

**HOUSE OF REPRESENTATIVES STAFF ANALYSIS**

**BILL #:** CS/HB 105 Regulation of Smoking by Counties and Municipalities

**SPONSOR(S):** Fine and others

**TIED BILLS:** **IDEN./SIM. BILLS:** CS/CS/SB 224

<b>REFERENCE</b>	<b>ACTION</b>	<b>ANALYST</b>	<b>STAFF DIRECTOR or BUDGET/POLICY CHIEF</b>
1) Health & Human Services Committee	19 Y, 0 N, As CS	Morris	Calamas

**SUMMARY ANALYSIS**

The Florida Clean Indoor Air Act (FCIAA), implements Article X, Section 20 of the Florida Constitution. Article X, Section 20 of the Florida Constitution prohibits a person from smoking tobacco or using a vapor-generating electronic device in an enclosed indoor workplace, with certain exceptions. Current law preempts the regulation of smoking and does not allow counties or municipalities to regulate smoking.

CS/HB 105 amends the FCIAA to allow counties and municipalities to restrict smoking within the boundaries of any public beach or park they own.

Additionally, the bill authorizes counties and municipalities to further restrict smoking or vaping within 25 feet of a public entrance or exit of a business located within the boundaries its jurisdiction, with exceptions.

The bill changes the title of the “Florida Clean Indoor Air Act” to the “Florida Clean Air Act” to account for the broader application of the act proposed in the bill.

The bill has no fiscal impact on state government and an indeterminate, negative fiscal impact on local governments.

The bill provides an effective date of July 1, 2022.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### Present Situation

##### Smoking Regulation

While the Food and Drug Administration (FDA) regulates the manufacture, distribution, and marketing of tobacco and vaping products, it does not regulate smoking or vaping in public places – leaving that to the states.

In 1985, the Florida Legislature enacted the Florida Clean Indoor Air Act (FCIAA)<sup>1</sup> to protect the public health, comfort, and environment by creating areas in public places and at public meetings that were reasonably free from tobacco smoke. The FCIAA originally prohibited smoking<sup>2</sup> in certain indoor public places (e.g. government buildings, elevators, public transportation, hospitals, day care centers) or common areas of an indoor public place (e.g. lobby, hallway, stairwell, restrooms), but did permit designated smoking areas of specified indoor public places such as places of employment, retail stores, indoor arenas, and restaurants.

#### Article X, Section 20 of the Florida Constitution

In the November 2002 General Election, Floridians voted to create Article X, Section 20 of the Florida Constitution, titled “Workplaces without tobacco smoke,” which further restricted smoking indoors.<sup>3</sup> The purpose of this citizens’ initiative was to protect people from the health hazards of secondhand tobacco smoke by prohibiting smoking in enclosed indoor workplaces, which are defined as:

Any place where one or more persons engage in work,<sup>4</sup> and which place is predominantly or totally bounded on all sides and above by physical barriers, regardless of whether such barriers consist of or include uncovered openings, screened or otherwise partially covered openings; or open or closed windows, jalousies, doors, or the like.<sup>5</sup>

The provision also provided various other definitions and exceptions to the smoking ban, and required the Legislature to implement the section in law by the following legislative session. Accordingly, in 2003, the Legislature amended the FCIAA to conform existing law and implement the constitutional provision in a manner consistent with its broad purpose and stated terms.<sup>6</sup>

In the November 2018 General Election, Floridians passed Amendment No. 9, which amended Article X, Section 20 of the Florida Constitution, banning the use of vapor-generating electronic devices, or vaping, in enclosed indoor workplaces, consistent with the prohibition on tobacco smoking.<sup>7</sup>

The FCIAA prohibits smoking and vaping in an enclosed indoor workplace, unless it is a:<sup>8</sup>

<sup>1</sup> Ch. 386, Part II, F.S.; ch. 85-257, Laws of Fla.

<sup>2</sup> “Smoking” is defined as “inhaling, exhaling, burning, carrying, or possessing any lighted tobacco product, including cigarettes, cigars, pipe tobacco, and any other lighted product. S. 386.203(11), F.S.

