules, a listing of all rules of
that agency excluded from publication in the code, and a
statement as to where those rules may be inspected.

4. Not publish forms ~~shall not be published~~ in the Florida
Administrative Code; but any form which an agency uses in its
dealings with the public, along with any accompanying
instructions, shall be filed with the committee before it is
used. Any form or instruction which meets the definition of
"rule" provided in s. 120.52 must ~~shall~~ be incorporated by
reference into the appropriate rule. The reference must ~~shall~~
specifically state that the form is being incorporated by
reference and must ~~shall~~ include the number, title, and



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effective date of the form and an explanation of how the form may be obtained. Each form created by an agency which is incorporated by reference in a rule notice of which is given under s. 120.54(3)(a) after December 31, 2007, must clearly display the number, title, and effective date of the form and the number of the rule in which the form is incorporated.

5. Require all materials incorporated by reference in any part of an adopted rule and in any part of a repromulgated rule

~~The department shall allow adopted rules and material incorporated by reference to be filed in the manner prescribed by s. 120.54(1)(i)3.a. or b. electronic form as prescribed by department rule.~~ When a proposed rule is filed for adoption or repromulgation with incorporated material in electronic form, the department's publication of the Florida Administrative Code on its website must contain a hyperlink from the incorporating reference in the rule directly to that material. The department may not allow hyperlinks from rules in the Florida Administrative Code to any material other than that filed with and maintained by the department, but may allow hyperlinks to incorporated material maintained by the department from the adopting agency's website or other sites.

6. Include the date of any technical changes to a rule in the history note of the rule in the Florida Administrative Code.
A technical change does not affect the effective date of the rule.

(b) Electronically publish on a website managed by the department a continuous revision and publication entitled the "Florida Administrative Register," which shall serve as the official publication and must contain:



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1. All notices required by s. 120.54(2) and (3)(a), showing the text of all rules proposed for consideration.

2. All notices of public meetings, hearings, and workshops conducted in accordance with s. 120.525, including a statement of the manner in which a copy of the agenda may be obtained.

3. A notice of each request for authorization to amend or repeal an existing uniform rule or for the adoption of new uniform rules.

4. Notice of petitions for declaratory statements or administrative determinations.

5. A summary of each objection to any rule filed by the Administrative Procedures Committee.

6. A list of rules filed for adoption in the previous 7 days.

7. A list of all rules filed for adoption pending legislative ratification under s. 120.541(3). A rule shall be removed from the list once notice of ratification or withdrawal of the rule is received.

8. The full text of each emergency rule in effect on the date of publication.

9. Any other material required or authorized by law or deemed useful by the department.

The department may contract with a publishing firm for a printed publication of the Florida Administrative Register and make copies available on an annual subscription basis.

(c) Prescribe by rule the style and form required for rules, notices, and other materials submitted for filing, including a rule requiring documents created by an agency which



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are proposed to be incorporated by reference in notices published pursuant to s. 120.54(3)(a) and (d) to be coded in the same manner as notices published pursuant to s. 120.54(3)(a)1.

Section 8. Paragraph (a) of subsection (2) of section 120.56, Florida Statutes, is amended to read:

120.56 Challenges to rules.—

(2) CHALLENGING PROPOSED RULES; SPECIAL PROVISIONS.—

(a) A petition alleging the invalidity of a proposed rule shall be filed within 21 days after the date of publication of the notice required by s. 120.54(3)(a); within 10 days after the final public hearing is held on the proposed rule as provided by s. 120.54(3)(e)2.; within 20 days after the statement of estimated regulatory costs or revised statement of estimated regulatory costs, if applicable, has been prepared and made available as provided in s. 120.54(1)(c) ~~s. 120.54(1)(d)~~; or within 20 days after the date of publication of the notice required by s. 120.54(3)(d). The petitioner has the burden to prove by a preponderance of the evidence that the petitioner would be substantially affected by the proposed rule. The agency then has the burden to prove by a preponderance of the evidence that the proposed rule is not an invalid exercise of delegated legislative authority as to the objections raised. A person who is not substantially affected by the proposed rule as initially noticed, but who is substantially affected by the rule as a result of a change, may challenge any provision of the resulting proposed rule.

Section 9. Subsection (1) and paragraph (a) of subsection (2) of section 120.74, Florida Statutes, are amended to read:

120.74 Agency annual rulemaking and regulatory plans;



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reports.—

(1) REGULATORY PLAN.—By October 1 of each year, each agency shall prepare a regulatory plan.

(a) The plan must include a listing of each law enacted or amended during the previous 12 months which creates or modifies the duties or authority of the agency. If the Governor or the Attorney General provides a letter to the committee stating that a law affects all or most agencies, the agency may exclude the law from its plan. For each law listed by an agency under this paragraph, the plan must state:

1. Whether the agency must adopt rules to implement the law.

2. If rulemaking is necessary to implement the law:

a. Whether a notice of rule development has been published and, if so, the citation to such notice in the Florida Administrative Register.

b. The date by which the agency expects to publish the notice of proposed rule under s. 120.54(3)(a).

3. If rulemaking is not necessary to implement the law, a concise written explanation of the reasons why the law may be implemented without rulemaking.

(b) The plan must also identify and describe each rule, including each rule number or proposed rule number, that include ~~a listing of each law not otherwise listed pursuant to paragraph (a) which the agency expects to develop, adopt, or repeal for the 12-month period beginning on October 1 and ending on September 30 implement by rulemaking before the following July 1, excluding emergency rules except emergency rulemaking.~~ For each rule ~~law~~ listed under this paragraph, the plan must state



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whether the rulemaking is intended to simplify, clarify, increase efficiency, improve coordination with other agencies, reduce regulatory costs, or delete obsolete, unnecessary, or redundant rules.

(c) The plan must include any desired update to the prior year's regulatory plan or supplement published pursuant to subsection (7). If, in a prior year, a law was identified under this paragraph or under subparagraph (a)1. as a law requiring rulemaking to implement but a notice of proposed rule has not been published:

1. The agency must ~~shall~~ identify and again list such law, noting the applicable notice of rule development by citation to the Florida Administrative Register; or

2. If the agency has subsequently determined that rulemaking is not necessary to implement the law, the agency must ~~shall~~ identify such law, reference the citation to the applicable notice of rule development in the Florida Administrative Register, and provide a concise written explanation of the reason why the law may be implemented without rulemaking.

(d) The plan must identify any rules that are required to be repromulgated pursuant to s. 120.5435 for the 12-month period beginning on October 1 and ending on September 30.

(e) The plan must include a certification executed on behalf of the agency by both the agency head, or, if the agency head is a collegial body, the presiding officer; and the individual acting as principal legal advisor to the agency head. The certification must declare:

1. ~~Verify~~ That the persons executing the certification have



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reviewed the plan.

2. ~~Verify~~ That the agency regularly reviews all of its rules and identify the period during which all rules have most recently been reviewed to determine if the rules remain consistent with the agency's rulemaking authority and the laws implemented.

3. That the agency understands that regulatory accountability is necessary to ensure public confidence in the integrity of state government and, to that end, the agency is diligently working toward lowering the total number of rules adopted.

4. The total number of rules adopted and repealed during the previous 12 months.

(2) PUBLICATION AND DELIVERY TO THE COMMITTEE.—

(a) By October 1 of each year, each agency shall:

1. Publish its regulatory plan on its website or on another state website established for publication of administrative law records. A clearly labeled hyperlink to the current plan must be included on the agency's primary website homepage.

2. Electronically deliver to the committee a copy of the certification required in paragraph (1) (e) ~~(1) (d)~~.

3. Publish in the Florida Administrative Register a notice identifying the date of publication of the agency's regulatory plan. The notice must include a hyperlink or website address providing direct access to the published plan.

Section 10. Subsection (11) of section 120.80, Florida Statutes, is amended to read:

120.80 Exceptions and special requirements; agencies.—

(11) NATIONAL GUARD.—Notwithstanding s. 120.52(17) ~~s.~~



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~~120.52(16)~~, the enlistment, organization, administration, equipment, maintenance, training, and discipline of the militia, National Guard, organized militia, and unorganized militia, as provided by s. 2, Art. X of the State Constitution, are not rules as defined by this chapter.

Section 11. Paragraph (c) of subsection (1) of section 120.81, Florida Statutes, is amended to read:

120.81 Exceptions and special requirements; general areas.—

(1) EDUCATIONAL UNITS.—

(c) Notwithstanding s. 120.52(17) ~~s. 120.52(16)~~, any tests, test scoring criteria, or testing procedures relating to student assessment which are developed or administered by the Department of Education pursuant to s. 1003.4282, s. 1008.22, or s. 1008.25, or any other statewide educational tests required by law, are not rules.

Section 12. Paragraph (a) of subsection (1) of section 420.9072, Florida Statutes, is amended to read:

420.9072 State Housing Initiatives Partnership Program.—The State Housing Initiatives Partnership Program is created for the purpose of providing funds to counties and eligible municipalities as an incentive for the creation of local housing partnerships, to expand production of and preserve affordable housing, to further the housing element of the local government comprehensive plan specific to affordable housing, and to increase housing-related employment.

(1)(a) In addition to the legislative findings set forth in s. 420.6015, the Legislature finds that affordable housing is most effectively provided by combining available public and private resources to conserve and improve existing housing and



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provide new housing for very-low-income households, low-income households, and moderate-income households. The Legislature intends to encourage partnerships in order to secure the benefits of cooperation by the public and private sectors and to reduce the cost of housing for the target group by effectively combining all available resources and cost-saving measures. The Legislature further intends that local governments achieve this combination of resources by encouraging active partnerships between government, lenders, builders and developers, real estate professionals, advocates for low-income persons, and community groups to produce affordable housing and provide related services. Extending the partnership concept to encompass cooperative efforts among small counties as defined in s. 120.52(20) ~~s. 120.52(19)~~, and among counties and municipalities is specifically encouraged. Local governments are also intended to establish an affordable housing advisory committee to recommend monetary and nonmonetary incentives for affordable housing as provided in s. 420.9076.

Section 13. Subsection (7) of section 420.9075, Florida Statutes, is amended to read:

420.9075 Local housing assistance plans; partnerships.—

(7) The moneys deposited in the local housing assistance trust fund shall be used to administer and implement the local housing assistance plan. The cost of administering the plan may not exceed 5 percent of the local housing distribution moneys and program income deposited into the trust fund. A county or an eligible municipality may not exceed the 5-percent limitation on administrative costs, unless its governing body finds, by resolution, that 5 percent of the local housing distribution



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plus 5 percent of program income is insufficient to adequately pay the necessary costs of administering the local housing assistance plan. The cost of administering the program may not exceed 10 percent of the local housing distribution plus 5 percent of program income deposited into the trust fund, except that small counties, as defined in s. 120.52(20) ~~s. 120.52(19)~~, and eligible municipalities receiving a local housing distribution of up to \$350,000 may use up to 10 percent of program income for administrative costs.

Section 14. Paragraph (d) of subsection (1) of section 443.091, Florida Statutes, is amended to read:

443.091 Benefit eligibility conditions.—

(1) An unemployed individual is eligible to receive benefits for any week only if the Department of Economic Opportunity finds that:

(d) She or he is able to work and is available for work. In order to assess eligibility for a claimed week of unemployment, the department shall develop criteria to determine a claimant's ability to work and availability for work. A claimant must be actively seeking work in order to be considered available for work. This means engaging in systematic and sustained efforts to find work, including contacting at least five prospective employers for each week of unemployment claimed. The department may require the claimant to provide proof of such efforts to the one-stop career center as part of reemployment services. A claimant's proof of work search efforts may not include the same prospective employer at the same location in 3 consecutive weeks, unless the employer has indicated since the time of the initial contact that the employer is hiring. The department



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shall conduct random reviews of work search information provided by claimants. As an alternative to contacting at least five prospective employers for any week of unemployment claimed, a claimant may, for that same week, report in person to a one-stop career center to meet with a representative of the center and access reemployment services of the center. The center shall keep a record of the services or information provided to the claimant and shall provide the records to the department upon request by the department. However:

1. Notwithstanding any other provision of this paragraph or paragraphs (b) and (e), an otherwise eligible individual may not be denied benefits for any week because she or he is in training with the approval of the department, or by reason of s. 443.101(2) relating to failure to apply for, or refusal to accept, suitable work. Training may be approved by the department in accordance with criteria prescribed by rule. A claimant's eligibility during approved training is contingent upon satisfying eligibility conditions prescribed by rule.

2. Notwithstanding any other provision of this chapter, an otherwise eligible individual who is in training approved under s. 236(a)(1) of the Trade Act of 1974, as amended, may not be determined ineligible or disqualified for benefits due to enrollment in such training or because of leaving work that is not suitable employment to enter such training. As used in this subparagraph, the term "suitable employment" means work of a substantially equal or higher skill level than the worker's past adversely affected employment, as defined for purposes of the Trade Act of 1974, as amended, the wages for which are at least 80 percent of the worker's average weekly wage as determined for



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purposes of the Trade Act of 1974, as amended.

3. Notwithstanding any other provision of this section, an otherwise eligible individual may not be denied benefits for any week because she or he is before any state or federal court pursuant to a lawfully issued summons to appear for jury duty.

4. Union members who customarily obtain employment through a union hiring hall may satisfy the work search requirements of this paragraph by reporting daily to their union hall.

5. The work search requirements of this paragraph do not apply to persons who are unemployed as a result of a temporary layoff or who are claiming benefits under an approved short-time compensation plan as provided in s. 443.1116.

6. In small counties as defined in s. 120.52(20) ~~s. 120.52(19)~~, a claimant engaging in systematic and sustained efforts to find work must contact at least three prospective employers for each week of unemployment claimed.

7. The work search requirements of this paragraph do not apply to persons required to participate in reemployment services under paragraph (e).

Section 15. This act shall take effect July 1, 2023.

===== T I T L E A M E N D M E N T =====
And the title is amended as follows:

Delete everything before the enacting clause
and insert:

A bill to be entitled
An act relating to administrative procedures; amending
s. 120.52, F.S.; defining the terms "repromulgation"
and "technical change"; amending s. 120.54, F.S.;



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1345 applying certain provisions applicable to all rules
1346 other than emergency rules to rules amended or
1347 repromulgated after a specified date; requiring
1348 agencies to publish a certain notice of rule
1349 development in the Florida Administrative Register
1350 within a specified timeframe before providing
1351 specified notice of a proposed rule; requiring that a
1352 notice of rule development cite the grant of
1353 rulemaking authority; requiring that a notice of rule
1354 development contain a proposed rule number and
1355 specified statements; requiring that notice of a
1356 proposed rule be published in the Florida
1357 Administrative Register within a specified timeframe
1358 after the most recent notice of rule development;
1359 revising the scope of public workshops to include
1360 information gathered for the preparation of statements
1361 of estimated regulatory costs; requiring that a notice
1362 of proposed rule include a website address where a
1363 statement of regulatory costs can be viewed; requiring
1364 that a notice of proposed rule include a request for
1365 the submission of any helpful information regarding
1366 the statement of estimated regulatory costs; requiring
1367 that material proposed to be incorporated by reference
1368 and the statement of estimated regulatory costs be
1369 made available to the public; requiring that material
1370 proposed to be incorporated by reference be made
1371 available in a specified manner; authorizing
1372 electronic delivery of notices to persons who have
1373 requested advance notice of agency rulemaking



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1374 proceedings; requiring an agency to prepare a
1375 statement of estimated regulatory costs before
1376 adopting or amending any rule other than an emergency
1377 rule; providing that an agency is not required to
1378 prepare a statement of estimated regulatory costs
1379 before repealing a rule; providing an exception;
1380 requiring that certain rule repeals be considered
1381 presumptively correct in a proceeding before the
1382 Division of Administrative Hearings or a court of
1383 competent jurisdiction; revising the criteria under
1384 which a proposed rule's adverse impact on small
1385 businesses is deemed to exist; requiring an agency to
1386 provide notice of a regulatory alternative to the
1387 Administrative Procedures Committee within a certain
1388 timeframe; requiring certain agency personnel to
1389 attend public hearings on proposed rules; requiring an
1390 agency to publish a notice of convening a separate
1391 proceeding in certain circumstances; providing that
1392 rulemaking timelines are tolled during such separate
1393 proceedings; providing that such timelines resume the
1394 day after the conclusion of such proceedings;
1395 requiring that notice of conclusion of such
1396 proceedings be provided to the committee; revising the
1397 requirements for the contents of a notice of change;
1398 requiring the committee to notify the Department of
1399 State that the date for an agency to adopt a proposed
1400 rule has expired under certain circumstances;
1401 requiring the department to publish a notice of
1402 withdrawal under certain circumstances; requiring the



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1403 agency, upon approval of the agency head, to
1404 electronically file with the department a certified
1405 copy of the proposed rule; requiring the committee to
1406 notify the department that the agency has failed to
1407 withdraw a rule within a specified timeframe;
1408 requiring the department to publish a notice of
1409 withdrawal of the rule; prohibiting an emergency rule
1410 from being effective for longer than a specified
1411 timeframe; providing that such rule is not renewable;
1412 providing an exception; requiring that emergency rules
1413 be published in the Florida Administrative Code;
1414 authorizing agencies to supersede an emergency rule
1415 through adoption of another emergency rule; providing
1416 the requirements for adopting the new rule;
1417 authorizing an agency to make technical changes to an
1418 emergency rule during a specified timeframe; requiring
1419 that notice of renewal of an emergency rule be
1420 published in the Florida Administrative Register
1421 before the expiration of the existing rule; requiring
1422 that the notice state specified facts and reasons;
1423 requiring that emergency rules be published in a
1424 certain section of the Florida Administrative Code;
1425 requiring specified emergency rules to contain a
1426 certain history note; providing that certain emergency
1427 rules may be repealed at any time while the emergency
1428 rule is in effect by publishing a certain notice in
1429 the Florida Administrative Register; requiring an
1430 agency to file a copy of a certain petition with the
1431 committee; making technical changes; amending s.



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120.541, F.S.; requiring an agency to provide a copy of a proposal for a lower cost regulatory alternative to the committee within a certain timeframe; specifying the circumstances under which such proposal is deemed to be made in good faith; revising requirements for an agency's consideration of a lower cost regulatory alternative; providing for an agency's revision and publication of a revised statement of estimated regulatory costs in response to such alternatives; requiring that the revised statement of estimated regulatory costs be made available in the same manner as the original; deleting the definition of the term "transactional costs"; revising the applicability of specified provisions; providing additional requirements for the calculation of estimated regulatory costs; making technical changes; conforming provisions to changes made by the act; conforming a cross-reference; creating s. 120.5435, F.S.; providing legislative intent; requiring agency review of rules and repromulgation of rules that do not require substantive changes within a specified timeframe; requiring that such rules be reviewed periodically; requiring the agency to publish any variation from this schedule in the agency's regulatory plan; requiring the committee to provide each agency with a specified list; providing that the failure of an agency to adhere to specified deadlines constitutes a material failure and is the basis for a specified objection; requiring an agency to publish a



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1461 notice of repromulgation in the Florida Administrative
1462 Register and file a rule for repromulgation with the
1463 department within a specified timeframe; requiring an
1464 agency to file a notice of repromulgation with the
1465 committee within a specified timeframe; requiring the
1466 committee to certify if the agency has provided
1467 certain responses to the committee; providing that a
1468 repromulgated rule is not subject to challenge as a
1469 proposed rule and that certain hearing requirements do
1470 not apply; requiring an agency to electronically file
1471 a certified copy of a proposed repromulgated rule and
1472 any material incorporated by reference; providing that
1473 a rule is considered repromulgated upon filing with
1474 the department; requiring the department to update
1475 certain information in the Florida Administrative
1476 Code; requiring the committee to submit a specified
1477 list to the Legislature, within a specified timeframe;
1478 requiring the agency to initiate rulemaking
1479 proceedings to repeal certain rules within a specified
1480 timeframe if certain conditions exist; requiring the
1481 department to adopt rules by a certain date; creating
1482 s. 120.5436, F.S.; providing legislative intent;
1483 requiring the Department of Environmental Protection
1484 and water management districts to conduct a holistic
1485 review of certain permitting processes and programs;
1486 providing the scope and purpose of the review;
1487 providing the factors the department and districts
1488 must consider when conducting the review; requiring
1489 the department and districts to submit a specified



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1490 report to the Governor and Legislature by a specified
1491 date; amending s. 120.545, F.S.; requiring the
1492 committee to examine certain existing rules; amending
1493 s. 120.55, F.S.; requiring the Department of State to
1494 publish the Florida Administrative Register once each
1495 business day by a specified time; providing
1496 exceptions; requiring the department to indicate if a
1497 rule, proposed rule, or notice of rule development was
1498 corrected or replaced by republishing the register and
1499 noting the rule, proposed rule, or notice of rule
1500 development was corrected; requiring that certain
1501 rulemaking timeframes revert to the initial date of
1502 publication; requiring the agency, rather than the
1503 department, to publish specified information at the
1504 beginning of specified sections of the code; requiring
1505 that materials incorporated by reference be filed in a
1506 specified manner; requiring the department to include
1507 the date of a technical rule change in the Florida
1508 Administrative Code; providing that a technical change
1509 does not affect the effective date of a rule; revising
1510 the required contents of the Florida Administrative
1511 Register; requiring the department to adopt specified
1512 rules; amending s. 120.56, F.S.; conforming a cross-
1513 reference; amending s. 120.74, F.S.; requiring an
1514 agency to list each rule it plans to develop, adopt,
1515 or repeal during the forthcoming year in the agency's
1516 annual regulatory plan; requiring that an agency's
1517 annual regulatory plan identify any rules required to
1518 be repromulgated during the forthcoming year;



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1519 requiring the agency to make certain declarations
1520 concerning the annual regulatory plan; amending ss.
1521 120.80, 120.81, 420.9072, 420.9075, and 443.091, F.S.;
1522 conforming cross-references; providing an effective
1523 date.

By Senator Grall

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A bill to be entitled

An act relating to administrative procedures; amending s. 120.52, F.S.; defining the terms "repromulgation" and "technical change"; amending s. 120.54, F.S.; applying certain provisions applicable to all rules other than emergency rules to repromulgated rules; requiring that a notice of rule development cite the grant of rulemaking authority; requiring a notice of rule development to contain a proposed rule number and specified statements; requiring that a notice of withdrawal be published in the next available issue of the Florida Administrative Register if a notice of proposed rule is not filed within a certain timeframe; revising the scope of public workshops to include information gathered for the preparation of statements of estimated regulatory costs; requiring that a notice of proposed rule include a website address where a statement of regulatory costs can be viewed; requiring that a notice of proposed rule include a request for the submission of any helpful information regarding the statement of estimated regulatory costs; revising the timeframe within which the notice must be published in the Florida Administrative Register; requiring that material proposed to be incorporated by reference and the statement of estimated regulatory costs be available to the public; requiring that material proposed to be incorporated by reference be made available in a specified manner; authorizing electronic delivery of notices to persons who have

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requested advance notice of agency rulemaking proceedings; requiring an agency to prepare a statement of estimated regulatory costs before adopting or amending any rule other than an emergency rule; providing that an agency is not required to prepare a statement of estimated regulatory costs before repealing a rule; providing an exception; requiring that certain rule repeals be considered presumptively correct in a proceeding before the Division of Administrative Hearings or a court of competent jurisdiction; revising the criteria under which a proposed rule's adverse impact on small businesses is deemed to exist; requiring an agency to provide notice of a regulatory alternative to the Administrative Procedures Committee within a certain timeframe; requiring certain agency personnel to attend public hearings on proposed rules; requiring an agency to publish a notice of convening a separate proceeding in certain circumstances; providing that rulemaking deadlines are tolled during such separate proceedings; revising the requirements for the contents of a notice of change; requiring the committee to notify the Department of State that the date for an agency to adopt a rule has expired under certain circumstances; requiring the department to publish a notice of withdrawal under certain circumstances; requiring emergency rules to be published in the Florida Administrative Code; prohibiting agencies from making changes to emergency

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59 rules by superseding the rule; authorizing an agency
60 to make technical changes to an emergency rule during
61 a specified timeframe; requiring an agency to file a
62 copy of a certain petition with the committee; making
63 technical changes; amending s. 120.541, F.S.;
64 requiring an agency to provide a copy of a proposal
65 for a lower cost regulatory alternative to the
66 committee within a certain timeframe; specifying the
67 circumstances under which such proposal is deemed to
68 be made in good faith; revising requirements for an
69 agency's consideration of a lower cost regulatory
70 alternative; providing for an agency's revision and
71 publication of a revised statement of estimated
72 regulatory costs in response to such alternatives;
73 requiring that the revised statement of estimated
74 regulatory costs be made available in the same manner
75 as the original; deleting the definition of the term
76 "transactional costs"; revising the applicability of
77 specified provisions; providing additional
78 requirements for the calculation of estimated
79 regulatory costs; making technical changes; conforming
80 provisions to changes made by the act; conforming a
81 cross-reference; creating s. 120.5435, F.S.; providing
82 legislative intent; requiring agency review of rules
83 and repromulgation of rules that do not require
84 substantive changes within a specified timeframe;
85 providing that the failure of an agency to adhere to
86 specified deadlines is a basis for certain persons to
87 petition the agency for review of the rule; requiring

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the agency to act within a specified timeframe upon receiving such petition; requiring a denial to include a specified statement; requiring an agency to publish a notice of repromulgation in the Florida Administrative Register and file a rule for promulgation with the department within a specified timeframe; requiring an agency to file a notice of repromulgation with the committee within a specified timeframe; providing that an agency's failure to repromulgate a rule within a specified timeframe constitutes repeal of the rule; requiring the committee to provide the department a certain notice; requiring the department to publish the notice in the Florida Administrative Register; providing that a notice of repromulgation is not required to include the text of the rule being repromulgated; requiring the committee to certify if the agency has provided certain responses to the committee; providing that a repromulgated rule is not subject to challenge as a proposed rule and that certain hearing requirements do not apply; requiring an agency to file a specified number of certified copies of a proposed repromulgated rule and any material incorporated by reference; providing that a repromulgated rule is adopted upon filing with the department and becomes effective after a specified time; requiring the department to update certain information in the Florida Administrative Code; requiring any rule that is not repromulgated to be submitted to the Legislature within a specified

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timeframe after the decision to not repromulgate is made; providing that such decision is not effective until the conclusion of the next legislative session following the decision; requiring the department to adopt rules by a certain date; creating s. 120.5436, F.S.; providing legislative intent; requiring the Department of Environmental Protection and water management districts to conduct a holistic review of certain permitting processes; providing the scope and purpose of the review; providing the factors the department and districts must consider when conducting the review; requiring the department and districts to submit a specified report to the Governor and Legislature by a specified date; amending s. 120.545, F.S.; requiring the committee to examine certain existing rules; amending s. 120.55, F.S.; requiring the Department of State to publish the Florida Administrative Code daily at a specified time; requiring the department to indicate a rule was corrected or replaced by republishing the code and noting the rule was corrected; requiring materials incorporated by reference to be filed in a specified manner; requiring the department to include the date of a technical rule change in the Florida Administrative Code; providing that a technical change does not affect the effective date of a rule; requiring the department to adopt specified rules; amending s. 120.56, F.S.; conforming a cross-reference; amending s. 120.74, F.S.; requiring an

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agency to list each rule it plans to develop, adopt, or repeal during the forthcoming year in the agency's annual regulatory plan; requiring that an agency's annual regulatory plan identify any rules that are required to be repromulgated during the forthcoming year; requiring the agency to make certain declarations concerning the annual regulatory plan; amending ss. 120.80, 120.81, 420.9072, 420.9075, and 443.091, F.S.; conforming cross-references; providing an effective date.

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

Section 1. Present subsections (16) through (19) and subsections (20), (21), and (22) of section 120.52, Florida Statutes, are redesignated as subsections (17) through (20) and (22), (23), and (24), respectively, and new subsections (16) and (21) are added to that section, to read:

120.52 Definitions.—As used in this act:

(16) "Repromulgation" means the publication and adoption of an existing rule following an agency's review of the rule for consistency with the powers and duties granted by its enabling statute.

(21) "Technical change" means a change limited to correcting grammatical, typographical, and similar errors not affecting the substance of a rule.

Section 2. Paragraph (i) of subsection (1), subsections (2) and (3), and paragraph (a) of subsection (7) of section 120.54, Florida Statutes, are amended, and paragraphs (e) and (f) are

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175 added to subsection (4) of that section, to read:

176 120.54 Rulemaking.—

177 (1) GENERAL PROVISIONS APPLICABLE TO ALL RULES OTHER THAN
178 EMERGENCY RULES.—

179 (i)1. A rule may incorporate material by reference but only
180 as the material exists on the date the rule is adopted. For
181 purposes of the rule, changes in the material are not effective
182 unless the rule is amended to incorporate the changes.

183 2. An agency rule that incorporates by specific reference
184 another rule of that agency automatically incorporates
185 subsequent amendments to the referenced rule unless a contrary
186 intent is clearly indicated in the referencing rule. A notice of
187 amendments to a rule that has been incorporated by specific
188 reference in other rules of that agency must explain the effect
189 of those amendments on the referencing rules.

190 3. In rules adopted after December 31, 2010, and rules
191 repromulgated on or after July 1, 2023, material may not be
192 incorporated by reference unless:

193 a. The material has been submitted in the prescribed
194 electronic format to the Department of State and the full text
195 of the material can be made available for free public access
196 through an electronic hyperlink from the rule making the
197 reference in the Florida Administrative Code; or

198 b. The agency has determined that posting the material on
199 the Internet for purposes of public examination and inspection
200 would constitute a violation of federal copyright law, in which
201 case a statement to that effect, along with the address of
202 locations at the Department of State and the agency at which the
203 material is available for public inspection and examination,

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204 must be included in the notice required by subparagraph (3)(a)1.

205 4. A rule may not be amended by reference only. Amendments
206 must set out the amended rule in full in the same manner as
207 required by the State Constitution for laws.

208 5. Notwithstanding any contrary provision in this section,
209 when an adopted rule of the Department of Environmental
210 Protection or a water management district is incorporated by
211 reference in the other agency's rule to implement a provision of
212 part IV of chapter 373, subsequent amendments to the rule are
213 not effective as to the incorporating rule unless the agency
214 incorporating by reference notifies the committee and the
215 Department of State of its intent to adopt the subsequent
216 amendment, publishes notice of such intent in the Florida
217 Administrative Register, and files with the Department of State
218 a copy of the amended rule incorporated by reference. Changes in
219 the rule incorporated by reference are effective as to the other
220 agency 20 days after the date of the published notice and filing
221 with the Department of State. The Department of State shall
222 amend the history note of the incorporating rule to show the
223 effective date of such change. Any substantially affected person
224 may, within 14 days after the date of publication of the notice
225 of intent in the Florida Administrative Register, file an
226 objection to rulemaking with the agency. The objection must
227 ~~shall~~ specify the portions of the rule incorporated by reference
228 to which the person objects and the reasons for the objection.
229 The agency does ~~shall~~ not have the authority under this
230 subparagraph to adopt those portions of the rule specified in
231 such objection. The agency shall publish notice of the objection
232 and of its action in response in the next available issue of the

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233 Florida Administrative Register.

234 6. The Department of State may adopt by rule requirements
235 for incorporating materials pursuant to this paragraph.

