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# **Agriculture, Conservation & Resiliency Subcommittee**

**January 24, 2024  
11:00 am  
Sumner Hall**

**Meeting Packet**

# Committee Meeting Notice

## HOUSE OF REPRESENTATIVES

### Agriculture, Conservation & Resiliency Subcommittee

**Start Date and Time:** Wednesday, January 24, 2024 11:00 am

**End Date and Time:** Wednesday, January 24, 2024 01:00 pm

**Location:** Sumner Hall (404 HOB)

**Duration:** 2.00 hrs

**Consideration of the following bill(s):**

HB 1051 Housing For Agricultural Workers by Tuck

HB 1159 Food Recovery by Roth

HB 1187 Carbon Sequestration by Cross

HM 1411 Shore Protection by Cross, Berfield

HB 1641 Regulation of Auxiliary Containers by Yeager

To submit an electronic appearance form, and for information about attending or testifying at a committee meeting, please see the "Visiting the House" tab at [www.myfloridahouse.gov](http://www.myfloridahouse.gov).

**NOTICE FINALIZED on 01/22/2024 4:00PM by Jones.Missy**



**HOUSE OF REPRESENTATIVES STAFF ANALYSIS**

**BILL #:** HB 1051 Housing For Agricultural Workers

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

**TIED BILLS:** IDEN./SIM. **BILLS:** SB 1082

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Agriculture, Conservation & Resiliency Subcommittee		Gawin	Moore
2) Local Administration, Federal Affairs & Special Districts Subcommittee			
3) Infrastructure Strategies Committee			

**SUMMARY ANALYSIS**

Local governments regulate aspects of land development by enacting ordinances that address local zoning, rezoning, subdivision, building construction, landscaping, tree protection, or sign regulations or any other regulations controlling the development of land.

Annually, an estimated 150,000 to 200,000 migrant and seasonal farmworkers travel to work in Florida. The migrant labor camp program within the Department of Health (DOH) currently issues over 700 permits in 33 counties ensuring that 34,000 migrant and seasonal farmworkers and families live in housing that meets or exceeds standards set by law. This housing is regulated by local governments, DOH, and federal regulations.

The bill defines “agricultural worker” and “housing site.” The bill prohibits a governmental entity from adopting or enforcing legislation that inhibits the construction or installation of housing for agricultural workers on land classified as agricultural which is operated as a bona fide farm. The bill establishes criteria for the construction or installation of housing units for agricultural workers on parcels of land classified as agricultural.

The bill requires any local ordinance adopted pursuant to the requirements for farmworker housing created in the bill to comply with all state and federal regulations for migrant farmworker housing, as applicable, including rules adopted by DOH and federal regulations under the Migrant and Seasonal Agricultural Worker Protection Act (MSPA) or the H-2A visa program. The bill authorizes a governmental entity to adopt local government land use regulations that are less restrictive than the regulations established by DOH and federal regulations under the MSPA or the H-2A visa program for the construction or installation of housing for temporary migrant farmworkers.

Beginning July 1, 2024, the bill requires a property owner to maintain records of all approved permits, including successor permits, for migrant labor camps or residential migrant housing.

The bill specifies the circumstances under which a housing site may not continue to be used and may be required to be removed.

The bill specifies that the construction or installation of housing for seasonal agricultural employees in the Florida Keys Area of Critical State Concern and the City of Key West Area of Critical State Concern is subject to the permit allocation systems of these areas.

The bill does not appear to have a fiscal impact on state or local government.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### **Background**

##### Comprehensive Plans and Land Use Regulation

###### *Comprehensive Plans*

The Growth Management Act requires every city and county to create and implement a comprehensive plan to guide future development.<sup>1</sup> A locality's comprehensive plan lays out the locations for future public facilities, including roads, water and sewer facilities, neighborhoods, parks, schools, and commercial and industrial developments.<sup>2</sup>

The land use element of the plan designates proposed future general distribution, location, and extent of the uses of land. Specified use designations include those for residential, commercial, industry, agriculture, recreation, conservation, education, and public facilities.<sup>3</sup> The housing element of the plan sets forth guidelines and strategies for the creation and preservation of affordable housing for all current and anticipated future residents of the jurisdiction, elimination of substandard housing conditions, provision of adequate sites for future housing, and distribution of housing for a range of incomes and types.<sup>4</sup>

###### *Zoning*

Local governments regulate aspects of land development by enacting ordinances that address local zoning, rezoning, subdivision, building construction, landscaping, tree protection, sign regulations, or any other regulations controlling the development of land.<sup>5</sup>

Zoning maps and zoning districts are adopted by a local government for developments within each land use category or sub-category. While land uses are general in nature, one or more zoning districts may apply within each land use designation.<sup>6</sup> Common regulations on buildings within the zoning map districts include density,<sup>7</sup> height and bulk of buildings, setbacks, and parking requirements.<sup>8</sup> Zoning regulations will also include acceptable uses of property for other categories of land, such as agricultural or industrial.

If a landowner believes that a proposed development may have merit but it does not meet the requirements of a zoning map in a jurisdiction, the landowner can seek a rezoning through a rezoning application, which is reviewed by the local government and voted on by the governing body.<sup>9</sup> If a property has unique circumstances or small nonconformities but otherwise meets zoning regulations, local governments may ease restrictions on certain regulations such as building size or setback through

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<sup>1</sup> Chapter 85-55, Laws of Fla.

<sup>2</sup> *Id.*

<sup>3</sup> Section 163.3177(6)(a), F.S.

<sup>4</sup> Section 163.3177(6)(f), F.S.

<sup>5</sup> *See* ss. 163.3164 and 163.3213, F.S. Substantially affected persons have the right to maintain administrative actions which assure that land development regulations implement and are consistent with the local comprehensive plan. Section 163.3213, F.S.

<sup>6</sup> Indian River County, *General Zoning Questions*, [https://indianriver.gov/services/community\\_development/faq.php#collapse1250b1](https://indianriver.gov/services/community_development/faq.php#collapse1250b1) (last visited Jan 16, 2024).

<sup>7</sup> "Density" means an objective measurement of the number of people or residential units allowed per unit of land, such as residents or employees per acre. *See* s. 163.3164(12), F.S.

<sup>8</sup> Indian River County, *General Zoning Questions*, [https://indianriver.gov/services/community\\_development/faq.php#collapse1250b1](https://indianriver.gov/services/community_development/faq.php#collapse1250b1) (last visited Jan. 16, 2024).

<sup>9</sup> City of Tallahassee, *Application for Rezoning Review*, available at <https://www.talgov.com/Uploads/Public/Documents/place/zoning/cityrezinfsh.pdf> (last visited Jan. 16, 2024).

an application for a variance.<sup>10</sup> However, any action to rezone or grant a variance must be consistent with the local government's comprehensive plan.

### Agricultural Lands

Under Florida's greenbelt law,<sup>11</sup> only lands that are used primarily for bona fide agricultural purposes may be classified agricultural. The law defines "bona fide agricultural purposes" to mean good faith commercial agricultural use of the land.<sup>12</sup> Various factors are considered when determining whether land is being used for a bona fide agricultural use, including the length of time the land has been so used; whether the use has been continuous; the purchase price paid; size, as it relates to specific agricultural use, but a minimum acreage is not required; whether an indicated effort has been made to care sufficiently and adequately for the land in accordance with accepted commercial agricultural practices; and whether the land is leased and, if so, the effective length, terms, and conditions of the lease.<sup>13</sup> Nonresidential buildings, structures, or facilities constructed on a farm for agritourism activities constitute a bona fide agricultural use of the land so long as the buildings, structures, or facilities are an integral part of the agricultural operation.<sup>14</sup>

### Migrant Farmworker Housing

Migrant farmworker housing is regulated by the Department of Health (DOH) in coordination with local health departments and federal law.<sup>15</sup> Migrant farmworker housing may include residential property, including mobile homes or a migrant labor camp consisting of dormitories constructed and operated as living quarters for migrant farmworkers.<sup>16</sup> Establishment of such housing requires advance notice, inspections, and permitting based on standards of construction, sanitation, equipment, and operation, as well as compliance with inspections during use.<sup>17</sup>

### Federal Regulations

The federal government authorizes farmers to hire seasonal or temporary workers from foreign countries through the H-2A visa program.<sup>18</sup> The H-2A temporary agricultural workers program helps employers who anticipate a lack of available domestic workers to bring foreign workers to the United States to perform temporary or seasonal agricultural work, including, but not limited to, planting, cultivating, or harvesting labor.<sup>19</sup> Farmers complete an H-2A visa petition with the U.S. Citizenship and Immigration Services, and workers apply for the H-2A visa with the U.S. Department of State.<sup>20</sup>

Farmers must provide no cost housing for H-2A workers and those workers in corresponding employment who are not reasonably able to return to their residence within the same day.<sup>21</sup> This housing can be in temporary labor camps that the farmer owns or controls, or they may use rental or public accommodations, such as hotels or motels.<sup>22</sup> The farmer is responsible for assuring certain health and safety measures are addressed in this housing, dictated by local or state regulations, or in

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<sup>10</sup> City of Tallahassee, *Variance and Appeals*, available at [https://www.tal.gov.com/Uploads/Public/Documents/growth/forms/boaa\\_variance.pdf](https://www.tal.gov.com/Uploads/Public/Documents/growth/forms/boaa_variance.pdf) (last visited Jan. 16, 2024); Seminole County, *Variance Processes*, <https://www.seminolecountyfl.gov/departments-services/development-services/planning-development/boards/board-of-adjustment/variance-process-requirements.shtml> (last visited Jan. 16, 2024).

<sup>11</sup> Section 193.461, F.S.

<sup>12</sup> Section 193.461(3)(b), F.S.

<sup>13</sup> *Id.*

<sup>14</sup> Section 570.87(1), F.S.

<sup>15</sup> Sections 381.008-381.00897, F.S.

<sup>16</sup> Section 381.008(5) and (8), F.S.

<sup>17</sup> Section 381.0083, F.S.

<sup>18</sup> U.S. Department of Agriculture (USDA), *H-2A Program*, <https://www.farmers.gov/working-with-us/h2a-visa-program> (last visited Jan. 16, 2024).

<sup>19</sup> *Id.*

<sup>20</sup> *Id.*

<sup>21</sup> 20 C.F.R. s. 655.122(d).

<sup>22</sup> U.S. Department of Labor (DOL), *Fact Sheet #26G: H-2A Housing Standards for Rental and Public Accommodations*, <https://www.dol.gov/agencies/whd/fact-sheets/26g-housing-standards-for-rental-and-public-accommodations-H-2A> (last visited Jan. 16, 2024).

the absence of applicable local or state regulations, federal standards.<sup>23</sup> The federal regulations address the following health and safety concerns:

- Minimum square footage requirements;
- Sufficient and sanitary cooking and kitchen facilities;
- Heating, cooking, and water heating equipment;
- Adequate and sanitary toilet, laundry, handwashing, and bathing facilities;
- Sufficient lighting; and
- Refuse disposal.<sup>24</sup>

The Migrant and Seasonal Agricultural Protection Act (MSPA) protects migrant and seasonal agricultural workers by establishing employment standards related to wages, housing, transportation, disclosures and recordkeeping.<sup>25</sup>

#### *Florida Migrant Farmworker Housing*

Annually, an estimated 150,000 to 200,000 migrant and seasonal farmworkers travel to work in Florida.<sup>26</sup> The migrant labor camp program within DOH currently issues over 700 permits in 33 counties ensuring that 34,000 migrant and seasonal farmworkers and families live in housing that meets or exceeds standards set by law.<sup>27</sup> Migrant labor camps<sup>28</sup> and residential migrant housing<sup>29</sup> need a permit prior to opening.<sup>30</sup> DOH implements its own regulations which address the above health and safety concerns, as well as the use and storage of pesticides.<sup>31</sup> These regulations are applicable to mobile homes, private residential rentals, rooming houses, barracks, and housing authority projects for farmworkers when these facilities constitute a migrant labor camp or residential migrant housing.<sup>32</sup>

Any person who believes that the farmworker housing violates the farmworker housing rules and regulations may file a complaint with DOH. DOH, or its inspectors, may enter and inspect migrant labor camps or residential migrant housing at reasonable hours and investigate any facts, conditions, practices, or matters to determine whether any person has violated the applicable rules and regulations. It is a third-degree felony to establish, maintain, or operate any residential migrant housing or migrant labor camp without providing adequate personal hygiene facilities, lighting, sewage disposal, and garbage disposal.<sup>33</sup>

#### Employment Eligibility

Private employers in the state must, after making an offer of employment which has been accepted by a person, verify such person's employment eligibility.<sup>34</sup> An employer can verify this through the E-Verify

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<sup>23</sup> *Id.*

<sup>24</sup> 29 C.F.R. s. 1910.142.

<sup>25</sup> 29 U.S.C. 1801, *et. seq.*; The MSPA specifies that the term "migrant agricultural worker" does not include any temporary nonimmigrant person authorized to work in the U.S. under the H-2A program. 29 C.F.R. s. 500.20(p)(1)ii.

<sup>26</sup> DOH, *Migrant Farmworker Housing*, <https://www.floridahealth.gov/environmental-health/migrant-farmworker-housing/index.html> (last visited Jan. 17, 2024).