<sup>3</sup> Text available at: <https://dos.elections.myflorida.com/initiatives/fulltext/pdf/34548-1.pdf> (last visited Feb. 11, 2022). The constitutional provision does not preclude the Legislature from enacting more restrictive regulation of tobacco smoking.

<sup>4</sup> “Work” is defined as “any persons providing any employment or employment-type service for or at the request of another individual or individuals or any public or private entity, whether for compensation or not, whether full or part-time, whether legally or not.” Fla. Const., art. X, s. 20. “Work” includes, without limitation, any such service performed by an employee, independent contractor, agent, partner, proprietor, manager, officer, director, apprentice, trainee, associate, servant, volunteer, and the like. The term does not include noncommercial activities performed by members of a membership association. S. 386.203(17), F.S.

<sup>5</sup> The smoking ban applies to all enclosed indoor workplaces regardless of whether work is occurring at any given time, Fla. Const., art. X, s. 20.

<sup>6</sup> Ch. 2003-398, Laws of Fla.

<sup>7</sup> Text available at: p. 26-30 <https://dos.myflorida.com/media/699824/constitutional-amendments-2018-general-election-english.pdf> (last visited Feb. 11, 2022). Note: Amendment No. 9 also amended article II, section 7 of the Florida Constitution to ban offshore oil and gas drilling.

- Private residence that is not being used commercially to provide child care, adult care, or health care, or any combination thereof;
- Retail tobacco shop;
- Designated smoking guest room in a public lodging establishment;
- Stand-alone bar;<sup>9</sup>
- Smoking cessation program or medical or scientific research; or
- Customs smoking room in an airport.

However, an owner, lessee, or a person otherwise in control of an enclosed indoor workplace may further prohibit or limit smoking or vaping therein.<sup>10</sup>

Additionally, no one under the age of 18 years old may smoke tobacco or vape in, on, or within 1,000 feet of a public or private grade school between 6 a.m. and midnight.<sup>11</sup> Violators of this provision are subject to a citation from a law enforcement officer.<sup>12</sup>

Persons in charge of enclosed indoor workplaces are required to develop and implement smoking and vaping prohibition policies in line with the FCIAA requirements.<sup>13</sup> Persons in charge of a smoking or vaping cessation program, medical or scientific research, or an airport terminal that includes a customs smoking room must all post signs clearly stating that smoking is only permitted in the designated areas.<sup>14</sup> Additionally, public transportation carriers in certain locations are required to make regular announcements regarding the smoking and vaping prohibition.<sup>15</sup>

The Department of Health (DOH) and the Department of Business and Professional Regulation (DBPR) are each responsible for the enforcement of the FCIAA as it relates to their respective areas of regulatory authority.<sup>16</sup> If an enclosed indoor work place violates the FCIAA and does not correct the violation within 30 days, DOH or DBPR may impose fines against the owner and pursue compliance in circuit court, if necessary.<sup>17</sup> Additionally, any person who violates the FCIAA by smoking or vaping in an enclosed indoor work place commits a noncriminal violation and may be subject to a fine of up to \$100 for the first violation and up to \$500 for each subsequent violation.<sup>18</sup>

Currently, the state preempts the regulation of smoking and does not allow counties or municipalities to regulate smoking, except school districts may further restrict smoking on school district property.<sup>19</sup> The state does not currently preempt the regulation of vaping. Thus, local governments impose more restrictive regulation on the use of vapor-generated electronic devices.<sup>20</sup>

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<sup>8</sup> Ss. 386.204 and 386.2045, F.S. Additionally, s. 386.203(5), F.S., by definition of an “enclosed indoor workplace,” excludes any facility owned or leased by and used exclusively for noncommercial activities performed by the members and guests of a membership association, including social gatherings, meetings, dining, and dances, if no person or persons are engaged in work.