236 (2) RULE DEVELOPMENT; WORKSHOPS; NEGOTIATED RULEMAKING.—

237 (a) 1. Except when the intended action is the repeal of a
238 rule, agencies shall provide notice of the development of
239 proposed rules by publication of a notice of rule development in
240 the Florida Administrative Register before providing notice of a
241 proposed rule as required by paragraph (3)(a). The notice of
242 rule development must ~~shall~~ indicate the subject area to be
243 addressed by rule development, provide a short, plain
244 explanation of the purpose and effect of the proposed rule, cite
245 the grant of rulemaking authority for the proposed rule and the
246 law being implemented ~~specific legal authority for the proposed~~
247 ~~rule~~, and include the proposed rule number and the preliminary
248 text of the proposed rules, if available, or a statement of how
249 a person may promptly obtain, without cost, a copy of any
250 preliminary draft, when if available. The notice must also
251 include a request for the submission of any information that
252 would be helpful to the agency in preparing the statement of
253 estimated regulatory costs required pursuant to paragraph (3)(b)
254 and a statement of how a person may submit comments to the
255 proposal and how a person may provide information regarding the
256 potential regulatory costs.

257 2. If a notice of a proposed rule is not filed within 12
258 months after the most recent notice of rule development, the
259 agency must withdraw the rule and publish notice of the
260 withdrawal in the next available issue of the Florida
261 Administrative Register.

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(b) All rules should be drafted in readable language. The language is readable if it:

1. ~~It~~ Avoids the use of obscure words and unnecessarily long or complicated constructions; and

2. ~~It~~ Avoids the use of unnecessary technical or specialized language that is understood only by members of particular trades or professions.

(c) An agency may hold public workshops for purposes of rule development and information gathering for the preparation of the statement of estimated regulatory costs. If requested in writing by any affected person, an agency must hold public workshops, including workshops in various regions of the state or the agency's service area, for purposes of rule development and information gathering for the preparation of the statement of estimated regulatory costs ~~if requested in writing by any affected person~~, unless the agency head explains in writing why a workshop is unnecessary. The explanation is not final agency action subject to review pursuant to ss. 120.569 and 120.57. The failure to provide the explanation when required may be a material error in procedure pursuant to s. 120.56(1)(c). When a workshop or public hearing is held, the agency must ensure that the persons responsible for preparing the proposed rule and the statement of estimated regulatory costs are available to receive public input, to explain the agency's proposal, and to respond to questions or comments regarding the rule being developed and the statement of estimated regulatory costs. The workshop may be facilitated or mediated by a neutral third person, or the agency may employ other types of dispute resolution alternatives for the workshop that are appropriate for rule development and for

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291 preparation of the statement of estimated regulatory costs.
292 Notice of a workshop for rule development and for preparation of
293 the statement of estimated regulatory costs must ~~workshop shall~~
294 be by publication in the Florida Administrative Register not
295 less than 14 days before ~~prior to~~ the date on which the workshop
296 is scheduled to be held and must ~~shall~~ indicate the subject area
297 that ~~which~~ will be addressed; the agency contact person; and the
298 place, date, and time of the workshop.

299 (d)1. An agency may use negotiated rulemaking in developing
300 and adopting rules. The agency should consider the use of
301 negotiated rulemaking when complex rules are being drafted or
302 strong opposition to the rules is anticipated. The agency should
303 consider, but is not limited to considering, whether a balanced
304 committee of interested persons who will negotiate in good faith
305 can be assembled, whether the agency is willing to support the
306 work of the negotiating committee, and whether the agency can
307 use the group consensus as the basis for its proposed rule.
308 Negotiated rulemaking uses a committee of designated
309 representatives to draft a mutually acceptable proposed rule and
310 to develop information necessary to prepare a statement of
311 estimated regulatory costs, when applicable.

312 2. An agency that chooses to use the negotiated rulemaking
313 process described in this paragraph shall publish in the Florida
314 Administrative Register a notice of negotiated rulemaking that
315 includes a listing of the representative groups that will be
316 invited to participate in the negotiated rulemaking process. Any
317 person who believes that his or her interest is not adequately
318 represented may apply to participate within 30 days after
319 publication of the notice. All meetings of the negotiating

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committee shall be noticed and open to the public pursuant to
~~the provisions of~~ this chapter. The negotiating committee shall
be chaired by a neutral facilitator or mediator.

3. The agency's decision to use negotiated rulemaking, its
selection of the representative groups, and approval or denial
of an application to participate in the negotiated rulemaking
process are not agency action. ~~Nothing in~~ This subparagraph is
not intended to affect the rights of a substantially an affected
person to challenge a proposed rule developed under this
paragraph in accordance with s. 120.56(2).

(3) ADOPTION PROCEDURES.—

(a) *Notices.*—

1. Before ~~Prior to~~ the adoption, amendment, or repeal of
any rule other than an emergency rule, an agency, upon approval
of the agency head, shall give notice of its intended action,
setting forth a short, plain explanation of the purpose and
effect of the proposed action; the rule number and full text of
the proposed rule or amendment and a summary thereof; a
reference to the grant of rulemaking authority pursuant to which
the rule is adopted; and a reference to the section or
subsection of the Florida Statutes or the Laws of Florida being
implemented or interpreted. The notice must include a concise
summary of the agency's statement of the estimated regulatory
costs, ~~if one has been prepared,~~ based on the factors set forth
in s. 120.541(2), which describes the regulatory impact of the
rule in readable language; an agency website address where the
statement of estimated regulatory costs can be viewed in its
entirety; a statement that any person who wishes to provide the
agency with information regarding the statement of estimated

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regulatory costs, or to provide a proposal for a lower cost regulatory alternative as provided by s. 120.541(1), must do so in writing within 21 days after publication of the notice; a request for the submission of any information that could be helpful to the agency regarding the statement of estimated regulatory costs; and a statement as to whether, based on the statement of the estimated regulatory costs ~~or other information expressly relied upon and described by the agency if no statement of regulatory costs is required,~~ the proposed rule is expected to require legislative ratification pursuant to s. 120.541(3). The notice must state the procedure for requesting a public hearing on the proposed rule. Except when the intended action is the repeal of a rule, the notice must include a reference both to the date on which and to the place where the notice of rule development that is required by subsection (2) appeared.

2. The notice must ~~shall~~ be published in the Florida Administrative Register at least 7 days after the publication of the notice of rule development and at least not less than 28 days before ~~prior to~~ the intended action. The proposed rule, including all materials proposed to be incorporated by reference and the statement of estimated regulatory costs, must ~~shall~~ be available for inspection and copying by the public at the time of the publication of notice. Material proposed to be incorporated by reference in the notice must be made available in the manner prescribed by sub-subparagraph (1)(i)3.a. or sub-subparagraph (1)(i)3.b.

3. The notice must ~~shall~~ be mailed to all persons named in the proposed rule and mailed or delivered electronically to all

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persons who, at least 14 days before publication of the notice
~~prior to such mailing~~, have made requests of the agency for
advance notice of its proceedings. The agency shall also give
such notice as is prescribed by rule to those particular classes
of persons to whom the intended action is directed.

4. The adopting agency shall file with the committee, at
least 21 days before ~~prior to~~ the proposed adoption date, a copy
of each rule it proposes to adopt; a copy of any material
incorporated by reference in the rule; a detailed written
statement of the facts and circumstances justifying the proposed
rule; a copy of the ~~any~~ statement of estimated regulatory costs
~~that has been~~ prepared pursuant to s. 120.541; a statement of
the extent to which the proposed rule relates to federal
standards or rules on the same subject; and the notice required
by subparagraph 1.

(b) *Special matters to be considered in rule adoption.*—

1. Statement of estimated regulatory costs.—Before the
adoption or, amendment, ~~or repeal~~ of any rule, other than an
emergency rule, an agency must ~~is encouraged to~~ prepare a
statement of estimated regulatory costs of the proposed rule, as
provided by s. 120.541. However, an agency is not required to
prepare a statement of estimated regulatory costs for a rule
repeal unless such repeal would impose a regulatory cost. In any
challenge to a rule repeal, a rule repeal that only reduces or
eliminates regulations on those individuals or entities
presently regulated by the rule must be considered presumptively
correct in any proceeding before the division or in any
proceeding before a court of competent jurisdiction ~~However, an~~
~~agency must prepare a statement of estimated regulatory costs of~~

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the proposed rule, ~~as provided by s. 120.541, if:~~

~~a. The proposed rule will have an adverse impact on small business; or~~

~~b. The proposed rule is likely to directly or indirectly increase regulatory costs in excess of \$200,000 in the aggregate in this state within 1 year after the implementation of the rule.~~

2. Small businesses, small counties, and small cities.—

a. For purposes of this subsection and s. 120.541(2), an adverse impact on small businesses, as defined in s. 288.703 or sub-subparagraph b., exists if, for any small business:

(I) An owner, officer, operator, or manager must complete any education, training, or testing to comply, or is likely to spend at least 10 hours or purchase professional advice to understand and comply, with the rule in the first year;

(II) Taxes or fees assessed on transactions are likely to increase by \$500 or more in the aggregate in 1 year;

(III) Prices charged for goods and services are restricted or are likely to increase because of the rule;

(IV) Specially trained, licensed, or tested employees will be required because of the rule;

(V) Operating costs are expected to increase by at least \$1,000 annually because of the rule; or

(VI) Capital expenditures in excess of \$1,000 are necessary to comply with the rule.

b. Each agency, before the adoption, amendment, or repeal of a rule, shall consider the impact of the rule on small businesses as defined in ~~by~~ s. 288.703 and the impact of the rule on small counties or small cities as defined in ~~by~~ s.

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120.52. Whenever practicable, an agency shall tier its rules to reduce disproportionate impacts on small businesses, small counties, or small cities to avoid regulating small businesses, small counties, or small cities that do not contribute significantly to the problem the rule is designed to address. An agency may define "small business" to include businesses employing more than 200 persons, may define "small county" to include those with populations of more than 75,000, and may define "small city" to include those with populations of more than 10,000, if it finds that such a definition is necessary to adapt a rule to the needs and problems of small businesses, small counties, or small cities. The agency shall consider each of the following methods for reducing the impact of the proposed rule on small businesses, small counties, and small cities, or any combination of these entities:

(I) Establishing less stringent compliance or reporting requirements in the rule.

(II) Establishing less stringent schedules or deadlines in the rule for compliance or reporting requirements.

(III) Consolidating or simplifying the rule's compliance or reporting requirements.

(IV) Establishing performance standards or best management practices to replace design or operational standards in the rule.

(V) Exempting small businesses, small counties, or small cities from any or all requirements of the rule.

~~c.b.~~ (I) If the agency determines that the proposed action will affect small businesses as defined by the agency as provided in sub-subparagraph b. ~~a.~~, the agency must ~~shall~~ send

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written notice of the rule to the rules ombudsman in the Executive Office of the Governor at least 28 days before the intended action.

(II) Each agency shall adopt those regulatory alternatives offered by the rules ombudsman in the Executive Office of the Governor and provided to the agency no later than 21 days after the rules ombudsman's receipt of the written notice of the rule which it finds are feasible and consistent with the stated objectives of the proposed rule and which would reduce the impact on small businesses. When regulatory alternatives are offered by the rules ombudsman in the Executive Office of the Governor, the 90-day period for filing the rule in subparagraph (e)2. is extended for a period of 21 days. The agency shall provide notice to the committee of any regulatory alternative offered to the agency pursuant to this sub-subparagraph at least 21 days before filing the rule for adoption.

(III) If an agency does not adopt all alternatives offered pursuant to this sub-subparagraph, it must ~~shall~~, before rule adoption or amendment and pursuant to subparagraph (d)1., file a detailed written statement with the committee explaining the reasons for failure to adopt such alternatives. Within 3 working days after the filing of such notice, the agency shall send a copy of such notice to the rules ombudsman in the Executive Office of the Governor.

(c) *Hearings.*—

1. If the intended action concerns any rule other than one relating exclusively to procedure or practice, the agency must ~~shall~~, on the request of any affected person received within 21 days after the date of publication of the notice of intended

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agency action, give affected persons an opportunity to present evidence and argument on all issues under consideration. The agency may schedule a public hearing on the proposed rule and, if requested by any affected person, must ~~shall~~ schedule a public hearing on the proposed rule. When a public hearing is held, the agency must ensure that the persons responsible for preparing the proposed rule and the statement of estimated regulatory costs ~~staff~~ are in attendance ~~available~~ to explain the agency's proposal and to respond to questions or comments regarding the proposed rule, the statement of estimated regulatory costs, and the agency's decision on whether to adopt a lower cost regulatory alternative submitted pursuant to s. 120.541(1)(a). If the agency head is a board or other collegial body created under s. 20.165(4) or s. 20.43(3)(g), and one or more requested public hearings is scheduled, the board or other collegial body must ~~shall~~ conduct at least one of the public hearings itself and may not delegate this responsibility without the consent of those persons requesting the public hearing. Any material pertinent to the issues under consideration submitted to the agency within 21 days after the date of publication of the notice or submitted to the agency between the date of publication of the notice and the end of the final public hearing must ~~shall~~ be considered by the agency and made a part of the record of the rulemaking proceeding.

2. Rulemaking proceedings are ~~shall be~~ governed solely by the provisions of this section unless a person timely asserts that the person's substantial interests will be affected in the proceeding and affirmatively demonstrates to the agency that the proceeding does not provide adequate opportunity to protect

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those interests. If the agency determines that the rulemaking proceeding is not adequate to protect the person's interests, it must ~~shall~~ suspend the rulemaking proceeding and convene a separate proceeding under ~~the provisions of~~ ss. 120.569 and 120.57. The agency shall publish notice of convening a separate proceeding in the Florida Administrative Register. Similarly situated persons may be requested to join and participate in the separate proceeding. Upon conclusion of the separate proceeding, the rulemaking proceeding shall be resumed. All timelines in this section are tolled during any suspension of the rulemaking proceeding under this subparagraph, beginning on the date the notice of convening a separate proceeding is published and resuming on the day after conclusion of the separate proceeding.

(d) *Modification or withdrawal of proposed rules.—*

1. After the final public hearing on the proposed rule, or after the time for requesting a hearing has expired, if the proposed rule has not been changed from the proposed rule as previously filed with the committee, or contains only technical changes, the adopting agency shall file a notice to that effect with the committee at least 7 days before ~~prior to~~ filing the proposed rule for adoption. Any change, other than a technical change ~~that does not affect the substance of the rule~~, must be supported by the record of public hearings held on the proposed rule, must be in response to written material submitted to the agency within 21 days after the date of publication of the notice of intended agency action or submitted to the agency between the date of publication of the notice and the end of the final public hearing, or must be in response to a proposed objection by the committee. Any change, other than a technical

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552 change, to a statement of estimated regulatory costs requires a
553 notice of change. In addition, ~~when~~ any change, other than a
554 technical change, to is made in a proposed rule text or any
555 material incorporated by reference requires, ~~other than a~~
556 ~~technical change,~~ the adopting agency to shall provide a copy of
557 a notice of change by certified mail or actual delivery to any
558 person who requests it in writing no later than 21 days after
559 the notice required in paragraph (a). The agency shall file the
560 notice of change with the committee, along with the reasons for
561 the change, and provide the notice of change to persons
562 requesting it, at least 21 days before ~~prior to~~ filing the
563 proposed rule for adoption. The notice of change must shall be
564 published in the Florida Administrative Register at least 21
565 days before ~~prior to~~ filing the proposed rule for adoption. The
566 notice of change must include a summary of any revision of the
567 statement of estimated regulatory costs required by s.
568 120.541(1)(c). This subparagraph does not apply to emergency
569 rules adopted pursuant to subsection (4). Material proposed to
570 be incorporated by reference in the notice required by this
571 subparagraph must be made available in the manner prescribed by
572 sub-subparagraph (1)(i)3.a. or sub-subparagraph (1)(i)3.b.

573 2. After the notice required by paragraph (a) and before
574 ~~prior to~~ adoption, the agency may withdraw the proposed rule in
575 whole or in part.

576 3. After the notice required by paragraph (a), the agency
577 must withdraw the proposed rule if the agency has failed to
578 adopt it within the prescribed timeframes in this chapter. If
579 the agency, 30 days after notice by the committee that the
580 agency has failed to adopt the proposed rule within the

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581 prescribed timeframes in this chapter, has not given notice of
582 the withdrawal of the rule, the committee must notify the
583 Department of State that the date for adoption of the rule has
584 expired, and the Department of State must publish a notice of
585 withdrawal of the proposed rule.

586 4. After adoption and before the rule becomes effective, a
587 rule may be modified or withdrawn only in the following
588 circumstances:

589 a. When the committee objects to the rule;

590 b. When a final order, which is not subject to further
591 appeal, is entered in a rule challenge brought pursuant to s.
592 120.56 after the date of adoption but before the rule becomes
593 effective pursuant to subparagraph (e)6.;

594 c. If the rule requires ratification, when more than 90
595 days have passed since the rule was filed for adoption without
596 the Legislature ratifying the rule, in which case the rule may
597 be withdrawn but may not be modified; or

598 d. When the committee notifies the agency that an objection
599 to the rule is being considered, in which case the rule may be
600 modified to extend the effective date by not more than 60 days.

601 5.4- The agency shall give notice of its decision to
602 withdraw or modify a rule in the first available issue of the
603 publication in which the original notice of rulemaking was
604 published, shall notify those persons described in subparagraph
605 (a)3. in accordance with the requirements of that subparagraph,
606 and shall notify the Department of State if the rule is required
607 to be filed with the Department of State.

608 6.5- After a rule has become effective, it may be repealed
609 or amended only through the rulemaking procedures specified in

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610 this chapter.

611 (e) *Filing for final adoption; effective date.*—

612 1. If the adopting agency is required to publish its rules
613 in the Florida Administrative Code, the agency, upon approval of
614 the agency head, must ~~shall~~ file with the Department of State
615 three certified copies of the rule it proposes to adopt; one
616 copy of any material incorporated by reference in the rule,
617 certified by the agency; a summary of the rule; a summary of any
618 hearings held on the rule; and a detailed written statement of
619 the facts and circumstances justifying the rule. Agencies not
620 required to publish their rules in the Florida Administrative
621 Code shall file one certified copy of the proposed rule, and the
622 other material required by this subparagraph, in the office of
623 the agency head, and such rules must ~~shall~~ be open to the
624 public.

625 2. A rule may not be filed for adoption less than 28 days
626 or more than 90 days after the notice required by paragraph (a),
627 until 21 days after the notice of change required by paragraph
628 (d), until 14 days after the final public hearing, until 21 days
629 after a statement of estimated regulatory costs required under
630 s. 120.541 has been provided to all persons who submitted a
631 lower cost regulatory alternative and made available to the
632 public at a readily accessible page on the agency's website, or
633 until the administrative law judge has rendered a decision under
634 s. 120.56(2), whichever applies. When a required notice of
635 change is published before ~~prior to~~ the expiration of the time
636 to file the rule for adoption, the period during which a rule
637 must be filed for adoption is extended to 45 days after the date
638 of publication. If notice of a public hearing is published

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639 before ~~prior to~~ the expiration of the time to file the rule for
640 adoption, the period during which a rule must be filed for
641 adoption is extended to 45 days after adjournment of the final
642 hearing on the rule, 21 days after receipt of all material
643 authorized to be submitted at the hearing, or 21 days after
644 receipt of the transcript, if one is made, whichever is latest.
645 The term "public hearing" includes any public meeting held by
646 any agency at which the rule is considered. If a petition for an
647 administrative determination under s. 120.56(2) is filed, the
648 period during which a rule must be filed for adoption is
649 extended to 60 days after the administrative law judge files the
650 final order with the clerk or until 60 days after subsequent
651 judicial review is complete.

652 3. At the time a rule is filed, the agency shall certify
653 that the time limitations prescribed by this paragraph have been
654 complied with, that all statutory rulemaking requirements have
655 been met, and that there is no administrative determination
656 pending on the rule.

657 4. At the time a rule is filed, the committee shall certify
658 whether the agency has responded in writing to all material and
659 timely written comments or written inquiries made on behalf of
660 the committee. The Department of State shall reject any rule
661 that is not filed within the prescribed time limits; that does
662 not comply with all statutory rulemaking requirements and rules
663 of the Department of State; upon which an agency has not
664 responded in writing to all material and timely written
665 inquiries or written comments; upon which an administrative
666 determination is pending; or which does not include a statement
667 of estimated regulatory costs, if required.

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5. If a rule has not been adopted within the time limits imposed by this paragraph or has not been adopted in compliance with all statutory rulemaking requirements, the agency proposing the rule must ~~shall~~ withdraw the proposed rule and give notice of its action in the next available issue of the Florida Administrative Register.

6. The proposed rule shall be adopted on being filed with the Department of State and becomes ~~become~~ effective 20 days after being filed, on a later date specified in the notice required by subparagraph (a)1., on a date required by statute, or upon ratification by the Legislature pursuant to s. 120.541(3). Rules not required to be filed with the Department of State ~~shall~~ become effective when adopted by the agency head, on a later date specified by rule or statute, or upon ratification by the Legislature pursuant to s. 120.541(3). If the committee notifies an agency that an objection to a rule is being considered, the agency may postpone the adoption of the rule to accommodate review of the rule by the committee. When an agency postpones adoption of a rule to accommodate review by the committee, the 90-day period for filing the rule is tolled until the committee notifies the agency that it has completed its review of the rule.

For the purposes of this paragraph, the term "administrative determination" does not include subsequent judicial review.

(4) EMERGENCY RULES.—

(e) Emergency rules must be published in the Florida Administrative Code.

(f) An agency may not supersede an emergency rule currently

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in effect. Technical changes to an emergency rule may be made within the first 7 days after adoption of the rule.

(7) PETITION TO INITIATE RULEMAKING.—

(a) Any person regulated by an agency or having substantial interest in an agency rule may petition an agency to adopt, amend, or repeal a rule or to provide the minimum public information required by this chapter. The petition must ~~shall~~ specify the proposed rule and action requested. The agency shall file a copy of the petition with the committee. No ~~Not~~ later than 30 calendar days after ~~following the date of~~ filing a petition, the agency shall initiate rulemaking proceedings under this chapter, otherwise comply with the requested action, or deny the petition with a written statement of its reasons for the denial.

Section 3. Section 120.541, Florida Statutes, is amended to read:

120.541 Statement of estimated regulatory costs.—

(1)(a) Within 21 days after publication of the notice of a proposed rule or notice of change ~~required under s.~~ ~~120.54(3)(a)~~, a substantially affected person may submit to an agency a good faith written proposal for a lower cost regulatory alternative to a proposed rule which substantially accomplishes the objectives of the law being implemented. The agency shall provide a copy of any proposal for a lower cost regulatory alternative to the committee at least 21 days before filing the rule for adoption. The proposal may include the alternative of not adopting any rule if the proposal explains how the lower costs and objectives of the law will be achieved by not adopting any rule. If submitted after a notice of change, a proposal for

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726 a lower cost regulatory alternative is deemed to be made in good
727 faith only if the person reasonably believes, and the proposal
728 states the person's reasons for believing, that the proposed
729 rule as changed by the notice of change increases the regulatory
730 costs or creates an adverse impact on small businesses that was
731 not created by the previous proposed rule. If such a proposal is
732 submitted, the 90-day period for filing the rule is extended 21
733 days. Upon the submission of the lower cost regulatory
734 alternative, the agency shall ~~prepare a statement of estimated~~
735 ~~regulatory costs as provided in subsection (2), or shall~~ revise
736 its prior statement of estimated regulatory costs, and either
737 adopt the alternative proposal, reject the alternative proposal,
738 or modify the proposed rule to reduce the regulatory costs. If
739 the agency rejects the alternative proposal or modifies the
740 proposed rule, the agency shall ~~or~~ provide a statement of the
741 reasons for rejecting the alternative in favor of the proposed
742 rule.

743 ~~(b) If a proposed rule will have an adverse impact on small~~
744 ~~business or if the proposed rule is likely to directly or~~
745 ~~indirectly increase regulatory costs in excess of \$200,000 in~~
746 ~~the aggregate within 1 year after the implementation of the~~
747 ~~rule, the agency shall prepare a statement of estimated~~
748 ~~regulatory costs as required by s. 120.54(3)(b).~~

749 (b)(e) The agency ~~must~~ shall revise a statement of
750 estimated regulatory costs if any change to the rule made under
751 s. 120.54(3)(d) increases the regulatory costs of the rule or if
752 the rule is modified in response to the submission of a lower
753 cost regulatory alternative. A summary of the revised statement
754 must be included with any subsequent notice published under s.

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755 120.54(3).

756 (c)~~(d)~~ At least 21 days before filing the proposed rule for
757 adoption, an agency that is required to revise a statement of
758 estimated regulatory costs shall provide the statement to the
759 person who submitted the lower cost regulatory alternative, to
760 the rules ombudsman in the Executive Office of the Governor, and
761 to the committee. The revised statement must be published and
762 made available in the same manner as the original statement of
763 estimated regulatory costs ~~and shall provide notice on the~~
764 ~~agency's website that it is available to the public.~~

765 (d)~~(e)~~ Notwithstanding s. 120.56(1)(c), the failure of the
766 agency to prepare and publish a statement of estimated
767 regulatory costs or to respond to a written lower cost
768 regulatory alternative as provided in this subsection is a
769 material failure to follow the applicable rulemaking procedures
770 or requirements set forth in this chapter.

771 (e)~~(f)~~ An agency's failure to prepare a statement of
772 estimated regulatory costs or to respond to a written lower cost
773 regulatory alternative may not be raised in a proceeding
774 challenging the validity of a rule pursuant to s. 120.52(8)(a)
775 unless:

776 1. Raised in a petition filed no later than 1 year after
777 the effective date of the rule; and

778 2. Raised by a person whose substantial interests are
779 affected by the rule's regulatory costs.

780 (f)~~(g)~~ A rule that is challenged pursuant to s.
781 120.52(8)(f) may not be declared invalid unless:

782 1. The issue is raised in an administrative proceeding
783 within 1 year after the effective date of the rule;

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2. The challenge is to the agency's rejection of a lower cost regulatory alternative offered under paragraph (a) or s. 120.54(3)(b)2.c. ~~s. 120.54(3)(b)2.b.~~; and

3. The substantial interests of the person challenging the rule are materially affected by the rejection.

(2) A statement of estimated regulatory costs must ~~shall~~ include:

(a) An economic analysis showing whether the rule directly or indirectly:

1. Is likely to have an adverse impact on economic growth, private sector job creation or employment, or private sector investment in excess of \$1 million in the aggregate within 5 years after the implementation of the rule;

2. Is likely to have an adverse impact on business competitiveness, including the ability of persons doing business in the state to compete with persons doing business in other states or domestic markets, productivity, or innovation in excess of \$1 million in the aggregate within 5 years after the implementation of the rule; or

3. Is likely to increase regulatory costs, including all ~~any transactional~~ costs and impacts estimated in the statement, in excess of \$1 million in the aggregate within 5 years after the implementation of the rule.

(b) A good faith estimate of the number of individuals, small businesses, and other entities likely to be required to comply with the rule, together with a general description of the types of individuals likely to be affected by the rule.

(c) A good faith estimate of the cost to the agency, and to any other state and local government entities, of implementing

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and enforcing the proposed rule, and any anticipated effect on state or local revenues.

(d) A good faith estimate of the compliance ~~transactional~~ costs likely to be incurred by individuals and entities, including local government entities, required to comply with the requirements of the rule. ~~As used in this section, "transactional costs" are direct costs that are readily ascertainable based upon standard business practices, and include filing fees, the cost of obtaining a license, the cost of equipment required to be installed or used or procedures required to be employed in complying with the rule, additional operating costs incurred, the cost of monitoring and reporting, and any other costs necessary to comply with the rule.~~

(e) An analysis of the impact on small businesses as defined by s. 288.703, and an analysis of the impact on small counties and small cities as defined in s. 120.52. The impact analysis for small businesses must include the basis for the agency's decision not to implement alternatives that would reduce adverse impacts on small businesses.

(f) Any additional information that the agency determines may be useful.

(g) In the ~~statement or~~ revised statement, ~~whichever applies,~~ a description of any regulatory alternatives submitted under paragraph (1)(a) and a statement adopting the alternative or a statement of the reasons for rejecting the alternative in favor of the proposed rule.

(3) If the adverse impact or regulatory costs of the rule exceed any of the criteria established in paragraph (2)(a), the rule must ~~shall~~ be submitted to the President of the Senate and

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842 Speaker of the House of Representatives no later than 30 days
843 before ~~prior to~~ the next regular legislative session, and the
844 rule may not take effect until it is ratified by the
845 Legislature.

846 (4) Subsection (3) does not apply to the adoption of:

847 (a) Federal standards pursuant to s. 120.54(6).

848 (b) Triennial updates of and amendments to the Florida
849 Building Code which are expressly authorized by s. 553.73.

850 (c) Triennial updates of and amendments to the Florida Fire
851 Prevention Code which are expressly authorized by s. 633.202.

852 (d) Emergency rules adopted pursuant to s. 120.54(4).

853 (5) For purposes of subsections (2) and (3), adverse
854 impacts and regulatory costs likely to occur within 5 years
855 after implementation of the rule include adverse impacts and
856 regulatory costs estimated to occur within 5 years after the
857 effective date of the rule. However, if any provision of the
858 rule is not fully implemented upon the effective date of the
859 rule, the adverse impacts and regulatory costs associated with
860 such provision must be adjusted to include any additional
861 adverse impacts and regulatory costs estimated to occur within 5
862 years after implementation of such provision.

863 (6) (a) In evaluating the impacts described in paragraphs
864 (2) (a) and (e), an agency shall include good faith estimates of
865 market impacts likely to result from compliance with the
866 proposed rule, including:

867 1. Increased customer charges for goods or services.

868 2. Decreased market value of goods or services produced,
869 provided, or sold.

870 3. Increased costs resulting from the purchase of

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substitute or alternative goods or services.

4. The reasonable value of time to be spent by owners, officers, operators, and managers to understand and comply with the proposed rule, including, but not limited to, time to be spent to complete required education, training, or testing.

5. Capital costs.

6. Any other impacts suggested by the rules ombudsman in the Executive Office of the Governor or by any interested persons.

(b) In estimating the information required in paragraphs (2)(b)-(e), the agency may use surveys of individuals, businesses, business organizations, counties, and municipalities to collect data helpful to estimate the costs and impacts.

(c) In estimating compliance costs under paragraph (2)(d), the agency shall consider, among other matters, all direct and indirect costs necessary to comply with the proposed rule which are readily ascertainable based upon standard business practices, including, but not limited to, costs related to:

1. Filing fees.

2. Expenses to obtain a license.

3. Necessary equipment.

4. Installation, utilities, and maintenance of necessary equipment.

5. Necessary operations and procedures.

6. Accounting, financial, information management, and other administrative processes.

7. Other processes.

8. Labor based on relevant rates of wages, salaries, and benefits.

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900 9. Materials and supplies.

901 10. Capital expenditures, including financing costs.

902 11. Professional and technical services, including
903 contracted services necessary to implement and maintain
904 compliance.

905 12. Monitoring and reporting.

906 13. Qualifying and recurring education, training, and
907 testing.

908 14. Travel.

909 15. Insurance and surety requirements.

910 16. A fair and reasonable allocation of administrative
911 costs and other overhead.

912 17. Reduced sales or other revenues.

913 18. Other items suggested by the rules ombudsman in the
914 Executive Office of the Governor or by any interested person,
915 business organization, or business representative.

916 (7) (a) The Department of State shall include on the Florida
917 Administrative Register website the agency website addresses
918 where statements of estimated regulatory costs can be viewed in
919 their entirety.

920 (b) An agency that prepares a statement of estimated
921 regulatory costs must provide, as part of the notice required
922 under s. 120.54(3) (a), the agency website address where the
923 statement of estimated regulatory costs can be read in its
924 entirety to the Department of State for publication in the
925 Florida Administrative Register.

