

The Florida Senate
COMMITTEE MEETING EXPANDED AGENDA

COMMUNITY AFFAIRS
Senator Bennett, Chair
Senator Norman, Vice Chair

MEETING DATE: Monday, April 11, 2011

TIME: 1:00 —4:00 p.m.

PLACE: Pat Thomas Committee Room, 412 Knott Building

MEMBERS: Senator Bennett, Chair; Senator Norman, Vice Chair; Senators Dockery, Hill, Richter, Ring, Storms, Thrasher, and Wise

TAB	OFFICE and APPOINTMENT (HOME CITY)	FOR TERM ENDING	COMMITTEE ACTION
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Senate Confirmation Hearing: A public hearing will be held for consideration of the below-named executive appointment to the office indicated.

Secretary of Community Affairs

1	Buzzett, William A. (Santa Rosa Beach)	Pleasure of Governor
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TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
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2	CS/CS/SB 1698 Environmental Preservation and Conservation / Health Regulation / Dean (Compare H 13, H 167, S 82, S 130, S 168)	Onsite Sewage Treatment and Disposal Systems; Defines the term "bedroom." Provides for any permit issued and approved by the Department of Health for the installation, modification, or repair of an onsite sewage treatment and disposal system to transfer with the title of the property. Provides circumstances in which an onsite sewage treatment and disposal system is not considered abandoned. Provides for the validity of an onsite sewage treatment and disposal system permit if rules change before final approval of the constructed system, etc.
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HR	03/28/2011 Fav/CS
EP	03/30/2011 Fav/CS
CA	04/11/2011
BC	

3	SB 292 Dean (Similar CS/H 847)	Mobile Home and Recreational Vehicle Parks; Specifies laws and rules to be enforced by the Department of Health. Provides that an operator of a mobile home park, lodging park, recreational vehicle park, or recreational camp who refuses to pay the operating permit fee required by law or who fails, neglects, or refuses to obtain an operating permit for the park commits a misdemeanor of the second degree. Provides a penalty for failure to depart from a park under certain circumstances, etc.
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TR	02/07/2011 Favorable
HR	03/28/2011 Fav/1 Amendment
CA	04/11/2011
BC	

COMMITTEE MEETING EXPANDED AGENDA

Community Affairs

Monday, April 11, 2011, 1:00 —4:00 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
4	CS/SB 1110 Military Affairs, Space, and Domestic Security / Dean (Identical H 829)	40th Anniversary/U.S. End of Involvement/Vietnam; Designates March 25, 2013, the 40th anniversary of the end of the United States' involvement in the Vietnam War, as a legal holiday. Requires the Department of Veterans' Affairs to administratively promote and support the efforts of counties, municipalities, and veterans' organizations that voluntarily hold special community events commemorating such anniversary and subsequent observances of Vietnam Veterans' Day. Creates the Vietnam Veterans license plate, etc. MS 03/23/2011 Fav/CS CA 04/11/2011 BC	
5	CS/SB 796 Environmental Preservation and Conservation / Diaz de la Portilla (Similar CS/H 613)	Domestic Wastewater Ocean Outfalls; Postpones the dates by which domestic wastewater facilities must meet more stringent treatment and management requirements for the discharge of domestic wastewater. Authorizes utilities to apportion the amount of wastewater outfall for purposes of meeting the reuse requirements. Provides additional requirements for the plans submitted to the Department of Environmental Protection by the holder of a permit authorizing the discharge of domestic wastewater through an ocean outfall, etc. EP 03/17/2011 Fav/CS CA 04/11/2011 BC	
6	SJR 808 Diaz de la Portilla (Identical HJR 789)	Homestead Exemption/Senior Citizens; Proposes amendments to the State Constitution to authorize counties to exempt the homesteads of eligible senior citizens from increases in ad valorem taxation. CA 04/11/2011 JU BC	
7	SB 1634 Lynn (Similar H 4021, Compare CS/H 5005)	Water Vending Machines; Repeals provisions relating to the regulation of water vending machines and the permitting of water vending machine operators. Deletes provisions for the deposit of operator permitting fees, the enforcement of the state's water vending machine regulations, penalties, and the preemption of county and municipal water vending machine regulations, to conform. EP 03/23/2011 Favorable CA 04/11/2011 CM	

COMMITTEE MEETING EXPANDED AGENDA

Community Affairs

Monday, April 11, 2011, 1:00 —4:00 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
8	CS/SB 632 Higher Education / Oelrich (Compare H 4175, H 4177, H 5201, CS/S 1732)	Postsecondary Education; Revises provisions relating to the disposal of personal property lost or abandoned on a university or Florida College System institution campus and the disposition of proceeds from the sale of such property. Repeals a provision relating to an exemption for students who earn 9 or more credits from one or more of the articulated acceleration mechanisms from any requirement of a public postsecondary educational institution which mandates enrollment during a summer term, etc. HE 03/14/2011 Temporarily Postponed HE 03/22/2011 Fav/CS CA 04/11/2011 BC	
9	CS/SB 1528 Commerce and Tourism / Altman (Similar H 753)	Secondary Metals Recyclers; Revises the period required for secondary metals recyclers to maintain certain information regarding purchase transactions involving regulated metals property. Prohibits secondary metals recyclers from purchasing regulated metals property without maintaining certain records. Limits civil liability of secondary metals recyclers under certain circumstances. Preempts to the state the regulation of secondary metals recyclers and purchase transactions involving regulated metals property, etc. CM 03/29/2011 Fav/CS CA 04/11/2011 CJ BC	
10	SB 1864 Altman (Compare CS/H 1281)	Energy Conservation; Provides for a portion of the proceeds of the local government infrastructure surtax to be used for financial assistance to homeowners who make energy efficiency improvements or install renewable energy devices. Defines the terms "renewable energy devices" and "energy efficiency improvement." CA 04/11/2011 CU BC	

COMMITTEE MEETING EXPANDED AGENDA

Community Affairs

Monday, April 11, 2011, 1:00 —4:00 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
11	CS/SB 386 Governmental Oversight and Accountability / Bogdanoff (Similar S 1258, Compare H 1079)	Procurement/Preference to Florida Businesses; Cites this act as the "Buy Florida Act." Requires an agency, county, municipality, school district, or other political subdivision of the state to grant a specified preference to a vendor located within the state when awarding a contract for printing under certain circumstances. Specifies the percentages of preference to be granted, etc. GO 03/23/2011 Fav/CS CA 04/11/2011 BC	
12	CS/SB 594 Judiciary / Hays (Identical CS/CS/H 277)	Sovereign Immunity; Requires that a claim in a wrongful death case be presented to the Department of Financial Services (DFS) within 2 years after the claim accrues. Provides that failure of the DFS or the appropriate agency to make final disposition of a claim for wrongful death within 90 days after it is filed is deemed to be a final denial of the claim. Tolls the statute of limitations for the period of time taken by the DFS or other agency to deny a medical malpractice or wrongful death claim, etc. JU 03/09/2011 Fav/CS GO 03/30/2011 Favorable CA 04/11/2011	
13	CS/SB 296 Commerce and Tourism / Wise (Compare H 901)	Household Moving Services; Provides for the biennial renewal of mover and moving broker registrations. Prohibits a mover or moving broker from conducting business without being registered with the department. Preempts local ordinances and regulations except in certain counties. Restricts the levy or collection of local registration fees and taxes of movers and moving brokers. Provides for local registration and bonding, etc. CM 03/16/2011 Temporarily Postponed CM 03/29/2011 Fav/CS CA 04/11/2011 BC	
14	SB 722 Norman (Identical H 4075, S 1780)	Damage By Dogs; Redefines the term "dangerous dog" to exclude dogs trained or used for dog fighting from the term. AG 03/07/2011 Favorable CA 04/11/2011 RC	

Amended
250

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

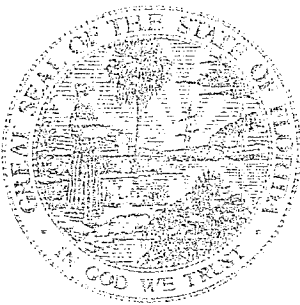
I, Kurt S. Browning, Secretary of State,
do hereby certify that

William A. Buzzett

is duly appointed

**Secretary,
Department of Community Affairs**

for a term beginning on the
Eleventh day of January, A.D., 2011,
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 Twenty-Fourth day of February, A.D., 2011.*

Secretary of State



RICK SCOTT
GOVERNOR

RECEIVED
2011 JAN 20 PM 3:01
DEPARTMENT OF STATE
DIVISION OF ELECTIONS

January 20, 2011

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

Dear Secretary Browning:

Please be advised I have made the following appointment under the provisions of Section 20.18, Florida Statutes :

Mr. William A. Buzzett
216 Forest Street
Santa Rosa Beach, Florida 32459

as Secretary, Department of Community Affairs, succeeding Thomas G. Pelham, subject to confirmation by the Senate. This appointment is effective January 11, 2011, for a term ending at the pleasure of the Governor.

Sincerely,

A handwritten signature in black ink, appearing to read "Rick Scott".

Rick Scott
Governor

RS/jlw

CERTIFICATION

RECEIVED
DEPARTMENT OF STATE

2011 JAN 20 PM 3:01

STATE OF FLORIDA, COUNTY OF

DEPARTMENT OF STATE
DIVISION OF ELECTIONS

Before me, the undersigned Notary Public of Florida, personally appeared William A. Buzzell, who, after being duly sworn, say: (1) that he/she has carefully and personally prepared or read the answers to the foregoing questions; (2) that the information contained in said answers is complete and true; and (3) that he/she will, as an appointee, fully support the Constitutions of the United States and of the State of Florida.

William A. Buzzell
Signature of Applicant-Affiant

Sworn to and subscribed before me

this 18 day of Apr, 20 11.

Gloria S. Cobb
Signature of Notary Public-State of Florida



(Print, Type, or Stamp Commissioned Name of Notary Public)

My commission expires: _____

Personally Known ☐ OR Produced Identification ☒

Type of Identification Produced Florida License

(seal)

OATH OF OFFICE

(Art. II, § 5(b), Fla. Const.)

STATE OF FLORIDA

County of Leon

RECEIVED
11 FEB 24 AM 9:45

DIVISION OF ELECTIONS
SECRETARY OF STATE

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 of the Department of Community Affairs
(Title of Office)

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

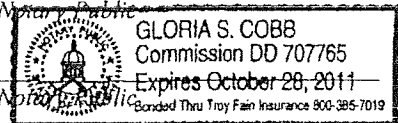
[NOTE: If you affirm, you may omit the words "so help me God." See § 92.52, Fla. Stat.]

William A. Buzzett
Signature

Sworn to and subscribed before me this 22nd day of February, 2011.

Gloria S. Cobb
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

2555 Shumard Oak Blvd.

Street or Post Office Box

Tallahassee FL 32399-2100

City, State, Zip Code

William A. Buzzett

Print name as you desire commission issued

William A. Buzzett
Signature

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 Community Affairs Committee

BILL: CS/CS/SB 1698

INTRODUCER: Environmental Preservation and Conservation Committee, Health Regulation Committee
and Senator Dean

SUBJECT: Onsite Sewage Treatment and Disposal Systems

DATE: April 6, 2011

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. O'Callaghan	Stovall	HR	Fav/CS
2. Uchino	Yeatman	EP	Fav/CS
3. Wolfgang	Yeatman	CA	Pre-meeting
4. _____	_____	BC	_____
5. _____	_____	_____	_____
6. _____	_____	_____	_____

Please see Section VIII. for Additional Information:

- | | | |
|------------------------------|--|---|
| A. COMMITTEE SUBSTITUTE..... | ☒ | Statement of Substantial Changes |
| B. AMENDMENTS..... | ☐ | Technical amendments were recommended |
| | ☐ | Amendments were recommended |
| | ☐ | Significant amendments were recommended |

I. Summary:

This Committee Substitute for Committee Substitute (CS) for SB 1698 repeals the onsite sewage treatment and disposal system evaluation program, including program requirements, and the Department of Health's (DOH) attendant rulemaking authority to implement the program.

This CS requires counties or municipalities to develop and adopt by local ordinance a local onsite sewage treatment and disposal system evaluation and assessment program (evaluation program), unless the county or municipality opts out and chooses not to participate in an evaluation program by resolution, which must be adopted before January 1, 2012, and filed with the Secretary of State. Counties that have first magnitude springs are prohibited from opting out.

If an evaluation program is adopted by a county or municipality by ordinance, this CS requires:

- A pump out and evaluation of a septic tank to be performed every five years, unless an exception applies.
- Certain persons to perform the pump out and evaluation.
- Notice to be given to septic tank owners at least 60 days before the septic tank is due for an evaluation.

- Penalties for qualified contractors and septic tank owners, who do not comply with the requirements of the evaluation program.
- Certain evaluation and assessment procedures to be followed during the inspection of a septic tank.
- A county or municipality to develop a database and establish a computerized tracking system based on evaluation reports submitted. The system, which may be Internet-based, is required to include certain information and notify homeowners when evaluations are due.
- A county or municipality to notify the Secretary of Environmental Protection upon the adoption of the ordinance establishing the program.
- The Department of Environmental Protection (DEP), within existing resources, to notify the county or municipality of potential funding under the Clean Water Act or Clean Water State Revolving Fund and assist such local governments to model and establish low-interest loan programs.

The CS provides that a local ordinance may authorize the assessment of a fee not to exceed \$30 to cover the costs of administering the evaluation program.

This CS provides that a grant program will be available January 1, 2013, to assist low-income owners of onsite sewage treatment and disposal systems with the costs associated with any required inspection, pump out, repair, or system replacement. The CS also reduces the range of the fee amount that may be assessed by the DOH for an evaluation report.

The CS also:

- Defines “bedroom.”
- Provides that a permit issued by the DOH for the installation, modification, or repair of an onsite sewage treatment system transfers with title to the property and a title is not encumbered if, when the title is transferred, new permit requirements are in place.
- Provides for the future use of unused, but properly functioning onsite sewage treatment systems, and clarifies that such systems are not “abandoned.”
- Clarifies that the rules applicable and in effect at the time of approval for construction apply at the time of the final approval of the sewage treatment and disposal system under certain circumstances.
- Clarifies that a modification, replacement, or upgrade of an onsite sewage treatment and disposal system is not required for a remodeling addition to a single-family home if a bedroom is not added.
- Reduces the annual operating permit fee for waterless, incinerating, or organic waste composting toilets to \$15-30 from \$30-150.

This CS substantially amends the following sections of the Florida Statutes: 381.0065, 381.00656, and 381.0066.

This CS creates s. 381.00651, F.S.

II. Present Situation:

The Department of Health's Regulation of Septic Tanks

The DOH oversees an environmental health program as part of fulfilling the state's public health mission. The purpose of this program is to detect and prevent disease caused by natural and manmade factors in the environment. One component of the program is an onsite sewage treatment and disposal function.¹

An "onsite sewage treatment and disposal system" is a system that contains a standard subsurface, filled, or mound drainfield system; an aerobic treatment unit; a graywater system tank; a laundry wastewater system tank; a septic tank; a grease interceptor; a pump tank; a solid or effluent pump; a waterless, incinerating, or organic waste-composting toilet; or a sanitary pit privy that is installed or proposed to be installed beyond the building sewer on land of the owner or on other land to which the owner has the legal right to install a system. The term includes any item placed within, or intended to be used as a part of or in conjunction with, the system. The term does not include package sewage treatment facilities and other treatment works regulated under ch. 403, F.S.²

The DOH estimates there are approximately 2.67 million septic tanks in use statewide.³ The DOH's Bureau of Onsite Sewage develops statewide rules and provides training and standardization for county health department employees responsible for permitting the installation and repair of onsite sewage treatment and disposal systems (septic tanks) within the state. The bureau also licenses septic tank contractors, approves continuing education courses and courses provided for septic tank contractors, funds a hands-on training center, and mediates onsite sewage treatment and disposal systems contracting complaints. The bureau manages a state-funded research program, prepares research grants, and reviews and approves innovative products and septic tank designs.⁴

In 2008, the Legislature directed the DOH to submit a report to the Executive Office of the Governor, the President of the Senate, and the Speaker of the House of Representatives by no later than October 1, 2008, which identifies the range of costs to implement a mandatory statewide 5-year septic tank inspection program to be phased in over 10 years pursuant to the DOH's procedure for voluntary inspection, including use of fees to offset costs.⁵ This resulted in the "Report on Range of Costs to Implement a Mandatory Statewide 5-Year Septic Tank Inspection Program" (Report).⁶ According to the report, three Florida counties, Charlotte, Escambia and Santa Rosa, have implemented mandatory septic tank inspections at a cost of \$83.93 to \$215 per inspection.

¹ See s. 381.006, F.S.

² Section 381.0065(2)(j), F.S.

³ Florida Dep't of Health, Bureau of Onsite Sewage, *Home*, <http://www.myfloridaeh.com/ostds/index.html> (last visited Apr. 1, 2011).

⁴ Florida Dep't of Health, Bureau of Onsite Sewage, *OSTDS Description*, <http://www.myfloridaeh.com/ostds/OSTDSdescription.html> (last visited Apr. 1, 2011).

⁵ See ch. 2008-152, Laws of Fla.

⁶ Florida Dep't of Health, *Report on Range of Costs to Implement a Mandatory Statewide 5-Year Septic Tank Inspection Program*, October 1, 2008, available at <http://www.doh.state.fl.us/environment/ostds/pdfiles/forms/MSIP.pdf> (last visited Mar. 24, 2011).

The Report stated that 99 percent of septic tanks in Florida are not under any management or maintenance requirements. Also, the Report found that while these systems were designed and installed in accordance with the regulations at the time of construction and installation, many are aging and by today's standards may be under-designed. The DOH's statistics indicate that approximately 2 million septic tanks are 20 years or older, which is the average lifespan of a septic tank in Florida.⁷ Because repairs of onsite systems were not regulated until 1987, many systems may have been unlawfully modified. Furthermore, 1.3 million onsite systems were installed prior to 1983 and a significant fraction of the pre-1983 systems may have been installed with a 6-inch separation from the bottom of the drainfield to the estimated seasonal high water table. The current water table separation requirement is 24 inches and is based on research findings compiled by the DOH in 1989 that indicate for septic tank effluent, the presence of at least 2 feet (24 inches) of unsaturated fine sandy soil is needed to provide a relatively high degree of treatment for most wastewater constituents. Therefore, Florida's pre-1983 systems may not provide the same level of protection expected from systems installed under current construction standards.⁸

Flow and Septic System Design Determinations

For residences, domestic sewage flows are calculated using the number of bedrooms and the building area as criteria for consideration, including existing structures and any proposed additions.⁹ Depending on the sewage flow, the septic system may or may not be approved by the DOH. For example, a current three bedroom, 1,300 square foot home is able to add building area to have a total of 2,250 square feet of building area with no change in their approved system, provided no additional bedrooms are added.¹⁰

Minimum required treatment capacities for systems serving any structure, building or group of buildings are based on estimated daily sewage flows as determined from the Table¹¹ below.

TABLE OF AEROBIC SYSTEMS PLANT SIZING RESIDENTIAL		
Number of Bedrooms	Building Area in square feet	Minimum Required Treatment Capacity gallons per day
1 or 2	Up to 1200	400
3	1201-2250	500
4	2251-3300	600

For each additional bedroom or each additional 750 square feet of building area, or fraction thereof, treatment capacity shall be increased by 100 gallons.

⁷ Dep't of Health, *Onsite Sewage Treatment and Disposal Systems in Florida (2010)*, available at <http://www.doh.state.fl.us/Environment/ostds/statistics/newInstallations.pdf> (last visited Mar. 24, 2011). See also Dep't of Health, Bureau of Onsite Sewage, *What's New?*, available at <http://www.doh.state.fl.us/environment/ostds/New.htm> (last visited on Mar. 24, 2011).

⁸ *Id.*

⁹ Rule 64E-6.001, F.A.C.

¹⁰ *Id.*

¹¹ Table adapted from Rule 64E-6.012, F.A.C.

Minimum design flows for systems serving any structure, building or group of buildings are based on the estimated daily sewage flow. For residences, the flows are based on the number of bedrooms and square footage of building area. For a single or multiple family per dwelling unit the estimated sewage flows are: for 1 bedroom with 750 square feet or less building area, 100 gallons; for 2 bedrooms with 751-1,200 square feet, 200 gallons; for 3 bedrooms with 1,201-2,250 square feet, 300 gallons; and for 4 bedrooms with 2,251-3,300 square feet, 400 gallons. For each additional bedroom or each additional 750 square feet of building area or fraction thereof in a dwelling unit, system sizing are to be increased by 100 gallons per dwelling unit.¹²

Chapter 2010-205, Laws of Florida

In 2010, the Legislature enacted CS/CS/CS/SB 550, which became ch. 2010-205, Laws of Florida, and amended s. 381.0065, F.S. This newly enacted law provides for additional legislative intent on the importance of properly managing the State's septic tanks and creates a septic tank evaluation program. The DOH was to implement the evaluation program beginning January 1, 2011, with full implementation by January 1, 2016.¹³ The evaluation program is to:

- Require all septic tanks to be evaluated for functionality at least once every 5 years.
- Provide proper notice to septic owners that their evaluations are due.
- Ensure proper separations from the wettest season water table.
- Specify the professional qualifications necessary to carry out an evaluation.

This law also establishes a grant program under s. 381.00656, F.S., for owners of septic tanks earning less than or equal to 133 percent of the federal poverty level. The grant program is to provide funding for inspections, pump-outs, repairs, or system replacements. The DOH is authorized under the law to adopt rules to establish the application and award process for grant funds.

Finally, ch. 2010-205, Laws of Florida, amends s. 381.0066, F.S., establishing a minimum and maximum evaluation fee that the DOH may collect, but no more than \$5 of each evaluation fee may be used to fund the grant program. It also requires the State's Surgeon General, in consultation with the Revenue Estimating Conference, to determine a revenue neutral evaluation fee.

Springs in Florida

Florida has more than 700 recognized springs. First magnitude springs are those that discharge 100 cubic feet of water per second or greater. Florida has 33 first magnitude springs in 18 counties that discharge more than 64 million gallons of water per day.¹⁴ Spring discharges, primarily from the Floridan Aquifer, are used to determine ground water quality and the degree of human impact on the spring's recharge area. Rainfall, surface conditions, soil type, mineralogy, the composition and porous nature of the aquifer system, flow, and length of time in the aquifer all contribute to ground water chemistry.

¹² Rule 64E-6.008, F.A.C.

¹³ However, implementation was delayed until July 1, 2011, by the Legislature's enactment of SB 2-A (2010). *See also* ch. 2010-283, L.O.F.

¹⁴ Florida Geological Survey, Bulletin No. 66, *Springs of Florida*, available at <http://www.dep.state.fl.us/geology/geologictopics/springs/bulletin66.htm> (last visited Apr. 1, 2011).

III. Effect of Proposed Changes:

CS/CS/SB 1698 defines “bedroom” because septage flow is determined, and the construction of septage system units, are based, in part, on the number of bedrooms. The term “bedroom” is defined as a room that can be used for sleeping which, for site-built dwellings, has a minimum 70 square feet of conditioned space, or, for manufactured homes constructed to HUD standards, has a minimum square footage of 50 square feet of floor area and is located along an exterior wall, has a closet and a door or an entrance where a door could be reasonably installed, and an emergency means of escape and rescue opening to the outside. A room may not be considered a bedroom if it is used to access another room, unless the room that is accessed is a bathroom or closet and does not include a hallway, bathroom, kitchen, living room, family room, dining room, den, breakfast nook, pantry, laundry room, sunroom, recreation room, media/video room, or exercise room. For the purpose of determining system capacity, occupancy is calculated at a maximum of two persons per bedroom.

The CS provides that a permit issued and approved by the DOH for the installation, modification, or repair of an onsite sewage treatment system transfers with title to the property and a title is not encumbered if when the title is transferred new permit requirements are in place. The CS also provides that a system is not considered “abandoned” if the properly functioning system is disconnected from a structure that was made unusable or destroyed following a disaster and the system was not adversely affected by the disaster. The onsite system may be reconnected to a rebuilt structure if:

- The reconnection of the system is to the same type and approximate size of the rebuilt structure that existed prior to the disaster;
- The system is not a sanitary nuisance; and
- The system has not been altered without prior authorization.

In addition, a system that serves a property that is foreclosed upon is not an abandoned system.

The CS provides that the rules applicable and in effect at the time of approval for construction apply at the time of the final approval of the sewage treatment and disposal system if fundamental site conditions have not changed between the time of construction approval and final approval.

The CS provides that a modification, replacement, or upgrade of an onsite sewage treatment and disposal system is not required for a remodeling addition to a single-family home if a bedroom is not added.

The CS repeals the onsite sewage treatment and disposal system evaluation program, including program requirements, and the DOH’s attendant rulemaking authority to implement the program.

This CS requires counties or municipalities to develop and adopt by local ordinance a local onsite sewage treatment and disposal system evaluation and assessment program within all or part of its geographic area. It contains an opt-out provision for local governments provided they pass separate resolutions by a majority of the local elected body. Counties containing a first magnitude spring are prohibited from opting out.

If a county or municipality adopts an ordinance to implement an evaluation program, the county or municipality must notify the Secretary of State by letter of the adoption of the ordinance. If the county or municipality opts out of having an evaluation program, which must be done by adopting a resolution before January 1, 2012, the resolution opting out of having an evaluation program must be filed with the Secretary of State. However, a county or municipality that opts out of the program may, at a later date, adopt an ordinance imposing an evaluation program. A county or municipality may repeal an ordinance adopting an evaluation program if notification is provided to the Secretary of State by letter of repeal. A local ordinance may not deviate from or exceed the substantive requirements under s. 381.00651, F.S.

This CS requires the owner of an onsite sewage treatment and disposal system within a county's or municipality's jurisdiction that has implemented an evaluation program to have the system pumped out and evaluated at least once every five years to assess the fundamental operational condition of the system and to identify system failures. In addition to a pump out, the inspection procedures require the location of the system to be identified and the apparent structural condition of water tightness of the tank to be assessed and the size of the tank to be estimated. A visual inspection of a tank is required when the tank is empty to detect cracks, leaks, or other defects and baffles or tees must be checked to ensure that they are intact and secure.¹⁵ Furthermore, the evaluation must note the presence and condition of outlet devices, effluent filters, and compartment walls; any structural defect in the tank; and the condition and fit of the tank lid, including manholes. If a tank, in the opinion of the qualified contractor, is in danger of being damaged by leaving the tank empty after inspection, the tank must be refilled before concluding the inspection.

However, a pump out is not required if the owner can provide documentation to show a pump out has been performed or there has been a permitted new installation, repair, or modification of the system within the previous five years, the capacity is indicated on the documentation, and documentation shows the condition of the tank is structurally sound and watertight. Also, the local ordinance may not mandate an evaluation at the point of sale in a real estate transaction and may not require a soil examination.

This CS also requires a drainfield evaluation and requires certain assessments to be performed when a system contains pumps, siphons, or alarms. The drainfield evaluation must include an overall assessment of the drainfield and a determination of the approximate size and location of the drainfield, state the condition of the surface vegetation and whether there is any seepage visible or excessively lush vegetation, state whether there is ponding water within the drainfield, and identify the location of any downspout or drain that encroaches or drains into the drainfield area. If the system contains pumps, siphons, or alarms, the following information must be provided:

- An assessment of dosing tank integrity, including the approximate volume and the type of material used in construction;

¹⁵ The septic tank baffle or tee is a device on the inlet or outlet of a septic tank which prevents sewage back-flow into the inlet or outlet pipe. The device may be made of concrete, steel, plastic, or other materials, but in all cases the septic tank tee or baffle forms a barrier between the septic tank and the inlet or outlet pipes to or from the septic tank. InspectAPedia, *Encyclopedia of Building & Environmental Inspection, Testing, Diagnosis, Repair*, available at <http://www.inspectapedia.com/septic/tanktees.htm> (last visited Mar. 28, 2011).

- Whether the pump is elevated off of the bottom of the chamber and its operational status;
- Whether there are a check valve and purge hole;
- Whether there is a high-water alarm, including whether the type of alarm is audio or visual or both, the location of the alarm, and its operational condition; and
- Whether surface water can infiltrate into the tank and whether the tank was pumped out.

This CS requires evaluations to be performed by a septic tank contractor or master septic tank contractor registered under part III of ch. 489, F.S.; a professional engineer licensed pursuant to ch. 471, F.S., who has experience with wastewater treatment systems; an environmental health professional certified under ch. 381, F.S., in the area of onsite sewage treatment and disposal system evaluation; or an employee working under the supervision of these individuals. All evaluation forms must be signed by a qualified contractor.

This CS also provides that the local ordinance:

- May not require an owner to repair, modify, or replace a system as a result of an evaluation unless the evaluation identifies a system failure. A “system failure” is defined as a condition existing within a system which results in the discharge of untreated or partially treated wastewater:
 - onto the ground surface,
 - into surface water, or
 - which results in a sanitary nuisance caused by the failure of building plumbing to discharge properly.
- Must provide that system failure is not based on whether a system has a minimum separation distance between the drainfield and wet season water table, or if an obstruction in a sanitary line or effluent screen or filter prevents effluent from flowing into a drain.
- May not require more than the least costly remedial measure to resolve a system failure and the homeowner may choose the remedial measure. Remedial measures must meet the requirements of the code in effect at the time they are permitted and installed.
- Exempt systems that are required to obtain an operating permit or that are inspected by the DOH from the evaluation requirements.
- Require notice be given to the septic tank owner at least 60 days before the septic tank is due for an evaluation and the notice may include information on the proper maintenance of onsite sewage treatment and disposal systems.
- May authorize the assessment of a fee not to exceed \$30 against the owner of the septic tank to cover the costs of administering the evaluation program.
- Provide penalties for qualified contractors and septic tank owners who do not comply with the requirements of the program.

The assessment procedure provided for in the CS requires:

- The qualified contractor to document the evaluation procedures used;
- The qualified contractor to provide a copy of a written, signed evaluation report to the property owner, the county or municipality, and the county health department;
- The local county health department to retain a copy of the evaluation report for a minimum of five years until a subsequent report is filed;

- The front cover of the report to identify any system failure and include a clear and conspicuous notice to the owner that the owner has a right to have any remediation performed by a contractor other than the contractor performing the evaluation;
- The report to identify tank defects, drainfield problems, and water flow problems or maintenance needed; and
- An overall assessment of the fundamental operational condition of the system.