<sup>27</sup> *Id.*

<sup>28</sup> "Migrant labor camp" means one or more buildings, structures, barracks, or dormitories, and the land appertaining thereto, constructed, established, operated, or furnished as an incident of employment as living quarters for seasonal or migrant farmworkers whether or not rent is paid or reserved in connection with the use or occupancy of such premises. The term does not include a single-family residence that is occupied by a single family. Section 381.008(5), F.S.

<sup>29</sup> "Residential migrant housing" means a building, structure, mobile home, barracks, or dormitory, and any combination thereof on adjacent property which is under the same ownership, control, and the land appertaining thereto that is rented or reserved for occupancy by five or more seasonal or migrant farmworkers. The term does not include housing furnished as an incident of employment. Section 381.008(8), F.S.

<sup>30</sup> Section 381.0083, F.S.

<sup>31</sup> See Chapter 64E-14, F.A.C.; DOH, *Basic Guidelines*, <https://www.floridahealth.gov/environmental-health/migrant-farmworker-housing/migrant-farm-workers-guidelines.html> (last visited Jan. 16, 2024).

<sup>32</sup> DOH, *Basic Guidelines*, <https://www.floridahealth.gov/environmental-health/migrant-farmworker-housing/migrant-farm-workers-guidelines.html> (last visited Jan. 16, 2024).

<sup>33</sup> Section 381.0081(3), F.S.

<sup>34</sup> Section 448.095(2)(a), F.S.

system<sup>35</sup> or by requiring the person to provide the same documentation that is required by the U.S. Immigration Services on its Employment Eligibility Verification form.<sup>36</sup>

### Areas of Critical State Concern

The Governor and Cabinet, sitting as the Administration Commission,<sup>37</sup> may designate by rule certain areas that contain resources of statewide significance as an Area of Critical State Concern based on the recommendations of the Florida Department of Commerce.<sup>38</sup> To be designated as an Area of Critical State Concern, the area must:

- Contain, or have a significant impact upon, environmental or natural resources of regional or statewide importance, the uncontrolled private or public development of which would cause substantial deterioration of such resources;
- Contain, or have a significant impact upon, historical or archaeological resources, sites, or statutorily defined historical or archaeological districts, the private or public development of which would cause substantial deterioration or complete loss of such resources, sites, or districts; or
- Have a significant impact upon, or be significantly impacted by, an existing or proposed major public facility or other area of major public investment, including, but not limited to, highways, ports, airports, energy facilities, and water management projects.<sup>39</sup>

Areas currently designated as Areas of Critical State Concern include the Big Cypress Area,<sup>40</sup> the Green Swamp Area,<sup>41</sup> the Florida Keys Area,<sup>42</sup> and the Apalachicola Bay Area.<sup>43</sup>

The Florida Keys Area of Critical State Concern includes the municipalities of Islamorada, Marathon, Layton, and Key Colony Beach and unincorporated Monroe County. The City of Key West has its own Area of Critical State Concern designation.<sup>44</sup>

### **Effect of the Bill**

The bill defines “agricultural worker” to mean a person who is seasonally or annually employed in bona fide agricultural production; is lawfully present in the U.S.; is authorized to work at the time of employment and remains so throughout the duration of that employment; and has been verified through the E-Verify system. The term includes a migrant farmworker and a worker with an H-2A visa.

The bill defines “housing site” to mean the totality of development supporting authorized housing, including buildings, mobile homes, barracks, dormitories used as living quarters, parking areas, common areas such as athletic fields or playgrounds, storage structures, and other related structures.

The bill prohibits a governmental entity from adopting or enforcing legislation that inhibits the construction or installation of housing for agricultural workers on land classified as agricultural which is operated as a bona fide farm.

The bill requires the construction or installation of housing units for agricultural workers on parcels of land classified as agricultural to satisfy all of the following criteria:

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<sup>35</sup> “E-Verify system” means an internet-based system operated by the U.S. Department of Homeland Security that allows participating employers to electronically verify the employment eligibility of newly hired employees. Section 448.095(1)(c), F.S.

<sup>36</sup> Section 448.095(3)(b), F.S.

<sup>37</sup> S. 14.202, F.S., The Administration Commission is part of the Executive Office of the Governor.; *see also* s. 380.031(1), F.S.

<sup>38</sup> S. 380.05, F.S.

<sup>39</sup> S. 380.05(2), F.S.

<sup>40</sup> S. 380.055, F.S.

<sup>41</sup> S. 380.0551, F.S.

<sup>42</sup> S. 380.0552, F.S.

<sup>43</sup> S. 380.0555, F.S.

<sup>44</sup> Florida Commerce, *City of Key West and The Florida Keys Areas*, <https://www.floridajobs.org/community-planning-and-development/programs/community-planning-table-of-contents/areas-of-critical-state-concern/city-of-key-west-and-the-florida-keys> (last visited Jan. 16, 2024).



- The dwelling units must meet federal, state, and local building standards, including migrant farmworker housing standards regulated by DOH and federal standards for H-2A visa housing. If written notice of intent is required to be submitted to DOH, the appropriate governmental entity with jurisdiction over the agricultural lands may also require submittal of a copy of the written notice.
- The housing site must be maintained in a neat, orderly, and safe manner.
- All structures containing dwelling units must be located a minimum of 10 feet apart.
- The square footage of the housing site's climate-controlled facilities may not exceed 1.5 percent of the property's area or 35,000 square feet, whichever is less.
- A housing site must provide front, side, and rear yard setbacks of at least 50 feet. However, an internal project driveway may be located in the required yard space if the yard is adjacent to a public roadway or to property that is under common ownership with the housing site.
- All access drives that serve the housing site must be made of packed shell, gravel, or a similar material that will provide a relatively dust-free surface.

Additionally, as part of the construction and installation criteria, the bill prohibits a housing site from being located less than 250 feet from a property line adjacent to property zoned for residential use. If the housing site is located less than 500 feet from any property line, screening must be provided between the housing site and any residentially developed adjacent parcels that are under different ownership. The screening may be designed in any of the following ways:

- Evergreen plants that, at the time of planting, are at least six feet in height and provide an overall screening opacity of 75 percent;
- A masonry wall at least six feet in height and finished on all sides with brick, stone, or painted or pigmented stucco;
- A solid wood or PVC fence at least six feet in height with the finished side of the fence facing out;
- A row of evergreen shade trees that, at the time of planting, are at least 10 feet in height, a minimum of two-inch caliper, and spaced no more than 20 feet apart; or
- A berm made with a combination of the materials listed above, which is at least six feet in height and provides an overall screening capacity of 75 percent at the time of installation.

The bill requires any local ordinance adopted pursuant to the requirements for farmworker housing created in the bill to comply with all state and federal regulations for migrant farmworker housing, as applicable, including rules adopted by DOH and federal regulations under the MSPA or the H-2A visa program. The bill authorizes a governmental entity to adopt local government land use regulations that are less restrictive than the regulations established by DOH and federal regulations under the MSPA or the H-2A visa program for the construction or installation of housing for temporary migrant farmworkers.

Beginning July 1, 2024, the bill requires a property owner to maintain records of all approved permits, including successor permits, for migrant labor camps or residential migrant housing. The property owner must maintain such records for at least three years and make the records available for inspection within 14 days after receipt of a request for records by a governmental entity.

The bill specifies that a housing site may not continue to be used and can be required to be removed under any of the following circumstances:

- If, for any reason, a housing site is not being used for agricultural workers for longer than 365 days, any structures used as dwelling units must be removed from the site within 180 days after receipt of a written notification from the local government unless the property owner can demonstrate that use of the site for housing agricultural workers will occur within 90 days after receipt of such written notification.
- If the property on which the housing site is located ceases to be classified as agricultural land, housing authorized by the bill ceases to be eligible for residential use unless it is approved under the zoning and land use regulations of the governmental entity.
- If the permit authorized by DOH for the housing site is revoked, any structures must be removed from the housing site within 180 days after receipt of a written notification from the local government unless the permit is reinstated by DOH.

The bill specifies that the construction or installation of housing for seasonal agricultural employees in the Florida Keys Area of Critical State Concern and the City of Key West Area of Critical State Concern is subject to the permit allocation systems of these areas.

**B. SECTION DIRECTORY:**

Section 1. Amends s. 163.3162, F.S., related to agricultural lands and practices.

Section 2. Provides an effective date of July 1, 2024.

**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:

None.

2. Expenditures:

None.

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

The bill may have an indeterminate positive fiscal impact on agricultural producers that employ and house migrant farmworkers.

**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:

None.

**B. RULE-MAKING AUTHORITY:**

None.

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

None.

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

Not applicable.

HB 1051

2024

1                   A bill to be entitled  
2           An act relating to housing for agricultural workers;  
3           amending s. 163.3162, F.S.; defining the terms  
4           "agricultural worker" and "housing site"; prohibiting  
5           a governmental entity from adopting or enforcing  
6           legislation that inhibits the construction of housing  
7           for agricultural workers on agricultural land operated  
8           as a bona fide farm; requiring that the construction  
9           or installation of such housing units on agricultural  
10          lands satisfy certain criteria; requiring that local  
11          ordinances comply with certain regulations;  
12          authorizing governmental entities to adopt local land  
13          use regulations that are less restrictive than certain  
14          state and federal regulations; requiring property  
15          owners to maintain certain records for a specified  
16          timeframe; requiring the suspension of use of certain  
17          housing units and authorizing their removal under  
18          certain circumstances; specifying applicability of  
19          permit allocation systems in certain areas of critical  
20          state concern; authorizing the continued use of  
21          housing sites constructed before the effective date of  
22          the act if certain conditions are met; providing an  
23          effective date.

24  
25   Be It Enacted by the Legislature of the State of Florida:

26  
 27 Section 1. Paragraphs (a) through (d) of subsection (2) of  
 28 section 163.3162, Florida Statutes, are redesignated as  
 29 paragraphs (b) through (e), respectively, new paragraphs (a) and  
 30 (f) are added to that subsection, and subsection (5) is added to  
 31 that section, to read:

32 163.3162 Agricultural Lands and Practices.—

33 (2) DEFINITIONS.—As used in this section, the term:

34 (a) "Agricultural worker" means a person who is seasonally  
 35 or annually employed in bona fide agricultural production; is  
 36 lawfully present in the United States; is authorized to work at  
 37 the time of employment and remains so throughout the duration of  
 38 that employment; and has been verified through the process  
 39 provided in s. 448.095(2). The term includes a migrant  
 40 farmworker as defined in s. 381.008(4) and a worker with an H-2A  
 41 visa.

42 (f) "Housing site" means the totality of development  
 43 supporting authorized housing, including buildings, mobile  
 44 homes, barracks, dormitories used as living quarters, parking  
 45 areas, common areas such as athletic fields or playgrounds,  
 46 storage structures, and other related structures.

47 (5) HOUSING FOR AGRICULTURAL WORKERS.—

48 (a) A governmental entity may not adopt or enforce  
 49 legislation that inhibits the construction or installation of  
 50 housing for agricultural workers on land classified as

51 agricultural land pursuant to s. 193.461 which is operated as a  
52 bona fide farm except as provided in this subsection.

53 (b) Construction or installation of housing units for  
54 agricultural workers on parcels of land classified as  
55 agricultural land under s. 193.461 must satisfy all of the  
56 following criteria:

57 1. The dwelling units must meet federal, state, and local  
58 building standards, including migrant farmworker housing  
59 standards regulated by the Department of Health and federal  
60 standards for H-2A visa housing. If written notice of intent is  
61 required to be submitted to the Department of Health pursuant to  
62 s. 381.0083, the appropriate governmental entity with  
63 jurisdiction over the agricultural lands may also require  
64 submittal of a copy of the written notice.

65 2. The housing site must be maintained in a neat, orderly,  
66 and safe manner.

67 3. All structures containing dwelling units must be  
68 located a minimum of 10 feet apart.

69 4. The square footage of the housing site's climate-  
70 controlled facilities may not exceed 1.5 percent of the  
71 property's area or 35,000 square feet, whichever is less.

72 5. A housing site must provide front, side, and rear yard  
73 setbacks of at least 50 feet. However, an internal project  
74 driveway may be located in the required yard space if the yard  
75 is adjacent to a public roadway or to property that is under

76 common ownership with the housing site.

77 6. A housing site may not be located less than 250 feet  
78 from a property line adjacent to property zoned for residential  
79 use. If the housing site is located less than 500 feet from any  
80 property line, screening must be provided between the housing  
81 site and any residentially developed adjacent parcels that are  
82 under different ownership. The screening may be designed in any  
83 of the following ways:

84 a. Evergreen plants that, at the time of planting, are at  
85 least 6 feet in height and provide an overall screening opacity  
86 of 75 percent;

87 b. A masonry wall at least 6 feet in height and finished  
88 on all sides with brick, stone, or painted or pigmented stucco;

89 c. A solid wood or PVC fence at least 6 feet in height  
90 with the finished side of the fence facing out;

91 d. A row of evergreen shade trees that, at the time of  
92 planting, are at least 10 feet in height, a minimum of 2-inch  
93 caliper, and spaced no more than 20 feet apart; or

94 e. A berm made with a combination of the materials listed  
95 in sub-subparagraphs a.-d., which is at least 6 feet in height  
96 and provides an overall screening capacity of 75 percent at the  
97 time of installation.