926 (c) If an agency revises its statement of estimated
927 regulatory costs, the agency must provide notice that a revision
928 has been made. Such notice must include the agency website

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address where the revision can be viewed in its entirety.

Section 4. Section 120.5435, Florida Statutes, is created to read:

120.5435 Repromulgation of rules.—

(1) It is the intent of the Legislature that each agency periodically review its rules for consistency with the powers and duties granted by its enabling statutes.

(2) If an agency determines after review that substantive changes to update a rule are not required, such agency must repromulgate the rule to reflect the date of the review. Each agency shall review its rules pursuant to this section either 5 years after July 1, 2023, if the rule was adopted before January 1, 2010, or 10 years after the rule is adopted, if the rule was adopted on or after January 1, 2010. Failure of an agency to adhere to the deadlines imposed in this section shall be a basis for any person regulated by the agency or having substantial interest in the agency rule to petition the agency requesting a review of the rule in accordance with this section. Upon receipt of the petition, the agency shall have 30 days to either comply with the requirements of this section or, if the agency determines that the duties imposed on the agency are not applicable to the specified rule at that time, deny the petition with a statement explaining the basis for the denial.

(3) Before repromulgation of a rule, the agency must, upon approval by the agency head or his or her designee:

(a) Publish a notice of repromulgation in the Florida Administrative Register. A notice of repromulgation is not required to include the text of the rule being repromulgated.

(b) File the rule for repromulgation with the Department of

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State. A rule may not be filed for repromulgation less than 28 days, and not more than 90 days, after the date of publication of the notice required by paragraph (a).

(4) The agency must file a notice of repromulgation with the committee at least 14 days before filing the rule for repromulgation. At the time the rule is filed for repromulgation, the committee shall certify whether the agency has responded in writing to all material and timely written comments or written inquiries made on behalf of the committee.

(5) A repromulgated rule is not subject to challenge as a proposed rule pursuant to s. 120.56(2).

(6) The hearing requirements of s. 120.54 do not apply to repromulgation of a rule.

(7) (a) The agency, upon approval of the agency head or his or her designee, shall file with the Department of State three certified copies of the repromulgated rule it proposes to adopt and one certified copy of any material incorporated by reference in the rule.

(b) The repromulgated rule shall be adopted upon filing with the Department of State and becomes effective 20 days after the date it is filed.

(c) The Department of State shall update the history note of the rule in the Florida Administrative Code to reflect the effective date of the repromulgated rule.

(8) Any rule that is not repromulgated in accordance with this section must be submitted to the President of the Senate and the Speaker of the House of Representatives within 7 days after the decision to not repromulgate the rule. The decision to not repromulgate may not become effective until adjournment sine

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die of the next regular session of the Legislature following
such decision.

(9) The Department of State shall adopt rules to implement
this section by December 31, 2023.

Section 5. Section 120.5436, Florida Statutes, is created
to read:

120.5436 Infrastructure and environmental permitting
review.—

(1)(a) It is the intent of the Legislature to build a more
resilient and responsive government infrastructure to allow for
quick recovery after natural disasters, including hurricanes and
tropical storms.

(b) It is further the intent of the Legislature to promote
efficiency in state government across all branches, agencies,
and other governmental entities and to identify any areas of
improvement that would allow for the quick and effective
delivery of services.

(c) Further, it is intended that the state seek out ways to
improve its administrative procedures in relevant fields to
build a streamlined permitting process that withstands
disruptions caused by natural disasters, including hurricanes
and tropical storms.

(2)(a) The Department of Environmental Protection and each
water management district shall conduct a holistic review of the
current coastal permitting processes and other permit programs.
These permitting processes must include, but need not be limited
to, the coastal construction control line permits, joint coastal
permits, environmental resource permits, and, consistent with
the terms of the Environmental Protection Agency's approval,

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1016 state administered section 404 permits.

1017 (b) The scope and purpose of the review must be to identify
1018 areas of improvement and to increase efficiency within each
1019 process. The review must consider the following factors:

- 1020 1. The requirements to obtain a permit;
1021 2. Time periods for review, including review by commenting
1022 agencies, and the approval process of the permit application;
1023 3. Areas for improved efficiency and decision-point
1024 consolidation within a single project's process;
1025 4. Areas of duplication across one or more permit programs;
1026 5. The methods of requesting permits; and
1027 6. Any other factors that can increase the efficiency of
1028 the permit processes to allow for improved storm recovery.

1029 (c) By December 31, 2023, the department and each water
1030 management district shall provide their findings and proposed
1031 solutions in a report to the Governor, the President of the
1032 Senate, and the Speaker of the House of Representatives.

1033 Section 6. Subsection (1) of section 120.545, Florida
1034 Statutes, is amended to read:

1035 120.545 Committee review of agency rules.—

1036 (1) As a legislative check on legislatively created
1037 authority, the committee shall examine each existing rule and
1038 proposed rule, except for those proposed rules exempted by s.
1039 120.81(1)(e) and (2), and its accompanying material, and each
1040 emergency rule, ~~and may examine any existing rule,~~ for the
1041 purpose of determining whether:

1042 (a) The rule is an invalid exercise of delegated
1043 legislative authority.

1044 (b) The statutory authority for the rule has been repealed.

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(c) The rule reiterates or paraphrases statutory material.

(d) The rule is in proper form.

(e) The notice given before ~~prior to~~ its adoption was sufficient to give adequate notice of the purpose and effect of the rule.

(f) The rule is consistent with expressed legislative intent pertaining to the specific provisions of law which the rule implements.

(g) The rule is necessary to accomplish the apparent or expressed objectives of the specific provision of law which the rule implements.

(h) The rule is a reasonable implementation of the law as it affects the convenience of the general public or persons particularly affected by the rule.

(i) The rule could be made less complex or more easily comprehensible to the general public.

(j) The rule's statement of estimated regulatory costs complies with the requirements of s. 120.541 and whether the rule does not impose regulatory costs on the regulated person, county, or city which could be reduced by the adoption of less costly alternatives that substantially accomplish the statutory objectives.

(k) The rule will require additional appropriations.

(l) If the rule is an emergency rule, there exists an emergency justifying the adoption of such rule, the agency is within its statutory authority, and the rule was adopted in compliance with the requirements and limitations of s. 120.54(4).

Section 7. Paragraphs (a) and (c) of subsection (1) of

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section 120.55, Florida Statutes, are amended to read:

120.55 Publication.—

(1) The Department of State shall:

(a)1. Through a continuous revision and publication system, compile and publish electronically, on a website managed by the department, the "Florida Administrative Code." The Florida Administrative Code must ~~shall~~ contain all rules adopted by each agency, citing the grant of rulemaking authority and the specific law implemented pursuant to which each rule was adopted, all history notes as authorized in s. 120.545(7), complete indexes to all rules contained in the code, and any other material required or authorized by law or deemed useful by the department. The electronic code must ~~shall~~ display each rule chapter currently in effect in browse mode and allow full text search of the code and each rule chapter. The department may contract with a publishing firm for a printed publication; however, the department shall retain responsibility for the code as provided in this section. The electronic publication is ~~shall~~ be the official compilation of the administrative rules of this state. The Florida Administrative Code must be published daily by 8 a.m. If a rule, after publication, is corrected and replaced, the Florida Administrative Code must indicate:

a. That the Florida Administrative Code has been republished; and

b. That the rule that has been corrected by the Department of State.

The Department of State retains ~~shall retain~~ the copyright over the Florida Administrative Code.

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1103 2. Not publish rules in the Florida Administrative Code
1104 which are general in form but applicable to only one school
1105 district, community college district, or county, or a part
1106 thereof, or state university rules relating to internal
1107 personnel or business and finance ~~shall not be published in the~~
1108 ~~Florida Administrative Code~~. Exclusion from publication in the
1109 Florida Administrative Code does ~~shall~~ not affect the validity
1110 or effectiveness of such rules.

1111 3. At the beginning of the section of the code dealing with
1112 an agency that files copies of its rules with the department,
1113 ~~the department shall~~ publish the address and telephone number of
1114 the executive offices of each agency, the manner by which the
1115 agency indexes its rules, a listing of all rules of that agency
1116 excluded from publication in the code, and a statement as to
1117 where those rules may be inspected.

1118 4. Not publish forms ~~shall not be published~~ in the Florida
1119 Administrative Code; but any form which an agency uses in its
1120 dealings with the public, along with any accompanying
1121 instructions, shall be filed with the committee before it is
1122 used. Any form or instruction which meets the definition of
1123 "rule" provided in s. 120.52 must ~~shall~~ be incorporated by
1124 reference into the appropriate rule. The reference must ~~shall~~
1125 specifically state that the form is being incorporated by
1126 reference and must ~~shall~~ include the number, title, and
1127 effective date of the form and an explanation of how the form
1128 may be obtained. Each form created by an agency which is
1129 incorporated by reference in a rule notice of which is given
1130 under s. 120.54(3)(a) after December 31, 2007, must clearly
1131 display the number, title, and effective date of the form and

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the number of the rule in which the form is incorporated.

5. Require all materials incorporated by reference in any part of an adopted rule and in any part of a repromulgated rule

~~The department shall allow adopted rules and material incorporated by reference to be filed in the manner prescribed by s. 120.54(1)(i)3.a. or b. electronic form as prescribed by department rule.~~ When a rule is filed for adoption or repromulgation with incorporated material in electronic form, the department's publication of the Florida Administrative Code on its website must contain a hyperlink from the incorporating reference in the rule directly to that material. The department may not allow hyperlinks from rules in the Florida Administrative Code to any material other than that filed with and maintained by the department, but may allow hyperlinks to incorporated material maintained by the department from the adopting agency's website or other sites.

6. Include the date of any technical changes to a rule in the history note of the rule in the Florida Administrative Code. A technical change does not affect the effective date of the rule.

(c) Prescribe by rule the style and form required for rules, notices, and other materials submitted for filing, including a rule requiring documents created by an agency that are proposed to be incorporated by reference in notices published pursuant to s. 120.54(3)(a) and (d) to be coded in the same manner as notices published pursuant to s. 120.54(3)(a)1.

Section 8. Paragraph (a) of subsection (2) of section 120.56, Florida Statutes, is amended to read:

120.56 Challenges to rules.—

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(2) CHALLENGING PROPOSED RULES; SPECIAL PROVISIONS.—

(a) A petition alleging the invalidity of a proposed rule shall be filed within 21 days after the date of publication of the notice required by s. 120.54(3)(a); within 10 days after the final public hearing is held on the proposed rule as provided by s. 120.54(3)(e)2.; within 20 days after the statement of estimated regulatory costs or revised statement of estimated regulatory costs, if applicable, has been prepared and made available as provided in s. 120.541(1)(c) ~~s. 120.541(1)(d)~~; or within 20 days after the date of publication of the notice required by s. 120.54(3)(d). The petitioner has the burden to prove by a preponderance of the evidence that the petitioner would be substantially affected by the proposed rule. The agency then has the burden to prove by a preponderance of the evidence that the proposed rule is not an invalid exercise of delegated legislative authority as to the objections raised. A person who is not substantially affected by the proposed rule as initially noticed, but who is substantially affected by the rule as a result of a change, may challenge any provision of the resulting proposed rule.

Section 9. Subsection (1) and paragraph (a) of subsection (2) of section 120.74, Florida Statutes, are amended to read:

120.74 Agency annual rulemaking and regulatory plans; reports.—

(1) REGULATORY PLAN.—By October 1 of each year, each agency shall prepare a regulatory plan.

(a) The plan must include a listing of each law enacted or amended during the previous 12 months which creates or modifies the duties or authority of the agency. If the Governor or the

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Attorney General provides a letter to the committee stating that a law affects all or most agencies, the agency may exclude the law from its plan. For each law listed by an agency under this paragraph, the plan must state:

1. Whether the agency must adopt rules to implement the law.

2. If rulemaking is necessary to implement the law:

a. Whether a notice of rule development has been published and, if so, the citation to such notice in the Florida Administrative Register.

b. The date by which the agency expects to publish the notice of proposed rule under s. 120.54(3)(a).

3. If rulemaking is not necessary to implement the law, a concise written explanation of the reasons why the law may be implemented without rulemaking.

(b) The plan must also identify and describe each rule, including each rule number or proposed rule number, that include ~~a listing of each law not otherwise listed pursuant to paragraph (a) which~~ the agency expects to develop, adopt, or repeal for the 12-month period beginning on October 1 and ending on September 30 ~~implement by rulemaking before the following July 1, excluding emergency rules except emergency rulemaking~~. For each rule ~~law~~ listed under this paragraph, the plan must state whether the rulemaking is intended to simplify, clarify, increase efficiency, improve coordination with other agencies, reduce regulatory costs, or delete obsolete, unnecessary, or redundant rules.

(c) The plan must include any desired update to the prior year's regulatory plan or supplement published pursuant to

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subsection (7). If, in a prior year, a law was identified under this paragraph or under subparagraph (a)1. as a law requiring rulemaking to implement but a notice of proposed rule has not been published:

1. The agency must ~~shall~~ identify and again list such law, noting the applicable notice of rule development by citation to the Florida Administrative Register; or

2. If the agency has subsequently determined that rulemaking is not necessary to implement the law, the agency must ~~shall~~ identify such law, reference the citation to the applicable notice of rule development in the Florida Administrative Register, and provide a concise written explanation of the reason why the law may be implemented without rulemaking.

(d) The plan must identify any rules that are required to be repromulgated pursuant to s. 120.5435 for the 12-month period beginning on October 1 and ending on September 30.

(e) The plan must include a certification executed on behalf of the agency by both the agency head, or, if the agency head is a collegial body, the presiding officer; and the individual acting as principal legal advisor to the agency head. The certification must declare:

1. ~~Verify~~ That the persons executing the certification have reviewed the plan.

2. ~~Verify~~ That the agency regularly reviews all of its rules and identify the period during which all rules have most recently been reviewed to determine if the rules remain consistent with the agency's rulemaking authority and the laws implemented.

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1248 3. That the agency understands that regulatory
1249 accountability is necessary to ensure public confidence in the
1250 integrity of state government and, to that end, the agency is
1251 diligently working toward lowering the total number of rules
1252 adopted.

1253 4. The total number of rules adopted and repealed during
1254 the previous 12 months.

1255 (2) PUBLICATION AND DELIVERY TO THE COMMITTEE.—

1256 (a) By October 1 of each year, each agency shall:

1257 1. Publish its regulatory plan on its website or on another
1258 state website established for publication of administrative law
1259 records. A clearly labeled hyperlink to the current plan must be
1260 included on the agency's primary website homepage.

1261 2. Electronically deliver to the committee a copy of the
1262 certification required in paragraph (1)(e) ~~(1)(d)~~.

1263 3. Publish in the Florida Administrative Register a notice
1264 identifying the date of publication of the agency's regulatory
1265 plan. The notice must include a hyperlink or website address
1266 providing direct access to the published plan.

1267 Section 10. Subsection (11) of section 120.80, Florida
1268 Statutes, is amended to read:

1269 120.80 Exceptions and special requirements; agencies.—

1270 (11) NATIONAL GUARD.—Notwithstanding s. 120.52(17) ~~s.~~
1271 ~~120.52(16)~~, the enlistment, organization, administration,
1272 equipment, maintenance, training, and discipline of the militia,
1273 National Guard, organized militia, and unorganized militia, as
1274 provided by s. 2, Art. X of the State Constitution, are not
1275 rules as defined by this chapter.

1276 Section 11. Paragraph (c) of subsection (1) of section

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120.81, Florida Statutes, is amended to read:

120.81 Exceptions and special requirements; general areas.—

(1) EDUCATIONAL UNITS.—

(c) Notwithstanding s. 120.52(17) ~~s. 120.52(16)~~, any tests, test scoring criteria, or testing procedures relating to student assessment which are developed or administered by the Department of Education pursuant to s. 1003.4282, s. 1008.22, or s. 1008.25, or any other statewide educational tests required by law, are not rules.

Section 12. Paragraph (a) of subsection (1) of section 420.9072, Florida Statutes, is amended to read:

420.9072 State Housing Initiatives Partnership Program.—The State Housing Initiatives Partnership Program is created for the purpose of providing funds to counties and eligible municipalities as an incentive for the creation of local housing partnerships, to expand production of and preserve affordable housing, to further the housing element of the local government comprehensive plan specific to affordable housing, and to increase housing-related employment.

(1)(a) In addition to the legislative findings set forth in s. 420.6015, the Legislature finds that affordable housing is most effectively provided by combining available public and private resources to conserve and improve existing housing and provide new housing for very-low-income households, low-income households, and moderate-income households. The Legislature intends to encourage partnerships in order to secure the benefits of cooperation by the public and private sectors and to reduce the cost of housing for the target group by effectively combining all available resources and cost-saving measures. The

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Legislature further intends that local governments achieve this combination of resources by encouraging active partnerships between government, lenders, builders and developers, real estate professionals, advocates for low-income persons, and community groups to produce affordable housing and provide related services. Extending the partnership concept to encompass cooperative efforts among small counties as defined in s. 120.52(20) ~~s. 120.52(19)~~, and among counties and municipalities is specifically encouraged. Local governments are also intended to establish an affordable housing advisory committee to recommend monetary and nonmonetary incentives for affordable housing as provided in s. 420.9076.

Section 13. Subsection (7) of section 420.9075, Florida Statutes, is amended to read:

420.9075 Local housing assistance plans; partnerships.—

(7) The moneys deposited in the local housing assistance trust fund shall be used to administer and implement the local housing assistance plan. The cost of administering the plan may not exceed 5 percent of the local housing distribution moneys and program income deposited into the trust fund. A county or an eligible municipality may not exceed the 5-percent limitation on administrative costs, unless its governing body finds, by resolution, that 5 percent of the local housing distribution plus 5 percent of program income is insufficient to adequately pay the necessary costs of administering the local housing assistance plan. The cost of administering the program may not exceed 10 percent of the local housing distribution plus 5 percent of program income deposited into the trust fund, except that small counties, as defined in s. 120.52(20) ~~s. 120.52(19)~~,

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and eligible municipalities receiving a local housing distribution of up to \$350,000 may use up to 10 percent of program income for administrative costs.

Section 14. Paragraph (d) of subsection (1) of section 443.091, Florida Statutes, is amended to read:

443.091 Benefit eligibility conditions.—

(1) An unemployed individual is eligible to receive benefits for any week only if the Department of Economic Opportunity finds that:

(d) She or he is able to work and is available for work. In order to assess eligibility for a claimed week of unemployment, the department shall develop criteria to determine a claimant's ability to work and availability for work. A claimant must be actively seeking work in order to be considered available for work. This means engaging in systematic and sustained efforts to find work, including contacting at least five prospective employers for each week of unemployment claimed. The department may require the claimant to provide proof of such efforts to the one-stop career center as part of reemployment services. A claimant's proof of work search efforts may not include the same prospective employer at the same location in 3 consecutive weeks, unless the employer has indicated since the time of the initial contact that the employer is hiring. The department shall conduct random reviews of work search information provided by claimants. As an alternative to contacting at least five prospective employers for any week of unemployment claimed, a claimant may, for that same week, report in person to a one-stop career center to meet with a representative of the center and access reemployment services of the center. The center shall

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keep a record of the services or information provided to the claimant and shall provide the records to the department upon request by the department. However:

1. Notwithstanding any other provision of this paragraph or paragraphs (b) and (e), an otherwise eligible individual may not be denied benefits for any week because she or he is in training with the approval of the department, or by reason of s.

443.101(2) relating to failure to apply for, or refusal to accept, suitable work. Training may be approved by the department in accordance with criteria prescribed by rule. A claimant's eligibility during approved training is contingent upon satisfying eligibility conditions prescribed by rule.

2. Notwithstanding any other provision of this chapter, an otherwise eligible individual who is in training approved under s. 236(a)(1) of the Trade Act of 1974, as amended, may not be determined ineligible or disqualified for benefits due to enrollment in such training or because of leaving work that is not suitable employment to enter such training. As used in this subparagraph, the term "suitable employment" means work of a substantially equal or higher skill level than the worker's past adversely affected employment, as defined for purposes of the Trade Act of 1974, as amended, the wages for which are at least 80 percent of the worker's average weekly wage as determined for purposes of the Trade Act of 1974, as amended.

3. Notwithstanding any other provision of this section, an otherwise eligible individual may not be denied benefits for any week because she or he is before any state or federal court pursuant to a lawfully issued summons to appear for jury duty.

4. Union members who customarily obtain employment through

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1393 a union hiring hall may satisfy the work search requirements of
1394 this paragraph by reporting daily to their union hall.

1395 5. The work search requirements of this paragraph do not
1396 apply to persons who are unemployed as a result of a temporary
1397 layoff or who are claiming benefits under an approved short-time
1398 compensation plan as provided in s. 443.1116.

1399 6. In small counties as defined in s. 120.52(20) ~~s.~~
1400 ~~120.52(19)~~, a claimant engaging in systematic and sustained
1401 efforts to find work must contact at least three prospective
1402 employers for each week of unemployment claimed.

1403 7. The work search requirements of this paragraph do not
1404 apply to persons required to participate in reemployment
1405 services under paragraph (e).

1406 Section 15. This act shall take effect July 1, 2023.

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

3/27/23

Meeting Date

1016

Bill Number (if applicable)

Topic

Flood Damage

Amendment Barcode (if applicable)

Name

Kate Wesner

Job Title

Board Member

Address

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kate.a.flood@floodaction.org

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against
(The Chair will read this information into the record.)

Representing

American Flood Action

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL: SB 1018

INTRODUCER: Senator Trumbull

SUBJECT: Flood Damage Prevention

DATE: March 24, 2023

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Hunter</u>	<u>Ryon</u>	<u>CA</u>	Favorable
2.	<u>Barriero</u>	<u>Rogers</u>	<u>EN</u>	Favorable
3.	<u> </u>	<u> </u>	<u>RC</u>	<u> </u>

I. Summary:

SB 1018, which may be cited as the Flood Damage Prevention Act of 2023, provides that voluntary freeboard may not be used in the calculation of the maximum allowable height in the applicable zoning district for certain new and substantially improved structures. The bill provides that the maximum voluntary freeboard is nine feet within coastal high-hazard areas and four feet in all other areas. Freeboard, in the context of flood elevation requirements, generally refers to elevating a building's lowest floor above the base flood elevation and is usually expressed in terms of feet. Voluntary freeboard means the additional height above the freeboard required by the floodplain management regulations and the Florida Building Code.

The bill authorizes a local government to adopt by ordinance minimum freeboard requirements or a maximum voluntary freeboard that exceeds the requirements in the bill or the Florida Building Code.

In addition, the bill directs the Florida Building Commission to develop and adopt minimum freeboard requirements by November 1, 2023, and incorporate such requirements into the next edition of the Florida Building Code. Beginning January 2028, and every 5 years thereafter, the commission must review the freeboard requirements in the Florida Building Code and make recommendations to the Legislature regarding any necessary revisions to such requirements.

II. Present Situation:

The Florida Building Code

In 1974, Florida passed legislation requiring all local governments to adopt and enforce a minimum building code that would ensure that Florida's minimum standards were met.¹ Local governments could choose from four separate model codes. The state's role was limited to adopting all or relevant parts of new editions of the four model codes. Local governments could amend and enforce their local codes as they saw fit.²

In 1992, Hurricane Andrew destroyed many structures that were built according to code, demonstrating that Florida's system of local codes was flawed. The Governor appointed a study commission to review the system of local codes and make recommendations for its modernization. The 1998 Legislature adopted the study commission's recommendations for a single state building code and enhanced the oversight role of the state over local code enforcement. The 2000 Legislature authorized implementation of the Building Code, and that first edition replaced all local codes on March 1, 2002.³

The Building Code is updated every three years.⁴ The current edition of the Building Code is the seventh edition, which is referred to as the 2020 Florida Building Code. The next edition of the Building Code will take effect on December 31, 2023.⁵

Chapter 553, part IV, F.S., is known as the Florida Building Codes Act. The purpose and intent of the act is to provide a mechanism for the uniform adoption, updating, interpretation, and enforcement of a single, unified state building code. The Building Code must be applied, administered, and enforced uniformly and consistently from jurisdiction to jurisdiction.⁶

Local governments may adopt amendments (though not more than once every six months) to the technical provisions of the Building Code that apply solely within the jurisdiction of such government and that provide for more stringent requirements than those specified in the Building Code.⁷ A local government must determine there is a need to strengthen the requirements of the Building Code based on a review of local conditions.⁸ Such amendments may not introduce a new subject not addressed in the Building Code.⁹ Most technical amendments sunset upon adoption of the newest edition of the Building Code, unless adopted into the Building Code.¹⁰

¹ Dep't of Community Affairs, *The Florida Building Commission Report to the 2006 Legislature*, 4 (2006), available at http://www.floridabuilding.org/fbc/publications/2006_Legislature_Rpt_rev2.pdf (last visited Mar. 17, 2023).

² *Id.*

³ *Id.*; Dep't of Business and Professional Regulation, *Building Code Information System*, <https://floridabuilding.org/c/default.aspx> (last visited Mar 21, 2023).

⁴ See Florida Building Commission, *Florida Building Codes and Effective Dates*, available at https://www.floridabuilding.org/fbc/Publications/2023_Effective_Dates.pdf.

⁵ *Id.*

⁶ Section 553.72(1), F.S.

⁷ Section 553.73(4)(b), F.S.

⁸ Section 553.73(4)(b)1., F.S.

⁹ Section 553.73(4)(b)3., F.S.

¹⁰ Section 553.73(4)(e), F.S.

The Florida Building Commission (commission) was statutorily created to implement the Building Code.¹¹ The commission, which is housed within the Department of Business and Professional Regulation, is a 19-member technical body made up of design professionals, contractors, and government experts in various disciplines covered by the Building Code.¹² The commission reviews International Codes published by the International Code Council,¹³ the National Electric Code, and other nationally adopted model codes during its triennial update of the Building Code.¹⁴

Local Enforcement of the Florida Building Code

Local governments have the power to inspect all buildings, structures, and facilities within their jurisdiction in protection of the public's health, safety, and welfare.¹⁵ Every local government must enforce the Building Code and issue building permits.¹⁶ It is unlawful for a person, firm, or corporation to construct, erect, alter, repair, secure, or demolish any building without first obtaining a permit from the local government enforcing agency or from such persons as may, by resolution or regulation, be directed to issue such permit.¹⁷ Any construction work that requires a building permit also requires plans and inspections to ensure the work complies with the Building Code, including certain building, electrical, plumbing, mechanical, and gas inspections.¹⁸ Construction work may not be done beyond a certain point until it passes an inspection.¹⁹

National Flood Insurance Program

The National Flood Insurance Program (NFIP) was created by the passage of the National Flood Insurance Act of 1968.²⁰ The NFIP is administered by the Federal Emergency Management Agency (FEMA) and provides homeowners, business owners, and renters in flood-prone areas the ability to purchase flood insurance protection from the federal government.²¹ The general purpose of the NFIP is both to offer primary flood insurance to properties with significant flood risk and to reduce flood risk through the adoption of floodplain management standards. Participation in the NFIP is voluntary.²² Within participating communities, the federal

¹¹ See section 553.74(1), F.S.

¹² *Id.*

¹³ The International Code Council (ICC) is an association that develops model codes and standards used in the design, building, and compliance process to construct safe, sustainable, affordable and resilient structures. ICC, *About the ICC*, <https://www.iccsafe.org/about/who-we-are/> (last visited March 21, 2023).

¹⁴ Section 553.73(3), F.S.

¹⁵ Section 553.72(2), F.S.

¹⁶ Sections 125.01(1)(bb), 125.56(1), and 553.80(1), F.S.

¹⁷ Sections 125.56(4)(a) and 553.79(1), F.S.

¹⁸ Int'l Code Council, *2020 Florida Building Code: 7th Edition*, section 110, available at https://codes.iccsafe.org/content/FLBC2020P1/chapter-1-scope-and-administration#FLBC2020P1_Ch01_SubCh02.

¹⁹ *Id.*

²⁰ FEMA, *50 Years of the NFIP*, available at https://www.fema.gov/sites/default/files/2020-05/NFIP_50th_Final_8.5x11_Regional_Printable.pdf.

²¹ Benefits.gov, National Flood Insurance Program (NFIP), available at <https://www.benefits.gov/benefit/435> (last visited March 10, 2023).

²² FEMA, *Participation in the NFIP*, <https://www.fema.gov/glossary/participation-nfip#:~:text=Participation%20in%20the%20National%20Flood%20Insurance%20Program%20%28NFIP%29,of%20intent%20to%20participate%20and%20cooperate%20with%20FEMA%3B> (last visited Mar. 21, 2023).

government makes flood insurance available throughout the community.²³ To join, a community must:

- Complete an application;
- Adopt a resolution of intent to participate and cooperate with FEMA; and
- Adopt and submit a floodplain management ordinance that meets or exceeds the minimum NFIP criteria.²⁴

In coordination with participating communities, FEMA develops flood maps called Flood Insurance Rate Maps (FIRMs) that depict the community's flood risk and floodplain.²⁵ While FEMA is largely responsible for the creation of the FIRM, the community itself must pass the map into its local regulations in order for the map to be effective.²⁶ An area of specific focus on the FIRM is the Special Flood Hazard Area (SFHA).²⁷ The SFHA is intended to distinguish the flood risk zones that have a chance of flooding during a 1-in-100 year flood or greater frequency. This means that properties in the SFHA have a risk of 1 percent or greater risk of flooding every year²⁸ (and at least a 26 percent chance of flooding over the course of a 30-year mortgage).²⁹ In a community that participates in the NFIP, owners of properties in the mapped SFHA are required to purchase flood insurance as a condition of receiving a federally backed mortgage.³⁰

Key conditions of the NFIP minimum floodplain management standards include, among things, that communities:

- Require permits for development in the SFHA;
- Require elevation of the lowest floor of all new residential buildings in the SFHA to or above the base flood elevation;
- Restrict development in floodways to prevent increasing the risk of flooding; and
- Require certain construction materials and methods that minimize future flood damage.³¹

Base Flood Elevation

A base flood is a flood that has a one percent chance of occurring during any given year.³² The base flood elevation (BFE) is how high floodwater is likely to rise during a one-percent-annual-chance flood event (base flood).³³ BFEs are measured from a reference point called

²³ *Id.*

²⁴ *Id.*

²⁵ See Congressional Research Service, *Introduction to the National Flood Insurance Program*, 3 (2023), available at <https://crsreports.congress.gov/product/pdf/R/R44593>.

²⁶ *Id.*

²⁷ *Id.*

²⁸ *Id.*

²⁹ FEMA, *Coastal Hazards & Flood Mapping: A Visual Guide*, 6, available at https://www.fema.gov/sites/default/files/documents/fema_coastal-glossary.pdf.