This CS requires a county or municipality that adopts an evaluation program to develop a database and establish a computerized tracking system based on evaluation reports submitted. The data and information collected is to be recorded and updated as evaluations are conducted and reported. The system, which may be Internet-based, is required to notify homeowners when evaluations are due and the information tracked by the system must include:

- The addresses or locations of the onsite systems;
- The number of onsite systems within the local jurisdiction;
- The total number and types of system failures; and
- Any other trends deemed relevant by the county or municipality resulting from an assessment of the overall condition of the systems.

This CS requires a county or municipality that adopts an onsite sewage treatment and disposal system evaluation and assessment program to notify the Secretary of Environmental Protection upon the adoption of an ordinance establishing the program. The DEP must, upon request and within existing resources, notify the county or municipality of potential funding under the Clean Water Act or Clean Water State Revolving Fund and provide guidance to the county or municipality in the application process to receive such funds. The DEP must also, upon request and within existing resources, provide advice and technical assistance to the county or municipality on how to establish a low-interest revolving loan program or how to model a revolving loan program after the low-interest loan program of the Clean Water State Revolving Fund. The DEP is not required to provide any money to fund such programs.

This CS requires the DOH to administer a grant program, effective January 1, 2013, to assist low-income owners¹⁶ of onsite sewage treatment and disposal systems with the cost of required inspections, pump outs, repairs, or system replacements.

This CS requires system owners to pay a fee of not less than \$10 or more than \$15 to be used to fund the evaluation program, including a fee up to \$5 to be used toward the grant program under s. 381.00656, F.S.

This CS also reduces the annual operating permit for waterless, incinerating, or organic waste composting toilets fee from a fee of not less than \$50 to a fee of not less than \$15 and from a fee of not more than \$150 to a fee of not more than \$30.

The CS provides that it will take effect upon becoming a law.

¹⁶ To be eligible for financial assistance, the owner must have a family income of less than or equal to 133 percent of the federal poverty level at the time of the application for assistance.

Other Potential Implications:

If the onsite sewage treatment and disposal system evaluation program is not repealed, the DOH is statutorily required to implement the program beginning on July 1, 2011.¹⁷

The CS provides no grandfather clause for local governments that have existing evaluation programs. These local governments will either have to comply with the provisions of this CS or adopt resolutions to opt out. It is not clear whether a local government administering a septic tank evaluation program will be able to continue administering its existing evaluation program if it opts out.

The CS prohibits local ordinances from requiring repairs, modifications or system replacements unless a system is found to be failing. System problems that do not rise to the level of a “system failure” cannot be required to be remedied under an ordinance. The septic tank owner will have the option to repair or modify a system with problems but not “failing” as defined by this CS. Although seepage onto surface ground or surface water are explicitly included into “system failure,” seepage into groundwater is not explicitly included unless it could be construed as resulting in a “sanitary nuisance.”

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

Article VII, Section 18(a) of the Florida Constitution states that no county or municipality shall be bound by any general law requiring such county or municipality to spend funds or to take an action requiring the expenditure of funds unless the Legislature has determined that such law fulfills an important state interest and it meets one of these exceptions:

- The Legislature appropriates funds or provides a funding source not available for such county or municipality on February 1, 1989;
- The expenditure is required to comply with a law that applies to all persons similarly situated, including the state and local governments; or
- The law is required to comply with a federal requirement.

Subsection (d) provides an additional applicable exemption. Laws determined to have an “insignificant fiscal impact,” which means an amount not greater than the average statewide population for the applicable fiscal year times \$0.10 (\$1.88 million for FY 2010-2011), are exempt.

There are 18 counties with first magnitude springs within their boundaries that must adopt the evaluation procedures set forth in this CS. The CS requires them to expend funds to establish and administer evaluation programs and gives them authority to charge up to \$30 per evaluation. If the up to \$30 fee is not sufficient to cover these counties’ costs, and the shortfall exceeds \$1.88 million, counties will not be bound by the CS unless the Legislature finds the law fulfills an important state interest and passes it with a

¹⁷ See *supra* note 13.

two-thirds vote of the membership of both chambers. The bill does not contain a finding of an important state interest.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

The CS allows a county or municipality by ordinance to assess a fee up to \$30 to cover the costs of administering the evaluation program. The CS also requires an evaluation report fee of not less than \$10 or more than \$15.

The CS reduces the fees for annual operating permits for waterless, incinerating, or organic waste composting toilets from a fee of not less than \$50 to a fee of not less than \$15 and from a fee of not more than \$150 to a fee of not more than \$30.

B. Private Sector Impact:

Owners of onsite sewage treatment and disposal systems subject to the evaluation program will have to pay to have their systems evaluated every five years, which would include an evaluation report fee of up to \$15 and a fee of up to \$30 imposed by the county or municipality in addition to the charges assessed by the qualified contractor. The owners will also be responsible for the cost of required repairs, modifications or replacements of the system if it is found to be “failing.”

System owners would pay for an evaluation and pump out every five years. Current costs for pump outs range from \$150 to \$300 depending on the size of the tank and disposal options. Evaluation costs would be set by private contractors. System owners would pay for any repairs, including a permit fee. Repair costs can range from \$2,500 to \$7,500 depending on the work required. Requiring inspections will increase demand for services which may increase price and profitability at the expense of system owners.

DOH estimates a cost savings to the public of \$2500 to \$7500 per system through preventive maintenance eliminating the need for costly repairs associated with neglected, failing, or improperly functioning systems.

C. Government Sector Impact:

The cost to counties or municipalities adopting an evaluation program is indeterminate as it depends on program requirements adopted by each county or municipality. The DOH will also incur an indeterminate amount of costs associated with implementing the grant

program. Counties with first magnitude springs will be required to expend funds to implement the provisions of this CS.

VI. Technical Deficiencies:

The CS leaves intact the grant program and evaluation report fee to be implemented and assessed by the DOH. However, the remainder of the CS takes away the DOH's oversight and enforcement of an evaluation program and gives it to local governments. The CS also provides for a fee to be imposed by the county or municipality to pay for the cost of implementing the evaluation program. Therefore, it may be more consistent to establish the grant program within individual counties and municipalities that adopt an evaluation program. It may also be appropriate to authorize local governments to collect the evaluation report fee, instead of the DOH.

The CS requires the Surgeon General, in consultation with the Revenue Estimating Conference, to submit a revenue neutral fee schedule for implementation of the evaluation program created in this CS. The report was due on January 1, 2011, for a program created in this CS. The date should likely be January 1, 2012.

VII. Related Issues:

Counties with first magnitude springs within their boundaries are prohibited from opting out of the provisions of this CS. Those counties are Alachua, Bay, Citrus, Columbia, Dixie, Gilchrist, Hamilton, Hernando, Jackson, Jefferson, Lafayette, Lake, Leon, Levy, Madison, Marion, Suwannee, Taylor, Volusia and Wakulla. However, municipalities having first magnitude springs within their boundaries may opt out. Additionally, leakage of septic tank waste into groundwater is not defined as septic tank "system failure," which may cause problems for local governments (especially those with first magnitude springs) that want to require replacement of tanks that are leaking into groundwater.

In addition, spring recharge areas for first magnitude springs can and do exist in multiple jurisdictions. Therefore, some counties will be required to implement and administer an evaluation program while their neighboring counties, which also impact their springs, can opt out.

VIII. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Environmental Preservation and Conservation on March 30, 2011:

The CS makes the following changes:

- Reinstates the ban on the land spreading of septage after January 1, 2016;
- Requires repairs, modifications and system replacements to meet current codes;
- Exempts systems that require operation permits or annual inspections from the evaluation program provisions;
- Prohibits counties with first magnitude springs within their boundaries from opting out of the evaluation program provisions;

- Changes the DEP's role in aiding the local government application process for funding from providing "direct technical assistance" to "guidance"; and
- Removes a provision that required the DEP to provide advice and technical assistance to local governments on how to provide low-interest loans for repairs to residents with failing systems.

CS by Health Regulation on March 29, 2011:

The CS differs from the bill in that it:

- Replaces the pilot program for the periodic evaluation of onsite sewage treatment and disposal systems with local onsite sewage treatment and disposal system evaluation and assessment programs that are to be adopted by a county or municipality by ordinance, unless the county or municipality opts out of the program by a certain date by adopting a resolution.
- Provides certain requirements of an evaluation program to be implemented by a county or municipality.
- Defines "bedroom" for clarification purposes because septage flow is determined, and the construction of septage system units, are based, in part, on the number of bedrooms.
- Provides that a permit issued by the DOH for the installation, modification, or repair of an onsite sewage treatment system transfers with title to the property and a title is not encumbered if when the title is transferred new permit requirements are in place.
- Provides for the future use of unused, but properly functioning onsite sewage treatment systems, and clarifies that such systems are not "abandoned."
- Clarifies that the rules applicable and in effect at the time of approval for construction apply at the time of the final approval of the sewage treatment and disposal system if fundamental site conditions have not changed between the time of construction approval and final approval.
- Clarifies that a modification, replacement, or upgrade of an onsite sewage treatment and disposal system is not required for a remodeling addition to a single-family home if a bedroom is not added.
- Reduces the annual operating permit for waterless, incinerating, or organic waste composting toilets fee from a fee not less than \$50 to a fee of not less than \$15 and from a fee not more than \$150 to a fee of not more than \$30.

B. Amendments:

None.



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LEGISLATIVE ACTION

Senate

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House

The Committee on Community Affairs (Bennett) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Subsections (1), (5), and (6), of section
381.0065, Florida Statutes, as amended by chapter 2010-283, Laws
of Florida, are amended, present paragraphs (b) through (p) of
subsection (2) of that section are redesignated as paragraphs
(c) through (q), respectively, a new paragraph (b) is added to
that subsection, and paragraphs (w), (x), (y), and (z) are added
to subsection (4) of that section, to read:

381.0065 Onsite sewage treatment and disposal systems;



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regulation.—

(1) LEGISLATIVE INTENT.—

~~(a) It is the intent of the Legislature that proper management of onsite sewage treatment and disposal systems is paramount to the health, safety, and welfare of the public. It is further the intent of the Legislature that the department shall administer an evaluation program to ensure the operational condition of the system and identify any failure with the system.~~

~~(b)~~ It is the intent of the Legislature that where a publicly owned or investor-owned sewerage system is not available, the department shall issue permits for the construction, installation, modification, abandonment, or repair of onsite sewage treatment and disposal systems under conditions as described in this section and rules adopted under this section. It is further the intent of the Legislature that the installation and use of onsite sewage treatment and disposal systems not adversely affect the public health or significantly degrade the groundwater or surface water.

(2) DEFINITIONS.—As used in ss. 381.0065-381.0067, the term:

(b) "Bedroom" means a room that can be used for sleeping which, for site-built dwellings, has a minimum 70 square feet of conditioned space, or, for manufactured homes constructed to HUD standards, has a minimum square footage of 50 square feet of floor area and is located along an exterior wall, has a closet and a door or an entrance where a door could be reasonably installed, and an emergency means of escape and rescue opening to the outside. A room may not be considered a bedroom if it is



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used to access another room, unless the room that is accessed is a bathroom or closet and does not include a hallway, bathroom, kitchen, living room, family room, dining room, den, breakfast nook, pantry, laundry room, sunroom, recreation room, media/video room, or exercise room. For the purpose of determining system capacity, occupancy is calculated at a maximum of two persons per bedroom.

(4) PERMITS; INSTALLATION; AND CONDITIONS.—A person may not construct, repair, modify, abandon, or operate an onsite sewage treatment and disposal system without first obtaining a permit approved by the department. The department may issue permits to carry out this section, but shall not make the issuance of such permits contingent upon prior approval by the Department of Environmental Protection, except that the issuance of a permit for work seaward of the coastal construction control line established under s. 161.053 shall be contingent upon receipt of any required coastal construction control line permit from the Department of Environmental Protection. A construction permit is valid for 18 months from the issuance date and may be extended by the department for one 90-day period under rules adopted by the department. A repair permit is valid for 90 days from the date of issuance. An operating permit must be obtained prior to the use of any aerobic treatment unit or if the establishment generates commercial waste. Buildings or establishments that use an aerobic treatment unit or generate commercial waste shall be inspected by the department at least annually to assure compliance with the terms of the operating permit. The operating permit for a commercial wastewater system is valid for 1 year from the date of issuance and must be renewed annually. The



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operating permit for an aerobic treatment unit is valid for 2 years from the date of issuance and must be renewed every 2 years. If all information pertaining to the siting, location, and installation conditions or repair of an onsite sewage treatment and disposal system remains the same, a construction or repair permit for the onsite sewage treatment and disposal system may be transferred to another person, if the transferee files, within 60 days after the transfer of ownership, an amended application providing all corrected information and proof of ownership of the property. There is no fee associated with the processing of this supplemental information. A person may not contract to construct, modify, alter, repair, service, abandon, or maintain any portion of an onsite sewage treatment and disposal system without being registered under part III of chapter 489. A property owner who personally performs construction, maintenance, or repairs to a system serving his or her own owner-occupied single-family residence is exempt from registration requirements for performing such construction, maintenance, or repairs on that residence, but is subject to all permitting requirements. A municipality or political subdivision of the state may not issue a building or plumbing permit for any building that requires the use of an onsite sewage treatment and disposal system unless the owner or builder has received a construction permit for such system from the department. A building or structure may not be occupied and a municipality, political subdivision, or any state or federal agency may not authorize occupancy until the department approves the final installation of the onsite sewage treatment and disposal system. A municipality or political subdivision of the state may not



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100 approve any change in occupancy or tenancy of a building that
101 uses an onsite sewage treatment and disposal system until the
102 department has reviewed the use of the system with the proposed
103 change, approved the change, and amended the operating permit.

104 (w) Any permit issued and approved by the department for
105 the installation, modification, or repair of an onsite sewage
106 treatment and disposal system shall transfer with the title to
107 the property. A title is not encumbered at the time of transfer
108 by new permit requirements by a governmental entity for an
109 onsite sewage treatment and disposal system which differ from
110 the permitting requirements in effect at the time the system was
111 permitted, modified, or repaired.

112 (x) An onsite sewage treatment and disposal system is not
113 considered abandoned if the properly functioning onsite sewage
114 treatment and disposal system is disconnected from a structure
115 that was made unusable or destroyed following a disaster and the
116 system was not adversely affected by the disaster. The onsite
117 system may be reconnected to a rebuilt structure if:

118 1. The reconnection of the onsite sewage treatment and
119 disposal system is to the same type and approximate size of
120 rebuilt structure that existed prior to the disaster;

121 2. The onsite sewage treatment and disposal system is not a
122 sanitary nuisance; and

123 3. The onsite sewage treatment and disposal system has not
124 been altered without prior authorization.

125
126 An onsite sewage treatment and disposal system that serves
127 a property that is foreclosed upon is not an abandoned system.

128 (y) If an onsite sewage treatment and disposal system



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129 permittee receives, relies upon, and undertakes construction of
130 a system based upon a validly issued construction permit under
131 rules applicable at the time of construction, but a change to a
132 rule occurs after the approval of the system for construction
133 but before the final approval of the system, the rules
134 applicable and in effect at the time of construction approval
135 apply at the time of final approval if fundamental site
136 conditions have not changed between the time of construction
137 approval and final approval.

138 (z) A modification, replacement, or upgrade of an onsite
139 sewage treatment and disposal system is not required for a
140 remodeling addition to a single-family home if a bedroom is not
141 added.

142 ~~(5) EVALUATION AND ASSESSMENT.—~~

143 ~~(a) Beginning July 1, 2011, the department shall administer~~
144 ~~an onsite sewage treatment and disposal system evaluation~~
145 ~~program for the purpose of assessing the fundamental operational~~
146 ~~condition of systems and identifying any failures within the~~
147 ~~systems. The department shall adopt rules implementing the~~
148 ~~program standards, procedures, and requirements, including, but~~
149 ~~not limited to, a schedule for a 5-year evaluation cycle,~~
150 ~~requirements for the pump-out of a system or repair of a failing~~
151 ~~system, enforcement procedures for failure of a system owner to~~
152 ~~obtain an evaluation of the system, and failure of a contractor~~
153 ~~to timely submit evaluation results to the department and the~~
154 ~~system owner. The department shall ensure statewide~~
155 ~~implementation of the evaluation and assessment program by~~
156 ~~January 1, 2016.~~

157 ~~(b) Owners of an onsite sewage treatment and disposal~~



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~~system, excluding a system that is required to obtain an operating permit, shall have the system evaluated at least once every 5 years to assess the fundamental operational condition of the system, and identify any failure within the system.~~

~~(c) All evaluation procedures must be documented and nothing in this subsection limits the amount of detail an evaluator may provide at his or her professional discretion. The evaluation must include a tank and drainfield evaluation, a written assessment of the condition of the system, and, if necessary, a disclosure statement pursuant to the department's procedure.~~

~~(d) 1. Systems being evaluated that were installed prior to January 1, 1983, shall meet a minimum 6-inch separation from the bottom of the drainfield to the wettest season water table elevation as defined by department rule. All drainfield repairs, replacements or modifications to systems installed prior to January 1, 1983, shall meet a minimum 12-inch separation from the bottom of the drainfield to the wettest season water table elevation as defined by department rule.~~

~~2. Systems being evaluated that were installed on or after January 1, 1983, shall meet a minimum 12-inch separation from the bottom of the drainfield to the wettest season water table elevation as defined by department rule. All drainfield repairs, replacements or modification to systems developed on or after January 1, 1983, shall meet a minimum 24-inch separation from the bottom of the drainfield to the wettest season water table elevation.~~

~~(e) If documentation of a tank pump-out or a permitted new installation, repair, or modification of the system within the~~



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~~previous 5 years is provided, and states the capacity of the tank and indicates that the condition of the tank is not a sanitary or public health nuisance pursuant to department rule, a pump out of the system is not required.~~

~~(f) Owners are responsible for paying the cost of any required pump out, repair, or replacement pursuant to department rule, and may not request partial evaluation or the omission of portions of the evaluation.~~

~~(g) Each evaluation or pump out required under this subsection must be performed by a septic tank contractor or master septic tank contractor registered under part III of chapter 489, a professional engineer with wastewater treatment system experience licensed pursuant to chapter 471, or an environmental health professional certified under chapter 381 in the area of onsite sewage treatment and disposal system evaluation.~~

~~(h) The evaluation report fee collected pursuant to s. 381.0066(2)(b) shall be remitted to the department by the evaluator at the time the report is submitted.~~

~~(i) Prior to any evaluation deadline, the department must provide a minimum of 60 days' notice to owners that their systems must be evaluated by that deadline. The department may include a copy of any homeowner educational materials developed pursuant to this section which provides information on the proper maintenance of onsite sewage treatment and disposal systems.~~

(5)~~(6)~~ ENFORCEMENT; RIGHT OF ENTRY; CITATIONS.—

(a) Department personnel who have reason to believe noncompliance exists, may at any reasonable time, enter the



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premises permitted under ss. 381.0065-381.0066, or the business premises of any septic tank contractor or master septic tank contractor registered under part III of chapter 489, or any premises that the department has reason to believe is being operated or maintained not in compliance, to determine compliance with the provisions of this section, part I of chapter 386, or part III of chapter 489 or rules or standards adopted under ss. 381.0065-381.0067, part I of chapter 386, or part III of chapter 489. As used in this paragraph, the term "premises" does not include a residence or private building. To gain entry to a residence or private building, the department must obtain permission from the owner or occupant or secure an inspection warrant from a court of competent jurisdiction.

(b)1. The department may issue citations that may contain an order of correction or an order to pay a fine, or both, for violations of ss. 381.0065-381.0067, part I of chapter 386, or part III of chapter 489 or the rules adopted by the department, when a violation of these sections or rules is enforceable by an administrative or civil remedy, or when a violation of these sections or rules is a misdemeanor of the second degree. A citation issued under ss. 381.0065-381.0067, part I of chapter 386, or part III of chapter 489 constitutes a notice of proposed agency action.

2. A citation must be in writing and must describe the particular nature of the violation, including specific reference to the provisions of law or rule allegedly violated.

3. The fines imposed by a citation issued by the department may not exceed \$500 for each violation. Each day the violation exists constitutes a separate violation for which a citation may



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be issued.

4. The department shall inform the recipient, by written notice pursuant to ss. 120.569 and 120.57, of the right to an administrative hearing to contest the citation within 21 days after the date the citation is received. The citation must contain a conspicuous statement that if the recipient fails to pay the fine within the time allowed, or fails to appear to contest the citation after having requested a hearing, the recipient has waived the recipient's right to contest the citation and must pay an amount up to the maximum fine.

5. The department may reduce or waive the fine imposed by the citation. In determining whether to reduce or waive the fine, the department must consider the gravity of the violation, the person's attempts at correcting the violation, and the person's history of previous violations including violations for which enforcement actions were taken under ss. 381.0065-381.0067, part I of chapter 386, part III of chapter 489, or other provisions of law or rule.

6. Any person who willfully refuses to sign and accept a citation issued by the department commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

7. The department, pursuant to ss. 381.0065-381.0067, part I of chapter 386, or part III of chapter 489, shall deposit any fines it collects in the county health department trust fund for use in providing services specified in those sections.

8. This section provides an alternative means of enforcing ss. 381.0065-381.0067, part I of chapter 386, and part III of chapter 489. This section does not prohibit the department from



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enforcing ss. 381.0065-381.0067, part I of chapter 386, or part III of chapter 489, or its rules, by any other means. However, the department must elect to use only a single method of enforcement for each violation.

Section 2. Section 381.00651, Florida Statutes, is created to read:

381.00651 Periodic evaluation and assessment of onsite sewage treatment and disposal systems.—

(1) Effective January 1, 2012, any county or municipality that does not opt out of this section shall adopt by ordinance the local onsite sewage treatment and disposal system evaluation and assessment program within all or part of its geographic area which meets the requirements of this subsection. The county or municipality shall notify the Secretary of State and the local county health department by letter of the adoption of such an ordinance pursuant to this section. The program shall be administered by the county health department pursuant to subsection (3). By a majority of the local elected body, a county or municipality may opt out of the requirements of this section at any time before January 1, 2012, by adopting a separate resolution. The resolution shall be directed to and filed with the Secretary of State and shall state the intent of the county or municipality not to adopt an onsite sewage treatment and disposal system evaluation and assessment program. A county or municipality may subsequently adopt an ordinance imposing an onsite sewage treatment and disposal system evaluation and assessment program if the program meets the requirements of this subsection. A county or municipality may repeal an ordinance adopted pursuant to this section if the



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county or municipality notifies the Secretary of State by letter of the repeal. Any county identified as having a first magnitude spring within its boundaries is prohibited from opting out of this section. The local ordinances may not deviate from or exceed the substantive requirements of this subsection. Such adopted ordinance shall include the following:

(a) Evaluations.—An evaluation of any septic tank within all or part of the county's or municipality's jurisdiction must take place once every 5 years to assess the fundamental operational condition of the system and to identify system failures. The ordinance may not mandate an evaluation at the point of sale in a real estate transaction and may not require a soil examination. The location of the system shall be identified. A tank and drainfield evaluation and a written assessment of the overall condition of the system pursuant to the assessment procedure prescribed in paragraph (2)(d) are required.

(b) Qualified contractors.—Each evaluation required under this subsection must be performed by a septic tank contractor or master septic tank contractor registered under part III of chapter 489, a professional engineer having wastewater treatment system experience and licensed pursuant to chapter 471, or an environmental health professional certified under this chapter in the area of onsite sewage treatment and disposal system evaluation. Evaluations and pump outs may also be performed by an authorized employee working under the supervision of the individuals listed in this paragraph; however, all evaluation forms must be written or electronically signed by a qualified contractor.



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(c) Repair of systems.—The local ordinance may not require a repair, modification, or replacement of a system as a result of an evaluation unless the evaluation identifies a system failure. For purposes of this subsection, the term “system failure” is defined as a condition existing within an onsite sewage treatment and disposal system which results in the discharge of untreated or partially treated wastewater onto the ground surface or into surface water, or which results in a sanitary nuisance caused by the failure of building plumbing to discharge properly. A system is not a failure if the system does not have a minimum separation distance between the drainfield and the wet season water table, or if an obstruction in a sanitary line or an effluent screen or filter prevents effluent from flowing into a drainfield. If a system failure is identified and several remedial options are available to resolve the failure, the local ordinance may not require more than the least costly remedial measure to resolve the system failure. The homeowner may choose the remedial measure to fix the system. There may be instances in which a pump out is sufficient to resolve a system failure. Remedial measures to resolve a system failure must meet the requirements in effect at the times specified in section 381.0065(4)(g).

(d) Exemptions.—The local ordinance shall exempt from the evaluation requirements any system that is required to obtain an operating permit pursuant to state law or that is inspected by the department pursuant to the annual permit inspection requirements of chapter 513.

(2) The following procedures shall be used for conducting evaluations:



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(a) Tank evaluation.—The tank evaluation shall assess the apparent structural condition and water tightness of the tank and shall estimate the size of the tank. The evaluation must include a pump out. However, an ordinance may not require a pump out if there is documentation that a tank pump out or a permitted new installation, repair, or modification of the system has occurred within the previous 5 years, and that identifies the capacity of the tank and indicates that the condition of the tank is structurally sound and watertight. Visual inspection of the tank must be made when the tank is empty to detect cracks, leaks, or other defects. Baffles or tees must be checked to ensure that they are intact and secure. The evaluation shall note the presence and condition of outlet devices, effluent filters, and compartment walls; any structural defect in the tank; and the condition and fit of the tank lid, including manholes. If the tank, in the opinion of the qualified contractor, is in danger of being damaged by leaving the tank empty after inspection, the tank shall be refilled before concluding the inspection.

(b) Drainfield evaluation.—The drainfield evaluation must include a determination of the approximate size and location of the drainfield. The evaluation shall state the condition of surface vegetation, identify whether there is any sewage or effluent visible on the ground or discharging to a ditch or other water body, and identify the location of any downspout or other source of water near or in the vicinity of the drainfield.

(c) Special circumstances.—If the system contains pumps, siphons, or alarms, the following information must be provided:

1. An assessment of dosing tank integrity, including the



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approximate volume and the type of material used in
construction;

2. Whether the pump is elevated off of the bottom of the
chamber and its operational status;

3. Whether there are a check valve and purge hole; whether
there is a high-water alarm, including whether the type of alarm
is audio or visual or both, the location of the alarm, and its
operational condition; and whether electrical connections appear
satisfactory; and

4. Whether surface water can infiltrate into the tank and
whether the tank was pumped out.

(d) *Assessment procedure.*—All evaluation procedures used by
a qualified contractor shall be documented. The qualified
contractor shall provide a copy of a written, signed evaluation
report to the property owner upon completion of the evaluation,
to the county health department within 30 days of the
evaluation. The report shall contain the name and license number
of the company providing the report. A copy of the evaluation
report shall be retained by the local county health department
for a minimum of 5 years until a subsequent inspection report is
filed. The front cover of the report must identify any system
failure and include a clear and conspicuous notice to the owner
that the owner has a right to have any remediation of the
failure performed by a qualified contractor other than the
contractor performing the evaluation. The report must further
identify any crack, leak, improper fit or other defect in the
tank, manhole, or lid, and any other damaged or missing
component; any sewage or effluent visible on the ground or
discharging to a ditch or other surface water body; any



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downspout, stormwater or other source of water directed onto or toward the system and any other maintenance need or condition of the system at the time of the evaluation which, in the opinion of the qualified contractor, would possibly interfere with or restrict any future repair or modification to the existing system. The report shall conclude with an overall assessment of the fundamental operational condition of the system.

(3) It shall be the responsibility of the county health department to administer any evaluation program on behalf of a county, or a local government within the county, that has adopted an evaluation program pursuant to this section. In order to administer the evaluation program a local government, in consultation with the county health department, may develop a reasonable fee schedule to be used solely to pay for the costs of administering the evaluation program. Such fee schedule shall be identified in the local ordinance which adopts the evaluation program. When arriving at a reasonable fee schedule, the estimated annual revenues to be derived from fees shall not exceed reasonable estimated annual costs of the program. Fees shall be assessed to the septic tank owner during an inspection and separately identified on the invoice of the qualified contractor. Fees shall be remitted by the qualified contractor to the county health department. The county health department's administrative responsibility includes the following:

(a) Providing a notice to the septic tank owner at least 60 days before the septic tank is due for an evaluation. The notice may include information on the proper maintenance of onsite sewage treatment and disposal systems.

(b) The county health department, in consultation with the



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Department of Health, shall provide uniform disciplinary procedures and penalties for qualified contractors who do not comply with the requirements of the adopted ordinance, including but not limited to failure to provide the evaluation report as required herein to the septic tank owner and the county health department and may also assess penalties against septic tank owners for compliance failures with the adopted ordinance, consistent with existing requirements of law.

(c) Developing its own database and tracking systems to encompass evaluations programs adopted by the county and/or cities within its jurisdiction. The database shall be used to collect, store and index information obtained from the evaluation reports filed by the qualified contractor with the county health department. The tracking system must include the ability to collect and store:

1. The description, addresses or locations of the onsite systems;
2. An inventory of the number of onsite systems within the local jurisdiction;
3. The total number and types of system failures; and
4. Any other trends deemed relevant by the county health department resulting from an assessment and evaluation of the overall condition of systems.

The tracking system may be Internet-based and may be designed to be used by contractors to report all service and evaluation events and by the county health department to notify homeowners when evaluations are due. Data and information shall be recorded and updated as service and evaluations are conducted and



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reported

(4) A county or municipality that adopts an onsite sewage treatment and disposal system evaluation and assessment program pursuant to this section shall notify the Secretary of Environmental Protection, the Department of Health and the applicable county health department upon the adoption of an ordinance. The Department of Environmental Protection shall, within existing resources and upon receipt of such notice, notify the county or municipality of the potential use of, and access to, program funds under the Clean Water State Revolving Fund or s. 319 of the Clean Water Act. Upon request by a county or municipality, the Department of Environmental Protection shall provide guidance in the application process to receive moneys under the Clean Water State Revolving Fund or s. 319 of the Clean Water Act. The Department of Environmental Protection shall also, within existing resources and upon request by a county or municipality, provide advice and technical assistance to the county or municipality on how to establish a low-interest revolving loan program or how to model a revolving loan program after the low-interest loan program of the Clean Water State Revolving Fund. This subsection does not obligate the Department of Environmental Protection to provide any money to fund such programs.