98 7. All access drives that serve the housing site must be  
99 made of packed shell, gravel, or a similar material that will  
100 provide a relatively dust-free surface.

101 (c) Any local ordinance adopted pursuant to this  
102 subsection must comply with all state and federal regulations  
103 for migrant farmworker housing, as applicable, including rules  
104 adopted by the Department of Health pursuant to ss. 381.008-  
105 381.00897 and federal regulations under the Migrant and Seasonal  
106 Agricultural Worker Protection Act or the H-2A visa program. A  
107 governmental entity may adopt local government land use  
108 regulations that are less restrictive than the regulations  
109 established by the Department of Health pursuant to ss. 381.008-  
110 381.00897 and federal regulations under the Migrant and Seasonal  
111 Agricultural Worker Protection Act or the H-2A visa program for  
112 the construction or installation of housing for temporary  
113 migrant farmworkers.

114 (d) Beginning July 1, 2024, a property owner must maintain  
115 records of all approved permits, including successor permits,  
116 for migrant labor camps or residential migrant housing as  
117 required under s. 381.0081. A property owner must maintain such  
118 records for at least 3 years and make the records available for  
119 inspection within 14 days after receipt of a request for records  
120 by a governmental entity.

121 (e) A housing site may not continue to be used and may be  
122 required to be removed under any of the following circumstances:

123 1. If, for any reason, a housing site is not being used  
124 for agricultural workers for longer than 365 days, any  
125 structures used as dwelling units must be removed from the



126 housing site within 180 days after receipt of a written  
127 notification from the local government unless the property owner  
128 can demonstrate that use of the site for housing agricultural  
129 workers will occur within 90 days after receipt of such written  
130 notification.

131 2. If the property on which the housing site is located  
132 ceases to be classified as agricultural land, housing authorized  
133 under this section ceases to be eligible for residential use  
134 unless it is approved under the zoning and land use regulations  
135 of the governmental entity.

136 3. If the permit authorized by the Department of Health  
137 for the housing site is revoked, any structures must be removed  
138 from the housing site within 180 days after receipt of a written  
139 notification from the local government unless the permit is  
140 reinstated by the Department of Health.

141 (f) Notwithstanding this subsection, the construction or  
142 installation of housing for seasonal agricultural employees in  
143 the Florida Keys Area of Critical State Concern and the City of  
144 Key West Area of Critical State Concern is subject to the permit  
145 allocation systems of the Florida Keys Area of Critical State  
146 Concern and City of Key West Area of Critical State Concern,  
147 respectively.

148 (g) A housing site that was constructed and in use before  
149 July 1, 2024, may continue to be used, and a governmental entity  
150 may not require the property owner to make changes to meet the

HB 1051

2024

151 requirements of this subsection, unless the housing site will be  
152 enlarged, remodeled, renovated, or rehabilitated. The property  
153 owner of a housing site that is permitted under this paragraph  
154 must provide regular maintenance and repair, including  
155 compliance with health and safety regulations and maintenance  
156 standards, for such housing site to ensure the health, safety,  
157 and habitability of the housing site.

158 Section 2. This act shall take effect July 1, 2024.

Amendment No.

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	<u>    </u>	(Y/N)
ADOPTED AS AMENDED	<u>    </u>	(Y/N)
ADOPTED W/O OBJECTION	<u>    </u>	(Y/N)
FAILED TO ADOPT	<u>    </u>	(Y/N)
WITHDRAWN	<u>    </u>	(Y/N)
OTHER	<u>      </u>	

1 Committee/Subcommittee hearing bill: Agriculture, Conservation  
2 & Resiliency Subcommittee

3 Representative Tuck offered the following:

4

5 **Amendment**

6 Remove lines 96-146 and insert:

7 and provides an overall screening opacity of 75 percent at the  
8 time of installation.

9 7. All access drives that serve the housing site must be  
10 made of packed shell, gravel, or a similar material that will  
11 provide a relatively dust-free surface.

12 (c) Any local ordinance adopted pursuant to this  
13 subsection must comply with all state and federal regulations  
14 for migrant farmworker housing, as applicable, including rules  
15 adopted by the Department of Health pursuant to ss. 381.008-  
16 381.00897 and federal regulations under the Migrant and Seasonal

Amendment No.

17 Agricultural Worker Protection Act or the H-2A visa program. A  
18 governmental entity may adopt local government land use  
19 regulations that are less restrictive than the regulations  
20 established by the Department of Health pursuant to ss. 381.008-  
21 381.00897 and federal regulations under the Migrant and Seasonal  
22 Agricultural Worker Protection Act or the H-2A visa program for  
23 the construction or installation of housing for temporary  
24 migrant farmworkers.

25 (d) Beginning July 1, 2024, a property owner must maintain  
26 records of all approved permits, including successor permits,  
27 for migrant labor camps or residential migrant housing as  
28 required under s. 381.0081. A property owner must maintain such  
29 records for at least 3 years and make the records available for  
30 inspection within 14 days after receipt of a request for records  
31 by a governmental entity.

32 (e) A housing site may not continue to be used and may be  
33 required to be removed under any of the following circumstances:

34 1. If, for any reason, a housing site is not being used  
35 for agricultural workers for longer than 365 days, any  
36 structures used as dwelling units must be removed from the  
37 housing site within 180 days after receipt of a written  
38 notification from the local government unless the property owner  
39 can demonstrate that use of the site for housing agricultural  
40 workers will occur within 90 days after receipt of such written  
41 notification.

Amendment No.

42        2. If the property on which the housing site is located  
43 ceases to be classified as agricultural land, housing authorized  
44 under this section ceases to be eligible for residential use  
45 unless it is approved under the zoning and land use regulations  
46 of the governmental entity.

47        3. If the permit authorized by the Department of Health  
48 for the housing site is revoked, any structures must be removed  
49 from the housing site within 180 days after receipt of a written  
50 notification from the local government unless the permit is  
51 reinstated by the Department of Health.

52        (f) Notwithstanding this subsection, the construction or  
53 installation of housing for seasonal agricultural employees in  
54 the Florida Keys Area of Critical State Concern or the City of  
55 Key West Area of Critical State Concern is subject to the permit  
56 allocation systems of the Florida Keys Area of Critical State  
57 Concern or the City of Key West Area of Critical State Concern,



## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 1159 Food Recovery

**SPONSOR(S):** Roth

**TIED BILLS:** **IDEN./SIM. BILLS:** SB 1422

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Agriculture, Conservation & Resiliency Subcommittee		Mamontoff	Moore
2) Agriculture & Natural Resources Appropriations Subcommittee			
3) Infrastructure Strategies Committee			

### SUMMARY ANALYSIS

It is estimated that forty percent of the food produced in the United States goes uneaten, and approximately one-fifth of Floridians are food insecure, including one million children. Each year, millions of pounds of surplus and slightly blemished fresh fruits and vegetables are destroyed while many residents of the state go each day without food.

Food recovery programs are beneficial to residents who otherwise lack the means to purchase fresh fruit and vegetables by providing surplus goods for distribution to those in need rather than destroying them. The Commissioner of Agriculture is responsible for assisting these programs, and when needed, aiding in their establishment and supporting their continued and efficient operation.

The Food Recovery Program, enacted by the Legislature in 1994 and administered by the Department of Agriculture and Consumer Services (DACS), gathers leftover farm-fresh produce after harvests, collects unsold food products from wholesale and retail sources, and distributes recovered foods to local food banks and emergency food programs. Through this program, DACS connects farmers with non-profit organizations and volunteers.

The bill directs DACS to implement a pilot program for food recovery entities to negotiate a discounted price for fresh food products. The purpose of this program is to encourage food recovery entities to receive and distribute more fresh food products that can be exclusively distributed for charitable purposes to relieve human hunger in the state.

The bill directs food recovery entities to negotiate and pay a discounted price to food producers for the purchase of fresh food products. The bill also directs DACS to reimburse a food recovery entity for each negotiated purchase of products as well as an additional two cents per pound of products purchased for costs associated with delivery and distribution.

The bill directs DACS to submit reports on the pilot program to the Governor, the President of the Senate, and the Speaker of the House of Representatives by January 1, 2025, and by January 1, 2026.

The bill directs DACS to adopt rules to implement the pilot program and provides a sunset date of January 1, 2026, for the pilot program.

For the 2024-2025 fiscal year, the bill appropriates the sum of \$5 million in nonrecurring funds from the General Revenue Fund to DACS to implement the pilot program.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### Background

It is estimated that forty percent of the food produced in the United States goes uneaten, and approximately one-fifth of Floridians are food insecure, including one million children.<sup>1</sup> Each year, millions of pounds of surplus and slightly blemished fresh fruits and vegetables are destroyed while many residents of the state go each day without food.<sup>2</sup> While food banks and food pantries are critical to addressing food insecurity, they do not always have access to fresh, nutrient-dense food.<sup>3</sup> Food banks often receive donations of less-healthy options, including canned or packaged food products that have a longer shelf life and are easier to distribute. Lack of funding, staff, and physical infrastructure make it difficult for a food bank or food pantry to secure, store, and distribute perishable foods, such as fruits and vegetables.<sup>4</sup>

The Commissioner of Agriculture is responsible for assisting in food recovery programs, and when needed, aiding in their establishment and supporting their continued and efficient operation.<sup>5</sup> Food recovery programs are beneficial to residents who otherwise lack the means to purchase fresh fruit and vegetables by providing surplus goods for distribution to those in need rather than destroying them.<sup>6</sup> In order to help coordinate the establishment of food recovery programs, the Department of Agriculture and Consumer Services (DACS) may:

- Identify suppliers, volunteers, and nonprofit organizations in the community to ascertain the level of interest in establishing a food recovery program;
- Provide facilities and other resources for initial organizational meetings; and
- Provide direct or indirect support for the fledgling program, upon demonstration of serious interest at the local level.<sup>7</sup>

Enacted by the Legislature in 1994, and administered by the Division of Food, Nutrition, and Wellness within DACS, the Food Recovery Program (program) gathers leftover farm-fresh produce after harvests, collects unsold food products from wholesale and retail sources, and distributes recovered foods to local food banks and emergency food programs. Through the program, DACS connects farmers with non-profit organizations and volunteers and holds workshops and trainings on the program.<sup>8</sup> The program works to recover food in two ways:

- By working with farmers: Volunteers visit farms and collect surplus produce in a process known as gleaning.
- By working with schools: DACS provides schools with guidance on food waste audits, share tables, food donations, and composting.<sup>9</sup>

The primary goal of the program is to reduce food waste through field gleaning (i.e. gathering leftover crops from fields after they have been commercially harvested) while increasing farmer profit margins

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<sup>1</sup> Florida Department of Agriculture and Consumer Services (DACS), *Food Recovery Program*, <https://www.fdacs.gov/Food-Nutrition/Nutrition-Programs/Food-Recovery-Program> (last visited Jan. 18, 2024).

<sup>2</sup> Section 595.420(1), F.S.

<sup>3</sup> DACS, *Agency Analysis for HB 399*, March 1, 2023 (on file with the Agriculture, Conservation & Resiliency Subcommittee).

<sup>4</sup> *Id.*

<sup>5</sup> Section 595.420(2), F.S. A food recovery program is a local, volunteer-based organization near an agricultural production area of the state that is established for the exclusive purpose of soliciting, collecting, packaging, and delivering surplus fresh fruit and vegetables for distribution in communities throughout the state. Distribution of the food to the needy is accomplished by DACS and volunteer and nonprofit organizations.

<sup>6</sup> Section 595.420(1), F.S.

<sup>7</sup> Section 595.420(3), F.S.

<sup>8</sup> DACS, *Food Recovery Program*, <https://www.fdacs.gov/Food-Nutrition/Nutrition-Programs/Food-Recovery-Program> (last visited Jan 18, 2024).

<sup>9</sup> *Id.*



through tax incentives. Trained volunteers conduct the field gleaning, post-harvest produce pick-up, as well as transportation of the produce. DACS ensures that donors are provided with proper documentation for a potential tax deduction based on the number of pounds donated.<sup>10</sup>

Food distribution programs are funded by the Legislature through the program. Partnerships for the 2022-2023 fiscal year included:

- The Farmers Feeding Florida Program, which is run by the Feeding Florida organization and purchases cosmetically blemished produce from local agricultural producers and provides it to households in need through Feeding Florida's member food banks.
- The Farm Share Program, which provides food free of charge to local community partner agencies as well as directly to families, children, senior citizens, and individuals in need to address food insecurity throughout the state.<sup>11</sup>

For the 2023-2024 fiscal year, \$5 million in nonrecurring funds was appropriated from the General Revenue Fund to DACS for the Fresh Florida Food Products Program for the purchase and delivery of fresh Florida food products to the following organizations: Feeding Florida Program,<sup>12</sup> Farm Share Program,<sup>13</sup> and the Palm Beach County Food Bank.<sup>14</sup>

The recipient organizations are required to purchase, transport and distribute non-Emergency Food Assistance Program (TEFAP)<sup>15</sup> fresh food products from Florida agricultural companies for the benefit of Florida residents in need.<sup>16</sup> The recipient organization will be reimbursed for the fresh food products as per the seller's invoice and some transportation costs. In order to qualify for reimbursement, the recipient organizations are directed to do the following:

- Purchase fresh food products at a discount;
- Ship the fresh food products within seven days of harvest; and
- Submit monthly reports to DACS.<sup>17</sup>

The purchased Florida grown fresh products are restricted to charitable purposes for hunger relief and may not re-enter the wholesale, retail or secondary market. DACS must reimburse the recipient organizations on a monthly basis, and the recipient organization must pay the seller within 14 days after receiving their specific reimbursement.<sup>18</sup>

## Effect of the Bill

The bill directs DACS, subject to appropriation, to implement a pilot program for food recovery entities<sup>19</sup> to negotiate a discounted price for fresh food products<sup>20</sup> (products) so that the products can be exclusively distributed for charitable purposes to relieve human hunger in the state.