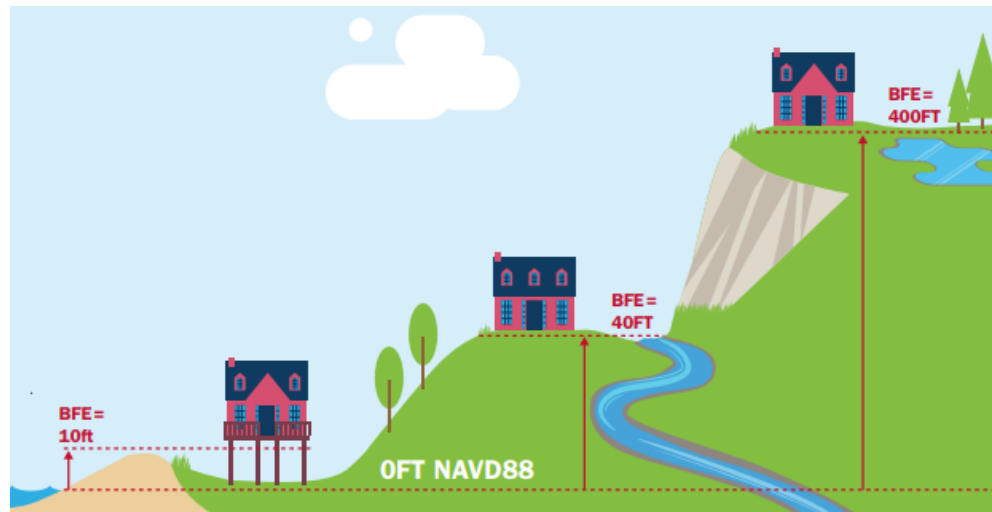
³⁰ Congressional Research Service, *Introduction to the National Flood Insurance Program* at 10. Such lenders include federal agency lenders, such as the Department of Veterans Affairs, government-sponsored enterprises Fannie Mae, Freddie Mac, and federally regulated lending institutions, such as banks covered by the Federal Deposit Insurance Corporation (FDIC) or the Office of the Comptroller of the Currency. *Id.*

³¹ Congressional Research Service, *Introduction to the National Flood Insurance Program*, 6 (2023), available at <https://crsreports.congress.gov/product/pdf/R/R44593>.

³² FEMA, *Coastal Hazards & Flood Mapping: A Visual Guide*, 6, available at https://www.fema.gov/sites/default/files/documents/fema_coastal-glossary.pdf.

³³ *Id.*

NAVD88, which is approximately equal to sea level, and vary widely across geographies.³⁴ The BFE represents the minimum elevation of construction allowed by the NFIP.³⁵



Base Flood Elevation³⁶

Freeboard

Freeboard, usually expressed in feet above flood level, is an additional amount of height above the BFE used as a factor of safety in determining the level at which a structure's lowest floor must be elevated or flood-proofed to be in accordance with state or community floodplain management regulations.³⁷ Freeboard helps to compensate for many unknown factors that could contribute to flooding and results in significantly lower flood insurance rates due to lower flood risk.³⁸ Freeboard is not required by NFIP eligibility standards, but FEMA encourages communities to adopt at least one foot of freeboard.³⁹

The Building Code requires all buildings located in a flood hazard area to be built an additional one foot higher.⁴⁰ However, many Florida communities adopt requirements for additional elevation above the minimum in the Building Code, ranging from two to five feet above the BFE. Local freeboard requirements are incorporated via technical amendments to the Building Code.⁴¹ Florida Statutes specifically authorizes counties and municipalities to adopt administrative or technical amendment to the Building Code relating to flood resistance in order

³⁴ *Id.*

³⁵ See FEMA, *Residential Buildings with Basements*, <https://www.fema.gov/floodplain-management/manage-risk/residential-buildings-basements#:~:text=Since%201971%2C%20the%20National%20Flood%20Insurance%20Program%20%28NFIP%29,Zones%20only%29%20to%20the%20Base%20Flood%20Elevation%20%28BFE%29> (last visited Mar. 21, 2023).

³⁶ FEMA, *Coastal Hazards & Flood Mapping: A Visual Guide*, 6, available at https://www.fema.gov/sites/default/files/documents/fema_coastal-glossary.pdf.

³⁷ FEMA, *Freeboard*, <https://www.fema.gov/glossary/freeboard> (last visited Mar. 21, 2023).

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ Int'l Code Council, *2020 Florida Building Code: 7th Edition*, section R322.2.1, available at

https://codes.iccsafe.org/content/FLBC2020P1/chapter-1-scope-and-administration#FLBC2020P1_Ch01_SubCh02.

⁴¹ Wilton Manors, FL. Ordinance No. 2020-004 s. 2, 5-26-20, City of Miami Beach Flood Plain Management, Sec. 54-35. – Definitions.

to implement the NFIP or other incentives.⁴² Flood-related local amendments that require a design flood elevation above the BFE are not subject to sunset upon adoption of the newest edition of the Building Code.⁴³

III. Effect of Proposed Changes:

Section 1 provides that this act may be cited as the “Flood Damage Prevention Act of 2023.”

Section 2 creates s. 553.845, F.S., regarding flood damage prevention. The bill includes the following findings:

- The state is vulnerable to the adverse effects of flooding resulting from the frequency and intensity of rainfall and an increase in storm surge and sea level rise. These adverse effects pose a significant risk to existing and future structures in the state.
- Public and private investments in our communities are important for economic growth, and protecting all structures from flooding is essential to maintaining resilient communities.
- The mitigation of property damage constitutes a valid and recognized objective of the Florida Building Code.
- It is important to develop a consistent, statewide approach to minimizing flooding in the state to mitigate property damage and encourage continued investment in our communities.
- Minimum freeboard requirements are critical to addressing the devastating effects of flooding, and delaying the adoption and implementation of such requirements constitutes a threat to the health, safety, and welfare of the state.

The bill provides that the maximum voluntary freeboard for all new construction and substantial improvements to existing construction, whether residential, commercial, industrial, or nonresidential, is four feet. The bill defines “freeboard” as the additional height, usually expressed as a factor of safety in feet, above the base flood elevation in determining the level at which a structure’s lowest floor or the bottom of the lowest horizontal structural member must be elevated in accordance with floodplain management regulations and the Florida Building Code. If a base flood elevation is not determined for a structure that is not located in a special flood hazard area as designated by a Flood Insurance Rate Map issued by the Federal Emergency Management Agency, the term “freeboard” means the highest adjacent grade at the foundation of a structure. “Voluntary freeboard” means the additional height above the freeboard required by floodplain management regulations and the Florida Building Code. If freeboard is not required by floodplain management regulations and the Florida Building Code, the term “voluntary freeboard” means the additional height above the highest adjacent grade at the foundation of a structure.

Within a coastal high-hazard area, the maximum voluntary freeboard for all new construction and substantial improvements to existing construction, whether residential, commercial, industrial, or nonresidential, is nine feet. The bill defines “coastal high-hazard area” as a special flood hazard area along the coast, as delineated by a Flood Insurance Rate Map issued by the Federal Emergency Management Agency, that has additional hazards due to wind and wave action.

⁴² Section 553.73 (5) F.S.

⁴³ *Id.*

The bill provides that for all new construction of a residential structure and “substantial improvements” to an existing residential structure, including a manufactured home, or an existing commercial, industrial, or nonresidential structure, voluntary freeboard may not be used in the calculation of the “maximum allowable height” for the structure. The bill defines “maximum allowable height” as the maximum height allowed for a structure in the applicable zoning district. “Substantial improvement” means any repair, reconstruction, rehabilitation, or improvement of a structure when the actual cost of the improvement or repair of the structure to its pre-damage condition equals or exceeds 50 percent of the market value of the structure either before the improvement or repair is started or, if the structure has been damaged and is being restored, before the damage occurred.

The bill authorizes a local government to adopt by ordinance a minimum freeboard requirement or a maximum voluntary freeboard that exceeds the requirements in the Florida Building Code or established in this section.

The bill directs the commission to develop and adopt by rule minimum freeboard requirements by November 1, 2023, which must take immediate effect, and incorporate such requirements into the next edition of the Florida Building Code. The bill also provides that, beginning in January 2028, and every five years thereafter, the commission must review the freeboard requirements in the Florida Building Code and make recommendations to the Legislature regarding any necessary revisions to such requirements.

Section 3 provides an effective date of July 1, 2023.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Building owners who incorporate voluntary freeboard may receive flood insurance discounts and reduce their exposure to flood events.

C. Government Sector Impact:

The Florida Building Commission may incur costs to develop adopt new freeboard requirements. However, these costs can likely be absorbed with existing resources.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The bill provides that, for all new construction of residential structures and substantial improvements to certain existing structures, voluntary freeboard may not be used in the calculation of the maximum allowable height for the structure. However, this provision would be inapplicable to new commercial, industrial, and nonresidential structures.

VIII. Statutes Affected:

This bill creates section 553.845 of the Florida Statutes.

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

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

None.

B. Amendments:

None.

By Senator Trumbull

2-01331A-23

20231018__

A bill to be entitled

An act relating to flood damage prevention; providing a short title; creating s. 553.845, F.S.; providing legislative findings; providing definitions; providing voluntary freeboard requirements for all new construction and substantial improvements to existing construction; prohibiting voluntary freeboard from being used in the calculation of the maximum allowable height for certain construction in applicable zoning districts; authorizing local governments to adopt by ordinance a minimum freeboard requirement or a maximum voluntary freeboard that exceeds the minimum requirements in the Florida Building Code or established in the act; requiring the Florida Building Commission to develop and adopt by rule minimum freeboard requirements by a specified date, which shall take immediate effect, and to incorporate such requirements into the next edition of the Florida Building Code; requiring the commission to review the freeboard requirements in the Florida Building Code every 5 years beginning on a specified date and make certain recommendations to the Legislature; providing an effective date.

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

Section 1. This act may be cited as the "Flood Damage Prevention Act of 2023."

Section 2. Section 553.845, Florida Statutes, is created to

2-01331A-23

20231018__

30 read:

31 553.845 Flood damage prevention.-

32 (1) The Legislature finds that:

33 (a) The state is vulnerable to the adverse effects of
34 flooding resulting from the frequency and intensity of rainfall
35 and an increase in storm surge and sea level rise. These adverse
36 effects pose a significant risk to existing and future
37 structures in the state.

38 (b) Public and private investments in our communities are
39 important for economic growth, and protecting all structures
40 from flooding is essential to maintaining resilient communities.

41 (c) The mitigation of property damage constitutes a valid
42 and recognized objective of the Florida Building Code.

43 (d) It is important to develop a consistent, statewide
44 approach to minimizing flooding in the state to mitigate
45 property damage and encourage continued investment in our
46 communities.

47 (e) Minimum freeboard requirements are critical to
48 addressing the devastating effects of flooding, and delaying the
49 adoption and implementation of such requirements constitutes a
50 threat to the health, safety, and welfare of the state.

51 (2) For purposes of this section, the term:

52 (a) "Coastal high-hazard area" means a special flood hazard
53 area along the coast, as delineated by a Flood Insurance Rate
54 Map issued by the Federal Emergency Management Agency, that has
55 additional hazards due to wind and wave action.

56 (b) "Freeboard" means the additional height, usually
57 expressed as a factor of safety in feet, above the base flood
58 elevation in determining the level at which a structure's lowest

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20231018__

59 floor or the bottom of the lowest horizontal structural member
60 must be elevated in accordance with floodplain management
61 regulations and the Florida Building Code. If a base flood
62 elevation is not determined for a structure that is not located
63 in a special flood hazard area as designated by a Flood
64 Insurance Rate Map issued by the Federal Emergency Management
65 Agency, the term "freeboard" means the highest adjacent grade at
66 the foundation of a structure.

67 (c) "Maximum allowable height" means the maximum height
68 allowed for a structure in the applicable zoning district.

69 (d) "Substantial improvement" has the meaning as in s.
70 161.54(12).

71 (e) "Voluntary freeboard" means the additional height above
72 the freeboard required by floodplain management regulations and
73 the Florida Building Code. If freeboard is not required by
74 floodplain management regulations and the Florida Building Code,
75 the term "voluntary freeboard" means the additional height above
76 the highest adjacent grade at the foundation of a structure.

77 (3)(a) The maximum voluntary freeboard for all new
78 construction and substantial improvements to existing
79 construction, whether residential, commercial, industrial, or
80 nonresidential, is 4 feet.

81 (b) Within a coastal high-hazard area, the maximum
82 voluntary freeboard for all new construction and substantial
83 improvements to existing construction, whether residential,
84 commercial, industrial, or nonresidential, is 9 feet.

85 (4) For all new construction of a residential structure and
86 substantial improvements to an existing residential structure,
87 including a manufactured home, or an existing commercial,

2-01331A-23

20231018__

industrial, or nonresidential structure, voluntary freeboard may not be used in the calculation of the maximum allowable height for the structure.

(5) A local government may adopt by ordinance a minimum freeboard requirement or a maximum voluntary freeboard that exceeds the requirements in the Florida Building Code or established in this section.

(6) The commission shall develop and adopt by rule minimum freeboard requirements by November 1, 2023, which shall take immediate effect, and shall incorporate such requirements into the next edition of the Florida Building Code.

(7) Beginning in January 2028, and every 5 years thereafter, the commission shall review the freeboard requirements in the Florida Building Code and make recommendations to the Legislature regarding any necessary revisions to such requirements.

Section 3. This act shall take effect July 1, 2023.

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

3/27

Meeting Date

1258

Bill Number (if applicable)

Topic Use of Phosphogypsum

Amendment Barcode (if applicable)

Name Ryan Smart

Job Title Executive Director

Address 209 Tallwood Rd.
Street

Phone 561-358-7191

Jacksonville Beach FL 32250
City State Zip

Email smart@floridaspringscouncil.org

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☐ In Support ☒ Against
(The Chair will read this information into the record.)

Representing Florida Springs Council

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

3/27/23

Meeting Date

SB 1258

Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name Tanner Warwick

Job Title _____

Address 516 W Adams St

Phone (850) 728-8419

Street

Tallahassee

City

FL

State

32301

Zip

Email _____

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Associated Industries of Florida

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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S-001 (10/14/14)

3/27/23

Meeting Date

ENR (301 SB) 11130

Committee

The Florida Senate

APPEARANCE RECORD

Deliver both copies of this form to
Senate professional staff conducting the meeting

1258

Bill Number or Topic

Amendment Barcode (if applicable)

Name David Cullen Phone 941-323-2404

Address 2838 Little Deal Rd Email cullenasea@gmail.com

Street

Tallahassee FL 32308

City

State

Zip

Speaking: ☐ For ☐ Against ☐ Information **OR** Waive Speaking: ☐ In Support ☒ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without
compensation or sponsorship.

☒ I am a registered lobbyist,
representing:

Sierra Club Florida

☐ I am not a lobbyist, but received
something of value for my appearance
(travel, meals, lodging, etc.),
sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf \(flsenate.gov\)](#)

This form is part of the public record for this meeting.

S-001 (08/10/2021)

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

8/27/23

Meeting Date

SB 1258

Bill Number (if applicable)

Topic Phosphogypsum

Name Carolyn Johnson

Job Title Vice President

Address 1302 S Bronaugh St

Street

Tallahassee

City

State

Zip

Phone 521-1200

Email

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against
(The Chair will read this information into the record.)

Representing FL Chamber of Commerce

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

8/27/23

Meeting Date

SB 1258
Bill Number (if applicable)

Topic SB 1258

Amendment Barcode (if applicable)

Name JANE BLAIS

Job Title Environmental Advocate

Address 252 Riverview
Street

Phone 352 318 4602

High Springs FL 32643
City State Zip

Email missblue88@gmail.com

Speaking: ☐ For ☒ Against ☐ Information

Waive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Right to Clean Water
Right to Clean

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

3/27/23
Meeting Date

SB1258
Bill Number (if applicable)
N/A
Amendment Barcode (if applicable)

Topic An Act relating to Phosphogypsum

Name Kenny Miller

Job Title Sr. Technical Advisor, Operations

Address 13830 Circa Crossing Drive
Street

Phone 863-781-0649

Lithia, FL
City State Zip

Email Kenneth.miller@mosaicco.com

Speaking: ☒ For ☐ Against ☒ Information

Waive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Mosaic

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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S-001 (10/14/14)

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL: CS/SB 1258

INTRODUCER: Transportation Committee and Senator Trumbull and others

SUBJECT: Use of Phosphogypsum

DATE: March 24, 2023

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Price	Vickers	TR	Fav/CS
2. Carroll	Rogers	EN	Favorable
3. _____	_____	FP	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1258 authorizes the Florida Department of Transportation (FDOT) to undertake demonstration projects using phosphogypsum from phosphate production in road construction aggregate material.

The bill authorizes the FDOT to conduct a study to evaluate the suitability of using phosphogypsum as a construction aggregate material. The FDOT may consider any prior or ongoing studies of phosphogypsum's road suitability. The study and a determination of suitability must be completed by January 1, 2024.

Upon the FDOT's determination of suitability, the bill authorizes the use of phosphogypsum from phosphate production as a construction aggregate material in accordance with the conditions of the United States Environmental Protection Agency's approval for such use.

Lastly, the bill provides that phosphogypsum placed in a phosphogypsum stack system permitted by the FDEP or used in accordance with an allowed use expressly specified in EPA regulations or pursuant to an express EPA approval for the specific use is not solid waste and is an allowable use in this state.

The FDOT is expected to incur costs associated with conducting the study required by the bill, which costs are expected to be absorbed within existing resources. See the "Fiscal Impact Statement" heading.

The bill takes effect July 1, 2023.

II. Present Situation:

Phosphogypsum Stacks

The production of fertilizer from phosphoric rock is a major industry in Florida. Unfortunately, the process results in wastewater and byproducts that are difficult to manage. The process produces phosphoric acid, wastewater, and gypsum to produce a slurry that is pumped to the top of a stack of gypsum. There, it is held until it seeps below and is redistributed to cooling ponds. It is critical that this acidic water not overflow the reservoir on the top of the stack or the cooling ponds. A phosphate plant relies heavily on its system of pipes and pumps to distribute the acidic water so as to prevent overflows, particularly during heavy rains.¹

According to the United States Environmental Protection Agency (EPA):

Phosphogypsum is a solid waste² byproduct that results from processing phosphate ore to make phosphoric acid that is later used in fertilizer. Because the phosphate ore contains uranium and radium, phosphogypsum also contains these radionuclides. The radium is of particular concern because it decays to form radon, a cancer-causing, radioactive gas.³

Florida Polytechnic University's Florida Industrial and Phosphate Research Institute (FIPRI) notes that there are about one billion tons of phosphogypsum stacked in 24 stacks⁴ in Florida and, each year, about 30 million new tons are generated.⁵ Stacking became necessary, according to the FIPRI, as a matter of legal necessity when the EPA banned the use of phosphogypsum in 1989. The EPA subsequently allowed the lawful removal and distribution of phosphogypsum from a stack for outdoor agricultural purposes,⁶ for indoor research and development,⁷ and for other purposes under certain conditions.⁸

Phosphogypsum may not be lawfully removed from a stack and distributed or used for any purposes not expressly specified in the provisions for outdoor agricultural use and for indoor research and development.⁹ A request that EPA approve distribution and/or use of phosphogypsum for any other purpose must be submitted in writing containing specified

¹ Failure of phosphogypsum stacks can occur for other reasons; *e.g.*, see wfla.com, [Stacks, water and waste: What the Piney Point leak means for Tampa Bay | WFLA](#) (last visited March 8, 2023).

² Under the EPA's rules, "phosphogypsum" is defined as the solid waste byproduct which results from the process of wet acid phosphorus production. 14 C.F.R. §61.20(1)(b).

³ See epa.gov, [Subpart R: National Emission Standards for Radon Emissions From Phosphogypsum Stacks | US EPA](#) (last visited March 7, 2023).

⁴ Section 403.4154(1)(d), F.S., defines "phosphogypsum stack" as any defined geographic area associated with a phosphoric acid production facility in which phosphogypsum is disposed of or stored, other than within a fully enclosed building, container, or tank.

⁵ See fipr.floridapoly.edu, [Phosphogypsum Stacks \(floridapoly.edu\)](#) (last visited March 7, 2023).

⁶ 40 C.F.R. §61.204.

⁷ 40 C.F.R. §61.205.

⁸ 40 C.F.R. §61.206.

⁹ 40 C.F.R. §61.206(a).

information. A request may be approved by the Assistant Administrator for Air and Radiation if he or she determines that the proposed distribution and/or use is at least as protective of public health, in both the short term and the long term, as disposal of phosphogypsum in a stack or a mine.¹⁰ If a request is granted, each of the following requirements must be satisfied:

- The owner or operator of the stack from which the phosphogypsum will be removed must annually determine the average radium-226 concentration at the location in the stack from which the phosphogypsum will be removed, as specified;
- All phosphogypsum distributed in commerce by the owner or operator of a phosphogypsum stack, or by a distributor, retailer, or reseller, or purchased by the end-user, shall be accompanied at all times by specified certification documents;¹¹ and
- The end-user of the phosphogypsum must maintain specified records.¹²

EPA Approval for Use in Road Construction and Subsequent Withdrawal

On October 14, 2020, the EPA approved a request from The Fertilizer Institute (TFI) to allow phosphogypsum to be used in government road construction projects, subject to certain terms and conditions.¹³ Effective July 7, 2021, the EPA withdrew its approval: “Upon further review, EPA has determined that the approval was premature and should be withdrawn because the request did not contain all of the required information. With this action, phosphogypsum remains prohibited from use in road construction projects.”¹⁴

TFI responded:

Importantly, the EPA withdrew the PG [phosphogypsum] road base approval based solely on procedural grounds, and its withdrawal did not contradict TFI’s robust risk assessment in support of the use of PG in road construction. In fact, the decision to withdraw the categorical approval to use PG in road construction definitively left the window open for site specific projects to be considered for EPA approval based on the same scientific merits which focus on safe, sustainable use. We concur with EPA’s scientific evaluation and conclusion that the risk associated with the use of PG in road construction is no greater than stacking the material or placing it in mines.

TFI will continue to work with the EPA and other stakeholders so that the United States can join with the numerous countries throughout South

¹⁰ 40 C.F.R. §61.206(c).

¹¹ Those that conform to 40 C.F.R. § 209(c).

¹² 40 C.F.R. §61.206(d).

¹³ See the EPA New Release, [EPA Approves Use of Phosphogypsum in Road Construction | US EPA](#) (last visited March 13, 2023). To review the terms and conditions, see the EPA letter to The Fertilizer Institute, October 14, 2020, available at [document \(epa.gov\)](#) (lasts visited March 13, 2023). To review The Fertilizer Institute’s supporting documents, see EPA, [Request to Use Phosphogypsum in Government Road Projects: Supporting Documents | US EPA](#) (last visited March 13, 2023).

¹⁴ See 86 F.R. 35795, available at [Federal Register :: Withdrawal of Approval for Use of Phosphogypsum in Road Construction](#) (last visited March 13, 2023).

America, Asia, Europe, Africa, and Canada that permit the safe and environmentally conscious beneficial use of PG.¹⁵

Other stakeholders are awaiting the outcome of TFI's ongoing efforts to achieve EPA approval of the use of phosphogypsum in road construction.

Florida Department of Environment Protection Phosphogypsum and Solid Waste Management Programs

The Florida Department of Environmental Protection's (FDEP's) Phosphogypsum Management Program administers and implements industrial wastewater permitting, compliance, and enforcement activities for the phosphate industry and regulates the design, construction, operation, and maintenance of phosphogypsum stack systems. Ensuring the proper closure and long-term monitoring and maintenance of those systems which have shut down, or which are otherwise required by rule to be closed, is the goal of the program.¹⁶

The FDEP issues permits for construction, operation, and closure of stack systems¹⁷ and permits for discharge to surface waters under the National Pollutant Discharge Elimination System, as authorized by the EPA.¹⁸ The FDEP also administers financial responsibility requirements intended to guarantee that owners and operators have the financial ability to properly close and manage phosphogypsum stack systems.¹⁹

The FDEP's Solid Waste Section of the Permitting and Compliance Assistance Program is charged with responsibility for rule development, solid waste policy, financial assurance compliance, and implementing the state's solid waste management program.²⁰ FDEP district offices receive technical assistance regarding the permitting, compliance, and enforcement activities associated with solid waste facilities. Such facilities can include landfills, material recovery facilities, transfer stations, composting and processing facilities, and waste tire management sites. The district offices manage permitting, compliance, and enforcement issues associated with such sites.²¹

The term "solid waste" is defined in Florida law to mean sludge²² unregulated under the federal Clean Water Act or Clean Air Act, sludge from a waste treatment works, water supply treatment plant, or air pollution control facility, or garbage, rubbish, refuse, special waste, or other

¹⁵ See tfi.org, [TFI Statement on EPA Phosphogypsum Decision | TFI | The Fertilizer Institute](#) (last visited March 13, 2023).

¹⁶ For additional information, see floridadep.gov, [Phosphate Management Program | Florida Department of Environmental Protection](#) (last visited March 13, 2023).

¹⁷ See ss. 403.4154 and 403.4155, F.S.

¹⁸ The NPDES is a permit program that addresses water pollution by regulating point sources that discharge pollutants to waters of the U.S., created in 1972 by the Clean Water Act. The EPA authorizes state governments to perform many permitting, administrative, and enforcement aspects of the program. For more information, see epa.gov, [National Pollutant Discharge Elimination System \(NPDES\) | US EPA](#) (last visited March 16, 2023).

¹⁹ Id.

²⁰ Section 403.705, F.S.

²¹ See floridadep.gov, [Solid Waste Section | Florida Department of Environmental Protection](#) (last visited March 16, 2023).

²² "Sludge" includes the accumulated solids, residues, and precipitates generated as a result of waste treatment or processing, including wastewater treatment, water supply treatment, or operation of an air pollution control facility, and mixed liquids and solids pumped from septic tanks, grease traps, privies, or similar waste disposal appurtenances. Section 403.703(34), F.S.

discarded material, including solid, liquid, semisolid, or contained gaseous material resulting from domestic, industrial, commercial, mining, agricultural, or government operations, excluding certain recovered materials and post-use polymers.²³

The FDEP currently may not regulate the following wastes or activities:

- Byproduct material, source material, and special nuclear material, the generation, transportation, disposal, storage, or treatment of which is regulated under chapter 404 or the federal Atomic Energy Act of 1954, ch. 1073, 68 Stat. 923, as amended.
- Suspended solids and dissolved materials in domestic sewage effluent or irrigation return flows or other discharges which are point sources subject to permits pursuant to chapter 403, F.S., concerning environmental control, or s. 402 of the Clean Water Act, Pub. L. No. 95-217.
- Emissions to the air from a stationary installation or source regulated under chapter 403, F.S., concerning environmental control, or the Clean Air Act, Pub. L. No. 95-95.
- Drilling fluids, produced waters, and other wastes associated with the exploration for, or development and production of, crude oil or natural gas which are regulated under Chapter 377, F.S.
- Recovered materials, post-use polymers, recovered materials processing facilities, or pyrolysis facilities, except as provided and under specified conditions.
- Industrial byproducts, under specified conditions.²⁴

Additionally, sludge from an industrial waste treatment works that meets certain exemption requirements is not solid waste as defined in s. 403.703, F.S.

Phosphogypsum is a solid waste as defined in current law and is regulated in Florida pursuant to waste and industry-specific requirements²⁵ and the FDEP's rules and permitting requirements.²⁶ The FDEP advises that while phosphogypsum is currently defined as a solid waste, "phosphogypsum stack systems are not regulated as solid waste management facilities, as they are separately regulated under the FDEP's rules for siting, construction, operation, closure and long-term care of phosphogypsum stack systems in Florida."²⁷

Florida Department of Transportation Road Construction Material

Generally speaking construction aggregate materials are mined resources that provide the basic material for concrete, asphalt, and road base. The Florida Department of Transportation's (FDOT's) rule defines the term "aggregate" to mean a granular construction material such as sand, limerock, limestone, gravel, shell, slag, and crushed stone; manufactured materials such as shales, slates, and clays; and recycled material such as crushed concrete used as specified, or for

²³ Section 403.703(35), F.S.

²⁴ Section 403.7045(1), F.S.

²⁵ See ss. 403.4154 and 403.4155, F.S.

²⁶ Chapters 62-672 and 62-673, F.A.C.

²⁷ See FDEP email to committee staff, March 16, 2023 (on file in the Senate Transportation Committee).

other construction materials and uses not yet developed, but which may have potential usage by the FDOT.²⁸

The FDOT has implemented a standardized method for producers of construction aggregates to apply for, receive, and maintain FDOT approval of construction aggregate sources for use on FDOT projects. The FDOT's primary methods of determining acceptability of aggregate are source and product approval, and maintenance of an on-going quality control program as monitored by the FDOT.²⁹

Current law reflects legislative intent that the FDOT continue to expand its current use of recovered materials in its construction programs.³⁰ The Legislature declares it to be in the public interest to find alternative ways to use certain recyclable materials that currently are part of the solid waste stream and that contribute to problems of declining space in landfills.

To determine the feasibility of using certain recyclable materials for paving materials, the FDOT may undertake demonstration projects using the following materials in road construction:

- Ground rubber from automobile tires in road resurfacing or subbase materials for roads;
- Ash residue from coal combustion byproducts for concrete and ash residue from waste incineration facilities and oil combustion byproducts for subbase material;
- Recycled mixed-plastic material for guardrail posts or right-of-way fence posts;
- Construction steel, including reinforcing rods and I-beams, manufactured from scrap metals disposed of in the state; and
- Glass and glass aggregates.³¹

The FDOT must review and revise existing bid procedures and specifications for the purchase or use of products and materials to eliminate any procedures and specifications that explicitly discriminate against products and materials with recycled content, except where such procedures and specifications are necessary to protect the health, safety, and welfare of the people of this state.³²

The FDOT must also review and revise its bid procedures and specifications on a continuing basis to encourage the use of products and materials with recycled content and shall, in developing new procedures and specifications, encourage the use of products and materials with recycled content.³³

The FDOT has participated in at least two experimental projects using phosphogypsum on secondary roads in Columbia County and in Polk County.³⁴

²⁸ Rule 14-103.003(3), F.A.C. Section 337.261, F.S., defines "construction aggregate materials" to mean crushed stone, limestone, dolomite, limerock, shell rock, cemented coquina, sand for use as a component of mortars, concrete, bituminous mixtures, or underdrain filters, and other mined resources providing the basic material for concrete, asphalt, and road base.

²⁹ Rule 14-103.002(1), F.A.C.

³⁰ Section 336.044(1), F.S.

³¹ Section 336.044(2), F.S.

³² Section 336.044(3), F.S.

³³ Section 336.044(4), F.S.

³⁴ See fipr.floridapoly.edu, [Phosphogypsum for Secondary Road Construction \(floridapoly.edu\)](http://floridapoly.edu) (last visited March 16, 2023).

III. Effect of Proposed Changes:

Use of Recyclable Material in Construction (Section 1)

The bill amends s. 336.044(2), F.S., authorizing the Florida Department of Transportation (FDOT) to undertake demonstration projects using phosphogypsum from phosphate production in road construction aggregate material.

So long as the use of phosphogypsum is prohibited by federal law, as is currently the case, the FDOT would not be authorized to undertake any such demonstration project. Such a demonstration project could only occur in accordance with conditions or limitations specified in any United States Environmental Protection Agency (EPA) approval for use of phosphogypsum in such a demonstration project.

Study and Use of Phosphogypsum as a Construction Aggregate Material (Section 2)

The bill creates s. 337.02611, F.S., requiring the FDOT to conduct a study to evaluate the suitability of using phosphogypsum as a construction aggregate material. The FDOT may consider any prior or ongoing studies of phosphogypsum's road suitability. The study and a determination of suitability must be completed by January 1, 2024. Upon the FDOT's determination of suitability, the bill authorizes the use of phosphogypsum from phosphate production as a construction aggregate material in accordance with the conditions of the EPA approval for such use.

Again, until such time as the EPA approves such use, the FDOT would be prohibited from any use of phosphogypsum as a road construction aggregate material. Such use could only occur if the EPA issues an approval, and only under the conditions imposed by the EPA.

Wastes and Activities Not Regulated by the FDEP (Section 3)

The bill amends s. 403.7045, F.S., providing that phosphogypsum used in accordance with an allowed use expressly specified in EPA regulations or pursuant to an express EPA approval for the specific use is not solid waste as defined in s. 403.703, F.S., and is an allowable use in this state. The bill restates current law that phosphogypsum may be placed in a phosphogypsum stack system permitted by the Florida Department of Environmental Protection (FDEP).