Section 3. Section 381.00656, Florida Statutes, is hereby repealed.

Section 4. Subsection (2) of section 381.0066, Florida Statutes, is amended to read:

381.0066 Onsite sewage treatment and disposal systems; fees.—



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(2) The minimum fees in the following fee schedule apply until changed by rule by the department within the following limits:

(a) Application review, permit issuance, or system inspection, including repair of a subsurface, mound, filled, or other alternative system or permitting of an abandoned system: a fee of not less than \$25, or more than \$125.

~~(b) A 5-year evaluation report submitted pursuant to s. 381.0065(5): a fee not less than \$15, or more than \$30. At least \$1 and no more than \$5 collected pursuant to this paragraph shall be used to fund a grant program established under s. 381.00656.~~

(b)~~(e)~~ Site evaluation, site reevaluation, evaluation of a system previously in use, or a per annum septage disposal site evaluation: a fee of not less than \$40, or more than \$115.

(c)~~(d)~~ Biennial Operating permit for aerobic treatment units or performance-based treatment systems: a fee of not more than \$100.

(d)~~(e)~~ Annual operating permit for systems located in areas zoned for industrial manufacturing or equivalent uses or where the system is expected to receive wastewater which is not domestic in nature: a fee of not less than \$150, or more than \$300.

(e)~~(f)~~ Innovative technology: a fee not to exceed \$25,000.

(f)~~(g)~~ Septage disposal service, septage stabilization facility, portable or temporary toilet service, tank manufacturer inspection: a fee of not less than \$25, or more than \$200, per year.

(g)~~(h)~~ Application for variance: a fee of not less than



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\$150, or more than \$300.

(h)~~(i)~~ Annual operating permit for waterless, incinerating, or organic waste composting toilets: a fee of not less than \$15~~\$50~~, or more than \$30~~\$150~~.

(i)~~(j)~~ Aerobic treatment unit or performance-based treatment system maintenance entity permit: a fee of not less than \$25, or more than \$150, per year.

(j)~~(k)~~ Reinspection fee per visit for site inspection after system construction approval or for noncompliant system installation per site visit: a fee of not less than \$25, or more than \$100.

(k)~~(l)~~ Research: An additional \$5 fee shall be added to each new system construction permit issued to be used to fund onsite sewage treatment and disposal system research, demonstration, and training projects. Five dollars from any repair permit fee collected under this section shall be used for funding the hands-on training centers described in s. 381.0065(3) (j).

(l)~~(m)~~ Annual operating permit, including annual inspection and any required sampling and laboratory analysis of effluent, for an engineer-designed performance-based system: a fee of not less than \$150, or more than \$300.

~~On or before January 1, 2011, the Surgeon General, after consultation with the Revenue Estimating Conference, shall determine a revenue neutral fee schedule for services provided pursuant to s. 381.0065(5) within the parameters set in paragraph (b). Such determination is not subject to the provisions of chapter 120.~~ The funds collected pursuant to this



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subsection must be deposited in a trust fund administered by the department, to be used for the purposes stated in this section and ss. 381.0065 and 381.00655.

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

===== 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 onsite sewage treatment and disposal systems; amending s. 381.0065, F.S.; deleting legislative intent; defining the term "bedroom"; providing for any permit issued and approved by the Department of Health for the installation, modification, or repair of an onsite sewage treatment and disposal system to transfer with the title of the property; providing circumstances in which an onsite sewage treatment and disposal system is not considered abandoned; providing for the validity of an onsite sewage treatment and disposal system permit if rules change before final approval of the constructed system; providing that a system modification, replacement, or upgrade is not required unless a bedroom is added to a single-family home; deleting provisions requiring the Department of Health to administer an evaluation and assessment program of onsite sewage treatment and disposal systems and requiring property owners to have such systems evaluated at least once every 5 years; creating s. 381.00651, F.S.; requiring a county or municipality to adopt by ordinance under certain



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circumstances the program for the periodic evaluation and assessment of onsite sewage treatment and disposal systems; requiring the county or municipality to notify the Secretary of State of the ordinance; authorizing a county or municipality, in specified circumstances, to opt out of certain requirements by a specified date; prohibiting a county having a first magnitude spring from opting out of the provisions of the act; authorizing a county or municipality to adopt or repeal, after a specified date, an ordinance creating an evaluation and assessment program; providing criteria for evaluations, qualified contractors, repair of systems, exemptions, and notifications; requiring that certain procedures be used for conducting tank and drainfield evaluations; providing for certain procedures in special circumstances; providing for assessment procedures; requiring the county or municipality to develop a system for tracking the evaluations; providing criteria; requiring counties and municipalities to notify the Secretary of Environmental Protection that an evaluation program ordinance is adopted; requiring the department to notify those counties or municipalities of the use of, and access to, certain state and federal program funds; department to provide certain guidance, within existing resources, upon request from a county or municipality; repealing s. 381.00656, F.S.; amending s. 381.0066, F.S.; lowering the fees imposed by the department for evaluation reports; providing an effective date.



680970

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
04/11/2011	.	
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	.	
	.	

The Committee on Community Affairs (Storms) recommended the following:

Senate Amendment

Delete line 514
and insert:
or municipality and the county health department. Electronic
records of the information tracked may be kept on file in lieu
of hard copies.



719498

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
04/11/2011	.	
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The Committee on Community Affairs (Storms) recommended the following:

Senate Amendment

Delete line 395
and insert:
properly, or other circumstances. A system is not a failure if
the system does not have



548378

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
04/11/2011	.	
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	.	
	.	

The Committee on Community Affairs (Storms) recommended the following:

Senate Amendment

Delete line 449
and insert:
visible; state whether there is



141068

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
04/11/2011	.	
	.	
	.	
	.	

The Committee on Community Affairs (Storms) recommended the following:

Senate Amendment (with directory and title amendments)

Delete lines 271 - 302
and insert:

(b)1. The department may issue citations that may contain an order of correction or an order to pay a fine, or both, for violations of ss. 381.0065-381.0067, part I of chapter 386, or part III of chapter 489 or the rules adopted by the department, when a violation of these sections or rules is enforceable by an administrative or civil remedy, or when a violation of these sections or rules is a misdemeanor of the second degree. A citation issued under ss. 381.0065-381.0067, part I of chapter



141068

386, or part III of chapter 489 constitutes a notice of proposed agency action.

2. A citation must be in writing and must describe the particular nature of the violation, including specific reference to the provisions of law or rule allegedly violated.

3. The fines imposed by a citation issued by the department may not exceed \$100 ~~\$500~~ for each violation. Each day the violation exists constitutes a separate violation for which a citation may be issued.

===== 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 62 - 68
and insert:

Section 1. Subsections (1) and (5) and paragraph (b) of subsection (6), of section 381.0065, Florida Statutes, as amended by chapter 2010-283, Laws of Florida, are amended, present paragraphs (b) through (p) of subsection (2) of that section are redesignated as paragraphs (c) through (q), respectively, a new paragraph (b) is added to that subsection, and paragraphs (w), (x), (y), and (z) are added to subsection (4) of that section, to read:

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

And the title is amended as follows:

Delete line 21
and insert:

evaluated at least once every 5 years; reducing the fine for violations; creating s.

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 Community Affairs Committee

BILL: SB 292

INTRODUCER: Senator Dean

SUBJECT: Mobile Home and Recreational Vehicle Parks

DATE: April 6, 2011

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Eichin	Spalla	TR	Favorable
2. Fernandez/O'Callaghan	Stovall	HR	Fav/ 1 amendment
3. Gizzi	Yeatman	CA	Pre-meeting
4. _____	_____	BC	_____
5. _____	_____	_____	_____
6. _____	_____	_____	_____

Please see Section VIII. for Additional Information:

- | | | |
|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | ☐ | Statement of Substantial Changes |
| B. AMENDMENTS..... | ☒ | Technical amendments were recommended |
| | ☐ | Amendments were recommended |
| | ☐ | Significant amendments were recommended |

I. Summary:

The bill specifies the sections of law within chapter 513, F.S., for which the Department of Health is responsible for establishing uniform laws. The bill also establishes a department review and approval process for construction of a new mobile home park, lodging park, recreational vehicle park, or recreational camp; or certain changes to an existing park or camp. The bill creates standards for separation distances between recreational vehicles and setback distances from the exterior property boundary of recreational vehicle parks.

The bill also revises the responsibilities of a recreational vehicle park operator in relation to personal property that is left on the premises and provides that an additional criminal act occurs when a person fails to depart from a recreational vehicle park under certain conditions.

The bill substantially amends the following sections of the Florida Statutes: 513.01; 513.012; 513.014; 513.02; 513.03; 513.045; 513.05; 513.054; 513.055; 513.10; 513.112; 513.115; and 513.13.

The bill repeals s. 513.111 of the Florida Statutes.

II. Present Situation:

The Department of Health (department) is the exclusive regulatory and permitting authority for sanitary standards for all mobile home parks, lodging parks, recreational vehicle parks and recreational camps under ch. 513, F.S.¹ Pursuant to s. 513.05, F.S.,² the department has adopted rules in Ch. 64E-15, Florida Administrative Code (F.A.C.), pertaining to: minimum area requirements, water supply, sewage disposal, sanitary facilities, plumbing, garbage and refuse disposal, insect and rodent control, recreational camp standards, permits and fees, and owner's and operator's responsibilities.³

The Mobile Home and Recreational Vehicle Parks Program is administered within the department by the Division of Environmental Health. The program's primary objective is to minimize the risk of injury and illness by focusing on "safe drinking water supply, proper sewage disposal, a safe and disease free swimming pool (where provided), and assurances that the establishment is free from garbage, harmful insects, and rodent infestations." The county health departments are responsible for receiving and investigating environmental health and sanitation complaints; they also conduct routine inspections, plan reviews, educational programs, investigations, complaints, and enforcement actions.⁴

Currently, there are approximately 5,600 mobile home parks, lodging parks, recreational vehicle parks, and recreational camps in Florida.⁵ Permits for mobile home and/or recreational vehicle parks and camps are issued annually by the department under s. 513.02, F.S. Permit fees are set by department rule at \$4 per space and cumulatively not less than \$100 or more than \$600 annually.⁶ Section 513.045, F.S., sets the permissible statutory range for permit fees at \$3.50-\$6.50 per space, and the total assessed fee at no less than \$50 or more than \$600, annually.⁷

III. Effect of Proposed Changes:

Section 1 amends s. 513.01, F.S., to revise the definition of "mobile home" and to define "occupancy." The definition of "mobile home" is modified to exclude a structure originally sold as a recreational vehicle. The term "occupancy" is defined to mean the length of time that a recreational vehicle is occupied by a transient guest and not the length of time that such a vehicle is located on the leased recreational site. Part of the current definition of "recreational vehicle" is added to the definition of "occupancy".

¹ Section 513.051, F.S.

² See s. 513.05, F.S., "The department may adopt rules pertaining to the location, construction, modification, equipment, and operation of mobile home parks, lodging parks, recreational vehicle parks, and recreational vehicle camps... as necessary to administer this chapter."

³ See 64E-15.002-15.008, F.A.C.

⁴ The Department of Health, Division of Environmental Health website, *Mobile Home and Recreational Vehicle Park Program*, located at: <<http://www.doh.state.fl.us/environment/community/mobile/index.html>> (Last visited on February 3, 2011).

⁵ *Mobile Home/RV Park Listing*, Department of Health, Division of Environmental Health website, *Mobile Home and Recreational Vehicle Park Program*, located at: <http://www.doh.state.fl.us/environment/community/mobile/index.html>. (Last visited April 6, 2011).

⁶ Rule 64E-15.010, F.A.C.

⁷ Section 513.045, F.S.

Section 2 amends s. 513.012, F.S., to specify that the department is responsible for administering and enforcing uniform laws under ch. 513, F.S., creating subsection (2) to provide the specific instances when the department shall establish uniform standards to include:

- The design, location, and site sizes for sites in parks and camps;
- Sanitary standards for permitting and the operation of parks and camps;
- Occupancy standards for transient rentals in recreational vehicle parks and camps;
- Permitting of parks and camps as required by this chapter;
- Inspection of parks and camps to enforce compliance with this chapter;
- Permit requirements; and
- The maintenance of guest registers.

The bill also creates subsection (3) to establish that ch. 513, F.S., provides the uniform standards pertaining to:

- The liability for property of guests left on sites;
- Separation and setback distances established at the time of approval;
- Unclaimed property;
- Conduct of transient guests;
- Theft of personal property;
- Evictions of transient guests; and
- Writs of distress.⁸

The bill requires that local government actions, ordinances and resolutions be consistent with the provisions of this chapter and the department's uniform standards, providing an exception for the authority of local governments to adopt and enforce local land use, building, fire safety, and other regulations.

Section 3 amends s. 513.014, F.S., to remove a redundant provision that a mobile home park that rents spaces to recreational vehicles for long term leases, must comply with the laws and rules relating to mobile home parks in ch. 723, F.S.

Section 4 amends s. 513.02, F.S., to require a person who maintains a mobile home park, lodging park, recreational vehicle park, or recreational camp who is going to construct a new park or camp, or change an existing park or camp that requires construction of new sanitary facilities or additional permitted sites to receive review and approval from the department prior to beginning construction or changes. The department shall identify by rule the procedures and items required to be submitted for review and approval. The terminology related to a permit and permitting requirements is modified to designate the permit as an *operating* permit. Inconsistent references to transferring permits are eliminated since permits are not transferrable. The bill requires the purchaser of a park or camp to apply for an operating permit within 30 days after the date of sale, rather than before the date of the sale.

⁸ Section 83.12, F.S. Defines a writ of distress—"A distress writ shall be issued by a judge of the court which has jurisdiction of the amount claimed. The writ shall enjoin the defendant from damaging, disposing of, secreting, or removing any property liable to distress from the rented real property after the time of service of the writ until the sheriff levies on the property, the writ is vacated, or the court otherwise orders."

Section 5 amends s. 513.03, F.S., to add information that must be submitted in an application for an operating permit to include the number of buildings and sites set aside for group camping, including barracks, cabins, cottages, and tent spaces. The department shall issue the necessary approval or operating permit, after reviewing the application, conducting an inspection, and determining that the park or camp is not a source of danger to the health of the general public, within the criteria established under this law.

Section 6 amends s. 513.045, F.S., to clarify language related to the fees imposed for the operating permit. Obsolete language is repealed inasmuch as rules have been adopted by the department.

The bill authorizes a person to submit plans related to a proposed park or camp to the department for review for an assessment of whether the plans meet the requirements of this chapter. A person constructing a new park or camp or adding spaces or renovating an existing park or camp is required to submit plans to the department for review and approval.

Section 7 amends s. 513.05, F.S., to clarify the department's authority to adopt rules related to reviewing plans that consolidate or expand space or capacity.

Section 8 amends s. 513.054, F.S., to clarify that a person who does not obtain an *operating* permit for a mobile home park, lodging park, recreational vehicle park, or recreational camp or refuses to pay the *operating* permit fee commits a misdemeanor of the second degree.

Section 9 amends s. 513.055, F.S., to clarify that the permit referred to in this section related to the revocation or suspension of a permit applies to an *operating* permit.

Section 10 amends s. 513.10, F.S., to clarify that a person who maintains or operates a mobile home park, lodging park, recreational vehicle park, or recreational camp without first obtaining an *operating* permit or who maintains or operates a park or camp after revocation of the operating permit commits a misdemeanor of the second degree.

Section 11 repeals s. 513.111, F.S., relating to posting or publishing site rates for a recreational vehicle park that rents by the day or week and the criminal penalties associated with this activity.

Section 12 creates s. 513.1115, F.S., to require the separation distances between recreational vehicles and the setback distances from the exterior property boundary of a recreational vehicle park to be maintained at the distances and setback distances established at the time of the initial approval of the recreational vehicle park by the department and local government. The bill specifies that both of these sections do not limit the regulation of the uniform fire safety standards under s. 633.022, F.S.

Section 13 amends s. 513.112, F.S., to eliminate the requirement that the guest registry of a recreational vehicle park must be made available to the department for inspection.

Section 14 amends s. 513.115, F.S., to authorize an operator of a recreational vehicle park to dispose of property unclaimed for 90 days by a guest who has vacated the premises without notice to the operator and who has an outstanding account. An owner of a park is no longer

required to provide written notice to any guest or owner of property left at the park prior to disposing of the property. However, the property still must be held by the park for 90 days prior to disposal. The bill specifies that any titled property, including a boat, recreational vehicle, or other vehicle, shall be disposed of in accordance with the requirements of ch. 715, F.S.

Section 15 amends s. 513.13, F.S., to provide that if an operator of a recreational vehicle park notifies a person to leave the park for a permissible reason, by either posting or personal delivery, in the presence of a law enforcement officer, and the person fails to depart from the park immediately, the person commits a misdemeanor of the second degree. Pursuant to current subsection (1) of s. 513.13, F.S., permissible reasons for removal include: possessing or dealing in controlled substances, disturbing the peace and comfort of other persons, causing harm to the physical park, or failing to pay the rental rate as agreed.

A recreational vehicle park operator is not liable for damages to personal property left on the premises by a guest who has been removed from the park or arrested for the failure to leave the park after being notified to leave for a permissible reason.

Section 16 provides an effective date of July 1, 2011.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

Separation of Powers Doctrine

Article II, section 3 of the Florida Constitution, is also known as the Separation of Powers Doctrine. The constitution provides that:

The powers of state government shall be divided into legislative, executive, and judicial branches. No person belonging to one branch shall exercise any powers appertaining to either of the other branches unless expressly provided therein.

An unconstitutional delegation of power from one branch of government to another branch of government violates the Separation of Powers Doctrine. The Supreme Court

has held that there is an unconstitutional delegation of legislative power when the criteria provided in a statute is not sufficient to give adequate guidance.⁹

The Florida Department of Health has raised the following constitutional concern in their agency analysis:

The proposed bill authorizes the department to pass a rule establishing occupancy standards for transient rentals in RV parks and camps but fails to provide ascertainable minimal standards and guidelines for the agency to base its rulemaking efforts. Such excessively broad discretion may be viewed as an unconstitutional delegation of authority from the legislative to the executive branch of government, and thus a violation of the doctrine of separation of powers. *citing Sloban v. Florida Bd. of Pharmacy*, 982 So.2d 26 (Fla. 1st DCA 2008).¹⁰

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

The bill removes obsolete language pertaining to interim fees and clarifies that the existing fee structure applies to *an annual operating* permit. There are no provisions for the late payment of the annual operating permit fee.

B. Private Sector Impact:

The bill affects newly constructed parks and camps, existing parks or camps that will be expanded, and parks and camps that do not submit the required fees in a timely manner. The uniform standards related to design, operation, and occupancy imposed by the bill could minimize negative fiscal impacts to the industry which result from existing inconsistent local government rules.

C. Government Sector Impact:

The bill requires the department to adopt administrative rules and implement new requirements. The department states that this bill will have a fiscal impact on the department associated with rule amendments and implementing requirements. The department is unable to estimate the fiscal impact at this time. However, the department noted that the bill does not authorize the department to assess fees sufficient to cover costs for plan reviews, approval of new construction, expansive remodeling, reinspection fees, or late fees.¹¹

⁹ *Askew v. Cross Keys Waterways*, 372 So. 2d 913, (Fla. 1978)(stating that “[t]he constitutional doctrine prohibiting delegation of legislative power rests on the premise that the Legislature may not abdicate its responsibility to resolve the ‘truly fundamental issues; by delegating that function to others or by failing to provide adequate directions for the implementation of its declared policies.’”).

¹⁰ Department of Health, *Agency Bill Analysis, Economic Statement and Fiscal Note: SB 292*, 9 (Jan. 12, 2011) (on file with the Senate Committee on Transportation).

¹¹ Department of Health, *Agency Bill Analysis, Economic Statement and Fiscal Note: SB 292*, 7 (Jan. 12, 2011) (on file with the Senate Committee on Transportation).

VI. Technical Deficiencies:

Section 6 of the bill amends s. 513.045, F.S., which relates to permit fees. The two new provisions located in s. 513.045(b)2. and 3., F.S., do not provide for, or relate to fees. Instead, these subparagraphs authorize and require the submission of a plan for the department to review. If fees are not contemplated for the department's review, these two provisions should be moved to a more applicable section of the bill.

Amendment 664890 by Health Regulation, adopted on March 28, 2011, addresses this issue by moving these subparagraphs to section 4 of the bill which addresses permits.

VII. Related Issues:

None.

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

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

None.

B. Amendments:**Barcode 664890 by Health Regulation on March 28, 2011:**

Clarifies that the Legislature, not the Department of Health, is establishing uniform standards and:

- Sets parameters for Department rulemaking authority;
- Assigns certain standards for recreational vehicle parks and camps only;
- Moves the authority for plan reviews to a more applicable section; and
- Makes technical changes.



664890

LEGISLATIVE ACTION

Senate	.	House
Comm: FAV	.	
03/28/2011	.	
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	.	

The Committee on Health Regulation (Fasano) recommended the following:

Senate Amendment

Delete lines 74 - 244
and insert:

Section 2. Section 513.012, Florida Statutes, is amended to read:

513.012 Public health laws; enforcement.—

(1) It is the intent of the Legislature that mobile home parks, lodging parks, recreational vehicle parks, and recreational camps be regulated under this chapter. As such, the department shall administer and enforce, with respect to such parks and camps, uniform laws and rules relating to sanitation,



664890

control of communicable diseases, illnesses and hazards to health among humans and from animals to humans, and the general health of the people of the state.

(2) This chapter establishes uniform standards to be administered and enforced by the department for the issuing of permits for, and the operation of, mobile home parks, lodging parks, recreational vehicle parks, and recreational camps, which include:

(a) The design, location, and site sizes for sites in parks and camps;

(b) Sanitary standards for the issuing of permits for, and the operation of, parks and camps;

(c) The issuing of permits for parks and camps as required by this chapter;

(d) The inspection of parks and camps to enforce compliance with this chapter; and

(e) Permit requirements.

(3) This chapter establishes uniform standards for recreational vehicle parks and camps which apply to:

(a) The liability for property of guests left on sites;

(b) Separation and setback distances established at the time of initial approval;

(c) Unclaimed property;

(d) Conduct of transient guests;

(e) Theft of personal property;

(f) Evictions of transient guests;

(g) Writs of distress;

(h) The maintenance of guest registers;

(i) Occupancy standards for transient rentals; and



664890

(j) Placement of recreational vehicles by size and type.

(4) Local governmental actions, ordinances, and resolutions must be consistent with the uniform standards established pursuant to this chapter and as implemented by rules of the department. This chapter does not limit the authority of a local government to adopt and enforce land use, building, firesafety, and other regulations.

(5) However, nothing in this chapter qualifies a mobile home park, a lodging park, a recreational vehicle park, or a recreational camp for a liquor license issued under s.

561.20(2)(a)1. Mobile home parks, lodging parks, recreational vehicle parks, and recreational camps regulated under this chapter are exempt from regulation under the provisions of chapter 509.

Section 3. Section 513.014, Florida Statutes, is amended to read:

513.014 Applicability of recreational vehicle park provisions to mobile home parks.—A mobile home park that has five or more sites set aside for recreational vehicles shall, for those sites set aside for recreational vehicles, comply with the recreational vehicle park requirements included in this chapter. This section does not require a mobile home park with spaces set aside for recreational vehicles to obtain two licenses. ~~However, a mobile home park that rents spaces to recreational vehicles on the basis of long-term leases is required to comply with the laws and rules relating to mobile home parks including but not limited to chapter 723, if applicable.~~

Section 4. Section 513.02, Florida Statutes, is amended to



664890

read:

513.02 Permits ~~Permit.~~

(1) A person may not establish or maintain a mobile home park, lodging park, recreational vehicle park, or recreational camp in this state without first obtaining an operating a permit from the department. ~~Such permit is not transferable from one place or person to another. Each permit must be renewed annually.~~

(2) Before the commencement of construction of a new park or camp or before any change to an existing park or camp which requires construction of new sanitary facilities or additional permitted sites, a person who operates or maintains such park or camp must contact the department to receive a review and approval. The items required to be submitted and the process for issuing a review and approval shall be set by department rule.

(3)(a) An operating permit is not transferable from one place or person to another. Each permit must be renewed annually.

(b)(2) The department may refuse to issue an operating a permit to, or refuse to renew the operating permit of, any park or camp that is not constructed or maintained in accordance with law and with the rules of the department.

(c)(3) The department may suspend or revoke an operating a permit issued to any person that operates or maintains such a park or camp if such person fails to comply with this chapter or the rules adopted by the department under this chapter.

(d)(4) An operating A permit for ~~the operation of~~ a park or camp may not be renewed ~~or transferred~~ if the permittee has an outstanding fine assessed pursuant to this chapter which is in



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final-order status and judicial reviews are exhausted, ~~unless the transferee agrees to assume the outstanding fine.~~

(e) ~~(5)~~ When a park or camp regulated under this chapter is sold ~~or its ownership transferred~~, the purchaser who continues operation of the park or camp transferee must apply to the department for an operating a permit within 30 days after to the department before the date of sale transfer. The applicant must provide the department with a copy of the recorded deed or lease agreement before the department may issue an operating a permit to the applicant.

(4) Each person seeking department review of plans for a proposed park or camp may submit the plans to the department for an assessment of whether the plans meet the requirements of this chapter and the rules.

(5) Each person constructing a new park or camp or adding spaces to an existing park or camp must, before the construction, renovation, or addition, submit plans to the department for department review and approval.

Section 5. Section 513.03, Florida Statutes, is amended to read:

513.03 Application for and issuance of permit.—

(1) An application for an operating a permit must be made in writing to the department, ~~on a form prescribed by the department.~~ The application must state the location of the existing or proposed park or camp; ~~the type of park or camp;~~ the number of mobile homes or recreational vehicles to be accommodated; ~~or the number of recreational campsites, buildings, and sites set aside for group camping, including barracks, cabins, cottages, and tent spaces;~~ the type of water



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supply; ~~the~~ the method of sewage disposal; ~~and~~ and any other information the department requires.

(2) If the department is satisfied, after reviewing the application of the proposed or existing park or camp and causing an inspection to be made, that the park or camp complies with this chapter and is so located, constructed, and equipped as not to be a source of danger to the health of the general public, the department shall issue the necessary approval or operating permit, in writing, on a form prescribed by the department.

Section 6. Subsection (1) of section 513.045, Florida Statutes, is amended to read:

513.045 Permit fees.—

(1) (a) Each person seeking a permit to establish, operate, or maintain a mobile home park, lodging park, recreational vehicle park, or recreational camp must pay to the department a fee, the amount of which shall be set by rule of the department.

(b) Fees established pursuant to this subsection must be based on the actual costs incurred by the department in carrying out its responsibilities under this chapter.

(c) The fee for an annual operating ~~a~~ permit may not be set at a rate that is more than \$6.50 per space or less than \$3.50 per space. ~~Until rules setting these fees are adopted by the department, the permit fee per space is \$3.50.~~ The annual operating permit fee for a nonexempt recreational camp shall be based on an equivalency rate for which two camp occupants equal one space. The total fee assessed to an applicant for an annual operating permit may not be more than \$600 or less than \$50, except that a fee may be prorated on a quarterly basis.

~~(d) (e)~~ A recreational camp operated by a civic, fraternal,



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educational, or religious organization that does not rent to the public is exempt from the fee requirements of this subsection.

Section 7. Section 513.05, Florida Statutes, is amended to read:

513.05 Rules.—The department may adopt rules pertaining to the location, construction, modification, equipment, and operation of mobile home parks, lodging parks, recreational vehicle parks, and recreational camps, except as provided in s. 633.022, as necessary to administer this chapter, pursuant to the provisions of this chapter and s. 381.006. Such rules may include definitions of terms; requirements for plan reviews of proposed and existing parks and camps; plan reviews of parks that consolidate or expand space or capacity or change space size; water supply; sewage collection and disposal; plumbing and backflow prevention; garbage and refuse storage, collection, and disposal; insect and rodent control; space requirements; heating facilities; food service; lighting; sanitary facilities; bedding; an occupancy equivalency to spaces for permits for recreational camps; sanitary facilities in recreational vehicle parks; and the owners' responsibilities at recreational vehicle parks and recreational camps.

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 Community Affairs Committee

BILL: CS/SB 1110

INTRODUCER: Military Affairs, Space & Domestic Security Committee and Senator Dean

SUBJECT: Commemoration of the 40th Anniversary of U.S. Involvement in the Vietnam War

DATE: April 5, 2011

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Fleming	Carter	MS	Fav/CS
2.	Wood	Yeatman	CA	Pre-meeting
3.			BC	
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

- | | | |
|------------------------------|--|---|
| A. COMMITTEE SUBSTITUTE..... | ☒ | Statement of Substantial Changes |
| B. AMENDMENTS..... | ☐ | Technical amendments were recommended |
| | ☐ | Amendments were recommended |
| | ☐ | Significant amendments were recommended |

I. Summary:

This bill designates March 25, 2013, the 40th anniversary of the end of the United States' involvement in the Vietnam War, as a legal holiday. This bill also directs the Governor to proclaim March 29 of each year to be "Vietnam Veterans' Day," which shall commence on March 29, 2014. This date is to be annually observed throughout Florida as a day honoring the veterans who served in the United States Armed Services during the Vietnam Era. Additionally, this bill:

- Directs the Florida Department of Veterans' Affairs to administratively promote and support the efforts of counties, municipalities, and bona fide veterans' organizations that voluntarily hold special community events commemorating "Vietnam Veterans' Day;"
- Creates a special volunteer advisory board to make recommendations as to the activities conducted to commemorate "Vietnam Veterans' Day;" and
- Directs the Florida Department of Highway Safety and Motor Vehicles to develop a "Vietnam Veterans" license plate.

This bill creates the following sections of the Florida Statutes: 683.025 and 292.075. This bill substantially amends the following sections of the Florida Statutes: 320.08056, 320.08058, and 683.01.

This bill has an effective date of July 1, 2011.