<sup>9</sup> A stand-alone bar is a licensed premises that predominantly or totally serves alcoholic beverages and in which serving food is merely incidental to the sale of alcohol. Also, it must not share a common entryway or indoor area with a business that predominantly serves food during the hours the stand-alone bar is operating its business, s. 386.203(11), F.S. See also s. 561.695, F.S.

<sup>10</sup> Fla. Const., art X, sec. 20(b).

<sup>11</sup> S. 386.212(1), F.S.

<sup>12</sup> S. 386.212(2), F.S.

<sup>13</sup> S. 386.206(1), F.S.

<sup>14</sup> S. 386.206(2)-(3), F.S.

<sup>15</sup> S. 386.211, F.S.

<sup>16</sup> Ss. 386.207(1) and 561.695, F.S. DBPR enforces the FCIAA in restaurants, bowling centers, dog tracks, horse tracks, bars, billiards, bingo halls (with food service), and civic/fraternal organizations. DOH enforces the FCIAA in all facilities not regulated by DBPR. Florida Department of Health, *Florida Clean Indoor Air Act, Enforcement*, <http://www.floridahealth.gov/PROGRAMS-AND-SERVICES/prevention/tobacco-free-florida/indoor-air-act/index.html> (last visited Feb. 11, 2022).

<sup>17</sup> S. 386.207(3), F.S.

<sup>18</sup> S. 386.208, F.S.

<sup>19</sup> S. 386.209, F.S.

<sup>20</sup> Id.; “Vapor-generating electronic devices” means any product that employs an electronic, a chemical, or a mechanical means capable of producing vapor or aerosol from a nicotine product or any other substance, including, but not limited to, an electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, or other similar device or product, any replacement cartridge for such device, and any other container of a solution or other substance intended to be used with or within an electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, or other similar device or product.

## County and Municipally Owned Parks

The Division of Recreation and Parks within the Florida Department of Environmental Protection maintains a comprehensive inventory of the existing park facilities and outdoor resources in Florida. The inventory provides details about the parks and recreation areas in the state and contains information on more than 13,000 outdoor recreational facilities in Florida, the majority of which are county and municipal parks.<sup>21</sup>

There are 67 county park systems and more than 400 municipal park systems in the state.<sup>22</sup> Such parks provide a wide variety of activities to the public, including nature trails, bird watching, youth and adult athletics, bike paths, horse trails, boat ramps, fishing piers, outdoor gyms, and outdoor pavilions.<sup>23</sup> For example, Orange County maintains and operates 118 county-owned parks, which consist of a wide array of available activities and facilities.<sup>24</sup> Additionally, municipalities within Orange County also own and operate parks and outdoor recreational facilities. For example, the City of Winter Park owns and operates 11 city parks, which offer similar recreational activities to county-owned parks.<sup>25</sup>

## Public Beaches

Florida has 825 miles of sandy coastline, attracting over 19 million tourists each year.<sup>26</sup> A significant portion of Florida's beaches is publicly owned, including federally-owned areas managed by the National Park Service, parts of Florida's 175 state parks, and the many beaches owned and managed by local governments on the coast.<sup>27</sup> In general, access to these beaches is free through the numerous public access points along the coast however; some state parks, counties and municipalities charge an access fee.

## Health Concerns

In 2021, an estimated 15.5 percent of the adults in Florida were tobacco smokers.<sup>28</sup> Tobacco smoke contains over 7,000 chemicals, including hundreds that are toxic and up to 69 that are known to cause cancer.<sup>29</sup> More than 480,000 deaths annually in the United States are caused by cigarette smoking, with exposure to secondhand smoke causing an estimated 41,000 deaths each year.<sup>30</sup> Secondhand smoke is generally defined as smoke from burning tobacco products or smoke that is exhaled by a

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<sup>21</sup> Florida Division of Recreation and Parks, *Florida Outdoor Recreation Inventory*, available at: <https://floridadep.gov/parks/florida-outdoor-recreation-inventory> (last visited Feb. 11, 2022)

<sup>22</sup> Florida Department of Environmental Protection, Division of Recreation and Parks, *Frequently Asked Questions*, <https://prodenv.dep.state.fl.us/DrpOrpccr/StaticFiles/FAQ.pdf> (last visited Feb. 11, 2022).