The FDEP advises that excluding phosphogypsum as a solid waste “would conflict with existing permitting and regulatory framework. Like the state provisions under section 403.7045(2)(c), F.S., under federal regulations at 40 CFR 261.4(b), phosphogypsum, along with process water from phosphoric acid production, are solid wastes that are not hazardous wastes. Accordingly, the proposed statutory revision in Section 3 of the bill, where phosphogypsum would not be a solid waste, creates uncertainty in the application of both the state and federal hazardous waste exemptions for phosphogypsum.”³⁵

³⁵ FDEP email to committee staff, March 16, 2023 (on file in the Senate Transportation Committee).

Effective Date (Section 4)

The bill takes effect July 1, 2023.

IV. Constitutional Issues:**A. Municipality/County Mandates Restrictions:**

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

Indeterminate. Should the EPA approve the use of phosphogypsum in road construction, the private sector may benefit from a reduction of the number of phosphogypsum stacks in the state. A literature review suggests the existence of opposing opinions relating to the advantages and disadvantages of exposure to phosphogypsum.

C. Government Sector Impact:

The FDOT will incur costs associated with conducting the study required by the bill, which costs are expected to be absorbed within existing resources.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 336.044 and 403.7045.

This bill creates the following section of the Florida Statutes: 337.02611.

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 March 20, 2023:

The committee substitute removes ambiguity by separating the provision that use of phosphogypsum in accordance with an allowed use expressly specified in the United States Environmental Protection Agency (EPA) regulations or pursuant to an express EPA approval for the specific use is not solid waste and is an allowed use in this state from the restatement of current law authorizing placement of phosphogypsum in a stack system permitted by the Florida Department of Environmental Protection.

- B. **Amendments:**

None.

By the Committee on Transportation; and Senators Trumbull, Burgess, Gruters, and Ingoglia

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A bill to be entitled

An act relating to the use of phosphogypsum; amending s. 336.044, F.S.; authorizing the Department of Transportation to undertake demonstration projects using phosphogypsum in road construction aggregate material to determine its feasibility as a paving material; creating s. 337.02611, F.S.; requiring the department to conduct a study on the suitability of using phosphogypsum as a construction aggregate material; providing requirements for the study; providing that such materials may be used as a construction aggregate material in accordance with specified regulations if the department determines it suitable for such use; amending s. 403.7045, F.S.; prohibiting phosphogypsum from being regulated as solid waste if used in accordance with an allowed use under specified federal regulations and approvals; providing that phosphogypsum may be placed in stack systems permitted by the department; providing an effective date.

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

Section 1. Subsection (2) of section 336.044, Florida Statutes, is amended to read:

336.044 Use of recyclable materials in construction.—

(2) The Legislature declares it to be in the public interest to find alternative ways to use certain recyclable materials that currently are part of the solid waste stream and

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that contribute to problems of declining space in landfills. To determine the feasibility of using certain recyclable materials for paving materials, the department may undertake demonstration projects using all of the following materials in road construction:

(a) Ground rubber from automobile tires in road resurfacing or subbase materials for roads.~~†~~

(b) Ash residue from coal combustion byproducts for concrete and ash residue from waste incineration facilities and oil combustion byproducts for subbase material.~~†~~

(c) Recycled mixed-plastic material for guardrail posts or right-of-way fence posts.~~†~~

(d) Construction steel, including reinforcing rods and I-beams, manufactured from scrap metals disposed of in the state.~~†~~
and

(e) Glass~~†~~ and glass aggregates.

(f) Phosphogypsum from phosphate production in road construction aggregate material.

Section 2. Section 337.02611, Florida Statutes, is created to read:

337.02611 Phosphogypsum as a construction aggregate material; study.—

(1) The department shall conduct a study to evaluate the suitability of using phosphogypsum as a construction aggregate material as defined in s. 337.0261(1). The department may consider any prior or ongoing studies of phosphogypsum's road suitability in the fulfillment of this duty. The study and a determination of suitability must be completed by January 1, 2024.

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(2) Upon a determination of suitability by the department,
phosphogypsum from phosphate production may be used as a
construction aggregate material in accordance with the
conditions of the United States Environmental Protection Agency
approval for the use.

Section 3. Paragraph (f) of subsection (1) of section
403.7045, Florida Statutes, is amended to read:

403.7045 Application of act and integration with other
acts.—

(1) The following wastes or activities may not be regulated
pursuant to this act:

(f) Industrial byproducts, if:

1. A majority of the industrial byproducts are demonstrated
to be sold, used, or reused within 1 year;~~—~~

2. The industrial byproducts are not discharged, deposited,
injected, dumped, spilled, leaked, or placed upon any land or
water so that such industrial byproducts, or any constituent
thereof, may enter other lands or be emitted into the air or
discharged into any waters, including groundwaters, or otherwise
enter the environment such that a threat of contamination in
excess of applicable department standards and criteria or a
significant threat to public health is caused;and~~—~~

3. The industrial byproducts are not hazardous wastes as
defined in s. 403.703 and rules adopted under this section.

Sludge from an industrial waste treatment works that meets the
exemption requirements of this paragraph is not solid waste as
defined in s. 403.703. Phosphogypsum used in accordance with an
allowed use expressly specified in United States Environmental

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88 Protection Agency regulations or pursuant to an express United
89 States Environmental Protection Agency approval for the specific
90 use is not solid waste as defined in s. 403.703 and shall be an
91 allowed use in this state. Phosphogypsum may be placed in a
92 phosphogypsum stack system permitted by the department pursuant
93 to ss. 403.4154 and 403.4155.

94 Section 4. This act shall take effect July 1, 2023.

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL: SB 1134

INTRODUCER: Senator Gruters

SUBJECT: Outstanding Florida Springs

DATE: March 24, 2023

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. <u>Barriero</u>	<u>Rogers</u>	<u>EN</u>	<u>Pre-meeting</u>
2. _____	_____	<u>CA</u>	_____
3. _____	_____	<u>RC</u>	_____

I. Summary:

SB 1134 amends the statutory list of Outstanding Florida Springs in s. 373.802, F.S., to include Warm Mineral Springs.

II. Present Situation:

Florida's Springs

Because of the thick, water-filled limestone underlying it, Florida has more large springs than any other state.¹ Springs are the window into the health of our groundwater, which is the source of 90 percent of drinking water for the state.² Some springs support entire ecosystems with unique plants and animals. In addition, Florida's springs offer many recreational opportunities, such as swimming, kayaking, and diving, and serve as economic drivers for local communities.³

Springs can be classified based on several characteristics but are most often classified by the average discharge of water.⁴ First magnitude springs are those that discharge 100 cubic feet of

¹ Dep't of Environmental Protection (DEP), *2022 Florida Forever Five-Year Plan: Florida's First Magnitude Springs*, 1 (2022), available at https://floridadep.gov/sites/default/files/FLDEP_DSL_OES_FF_22_FloridasFirstMagnitudeSprings.pdf#:~:text=Those%20discharging%20an%20average%20of%20100%20cubic%20feet,the%20Floridan%20Aquifer%20arches%20close%20to%20the%20surface.

² DEP, *Springs*, <https://floridadep.gov/springs> (last visited Mar. 21, 2023).

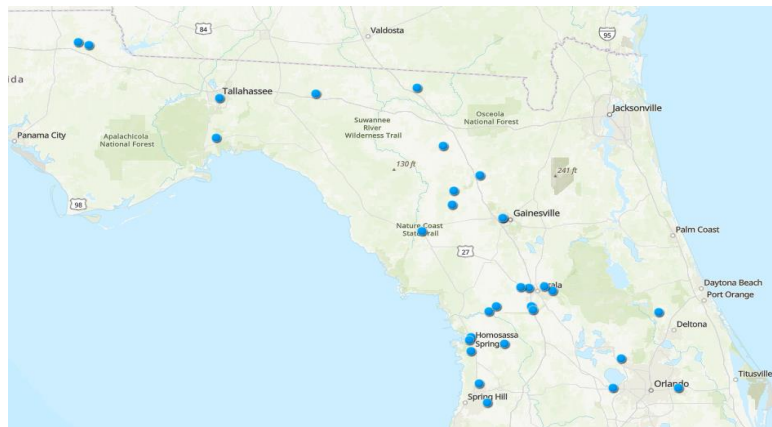
³ *Id.*

⁴ DEP, Florida Geological Survey, *First Magnitude Springs of Florida: Open File Report no. 85*, 6 (2002), available at http://publicfiles.dep.state.fl.us/FGS/FGS_Publications/OFR/OFR85.pdf.

water per second or greater.⁵ Of Florida's more than 700 springs, 33 are first magnitude, 191 are second magnitude, and 151 third magnitude springs.⁶

Individual springs exhibit variable discharge depending upon rainfall, recharge, and groundwater withdrawals within their recharge areas.⁷ One discharge measurement is enough to place a spring into one of the eight magnitude categories. However, springs have dynamic flows. A spring categorized as being a first magnitude spring at one moment in time may not continue to remain in the same category. This can result in a spring being classified as a first magnitude spring at one point in time and a second magnitude at another.⁸

Florida's springs face various complex threats, including decreasing spring flows and excessive nutrients.⁹ Spring flows decrease because of declining water levels in the groundwater aquifer that sustains them, and excessive nutrients, mainly nitrate, can lead to algal growth and habitat degradation. Florida has invested in many nitrate-reducing capital projects and water-quantity projects to protect and restore springs, as well as the acquisition of land intended to protect the springs.¹⁰ In fiscal year 2020-21, there were 31 springs restoration projects funded.¹¹ Funding comes partly from DEP's Springs and Watershed Restoration¹² program and the Land Acquisition Trust Fund, which provides for the lesser of 7.6 percent or \$50 million for spring restoration, protection, and management projects.¹³ Last year, the Legislature appropriated \$75 million for springs restoration projects, including \$25 million from the general revenue fund and \$50 million from the land acquisition trust fund.¹⁴



Springs Restoration Projects 2020-2021

⁵ DEP, 2022 *Florida Forever Five-Year Plan: Florida's First Magnitude Springs* at 1.

⁶ DEP, Florida Geological Survey, *Springs of Florida Bulletin no. 66*, 9 (2004), available at http://publicfiles.dep.state.fl.us/FGS/FGS_Publications/B/B66.pdf

⁷ *Id.* at 8.

⁸ *Id.*

⁹ DEP, *Springs*, <https://floridadep.gov/springs> (last visited Mar. 21, 2023).

¹⁰ *Id.*

¹¹ DEP, *Springs Restoration Projects 2020-21*, <https://fdep.maps.arcgis.com/apps/MapJournal/index.html?appid=1783539ce99e463f9a073c2d305902cd> (last visited Mar. 22, 2023).

¹² DEP, *Springs and Watershed Restoration Program*, <https://floridadep.gov/springs/restoration-funding> (last visited Mar. 23, 2023).

¹³ Section 375.041(3)(b)2., F.S.

¹⁴ Ch. 2022-156, s. 5, Laws of Fla. (line item 1657).

Outstanding Florida Springs

In 2016, the Florida Legislature enacted the Florida Springs and Aquifer Protection Act (the Act) and identified 30 Outstanding Florida Springs (OFSs) that require additional protections to ensure their conservation and restoration for future generations.¹⁵ These springs are a unique part of the state's scenic beauty, provide critical habitat, and have immeasurable natural, recreational, and economic value.¹⁶ OFSs are defined by statute and include all historic first magnitude springs, including their associated spring runs, as determined by DEP using the most recent Florida Geological Survey springs bulletin, and the following additional springs, including their associated spring runs:

- De Leon Springs;
- Peacock Springs;
- Poe Springs;
- Rock Springs;
- Wekiwa Springs; and
- Gemini Springs.¹⁷

The Act requires DEP to assess the water quality in the OFSs. Based on these assessments, DEP determined that most of these springs are impaired.¹⁸ For these impaired springs, DEP must adopt (or re-adopt) a basin management action plan (BMAP)¹⁹ to implement all the protections of the Act, including:

- Prioritized lists of restoration projects along with planning level estimates for cost, schedule, and nutrient load reduction;
- Phased milestones (5-year, 10-year, and 15-year) to achieve water quality restoration targets in 20 years;
- Estimated nutrient pollutant loads, allocated to each source or category of sources;
- Completed remediation plans for onsite sewage treatment and disposal systems (OSTDS), commonly referred to as “septic systems,” where septic loading accounts for at least 20 percent of the estimated nutrient input;²⁰ and
- Delineated “priority focus areas” where certain activities are prohibited.²¹

¹⁵ DEP, *Springs*, <https://floridadep.gov/springs/> (last visited Mar. 13, 2023).

¹⁶ DEP, *Protect and Restore Springs*, <https://floridadep.gov/springs/protect-restore> (last visited Mar. 13, 2023).

¹⁷ Section 373.802(4), F.S.

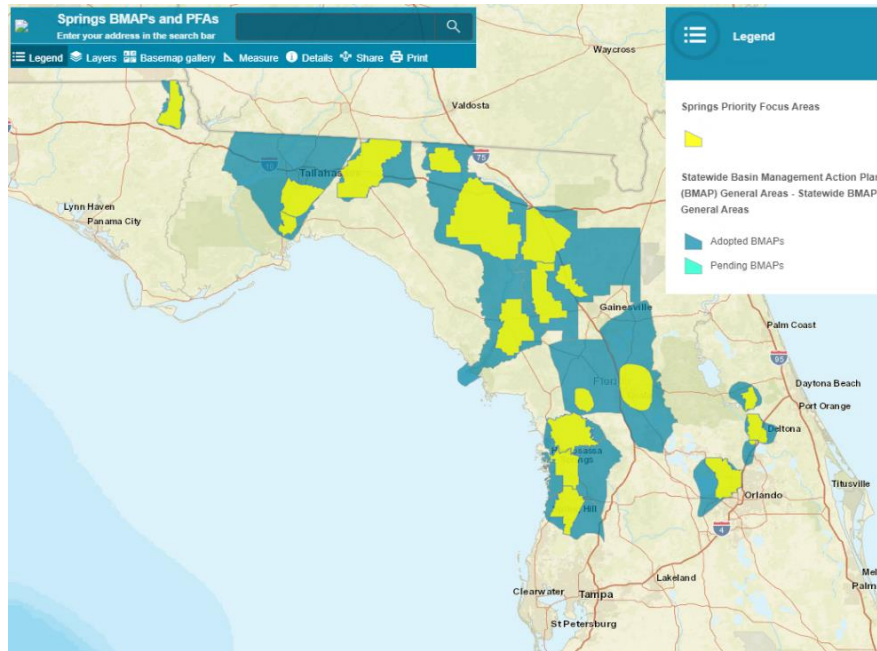
¹⁸ DEP, *Protect and Restore Springs*.

¹⁹ A BMAP is a framework for water quality restoration that contains local and state commitments to reduce pollutant loading through current and future projects and strategies. DEP, *Basin Management Action Plans (BMAPS)*, <https://floridadep.gov/dear/water-quality-restoration/content/basin-management-action-plans-bmaps#:~:text=A%20basin%20management%20action%20plan%20%28BMAP%29%20is%20a,loading%20through%20current%20and%20future%20projects%20and%20strategies> (last visited Mar. 22, 2023).

²⁰ Although OSTDS remediation plans were first only required for springs, in 2020, the requirement was expanded to BMAPs statewide as part of the Clean Waterways Act. See Chapters 2016-1, s. 27 and 2020-150, s. 13, Laws of Fla. Notably, OSTDS remediation plans for springs are only required within the priority focus areas, whereas the laws governing BMAPs require OSTDS remediation plans more generally within the entire BMAP.

²¹ DEP, *Protect and Restore Springs*, <https://floridadep.gov/springs/protect-restore> (last visited Mar. 22, 2023).

A “priority focus area” is the area or areas of a basin where the Floridan Aquifer²² is generally most vulnerable to pollutant inputs where there is a known connectivity between groundwater pathways and an OFS, as determined by DEP in consultation with the appropriate water management districts and delineated in a BMAP.²³



The activities prohibited within priority focus areas include:

- New domestic wastewater disposal facilities with permitted capacities of 100,000 gallons per day or more, except for those facilities that meet an advanced wastewater treatment standard of no more than 3 mg/l total nitrogen, on an annual permitted basis, or a more stringent treatment standard if necessary to attain a total daily maximum load;
- New OSTDSs on lots of less than one acre, if the addition of the specific systems conflicts with an OSTDS remediation plan incorporated into a BMAP;
- New facilities for the disposal of hazardous waste;
- The land application of Class A or Class B domestic wastewater biosolids not in accordance with a DEP-approved nutrient management plan; and
- New agriculture operations that do not implement best management practices, measures necessary to achieve pollution reduction levels established by DEP, or groundwater monitoring plans.²⁴

²² The Floridan Aquifer is the largest aquifer in the southeastern United States and one of the most productive aquifer systems in the world. The aquifer underlies an area of about 100,000 square miles that includes all of Florida and extends into parts of Alabama, Georgia and South Carolina, as well as parts of the Atlantic Ocean and the Gulf of Mexico. St. Johns River Water Management District, *Florida's aquifers*, <https://www.sjrwmd.com/water-supply/aquifer/#:~:text=Aquifer%20facts%201%20More%20than%2090%20percent%20of,%20C000%20feet%20below%20land%20surface.%20...%20More%20items> (last visited Mar. 22, 2023).

²³ Section 373.802(5), F.S.; DEP, *Map of Priority Focus Areas in BMAPs*, <https://fddep.maps.arcgis.com/apps/View/index.html?appid=1afdd97c67584c06840019241becde74> (last visited Mar. 22, 2023) (map of priority focus areas).

²⁴ Section 373.811, F.S.

There have been recent legal challenges to DEP's development of BMAPs for OFSs. In *Sierra Club v. Department of Environmental Protection*, the court held that DEP failed to comply with ss. 403.067(6)(b) and 373.801(1)(b), F.S., in creating the BMAPs because the BMAPs failed to include an identification of each *specific* point source or category of nonpoint sources and an estimated allocation of the pollutant for each point source or category of nonpoint sources.²⁵ Instead, the BMAPs included pie charts that only showed current estimated nitrogen loading in the various springsheds by source and allocations to entire basins, not to any point or nonpoint source.²⁶

Warm Mineral Springs

Warm Mineral Springs, located in southern Sarasota County, Florida, is a warm, highly mineralized, inland spring.²⁷ Since 1946, a bathing spa has been in operation at the spring, attracting vacationers and health enthusiasts. During the winter months, the warm water attracts manatees to the adjoining spring run and provides vital habitat for these mammals. Well-preserved late Pleistocene to early Holocene-age human and animal bones, artifacts, and plant remains have been found in and around the spring, and indicate the surrounding sinkhole formed more than 12,000 years ago.²⁸

Warm Mineral Springs is a third magnitude spring, which is defined as having discharge less than 10 cubic feet per second (though discharge measurements for Warm Mineral Springs has occasionally exceeded this amount).²⁹ Discharge at Warm Mineral Springs decreased from about 11–12 cubic feet per second in the 1940s to 6–9 cubic feet per second in the 1970s, and remained at about that level for the duration of the period of record.³⁰ This pattern of decrease until about the 1970s is consistent with the trend of water withdrawals and changes in the potentiometric surface of the Upper Floridan aquifer in the region.³¹

DEP has determined that Warm Mineral Springs is impaired and not attaining water quality standards.³² However, further study is needed to determine the causative pollutants or other factors contributing to impairment. For this reason, it has been placed on the statewide comprehensive study list.³³

²⁵ *Sierra Club v. DEP*, No. 1D21-1667, *2 (Fla. 1st DCA 2023).

²⁶ *Id.* at *5.

²⁷ U.S. Geological Survey (USGS), *Discharge, water temperature, and water quality of Warm Mineral Springs, Sarasota County, Florida: A retrospective analysis*, 1 (2016), available at <https://pubs.usgs.gov/of/2016/1166/ofr20161166.pdf>.

²⁸ *Id.*

²⁹ *Id.* at 2, 8.

³⁰ *Id.* at 27.

³¹ *Id.*

³² DEP, *Comprehensive Study List*, row 810 (2022), available at <https://floridadep.gov/dear/watershed-assessment-section/documents/comprehensive-study-list>.

³³ A waterbody is placed on the study list when one or more water quality parameters do not meet applicable water quality criteria, which indicates that the waterbody does not fully support its designated use; however, additional data or information is needed to determine attainment of the designated use. The listing determination is based on prescribed analytical protocols and minimum data sufficiency requirements as defined by Florida's water quality standards and Impaired Waters Rule. DEP, *Impaired Waters Listing Process*, <https://floridadep.gov/dear/water-quality-assessment/content/impaired-waters-listing-process> (last visited Mar. 23, 2023).

Minimum Flows and Levels (MFLs)

MFLs are established for waterbodies in order to prevent significant harm to the water resources or ecology of an area as a result of water withdrawals.³⁴ MFLs are typically determined based on evaluations of natural seasonal fluctuations in water flows or levels, nonconsumptive uses, and environmental values associated with coastal, estuarine, riverine, spring, aquatic, wetlands ecology, and other pertinent information associated with the water resource.³⁵

While the DEP has the authority to adopt MFLs, WMDs have the primary responsibility for MFL adoption. WMDs submit annual MFL priority lists and schedules to DEP for the establishment of MFLs for surface watercourses, aquifers, and surface waters within the district.³⁶ MFLs are calculated using the best information available³⁷ and are considered rules by the WMDs and are subject to Chapter 120, F.S., challenges.³⁸ MFLs are subject to independent scientific peer review at the election of the DEP, a WMD, or, if requested, by a third party.³⁹

WMDs or DEP are required to adopt MFLs for OFSs. If the WMD or DEP fails to do so, it must adopt a MFL by emergency rule.⁴⁰ For OFSs identified on a WMD's priority list which have the potential to be affected by withdrawals in an adjacent WMD, the adjacent WMD and DEP must collaboratively develop and implement a recovery or prevention strategy for an OFS not meeting an adopted MFL.⁴¹

III. Effect of Proposed Changes:

Section 1 amends s. 373.802, F.S., which provides a definition for “Outstanding Florida Spring” and identifies which springs are included in this term. The bill adds Warm Mineral Springs to the list of Outstanding Florida Springs.

Section 2 reenacts, s. 373.042, regarding minimum flows and water levels, for the purpose of incorporating the amendment made by this act to s. 373.802, F.S., in a reference thereto.

Section 3 provides that the act will take effect upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

³⁴ See section 373.042, F.S.; see also DEP, *Minimum Flows and Minimum Water Levels and Reservations*, [https://floridadep.gov/water-policy/water-policy/content/minimum-flows-and-minimum-water-levels-and-reservations#Minimum%20Flows%20and%20Minimum%20Water%20Levels%20\(MFLs\)](https://floridadep.gov/water-policy/water-policy/content/minimum-flows-and-minimum-water-levels-and-reservations#Minimum%20Flows%20and%20Minimum%20Water%20Levels%20(MFLs)) (last visited Mar. 22, 2023).

³⁵ Fla. Admin. Code R. 62-40.473(1).

³⁶ Section 373.042(3), F.S.

³⁷ Section 373.042(1), F.S.

³⁸ Section 373.042(5) and (7), F.S.

³⁹ Section 373.042(6)(a), F.S.

⁴⁰ Section 373.042(2), F.S.

⁴¹ Section 373.042(2)(b), F.S.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Department of Environmental Protection and water management districts may incur costs related to establishing minimum flows and water levels for Warm Mineral Springs.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 373.802 of the Florida Statutes.

This bill reenacts section 373.042 of the Florida Statutes.

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

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

None.

B. Amendments:

None.

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

By Senator Gruters

22-00851A-23

20231134__

A bill to be entitled
An act relating to Outstanding Florida Springs;
amending s. 373.802, F.S.; designating Warm Mineral
Springs as an Outstanding Florida Spring; making
technical changes; reenacting s. 373.042(2)(d), F.S.,
relating to minimum flows and minimum water levels, to
incorporate the amendment made to s. 373.802, F.S., in
a reference thereto; providing an effective date.

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

Section 1. Subsection (4) of section 373.802, Florida
Statutes, is reordered and amended to read:

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

(4) "Outstanding Florida Spring" includes all historic
first magnitude springs, including their associated spring runs,
as determined by the department using the most recent Florida
Geological Survey springs bulletin, and all of the following
additional springs, including their associated spring runs:

(a) De Leon Springs.†

(c)~~(b)~~ Peacock Springs.†

(d)~~(e)~~ Poe Springs.†

(e)~~(d)~~ Rock Springs.†

(g)~~(e)~~ Wekiwa Springs.† ~~and~~

(b)~~(f)~~ Gemini Springs.

(f) Warm Mineral Springs.

The term does not include submarine springs or river rises.

Section 2. For the purpose of incorporating the amendment

22-00851A-23

20231134__

made by this act to section 373.802, Florida Statutes, in a
reference thereto, paragraph (d) of subsection (2) of section
373.042, Florida Statutes, is reenacted to read:

373.042 Minimum flows and minimum water levels.—

(2)

(d) As used in this subsection, the term "Outstanding
Florida Spring" has the same meaning as in s. 373.802.

Section 3. This act shall take effect upon becoming a law.



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Appropriations Committee on Agriculture,
Environment, and General Government, *Chair*
Health Policy, *Vice Chair*
Appropriations
Appropriations Committee on Health
and Human Services
Children, Families, and Elder Affairs
Community Affairs
Regulated Industries
Rules

JOINT COMMITTEE:

Joint Legislative Auditing Committee

SENATOR JASON BRODEUR

10th District

March 14, 2023

The Honorable Ana Maria Rodriguez
Chair, Environment and Natural Resources
314 Senate Building
404 South Monroe Street
Tallahassee, FL 32399-1100

Dear Chair Rodriguez,

I respectfully request that **Senate Bill 1234, Hunting and Fishing**, be placed on the agenda of the Environment and Natural Resources Committee meeting to be considered at your earliest convenience.

If you have any questions or concerns, please do not hesitate to reach out to me or my office.

Sincerely,

A handwritten signature in black ink that reads "Jason Brodeur". The signature is fluid and cursive, with the first name "Jason" and last name "Brodeur" clearly legible.

Senator Jason Brodeur – District 10

CC: Ellen Rogers – Staff Director
Kim Bonn – Administrative Assistant

REPLY TO:

- 110 Timberlachen Circle, Suite 1012, Lake Mary, Florida 32746 (407) 333-1802
- 405 Senate Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5010

Senate's Website: www.flsenate.gov

KATHLEEN PASSIDOMO
President of the Senate

DENNIS BAXLEY
President Pro Tempore

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

3-27-23

Meeting Date

1234

Bill Number (if applicable)

Topic Right to Hunt & Fish

DE Amendment

Amendment Barcode (if applicable)

Name Lane Stephens

Job Title _____

Address 111 N Calhoun St Ste 6

Phone 850-933-3583

Street

Tallahassee FL 32301

City

State

Zip

Email lane@slg800.com

Speaking: ☒ For ☐ Against ☐ Information

Waive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Southeast Dog Hunters Assoc; Fla State Dog Hunters Association

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

3/27/2023

Meeting Date

STR 1234

Bill Number (if applicable)

Topic right to fish and hunt

Amendment Barcode (if applicable)

Name Luke Hilgemann

Job Title Executive Director, T. Roosevelt Action

Address Po Box 7426
Street

Phone 608.345.7627

Naples
City

FL
State

34101
Zip

Email luke@t-roosevelt.org

Speaking: ☒ For ☐ Against ☐ Information

Waive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Representing IOTR, T. Roosevelt Action

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

3/27/23

Meeting Date

SSR 1234

Bill Number (if applicable)

Topic right to hunt & fish

Amendment Barcode (if applicable)

Name Chris Coker

Job Title Lobbyist

Address 2003 Winthrop Way

Phone 850-570-5432

Street

Tallahassee FL 32309

City

State

Zip

Email Chris.Coker@com

Speaking: ☒ For ☐ Against ☐ Information

Waive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Representing International order of T Roosevelt

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

3/27/23

Meeting Date

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

1234

Bill Number (if applicable)

Topic Right to Hunt & Fish

Name TRAVIS Thompson

Job Title Guide/Executive Director

Address 4372 Diamond Road

Street

Winter Haven

City

FL

State

33880

Zip

Phone (863) 206-6762

Email travis@allfla.org

Speaking: ☒ For ☐ Against ☐ Information

Waive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Florida Guides Association, Delta Waterfowl, All Florida

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

3/27
Meeting Date

1234
Bill Number (if applicable)

Topic Hunting + Fishing

Amendment Barcode (if applicable)

Name Jennifer Ungre

Job Title _____

Address Dean Mead + Dunbar
Street

Phone 850 999 4100

City

State

Zip

Email jungre@deanmead.com

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against
(The Chair will read this information into the record.)

Representing American Sports Fishing Association

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

3/27

Meeting Date

SJR 1234

Bill Number (if applicable)

Topic Hunt + Fish in Florida

Amendment Barcode (if applicable)

Name Capt. TJ SAUNDERS

Job Title Regional Director, Florida Gopher Assn.

Address 9908 Waters Meet Dr.

Phone 7035319946

Street

Tallahassee

FL

32312

City

State

Zip

Email

Speaking: ☒ For ☐ Against ☐ Information

Waive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Representing FLORIDA Gopher Assn.

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL: CS/SJR 1234

INTRODUCER: Environment and Natural Resources and Senator Brodeur

SUBJECT: Hunting and Fishing

DATE: March 27, 2023

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Carroll	Rogers	EN	Fav/CS
2. _____	_____	JU	_____
3. _____	_____	RC	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SJR 1234 proposes an amendment to the Florida Constitution to preserve hunting, fishing, and the taking of fish and wildlife, including by the use of traditional methods, in perpetuity as a public right. The amendment makes hunting, fishing, and the taking of fish and wildlife the preferred means of responsibly managing and controlling fish and wildlife. This amendment does not limit the authority of the Florida Fish and Wildlife Conservation Commission.

If adopted by the Legislature, the proposed amendment will be submitted to Florida's electors for approval or rejection at the next general election in November 2024 or at an earlier special election.

II. Present Situation:

Hunting and Fishing in Florida

Wildlife managers often use hunting and fishing as tools for wildlife management and conservation.¹ Based on field research and harvest data, managers can model population growth

¹ See, Andrew Moore, College of Natural Resources News, *The Role of Hunting in Wildlife Conservation, Explained*, <https://cnr.ncsu.edu/news/2021/02/the-role-of-hunting-in-wildlife-conservation-explained/> (last visited Mar. 28, 2023); U.S. Department of the Interior, *How Hunting Assists Species Conservation and Management*, https://www.doi.gov/ocl/hearings/112/SpeciesConservation_062712 (last visited Mar. 28, 2023); Brent Lawrence, U.S. Fish and Wildlife Service, *North American Model of Wildlife Conservation: Wildlife for Everyone*,

and set management regulations according to those models.² If a population of fish or wildlife is overabundant, increased harvest can help control the population.³

The Florida Fish and Wildlife Conservation Commission (FWC) is responsible for regulating, managing, protecting, and conserving the state's fish and wildlife resources.⁴ FWC is governed by a board of seven members who are appointed by the Governor and confirmed by the Florida Senate.⁵ Under Article IV, Section 9 of the Florida Constitution, FWC has the authority to exercise the regulatory and executive powers of the state with respect to wild animal life, fresh water aquatic life, and marine life. All license fees for taking wild animal life, fresh water aquatic life, and marine life and penalties for violating FWC regulations are found in statute.⁶ The Legislature may enact laws to aid FWC, except for special laws or general laws of local application pertaining to hunting or fishing.⁷

Right to Hunt and Fish

Citizens of Florida have the statutory right to hunt, fish, and take game subject to the regulations and restrictions prescribed by law and by the State Constitution.⁸ The Legislature recognizes that hunting, fishing, and the taking of game are a valued part of the cultural heritage of Florida and should be forever preserved for Floridians. The Legislature also recognizes that these activities play an important role in the state's economy and in the conservation, preservation, and management of the state's natural areas and resources.⁹ Additionally, it can be a criminal infraction to intentionally harass hunters, trappers, or fishers.¹⁰

Twenty-three states have passed constitutional amendments giving their citizens the right to hunt, fish, or both.¹¹ States that preserve the right to both hunt and fish are Alabama, Arkansas, Georgia, Idaho, Indiana, Kansas, Kentucky, Louisiana, Mississippi, Minnesota, Montana, Nebraska, North Carolina, North Dakota, Oklahoma, South Carolina, Tennessee, Texas, Utah, Vermont, Virginia, Wisconsin, and Wyoming. Both California and Rhode Island have amended their state constitutions to guarantee the right to fish, but not to hunt, and New Hampshire statutorily recognizes the right to hunt and fish.¹²

<https://www.fws.gov/story/2022-04/north-american-model-wildlife-conservation-wildlife-everyone> (last visited Mar. 28, 2023).