II. Present Situation:

Legal Holidays and Special Observance Days

Chapter 683, F.S., establishes legal holidays and special observance days. Legal holidays and special observance days may apply throughout the state or they may be limited to particular counties. For example, “Gasparilla Day”¹ is a legal holiday observed only in Hillsborough County, while “Bill of Rights Day,”² if issued by the Governor, is observed throughout the state. Also, designation of a day as a legal holiday does not necessarily make that day a paid holiday for public employees. Section 110.117, F.S., establishes which legal holidays are paid holidays for public employees.³

The legal holidays established in s. 683.01(1), F.S., are:

- (a) Sunday, the first day of each week.⁴
- (b) New Year’s Day, January 1.
- (c) Birthday of Martin Luther King, Jr., January 15.
- (d) Birthday of Robert E. Lee, January 19.
- (e) Lincoln’s Birthday, February 12.
- (f) Susan B. Anthony’s Birthday, February 15.
- (g) Washington’s Birthday, the third Monday in February.
- (h) Good Friday.
- (i) Pascua Florida Day, April 2.⁵
- (j) Confederate Memorial Day, April 26.
- (k) Memorial Day, the last Monday in May.
- (l) Birthday of Jefferson Davis, June 3.
- (m) Flag Day, June 14.
- (n) Independence Day, July 4.
- (o) Labor Day, the first Monday in September.
- (p) Columbus Day and Farmers’ Day, the second Monday in October.
- (q) Veterans’ Day, November 11.

Specialty License Plates

The Florida Legislature created the first specialty license plate in 1986. Specialty license plates are available for an annual use fee to any owner or lessee of a motor vehicle. Annual use fees ranging from \$15 to \$25, paid in addition to required license taxes and service fees, are distributed to a specified organization in support of the particular cause or charity signified in the

¹ Section 683.08, F.S.

² Section 683.25, F.S.

³ Section 110.117(1), F.S., provides the following holidays as paid holidays for all state branches and agencies: New Year’s Day; Martin Luther King Birthday; Memorial Day; Independence Day; Labor Day; Veteran’s Day; Thanksgiving Day and Friday after Thanksgiving; and Christmas Day.

⁴ Sunday as a holiday has its origins in the Christian Sabbath or day of rest.

⁵ “Pascua Florida” is a Spanish term that means *flowery festival* or *feast of flowers*. It usually refers to the Easter season, though, “Pascua” can, depending on the context, refer to the Jewish Passover, Easter, Christmas, Epiphany or Pentecost. See, <http://www.answers.com/topic/pascua-florida>. April 2 each year is designated as “Florida State Day” and is known as “Pascua Florida Day.” Juan Ponce de León called the land he encountered in 1513 “Pascua florida.” The holiday is to be observed in the same manner as a “patriotic occasion.”

plate's design and designated in statute. The Legislature may create a specialty license plate under its own initiative or it can do so at the request of an organization.

Section 320.08053, F.S., provides that an organization seeking authorization to establish a specialty license plate must submit the following:

- A request for the particular license plate with a description of the proposed plate in specific terms, including a sample plate conforming to the specifications set by the Department of Highway Safety and Motor Vehicles (DHSMV);
- An application fee, not to exceed \$60,000, to defray the DHSMV's cost for reviewing the application and developing the specialty license plate, if authorized; and
- A marketing strategy outlining both the short and long term marketing plans, and a financial analysis outlining the anticipated revenue and the planned expenditures of the revenue from the requested specialty license plate.

The required documentation and fees must be submitted at least 90 days before the convening of the next regular session of the Florida Legislature. If a specialty license plate is approved by law, the organization must submit a proposed art design for the specialty plate to the DHSMV no later than 60 days after the act becomes a law. If the specialty license plate is not approved by the Legislature, the application fee is refunded to the requesting organization.

In 2010, the Legislature amended s. 320.08053, F.S., to establish presale requirements for specialty license plates that have been approved by the Legislature. Section 320.08053(3), F.S., requires the DHSMV to establish a method to issue a specialty license plate voucher to allow for the presale of an approved specialty license plate, within 120 days following the specialty license plate becoming law. Within 24 months after the presale specialty license plate voucher is established, the approved specialty license plate organization must record with the DHSMV at least 1,000 voucher sales before manufacture of the license plate may commence. If the minimum sales requirements have not been met after the 24-month presale period, the specialty license plate is deauthorized and the DHSMV must discontinue development of the plate and discontinue issuance of the presale vouchers.

In 2008, the Legislature passed SB 1992 (ch. 2008-176, Laws of Florida), which established a moratorium on the issuance of specialty plates by the DHSMV. The 2010 Legislature created chapter 2010-233, Laws of Florida, to extend the moratorium to July 1, 2014. The moratorium contains an exception "for [any] specialty license plate proposal which has submitted a letter of intent to the DHSMV prior to May 2, 2008" or "which was included in a bill filed during the 2008 Legislative Session."⁶

The DHSMV is authorized to annually retain the first proceeds derived from the annual use fees collected in an amount sufficient to defray each specialty plate's pro rata (proportionate) share of the DHSMV's costs directly related to issuing the specialty license plate. A person wishing to purchase a specialty license plate must pay, in addition to the required license plate fee and license tax, a license plate annual use fee (from \$15 to \$25) and a processing fee of \$5.

⁶ Section 21, ch. 2010-223, L.O.F.

Annual use fees and any interest earned from those fees may be used by the authorized organization for public or private purposes. However, the annual fees may not be used for commercial or for-profit activities or for general administrative expenses (except as specifically authorized or to pay the cost of the audit or report required to ensure the proceeds are used as authorized).

Section 320.08058, F.S., lists the approved specialty license plates and specifies funding requirements.

Section 320.08062, F.S., requires all organizations receiving annual use fee proceeds from the DHSMV to be responsible for ensuring proceeds are used in accordance with ss. 320.08056 and 320.08058, F.S. Each organization is either subject to an audit or is required to annually attest, under penalties of perjury, that such proceeds were used correctly. The DHSMV can examine all records pertaining to the use of specialty license plate revenues.

United States Involvement in Vietnam War

The United States supported South Vietnam from the beginning of the war until its end on May 7, 1975. The U.S. Congress and President have defined the Vietnam era as beginning February 28, 1961, and ending on May 7, 1975.⁷ This is the period used to determine qualification for veterans' benefits. The Vietnam Veterans Association likewise uses this period to determine eligibility for membership.⁸ Approximately 2.7 million American men and women served in the Vietnam War, and over 50,000 U.S. lives were lost as a result of combat-related deaths in fighting that spread throughout Cambodia, Laos, and Vietnam.

United States involvement in the Vietnam War began to decline with the signing of the Paris Peace Accords on January 27, 1973. All U.S. ground troops were to be withdrawn from Vietnam by March 30, 1973. The U.S. Congress passed the Case-Church amendment on June 4, 1973, prohibiting direct U.S. intervention beginning August 15, 1973. The U.S. continued bombing North Vietnamese installations until August 14, 1973. Thousands of civilian and support personnel remained in South Vietnam through the end of the war and the U.S. continued giving financial aid to South Vietnam. The last U.S. diplomatic, military, and civilian personnel were evacuated on April 30, 1975.

Federal Recognition

On March 7, 2011, the 112th U.S. Congress passed a resolution declaring March 30, 2011, to be "Welcome Home Vietnam Veterans Day." This resolution encourages states to establish the holiday as well. The resolution states that "on March 30, 1973, the United States Armed Forces completed the withdrawal of combat units and combat support units from South Vietnam."⁹

⁷ U.S. Code of Federal Regulations, Title 45, Volume 3, Sec. 506.10, "Vietnam Conflict" defined, *available at* <http://frwebgate2.access.gpo.gov/cgi-bin/TEXTgate.cgi?WAISdocID=xr1v3B/30/1/0&WAIAction=retrieve>

⁸ Vietnam Veterans Association, *Membership Brochure*, http://www.vva.org/member_brochure.html (last visited April 05, 2011).

⁹ S.R. 55, 112th Cong. (March 7, 2011).

III. Effect of Proposed Changes:

Section 1 amends s. 683.01, F.S., designating March 25, 2013,¹⁰ the 40th anniversary of the end of the United States' involvement in the Vietnam War, as a legal holiday.

Section 2 creates s. 683.025, F.S., designating March 25, 2013, as the date which the 40th anniversary of the end of the United States' involvement in the Vietnam War is to be commemorated. This bill further directs the Governor to proclaim March 29 of each year to be "Vietnam Veterans' Day," which shall commence on March 29, 2014. This date is to be annually observed throughout the state as a day honoring the veterans who served in the United States Armed Services during the Vietnam Era.

Section 3 creates s. 292.075, F.S., directing the Florida Department of Veterans' Affairs to administratively promote and support the efforts of counties, municipalities, and bona fide veterans' organizations that voluntarily hold special community events commemorating the 40th anniversary of the end of the United States' involvement in the Vietnam War on March 25, 2013, and "Vietnam Veterans' Day."

Specifically, the bill directs the Department of Veterans' Affairs to adopt rules to:

- Solicit private donations to fund grants to counties, municipalities, and bona fide veterans' organizations that voluntarily hold commemorative "Vietnam Veterans' Day" activities; and
- Create a special volunteer advisory board, consisting of Vietnam veterans who are Florida residents, which will review and make recommendations as to the activities conducted to commemorate "Vietnam Veterans' Day."

Section 4 amends s. 320.08056, F.S., adding the "Vietnam Veterans" license plate to the list of approved specialty license plates available in Florida and establishes an annual use fee of \$25 to acquire such license plate.

Section 5 amends s. 320.08058, F.S., directing the DHSMV to develop a "Vietnam Veterans" license plate, in which the license plate annual use fees are to be deposited into the Florida Department of Veterans' Affairs' Operations and Maintenance Trust Fund. All such moneys are to be administered by the Florida Veterans' Foundation,¹¹ and must be used solely for the purpose of:

- Funding grants to counties, municipalities, and bona fide veterans' organizations for activities related to the initial observance of "Vietnam Veterans' Day" on March 25, 2013;
 - Expenditures related to the annual observance of "Vietnam Veterans' Day" in years subsequent to 2013; and
 - The continuing promotion and marketing of the "Vietnam Veterans" license plate.
- According to the DHSMV, the "Vietnam Veterans" license plate sponsoring organization has not met the necessary application and fee requirements established by s. 320.08053, F.S., prior to May 2, 2008. That statute requires that an organization seeking to have a license plate must

¹⁰ Because March 29, 2013, falls on Good Friday, which is an existing legal holiday, this bill designates March 25, 2013, as the date which the 40th anniversary of the end of the United States' involvement in the Vietnam War is to be commemorated.

¹¹ The Florida Veterans' Foundation is the direct-support organization of the Florida Department of Veterans' Affairs created under s. 292.055, F.S.

follow an application process which goes through the DHSMV, with all information and fees submitted 90 days prior to the start of the Legislative session. The Legislature then approves a license plate by adding it to current law. This section as written circumvents the process established in current state statute as well as the associated moratorium on new license plates.

Section 6 provides an effective date of July 1, 2011.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Persons choosing to purchase a “Vietnam Veterans” specialty license plate can do so for a charge of \$25 (plus \$5 processing fee) in addition to the normal fees associated with buying a license plate.

C. Government Sector Impact:

DHSMV would be responsible for developing and distributing the “Vietnam Veterans” specialty license plate. The cost of this effort is estimated to be approximately \$60,000. According to the DHSMV, the required \$60,000 application fee has not been paid which would help offset the development and distribution costs.

VI. Technical Deficiencies:

The bill states that March 29, 2013, is the 40th anniversary of the end of United States involvement in the Vietnam War. While this may be the date that most ground troops were supposed to be withdrawn under the Paris Peace Accords, the United States continued to be involved in the Vietnam War until May 7, 1975. March 29, 1973, does not appear in any official documents as the end of U.S. involvement or the end of the Vietnam War. As noted in the Present Situation section, the U.S. Congress has noted May 7, 1975, as the end of the conflict as it relates to U.S. veterans and a recent U.S. Senate Resolution noted March 30, 1973, as the day

troops were withdrawn. It might be more accurate to state that it is the anniversary of the withdrawal of U.S. combat ground troops from Vietnam, or otherwise to change the date.

The DHSMV notes that the bill does not have a timeline specified in which funds are to be deposited into the Operations and Maintenance Trust Fund of the Department of Veterans' Affairs. They also request that the effective date be changed to October 1, 2011 to allow time for programming modifications.¹²

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

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

CS by Military Affairs, Space, and Domestic Security on March 23, 2011:

- Designates March 25, 2013, the 40th anniversary of the end of the United States' involvement in the Vietnam War, as a legal holiday.
- Provides for the recognition of "Vietnam Veterans' Day" to be held annually on March 29, commencing on March 29, 2014.

B. Amendments:

None.

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

¹² Department of Highway Safety and Motor Vehicles, *Senate Bill 1110 Agency Bill Analysis* (Feb. 25, 2011) (on file with the Senate Committee on Community Affairs).

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 Community Affairs Committee

BILL: CS/SB 796

INTRODUCER: Environmental Preservation and Conservation Committee and Senators Diaz de la Portilla and Sobel

SUBJECT: Domestic Wastewater Ocean Outfalls

DATE: April 6, 2011

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Uchino	Yeatman	EP	Fav/CS
2.	Wolfgang	Yeatman	CA	Pre-meeting
3.			BC	
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

- | | | |
|------------------------------|--|---|
| A. COMMITTEE SUBSTITUTE..... | ☒ | Statement of Substantial Changes |
| B. AMENDMENTS..... | ☐ | Technical amendments were recommended |
| | ☐ | Amendments were recommended |
| | ☐ | Significant amendments were recommended |

I. Summary:

This Committee Substitute (CS) extends compliance deadlines five years for utilities to install functional reuse systems and eliminate discharges through ocean outfalls. Utilities will be allowed to meet the 60-percent reuse requirement from their entire service areas. The CS allows utilities to continue to discharge peak flows up to five percent of utilities' baseline flows through ocean outfalls and exempts those discharges if the utilities meet certain requirements. Additionally, the CS requires utilities to include supplemental information on costs and options in their detailed plans necessary to achieve the requirements of subsection 403.086(9), F.S. Finally, the CS requires the utilities, the Department of Environmental Protection (DEP) and the South Florida Water Management District (SFWMD) to evaluate the detailed plans and recommend to the Legislature adjustments, if necessary, to the reuse requirements in this subsection.

This bill substantially amends s. 403.086, Florida Statutes.

II. Present Situation:

Eliminating Ocean Outfalls and Reuse Requirements

There are six domestic wastewater facilities in Palm Beach, Broward, and Miami-Dade Counties discharging approximately 300 million gallons per day of treated domestic wastewater directly into the Atlantic Ocean through ocean outfalls.¹ The ocean outfall providing service to the cities of Boynton Beach and Delray Beach largely ceased discharges in early 2009.² Exceptions for this facility are allowed to handle peak wet weather flows, during integrity testing of deep well injection and for emergencies.

Chapter 2008-232, Laws of Florida, prohibits construction of new ocean outfalls and requires that all six ocean outfalls in Florida cease discharging wastewater by December 31, 2025. In addition, wastewater facilities that discharged wastewater through an ocean outfall on July 1, 2008 are required to install a reuse system no later than December 31, 2025. The reuse systems must be capable of providing a minimum of 60 percent of the wastewater facilities actual annual flow for beneficial reuse. The actual annual flow is calculated using the annual average flow through a wastewater facility's ocean outfall from 2003 through 2007.³

Wastewater facilities operating ocean outfalls may receive a significant portion of their annual average flow from other wastewater facilities located outside their direct service areas. SB 550, passed during the 2010 Regular Session,⁴ addressed the possibility of certain facilities not being able to comply with the 60 percent reuse requirement of s. 403.086(9)(c), F.S. The potential existed that flow received from outside their service areas could be diverted to other wastewater facilities that do not discharge through ocean outfalls, and therefore, diverting facilities would not have to comply with the 60-percent beneficial reuse requirement for ocean outfalls. In addition, discharges of wastewater through ocean outfalls after December 31, 2018, must meet advanced wastewater treatment (AWT) standards or equivalent processes.⁵

Implementation Issues

The first progress report from the DEP was presented to the Governor, President of the Florida Senate and Speaker of the Florida House of Representatives in June 2010.⁶ Although there is general understanding of the existing requirements, some confusion remains about what current and future reuse projects count towards the 60-percent reuse threshold. The DEP reports:

The City of Hollywood and Broward County Office of Environmental Services assumed that reuse projects that were in use during 2003 through 2007 can be

¹ Florida Dep't of Environmental Protection, *Implementation of Chapter 2008-232, Laws of Florida Domestic Wastewater Ocean Outfalls* (June 2010), available at <http://www.dep.state.fl.us/water/wastewater/docs/ocean-outfall-2010.pdf> (last visited 03/14/2011).

² Christine Stapleton, *Delray Beach to stop dumping wastewater in ocean*, The Palm Beach Post, Mar. 31, 2009, available at http://www.palmbeachpost.com/localnews/content/local_news/epaper/2009/03/31/0331_delrayoutfall.html (last visited 03/14/2011).

³ Section 403.086(9)(c), F.S.

⁴ Ch. 2010-205, s. 38, Laws of Fla.

⁵ Section 403.086(9)(b), F.S.

⁶ *Supra* note 2.

applied to the 60 percent reuse requirement. The Department has informed all ocean outfall permit holders that such existing reuse projects do not count toward meeting the reuse requirement.⁷

In addition, the Miami-Dade Water and Sewer Department is planning to divert flows from its two ocean outfalls to other facilities to support reuse projects located near those sites.⁸ The DEP has had discussions with utilities personnel that subsection 403.086(9)(c), F.S., does not allow existing reuse projects to count towards meeting the 60-percent reuse requirement, “since one of the primary goals of the Act is to beneficially reuse wastewater flows that are discharged through the outfalls and therefore increase the amount of new reuse in Southeast Florida.”⁹

III. Effect of Proposed Changes:

Section 1 amends s. 403.086, F.S., to extend certain compliance deadlines five years. Under the bill the deadlines will be extended to:

- December 31, 2030, to:
 - have in place a functioning reuse system,
 - achieve the 60-percent reuse requirement for discharges through ocean outfalls, and
 - eliminate ocean outfalls;
- July 1, 2018, for a utility to submit detailed plans on how to achieve the requirements of subsection 403.086(9), F.S. (updates must be completed by July 1, 2021).

The CS allows utilities to comply with the 60-percent reuse requirement from their entire service areas rather than just from ocean outfalls. This provision will allow utilities the flexibility to find the most cost-effective method to achieve a 60-percent reuse for their service areas. However, it may also reduce the percentage of reuse derived from ocean outfalls. The CS specifies that only the Biscayne and Upper Floridan Aquifers may be recharged with reuse from these facilities. Additionally, facilities that shared a common ocean outfall as of July 1, 2008, are required to meet the 60-percent reuse requirement individually but may contract to share or transfer this responsibility with other utilities.

The CS allows utilities to continue backup discharges through ocean outfalls that are part of a functioning reuse system or other wastewater management system authorized by the DEP. Utilities may discharge peak flows that do not cumulatively exceed five percent of total baseline flows. “Baseline flow” is defined as “the annual average flow of domestic wastewater discharging through the facility’s ocean outfall, as determined by the department, using monitoring data available for calendar years 2003 through 2007.” Backup discharges are subject to effluent limitations contained in DEP rules and, if in compliance, are deemed to meet AWT standards.¹⁰ In addition, backup discharges are deemed to meet AWT standards if the discharging facility has installed a fully operational reuse system by December 31, 2018, that handles 100 percent of a facility’s average annual daily flow. This change will allow backup discharges to violate AWT standards while being statutorily deemed to meet them.

⁷ See *supra* note 2, at 17.

⁸ See *supra* note 2, at 18.

⁹ See *supra* note 2, at 3.

¹⁰ See s. 403.086(4), F.S.

The CS updates the requirements for the detailed plans that utilities must develop. The new information included in the plan must identify:

- The technical, environmental and economic feasibility of various reuse options,
- An analysis of costs necessary for utilities to meet state and local water quality criteria, and
- A comparative cost estimate of achieving reuse requirements from ocean outfalls and other sources.

The plan must evaluate the demand for reuse in the context of future water use estimates, the availability of traditional sources of water, the need for alternative water supplies, the offset reuse will have on potable supplies and other factors contained in the SFWMD's Lower East Coast Regional Water Supply Plan.

Finally, the CS requires the utilities, the DEP and the SFWMD to evaluate the detailed plans and recommend to the Legislature adjustments, if necessary, to the reuse requirements in this subsection. The report is due to the Legislature by February 15, 2019.

This section contains technical and conforming changes.

Section 2 provides an effective date of July 1, 2011.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Water utility consumers will benefit from the cost saving provisions for wastewater utilities in this bill. While the cost savings are indeterminate, they will likely be insignificant on an individual basis.

C. Government Sector Impact:

First, wastewater utilities may see significant cost reductions in implementing the 60-percent reuse requirements for ocean outfalls by utilizing their entire service areas rather than only flows discharged through ocean outfalls. Second, allowing utilities to continue backup discharges up to five percent of their peak flows will also save costs. Exempting five percent of their peak flows from AWT standards if those discharges meet statutory requirements and DEP rules on effluent limitations is another provision that will save the utilities millions of dollars. The sponsor of the bill testified in the Environmental Preservation and Conservation Committee meeting that the amendments offered to the bill, which are incorporated in this CS, will save more than \$5 billion over 20 years for all counties combined and \$50 million in annual operation and maintenance costs for Miami-Dade County alone. Last, extending compliance deadlines may allow utilities time to access more favorable bond market conditions due to the economic recovery and recovering tax revenues. Although potentially significant, the impact cannot be determined at this time.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)**CS by Environmental Preservation and Conservation on March 17, 2011:**

- Extends compliance deadline five years to December 31, 2030, for utilities to install functioning reuse systems,
- Allows utilities operating more than one wastewater facility to meet the 60-percent reuse requirement from the entire wastewater system,
- Changes the standard for reuse from “actual flow on an annual basis” to “baseline flow,” and provides a definition for such,
- Clarifies what aquifers may be recharged with reuse water – Biscayne or Upper Floridan,
- Clarifies that utilities that shared a common ocean outfall are individually responsible for meeting the reuse requirement and may enter into contracts to share or transfer this responsibility,
- Extends compliance deadline five years to eliminate discharges through ocean outfalls,
- Allows facilities to continue backup discharges after the 2030 deadline for peak flows,
- Limits peak flow discharges to five percent of baseline flow measured on a 5-year rolling average,

- Specifies that peak flow discharges meet AWT standards if they are in compliance with department rule limitations for effluent,
- Authorizes peak flow discharges for facilities operating 100 percent reuse systems by Dec. 31, 2018,
- Clarifies what needs to be included in the detailed plans to achieve the requirements of this subsection,
- Extends compliance deadline 5 years for submittal of these plans and plan updates to July 1, 2018, and July 1, 2021, respectively, and

Requires the DEP, the water management districts and affected utilities to reevaluate the reuse requirements in this subsection. The DEP must then submit a report to the Legislature by Feb. 15, 2019, detailing any changes needed to the reuse requirement.

B. Amendments:

None.



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LEGISLATIVE ACTION

Senate

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House

The Committee on Community Affairs (Thrasher) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Subsection (9) of section 403.086, Florida
Statutes, is amended to read:

403.086 Sewage disposal facilities; advanced and secondary
waste treatment.—

(9) The Legislature finds that the discharge of domestic
wastewater through ocean outfalls wastes valuable water supplies
that should be reclaimed for beneficial purposes to meet public
and natural systems demands. The Legislature also finds that



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13 discharge of domestic wastewater through ocean outfalls
14 compromises the coastal environment, quality of life, and local
15 economies that depend on those resources. The Legislature
16 declares that more stringent treatment and management
17 requirements for such domestic wastewater and the subsequent,
18 timely elimination of ocean outfalls as a primary means of
19 domestic wastewater discharge are in the public interest.

20 (a) The construction of new ocean outfalls for domestic
21 wastewater discharge and the expansion of existing ocean
22 outfalls for this purpose, along with associated pumping and
23 piping systems, are prohibited. Each domestic wastewater ocean
24 outfall shall be limited to the discharge capacity specified in
25 the department permit authorizing the outfall in effect on July
26 1, 2008, which discharge capacity shall not be increased.
27 Maintenance of existing, department-authorized domestic
28 wastewater ocean outfalls and associated pumping and piping
29 systems is allowed, subject to the requirements of this section.
30 The department is directed to work with the United States
31 Environmental Protection Agency to ensure that the requirements
32 of this subsection are implemented consistently for all domestic
33 wastewater facilities in Florida which discharge through ocean
34 outfalls.

35 (b) The discharge of domestic wastewater through ocean
36 outfalls must ~~shall~~ meet advanced wastewater treatment and
37 management requirements by December 31, 2023 ~~no later than~~
38 ~~December 31, 2018~~. For purposes of this subsection, the term
39 "advanced wastewater treatment and management requirements"
40 means the advanced waste treatment requirements set forth in
41 subsection (4), a reduction in outfall baseline loadings of



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total nitrogen and total phosphorus which is equivalent to that which would be achieved by the advanced waste treatment requirements in subsection (4), or a reduction in cumulative outfall loadings of total nitrogen and total phosphorus occurring between December 31, 2008, and December 31, 2025, which is equivalent to that which would be achieved if the advanced waste treatment requirements in subsection (4) were fully implemented beginning December 31, 2020 ~~2018~~, and continued through December 31, 2025. The department shall establish the average baseline loadings of total nitrogen and total phosphorus for each outfall using monitoring data available for calendar years 2003 through 2007 and ~~shall~~ establish required loading reductions based on this baseline. The baseline loadings and required loading reductions of total nitrogen and total phosphorus shall be expressed as an average annual daily loading value. The advanced wastewater treatment and management requirements of this paragraph shall be deemed to be met for any domestic wastewater facility discharging through an ocean outfall on July 1, 2008, which has installed by ~~no later than~~ December 31, 2018, a fully operational reuse system comprising 100 percent of the facility's annual average daily flow for reuse activities authorized by the department.

(c)1. Each utility that had a permit for a domestic wastewater facility that discharged ~~discharges~~ through an ocean outfall on July 1, 2008, must ~~shall~~ install a functioning reuse system by ~~no later than~~ December 31, 2025. For purposes of this subsection, a "functioning reuse system" means an environmentally, economically, and technically feasible system that provides a minimum of 60 percent of a ~~the~~ facility's



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71 baseline actual flow or, for utilities operating more than one
72 facility, 60 percent of the utility's entire wastewater system
73 flow on an annual basis on December 31, 2025. Reuse may be ~~on an~~
74 ~~annual basis~~ for irrigation of public access areas, residential
75 properties, or agricultural crops; ~~aquifer~~ recharge of the
76 Biscayne or Upper Floridan Aquifers; groundwater recharge;
77 industrial cooling; or other acceptable reuse purposes
78 authorized by the department. For purposes of this subsection,
79 the term "baseline flow" ~~"facility's actual flow on an annual~~
80 ~~basis"~~ means the annual average flow of domestic wastewater
81 discharging through the facility's ocean outfall, as determined
82 by the department, using monitoring data available for calendar
83 years 2003 through 2007.

84 2. Flows diverted from facilities to other facilities that
85 provide 100 percent reuse of the diverted flows ~~before~~ ~~prior to~~
86 December 31, 2025, shall be considered to contribute to meeting
87 the ~~60 percent~~ reuse requirement. For utilities operating more
88 than one outfall, the reuse requirement ~~may~~ ~~can~~ be apportioned
89 ~~between the met if the combined actual reuse flows from~~
90 ~~facilities served by the outfalls is at least 60 percent of the~~
91 ~~sum of the total actual flows from the facilities, including~~
92 ~~flows diverted to other facilities for 100 percent reuse~~ before
93 ~~prior to~~ December 31, 2025. Utilities that shared a common ocean
94 outfall for the discharge of domestic wastewater on July 1,
95 2008, regardless of which utility operates the ocean outfall,
96 are individually responsible for meeting the reuse requirement
97 and may enter into binding agreements to share or transfer such
98 responsibility among the utilities. In the event treatment in
99 addition to the advanced wastewater treatment and management



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requirements described in paragraph (b) is needed in order to support a functioning reuse system, such treatment must ~~shall~~ be fully operational by no later than December 31, 2025.

(d) The discharge of domestic wastewater through ocean outfalls is prohibited after December 31, 2025, except as a backup discharge that is part of a functioning reuse system or other wastewater management system authorized by the department ~~as provided for in paragraph (c)~~. Except as otherwise provided in this subsection, a backup discharge may occur only during periods of reduced demand for reclaimed water in the reuse system, such as periods of wet weather, or as the result of peak flows from other wastewater management systems, and must ~~shall~~ comply with the advanced wastewater treatment and management requirements of paragraph (b). Peak flow backup discharges from other wastewater management systems may not cumulatively exceed 5 percent of a facility's baseline flow, measured as a 5-year rolling average; are subject to applicable secondary waste treatment and water-quality-based effluent limitations specified in department rules; and, when in compliance with the effluent limitations, are deemed to meet the advanced wastewater treatment requirements of this subsection.

(e) The holder of a department permit authorizing the discharge of domestic wastewater through an ocean outfall as of July 1, 2008, shall submit the following to the secretary of the department ~~the following~~:

1. A detailed plan to meet the requirements of this subsection, including the identification of the technical, environmental, and economic feasibility of various reuse options; the ~~an~~ identification of all land acquisition and



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129 facilities necessary to provide for reuse of the domestic
130 wastewater; an analysis of the costs to meet the requirements,
131 including the level of treatment necessary to satisfy state
132 water quality requirements and local water quality
133 considerations, and a comparative cost of reuse using flows from
134 ocean outfalls and flows from other domestic wastewater sources;
135 and a financing plan for meeting the requirements, including
136 identifying any actions necessary to implement the financing
137 plan, such as bond issuance or other borrowing, assessments,
138 rate increases, fees, other charges, or other financing
139 mechanisms. The plan must evaluate reuse demand in the context
140 of future regional water supply demands, the availability of
141 traditional water supplies, the need for development of
142 alternative water supplies, the degree to which various reuse
143 options offset potable water supplies, and other factors
144 considered in the South Florida Water Management District's
145 Lower East Coast Regional Water Supply Plan. The plan must ~~shall~~
146 include a detailed schedule for the completion of all necessary
147 actions and ~~shall~~ be accompanied by supporting data and other
148 documentation. The plan must ~~shall~~ be submitted by October 1,
149 2014 ~~no later than July 1, 2013.~~

150 2. By July 1, 2018 ~~No later than July 1, 2016,~~ an update of
151 the plan required in subparagraph 1. documenting any refinements
152 or changes in the costs, actions, or financing necessary to
153 eliminate the ocean outfall discharge in accordance with this
154 subsection or a written statement that the plan is current and
155 accurate.