<sup>23</sup> Id.

<sup>24</sup> Orange County Government Florida, *Parks*, <http://www.orangecountyfl.net/CultureParks/Parks.aspx> (last visited Feb. 11, 2022).

<sup>25</sup> City of Winter Park, *Parks*, <https://cityofwinterpark.org/departments/parks-recreation/parks-playgrounds/parks/> (last visited Feb. 11, 2022).

<sup>26</sup> Department of Environmental Protection, *Beaches*, <https://floridadep.gov/water/beaches> (last visited at Feb. 11, 2022).

<sup>27</sup> National Park Service, Canaveral National Seashore, *Natural Features & Ecosystems*, <https://www.nps.gov/cana/learn/nature/naturalfeaturesandecosystems.htm> (last visited Feb. 11, 2022). Canaveral National Seashore's 24 miles of undeveloped beach is the longest such stretch on the east coast of Florida; National Park Service, Gulf Islands National Seashore, *Things To Do*, <https://www.nps.gov/guis/planyourvisit/things2do.htm> (last visited Feb. 11, 2022). Gulf Islands National Seashore stretches for 160 miles along the coasts of both Florida and Mississippi; DEP, *Beaches and Coasts at Florida State Parks*, <https://www.floridastateparks.org/learn/beaches-and-coasts-florida-state-parks> (last visited Feb. 11, 2022). Florida's state parks include 100 miles of beaches; DEP, *Map of Florida's Coastal Counties*, <https://floridadep.gov/fco/fcmp/documents/map-floridas-coastal-counties> (last visited Feb. 11, 2022); Beaches in coastal counties are important for tourism and Florida's "brand"; DEP, Florida Coastal Management Program, *Final Assessment and Strategies, FY 2016 – FY 2020*, 30 (2015) available at [https://floridadep.gov/sites/default/files/FCMP\\_FY2016-20\\_Assessment.pdf](https://floridadep.gov/sites/default/files/FCMP_FY2016-20_Assessment.pdf) (last visited Feb. 11, 2022). Based on shoreline access sites, there are approximately 439 miles of public saltwater beach in Florida.

<sup>28</sup> United Health Foundation, *America's Health Rankings, Annual Report*, <https://www.americashealthrankings.org/explore/annual/measure/Smoking/state/FL> (last visited Feb. 11, 2022).

<sup>29</sup> Id.; U.S. Department of Health and Human Services, *The Health Consequences of Smoking—50 Years of Progress: A Report of the Surgeon General*, 148 (2014), <https://www.surgeongeneral.gov/library/reports/50-years-of-progress/full-report.pdf> (last visited Feb. 11, 2022).

<sup>30</sup> Centers for Disease Control and Prevention, *Tobacco-Related Mortality*, [https://www.cdc.gov/tobacco/data\\_statistics/fact\\_sheets/health\\_effects/tobacco\\_related\\_mortality/index.htm](https://www.cdc.gov/tobacco/data_statistics/fact_sheets/health_effects/tobacco_related_mortality/index.htm) (last visited Feb. 11, 2022).

tobacco smoker.<sup>31</sup> Exposure to secondhand smoke can cause numerous health problems and has been causally linked to cancer and other fatal diseases.<sup>32</sup> Studies suggest that secondhand smoke in crowded outdoor areas can cause concentrations of air contaminants comparable to those caused by indoor smoking.<sup>33</sup>

## Florida Businesses

There are currently over 3 million active business entities in Florida,<sup>34</sup> approximately 2.8 of which are small businesses.<sup>35</sup> Each county and city establishes its own business zoning requirements, which regulate the features of a building, such as height and distance from the street.

## Effect of Proposed Changes

### Smoking Regulation

CS/HB 105 authorizes counties and municipalities to further restrict smoking within the boundaries of any public beaches and public parks they own. Municipalities may further restrict smoking within the boundaries of public beaches and public parks that are within their jurisdiction, but owned by the county, unless such restriction conflicts with county ordinance.