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<sup>10</sup> *Id.*

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

<sup>12</sup> \$2,500,000 was appropriated for Feeding Florida. General Appropriations Act, ch. 2023-239, Laws of Fla.

<sup>13</sup> \$2,250,000 was appropriated for Farm Share. *Id.*

<sup>14</sup> \$250,000 was appropriated for the Palm Beach County Food Bank. *Id.*

<sup>15</sup> The Emergency Food Assistance Program (TEFAP) is a federal program that helps supplement the diets of people with low income by providing them with emergency food assistance at no cost. USDA provides 100 percent American-grown USDA Foods and administrative funds to states to operate TEFAP. USDA, Food and Nutrition Services, *The Emergency Food Assistance Program*, <https://www.fns.usda.gov/tefap/emergency-food-assistance-program> (last visited Jan. 20, 2024).

<sup>16</sup> General Appropriations Act, ch. 2023-239, Laws of Fla.

<sup>17</sup> The monthly reports must include, at a minimum, the amount of food purchased by type, quantity and cost, the purchase location, the purchase date, and distribution location.

<sup>18</sup> General Appropriations Act, ch. 2023-239, Laws of Fla.

<sup>19</sup> The bill defines "food recovery entity" as a nonprofit association engaged in food recovery and distribution that has at least 20 years of operation in the state and has received a minimum of 10 million pounds of perishable fresh food products annually for the last 3 years.

<sup>20</sup> The bill defines "fresh food products" as high-quality fresh fruits, vegetables, proteins, and dairy produced by a food producer that are delivered to their final destination for charitable distribution and meet United States Department of Agriculture commodity standards and grades upon such delivery.

The bill directs food recovery entities to negotiate and pay a discounted price to a food producer<sup>21</sup> for the purchase of food products. The harvest or processing date and the current market price of each product purchased and the shipment destination must be included by invoice, bill of lading, or other documents from the food producer to the food recovery entity. A food recovery entity may reject any product that does not meet its quality standards.

The bill directs DACS to reimburse a food recovery entity for each negotiated purchase of products and an additional two cents per pound of products purchased for costs associated with delivery and distribution for charitable purposes. To receive reimbursement, a food recovery entity must do the following:

- Certify in writing that the purchased products meet the quality standards of the food recovery entity and that the products will not be sold to wholesale, retail, or secondary markets for monetary gain; and
- Submit an invoice as prescribed by DACS which includes the shipment date, the shipment location by shipper and city, the number of packages shipped and the price for each product, the total price paid for each product, the total invoice price paid, and the total pounds shipped by measured weight or by estimate.

The bill directs DACS to submit reports on the pilot program to the Governor, the President of the Senate, and the Speaker of the House of Representatives by January 1, 2025, and by January 1, 2026. The reports must include the following:

- Each product by package size, total number of packages, and average price per package;
- Each product by total pounds and total average price per pound; and
- Total dollars spent on each product and total dollars spent on all products.

The bill directs DACS to adopt rules to implement the pilot program. The bill also provides an expiration date of January 1, 2026, for the pilot program.

For the 2024-2025 fiscal year, the bill appropriates the sum of \$5 million in nonrecurring funds from the General Revenue Fund to DACS for the implementation of the pilot program.

**B. SECTION DIRECTORY:**

- Section 1. Amends s. 595.420, F.S., relating to food recovery.
- Section 2. Provides an appropriation.
- Section 3. Provides an effective date of July 1, 2024.

**II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

**A. FISCAL IMPACT ON STATE GOVERNMENT:**

- 1. Revenues:  
None.

- 2. Expenditures:

The bill provides an appropriation of \$5 million in nonrecurring funds from the General Revenue Fund to DACS to implement the pilot program.

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

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<sup>21</sup> The bill defines “food producer” as an agricultural company, or their associated shipper, that produces fresh food products in the state.

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may have a positive economic impact on agricultural producers in the state that receive funds through the pilot program to sell fresh produce to food recovery entities.

D. FISCAL COMMENTS:

None.

**III. COMMENTS**

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill does not appear to affect county or municipal governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill directs DACS to adopt rules to implement the pilot program.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

**IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES**

Not applicable.

1                                   A bill to be entitled  
 2           An act relating to food recovery; amending s. 595.420,  
 3           F.S.; providing definitions; directing the Department  
 4           of Agriculture and Consumer Services, subject to  
 5           legislative appropriation, to implement a pilot  
 6           program to provide incentives to food recovery food  
 7           recovery entities to negotiate the price for fresh  
 8           food products; providing shipping requirements;  
 9           authorizing food recovery entities to reject certain  
 10          fresh food products; requiring the department to  
 11          reimburse food recovery entities for certain costs;  
 12          providing reimbursement requirements; requiring the  
 13          department to submit reports to the Governor and  
 14          Legislature by specified dates and to adopt rules;  
 15          providing for expiration of the pilot program;  
 16          providing an appropriation; providing an effective  
 17          date.

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

20  
 21           Section 1. Subsection (8) is added to section 595.420,  
 22           Florida Statutes, to read:

23           595.420 Food recovery; legislative intent; department  
 24           functions.—

25           (8) (a) As used in this subsection, the term:

26        1. "Food producer" means an agricultural company, or their  
 27 associated shipper, that produces fresh food products in the  
 28 state.

29        2. "Food recovery entity" means a nonprofit association  
 30 engaged in food recovery and distribution that has at least 20  
 31 years of operation in the state and has received a minimum of 10  
 32 million pounds of perishable fresh food products annually for  
 33 the last 3 years.

34        3. "Fresh food products" means high-quality fresh fruits,  
 35 vegetables, proteins, and dairy produced by a food producer that  
 36 are delivered to their final destination for charitable  
 37 distribution and meet United States Department of Agriculture  
 38 commodity standards and grades upon such delivery.

39        (b) Subject to legislative appropriation, the department  
 40 shall implement a pilot program for food recovery entities to  
 41 negotiate a discounted price for fresh food products so that the  
 42 fresh food products can be exclusively distributed for  
 43 charitable purposes to relieve human hunger in the state.

44        (c) Food recovery entities must negotiate and pay a  
 45 discounted price to a food producer for the purchase of food  
 46 products. The harvest or processing date and the current market  
 47 price of each fresh food product purchased and the shipment  
 48 destination must be included by invoice, bill of lading, or  
 49 other documents from the food producer to the food recovery  
 50 entity.

51 (d) Food recovery entities may reject any fresh food  
52 product that does not meet the quality standards of the food  
53 recovery entity.

54 (e) The department shall reimburse a food recovery entity  
55 for each negotiated purchase of fresh food products and an  
56 additional 2 cents per pound of fresh food products purchased  
57 for costs to deliver and distribute the fresh food products for  
58 charitable purposes. To receive reimbursement, a food recovery  
59 entity must:

60 1. Certify in writing that:

61 a. The fresh food products meet the quality standards of  
62 the food recovery entity.

63 b. The purchased fresh food products will not be sold to  
64 wholesale, retail, or secondary markets for monetary gain.

65 2. Submit an invoice as prescribed by the department,  
66 which includes the following information:

67 a. Shipment date.

68 b. Shipment location by shipper and city.

69 c. Number of packages shipped and the price for each fresh  
70 food product.

71 d. Total price paid for each fresh food product.

72 e. Total invoice price paid.

73 f. Total pounds shipped by measured weight or by estimate  
74 of the fresh food product.

75 (f) The department shall submit reports on the pilot

76 program to the Governor, the President of the Senate, and the  
 77 Speaker of the House of Representatives by January 1, 2025, and  
 78 by January 1, 2026. The reports must include all of the  
 79 following:

80 1. Each fresh food product by package size, total number  
 81 of packages, and average price per package.

82 2. Each fresh food product by total pounds and total  
 83 average price per pound.

84 3. Total dollars total spent on each fresh food product  
 85 and total dollars spent on all fresh food products.

86 (g) The department shall adopt rules to implement this  
 87 subsection.

88 (h) This subsection expires on January 1, 2026.

89 Section 2. For the 2024-2025 fiscal year, the sum of \$5  
 90 million in nonrecurring funds from the General Revenue Fund is  
 91 appropriated to the Department of Agriculture and Consumer  
 92 Services to implement the pilot program under s. 595.420(8),  
 93 Florida Statutes.

94 Section 3. This act shall take effect July 1, 2024.

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 1159 (2024)

Amendment No.

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED \_\_\_\_\_ (Y/N)

ADOPTED AS AMENDED \_\_\_\_\_ (Y/N)

ADOPTED W/O OBJECTION \_\_\_\_\_ (Y/N)

FAILED TO ADOPT \_\_\_\_\_ (Y/N)

WITHDRAWN \_\_\_\_\_ (Y/N)

OTHER

1 Committee/Subcommittee hearing bill: Agriculture, Conservation  
2 & Resiliency Subcommittee

3 Representative Roth offered the following:

4

5 **Amendment**

6 Remove line 30 and insert:

7 engaged in food recovery and distribution that has at least 10





**HOUSE OF REPRESENTATIVES STAFF ANALYSIS**

**BILL #:** HB 1187 Carbon Sequestration  
**SPONSOR(S):** Cross  
**TIED BILLS:** IDEN./SIM. BILLS: SB 1258

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Agriculture, Conservation & Resiliency Subcommittee		Mamontoff	Moore
2) Agriculture & Natural Resources Appropriations Subcommittee			
3) Infrastructure Strategies Committee			

**SUMMARY ANALYSIS**

Carbon is the foundation of all life on Earth. Carbon helps to regulate the Earth’s temperature, makes all life possible, is a key ingredient in food, and provides a major source of energy to fuel the global economy. This element is also found in our atmosphere in the form of carbon dioxide (CO<sub>2</sub>). The carbon cycle describes the process in which carbon atoms continually travel from the atmosphere to the Earth and then back into the atmosphere. Since Earth and its atmosphere form a closed environment, the amount of carbon in this system does not change.

Carbon sequestration is the process of capturing and storing atmospheric CO<sub>2</sub> to reduce the amount of CO<sub>2</sub> in the atmosphere. There are two types of carbon sequestration: geologic and biologic. Geologic carbon sequestration is the process of storing CO<sub>2</sub> in underground geologic formations. Biologic carbon sequestration particularly refers to the storage of atmospheric carbon in vegetation, soils, woody products, and aquatic environments. For example, forests and woodland ecosystems are considered to be one of the best forms of natural carbon sequestration. CO<sub>2</sub> binds to plants during photosynthesis, exchanging it for oxygen as a purifying emission.

The bill creates the Carbon Sequestration Task Force (Task Force) adjunct to DEP for the purpose of providing recommendations for the development of a statewide carbon sequestration program. The bill specifies that such statewide program is necessary to provide incentives for landowners and managers to continue activities and land uses that sequester carbon.

The bill requires appointments to the ten-member Task Force to be made by August 1, 2024.

The bill directs the Task Force to submit to the Secretary of Environmental Protection a report summarizing its activities and findings in its first year by October 1, 2025.

The bill directs the Task Force to submit to the Governor, the President of the Senate, and the Speaker of the House of Representatives a report that compiles the Task Force’s findings and recommendations by October 1, 2026.

The bill sunsets the Task Force on April 30, 2027.

The bill appropriates a nonrecurring sum of \$350,000 from the Operating Trust Fund to DEP.

**FULL ANALYSIS**

# I. SUBSTANTIVE ANALYSIS

## A. EFFECT OF PROPOSED CHANGES:

### Background

#### Carbon

Carbon is the foundation of all life on Earth and is necessary to form complex molecules like proteins and DNA. Carbon helps to regulate the Earth's temperature, makes all life possible, is a key ingredient in food, and provides a major source of energy to fuel the global economy.<sup>1</sup> This element is also found in our atmosphere in the form of carbon dioxide (CO<sub>2</sub>).

The carbon cycle describes the process in which carbon atoms continually travel from the atmosphere to the Earth and then back into the atmosphere. Since Earth and its atmosphere form a closed environment, the amount of carbon in this system does not change. Therefore, where the carbon is located, in the atmosphere or on Earth, is constantly in flux.<sup>2</sup>

On Earth, most carbon is stored in rocks and sediments, while the rest is located in the ocean, atmosphere, and in living organisms.<sup>3</sup> These are the reservoirs, or sinks, through which carbon cycles. Carbon is released back into the atmosphere when organisms die, volcanoes erupt, fires blaze, fossil fuels are burned, and through a variety of other mechanisms. In the case of the ocean, carbon is continually exchanged between the ocean's surface waters and the atmosphere, or is stored for long periods of time in the ocean depths.<sup>4</sup>

Humans play a major role in the carbon cycle through activities such as the burning of fossil fuels or land development. As a result, the amount of CO<sub>2</sub> in the atmosphere is rapidly rising; it is already considerably greater than at any time in the past 3.6 million years.<sup>5</sup>

#### Carbon Sequestration

Carbon sequestration is the process of capturing and storing atmospheric CO<sub>2</sub> that reduces the amount of CO<sub>2</sub> in the atmosphere.<sup>6</sup> It is estimated that approximately 45 percent of CO<sub>2</sub> emitted by humans remains in the atmosphere.<sup>7</sup>

There are two types of carbon sequestration: geologic and biologic. Geologic carbon sequestration is the process of storing carbon dioxide in underground geologic formations. The CO<sub>2</sub> is usually pressurized until it becomes a liquid, and then it is injected into porous rock formations in geologic basins.<sup>8</sup> This method of carbon storage is sometimes a part of enhanced oil recovery, otherwise known as tertiary recovery, because it is used later in the life of a producing oil well. In enhanced oil recovery, the liquid CO<sub>2</sub> is injected into the oil-bearing formation to reduce the viscosity of the oil and allow it to flow more easily to the oil well.<sup>9</sup>

Biologic carbon sequestration refers to the storage of atmospheric carbon in the natural environment<sup>10</sup> and is also known as an indirect or passive form of carbon sequestration. This type of carbon

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<sup>1</sup> National Oceanic and Atmospheric Association (NOAA), *What is the carbon cycle?*, <https://oceanservice.noaa.gov/facts/carbon-cycle.html#transcript> (last visited Jan. 18, 2024).

<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

<sup>6</sup> United States Geological Survey (USGS), *What is carbon sequestration?*, <https://www.usgs.gov/faqs/what-carbon-sequestration> (last visited Jan. 18, 2024).

<sup>7</sup> National Grid, *What is carbon sequestration?*, <https://www.nationalgrid.com/stories/energy-explained/what-carbon-sequestration> (last visited Jan. 18, 2024).

<sup>8</sup> USGS, *What's the difference between geologic and biologic carbon sequestration?*, <https://www.usgs.gov/faqs/whats-difference-between-geologic-and-biologic-carbon-sequestration> (last visited Jan. 18, 2024).

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

sequestration occurs in what are known as carbon sinks,<sup>11</sup> such as forests, grasslands, soil, oceans, and other bodies of water. For example, by encouraging the growth of plants, particularly trees, advocates of biologic carbon sequestration hope to help reduce the amount of CO<sub>2</sub> in the atmosphere.<sup>12</sup>

### Department of Environmental Protection

The Department of Environmental Protection (DEP) is the state's lead agency for environmental management and stewardship, protecting Florida's air, water and land. DEP is divided into three primary areas:

- Land and recreation programs that acquire and protect lands for preservation and recreation;
- Regulatory programs that safeguard natural resources by overseeing permitting and compliance activities that protect air and water quality, and manage waste cleanups; and
- Ecosystem restoration programs that protect and improve water quality and aquatic resources, including America's Everglades, Florida's iconic springs, and Florida's world-renowned coastal resources.<sup>13</sup>

### **Effect of the Bill**

The bill defines the following terms:

- "Blue carbon" means carbon sequestered by marine and coastal ecosystems.
- "Carbon sequestration" means the long-term storage of carbon in plants, soils, geologic formations, and the ocean through land and aquatic habitat management.

The bill creates the Carbon Sequestration Task Force (Task Force)<sup>14</sup> adjunct to DEP for the purpose of providing recommendations for the development of a statewide carbon sequestration program. The bill specifies that such statewide program is necessary to provide incentives for landowners and managers to continue activities and land uses that sequester carbon.

The Task Force must be composed of the following ten members:

- The Secretary of Environmental Protection, or his or her designee;
- The Commissioner of Agriculture, or his or her designee;
- The executive director of the Fish and Wildlife Conservation Commission;
- The Chief Resilience Officer, or his or her designee;
- A representative from the National Estuary Program, appointed by the Secretary of Environmental Protection;
- A member of an environmental not-for-profit, appointed by the Secretary of Environmental Protection;
- A landowner of working agricultural lands, appointed by the Commissioner of Agriculture;
- A representative from a state university with expertise in energy or sustainability, appointed by the Secretary of Environmental Protection;
- A representative from the University of Florida Institute of Food and Agricultural Sciences, appointed by the Commissioner of Agriculture; and
- A representative from the Florida Sea Grant Program, appointed by the Commissioner of Agriculture.

The bill requires appointments to the Task Force to be made by August 1, 2024. Any vacancy must be filled in the same manner as the original appointment. The bill directs the Task Force to elect a chair

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<sup>11</sup> A carbon sink is anything that absorbs more carbon from the atmosphere than it releases. Client Earth, *What is a carbon sink?*, <https://www.clientearth.org/latest/latest-updates/stories/what-is-a-carbon-sink/> (last visited Jan. 18, 2024).

<sup>12</sup> USGS, *What's the difference between geologic and biologic carbon sequestration?*, <https://www.usgs.gov/faqs/whats-difference-between-geologic-and-biologic-carbon-sequestration> (last visited Jan. 18, 2024).

<sup>13</sup> Department of Environmental Protection, *About DEP*, <https://floridadep.gov/about-dep> (last visited Jan. 18, 2024).

<sup>14</sup> "Task force" means an advisory body created without specific statutory enactment for a time not to exceed one year or created by specific statutory enactment for a time not to exceed three years and appointed to study a specific problem and recommend a solution or policy alternative with respect to that problem. Its existence terminates upon the completion of its assignment. Section 20.03(5), F.S.

from among the members, to convene no later than September 1, 2024, and to meet quarterly or upon the call of the chair.

The bill directs the Task Force to do the following:

- Identify and inventory terrestrial and aquatic environments suitable for carbon sequestration in the state;
- Consider possible methods of increasing carbon sequestration within the natural environment through state land and marine resource use policies; agricultural, aquacultural, and silvicultural practices; and other practices to achieve restoration of natural resources and long-term conservation;
- Develop a standardized methodology, including appropriate technology and existing research, to establish baseline carbon levels and account for increases in carbon sequestration over time;
- Evaluate additional ecosystem services and benefits of terrestrial and aquatic environments that may promote conservation and ecosystem restoration success, including water recharge, stormwater filtration, threatened or endangered wildlife habitat, nutrient reduction, flood mitigation and protection, coastal resilience, air quality, soil health, and food security;
- Recommend short-term and long-term benchmarks for increasing carbon sequestration in terrestrial and aquatic ecosystems;
- Identify existing carbon markets and other considerations relevant to participation by the state in such markets; and
- Identify potential funding mechanisms to encourage carbon sequestration practices and activities in the state.

The bill directs the Task Force to submit to the Secretary of Environmental Protection a report summarizing its activities and findings in its first year by October 1, 2025. This report must include a nonrecurring budget request for the 2025-2026 fiscal year.

The bill directs the Task Force to submit to the Governor, the President of the Senate, and the Speaker of the House of Representatives a report that compiles the Task Force's findings and recommendations by October 1, 2026.

The bill sunsets the Task Force on April 30, 2027.

The bill appropriates the sum of \$350,000 in nonrecurring funds from the Operating Trust Fund to DEP for the purpose of providing administrative and support services to the Task Force.

#### B. SECTION DIRECTORY:

Section 1. Creates s. 403.945, F.S., relating to the Carbon Sequestration Task Force.

Section 2. Provides an appropriation.

Section 3. Provides an effective date of July 1, 2024.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

#### A. FISCAL IMPACT ON STATE GOVERNMENT:

##### 1. Revenues:

None.

##### 2. Expenditures:

The bill provides an appropriation of \$350,000 in nonrecurring funds from the Operating Trust Fund to DEP for the purpose of providing administrative and support services to the Task Force.

#### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

### **III. COMMENTS**

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to affect county or municipal governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

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

Not applicable.

1                                   A bill to be entitled  
 2           An act relating to carbon sequestration; creating s.  
 3           403.945, F.S.; providing definitions; providing  
 4           legislative findings; creating the Carbon  
 5           Sequestration Task Force adjunct to the Department of  
 6           Environmental Protection; providing for task force  
 7           membership and duties; requiring the task force to  
 8           submit specified reports to the Secretary of  
 9           Environmental Protection and to the Governor and  
 10          Legislature by specified dates; providing an  
 11          appropriation; providing for expiration of the task  
 12          force; providing an effective date.

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

15  
 16           Section 1.   Section 403.945, Florida Statutes, is created  
 17   to read:

18           403.945   Carbon Sequestration Task Force.-

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

20           (a)   "Blue carbon" means carbon sequestered by marine and  
 21   coastal ecosystems.

22           (b)   "Carbon sequestration" means the long-term storage of  
 23   carbon in plants, soils, geologic formations, and the ocean  
 24   through land and aquatic habitat management.

25           (2)   The Legislature finds that:

26 (a) Maintaining coastal and freshwater wetlands, nearshore  
27 and offshore aquatic ecosystems, conservation lands, healthy and  
28 sustainable agriculture, shellfish aquaculture, and timber and  
29 silvicultural industries is vital to the state's economy,  
30 environment, and natural resources, including significant  
31 environmental contributions to water quality and quantity, air  
32 purification, carbon sequestration, blue carbon, coastal  
33 resilience, and habitat for threatened and endangered wildlife.

34 (b) The continued expansion of urban sprawl and the  
35 development of coastal areas have led to losses of the state's  
36 natural and agricultural lands and decreases in water quality  
37 and quantity that have harmed coastal ecosystems and industries,  
38 including imperiled wetlands, coral reefs, seagrasses, and  
39 shellfish aquaculture.

40 (c) To ensure healthy and sustainable agriculture,  
41 shellfish aquaculture and silvicultural industries, and natural  
42 and working lands and waters, a statewide program is necessary  
43 to provide incentives for landowners and managers to continue  
44 activities and land uses that sequester carbon.

45 (3) The Carbon Sequestration Task Force, a task force as  
46 defined in s. 20.03, is created adjunct to the department to  
47 provide recommendations for the development of a statewide  
48 carbon sequestration program. The task force shall operate in a  
49 manner consistent with the requirements of s. 20.052.

50 (4) (a) The task force shall be composed of the following



51 members:

52 1. The Secretary of Environmental Protection, or his or  
 53 her designee.

54 2. The Commissioner of Agriculture, or his or her  
 55 designee.

56 3. The executive director of the Fish and Wildlife  
 57 Conservation Commission, or his or her designee.

58 4. The Chief Resilience Officer, or his or her designee.

59 5. A representative from the National Estuary Program,  
 60 appointed by the Secretary of Environmental Protection.

61 6. A member of an environmental not-for-profit, appointed  
 62 by the Secretary of Environmental Protection.

63 7. A landowner of working agricultural lands, appointed by  
 64 the Commissioner of Agriculture.

65 8. A representative from a state university with expertise  
 66 in energy or sustainability, appointed by the Secretary of  
 67 Environmental Protection.

68 9. A representative from the University of Florida  
 69 Institute of Food and Agricultural Sciences, appointed by the  
 70 Commissioner of Agriculture.

71 10. A representative from the Florida Sea Grant Program,  
 72 appointed by the Commissioner of Agriculture.

73 (b) Appointments to the task force must be made by August  
 74 1, 2024.

75 (c) Each appointed member serves at the pleasure of the

76 appointing official.

77 (d) A vacancy on the task force must be filled in the same  
78 manner as the original appointment.

79 (e) The task force shall elect a chair from among the  
80 members.

81 (f) The task force shall convene no later than September  
82 1, 2024. The task force shall meet quarterly or upon the call of  
83 the chair. The task force shall hold its meetings in person or  
84 through teleconference or other electronic means.

85 (5) The duties of the task force shall include all of the  
86 following:

87 (a) Identify and inventory terrestrial and aquatic  
88 environments suitable for carbon sequestration in this state.

89 (b) Consider possible methods of increasing carbon  
90 sequestration within the natural environment through state land  
91 and marine resource use policies; agricultural, aquacultural,  
92 and silvicultural practices; and other practices to achieve  
93 restoration of natural resources and long-term conservation.

94 (c) Develop a standardized methodology, including  
95 appropriate technology and existing research, to establish  
96 baseline carbon levels and account for increases in carbon  
97 sequestration over time.

98 (d) Evaluate additional ecosystem services and benefits of  
99 terrestrial and aquatic environments that may promote  
100 conservation and ecosystem restoration success, including water

101 recharge, stormwater filtration, threatened or endangered  
102 wildlife habitat, nutrient reduction, flood mitigation and  
103 protection, coastal resilience, air quality, soil health, and  
104 food security.

105 (e) Recommend short-term and long-term benchmarks for  
106 increasing carbon sequestration in terrestrial and aquatic  
107 ecosystems.

108 (f) Identify existing carbon markets and other  
109 considerations relevant to participation by the state in such  
110 markets.

111 (g) Identify potential funding mechanisms to encourage  
112 carbon sequestration practices and activities in this state.

113 (6) By October 1, 2025, the task force shall submit to the  
114 Secretary of Environmental Protection a report summarizing the  
115 task force activities and findings in its first year, including  
116 a nonrecurring budget request for the 2025-2026 fiscal year.

117 (7) By October 1, 2026, the task force shall submit to the  
118 Governor, the President of the Senate, and the Speaker of the  
119 House of Representatives a report that compiles the findings and  
120 recommendations of the task force. The task force shall  
121 terminate on April 30, 2027.