156 (f) By December 31, 2009, and by December 31 every 5 years
157 thereafter, the holder of a department permit authorizing the



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discharge of domestic wastewater through an ocean outfall shall submit to the secretary of the department a report summarizing the actions accomplished to date and the actions remaining and proposed to meet the requirements of this subsection, including progress toward meeting the specific deadlines set forth in paragraphs (b) through (e). The report shall include the detailed schedule for and status of the evaluation of reuse and disposal options, preparation of preliminary design reports, preparation and submittal of permit applications, construction initiation, construction progress milestones, construction completion, initiation of operation, and continuing operation and maintenance.

(g) No later than July 1, 2010, and by July 1 every 5 years thereafter, the department shall submit a report to the Governor, the President of the Senate, and the Speaker of the House of Representatives on the implementation of this subsection. The report shall summarize progress to date, including the increased amount of reclaimed water provided and potable water offsets achieved, and identify any obstacles to continued progress, including all instances of substantial noncompliance.

(h) By February 1, 2012, the department shall submit a report to the Governor and Legislature detailing the results and recommendations from phases 1 through 3 of its ongoing study on reclaimed water use.

(i) The renewal of each permit that authorizes the discharge of domestic wastewater through an ocean outfall as of July 1, 2008, shall be accompanied by an order in accordance with s. 403.088(2)(e) and (f) which establishes an enforceable



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compliance schedule consistent with the requirements of this subsection.

(j) An entity that diverts wastewater flow from a receiving facility that discharges domestic wastewater through an ocean outfall must meet the ~~60-percent~~ reuse requirement of paragraph (c). Reuse by the diverting entity of the diverted flows shall be credited to the diverting entity. The diverted flow shall also be correspondingly deducted from the receiving facility's baseline actual flow on an annual basis from which the required reuse is calculated pursuant to paragraph (c), and the receiving facility's reuse requirement shall be recalculated accordingly.

The department, the South Florida Water Management District, and the affected utilities must consider the information in the detailed plan under paragraph (e) for the purpose of adjusting, as necessary, the reuse requirements of this subsection. The department shall submit a report to the Legislature by February 15, 2015, containing recommendations for any changes necessary to the requirements of this subsection.

Section 2. This act shall take effect July 1, 2011.

===== 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 domestic wastewater discharged
through ocean outfalls; amending s. 403.086, F.S.;
postponing the dates by which domestic wastewater



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facilities must meet more stringent treatment and management requirements; providing exceptions; revising the definition of the term "functioning reuse system"; changing the term "facility's actual flow on an annual basis" to "baseline flow"; revising plan requirements for the elimination of ocean outfalls; providing that certain utilities that shared a common ocean outfall on a specified date are individually responsible for meeting the reuse requirement; authorizing those utilities to enter into binding agreements to share or transfer responsibility for meeting reuse requirements; revising provisions on the discharge of domestic wastewater through ocean outfalls; requiring a holder of a department permit authorizing the discharge of domestic wastewater through an ocean outfall to submit certain information; requiring the Department of Environmental Protection, the South Florida Water Management District, and affected utilities to consider certain information for the purpose of adjusting reuse requirements; requiring the department to submit a report to the Legislature; providing an effective date.

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 Community Affairs Committee

BILL: SJR 808

INTRODUCER: Senator Diaz de la Portilla

SUBJECT: Homestead Exemption/Senior Citizens

DATE: March 31, 2011

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Gizzi	Yeatman	CA	Pre-meeting
2.			JU	
3.			BC	
4.				
5.				
6.				

I. Summary:

This joint resolution amends Article VII, sections 2 and 6 of the Florida Constitution, to authorize counties to exempt homesteads of eligible senior citizens from increases in ad valorem taxation and to provide an exception from the uniformity requirement for such exemption.

This joint resolution will require approval by a three-fifths vote of the membership of each house of the Legislature for passage.

II. Present Situation:

Property Valuation

A.) Just Value

Article VII, section 4 of the Florida Constitution, requires that all property be assessed at its just value for ad valorem tax purposes. Just value has been interpreted by the courts to mean fair market value, or what a willing buyer would pay a willing seller for the property in an arm's length transaction.¹

B.) Assessed Value

Section 4 also provides exceptions to this requirement for agricultural land, land producing high water recharge to Florida's aquifers, and land used exclusively for noncommercial recreational purposes, all of which may be assessed solely on the basis of their character or use. Additionally,

¹ See *Walter v. Shuler*, 176 So. 2d 81 (Fla. 1965); *Deltona Corp. v. Bailey*, 336 So. 2d 1163 (Fla. 1976); *Southern Bell Tel. & Tel. Co. v. Dade County*, 275 So. 2d 4 (Fla. 1973).

tangible personal property that is held as inventory may be assessed at a specified percentage of its value or may be totally exempted.

The “Save Our Homes” provision in Article VII, section 4(d) of the Florida Constitution, limits the amount that a homestead’s assessed value can increase annually to the lesser of three percent or the Consumer Price Index (CPI).² If there is a change in ownership, the property is assessed at its just value on the following January 1. The value of changes, additions, reductions or improvements to the homestead property is assessed as provided by general law. In 2008, Florida voters approved an additional amendment to article VII, section 4(d), of the Florida Constitution, to provide for the portability of the accrued “Save Our Homes” benefit. This amendment allows homestead property owners that relocate to a new homestead to transfer up to \$500,000 of the “Save Our Homes” accrued benefit to the new homestead.

C.) Taxable Value

The taxable value of real and tangible personal property is the assessed value minus any exemptions provided by the Florida Constitution or by Florida Statutes. Such exemptions include, but are not limited to: homestead exemptions and exemptions for property used for educational, religious, or charitable purposes.³

D.) Uniformity Requirement

Article VII, section 2 of the Florida Constitution, provides that “all ad valorem taxation shall be at a uniform rate within each taxing unit. . .” with certain specified exceptions for taxes on intangible personal property.⁴

Property Tax Exemptions

The Legislature may only grant property tax exemptions that are authorized in the constitution, and any modifications to existing property tax exemptions must be consistent with the constitutional provision authorizing the exemption.⁵

A.) Homestead Exemption

Article VII, section 6(a) of the Florida Constitution, as amended in January 2008, provides that every person with legal and equitable title to real estate and who maintains the permanent residence of the owner is eligible for a \$25,000 homestead tax exemption applicable to all ad valorem tax levies including school districts. An additional \$25,000 homestead exemption applies to homesteads that have an assessed value greater than \$50,000 and up to \$75,000, excluding ad valorem taxes levied by schools.

B.) Additional Homestead Exemption for Certain Senior Citizens

Article VII, section 6(d) of the Florida Constitution, allows the Legislature to adopt a general law allowing counties and municipalities to grant an additional homestead exemption of up to \$50,000 for any person with legal and equitable title to real estate and who maintains the

² FLA. CONST. art. VII, s. 4(d).

³ FLA. CONST. art. VII, ss. 3 and 6.

⁴ See FLA. CONST. art. VII, s. 2.

⁵ *Sebring Airport Authority v. McIntyre*, 783 So. 2d 238 (Fla. 2001). See also, *Archer v. Marshall*, 355 So. 2d 781, 784. (Fla. 1978). See also, *Am Fi Inv. Corp. v. Kinney*, 360 So. 2d 415 (Fla. 1978). *Sparkman v. State*, 58 So. 2d 431, 432 (Fla. 1952).

permanent residence of the owner, who has attained the age of 65, and whose household income, as defined by general law, does not exceed \$20,000 adjusted annually for inflation. The county or municipality must grant this additional exemption by ordinance which must be adopted pursuant to the procedures prescribed in chapters 125 and 166, F.S., and must specify that the exemption applies only to taxes levied by the unity of government granting the exemption.⁶

Section 196.075(1)(b), F.S., defines “household income” to mean “the adjusted gross income, as defined in s. 62 of the United States Internal Revenue Code, of all members of a household.”

III. Effect of Proposed Changes:

This joint resolution amends Article VII, section 2 of the Florida Constitution, to provide that the uniformity requirement does not apply to the ad valorem taxation of a homestead owned by an eligible person which is exempt from increases in ad valorem taxation pursuant to Article VII, section 6, subsection (f) of the Florida Constitution (as created in this bill).

This joint resolution amends Article VII, section 6 of the Florida Constitution, to create a new subsection (f), which allows a county to adopt an ordinance to exempt homesteads of eligible persons from increases in the combined amount of the ad valorem taxes that may be levied by the county and the school district, municipalities, water management district, and other special districts in the county.

The joint resolution defines the term “eligible person” to mean individuals who receive the homestead exemption under Article VII, section 6(a) of the Florida Constitution; are 65 years of age or older; and whose household income, as defined by general law, is \$50,000 per year or less, as adjusted for inflation pursuant to general law.

This joint resolution provides no effective date for the constitutional amendment. In accordance with Article XI, section 5 of the Florida Constitution, it would take effect on the first Tuesday after the first Monday in January following the election at which it was approved by the electorate.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The mandate provisions in Article VII, section 18 of the Florida Constitution, do not apply to joint resolutions.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

⁶ See s. 196.075, F.S.

D. Other Constitutional Issues:

Constitutional Amendments

Section 1, Art. XI of the Florida Constitution, authorizes the Legislature to propose amendments to the State Constitution by joint resolution approved by three-fifths vote of the membership of each house. The amendment must be placed before the electorate at the next general election held after the proposal has been filed with the Secretary of State, or at a special election held for that purpose.

Section 5(d), Art. XI 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 tenth week and again in the sixth week immediately preceding the week the election is held. The Division of Elections within the Department of State estimated that the average cost per word to advertise an amendment to the State Constitution is \$106.14 for this fiscal year.

Section 5(e), Art. XI of the Florida Constitution, requires a 60 percent voter approval for a constitutional amendment to take effect. An approved amendment becomes effective on the first Tuesday after the first Monday in January following the election at which it is approved, or on such other date as may be specified in the amendment or revision.

V. **Fiscal Impact Statement:**

A. Tax/Fee Issues:

If approved by the voters, this joint resolution will provide an ad valorem tax relief to specified homestead owners who are 65 years or older and whose household income is \$50,000 per year or less.

B. Private Sector Impact:

If approved by the voters, taxes in certain counties will be reduced for individuals who receive a homestead exemption and who are 65 years or older and whose household income is \$50,000 per year or less.

C. Government Sector Impact:

If approved by the voters, certain counties will be authorized to adopt an ordinance that exempts homesteads of eligible persons from increases in ad valorem taxes.

Section 5(d), Art. XI 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 tenth week and again in the sixth week immediately preceding the week the election is held. The Division of Elections within the Department of State estimated that the average cost per word to advertise an amendment to the State Constitution is \$106.14

for this fiscal year.⁷ The division has not estimated the full publication costs to advertise this constitutional amendment at this time.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial 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.

⁷ Florida Department of State, *Senate Joint Resolution 390 Fiscal Analysis* (Jan. 28, 2011) (on file with the Senate Committee on Community Affairs).

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 Community Affairs Committee

BILL: SB 1634

INTRODUCER: Senator Lynn

SUBJECT: Water Vending Machines

DATE: March 28, 2011

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Wiggins	Yeatman	EP	Favorable
2.	Wood	Yeatman	CA	Pre-meeting
3.			CM	
4.				
5.				
6.				

I. Summary:

The bill repeals the regulation of water vending machines and the permitting of vending machine operators. It deletes provisions for the deposit of fees, enforcement of the state's water vending machine regulations, penalties, and the preemption of county and municipal water vending regulations. Thus, counties and municipalities may pursue local regulatory ordinances unique to local jurisdictions.

The bill repeals s. 500.459, and amends s. 500.511, of the Florida Statutes.

II. Present Situation:

The Department of Agriculture and Consumer Services (DACS), inspects and collects samples for all water vending machines in Florida. For Fiscal Year 2009-2010, DACS:

- permitted approximately 2,800 water vending firms at a cost of \$35 per permit;
- inspected 309 water vending machines; and
- collected 673 vended water samples for testing of which 14 tested positive for coliforms (a known indicator organism) which detects contaminants capable of causing severe illness and/or death if consumed.

The permitting and inspection processes were developed to provide a reasonable level of assurance to the general public that products offered through this venue meet acceptable standards, are routinely tested and inspected, and ensure products are safe for human consumption.

The legislative intent of s. 500.459, F.S., was to protect public health through licensing of and establishing standards for water vending machines in Florida. DACS is statutorily responsible for the permitting and regulation of Florida's water vending machines.

III. Effect of Proposed Changes:

Section 1 repeals s. 500.459, F.S., relating to the regulation of water vending machines. According to DACS, de-regulation of water vending machines may compromise the wholesomeness of water products offered for sale to the general public creating a significant public health risk. The absence of permitting, inspection, and sample collection activities, will not ensure adherence to industry-acceptable operating standards designed to prevent contamination of water products offered to the general public through vending machines. Additionally, the introduction of other water-borne pathogens may likely increase and could result in more frequent outbreaks of sickness and/or deaths of Floridians.

Section 2 amends s. 500.511, F.S., to remove the provisions relating to fees, enforcement and preemption of regulation of water vending machines to the state. DACS has stated that if adopted, regulation will no longer be preempted to the state and it will allow city and county jurisdictions to pursue local ordinances requiring permitting with fees, inspections and regulations unique to each local jurisdiction.

Section 3 creates an effective date of July 1, 2011.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Industries associated with providing inspections may see an increase in business if the cities and counties in which the business resides decides to institute new compliance requirements.

C. Government Sector Impact:

The fee for a Water Vending Operating Permit is \$35 per machine. There is also a \$10 epidemiology surcharge per operator collected for the Florida Department of Health (DOH). The bill is anticipated to have a negative fiscal impact on state trust funds from the reduction in fees associated with permitting and operating water vending machines. DACS estimates this reduction to be \$95,000 per fiscal year based on the \$35 fee paid to DACS for each water vending machine.

Additionally, the DACS reports that there are 106 “firm operators” that are issued a permit. Therefore, based on a \$10 surcharge currently collected by DACS and transferred to DOH from each operator, this bill would have a negative fiscal impact on DOH trust funds of \$1,060.

A positive fiscal impact on state funds is anticipated to occur from the reduction in costs associated with processing permit applications. DACS reports that this reduction would approach \$64,700 per year. The bulleted list below reflects the number of applications processed by DACS last year.

For Fiscal Year 2009-2010 DACS:

- permitted approximately 2,800 water vending firms at a cost of \$35 per permit;
- permitted 309 inspections of water vending machines; and
- collected 673 water samples for testing.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

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

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

None.

B. Amendments:

None.



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LEGISLATIVE ACTION

Senate

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House

The Committee on Community Affairs (Bennett) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Section 500.459, Florida Statutes, is amended to
read:

500.459 Water vending machines.—

(1) LEGISLATIVE INTENT.—It is the intent of the Legislature
to protect the public health through ~~licensing and~~ establishing
standards for water vending machines to ensure that consumers
obtaining water through such means are given appropriate
information as to the nature of such water and that such



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consumers are assured that the water meets acceptable standards for human consumption.

(2) DEFINITIONS.—

(a) "Sanitized" means treated in conformity with 21 C.F.R. s. 110.3 (1996).

(b) "Vended water" means water dispensed by means of a water vending machine and is excluded from the definition of Food as defined in 500.03(1)(1).

(c) "Water vending machine" means a self-service device that, upon insertion of a coin or token or upon receipt of payment by other means, dispenses a serving of water into a container.

(d) "Water vending machine operator" means a person who owns, leases, or manages, or is otherwise responsible for, the operation of a water vending machine.

~~(3) PERMITTING REQUIREMENTS.—~~

~~(a) Each person or public body that establishes, maintains, or operates any water vending machine in the state must secure an operating permit from the department each year.~~

~~(b) An application for an operating permit must be made in writing to the department on forms provided by the department and must be accompanied by a fee as provided in subsection (4). The application must state the location of each water vending machine, the source of the water to be vended, the treatment the water will receive prior to being vended, and any other information considered necessary by the department.~~

~~(4) FEES.—A person seeking an operating permit must pay the department a fee not exceeding \$200, which fee shall be set by rule of the department. Such fees shall be deposited in the~~



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~~General Inspection Trust Fund.~~

~~(3)-(5)~~ STATEWIDE MINIMUM OPERATING STANDARDS.-

(a) Counties and municipalities may regulate the operation of water vending machines, adopt and enforce such regulations, and take such actions as they see fit to ensure compliance with the following statewide minimum operating standards:

~~A water vending machine operator must obtain a permit prior to operating any water vending machine.~~

1. ~~(b)~~ Each water vending machine must be located indoors or otherwise protected against tampering and vandalism and must be located in an area that can be maintained in a clean condition and in a manner that avoids insect and rodent harborage. The floor upon which the water vending machine is located should be smooth and of cleanable construction.

2. ~~(c)~~ The source of water supply must be an approved public water system.

3. ~~(d)~~ Each water vending machine must have a backflow prevention device that conforms with the applicable provision of the Florida Building Code and an adequate system for collecting and handling dripping, spillage, and overflow of water.

4. ~~(e)~~ All parts and surfaces of a water vending machine with which water comes into contact must be made of nontoxic, corrosion-resistant, nonabsorbent material capable of withstanding repeated cleaning and sanitizing treatments.

5. ~~(f)~~ Each water vending machine must be maintained in a clean and sanitary condition, free from rust, dirt, and vermin.

6. ~~(g)~~ The vended water must receive treatment and postdisinfection according to approved methods established by rule of the department. Activated carbon, if used, must comply



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with specifications for granular activated carbon used in water treatment applications as established by rule of the department.

7. ~~(h)~~ The vended water may not be described as "purified water" unless the water conforms to the definition of that term. Further, a water vending machine operator must not claim that the vended water has medicinal or health-giving properties and must not describe any vended water as "spring water."

8. ~~(i)~~ The operator shall place on each water vending machine, in a position clearly visible to customers, the following information: the name and address of the operator; the operating permit number, if applicable; the fact that the water is obtained from a public water supply; the method of treatment used; the method of postdisinfection used; and a local or toll-free telephone number that may be called for obtaining further information, reporting problems, or making complaints.

~~(6) DUTIES AND RESPONSIBILITIES OF THE DEPARTMENT.~~

~~(a) The department has authority to adopt rules pursuant to ss. 120.536(1) and 120.54 to implement the provisions of this section conferring duties upon it.~~

~~(b) If, considering the source of water and the treatment process provided by the water vending machine, the department finds that the vended water will not meet the primary and secondary drinking water quality standards as provided for in department rules, the permit shall be denied. Specific technical reasons for the denial shall be given by the department.~~

~~(c) The water from each water vending machine shall be sampled and tested for compliance with the water quality standards established by rule of the department at regular intervals established by rule of the department.~~



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~~(d) The vended water from each water vending machine using silver-impregnated carbon filters in the treatment process shall be sampled for silver at regular intervals established by rule of the department.~~

~~(e) The department shall order a water vending machine operator to discontinue the operation of any water vending machine the condition of which represents a threat to the life or health of any person, or when the vended water does not meet the standards provided in this section. Such water vending machine must not be returned to use or be used until the department determines that the condition that caused the discontinuance of operation no longer exists.~~

~~(7) PENALTIES.—~~

~~(a) The department may deny, suspend, or revoke a permit if it finds that there has been a substantial failure to comply with this section or rules adopted under this section.~~

~~(b) Any person who operates a water vending machine without first obtaining an operating permit as required by subsection (3), who operates a water vending machine in violation of an order to discontinue operation, or who maintains or operates a water vending machine after revocation of the operating permit is guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.~~

Section 2. Section 500.511, Florida Statutes, is amended to read:

500.511 Bottled water plants; packed ice plants; Fees;
~~enforcement; preemption.—~~

~~(1) FEES.—All fees collected under s. 500.459 shall be deposited into the General Inspection Trust Fund and shall be~~



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~~accounted for separately and used for the sole purpose of
administering the provisions of such section.~~

~~(2) ENFORCEMENT AND PENALTIES. In addition to the
provisions contained in s. 500.459, the department may enforce
s. 500.459 in the manner provided in s. 500.121. Any person who
violates a provision of s. 500.459 or any rule adopted under
such section shall be punished as provided in such section.
However, criminal penalties may not be imposed against any
person who violates a rule.~~

~~(3) PREEMPTION OF AUTHORITY TO REGULATE. Regulation of
bottled water plants, water vending machines, water vending
machine operators, and packaged ice plants is preempted by the
state. No county or municipality may adopt or enforce any
ordinance that regulates the licensure or operation of bottled
water plants, water vending machines, or packaged ice plants,
unless it is determined that unique conditions exist within the
county which require the county to regulate such entities in
order to protect the public health. This section ~~subsection~~ does
not prohibit a county or municipality from requiring a business
tax pursuant to chapter 205.~~

Section 3. This act shall take effect July 1, 2011.

===== 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 water vending machines; amending s.



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158 500.459, F.S., relating to the regulation of water vending
159 machines and the permitting of water vending machine operators;
160 amending s. 500.511, F.S.; deleting provisions for the deposit
161 of operator permitting fees, the enforcement of the state's
162 water vending machine regulations, penalties, and the preemption
163 of county and municipal water vending machine regulations, to
164 conform; providing an effective date.

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 Community Affairs Committee

BILL: CS/SB 632

INTRODUCER: Higher Education Committee and Senator Oelrich

SUBJECT: Postsecondary Education

DATE: April 6, 2011

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Harkey	Matthews	HE	Fav/CS
2.	Wolfgang	Yeatman	CA	Pre-meeting
3.			BC	
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

- | | | |
|------------------------------|--|---|
| A. COMMITTEE SUBSTITUTE..... | ☒ | Statement of Substantial Changes |
| B. AMENDMENTS..... | ☐ | Technical amendments were recommended |
| | ☐ | Amendments were recommended |
| | ☐ | Significant amendments were recommended |

I. Summary:

This bill would revise requirements for the disposal of personal property lost or abandoned on university or Florida College System institution campuses. Institutions would not have to sell the property at public auction after public notice and would not have to use the proceeds for student scholarships and loans. Instead, the property would be disposed of in accordance with the policies of the institution.

Under this bill, state universities would not have to enter into campus development agreements with local governmental entities when their current agreements expire. The campus master plan would be required to identify the level-of-service standard established by the local government and the entity that would provide the service to the campus. Universities could begin constructing a campus development without having to pay the impact costs. The bill would repeal the University Concurrency Trust Fund.

The bill would authorize the Board of Governors (BOG) to adopt a regulation instead of a rule to govern the naming of state university buildings; university-acquired patents, copyrights or trademarks; delinquent accounts; purchasing; research centers for child development; personnel records; and university lease agreements for facilities.

The bill repeals a prohibition on a university from requiring a student who earns 9 or more credit hours through an acceleration mechanism to enroll in a summer term, thus permitting a state university to require summer term attendance by students.

This bill amends ss. 267.062, 705.18, 1004.23, 1007.27, 1010.03, 1010.04, 1010.07, 1011.48, 1012.91, 1013.171, 1010.30, and 1013.33, Florida Statutes. The bill repeals s. 1013.63, Florida Statutes

II. Present Situation:

Growth Management and Concurrency Requirements

A key component of the Local Government Comprehensive Planning and Land Development Regulation Act¹ is its “concurrency” provision that requires infrastructure facilities and services to be available concurrent with the impacts of development. Concurrency applies to sanitary sewer, solid waste, drainage, potable water, parks and recreation, schools, and transportation facilities. If the necessary infrastructure is not in place, the planned development cannot go forward unless the local government or the developer commits the necessary funds or pays their proportionate fair-share. The state land planning agency that administers these provisions is the Department of Community Affairs.

Coordinating of University Planning with Local Governing Bodies

Growth management requirements for state universities are established in s. 1013.30, F.S. Each state university must adopt a campus master plan that identifies the university’s general land uses and addresses plans for the provision of roads, parking, public transportation, solid waste, drainage, sewer, potable water, and recreation and open space during the coming 10 to 20 years.

A university must maintain a copy of the master plan on the university’s web site. The statute requires public notice that the master plan has been adopted and establishes a procedure by which an affected local government or person could challenge provisions in the plan under ch. 120, F.S. The law requires a university to adopt a campus development agreement with each affected local government within 270 days after the adoption of the campus master plan. The campus development agreement must determine the impact of campus development on public facilities and services, such as roads, sewer, water, etc., and must determine the university’s fair share of the cost of the improvements to the facilities and services. The statute prohibits the building of the campus development before the university’s share of the costs has been appropriated by the Legislature. If the local government and university board of trustees cannot reach agreement, the matter must be decided by the state land planning agency.

The University Concurrency Trust Fund

Section 1013.63, F.S., creates the University Concurrency Trust Fund which may be funded as provided in the General Appropriations Act. The statute requires funds in the trust fund to be used for university offsite improvements and to meet the requirements of concurrency standards

¹ See ch. 163, pt. II, F.S.

required under pt. II of ch. 163, F.S. Funds last were appropriated to the trust fund in 2007, and at present there are no funds in the trust fund.

Rules and Regulations

Section 1001.706(2)(b), F.S., establishes the rulemaking and regulatory authority of the BOG. When the BOG is acting pursuant to authority derived from the Legislature, it must adopt rules pursuant to ch. 120, F.S., except that the BOG may adopt regulations for such matters if it is expressly authorized to do so by law. For matters relating to the BOG's constitutional authority, the BOG may adopt regulations. Statutes granting rulemaking or regulatory authority to the BOG specify whether rules or regulations are to be adopted. The BOG has indentified eight statutes requiring rules for which the BOG would prefer the Legislature to authorize regulations in lieu of rules. The statutes concern the naming of university buildings; the acquiring of university patents, copyrights, or trademarks; delinquent accounts; purchasing; contractor's bonds; establishing educational research centers for child development; personnel records; and university lease agreements for facilities. The BOG has adopted regulations to govern these areas.

Summer Term at Universities

Section 1007.27(10), F.S., prohibits a public college or university from requiring a student who earns 9 or more credit hours through an acceleration mechanism, such as dual enrollment and advanced placement, to enroll in a summer term.

III. Effect of Proposed Changes:

This bill would revise requirements for the disposal of personal property lost or abandoned on university or Florida College System institution campuses. Institutions would not have to sell the property at public auction after public notice and would not have to use the proceeds for student scholarships and loans. Instead the institution would dispose of the property in accordance with its policies.

Under this bill, state universities would not have to enter into campus development agreements with local governmental entities when their current agreements expire. The level-of-service standard, established by the applicable local government, and the entity that will provide the service to the campus, which previously were required in campus development agreements, would instead be identified in the campus master plan. The bill would repeal the University Concurrency Trust Fund. Universities could begin constructing a campus development without having to pay the impact costs.

University	Date Campus Development Agreement Expires
New College of Florida	The agreement has expired and is being re-negotiated.
Florida International University	5/16/2012
University of Central Florida	12/31/2015
University of North Florida	6/30/2015
University of South Florida	6/30/2015

University of South Florida, Sarasota	12/31/2015
University of South Florida Polytechnic	12/31/2015
University of West Florida	12/31/2015
Florida State University	6/10/2015
Florida A & M University	12/31/2015
Florida Atlantic University	12/31/2015
Florida Atlantic University, Jupiter	12/31/2020
Florida Gulf Coast University	12/31/2015
University of Florida	12/31/2015

The bill would authorize the Board of Governors (BOG) to adopt a regulation instead of a rule to govern:

- The naming of state university buildings;
- University-acquired patents, copyrights or trademarks;
- Delinquent accounts;
- Purchasing;
- Establishment of educational research centers for child development;
- Personnel records;
- Contractors' bonds; and
- University lease agreements for facilities.

The bill would repeal s. 1007.27(10), F.S., which prohibits a public college or university from requiring a student who earns 9 or more credit hours through an acceleration mechanism to enroll in a summer term, thus permitting a state university to require summer term attendance by students. According to the Department of Education, 21,200 students, who earned a standard high school diploma in 2010, earned 9 or more credit hours through an accelerated mechanism, such as Advanced Placement, dual enrollment, International Baccalaureate, or Advanced International Certificate of Education. Requiring students to attend during the summer term could enable a postsecondary institution to use its facilities year-round. However, the provision could create new costs for students who receive state financial aid, including the Bright Futures Scholarships, because state scholarship programs are only funded for the fall and spring academic terms. The Bright Futures Scholarships may be used in the summer term if funds are available,² but the Legislature has not funded the scholarship for the summer term.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

² Section 1009.53(9), F.S.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Florida College System students and state university students who were required to enroll during the summer term could incur costs not covered by financial aid if their financial aid only covered fall and spring academic terms. A student who enrolled in the fall, spring, and summer terms would be more likely to finish his degree program sooner than a student who only enrolled in the fall and spring terms.

C. Government Sector Impact:

Florida College System Institutions and state universities would be able to dispose of lost property in accordance with the institution's procedures and would not incur the cost of holding a public auction.

State universities could make better year-round use of their facilities if they required students to enroll in the summer term. Universities would receive additional revenue from students whose financial aid did not cover the summer term.

Universities could begin a campus development before paying the impact costs, and would not be required to pay them. It is possible that a governmental entity would pay the impact costs.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

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

CS by Higher Education on March 22, 2011:

The committee substitute:

- Changes requirements for disposal of personal property that is lost or abandoned on a state university or Florida College System campus to permit the president to

dispose of the property or make use of it in accordance with the institutions' procedures;

- Repeals the University Concurrency Trust Fund;
- Does not redirect fuel tax revenues;
- Removes the requirement for campus development plans with local governments effective July 1, 2011, and specifies that when the current plans expire they may not be renewed;
- Removes the requirement for impact fees to be paid before the university begins construction; and
- Authorizes regulations instead of rules for these additional areas: delinquent accounts; contractors' bonds; university centers for child development; and personnel records.

B. Amendments:

None.



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LEGISLATIVE ACTION

Senate

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House

The Committee on Community Affairs (Dockery) recommended the following:

Senate Amendment (with title amendment)

Delete lines 202 - 259.

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

And the title is amended as follows:

Delete lines 21 - 27

and insert:

1013.33, F.S.;

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 Community Affairs Committee

BILL: CS/SB 1528

INTRODUCER: Commerce and Tourism Committee and Senator Altman

SUBJECT: Secondary Metals Recyclers

DATE: April 4, 2011

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	McCarthy	Cooper	CM	Fav/CS
2.	Wolfgang	Yeatman	CA	Pre-meeting
3.			CJ	
4.			BC	
5.				
6.				

Please see Section VIII. for Additional Information:

- | | | |
|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | ☒ | Statement of Substantial Changes |
| B. AMENDMENTS..... | ☐ | Technical amendments were recommended |
| | ☐ | Amendments were recommended |
| | ☐ | Significant amendments were recommended |

I. Summary:

This Committee Substitute (CS or bill) creates a new category of “regulated metals property” – “restricted regulated metals property” – and imposes restrictions on the purchase of such property. “Restricted regulated metals property” includes: manhole covers; electric light poles; guard rails; traffic signs; utility communication wire; funeral and historical markers; railroad equipment; metal marked by a governmental entity, utility company, cemetery or railroad; condensing or evaporator coils from air conditioning equipment; propane tanks; beer kegs; catalytic converters; metallic wire from which the insulation has been removed; certain brass or bronze fixtures; and shopping carts.

Recyclers may only purchase such property after obtaining “reasonable proof” that the seller owns the property or is authorized to sell the property on behalf of the owner. In addition, recyclers may not provide cash for purchases of restricted regulated metals property.

The bill deletes an exemption in current law allowing the secondary metals recyclers to not keep certain identifying information. The bill adds new language stating that if a secondary metals recycler purchases a vehicle to convert it into scrap metal then it may rely on a written statement

from another secondary metals recycler or a salvage motor vehicle dealer that the vehicle's title was surrendered to the Department of Highway Safety and Motor Vehicles.

The bill limits the civil and criminal liability of secondary metals recyclers regarding stolen materials.

By deleting a current authorization, the bill would prohibit regulated metals from being purchased from a nonfixed location. The bill also preempts the regulation of regulated metals property or the registration or licensure of secondary metals recyclers to the state, except for such local ordinances existing before March 1, 2011.

This bill substantially amends the following sections of the Florida Statutes: 319.30, 538.18, 538.19, 538.235, 538.26, and 812.022.

This bill creates sections 538.27 and 538.28 of the Florida Statutes.

II. Present Situation:

Secondary Metals Recyclers

Requirements

Currently no person may engage in business as a secondary metals recycler at any location without registering with the department of revenue.¹ A secondary metals recycler means any person who:

- Is engaged, from a fixed location or otherwise, in the business of gathering or obtaining ferrous or nonferrous metals that have served their original economic purpose or is in the business of performing the manufacturing process by which ferrous metals or nonferrous metals are converted into raw material products consisting of prepared grades and having an existing or potential economic value; or
- Has facilities for performing the manufacturing process by which ferrous metals or nonferrous metals are converted into raw material products consisting of prepared grades and having an existing or potential economic value, other than by the exclusive use of hand tools, by methods including, without limitation, processing, sorting, cutting, classifying, cleaning, baling, wrapping, shredding, shearing, or changing the physical form or chemical content thereof.²

“Regulated metals property” means any item composed primarily of any nonferrous metals, but may not include aluminum beverage containers, used beverage containers, or similar beverage containers. The term shall include stainless steel beer kegs.³

Secondary metals recyclers must maintain legible records of all purchase transactions to which the secondary metals recycler is a party. The secondary metals recycler must maintain the records of the purchase transactions for 5 years.

¹ Section 538.25(1), F.S.

² Section 538.18(8), F.S.

³ Section 538.18(7), F.S.

The following information must be maintained on a form approved by the Department of Law Enforcement for each purchase transaction:

- The name and address of the secondary metals recycler.
- The name, initials, or other identification of the individual entering the information on the ticket.
- The date and time of the transaction.
- The weight, quantity, or volume, and a description of the type of regulated metals property purchased in a purchase transaction.
- The amount of consideration given in a purchase transaction for the regulated metals property.
- A signed statement from the person delivering the regulated metals property stating that she or he is the rightful owner of, or is entitled to sell, the regulated metals property being sold. If the purchase involves a stainless steel beer keg, the seller must provide written documentation from the manufacturer that the seller is the owner of the stainless steel beer keg or is an employee or agent of the manufacturer.
- The distinctive number from the personal identification card of the person delivering the regulated metals property to the secondary metals recycler.
- A description of the person from whom the goods were acquired, including:
 - Full name, current residential address, workplace, and home and work phone numbers.
 - Height, weight, date of birth, race, gender, hair color, eye color, and any other identifying marks.
 - The right thumbprint, free of smudges and smears.
 - Vehicle description to include the make, model, and tag number of the vehicle and trailer of the person selling the regulated metals property.
 - Any other information required by the form approved by the Department of Law Enforcement.
- A photograph, videotape, or digital image of the regulated metals being sold.
- A photograph, videotape, or similar likeness of the person receiving consideration in which such person's facial features are clearly visible.⁴

If a purchase transaction involves the transfer of regulated metals property from a secondary metals recycler registered with the department to another secondary metals recycler registered with the department, the secondary metals recycler receiving the regulated metals property must record the name and address of the secondary metals recycler from which it received the regulated metals property rather than the information regarding the identity of the original seller.⁵

Prohibited Acts

Section 538.26, F.S., makes it unlawful for a secondary metals recycler to do or allow any of the following acts:

- Purchase regulated metals property between the hours of 9 p.m. and 6 a.m.;
- Fail to pay any sales tax owed to the department or fail to have a sales tax registration number;

⁴ Section 538.19(2), F.S.

⁵ Section 538.19(5), F.S.

- Purchase regulated metals property at a location other than the place of business set forth on the registration;
- Purchase regulated metals property from any seller who presents such property for sale at the registered location of the secondary metals recycler when such property was not transported in a motor vehicle unless the seller can prove ownership of the regulated metals property; or
- Purchase regulated metals property in return for money from a trailer, a vehicle, or any location other than a fixed location or from any person who is required to prove ownership. However, regulated metals may be purchased from a non-fixed location, or from such person, with any negotiable or nonnegotiable instrument, including a check or draft or any other type of instrument purchased with money and sold for the purpose of making payments or transfers to others.⁶

Criminal Penalties

Section 538.23, F.S., provides for criminal penalties for a secondary metals recycler who knowingly or intentionally:

- Violates inspection requirements;⁷
- Violates their requirement to hold metals if notified by law enforcement;⁸
- Engages in a pattern of failing to keep records;⁹
- Purchases regulated metals property from any seller who presents such property for sale at the registered location of the secondary metals recycler when such property was not transported in a motor vehicle, unless the seller can prove ownership of the regulated metals property;¹⁰ or
- Enters into cash transactions in excess of \$1,000 for the purchase of regulated metals property.¹¹

It is a felony for a secondary metals recycler to fail to register under s. 538.25, F.S., and the Department of Revenue (DOR) may impose a fine up to \$10,000 for secondary metals recyclers who are not registered. If the fine is not paid within 60 days, DOR may bring civil action to recover the fine.¹²

Stolen Metals

Generally, the remedies for theft are damages for the value of the item, damages for the loss of use of the item due to damage and/or the time it was unlawfully taken, or return of the item (replevin). “Any person who purchases personal property of another from one other than the owner or someone authorized to sell it is liable for conversion of property in a suit by the true owner, regardless of whether the purchaser was honestly mistaken or acted innocently, in good faith, and without knowledge of the seller's lack of right to make the sale.”¹³ Chapter 812, F.S.,

⁶ Section 538.26, F.S.

⁷ Section 538.20, F.S.

⁸ Section 538.21, F.S.

⁹ Section 538.19, F.S.

¹⁰ Section 538.26(4), F.S.

¹¹ Section 538.235, F.S.

¹² Section 120.69, F.S.

¹³ 12 Fla. Jur 2d Conversion and Replevin § 28.

provides both criminal and civil sanctions for theft, dealing in stolen property,¹⁴ and other crimes. Remedies include divestiture of stolen property. Additionally, ss. 538.24 and 538.32, F.S., provide for an action for replevin by a party claiming ownership of any allegedly stolen regulated metals property in the possession of a secondary metals recycler if the recycler has contested the identification or ownership of such property. The criminal court has jurisdiction to determine ownership, to order return or other disposition of the property, and to order any appropriate restitution to any person. The order must be entered upon hearing after proper notice has been given to the secondhand dealer, the victim, and the defendant in the criminal case.

A law enforcement officer may issue a hold notice to a secondary metals recycler if he believes the metals involved have been stolen.¹⁵ The hold notice is for 15 days unless extended an additional 45 days by the law enforcement officer.

III. Effect of Proposed Changes:

Section 1 amends s. 538.18 F.S., to create a new category of “regulated metals property” – “restricted regulated metals property.” The term is defined by reference to proposed s. 538.26(6)(b), F.S., (see Section 5 of the bill), and includes:

- manhole covers;
- electric light poles;
- guard rails;
- traffic signs;
- utility communication wire;
- funeral and historical markers;
- railroad equipment;
- metal marked by a governmental entity,
- utility company,
- cemetery or railroad;
- condensing or evaporator coils from air conditioning equipment;
- propane tanks;
- beer kegs;
- catalytic converters;
- metallic wire from which the insulation has been removed;
- certain brass or bronze fixtures; and
- shopping carts.

The bill defines “utility” as a person, firm, corporation, association, or political subdivision, whether private, municipal, county, or cooperative, that is engaged in the sale, generation, provision, or delivery of gas, electricity, heat, water, oil, sewer service, or telephone, telegraph, radio, communications, or telecommunications service.

¹⁴ “Any person who traffics in, or endeavors to traffic in, property that he or she knows or should know was stolen shall be guilty of a felony of the second degree....” Section 812.019, F.S.

¹⁵ Section 538.21(1), F.S.

The bill revises the definition of “secondary metals recycler” to make it consistent with other provisions of the bill that would prohibit secondary metals recyclers from engaging in business in a mobile location.

Section 2 amends s. 319.30, F.S., to correct a cross-reference necessitated by changes proposed in section 1.

Section 3 amends s. 538.19, F.S., to delete the provision in current law that, in the transfer of regulated metals property between secondary metals recyclers, the secondary metals recycler receiving the regulated metals property need only record the name and address of the secondary metals recycler from which it received the regulated metals rather than the information regarding the identity of the original seller. The bill replaces this subsection with language that allows a secondary metals recycler purchasing a vehicle for scrap metal to rely on written statement from another secondary metals recycler or a salvage motor vehicle dealer that sold the vehicle stating that the vehicle’s title was surrendered to the Department of Highway Safety and Motor Vehicles.

In addition, it reduces the time that recyclers must maintain purchase transaction records from 5 years to 2 years.

Section 4 amends s. 538.235, F.S., to restrict recyclers from paying cash for restricted regulated metals, as defined in section 5 of this bill. Payment in excess of \$1,000 for the purchase of regulated metals property or payment in any amount for the purchase of restricted regulated metals property may only be made by:

- check issued and payable to the seller, or
- electronic payment to the seller’s bank account or the bank account of the seller’s employer.

Section 5 amends s. 538.26(5), F.S., to specify that regulated metal property may only be purchased from a fixed location. Current law allows purchases of such property from a non-fixed location if paid by check or other type of instrument.

In addition, this section creates subsection (6) to prohibit recyclers from purchasing restricted regulated metals property, unless the recycler obtains “reasonable proof” that the seller owns the property or is authorized to sell the property on behalf of the owner. This section also lists all those items to be considered restricted regulated metals as referenced in section 1.

Section 6 creates s. 538.27, F.S., to provide that secondary metals recyclers that comply with the law are not liable for any civil claim of replevin or damages resulting from a purchase transaction of regulated metals property. In addition, compliance with the law gives rise to an inference that the secondary metals recycler did not know or have reason to believe that the property was stolen and did not have intent to commit theft or deal in stolen property.

Section 7 creates s. 538.28, F.S., to preempt the regulation of regulated metals property or the registration or licensure of secondary metals recyclers to the state, except for such local ordinances existing before March 1, 2011.

Section 8 creates subsection (7) of s. 812.022, F.S., to expand what constitutes evidence of theft as it relates to purchase transactions of regulated metals property. Specifically any secondary metals recycler who has complied with part II of ch. 538, F.S., dealing with secondary metals recyclers gives rise to an inference that the recycler did not know or have reason to believe that the property was stolen and did not have intent to commit theft or deal in stolen property.

Section 9 provides an effective date of July 1, 2011.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill imposes new restrictions on the purchase of regulated metals property. The bill will put persons/entities that currently operate out of a nonfixed location out of business. For example, a business that purchases secondary metals from the seller at the seller's location and sells the metals to another entity may no longer do so under this bill.

C. Government Sector Impact:

Section 7 creates s. 538.28, F.S., to preempt the regulation of regulated metals property or the registration or licensure of secondary metals recyclers to the state, except for such local ordinances existing before March 1, 2011.

VI. Technical Deficiencies:

Sections 538.24 and 538.32, F.S., currently allow for an action for replevin; whereas, this bill prohibits it for secondary metals recyclers complying with the law. These provisions seem to be in conflict.

VII. Related Issues:

None.

VIII. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Commerce and Tourism Committee on March 29, 2011:

The CS expands the definition of “Utility,” as proposed in the bill, to include “communications.”

- B. **Amendments:**

None.

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



292084

LEGISLATIVE ACTION

Senate

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House

The Committee on Community Affairs (Richter) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

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

319.30 Definitions; dismantling, destruction, change of
identity of motor vehicle or mobile home; salvage.—

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

(u) "Secondary metals recycler" means secondary metals
recycler as defined in s. 538.18(11) ~~s. 538.18(8)~~.

Section 2. Paragraph (j) is added to subsection (1) of



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section 538.03, Florida Statutes, to read:

538.03 Definitions; applicability.—

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

(j) "Appropriate law enforcement official" means the sheriff of the county in which a secondhand dealer is located or, in the case of a secondhand dealer located within a municipality, the police chief of the municipality in which the secondhand dealer is located; however, any sheriff or police chief may designate as the appropriate law enforcement official for the county or municipality, as applicable, any law enforcement officer working within the county or municipality headed by that sheriff or police chief. This paragraph does not limit the power and responsibilities of the sheriff.

Section 3. Subsection (1) of section 538.04, Florida Statutes, is amended to read:

538.04 Recordkeeping requirements; penalties.—

(1) Secondhand dealers shall complete a secondhand dealers transaction form at the time of the actual transaction. A secondhand dealer shall maintain a copy of a completed transaction form on the registered premises for at least 1 year after the date of the transaction. However, the secondhand dealer shall maintain a copy of the transaction form for not less than 3 years. Unless other arrangements have been agreed upon by the secondhand dealer and the appropriate law enforcement agency, the secondhand dealer shall, within 24 hours after the acquisition of any secondhand goods, deliver to the appropriate law enforcement official ~~police department of the municipality where the goods were acquired or, if the goods were acquired outside of a municipality, to the sheriff's department~~



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~~of the county where the goods were acquired,~~ a record of the transaction on a form approved by the Department of Law Enforcement. Such record shall contain:

(a) The time, date, and place of the transaction.

(b) A complete and accurate description of the goods acquired, including the following information, if applicable:

1. Brand name.

2. Model number.

3. Manufacturer's serial number.

4. Size.

5. Color, as apparent to the untrained eye.

6. Precious metal type, weight, and content if known.

7. Gemstone description, including the number of stones, if applicable.

8. In the case of firearms, the type of action, caliber or gauge, number of barrels, barrel length, and finish.

9. Any other unique identifying marks, numbers, or letters.

(c) A description of the person from whom the goods were acquired, including:

1. Full name, current residential address, workplace, and home and work phone numbers.

2. Height, weight, date of birth, race, gender, hair color, eye color, and any other identifying marks.

3. The right thumbprint, free of smudges and smears, of the person from whom the goods were acquired.

(d) Any other information required by the form approved by the Department of Law Enforcement.

Section 4. Section 538.18, Florida Statutes, is amended to read:



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

(1) "Appropriate law enforcement official" means the sheriff of the county in which a secondary metals recycler is located or, in the case of a secondary metals recycler located within a municipality, the police chief of the municipality in which the secondary metals recycler is located; however, any sheriff or police chief may designate as the appropriate law enforcement official for the county or municipality, as applicable, any law enforcement officer working within the county or municipality headed by that sheriff or police chief. This subsection does not limit the power and responsibilities of the sheriff.

(2 "Department" means the Department of Revenue.

(3)~~(1)~~ "Ferrous metals" means any metals containing significant quantities of iron or steel.

(4)~~(2)~~ "Fixed location" means any site occupied by a secondary metals recycler as owner of the site or as lessee of the site under a lease or other rental agreement providing for occupation of the site by the secondary metals recycler for a total duration of not less than 364 days.

(5)~~(3)~~ "Money" means a medium of exchange authorized or adopted by a domestic or foreign government as part of its currency.

(6)~~(4)~~ "Nonferrous metals" means metals not containing significant quantities of iron or steel, including, without limitation, copper, brass, aluminum, bronze, lead, zinc, nickel, and alloys thereof, excluding precious metals subject to regulation under part I.

(7)~~(5)~~ "Personal identification card" means any government-



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issued photographic identification card.

~~(8)(6)~~ "Purchase transaction" means a transaction in which a secondary metals recycler gives consideration for regulated metals property.

~~(9)(7)~~ "Regulated metals property" means any item composed primarily of any nonferrous metals. The term does, but shall not include aluminum beverage containers, used beverage containers, or similar beverage containers; however, the term includes ~~shall include~~ stainless steel beer kegs.

(10) "Restricted regulated metals property" means any regulated metals property listed in s. 538.26(6)(b), the sale of which is restricted as provided in s. 538.26(6)(a).

~~(11)(8)~~ "Secondary metals recycler" means any person who:

(a) Is engaged, from a fixed location ~~or otherwise~~, in the business of gathering or obtaining ferrous or nonferrous metals that have served their original economic purpose or is in the business of performing the manufacturing process by which ferrous metals or nonferrous metals are converted into raw material products consisting of prepared grades and having an existing or potential economic value; or

(b) Has facilities for performing the manufacturing process by which ferrous metals or nonferrous metals are converted into raw material products consisting of prepared grades and having an existing or potential economic value, other than by the exclusive use of hand tools, by methods including, without limitation, processing, sorting, cutting, classifying, cleaning, baling, wrapping, shredding, shearing, or changing the physical form or chemical content thereof.

~~(9) "Department" means the Department of Revenue.~~



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(12) "Utility" means a person, firm, corporation, association, or political subdivision, whether private, municipal, county, or cooperative, which is engaged in the sale, generation, provision, or delivery of gas, electricity, heat, water, oil, sewer service, or telephone, telegraph, radio, communications, or telecommunications service.

Section 5. Section 538.19, Florida Statutes, is amended to read:

538.19 Records required; limitation of liability.—

(1) A secondary metals recycler shall complete a transaction form at the time of the actual transaction. Unless other arrangements have been agreed upon, the secondary metals recycler shall, within 24 hours after acquiring the regulated metals, deliver to the appropriate law enforcement official a record of the transaction on a form approved by the Department of Law Enforcement. The recycler shall also maintain a legible record of all purchase transactions to which the ~~such~~ secondary metals recycler is a party.

(2) The following information must be maintained on the ~~a~~ form approved by the Department of Law Enforcement for each purchase transaction:

(a) The name and address of the secondary metals recycler.

(b) The name, initials, or other identification of the individual entering the information on the ticket.

(c) The date and time of the transaction.

(d) The weight, quantity, or volume, and a description of the type of regulated metals property purchased in a purchase transaction.

(e) The amount of consideration given in a purchase



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transaction for the regulated metals property.

(f) A signed statement from the person delivering the regulated metals property stating that she or he is the rightful owner of, or is entitled to sell, the regulated metals property being sold. If the purchase involves a stainless steel beer keg, the seller must provide written documentation from the manufacturer that the seller is the owner of the stainless steel beer keg or is an employee or agent of the manufacturer.

(g) The distinctive number from the personal identification card of the person delivering the regulated metals property to the secondary metals recycler.

(h) A description of the person from whom the goods were acquired, including:

1. Full name, current residential address, workplace, and home and work phone numbers.

2. Height, weight, date of birth, race, gender, hair color, eye color, and any other identifying marks.

3. The right thumbprint, free of smudges and smears.

4. Vehicle description to include the make, model, and tag number of the vehicle and trailer of the person selling the regulated metals property.

5. Any other information required by the form approved by the Department of Law Enforcement.

(i) A photograph, videotape, or digital image of the regulated metals being sold.

(j) A photograph, videotape, or similar likeness of the person receiving consideration in which such person's facial features are clearly visible.

(3) Any secondary metals recycler may, with the approval of



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187 the appropriate law enforcement official, use that maintains an
188 electronic database containing the information required in
189 subsection (2) paragraph (2)(h), along with an oath of ownership
190 with a signature of the seller of the secondary metals being
191 purchased by the secondary metals recycler and a right
192 thumbprint that has no smudges and smears on the oath of
193 ownership for each purchase transaction, shall be exempt from
194 the records requirement of paragraph (2)(h). A secondary metals
195 recycler complies with the requirements of this section if it
196 maintains an electronic database containing the information
197 required by subsection (2) paragraph (2)(h) as long as the
198 electronic information required by subsection (2) paragraph
199 (2)(h), along with an electronic oath of ownership with an
200 electronic signature of the seller of the secondary metals being
201 purchased by the secondary metals recyclers and an electronic
202 image of the seller's right thumbprint that has no smudges and
203 smears, can be downloaded onto a paper form in the image of the
204 form approved by the Department of Law Enforcement as provided
205 in subsection (2).

206 (4) If an appropriate law enforcement official supplies the
207 software and the secondary metals recycler has the computer
208 ability, the recycler shall electronically transmit regulated
209 metals transaction records required by this section. If a
210 recycler does not have such ability, the appropriate law
211 enforcement official may provide the recycler with a computer
212 and necessary equipment to electronically transmit such records.
213 The appropriate law enforcement official shall retain ownership
214 of the computer, unless otherwise agreed upon, and the recycler
215 shall maintain the computer in good working order, ordinary wear



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and tear excepted. A recycler who transmits such records electronically is not required to also provide the original or paper copies of the forms to the appropriate law enforcement official. However, such official may, for purposes of a criminal investigation, require the recycler to provide the original of a transaction form that has been electronically transferred within 24 hours after receipt of the request.

~~(5)~~ (4) A secondary metals recycler shall maintain or cause to be maintained the information required by this section for not less than 2 5 years from the date of the purchase transaction.

~~(6)~~ (5) ~~If a purchase transaction involves the transfer of regulated metals property from~~ A secondary metals recycler registered with the department who purchases a motor vehicle from a licensed salvage motor vehicle dealer as defined in s. 320.27 or from ~~to~~ another secondary metals recycler registered with the department and who uses a mechanical crusher to convert the vehicle to scrap metal must obtain a signed statement from the seller stating that the seller has surrendered the vehicle's certificate of title to the Department of Highway Safety and Motor Vehicles as provided in s. 319.30 or has otherwise complied with the titling requirements provided by law for conversion of the vehicle to scrap metal. A, the secondary metals recycler is not liable for the seller's failure to comply with the titling requirements provided by law for conversion of a motor vehicle to scrap metal if the secondary metals recycler obtains and maintains the seller's signed statement ~~receiving the regulated metals property shall record the name and address of the secondary metals recycler from which it received the~~



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~~regulated metals property in lieu of the requirements of
paragraph (2)(h).~~

Section 6. Section 538.235, Florida Statutes, is amended to
read:

538.235 Method of payment.—

(1) A secondary metals recycler may ~~shall~~ not enter into
any cash transaction:

(a) In excess of \$1,000 in payment ~~for the purchase of~~
regulated metals property; or

(b) In any amount for the purchase of restricted regulated
metals property.

(2) Payment in excess of \$1,000 for the purchase of
regulated metals property or payment in any amount for the
purchase of restricted regulated metals property must ~~shall~~ be
made by check issued and payable to the seller or by electronic
payment to the seller's bank account or the bank account of the
seller's employer ~~metal and payable to the seller.~~

Section 7. Subsection (5) of section 538.26, Florida
Statutes, is amended, and subsection (6) is added to that
section, to read:

538.26 Certain acts and practices prohibited.—It is
unlawful for a secondary metals recycler to do or allow any of
the following acts:

(5) Purchase regulated metals property ~~in return for money~~
from a trailer, a vehicle, or any location other than a fixed
location or from any person who is required to prove ownership
under s. 538.19 pursuant to subsection (4). ~~However, regulated~~
~~metals may be purchased from a nonfixed location, or from such~~
~~person, with any negotiable or nonnegotiable instrument,~~



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~~including a check or draft or any other type of instrument
purchased with money and sold for the purpose of making payments
or transfers to others.~~

(6)(a) Purchase any restricted regulated metals property
listed in paragraph (b) unless the secondary metals recycler
obtains reasonable proof that the seller:

1. Owns such property. Reasonable proof of ownership may
include, but is not limited to, a receipt or bill of sale; or

2. Is an employee, agent, or contractor of the property's
owner and is authorized to sell the property on behalf of the
owner. Reasonable proof of authorization to sell the property
includes, but is not limited to, a signed letter on the owner's
letterhead, dated no later than 90 days before the sale,
authorizing the seller to sell the property.

(b) The purchase of any of the following regulated metals
property is subject to the restrictions provided in paragraph
(a):

1. A manhole cover.

2. An electric light pole or other utility structure and
its fixtures, wires, and hardware that are readily identifiable
as connected to the utility structure.

3. A guard rail.

4. A street sign, traffic sign, or traffic signal and its
fixtures and hardware.

5. Communication, transmission, distribution, and service
wire from a utility, including copper or aluminum bus bars,
connectors, grounding plates, or grounding wire.

6. A funeral marker or funeral vase.

7. A historical marker.



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8. Railroad equipment, including, but not limited to, a tie plate, signal house, control box, switch plate, E clip, or rail tie junction.

9. A metal item that is observably marked, upon reasonable inspection, with any form of the name, initials, or logo of a governmental entity, utility company, cemetery, or railroad.

10. A copper, aluminum, or aluminum-copper condensing or evaporator coil, including its tubing or rods, from an air-conditioning or heating unit, excluding coils from window air-conditioning or heating units and motor vehicle air-conditioning or heating units.

11. An aluminum or stainless steel container or bottle designed to hold propane for fueling forklifts.

12. A stainless steel beer keg.

13. A catalytic converter or any nonferrous part of a catalytic converter unless purchased as part of a motor vehicle.

14. Metallic wire that has been burned in whole or in part to remove insulation.

15. A brass or bronze commercial valve or fitting, referred to as a "fire department connection and control valve" or an "FDC valve," which is commonly used on structures for access to water for the purpose of extinguishing fires.

16. A brass or bronze commercial potable water backflow preventer valve that is commonly used to prevent backflow of potable water from commercial structures into municipal domestic water service systems.

17. A shopping cart.

Section 8. Section 538.27, Florida Statutes, is created to read:



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538.27 Secondary metals recyclers; limitation of liability; inference.—As provided in s. 812.022(7), proof that a purchase transaction for regulated metals property by a secondary metals recycler complied with this part gives rise to an inference that the secondary metals recycler did not know or have reason to believe that the property was stolen and that the recycler did not have intent to commit theft or deal in stolen property.

Section 9. Section 538.28, Florida Statutes, is created to read:

538.28 Local government regulation; preemption.—

(1) The regulation of purchase transactions involving regulated metals property is preempted to the state. Except as provided in subsection (2), an ordinance or regulation adopted by a county or municipality relating to the purchase or sale of regulated metals property or the registration or licensure of secondary metals recyclers is void.

(2) This part does not preempt an ordinance or regulation originally enacted by a county or municipality before March 1, 2011, or any subsequent amendment to such ordinance or regulation.

Section 10. Subsection (7) is added to section 812.022, Florida Statutes, to read:

812.022 Evidence of theft or dealing in stolen property.—

(7) Proof that a purchase transaction for regulated metals property by a secondary metals recycler complied with part II of chapter 538 gives rise to an inference that the secondary metals recycler did not know or have reason to believe that the property was stolen and that the recycler did not have intent to commit theft or deal in stolen property.



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Section 11. This act shall take effect July 1, 2011.

===== 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 secondary metals recyclers;
amending s. 319.30, F.S.; conforming a cross-
reference; amending s. 538.03, F.S.; defining the term
"appropriate law enforcement official"; amending s.
538.04, F.S.; clarifying a provision requiring that a
secondhand dealer deliver a transaction form to the
appropriate law enforcement official; amending s.
538.18, F.S.; revising and providing definitions;
amending s. 538.19, F.S.; requiring that a secondary
metals recycler complete a transaction form and
transmit it to the appropriate law enforcement
official within 24 hours after the acquisition of
regulated metals; authorizing such recyclers to use an
electronic database and transmit transaction forms
electronically under certain circumstances;
authorizing appropriate law enforcement officials to
provide software and computer equipment to recyclers;
requiring that a recycler produce an original form in
certain situations; revising the period required for
secondary metals recyclers to maintain certain
information regarding purchase transactions involving
regulated metals property; revising requirements for



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the types of information that secondary metals recyclers must obtain and maintain regarding purchase transactions; limiting the liability of secondary metals recyclers for the conversion of motor vehicles to scrap metal under certain circumstances; amending s. 538.235, F.S.; revising requirements for payments made by secondary metals recyclers to sellers of regulated metals property, to which penalties apply; providing methods of payment for restricted regulated metals property; requiring that purchases of certain property be made by check or by electronic payment; amending s. 538.26, F.S.; prohibiting secondary metals recyclers from purchasing regulated metals property without maintaining certain records; deleting provisions prohibiting the purchase of regulated metals property from certain persons or at certain locations; prohibiting the purchase of specified restricted regulated metals property without obtaining certain proof of the seller's ownership or authorization to sell the property; creating s. 538.27, F.S.; establishing an inference that secondary metals recyclers do not commit theft or deal in stolen property under certain circumstances; creating s. 538.28, F.S.; preempting to the state the regulation of secondary metals recyclers and purchase transactions involving regulated metals property; exempting certain ordinances and regulations from preemption; amending s. 812.022, F.S.; establishing an inference that secondary metals recyclers do not



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419 commit theft or deal in stolen property under certain
420 circumstances; providing an effective date.