Additionally, the bill authorizes counties and municipalities to further restrict smoking or vaping within 25 feet of a public entrance or exit of a business located within the boundaries its jurisdiction, except:

- Stand-alone bars;
- Retail tobacco shops;
- Vapor-generating electronic device retailers; or
- Any other business that derives no more than 10 percent of its gross revenue from food sales consumed on premises.

The bill changes the title of Part II of ch. 386, F.S., from “Indoor Air: Smoking and Vaping” to “Smoking and Vaping.”

The bill makes conforming changes.

The bill provides an effective date of July 1, 2022.

## B. SECTION DIRECTORY:

- Section 1:** Renames Part II of chapter 386, F.S., from “INDOOR AIR: SMOKING AND VAPING” to “SMOKING AND VAPING.”
- Section 2:** Amends s. 386.201, F.S., relating to popular name.
- Section 3:** Amends s. 386.209, F.S., relating to regulation of smoking preempted to state.
- Section 4:** Amends s. 381.84, F.S., relating to Comprehensive Statewide Tobacco Education and Use Prevention Program.
- Section 5:** Amends s. 386.211, F.S., relating to public announcements in mass transportation terminals.

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<sup>31</sup> Centers for Disease Control and Prevention, *Secondhand Smoke (SHS) Facts*, [https://www.cdc.gov/tobacco/data\\_statistics/fact\\_sheets/secondhand\\_smoke/general\\_facts/index.htm](https://www.cdc.gov/tobacco/data_statistics/fact_sheets/secondhand_smoke/general_facts/index.htm) (last visited Feb. 11, 2022).

<sup>32</sup> *Id.*

<sup>33</sup> Nipapun Kungskulniti et al., *Secondhand Smoke Point-Source Exposures Assessed By Particulate Matter At Two Popular Public Beaches in Thailand*, 40 J. Public Health 3, 527–532 (2017), <https://academic.oup.com/pubhealth/article/40/3/527/4110319?guestAccessKey=5947c328-fd75-4b6c-acfe-28f989c4c639> (last visited Feb. 11, 2022); James Repace, *Benefits of Smoke-free Regulations in Outdoor Settings: Beaches, Golf Courses, Parks, Patios and in Motor Vehicles*, 34 WM Mitchell L. Rev. 1621, 1622–1624, 1638 (2008), <https://open.mitchellhamline.edu/wmlr/vol34/iss4/15/> (last visited Feb. 11, 2022).

<sup>34</sup> Florida Department of State, *Yearly Statistics from 2012 to Present*, <https://dos.myflorida.com/sunbiz/about-us/yearly-statistics/> (last visited Feb. 11, 2022).

<sup>35</sup> U.S. Small Business Administration, 2021 Small Business Profile – Florida, <https://cdn.advocacy.sba.gov/wp-content/uploads/2021/08/30141325/Small-Business-Economic-Profile-FL.pdf> (last visited Feb. 11, 2022).

**Section 6:** Provides an effective date of July 1, 2022.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

To the extent that any imposed smoking restrictions deter or encourage visitation of county and municipal beaches and parks, local governments may experience an indeterminate fluctuation in revenues generated by any fees for beach and park admittance.

2. Expenditures:

Counties and municipalities that opt to restrict smoking within the boundaries of public parks may incur indeterminate expenses related to enacting and enforcing such restrictions.

### C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Visitors to county or municipal parks who violate smoking restrictions imposed by a county or municipality may be subject to any applicable fines or civil penalties for such violations.

### D. FISCAL COMMENTS:

None.

### **III. COMMENTS**

#### **A. CONSTITUTIONAL ISSUES:**

##### **1. Applicability of Municipality/County Mandates Provision:**

Not applicable. This bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditure of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

##### **2. Other:**

#### **B. RULE-MAKING AUTHORITY:**

Rulemaking authority is not needed to implement the provisions of the bill.

#### **C. DRAFTING ISSUES OR OTHER COMMENTS:**

None.

### **IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES**