

**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.)

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Prepared By: The Professional Staff of the Committee on Criminal Justice

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BILL: SB 1486

INTRODUCER: Senators Pizzo and Brandes

SUBJECT: Clothing-optional Locations

DATE: March 8, 2021

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Stokes	Jones	CJ	<b>Favorable</b>
2.			EN	
3.			RC	

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**I. Summary:**

SB 1486 amends s. 800.03, F.S., to specifically permit being naked in public on a clothing-optional beach.

Section 800.03, F.S., provides that it is unlawful for a person to expose or exhibit his or her sexual organs in a vulgar or indecent manner while in public or private view. The exposure of sexual organs is not a violation of this section by:

- A mother breastfeeding her baby.
- An individual who is merely naked at any place provided or set apart for that purpose.

Additionally, this bill directs the Division of Recreation and Parks of the Department of Environmental Protection to amend Rule 62D-2.014(7)(b), F.A.C., to comply with this act.

Rule 62D-2.014(7)(b), F.A.C., provides that in every area of a park including bathing areas no individual shall expose his or her genitals, pubic area, the entire buttock or female breast below the top of the nipple, with less than a fully opaque covering.

This bill is effective July 1, 2021.

**II. Present Situation:**

Florida has multiple clothing-optional beaches along the east coast. Top clothing-optional locations include Haulover Beach, Blind Creek Beach, Playalinda and Apollo Beaches.<sup>1</sup> While it is permissible to be naked at clothing-optional beaches, it is unlawful to engage in sexual

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<sup>1</sup> *Top Nude Beaches in Florida*, Visit Florida, Carlos Harrison, available at: <https://www.visitflorida.com/en-us/florida-beaches/nude.html> (last visited March 3, 2021).

activity. Many of the clothing-optional beaches advise that individuals conducting themselves in a lewd manner will be arrested.<sup>2</sup>

There are multiple ways in which a beach may be recognized as clothing-optional. For example, St. Lucie County commissioners are expected to vote on a county ordinance to officially recognize Blind Creek Beach as a clothing-optional beach.<sup>3</sup> According to the American Association for Nude Recreation Florida Region, nude tourism has a \$7.4 billion annual economic impact for Florida.<sup>4</sup>

### **Exposure of Sexual Organs**

Section 800.03, F.S., provides that it is unlawful for a person to expose or exhibit his or her sexual organs in a vulgar or indecent manner while in public or private view. The exposure of sexual organs is not a violation of this section by:

- A mother breastfeeding her baby.
- An individual who is merely naked at any place provided or set apart for that purpose.

A violation of this section is a first degree misdemeanor.<sup>5</sup> A second or subsequent violation is a third degree felony.<sup>6</sup>

Courts have consistently held that being naked alone is not sufficient to violate s. 800.03, F.S. To trigger a violation, there must also be a “lascivious” exhibition of the sexual organs.<sup>7</sup> Some counties have enacted county ordinances which specifically address public nudity.<sup>8</sup> Similarly, the Florida Department of Environmental Protection (DEP) has enacted a rule that specifically prohibits nudity in parks.<sup>9</sup> These local ordinances or rules may further restrict nudity in their respective jurisdictions.

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<sup>2</sup> *Frequently Asked Questions*, Haulover Beach, available at: <https://www.hauloverbeach.org/faq/> (last visited March 3, 2021); *Naturist Beach Etiquette for Blind Creek Beach*, Treasure Coast Naturists, available at:

<https://www.treasurecoastnaturists.org/beach-etiquette> (last visited March 3, 2021).

<sup>3</sup> St. Lucie County could be a step closer to having official nude beach, Al Pefley, CBS12 News January 7th 2020, available at: <https://cbs12.com/news/local/st-lucie-county-could-be-a-step-closer-to-having-official-nude-beach> (last visited March 9, 2021).

<sup>4</sup> *The Economic Impact of Nude Tourism and Recreation in Florida*, *American Association for Nude Recreation Florida Region*, p. i., February 7, 2017. (On file with Senate Committee on Criminal Justice).

<sup>5</sup> A first degree misdemeanor is punishable by up to one year in jail and up to a \$1,000 fine. Sections 775.082 and 775.083, F.S.

<sup>6</sup> A third degree felony is punishable by up to five years in prison and up to a \$5,000 fine. Sections 775.082, 775.083, and 775.084, F.S.

<sup>7</sup> See *Hoffman v. Carson*, 250 So. 2d 891 (Fla. 1971); *Goodmakers v. State*, 450 So. 2d 888 (Fla. 2d. DCA 1984); *Duvallon v. State*, 404 So. 2d 196 (Fla. 1st DCA 1981).

<sup>8</sup> Brevard County, Florida, Municipal Code art. II., s. 74-30.

<sup>9</sup> Rule 62D-2.014(7)(a), F.A.C., states that in every area of a park including bathing areas no individual shall expose the human, male or female genitals, pubic area, the entire buttocks or female breast below the top of the nipple, with less than fully opaque covering.

## Florida Department of Environmental Protection

The DEP is the state's lead agency for environmental management and stewardship, protecting Florida's air, water, and land.<sup>10</sup> The DEP is divided into three primary areas:

- Land and Recreation;
- Regulatory; and
- Ecosystems Restoration.<sup>11</sup>

The DEP's Division of Recreation and Parks (Division) is under the primary area of Land and Recreation. The Division includes the Florida Park Service and the Office of Greenways and Trails.<sup>12</sup> It is the duty of the Division to supervise, administer, regulate, and control the operation of all public parks.<sup>13</sup>

Section 258.007(2), F.S., provides that the Division has authority to adopt rules pursuant to ss. 120.536(1)<sup>14</sup> and 120.54, F.S.,<sup>15</sup> to implement provisions of law conferring duties on it and authority to impose penalties as provided in s. 258.008, F.S., for the violation of any rule authorized. The Division may prohibit or regulate any activity that lessens the safety or recreational experience of the visiting public or lessens the natural or cultural value of the park.<sup>16</sup> The Division has enacted various rules regarding conduct in state parks. Specifically, the Division has enacted a rule to prohibit nudity in state parks.

Rule 62D-2.014(7)(b), F.A.C., provides that in every area of a park including bathing areas no individual shall expose his or her genitals, pubic area, the entire buttock or female breast below the top of the nipple, with less than a fully opaque covering. Any person who violates rules adopted under ch. 258, F.S., commits a noncriminal infraction for which ejection from all property managed by the Division and a fine of up to \$500 may be imposed by the Division.<sup>17</sup>

### III. Effect of Proposed Changes:

The bill amends s. 800.03, F.S., to specifically permit being naked in public on a clothing-optional beach by adding it to the list of exceptions that a person may expose his or her sexual organs and not commit a violation.

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<sup>10</sup> *About DEP*, Florida Department of Environmental Protection, available at <https://floridadep.gov/about-dep> (last visited March 3, 2021).

<sup>11</sup> *Id.*

<sup>12</sup> Deputy Secretary for Land and Recreation, Florida Department of Environmental Protection, available at <https://floridadep.gov/land-and-rec> (last visited March 3, 2021).

<sup>13</sup> *See* s. 258.004, F.S.

<sup>14</sup> Section 120.536(1), F.S., provides that a grant of rulemaking authority is necessary but not sufficient to allow an agency to adopt a rule; a specific law to be implemented is also required. An agency may adopt only rules that implement or interpret the specific powers and duties granted by the enabling statute. No agency shall have authority to adopt a rule only because it is reasonably related to the purpose of the enabling legislation and is not arbitrary and capricious or is within the agency's class of powers and duties, nor shall an agency have the authority to implement statutory provisions setting forth general legislative intent or policy. Statutory language granting rulemaking authority or generally describing the powers and functions of an agency shall be construed to extend no further than implementing or interpreting the specific powers and duties conferred by the enabling statute.

<sup>15</sup> Section 120.54, F.S., provides general provisions relating to an agency's rulemaking authority.

<sup>16</sup> Rule 62D-2.014(1), F.A.C.

<sup>17</sup> Section 258.008(1), F.S.

Section 800.03, F.S., provides that it is unlawful for a person to expose or exhibit his or her sexual organs in a vulgar or indecent manner while in public or private view. Exceptions to the prohibition of the exposure of sexual organs include:

- A mother breastfeeding her baby.
- An individual who is merely naked at any place provided or set apart for that purpose.

Additionally, this bill directs the Division of Recreation and Parks of the Department of Environmental Protection to amend Rule 62D-2.014(7)(b), F.A.C., to comply with this act.

Rule 62D-2.014(7)(b), F.A.C., provides that in every area of a park including bathing areas no individual shall expose his or her genitals, pubic area, the entire buttock or female breast below the top of the nipple, with less than a fully opaque covering.

This bill is effective 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 identified.

#### **V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends section 800.03 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.