² Andrew Moore, *The Role of Hunting in Wildlife Conservation, Explained*.

³ *Id.*

⁴ FLA. CONST. art. IV, s. 9.

⁵ *Id.*; see also s. 379.102(1), F.S.

⁶ FLA. CONST. art. IV, s. 9.

⁷ *Id.*

⁸ Section 379.104, F.S.

⁹ *Id.*

¹⁰ Section 379.105, F.S.

¹¹ National Conference of State Legislatures, *State Constitutional Right to Hunt and Fish*, <https://www.ncsl.org/environment-and-natural-resources/state-constitutional-right-to-hunt-and-fish> (last visited Mar. 22, 2023); N.C. CONST. art. I, s. 38; UTAH CONST. art. I, s. 30.

¹² *Id.*

Taking Fish and Wildlife

“Taking” is defined in the Florida statutes as “taking, attempting to take, pursuing, hunting, molesting, capturing, or killing any wildlife or freshwater or saltwater fish, or their nests or eggs, by any means, whether or not such actions result in obtaining possession of such wildlife or freshwater or saltwater fish or their nests or eggs.”¹³ The term “take” is also defined in the federal Endangered Species Act to include harassing, harming, pursuing, hunting, shooting, wounding, killing, trapping, capturing, or collecting, or attempting to engage in any such conduct.¹⁴

Allowed Methods of Hunting in Florida

The Florida Fish and Wildlife Conservation Commission (FWC) authorizes the hunting of resident game birds, crows, or game mammals with:

- Shotguns.
- Rifles, revolvers, or pistols, except that:
 - No fully automatic firearm may be used.
 - Firearms using any rimfire cartridge or non-expanding, full metal case ammunition are prohibited for taking deer or bear.
 - Use of a centerfire semi-automatic rifle having a magazine capable of holding more than five rounds is prohibited.
- Muzzleloading guns of less than .30 caliber firing a single bullet or of less than 20 gauge firing two or more balls, are prohibited for taking deer or bear.
- Air guns, except that:
 - Only pre-charged pneumatic air guns .30 caliber or greater propelling a single projectile may be used for taking deer.
 - Only pre-charged pneumatic air guns .20 caliber or greater propelling a single projectile may be used for taking wild turkey.
- Falcons.
- Bows or crossbows, except that any arrow or bolt used to take deer, bear, or wild turkey shall be equipped with a broadhead with a minimum width of 7/8 inches.¹⁵

Dogs may be used as an aid to take game unless otherwise prohibited.¹⁶

FWC allows migratory game birds to be taken with:

- Shotguns not larger than 10 gauge with a capacity not exceeding three shells in the magazine and chamber combined.
- Falcons.
- Bows or crossbows.¹⁷

¹³ Section 379.101(38), F.S.

¹⁴ 16 U.S.C. §1531; National Oceanic and Atmospheric Administration, *Endangered Species Act*, <https://www.fisheries.noaa.gov/national/endangered-species-conservation/endangered-species-act#section-9-prohibited-acts> (last visited Mar. 27, 2023).

¹⁵ Chapter 68A-12.002, F.A.C.

¹⁶ *Id.*

¹⁷ *Id.*

A person who holds a furbearer trapping license may take or attempt to take furbearing animals including raccoon, opossum, skunk, nutria, beaver, coyote, bobcat, and otter with a livetrapped of snare and to sell furbearer's hides and meat to a licensed dealer.¹⁸

FWC does not allow a person to take game or crows with arrows or bolts that have explosive or drug-administering heads or to attempt to take any game with the aid of live decoys, recorded game calls or sounds, set guns, artificial light, net, trap, snare, drug, or poison.¹⁹

Allowed Methods of Fishing in Florida

FWC allows freshwater game fish to be taken only by hook and line or rod and reel.²⁰ Freshwater game fish include black bass, crappie, bluegill, redear sunfish, warmouth, redbreast sunfish, spotted sunfish, flier, mud sunfish, longear sunfish, shadow bass, peacock bass, white bass, striped bass, and sunshine bass.²¹ Freshwater non-game fish may be taken:

- With pole and line or rod and reel.
- By bush hook, setline, or trotline baited with cut bait or other substance, but only in certain areas.
- At night with bow and arrow or gigs.
- During daylight hours by manually operated spears, gigs, snatch hooks, crossbow, or bow and arrow from a boat or from the shore, except in certain areas.
- By the use of cast nets in certain areas.
- At night with a bow and light.
- By netting or impounding at night in certain areas.
- By the use of not more than one slat basket or one wire trap.²²

All persons fishing recreationally for saltwater reef fish in the Gulf of Mexico must use a dehooking device and must use non-stainless non-offset circle hooks when using natural baits.²³ In the Atlantic Ocean, recreational and commercial fishers must use dehooking devices as needed when fishing for reef fish. When fishing for reef fish using hook and line with natural baits from a vessel, non-stainless steel, non-offset circle hooks and non-stainless steel hooks may be required depending on the location. These rules apply to all reef fish, including but not limited to groupers, snappers, amberjacks, red porgy, gray triggerfish, black sea bass, golden tilefish, banded rudderfish, and speckled hind.²⁴

The following types of nets may be used for recreational purposes in Florida waters:

- Bully nets for lobster,
- Frame nets and push nets for shrimp in certain areas,

¹⁸ FWC, *Recreational Hunting Licenses & Permits*, <https://myfwc.com/license/recreational/hunting/> (last visited Mar. 27, 2023).

¹⁹ Chapter 68A-12, F.A.C.

²⁰ Chapter 68A-23.002, F.A.C.

²¹ ERegulations, *Florida Freshwater Fishing, Methods of Taking Fish*, <https://www.eregulations.com/florida/fishing/freshwater/methods-of-taking-fish> (last visited Mar. 28, 2023).

²² *Id.*

²³ ERegulations, *Florida Saltwater Fishing, Recreational Gear*, <https://www.eregulations.com/florida/fishing/saltwater/recreational-gear> (last visited Mar. 28, 2023).

²⁴ *Id.*

- Hand-held landing or dip nets,
- Cast nets, and
- Beach or haul seines.

Cast nets and seines may be used to harvest only black drum, bluefish, cobia, flounder, mullet, Florida pompano, red drum, sheepshead, shrimp, Spanish mackerel, weakfish, and unregulated species. Fishing with powerheads, explosives, chemicals, or firearms is prohibited in state waters.²⁵

Spearing, which includes bow fishing, gigging, and spearfishing, is prohibited for certain species and subject to the same recreational regulations as those marine species that are harvested by any other type of gear. Fishing with the use of powerheads, bangsticks, or rebreathers is prohibited in state waters, however rebreathers are allowed for the harvest of lionfish.²⁶

III. Effect of Proposed Changes:

The joint resolution proposes the creation of Article I, s. 28 of the Florida Constitution to preserve hunting, fishing, and the taking of fish and wildlife, including by the use of traditional methods, forever as a public right and as a preferred means of responsibly managing and controlling fish and wildlife. The section does not limit the authority granted to the Florida Fish and Wildlife Conservation Commission under Article IV, s. 9.

If adopted by the Legislature, the proposed amendment will be submitted to Florida's electors for approval or rejection at the next general election in November 2024 or at an earlier special election specifically authorized by law for that purpose.

The joint resolution also provides the ballot statement, which will appear on the November 2024 ballot if adopted by the Legislature, as follows:

RIGHT TO FISH AND HUNT.—Proposing an amendment to the State Constitution to preserve forever fishing and hunting, including by the use of traditional methods, as a public right and preferred means of responsibly managing and controlling fish and wildlife. Specifies that the amendment does not limit the authority granted to the Fish and Wildlife Conservation Commission under Section 9 of Article IV of the State Constitution.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

²⁵ *Id.*

²⁶ *Id.*

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

Article XI, s. 1 of the Florida Constitution authorizes the Legislature to propose amendments to the Florida Constitution by joint resolution approved by a three-fifths vote of the membership of each house. Article XI, s. 5(a) of the Florida Constitution requires the amendment be placed before the electorate at the next general election²⁷ held more than 90 days after the proposal has been filed with the Secretary of State or at a special election held for that purpose. Constitutional amendments submitted to the electors must be printed in clear and unambiguous language on the ballot.²⁸

Article XI, s. 5(d) of the Florida Constitution requires proposed amendments or constitutional revisions to be published in a newspaper of general circulation in each county where a newspaper is published. The amendment or revision must be published once in the 10th week and again in the 6th week immediately preceding the week the election is held.

Article XI, s. 5(e) of the Florida Constitution requires approval by 60 percent of voters for a constitutional amendment to take effect. The amendment, if approved, becomes effective on the first Tuesday after the first Monday in January following the election, or on such other date as may be specified in the amendment.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

None.

²⁷ Section 97.021(16), F.S., defines “general election” as an election held on the first Tuesday after the first Monday in November in the even-numbered years, for the purpose of filling national, state, county, and district offices and for voting on constitutional amendments not otherwise provided for by law.

²⁸ Section 101.161(1), F.S.

C. Government Sector Impact:

Article XI, Section 5(d) of the Florida Constitution requires proposed amendments or constitutional revisions to be published in a newspaper of general circulation in each county where a newspaper is published. The amendment or revision must be published in the 10th week and again in the 6th week immediately preceding the week the election is held.

The Division of Elections (division) within the Department of State pays for publication costs to advertise all constitutional amendments in both English and Spanish,²⁹ typically paid from non-recurring General Revenue funds.³⁰ Accurate cost estimates for the next constitutional amendment advertising cannot be determined until the total number of amendments to be advertised is known and updated quotes are obtained from newspapers.

There is an unknown additional cost for the printing and distributing of the constitutional amendments, in poster or booklet form, in English and Spanish, for each of the 67 Supervisors of Elections to post or make available at each polling room or each voting site, as required by s. 101.171, F.S. Historically, the division has printed and distributed booklets that include the ballot title, ballot summary, text of the constitutional amendment, and, if applicable, the financial impact statement. Beginning in 2020, the summary of such financial information statements was also included as part of the booklets.³¹

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This resolution creates a new section in Article I of the Florida Constitution.

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 Environment and Natural Resources on March 27, 2023:

- Revises the title of Section 28 to “Fishing, hunting, and the taking of fish and wildlife;”
- Adds the taking of fish and wildlife as a constitutional right;

²⁹ Pursuant to Section 203 of the Voting Rights Act (52 U.S.C.A. § 10503).

³⁰ See Ch. 2020-111, Specific Appropriation 3132, Laws of Fla.

³¹ Section 100.371(13)(e)4., F.S. See also Chapter 2019-64, s. 3, Laws of Fla.

- Specifically includes the use of traditional methods in the right to fish, hunt, and take fish and wildlife;
- Adds that fishing, hunting, and the taking of fish and wildlife shall be preserved forever as preferred means of responsibly managing and controlling fish and wildlife;
- Deletes language clarifying that the constitutional right to hunt, fish, and take fish and wildlife does not limit or restrict any law relating to trespass, property rights, or eminent domain; and
- Revises the ballot statement and the title of the joint resolution to reflect the changes above.

B. Amendments:

None.



841044

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/27/2023	.	
	.	
	.	
	.	

The Committee on Environment and Natural Resources (Brodeur)
recommended the following:

Senate Amendment (with title amendment)

Delete everything after the resolving clause
and insert:

That the following creation of Section 28 of Article I of
the State Constitution is agreed to and shall be submitted to
the electors of this state for approval or rejection at the next
general election or at an earlier special election specifically



841044

authorized by law for that purpose:

ARTICLE I

DECLARATION OF RIGHTS

SECTION 28. Fishing, hunting, and the taking of fish and wildlife.—Fishing, hunting, and the taking of fish and wildlife, including by the use of traditional methods, shall be preserved forever as a public right and preferred means of responsibly managing and controlling fish and wildlife. This section does not limit the authority granted to the Fish and Wildlife Conservation Commission under Section 9 of Article IV.

BE IT FURTHER RESOLVED that the following statement be placed on the ballot:

CONSTITUTIONAL AMENDMENT

ARTICLE I, SECTION 28

RIGHT TO FISH AND HUNT.—Proposing an amendment to the State Constitution to preserve forever fishing and hunting, including by the use of traditional methods, as a public right and preferred means of responsibly managing and controlling fish and wildlife. Specifies that the amendment does not limit the authority granted to the Fish and Wildlife Conservation Commission under Section 9 of Article IV of the State Constitution.

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

And the title is amended as follows:

Delete everything before the resolving clause
and insert:

A bill to be entitled

A joint resolution proposing the creation of Section



841044

39 28 of Article I of the State Constitution to preserve
40 forever fishing, hunting, and the taking of fish and
41 wildlife, including by the use of traditional methods,
42 as a public right and preferred means of managing and
43 controlling fish and wildlife and providing
44 construction regarding such right.

By Senator Brodeur

10-01520A-23

20231234__

Senate Joint Resolution

A joint resolution proposing the creation of Section 28 of Article I of the State Constitution to preserve in perpetuity hunting and fishing as a public right.

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

That the following creation of Section 28 of Article I of the State Constitution is agreed to and shall be submitted to the electors of this state for approval or rejection at the next general election or at an earlier special election specifically authorized by law for that purpose:

ARTICLE I

DECLARATION OF RIGHTS

SECTION 28. Hunting and fishing.—Hunting and fishing shall be preserved in perpetuity as a public right. This section does not limit the authority granted to the fish and wildlife conservation commission under Section 9 of Article IV and does not limit or restrict any law relating to trespass, property rights, or eminent domain.

BE IT FURTHER RESOLVED that the following statement be placed on the ballot:

CONSTITUTIONAL AMENDMENT

ARTICLE I, SECTION 28

RIGHT TO HUNT, FISH, AND HARVEST WILDLIFE.—Proposing an amendment to the State Constitution to preserve in perpetuity hunting and fishing as a public right. Specifies that the amendment does not limit the authority granted to the Fish and Wildlife Conservation Commission under Section 9 of Article IV

10-01520A-23

20231234__

30 of the State Constitution and does not limit or restrict any law
31 relating to trespass, property rights, or eminent domain.

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL: SB 1420

INTRODUCER: Senator Rodriguez

SUBJECT: Sanitary Sewer Lateral Inspection Programs

DATE: March 24, 2023

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Barriero	Rogers	EN	Favorable
2.			CA	
3.			FP	

I. Summary:

SB 1420 authorizes counties and municipalities to access any sanitary sewer lateral within their jurisdictions to investigate, clean, repair, recondition, or replace the sanitary sewer lateral.

The bill revises the discretionary minimum program requirements for counties and municipalities that establish an evaluation and rehabilitation program for sanitary sewer laterals on residential and commercial properties. For counties and municipalities that identify a defective sanitary sewer lateral and initiate a program to eliminate extraneous flow, the bill:

- Requires notice by certified mail by the county or municipality to the property owner, specifying that the county or municipality intends to access the owner's property within 14 days to address the sanitary sewer lateral;
- Provides that the county or municipality is responsible for any repair work done on the private property and is required to ensure that the property is restored to at least its pre-work conditions after the repair is complete;
- Specifies methods for the repair and inspection of sanitary sewer laterals by a county or municipality; and
- Authorizes the county or municipality to consider economical methods to repair or replace a defective, damaged, or deteriorated sanitary sewer lateral.

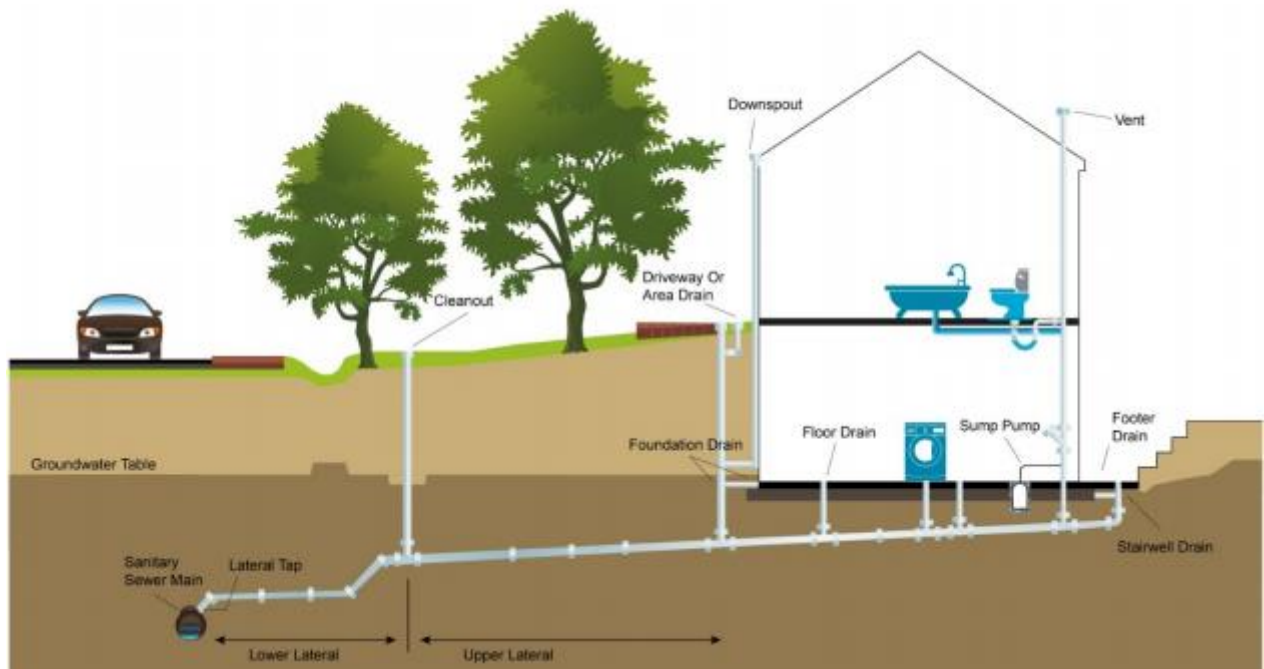
The bill authorizes counties or municipalities to use state or local funds allocated for the purpose of environmental preservation or the protection of water quality for a sanitary sewer lateral program.

The bill also authorizes counties and municipalities to establish and implement an alternative evaluation and rehabilitation program to identify and reduce extraneous flow from leaking sanitary sewer laterals.

II. Present Situation:

Sanitary Sewer Laterals

Sanitary sewers convey wastewater from homes, institutions and businesses to a centralized treatment plant.¹ The diagram below shows an example of a sanitary sewer lateral configuration.²



Sanitary sewer laterals are often in poor condition and defects can occur due to aging systems, structural failure, lack of maintenance, or poor construction and design practices.³ Problems in sanitary sewer laterals can have a significant impact on the performance of the sewer system and treatment plant and can account for half of the infiltration and inflow to sanitary sewers.⁴ Cracked or broken laterals can allow groundwater and infiltrating rainwater to enter into the sewer system which, at high levels, can cause problems at the treatment facility or overload the sewers and cause sanitary sewer overflows.⁵

¹ Water Environment Federation, *Sanitary Sewer Rehabilitation Fact Sheet*, 1 (2017), available at <https://www.wef.org/globalassets/assets-wef/direct-download-library/public/03---resources/wsec-2017-fs-009---csc---sewer-rehabilitation---final---9.27.17.pdf>; see also Fla. Dep't of Environmental Protection, *Design and Specifications Guidelines for Low Pressure Sewer Systems* at xi, available at https://floridadep.gov/sites/default/files/guide_lowpres.pdf (last visited Mar. 21, 2023) (defining various relevant terms).

² Water Environment Federation, *Sanitary Sewer Rehabilitation Fact Sheet* at 2.

³ *Id.* at 1-2.

⁴ *Id.* at 2.

⁵ U.S. Environmental Protection Agency (EPA), *Private Sewer Laterals* (2014), available at <https://www3.epa.gov/region1/sso/pdfs/PrivateSewerLaterals.pdf> (last visited Mar. 21, 2023).

The Florida Building Code requires every building in which plumbing fixtures are installed to be connected to a publicly or investor-owned sewage system, or if none is available, then to an approved onsite sewage treatment and disposal system.⁶

There are no statewide requirements for inspections of sanitary sewer laterals. Generally, local governments are responsible for maintaining sewer mains and the portions of sewer laterals in public rights-of-way, but the property owner is responsible for the maintenance and repair of a sanitary sewer lateral on the person's private property.⁷ Some local governments offer rebates for the costs of private sewer lateral replacement or rehabilitation.⁸

Inspection Technologies

Before camera and robotic equipment became widely available, sewer inspections relied upon visual and lamping approaches.⁹ Workers would enter a maintenance access point (manhole) and visually examine the pipes. Sometimes workers would also attempt to illuminate the interior of a pipe to determine whether the light could reach the adjacent manhole (an approach known as lamping). If light was observed, the pipe was assumed to be relatively free from obstructions, but if light was not observed, the pipe was assumed to have a blockage that could obstruct flow.¹⁰

Today, workers are more likely to rely upon remote, non-entry, camera-based inspections such as cameras, closed-circuit television (CCTV), laser profiling, and sonar assessment.¹¹ Workers can use cameras by mounting them on a pole and lowering them into a manhole; an equipment operator can then remotely view at street level what the camera observes in the pipe. Another option is to use robotic systems mounted with CCTV camera equipment, which can be remotely operated, controlled, and monitored from ground level.¹² Laser profiling goes beyond visual inspection and allows for geometric measurements to be obtained. Sonar profiling equipment requires that the sensing apparatus be completely submerged and only provides an assessment of the pipe condition under the water level; therefore, sonar equipment is often coupled with CCTV equipment so that the pipe above and below the water level can be inspected.¹³

Sanitary Sewer Lateral Inspection Programs for Counties and Municipalities

A sanitary sewer lateral is defined in Florida law as a privately owned pipeline connecting a property to the main sewer line which is maintained and repaired by the property owner.¹⁴

⁶ Chapter 7, s. 701.2, *Florida Building Code, Plumbing: 7th Edition* (July 2020), available at <https://codes.iccsafe.org/content/FLPC2020P1/chapter-7-sanitary-drainage>.

⁷ See ss. 125.569 and 166.0481, F.S.

⁸ See Pinellas County, *Private Sewer Lateral Program*, <https://pinellas.gov/programs/private-sewer-lateral-program/> (last visited Mar. 21, 2023); Emerald Coast Utilities Authority, *Private Sewer Lateral Program*, <https://ecua.fl.gov/private-sewer-lateral-program> (providing that the City of Pensacola offers assistance to certain qualified owners under the City's rehabilitation program) (last visited Mar. 21, 2023).

⁹ EPA, *Demonstration of Innovative Sewer System Inspection Technology: SL-RAT*, s. 1.2, available at <https://nepis.epa.gov/Adobe/PDF/P100IY1P.pdf>.

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

¹⁴ Section 125.569(1), F.S.

Sections 125.569 and 166.0481, F.S., encourage counties and municipalities, respectively, to establish an evaluation and rehabilitation program for sanitary sewer laterals on residential and commercial properties within the county's jurisdiction to identify and reduce extraneous flow from leaking sanitary sewer laterals.¹⁵ Counties and municipalities that opt to establish such a program are authorized to do the following:

- Establish a system to identify defective, damaged, or deteriorated sanitary sewer laterals on residential and commercial properties within their respective jurisdictions;
- Consider economical methods for a property owner to repair or replace a defective, damaged, or deteriorated sanitary sewer lateral; and,
- Establish and maintain a publicly accessible database to store information concerning properties where a defective, damaged, or deteriorated sanitary sewer lateral has been identified. For each property, the database must include, but is not limited to, the address of the property, the names of any persons the county or municipality notified concerning the faulty sanitary sewer lateral, and the date and method of such notification.¹⁶

III. Effect of Proposed Changes:

Sections 1 and 2 amend ss. 125.569 and 166.0481, F.S., relating to counties and municipalities, respectively. The bill makes the following changes to both sections of law.

The bill defines the term “continuous monolithic pipe system” to mean a pipe system with no joints or seams, including all points where the pipe connects to the structure, mainline, and the cleanout.

The bill authorizes counties and municipalities to access any sanitary sewer lateral within their jurisdictions to investigate, clean, repair, recondition, or replace the sanitary sewer lateral.

The bill deletes the deadline (July 2022) by which counties are encouraged to establish a sanitary sewer lateral evaluation and rehabilitation program.

The bill adds to and revises the discretionary minimum program requirements for counties and municipalities that establish an evaluation and rehabilitation program for sanitary sewer laterals on residential and commercial properties. For a county or municipality that identifies a defective, damaged, or deteriorated sanitary sewer lateral and initiates a program to eliminate extraneous flow, the bill:

- Requires the county or municipality to notify the property owner of the issue by certified mail, return receipt requested. The notice must specify that the county or municipality intends to access the owner's property within 14 days after the property owner receives the notice to address the defective, damaged, or deteriorated sanitary sewer lateral. The notice must identify the issue, inform the property owner that he or she will be indemnified and held harmless in the repair process, and provide a proposed timeline and plan for the duration of the project, including start and completion dates.

¹⁵ See generally ss. 125.569 and 166.0481, F.S.

¹⁶ Sections 125.569(2) and 166.0481(2), F.S.

- Provides that the county or municipality is responsible for any repair work done on the private property. If any disruption of the property is necessary to access the sanitary sewer lateral, the county or municipality must ensure that the property is restored to at least its pre-work condition after the repair is complete.
- Requires that the repair work done to a sanitary sewer lateral by a county or municipality meets the following requirements:
 - Provide one continuous monolithic pipe system with connections for the structure, mainline, and cleanout installed and integrated into the continuous monolithic pipe system by a Florida licensed plumber; and
 - Be inspected using a lateral launch or similar CCTV camera system conducted by a Pipeline Assessment Certification Program (PACP) and Lateral Assessment and Certification Program (LACP)-certified camera operator. The contractor must produce and provide the county or municipality with a PACP- and LACP-certified report describing the conditions of the continuous monolithic pipe system and the respective connections to the main sewer pipe and the structure.

The bill authorizes the county or municipality to consider economical methods to repair or replace a defective, damaged, or deteriorated sanitary sewer lateral.¹⁷ The bill also authorizes the county or municipality to use state or local funds allocated for the purpose of environmental preservation or the protection of water quality for a sanitary sewer lateral program.

The bill provides that counties and municipalities may elect to establish and implement an alternative evaluation and rehabilitation program to identify and reduce extraneous flow from leaking sanitary sewer laterals.

Section 3 provides an effective date of July 1, 2023.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The bill adds discretionary requirements to the evaluation and rehabilitation program that counties and municipalities may establish for sanitary sewer laterals. The bill is not a mandate because it does not require the expenditure of funds for the program. Therefore, the county/municipality mandates provision of Art. VII, s. 18(a) of the Florida Constitution does not apply.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

¹⁷ Currently, property owners are authorized to consider such economical methods. Sections 125.569(3)(b) and 166.0481(3)(b), F.S.

D. State Tax or Fee Increases:

None.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 125.569 and 166.0481.

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.

By Senator Rodriguez

40-00542-23

20231420__

A bill to be entitled

An act relating to sanitary sewer lateral inspection programs; amending ss. 125.569 and 166.0481, F.S.; defining the term "continuous monolithic pipe system"; authorizing counties and municipalities, respectively, to access sanitary sewer laterals within their jurisdictions for specified purposes; requiring counties and municipalities to notify private property owners within a specified timeframe if the county or municipality intends to access the owner's sanitary sewer lateral; specifying requirements for such notification; providing that counties and municipalities that establish evaluation and rehabilitation programs are responsible for all work done on private property; requiring counties and municipalities to ensure property is restored to pre-work condition; specifying requirements for counties and municipalities repair work; requiring counties and municipalities that establish programs to consider economical methods for the counties and municipalities, rather than the property owners, to complete such work; authorizing a program established by a county or a municipality to evaluate and rehabilitate sanitary sewer laterals on residential and commercial properties to use state or local funds allocated for environmental preservation or the protection of water quality; providing that counties and municipalities may establish and implement alternative evaluation and rehabilitation programs to

40-00542-23

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identify and reduce extraneous flow from leaking
sanitary sewer laterals; providing an effective date.

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

Section 1. Section 125.569, Florida Statutes, is amended to
read:

125.569 County sanitary sewer lateral inspections
~~inspection programs for counties.~~

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

(a) "Continuous monolithic pipe system" means a pipe system
without any joints or seams, including all points where the pipe
connects to the structure, mainline, and cleanout.

(b) "Sanitary sewer lateral" means a privately owned
pipeline connecting a property to the main sewer line which is
maintained and repaired by the property owner.

(2) A county may access any sanitary sewer lateral within
its jurisdiction to investigate, clean, repair, recondition, or
replace the sanitary sewer lateral.

(3) By July 1, 2022, Each county may ~~is encouraged to~~
establish an evaluation and rehabilitation program for sanitary
sewer laterals on residential and commercial properties within
the county's jurisdiction to identify and reduce extraneous flow
from leaking sanitary sewer laterals. At a minimum, the program
may do all of the following:

(a) Establish a system to identify defective, damaged, or
deteriorated sanitary sewer laterals on residential and
commercial properties within the jurisdiction of the county. If
a county identifies a defective, damaged, or deteriorated

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sanitary sewer lateral and initiates a program to eliminate extraneous flow, the county:

1. Must notify the property owner of the issue by certified mail, return receipt requested. The notice must specify that within 14 days after receiving the notice, the county intends to access the owner's property to address the defective, damaged, or deteriorated sanitary sewer lateral. The notice must identify the issue, inform the property owner that he or she will be indemnified and held harmless in the repair process, and provide a proposed timeline and plan for the duration of the project, including start and completion dates.

2. Is responsible for any repair work done on the private property. If any disruption of the property is necessary to access the sanitary sewer lateral, the county must ensure that the property is restored to at least its pre-work condition after the repair is complete. Any repair work done to a sanitary sewer lateral must meet all of the following requirements:

a. Provide one continuous monolithic pipe system. The connections for the structure, mainline, and cleanout must be installed and integrated into the continuous monolithic pipe system by a Florida-licensed plumber.

b. Be inspected using a lateral launch or similar CCTV camera system operated by a Pipeline Assessment Certification Program (PACP)- and Lateral Assessment Certification Program (LACP)-certified camera operator. The contractor must produce and provide the county with a PACP- and LACP-certified report describing the conditions in the continuous monolithic pipe system and the respective connections to the main sewer pipe and the structure.

