

Tab 3	SB 64 by Albritton; (Identical to H 00263) Reclaimed Water						
935396	A	S	RCS	EN, Albritton	btw L.95 - 96:		02/01 04:54 PM
906528	A	S	RCS	EN, Albritton	Delete L.320 - 323:		02/01 04:54 PM

Tab 4	SB 524 by Hooper; (Identical to H 00323) Fish and Wildlife Conservation Commission Trust Funds						
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Tab 5	SB 578 by Wright; (Identical to H 00223) Marina Evacuations						
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Tab 6	SB 588 by Book; (Identical to H 00217) Conservation Area Designations/Kristin Jacobs Coral Reef Ecosystem Conservation Area						
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Tab 7	SPB 7006 by EN; OGSR/Trade Secrets/Department of Environmental Protection						
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Tab 8	SPB 7008 by EN; OGSR/Trade Secrets/Department of Environmental Protection						
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The Florida Senate
COMMITTEE MEETING EXPANDED AGENDA

ENVIRONMENT AND NATURAL RESOURCES

Senator Brodeur, Chair
Senator Stewart, Vice Chair

MEETING DATE: Monday, February 1, 2021
TIME: 2:30—5:00 p.m.
PLACE: *Mallory Horne Committee Room, 37 Senate Building*

MEMBERS: Senator Brodeur, Chair; Senator Stewart, Vice Chair; Senators Albritton, Ausley, Bean, and Perry

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
PUBLIC TESTIMONY WILL BE RECEIVED FROM ROOM A1 AT THE DONALD L. TUCKER CIVIC CENTER, 505 W PENSACOLA STREET, TALLAHASSEE, FL 32301			
1	Presentation by the Department of Environmental Protection on Biosolids Rule Ratification		Presented
2	Presentation by the Department of Environmental Protection on the Central Florida Water Initiative Rule Ratification		Presented
3	SB 64 Albritton (Identical H 263)	Reclaimed Water; Requiring certain domestic wastewater utilities to submit to the Department of Environmental Protection by a specified date a plan for eliminating nonbeneficial surface water discharge within a specified timeframe; requiring domestic wastewater utilities applying for permits for new or expanded surface water discharges to prepare a specified plan for eliminating nonbeneficial discharges as part of its permit application; providing that potable reuse is an alternative water supply and that projects relating to such reuse are eligible for alternative water supply funding; requiring counties, municipalities, and special districts to authorize graywater technologies under certain circumstances and to provide incentives for the implementation of such technologies, etc.	Fav/CS Yeas 4 Nays 0
		EN 02/01/2021 Fav/CS CA AP	

COMMITTEE MEETING EXPANDED AGENDA

Environment and Natural Resources

Monday, February 1, 2021, 2:30—5:00 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
4	SB 524 Hooper (Identical H 323)	Fish and Wildlife Conservation Commission Trust Funds; Revising the sources of funds that may be used for specified purposes for the Florida Panther Research and Management Trust Fund; authorizing the commission to invest and reinvest funds and the interest thereof of the Marine Resources Conservation Trust Fund and the Nongame Wildlife Trust Fund, respectively; revising the use of such funds for the marketing of the license plates; authorizing such funds to be used for commission administrative costs, etc. EN 02/01/2021 Favorable AEG AP	Favorable Yeas 4 Nays 0
5	SB 578 Wright (Identical H 223)	Marina Evacuations; Prohibiting vessels under a specified weight from remaining in certain marinas that have been deemed unsuitable for refuge during a hurricane after the issuance of a hurricane watch; requiring a marina owner, operator, employee, or agent to remove specified vessels under certain circumstances; providing that such owner, operator, employee, or agent may charge the vessel owner a reasonable fee for such removal and may not be held liable for any damages as a result of such removal, etc. EN 02/01/2021 Favorable TR RC	Favorable Yeas 4 Nays 0
6	SB 588 Book (Identical H 217)	Conservation Area Designations/Kristin Jacobs Coral Reef Ecosystem Conservation Area; Designating the Southeast Florida Coral Reef Ecosystem Conservation Area as the Kristin Jacobs Coral Reef Ecosystem Conservation Area; directing the Department of Environmental Protection to erect suitable markers, etc. EN 02/01/2021 Favorable AEG AP	Favorable Yeas 4 Nays 0
Consideration of proposed bill:			
7	SPB 7006	OGSR/Trade Secrets/Department of Environmental Protection; Amending a provision relating to an exemption from public records requirements for trade secrets contained in information obtained by the Department of Environmental Protection; removing the scheduled repeal of the exemption, etc.	Submitted and Reported Favorably as Committee Bill Yeas 5 Nays 0
Consideration of proposed bill:			

COMMITTEE MEETING EXPANDED AGENDA

Environment and Natural Resources

Monday, February 1, 2021, 2:30—5:00 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
8	SPB 7008	OGSR/Trade Secrets/Department of Environmental Protection; Amending a provision which provides exemptions from public records requirements for the trade secrets contained in information obtained by the Department of Environmental Protection; narrowing the exemption to the types or amounts of recovered materials or post-use polymers reported by a recovered materials dealer or pyrolysis facility; removing the scheduled repeals of the exemptions, etc.	Submitted and Reported Favorably as Committee Bill Yeas 5 Nays 0

TAB	OFFICE and APPOINTMENT (HOME CITY)	FOR TERM ENDING	COMMITTEE ACTION
Senate Confirmation Hearing: A public hearing will be held for consideration of the below-named executive appointment to the office indicated.			
Governing Board of the Northwest Florida Water Management District			
9	Andrews, Angus "Gus" G., Jr. (DeFuniak Springs)	03/01/2023	Recommend Confirm Yeas 4 Nays 0
	Ralston, Kellie Rebello (Tallahassee)	03/01/2024	Recommend Confirm Yeas 4 Nays 0
	Patronis, Nicholas Jimmy (Panama City Beach)	03/01/2022	Recommend Confirm Yeas 4 Nays 0

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
10	Other Related Meeting Documents		



Protecting **FLORIDA** Together

Biosolids

Senate Environment and Natural Resources Committee - Feb. 1, 2021

BIOSOLIDS UPDATE RULEMAKING TIMELINE



RULEMAKING BEGAN AFTER RECOMMENDATIONS WERE MADE BY THE BIOSOLIDS TECHNICAL ADVISORY COMMITTEE

MARCH 22, 2019

Notice of Rule
Development

JUNE 25-27, 2019

Three public
workshops held

OCT. 29, 2019

Notice of proposed rule
and statement of
regulatory costs (SERC)

MARCH 20, 2020

Proposed rule withdrawn
to allow for the addition
of provisions based on
SB712

APRIL 14, 2020

Notice of rule
development

SEPT. 18, 2020

Public workshop

DEC. 3, 2020

Notice of proposed rule
and SERC



LEGISLATIVE FINDINGS AND PROVISIONS

- **It is in the best interest of the state to regulate biosolids management in order to minimize the migration of nutrients that impair water bodies**
- **Permitting according to site specific application conditions, an increased inspection rate, groundwater and surface water monitoring protocols, and nutrient management research will improve biosolids management and assist in protecting this state's water resources and water quality**
- **Requires DEP to adopt new rules for biosolids management; adopted rules must be ratified by the Legislature**



NEW AND RENEWAL SITE PERMITS AFTER JULY 1, 2020 SHALL:

- Meet a minimum unsaturated soil depth of two feet from the depth of biosolids placement when biosolids are applied
- Not allow application on soils with a seasonal high water table (SHWT) within six inches of the soil surface or depth of biosolids placement unless the permittee provides reasonable assurance through the site nutrient management plan and water quality monitoring plan that land application will not cause or contribute to surface water quality violations or ground water violations
- Require enrollment in a Florida Department of Agriculture and Consumer Services' (DACCS) Best Management Practices (BMP) program



- All site permits will have to comply with DACS' BMP enrollment requirement and the SHWT provision by July 1, 2022
- New and renewed permits after July 1, 2020 must include a permit re-opener condition to add a compliance date of no later than one year after the effective date of new biosolids rules
- All permits must comply with the new rules no later than two years after the effective date of the new biosolids rule
- A municipality or county may enforce or extend a local ordinance, regulation, resolution, rule, moratorium or policy adopted before Nov. 1, 2019, relating the application of Class A or Class B biosolids until the regulation, resolution, etc., is repealed by the municipality or county

BIOSOLIDS UPDATE

SUMMARY OF KEY RULE REVISIONS



- Revising the provisions for determining biosolids land application rates
 - Determine rates based on Nitrogen (N) or Phosphorus (P), cannot exceed either
 - P adjustments will be based on the ability of the soil to store P and the water extractable P in biosolids
 - Provisions to adjust N limited to 1.5 factor
- Ground water and surface water monitoring requirements for land application sites
- Prohibition on applying biosolids to land with a SWHT within six inches of the soil surface or depth of biosolids placement (SB 712)

BIOSOLIDS UPDATE

SUMMARY OF KEY RULE REVISIONS, *cont.*



- **Biosolids sites comply with the new rules (SB 712):**
 - **Within one year of the effective date of the new rules for new permits or permit renewals issued after July 1, 2020**
 - **Within two years of the effective date of the new rule for all permits**
- **Enrollment in a DACS' BMP program will be required (SB 712)**
- **Biosolids permit applications shall be considered projects of heightened public interest**
- **References to Florida Department of Health (DOH) regulation of septage removed**



- The revisions to Chapter 62-640, F.A.C., must be adopted by the Environmental Regulation Commission (ERC)
- An ERC rule adoption hearing has not been set yet; anticipated for the next ERC meeting

BIOSOLIDS UPDATE LEGISLATIVE RATIFICATION



- Legislative ratification of a rule is required when the costs of the rule exceed \$1 million over a five-year period
- SB 712 requires ratification by the Legislature
 - Legislative ratification would likely have been required anyway because of expected regulatory costs



THANK YOU



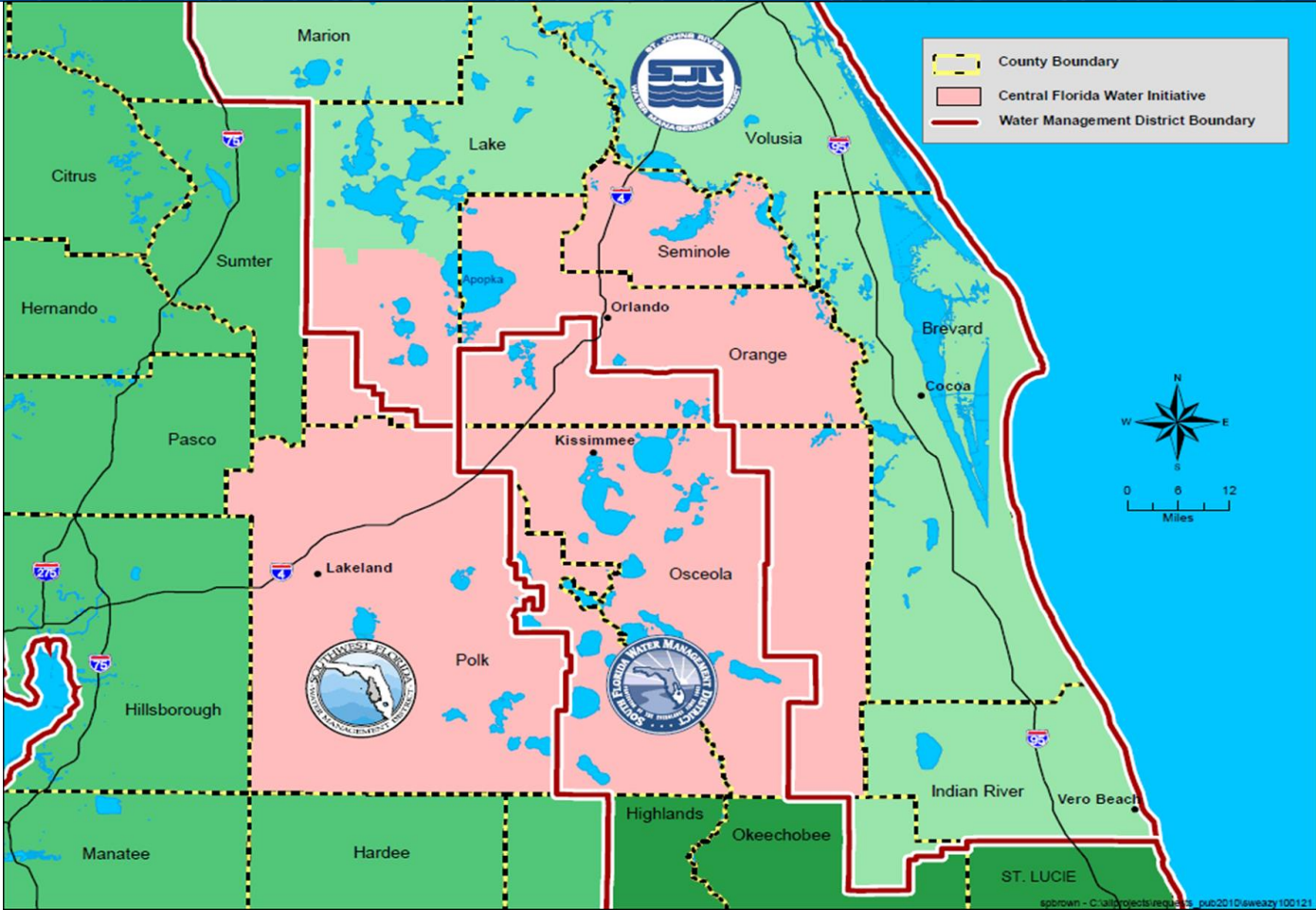
Protecting **FLORIDA** Together

Central Florida Water Initiative

Senate Environment and Natural Resources Committee - Feb. 1, 2021

CENTRAL FLORIDA WATER INITIATIVE

WHAT IS THE CFWI?



CENTRAL FLORIDA WATER INITIATIVE WATER DEMANDS IN THE PLANNING AREA



	Public Water Supply	Domestic and Small Public Supply	Agricultural Irrigation	Industrial/Commercial/Institutional	Landscape/Recreational Irrigation	Power Generation	Total
2015	385.97	21.56	159.38	53.50	38.24	8.47	667.12
2040	592.28	24.59	163.49	69.00	46.96	11.27	907.59
Change	206.31	3.03	4.11	15.50	8.72	2.80	240.47
% Change	53%	14%	3%	29%	23%	33%	36%

Demands under average rainfall conditions, in million gallons per day.

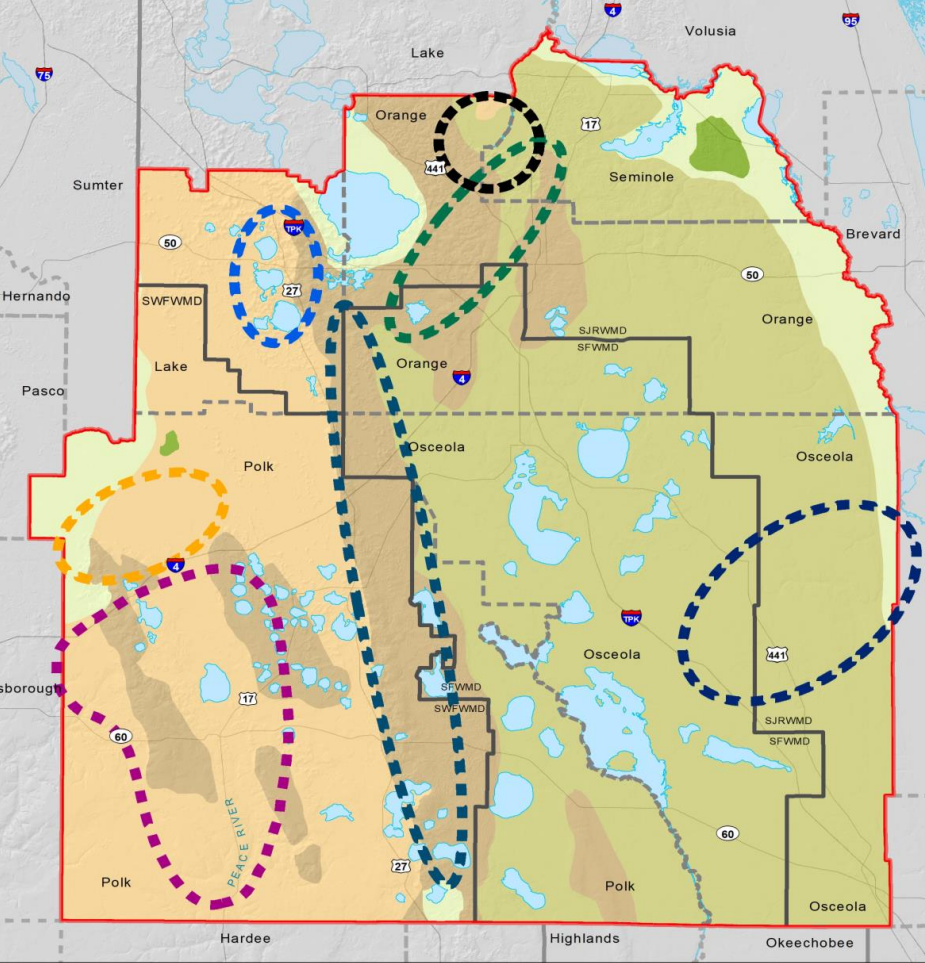


POPULATION
 2015 2,933,915 residents
 2040 4,373,309 residents
49% INCREASE



IRRIGATED AGRICULTURAL ACRES
 2015 135,700 acres
 2040 134,300 acres
1% DECREASE

CENTRAL FLORIDA WATER INITIATIVE PRIMARY AREAS SUSCEPTIBLE TO GROUNDWATER WITHDRAWALS

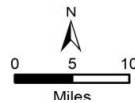


Areas Susceptible to Groundwater Withdrawals within the Central Florida Water Initiative (CFWI) Planning Area

- Primary areas susceptible to groundwater withdrawals**
- Central Polk County
 - East Osceola County
 - Lake Wales Ridge
 - South Lake County
 - Upper Peace River
 - Wekiva Springs / River System
 - West Seminole & Orange Counties

- Physiographic Regions (White 1970)**
- Hills
 - Lowlands, Gaps and Valleys
 - Plains
 - Ridges
 - Uplands

- CFWI Boundary
- County Boundaries
- Water Management District Boundaries



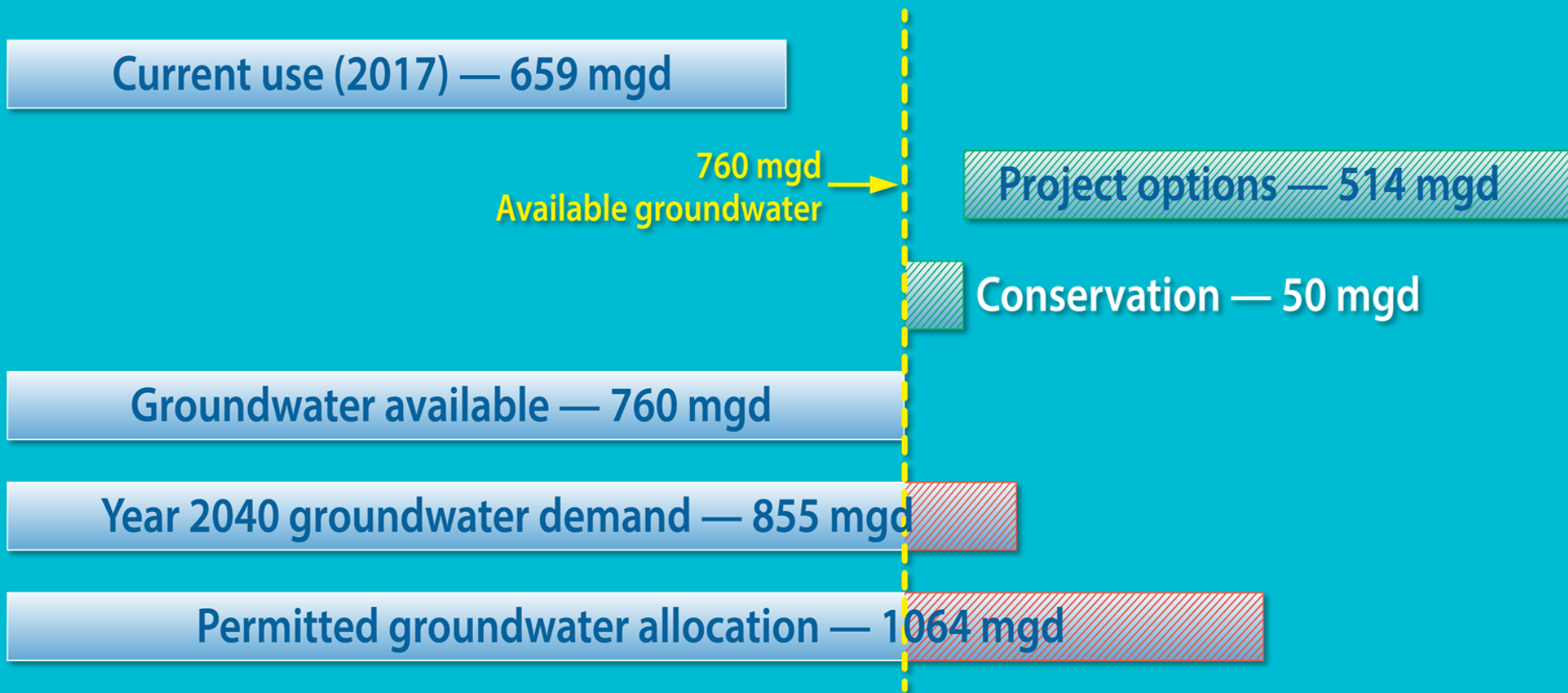
CENTRAL FLORIDA WATER INITIATIVE RESOURCE CONCERNS



Model Scenarios	Environmental Measures		
	MFLs and MFL-related (39 criteria)	Plains Wetlands (139,000 acres)	Ridge Wetlands (50,000 acres)
2014 (~620 mgd)	11 Not Met	16,700 ac	18,700 ac
2025 (~760 mgd)	11 Not Met	17,400 ac	19,200 – 21,400 ac
2030 (~800 mgd)	13 Not Met	17,700 ac	19,400 – 22,200 ac
2040 (~860 mgd)	15 Not Met	18,100 ac	19,700 – 23,400 ac

Source: 2020 CFWI Regional Water Supply Plan

CENTRAL FLORIDA WATER INITIATIVE PLANNING LEVEL GROUNDWATER AVAILABILITY





CREATED 373.0456, F.S.

Directed DEP to adopt uniform rules for application within the Central Florida Water Initiative Area that include:

- A single, uniform definition of the term “harmful to the water resources” consistent with the term’s usage in s. 373.219;
- A single method for calculating residential per capita water use;
- A single process for permit reviews;
- A single, consistent process, as appropriate, to set minimum flows and minimum water levels and water reservations;
- A goal for residential per capita water use for each consumptive use permit; and
- An annual conservation goal for each consumptive use permit consistent with the regional water supply plan.

CENTRAL FLORIDA WATER INITIATIVE RULEMAKING TIMELINE



JULY 2016

Section 373.0465, F.S.,
became effective

DECEMBER 2016

DEP issued notice of rule
development

2017 – 2019

DEP hosted five rule
development workshops
for different portions of
the rule as they were
developed

JULY 2020

Rule development
workshop with combined
draft rules

AUGUST 2020

Rule development
workshop

SEPTEMBER 2020

Rule development
workshop

NOVEMBER 2020

Notice of proposed rule
published
Nov. 19, 2020

DECEMBER 2020

Rulemaking hearing

OVERVIEW OF 62-41, F.A.C.

62-41.300-305



- **Outlines who administers the rule and who will be regulated**
- **Establishes the process for all existing permits to be modified to incorporate these new provisions**
- **Outlines uniform conditions for issuance of consumptive use permits**
- **Outlines consistent method for establishing MFLs and Reservations within the CFWI area**
- **Creates a new process for variances from the CFWI Rules**
- **Incorporates the CFWI Supplemental Applicant's Handbook**
- **Incorporates the Dover/Plant City and Southern Water Use Caution Area (SWUCA) Recovery Strategies**

OVERVIEW OF SUPPLEMENTAL APPLICANT'S HANDBOOK

SECTION 1.0 – GENERAL PROVISIONS



1.1 Definitions

1.2 Modification of Existing Permits

- Existing permits shall be letter modified pursuant to applicable district rules to implement section 2.8 and add special permit conditions in section 5.0

1.3 ERP Concurrency

- Streamlines administrative process for CUP applications when an ERP is also required

OVERVIEW OF SUPPLEMENTAL APPLICANT'S HANDBOOK

SECTION 2.0 – WATER USE DEMAND, ALLOCATION AND SOURCE



SECTIONS 2.1 – 2.6 ARE SIMILAR TO CURRENT DISTRICT HANDBOOKS IN REQUIREMENTS AND METHODOLOGIES

- Provide consistency with calculations and approaches
- Still allow for district-specific water resource characteristics to be considered in individual permit reviews
- Public Supply demand calculations use standard method for calculating Gross per capita daily water use/residential per capita daily water use
- ICI, mining and mining dewatering must submit a water balance including specific demand components
- Agricultural and landscape irrigation allocated to both a 2-in-10 and 5-in-10 year drought scenarios and updated efficiency standards



ESTABLISHES AN ANNUAL CONSERVATION GOAL

- Provide consistency with calculations and approaches
- For all uses except public supply, develop and implement an Annual Conservation Goal Implementation Plan (ACGIP)
- For public supply greater than 100,000 gpd:
 - End of permit residential per capita goal required
 - Gross or functional per capita goal required
115 gross per capita goal and 100 functional per capita goal

OVERVIEW OF SUPPLEMENTAL APPLICANT'S HANDBOOK

SECTION 2.7 – ANNUAL CONSERVATION GOAL



ACGIP

- Sets goal(s): conservation BMPs and conservation programs, (including device replacements, maintenance, etc.) or other metrics
- Must state a strategy for their implementation
- Is iterative and adaptable to maximize conservation practices by use type (i.e. agricultural BMPs, industry equipment upgrades, etc.)

PUBLIC SUPPLY

Gross or Functional Per Capita

- Target: 115 gpd gross per capita or 100 gpd functional per capita
- Three progressive methods to achieve goal:
 - Standard gross per capita
 - Adjusted gross per capita (provides deductions for non-residential water use)
 - Alternative per capita (provides additional deductions for certain alternative water supplies)

OVERVIEW OF SUPPLEMENTAL APPLICANT'S HANDBOOK

SECTION 2.8 – ALLOCATIONS FROM THE UPPER FLORIDIAN AQUIFER



DEMONSTRATED 2025 DEMAND

- Agriculture, recreation and landscape irrigation limited to modified permitted allocations (2-in-10 and 5-in-10)
- ICI, power and mining limited to current permitted allocation
- Public supply limited to Demonstrated 2025 Demand
 - Any reductions needed will come from Upper Floridan aquifer allocation only
 - Allows districts to consider conservation and AWS projects developed since December 2015
- If exceeds 2025 demand:
 - Submit future water use plan by December 2023
 - Remedies: temporary allocations, offsets, credits, redistributed uses, land use transitions and alternative water supplies
- Exceptions to restrictions on groundwater allocations for aquifer storage and recovery, injection wells and recharge projects
- Also applies to new uses following effective date of rule

OVERVIEW OF SUPPLEMENTAL APPLICANT'S HANDBOOK

SECTION 2.9 – LOWEST QUALITY WATER SOURCE



APPLICANT SHALL DEMONSTRATE THAT THE USE

- Will utilize the lowest quality water source that is suitable for the purpose and is technically, environmentally and economically feasible

EXCEPTIONS

- Water used for washing hands during and after harvest activities
- Water that is applied in a manner that directly contacts produce during or after harvest activities
- Water that is used to make ice that directly contacts produce during or after harvest activities



CREATES A UNIFORM METHOD FOR DETERMINING HARM TO THE WATER RESOURCES

- Provides evaluation criteria for water quality impacts from withdrawals, including saline water intrusion
- Provides evaluation criteria for wetlands, flowing systems, lakes, or other surface waters
- Provides criteria for identifying wetlands
- Describes types of information needed to make harm evaluation



DETERMINING HARM TO OFFSITE LAND USES

- Defines harm to existing offsite land uses
e.g. significant reduction in water levels in surface water body, adverse flooding, etc.
- Details the criteria used to determine harm to offsite land uses
- Limits consideration of harm evaluation to only those impacts resulting from the proposed withdrawal or diversion

OVERVIEW OF SUPPLEMENTAL APPLICANT'S HANDBOOK

SECTION 5.0 – SPECIAL LIMITING PERMITTING CONDITIONS



SPECIAL PERMITTING CONDITIONS

- Public supply permittees required per capita goal
- All other permittees required to submit an ACGIP
- Agriculture, landscape and recreation permits revised dual allocation and compliance criteria
- All permittees (except agriculture, landscape and recreation users) required to submit a plan to address any water use above that outlined in section 2.8



THANK YOU

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL: CS/SB 64

INTRODUCER: Environment and Natural Resources Committee and Senator Albritton

SUBJECT: Reclaimed Water

DATE: February 2, 2021

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Anderson	Rogers	EN	Fav/CS
2.			CA	
3.			AP	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 64 creates a timeline and plan to eliminate nonbeneficial surface water discharge within 5 years and contains a series of conditions authorizing discharges that are being beneficially used or are otherwise regulated, and for specified hardships. The bill requires domestic wastewater utilities that dispose of effluent, reclaimed water, or reuse water by surface water discharge to submit a 5-year plan to eliminate nonbeneficial surface water discharge to the Department of Environmental Protection (DEP). The plan must be:

- Submitted by November 1, 2021; and
- Implemented by January 1, 2028 (January 1, 2030 for potable reuse projects).

The bill also:

- Specifies that potable reuse is an alternative water supply, for purposes of making reuse projects eligible for alternative water supply funding;
- Incentivizes the development of potable reuse projects;
- Incentivizes residential developments that use graywater technologies; and
- Specifies the total dissolved solids allowable in aquifer storage and recovery in certain circumstances.

II. Present Situation:

Floridians currently use an estimated 6.4 billion gallons of water per day.¹ Between 2020 and 2040, the population in Florida is expected to grow from 4.8 million to 26.4 million people while water demands are expected to grow from 1 billion gallons per day (bgd) to 7.4 bgd.² For some regions of the state, there is enough water to meet future needs through existing sources, but others require additional water to be developed.³ Alternative water supply projects currently provide an estimated 1.019 bgd with an additional estimated capacity of 1.651 bgd that will be available when all projects are fully completed and implemented.⁴

Water Reuse

Water reuse is an important component of both wastewater management and water resource management in Florida. Reuse is defined as the deliberate application of reclaimed water for a beneficial purpose.⁵ Whereas, reclaimed water is defined as water from a domestic wastewater⁶ treatment facility that has received at least secondary treatment⁷ and basic disinfection⁸ for reuse.⁹

Florida has approximately 2,000 permitted domestic wastewater treatment facilities.¹⁰ These facilities may require state and federal permits for discharges to surface waters,¹¹ although federal requirements for most facilities or activities are incorporated into a state-issued permit.¹² The Department of Environmental Protection (DEP) also regulates the construction and operation of domestic wastewater treatment facilities and establishes disinfection requirements for the reuse of reclaimed water.¹³

Reusing water helps conserve drinking water supplies by replacing the use of drinking quality water for non-drinking water purposes, such as irrigation, industrial cooling, groundwater recharge, and prevention of saltwater intrusion in coastal groundwater aquifers.¹⁴ Water reuse

¹ Department of Environmental Protection (DEP), *Annual Regional Water Supply Planning Report (2019)*, available at <https://fdp.maps.arcgis.com/apps/MapSeries/index.html?appid=04f84e6ae64c45e292e5b3db82f045e3>.

² *Id.*

³ *Id.*

⁴ *Id.*

⁵ Fla. Admin. Code R. 62-610.200(52).

⁶ Section 367.021(5), F.S., defines the term “domestic wastewater” to mean wastewater principally from dwellings, business buildings, institutions, and sanitary wastewater or sewage treatment plants.

⁷ Fla. Admin. Code R. 62-610.200(54) defines the term “secondary treatment” to mean “wastewater treatment to a level that will achieve the effluent limitations specified in paragraph 62-600.420(1)(a), F.A.C.”

⁸ Fla. Admin. Code R. 62-600.440(5) provides the requirements for basic disinfection.

⁹ Section 373.019(17), F.S.; Fla. Admin. Code R. 62-610.200(48).

¹⁰ DEP, *General Facts and Statistics about Wastewater in Florida*, <https://floridadep.gov/water/domestic-wastewater/content/general-facts-and-statistics-about-wastewater-florida> (last visited Jan. 21, 2021).

¹¹ For required state permits, see Section 403.087, F.S.; see also DEP, *Wastewater Permitting*, available at <https://floridadep.gov/water/domestic-wastewater/content/wastewater-permitting> (last visited Jan. 26, 2021). For federal permits, see 33 U.S.C. s. 1342.

¹² Sections 403.061 and 403.087, F.S.

¹³ Fla. Admin. Code R. 62-600.

¹⁴ Martinez, Christopher J. and Clark, Mark W., *Reclaimed Water and Florida’s Water Reuse Program*, UF/IFAS Agricultural and Biological Engineering Department (rev. 07/2012), available at <https://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.590.5063&rep=rep1&type=pdf>.

also provides environmental benefits, including reduced groundwater withdrawals, reduced needs for new drinking water supplies and infrastructure, and improved water quality of the natural environment by reducing the amount of nutrients that are discharged directly to surface water and groundwater by wastewater treatment facilities.¹⁵ The use of reclaimed water also provides for the recovery of water that would otherwise be lost to tide and evaporation.

In its rules, DEP requires promotion of reuse of reclaimed water, recycling of stormwater for irrigation and other beneficial uses, recycling of industrial wastewater, and encourages local governments to create programs for reuse.¹⁶ Water conservation and the promotion of water reuse have also been established as formal state objectives by the Legislature.¹⁷ State law further provides that the use of reclaimed water provided by wastewater treatment plants permitted and operated under a reuse program by DEP are considered environmentally acceptable and are not a threat to public health and safety.¹⁸

Florida tracks its reuse inventory in an annual report compiled by DEP.¹⁹ In 2019, a total of 476 domestic wastewater treatment facilities reported making reclaimed water available for reuse.²⁰ Approximately 820 million gallons per day (mgd) of reclaimed water were used for beneficial purposes in 2019,²¹ which represents approximately 48 percent of the total domestic wastewater flow in the state.²² The total reuse capacity associated with reuse systems was 1,757 mgd,²³ which represents approximately 67 percent of the total domestic wastewater treatment capacity in the state.²⁴

Reclaimed Water as Alternative Water Supply

When traditional water supplies are constrained, alternative water supplies must be developed in addition to water conservation efforts. Alternative water supply can include reclaimed water, brackish groundwater, surface water, and excess surface water captured and stored in reservoirs or aquifer storage and recovery wells.²⁵

¹⁵ *Id.*

¹⁶ Fla. Admin. Code R. 62-40.416.

¹⁷ Sections 403.064(1) and 373.250(1), F.S.

¹⁸ *Id.*

¹⁹ See DEP, *2019 Reuse Inventory Report* (2020), available at https://floridadep.gov/sites/default/files/2019_Reuse_Inventory_Report.pdf; compiled from reports collected pursuant to chapter 62-610 of the Florida Administrative Code.

²⁰ The number of treatment facilities providing reuse broken down by water management districts is as follows: Northwest Florida – 62, South Florida – 109, St. Johns River – 143, Suwannee River – 28, and Southwest Florida – 134; DEP, *2019 Reuse Inventory Report*, 2 (2020), available at https://floridadep.gov/sites/default/files/2019_Reuse_Inventory_Report.pdf.

²¹ This represents an average per capita reuse of 38.66 gallons per day per person. DEP, *Florida's Reuse Activities*, <https://floridadep.gov/water/domestic-wastewater/content/floridas-reuse-activities> (last visited Jan. 21, 2021).

²² *Id.* at 2, 3.

²³ *Id.* at 2.

²⁴ *Id.*

²⁵ DEP, *Annual Regional Water Supply Planning Report* (2019), available at <https://fdep.maps.arcgis.com/apps/MapSeries/index.html?appid=04f84e6ae64c45e292e5b3db82f045e3>.

Reclaimed water is a type of alternative water supply as defined in s. 373.019(1), F.S., and is eligible to receive alternative water supply funding.²⁶ Reclaimed water can be used for many purposes to meet water demand, including:

- Irrigation of golf courses, parks, residential properties, and landscaped areas;
- Urban uses, such as toilet flushing, car washing, and aesthetic purposes;
- Agricultural uses, such as irrigation of food crops, pasture lands, and at nurseries;
- Wetlands creation, restoration, and enhancement;
- Recharging groundwater through rapid infiltration basins, absorption fields, and direct injection;
- Augmentation of surface waters used for drinking water supplies; and
- Industrial uses such as processing and cooling water.²⁷

Reclaimed Water Use in Florida

Communities in Florida have been using reclaimed water for landscape irrigation and industrial uses since the early 1970s.²⁸ Today, Florida is the national leader in water reuse, utilizing 48 percent of the total domestic wastewater in the state for nonpotable uses.²⁹ The use of reclaimed water is estimated to have avoided the use of over 158 billion gallons of potable quality water while serving to add more than 94 billion gallons back to available groundwater supplies.³⁰ Reclaimed water projects make up 35% of all water supply projects.³¹

According to DEP's reuse inventory report, over the past 30 years, Florida has made great strides in the expansion of reclaimed water systems and reuse is now an integral part of wastewater management, water resource management, and ecosystem management in the state.³² The chart below shows the percentage of reclaimed water utilization by flow for each reuse type.³³

²⁶ Section 373.250(2), F.S.

²⁷ DEP, *Uses of Reclaimed Water*, <https://floridadep.gov/water/domestic-wastewater/content/uses-reclaimed-water> (last visited Jan. 21, 2021).

²⁸ Florida Potable Reuse Commission, *Framework for the Implementation of Potable Reuse in Florida*, xxiii, (Jan. 2020), available at <https://watereuse.org/wp-content/uploads/2020/01/Framework-for-Potable-Reuse-in-Florida.pdf>.

²⁹ *Id.*; Florida Water Environment Association Utility Council, *Evaluation of the Impacts of Eliminating Surface Water Discharges from Domestic Wastewater Facilities in Florida*, 16 (Jan. 2020), available at <http://fweauc.org/wp-content/uploads/2013/02/Evaluation-of-the-Impacts-of-Eliminating-Surface-Water-Discharges-from-Domestic-Wastewater-Facilities-in-Florida-January-2020.pdf>.

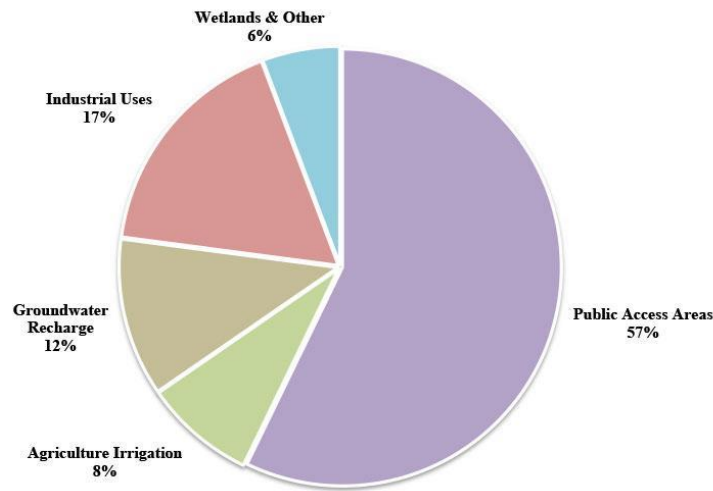
³⁰ DEP, *Florida's Reuse Activities*, <https://floridadep.gov/water/domestic-wastewater/content/floridas-reuse-activities> (last visited Jan. 21, 2021).

³¹ DEP, *Annual Regional Water Supply Planning Report*, (2019), available at <https://fdep.maps.arcgis.com/apps/MapSeries/index.html?appid=04f84e6ae64c45e292e5b3db82f045e3>.

³² DEP, *2019 Reuse Inventory Report*, 2 (2020), available at https://floridadep.gov/sites/default/files/2019_Reuse_Inventory_Report.pdf; see also DEP, *Florida's Reuse Activities*, <https://floridadep.gov/water/domestic-wastewater/content/floridas-reuse-activities> (last visited Jan. 21, 2021).

³³ *Id.*

Figure 1: Reclaimed Water Utilization by Flow



Note: Agriculture irrigation includes edible crops (e.g., citrus) as well as feed and fodder crops (e.g., spray fields).

Regulation of Reclaimed Water

Both DEP and the water management districts play a regulatory role in the use of reclaimed water. DEP regulations focus on water quality and ensure that reclaimed water is appropriately treated for its intended use to ensure protection of public health and the environment. Water management districts work with local utilities and water users to maximize the beneficial use of reclaimed water as an alternative water supply. The districts include alternative water supply projects in their regional water supply plans³⁴ and implement cost-share programs to assist communities in developing reclaimed water systems.³⁵

In its rules, DEP provides detailed reclaimed water treatment requirements depending upon how the reclaimed water will be used, including for groundwater recharge, surface water discharge, or to protect water quality.³⁶ These rules also require owners of domestic wastewater facilities having permitted capacities of 0.1 million gallons per day and above that provide reclaimed water for reuse to submit annual reuse reports to DEP. In order to be reused as reclaimed water, domestic wastewater must meet, at minimum, a treatment standard of secondary treatment, basic disinfection, and pH control.³⁷ The regulations also include requirements for groundwater monitoring at reuse and land application sites.³⁸

³⁴ Section 373.036(2), F.S.

³⁵ DEP, *Annual Regional Water Supply Planning Report* (2019), available at <https://fddep.maps.arcgis.com/apps/MapSeries/index.html?appid=04f84e6ae64c45e292e5b3db82f045e3>; see also DEP, *Water Management District Reuse Programs*, <https://floridadep.gov/water/domestic-wastewater/content/water-management-district-reuse-programs> (last visited Jan. 26, 2021).

³⁶ Fla. Admin. Code R. 62-610.

³⁷ Fla. Admin. Code R. 62-600.530, 62-600.440.

³⁸ Fla. Admin. Code R. 62-601.

Water management districts are responsible for the administration of water resources at a regional level, including programs to protect water supply, water quality, and natural systems.³⁹ Water management districts issue consumptive use permits (CUPs) to manage the use of water. A CUP allows the holder to withdraw a specified amount of water from surface water and groundwater sources for reasonable and beneficial use.⁴⁰ CUPs require water conservation to prevent wasteful uses, require the reuse of reclaimed water instead of higher-quality groundwater where appropriate, and set limits on the amount of water that can be withdrawn.⁴¹ Water management districts may not require CUPs for reclaimed water.⁴²

Districts also implement minimum flows and minimum water levels (MFLs) to balance public water supply needs with protection of the state's natural systems.⁴³ For water bodies that are below or projected to fall below their MFL, the districts are required to implement a recovery or prevention strategy to ensure the MFL is maintained.⁴⁴ Alternative water supply can be used as a recovery strategy when existing sources of water are not adequate to supply water for all existing and future reasonable beneficial uses or as a prevention strategy to sustain the water resources and related natural systems.⁴⁵

Potable Reuse

Potable reuse is the process of using treated wastewater for drinking water.⁴⁶ It involves the use of reclaimed water to directly or indirectly augment drinking water supplies.⁴⁷ Indirect potable reuse is the planned discharge of reclaimed water to ground or surface waters for the development or supplementation of potable water supply. Direct potable reuse is the introduction of advanced treated reclaimed water into a raw water supply immediately upstream of a drinking water treatment facility or directly into a potable water distribution system.⁴⁸

Although regulations currently exist in Florida for using reclaimed water for indirect potable reuse for augmenting surface water, there are no regulations that address using reclaimed water for indirect potable reuse involving groundwater replenishment or for direct potable reuse.⁴⁹

³⁹ DEP, *Water Management Districts*, <https://floridadep.gov/water-policy/water-policy/content/water-management-districts> (last visited Jan. 23, 2021).

⁴⁰ South Florida Water Management District, *Consumptive Water Use Permits*, <https://www.sfwmd.gov/doing-business-with-us/permits/water-use-permits> (last visited Jan. 23, 2021).

⁴¹ DEP, *2021 Florida Water Plan*, available at <https://fddep.maps.arcgis.com/apps/Cascade/index.html?appid=473b768b4af049bf91b2879b83ea961c>.

⁴² Section 373.250, F.S.

⁴³ DEP, *Minimum Flows and Minimum Water Levels and Reservations*, <https://floridadep.gov/water-policy/water-policy/content/minimum-flows-and-minimum-water-levels-and-reservations> (last visited Jan. 23, 2021); see also section 373.042(1), F.S. Minimum flows and minimum water levels are the limit at which further withdrawals would be significantly harmful to the water resources or ecology of the area.

⁴⁴ *Id.*

⁴⁵ DEP, *Annual Regional Water Supply Planning Report*, (2019), available at <https://fddep.maps.arcgis.com/apps/MapSeries/index.html?appid=04f84e6ae64c45e292e5b3db82f045e3>.

⁴⁶ U.S. Environmental Protection Agency, *Potable Water Reuse and Drinking Water*, <https://www.epa.gov/ground-water-and-drinking-water/potable-water-reuse-and-drinking-water> (last visited Jan. 21, 2021).

⁴⁷ Florida Potable Reuse Commission (PRC), *Framework for the Implementation of Potable Reuse in Florida*, xxiv, (Jan. 2020), available at <https://watereuse.org/wp-content/uploads/2020/01/Framework-for-Potable-Reuse-in-Florida.pdf>.

⁴⁸ *Id.*

⁴⁹ *Id.*

The Potable Reuse Commission (PRC) was organized to develop a framework for advancing the implementation of potable reuse in Florida as a water supply alternative to meet future supply needs while protecting public health and the environment through an engagement process involving stakeholders with technical and scientific expertise.⁵⁰ In its report, the PRC identified a number of proposed regulatory changes that would require the Florida Legislature to enact legislation to provide authority and require DEP to revise existing rules or adopt new rules to advance potable reuse within the state while ensuring protection of public health and the environment.

Chapter 2020-150, Laws of Florida, required DEP to revise its rules based on the recommendations of the PRC's 2020 report. Specifically, the Legislature required DEP to address contaminants of emerging concern and meet or exceed federal and state drinking water quality standards and other applicable water quality standards in its rule.⁵¹ The law also specifically deemed reclaimed water as a water source for public supply systems.⁵² DEP is currently in the rulemaking process to revise existing rules to create a framework for potable reuse.⁵³

In addition to the recommendations related to drinking water regulations, the PRC recommended:

- Designating reclaimed water as a water supply source;
- Requiring DEP and the water management districts to enter into a memorandum of agreement to coordinate permitting for indirect potable water projects;
- Continuing the exemption of direct potable reuse from consumptive use permit or water use permit requirements;
- Implementing regulatory recommendations collectively and through Technical Advisory Committees;
- Incentivizing and protecting public investments in potable reuse; and
- Continuing public education and outreach.⁵⁴

Ocean Outfalls

An ocean outfall occurs when a wastewater treatment facility or other facility discharges treated effluent into coastal or ocean waters. There are six domestic wastewater facilities in Palm Beach, Broward, and Miami-Dade Counties that discharge or previously discharged approximately 300 mgd of treated domestic wastewater directly into the Atlantic Ocean through ocean outfalls.⁵⁵

⁵⁰ *Id.*

⁵¹ Section 12, Ch. 2020-150.

⁵² *Id.*

⁵³ Florida Administrative Register, Notice of Proposed Rule 62-610, Volume 46, Number 242 at 5468 (Dec. 15, 2020), available at <https://www.flrules.org/Faw/FAWDocuments/FAWVOLUMEFOLDERS2020/46242/46242doc.pdf>; DEP, *Water Reuse News & Rulemaking Information*, <https://floridadep.gov/water/domestic-wastewater/content/water-reuse-news-rulemaking-information> (last visited Jan. 15, 2021).

⁵⁴ PRC, *Framework for the Implementation of Potable Reuse in Florida*, xxvii-xxxii, (Jan. 2020), available at <https://watereuse.org/wp-content/uploads/2020/01/Framework-for-Potable-Reuse-in-Florida.pdf>.

⁵⁵ DEP, *Ocean Outfall Study Final Report ES-1* (Apr. 18, 2006), available at https://floridadep.gov/sites/default/files/OceanOutfallStudy_0.pdf.

However, state law prohibits construction of new ocean outfalls and requires that all six ocean outfalls in Florida cease discharging wastewater by December 31, 2025.⁵⁶ 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, 2025.⁵⁷ Existing discharges through ocean outfalls must meet advanced waste treatment requirements⁵⁸ by December 31, 2018.⁵⁹

Backup Discharges

A backup discharge is a surface water discharge that occurs as part of a functioning reuse system which has been permitted by DEP and which provides reclaimed water for irrigation of public access areas, residential properties, or edible food crops, or for industrial cooling or other acceptable reuse purposes.⁶⁰ Backup discharges of reclaimed water that meet advanced waste treatment requirements are presumed to be allowable and are permitted in all waters in the state at a reasonably accessible point where such discharge results in minimal negative impact, unless the discharge is to waters that are subject to additional protections.⁶¹

Fiscally Constrained Counties and Rural Areas of Opportunity

A fiscally constrained county is a county that is entirely within a rural area of opportunity (RAO) or a county for which the value of a mill will raise no more than \$5 million in revenue.⁶²

A RAO is a rural community, or a region composed of rural communities, designated by the Governor that presents a unique economic development opportunity of regional impact or that has been adversely affected by an extraordinary economic event, severe or chronic distress, or a natural disaster.⁶³ The three designated RAOs are the:

- Northwest RAO, which includes Calhoun, Franklin, Gadsden, Gulf, Holmes, Jackson, Liberty, Wakulla, and Washington Counties, and the City of Freeport;
- South Central RAO, which includes DeSoto, Glades, Hardee, Hendry, Highlands, and Okeechobee Counties, and the Cities of Pahokee, Belle Glade, South Bay, and Immokalee; and
- North Central RAO, which includes Baker, Bradford, Columbia, Dixie, Gilchrist, Hamilton, Jefferson, Lafayette, Levy, Madison, Putnam, Suwannee, Taylor, and Union Counties.⁶⁴

Graywater/Residential Systems/Development Incentives

Graywater is the part of domestic sewage that is not carried off by toilets, urinals, and kitchen drains. It includes waste from the bath, lavatory, laundry, and sink, except for kitchen sink

⁵⁶ Section 403.086(10), F.S.; chapter 2008-232, Laws of Fla.

⁵⁷ Section 403.086(10)(c), F.S.

⁵⁸ Section 403.086(4), F.S.

⁵⁹ Section 403.086(10)(b), F.S.

⁶⁰ Section 403.086(8)(a), F.S.

⁶¹ Section 403.086(8)(b), F.S.

⁶² Section 218.67(1), F.S.

⁶³ Section 288.0656(2)(d), F.S.

⁶⁴ Florida Department of Economic Opportunity, *RAO*, available at <http://www.floridajobs.org/business-growth-and-partnerships/rural-and-economic-development-initiative/rural-areas-of-opportunity> (last visited Jan. 8, 2021).

waste.⁶⁵ Graywater installations occur in both residential and non-residential installations and the capture, treatment, and reuse of graywater yields usable water that would otherwise be directed to the sewer.⁶⁶ Reusing graywater also reduces the use of potable water for non-potable needs and conserves fresh water.⁶⁷

The Florida Building Code specifies that graywater may only be used for flushing of toilets and urinals. Any discharge from the building must be connected to a public sewer or an onsite sewage treatment and disposal system in accordance with Department of Health regulations in chapter 64E-6 of the Florida Administrative Code.⁶⁸ Graywater systems in Florida have several requirements: the graywater must be filtered, disinfected, and dyed; and storage reservoirs must have drains and overflow pipes which must be indirectly connected to the sanitary drainage system.⁶⁹

There are barriers to the widespread adoption of residential graywater reuse, including: system cost, knowledge and experience of contractors and local officials, homeowner acceptance, and limited permitted uses.⁷⁰

Aquifer Storage and Recovery (ASR)

ASR is the underground injection and storage of water into a subsurface formation for the purpose of withdrawing the water for beneficial purposes at a later date.⁷¹ It refers to the process of recharge, storage, and recovery of water in an aquifer. ASR provides for storage of large quantities of water for both seasonal and long-term storage and ultimate recovery that would otherwise be unavailable due to land limitations, loss to tide, or evaporation.⁷²

ASR facilities have been used in Florida and throughout the United States for about 40 years.⁷³ ASR systems are currently used for the storage of potable drinking water, partially treated surface water, groundwater, and reclaimed water.⁷⁴ Water can be stored and subsequently recovered and distributed for purposes such as water supply or ecosystem restoration.⁷⁵ For ASR, the aquifer acts as an underground reservoir for the recharged water.

⁶⁵ Section 381.0065(2)(e), F.S.

⁶⁶ Alliance for Water Efficiency, *Graywater Systems*, <https://www.allianceforwaterefficiency.org/resources/topic/graywater-systems> (last visited Jan. 8, 2021).

⁶⁷ Martinez, Christopher J., *Gray Water Reuse in Florida*, University of Florida IFAS Extension, <https://edis.ifas.ufl.edu/ae453#:~:text=Gray%20water%20must%20be%20filtered,to%20the%20sanitary%20drainage%20system> (last visited Jan. 12, 2021).

⁶⁸ 2020 Florida Building Code – Plumbing, Seventh Edition (Dec. 2020), available at <https://codes.iccsafe.org/content/FLPC2020P1>.

⁶⁹ *Id.*

⁷⁰ Martinez, Christopher J., *Gray Water Reuse in Florida*, University of Florida IFAS Extension, <https://edis.ifas.ufl.edu/ae453#:~:text=Gray%20water%20must%20be%20filtered,to%20the%20sanitary%20drainage%20system> (last visited Jan. 12, 2021).

⁷¹ DEP, Office of Water Policy, *Report on Expansion of Beneficial Use of Reclaimed Water, Stormwater and Excess Surface Water*, 83 (December 1, 2015) available at <https://floridadep.gov/sites/default/files/SB536%20Final%20Report.pdf>.

⁷² *Id.*

⁷³ South Florida Water Management District, *Aquifer Storage and Recovery*, <https://www.sfwmd.gov/our-work/alternative-water-supply/asr> (last visited Jan. 12, 2021).

⁷⁴ *Id.*

⁷⁵ *Id.*

Through its Aquifer Protection Program, DEP regulates the disposal of appropriately treated fluids, such as reclaimed water, through underground injection wells while also protecting underground sources of drinking water.⁷⁶ The program is aimed at preventing degradation of the quality of aquifers adjacent to the injection zone.⁷⁷ ASR wells are regulated as Class V injection wells, which include all wells that inject non-hazardous fluids into or above formations that contain underground sources of drinking water.⁷⁸

DEP rules regulating ASR require that reclaimed water injected into a receiving groundwater that has 3,000 mg/L or less of total dissolved solids must meet the treatment and disinfection criteria requirements⁷⁹ for groundwater recharge projects.⁸⁰ If receiving groundwater contains between 1,000 and 3,000 mg/L of total dissolved solids and the applicant for an underground injection control permit provides an affirmative demonstration that the receiving groundwater is not currently used as a source of public water supply, and is not reasonably expected to be used for public water supply in the future, certain modifications to the treatment and disinfection requirements are available.⁸¹ Reclaimed water recovered from groundwaters containing 3,000 mg/L or less of total dissolved solids must meet full treatment and disinfection requirements and drinking water standards.⁸²

III. Effect of Proposed Changes:

Plan to Eliminate Nonbeneficial Surface Water Discharge

Section 1 amends s. 403.064, F.S., to create a timeline and plan to eliminate nonbeneficial surface water discharge within 5 years and contains a series of conditions for authorizing discharges that are being beneficially used or are otherwise regulated, or for various hardships (*see discussions on discharge conditions and hardship conditions below*).

The bill requires domestic wastewater utilities that dispose of effluent, reclaimed water, or reuse water by surface water discharge to submit a 5-year plan to eliminate nonbeneficial surface water discharge to the Department of Environmental Protection (DEP). The plan must be:

- Submitted by November 1, 2021, and
- Implemented by January 1, 2028 (January 1, 2030 for potable reuse projects).

Domestic wastewater utilities applying for a permit for new or expanded surface water discharge must also submit a discharge elimination plan.

The plan must include:

⁷⁶ Fla. Admin. Code R. 62-528.200(66), defines the term “underground source of drinking water” to mean aquifer. DEP, *Aquifer Protection Program – UIC*, <https://floridadep.gov/water/aquifer-protection> (last visited Jan. 12, 2021).

⁷⁷ DEP, *Aquifer Protection Program -UIC*, <https://floridadep.gov/water/aquifer-protection> (last visited Jan. 12, 2021); *see* ch. 62-528, F.A.C., for underground injection control permitting requirements.

⁷⁸ Fla. Admin. Code R. 62-528.300(1)(e).

⁷⁹ Fla. Admin. Code R. 62-610.563. Full treatment and disinfection criteria require meeting all primary and secondary drinking water standards and limits total organic carbon and halogen.

⁸⁰ Fla. Admin. Code R. 62-610.466(9)(a).

⁸¹ Fla. Admin. Code R. 62-610.466(9)(b).

⁸² Fla. Admin. Code R. 62-610.563(3).

- The average gallons per day of effluent, reclaimed water, or reuse water which will no longer be discharged into surface waters and the date of such elimination;
- The average gallons per day of surface water discharge which will continue in accordance with the requirements for the elimination of ocean outfalls, one of the discharge conditions specified in the bill (*see discussion below*), or one of the hardship conditions (*see discussion below*); and
- The level of treatment which the effluent, reclaimed water, or reuse water will receive before being discharged into a surface water by each alternative.

To be approved, the plan must:

- Result in eliminating surface water discharge;
- Result in meeting statutory requirements regarding discharge of domestic wastewater through ocean outfall; or
- Meet one of the discharge conditions (*see discussion below*) if the plan does not provide for a complete elimination of surface water discharge.

DISCHARGE CONDITIONS: DEP will approve a plan even if it does not provide for a complete elimination of surface water discharge if:

- The discharge is associated with an indirect potable reuse project;
- The discharge is a permitted wet weather discharge;
- The discharge is into a stormwater management system and is subsequently withdrawn for irrigation purposes;
- The utility operates domestic wastewater treatment facilities with reuse systems that reuse a minimum of 90% of a facility's annual average flow, as determined by DEP using monitoring data for the prior 5 consecutive years, for reuse purposes authorized by DEP; or
- The discharge provides direct ecological or public water supply benefits, such as rehydrating wetlands or implementing the requirements of minimum flows and minimum water levels or recovery or prevention strategies for a waterbody.

A plan may include conceptual plans for indirect potable reuse projects or projects that provide direct ecological or public water supply. However, the inclusion of conceptual plans for such projects may not extend the timeline for implementation of the plan.

HARDSHIP CONDITIONS: DEP must also approve the plan if a utility demonstrates that:

- It is technically, economically, or environmentally infeasible for the utility to meet the conditions above within 5 years after submitting the plan to DEP;
- Implementing such alternatives would create a severe undue economic hardship on the community served by the utility, as demonstrated by the impact to utility ratepayers, a lack of reasonable return on investment, and the unaffordability of implementing any combination of the alternatives; and
- The plan provides a means to eliminate the discharge to the extent feasible.

If a utility demonstrates hardship conditions, the utility must update its plan annually to demonstrate that it continues to meet the hardship conditions, until it is able to eliminate discharge. DEP must review updated plans to verify that a utility continues to meet the hardship conditions. If DEP determines that the utility no longer meets hardship conditions, the utility

must submit a plan within 9 months of receiving notice from DEP and must fully implement the plan within 5 years of receiving approval of the plan by DEP.

The bill provisions also do not apply to domestic wastewater treatment facilities that are located in a:

- Fiscally constrained county;
- Municipality that is entirely within a rural area of opportunity; and
- Municipality with less than \$10 million in total revenue, as determined by the municipality's most recent annual financial report submitted to the Department of Financial Services.

The bill requires DEP to approve a plan, within 9 months after receiving the plan, which includes all of the information required under the bill. If a plan is approved, DEP must incorporate the plan into a utility's operating permit. A utility may modify its plan by amendment to the permit, but the permit may not be amended such that the permit no longer meets the requirements of the bill. DEP may not extend the time within which a plan must be implemented.

If a plan is not timely submitted by a utility or approved by DEP, the utility's domestic wastewater treatment facilities may not dispose of effluent, reclaimed water, or reuse water by surface discharge after January 1, 2028. A violation subjects a utility to administrative and civil penalties.

The bill requires DEP to submit a report by December 31 annually to the President of the Senate and the Speaker of the House of Representatives which provides:

- The average gallons per day of effluent, reclaimed water, or reuse water which will no longer be discharged into surface waters by the utility and the dates of such elimination;
- The average gallons per day of surface water discharge which will continue in accordance with the requirements for the elimination of ocean outfalls, one of the discharge conditions, or one of the hardship conditions; and
- Any modified or new plans submitted by a utility since the last report.

The bill provides that the requirement for a plan to eliminate nonbeneficial surface water discharges does not prohibit the inclusion of a plan for backup discharges and may not exempt a utility from requirements that prohibit the causing of or contributing to violations of water quality standards in surface waters, including groundwater discharges that affect water quality in surface waters.

The bill provides a legislative statement that sufficient water supply is imperative to the future of this state and that potable reuse is a source of water which may assist in meeting future demand for water supply.

The bill authorizes DEP to convene and lead one or more technical advisory groups to coordinate rulemaking and review of rules for potable reuse. The technical advisory group must consist of knowledgeable representatives of stakeholders, including, but not limited to, representatives from the:

- Water management districts;
- Wastewater utility industry;

- Water utility industry;
- Environmental community;
- Business community;
- Public health community;
- Agricultural community; and
- Consumers.

The bill specifies that potable reuse is an alternative water supply, for purposes of making reuse projects eligible for alternative water supply funding. The bill also specifies that the use of potable reuse water may not be excluded from regional water supply planning.

The bill requires DEP and the water management districts to develop and execute, by December 31, 2023, a memorandum of agreement (MOU) to conduct a coordinated review of all permits associated with the construction and operation of an indirect potable reuse project. The MOU must provide that the review will occur only if requested by a permittee. The bill states that the purpose of the coordinated review is to share information, avoid redundancies, and ensure consistency in the permit for the protection of public health and the environment.

The bill incentivizes the development of potable reuse projects by private entities through eligibility for expedited permitting, beginning January 1, 2026, and eligibility for priority funding from the Drinking Water State Revolving Fund, under the Water Protection and Sustainability Program, and for water management district cooperative funding.

The bill does not supersede existing requirements relating to the use of reclaimed water.

Graywater Incentives

Section 2 creates s. 403.892, F.S., to provide incentives for the use of graywater technologies.

The bill defines the terms “developer” to mean any person, including a governmental agency, undertaking any development.⁸³ The bill defines “graywater” to mean that part of domestic sewage that is not blackwater, including waste from the bath, lavatory, laundry, and sink, except kitchen sink waste.⁸⁴

The bill requires a county, municipality, and special district to promote the beneficial reuse of water in this state by:

- Authorizing graywater technologies in their respective jurisdictions which meet the requirement for residential use of graywater systems and technologies, the Florida Building Code, and applicable requirements of the Florida Department of Health and have received all applicable regulatory permits or authorizations; and
- Providing density and intensity bonuses to developers and homebuilders to fully offset the capital costs of the technology and installation costs.

⁸³ Section 380.031, F.S.

⁸⁴ Section 381.0065, F.S.

To qualify for the incentives, the bill requires the developer or homebuilder to certify to the applicable governmental entity as part of its application for development approval or amendment of a development order that all of the following conditions are met:

- The proposed or existing development has at least 25 single-family residential homes that are either detached or multifamily dwellings, but the development must not be over 5 stories in height;
- Each single-family residential home or residence has its own residential graywater system that is dedicated for its use;
- The developer has submitted a manufacturer's warranty or data providing reasonable assurance that the residential graywater system will function as designed and includes an estimate of anticipated potable water savings for each system. A submission from a building code official, government entity, or research institute that has monitored or measured the residential graywater system that is proposed to be installed for such development is acceptable as reasonable assurance; and
- The required maintenance of the graywater system is the responsibility of the residential homeowner or manufacturer; and
- An operation and maintenance manual for the system must be supplied to the initial residential property owner, along with a method of contacting the installer or manufacturer and directions to the homeowner that the manual must remain with the residence throughout the life cycle of the system.

The bill provides that if the requirements to qualify for incentives are met, the county or municipality must include the incentives when it approves the development or amendment of a development order. The approval must also provide for the process that the developer or homebuilder will follow to verify that graywater systems have been purchased. Proof of purchase must be provided within 180 days from the issuance of a certificate of occupancy for single-family residential homes that are either detached or multifamily projects under five stories.

Under the bill, the installation of graywater systems in a county or municipality qualify as a water conservation measure in a public water utility's water conservation plan. The efficiency of the measures is commensurate with the amount of potable water savings estimated for each system provided by the developer or homebuilder.

Aquifer Storage and Recovery

Section 3 provides, to further promote the reuse of reclaimed water for irrigation purposes, that the rules that apply when reclaimed water is injected into a receiving groundwater that has 1,000 to 3,000 mg/L total dissolved solids are applicable to reclaimed water aquifer storage and recovery wells injecting into a receiving groundwater that has less than 1,000 mg/L total dissolved solids if the applicant demonstrates that:

- It is injecting into a confined aquifer;
- There are no potable water supply wells within 3,500 feet of the aquifer storage and recovery wells;
- It has implemented institutional controls to prevent the future construction of public supply wells within 3,500 feet of the aquifer storage and recovery wells; and
- The recovered water is being used for irrigation purposes.

The bill specifies that the injection of reclaimed water that meets these requirements is not potable reuse.

The bill specifies that this section may not be construed to exempt the reclaimed water aquifer storage and recovery wells from requirements that prohibit the causing of or contribution to violations of water quality standards in surface water, including groundwater discharges that flow by interflow and affect water quality in surface water.

Declaration of Important State Interest

Section 4 provides a declaratory statement by the Legislature that the act fulfills an important state interest.

Effective Date

Section 5 provides that the bill will take effect upon becoming law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Article VII, s. 18 of the Florida Constitution governs laws that require counties and municipalities to spend funds, limit the ability of counties and municipalities to raise revenue, or reduce the percentage of state tax shared with counties and municipalities.

Subsection (a) of s. 18, Art. VII of the Florida Constitution provides that no county or municipality shall be bound by any general law requiring the county or municipality to spend funds or take action requiring the expenditure of funds unless the legislature determines that the law fulfills an important state interest and meets one of the exceptions specified in that subsection: provision of funding or a funding mechanism, enactment by vote of two-thirds of the membership in each house, the expenditure is required to comply with a law that applies to all persons similarly situated, or the law is either required to comply with a federal requirement or required for eligibility for a federal entitlement.

The bill's provisions appear to apply to all similarly situated domestic wastewater treatment facilities and all are required to comply unless the utility is eligible for an exemption. Section 4 of the bill contains a statement that the act fulfills an important state interest.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The total statewide cost of compliance with the requirement to eliminate surface water discharge is indeterminate.

C. Government Sector Impact:

It is likely that some of the costs of implementation of the bill will be borne by municipal utilities.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 403.064 of the Florida Statutes.

This bill creates section 403.892 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

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

CS by Environment and Natural Resources on February 1, 2021:

- Authorizes utilities to include conceptual plans for potable reuse projects or projects that provide direct ecological or public water supply.
- Provides that the inclusion of conceptual plans for such projects may not extend the timeline for implementation of the plan.

- Revises the provisions describing when the rules for the total dissolved solids allowable in aquifer storage and recovery apply to include that the recovered water is used for irrigation purposes.
- Provides a statement that injection of reclaimed water meeting certain requirements is not potable reuse.

B. Amendments:

None.

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



935396

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/01/2021	.	
	.	
	.	
	.	

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

Senate Amendment

Between lines 95 and 96
insert:

The plan may include conceptual projects under sub-subparagraphs 3.a. and 3.e.; however, such inclusion does not extend the time within which the plan must be implemented.



906528

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/01/2021	.	
	.	
	.	
	.	

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

Senate Amendment

Delete lines 320 - 323
and insert:
within 3,500 feet of the aquifer storage and recovery wells,
that it has implemented institutional controls to prevent the
future construction of potable water supply wells within 3,500
feet of the aquifer storage and recovery wells, and that the
recovered water is being used for irrigation purposes. The
injection of reclaimed water that meets the requirements of this



906528

11 section is not potable reuse. This section may

By Senator Albritton

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1 A bill to be entitled
2 An act relating to reclaimed water; amending s.
3 403.064, F.S.; requiring certain domestic wastewater
4 utilities to submit to the Department of Environmental
5 Protection by a specified date a plan for eliminating
6 nonbeneficial surface water discharge within a
7 specified timeframe; providing requirements for the
8 plan; requiring the department to approve plans that
9 meet certain requirements; requiring the department to
10 make a determination regarding a plan within a
11 specified timeframe; requiring the utilities to
12 implement approved plans by specified dates; providing
13 for administrative and civil penalties; requiring
14 certain utilities to submit updated annual plans until
15 certain conditions are met; requiring domestic
16 wastewater utilities applying for permits for new or
17 expanded surface water discharges to prepare a
18 specified plan for eliminating nonbeneficial
19 discharges as part of its permit application;
20 requiring the department to submit an annual report to
21 the Legislature by a specified date; providing
22 applicability; providing construction; authorizing the
23 department to convene and lead one or more technical
24 advisory groups; providing that potable reuse is an
25 alternative water supply and that projects relating to
26 such reuse are eligible for alternative water supply
27 funding; requiring the department and the water
28 management districts to develop and execute, by a
29 specified date, a memorandum of agreement for the

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30 coordinated review of specified permits; providing
31 that potable reuse projects are eligible for certain
32 expedited permitting and priority funding; providing
33 construction; creating s. 403.892, F.S.; defining
34 terms; requiring counties, municipalities, and special
35 districts to authorize graywater technologies under
36 certain circumstances and to provide incentives for
37 the implementation of such technologies; providing
38 requirements for the use of graywater technologies;
39 providing that the installation of residential
40 graywater systems meets certain public utility water
41 conservation measure requirements; providing for the
42 applicability of specified reclaimed water aquifer
43 storage and recovery well requirements; providing a
44 declaration of important state interest; providing an
45 effective date.

46
47 Be It Enacted by the Legislature of the State of Florida:

48
49 Section 1. Present subsection (17) of section 403.064,
50 Florida Statutes, is redesignated as subsection (18) and
51 amended, and a new subsection (17) is added to that section, to
52 read:

53 403.064 Reuse of reclaimed water.—

54 (17) By November 1, 2021, domestic wastewater utilities
55 that dispose of effluent, reclaimed water, or reuse water by
56 surface water discharge shall submit to the department for
57 review and approval a plan for eliminating nonbeneficial surface
58 water discharge within 5 years, subject to the requirements of

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59 this section. The plan must include the average gallons per day
60 of effluent, reclaimed water, or reuse water which will no
61 longer be discharged into surface waters and the date of such
62 elimination; the average gallons per day of surface water
63 discharge which will continue in accordance with the
64 alternatives provided for in subparagraphs (a)2. and 3., or, if
65 applicable to the utility, under paragraph (b); and the level of
66 treatment which the effluent, reclaimed water, or reuse water
67 will receive before being discharged into a surface water by
68 each alternative.

69 (a) The department shall approve a plan that includes all
70 of the information required under this subsection as meeting the
71 requirements of this section if one or more of the following
72 conditions are met:

73 1. The plan will result in eliminating the surface water
74 discharge.

75 2. The plan will result in meeting the requirements of s.
76 403.086(10).

77 3. The plan does not provide for a complete elimination of
78 the surface water discharge but does provide an affirmative
79 demonstration that any of the following conditions apply to the
80 remaining discharge:

81 a. The discharge is associated with an indirect potable
82 reuse project;

83 b. The discharge is a wet weather discharge that occurs in
84 accordance with an applicable department permit;

85 c. The discharge is into a stormwater management system and
86 is subsequently withdrawn by a user for irrigation purposes;

87 d. The utility operates domestic wastewater treatment

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88 facilities with reuse systems that reuse a minimum of 90 percent
89 of a facility's annual average flow, as determined by the
90 department using monitoring data for the prior 5 consecutive
91 years, for reuse purposes authorized by the department; or

92 e. The discharge provides direct ecological or public water
93 supply benefits, such as rehydrating wetlands or implementing
94 the requirements of minimum flows and minimum water levels or
95 recovery or prevention strategies for a waterbody.

96 (b) The department shall also approve a plan if a utility
97 demonstrates that it is technically, economically, or
98 environmentally infeasible for the utility to meet any of the
99 conditions provided in paragraph (a) for the discharge within 5
100 years after submitting the plan to the department; that
101 implementing such alternatives would create a severe undue
102 economic hardship on the community served by the utility, as
103 demonstrated by the impact to utility ratepayers, a lack of a
104 reasonable return on investment, and the unaffordability of
105 implementing any combination of the alternatives; and that the
106 plan provides a means to eliminate the discharge to the extent
107 feasible.

108 (c) The department shall approve or deny a plan within 9
109 months after receiving the plan and, if a plan is approved, must
110 incorporate it in the utility's operating permit issued under s.
111 403.087. Any applicable environmental and public health
112 protection requirements provided by law or department rule
113 governing the implementation of the plan must also be
114 incorporated into the permit. A utility may modify the plan by
115 amendment to the permit; however, the plan may not be modified
116 such that the requirements of this subsection are not met, and

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117 the department may not extend the time within which a plan will
118 be implemented.

119 (d) Upon approval of a plan by the department, a utility
120 shall fully implement the approved plan by January 1, 2028;
121 however, if the utility proposes to implement a potable reuse
122 project, provided that the utility has implemented all other
123 components of the plan, the utility has until January 1, 2030,
124 to implement the potable reuse project component of the plan.

125 (e) If a plan is not timely submitted by a utility or
126 approved by the department, the utility's domestic wastewater
127 treatment facilities may not dispose of effluent, reclaimed
128 water, or reuse water by surface water discharge after January
129 1, 2028. A violation of this paragraph is subject to
130 administrative and civil penalties pursuant to ss. 403.121,
131 403.131, and 403.141.

132 (f) A utility that has had a plan approved by the
133 department pursuant to paragraph (b) shall update the plan
134 annually until the utility is able to meet one or more of the
135 conditions provided in paragraph (a). The updated annual plan
136 must affirmatively demonstrate that the utility continues to be
137 unable to meet any of the conditions provided in paragraph (a)
138 because it is infeasible to do so and a severe undue economic
139 hardship still exists as provided in paragraph (b). The
140 department shall review the updated plans to verify that the
141 utility is unable to meet any of the conditions provided in
142 paragraph (a) and that the utility continues to meet the
143 conditions of paragraph (b). If the department determines that
144 the utility is able to meet any of the conditions and the
145 utility is no longer eligible for approval under paragraph (b),

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146 the utility must submit a plan in accordance with paragraph (a)
147 within 9 months after receiving notice of such a determination
148 from the department, and the utility must fully implement such
149 plan within 5 years after receiving an approval by the
150 department.

151 (g) A domestic wastewater utility applying for a permit for
152 a new or expanded surface water discharge shall prepare a plan
153 in accordance with this subsection as part of that permit
154 application. The department may not approve a permit for a new
155 or expanded surface water discharge unless the plan meets one or
156 more of the conditions provided in paragraph (a).

157 (h) By December 31, 2021, and annually thereafter, the
158 department shall submit a report to the President of the Senate
159 and the Speaker of the House of Representatives which provides
160 the average gallons per day of effluent, reclaimed water, or
161 reuse water which will no longer be discharged into surface
162 waters by the utility and the dates of such elimination; the
163 average gallons per day of surface water discharges which will
164 continue in accordance with the alternatives provided in
165 subparagraphs (a)2. and 3., and the level of treatment which the
166 effluent, reclaimed water, or reuse water will receive before
167 being discharged into a surface water by each alternative and
168 utility; the average gallons per day of effluent, reclaimed
169 water, or reuse water which is proposed to continue to be
170 discharged under paragraph (b) and the level of treatment which
171 the effluent, reclaimed water, or reuse water will receive
172 before being discharged into a surface water by the utility; and
173 any modified or new plans submitted by a utility since the last
174 report.

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175 (i) This subsection does not apply to any of the following:

176 1. A domestic wastewater treatment facility that is located
177 in a fiscally constrained county as described in s. 218.67(1).

178 2. A domestic wastewater treatment facility that is located
179 in a municipality that is entirely within a rural area of
180 opportunity as designated pursuant to s. 288.0656.

181 3. A domestic wastewater treatment facility that is located
182 in a municipality that has less than \$10 million in total
183 revenue, as determined by the municipality's most recent annual
184 financial report submitted to the Department of Financial
185 Services in accordance with s. 218.32.

186 (j) This subsection does not prohibit the inclusion of a
187 plan for backup discharges pursuant to s. 403.086(8)(a).

188 (k) This subsection may not be deemed to exempt a utility
189 from requirements that prohibit the causing of or contributing
190 to violations of water quality standards in surface waters,
191 including groundwater discharges that affect water quality in
192 surface waters.

193 (18) (a) ~~(17)~~ By December 31, 2020, the department shall
194 initiate rule revisions based on the recommendations of the
195 Potable Reuse Commission's 2020 report "Advancing Potable Reuse
196 in Florida: Framework for the Implementation of Potable Reuse in
197 Florida." Rules for potable reuse projects must address
198 contaminants of emerging concern and meet or exceed federal and
199 state drinking water quality standards and other applicable
200 water quality standards. Reclaimed water is deemed a water
201 source for public water supply systems.

202 (b) The Legislature recognizes that sufficient water supply
203 is imperative to the future of this state and that potable reuse

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204 is a source of water which may assist in meeting future demand
205 for water supply.

206 (c) The department may convene and lead one or more
207 technical advisory groups to coordinate the rulemaking and
208 review of rules for potable reuse as required under this
209 section. The technical advisory group, which shall assist in the
210 development of such rules, must be composed of knowledgeable
211 representatives of a broad group of interested stakeholders,
212 including, but not limited to, representatives from the water
213 management districts, the wastewater utility industry, the water
214 utility industry, the environmental community, the business
215 community, the public health community, the agricultural
216 community, and the consumers.

217 (d) Potable reuse is an alternative water supply as defined
218 in s. 373.019, and potable reuse projects are eligible for
219 alternative water supply funding. The use of potable reuse water
220 may not be excluded from regional water supply planning under s.
221 373.709.

222 (e) The department and the water management districts shall
223 develop and execute, by December 31, 2023, a memorandum of
224 agreement providing for the procedural requirements of a
225 coordinated review of all permits associated with the
226 construction and operation of an indirect potable reuse project.
227 The memorandum of agreement must provide that the coordinated
228 review will occur only if requested by a permittee. The purpose
229 of the coordinated review is to share information, avoid the
230 redundancy of information requested from the permittee, and
231 ensure consistency in the permit for the protection of the
232 public health and the environment.

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233 (f) To encourage investment in the development of potable
234 reuse projects by private entities, a potable reuse project
235 developed as a qualifying project pursuant to s. 255.065 is:

236 1. Beginning January 1, 2026, eligible for expedited
237 permitting under s. 403.973.

238 2. Consistent with s. 373.707, eligible for priority
239 funding in the same manner as other alternative water supply
240 projects from the Drinking Water State Revolving Fund, under the
241 Water Protection and Sustainability Program, and for water
242 management district cooperative funding.

243 (g) This subsection is not intended and may not be
244 construed to supersede s. 373.250(3).

245 Section 2. Section 403.892, Florida Statutes, is created to
246 read:

247 403.892 Incentives for the use of graywater technologies.-

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

249 (a) "Developer" has the same meaning as in s. 380.031(2).

250 (b) "Graywater" has the same meaning as in s.
251 381.0065(2) (e).

252 (2) To promote the beneficial reuse of water in this state,
253 a county, municipality, or special district shall:

254 (a) Authorize the use of residential graywater technologies
255 in their respective jurisdictions which meet the requirements of
256 this section, the Florida Building Code, and applicable
257 requirements of the Florida Department of Health and have
258 received all applicable regulatory permits or authorizations;
259 and

260 (b) Provide density or intensity bonuses to the developer
261 or homebuilder to fully offset the capital costs of the

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262 technology and installation costs.

263 (3) To qualify for the incentives, the developer or
264 homebuilder must certify to the applicable government entity as
265 part of its application for development approval or amendment of
266 a development order that all of the following conditions are
267 met:

268 (a) The proposed or existing development has at least 25
269 single-family residential homes that are either detached or
270 multifamily dwellings. This paragraph does not apply to
271 multifamily projects over five stories in height.

272 (b) Each single-family residential home or residence will
273 have its own residential graywater system that is dedicated for
274 its use.

275 (c) It has submitted a manufacturer's warranty or data
276 providing reasonable assurance that the residential graywater
277 system will function as designed and includes an estimate of
278 anticipated potable water savings for each system. A submission
279 of the manufacturer's warranty or data from a building code
280 official, government entity, or research institute that has
281 monitored or measured the residential graywater system that is
282 proposed to be installed for such development shall be accepted
283 as reasonable assurance and no further information or assurance
284 is needed.

285 (d) The required maintenance of the graywater system will
286 be the responsibility of the residential homeowner or
287 manufacturer.

288 (e) An operation and maintenance manual for the graywater
289 system will be supplied to the initial homeowner of each home.
290 The manual shall provide a method of contacting the installer or

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291 manufacturer and shall include directions to the residential
292 homeowner that the manual shall remain with the residence
293 throughout the life cycle of the system.

294 (4) If the requirements of subsection (3) have been met,
295 the county or municipality must include the incentives provided
296 for in subsection (2) when it approves the development or
297 amendment of a development order. The approval must also provide
298 for the process that the developer or homebuilder will follow to
299 verify that such systems have been purchased. Proof of purchase
300 must be provided within 180 days from the issuance of a
301 certificate of occupancy for single-family residential homes
302 that are either detached or multifamily projects under five
303 stories.

304 (5) The installation of residential graywater systems in a
305 county or municipality in accordance with this section shall
306 qualify as a water conservation measure in a public water
307 utility's water conservation plan pursuant to s. 373.227. The
308 efficiency of such measures shall be commensurate with the
309 amount of potable water savings estimated for each system
310 provided by the developer or homebuilder pursuant to paragraph
311 (3) (c).

312 Section 3. To further promote the reuse of reclaimed water
313 for irrigation purposes, the rules that apply when reclaimed
314 water is injected into a receiving groundwater that has 1,000 to
315 3,000 mg/L total dissolved solids are applicable to reclaimed
316 water aquifer storage and recovery wells injecting into a
317 receiving groundwater of less than 1,000 mg/L total dissolved
318 solids if the applicant demonstrates that it is injecting into a
319 confined aquifer, that there are no potable water supply wells

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320 within 3,500 feet of the aquifer storage and recovery wells, and
321 that it has implemented institutional controls to prevent the
322 future construction of potable water supply wells within 3,500
323 feet of the aquifer storage and recovery wells. This section may
324 not be construed to exempt the reclaimed water aquifer storage
325 and recovery wells from requirements that prohibit the causing
326 of or contribution to violations of water quality standards in
327 surface waters, including groundwater discharges that flow by
328 interflow and affect water quality in surface waters.

329 Section 4. The Legislature determines and declares that
330 this act fulfills an important state interest.

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



2021 AGENCY LEGISLATIVE BILL ANALYSIS

AGENCY: Florida Fish and Wildlife Conservation Commission

BILL INFORMATION

BILL NUMBER:	<u>Senate Bill (SB) 524</u>
BILL TITLE:	<u>Fish and Wildlife Conservation Commission Trust Funds</u>
BILL SPONSOR:	<u>Senator Ed Hooper</u>
EFFECTIVE DATE:	<u>July 1, 2021</u>

COMMITTEES OF REFERENCE

1) Environment and Natural Resources
2) Appropriations Subcommittee on Agriculture, Environment, and General Government
3) Appropriations
4) Click or tap here to enter text.
5) Click or tap here to enter text.

CURRENT COMMITTEE

Environment and Natural Resources

SIMILAR BILLS

BILL NUMBER:	Click or tap here to enter text.
SPONSOR:	Click or tap here to enter text.

PREVIOUS LEGISLATION

BILL NUMBER:	N/A
SPONSOR:	Click or tap here to enter text.
YEAR:	Click or tap here to enter text.
LAST ACTION:	Click or tap here to enter text.

IDENTICAL BILLS

BILL NUMBER:	House Bill (HB) 323
SPONSOR:	Representative Brad Drake

Is this bill part of an agency package?

Yes.

BILL ANALYSIS INFORMATION

DATE OF ANALYSIS:	January 22, 2021
LEAD AGENCY ANALYST:	Charlotte Jerrett
ADDITIONAL ANALYST(S):	N/A
LEGAL ANALYST:	Emily Norton
FISCAL ANALYST:	Charlotte Jerrett

POLICY ANALYSIS

1. EXECUTIVE SUMMARY

SB 524 would provide for the addition of language to (1) explicitly allow the Agency to invest/re-invest proceeds and cash balances in certain trust funds, and (2) to authorize the purpose of specific trust funds to include administrative costs of the agency.

2. SUBSTANTIVE BILL ANALYSIS

1. PRESENT SITUATION:

The Commission operates from 13 discrete trust funds and currently invests proceeds and cash balances from those funds, in accordance with financial provisions outlined in c. 215, Florida Statutes. In addition, The Commission funds have historically contributed to the administrative costs of the agency; The Commission has recently become aware that authorizing language is explicitly needed in order to continue those practices in certain trust funds.

2. EFFECT OF THE BILL:

- (1) The trust funds listed below require modifying language to allow supporting revenues and cash balances to be invested/re-invested.

379.205, F.S. - Florida Panther Research and Management Trust Fund
 379.208, F.S. - Marine Resources Conservation Trust Fund
 379.209, F.S. - Non-Game Wildlife Trust Fund
 379.211, F.S. - State Game Trust Fund
 379.213, F.S. - Save the Manatee Trust Fund
 379.214, F.S. - Invasive Plant Control Trust Fund

- (2) Additionally, the trust funds listed below require modifying language to allow supporting revenues to be used for agency administrative costs.

379.205, F.S. - Florida Panther Research and Management Trust Fund
 379.213, F.S. - Save the Manatee Trust Fund
 379.214, F.S. - Invasive Plant Control Trust Fund

3. DOES THE BILL DIRECT OR ALLOW THE AGENCY/BOARD/COMMISSION/DEPARTMENT TO DEVELOP, ADOPT, OR ELIMINATE RULES, REGULATIONS, POLICIES, OR PROCEDURES? Y N

If yes, explain:	Procedures are already in place for the investment of cash balances and for determining the proportionate share of agency administrative costs.
Is the change consistent with the agency's core mission?	Y <input checked="" type="checkbox"/> N <input type="checkbox"/>
Rule(s) impacted (provide references to F.A.C., etc.):	N/A

4. WHAT IS THE POSITION OF AFFECTED CITIZENS OR STAKEHOLDER GROUPS?

Proponents and summary of position:	The Commission has made a commitment to the Department of Financial Services to correct the deficiency with authorizing language to
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	provide for investing/re-investing proceeds and available cash balances.
Opponents and summary of position:	There are no known opponents of this bill.

5. ARE THERE ANY REPORTS OR STUDIES REQUIRED BY THIS BILL?Y N

If yes, provide a description:	N/A
Date Due:	N/A
Bill Section Number(s):	N/A

6. ARE THERE ANY NEW GUBERNATORIAL APPOINTMENTS OR CHANGES TO EXISTING BOARDS, TASK FORCES, COUNCILS, COMMISSIONS, ETC. REQUIRED BY THIS BILL?Y N

Board:	N/A
Board Purpose:	N/A
Who Appoints:	N/A
Changes:	N/A
Bill Section Number(s):	N/A

FISCAL ANALYSIS

1. DOES THE BILL HAVE A FISCAL IMPACT TO LOCAL GOVERNMENT?Y N

Revenues:	N/A
Expenditures:	N/A
Does the legislation increase local taxes or fees? If yes, explain.	N/A
If yes, does the legislation provide for a local referendum or local governing body public vote prior to implementation of the tax or fee increase?	N/A

2. DOES THE BILL HAVE A FISCAL IMPACT TO STATE GOVERNMENT?Y N

Revenues:	<p>The annual projected impacts (based on the most recent three year average interest earnings) are as follows:</p> <p>Florida Panther Research/Management Trust Fund - \$31,000</p>
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	Marine Resources Conservation Trust Fund - \$278,300 Non-Game Wildlife Trust Fund - \$100,000 State Game Trust Fund - \$331,250 Save the Manatee Trust Fund - \$11,800 Invasive Plant Control Trust Fund - \$137,800
Expenditures:	None.
Does the legislation contain a State Government appropriation?	No.
If yes, was this appropriated last year?	N/A

3. DOES THE BILL HAVE A FISCAL IMPACT TO THE PRIVATE SECTOR?Y N

Revenues:	N/A
Expenditures:	N/A
Other:	N/A

4. DOES THE BILL INCREASE OR DECREASE TAXES, FEES, OR FINES?Y N

If yes, explain impact.	N/A
Bill Section Number:	N/A

TECHNOLOGY IMPACT**1. DOES THE BILL IMPACT THE AGENCY'S TECHNOLOGY SYSTEMS (I.E. IT SUPPORT, LICENSING SOFTWARE, DATA STORAGE, ETC.)?**Y N

If yes, describe the anticipated impact to the agency including any fiscal impact.	N/A
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FEDERAL IMPACT**1. DOES THE BILL HAVE A FEDERAL IMPACT (I.E. FEDERAL COMPLIANCE, FEDERAL FUNDING, FEDERAL AGENCY INVOLVEMENT, ETC.)?**Y N

If yes, describe the anticipated impact including any fiscal impact.	N/A
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ADDITIONAL COMMENTS

N/A

LEGAL - GENERAL COUNSEL'S OFFICE REVIEW

Issues/concerns/comments:	N/A
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The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL: SB 524

INTRODUCER: Senator Hooper

SUBJECT: Fish and Wildlife Conservation Commission Trust Funds

DATE: January 29, 2021

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Anderson	Rogers	EN	Favorable
2.			AEG	
3.			AP	

I. Summary:

SB 524 revises several of the Fish and Wildlife Conservation Commission’s (FWC) trust funds to allow the agency to use trust fund revenues for administrative costs and to specifically authorize the investment of funds within the State Treasury. The bill provides explicit statutory authorization to codify FWC’s existing practices.

The following trust funds are amended to allow for the use of trust fund revenues for administrative costs:

- Florida Panther Research and Management Trust Fund;
- Save the Manatee Trust Fund; and
- Invasive Plant Control Trust Fund.

The following trust funds are amended to authorize the investment of funds into the State Treasury:

- Florida Panther Research and Management Trust Fund;
- Marine Resources Conservation Trust Fund;
- Nongame Wildlife Trust Fund;
- State Game Trust Fund;
- Save the Manatee Trust Fund; and
- Invasive Plant Control Trust Fund.

II. Present Situation:

Fish and Wildlife Conservation Commission (FWC)

FWC is responsible for regulating, managing, protecting, and conserving the state's fish and wildlife resources.¹ FWC is governed by a board of seven members who are appointed by the Governor and confirmed by the Florida Senate to five-year terms.² Under Article IV, Section 9 of the Florida Constitution, FWC is granted the authority to exercise the regulatory and executive powers of the state with respect to wild animal life, fresh water aquatic life, and marine life. The Legislature may enact laws that aid FWC in its exercise of regulatory functions and executive powers in the areas of planning, budgeting, personnel management, and purchasing.³

FWC administers 13 trust funds that serve to support their mission. FWC currently invests proceeds and cash balances from the funds in accordance with ch. 215, F.S. According to its agency bill analysis, FWC has become aware that authorizing language is explicitly needed to continue that practice in certain trust funds.⁴ FWC stated in its agency bill analysis that it has made a commitment to the Department of Financial Services (DFS) to correct the deficiency with authorizing language in those trust funds to provide for the investment and reinvestment of proceeds.⁵

Additionally, trust funds have historically been used by FWC to contribute to the agency's administrative costs. According to its agency bill analysis, certain trust funds require modifying language to allow supporting revenues to be used for agency administrative costs.⁶

FWC indicated that it already has procedures in place for the investment of cash balances and the determination of the proportionate share of agency administrative costs.⁷

Trust Funds

Florida Panther Research and Management Trust Fund

The Florida Panther Research and Management Trust Fund may be used exclusively for the following purposes:

- Management and protection of existing Florida panther populations;
- Public education concerning the value of the panther and the necessity for panther management;
- Reestablishment of Florida panthers into areas of suitable habitat; and
- Promotion and marketing of the Florida panther license plate.⁸

¹ FLA. CONST. art. IV, s. 9.

² *Id.*; see also section 379.102(1), F.S.

³ FLA. CONST. art. IV, s. 9.

⁴ Fish and Wildlife Conservation Commission (FWC), *Agency Bill Analysis for SB 524* (Jan. 22, 2021)(on file with the Committee on Environment and Natural Resources).

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

⁸ Section 379.205, F.S.

Marine Resources Conservation Trust Fund

The Marine Resources Conservation Trust Fund is a depository for funds from various marine-related and boating-related activities and is allowed to be administered for the purposes of funding the following:

- Marine research;
- Fishery enhancement;
- Marine law enforcement;
- Administration of licensing programs for recreational fishing, saltwater products sales, and related information and education activities;
- Operations of FWC;
- Titling and registration of vessels;
- Marine turtle protection, research, and recovery activities from revenues that are specifically credited to the trust fund for these purposes;
- Rehabilitation of oyster harvesting areas from which special oyster surcharge fees are collected;
- Boating research, boating-related programs and activities, and law enforcement on state waters;
- The stone crab trap reduction program, the blue crab effort management program, the spiny lobster trap certificate program, and the trap retrieval program.⁹

Nongame Wildlife Trust Fund

The Nongame Wildlife Trust Fund is allowed to be used for the following purposes:

- Documentation of population trends of nongame wildlife and assessment of wildlife habitat;
- Establishment of effective conservation, management, and regulatory programs for nongame wildlife of the state; and
- Public education programs.¹⁰

State Game Trust Fund

The State Game Trust Fund comes from the administration of laws and regulations pertaining to birds, game, fur-bearing animals, freshwater fish, reptiles, and amphibians, and any other funds specifically provided for such purposes.¹¹ It is used for recreational boating activities and freshwater fisheries management and research, including funding local projects in counties where there are unmet needs for boating-related activities and where sufficient financial resources are unavailable.¹²

Save the Manatee Trust Fund

The Save the Manatee Trust Fund¹³ is used to fund:

- A scientific census study of the manatee population in the state, which is conducted annually by FWC and is used in the evaluation and development of manatee protection measures;

⁹ Section 379.208(1), F.S.

¹⁰ Section 379.209, F.S.

¹¹ Section 379.211, F.S.

¹² Section 206.606(1)(b), F.S.

¹³ Section 379.213, F.S.

- Annual funding of activities of FWC and public and private organizations intended to provide manatee and marine mammal protection and recovery efforts;
- Manufacture and erection of informational and regulatory signs;
- Production, publication, and distribution of educational materials;
- Participation in manatee and marine mammal research programs, including carcass salvage and other programs;
- Programs intended to assist the recovery of the manatee as an endangered species, assist the recovery of the endangered or threatened marine mammals, and prevent the endangerment of other species of marine mammals;
- Other similar programs intended to protect and enhance the recovery of the manatee and other species of marine mammals; and
- Promotion and marketing of the manatee license plate.¹⁴

Invasive Plant Control Trust Fund

The Invasive Plant Control Trust Fund¹⁵ is used for control, eradication, and regulation of aquatic weeds¹⁶ and nonnative, upland, invasive plant species on public lands,¹⁷ and research and planning related to these activities.

III. Effect of Proposed Changes:

Section 1 amends s. 379.205, F.S., to authorize the Fish and Wildlife Conservation Commission (FWC) to spend money from the interest derived from its investments and reinvestments in the Florida Panther Research and Management Trust Fund. The bill allows FWC to use revenues from the trust fund for FWC administrative costs, in addition to currently allowed purposes.

Section 2 amends s. 379.208, F.S., to authorize FWC to invest and reinvest the funds and interest derived from the Marine Resources Conservation Trust Fund.

Section 3 amends s. 379.209, F.S., to authorize FWC to invest and reinvest the funds and interest derived from the Nongame Wildlife Trust Fund.

Section 4 amends s. 379.211, F.S., to authorize FWC to use revenues from the interest derived from its investments and reinvestments in the State Game Trust Fund.

Section 5 amends s. 379.213, F.S., to authorize FWC to invest and reinvest the funds and interest derived from the Save the Manatee Trust Fund.

Section 6 amends s. 379.08058, F.S., to authorize FWC to use funds from the manatee license plate annual use fee, which are deposited into the Save the Manatee Trust Fund, for FWC administrative costs, in addition to currently allowed purposes.

¹⁴ Section 379.2431(4), F.S.

¹⁵ Section 379.214, F.S.

¹⁶ Sections 206.606(1)(a), 328.76(1), 369.20, and 369.22, F.S.

¹⁷ Section 369.252, F.S.

Section 7 amends s. 379.214, F.S., to authorize FWC to invest and reinvest the funds and interest derived from the Invasive Plant Control Trust Fund. The bill allows FWC to use revenues from the trust fund for FWC administrative costs, in addition to currently allowed purposes.

Section 8 provides that the bill will take effect on July 1, 2021.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

According to FWC's agency bill analysis, the annual projected fiscal impact (based on the average interest earnings from the most recent three year period) to the funds that are being revised to authorize the investment of funds into the State Treasury is as follows:

- Florida Panther Research and Management Trust Fund: \$31,000
- Marine Resources Conservation Trust Fund: \$278,300
- Non-Game Wildlife Trust Fund: \$100,000
- State Game Trust Fund: \$331,250
- Save the Manatee Trust Fund: \$11,800

- Invasive Plant Control Trust Fund: \$137,800¹⁸

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: ss. 379.205, 379.208, 379.209, 379.211, 379.213, 320.08058, 379.214.

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

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

None.

B. Amendments:

None.

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

¹⁸ Fish and Wildlife Conservation Commission (FWC), *Agency Bill Analysis for SB 524* (Jan. 22, 2021)(on file with the Committee on Environment and Natural Resources).

By Senator Hooper

16-00650-21

2021524__

1 A bill to be entitled
2 An act relating to Fish and Wildlife Conservation
3 Commission trust funds; amending s. 379.205, F.S.;
4 revising the sources of funds that may be used for
5 specified purposes for the Florida Panther Research
6 and Management Trust Fund; authorizing the funds to be
7 used for commission administrative costs; amending ss.
8 379.208 and 379.209, F.S.; authorizing the commission
9 to invest and reinvest funds and the interest thereof
10 of the Marine Resources Conservation Trust Fund and
11 the Nongame Wildlife Trust Fund, respectively;
12 amending s. 379.211, F.S.; authorizing the commission
13 to invest and reinvest funds and the interest thereof
14 of the State Game Trust Fund; deleting a provision
15 limiting the use of such funds; amending s. 379.213,
16 F.S.; authorizing the commission to invest and
17 reinvest funds and the interest thereof of the Save
18 the Manatee Trust Fund; amending s. 320.08058, F.S.;
19 revising the authorized uses for funds of the Save the
20 Manatee Trust Fund collected from sales of the manatee
21 license plates to include administrative costs;
22 revising the use of such funds for the marketing of
23 the license plates; amending s. 379.214, F.S.;
24 authorizing the commission to invest and reinvest the
25 funds and the interest thereof of the Invasive Plant
26 Control Trust Fund; authorizing such funds to be used
27 for commission administrative costs; providing an
28 effective date.
29

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

31
32 Section 1. Subsection (2) of section 379.205, Florida
33 Statutes, is amended to read:

34 379.205 Florida Panther Research and Management Trust
35 Fund.—

36 (2) The commission shall spend money from the fund and all
37 interest derived from its investments and reinvestments ~~shall be~~
38 ~~spent~~ only for the following purposes:

39 (a) To manage and protect existing Florida panther
40 populations by increasing panther food sources where food is a
41 limiting factor, determining conflicts between public use and
42 panther survival, maintaining sufficient genetic variability in
43 existing populations, and undertaking management and enforcement
44 activities that protect panther habitat.

45 (b) To educate the public concerning the value of the
46 panther and the necessity for panther management.

47 (c) To reestablish Florida panthers into areas of suitable
48 habitat, where feasible, by assessing the necessity of a captive
49 breeding program for purposes of reintroduction of the panthers
50 into the suitable habitat; selecting potential sites for
51 reintroduction and investigating associated human sociological
52 aspects; and assessing the potential for panther habitat
53 acquisition.

54 (d) For Fish and Wildlife Conservation Commission
55 administrative costs and for the promotion ~~to promote~~ and
56 marketing of ~~market~~ the Florida panther license plate as
57 authorized under s. 320.08058.

58 Section 2. Subsection (1) of section 379.208, Florida

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59 Statutes, is amended to read:

60 379.208 Marine Resources Conservation Trust Fund;
61 purposes.—

62 (1) The Marine Resources Conservation Trust Fund within the
63 Fish and Wildlife Conservation Commission shall serve as a
64 broad-based depository for funds from various marine-related and
65 boating-related activities. The commission may invest and
66 reinvest the funds and the interest thereof of the trust fund
67 and shall administer the trust fund ~~be administered by the~~
68 ~~commission~~ for the purposes of:

69 (a) Funding for marine research.

70 (b) Funding for fishery enhancement, including, but not
71 limited to, fishery statistics development, artificial reefs,
72 and fish hatcheries.

73 (c) Funding for marine law enforcement.

74 (d) Funding for administration of licensing programs for
75 recreational fishing, saltwater products sales, and related
76 information and education activities.

77 (e) Funding for the operations of the Fish and Wildlife
78 Conservation Commission.

79 (f) Funding for titling and registration of vessels.

80 (g) Funding for marine turtle protection, research, and
81 recovery activities from revenues that are specifically credited
82 to the trust fund for these purposes.

83 (h) Funding activities for rehabilitation of oyster
84 harvesting areas from which special oyster surcharge fees are
85 collected, including relaying and transplanting live oysters.

86 (i) Funding for boating research, boating-related programs
87 and activities, and for law enforcement on state waters.

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88 (j) Funding for the stone crab trap reduction program under
89 s. 379.365, the blue crab effort management program under s.
90 379.366, the spiny lobster trap certificate program under s.
91 379.3671, and the trap retrieval program under s. 379.2424.

92 Section 3. Paragraph (a) of subsection (2) of section
93 379.209, Florida Statutes, is amended to read:

94 379.209 Nongame Wildlife Trust Fund.—

95 (2) (a) There is established within the Fish and Wildlife
96 Conservation Commission the Nongame Wildlife Trust Fund. The
97 fund shall be credited with moneys collected pursuant to ss.
98 319.32(3) and 320.02(8). Additional funds may be provided from
99 legislative appropriations and by donations from interested
100 individuals and organizations. The commission may invest and
101 reinvest the funds and the interest thereof of the Nongame
102 Wildlife Trust Fund. The commission shall designate an
103 identifiable unit to administer the trust fund.

104 Section 4. Section 379.211, Florida Statutes, is amended to
105 read:

106 379.211 State Game Trust Fund.—The funds resulting from the
107 operation of the commission and from the administration of the
108 laws and regulations pertaining to birds, game, fur-bearing
109 animals, freshwater fish, reptiles, and amphibians, together
110 with any other funds specifically provided for such purposes
111 shall constitute the State Game Trust Fund and shall be used by
112 the commission as it shall deem fit, including the investment
113 and reinvestment of the funds and the interest thereof, for the
114 purpose of ~~in~~ carrying out this section. ~~The provisions hereof~~
115 ~~and for no other purposes, except that~~ annual use fees deposited
116 into the trust fund from the sale of the Largemouth Bass license

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117 plate may be expended for the purposes provided under s.
118 320.08058(17). The commission may not obligate itself beyond the
119 current resources of the State Game Trust Fund unless
120 specifically so authorized by the Legislature.

121 Section 5. Subsection (2) of section 379.213, Florida
122 Statutes, is amended to read:

123 379.213 Save the Manatee Trust Fund.—

124 (2) The commission may invest and reinvest the funds and
125 the interest thereof of the Save the Manatee Trust Fund. Funds
126 to be credited to and uses of the trust fund shall be
127 administered in accordance with ~~the provisions of~~ ss. 320.08058,
128 328.66, 328.72, 328.74, 328.76, and 379.2431. The Fish and
129 Wildlife Conservation Commission may receive donations for
130 deposit into the Save the Manatee Trust Fund.

131 Section 6. Paragraphs (b) and (c) of subsection (1) of
132 section 320.08058, Florida Statutes, are amended to read:

133 320.08058 Specialty license plates.—

134 (1) MANATEE LICENSE PLATES.—

135 (b) The manatee license plate annual use fee must be
136 deposited into the Save the Manatee Trust Fund, created within
137 the Fish and Wildlife Conservation Commission, and may ~~shall~~ be
138 used only for commission administrative costs and the purposes
139 specified in s. 379.2431(4).

140 (c) Notwithstanding paragraph (b), up to 10 percent of the
141 annual use fee deposited in the Save the Manatee Trust Fund from
142 the sale of the manatee license plate may be used to promote and
143 market the license plate ~~issued by the Department of Highway~~
144 ~~Safety and Motor Vehicles after June 30, 2007.~~

145 Section 7. Subsection (2) of section 379.214, Florida

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146 Statutes, is amended to read:

147 379.214 Invasive Plant Control Trust Fund.—

148 (2) The commission may invest and reinvest the funds and
149 the interest thereof of the Invasive Plant Control Trust Fund.

150 Funds to be credited to and uses of the trust fund shall be
151 administered in accordance with ~~the provisions of~~ ss. 206.606,
152 328.76, 369.20, 369.22, 369.252, and 379.502 and may also be
153 used for commission administrative costs.

154 Section 8. This act shall take effect July 1, 2021.

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL: SB 578

INTRODUCER: Senator Wright

SUBJECT: Marina Evacuations

DATE: January 29, 2021

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Anderson	Rogers	EN	Favorable
2.			TR	
3.			RC	

I. Summary:

SB 578 prohibits, upon the issuance of a hurricane watch that affects the waters of marinas located in a deepwater seaport, vessels under 500 gross tons from remaining in the waters of such marinas that have been deemed not suitable for refuge during a hurricane. The bill requires that vessel owners promptly remove their vessels from the waterways upon issuance of an evacuation order by the deepwater seaport.

If the Coast Guard Captain of the Port sets the port condition to “Yankee”¹ and a vessel owner has failed to remove his or her vessel from the waterway, a marina owner, operator, employee, or agent, is required to remove the vessel, if reasonable, from its slip. The marina owner may charge the vessel owner a reasonable fee for the service of removing the vessel.

The bill provides that a marina owner, operator, employee, or agent may not be held liable for any damage incurred to the vessel from a hurricane and is held harmless from removing the vessel from the waterways. However, the bill does not provide immunity to the marina owner, operator, employee, or agent for any damage caused by intentional acts or negligence when removing a vessel.

The bill provides that after a watch has been issued, if an owner or operator has not removed the vessel pursuant to an order from the seaport, the owner or operator may be subject to a fine, in an amount not exceeding three times the cost associated with removing the vessel from the waterway.

The bill has an effective date of July 1, 2021.

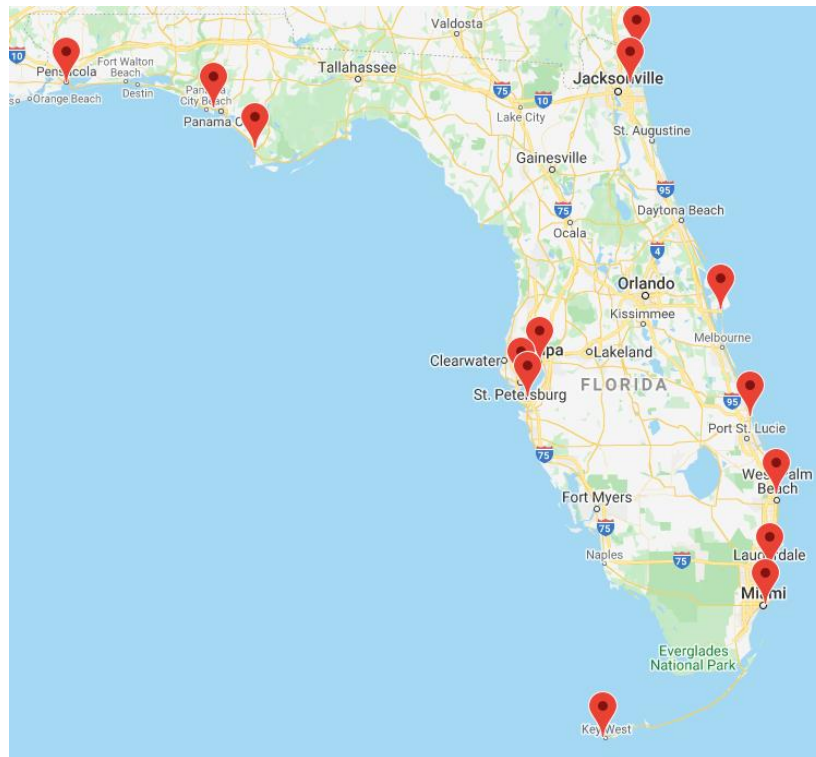
¹ Gale force winds are predicted to arrive within 24 hours, the port is closed to inbound traffic, and vessel traffic control measures are in effect on vessel movements within the port.

II. Present Situation:

Deepwater Ports in Florida

Under Florida law, a “port” means a port authority or district.² Ports are created by and given authority under general or special law. Each port, in agreement with the United States Coast Guard (Coast Guard), state pilots, and other ports in its operating port area, is required to adopt guidelines for minimum bottom clearance for each berth and channel, for the movement of vessels, and for radio communications of vessel traffic for all commercial vessels entering and leaving its harbor channels.³

There are 14 deepwater seaports in Florida, indicated in the map below:⁴



Port Canaveral

One example of a deepwater seaport impacted by the bill is Port Canaveral, which was dedicated on November 4, 1953.⁵ It is a gateway for Central Florida and the world’s second busiest cruise port.⁶ Annually, Port Canaveral moves nearly 4 million tons of cargo and sees 4 million cruise

² Section 313.21, F.S.; *see also* s. 315.02, F.S. “Port authority” means a port authority in Florida created by or pursuant to the provisions of any general or special law or any district or board of county commissioners acting as a port authority under or pursuant to the provisions of any general or special law. “Port district” means any district created by or pursuant to the provisions of any general or special law and authorized to own or operate any port facilities.

³ Section 313.23, F.S.

⁴ Florida Ports Council, *Seaports*, <https://flaports.org/seaports/> (last visited Jan. 22, 2021).

⁵ Port Canaveral, *History*, <https://www.portcanaveral.com/About/History> (last visited Jan. 22, 2021).

⁶ Port Canaveral, *Port and Cruise Facts*, <https://www.portcanaveral.com/Cruise/Port-Cruise-Facts> (last visited Jan. 22, 2021).

passengers.⁷ It also houses United States Army, Navy, and Air Force facilities.⁸ Port Canaveral is a key part of Florida's gasoline supply system. Gasoline and other petroleum products are primarily delivered by marine tankers and barges to the state's ports, including Port Canaveral, where the products are offloaded and later stored and distributed around the state.⁹ Additionally, 200 small businesses ranging from marinas, restaurants, retail, and charter boats currently lease and operate at Port Canaveral.¹⁰

In fiscal year 2019, Port Canaveral reported \$110 million in revenues, the highest in its history.¹¹

Canaveral Port Authority

The Canaveral Port District (Port District) was created by the Legislature by special act in 1953, as amended in 2014.¹² It is an independent special taxing district and political subdivision of the state.¹³ The Canaveral Port Authority (Port Authority) has the power to make rules and regulations for the promotion and conduct of navigation, commerce, and industry in the Port District.¹⁴ The Port Authority also has the power to make rules and regulations governing the docking, storing, mooring, and anchoring of vessels within the Port District and to remove all obstacles to navigation, commerce, and industry in the waters of the port.¹⁵

The Port Canaveral Tariff No. 16 provides the current rates, rules, and regulations governing its marine and port services.¹⁶ Anyone who uses the waterways and facilities under the jurisdiction of the Port Authority consents to the terms and conditions of the tariff.¹⁷ According to the tariff, Port Canaveral is not a suitable refuge during hurricanes or tropical storms. All Port Canaveral waterway tenants and users must comply with evacuation orders and storm preparation directives given by the Port Authority, the Coast Guard, the Brevard County Sheriff's Office, and Canaveral Fire Rescue.¹⁸

The tariff specifically states that recreational and commercial vessels under 500 gross tons are not eligible to remain in Port and must be removed from the waters of the Port, at the expense of the vessel owner or operator, before hurricane condition Zulu is set by the Coast Guard (see discussion below of Hurricane Season Port Conditions and Categories).¹⁹ The Port Authority is

⁷ Port Canaveral, *History*, <https://www.portcanaveral.com/About/History> (last visited Jan. 22, 2021).

⁸ Port Canaveral, *About Us*, <https://www.portcanaveral.com/About/> (last visited Jan. 22, 2021).

⁹ Office of Program Policy Analysis and Government Accountability, Florida Legislature, *Feasibility Analysis for Petroleum Distribution Centers*, 11 (Nov. 29, 2018), available at <https://oppaga.fl.gov/Documents/Reports/18-PETRO.pdf>.

¹⁰ Port Canaveral, *About Us*, <https://www.portcanaveral.com/About/> (last visited Jan. 22, 2021).

¹¹ Florida Ports Council, *Port Canaveral*, <https://flaports.org/ports/port-canaveral/> (last visited Jan. 22, 2021).

¹² Ch. 2014-241, Laws of Fla. Each special district in existence at the time was required to submit to the Legislature a draft codified charter so that its special acts could be codified into a single act for reenactment by the Legislature.

¹³ Section 189.403(1), F.S., defines a "special district" as a confined local government unit established for a special purpose. The public policy intent of special districts is to provide private and public sectors an alternative governing method to "manage, own, operate, construct and finance basic capital infrastructure, facilities and services."

¹⁴ Art. IV, s. 9 of the Canaveral Port Authority Charter, as amended by Ch. 2014-241, Laws of Fla.

¹⁵ Art. IV, s. 10 of the Canaveral Port Authority Charter, as amended by Ch. 2014-241, Laws of Fla.

¹⁶ Canaveral Port Authority, *Tariff No. 16 – Governing Rates, Rules, & Regulations of the Marine and Port Services*, Rule 520 (Oct. 1, 2019), available at [https://www.portcanaveral.com/Cargo/Port-Tariff/CPA-Tariff-16-FY21-FINAL-\(1\).aspx](https://www.portcanaveral.com/Cargo/Port-Tariff/CPA-Tariff-16-FY21-FINAL-(1).aspx).

¹⁷ *Id.*, Rule 100.

¹⁸ *Id.*, Rule 520.

¹⁹ *Id.*

authorized to issue penalties to vessel owners or operators in accordance with statutory provisions (see discussion below of Vessel Movements and Penalties for Delay).²⁰

Vessel Movements and Penalties for Delay

Pursuant to Florida law, each port may regulate vessel movements within its jurisdiction, whether involving public or private facilities or areas, by:

- Scheduling vessels for use of berths, anchorages, or other facilities at the port.
- Ordering and enforcing a vessel, at its own expense and risk, to vacate or change position at a berth, anchorage, or facility, whether public or private, in order to facilitate navigation, commerce, protection of other vessels or property, or dredging of channels or berths.
- Designating port facilities for the loading or discharging of vessels.
- Assigning berths at wharves for arriving vessels.²¹

Ports are authorized to establish fees and compensation for the services regulating vessel movements provided by the port.²²

A port may impose and collect a penalty from a vessel that unnecessarily delays in moving under an order to vacate or change position. This penalty may not exceed \$1,000 per hour or fraction thereof, plus 150 percent of the demurrage costs incurred by a waiting vessel, until the order is complied with.²³

Marinas

A marina is a licensed commercial facility that provides secured public moorings or dry storage for vessels on a leased basis.²⁴ There are five marinas within Port Canaveral, with approximately 260 wet slips hosted on Port property for recreational vessels under 500 gross tons.²⁵ This number does not include boats in marina storage within Port property. The map below shows Port Canaveral, including its marina district.²⁶

²⁰ Section 313.22(3), F.S.

²¹ Section 313.22(1), F.S.

²² Section 313.22(2), F.S.

²³ Section 313.22(3), F.S.

²⁴ Section 327.02(25), F.S.

²⁵ Email from Caitlin Lewis, Government Relations Manager, Canaveral Port Authority, to Senate Environment and Natural Resources Committee (Jan. 22, 2020), available at http://www.flsenate.gov/Committees/Show/EN/MeetingPacket/4857/8671_MeetingPacket_4857.03.20.pdf on page 218-219 (last visited Jan. 22, 2021).

²⁶ Port Canaveral, *Port and Cruise Facts*, <https://www.portcanaveral.com/Cruise/Port-Cruise-Facts> (last visited Jan. 22, 2021).



Marina Evacuations

Storm Condition Effects on Vessels and Marinas

Hurricanes and storm conditions can include high winds, storm surges, wave action, and heavy rainfall.²⁷ These conditions can cause catastrophic damage to marinas and vessels. Vessels that are left in a marina during hurricane and storm conditions can lead to problems in the port, including the inability to secure docks, causing potential damage to infrastructure such as piers, and other harm to persons or property. Weather during a storm event can force a vessel into an obstruction, propel objects into the vessel, or sink or damage a boat.²⁸ A moored vessel can repeatedly collide with a stationary dock, leading to damage to both the vessel and dock. Storm surges can even lift entire floating docks above their pilings or knock boats off their cradles.²⁹

Vessels left in the harbor can also pose navigational issues and cause problems and delays in clearing channels. However, boater preparedness education and preparation can reduce the loss of property for both the vessel owner and others.³⁰ To this end, marinas and ports have an interest in requiring vessel owners to secure their vessels during a storm to prevent damage to persons or property.

Safe Haven

Some marina docking contracts contain “safe haven” or “hurricane” clauses. These clauses provide that, when a hurricane watch is issued, boat owners shall immediately remove their vessels and all personal property from the marina and seek safe haven somewhere else. Failure to comply with this requirement, according to the clauses, will result in the boat owner being liable

²⁷ UF/IFAS, *Hurricane Manual for Marine Interest*, available at [https://sfyl.ifas.ufl.edu/media/sfylifasufledu/miami-dade/documents/disaster-preparation/hurricane-and-disaster/HurricaneManual1-\(2\).pdf](https://sfyl.ifas.ufl.edu/media/sfylifasufledu/miami-dade/documents/disaster-preparation/hurricane-and-disaster/HurricaneManual1-(2).pdf).

²⁸ *Id.*; Florida Keys National Marine Sanctuary, *Protect your Boat in a Hurricane: Making a Plan (Part I)*, <https://floridakeys.noaa.gov/whatsnew/around/2015/boathurricane1.html> (last visited Jan. 22, 2021).

²⁹ *Id.*

³⁰ UF/IFAS, *Hurricane Manual for Marine Interest*, available at [https://sfyl.ifas.ufl.edu/media/sfylifasufledu/miami-dade/documents/disaster-preparation/hurricane-and-disaster/HurricaneManual1-\(2\).pdf](https://sfyl.ifas.ufl.edu/media/sfylifasufledu/miami-dade/documents/disaster-preparation/hurricane-and-disaster/HurricaneManual1-(2).pdf).

for all damage to docks, piers, other vessels, or any other property damage directly caused by the owner's vessel or resulting from its presence in the marina.³¹

Marina Evacuation Statute

Florida enacted a law designed to prevent marinas from using safe haven clauses as a basis for recovering their property damage from vessel owners after a hurricane.³² Florida law emphasizes the protection of life over property by prohibiting marinas from requiring vessel owners to remove their vessels from a marina following the issuance of a hurricane watch or warning.³³

However, after a tropical storm or hurricane watch has been issued, a marina owner or operator, or their employee or agent, may take reasonable actions to further secure a vessel within the marina to minimize damage to the vessel and to protect marina property, private property, and the environment.³⁴ The owner or operator may charge a reasonable fee for such services.³⁵ A marina owner may include this in a contractual agreement with a vessel owner.³⁶ Marina owners are not able to be held liable for damage to a vessel from a storm or hurricane, but may be liable for damage due to intentional acts or negligence when removing or securing a vessel.³⁷

Burklow & Associates, Inc. v. Belcher is the only Florida state court decision that specifically mentions Florida's marina evacuation statute.³⁸ A marina owner sued owners of 16 stored vessels for damages allegedly caused by the vessel owners' failure to move their vessels after a hurricane warning was issued as was required by their marina contracts.³⁹ The court upheld the state statute and found that the vessel owners had no duty, contractually or otherwise, to move their vessels following the issuance of a hurricane watch or warning.⁴⁰ The court's analysis pointed to the clear legislative policy "to ensure that protecting lives and safety of vessel owners is placed before interests of protecting property" when a hurricane approaches.⁴¹

Hurricane Season Port Conditions and Categories

Port conditions are set by the Coast Guard Captain of the Port of a sector, or regulated area. Port conditions are explained in the table below.⁴² "Gale force winds" mean winds of 34 knots or 39 miles per hour.

³¹ Mercante, James, *Hurricanes and Act of God: When the Best Defense is a Good Offense*, 18 U.S.F. MAR. L.J. (2006).

³² Ch. 93-211, s. 22, Laws of Fla. (creating s. 327.59, F.S.).

³³ Section 327.59(1), F.S.

³⁴ Ch. 2006-309, s. 2, Laws of Fla. (creating s. 327.59(2), F.S., effective Jul. 1, 2006).

³⁵ *Id.*

³⁶ Ch. 2006-309, s. 2, Laws of Fla. (creating s. 327.59(3), F.S., effective Jul. 1, 2006).

³⁷ Ch. 2006-309, s. 2, Laws of Fla. (creating s. 327.59(4), F.S., effective Jul. 1, 2006).

³⁸ 719 So.2d 31 (Fla. Dist. Ct. App. 1998).

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² 33 C.F.R. s. 165.720; 33 C.F.R. 165.781; see also Brazos Pilots Association, *Hurricane Season Port Conditions and Categories*, available at <http://www.brazospilots.com/Hurricane-Season.pdf>.

Port Condition	Storm Status	Port Status
Whiskey	Gale force winds are predicted to arrive within 72 hours	Open to all commercial and recreational traffic
X-Ray	Gale force winds are predicted to arrive within 48 hours	Open to all commercial and recreational traffic
Yankee	Gale force winds are predicted to arrive within 24 hours	Closed to inbound traffic and vessel traffic control measures in effect on vessel movements within the port
Zulu	Gale force winds are predicted to arrive within 12 hours	Closed to all inbound and outbound traffic
Recovery	The storm is no longer a threat to the area, but response and recovery operations may be in progress to address damage.	Reopened to outbound traffic at completion of port survey; vessel traffic control measures remain in effect on vessel movements within the port

III. Effect of Proposed Changes:

The bill amends s. 327.59, F.S., to prohibit, upon the issuance of a hurricane watch that affects the waters of marinas located in a deepwater seaport, vessels under 500 gross tons from remaining in the waters of such marinas that have been deemed not suitable for refuge during a hurricane.

The bill requires that vessel owners promptly remove their vessels from the waterways upon issuance of an evacuation order by the deepwater seaport. If the Coast Guard Captain of the Port sets the port condition to “Yankee” and a vessel owner has failed to remove his or her vessel from the waterway, a marina owner, operator, employee, or agent, regardless of any existing contractual provisions between the marina owner and vessel owner, is required to remove the vessel, or cause the vessel to be removed, if reasonable, from its slip. The marina owner may charge the vessel owner a reasonable fee for the service of removing the vessel.

The bill provides that a marina owner, operator, employee, or agent may not be held liable for any damage incurred to the vessel from a hurricane and is held harmless from removing the vessel from the waterways. However, the bill does not provide immunity to the marina owner, operator, employee, or agent for any damage caused by intentional acts or negligence when removing a vessel.

The bill provides that after a hurricane watch has been issued, if an owner or operator of a vessel has not removed the vessel pursuant to an order from the seaport, the owner or operator may be subject to a fine, which must be imposed and collected by the deepwater seaport that issued the evacuation order. The amount of the fine may not exceed three times the cost associated with removing the vessel from the waterway.

The bill takes effect on July 1, 2021.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Vessel owners may incur increased costs from moving their vessel pursuant to a movement order, from fees charged by a marina owner for the service of moving a vessel, or due to penalties incurred from noncompliance with a movement order.

C. Government Sector Impact:

Ports may see a positive fiscal impact due to increased collection of penalties from vessel owners that do not comply with a movement order and cost savings associated with prevention of damage to port facilities and infrastructure.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 327.59 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

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

None.

B. Amendments:

None.

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

By Senator Wright

14-00622-21

2021578__

1 A bill to be entitled
2 An act relating to marina evacuations; amending s.
3 327.59, F.S.; prohibiting vessels under a specified
4 weight from remaining in certain marinas that have
5 been deemed unsuitable for refuge during a hurricane
6 after the issuance of a hurricane watch; requiring a
7 marina owner, operator, employee, or agent to remove
8 specified vessels under certain circumstances;
9 providing that such owner, operator, employee, or
10 agent may charge the vessel owner a reasonable fee for
11 such removal and may not be held liable for any
12 damages as a result of such removal; providing
13 construction; providing that the owners or operators
14 of certain vessels may be subject to a fine that the
15 deepwater seaport issuing an evacuation order is
16 required to impose and collect; providing an effective
17 date.

18
19 Be It Enacted by the Legislature of the State of Florida:

20
21 Section 1. Subsection (1) of section 327.59, Florida
22 Statutes, is amended, and subsection (5) is added to that
23 section, to read:

24 327.59 Marina evacuations.—

25 (1) Except as provided in this section ~~After June 1, 1994,~~
26 marinas may not adopt, maintain, or enforce policies pertaining
27 to evacuation of vessels which require vessels to be removed
28 from marinas following the issuance of a hurricane watch or
29 warning, in order to ensure that protecting the lives and safety

14-00622-21

2021578__

30 of vessel owners is placed before interests of protecting
31 property.

32 (5) Upon the issuance of a hurricane watch affecting the
33 waters of marinas located in a deepwater seaport, vessels under
34 500 gross tons may not remain in the waters of such marinas that
35 have been deemed not suitable for refuge during a hurricane.
36 Vessel owners shall promptly remove their vessels from the
37 waterways upon issuance of an evacuation order by the deepwater
38 seaport. If the United States Coast Guard captain of the port
39 sets the port condition to "Yankee" and a vessel owner has
40 failed to remove a vessel from the waterway, the marina owner,
41 operator, employee, or agent, regardless of any existing
42 contractual provisions between the marina owner and the vessel
43 owner, shall remove the vessel, or cause the vessel to be
44 removed, if reasonable, from its slip and may charge the vessel
45 owner a reasonable fee for any such services rendered. A marina
46 owner, operator, employee, or agent may not be held liable for
47 any damage incurred to a vessel from a hurricane and is held
48 harmless as a result of such actions to remove the vessel from
49 the waterways. Nothing in this section may be construed to
50 provide immunity to a marina owner, operator, employee, or agent
51 for any damage caused by intentional acts or negligence when
52 removing a vessel pursuant to this section. After the hurricane
53 watch has been issued, the owner or operator of any vessel that
54 has not been removed from the waterway of the marina, pursuant
55 to an order from the deepwater seaport, may be subject to a
56 fine, which must be imposed and collected by the deepwater
57 seaport that issued the evacuation order if assessed, in an
58 amount not exceeding three times the cost associated with

14-00622-21

2021578__

59 removing the vessel from the waterway.

60 Section 2. This act shall take effect July 1, 2021.

Anderson, Crystal

From: Suddes, Diane
Sent: Friday, January 22, 2021 2:56 PM
To: Anderson, Crystal
Subject: RE: SB 588 Kristin Jacobs Coral Reef Ecosystem Conservation Area

Crystal

Will this work?

Kristin Jacobs was a member of the Florida House of Representatives who built a career centered on climate and resiliency policy. Her journey began as president of her neighborhood Homeowner's Association, and she quickly evolved to become Broward County Commissioner, Mayor of Broward County and was twice chosen by the President of the United States to serve on national task forces dealing with climate resiliency and protecting our oceans.

As a public servant, Kristin demonstrated a keen ability to pull people with differing points of view together and to find common ground even on hot button issues pertaining to climate change, adaption and mitigation. Her collaborative approach has led to landmark initiatives, many of which have been heralded as national models.

Her eagerness to take on daunting challenges led her to be one of the original signers and champions of the Southeast Florida Regional Climate Change Compact which President Obama called the national and international model of bipartisan collaboration.

From: Anderson, Crystal <Anderson.Crystal@flsenate.gov>
Sent: Friday, January 22, 2021 11:04 AM
To: Druckman, Zoraida <DRUCKMAN.ZORAIDA@flsenate.gov>; Gonzalez, Angel <Gonzalez.Angel@flsenate.gov>; Suddes, Diane <SUDDES.DIANE@flsenate.gov>
Subject: SB 588 Kristin Jacobs Coral Reef Ecosystem Conservation Area

Zoraida, Angel, and Diane –

I'm not sure which of you is working on SB 588 (designating the Southeast Florida Coral Reef Ecosystem Conservation Area as the Kristin Jacobs Coral Reef Ecosystem Conservation Area), but could the appropriate legislative assistant please call me? My direct line is 850-487-5366. Thank you!

Crystal D. Anderson
Senior Attorney
Committee on Environment and Natural Resources
Florida Senate
850-487-5372

Anderson, Crystal

From: Sutton, Emily <Emily.Sutton@myfloridahouse.gov>
Sent: Friday, January 22, 2021 1:12 PM
To: Anderson, Crystal
Subject: FW: IN MEMORIAM - REPRESENTATIVE KRISTIN JACOBS

Hi, Crystal –

It was nice speaking with you! Here is the memo that was sent out from the Speaker's Office in regards to the passing of former House member Kristin Jacobs. Let me know if I can be of any additional assistance.

Emily Proctor Sutton

Executive Assistant to the Clerk
Florida House of Representatives
Emily.Sutton@myfloridahouse.gov
850.717.5622

From: Speaker Jose Oliva <fred.piccolo@myfloridahouse.gov>
Sent: Saturday, April 11, 2020 9:57 AM
To: Sutton.Emily <Emily.Sutton@myfloridahouse.gov>
Subject: IN MEMORIAM - REPRESENTATIVE KRISTIN JACOBS

EXTERNAL EMAIL: This email originated from outside of the Legislature. USE CAUTION when clicking links or opening attachments unless you recognize the sender and know the content is safe.



FLORIDA HOUSE OF REPRESENTATIVES

Jose R. Oliva, Speaker

For Immediate Release:

April 11, 2020

**IN MEMORIAM
REPRESENTATIVE KRISTIN JACOBS
1959 - 2020**

It is with profound sadness that I inform the House of Representatives of the passing of our friend and colleague, Kristin Jacobs.

Never without a smile on her face, even as she battled cancer, we all know her to have been a tireless advocate for Florida's environment, wildlife, and families. She served her constituents with honor, distinction, and loyalty and will be remembered with great joy by all who knew her.

Funeral arrangements will be passed along as they become known. I ask all Members and staff of the House to offer prayers for her family at this time and I speak for all of us when I say her legislative family stands ready to assist her loved ones should they need anything.

Jose Oliva
Speaker

###

Florida House of Representatives | 402 S. Monroe St., Tallahassee, FL 32399

[Unsubscribe emily.sutton@myfloridahouse.gov](mailto:emily.sutton@myfloridahouse.gov)

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Sent by fred.piccolo@myfloridahouse.gov in collaboration with



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The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL: SB 588

INTRODUCER: Senator Book

SUBJECT: Conservation Area Designations/Kristin Jacobs Coral Reef Ecosystem Conservation Area

DATE: January 29, 2021

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Anderson	Rogers	EN	Favorable
2.	_____	_____	AEG	_____
3.	_____	_____	AP	_____

I. Summary:

SB 588 designates the Southeast Florida Coral Reef Ecosystem Conservation Area as the “Kristin Jacobs Coral Reef Ecosystem Conservation Area.”

The Southeast Florida Coral Reef Ecosystem Conservation Area was established in 2018 and consists of sovereignty submerged lands and state waters offshore of Broward, Martin, Miami-Dade, and Palm Beach Counties from the St. Lucie Inlet to the northern boundary of the Biscayne National Park.

The bill directs the Department of Environmental Protection to erect suitable markers designating the conservation area.

The bill takes effect on July 1, 2021.

II. Present Situation:

Coral Reefs

Coral reefs in southeast Florida support a rich and diverse assemblage of stony corals, octocorals, macroalgae, sponges, and fishes.¹ Florida's coral reef stretches for over 350 miles, from the St. Lucie Inlet in Martin County past Key West to the Dry Tortugas.² It is the only coral reef system

¹ Florida Department of Environmental Protection (DEP), *Coral Reef Conservation Program*, <https://floridadep.gov/rcp/coral> (last visited Jan. 22, 2021); DEP, *Coral Reef Conservation Program 2011-2016 Strategic Plan*, 3 (July 2011), available at https://floridadep.gov/sites/default/files/CRCP_Strategic_Plan_2011-2016.pdf.

² Florida's Coral Reef, *Conserving Florida's Coral Reef*, <https://floridascoralreef.org/> (last visited Jan. 22, 2021).

in the continental United States and is home to over 40 species of reef-building corals that provide shelter, food, and breeding sites for millions of plants and animals.³

Coral reefs are valuable natural resources. They protect coastlines by reducing wave energy from storms and hurricanes. They serve as a source of food and shelter and provide critical habitat for over 6,000 species, including commercially important fisheries.⁴ Many medicines, as well as other health and beauty products, are derived from marine plants, algae, and animals found on coral reefs.

People use coral reefs as a resource for recreation, education, scientific research, and public inspiration. Millions of tourists and local residents enjoy scuba diving, snorkeling, and fishing on Florida's coral reefs. These activities provide a source of income for the state and its coastal communities. The natural coral reefs in Martin, Palm Beach, Broward, and Miami-Dade counties generate an estimated \$3.4 billion in sales and income and support 36,000 jobs in the region each year.⁵

Florida Coral Reef Conservation Program

The Coral Reef Conservation Program (CRCP) within the Office of Resilience and Coastal Protection of the Florida Department of Environmental Protection (DEP) manages the northern section of the reef, from the St. Lucie Inlet to the northern border of Biscayne National Park.⁶ The CRCP coordinates research and monitoring, develops management strategies, and promotes partnerships to protect the coral reefs, hardbottom communities, and associated reef resources of southeast Florida.⁷

The CRCP implements and coordinates the Southeast Florida Coral Reef Initiative (SEFCRI). The SEFCRI identifies and implements priority actions needed to reduce key threats to coral reef resources in southeast Florida, through a local action strategy for collaborative action among government and non-governmental partners.⁸

³ *Id.*

⁴ DEP, *Coral Reef Conservation Program*, <https://floridadep.gov/rcp/coral> (last visited Jan. 22, 2021); DEP, *Coral Reef Conservation Program 2011-2016 Strategic Plan*, 3 (July 2011), available at https://floridadep.gov/sites/default/files/CRCP_Strategic_Plan_2011-2016.pdf.

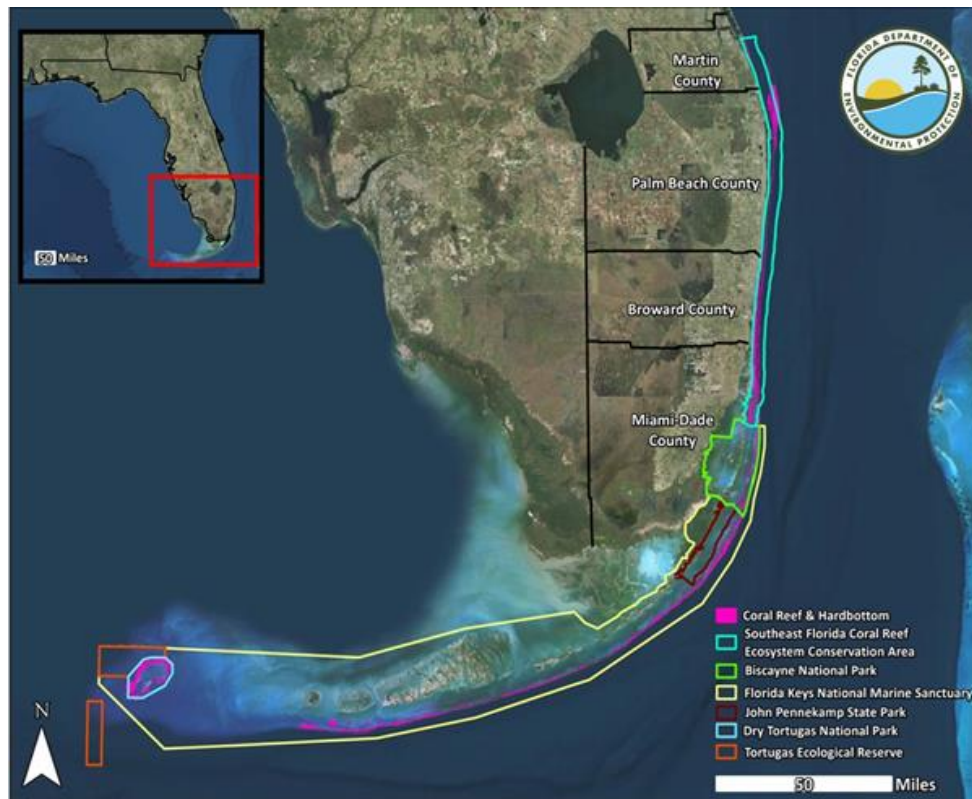
⁵ *Id.*

⁶ DEP, *Coral Reef Conservation Program*, <https://floridadep.gov/rcp/coral> (last visited Jan. 22, 2021).

⁷ *Id.*

⁸ Southeast Florida Coral Reef Initiative (SEFCRI), *What is SEFCRI?*, <https://southeastfloridareefs.net/who-we-are/> (last visited Jan. 22, 2021).

Southeast Florida Coral Reef Ecosystem Conservation Area



The Southeast Florida Coral Reef Ecosystem Conservation Area, formerly referred to as the Southeast Florida Coral Reef Initiative (SEFCRI) Region, was officially established on July 1, 2018.⁹ The conservation area shown in the map above¹⁰ includes the sovereign submerged lands and state waters offshore of Martin, Palm Beach, Broward, and Miami-Dade Counties from the northern boundary of the Biscayne National Park to the St. Lucie Inlet.¹¹

The Florida Keys portion of the reef is recognized and protected by management plans of Florida Keys National Marine Sanctuary, National Parks, and National Wildlife Refuges.¹² Prior to the designation of the Southeast Florida Coral Reef Ecosystem Conservation Area, the northern portion of the reef was unprotected and lacked a state-adopted management plan for its future sustainability and conservation.¹³ This section of the reef is affected by extremely high year-round usage and water quality degradation.

⁹ Chapter 2018-30, Laws of Fla.

¹⁰ DEP, *Coral ECA: Southeast Florida Coral Reef Ecosystem Conservation Area*, <https://floridadep.gov/rcp/coral/content/coral-eca-southeast-florida-coral-reef-ecosystem-conservation-area> (last visited Jan. 22, 2021).

¹¹ Chapter 2018-30, Laws of Fla.

¹² DEP, *Coral ECA: Southeast Florida Coral Reef Ecosystem Conservation Area*, <https://floridadep.gov/rcp/coral/content/coral-eca-southeast-florida-coral-reef-ecosystem-conservation-area> (last visited Jan. 22, 2021).

¹³ *Id.*

Kristin Jacobs

Kristin Jacobs was a member of the Florida House of Representatives, representing District 96 in Broward County, from 2014 until her passing in 2020. She was the prime sponsor of House Bill 53 in 2018, which established the Southeast Florida Coral Reef Ecosystem Conservation Area.¹⁴ Prior to her time in the Legislature, she served as Broward County Commissioner for 16 years and Mayor of Broward County for two terms and was twice chosen by the President of the United States to serve on national task forces dealing with climate resiliency and ocean protection.¹⁵ Representative Jacobs was known as a “tireless advocate for Florida’s environment, wildlife, and families.”¹⁶ She was also one of the original signers and champions of the Southeast Florida Regional Climate Change Compact.¹⁷ Representative Jacobs passed away on April 11, 2020.

III. Effect of Proposed Changes:

The bill designates the Southeast Florida Coral Reef Ecosystem Conservation Area as the “Kristin Jacobs Coral Reef Ecosystem Conservation Area.”

The bill directs DEP to erect suitable markers designating the Kristin Jacobs Coral Reef Ecosystem Conservation Area.

The bill provides an effective date of July 1, 2021.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

¹⁴ Chapter 2018-30, Laws of Fla.

¹⁵ Florida House of Representatives, *Kristin Diane Jacobs*,

<https://myfloridahouse.gov/Sections/Representatives/details.aspx?MemberId=4613&LegislativeTermId=88> (last visited Jan. 22, 2021); email from Diane Suddes, Legislative Assistant to Senator Lauren Book, to Senate Environment and Natural Resources Committee (Jan. 22, 2021)(on file with the Senate Committee on Environment and Natural Resources).

¹⁶ Florida House of Representatives, Speaker Jose R. Oliva, *In Memoriam Representative Kristin Diane Jacobs 1959-2020* (Apr. 11, 2020) (on file with the Senate Committee on Environment and Natural Resources).

¹⁷ Email from Diane Suddes, Legislative Assistant to Senator Lauren Book, to Senate Environment and Natural Resources Committee (Jan. 22, 2021)(on file with the Senate Committee on Environment and Natural Resources).

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The estimated cost to erect the designated markers required under this bill is indeterminate at this time.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates an undesignated section of law.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

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

None.

B. Amendments:

None.

By Senator Book

32-00026-21

2021588__

1 A bill to be entitled
2 An act relating to conservation area designations;
3 designating the Southeast Florida Coral Reef Ecosystem
4 Conservation Area as the Kristin Jacobs Coral Reef
5 Ecosystem Conservation Area; directing the Department
6 of Environmental Protection to erect suitable markers;
7 providing an effective date.

8
9 Be It Enacted by the Legislature of the State of Florida:

10
11 Section 1. Kristin Jacobs Coral Reef Ecosystem Conservation
12 Area designated; Department of Environmental Protection to erect
13 suitable markers.-

14 (1) The Southeast Florida Coral Reef Ecosystem Conservation
15 Area, as established by chapter 2018-30, Laws of Florida, is
16 designated as the "Kristin Jacobs Coral Reef Ecosystem
17 Conservation Area."

18 (2) The Department of Environmental Protection is directed
19 to erect suitable markers designating the Kristin Jacobs Coral
20 Reef Ecosystem Conservation Area as described in subsection (1).

21 Section 2. This act shall take effect July 1, 2021.

**The House Oversight, Transparency, and Public Management Subcommittee
The Senate Environment and Natural Resources Committee
July 20, 2020**

**Open Government Sunset Review Questionnaire
(Trade secrets contained in records, reports, or information submitted to
the Department of Environmental Protection under part IV of ch. 403)**

PLEASE RETURN THIS QUESTIONNAIRE BY AUGUST 14, 2020, TO BOTH:

**Chris Villa,
Attorney
House Oversight, Transparency & Public
Management Subcommittee
Chris.Villa@myfloridahouse.gov
Phone: (850) 717-4890**

**Crystal Anderson,
Senior Attorney
Senate Environment and Natural
Resources Committee
Crystal.Anderson@flsenate.gov
Phone: (850) 487-5372**

Section 403.73, F.S., provides a public record exemption for trade secrets (as defined in section 812.081, F.S.) contained in records, reports, or information submitted to the Department of Environmental Protection (DEP) under part IV of ch. 403, F.S. In 2016, the definition of “trade secret” in section 812.081, F.S., was expanded to include financial information. As a result, this public record exemption was reenacted to include the new definition of “trade secret” and is subject to the Open Government Sunset Review Act (section 119.15, F.S.).

The public record exemption stands repealed on October 2, 2021, unless reviewed and reenacted by the Legislature under the Open Government Sunset Review Act.

TO ASSIST PROFESSIONAL COMMITTEE STAFF AS PART OF THEIR REVIEW OF THIS PUBLIC RECORD EXEMPTION, PLEASE ANSWER THE FOLLOWING QUESTIONS. A COPY OF SECTIONS 403.73 AND 812.081, F.S., IS ATTACHED FOR YOUR CONVENIENCE.

Agency or Organization Completing this Questionnaire: Department of Environmental Protection.

Name of Person Completing the Questionnaire: Several people assisted with preparing this response. Please contact Rebecca Robinette to coordinate a response to questions.

Title: Deputy General Counsel

Telephone Number: 850-245-2278

E-mail Address: Rebecca.robinette@floridadep.gov

Date that this Questionnaire was Completed: August 12, 2020

I. Trade secrets contained in records, reports, or information submitted to the Department of Environmental Protection (DEP) under part IV of ch. 403, F.S.

1. Part IV of ch. 403, F.S., governs solid waste management, including the storage, collection, transport, separation, processing, recycling, and disposal of solid waste.

- a. How many solid waste management facilities are currently permitted in the state and what types of facilities are permitted?

Approximately 1,800 active sites that include solid waste disposal areas (Class I, Class III, C&D, Yard Trash), transfer stations, materials recovery facilities or other facility, the purpose of which is resource recovery or the disposal, recycling, processing or storage of solid waste.

- b. Please explain the types of information typically contained in records and reports submitted to DEP under part IV of ch. 403, F.S.

Permit application, engineering report, foundation and stability calculations, site plans, hydrogeological and geotechnical reports, design and construction drawings, groundwater monitoring plan, operation plan including details on operating procedures, processes and contingency plans, gas monitoring, landfill/facility design and construction details, technical specifications, Construction Quality Assurance plans, cost estimates for closure and long-term care, financial mechanisms, groundwater and landfill gas monitoring results.

- c. In what format(s) is this information received and/or stored by DEP?

Hardcopy and electronic submittal. In Oculus (DEP's electronic document system), our network drives on the server, on discs, external drives, and/or hardcopy.

II. Public Record Exemption under Review

1. Section 403.73, F.S., provides a public record exemption for trade secrets (as defined in s. 812.081, F.S.) contained in records, reports, or information submitted to DEP under part IV of ch. 403. In 2016, the definition of "trade secret" in s. 812.081, F.S., was expanded to include financial information.

- a. What is the extent of the records and reports affected by the exemption for trade secrets under s. 403.73, F.S.?

<5%

- b. Approximately what percentage of the records or reports received by DEP contain financial information claimed to be trade secrets under s. 403.73, F.S.?

<1%

Solid Waste - 1% (currently about 8 out of 500 records) are explicitly claimed to contain trade secrets. Hazardous Waste (RCRA) - 1% (currently about 2 out of 150 records) are explicitly claimed to contain trade secrets.

In addition to what is requested above, pursuant to Section 119.071(5)(b), F.S. bank account numbers are considered confidential and exempt

- c. Has there been an increase in information claimed to be trade secrets under s. 403.73, F.S., since the 2016 amendment to include financial information in the definition of “trade secrets?”

No, there has not been an increase in the information claimed to be trade secret in the Solid Waste and Hazardous Waste programs since the 2016 statutory amendment.

- d. Has your agency received a public record request for records or reports that contain information claimed to be trade secrets under s. 403.73, F.S.?

Since 2016 we do not recall receiving a request for a specific company’s claimed financial trade secret.

However, when responding to requests for financial documents, the Department automatically redacts account numbers (see question 1.b.).

- i. If “yes,” please describe the types of entities requesting such information and how many requests are received each year.
- ii. If “yes,” was the information released? Please explain to what extent trade secret information was redacted from the information released.
- iii. If “yes,” approximately what percentage of the public records requests specifically address financial information?
2. There is a distinction between records that are made “exempt” and records that are made “confidential and exempt.” A record classified as exempt from public disclosure may be disclosed under certain circumstances. If the Legislature designates a record as confidential and exempt from public disclosure, such record may not be released by the custodian of public records to anyone other than the persons or entities specifically designated by statute.

The exemption under review provides that such information is confidential and exempt from public record requirements. As such, the confidential and exempt information may only be released as provided in statute. Subsection 403.73(1), F.S., authorizes the release of such information to authorized representatives of the Department of Environmental Protection (DEP), or, pursuant to request, to other governmental entities in order for them to properly perform their duties, or when relevant in any proceeding in ch. 403. Those involved in a proceeding may include an administrative law judge, a hearing officer, or a judge or justice.

- a. Approximately what percentage of the time is information requested under these conditions?

Since 2016 we do not recall receiving a request for a specific company’s claimed financial trade secret. However, for requests for financial documents, the Department automatically redacts account numbers.

- b. Has there been an increase in requests for information that is claimed to be trade secrets under s. 403.73, F.S., since the 2016 amendment to include financial information in the definition of “trade secrets?”

The Division does not recall receiving any such requests.

- c. Approximately what percentage of the time is such information released?

The Division does not recall receiving or releasing information that is claimed to be a trade secret since 2016.

- d. Are there other instances when such information must be released (e.g., with another governmental entity in the furtherance of its lawful duties and responsibilities)?

Yes.

- e. If “yes,” please provide a list of who would be considered an “authorized representative of the Department” that these records would be shared with?

EPA for RCRA. EPA would need to request the information from the Department. However, within the last five years the program does not recall EPA requesting this information or the Department releasing this information to EPA.

3. Subsection 403.73(1), F.S., requires persons submitting trade secret information to DEP to request that such information be kept confidential and inform DEP of the basis for the claim of trade secret. DEP then is required to, subject to notice and an opportunity for hearing, determine whether the information, or any portion thereof, is or is not a trade secret.

- a. What does your agency consider to be a “trade secret” under s. 403.73, F.S., and is there any guidance to support this interpretation? Has this interpretation changed in light of the 2016 amendment to include financial information?

The Department follows the definition of “trade secret” in s. 812.081, F.S.

- b. How does a person submitting trade secret information to DEP request that the information be kept confidential and exempt and inform DEP of the basis for the claim of trade secret?

When the information is submitted, the person submitting the information is supposed to label it as such, request it be handled as confidential and exempt as a trade secret, and provide the reasoning for the exemption.

- c. Please describe the hearing process to determine whether information is a trade secret under s. 403.73, F.S.

The hearing provisions are specific to ss. 403.111, 403.7046, and 403.73, F.S. The Department would issue a letter providing 21 days to request a hearing to the requestor and to the entity requesting the exemption. Please see Conservation Alliance of St. Lucie County v. Florida Department of Environmental Protection, Fort Peirce Utilities Authority, and Allied New Technologies, Inc., (Fla. 1st DCA, 2014) 145 So.3d 852 (Table), 2014 WL 3533079, Per Curium Affirmed. The Conservation Alliance of St. Lucie County v. Florida Department of Environmental Protection and Allied New Technologies, Inc., No. 2010 CA 3853 (Fla 2d Cir. Ct. Dec. 22, 2010). The Department has attached a copy of the court’s opinion to the email.

d. Approximately how many times has DEP used such a hearing process to determine whether information, or any portion thereof, is a trade secret under s. 403.73, F.S.?

No one recalls holding a hearing pursuant to s. 403.73, F.S.

4. Would the disclosure of information claimed to be trade secrets under s. 403.73, F.S., potentially have a negative impact on the parties who reported the information, or on any other parties? If “yes,” please explain.

It is hard to say with the various programs. Some propose they have a process that is a trade secret others certain financial information.

5. What, if any, information covered by the public record exemption for trade secrets in s. 403.73, F.S., is not covered by any other existing exemption for trade secrets?

The public records exemption for trade secrets in s. 403.73, F.S., allows the Department to disclose confidential trade secret information to other governmental entities, such as EPA, in order for them to properly perform their duties. This is important because it is part of the Department's program authorization for the Hazardous Waste (RCRA) program from EPA. For non-RCRA programs, if this provision was repealed and a request for protecting a trade secret was provided to DEP that appeared to meet the criteria of s. 812.081, F.S., the DEP would rely upon s. 815.04(3) or 815.045, F.S., as applicable.

6. Does your agency recommend that the Legislature repeal or reenact the public record exemption in s. 403.73, F.S.?

repeal the exemption

reenact the exemption ‘as is’

reenact the exemption with the following changes:

7. Please provide a brief explanation of your recommendation in question 6.

The Department has no position regarding whether the provision should sunset.

8. Is there any case law interpreting the public record exemption in s. 403.73, F.S.?

A search indicates there is no reported case with an opinion that does more than mention s. 403.73, F.S.

9. Please provide a list of appropriate associations that would be able to answer additional questions regarding the public record exemption in s. 403.73, F.S.

*Solid Waste Association North America and its Florida Sunshine Chapter
Air & Waste Management Association and its Florida Section*

10. If you have any additional comments regarding the public record exemption in s. 403.73, F.S., please provide them below.

403.73 Trade secrets; confidentiality.—

(1) Records, reports, or information obtained from any person under this part, unless otherwise provided by law, must be available to the public, except upon a showing satisfactory to

the department by the person from whom the records, reports, or information is obtained that such records, reports, or information, or a particular part thereof, contains trade secrets as defined in s. 812.081. Such trade secrets are confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. The person submitting such trade secret information to the department must request that it be kept confidential and must inform the department of the basis for the claim of trade secret. The department shall, subject to notice and opportunity for hearing, determine whether the information, or portions thereof, claimed to be a trade secret is or is not a trade secret. Such trade secrets may be disclosed, however, to authorized representatives of the department or, pursuant to request, to other governmental entities in order for them to properly perform their duties, or when relevant in any proceeding under this part. Authorized representatives and other governmental entities receiving such trade secret information shall retain its confidentiality. Those involved in any proceeding under this part, including an administrative law judge, a hearing officer, or a judge or justice, shall retain the confidentiality of any trade secret information revealed at such proceeding.

(2) This section is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2021, unless reviewed and saved from repeal through reenactment by the Legislature.

History.—s. 8, ch. 80-302; s. 3, ch. 90-74; s. 5, ch. 95-366; s. 243, ch. 96-406; s. 158, ch. 96-410; s. 8, ch. 2016-6.

812.081 Trade secrets; theft, embezzlement; unlawful copying; definitions; penalty.—

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

(a) “Article” means any object, device, machine, material, substance, or composition of matter, or any mixture or copy thereof, whether in whole or in part, including any complete or partial writing, record, recording, drawing, sample, specimen, prototype model, photograph, microorganism, blueprint, map, or copy thereof.

(b) “Representing” means completely or partially describing, depicting, embodying, containing, constituting, reflecting, or recording.

(c) “Trade secret” means the whole or any portion or phase of any formula, pattern, device, combination of devices, or compilation of information which is for use, or is used, in the operation of a business and which provides the business an advantage, or an opportunity to obtain an advantage, over those who do not know or use it. The term includes any scientific, technical, or commercial information, including financial information, and includes any design, process, procedure, list of suppliers, list of customers, business code, or improvement thereof. Irrespective of novelty, invention, patentability, the state of the prior art, and the level of skill in the business, art, or field to which the subject matter pertains, a trade secret is considered to be:

1. Secret;
2. Of value;
3. For use or in use by the business; and
4. Of advantage to the business, or providing an opportunity to obtain an advantage, over those who do not know or use it when the owner thereof takes measures to prevent it

from becoming available to persons other than those selected by the owner to have access thereto for limited purposes.

(d) “Copy” means any facsimile, replica, photograph, or other reproduction in whole or in part of an article and any note, drawing, or sketch made of or from an article or part or portion thereof.

(2) Any person who, with intent to deprive or withhold from the owner thereof the control of a trade secret, or with an intent to appropriate a trade secret to his or her own use or to the use of another, steals or embezzles an article representing a trade secret or without authority makes or causes to be made a copy of an article representing a trade secret commits a felony of the third degree, punishable as provided in s. 775.082 or s. 775.083.

(3) In a prosecution for a violation of this section, the fact that the person so charged returned or intended to return the article so stolen, embezzled, or copied is not a defense.

History.—ss. 1, 2, 3, ch. 74-136; s. 1, ch. 85-34; s. 1240, ch. 97-102; s. 1, ch. 2016-5.

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL: SPB 7006

INTRODUCER: Environment and Natural Resources Committee

SUBJECT: OGSR/Public Records/Trade Secrets/Department of Environmental Protection

DATE: February 1, 2021 REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
Anderson	Rogers	_____	EN Submitted as Comm. Bill/Fav
1. _____	_____	_____	_____

I. Summary:

SPB 7006 amends s. 403.73, F.S., to save from repeal the public records exemption relating to trade secret information contained in records, reports, or information submitted to the Department of Environmental Protection (DEP) under part IV of ch. 403, F.S., which regulates solid waste management, including the storage, collection, transport, separation, processing, recycling, and disposal of solid waste.

The bill continues to maintain this trade secret information as confidential and exempt from public inspection and copying. These confidential records may be disclosed to authorized representatives of DEP or, pursuant to request, to other governmental entities in order for them to properly perform their duties, when relevant to a proceeding involving the regulation of solid waste management and recycling, provided the authorized representative or governmental entity retains confidentiality.

The Open Government Sunset Review Act requires the Legislature to review each public record and each public meeting exemption five years after enactment. The exemption contained in s. 403.73, F.S., is scheduled to repeal on October 2, 2021. This bill removes the scheduled repeal to continue the confidential and exempt status of the information.

The bill is not expected to impact state and local revenues and expenditures.

The bill takes effect October 1, 2021.

II. Present Situation:

Access to Public Records – Generally

The Florida Constitution provides that the public has the right to inspect or copy records made or received in connection with official governmental business.¹ The right to inspect or copy applies to the official business of any public body, officer, or employee of the state, including all three branches of state government, local governmental entities, and any person acting on behalf of the government.²

Additional requirements and exemptions related to public records are found in various statutes and rules, depending on the branch of government involved. For instance, s. 11.0431, F.S., provides public access requirements for legislative records. Relevant exemptions are codified in s. 11.0431(2)-(3), F.S., and the statutory provisions are adopted in the rules of each house of the legislature.³ Florida Rule of Judicial Administration 2.420 governs public access to judicial branch records.⁴ Lastly, ch. 119, F.S., provides requirements for public records held by executive agencies.

Executive Agency Records – The Public Records Act

Chapter 119, F.S., known as the Public Records Act, provides that all state, county, and municipal records are open for personal inspection and copying by any person, and that providing access to public records is a duty of each agency.⁵

A public record includes virtually any document or recording, regardless of its physical form or how it may be transmitted.⁶ The Florida Supreme Court has interpreted the statutory definition of “public record” to include “material prepared in connection with official agency business which is intended to perpetuate, communicate, or formalize knowledge of some type.”⁷

The Florida Statutes specify conditions under which public access to public records must be provided. The Public Records Act guarantees every person’s right to inspect and copy any public record at any reasonable time, under reasonable conditions, and under supervision by the

¹ FLA. CONST. art. I, s. 24(a).

² *Id.*

³ See Rule 1.48, *Rules and Manual of the Florida Senate*, (2020-2022) and Rule 14.1, *Rules of the Florida House of Representatives*, Edition 1, (2020-2022).

⁴ *State v. Wooten*, 260 So. 3d 1060 (Fla. 4th DCA 2018).

⁵ Section 119.01(1), F.S. Section 119.011(2), F.S., defines “agency” as “any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency.”

⁶ Section 119.011(12), F.S., defines “public record” to mean “all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency.”

⁷ *Shevin v. Byron, Harless, Schaffer, Reid and Assoc., Inc.*, 379 So. 2d 633, 640 (Fla. 1980).

custodian of the public record.⁸ A violation of the Public Records Act may result in civil or criminal liability.⁹

The Legislature may exempt public records from public access requirements by passing a general law by a two-thirds vote of both the House and the Senate.¹⁰ The exemption must state with specificity the public necessity justifying the exemption and must be no broader than necessary to accomplish the stated purpose of the exemption.¹¹

General exemptions from the public records requirements are contained in the Public Records Act.¹² Specific exemptions often are placed in the substantive statutes relating to a particular agency or program.¹³

When creating a public records exemption, the Legislature may provide that a record is “exempt” or “confidential and exempt.” Custodians of records designated as “exempt” are not prohibited from disclosing the record; rather, the exemption means that the custodian cannot be compelled to disclose the record.¹⁴ Custodians of records designated as “confidential and exempt” may not disclose the record except under circumstances specifically defined by the Legislature.¹⁵

Open Government Sunset Review Act

The Open Government Sunset Review Act¹⁶ (the Act) prescribes a legislative review process for newly created or substantially amended¹⁷ public records or open meetings exemptions, with specified exceptions.¹⁸ It requires the automatic repeal of such exemption on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.¹⁹

The Act provides that a public records or open meetings exemption may be created or maintained only if it serves an identifiable public purpose and is no broader than is necessary.²⁰

⁸ Section 119.07(1)(a), F.S.

⁹ Section 119.10, F.S. Public records laws are found throughout the Florida Statutes, as are the penalties for violating those laws.

¹⁰ FLA. CONST. art. I, s. 24(c).

¹¹ *Id. See, e.g., Halifax Hosp. Medical Center v. News-Journal Corp.*, 724 So. 2d 567 (Fla. 1999) (holding that a public meetings exemption was unconstitutional because the statement of public necessity did not define important terms and did not justify the breadth of the exemption); *Baker County Press, Inc. v. Baker County Medical Services, Inc.*, 870 So. 2d 189 (Fla. 1st DCA 2004) (holding that a statutory provision written to bring another party within an existing public records exemption is unconstitutional without a public necessity statement).

¹² *See, e.g., s. 119.071(1)(a), F.S.* (exempting from public disclosure examination questions and answer sheets of examinations administered by a governmental agency for the purpose of licensure).

¹³ *See, e.g., s. 213.053(2)(a), F.S.* (exempting from public disclosure information contained in tax returns received by the Department of Revenue).

¹⁴ *See Williams v. City of Minneola*, 575 So. 2d 683, 687 (Fla. 5th DCA 1991).

¹⁵ *WFTV, Inc. v. The School Board of Seminole*, 874 So. 2d 48 (Fla. 5th DCA 2004).

¹⁶ Section 119.15, F.S.

¹⁷ An exemption is considered to be substantially amended if it is expanded to include more records or information or to include meetings as well as records. Section 119.15(4)(b), F.S.

¹⁸ Section 119.15(2)(a) and (b), F.S., provide that exemptions that are required by federal law or are applicable solely to the Legislature or the State Court System are not subject to the Open Government Sunset Review Act.

¹⁹ Section 119.15(3), F.S.

²⁰ Section 119.15(6)(b), F.S.

An exemption serves an identifiable purpose if it meets one of the following purposes *and* the Legislature finds that the purpose of the exemption outweighs open government policy and cannot be accomplished without the exemption:

- It allows the state or its political subdivisions to effectively and efficiently administer a governmental program, and administration would be significantly impaired without the exemption;²¹
- It protects sensitive, personal information, the release of which would be defamatory, cause unwarranted damage to the good name or reputation of the individual, or would jeopardize the individual's safety. If this public purpose is cited as the basis of an exemption, however, only personal identifying information is exempt;²² or
- It protects information of a confidential nature concerning entities, such as trade or business secrets.²³

The Act also requires specified questions to be considered during the review process.²⁴ In examining an exemption, the Act directs the Legislature to carefully question the purpose and necessity of reenacting the exemption.

If the exemption is continued and expanded, then a public necessity statement and a two-thirds vote for passage are required.²⁵ If the exemption is continued without substantive changes or if the exemption is continued and narrowed, then a public necessity statement and a two-thirds vote for passage are *not* required. If the Legislature allows an exemption to sunset, the previously exempt records will remain exempt unless provided for by law.²⁶

Confidentiality of Trade Secrets Contained in Information Submitted to DEP Under Part IV of Ch. 403, F.S.

Part IV of ch. 403, F.S., governs solid waste management, including the storage, collection, transport, separation, processing, recycling, and disposal of solid waste. Section 403.73, F.S., provides a public record exemption for trade secrets²⁷ contained in records, reports, or information submitted to the Department of Environmental Protection (DEP) under part IV of ch. 403, F.S. The exemption also requires persons submitting trade secret information to DEP to request that such information be kept confidential and inform DEP of the basis for the claim of

²¹ Section 119.15(6)(b)1., F.S.

²² Section 119.15(6)(b)2., F.S.

²³ Section 119.15(6)(b)3., F.S.

²⁴ Section 119.15(6)(a), F.S. The specified questions are:

- What specific records or meetings are affected by the exemption?
- Whom does the exemption uniquely affect, as opposed to the general public?
- What is the identifiable public purpose or goal of the exemption?
- Can the information contained in the records or discussed in the meeting be readily obtained by alternative means? If so, how?
- Is the record or meeting protected by another exemption?
- Are there multiple exemptions for the same type of record or meeting that it would be appropriate to merge?

²⁵ See generally s. 119.15, F.S.

²⁶ Section 119.15(7), F.S.

²⁷ Section 812.081, F.S. defines "trade secret" to mean the whole or any portion or phase of any formula, pattern, device, combination of devices, or compilation of information which is for use, or is used, in the operation of a business and which provides the business an advantage, or an opportunity to obtain an advantage, over those who do not know or use it.

trade secret.²⁸ DEP then is required to, subject to notice and an opportunity for hearing, determine whether the information, or any portion thereof, is or is not a trade secret.²⁹

DEP may disclose information made confidential and exempt to authorized representatives of DEP, or, pursuant to request, to another state or federal government entity if disclosure is necessary for the receiving entity to perform its duties or responsibilities or when relevant to any proceeding in ch. 403, F.S.³⁰ Those involved in a proceeding may include an administrative law judge, a hearing officer, or a judge or justice.

Section 403.73, F.S., provides for future review and repeal of the public records exemption on October 2, 2021.

In 2016, the definition of “trade secret” in s. 812.081, F.S., was expanded to include financial information. As a result, the public record exemption in s. 403.73, F.S., was reenacted to include the new definition of “trade secret” and is subject to the Open Government Sunset Review Act.³¹

Chapter 2016-6, Laws of Florida, reenacted the exemption for public record disclosure requirements for trade secret information contained in records, reports, or information submitted to DEP under part IV of ch. 403, F.S. Chapter 2016-6, Laws of Florida, included a public necessity statement that provided a rationale for the exemption, which recognized that, in many instances, businesses are required to provide financial information for regulatory or other purposes to public entities and that disclosure of such information to competitors of those businesses would be detrimental to the businesses.³² The Legislature stated its intent to protect trade secret information of a confidential nature which includes, but is not limited to, a formula, a pattern, a device, a combination of devices, or a compilation of information used to protect or further a business advantage over those who do not know or use the information, the disclosure of which would injure the affected business in the marketplace.³³

Open Government Sunset Review Findings and Recommendations

In July 2020, the Senate Environment and Natural Resources Committee and the House Oversight, Transparency & Public Management Subcommittee sent an Open Government Sunset Review Questionnaire to DEP regarding the exemption for trade secrets contained in records, reports, or information submitted to DEP under part IV of ch. 403, F.S.

DEP responded to the questionnaire, but did not take a position on whether the exemption should remain in effect to protect the trade secret information it obtains. DEP estimates that under 5% of the records and reports it receives are affected by the exemption for trade secrets under s. 403.73,

²⁸ Section 403.73(1), F.S.

²⁹ *Id.*

³⁰ *Id.*

³¹ Section 119.15, F.S.

³² Ch. 2016-6, Laws of Fla.

³³ Ch. 2016-6, Laws of Fla.

F.S., and under 1% of the records and reports contain financial information claimed to be trade secrets.³⁴

DEP stated that the information typically contained in records and reports it receives includes, “[p]ermit application[s], engineering report[s], foundation and stability calculations, site plans, hydrogeological and geotechnical reports, design and construction drawings, groundwater monitoring plan[s], operation plan[s] including details on operating procedures, processes and contingency plans, gas monitoring, landfill/facility design and construction details, technical specifications, Construction Quality Assurance plans, cost estimates for closure and long-term care, financial mechanisms, and groundwater and landfill gas monitoring results.”³⁵

III. Effect of Proposed Changes:

SPB 7006 saves from repeal the current public records exemption relating to trade secret information contained in records, reports, or information submitted to the Department of Environmental Protection under part IV of ch. 403, F.S., which regulates solid waste management, including the storage, collection, transport, separation, processing, recycling, and disposal of solid waste. The information will continue to be confidential and exempt from public disclosure beyond October 2, 2021.

The bill takes effect October 1, 2021.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Not applicable. The bill does not require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

B. Public Records/Open Meetings Issues:

Vote Requirement

Article I, s. 24(c) of the State Constitution requires a two-thirds vote of the members present and voting for final passage of a bill creating or expanding an exemption to the public records requirements. This bill continues a current public records exemption beyond its current date of repeal. The bill does not create or expand an exemption. Thus, the bill does not require an extraordinary vote for enactment.

Public Necessity Statement

Article I, s. 24(c) of the State Constitution requires a bill creating or expanding an exemption to the public records requirements to state with specificity the public necessity

³⁴ Email, Department of Environmental Protection (Aug. 12, 2020), *Open Government Sunset Review Questionnaire (Trade Secrets contained in records, reports, or information submitted to the Department of Environmental Protection under part IV of ch. 403)* (Aug. 12, 2020)(on file with the Senate Committee on Environment and Natural Resources).

³⁵ *Id.*

justifying the exemption. This bill continues a current public records exemption without expansion. Thus, a statement of public necessity is not required.

Breadth of Exemption

Article I, s. 24(c) of the State Constitution requires an exemption to the public records requirements to be no broader than necessary to accomplish the stated purpose of the law. The purpose of the law is to protect trade secret information contained in records, reports, or information submitted to the Department of Environmental Protection under part IV of ch. 403. This bill exempts only trade secret information from the public records requirements. The exemption does not appear to be broader than necessary to accomplish the purpose of the law.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The private sector will continue to be subject to the cost, to the extent imposed, associated with DEP making redactions and/or making copies in response to public records requests.

C. Government Sector Impact:

DEP will continue to incur costs related to the redaction of exempt records and copying associated with responding to public records requests.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 403.73 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

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

None.

B. Amendments:

None.

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

FOR CONSIDERATION By the Committee on Environment and Natural Resources

592-01106-21

20217006pb

1 A bill to be entitled
2 An act relating to a review under the Open Government
3 Sunset Review Act; amending s. 403.73, F.S., relating
4 to an exemption from public records requirements for
5 trade secrets contained in information obtained by the
6 Department of Environmental Protection; removing the
7 scheduled repeal of the exemption; providing an
8 effective date.

9
10 Be It Enacted by the Legislature of the State of Florida:

11
12 Section 1. Section 403.73, Florida Statutes, is amended to
13 read:

14 403.73 Trade secrets; confidentiality.-

15 ~~(1)~~ Records, reports, or information obtained from any
16 person under this part, unless otherwise provided by law, must
17 be available to the public, except upon a showing satisfactory
18 to the department by the person from whom the records, reports,
19 or information is obtained that such records, reports, or
20 information, or a particular part thereof, contains trade
21 secrets as defined in s. 812.081. Such trade secrets are
22 confidential and exempt from s. 119.07(1) and s. 24(a), Art. I
23 of the State Constitution. The person submitting such trade
24 secret information to the department must request that it be
25 kept confidential and must inform the department of the basis
26 for the claim of trade secret. The department shall, subject to
27 notice and opportunity for hearing, determine whether the
28 information, or portions thereof, claimed to be a trade secret
29 is or is not a trade secret. Such trade secrets may be

592-01106-21

20217006pb

30 disclosed, however, to authorized representatives of the
31 department or, pursuant to request, to other governmental
32 entities in order for them to properly perform their duties, or
33 when relevant in any proceeding under this part. Authorized
34 representatives and other governmental entities receiving such
35 trade secret information shall retain its confidentiality. Those
36 involved in any proceeding under this part, including an
37 administrative law judge, a hearing officer, or a judge or
38 justice, shall retain the confidentiality of any trade secret
39 information revealed at such proceeding.

40 ~~(2) This section is subject to the Open Government Sunset~~
41 ~~Review Act in accordance with s. 119.15 and shall stand repealed~~
42 ~~on October 2, 2021, unless reviewed and saved from repeal~~
43 ~~through reenactment by the Legislature.~~

44 Section 2. This act shall take effect October 1, 2021.

**The House Oversight, Transparency, and Public Management Subcommittee
The Senate Environment and Natural Resources Committee
July 20, 2020**

**Open Government Sunset Review Questionnaire
(Information reported to DEP by certified recovered materials dealers)**

PLEASE RETURN THIS QUESTIONNAIRE BY AUGUST 14, 2020, TO BOTH:

**Chris Villa,
Attorney
House Oversight, Transparency & Public
Management Subcommittee
Chris.Villa@myfloridahouse.gov
Phone: (850) 717-4890**

**Daniel Schreiber,
Attorney
Senate Environment and Natural
Resources Committee
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Phone: (850) 487-5386**

Section 403.7046(2), F.S., provides a public record exemption for trade secrets (as defined in section 812.081, F.S.) contained in information reported to the Department of Environmental Protection (DEP) by persons dealing in recovered materials or post-use polymers. In 2016, the definition of “trade secret” in section 812.081, F.S., was expanded to include financial information. As a result, this public record exemption was reenacted to include the new definition of “trade secret” and is subject to the Open Government Sunset Review Act (section 119.15, F.S.).

The public record exemption stands repealed on October 2, 2021, unless reviewed and reenacted by the Legislature under the Open Government Sunset Review Act.

TO ASSIST PROFESSIONAL COMMITTEE STAFF AS PART OF THEIR REVIEW OF THIS PUBLIC RECORD EXEMPTION, PLEASE ANSWER THE FOLLOWING QUESTIONS. A COPY OF SECTIONS 403.7046 AND 812.081, F.S., IS ATTACHED FOR YOUR CONVENIENCE.

Agency or Organization Completing this Questionnaire: Department of Environmental Protection.

Name of Person Completing the Questionnaire: Several people assisted with preparing this response. Please contact Rebecca Robinette to coordinate a response to questions.

Title: Deputy General Counsel

Telephone Number: 850-245-2278

E-mail Address: Rebecca.robinette@floridadep.gov

Date that this Questionnaire was Completed: August 12, 2020

1. Section 403.7046(1), F.S., requires any person who handles, purchases, receives, recovers, sells, or is an end user of recovered materials or post-use polymers to apply annually to the Department of Environmental Protection (DEP) for certification and to report certain information to DEP.

Section 403.7046(2), F.S., provides a public record exemption for trade secrets contained in information reported pursuant to section 403.7046, F.S., or any rule adopted pursuant to section 403.7046, F.S.

- a. How many, if any, of the persons currently certified and reporting information to DEP under s. 403.7046, F.S., are pyrolysis facilities or persons dealing in post-use polymers?

There are no pyrolysis facilities in Florida or persons certified specifically for dealing with post-use polymers. Post-use polymers are plastic. Recovered Materials by statutory definition are paper, plastic, metal, glass, textiles and rubber. Certification is not based upon a specific material but on anyone who handles, purchases, receives, recovers, sells or is an end user of 600 tons or more per year of recovered materials, reports to, and is certified by the Department.

- b. How many certifications has DEP issued under s. 403.7046, F.S., each year since 2016?

Recovered Materials Dealers can have multiple facilities certified on a single certificate. There are currently 172 Certified Recovered Materials Dealers certifying 252 different facilities. That number has stayed fairly constant since 2016.

- c. Please describe the types of information reported to DEP under s. 403.7046, F.S.

The rules relating to the Regulation of Recovered Materials can be found in Chapter 62-722, Florida Administrative Code (F.A.C.). Recovered Materials Dealers are required to report:

(a) Name, address, and phone number of the applicant;

(b) The locations of all recovered materials facilities owned or operated by the applicant;

(c) The amount and type of recovered materials, by county of origin, that are handled, purchased, received, recovered, or sold by the applicant;

(d) The amount and disposal site, or the name of the person with whom such disposal was arranged in the event that the applicant cannot reasonably determine amount or disposal site, of any solid waste generated by the applicant's facilities; and,

(e) The total amount of recovered materials received at the facility from both certified and non-certified persons.

- Of what importance is this information to DEP?

This tonnage information is gathered by county of origin and used by the counties in determining the recycling rates as required by statute.

- How is this information used by DEP?
DEP aggregates the information by county of origin and sends the aggregate information as well as individual county Recovered Materials report to the counties for their use to calculate the county recycling rate.
- In what format(s) is this information received and/or stored by DEP?
Recovered Material Dealers report tonnage information through an online reporting program, Re-TRAC.

d. What rules has DEP adopted to implement s. 403.7046, F.S.?
Chapter 62-722, F.A.C.

e. Have you received a public records request for any information reported to DEP under 403.7046, F.S.? If the answer is “yes,” please describe:
Yes. There have been requests for tonnage information from specific Recovered Material facilities.

- The types of entities requesting such information.
Consultants and other Recovered Materials Dealers.
- The number of requests received each year during that period.
Very few requests are made.
- Whether the information was released. Please explain, including the extent to which trade secret information was redacted from the information released.
The tonnage information has never been released by DEP due to the fact that it would reveal a trade secret, as defined in s. 812.081, F.S.

2. Section 403.7046(2), F.S., provides a public records exemption for information reported pursuant to s. 403.7046, F.S., or rules adopted pursuant thereto. The exemption applies to information that, if disclosed, would reveal a trade secret, as defined in s. 812.081, F.S. In 2016, the statute was amended and reenacted to include financial information in the definition of “trade secret.”

a. In general, what are the types of information reported to DEP under s. 403.7046, F.S., that, if disclosed, would reveal a trade secret?
The tonnage information reported by the Recovered Materials Dealers

b. Why are such types of information generally considered to be trade secrets? For example, what potential harm to certified recovered materials dealers could result if DEP were to disclose such information?
It could provide confidential information regarding tonnage to the Recovered Material Dealer’s competitors allowing competitors to evaluate market share.

3. There is a distinction between records that are made “exempt” and records that are made “confidential and exempt.” A record classified as exempt from public disclosure may be disclosed under certain circumstances. If the Legislature designates a record as confidential and exempt from public disclosure, such record may not be released by the custodian of public records to anyone other than the persons or entities specifically designated by statute.

The exemption under review provides that the information is confidential and exempt from public record requirements. As such, the confidential and exempt information may only be released as provided in statute. Section 403.7046(2), F.S., authorizes DEP to provide this information in such form that the names of the persons reporting such information and the specific information reported are not revealed, for reporting or information purposes.

- a. Has DEP released confidential and exempt trade secret records for reporting or information purposes? If “yes,” please explain:

No.

- To whom DEP provides the information, including publishing information that is generally accessible to the public.
- The information that DEP provides.
- The form(s) in which DEP provides the information, including data or reports.

- b. Are there other instances when such information must be released? If “yes,” please provide under what circumstances the information would need to be released and identify the entities who would need access to such information.

No.

4. Section 403.7046(3)(b)2., F.S., contains an additional exemption applicable only to subsection (3). Subsection (3) authorizes certain local governments to establish registration and reporting processes for recovered materials dealers or pyrolysis facilities doing business within their jurisdictions.

- In general, is the information covered by the exemption in subsection (3) also covered by the exemption in s. 403.7046(2), F.S.?
Not sure. One exemption is for the state (403.7046(2), F.S) and the other is for local government (403.7046(3)(b)2., F.S.)
- If the answer is “yes,” could these two exemptions be merged into one?

5. Does your agency recommend that the Legislature repeal or reenact the public record exemption in s. 403.7046(2), F.S.?

_____ repeal the exemption

- _____ reenact the exemption ‘as is’
- _____ reenact the exemption with the following changes:

6. Please provide a brief explanation of your recommendation in question 5.
The Department has no position regarding whether the provision should sunset.
7. Is there any case law interpreting the exemption?
A search indicates there is no reported case with an opinion that does more than mention s. 403.7046(2), F.S.
8. Please provide the information for any other organizations that could answer additional questions on these matters.
*Recycle Florida Today,
Solid Waste Association of North American & its Florida Sunshine Chapter
Florida Recycling Partnership,
National Waste and Recycling Association & its Florida Chapter*
9. Please provide any additional comments regarding the public record exemption under review.

403.7046 Regulation of recovered materials.—

(1) Any person who handles, purchases, receives, recovers, sells, or is an end user of recovered materials or post-use polymers shall annually certify to the department on forms provided by the department. The department may by rule exempt from this requirement generators of recovered materials or post-use polymers; persons who handle or sell recovered materials or post-use polymers as an activity which is incidental to the normal primary business activities of that person; or persons who handle, purchase, receive, recover, sell, or are end users of recovered materials or post-use polymers in small quantities as defined by the department. The department shall adopt rules for the certification of and reporting by such persons and shall establish criteria for revocation of such certification. Such rules shall be designed to elicit, at a minimum, the amount and types of recovered materials or post-use polymers handled by registrants, and the amount and disposal site, or name of person with whom such disposal was arranged, of any solid waste generated by such facility. By February 1 of each year, registrants shall report all required information to the department and to all counties from which it received materials. Such rules may provide for the department to conduct periodic inspections. The department may charge a fee of up to \$50 for each registration, which shall be deposited into the Solid Waste Management Trust Fund for implementation of the program.

(2) Information reported pursuant to this section or any rule adopted pursuant to this section which, if disclosed, would reveal a trade secret, as defined in s. 812.081, is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. For reporting or information purposes, however, the department may provide this information in such form that the names of the persons reporting such information and the specific information reported are not

revealed. This subsection is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2021, unless reviewed and saved from repeal through reenactment by the Legislature.

(3) Except as otherwise provided in this section or pursuant to a special act in effect on or before January 1, 1993, a local government may not require a commercial establishment that generates source-separated recovered materials to sell or otherwise convey its recovered materials to the local government or to a facility designated by the local government, nor may the local government restrict such a generator's right to sell or otherwise convey such recovered materials to any properly certified recovered materials dealer who has satisfied the requirements of this section. A local government may not enact any ordinance that prevents such a dealer from entering into a contract with a commercial establishment to purchase, collect, transport, process, or receive source-separated recovered materials.

(a) The local government may require that the recovered materials generated at the commercial establishment be source separated at the premises of the commercial establishment.

(b)1. Before engaging in business within the jurisdiction of the local government, a recovered materials dealer or pyrolysis facility must provide the local government with a copy of the certification provided for in this section. In addition, the local government may establish a registration process whereby a recovered materials dealer or pyrolysis facility must register with the local government before engaging in business within the jurisdiction of the local government. Such registration process is limited to requiring the dealer or pyrolysis facility to register its name, including the owner or operator of the dealer or pyrolysis facility, and, if the dealer or pyrolysis facility is a business entity, its general or limited partners, its corporate officers and directors, its permanent place of business, evidence of its certification under this section, and a certification that the recovered materials or post-use polymers will be processed at a recovered materials processing facility or pyrolysis facility satisfying the requirements of this section. The local government may not use the information provided in the registration application to compete unfairly with the recovered materials dealer until 90 days after receipt of the application. All counties, and municipalities whose population exceeds 35,000 according to the population estimates determined pursuant to s. 186.901, may establish a reporting process that must be limited to the regulations, reporting format, and reporting frequency established by the department pursuant to this section, which must, at a minimum, include requiring the dealer or pyrolysis facility to identify the types and approximate amount of recovered materials or post-use polymers collected, recycled, or reused during the reporting period; the approximate percentage of recovered materials or post-use polymers reused, stored, or delivered to a recovered materials processing facility or pyrolysis facility or disposed of in a solid waste disposal facility; and the locations where any recovered materials or post-use polymers were disposed of as solid waste. The local government may charge the dealer or pyrolysis facility a registration fee commensurate with and no greater than the cost incurred by the local government in operating its registration program. Registration program costs are limited to those costs associated with the activities described in this subparagraph. Any reporting or registration

process established by a local government with regard to recovered materials or post-use polymers is governed by this section and department rules adopted pursuant thereto.

2. Information reported under this subsection which, if disclosed, would reveal a trade secret, as defined in s. 812.081, is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. This subparagraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2021, unless reviewed and saved from repeal through reenactment by the Legislature.

(c) A local government may establish a process in which the local government may temporarily or permanently revoke the authority of a recovered materials dealer to do business within the local government if the local government finds the recovered materials dealer, after reasonable notice of the charges and an opportunity to be heard by an impartial party, has consistently and repeatedly violated state or local laws, ordinances, rules, and regulations.

(d) In addition to any other authority provided by law, a local government is hereby expressly authorized to prohibit a person or entity not certified under this section from doing business within the jurisdiction of the local government; to enter into a nonexclusive franchise or to otherwise provide for the collection, transportation, and processing of recovered materials at commercial establishments, provided that a local government may not require a certified recovered materials dealer to enter into such franchise agreement in order to enter into a contract with any commercial establishment located within the local government's jurisdiction to purchase, collect, transport, process, or receive source-separated recovered materials; and to enter into an exclusive franchise or to otherwise provide for the exclusive collection, transportation, and processing of recovered materials at single-family or multifamily residential properties.

(e) Nothing in this section shall prohibit a local government from enacting ordinances designed to protect the public's general health, safety, and welfare.

(f) As used in this section:

1. "Commercial establishment" means a property or properties zoned or used for commercial or industrial uses, or used by an entity exempt from taxation under s. 501(c)(3) of the Internal Revenue Code, and excludes property or properties zoned or used for single-family residential or multifamily residential uses.

2. "Local government" means a county or municipality.

3. "Certified recovered materials dealer" means a dealer certified under this section.

(4) A recovered materials dealer or an association whose members include recovered materials dealers may initiate an action for injunctive relief or damages for alleged violations of this section. The court may award to the prevailing party or parties reasonable attorney fees and costs.

History.—s. 12, ch. 93-207; s. 5, ch. 95-311; s. 2, ch. 95-366; s. 240, ch. 96-406; s. 17, ch. 2000-211; s. 5, ch. 2000-304; s. 4, ch. 2010-143; s. 20, ch. 2013-92; s. 7, ch. 2016-6; s. 3, ch. 2017-167.

812.081 Trade secrets; theft, embezzlement; unlawful copying; definitions; penalty.—

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

(a) “Article” means any object, device, machine, material, substance, or composition of matter, or any mixture or copy thereof, whether in whole or in part, including any complete or partial writing, record, recording, drawing, sample, specimen, prototype model, photograph, microorganism, blueprint, map, or copy thereof.

(b) “Representing” means completely or partially describing, depicting, embodying, containing, constituting, reflecting, or recording.

(c) “Trade secret” means the whole or any portion or phase of any formula, pattern, device, combination of devices, or compilation of information which is for use, or is used, in the operation of a business and which provides the business an advantage, or an opportunity to obtain an advantage, over those who do not know or use it. The term includes any scientific, technical, or commercial information, including financial information, and includes any design, process, procedure, list of suppliers, list of customers, business code, or improvement thereof. Irrespective of novelty, invention, patentability, the state of the prior art, and the level of skill in the business, art, or field to which the subject matter pertains, a trade secret is considered to be:

1. Secret;
2. Of value;
3. For use or in use by the business; and
4. Of advantage to the business, or providing an opportunity to obtain an advantage, over those who do not know or use it when the owner thereof takes measures to prevent it from becoming available to persons other than those selected by the owner to have access thereto for limited purposes.

(d) “Copy” means any facsimile, replica, photograph, or other reproduction in whole or in part of an article and any note, drawing, or sketch made of or from an article or part or portion thereof.

(2) Any person who, with intent to deprive or withhold from the owner thereof the control of a trade secret, or with an intent to appropriate a trade secret to his or her own use or to the use of another, steals or embezzles an article representing a trade secret or without authority makes or causes to be made a copy of an article representing a trade secret commits a felony of the third degree, punishable as provided in s. 775.082 or s. 775.083.

(3) In a prosecution for a violation of this section, the fact that the person so charged returned or intended to return the article so stolen, embezzled, or copied is not a defense.

History.—ss. 1, 2, 3, ch. 74-136; s. 1, ch. 85-34; s. 1240, ch. 97-102; s. 1, ch. 2016-5.

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL: SPB 7008

INTRODUCER: Environment and Natural Resources Committee

SUBJECT: OGSR/Trade Secrets/Department of Environmental Protection

DATE: February 1, 2021

REVISED: _____

ANALYST

Schreiber

STAFF DIRECTOR

Rogers

REFERENCE

ACTION

EN Submitted as Comm. Bill/Fav

I. Summary:

SPB 7008 amends s. 403.7046, F.S., to save from repeal and narrow the scope of the public records exemption for trade secret information reported under s. 403.7046, F.S., which involves information on recovered materials reported to the Department of Environmental Protection (DEP) or local governments by recovered materials dealers or pyrolysis facilities. The bill also deletes another exemption in s. 403.7046, F.S., which pertains only to similar information that is reported to local governments under s. 403.7046(3), F.S.

The bill continues to maintain information reported on recovered materials as confidential and exempt, but it narrows the scope of the exemption to information reported under s. 403.7046, F.S., relating to the types or amounts of recovered materials. The bill retains the current provision that DEP may provide information covered by the exemption in such form that the names of the persons reporting the information and the specific information reported are not revealed.

The Open Government Sunset Review Act requires the Legislature to review each public record and each public meeting exemption five years after enactment. The two exemptions contained in s. 403.7046 F.S., are scheduled to repeal on October 2, 2021. This bill removes the scheduled repeal of the exemption for information reported under s. 403.7046, F.S., to continue the confidential and exempt status of such information with a narrowed scope of application. The exemption for only information reported under s. 403.7046(3), F.S., is deleted.

The bill is not expected to impact state and local revenues and expenditures.

The bill takes effect October 1, 2021.

II. Present Situation:

Access to Public Records – Generally

The Florida Constitution provides that the public has the right to inspect or copy records made or received in connection with official governmental business.¹ The right to inspect or copy applies to the official business of any public body, officer, or employee of the state, including all three branches of state government, local governmental entities, and any person acting on behalf of the government.²

Additional requirements and exemptions related to public records are found in various statutes and rules, depending on the branch of government involved. For instance, section 11.0431, Florida Statutes (F.S.), provides public access requirements for legislative records. Relevant exemptions are codified in s. 11.0431(2)-(3), F.S., and the statutory provisions are adopted in the rules of each house of the legislature.³ Florida Rule of Judicial Administration 2.420 governs public access to judicial branch records.⁴ Lastly, chapter 119, F.S., provides requirements for public records held by executive agencies.

Executive Agency Records – The Public Records Act

Chapter 119, F.S., known as the Public Records Act, provides that all state, county, and municipal records are open for personal inspection and copying by any person, and that providing access to public records is a duty of each agency.⁵

A public record includes virtually any document or recording, regardless of its physical form or how it may be transmitted.⁶ The Florida Supreme Court has interpreted the statutory definition of “public record” to include “material prepared in connection with official agency business which is intended to perpetuate, communicate, or formalize knowledge of some type.”⁷

The Florida Statutes specify conditions under which public access to public records must be provided. The Public Records Act guarantees every person’s right to inspect and copy any public record at any reasonable time, under reasonable conditions, and under supervision by the

¹ FLA. CONST. art. I, s. 24(a).

² *Id.*

³ See Rule 1.48, *Rules and Manual of the Florida Senate* (2020-2022) and Rule 14.1, *Rules of the Florida House of Representatives*, Edition 1, (2020-2022).

⁴ *State v. Wooten*, 260 So. 3d 1060 (Fla. 4th DCA 2018).

⁵ Section 119.01(1), F.S.; s. 119.011(2), F.S. “Agency” is defined as “any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency.”

⁶ Section 119.011(12), F.S. “Public record” is defined as “all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency.”

⁷ *Shevin v. Byron, Harless, Schaffer, Reid and Assoc., Inc.*, 379 So. 2d 633, 640 (Fla. 1980).

custodian of the public record.⁸ A violation of the Public Records Act may result in civil or criminal liability.⁹

The Legislature may exempt public records from public access requirements by passing a general law by a two-thirds vote of both the House and the Senate.¹⁰ The exemption must state with specificity the public necessity justifying the exemption and must be no broader than necessary to accomplish the stated purpose of the exemption.¹¹

General exemptions from the public records requirements are contained in the Public Records Act.¹² Specific exemptions often are placed in the substantive statutes relating to a particular agency or program.¹³

When creating a public records exemption, the Legislature may provide that a record is “exempt” or “confidential and exempt.” Custodians of records designated as “exempt” are not prohibited from disclosing the record; rather, the exemption means that the custodian cannot be compelled to disclose the record.¹⁴ Custodians of records designated as “confidential and exempt” may not disclose the record except under circumstances specifically defined by the Legislature.¹⁵

Open Government Sunset Review Act

The Open Government Sunset Review Act¹⁶ (the Act) prescribes a legislative review process for newly created or substantially amended public records or open meetings exemptions, with specified exceptions.¹⁷ It requires the automatic repeal of such exemption on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.¹⁸ Under the Act, substantially amending an exemption means expanding the scope of the exemption to include more records or information or to include meetings, but narrowing the scope of an exemption is not substantially amending the exemption.¹⁹

⁸ Section 119.07(1)(a), F.S.

⁹ Section 119.10, F.S. Public records laws are found throughout the Florida Statutes, as are the penalties for violating those laws.

¹⁰ FLA. CONST. art. I, s. 24(c).

¹¹ *Id.*; *see, e.g., Halifax Hosp. Medical Center v. News-Journal Corp.*, 724 So. 2d 567 (Fla. 1999) (holding that a public meetings exemption was unconstitutional because the statement of public necessity did not define important terms and did not justify the breadth of the exemption); *Baker County Press, Inc. v. Baker County Medical Services, Inc.*, 870 So. 2d 189 (Fla. 1st DCA 2004) (holding that a statutory provision written to bring another party within an existing public records exemption is unconstitutional without a public necessity statement).

¹² *See, e.g., s. 119.071(1)(a), F.S.* (exempting from public disclosure examination questions and answer sheets of examinations administered by a governmental agency for the purpose of licensure).

¹³ *See, e.g., s. 213.053(2)(a), F.S.* (exempting from public disclosure information contained in tax returns received by the Department of Revenue).

¹⁴ *See Williams v. City of Minneola*, 575 So. 2d 683, 687 (Fla. 5th DCA 1991).

¹⁵ *WFTV, Inc. v. The School Board of Seminole*, 874 So. 2d 48, 53 (Fla. 5th DCA 2004).

¹⁶ Section 119.15, F.S.

¹⁷ Section 119.15(2)(a) and (b), F.S., provide that exemptions that are required by federal law or are applicable solely to the Legislature or the State Court System are not subject to the Open Government Sunset Review Act.

¹⁸ Section 119.15(3), F.S.

¹⁹ Section 119.15(4)(b), F.S.

The Act provides that a public records or open meetings exemption may be created or maintained only if it serves an identifiable public purpose and is no broader than is necessary.²⁰ An exemption serves an identifiable purpose if it meets one of the following purposes *and* the Legislature finds that the purpose of the exemption outweighs open government policy and cannot be accomplished without the exemption:

- It allows the state or its political subdivisions to effectively and efficiently administer a governmental program, and administration would be significantly impaired without the exemption;²¹
- It protects sensitive, personal information, the release of which would be defamatory, cause unwarranted damage to the good name or reputation of the individual, or would jeopardize the individual's safety. If this public purpose is cited as the basis of an exemption, however, only personal identifying information is exempt;²² or
- It protects information of a confidential nature concerning entities, such as trade or business secrets.²³

The Act also requires specified questions to be considered during the review process.²⁴ In examining an exemption, the Act directs the Legislature to carefully question the purpose and necessity of reenacting the exemption.

If the exemption is continued and expanded, then a public necessity statement and a two-thirds vote for passage are required.²⁵ If the exemption is continued without substantive changes or if the exemption is continued and narrowed, then a public necessity statement and a two-thirds vote for passage are *not* required. If the Legislature allows an exemption to sunset, the previously exempt records will remain exempt unless otherwise provided by law.²⁶

Information Reported Under s. 403.7046, F.S.

The Department of Environmental Protection (DEP) regulates resource recovery and management under part IV of ch. 403, F.S. "Recovered materials" are defined in that part to mean materials with known recycling potential, that can be feasibly recycled, that have been diverted and separated or have been removed from the solid waste stream for sale, use, or reuse as raw materials.²⁷

²⁰ Section 119.15(6)(b), F.S.

²¹ Section 119.15(6)(b)1., F.S.

²² Section 119.15(6)(b)2., F.S.

²³ Section 119.15(6)(b)3., F.S.

²⁴ Section 119.15(6)(a), F.S. The specified questions are:

- What specific records or meetings are affected by the exemption?
- Whom does the exemption uniquely affect, as opposed to the general public?
- What is the identifiable public purpose or goal of the exemption?
- Can the information contained in the records or discussed in the meeting be readily obtained by alternative means? If so, how?
- Is the record or meeting protected by another exemption?
- Are there multiple exemptions for the same type of record or meeting that it would be appropriate to merge?

²⁵ See generally s. 119.15, F.S.

²⁶ Section 119.15(7), F.S.

²⁷ Section 403.703(28), F.S. "Recovered materials" is defined as "metal, paper, glass, plastic, textile, or rubber materials that have known recycling potential, can be feasibly recycled, and have been diverted and source separated or have been removed

Section 403.7046, F.S., requires persons dealing in recovered materials (or post-use polymers²⁸) to follow specified procedures.²⁹ Any person who handles, purchases, receives, recovers, sells, or is an end user of 600 tons or more of recovered materials must annually apply to DEP for certification by April 1.³⁰ Such persons must report by February 1st of each year to DEP, and to all counties from which they received materials, certain information for the preceding year.³¹ Such reporting is submitted through a specified DEP form³², incorporated into rule by reference.³³ Information reported on the form includes the total tons of recovered materials for a given year, organized by types of materials: paper, plastic, metals, glass, rubber, and textiles.

Section 403.7046, F.S., contains a public records exemption that applies to any information reported pursuant to the section or any rule adopted pursuant thereto.³⁴ The exemption states that reported information which, if disclosed, would reveal a trade secret, as defined in s. 812.081, F.S., is confidential and exempt from s. 119.07(1), F.S., and s. 24(a), Art. I of the State Constitution.³⁵ The exemption provides that, for reporting or information purposes, DEP may provide this information “in such form that the names of the persons reporting such information and the specific information reported are not revealed.”³⁶ DEP publishes various reports and data on statewide recycling efforts and solid waste management.³⁷

Section 403.7046(3)(b), F.S., authorizes local governments to establish an additional registration process for recovered materials dealers and pyrolysis facilities doing business within their jurisdiction. Local governments whose population exceeds 35,000 may establish an additional reporting process, limited to the requirements established for reporting to DEP, which must include the types and approximate amounts of recovered materials collected, recycled, or reused during the reporting period.³⁸ Section 403.7046(3)(b)2., F.S., contains a separate public records

from the solid waste stream for sale, use, or reuse as raw materials, whether or not the materials require subsequent processing or separation from each other, but the term does not include materials destined for any use that constitutes disposal. Recovered materials as described in this subsection are not solid waste.”

²⁸ Chapter 2017-167, Laws of Fla. In 2017, the Legislature amended pt. IV, ch. 403, F.S., to include emerging technologies involving post-use polymers, and these are included in the reporting requirements under s. 403.7046, F.S.; s. 403.703(10), (24), and (26), F.S. Post-use polymer means a plastic polymer that is converted to raw materials using gasification or pyrolysis. Gasification means heating post-use polymers and converting them to synthetic gas in an oxygen-deficient atmosphere. Pyrolysis means heating post-use polymers in the absence of oxygen until they are melted and converted to raw materials or products.

²⁹ DEP, *Recovered Materials Certification and Reporting Program*, <https://floridadep.gov/waste/waste-reduction/content/recovered-materials-certification-and-reporting-program> (last visited Jan. 22, 2021).

³⁰ Section 403.7046(1), F.S.; Fla. Admin. Code. R. 62-722.400.

³¹ Section 403.7046(1), F.S.; Fla. Admin. Code. R. 62-722.400.

³² DEP, *Form # 62-722.400(9)(b)*, F.A.C. (2013), available at https://floridadep.gov/sites/default/files/62-722_400_9b.pdf (last visited Jan. 22, 2021).

³³ Fla. Admin. Code. R. 62-722.400(2).

³⁴ Section 403.7046(2), F.S.

³⁵ *Id.*

³⁶ *Id.*

³⁷ DEP, *Recycling*, <https://floridadep.gov/waste/waste-reduction/content/recycling> (last visited Jan. 22, 2021); s. 403.706(7), F.S. Counties are required to provide DEP with recycling and solid waste information so that DEP can assess progress towards the state’s recycling goals; Fla. Admin. Code R. 62-716.450.

³⁸ Section 403.7046(3)(b)1., F.S.

exemption, similar to the public records exemption in s. 403.7046(2), F.S., but which only applies to information reported under subsection (3).³⁹

In 2016, the definition of “trade secret” in s. 812.081, F.S., was expanded to include financial information.⁴⁰ As a result, the two public records exemptions in s. 403.7046, F.S., were reenacted to include the expanded definition of “trade secret,” and, thus, became subject to the Open Government Sunset Review Act.⁴¹ Chapter 2016-6, L.O.F., included a broad public necessity statement that provided a rationale for the exemption, recognizing that, in many instances, businesses are required to provide financial information to public entities and that disclosure of such information to competitors of those businesses would be detrimental to the businesses.⁴² The Legislature stated its intent to protect trade secret information of a confidential nature.⁴³

Open Government Sunset Review Findings and Recommendations

In July of 2020, the Senate Environment and Natural Resources Committee and the House Oversight, Transparency, and Public Management Subcommittee sent an Open Government Sunset Review Questionnaire to DEP regarding the trade secret exemption in s. 403.7046(2), F.S., for information submitted to DEP under s. 403.7046, F.S.

DEP responded to the questionnaire, but did not take a position on whether the exemption in s. 403.7046(2), F.S., should remain in effect.⁴⁴ The questionnaire asked DEP what types of information reported to DEP under s. 403.7046, F.S., would reveal a trade secret if disclosed. DEP’s response was the tonnage information reported by the recovered materials dealers. DEP explained that disclosing such information could provide confidential information regarding tonnage to the competitors of recovered materials dealers, allowing the competitors to evaluate market share.⁴⁵

III. Effect of Proposed Changes:

Section 1 amends s. 403.7046, F.S., which requires persons dealing in recovered materials or post-use polymers to report to the Department of Environmental Protection (DEP) and certain local governments information on recovered materials. The section includes two public records exemptions.

For the exemption in s. 403.7046(2), F.S., the bill saves the exemption from repeal by deleting the repeal date of October 2, 2021. The bill narrows the scope of the exemption, from applying to anything constituting a trade secret as defined in s. 812.081, F.S., to applying to information relating to the types and amounts of recovered materials. This exemption applies to any information reported pursuant to s. 403.7046, F.S., or any rule adopted pursuant thereto.

³⁹ Section 403.7046(3)(b)2., F.S.

⁴⁰ Chapter 2016-5, Laws of Fla.

⁴¹ Section 119.15, F.S.; *see* s. 403.7046(2), (3)(b)2., F.S.

⁴² Chapter 2016-6, s. 21, Laws of Fla.

⁴³ *Id.*

⁴⁴ Open Government Sunset Review Questionnaire, DEP’s Responses, *Information Reported to DEP by Certified Recovered Materials Dealers*, 5 (Aug. 12, 2020)(on file with the Florida Senate Environment and Natural Resources Committee).

⁴⁵ *Id.* at 3.

For the exemption in s. 403.7046(3)(b)2., F.S., the bill deletes the exemption. This exemption currently applies only to information reported under subsection (3) of s. 403.7046, F.S. Information reported under s. 403.7046(3)(b), F.S., would still be covered under the exemption in s. 403.7046(2), F.S., since that exemption applies to any information reported pursuant to s. 403.7046, F.S.

Section 2 states that the bill takes effect October 1, 2021.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Not applicable.

B. Public Records/Open Meetings Issues:

Vote Requirement

Article I, s. 24(c) of the State Constitution requires a two-thirds vote of the members present and voting for final passage of a bill creating or expanding an exemption to the public records requirements. This bill continues one current public records exemption beyond its current date of repeal and narrows the scope of that exemption, and also deletes one current exemption. The bill does not create or expand the scope of an exemption. Thus, the bill does not require an extraordinary vote for enactment.

Public Necessity Statement

Article I, s. 24(c) of the State Constitution requires a bill creating or expanding an exemption to the public records requirements to state with specificity the public necessity justifying the exemption. The bill does not create or expand the scope of an exemption. Thus, a statement of public necessity is not required.

Breadth of Exemption

Article I, s. 24(c) of the State Constitution requires an exemption to the public records requirements to be no broader than necessary to accomplish the stated purpose of the law. The purpose of the law is to protect information that must be reported to the Department of Environmental Protection and local governments under s. 403.7046, F.S. This bill narrows the scope of the exemption to apply to such reported information only as broadly as necessary. Thus, the bill revises the exemption so it is no broader than necessary to accomplish the purpose of the law.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The private sector will continue to be subject to the cost, to the extent imposed, associated with the Department of Environmental Protection (DEP) or local governments making redactions and/or making copies in response to public records requests.

C. Government Sector Impact:

DEP and local governments will continue to incur costs related to the redaction of exempt records and copying associated with responding to public records requests.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 403.7046 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

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

None.

B. Amendments:

None.

FOR CONSIDERATION By the Committee on Environment and Natural Resources

592-01117-21

20217008pb

1 A bill to be entitled
2 An act relating to a review under the Open Government
3 Sunset Review Act; amending s. 403.7046, F.S., which
4 provides exemptions from public records requirements
5 for the trade secrets contained in information
6 obtained by the Department of Environmental
7 Protection; narrowing the exemption to the types or
8 amounts of recovered materials or post-use polymers
9 reported by a recovered materials dealer or pyrolysis
10 facility; removing the scheduled repeals of the
11 exemptions; providing an effective date.

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

14
15 Section 1. Subsection (2) and paragraph (b) of subsection
16 (3) of section 403.7046, Florida Statutes, are amended to read:
17 403.7046 Regulation of recovered materials.—

18 (2) Information reported pursuant to this section or any
19 rule adopted pursuant to this section relating to the types or
20 amounts of recovered materials or post-use polymers reported by
21 a recovered materials dealer or pyrolysis facility ~~which, if~~
22 ~~disclosed, would reveal a trade secret, as defined in s.~~
23 ~~812.081,~~ is confidential and exempt from s. 119.07(1) and s.
24 24(a), Art. I of the State Constitution. For reporting or
25 information purposes, however, the department may provide this
26 information in such form that the names of the persons reporting
27 such information and the specific information reported are not
28 revealed. ~~This subsection is subject to the Open Government~~
29 ~~Sunset Review Act in accordance with s. 119.15 and shall stand~~

592-01117-21

20217008pb

30 ~~repealed on October 2, 2021, unless reviewed and saved from~~
31 ~~repeal through reenactment by the Legislature.~~

32 (3) Except as otherwise provided in this section or
33 pursuant to a special act in effect on or before January 1,
34 1993, a local government may not require a commercial
35 establishment that generates source-separated recovered
36 materials to sell or otherwise convey its recovered materials to
37 the local government or to a facility designated by the local
38 government, nor may the local government restrict such a
39 generator's right to sell or otherwise convey such recovered
40 materials to any properly certified recovered materials dealer
41 who has satisfied the requirements of this section. A local
42 government may not enact any ordinance that prevents such a
43 dealer from entering into a contract with a commercial
44 establishment to purchase, collect, transport, process, or
45 receive source-separated recovered materials.

46 (b)~~1~~. Before engaging in business within the jurisdiction
47 of the local government, a recovered materials dealer or
48 pyrolysis facility must provide the local government with a copy
49 of the certification provided for in this section. In addition,
50 the local government may establish a registration process
51 whereby a recovered materials dealer or pyrolysis facility must
52 register with the local government before engaging in business
53 within the jurisdiction of the local government. Such
54 registration process is limited to requiring the dealer or
55 pyrolysis facility to register its name, including the owner or
56 operator of the dealer or pyrolysis facility, and, if the dealer
57 or pyrolysis facility is a business entity, its general or
58 limited partners, its corporate officers and directors, its

592-01117-21

20217008pb

59 permanent place of business, evidence of its certification under
60 this section, and a certification that the recovered materials
61 or post-use polymers will be processed at a recovered materials
62 processing facility or pyrolysis facility satisfying the
63 requirements of this section. The local government may not use
64 the information provided in the registration application to
65 compete unfairly with the recovered materials dealer until 90
66 days after receipt of the application. All counties, and
67 municipalities whose population exceeds 35,000 according to the
68 population estimates determined pursuant to s. 186.901, may
69 establish a reporting process that must be limited to the
70 regulations, reporting format, and reporting frequency
71 established by the department pursuant to this section, which
72 must, at a minimum, include requiring the dealer or pyrolysis
73 facility to identify the types and approximate amount of
74 recovered materials or post-use polymers collected, recycled, or
75 reused during the reporting period; the approximate percentage
76 of recovered materials or post-use polymers reused, stored, or
77 delivered to a recovered materials processing facility or
78 pyrolysis facility or disposed of in a solid waste disposal
79 facility; and the locations where any recovered materials or
80 post-use polymers were disposed of as solid waste. The local
81 government may charge the dealer or pyrolysis facility a
82 registration fee commensurate with and no greater than the cost
83 incurred by the local government in operating its registration
84 program. Registration program costs are limited to those costs
85 associated with the activities described in this paragraph
86 ~~subparagraph~~. Any reporting or registration process established
87 by a local government with regard to recovered materials or

592-01117-21

20217008pb

88 post-use polymers is governed by this section and department
89 rules adopted pursuant thereto.

90 ~~2. Information reported under this subsection which, if~~
91 ~~disclosed, would reveal a trade secret, as defined in s.~~
92 ~~812.081, is confidential and exempt from s. 119.07(1) and s.~~
93 ~~24(a), Art. I of the State Constitution. This subparagraph is~~
94 ~~subject to the Open Government Sunset Review Act in accordance~~
95 ~~with s. 119.15 and shall stand repealed on October 2, 2021,~~
96 ~~unless reviewed and saved from repeal through reenactment by the~~
97 ~~Legislature.~~

98 Section 2. This act shall take effect October 1, 2021.

A black and white copy of this document is not official

2405

STATE OF FLORIDA
DEPARTMENT OF STATE

Division of Elections

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

Angus G. "Gus" Andrews, Jr.

is duly appointed a member of the

Governing Board,

**Northwest Florida Water Management
District**

for a term beginning on the Seventh day of October, A.D., 2020,
until the First day of March, A.D., 2023 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-Sixth day of October, A.D., 2020.*



Secretary of State

DSDE 99 (3/03)

The original document has a reflective line mark in paper. Hold at an angle to view when checking.

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

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



RON DESANTIS
GOVERNOR

RECEIVED
DEPARTMENT OF STATE

2020 OCT 13 AM 10:28

DIVISION OF ELECTIONS
TALLAHASSEE, FL

October 8, 2020

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

Dear Secretary Lee:

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

Mr. Angus Andrews
615 Bob Sikes Road
DeFuniak Springs, Florida 32435

as a member of the Northwest Florida Water Management District Governing Board, subject to confirmation by the Senate. This appointment is effective October 7, 2020, for a term ending March 1, 2023.

Sincerely,

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

Ron DeSantis
Governor

RD/kk

OATH OF OFFICE RECEIVED
DEPARTMENT OF STATE
(Art. II, § 5(b), Fla. Const.)

2020 OCT 26 AM 9:42

STATE OF FLORIDA

County of Walton

DEPARTMENT OF STATE
DIVISION OF ELECTIONS

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

Governing Board Northwest Florida Water Management District
(Title of Office)

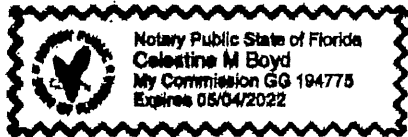
on which I am now about to enter, so help me God.

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

Angus G. Andrews Jr.
Signature

Sworn to and subscribed before me by means of physical presence or
 online notarization, this 12 day of October, 2020

Celestine M. Boyd
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

P.O. Box 405
Street or Post Office Box
DeFuniak Springs, FL. 32435
City, State, Zip Code

Angus G. "Gus" Andrews Jr.
Print Name

Angus G. Andrews Jr.
Signature

A black and white copy of this document is not official

2405

STATE OF FLORIDA
DEPARTMENT OF STATE

Division of Elections

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

Kellie Ralston

is duly appointed a member of the
Governing Board,
Northwest Florida Water Management
District

for a term beginning on the Eighth day of September, A.D.,
2020, until the First day of March, A.D., 2024 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-Sixth day of October, A.D., 2020.*



Secretary of State



DSDE 99 (3/03)

The original document has a reflective line mark in paper. Hold at an angle to view when checking.

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

State of Florida, appear in final letters across the face of this 8 1/2 X 11" document



RON DeSANTIS
GOVERNOR

RECEIVED
DEPARTMENT OF STATE
2020 SEP 10 AM 10:02
DIVISION OF ELECTIONS
TALLAHASSEE FL

September 8, 2020

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

Dear Secretary Lee:

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

Mrs. Kellie Ralston
9167 Shoal Creek Drive
Tallahassee, Florida 32312

as a member of the Northwest Florida Water Management District Governing Board, succeeding Jonathan Costello, subject to confirmation by the Senate. This appointment is effective September 8, 2020, for a term ending March 1, 2024.

Sincerely,

Ron DeSantis
Governor

RD/kk

OATH OF OFFICE
(Art. II, § 5(b), Fla. Const.)

RECEIVED
DEPARTMENT OF STATE
2020 OCT 26 AM 9:43
DEPARTMENT OF STATE
DIVISION OF ELECTIONS

STATE OF FLORIDA

County of Leon

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

Governing Board, Northwest Florida Water Management District
(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.]

Kellie Ralston
Signature

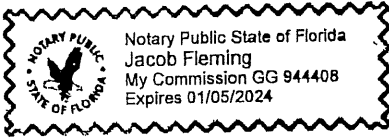
Sworn to and subscribed before me by means of physical presence or
online notarization, this 5th day of October, 2020.

Jacob Fleming
Signature of Officer Administering Oath or of Notary Public

Jacob Fleming
Print, Type, or Stamp Commissioned Name of Notary Public

Personally Known OR Produced Identification

Type of Identification Produced FL DL



ACCEPTANCE

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

Mailing Address: Home Office

9167 Shoal Creek Dr
Street or Post Office Box
Tallahassee, FL 32312
City, State, Zip Code

Kellie Ralston
Print Name
Kellie Ralston
Signature

2405

STATE OF FLORIDA
DEPARTMENT OF STATE

Division of Elections

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

Nicholas J. Patronis

is duly appointed a member of the

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

for a term beginning on the Eighth day of September, A.D.,
2020, until the First day of March, A.D., 2022 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 Fifth day of November, A.D., 2020.*



Secretary of State

DSDE 99 (3/03)

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

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



RON DESANTIS
GOVERNOR

RECEIVED
DEPARTMENT OF STATE
2020 SEP 10 AM 10:02
DIVISION OF ELECTIONS
TALLAHASSEE, FL

September 8, 2020

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

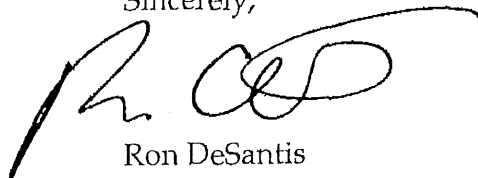
Dear Secretary Lee:

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

Mr. Nicholas Patronis
5551 North Lagoon Drive
Panama City Beach, Florida 32408

as a member of the Northwest Florida Water Management District Governing Board, succeeding Cindy Littlejohn, subject to confirmation by the Senate. This appointment is effective September 8, 2020, for a term ending March 1, 2022.

Sincerely,



Ron DeSantis
Governor

RD/kk

OATH OF OFFICE

(Art. II, § 5(b), Fla. Const.)

RECEIVED
DEPARTMENT OF STATE

2020 OCT 26 AM 9:44

STATE OF FLORIDA

County of Bay

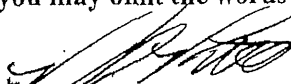
DEPARTMENT OF STATE
DIVISION OF ELECTIONS

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

Governing Board of Northwest Florida Watermanagement District
(Title of Office)

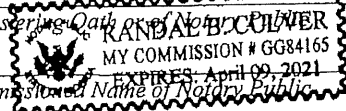
on which I am now about to enter, so help me God.

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



Signature

Sworn to and subscribed before me by means of physical presence or
 online notarization, this 2nd day of SEPTEMBER, 2020.

Signature of Officer Administering Oath or Notary Public


Print, Type, or Stamp Commissioned Name of Notary Public

Personally Known OR Produced Identification

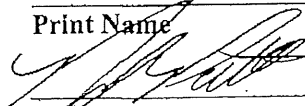
Type of Identification Produced _____

ACCEPTANCE

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

Mailing Address: Home Office

5551 N. Lagoon Drive
Street or Post Office Box
Panama City Beach, FL 32408
City, State, Zip Code

Nicholas J. Patronis
Print Name


Signature



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Agriculture
Appropriations Subcommittee on Agriculture,
Environment, and General Government
Appropriations Subcommittee on Transportation,
Tourism, and Economic Development
Environment and Natural Resources

SELECT COMMITTEE:

Select Committee on Pandemic
Preparedness and Response

JOINT COMMITTEE:

Joint Administrative Procedures Committee

SENATOR LORANNE AUSLEY

3rd District

January 29, 2021

The Honorable Jason Brodeur
Chair, Environment and Natural Resources Committee
Florida Senate
404 S Monroe St
325 Knott Building
Tallahassee, FL 32399-1100

Dear Chair Brodeur:

I would respectfully request to be excused from your Environment and Natural Resources Committee on Monday, February 1, 2021. Unfortunately, I tested positive for COVID-19 last Monday and am currently following CDC and Senate protocols for quarantining and testing.

Thank you for your consideration.

Sincerely,

Lorraine Ausley

cc: Ellen Rogers, Staff Director
Kim Bonn, Committee Administrative Assistant

REPLY TO:

- 20 East Washington Street, Suite D, Quincy, Florida 32351 (850) 627-0474
- 202 Senate Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5003

Senate's Website: www.flsenate.gov

WILTON SIMPSON
President of the Senate

AARON BEAN
President Pro Tempore

THE FLORIDA SENATE
APPEARANCE RECORD

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

2/1/21
Meeting Date

SB 64
Bill Number (if applicable)

Topic Reclaimed Water

Amendment Barcode (if applicable)

Name Jim Spratt

Job Title _____

Address 1195 Monroe St.
Street

Phone 850-278-1296

TALLAHASSEE FL 32301
City State Zip

Email Jim@masculiastrategiesllc

Speaking: For Against Information

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

Representing Associated Industries of Florida

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

YOU MUST PRINT AND DELIVER THIS FORM TO THE ASSIGNED TESTIMONY ROOM

Duplicate

THE FLORIDA SENATE

APPEARANCE RECORD

February 1, 2021

Meeting Date

SB64

Bill Number (if applicable)

Topic SB 64 Reclaimed Water

Amendment Barcode (if applicable)

Name David Ballard Geddis jr.

Job Title unemployed

Address 802 Georgia Avenue

Phone (727) 483-1330

Street

Palm Harbor

Florida

34683

Email geddisdavid@yahoo.com

City

State

Zip

Speaking: For Against Information

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

Representing general audience

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/14/14)

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THE FLORIDA SENATE
APPEARANCE RECORD

2/1/21 (ENR A1 2:30)

Meeting Date

64

Bill Number (if applicable)

Topic Reclaimed Water

Name David Cullen

Amendment Barcode (if applicable)

Job Title _____

Address 1934 Shelby Court

Street

Phone 941-323-2404

Tallahassee

FL

32308

City

State

Zip

Email cullenasea@gmail.com

Speaking: For Against Information

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

Representing Sierra Club Florida

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

THE FLORIDA SENATE

APPEARANCE RECORD

FEB 1st 2021

Meeting Date

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

SB 64

Bill Number (if applicable)

Topic SB 64 Reclaimed Water Requirements Amendment Barcode (if applicable)

Name DAVID M. SERDAR (SIR-DAR)

Job Title Retired Certified in Water Damage at over 20 years

Address 66 Wintergreen Drive Phone 352 805 6594

Street

City

State

Zip

Email goldendave1955@gmail.com

Speaking: For Against Information

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

Representing Self, A Environmentalist STATESMAN
with issues on protecting
our precious water

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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THE FLORIDA SENATE

APPEARANCE RECORD

2/1/21

Meeting Date

578

Bill Number (if applicable)

Topic Marina Evacuations

Name Robert Stuart

Amendment Barcode (if applicable)

Job Title Government Consultant

Address 301 S Bronough Street, Suite 600

Phone 850-577-9090

Street

Tallahassee

FL

32301

City

State

Zip

Email robert.stuart@gray-robinson.com

Speaking: For Against Information

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

Representing Canaveral Port Authority

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

YOU MUST PRINT AND DELIVER THIS FORM TO THE ASSIGNED TESTIMONY ROOM

Duplicate

THE FLORIDA SENATE

APPEARANCE RECORD

2/1/21

Meeting Date

578

Bill Number (if applicable)

Topic Marina Evacuations

Name Bonnie Basham

Amendment Barcode (if applicable)

Job Title Lobbyist with Capital Ideas

Address 10797 Wadesboro Road

Phone 850-933-7277

Street

tallahassee

FL

32301

City

State

Zip

Email capital.ideas@att.net

Speaking: For Against Information

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

Representing Boat Owners of the United States (BOAT US)

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

02/01/21

Meeting Date

SB 578

Bill Number (if applicable)

Topic Marina Evacuations

Name Michael Rubin

Amendment Barcode (if applicable)

Job Title VP, Governmental Affairs

Address 502 East Jefferson Street

Street

Tallahassee

City

FL

State

32301

Zip

Phone 850-222-8028

Email mike.rubin@flaports.org

Speaking: For Against Information

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

Representing Florida Ports Council

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

This form is part of the public record for this meeting

YOU MUST PRINT AND DELIVER THIS FORM TO THE ASSIGNED TESTIMONY ROOM

2/1/2021

Meeting Date

THE FLORIDA SENATE
APPEARANCE RECORD

SB 578

Bill Number (if applicable)

Topic Marina Evacuations

Amendment Barcode (if applicable)

Name Bonnie Basham

Job Title lobbyist Capital Ideas

Address 10797 Wadesboro Rd

Phone 850-933-7277

Street

Tallahassee

FL

32317

City

State

Zip

Email capital.ideas@att.net

Speaking: For Against Information

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

Representing Boat Owners of the United States (BOAT US)

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

2/1/21

Meeting Date

SB 588
Bill Number (if applicable)

Topic Coral Reef / SB 588

Amendment Barcode (if applicable)

Name JEFF SCALA

Job Title Associate Director of Public Policy

Address 100 S Monroe
Street

Phone (727) 637-4081

Tallahassee FL 32301
City State Zip

Email jscala@fl-counties.com

Speaking: For Against Information

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

Representing Florida Association of Counties

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

YOU MUST PRINT AND DELIVER THIS FORM TO THE ASSIGNED TESTIMONY ROOM

Duplicate

THE FLORIDA SENATE

APPEARANCE RECORD

2/1/21

Meeting Date

588

Bill Number (if applicable)

Topic Kristin Jacobs Coral Reef

Amendment Barcode (if applicable)

Name Frank Bernardino

Job Title Senior Partner

Address 201 W. Park Ave. Suite 100

Phone (561) 718-2345

Street

Tallahassee, FL

State

32301

Zip

Email frank@antfieldflorida.com

Speaking: For Against Information

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

Representing Broward, Monroe and Palm Beach Counties

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

YOU MUST PRINT AND DELIVER THIS FORM TO THE ASSIGNED TESTIMONY ROOM

Duplicate

THE FLORIDA SENATE
APPEARANCE RECORD

2/1/21 (ENR A1 2:30)
Meeting Date

588
Bill Number (if applicable)

Topic Conservation Area Designation

Amendment Barcode (if applicable)

Name David Cullen

Job Title _____

Address 1934 Shelby Court
Street

Phone 941-323-2404

Tallahassee FL 32308
City State Zip

Email cullenasea@gmail.com

Speaking: For Against Information

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

Representing Sierra Club Florida

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

YOU MUST PRINT AND DELIVER THIS FORM TO THE ASSIGNED TESTIMONY ROOM

THE FLORIDA SENATE

APPEARANCE RECORD

2/1/21

Meeting Date

588

Bill Number (if applicable)

Topic Kristin Jacobs Coral Reef

Amendment Barcode (if applicable)

Name Frank Bernardino

Job Title Senior Partner

Address 201 W. Park Ave. Suite 100

Phone (561) 718 - 2345

Street

Tallahassee

City

FL

State

32301

Zip

Email Frankcandfield@florida.com

Speaking: For Against Information

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

Representing Broward, Monroe and Palm Beach Counties

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

YOU MUST PRINT AND DELIVER THIS FORM TO THE ASSIGNED TESTIMONY ROOM

THE FLORIDA SENATE

APPEARANCE RECORD

2/1/2021

Meeting Date

Bill Number (if applicable)

Topic Presentation on Biosolids Rule Ratification

Amendment Barcode (if applicable)

Name John Truitt

Job Title Deputy Secretary for Regulatory Programs

Address 3900 Commonwealth Blvd

Phone _____

Street

Tallahassee

FL

32399

Email _____

City

State

Zip

Speaking: For Against Information

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

Representing FL Dept of Environmental Protection

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

FEB 1st 2021
Meeting Date

Presentation #1

Bill Number (if applicable)

Topic Biosolids Rule Ratification

Amendment Barcode (if applicable)

Name David Sirdan (SIRDAN)

Certified above

Job Title Retired Certified Commercial Cleaner

Amover 20yr
Chemical Applicator

Address 66 Wintergreen Dr

Phone 352 205 6597

Street

Fruitland Park FL 34738

Email goldendave1955@gmail.com

City

State

Zip

Speaking: For Against Information

Waive Speaking: In Support Against

(The Chair will read this information into the record.)

Representing Self & Our Environment

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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THE FLORIDA SENATE

APPEARANCE RECORD

2/1/2021

Meeting Date

Bill Number (if applicable)

Topic Presentation on the Central Florida Water Initiative Rule Ratification

Amendment Barcode (if applicable)

Name Adam Blalock

Job Title Deputy Secretary for Ecosystems Restoration

Address 3900 Commonwealth Blvd

Phone _____

Street

Tallahassee

FL

32399

Email _____

City

State

Zip

Speaking: For Against Information

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

Representing FL Dept of Environmental Protection

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

FEB 13th 2024

Meeting Date

Bill Number (if applicable)

Topic Presentations #2 Central Ft. Water Ho. Rule 12.1 Amendment Barcode (if applicable)

Name DAVID SERDAR (SIR-DAR)

Job Title Retiree Corporate Commercial (Certified) Cleaner

Address 66 WINTERGREEN DR Phone 352 2905 6597

Street FRUITLAND PARK #13473 Email golferdar1955@gmail.com
City State Zip

Speaking: For Against Information

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

Representing Self & the Environment

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

FEB 1, 2021

Meeting Date

D.E.P.
CRITERIA WATER
Bill Number (if applicable)

Topic DIRECT INJECTION OF RECLAIMED WATER INTO AQUIFER

Amendment Barcode (if applicable)

Name DAVID BALLARD CRODDIS JR (TIME 3:45-3:50 PM)

Job Title _____

Address 802 GEORGIA AVENUE

Phone (727) 483-1330

Street

Palm Harbor

Florida

34683

Email MYABRIDGEPOINT@GMAIL.COM

City

State

Zip

Com

Speaking: For Against Information

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

Representing _____

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/14/14)

CourtSmart Tag Report

Room: LL 37

Case No.:

Type:

Caption: Environment and Natural Resources Committee

Judge:

Started: 2/1/2021 2:31:20 PM

Ends: 2/1/2021 3:50:34 PM Length: 01:19:15

2:31:19 PM Meeting called to order
2:31:29 PM Roll Call - Quorum present
2:31:48 PM Stand for pledge of allegiance
2:32:33 PM Comments by Chair Brodeur
2:32:42 PM Passed Gavel to Senator Stewart
2:33:17 PM SPB 7006 taken up
2:33:26 PM Senator Brodeur explains bill
2:33:38 PM No questions
2:34:31 PM No discussion
2:34:42 PM No appearance cards
2:34:49 PM No debate
2:34:55 PM SPB 7006 reported favorably
2:35:14 PM SPB 7008 explained by Senator Brodeur
2:35:46 PM No questions
2:36:18 PM No appearance forms
2:36:28 PM No debate
2:36:40 PM SPB 7008 reported favorably
2:37:12 PM SB 524, Fish and Wildlife Conservation Commission Trust Funds, by Senator Hooper
2:37:22 PM Senator Hooper explains bill
2:38:16 PM No questions
2:38:34 PM No appearance forms
2:39:34 PM No debate
2:39:38 PM Senator Hooper waves close
2:39:46 PM SB 524 reported favorably
2:40:05 PM SB 578 by Senator Wright taken up
2:40:21 PM Senator Wright explains bill
2:41:36 PM No questions
2:42:20 PM Bonnie Basham, Boat Owners of the United States (BOAT US), waives in support
2:42:40 PM Michael Rubin, VP of Governmental Affairs for Florida Ports Council, waives in support
2:42:59 PM Robert Stuart, Government Consultant for Canaveral Port Authority, waives in support
2:43:10 PM No debate
2:43:15 PM Senator Wright closes on bill
2:43:23 PM SB 578 reported favorably
2:43:38 PM SB 588 by Senator Book taken up
2:43:54 PM Senator Book explains bill
2:45:35 PM No questions
2:45:43 PM Jeff Scala, Florida Association of Counties, waives in support
2:46:08 PM Frank Bernardino, Broward, Monroe and Palm Beach Counties, waives in support
2:46:20 PM David Cullen, Sierra Club Florida, waives in support
2:46:31 PM Debate from Senator Albritton
2:47:30 PM Senator Book waves close
2:47:37 PM SB 588 reported favorably
2:47:53 PM SB 64 by Senator Albritton taken up
2:48:08 PM Senator Albritton explains bill
2:53:25 PM Questions from Senator Bean
2:53:47 PM Senator Albritton responds to question
2:55:10 PM Ammendment 935396 by Senator Albritton
2:55:31 PM Senator Albritton explains ammdement
2:56:36 PM No questions on ammdement
2:56:50 PM No debate on ammdement
2:57:50 PM Senator Albritton closes on Ammdement
2:57:59 PM Ammdement adopted

2:58:03 PM Ammendment 906528 by Senator Albritton
2:58:15 PM Senator Albritton explains ammdement
2:58:37 PM No questions on ammdement
2:58:47 PM No debate on the ammdement
2:59:03 PM Senator Albritton closes on ammdement
2:59:12 PM Ammdement is adopted
2:59:18 PM Back on the bill
2:59:22 PM No questions on Bill
2:59:56 PM Jim Spratt, Associated Industries of Florida, waives in support
3:00:15 PM Speaker David Serdar
3:03:31 PM Speaker David Cullen, Sierra Club Florida
3:05:51 PM Speaker David Geddis Jr.
3:09:14 PM No debate
3:10:00 PM Senator Albritton closes on bill as ammdemented
3:11:17 PM CS/SB 64 is reported favorably
3:11:59 PM Appointee Angus G. Andrews Jr.
3:12:32 PM Appointee Kellie Rebello Raiston
3:12:34 PM Appointee Nicholas Jimmy Patronis
3:12:48 PM Take up one vote for all appointees
3:13:19 PM Senator Bean moves to approve confirmations
3:13:32 PM Roll call appointments is recommended favorably
3:14:35 PM Presentation by John Truitt, Deputy Secretary for Regulatory Programs, DEP
3:24:06 PM No questions
3:24:25 PM Speaker David Serdar
3:27:44 PM Presentation by Adam Blalock, Deputy Secretary for Ecosystems Restoration, DEP
3:45:44 PM No questions
3:45:57 PM No discussion
3:46:04 PM Speaker David Serdar
3:48:48 PM Speaker David Geddis Jr.
3:50:07 PM Senator Perry moves to adjourn
3:50:20 PM The meeting is adjourned