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LEGISLATIVE ACTION

Senate

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House

The Committee on Community Affairs (Bennett) recommended the following:

Senate Amendment to Amendment (292084) (with title amendment)

Delete lines 271 - 276

and insert:

under s. 538.19 ~~pursuant to subsection (4).~~ However, regulated metals may be purchased from a nonfixed location, or from such person, with any negotiable or nonnegotiable instrument, including a check or draft or any other type of instrument purchased with money and sold for the purpose of making payments or transfers to others.



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

And the title is amended as follows:

 Delete lines 403 - 406

and insert:

 without maintaining certain records; prohibiting the
 purchase of specified



179208

LEGISLATIVE ACTION

Senate

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House

The Committee on Community Affairs (Bennett) recommended the following:

Senate Amendment to Amendment (292084)

Delete line 113

and insert:

(a) Is engaged, from a fixed location or otherwise, in the



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LEGISLATIVE ACTION

Senate

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House

The Committee on Community Affairs (Norman) recommended the following:

Senate Amendment (with title amendment)

Delete lines 216 - 222

and insert:

538.27 Secondary metals recyclers; inference.-
As provided in s. 812.022(7), proof that a purchase

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

And the title is amended as follows:

Delete lines 29 - 31

and insert:

sell the property; creating s. 538.27, F.S.;



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establishing an inference that

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 Community Affairs Committee

BILL: SB 1864

INTRODUCER: Senator Altman

SUBJECT: Energy Conservation

DATE: March 30, 2011

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Gizzi	Yeatman	CA	Pre-meeting
2.			CU	
3.			BC	
4.				
5.				
6.				

I. Summary:

This bill provides for a portion of the proceeds of the local government infrastructure surtax to be used to provide financial assistance to residential property owners who make energy efficiency improvements to, or purchase and install renewable energy devices in, the residential property. The bill also defines the terms “renewable energy devices” and “energy efficiency improvement” for purposes of this Act.

This bill substantially amends section 212.055 of the Florida Statutes.

II. Present Situation:¹

Local Discretionary Sales Surtax

Local discretionary sales surtaxes, also referred to as local option sales taxes, are authorized under s. 212.055, F.S., and provide potential revenue sources for county and municipal governments and school districts. The local discretionary sales surtaxes apply to all transactions subject to the state tax imposed on sales, use, services, rentals, admissions, and other authorized transactions authorized pursuant to ch. 212, F.S., and communications services as defined for purposes of ch. 202, F.S.

Discretionary sales surtax must be collected when the transaction occurs in, or delivery is into, a county that imposes the surtax, and the sale is subject to the state’s sales and use tax.² The surtax

¹ The information in this section was obtained from Fla. H.R. Subcomm. on Energy and Utilities, HB 1281 (2011) Staff Analysis 2-5 (on file with Comm.) *citing* the 2011 FLORIDA TAX HANDBOOK.

² Florida Revenue Estimating Conference, 2011 FLORIDA TAX HANDBOOK, at 203.

applies to the first \$5,000 of any single taxable item when sold to the same purchaser at the same time.³ The local discretionary sales surtax rate varies from county to county depending on the particular levies authorized in that jurisdiction.

There are eight different types of local discretionary sales surtaxes currently authorized in law:⁴

- Charter County and Regional Transportation System Surtax;
- Local Government Infrastructure Surtax;
- Small County Surtax;
- Indigent Care and Trauma Center Surtax;
- County Public Hospital Surtax;
- School Capital Outlay Surtax;
- Voter-Approved Indigent Care Surtax; and
- Emergency Fire Rescue Services and Facilities Surtax.

Local Government Infrastructure Surtax

Section 212.055(2)(a)1., F.S., provides that the Local Government Infrastructure Surtax shall be levied at the rate of 0.5 or 1 percent pursuant to an ordinance enacted by a majority vote of the members of the county's governing body and approved by voters in a countywide referendum.⁵ If the proposal to levy the surtax is approved by a majority of the electors, the levy shall take effect. The levy may only be extended by voter approval in a countywide referendum. There is no state-mandated limit on the length of levy for surtax ordinances enacted after July 1, 1993.⁶

All counties are eligible to levy this surtax.⁷ During the 2011 calendar year, four counties will be levying at the 0.5 percent rate and 16 counties will be levying at the 1 percent rate.⁸ Specifically, the following counties will be levying this surtax during the 2011 calendar year:

County	Percentage
Charlotte	1%
Clay	1%
Duval	0.5%
Escambia	1%
Flagler	0.5%
Glades	1%
Highlands	1%
Hillsborough	0.5%

³ Section 212.054(2)(b)1., F.S.

⁴ See s. 212.055(1)-(8), F.S.

⁵ In lieu of action by the county's governing body, municipalities representing a majority of the county's population may initiate the surtax through the adoption of uniform resolutions calling for a countywide referendum on the issue.

⁶ If the surtax was levied pursuant to a referendum held before July 1, 1993, the surtax may not be levied beyond the time established in the ordinance. If the pre-July 1, 1993, ordinance did not limit the period of the levy, the surtax may not be levied for more than 15 years.

⁷ This surtax is one of several surtaxes subject to a combined rate limitation. A county cannot levy this surtax and the Small County Surtax, Indigent Care and Trauma Center Surtax, and County Public Hospital Surtax in excess of a combined rate of 1 percent.

⁸ 2011 FLORIDA TAX HANDBOOK, at 208-209.

Indian River	1%
Lake	1%
Leon	1%
Martin	0.5%
Monroe	1%
Osceola	1%
Pasco	1%
Pinellas	1%
Putnam	1%
Sarasota	1%
Seminole	1%
Wakulla	1%

Source: 2011 Florida Tax Handbook, pp. 208-209.

The following chart estimates what these counties will collect for the current and upcoming fiscal year and provides historical collections for the Local Government Infrastructure Surtax:

Fiscal Year	Total Collections
2011-2012 estimate	\$655,565,230
2010-2011 estimate	\$612,677,785
2009-2010	\$593,680,024
2008-2009	\$629,887,765
2007-2008	\$658,207,195
2006-2007	\$685,978,662

Source: 2100 Florida Tax Handbook, p. 212.

Pursuant to s. 212.055(2)(d), F.S., school districts, counties and municipalities⁹ may expend the proceeds of the Local Government Infrastructure Surtax and any accrued interest for the following purposes:

- To finance, plan, and construct infrastructure;
- To acquire land for public recreation, conservation, or protection of natural resources; or
- To finance the closure of county-owned or municipally-owned solid waste landfills that have been closed or are required to be closed by order of the Department of Environmental Protection.

For purposes of s. 212.055(2)(d), F.S., the term “infrastructure” means the following:

- Any fixed capital expenditure or fixed capital outlay associated with the construction, reconstruction, or improvement of public facilities that have a life expectancy of 5 or more years and any related land acquisition, land improvement, design, and engineering costs.
- A fire department vehicle, an emergency medical service vehicle, a sheriff's office vehicle, a police department vehicle, or any other vehicle, and the equipment necessary to

⁹ Pursuant to s. 212.055(2)(d), F.S., proceeds of the surtax may also be expended within another county in the case of a negotiated joint county agreement.

- outfit the vehicle for its official use or equipment that has a life expectancy of at least 5 years.
- Any expenditure for the construction, lease, or maintenance of, or provision of utilities or security for, facilities, as defined in s. 29.008, F.S.
 - Any fixed capital expenditure or fixed capital outlay associated with the improvement of private facilities that have a life expectancy of 5 or more years and that the owner agrees to make available for use on a temporary basis as needed by a local government as a public emergency shelter or a staging area for emergency response equipment during an emergency officially declared by the state or by the local government.¹⁰
 - Any land acquisition expenditure for a residential housing project in which at least 30 percent of the units are affordable to individuals or families whose total annual household income does not exceed 120 percent of the area median income adjusted for household size, if the land is owned by a local government or by a special district that enters into a written agreement with the local government to provide such housing.¹¹

Any Local Government Infrastructure Surtax imposed or extended after July 1, 1998, may allocate up to 15 percent of the proceeds to be deposited in a trust fund for the purpose of funding economic development projects having a general public purpose of improving local economies, including the funding of operational costs and incentives related to economic development.¹² This intention must be on the ballot statement.

A county with a total population of 50,000 or less on April 1, 1992, or any county designated as an area of critical state concern that imposed the surtax before July 1, 1992, may use the proceeds and accrued interest of the surtax for any public purpose if the county satisfies all of the following criteria:

- The debt service obligations for any year are met;
- The county's comprehensive plan has been determined to be in compliance with part II of ch. 163, F.S.; and
- The county has adopted an amendment to the surtax ordinance pursuant to the procedure provided in s. 125.66, F.S., authorizing additional uses of the proceeds and accrued interest.¹³

Pursuant to s. 125.66(2)(a), F.S., a board of county commissioners at any regular or special meeting may enact or amend any ordinance if notice of intent to consider the ordinance is given at least 10 days prior to the meeting by publication in a newspaper of general circulation in the county. A copy of the notice shall be kept available for public inspection during the regular business hours of the office of the clerk of the board of county commissioners.

¹⁰ Such improvements are limited to those necessary to comply with current standards for public emergency evacuation shelters. The owner must enter into a written contract with the local government providing the improvement funding to make the private facility available to the public for purposes of emergency shelter at no cost to the local government for a minimum of 10 years after completion of the improvement with the provision that the obligation will transfer to any subsequent owner until the end of the minimum period.

¹¹ The local government or special district may enter into a ground lease with a public or private person or entity for nominal or other consideration for the construction of the residential housing project on land acquired pursuant to this sub-paragraph.

¹² Section 212.055(2)(d)2., F.S.

¹³ Section 212.055(2)(f)1., F.S.

The notice of proposed enactment must state the date, time, and place of the meeting; the title or titles of proposed ordinances; and the place or places within the county where the proposed ordinance(s) may be inspected by the public. The notice shall also advise that interested parties may appear at the meeting and be heard with respect to the proposed ordinance.

III. Effect of Proposed Changes:

This bill provides for a portion of the proceeds of the local government infrastructure surtax to be used to provide financial assistance to residential property owners who make energy efficiency improvements to, or purchase and install renewable energy devices in, the residential property.

The bill defines the term “renewable energy devices” to mean any of the following equipment that collects, transmits, stores, or uses solar energy, wind energy or energy derived from geothermal deposits:

- Solar energy collectors.
- Storage tanks and other storage systems, excluding swimming pools used as storage tanks.
- Rockbeds.
- Thermostats and other control devices.
- Heat exchange devices.
- Pumps and fans.
- Roof ponds.
- Freestanding thermal containers.
- Pipes, ducts, refrigerant handling systems, and other equipment used to interconnect such systems; however, conventional backup systems of any type are not included in this definition.
- Windmills.
- Wind-driven generators.
- Power conditioning and storage devices that use wind energy to generate electricity or mechanical forms of energy.
- Pipes and other equipment used to transmit hot geothermal water to a dwelling or structure from a geothermal deposit.

The bill defines the term “energy efficiency improvements” to mean any energy conservation and efficiency improvement that reduces consumption through conservation or more efficient use of electricity, natural gas, propane, or other forms of energy on the property, including, but not limited to:

- Air sealing;
- Installation of insulation;
- Installation of energy-efficient heating, cooling, or ventilation systems;
- Building modifications to increase the use of daylight;
- Replacement of windows;
- Installation of energy controls or energy recovery systems;
- Installation of electric vehicle charging equipment; and
- Installation of efficient lighting equipment.

This bill shall take effect July 1, 2011.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

This bill will allow a portion of the proceeds of the local government infrastructure surtax to be used to provide financial assistance to residential property owners who make energy efficiency improvements to, or purchase and install renewable energy devices in, the residential property.

B. Private Sector Impact:

Residential property owners who make energy efficiency improvements or install renewable energy devices may receive financial assistance as a result of this bill.

C. Government Sector Impact:

A local government choosing to expend funds under this Act would be required to amend its ordinance pursuant to s. 125.66, F.S.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial 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.



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LEGISLATIVE ACTION

Senate

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House

The Committee on Community Affairs (Bennett) recommended the following:

Senate Amendment (with title amendment)

Between lines 12 and 13
insert:

Section 1. Subsection (1) of section 170.01, Florida
Statutes, is amended to read:

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

(1) Any municipality of this state may, by its governing
authority:

(a) Provide for the construction, reconstruction, repair,
paving, repaving, hard surfacing, rehard surfacing, widening,



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guttering, and draining of streets, boulevards, and alleys; for grading, regrading, leveling, laying, relaying, paving, repaving, hard surfacing, and rehard surfacing of sidewalks; for constructing or reconstructing permanent pedestrian canopies over public sidewalks; and in connection with any of the foregoing, provide related lighting, landscaping, street furniture, signage, and other amenities as determined by the governing authority of the municipality;

(b) Order the construction, reconstruction, repair, renovation, excavation, grading, stabilization, and upgrading of greenbelts, swales, culverts, sanitary sewers, storm sewers, outfalls, canals, primary, secondary, and tertiary drains, water bodies, marshlands, and natural areas, all or part of a comprehensive stormwater management system, including the necessary appurtenances and structures thereto and including, but not limited to, dams, weirs, and pumps;

(c) Order the construction or reconstruction of water mains, water laterals, alternative water supply systems, including, but not limited to, reclaimed water, aquifer storage and recovery, and desalination systems, and other water distribution facilities, including the necessary appurtenances thereto;

(d) Pay for the relocation of utilities, including the placement underground of electrical, telephone, and cable television services, pursuant to voluntary agreement with the utility, but nothing contained in this paragraph shall affect a utility's right to locate or relocate its facilities on its own initiative at its own expense;

(e) Provide for the construction or reconstruction of parks



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and other public recreational facilities and improvements,
including appurtenances thereto;

(f) Provide for the construction or reconstruction of
seawalls;

(g) Provide for the drainage and reclamation of wet, low,
or overflowed lands;

(h) Provide for offstreet parking facilities, parking
garages, or similar facilities;

(i) Provide for mass transportation systems;

(j) Provide for improvements to permit the passage and
navigation of watercraft; ~~and~~

(k) Pay the additional costs of renewable energy, as
defined in s. 366.91, which are in excess of a public utility's
full avoided costs, as defined in s. 366.051, pursuant to an
agreement with the public utility; and

(l) ~~(k)~~ Provide for the payment of all or any part of the
costs of any such improvements by levying and collecting special
assessments on the abutting, adjoining, contiguous, or other
specially benefited property.

However, offstreet parking facilities, parking garages, or other
similar facilities and mass transportation systems must be
approved by vote of a majority of the affected property owners.
Any municipality which is legally obligated for providing
capital improvements for water, alternative water supplies,
including, but not limited to, reclaimed water, water from
aquifer storage and recovery, and desalination systems, or sewer
facilities within an unincorporated area of the county may
recover the costs of the capital improvements by levying and



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collecting special assessments for the purposes authorized in
this section on the specially benefited property; however,
collections of the special assessment shall not take place until
the specially benefited property connects to the capital
improvement.

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

And the title is amended as follows:

Delete line 2

and insert:

An act relating to energy conservation; amending s.
170.01, F.S.; authorizing a municipality to collect
special assessments to pay the additional costs to
purchase renewable energy for the municipality;
amending s.

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 Community Affairs Committee

BILL: CS/SB 386

INTRODUCER: Government Oversight and Accountability Committee and Senators Bogdanoff, Fasano, and Gaetz

SUBJECT: Procurement/Preference to Florida Businesses

DATE: April 5, 2011

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	McKay	Roberts	GO	Fav/CS
2.	Gizzi	Yeatman	CA	Pre-meeting
3.			BC	
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

- | | | |
|------------------------------|--|---|
| A. COMMITTEE SUBSTITUTE..... | ☒ | Statement of Substantial Changes |
| B. AMENDMENTS..... | ☐ | Technical amendments were recommended |
| | ☐ | Amendments were recommended |
| | ☐ | Significant amendments were recommended |

I. Summary:

This Committee Substitute (CS) modifies the existing in-state vendor preference for public printing contracts to include counties, municipalities, school districts, and other political subdivisions as entities that may grant a preference. The CS specifies that the printing preference is equal to the preference established by the state of the lowest bidder, or 5 percent when the lowest bidder's state has no in-state preference. In relation to the procurement of personal property and services under ch. 287, F.S., the CS provides that the preference for in-state vendors shall be 5 percent when the lowest bidder's state has no in-state preference.

This CS substantially amends sections 283.35 and 287.084 of the Florida Statutes.

II. Present Situation:

Public Printing Vendor Preference

Chapter 283 of the Florida Statutes regulates public printing. Section 283.35, F.S., provides that "[e]very agency must give preference to vendors located within the state when awarding

contracts to have materials printed, whenever such printing can be done at no greater expense than the expense of awarding a contract to a vendor located outside the state and can be done at a level of quality comparable to that obtainable from a vendor located outside the state.”

Section 283.30(1), F.S., defines the term “agency” for purposes of ch. 283, F.S., to mean any official, officer, department, board, commission, division, bureau, section, district, office, authority, committee, or council, or any other unit of organization, however designated, of the executive branch of state government, and the Public Service Commission.

State Agency Procurement Vendor Preference

Chapter 287 of the Florida Statutes regulates state agency procurement of personal property and services. In providing preference to Florida businesses, s. 287.084, F.S., states:

- (1) When an agency¹, county, municipality, school district, or other political subdivision of the state is required to make purchases of personal property through competitive solicitation and the lowest responsible and responsive bid, proposal, or reply is by a vendor whose principal place of business is in a state or political subdivision thereof which grants a preference for the purchase of such personal property to a person whose principal place of business is in such state, then the agency, county, municipality, school district, or other political subdivision of this state may award a preference to the lowest responsible and responsive vendor having a principal place of business within this state, which preference is equal to the preference granted by the state or political subdivision thereof in which the lowest responsible and responsive vendor has its principal place of business. However, this section does not apply to transportation projects for which federal aid funds are available.
- (2) If a solicitation provides for the granting of a preference as is provided in this section, any vendor whose principal place of business is outside the State of Florida must accompany any written bid, proposal, or reply documents with a written opinion of an attorney at law licensed to practice law in that foreign state, as to the preferences, if any or none, granted by the law of that state to its own business entities whose principal places of business are in that foreign state in the letting of any or all public contracts.

III. Effect of Proposed Changes:

Section 1 provides short title for this act as the “Buy Florida Act.”

Section 2 amends s. 283.35, F.S., by expanding application of the printing preference to each county, municipality, school district, or other political subdivision of the state. The preference

¹ As used in Ch. 287, F.S., “agency” means any of the various state officers, departments, boards, commissions, divisions, bureaus, and councils and any other unit of organization, however designated, of the executive branch of state government. “Agency” does not include the university and college boards of trustees or the state universities and colleges.

for in-state vendors, which applies when the printing can be performed in-state at a level of quality comparable to that obtainable from an out-of-state vendor that submits the lowest bid, must be:

- Equal to the preference granted by the state or political subdivision in which the lowest responsible and responsive vendor has its principal place of business; or
- Five percent if the lowest bid is submitted by a vendor whose principal place of business is located outside the state and that state does not grant a preference in competitive solicitation to vendors having a principal place of business in that state.

Any vendor whose principal place of business is in another state must accompany any written bid, proposal, or reply documents with a written opinion of an attorney licensed in that state, regarding any preferences granted by that state to its own business entities whose principal places of business are in that state in the letting of public contracts.

Section 3 amends s. 287.084, F.S., to add an additional provision to the existing in-state preference for state agency procurement. The CS provides that in a competitive solicitation in which the lowest bid is submitted by a vendor whose principal place of business is located outside the state and that state does not grant a preference in competitive solicitation to vendors having a principal place of business in that state, the preference to the lowest responsible and responsive vendor having a principal place of business in this state shall be 5 percent.

Section 4 provides that this act shall take effect July 1, 2011.

IV. **Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

The establishment of local preference laws may potentially implicate the Equal Protection Clause and the Commerce Clause of the U.S. Constitution.

The Equal Protection Clause

The United States Constitution provides that “no State shall . . . deny to any person within its jurisdiction, the equal protection of law.”² The in-state preference provisions in this CS may constitute an equal protection violation. If

² U.S. CONST. amend. XIV, § 1. See also FLA. CONST. art. I, s. 2.

such legislation is challenged, the court would use a rational basis test to determine the constitutionality of the alleged discriminatory treatment.³ Under the rational basis test, a court must uphold a state statute so long as the classification bears a rational relationship to a legitimate state interest.⁴

The Commerce Clause

The United States Constitution provides that Congress shall have the power “to regulate commerce . . . among the states.”⁵ The Commerce Clause acts not only as a positive grant of power to Congress, but also as a negative constraint upon the states.⁶

Courts have used a two-tiered analysis to determine whether a statutory scheme violates the Commerce Clause:

1. “If a statute ‘directly regulates or discriminates against interstate commerce, or [if] its effect is to favor in-state economic interests over out-of-state interests,’ the court may declare it unconstitutional as applied, without further inquiry.”⁷
2. “. . . if the statute regulates evenhandedly and if it has only an indirect effect on interstate commerce, the court must determine whether the state’s interest is legitimate and, if so, whether the burden on interstate commerce exceeds the local benefits.”⁸

However, when a state or local government is acting as a “market participant” rather than a “market regulator,” it is not subject to the limitations of the Commerce Clause.⁹ A state is considered to be a “market participant” when it is acting as an economic actor such as a purchaser of goods and services.¹⁰ Since the state is acting as a “market participant” under this CS, the in-state preference provisions herein are likely to be upheld as an exception to the Commerce Clause.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Indeterminate.

³ *Nordlinger v. Hahn*, 505 U.S. 1, 33-34 (1992) (stating that a “classification *rationally* furthers a state interest when there is some fit between the disparate treatment and the legislative purpose.”).

⁴ *Id.*

⁵ U.S. CONST. art. I, s. 8, cl. 3.

⁶ See *Gibbons v. Ogden*, 22 U.S. (9 Wheat.) 1 (1824).

⁷ *National Collegiate Athletic Ass’n v. Associated Press*, 18 So. 3d 1201, 1211-1212 (Fla. 1st DCA 2009) (citing *Brown-Forman Distillers Corp. v. New York State Liquor Authority*, 476 U.S. 573, 578-579).

⁸ *Id.* (citations omitted); See *Bainbridge v. Turner*, 311 F.3d 1104, 1108-1109.

⁹ See *White v. Massachusetts Council of Constr. Employers*, 460 U.S. 204, 204 (1983) (providing that a state may grant and enforce a preference to local residents when entering into construction projects for public projects).

¹⁰ *Id.*

C. **Government Sector Impact:**

As a result of this CS, counties, municipalities, school districts, and other political subdivisions will be authorized to grant in-state vendor preference for public printing contracts.

In the procurement of personal property and services under ch. 287, F.S., the CS provides that the preference for in-state vendors shall be 5 percent when the lowest bidder's state has no in-state preference.

The fiscal impact of these changes is indeterminate at this time.

VI. **Technical Deficiencies:**

None.

VII. **Related Issues:**

Section 2 of the CS provides that the printing preference to an in-state vendor in instances when the lowest responsible and responsive vendor is an out-of-state vendor shall be equal to the preference provided in the state where the out-of-state vendor's principal place of business is located.

If the out-of-state vendor's principal place of business is located in a state that has a reciprocal numberless in-state vendor preference, the numerical preference would be difficult to apply/determine since each states' preference language would mirror the other.

VIII. **Additional Information:**

A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Governmental Oversight and Accountability on March 23, 2011:

The committee substitute removes references discussing how the preference would apply to PRIDE (Prison Rehabilitative Industries and Diversified Enterprises, Inc.), and clarifies how the preference will apply in printing contracts.

B. **Amendments:**

None.



307288

LEGISLATIVE ACTION

Senate

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House

The Committee on Community Affairs (Ring) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

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

Section 2. Section 283.35, Florida Statutes, is amended to
read:

283.35 Preference given printing within the state.—Every
agency, county, municipality, school district, or other
political subdivision of this state shall give preference to the
responsible and responsive vendor whose principal place of
business is in this state and who is offering the lowest-priced



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bid or highest-ranked proposal or reply, ~~vendors located within the state~~ when awarding contracts to have materials printed. ~~Whenever such printing can be done at no greater expense than the expense of awarding a contract to a vendor located outside the state and can be done at a level of quality comparable to that obtainable from a vendor located outside the state. The~~ preference shall be 5 percent.

Section 3. Section 287.084, Florida Statutes, is amended to read:

287.084 Preference to Florida businesses.—

~~(1) When an agency, county, municipality, school district, or other political subdivision of the state is required to make purchases of personal property through competitive solicitation and the~~ responsive lowest-priced bid or responsive highest-ranked ~~lowest responsible and responsive bid,~~ proposal, or reply is by a responsible vendor whose principal place of business is in a state other than this state ~~or political subdivision thereof which grants a preference for the purchase of such personal property to a person whose principal place of business is in such state, then~~ the agency, county, municipality, school district, or other political subdivision of this state shall ~~may~~ award a preference to the ~~lowest~~ responsible and responsive vendor offering the lowest-priced bid or highest-ranked proposal or reply having a principal place of business within this state. ~~which preference is equal to the preference granted by the state or political subdivision thereof in which the lowest responsible and responsive vendor has its principal place of business. The preference given shall be 5 percent.~~ However, this section does not apply to transportation projects for which



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federal aid funds are available.

~~(2) If a solicitation provides for the granting of such preference as is provided in this section, Any vendor whose principal place of business is outside the State of Florida must accompany any written bid, proposal, or reply documents with a written opinion of an attorney at law licensed to practice law in that foreign state, as to the preferences, if any or none, granted by the law of that state to its own business entities whose principal places of business are in that foreign state in the letting of any or all public contracts.~~

Section 4. This act shall take effect July 1, 2011.

===== 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 preference to Florida businesses in procurement of personal property and services;
providing a short title; amending s. 283.35, F.S.;
requiring an agency, county, municipality, school district, or other political subdivision of the state to grant a specified preference to a vendor located within the state when awarding a contract for printing under certain circumstances; specifying the percentage of preference to be granted; amending s. 287.084, F.S.; requiring, rather than authorizing, an agency, county, municipality, school district, or other political subdivision of the state in making purchases



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71 of personal property through competitive solicitation
72 to award a preference to a responsible and responsive
73 vendor having a principal place of business within
74 this state under specified circumstances; specifying
75 the percentage of preference to be granted; deleting a
76 provision to conform to changes made by the act;
77 providing an effective date.



233824

LEGISLATIVE ACTION

Senate

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House

The Committee on Community Affairs (Bennett) recommended the following:

Senate Amendment to Amendment (307288) (with title amendment)

Between lines 51 and 52
insert:

Section 4. It is the intent of the Florida Legislature that purchases of new equipment, machinery or inventory by state agencies that result from fire; smoke; water or any other disaster incident, be limited to those purchases that are absolutely necessary and are deemed to be in an un-repairable condition.

By January 1, 2012, all state agencies shall develop and



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adopt assessment protocols which facilitate an agency's best efforts to evaluate and make a determination whether equipment, machinery or any other inventory could be repaired or restored prior to any request to purchase replacement equipment, machinery or any other inventory is approved.

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

And the title is amended as follows:

Delete line 77

and insert:

creating an undesignated section of law; expressing legislative intent; requiring state agencies to develop and adopt assessment protocols to evaluate and determine whether equipment, machinery or other inventory can be repaired or restored prior to a request to purchase replacement machinery, equipment or inventory under certain circumstances; providing an effective date.



117030

LEGISLATIVE ACTION

Senate

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House

The Committee on Community Affairs (Ring) recommended the following:

Senate Amendment to Amendment (307288)

Delete lines 12 - 36
and insert:

business is in this state, ~~vendors located within the state~~
when awarding contracts to have materials printed., ~~whenever~~
~~such printing can be done at no greater expense than the expense~~
~~of awarding a contract to a vendor located outside the state and~~
~~can be done at a level of quality comparable to that obtainable~~
~~from a vendor located outside the state.~~ The preference shall be
5 percent.

Section 3. Section 287.084, Florida Statutes, is amended to



117030

read:

287.084 Preference to Florida businesses.—

~~(1) When an agency, county, municipality, school district, or other political subdivision of the state is required to make purchases of personal property through competitive solicitation and the responsive lowest-priced bid or responsive highest-ranked ~~lowest responsible and responsive bid~~, proposal, or reply is by a responsible vendor whose principal place of business is in a state other than this state ~~or political subdivision thereof which grants a preference for the purchase of such personal property to a person whose principal place of business is in such state~~, then the agency, county, municipality, school district, or other political subdivision of this state shall ~~may~~ award a preference to the ~~lowest~~ responsible and responsive vendor having a principal place of business within this~~

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 Community Affairs Committee

BILL: CS/SB 594

INTRODUCER: Judiciary Committee and Senator Hays

SUBJECT: Sovereign Immunity

DATE: April 6, 2011

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Boland	Maclure	JU	Fav/CS
2. McKay	Roberts	GO	Favorable
3. Wolfgang	Yeatman	CA	Pre-meeting
4. _____	_____	_____	_____
5. _____	_____	_____	_____
6. _____	_____	_____	_____

Please see Section VIII. for Additional Information:

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|------------------------------|--|---|
| A. COMMITTEE SUBSTITUTE..... | ☒ | Statement of Substantial Changes |
| B. AMENDMENTS..... | ☐ | Technical amendments were recommended |
| | ☐ | Amendments were recommended |
| | ☐ | Significant amendments were recommended |

I. Summary:

A statute of limitations is a law that bars legal claims after a specified period of time, usually based on when the injury occurred or was discovered. Currently, claims against the state or its subdivisions for a negligent or wrongful act are subject to a 4-year statute of limitations. However, there is an exception for medical malpractice claims against the state or its subdivisions, which are subject to a 2-year limitations period. The bill adds “wrongful death” to the list of exceptions governed by the 2-year statute of limitations. Thus, the bill reduces the statute of limitations for wrongful death actions against the state from 4 years to 2 years.

The bill brings other portions of the statute in conformity with the new statute of limitations. Currently, claimants have 3 years to give notice of their claim to an agency. The agency then has 6 months, or 90 days for medical malpractice claims, to dispose of the claim. Suit cannot be brought before notice has been given and a final disposition of the claim rendered; except that, if no agency action occurs for 6 months, or 90 days for medical malpractice claims, it is considered an automatic denial of the claim. Currently, the statute of limitations still runs during the period that the agency has to dispose of the claim. The bill reduces the period that a claimant has to give notice to an agency of its wrongful death claim, mandating that a claimant give notice to the agency within 2 years of the claim accruing. Additionally, the bill adds wrongful death claims to

the 90-day period for agency action already in place for medical malpractice claims. Thus, if no agency action occurred on a wrongful death claim for 90 days, such inaction would result in an automatic final denial of the claim. Finally, the bill tolls the statute of limitations for wrongful death and medical malpractice claims during the time period provided for agency action.

This bill substantially amends section 768.28, Florida Statutes.

II. Present Situation:

Wrongful Death Actions

A wrongful death action is a lawsuit brought on behalf of a decedent's survivors for damages resulting from a tortious injury that caused the decedent's death.¹ The "Florida Wrongful Death Act" is codified in ss. 768.16-768.26, F.S. The Florida Wrongful Death Act provides that when the death of a person is caused by the wrongful act, negligence, default, or breach of contract of any person, the person who would have been liable for injury, if death had not ensued, is still liable for the damages resulting from the tortious conduct.² Furthermore, s. 768.20, F.S., provides that the personal representative of the decedent shall bring the wrongful death action and seek recovery on behalf of the survivors and the decedent's estate. The following damages are recoverable under the Florida Wrongful Death Act:

- Payer of medical and funeral expenses may recover those expenses;
- Surviving spouse, minor children (defined as under 25 years of age³), and all children if there is no surviving spouse, hereafter "survivors", may recover lost value of support and services from date of injury until resulting death;
- Survivors may recover lost value of future support and services;
- Survivors may recover for loss of companionship and mental pain and suffering;
- Parents of deceased minors may recover for mental pain and suffering from the date of injury; and,
- Decedent's estate may recover lost earnings from date of injury to the date of death.⁴

Statutes of Limitations

A statute of limitations is a law that bars legal claims after a specified period of time, usually based on when the injury occurred or was discovered.⁵ These laws are designed to create equity and have a conclusive effect by preventing surprises and disallowing claims that have been allowed to slumber until evidence, memories, and availability of witnesses have eroded.⁶ The theory behind a statute of limitations is that, even if one has a just claim, it is unjust not to put the adversary on notice that he/she must defend that claim within the period of limitation.⁷

¹ Black's Law Dictionary (9th ed. 2009).

² Section 768.19, F.S.

³ Section 768.18, F.S.

⁴ Section 768.21, F.S.

⁵ Black's Law Dictionary (9th ed. 2009).

⁶ *Order of R.R. Telegraphers v. Railway Express Agency*, 321 U.S. 342, 348-49 (1944).

⁷ *Id.* at 349.

Section 768.28, F.S., provides for tort actions against the state and its subdivisions. Section 768.28(14), F.S., creates special limitation periods when the state or one of its subdivisions is the defendant, notably:

Every claim against the state or one of its agencies or subdivisions for damages for a negligent or wrongful act or omission pursuant to this section shall be forever barred unless the civil action is commenced by filing a complaint in the court of appropriate jurisdiction within 4 years after such claim accrues; except that an action for contribution must be commenced within the limitations provided in s. 768.31(4),⁸ and an action for damages arising from medical malpractice must be commenced within the limitations for such an action in s. 95.11(4).

Section 95.11, F.S., sets forth the time limitations for commencing civil actions in Florida. Specifically, s. 95.11(4)(d), F.S., provides that an action for wrongful death must be commenced within 2 years of the death from which the cause of action accrues.

In *Beard v. Hambrick*, 396 So. 2d 708 (Fla. 1981), the Florida Supreme Court held that the 4-year statute of limitations provided in s. 768.28, F.S., is applicable to political subdivisions of the state rather than the 2-year statute of limitations for wrongful death actions provided in s. 95.11(4), F.S. The Court based its holding on a determination that a sheriff's office was an integral part of a "county" as defined in the Florida Constitution and therefore fell within the definition of a "political subdivision" of the state.⁹ The Court found that the Legislature intended there to be one limitations period for all actions brought under s. 768.28, F.S.¹⁰ Therefore, there is currently a 4-year statute of limitations for filing a wrongful death action against the state and its political subdivisions, and there is a 2-year statute of limitations for filing a wrongful death action against anyone other than the state and its political subdivisions.

Notice Requirements for Claims Against the State

Currently, if a claimant wishes to bring an action against the state or one of its subdivisions, then the claimant must give notice to the appropriate agency within 3 years of the claim accruing. Once notice has been given, the agency then has 90 days in the case of medical malpractice claims, and 6 months in all other cases, to take action on the claim. If no agency action occurs during the 6-month or 90-day period, then such inaction constitutes a denial of the claim. Additionally, the statute of limitations continues to run on claims after notice is given and while they are awaiting agency action. No action may be taken against the state or one of its subdivisions prior to the satisfaction of these notice requirements.¹¹

⁸ Section 768.31 (4), F.S., provides that where there is a judgment for wrongful death against a tortfeasor seeking contribution, any separate action by her or him to enforce contribution must be commenced within one year after the judgment has become final by lapse of time for appeal or after appellate review.

⁹ *Hambrick*, 396 So. 2d at 711-12.

¹⁰ *Id.* at 712.

¹¹ Section 768.28 (6), F.S.

III. Effect of Proposed Changes:

This bill shortens the statute of limitations for wrongful death actions against the state from 4 years to 2 years. Whereas the Court in *Beard v. Hambrick* held that the 4-year statute of limitations was applicable to wrongful death actions against the state and its subdivisions, this bill would legislatively override that decision and offer only the 2-year statute of limitations, provided for in s. 95.11(4), F.S., in which to file a wrongful death action against the state and its subdivisions.¹² Potentially, shortening the statute of limitations will bar some claims against the state based on the fact that claims filed after the 2-year limitation period will be untimely and dismissed on those grounds.

The bill changes the time that a claimant has to give notice to the appropriate agency of its wrongful death claim to 2 years. The bill also provides that the agency has 90 days from the time that notice is given to take action on the wrongful death claim. If the agency takes no action during that 90-day period, then the agency's inaction constitutes a final denial of the claim. Additionally, the bill provides that the statute of limitations for wrongful death and medical malpractice claims are tolled during the time that the agency has to take action after the claimant gives the agency notice of its claim. This period for agency action could toll the statute of limitations for up to 90 days in wrongful death actions.

The bill provides an effective date of July 1, 2011, and applies to causes of action accruing on or after that date.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

¹² *Hambrick*, at 712.

B. Private Sector Impact:

An estate will have a shorter period of time in which to commence a lawsuit on behalf of the survivors of a person whose death is caused by the wrongful act of the state or one of its subdivisions.

C. Government Sector Impact:

To the extent that a shorter period of time in which to institute litigation against the state or its subdivisions results in fewer wrongful death lawsuits being filed, the state and its subdivisions may potentially benefit fiscally from having fewer judgments entered against them.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)**CS by Judiciary on March 9, 2011:**

The committee substitute amends the original bill in the following ways:

- Changes the statutory period in which a claimant is required to give notice to the appropriate agency of its claim to 2 years;
- Adds wrongful death actions to the 90-day period for agency action that is already in place for medical malpractice actions;
- Adds a provision to the end of s. 768.28(6)(d), F.S., that tolls the statute of limitations during the 90 days that an agency has to take action once notice is given, and applies this provision to wrongful death and medical malpractice claims; and
- Changes the effective date to provide that this bill only applies to causes of action accruing on or after the effective date.

B. Amendments:

None.



575802

LEGISLATIVE ACTION

Senate

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House

The Committee on Community Affairs (Richter) recommended the following:

Senate Amendment (with directory and title amendments)

Between lines 93 and 94
insert:

(21) No provision of this section, or any other provision of state law, waives the immunity of the state or any of its agencies with regard to claims brought under s. 440.205. Claims brought against the state or any of its agencies pursuant to s. 440.205 must be brought in compliance with this section.

===== 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:



575802

Delete line 24

and insert:

subsection (14) of section 768.28, Florida Statutes, are
amended, and subsection (21) is added to that section,

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

And the title is amended as follows:

Delete line 17

and insert:

defendants; specifying applicability to workers'
compensation claims; providing for the application of
the act

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 Community Affairs Committee

BILL: CS/SB 296

INTRODUCER: Commerce and Tourism Committee and Senator Wise

SUBJECT: Household Moving Services

DATE: April 6, 2011

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	McCarthy	Cooper	CM	Fav/CS
2.	Gizzi	Yeatman	CA	Pre-meeting
3.			BC	
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

- | | | |
|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | ☒ | Statement of Substantial Changes |
| B. AMENDMENTS..... | ☐ | Technical amendments were recommended |
| | ☐ | Amendments were recommended |
| | ☐ | Significant amendments were recommended |

I. Summary:

This Committee Substitute (CS) requires movers and moving brokers to register with the Department of Agriculture and Consumer Services biennially instead of annually and clarifies the definition of storage. The CS also preempts local government ordinances regulating movers of household goods or moving brokers that were enacted after January 1, 2011. The CS allows local government ordinances that were enacted prior to January 1, 2011, to remain in effect provided that such ordinances levy “reasonable” registration fees that do not exceed the cost of administering such ordinance and only apply to a mover or moving broker whose principal place of business is located in the jurisdiction having such ordinance.

The preemption provisions in this CS do not preempt a local government’s authority to levy a local business tax.

This CS substantially amends the following sections of the Florida Statutes: 507.01, 507.03, 507.07 and 507.13.

II. Present Situation:

Federal law expressly permits states to regulate the intrastate transportation of household goods.¹ Chapter 507, F.S., under which household moving services are regulated, “applies to the operations of any mover or moving broker engaged in the intrastate transportation or shipment of household goods originating in this state and terminating in this state.”²

Movers and Moving Brokers Registration

Section 507.01(9), F.S., defines “mover” to mean a person who, for compensation, contracts for or engages in the loading, transportation, shipment, or unloading of household goods as part of a household move. The term does not include a postal, courier, envelope, or package service that does not advertise itself as a mover or moving service.³ “Moving broker” is classified as a person who, for compensation, arranges for another person to load, transport, ship, or unload household goods as part of a household move or who, for compensation, refers a shipper to a mover by telephone, postal or electronic mail, internet website, or other means.⁴

Section 507.03, F.S., requires any “mover” or “moving broker” that wishes to do business in Florida to register annually with the Department of Agriculture and Consumer Services (DACS or department). In order to obtain a registration certificate, the mover or moving broker must file an application, pay a \$300 annual registration fee, and meet certain statutory qualifications, including proof of insurance coverage.⁵

Failure to comply with these intrastate registration requirements may subject a mover or moving broker to a “cease and desist order and fines of up to \$5,000.”⁶

Insurance Coverage and Liability Limitations

Section 507.04, F.S., requires that movers and moving brokers maintain liability and motor vehicle insurance. A mover operating more than two vehicles is required to maintain liability insurance coverage in the amount of at least \$10,000 per shipment, and the mover’s liability must not be less than 60 cents per pound per article.⁷ Movers operating two or fewer vehicles may maintain a performance bond or certificate of deposit in the amount of \$25,000, in lieu of maintaining liability insurance.⁸ All movers must maintain motor vehicle insurance coverage. The amount of coverage required is determined by the weight of the commercial motor vehicle.⁹

Contractual provisions that limit a mover’s liability for a shipper’s goods are required to be disclosed by the mover in writing to the seller along with the valuation rate “at the time that the

¹ See 49 U.S.C. 14501(c)(2)(B).

² Section 507.02(2), F.S.

³ Section 507.01(9), F.S.

⁴ Section 507.01(10), F.S.

⁵ Section 507.03(1), F.S.

⁶ Florida Department of Agriculture and Consumer Services, *Intrastate Moving Information For Businesses*, available online at <http://www.800helpfla.com/moving.html> (last visited on April 7, 2011). See also, ss. 507.09 and 507.10, F.S.

⁷ Section 507.04(1)(a) and (4), F.S.

⁸ Section 507.04(1)(b), F.S.

⁹ Section 507.04(2)(a)-(c), F.S.

estimate and contract for services are executed” and prior to providing any moving services.¹⁰ Movers that offer valuation coverage must also inform the shipper “of the opportunity to purchase” such coverage in the disclosure.¹¹ However, any contract for moving services that seeks to limit a mover’s liability beyond the minimum valuation rate of “60 cents per pound per article” is void under s. 507.04(4), F.S.

Violations and Penalties

Current law regulates movers and moving brokers by specifying certain contract, delivery, and storage requirements.¹² Furthermore, s. 507.07, F.S., prohibits certain acts by movers and moving brokers and makes it a violation for movers and moving brokers to:

- Conduct or engage in the business of moving without first being registered annually with the department;
- Knowingly make a false statement, representation, or certification of a document required to be submitted or retained;
- Misrepresent or deceptively represent: the contract for services or inventory of goods; the timeframe for delivery or storage of goods; the price, size, nature, extent, qualities, or characteristics of services offered; or a shipper’s rights, privileges, or benefits;
- Fail to honor and comply with provisions of the contract for services;
- Withhold delivery of household goods against the wishes of the shipper and after the shipper has paid according to the estimate provided in the service contract;
- Include a contract provision purporting to waive or limit a shipper’s right or benefit as provided in this chapter;
- Seek or solicit a waiver or acceptance from a shipper of a provision limiting a shipper’s right or benefit;
- Solicit services without clearly disclosing the mover’s fixed business address;
- Commit any other act of fraud, misrepresentation, or failure to disclose a material fact;
- Refuse or fail, after notice, to produce any document or record or disclose any information required to be produced or disclosed; or
- Knowingly make a false statement in response to any request or investigation by DACS, the Department of Legal Affairs, or the state attorney.¹³

Movers that commit any of the above-listed prohibited acts may be subject to administrative, civil, or criminal penalties.¹⁴ Violations under ch. 507, F.S., may also be deemed an unfair or deceptive act or practice, or an unfair method of competition in violation of the Florida Deceptive and Unfair Trade Practices Act, subjecting a violator to a civil penalty of up to \$10,000 per violation.¹⁵

¹⁰ Section 507.04(4), F.S.

¹¹ *Id.*

¹² See ss. 507.05 and 507.06, F.S.

¹³ Section 507.07, F.S.

¹⁴ See ss. 507.09, 507.10, and 507.11, F.S.

¹⁵ Section 507.08, F.S.

Local Ordinances and Regulations

Currently, ch. 507, F.S., allows municipalities and counties to adopt local ordinances or regulations relating to the moving of household goods in addition to state regulations that are required by the statute.¹⁶ Broward, Miami-Dade, Palm Beach, Hillsborough, and Pinellas counties currently have ordinances regulating household moving.¹⁷ Movers or moving brokers whose principal place of business is located in a county or municipality that has such ordinances requiring local licensing or registration are required to obtain local registration in addition to registering with the state.¹⁸ Florida law also allows for local taxes, fees, and bonding related to movers and moving brokers.¹⁹

Chapter 205, F.S., authorizes a local government to levy a business tax for the privilege of engaging in or managing any business, profession, or occupation within its jurisdiction, called a local business tax.²⁰ The local business tax “does not mean any fees or licenses paid to any board, commission, or officer for permits, registration, examination, or inspection,” which are “in addition to, but not in lieu of,” the local business tax.²¹

According to the Federal Motor Carrier Safety Administration (FMCSA), Florida, California, New York, and New Jersey are “hot spots” for moving fraud.²² The FMCSA has partnered with state attorneys general, local law enforcement agencies, and industry and consumer groups to oversee and prevent fraud in the moving industry.²³

III. Effect of Proposed Changes:

CS/SB 296 amends the requirements for household moving services and preempts certain local ordinances and regulations.

Section 1 amends s. 507.01, F.S., to narrow the definition of the term “storage” to mean the “temporary” warehousing of a shipper’s goods while under the care, custody, and control of a mover. Many movers store a shipper’s goods for a short period of time in order to combine loads from different shippers to reduce costs.

Section 2 amends s. 507.03, F.S., to change the registration renewal requirement by providing for a biennial requirement instead of an annual requirement. This section also grants the DACS the authority to extend the registration expiration date up to 12 months in order to establish staggered expiration dates of movers to prevent the department from receiving an influx of

¹⁶ Section 507.13(1), F.S.

¹⁷ Information received from the Department of Agriculture and Consumer Services (Feb. 4, 2011) (Information is on file with the Commerce and Tourism Committee).

¹⁸ Section 507.03(4), F.S.

¹⁹ See s. 507.13(1), F.S.

²⁰ Local business taxes were formerly known as “local occupational license taxes.” See ch. 2006-152, Laws of Fla.

²¹ See s. 205.022(5), F.S.

²² See Federal Motor Carrier Safety Administration, *Background: The Regulation of Household Goods Movers*, <http://www.protectyourmove.gov/about/background/background.htm> (last visited April 8, 2011) (stating that to combat moving fraud “Florida’s Attorney General has a compliant system, provides moving tips, and makes moving companies’ business histories available to the public”).

²³ *Id.*

registration renewals and to allow for more efficient processing of renewals. The registration fee will continue to be calculated at the rate of \$300 per year.

Additionally, this section removes the requirement that movers and brokers obtain a local license or register locally, and deletes the provision requiring movers and moving brokers to pay for local license or registration fees in addition to the state registration fee.²⁴ However, movers and brokers are still required to pay the state registration fee required under s. 507.03, F.S.

Section 3 amends s. 507.07, F.S., to make technical changes to the language in order to comport with the amendments made in section 2 of the CS, which would require movers to register with DACS biennially instead of annually.

Section 4 amends s. 507.13, F.S., to provide that ch. 507, F.S., shall preempt a local government ordinance or regulation that regulates transactions relating to movers of household goods or moving brokers.

However, ordinances enacted before January 1, 2011, or amendments to those ordinances, may remain in effect, provided such ordinances levy “reasonable” registration fees that do not exceed the cost of administering the ordinances. These existing ordinances apply only to a mover or moving broker if the mover or moving broker’s principal place of business is located within the jurisdiction having such an ordinance.

This section also clarifies that the preemption does not apply to a local government’s authority to levy a local business tax, pursuant to ch. 205, F.S.

Section 5 provides an effective date of July 1, 2011.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Article VII, section 18(b), of the Florida Constitution, requires any general law that reduces a local government’s authority to raise revenues in the aggregate, to be passed by a two-thirds vote of the membership of each house of the Legislature.²⁵ By limiting a local government’s authority to levy registration fees, this CS will reduce a local government’s revenue-raising authority.

Article VII, section 18(d), of the Florida Constitution, provides an exemption if the law is determined to have an insignificant fiscal impact.²⁶ An insignificant fiscal impact means an amount not greater than the average statewide population for the applicable fiscal year times ten cents (FY 2011-2012 \$1.9 million).²⁷

²⁴ Note: Section 6 of the bill addresses local registration requirements of movers and moving brokers.

²⁵ FLA. CONST. art. VII, s. 18(b).

²⁶ FLA. CONST. art. VII, s. 18(d).

²⁷ Florida Economic Estimating Conference, Short-Run Tables, on file with the Senate Committee on Community Affairs.

The Revenue Estimating Conference has determined that the biennial registration requirements would have a proposed fiscal impact of \$147, 600 on State Trust Funds. The Revenue Estimating Conference states that the preemption of local fees will have an indeterminate fiscal impact on local governments.²⁸ If it is determined that the preemption of local fees has more than an insignificant fiscal impact, it will require a two-thirds vote of the membership of each house of the Legislature for passage.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

Retroactive Application

Section 4 of this CS provides that this act shall not preempt an ordinance or regulation originally enacted by a county before January 1, 2011, or a subsequent amendment to such ordinance or regulation. This CS will therefore operate retroactively to January 1, 2011, and will affect local ordinances or regulations that were adopted between January 1, 2011, and July 1, 2011, which is the date the CS takes effect.

Pursuant to Florida case law, even when the Legislature clearly intends for a statute to apply retroactively, a court will reject such an application if the statute: impairs a vested right, creates a new obligation, or imposes a new penalty.²⁹ However, statutes that do not alter contractual or vested rights, and only relate to procedure can be applied retroactively.³⁰

The Florida Supreme Court has recognized that a statute may be applied retroactively if it meets a two-pronged test:

- There is clear evidence that the Legislature intended to apply the statute retroactively; and
- Retroactive application is constitutionally permissible.³¹

In determining whether a retroactive application is constitutional, courts have generally held that due process considerations prevent retroactive legislation that impairs vested

²⁸ Revenue Estimating Conference, *Fiscal Impact, General Household Moving Services* (Feb. 22, 2011) (on file with the Senate Committee on Community Affairs).

²⁹ *Mendez v. Progressive Express Ins. Co.*, 35 So. 3d 873 (Fla. 2010). See also *Metropolitan Dade County v. Chase Fed. Housing Corp.*, 737 So. 2d 494, 499 (Fla. 1999) (stating that “[t]he general rule is that in the absence of clear legislative intent to the contrary, a law affecting substantive rights, liabilities and duties is presumed to apply prospectively).

³⁰ *Id.*

³¹ *Metropolitan Dade County v. Chase Fed. Housing Corp.*, 737 So. 2d 494, 499 (Fla. 1999); See also *Promontory Enterprises, Inc. v. Southern Engineering & Contracting, Inc.*, 864 So. 2d 479 (Fla. 5th DCA 2004).

rights.³² However the Supreme Court has determined that this general rule is not absolute, and that courts have identified factors “to balance the considerations permitting or prohibiting an abrogation of value.”³³ In one case, the Supreme Court weighed the following three factors in considering the validity of retroactive legislation:

- The strength of the public interest served by the statute;
- The extent to which the right affected is abrogated; and
- The nature of the right affected.³⁴

Since the retroactive provisions in this CS are aimed at local governments and not private citizens, it is unlikely that it will create due process concerns.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

Movers and moving brokers will be required to pay their registration fees with the Department of Agriculture and Consumer Services biennially instead of annually.

Current local government ordinances regulating movers of household goods or moving brokers that were enacted prior to January 1, 2011, must be “reasonable” and limited to the amount necessary to administer the ordinance or regulation.

B. Private Sector Impact:

This CS may reduce business costs on household movers and moving brokers by requiring current local registration fees to be “reasonable” and limited to the amount necessary to administer the ordinance or regulation. According to the Department of Agriculture and Consumer Services, there are currently 808 intrastate movers and 6 moving brokers in the State of Florida.³⁵

This CS also reduces the state’s administrative burden on intrastate movers by requiring registration biennially instead of annually.³⁶ The biennial registration renewal requirement at the current rate of \$300 per year would require movers and moving brokers to pay \$600 every two years instead of \$300 per year.

C. Government Sector Impact:

The state preemption of new local ordinances or regulations adopted after January 1, 2011, could lead to a loss of revenue from registration fees. Local governments that are permitted to continue to regulate intrastate movers (i.e. they have ordinances that were adopted prior to January 1, 2011), may also experience a loss in revenue since they would

³² *State Dept. of Transportation v. Knowles*, 402 So. 2d 1155, 1157 (Fla. 1981).

³³ *Id.*

³⁴ *Id.*

³⁵ Information received from the Department of Agriculture and Consumer Services (Feb. 4, 2011) (Information on file with the Senate Committee on Commerce and Tourism).

³⁶ Florida Department of Agriculture and Consumer Services, *Agency Analysis Senate Bill 296*, at 2 (Jan. 21, 2011) (on file with the Senate Committee on Commerce and Tourism).

be required to review their registration fees to ensure that they are “reasonable” and necessary to cover the administrative costs of the ordinance.³⁷

The Revenue Estimating Conference has determined that the biennial registration requirements would have a proposed fiscal impact of \$147, 600 on State Trust Funds. The Revenue Estimating Conference further states that the preemption of local fees will have an indeterminate fiscal impact on local governments.³⁸

The Department of Agriculture and Consumer Services has indicated that the preemption on local government ordinances as framed in the CS will not expand the duties or responsibilities of the Department.³⁹

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes: (Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Commerce and Tourism Committee on March 29, 2011:

This CS deletes previous sections 3 and 4 of the original bill as filed. These sections proposed to:

- Allow a mover to exclude liability for items packed by the shipper, if the shipper declined in writing to allow the mover to inspect the box or crate containing the items, and the mover declared his or her exclusion from such liability; and
- Allow a mover to refuse to transport or ship any of a shipper’s household goods, as long as the shipper is notified of, and acknowledges in writing, the mover’s refusal.

B. Amendments:

None.

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

³⁷ *Id.*

³⁸ Revenue Estimating Conference, *Fiscal Impact, General Household Moving Services* (Feb. 22, 2011) (on file with the Senate Committee on Community Affairs).

³⁹ Information received from the Department of Agriculture and Consumer Services (Feb. 7, 2011) (Information on file with the Senate Committee on Commerce and Tourism).



243952

LEGISLATIVE ACTION

Senate

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House

The Committee on Community Affairs (Wise) recommended the following:

Senate Amendment (with title amendment)

Delete line 97

and insert:

Section 5. This act shall take effect July 1, 2011, and shall apply retroactively to local ordinances or regulations adopted on or after January 1, 2011.

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

And the title is amended as follows:

Delete line 22

and insert:



243952

13 providing for retroactive application; providing an
14 effective date.

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 Community Affairs Committee

BILL: SB 722

INTRODUCER: Senator Norman and others

SUBJECT: Damage by Dogs

DATE: April 5, 2011

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Looke	Spalla	AG	Favorable
2.	Wood	Yeatman	CA	Pre-meeting
3.			RC	
4.				
5.				
6.				

I. Summary:

This bill repeals the statutory requirement that a dog be deemed a dangerous dog on the basis that it participated in or was trained for dog fighting.

This bill substantially amends section 767.11 of the Florida Statutes.

II. Present Situation:

In s. 767.10, F.S., the Florida Legislature finds that dangerous dogs are an increasing threat to the public welfare, in part due to the failure of owners of such dogs to confine them, and that the previous law was inadequate to quell this threat.¹ Accordingly, s. 767.12, F.S., allows for the classification of dangerous dogs and mandates that once a dog is classified as dangerous its owner is subject to a series of restrictions including but not limited to:

- mandatory registration of the dog;
- mandatory confinement of the dog in a securely fenced area;
- mandatory posting of warning signs;
- permanent identification of the dog as dangerous;
- possible annual fees imposed by the local government;
- prohibition on use of the dog for hunting; and
- substantial restrictions on the owner's ability to remove the dog from the fenced enclosure.²

¹ Section 767.10, F.S.

² See ss. 767.12(1)-(4), F.S.

Also, s. 767.13(1), F.S., provides that an owner of a previously classified dangerous dog is guilty of a first degree misdemeanor if that dog attacks or bites a person or domestic animal without provocation. Section 767.13(3), F.S., provides that such an owner is guilty of a third degree felony if the dog causes serious injury or death to a human being.³

Section 767.11(c), F.S., declares that any dog who “[h]as been used primarily or in part for the purpose of dog fighting or is a dog trained for dog fighting” is deemed a dangerous dog under chapter 767, F.S.⁴ According to multiple animal control centers around the state, the classification of a dog as a dangerous dog essentially prevents it from being adopted. This is because owners do not want to deal with the legal restrictions or because shelters are concerned about liability issues. Currently, at least four animal control centers in Duval, Palm Beach, Orange and Hillsborough counties are out of compliance with the law in that they do not automatically deem a dog as a dangerous dog simply due to participation in dog fighting.⁵ Florida is one of thirteen states which either deems a dog dangerous or automatically destroys a dog based only on participation in or training for dog fighting.⁶

The current statute is unclear whether a submissive dog which is used as a bait dog in order to make fighting dogs fight is to be considered dangerous. Media relating to this issue has focused on the belief held by animal shelters who do comply with current law that the statute does extend to bait dogs, which are typically picked because they are not aggressive.⁷

Currently, most shelters give a history of any adopted dog to the new owner. However, this is not required by law and there is no standard procedure which is followed statewide.⁸ When shelters encounter an abandoned or stray dog, they typically evaluate the dog’s temperament and decide on a case-by-case basis whether it can be rehabilitated and whether it should be put up for adoption. There is no law or standard procedure which mandates how shelters determine whether a dog should be put up for adoption.

III. Effect of Proposed Changes:

Section 1 amends s. 767.11, F.S., to remove the requirement that a dog be deemed a dangerous dog on the sole basis that it was used or trained for dog fighting.

Removing this requirement would allow dogs used or trained for dog fighting to be adopted out by shelters without being classified as dangerous. There would be no notice requirement by law for the shelter to inform the new owner of the dog’s fighting history. Shelters could determine the dog’s temperament through testing and base their decision on that information. The new owner would not be required to register the dog, notify the local animal control authority when

³ See ss. 767.13(1), (3), F.S.

⁴ Section 767.11(c), F.S.

⁵ Memorandum to Senate Committee on Agriculture from Denise Lasher, President of Lasher Consulting, Inc., (February, 2011) (on file with Senate Committee on Agriculture).

⁶ Voices for No More Homeless Pets, *Florida Moves to Protect Canine Victims of Cruelty*, Best Friends Animal Society, February 01, 2011, found at <http://network.bestfriends.org/campaigns/pitbulls/16662/news.aspx> (last visited on Feb. 15, 2011)

⁷ Patricia Mazzei, *Bill Could Give Dogs Trained to Fight a Reprieve*, Miami Herald, Mar. 29, 2011, available at <http://www.miamiherald.com/2011/03/29/2140287/bill-could-give-dogs-trained-to.html#>.

⁸ Conversation with Scott Trebatoski, President of Florida Animal Control Association (April 1, 2011).

the dog is loose, keep the dog in a proper enclosure if not muzzled and on a leash, post warning signs, pay fees to local governments for registration, or inform the local animal control authority of the identity of a new owner when the dog is sold. They would also no longer be restricted from using the dogs for hunting.

Section 2 provides an effective date of July 1, 2011.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Private owners who adopt a dog formerly used for fighting would no longer be required to provide a security fence or muzzle or to pay dangerous dog registration fees in localities which impose them. Dangerous dog registration fees typically range from \$100-\$500 per year.

C. Government Sector Impact:

There would be a minimal negative fiscal impact on local governments which charge a fee for registration of dangerous dogs.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

- A. **Committee Substitute – Statement of Substantial 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.