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(b) Consider economical methods for the county ~~a property owner~~ to repair or replace a defective, damaged, or deteriorated sanitary sewer lateral.

(c) Establish and maintain a publicly accessible database to store information concerning properties where a defective, damaged, or deteriorated sanitary sewer lateral has been identified. For each property, the database must include, but is not limited to, the address of the property, the names of any persons the county notified concerning the faulty sanitary sewer lateral, and the date and method of such notification.

(d) Use state or local funds allocated for the purpose of environmental preservation or the protection of water quality.

(4) Notwithstanding subsection (3), a county may elect to establish and implement an alternative evaluation and rehabilitation program to identify and reduce extraneous flow from leaking sanitary sewer laterals.

Section 2. Section 166.0481, Florida Statutes, is amended to read:

166.0481 Municipal sanitary sewer lateral inspections ~~inspection programs for municipalities.~~

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

(a) "Continuous monolithic pipe system" means a pipe system without any joints or seams, including all points where the pipe connects to the structure, mainline, and cleanout.

(b) "Sanitary sewer lateral" means a privately owned pipeline connecting a property to the main sewer line which is maintained and repaired by the property owner.

(2) A municipality may access any sanitary sewer lateral within its jurisdiction to investigate, clean, repair,

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recondition, or replace the sanitary sewer lateral.

(3) ~~By July 1, 2022,~~ Each municipality may ~~is encouraged to~~ establish an evaluation and rehabilitation program for sanitary sewer laterals on residential and commercial properties within the municipality's jurisdiction to identify and reduce extraneous flow from leaking sanitary sewer laterals. At a minimum, the program may do all of the following:

(a) Establish a system to identify defective, damaged, or deteriorated sanitary sewer laterals on residential and commercial properties within the jurisdiction of the municipality. If a municipality identifies a defective, damaged, or deteriorated sanitary sewer lateral and initiates a program to eliminate extraneous flow, the municipality:

1. Must notify the property owner of the issue by certified mail, return receipt requested. The notice must specify that within 14 days after receiving the notice, the municipality intends to access the owner's property to address the defective, damaged, or deteriorated sanitary sewer lateral. The notice must identify the issue, inform the property owner that he or she will be indemnified and held harmless in the repair process, and provide a proposed timeline and plan for the duration of the project, including start and completion dates.

2. Is responsible for any repair work done on the private property. If any disruption of the property is necessary to access the sanitary sewer lateral, the municipality must ensure that the property is restored to at least its pre-work condition after the repair is complete. Any repair work done to a sanitary sewer lateral must meet all of the following requirements:

a. Provide one continuous monolithic pipe system. The

40-00542-23

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connections for the structure, mainline, and cleanout must be installed and integrated into the continuous monolithic pipe system by a Florida-licensed plumber.

b. Be inspected using a lateral launch or similar CCTV camera system operated by a Pipeline Assessment Certification Program (PACP)- and Lateral Assessment Certification Program (LACP)-certified camera operator. The contractor must produce and provide the county with a PACP- and LACP-certified report describing the conditions in the continuous monolithic pipe system and the respective connections to the main sewer pipe and the structure.

(b) Consider economical methods for the municipality ~~a property owner~~ to repair or replace a defective, damaged, or deteriorated sanitary sewer lateral.

(c) Establish and maintain a publicly accessible database to store information concerning properties where a defective, damaged, or deteriorated sanitary sewer lateral has been identified. For each property, the database must include, but is not limited to, the address of the property, the names of any persons the municipality notified concerning the faulty sanitary sewer lateral, and the date and method of such notification.

(d) Use state or local funds allocated for the purpose of environmental preservation or the protection of water quality.

(4) Notwithstanding subsection (3), a municipality may elect to establish and implement an alternative evaluation and rehabilitation program to identify and reduce extraneous flow from leaking sanitary sewer laterals.

Section 3. This act shall take effect July 1, 2023.

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

9/27/23

Meeting Date

SB 1502

Bill Number (if applicable)

Topic

Anchoring Limitation Areas

Amendment Barcode (if applicable)

Name

Bonnie Basham

Job Title

Address

10799 Wadesboro Rd

Street

Phone

850 933 7277

City

Tulh

State

FL

Zip

32317

Email

Capital-Ideas@ATV.net

Speaking:

☐

For

☐

Against

☐

Information

Waive Speaking:

☐

In Support

☒

Against

(The Chair will read this information into the record.)

Representing

Boat Owners of the United States Boat US

Appearing at request of Chair:

☐

Yes

☒

No

Lobbyist registered with Legislature:

☒

Yes

☐

No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL: SB 1502

INTRODUCER: Senator Rodriguez

SUBJECT: Vessel Owner and Operation Requirements

DATE: March 24, 2023

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Carroll	Rogers	EN	Favorable
2.			AEG	
3.			FP	

I. Summary:

SB 1502 prohibits a person from anchoring a vessel in certain listed anchoring limitation areas for more than four hours per day. This is an expansion of current law, which limits anchoring in these areas between one-half hour before sunrise and one-half hour after sunset. The bill adds sections of Biscayne Bay in Miami-Dade County to the list of anchoring limitation areas.

The list of anchoring limitation areas are described as areas lying between certain islands or landmarks and the bill defines “lying between” as including all of the area 200 yards to the west from the western shore of the Sunset Islands and Di Lido Island, all of the area 200 yards to the north from the northern shore of the Sunset Islands, and all of the area 200 yards to the east from the eastern shore of Di Lido Island.

The bill deletes language that currently allows anchoring in an anchoring limitation area during special events (not including regattas, tournaments, or marine parades or exhibitions) that include public music performances, local government waterfront activities, or fireworks displays.

The bill requires a law enforcement officer who issues a citation to a vessel owner for a violation of vessel safety laws to conduct a national criminal background check on the vessel owner.

II. Present Situation:

Fish and Wildlife Conservation Commission

The Florida Fish and Wildlife Conservation Commission (FWC) is governed by a board of seven members who are appointed by the Governor and confirmed by the Florida Senate.¹ The Division of Law Enforcement Boating and Waterways Section of FWC oversees and coordinates statewide regulatory waterway markers to ensure compliance with uniform markers and state boating and resource protection zones for the benefit of all waterway users and fish and wildlife resources in the state.² The Boating and Waterways Section takes public input and provides notice of proposed local boating-restricted areas.³

FWC's boating laws are enforced by the Division of Law Enforcement and its officers, county sheriffs and deputies, municipal police officers, and any other law enforcement officer.⁴ The Division of Law Enforcement manages the state's waterways to ensure boating safety for residents of and visitors to the state.⁵ This includes enforcing boating rules and regulations, coordinating boating safety campaigns and education, managing public waters and access to the waters, conducting boating accident investigations, identifying and removing derelict vessels, and investigating vessel theft and title fraud.⁶

Anchoring or Mooring

Anchoring or mooring refers to a boater's practice of seeking and using a safe harbor on the public waterway system for an undefined duration. Anchoring is accomplished using an anchor carried on the vessel.⁷ Mooring is accomplished through the use of moorings permanently affixed to the bottom of the waterbody. Anchorages are areas that boaters regularly use for anchoring or mooring, whether designated or managed for that purpose or not. Mooring fields are areas designated and used for a system of properly spaced moorings.⁸

¹ FLA. CONST. art. IV, s. 9; *see also* s. 379.102(1), F.S.

² FWC, *Waterway Management*, <https://myfwc.com/boating/waterway/> (last visited Mar. 13, 2023).

³ *Id.*

⁴ Section 327.70(1), F.S.; *see* s. 943.10(1), F.S., which defines "law enforcement officer" as any person who is elected, appointed, or employed full time by any municipality or the state or any political subdivision thereof; who is vested with authority to bear arms and make arrests; and whose primary responsibility is the prevention and detection of crime or the enforcement of the penal, criminal, traffic, or highway laws of the state. The definition also includes all certified supervisory and command personnel whose duties include, in whole or in part, the supervision, training, guidance, and management responsibilities of full-time law enforcement officers, part-time law enforcement officers, or auxiliary law enforcement officers but does not include support personnel employed by the employing agency.

⁵ Fish and Wildlife Conservation Commission (FWC), *Boating*, <https://myfwc.com/boating/> (last visited Mar. 13, 2023).

⁶ FWC, *Law Enforcement*, <https://myfwc.com/about/inside-fwc/le/> (last visited Mar. 13, 2023). *See* s. 327.70(1) and (4), F.S.

⁷ Section 327.02, F.S., defines the term "vessel" to include every description of watercraft, barge, and airboat, other than a seaplane on the water, used or capable of being used as a means of transportation on water.

⁸ Ankersen, Hamann, & Flagg, *Anchoring Away: Government Regulation and the Rights of Navigation in Florida*, 2 (Rev. May 2012), available at <https://repository.library.noaa.gov/view/noaa/36907>.

Anchoring Limitation Areas

State law designates certain densely populated urban areas as anchoring limitation areas.⁹ These areas usually have narrow state waterways, residential docking facilities, and significant recreational boating traffic. The listed anchoring limitation areas are:

- The section of Middle River lying between Northeast 21st Court and the Intracoastal Waterway in Broward County;
- Sunset Lake in Miami-Dade County; and
- The sections of Biscayne Bay in Miami-Dade County lying between:
 - Rivo Alto Island and Di Lido Island,
 - San Marino Island and San Marco Island, and
 - San Marco Island and Biscayne Island.¹⁰

Exceptions to anchoring prohibitions in an anchoring limitation area include the following:

- When a vessel suffers a mechanical failure that poses an unreasonable risk of harm to the vessel or the persons onboard unless the vessel anchors;
- If imminent or existing weather conditions in the vicinity of the vessel pose an unreasonable risk of harm to the vessel or the persons onboard unless the vessel anchors; and
- During a regatta, tournament, or marine parade or exhibition or other special events, including, but not limited to, public music performances, local government waterfront activities, or fireworks displays.¹¹

Vessels exempt from anchoring prohibitions in an anchoring limitation area include the following:

- Vessels owned or operated by a government entity for law enforcement, firefighting, military, or rescue purposes;
- Construction or dredging vessels on an active job site;
- Vessels actively engaged in commercial fishing; and
- Vessels engaged in recreational fishing if the persons onboard are actively tending hook and line fishing gear or nets.¹²

Law enforcement officers or agencies may remove and impound, for up to 48 hours, vessels from anchoring limitation areas when a vessel operator who was previously issued a citation:

- Continues to anchor the vessel in an anchoring limitation area within 12 hours of being issued a citation; or
- Refuses to leave the anchoring limitation area after being directed to do so by a law enforcement officer or agency.¹³

In addition to the civil penalty imposed by a citation, a vessel operator whose vessel has been impounded must pay all of the applicable removal and storage fees before the vessel is released.¹⁴

⁹ Section 327.4108(1), F.S.

¹⁰ *Id.* Counties may create more anchoring limitation areas under certain circumstances. Section 327.4108(2), F.S.

¹¹ Section 327.4108 (4), F.S.

¹² Section 327.4108(5), F.S.

¹³ Section 327.4108(6), F.S.

¹⁴ *Id.*

An owner or operator of a vessel who anchors in an anchoring limitation area commits a noncriminal infraction and is subject to a uniform boating citation and penalties. The civil penalty provided is up to a maximum of:

- \$100 for a first offense;
- \$250 for a second offense; and
- \$500 for a third or subsequent offense.¹⁵

Section 327.73(1) F.S., provides that any person who fails to appear or otherwise properly respond to a uniform boating citation must, in addition to the charge relating to the violation of the boating laws, be charged with a second degree misdemeanor, which is punishable by a maximum fine of \$500 and no more than a 60-day imprisonment.¹⁶

National Criminal Background Check

The Florida Department of Law Enforcement makes state and national criminal history information available to governmental agencies for licensing and employment.¹⁷ A State of Florida criminal history record check may currently be ordered online for a fee paid at the time of request.¹⁸

Biscayne Bay

Biscayne Bay is a 428-square mile estuary extending nearly the entire length of Miami-Dade County.¹⁹ The Bay is home to over 500 species of fish and other marine organisms, and its extensive areas of seagrasses are an important food source for the Florida manatee and as nursery areas for many ecologically and commercially important estuarine species like shrimps, crabs, lobster, and sponges.²⁰ Miami-Dade County is one of Florida's most populous counties, with approximately 2.7 million residents.²¹ The county sees millions of visitors each year.²²

¹⁵ Section 327.73(1)(z), F.S.

¹⁶ Sections 775.082 and 775.083, F.S.

¹⁷ Florida Department of Law Enforcement (FDLE), *State and National Criminal History Record Check*, <https://www.fdle.state.fl.us/Criminal-History-Records/National-Checks> (last visited Mar. 13, 2023).

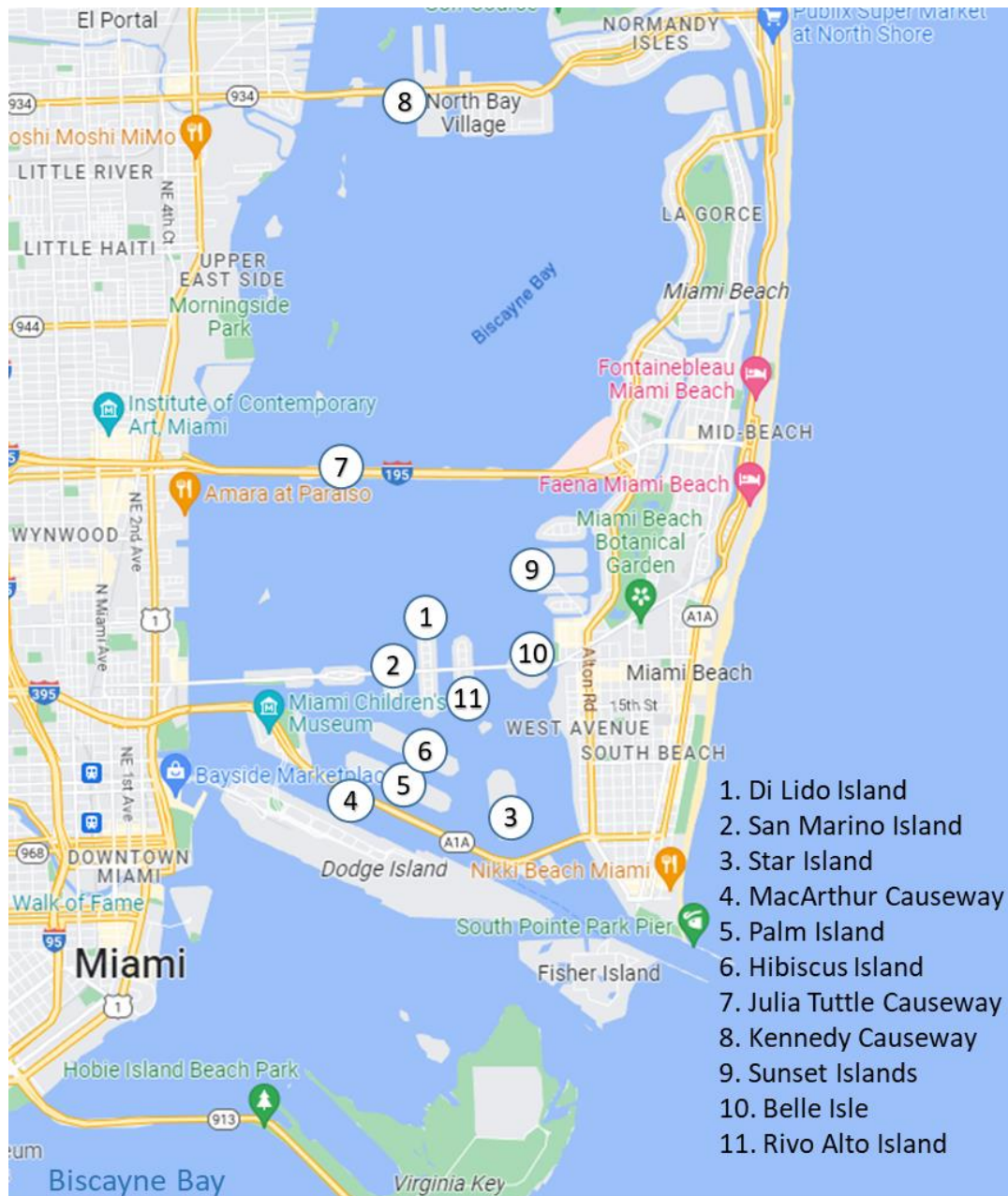
¹⁸ FDLE, *State of Florida Criminal History Record Check*, <https://www.fdle.state.fl.us/Criminal-History-Records/Florida-Checks.aspx> (last visited Mar. 20, 2023).

¹⁹ Miami-Dade County, *About Biscayne Bay*, <https://www.miamidade.gov/global/economy/environment/about-biscayne-bay.page> (last visited Mar. 12, 2023).

²⁰ U.S. Army Corps of Engineers, *Biscayne Bay Coastal Wetlands Project*, <https://www.saj.usace.army.mil/BBCW/> (last visited Mar. 12, 2023).

²¹ Florida Department of Environmental Protection, *Biscayne Bay Aquatic Preserves*, <https://floridadep.gov/rcp/aquatic-preserve/BiscayneBayAquaticPreserves> (last visited Mar. 12, 2023).

²² Miami-Dade County, *About Biscayne Bay*.



III. Effect of Proposed Changes:

Section 1 amends s. 327.4108, F.S., to prohibit a person from anchoring a vessel in certain listed anchoring limitation areas for more than four hours per day. This is an expansion of current law, which limits anchoring in these areas between one-half hour before sunrise and one-half hour after sunset.

The bill adds sections of Biscayne Bay in Miami-Dade County to the listed anchoring limitation areas that lie between:

- Di Lido Island and San Marino Island,
- Star Island and MacArthur Causeway,

- Palm Island and MacArthur Causeway,
- Hibiscus Island and Palm Island,
- Julia Tuttle Causeway and Kennedy Causeway,
- The Sunset Islands, and
- Belle Isle and Rivo Alto Island.

The bill defines “lying between” as including, without limitation, all of the area 200 yards to the west from the western shore of the Sunset Islands and Di Lido Island, all of the area 200 yards to the north from the northern shore of the Sunset Islands, and all of the area 200 yards to the east from the eastern shore of Di Lido Island.

The bill removes language allowing anchoring in an anchoring limitation area during special events (not including regattas, tournaments, or marine parades or exhibitions) that include public music performances, local government waterfront activities, or fireworks displays.

The bill makes technical changes.

Section 2 amends s. 327.70, F.S., to require a law enforcement officer who issues a citation to a vessel owner for a violation of ch. 327, F.S., concerning vessel safety, to conduct a national criminal background check on the vessel owner.

Section 3 provides an effective date of July 1, 2023.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

Art. III, s. 10 of the Florida Constitution prohibits the Legislature from enacting any special law unless notice is first published or a referendum is conducted. A special law or “local law” relates to or operates upon a particular person, thing, or part of the state; it does not apply with geographic uniformity across the state and bears no reasonable

relationship to differences in population or other legitimate criteria.²³ On the other hand, a general law of local application relates to a class of persons or things or subdivisions of the state, based upon distinctions or differences that are inherent or particular to the class or location. The Legislature is granted wide discretion in making such classifications.²⁴ If a particular condition exists in only a portion of the state, enactments that reference the limited geographic area may be general laws.²⁵ “[I]f a law utilizes a classification that is geographical in its terms but the purpose of the statute is one of statewide importance and impact, and the classification is reasonably related to the law’s purpose, it is a valid general law.”²⁶

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

According to the Florida Fish and Wildlife Conservation Commission (FWC), law enforcement officers may conduct criminal background checks on vessel owners who have been issued a citation, however a national criminal background check is more in-depth than what officers typically conduct. FWC has suggested removing “national” from the requirement in Section 2 of the bill.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends sections 327.4108 and 327.70 of the Florida Statutes.

²³ See *State ex rel. Landis v. Harris*, 163 So. 237, 240 (Fla. 1934); and *Lawnwood Medical Center, Inc. v. Seeger*, 990 So.2d 503 (Fla. 2008).

²⁴ *Shelton v. Reeder*, 121 So. 2d 145, 151 (Fla. 1960). But see also FLA. CONST. Art. X, s. 11s.

²⁵ *Schrader v. Florida Keys Aqueduct Authority*, 840 So.2d 1050, 1055 (Fla. 2003).

²⁶ *Id.* at 1056.

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.

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



843964

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
03/24/2023	.	
	.	
	.	
	.	

The Committee on Environment and Natural Resources (Rodriguez)
recommended the following:

Senate Amendment (with directory and title amendments)

Delete lines 24 - 67
and insert:
areas, within which a person may not anchor a vessel at any time
during the period between one-half hour after sunset and one-
half hour before sunrise, except as provided in subsections (4)
and (5):
(a) The section of Middle River lying between Northeast
21st Court and the Intracoastal Waterway in Broward County.



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(b) Sunset Lake in Miami-Dade County.

(c) The sections of Biscayne Bay in Miami-Dade County lying
between MacArthur Causeway and John F. Kennedy Causeway.÷

~~1. Rivo Alto Island and Di Lido Island.~~

~~2. San Marino Island and San Marco Island.~~

~~3. San Marco Island and Biscayne Island.~~

===== D I R E C T O R Y C L A U S E A M E N D M E N T =====

And the directory clause is amended as follows:

Delete lines 16 - 17

and insert:

Section 1. Subsection (1) of section 327.4108, Florida
Statutes, is amended to read:

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

And the title is amended as follows:

Delete lines 5 - 12

and insert:

Biscayne Bay in Miami-Dade County; providing an
effective date.

By Senator Rodriguez

40-01732D-23

20231502__

A bill to be entitled
An act relating to vessel owner and operation requirements; amending s. 327.4108, F.S.; revising anchoring limitation areas in certain sections of Biscayne Bay in Miami-Dade County; revising the timeframe during which a person may anchor a vessel in an anchoring limitation area within which such anchoring would otherwise be unlawful; amending s. 327.70, F.S.; requiring law enforcement officers to conduct national criminal background checks for vessel owners who are issued citations for specified violations; providing an effective date.

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

Section 1. Subsection (1) and paragraph (c) of subsection (4) of section 327.4108, Florida Statutes, are amended to read:
327.4108 Anchoring of vessels in anchoring limitation areas.—

(1) The following densely populated urban areas, which have narrow state waterways, residential docking facilities, and significant recreational boating traffic, are designated as and shall be considered to be grandfathered-in anchoring limitation areas, within which, except as provided in subsections (4) and (5), a person may not anchor a vessel at any time during the period between one-half hour after sunset and one-half hour before sunrise and, at any other time, for more than 4 hours in a single day ~~except as provided in subsections (4) and (5):~~

(a) The section of Middle River lying between Northeast

40-01732D-23

20231502__

21st Court and the Intracoastal Waterway in Broward County.

(b) Sunset Lake in Miami-Dade County.

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

1. Rivo Alto Island and Di Lido Island.

2. Di Lido Island and San Marino Island.

3.2- San Marino Island and San Marco Island.

4.3- San Marco Island and Biscayne Island.

5. Star Island and MacArthur Causeway.

6. Palm Island and MacArthur Causeway.

7. Hibiscus Island and Palm Island.

8. Julia Tuttle Causeway and Kennedy Causeway.

9. The Sunset Islands.

10. Belle Isle and Rivo Alto Island.

For the purposes of this paragraph, the term "lying between" includes, without limitation, all of the area 200 yards to the west from the western shore of the Sunset Islands and Di Lido Island, all of the area 200 yards to the north from the northern shore of the Sunset Islands, and all of the area 200 yards to the east from the eastern shore of Di Lido Island.

(4) Notwithstanding subsections (1), (2), and (3), a person may anchor a vessel in an anchoring limitation area during a time that would otherwise be unlawful:

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

40-01732D-23

20231502__

59 is less.

60 Section 2. Present subsection (5) of section 327.70,
61 Florida Statutes, is redesignated as subsection (6), and a new
62 subsection (5) is added to that section, to read:

63 327.70 Enforcement of this chapter and chapter 328.—

64 (5) When a law enforcement officer issues a citation to a
65 vessel owner for a violation of this chapter, the law
66 enforcement officer must conduct a national criminal background
67 check on the vessel owner.

68 Section 3. This act shall take effect July 1, 2023.



The Florida Senate

Committee Agenda Request

To: Senator Ana Maria Rodriguez, Chair
Committee on Environment and Natural Resources

Subject: Committee Agenda Request

Date: March 13, 2023

I respectfully request that **Senate Bill 1686**, relating to Designation of Brevard Barrier Island Area as an Area of Critical State Concern, be placed on the:

- ☐ committee agenda at your earliest possible convenience.
- ☒ next committee agenda.

Thank you for your consideration.

A handwritten signature in black ink that reads "Tom A. Wright". The signature is written in a cursive style with a large, sweeping "T" and "W".

Senator Tom A. Wright
Florida Senate, District 8

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL: CS/SB 1686

INTRODUCER: Environment and Natural Resources Committee and Senator Wright

SUBJECT: Designation of Brevard Barrier Island Area as an Area of Critical State Concern

DATE: March 27, 2023

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Carroll	Rogers	EN	Fav/CS
2.			CA	
3.			RC	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Technical Changes

I. Summary:

CS/SB 1686 establishes the Brevard Barrier Island Area as an area of critical state concern. The bill provides Legislative findings regarding the necessity of designating the Brevard Barrier Island Area as an area of critical state concern. These findings include environmental, economic, and safety considerations. The bill provides that the Legislature intends to:

- Establish a land use management system that protects the natural environment of the southern Brevard Barrier Island Area;
- Establish a land use management system that promotes orderly and balanced growth in accordance with the capacity of existing public facilities and services;
- Protect and improve the Indian River Lagoon ecosystem, including improving water quality of the Brevard Barrier Island Area by funding water quality improvement projects; and
- Ensure that the population of the Brevard Barrier Island can be safely evacuated.

The bill provides guiding principles for development within the Brevard Barrier Island Area. It also allows for the removal of the Brevard Barrier Island Area's designation as an area of critical state concern if the legislative intent has been fulfilled and the work program tasks specified in rules of the Administration Commission have been completed. The bill provides criteria that must be met before the state land planning agency may recommend removing the area of critical state concern designation.

Beginning November 30, 2030, the state land planning agency must submit an annual written report to the Administration Commission on the progress of the Brevard Barrier Island Area.

II. Present Situation:

Areas of Critical State Concern

The Areas of Critical State Concern Program was created in the Florida Environmental Land and Water Management Act of 1972.¹ The program is intended to protect resources and public facilities of major statewide significance, within designated geographic areas, from uncontrolled development that would cause substantial deterioration of such resources.²

The Department of Economic Opportunity (DEO)³ may recommend specific areas of critical state concern to the Administration Commission, which includes the Governor and Cabinet.⁴ Within 45 days, the Commission must either reject or adopt the recommendation, with or without modification, and by rule designate the area of critical state concern.⁵ If the rule is adopted, it is then submitted to the President of the Senate and the Speaker of the House of Representatives no later than 30 days prior to the next regular session of the Legislature.⁶

An area of critical state concern may be designated for:

- An area containing, or having a significant impact upon, environmental or natural resources of regional or statewide importance, the uncontrolled private or public development of which would cause substantial deterioration of such resources;
- An area containing, or having a significant impact upon, historical or archaeological resources, sites, or statutorily defined historical or archaeological districts, the private or public development of which would cause substantial deterioration or complete loss of such resources, sites, or districts; or
- An area having a significant impact upon, or being significantly impacted by, an existing or proposed major public facility or other area of major public investment.⁷

Once an area of critical state concern is designated, DEO reviews all local development projects within area and may appeal to the Florida Land and Water Adjudicatory Commission⁸ any local development orders that are inconsistent with state guidelines and local comprehensive plans and regulations. DEO must also review and approve amendments to comprehensive plans and land development regulations proposed and adopted by local governments within the designated areas.⁹

¹ Chapter 72-317, Laws of Fla.; Department of Economic Opportunity (DEO), *Areas of Critical State Concern Program*, <https://www.floridajobs.org/community-planning-and-development/programs/community-planning-table-of-contents/areas-of-critical-state-concern> (last visited Mar. 21, 2023).

² DEO, *Areas of Critical State Concern Program*.

³ DEO is the state land planning agency. Section 380.031(18), F.S.

⁴ Section 380.031(1), F.S.; s. 380.05(1)(a), F.S.

⁵ Section 380.05(1)(b), F.S.

⁶ Section 380.05(1)(c), F.S.

⁷ Section 380.05(2), F.S.

⁸ The Florida Land and Water Adjudicatory Commission consists of the Administration Commission, which includes the Governor and members of the Cabinet. Florida Land and Water Adjudicatory Commission, *Statement of Agency Organization and Operation*, 1 (2023), available at <https://www.myflorida.com/myflorida/cabinet/flwac/flwac.pdf>; s. 380.031(1), F.S.

⁹ DEO, *Areas of Critical State Concern Program*.

Areas of critical state concern currently designated in the state include the Big Cypress,¹⁰ Green Swamp,¹¹ Florida Keys,¹² and Apalachicola Bay¹³ areas of critical state concern.

Brevard Barrier Island Area

Barrier islands form as waves repeatedly deposit sediment parallel to the shoreline. As wind and waves shift according to weather patterns and local geographic features, these islands constantly move, erode, and grow.¹⁴ They are generally separated from the mainland by tidal creeks, bays, and lagoons. Beaches and sand dune systems form on the side of the island facing the ocean; the side facing the shore often contains marshes, tidal flats, and maritime forests. These areas are important habitat for seabirds, fish and shellfish, and nesting sea turtles.¹⁵

These islands are critical to protecting coastal communities and ecosystems from extreme weather.¹⁶ Beach dunes and grasses on barrier islands absorb wave energy before the wave hits the mainland. This generally means smaller storm surge and less flooding on the coast. Today, barrier islands are disappearing at a high rate.¹⁷

The Brevard Barrier Island Area's beaches are important nesting grounds for threatened and endangered sea turtles and are home to the largest nesting aggregation of loggerhead sea turtles in the world.¹⁸ The barrier island is bordered by the Indian River Lagoon (IRL), and its ecosystem helps protect the water quality and ecological productivity of the IRL.¹⁹

The Indian River Lagoon

The IRL is a 156-mile-long estuary spanning approximately 40 percent of Florida's east coast.²⁰ There are six coastal counties in the IRL watershed: Volusia, Brevard, Indian River, St. Lucie, Martin, and Palm Beach.²¹ The IRL extends from Ponce de Leon Inlet near New Smyrna Beach

¹⁰ Section 380.055, F.S.

¹¹ Section 380.0551, F.S.

¹² Section 380.0552, F.S.

¹³ Section 380.0555, F.S.

¹⁴ National Oceanic and Atmospheric Administration (NOAA), *What is a barrier island?*,

[https://oceanservice.noaa.gov/facts/barrier-](https://oceanservice.noaa.gov/facts/barrier-islands.html#:~:text=These%20islands%20are%20critical%20to,less%20flooding%20on%20the%20coast)

[islands.html#:~:text=These%20islands%20are%20critical%20to,less%20flooding%20on%20the%20coast](https://oceanservice.noaa.gov/facts/barrier-islands.html#:~:text=These%20islands%20are%20critical%20to,less%20flooding%20on%20the%20coast) (last visited Mar. 21, 2023).

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ Sea Turtle Conservancy, *Barrier Island Education Center*, <https://conserveturtles.org/barrier-island-education-center/> (last visited Mar. 21, 2023).

¹⁹ Indian River Lagoon Species Inventory, *Barrier Islands*, <https://irlspecies.org/misc/BarrierisInd.php> (last visited Mar. 21, 2023).

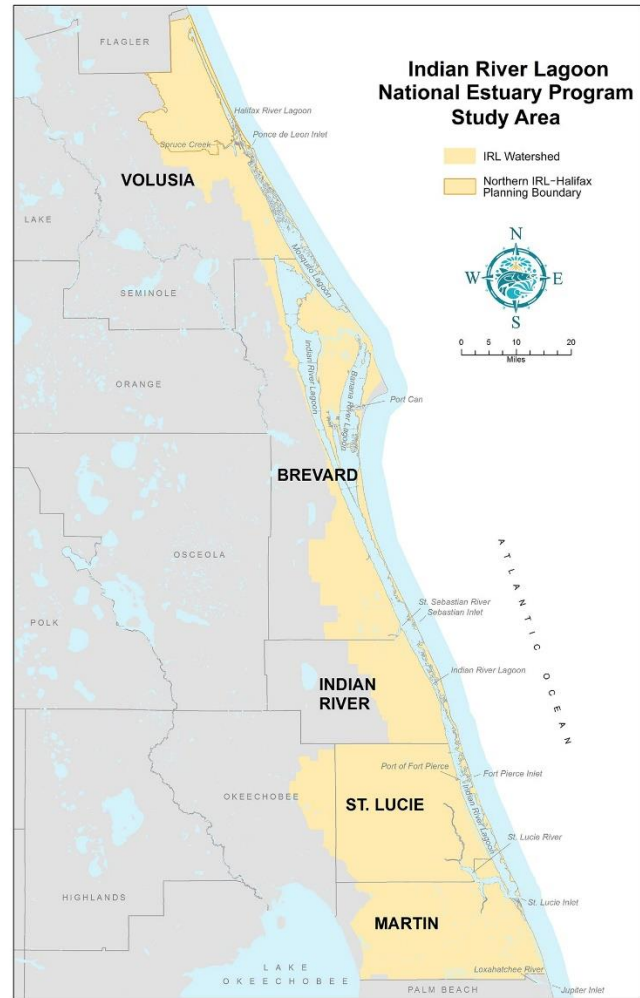
²⁰ DEP, Basin Management Action Plan, *Indian River Lagoon Basin Central Indian River Lagoon*, 14 (2021), available at https://publicfiles.dep.state.fl.us/DEAR/BMAP/IndianRiverLagoon/BMAP_Documents/2021_IRL_BMAP_Final/CIRL/Final_CIRL_BMAP_02102021.pdf; IRLNEP, *Importance*, <https://onelagoon.org/importance/> (last visited Feb. 15, 2023).

²¹ DEP, Basin Management Action Plan, *Indian River Lagoon Basin Central Indian River Lagoon*, 14 (2021).

in Volusia County to the southern border of Jupiter Inlet in Martin County.²² There are three interconnected lagoons in the IRL basin: Mosquito Lagoon, Banana River Lagoon, and Indian River Lagoon.²³ Seventy-one percent of its area and nearly half its length is within Brevard County.²⁴

The IRL is considered the most biologically diverse estuary in North America.²⁵ It is home to more than 2,000 species of plants, 600 species of fish, 300 species of birds, and 53 threatened or endangered species.²⁶ In 2014, the estimated annual economic value received from the IRL was approximately \$7.6 billion, around \$1.57 billion of which was attributable to recreation and visitor-related activity.²⁷ Industry groups directly influenced by the IRL supported nearly 72,000 jobs.²⁸

The IRL ecosystem has been harmed by human activities in the region. Stormwater runoff from urban and agricultural areas, wastewater treatment facility discharges, canal discharges, septic systems, animal waste, and fertilizer applications have led to harmful levels of nutrients and sediments



²² *Id.*

²³ DEP, TMDL Report, *Nutrient and Dissolved Oxygen TMDLs for the Indian River Lagoon and Banana River Lagoon*, 1 (Mar. 2009), available at <https://floridadep.gov/sites/default/files/indian-banana-nutrient-do-tmdl.pdf>.

²⁴ Tetra Tech, Inc. & Closewaters, LLC, *Save Our Indian River Lagoon Project Plan 2019 Update*, xi (Feb. 2023)[hereinafter *Save Our Lagoon*], available at <https://www.brevardfl.gov/SaveOurLagoon/ProjectPlan>. The map on this page shows the IRL watershed. IRLNEP, *IRLWatershedMap_With PlBound*, https://onelagoon.org/irlwatershedmap_withplbound/# (last visited Feb. 17, 2023).

²⁵ DEP, Basin Management Action Plan, *Indian River Lagoon Basin Central Indian River Lagoon*, 45 (2021), available at <https://floridadep.gov/sites/default/files/central-irl-bmap.pdf>; An estuary is a partially enclosed, coastal waterbody where freshwater from rivers and streams mixes with saltwater from the ocean. Estuaries are among the most productive ecosystems on earth, home to unique plant and animal communities that have adapted to brackish water: freshwater mixed with saltwater. U.S. EPA, *What Is An Estuary?*, <https://www.epa.gov/nep/basic-information-about-estuaries> (last visited Feb. 15, 2023); NOAA, *What Is An Estuary?*, <https://oceanservice.noaa.gov/facts/estuary.html> (last visited Feb. 15, 2023).

²⁶ Indian River Lagoon Species Inventory, *Biodiversity*, https://www.irlspecies.org/misc/Total_Biodiv.php#:~:text=Home%20to%20over%204%2C200%20species%20of%20plants%2C%20birds%2C,species%20of%20fish%20and%20370%20species%20of%20birds (last visited Feb. 15, 2023).

²⁷ East Central Florida Regional Planning Council and Treasure Coast Regional Planning Council, *Indian River Lagoon Economic Valuation Update*, vi, ix (Aug. 26, 2016), available at https://files.tcrpc.org/portfolio%20of%20work/Economic%20Development/IRL%20Valuation/FinalReportIRL08_26_2016.pdf.

²⁸ *Id.* at ix.

entering the lagoon.²⁹ The St. Lucie Estuary also discharges water that often contains toxic cyanobacteria (also known as blue-green algae) from Lake Okeechobee into the IRL.³⁰ These pollutants create cloudy conditions, feed algal blooms, and lead to muck accumulation, all of which negatively impact the seagrass that provides habitat for much of the IRL's marine life.³¹ During the 2011 "Superbloom," intense algal blooms of phytoplankton occurred throughout most of the IRL, lasting for seven months and resulting in massive losses of seagrass that has yet to fully recover.³² There have also been recurring brown tides;³³ unusual mortalities of dolphins, manatees, and shorebirds; and large fish kills due to low dissolved oxygen from decomposing algae.³⁴

Archie Carr National Wildlife Refuge and Sea Turtles

In North America, sea turtles primarily nest from North Carolina through Florida, with over 90 percent of nesting occurring in Florida.³⁵ Within that range is the Archie Carr National Wildlife Refuge (Carr Refuge), a 20.5-mile section of shoreline between Melbourne Beach and Wabasso, along Florida's east central coast. Since its establishment by Congress in 1989, the Carr Refuge, named after the Sea Turtle Conservancy's founding scientific director, has been a major success. The stretch of beach within the Refuge boundary is the most important sea turtle nesting habitat in the United States.³⁶

Sea turtles are large, air-breathing reptiles that inhabit tropical and subtropical seas throughout the world.³⁷ Their shells consist of an upper part (carapace) and a lower section (plastron). Hard scales (or scutes) cover all but the leatherback turtle and the number and arrangement of these scutes can be used to determine the species.³⁸

Only female sea turtles come ashore to nest as males rarely ever return to land after crawling into the sea as hatchlings. Most females return to nest on the beach where they were born. Nesting

²⁹ Tetra Tech, Inc. & Closewaters, LLC, *Save Our Indian River Lagoon Project Plan 2019 Update* at xi; [Marine Resources Council, *Indian River Lagoon Health Update*, 4-7 \(2018\), available at https://savetheirl.org/wp-content/uploads/mrc-report-card-2018-min.pdf](https://savetheirl.org/wp-content/uploads/mrc-report-card-2018-min.pdf).

³⁰ DEP, *Basin Management Action Plan, St. Lucie River and Estuary Basin*, 15 (2020), available at https://publicfiles.dep.state.fl.us/DEAR/DEARweb/BMAP/NEEP_2020_Updates/St_Lucie_BMAP_01-31-20.pdf; DEP, *Basin Management Action Plan, Lake Okeechobee*, 14 (2020), available at https://publicfiles.dep.state.fl.us/DEAR/DEARweb/BMAP/NEEP_2020_Updates/Lake%20Okeechobee%20BMAP_01-31-20.pdf.

³¹ Tetra Tech, Inc. & Closewaters, LLC, *Save Our Indian River Lagoon Project Plan 2019 Update* at xi.

³² IRL 2011 Consortium, *Indian River Lagoon 2011 Superbloom - Plan of Investigation*, 2-3 (2012), available at https://www.sjrwmd.com/static/waterways/irl-technical//2011superbloom_investigationplan_June_2012.pdf; Marine Resources Council, *Indian River Lagoon Coastal Community Report Card*, 2,4 (2022), available at <https://savetheirl.org/wp-content/uploads/IRLReportCard2022-opt.pdf>.

³³ Brown tide is a type of algal bloom dominated by a brown, microscopic marine algae, which can be harmful to ecosystems in high concentrations, and was first documented in state waters in 2012. FWC, *Effects of Brown Tide in the Indian River Lagoon* (2012), <https://myfwc.com/research/redtide/monitoring/historical-events/brown-tide/> (last visited Feb. 15, 2023).

³⁴ Tetra Tech, Inc. & Closewaters, LLC, *Save Our Indian River Lagoon Project Plan 2019 Update* at xi.

³⁵ Sea Turtle Conservancy, *Barrier Island Education Center*, <https://conserveturtles.org/barrier-island-education-center/> (last visited Mar. 21, 2023).

³⁶ *Id.*

³⁷ Sea Turtle Conservancy, *Information about Sea Turtles: An Introduction*, <https://conserveturtles.org/information-about-sea-turtles-an-introduction/> (last visited Mar. 21, 2023).

³⁸ *Id.*

seasons occur at different times around the world. In the U.S., nesting occurs from April through October. Most females nest at least twice during each mating season; some may nest up to ten times in a season. However, a female will not nest in consecutive years, typically skipping one or two years before returning.³⁹

Researchers do not yet know how long young sea turtles spend in the open sea or exactly where they go, but once they reach the size of a dinner-plate they appear at feeding grounds in nearshore waters. They grow slowly and take between 15 and 50 years to reach reproductive maturity, depending on the species. There is no way to determine the age of a sea turtle from its physical appearance. It is theorized that some species can live over 100 years.⁴⁰

Green, leatherback, and hawksbill sea turtles are classified as endangered in the U.S. under the Endangered Species Act.⁴¹ More loggerheads nest within the Carr Refuge than anywhere else in the Western Hemisphere. Over the past several years, there has been an observed increase in both green turtle and leatherback nesting in the Carr Refuge, indicating that the protection of these beaches is essential to the survival and recovery of these three species.⁴²

III. Effect of Proposed Changes:

Section 1 creates s. 380.0553, F.S., to establish the Brevard Barrier Island Area as an area of critical state concern. The bill may be cited as the “Brevard Barrier Island Area Protection Act.” The bill contains the following legislative findings regarding the necessity of designating the Brevard Barrier Island Area as an area of critical state concern:

- The southern barrier island of Brevard County represents one of the most fragile and endangered coastal ecosystems in North America and the beaches, dunes, coastal scrub, and maritime hammock areas of the barrier island ecosystem represent some of the most fragile and endangered natural upland communities in the state and nation;
- The beaches of the region are among the most important nesting grounds for threatened and endangered sea turtles in the Western Hemisphere and the beach running the length of the southern barrier island in Brevard County is home to the largest nesting aggregation of loggerhead sea turtles in the world and the management decisions made in the region have global impacts for the species;
- The Archie Carr National Wildlife Refuge is located within the Brevard Barrier Island Area and is a significant conservation area designated to protect habitat at the most significant area for loggerhead sea turtle nesting in the world, at the most significant area for green turtle nesting in North America, and for a diverse array of plant and animal species;
- The Indian River Lagoon (IRL), designated as an Estuary of National Significance by the U.S. Environmental Protection Agency in 1990, borders the western shore of the barrier

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ *Id.* The Endangered Species Act (ESA) defines an endangered species as any species which is in danger of extinction throughout all or a significant portion of its range. Endangered species are automatically protected by prohibitions of several types of “take,” including harming, harassing, collecting, or killing, under Section 9 of the ESA. NOAA, *What is the difference between a threatened and endangered species?*, <https://oceanservice.noaa.gov/facts/endangered.html> (last visited Mar. 21, 2023).

⁴² Sea Turtle Conservancy, *Barrier Island Education Center*.

island and the natural habitats of the barrier island ecosystem protect the water quality and productivity of the IRL;

- The saltwater recreational fishery of the IRL generates hundreds of millions of dollars per year in local economic benefits;
- Density limitations and natural resource protection on the barrier island has increased public tax burdens associated with the provisions of services, building and maintenance of infrastructure for barrier island residential developments, and public costs for rebuilding public and private structures following severe erosion events;
- Protection of the primary dune system of the barrier island provides the only protective buffer for local development from storm surges associated with tropical storms and hurricanes; and
- The entirety of the barrier island lies within a zone that is the first to be subject to mandatory evacuation protocols due to the vulnerability of the barrier island in hurricane events and the adverse impacts of such vulnerability on evacuating safely.

Through this bill, the Legislature intends to:

- Establish a land use management system that protects the natural environment of the southern Brevard Barrier Island Area;
- Establish a land use management system that promotes orderly and balanced growth in accordance with the capacity of existing public facilities and services;
- Protect and improve the IRL ecosystem, including improving water quality of the Brevard Barrier Island Area through federal, state, and local funding of water quality improvement projects; and
- Ensure that the population of the Brevard Barrier Island can be safely evacuated in the event of a hurricane.

The bill provides that the Brevard Barrier Island Area is that portion of Brevard County bounded on the north by the southern boundary of the Town of Melbourne Beach, on the east by the Atlantic Ocean, on the west by the Indian River, and on the south by the southern boundary of Sebastian Inlet State Park. The bill provides township, ranges, and sections as designated by the Brevard Public Land Survey System.

The bill directs state, regional, and local agencies and units of government in the Brevard Barrier Island Area to coordinate their plans and conduct their programs and regulatory activities to be consistent with all of the following guiding principles for development within the area:

- Preventing the adverse impacts of development on resources critical to sea turtle habitat by prohibiting new shoreline hardening structures and enforcing existing state and county coastal construction regulations;
- Prioritizing water quality restoration projects in the IRL;
- Reducing nutrient contributions from septic tanks and wastewater facilities, stormwater discharges, and agriculture non-point sources into the IRL;
- Supporting innovative, nature-based solutions including living shorelines, and freshwater and coastal wetland restoration;
- Safeguarding against adverse economic, social, environmental, and public health and safety impacts posed by flooding and storm surge by protecting critical assets identified in s. 380.093, F.S.;

- Protecting shoreline and marine resources, including mangroves, seagrass beds, wetlands, sea turtles, manatees, and fish and wildlife, and related habitats;
- Protecting upland resources, including dune ridges, beaches, wildlife, and related habitats;
- Limiting the adverse impacts of development on the quality of water throughout the Brevard Barrier Island Area and the Indian River Lagoon;
- Enhancing natural scenic resources to promote the aesthetic benefits of the natural environment; and
- Ensuring that development is compatible with the unique barrier island characteristics.

The bill allows the designation of the Brevard Barrier Island Area as an area of critical state concern to be recommended for removal if the legislative intent has been fulfilled and the work program tasks specified in rules of the Administration Commission have been completed. Beginning November 30, 2030, the state land planning agency must annually submit a written report to the Administration Commission describing the progress of the Brevard Barrier Island Area and shall recommend removing the area of critical state concern designation if it determines that:

- Adequate restoration and renourishment programs are in place to preserve the beaches and dunes of the southern barrier island in Brevard County for nesting sea turtles;
- Seagrass replanting in the IRL extending the length of the Brevard Barrier Island Protection Area is in a coverage volume that would establish recovery to scientifically defensible reference targets;
- Nonpoint pollution sources into the IRL that contribute to total phosphorus, total nitrogen, chlorophyll-a, fecal coliform, and metals have been sufficiently reduced to meet water quality criteria standards resulting in the removal of the IRL from the impaired waters list;
- The green sea turtle (*Chelonia mydas*), loggerhead sea turtle (*Caretta caretta*), and leatherback sea turtle (*Dermochelys coriacea*) have been delisted from the Florida Endangered and Threatened Species rule and the Florida Marine Turtle Protection Act;
- All local comprehensive plans and land development regulations and the administration of such plans and regulations are adequate to protect the Brevard Barrier Island Area, fulfill the legislative intent expressed in the bill, and are consistent with and further the principles guiding development; and
- A local government has adopted a resolution at a public hearing recommending the removal of the designation.

Section 2 provides an effective date of July 1, 2023.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates section 380.0553 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

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

CS by Environment and Natural Resources on March 27, 2023:

The committee substitute makes technical changes.

B. Amendments:

None.



142928

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/27/2023	.	
	.	
	.	
	.	

The Committee on Environment and Natural Resources (Wright)
recommended the following:

Senate Amendment

Delete lines 67 - 85
and insert:

(a) Establish a land use management system that protects
the natural environment of the southern Brevard Barrier Island
Area.

(b) Establish a land use management system that promotes
orderly and balanced growth in accordance with the capacity of
existing public facilities and services.



142928

11 (c) Protect and improve the Indian River Lagoon ecosystem,
12 including improving water quality of the Brevard Barrier Island
13 Area through federal, state, and local funding of water quality
14 improvement projects.

15 (d) Ensure that the population of the Brevard Barrier
16 Island can be safely evacuated in the event of a hurricane.

17 (4) DESIGNATION.—The Brevard Barrier Island Area, as
18 described in this subsection, is designated as an area of
19 critical state concern. The Brevard Barrier Island Area is that
20 portion of Brevard County bounded on the north by the southern
21 boundary of the Town of Melbourne Beach, on the east by the
22 Atlantic Ocean, on the west by the Indian River, and on the
23 south by the southern boundary of Sebastian Inlet State

By Senator Wright

8-01431A-23

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A bill to be entitled
An act relating to the designation of Brevard Barrier
Island Area as an area of critical state concern;
creating s. 380.0553, F.S.; providing a short title;
providing legislative findings and intent; designating
the Brevard Barrier Island Area as an area of critical
state concern; providing guiding principles for
development within the area; providing for removal of
the designation; providing an effective date.

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

Section 1. Section 380.0553, Florida Statutes, is created
to read:

380.0553 Brevard Barrier Island Area; protection and
designation as area of critical state concern.—

(1) SHORT TITLE.—This section may be cited as the "Brevard
Barrier Island Area Protection Act."

(2) LEGISLATIVE FINDINGS.—The Legislature finds that the
designation of the Brevard Barrier Island Area as an area of
critical state concern is necessary for the following reasons:

(a) The southern barrier island of Brevard County
represents one of the most fragile and endangered coastal
ecosystems in North America and the beaches, dunes, coastal
scrub, and maritime hammock areas of the barrier island
ecosystem represent some of the most fragile and endangered
natural upland communities in the state and nation.

(b) The beaches of the region are among the most important
nesting grounds for threatened and endangered sea turtles in the

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30 Western Hemisphere and the beach running the length of the
31 southern barrier island in Brevard County is home to the largest
32 nesting aggregation of loggerhead sea turtles in the world and
33 the management decisions made in the region have global impacts
34 for the species.

35 (c) The Archie Carr National Wildlife Refuge is located
36 within the Brevard barrier island and is a significant
37 conservation area designated to protect habitat at the most
38 significant area for loggerhead sea turtle nesting in the world,
39 at the most significant area for green turtle nesting in North
40 America, and for a diverse array of plant and animal species.

41 (d) The Indian River Lagoon, designated as an Estuary of
42 National Significance by the United States Environmental
43 Protection Agency in 1990, borders the western shore of the
44 barrier island and the natural habitats of the barrier island
45 ecosystem protect the water quality and productivity of the
46 Indian River Lagoon.

47 (e) The salt water recreational fishery of the Indian River
48 Lagoon generates hundreds of millions of dollars per year in
49 local economic benefit.

50 (f) Density limitations and natural resource protection on
51 the barrier island has decreased public tax burdens associated
52 with the provisions of services, building and maintenance of
53 infrastructure for barrier island residential developments, and
54 public costs for rebuilding public and private structures
55 following severe erosion events.

56 (g) Protection of the primary dune system of the barrier
57 island provides the only protective buffer for local development
58 from storm surges associated with tropical storms and

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hurricanes.

(h) The entirety of the barrier island lies within a zone that is the first to be subject to mandatory evacuation protocols due to the vulnerability of the barrier island in hurricane events and the adverse impacts of such vulnerability on evacuating safely.

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

(a) Establish a land use management system that protect that natural environment of the southern Brevard Barrier Island Area.

(b) Establish a land use management system that promotes orderly and balanced growth in accordance with the capacity of existing public facilities and services.

(c) Protect and improve the Indian River Lagoon ecosystem, including improving water quality of the Brevard Barrier Island Area through federal, state, and local funding of water quality improvement projects.

(d) Ensure that the population of the Brevard Barrier Island can be safely evacuated in the event of a hurricane.

(4) DESIGNATION.—The Brevard Barrier Island Area, as described in this subsection, is designated as an area of critical state concern. The Brevard Barrier Island Area is that portion of Brevard County formed by the southern boundary of the Town of Melbourne Beach, the Indian River as the western boundary, the Atlantic Ocean as the eastern boundary, extending south to the southern boundary of the Sebastian Inlet State Park. Specifically including the following township, ranges, and sections as designated by the Brevard Public Land Survey System:

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28-38-17-18, 28-38-20-21, 28-38-28, 28-38-33-34, 29-38-03, 29-38-10-11, 29-38-14-15, 29-38-22-24, the barrier island portion only of 29-38-27, 29-38-25-26, 29-38-35-36, 29-39-31, 30-38-01, 30-39-06-08, 30-39-17-18, and 30-39-20.

(5) GUIDING PRINCIPLES FOR DEVELOPMENT.—State, regional, and local agencies and units of government in the Brevard Barrier Island Area shall coordinate their plans and conduct their programs and regulatory activities to be consistent with all of the following guiding principles for development within the area:

(a) Preventing the adverse impacts of development on resources critical to sea turtle habitat by prohibiting new shoreline hardening structures and enforcing existing state and county coastal construction regulations.

(b) Prioritizing water quality restoration projects in the Indian River Lagoon.

(c) Reducing nutrient contributions from septic tanks and wastewater facilities, stormwater discharges, and agriculture non-point sources into the Indian River Lagoon.

(d) Supporting innovative, nature-based solutions including living shorelines, and freshwater and coastal wetland restoration.

(e) Safeguarding against adverse economic, social, environmental, and public health and safety impacts posed by flooding and storm surge by protecting critical assets identified in s. 380.093.

(f) Protecting shoreline and marine resources, including mangroves, seagrass beds, wetlands, sea turtles, manatees, and fish and wildlife, and related habitats.

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117 (g) Protecting upland resources, including dune ridges,
118 beaches, wildlife, and related habitats.

119 (h) Limiting the adverse impacts of development on the
120 quality of water throughout the Brevard Barrier Island Area and
121 the Indian River Lagoon.

122 (i) Enhancing natural scenic resources to promote the
123 aesthetic benefits of the natural environment.

124 (j) Ensuring that development is compatible with the unique
125 barrier island characteristics.

126 (6) REMOVAL OF DESIGNATION.—

127 (a) The designation of the Brevard Barrier Island Area as
128 an area of critical state concern under this section may be
129 recommended for removal upon fulfilling the legislative intent
130 under subsection (3) and completion of all the work program
131 tasks specified in rules of the Administration Commission.

132 (b) Beginning November 30, 2030, the state land planning
133 agency shall annually submit a written report to the
134 Administration Commission describing the progress of the Brevard
135 Barrier Island Area toward completing the work program tasks
136 specified in the commission rules. The land planning agency
137 shall recommend removing the Brevard Barrier Island Area from
138 being designated as an area of critical state concern to the
139 commission if it determines that:

140 1. Adequate restoration and renourishment programs are in
141 place to preserve the beaches and dunes of the southern barrier
142 island in Brevard County for nesting sea turtles;

143 2. Seagrass replanting in the Indian River Lagoon extending
144 the length of the Brevard Barrier Island Protection Area is in a
145 coverage volume that would establish recovery to scientifically

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defensible reference targets;

3. Nonpoint pollution sources into the Indian River Lagoon that contribute to total phosphorus, total nitrogen, chlorophyll-a, fecal coliform, and metals have been sufficiently reduced to meet water quality criteria standards resulting in the removal of the Indian River Lagoon from the impaired waters list;

4. The green sea turtle (Chelonia mydas), loggerhead sea turtle (Caretta caretta), and leatherback sea turtle (Dermochelys coriacea) have been delisted from the Florida Endangered and Threatened Species rule and the Florida Marine Turtle Protection Act under s. 379.2431;

5. All local comprehensive plans and land development regulations and the administration of such plans and regulations are adequate to protect the Brevard Barrier Island Area, fulfill the legislative intent specified in subsection (2), and are consistent with and further the principles guiding development; and

6. A local government has adopted a resolution at a public hearing recommending the removal of the designation.

Section 2. This act shall take effect July 1, 2023.

CourtSmart Tag Report

Room: SB 301
Caption: Committee on Environment & Natural Resources

Type:
Judge:

Started: 3/27/2023 11:31:23 AM
Ends: 3/27/2023 12:29:56 PM **Length:** 00:58:34

11:31:23 AM Meeting called to order by Chair Rodriguez
11:31:31 AM roll call
11:31:41 AM A quorum is present
11:32:06 AM Pledge of Allegiance
11:32:09 AM SB 1134 is TP'd
11:32:25 AM tab 1 - confirmation of DEP Sec'y Shawn Hamilton
11:32:55 AM Sec'y Hamilton recognized to address committee
11:36:48 AM Garrett Wallace w/ Nature Conservancy waives in support
11:36:58 AM Andrew Ketchel, representing Everglades Trust, waives in support
11:37:09 AM Vice-chair Harrell in debate
11:38:12 AM Sen. Albritton in debate
11:40:35 AM Sen. Mayfield recognized in debate
11:42:26 AM Sen. Powell in debate
11:43:11 AM Sen. Mayfield moves to recognize confirmation - roll call
11:43:28 AM Sec'y Hamilton's confirmation is favorable
11:43:45 AM Sen. Trumbull is next to explain SB 702 for Sen. Simon
11:44:35 AM Sen. Powell recognized for a question
11:44:47 AM Sen. Trumbull responds
11:45:05 AM Mayor Brenda Ash of Apalachicola waives in support
11:45:17 AM Sen. Trumbull waives close of Sen. Simon's bill - roll call
11:45:32 AM SB 702 is reported favorably
11:45:40 AM tab 13 - SB 1018 by Sen. Trumbull
11:45:54 AM bill is explained
11:46:30 AM Vice-chair Harrell recognized with a question
11:46:46 AM Sen. Trumbull responds
11:47:29 AM Kate Wesner w/ Amer. Flood Coalition Action waives in support
11:47:37 AM Sen. Trumbull waives close
11:47:45 AM SB 1018 reported favorably
11:47:58 AM tab 14 - CS/SB 1258 by Trumbull
11:48:08 AM Sen. Trumbull explains bill
11:49:06 AM Sen. Stewart recognized for a question
11:49:24 AM Sen. Trumbull responds
11:50:02 AM follow-up question
11:50:17 AM response by sponsor
11:50:56 AM Ryan Smart, Exec. Dir. of Fla. Springs Council, waives against
11:51:06 AM Tanner Warwick w/ AIF waives in support
11:51:11 AM David Cullen, Sierra Club of Fla., waives against
11:51:17 AM Carolyn Johnson, Fla. Chamber of Commerce, waives in support
11:51:25 AM Jane Blais of Right to Clean Water speaks against
11:54:52 AM Kenny Miller, Sr. Tech. Advisor of Ops. w/ Mosaic, speaks in support
11:58:03 AM Sen. Powell recognized in debate
11:58:41 AM Sen. Stewart in debate
12:00:08 PM Leader Albritton in debate
12:01:55 PM Sen. Trumbull closes on bill
12:02:42 PM roll call - CS/SB 1258 reported favorably
12:03:05 PM tab 16 - SJR 1234
12:03:22 PM Sen. Brodeur explains bill
12:04:00 PM Late-filed amendment 841044 introduced
12:04:23 PM Sen. Polsky recognized for question
12:04:33 PM Sen. Brodeur responds
12:04:59 PM Lane Stephens, representing SE Dog Hunters Assc., speaks in support of amendment
12:06:11 PM Sen. Brodeur closes on amendment

12:06:21 PM Amendment adopted
12:06:26 PM Sen. Powell recognized to ask question on bill
12:06:43 PM sponsor responds
12:07:36 PM back & forth
12:08:09 PM Luke Hilgemann, ED of T. Roosevelt Action, speaks in support
12:09:31 PM question from Sen. Powell
12:10:05 PM Mr. Hilgemann responds
12:11:18 PM Chris Coker w/ Int'l Order of T. Roosevelt, waives in support
12:11:26 PM Travis Thompson, ED of Fla. Guides Assn., speaks in support
12:13:16 PM Jennnifer Ungru w/ Amer. Sports Fishing Assn., waives in support
12:13:31 PM Leader Albritton in debate
12:14:17 PM Sen. Polsky in debate
12:15:58 PM Sen. Martin in debate
12:16:42 PM Sen. Brodeur closes on bill
12:17:06 PM roll call - SJR 1234 reported favorably
12:17:33 PM tab 12 - SB 742
12:17:37 PM Sen. Grall explains SB 742
12:18:19 PM Sen. Grall explains Strike All amendment (914922)
12:19:10 PM Sen. Grall waives close on amendment
12:19:20 PM Amendment adopted
12:19:24 PM Chris Stranburg, LAD for Amers. for Prosperity, waives in support
12:19:41 PM Sen. Grall waives close
12:19:46 PM roll call - CS/SB 742 reported favorably
12:20:00 PM tabs 2-10 - confirmation appointments
12:20:22 PM Sen. Powell in debate
12:22:22 PM Harrell motions that the committee confirm all
12:22:38 PM roll call - confirmation of tabs 2-10 reported favorably
12:22:50 PM tab 19 - SB 1686
12:23:01 PM Sen. Wright explains bill
12:24:06 PM Amendment 142928 explained by Sen. Wright
12:24:28 PM sponsor waives close; amendment adopted
12:24:47 PM Sen. Wright closes on CS/SB 1686
12:25:07 PM roll call - reported favorably
12:25:23 PM chair yielded to Vice-Chair Harrell
12:25:32 PM tab 17 - SB 1420, Sen. Rodriguez explains bill
12:26:02 PM Sen. Rodriguez waives close
12:26:07 PM roll call - SB 1420 reported favorably
12:26:30 PM tab 18 - SB 1502
12:26:36 PM Sen. Rodriguez explains bill
12:27:18 PM Bonnie Basham, Boat Owners of the US, waives in opposition
12:27:40 PM Sen. Rodriguez waives close
12:27:50 PM roll call - SB 1502 reported favorably
12:28:04 PM chair returned to Sen. Rodriguez
12:28:14 PM Sen. Wright - votes affirmatively on tab 1 & Sec'y Hamilton confirmation
12:28:31 PM Sen. Powell moves to adjourn