122 Section 2. For the 2024-2025 fiscal year, the sum of  
123 \$350,000 in nonrecurring funds is appropriated from the  
124 Operating Trust Fund to the Department of Environmental  
125 Protection for the purpose of providing administrative and

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126 | support services to the Carbon Sequestration Task Force pursuant  
127 | to s. 403.945, Florida Statutes.

128 |       Section 3. This act shall take effect July 1, 2024.



**HOUSE OF REPRESENTATIVES STAFF ANALYSIS**

**BILL #:** HM 1411 Shore Protection

**SPONSOR(S):** Cross, Berfield and others

**TIED BILLS:** **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Agriculture, Conservation & Resiliency Subcommittee		Mamontoff	Moore
2) Infrastructure Strategies Committee			

**SUMMARY ANALYSIS**

The 825 miles of sandy coastline fronting the Atlantic Ocean, the Gulf of Mexico, and the Straits of Florida are one of Florida’s most valuable natural resources. They are also a primary attraction for almost 19 million tourists each year, making them an integral part of the state's economy. Beaches also provide a barrier against storms by absorbing wave energy, thereby greatly reducing damage to upland structures. Unfortunately, erosion is a constant threat to this valuable resource, and beaches must be restored through the placement of additional sand on the beach.

The United States Army Corps of Engineers (USACE), through its Shore Protection Program, works directly with local governments to construct beach restoration projects for the primary purposes of controlling beach erosions, protecting shorelines, and protecting infrastructure. USACE's Jacksonville District is the entity responsible for constructing and maintaining 1,300 miles of Florida's 1,800 miles of coastline.

Securing easements for construction projects is a common practice for capital improvement projects. If a project crosses private property and public funds are used, an easement that allows for the construction, maintenance, and replacement is required. Due to recent shifts in USACE policy on the type of easements required to proceed with beach nourishment projects, several such projects in the state are on hold until perpetual public access, use, and construction easements from 100 percent of property owners within a project area are obtained.

Legislative memorials are not subject to the Governor’s veto powers and are not presented to the Governor for review. Memorials have no force of law, as they are mechanisms for formally petitioning the federal government to act on a particular subject.

The memorial urges the U.S. Congress to take immediate action to direct USACE to amend its current easement policy for shore protection projects to allow critical shore protection projects in Florida to proceed without delay.

The memorial does not have a fiscal impact on the state or local governments.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### Background

##### Florida's Beaches

The 825 miles of sandy coastline fronting the Atlantic Ocean, the Gulf of Mexico, and the Straits of Florida are one of Florida's most valuable natural resources.<sup>1</sup> Wide beaches provide foraging and nesting habitat for shorebirds, and sea turtles use the beaches during summer months to come ashore to nest.<sup>2</sup> In all, there are more than 30 plants and animals considered rare within the state that inhabit beaches and the adjacent habitats.<sup>3</sup>

Florida's beaches are also a primary attraction for almost 19 million tourists each year. Tourists and residents alike flock to the beaches for relaxation, boating, fishing, diving, and other innumerable recreational activities. These factors make Florida's beaches an integral part of the state's economy.<sup>4</sup>

Beaches also provide a barrier against storms. The beach and dune system act as a buffer between storm waves and coastal development or infrastructure. During storms, waves reach the beach and dunes before they get to upland property. A beach and dune system absorb the wave energy, thereby greatly reducing damage to upland structures.<sup>5</sup>

Unfortunately, erosion is a constant threat to this valuable resource. Beach erosion is caused by coastal storms, imprudent constructions, sea level rise, and coastal inlets that interrupt sand movement. Only nourishment, the placement of additional sand on the beach seaward of the mean high tide line, makes it possible to reset the erosion clock and push back the tide.<sup>6</sup>

##### Federal Shore Protection Program

In the late 1960s, the passage of the Water Resources Development Act (WRDA) authorized the United States Army Corps of Engineers (USACE) to conduct studies, construct projects, and research activities that will improve the rivers and harbors of the U.S. As a result, USACE became the leading environmental preservation and restoration agency to carry out natural and cultural resource management programs through its water resources projects.<sup>7</sup>

The Shore Protection Program works directly with local governments to construct beach restoration projects for the primary purpose of protecting upland developed properties.<sup>8</sup> In Shore Protection Projects (SPPs), USACE performs nourishment to control beach erosion, protect the shoreline, and protect infrastructure. After detailed feasibility studies are conducted, projects are individually authorized by Congress for construction and long-term maintenance. Authorized projects usually have an authorization period of fifty years, during which time periodic beach nourishment is conducted to maintain the designed storm protection values. Under the program, the federal

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<sup>1</sup> Florida Department of Environmental Protection (DEP), *Beaches*, <https://floridadep.gov/rcp/beaches> (last visited Jan. 20, 2024).

<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

<sup>6</sup> Flournoy, Ankerson, Alvaregna, *Recreational Rights to the Dry Sand Beach in Florida: Property, Custom, and Controversy*, 25 *Ocean & Coastal Law Journal*, Jan. 2020.

<sup>7</sup> U.S. Army Corp of Engineers, *The U.S. Army Corps of Engineers: A Brief History*, <https://www.usace.army.mil/About/History/Brief-History-of-the-Corps/Introduction/> (last visited Jan.19, 2024).

<sup>8</sup> DEP, Office of Resilience and Coastal Protection, *Hurricanes Ian and Nicole Recovery Plan for Florida's Beach and Dune System*, [https://floridadep.gov/sites/default/files/2022-Hurricanes-Ian-and-Nicole-Recovery-Plan\\_12-9-22%283%29.pdf](https://floridadep.gov/sites/default/files/2022-Hurricanes-Ian-and-Nicole-Recovery-Plan_12-9-22%283%29.pdf) (last visited Jan.19, 2024).

government funds the majority of the total project costs.<sup>9</sup> The remaining non-federal cost is the responsibility of the local sponsor and the state as cost-sharing partners.<sup>10</sup>

USACE's Jacksonville District is the entity responsible for constructing and maintaining 1,300 miles of Florida's 1,800 miles of coastline.<sup>11</sup>

### Florida's Beach and Inlet Management Program

Recognizing that beach erosion is a statewide problem, the Florida Legislature created a comprehensive statewide beach and inlet management program with a required long-term management plan and dedicated funding to partner with coastal communities for beach restoration.<sup>12</sup>

The Legislature adopted the Florida Beach and Restoration Act to protect, preserve, and manage the state's beaches and adjacent coastal systems.<sup>13</sup> The Department of Environmental Protection's (DEP) Beaches Programs, within the Office of Resilience and Coastal Protection, have the primary mission of protecting, restoring, and managing Florida's coastal systems.<sup>14</sup> The act established three interrelated programs that DEP administers to protect the state's beaches:

- The Coastal Construction Control Line Program;<sup>15</sup>
- Beach Management Funding Assistance;<sup>16</sup> and
- The Beaches, Inlets, and Ports Program.<sup>17</sup>

So far, the state's beaches programs have been successful in generating state and local benefits, and have partnered with communities in the restoration or maintenance of 227 miles of eroding shoreline.<sup>18</sup>

### Public Use

While some nourished beach miles are already in public ownership as parks and protected areas, most are not. This is because a key impetus for nourishment is the protection of upland structures which are not typically located in parks and other protected areas.<sup>19</sup> When a beach is nourished using federal or state dollars, the newly emergent dry sand beach that is created from the submerged lands seaward of the mean high tide line belongs to the state up to the former mean high tide line, which is re-designated as the erosion control line (ECL).<sup>20</sup>

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<sup>9</sup> *Id.*

<sup>10</sup> Roughly 65 percent of the cost sharing is federally funded, and the remaining 35 percent is funded by the county and local governments.

<sup>11</sup> USACE, Jacksonville District, *Shore Protection*, <https://www.saj.usace.army.mil/Missions/Civil-Works/Shore-Protection/> (last visited Jan. 20, 2024).

<sup>12</sup> Florida Shore and Beach Preservation Association, *Beaches 2017 and Beyond: A Funding Initiative for Statewide Beach Management*, <https://www.fsbpa.com/Beaches2017.pdf> (last visited Jan. 20, 2024).

<sup>13</sup> Sections 161.011 through 161.45, F.S.

<sup>14</sup> DEP, *Beaches*, <https://floridadep.gov/rcp/beaches> (last visited Jan. 20, 2024).

<sup>15</sup> The Coastal Construction Control Line (CCCL) Program regulates structures and activities that can cause beach erosion, destabilize dunes, damage upland properties or interfere with public access. CCCL permits also protect sea turtles and dune plants. DEP, *Coastal Construction Control Line Program*, <https://floridadep.gov/CCCL> (last visited Jan. 20, 2024).

<sup>16</sup> The Beach Management Funding Assistance Program is responsible for managing funding for critically eroded beaches. The program provides and manages grants to local governments (up to 75 percent of project costs) for planning and implementing beach and inlet management projects. DEP, *Beaches Funding Program*, <https://floridadep.gov/rcp/beaches-funding-program> (last visited Jan. 20, 2024).

<sup>17</sup> The Beaches, Inlets, and Ports Program processes Joint Coastal Permit applications as well as Environmental Resource Permit applications for navigational dredging of deepwater ports and inlets. These projects are reviewed to make sure that any potential adverse impacts have been avoided or minimized, and that the projects meet the criteria for issuance that are specified in statutes and rules. DEP, *Beaches, Inlets and Ports Program*, <https://floridadep.gov/rcp/beaches-inlets-ports>; DEP, *Beaches*, <https://floridadep.gov/rcp/beaches> (last visited Jan. 20, 2024).

<sup>18</sup> Florida Shore and Beach Preservation Association, *Beaches 2017 and Beyond: A Funding Initiative for Statewide Beach Management*, <https://www.fsbpa.com/Beaches2017.pdf> (last visited Jan. 20, 2024).

<sup>19</sup> *Id.*

<sup>20</sup> Sections 161.141 and 161.151(3), F.S.



The beach that is landward of the ECL remains privately owned, while the new beach created by nourishment, remains in public ownership.<sup>21</sup> While the private property owner retains riparian rights<sup>22</sup> over the newly created public beach, the public owns and has the right to use the newly emergent dry sand beach. This bifurcation of dry sand beach ownership remains until the nourished public beach erodes back to the established ECL. Once this occurs, there is no longer a publicly owned dry sand beach, and the common law boundary is reinstated.<sup>23</sup>

To date, new publicly owned dry sand beach has been created along more than 229 miles of Florida's coastline, under DEP's beach management program. Federal cost-share represents a significant percentage of the funding for beach nourishment.<sup>24</sup> Once a beach has been nourished, it is eligible to be renourished at regular intervals.<sup>25</sup>

#### Perpetual Property Easements

Securing easements for construction projects is a common practice for capital improvement projects. If a beach nourishment project crosses private property and public funds are used, an easement that allows for the construction, maintenance, and replacement is required.<sup>26</sup> These perpetual easements will allow USACE to place sand on private property while guaranteeing public access to the easement area.<sup>27</sup> USACE will not nourish beaches without these easements in place.<sup>28</sup>

USACE requires the public to have access to nourished beach areas, but that access is not unrestricted. The area within the easement is still owned by the property owner and public access does not apply to the upland. For example, the public cannot sit on the seawall, access the beach through upland property, park in private parking lots, or use a homeowner's private property.<sup>29</sup>

Due to recent shifts in USACE policy on the type of easements required to proceed with beach nourishment projects, several such projects in the state are on hold until perpetual public access, use, and construction easements from 100 percent of property owners within a project area are obtained.<sup>30</sup>

#### Pinellas County Shore Protection Projects

There are three segments of Pinellas County that work with USACE to receive beach nourishment through SPPs. These projects are in Sand Key, Treasure Island, and Long Key. Nourishment funding in Pinellas County is typically split in three ways:

- 60 percent funding from USACE;

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<sup>21</sup> Being open to public use does not necessarily mean that it is easily accessible. For example, many areas lack facilities for parking or easy public transit access, thus, as a practical matter, limiting the use to those who live or are staying in the immediate vicinity.

<sup>22</sup> "Riparian rights" are those incident to land bordering upon navigable waters. They are rights of ingress, egress, boating, bathing, and fishing and such others as may be or have been defined by law. Such rights are not of a proprietary nature. They are rights inuring to the owner of the riparian land but are not owned by him or her. They are appurtenant to and are inseparable from the riparian land. The land to which the owner holds title must extend to the ordinary high watermark of the navigable water in order that riparian rights may attach. Conveyance of title to or lease of the riparian land entitles the grantee to the riparian rights running therewith whether or not mentioned in the deed or lease of the upland. Section 253.141, F.S.

<sup>23</sup> Flournoy, Ankerson, Alvaregna, *Recreational Rights to the Dry Sand Beach in Florida: Property, Custom, and Controversy*, 25 *Ocean & Coastal Law Journal*, Jan. 2020.

<sup>24</sup> *Id.*

<sup>25</sup> *Id.*

<sup>26</sup> Pinellas County, *Beach Easements: Frequently Asked Questions*, <https://pinellas.gov/coastal-management-easements-for-future-sand-key-nourishment-projects/> (last visited Jan. 19, 2024)

<sup>27</sup> Pinellas County, *Sand Key Beach Nourishment*, <https://pinellas.gov/coastal-management-easements> (last visited Jan. 20, 2024).

<sup>28</sup> *Id.*

<sup>29</sup> *Id.*

<sup>30</sup> See Jack Evans, *In Pinellas beach erosion battle, Army Corps shows up but won't budge*, Tampa Bay Times, available at <http://www.tampabay.com/news/pinellas/2023/09/08/beach-erosion-renourishment-army-corps-easements/> (last visited Jan. 21, 2024); USACE, *Frequently Asked Questions: Material Placement on Beaches*, available at [https://www.saj.usace.army.mil/Portals/44/docs/Civil%20Works/Shore%20Protection/FAQ\\_Easements\\_FINAL\\_May\\_%202017.pdf](https://www.saj.usace.army.mil/Portals/44/docs/Civil%20Works/Shore%20Protection/FAQ_Easements_FINAL_May_%202017.pdf) (last visited Jan. 21, 2024).

- 20 percent from DEP; and
- 20 percent from local funds.<sup>31</sup>

USACE has stated it will not nourish Pinellas County beaches without the required easements.<sup>32</sup> USACE has declared that if the easements are not in place within the dunes area, it will not pay to place sand seaward of that area.<sup>33</sup> As a result, the Sand Key portion of the SPP that was scheduled for 2024 is indefinitely on hold. The Treasure Island portion of the SPP is two years past due; and Long Key, which had projects slated to begin in the fall of 2023, is also on hold.<sup>34</sup> Because all of Pinellas County's nourishment projects are connected, without 100 percent of the easements from property owners, none of the projects can move forward.

Pinellas County's agreement with USACE puts the burden on the county to obtain all federally required easements within the project area.<sup>35</sup> The easements will be held by the county and not by USACE. However, private property owners have been unwilling to agree to the required easements due to concerns about the extent of the public use and access that would be granted on their property.<sup>36</sup> Since easement acquisition began in 2016, Pinellas County has been working to request changes to the easement language and USACE policy. However, USACE is unwilling to change its position on this requirement.<sup>37</sup>

In previous nourishments, USACE did not require private property owners to sign perpetual property easements. Now, with the easements, USACE would have perpetual access to a private property up to the sea wall.<sup>38</sup> USACE has made it clear that it will not nourish any of the Pinellas County beaches until they come into compliance.

### Legislative Memorials

Legislative memorials are not subject to the Governor's veto powers and are not presented to the Governor for review. Memorials have no force of law, as they are mechanisms for formally petitioning the federal government to act on a particular subject.

### **Effect of the Bill**

The memorial urges the U.S. Congress to take immediate action to direct USACE to amend its current easement policy for SPPs to allow critical SPPs in Florida to proceed without delay.

The memorial calls for copies of the memorial to be dispatched to the President of the U.S., the President of the U.S. Senate, the Speaker of the U.S. House of Representatives, and each member of the Florida delegation to the U.S. Congress.

<sup>31</sup> Pinellas County, *Sand Key Beach Nourishment*, <https://pinellas.gov/coastal-management-easements> (last visited Jan. 20, 2024).

<sup>32</sup> See Jack Evans, *In Pinellas beach erosion battle, Army Corps shows up but won't budge*, Tampa Bay Times, available at <http://www.tampabay.com/news/pinellas/2023/09/08/beach-erosion-renourishment-army-corps-easements/> (last visited Jan. 21, 2024).

<sup>33</sup> Pinellas County, *Sand Key Beach Nourishment*, <https://pinellas.gov/coastal-management-easements> (last visited Jan. 20, 2024).

<sup>34</sup> WSTP, *'We're in an impasse': All Pinellas County beach renourishment projects on pause*, <https://www.wstp.com/article/news/local/pinellascounty/pinellas-county-beach-renourishment-projects/67-86edc2b1-28aa-4ca1-bb0b-c60289941ec3> (last visited Jan. 19, 2024).

<sup>35</sup> Pinellas County, *Sand Key Beach Nourishment*, <https://pinellas.gov/coastal-management-easements> (last visited Jan. 20, 2024).

<sup>36</sup> WSTP, *'We're in an impasse': All Pinellas County beach renourishment projects on pause*, <https://www.wstp.com/article/news/local/pinellascounty/pinellas-county-beach-renourishment-projects/67-86edc2b1-28aa-4ca1-bb0b-c60289941ec3> (last visited Jan. 19, 2024).

<sup>37</sup> Pinellas County, *Sand Key Beach Nourishment*, <https://pinellas.gov/coastal-management-easements> (last visited Jan. 20, 2024).

<sup>38</sup> WSTP, *'We're in an impasse': All Pinellas County beach renourishment projects on pause*, <https://www.wstp.com/article/news/local/pinellascounty/pinellas-county-beach-renourishment-projects/67-86edc2b1-28aa-4ca1-bb0b-c60289941ec3> (last visited Jan. 19, 2024).

B. SECTION DIRECTORY:

Not applicable.

**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:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

**III. COMMENTS**

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The memorial does not appear to affect county or municipal governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The memorial neither authorizes nor requires executive branch rulemaking.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

**IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES**

Not applicable.

House Memorial

A memorial to the Congress of the United States,  
 urging Congress to take immediate action to direct the  
 United States Army Corps of Engineers to amend its  
 current easement policy for shore protection projects  
 to allow critical shore protection projects in Florida  
 to proceed without delay.

WHEREAS, according to a 2015 report by the Office of  
 Economic and Demographic Research, beaches are Florida's number  
 one tourist attraction, generating billions of dollars for the  
 state and local economies, and

WHEREAS, healthy beach and dune systems in Florida protect  
 upland property and infrastructure, increase property values,  
 combat sea level rise and erosion, provide critical habitat for  
 threatened and endangered wildlife, and ensure a myriad of other  
 benefits, and

WHEREAS, Florida has 825 miles of world-renowned beaches,  
 and

WHEREAS, it has been the long-standing policy of Florida  
 that erosion is most efficiently addressed by beach restoration  
 and periodic nourishment, and

WHEREAS, according to the 2023 Critically Eroded Beaches in  
 Florida Report by the Florida Department of Environmental  
 Protection, 432.5 miles of beaches are critically eroded, and

26 WHEREAS, the federal, state, and local governments have  
 27 partnered for over 50 years to protect 253 miles of critically  
 28 eroded beaches in Florida, and

29 WHEREAS, public access to restored beaches has been  
 30 enshrined in Florida since 1970 with the passage of state  
 31 legislation requiring the establishment of an erosion control  
 32 line, usually at the mean high-water line, before restoration of  
 33 a beach, which identifies private interests landward of the line  
 34 and public ownership by the state in trust for its people  
 35 seaward of the line, and

36 WHEREAS, shore protection projects are typically authorized  
 37 by the Congress of the United States for a duration of 50 years,  
 38 and

39 WHEREAS, the federal government's cost-sharing  
 40 responsibilities for shore protection projects were clarified in  
 41 the Water Resources Development Act of 1986 to prohibit federal  
 42 participation when shores are limited to exclusively private  
 43 interests but allow the local sponsor to bear these costs in  
 44 such instances where easements could not be obtained, and

45 WHEREAS, in 1996, the United States Army Corps of Engineers  
 46 declared the minimum estate necessary for shore protection  
 47 projects was the perpetual beach storm damage reduction easement  
 48 but allowed local sponsors in Florida to acquire less-than-  
 49 perpetual easements and to pay 100 percent of sand placement

50 landward of the erosion control line for those areas not covered  
 51 by an easement, and

52 WHEREAS, in addition to the United States Army Corps of  
 53 Engineers requiring a perpetual easement for a 50-year project,  
 54 other overly broad public access and use language in the  
 55 easement not tailored to the needs of shore protection projects  
 56 is causing coastal property owners to reject signing such  
 57 easements, and

58 WHEREAS, project cooperation agreements require local  
 59 sponsors to ensure public ownership and use of the shores upon  
 60 which the federal cost-share is based, and

61 WHEREAS, recent shifts in United States Army Corps of  
 62 Engineers' policy on easements, which are not based in law,  
 63 require the acquisition of perpetual public access, use, and  
 64 construction easements from 100 percent of property owners  
 65 within a project area in order to proceed even if construction  
 66 will not occur over the easement area, and

67 WHEREAS, the Unites States Army Corps of Engineers is  
 68 retroactively applying its inflexible interpretation of law  
 69 regarding perpetual easements which has resulted in widespread  
 70 project delays for both traditional and emergency repair  
 71 projects, contradicting Congressional intent and leaving  
 72 Floridians and critical coastal habitat vulnerable to  
 73 catastrophic flooding and erosion from the next coastal storm,  
 74 and

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75 WHEREAS, the efforts of coastal stakeholders in Florida to  
76 address these issues with the United States Army Corps of  
77 Engineers have been unsuccessful, NOW, THEREFORE,

78  
79 Be It Resolved by the Legislature of the State of Florida:

80  
81 That to the Congress of the United States is urged to take  
82 immediate action to direct the United States Army Corps of  
83 Engineers to amend to its current easement policy for shore  
84 protection projects to allow critical shore protection projects  
85 in Florida to proceed without delay.

86 BE IT FURTHER RESOLVED that the Secretary of State dispatch  
87 copies of this memorial to the President of the United States,  
88 the President of the United States Senate, the Speaker of the  
89 United States House of Representatives, and each member of the  
90 Florida delegation to the United States Congress.

Amendment No.

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	_____	(Y/N)
ADOPTED AS AMENDED	_____	(Y/N)
ADOPTED W/O OBJECTION	_____	(Y/N)
FAILED TO ADOPT	_____	(Y/N)
WITHDRAWN	_____	(Y/N)
OTHER		

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1 Committee/Subcommittee hearing bill: Agriculture, Conservation  
2 & Resiliency Subcommittee

3 Representative Cross offered the following:

4

5 **Amendment**

6 Remove lines 46-83 and insert:

7 declared the minimum easement necessary for shore protection  
8 projects was the perpetual beach storm damage reduction easement  
9 but allowed local sponsors in Florida to acquire less-than-  
10 perpetual easements and to pay 100 percent of sand placement  
11 landward of the erosion control line for those areas not covered  
12 by an easement, and

13 WHEREAS, in addition to the United States Army Corps of  
14 Engineers requiring a perpetual easement for a 50-year project,  
15 other overly broad public access and use language in the  
16 easement not tailored to the needs of shore protection projects



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17 is causing coastal property owners to reject signing such  
18 easements, and

19 WHEREAS, project cooperation agreements require local  
20 sponsors to ensure public ownership and use of the shores upon  
21 which the federal cost-share is based, and

22 WHEREAS, recent shifts in United States Army Corps of  
23 Engineers' policy on easements, which are not based in law,  
24 require the acquisition of perpetual public access, use, and  
25 construction easements from 100 percent of property owners  
26 within a project area in order to proceed even if construction  
27 will not occur over the easement area, and

28 WHEREAS, the United States Army Corps of Engineers is  
29 retroactively applying its inflexible interpretation of law  
30 regarding perpetual easements which has resulted in widespread  
31 project delays for both traditional and emergency repair  
32 projects, contradicting Congressional intent and leaving  
33 Floridians and critical coastal habitat vulnerable to  
34 catastrophic flooding and erosion from the next coastal storm,  
35 and

36 WHEREAS, the efforts of coastal stakeholders in Florida to  
37 address these issues with the United States Army Corps of  
38 Engineers have been unsuccessful, NOW, THEREFORE,

39  
40 Be It Resolved by the Legislature of the State of Florida:  
41

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HM 1411 (2024)

Amendment No.

42           That the Congress of the United States is urged to take  
43 immediate action to direct the United States Army Corps of  
44 Engineers to amend its current easement policy for shore



## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 1641 Regulation of Auxiliary Containers

**SPONSOR(S):** Yeager

**TIED BILLS:** **IDEN./SIM. BILLS:** CS/SB 1126

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Agriculture, Conservation & Resiliency Subcommittee		Gawin	Moore
2) Local Administration, Federal Affairs & Special Districts Subcommittee			
3) Infrastructure Strategies Committee			

### SUMMARY ANALYSIS

The United Nations has estimated that the world consumes between 1 trillion and 5 trillion plastic bags (a form of auxiliary container) per year. Additionally, in the United States, fewer than 10 percent of plastics packaging, including plastic bags, are recycled per year. In Florida, the Department of Environmental Protection (DEP) estimated that about 5 to 6 million tons of collected municipal solid waste per year are single use carryout packaging (SUCP). Improperly managed SUCP can result in litter in the environment, along roads, and in stormwater collection systems and freshwater resources. Plastic has been documented as the most abundant anthropogenic material in marine ecosystems, where it causes harm to wildlife.

In response to growing concerns regarding the impact of retail plastic bags on the environment, the Legislature passed HB 7135 in 2008, which, in part, required DEP to analyze the need for new or different regulation of auxiliary containers, wrappings, or disposable plastic bags used by consumers to carry products from retail establishments. The initial report was submitted in 2010, and in 2021, the Legislature directed DEP to review and update its 2010 report and submit it to the Legislature by December 31, 2021. DEP submitted the updated report with its conclusions and recommendations to the Legislature on December 27, 2021. Local governments, local governmental agencies, and state government agencies are prohibited from enacting any rule, regulation, or ordinance regarding the use, disposition, sale, prohibition, restriction, or tax of auxiliary containers, wrappings, or disposable plastic bags until the Legislature adopts DEP's recommendations. To date, the Legislature has not adopted any recommendations contained in the report.

The bill defines "auxiliary container" to mean a reusable or single-use bag, cup, bottle, or other packaging that is made of cloth; paper; plastic, including, but not limited to, foamed plastic, expanded plastic, or polystyrene; cardboard; molded fiber; corrugated material; aluminum; glass; postconsumer recycled material; or similar material or substrates, including coated, laminated, or multilayer substrates and is designed for transporting, consuming, or protecting merchandise, food, or beverages from or at a food service or retail facility.

The bill removes the provision requiring DEP to update the 2010 retail bags report. The bill also removes the provision that prohibits a local government, local government agency, or state government agency from enacting any rule, regulation, or ordinance regarding the use, disposition, sale, prohibition, restriction, or tax of auxiliary containers until the Legislature adopts DEP's recommendations in the updated retail bags report. Additionally, the bill expressly preempts the regulation of auxiliary containers to the state.

The bill does not appear to have a fiscal impact on state or local government.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### Background

##### Auxiliary Containers

The United Nations has estimated that the world consumes between 1 trillion and 5 trillion plastic bags (a form of auxiliary container) per year.<sup>1</sup> Additionally, in the United States, fewer than 10 percent of plastics packaging, including plastic bags, are recycled per year.<sup>2</sup> In Florida, the Department of Environmental Protection (DEP) estimated that about 5 to 6 million tons of collected municipal solid waste per year are single use carryout packaging (SUCP).<sup>3</sup> Improperly managed SUCP can result in litter in the environment, along roads, and in stormwater collection systems and freshwater resources.<sup>4</sup> Plastic has been documented as the most abundant anthropogenic material in marine ecosystems, where it causes harm to wildlife.<sup>5</sup> Due to these concerns, some local governments in the state have attempted to enact regulations regarding the use of SUCP.<sup>6</sup>

##### DEP Retail Bags Report

In response to growing concerns regarding the impact of retail plastic bags on the environment, the Legislature passed HB 7135 in 2008,<sup>7</sup> which, in part, required DEP to analyze the need for new or different regulation of auxiliary containers, wrappings, or disposable plastic bags used by consumers to carry products from retail establishments.<sup>8</sup> The initial report was submitted in 2010,<sup>9</sup> and in 2021, the Legislature directed DEP to review and update its 2010 report and submit it to the Legislature by December 31, 2021.<sup>10</sup> DEP submitted the updated report with its conclusions and recommendations to the Legislature on December 27, 2021.<sup>11</sup> Current law prohibits local governments, local governmental agencies, and state government agencies from enacting any rule, regulation, or ordinance regarding the use, disposition, sale, prohibition, restriction, or tax of auxiliary containers, wrappings, or disposable plastic bags until the Legislature adopts DEP's recommendations.<sup>12</sup> To date, the Legislature has not adopted any recommendations contained in the report, and the prohibition remains in effect.<sup>13</sup>

##### State Preemption

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<sup>1</sup> United Nations Environment Programme, *Single-Use Plastics: A Roadmap for Sustainability*, March 26, 2018, viii, available at <https://www.unep.org/resources/report/single-use-plastics-roadmap-sustainability> (last visited Jan. 18, 2024).

<sup>2</sup> United States Environmental Protection Agency, *Advancing Sustainable Materials Management: 2016 and 2017 Tables and Figures*, November, 2019, 47, available at [https://www.epa.gov/sites/default/files/2019-11/documents/2016\\_and\\_2017\\_facts\\_and\\_figures\\_data\\_tables\\_0.pdf](https://www.epa.gov/sites/default/files/2019-11/documents/2016_and_2017_facts_and_figures_data_tables_0.pdf) (last visited Jan. 18, 2024).

<sup>3</sup> DEP, *Update of the 2010 Retail Bags Report*, December 2021, 3, available at <https://floridadep.gov/sites/default/files/FDEP%20Plastic%20Bag%20Report%20Final%20v4.pdf> (last visited Jan. 18, 2024). SUCP refers to auxiliary containers, wrappings, and disposable plastic bags. *Id.* at 2.

<sup>4</sup> *Id.* at 4.

<sup>5</sup> *Id.* at 5.

<sup>6</sup> See *Florida Retail Federation, Inc. v. City of Coral Gables*, 282 So. 3d 889 (Fla. 3d Dist. Ct. App. 2019), where originally the ordinance prohibited the use of expanded polystyrene by restaurants and businesses as well as city vendors/contractors and special events permittees and their subcontractors. After the Florida Retail Federation challenged the ordinance, the 3<sup>rd</sup> District Court of Appeal ruled the ordinance was preempted by the state.

<sup>7</sup> Chapter 2008-227, s. 96, L.O.F.

<sup>8</sup> Section 403.7033, F.S.

<sup>9</sup> Chapter 2008-227, s. 96, L.O.F.

<sup>10</sup> Section 403.7033, F.S.

<sup>11</sup> DEP, *Retail Bags Report Cover Letter*, available at <https://floridadep.gov/sites/default/files/Plastic%20Bag%20Report%20Cover.pdf> (last visited Jan. 18, 2024); DEP, *Update of the 2010 Retail Bags Report*, December 2021, available at <https://floridadep.gov/sites/default/files/FDEP%20Plastic%20Bag%20Report%20Final%20v4.pdf> (last visited Jan. 18, 2024).

<sup>12</sup> *Id.*

<sup>13</sup> DEP, *Update of the 2010 Retail Bags Report*, December 2021, 10, available at <https://floridadep.gov/sites/default/files/FDEP%20Plastic%20Bag%20Report%20Final%20v4.pdf> (last visited Jan. 18, 2024).

There are two ways that a local regulation can be inconsistent with state law and therefore unlawful. First, a local government may not legislate in a field if the subject area has been preempted to the state. Second, in a field where both the state and local government can legislate concurrently, a local government may not enact an ordinance that directly conflicts with the state statute.<sup>14</sup>

State law recognizes two types of state preemption: express and implied. Express preemption requires a specific legislative statement of intent to preempt a specific area of law; it cannot be implied or inferred.<sup>15</sup> In contrast, implied preemption exists if the legislative scheme is so pervasive as to evidence an intent to preempt the particular area, and where strong public policy reasons exist for finding such an area to be preempted by the Legislature.<sup>16</sup> Courts determining the validity of local government ordinances enacted in the face of state preemption, whether express or implied, have found such ordinances to be null and void.<sup>17</sup>

### Home Rule Authority

The Florida Constitution grants local governments broad home rule authority. Specifically, non-charter county governments may exercise those powers of self-government that are provided by general or special law.<sup>18</sup> Counties operating under a county charter have all powers of self-government not inconsistent with general law or special law approved by vote of the electors.<sup>19</sup> Likewise, municipalities have governmental, corporate, and proprietary powers that enable them to conduct municipal government, perform municipal functions and provide services, and exercise any power for municipal purposes except as otherwise provided by law.<sup>20</sup>

County governments have the authority to provide fire protection, ambulance services, parks and recreation, libraries, museums and other cultural facilities, waste and sewage collection and disposal, and water and alternative water supplies.<sup>21</sup> Municipalities are afforded broad home rule powers with the exception of annexation, merger, exercise of extraterritorial power, or subjects prohibited or preempted by the federal or state constitution, county charter, or statute.<sup>22</sup>

### **Effect of the Bill**

The bill defines “auxiliary container” to mean a reusable or single-use bag, cup, bottle, or other packaging that is:

- Made of cloth; paper; plastic, including, but not limited to, foamed plastic, expanded plastic, or polystyrene; cardboard; molded fiber; corrugated material; aluminum; glass; postconsumer recycled material; or similar material or substrates, including coated, laminated, or multilayer substrates; and
- Designed for transporting, consuming, or protecting merchandise, food, or beverages from or at a food service or retail facility.

The bill removes the provision requiring DEP to update the 2010 retail bags report. The bill also removes the provision that prohibits a local government, local government agency, or state government agency from enacting any rule, regulation, or ordinance regarding the use, disposition, sale, prohibition, restriction, or tax of auxiliary containers until the Legislature adopts DEP’s recommendations in the

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<sup>14</sup> *Orange County v. Singh*, 268 So. 3d 668, 673 (Fla. 2019) (citing *Phantom of Brevard, Inc. v. Brevard County*, 3 So. 3d 309, 314 (Fla. 2008)); see also James Wolf & Sarah Bolinder, *The Effectiveness of Home Rule: A Preemptions and Conflict Analysis*, 83 FLA. BAR J. 92 (2009), available at <https://www.floridabar.org/the-florida-bar-journal/the-effectiveness-of-home-rule-a-preemption-and-conflict-analysis/> (last visited Jan. 18, 2024).

<sup>15</sup> *City of Hollywood v. Mulligan*, 934 So. 2d 1238, 1243 (Fla. 2006); *Phantom of Brevard, Inc.*, 3 So. 3d at 1018.

<sup>16</sup> *Sarasota Alliance for Fair Elections, Inc. v. Browning*, 28 So. 3d 880, 886 (Fla. 2010).

<sup>17</sup> See, e.g., *National Rifle Association of America, Inc. v. City of South Miami*, 812 So. 2d 504 (Fla. 3d DCA 2002) (concluding that a City of South Miami local government ordinance, which purported to provide safety standards for firearms, was null and void because the Legislature expressly preempted the entire field of firearm and ammunition regulation when it enacted s. 790.33, F.S.).

<sup>18</sup> FLA. CONST., art. VIII, s. 1.(f).

<sup>19</sup> FLA. CONST., art. VIII, s. 1.(g).

<sup>20</sup> FLA. CONST., art. VIII, s. 2.(b); see also s. 166.021(1), F.S.

<sup>21</sup> Section 125.01(1), F.S.

<sup>22</sup> Section 166.021(3), F.S.

updated retail bags report. Additionally, the bill expressly preempts the regulation of auxiliary containers to the state.

**B. SECTION DIRECTORY:**

Section 1. Amends s. 403.703, F.S., related to recycling definitions.

Section 2. Amends s. 403.7033, F.S., related to preemption of regulation for auxiliary containers.

Section 3. Amends s. 403.707, F.S., related to permits, to conform cross references.

Section 4. Provides an effective date of July 1, 2024.

**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:

None.

2. Expenditures:

None.

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

None.

**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 expenditures 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:

None.

**B. RULE-MAKING AUTHORITY:**

None.

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

None.

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

Not applicable.



1                                   A bill to be entitled  
 2           An act relating to regulation of auxiliary containers;  
 3           amending s. 403.703, F.S.; defining the term  
 4           "auxiliary container"; amending s. 403.7033, F.S.;  
 5           removing obsolete provisions requiring the Department  
 6           of Environmental Protection to review and update a  
 7           specified report; prohibiting local regulation of  
 8           auxiliary containers; preempting such regulation to  
 9           the state; amending s. 403.707, F.S.; conforming  
 10          cross-references; providing an effective date.

11  
 12   Be It Enacted by the Legislature of the State of Florida:

13  
 14           Section 1. Subsections (2) through (48) of section  
 15   403.703, Florida Statutes, are renumbered as sections (3)  
 16   through (49), respectively, present subsection (35) of that  
 17   section is amended, and a new subsection (2) is added to that  
 18   section, to read:

19           403.703 Definitions.—As used in this part, the term:  
 20           (2) "Auxiliary container" means a reusable or single-use  
 21           bag, cup, bottle, or other packaging that meets both of the  
 22           following requirements:  
 23           (a) Is made of cloth; paper; plastic, including, but not  
 24           limited to, foamed plastic, expanded plastic, or polystyrene;  
 25           cardboard; molded fiber; corrugated material; aluminum; glass;

26 postconsumer recycled material; or similar material or  
 27 substrates, including coated, laminated, or multilayer  
 28 substrates.

29 (b) Is designed for transporting, consuming, or protecting  
 30 merchandise, food, or beverages from or at a food service or  
 31 retail facility.

32 (36)-(35) "Solid waste" means sludge unregulated under the  
 33 federal Clean Water Act or Clean Air Act, sludge from a waste  
 34 treatment works, water supply treatment plant, or air pollution  
 35 control facility, or garbage, rubbish, refuse, special waste, or  
 36 other discarded material, including solid, liquid, semisolid, or  
 37 contained gaseous material resulting from domestic, industrial,  
 38 commercial, mining, agricultural, or governmental operations.  
 39 Recovered materials as defined in subsection (29) ~~(28)~~ and post-  
 40 use polymers as defined in subsection (25) ~~(24)~~ are not solid  
 41 waste.

42 Section 2. Section 403.7033, Florida Statutes, is amended  
 43 to read:

44 403.7033 Preemption of regulation for auxiliary containers  
 45 ~~Departmental analysis of particular recyclable materials.-The~~  
 46 ~~Legislature finds that prudent regulation of recyclable~~  
 47 ~~materials is crucial to the ongoing welfare of Florida's ecology~~  
 48 ~~and economy. As such, the Department of Environmental Protection~~  
 49 ~~shall review and update its 2010 report on retail bags analyzing~~  
 50 ~~the need for new or different regulation of auxiliary~~

51 ~~containers, wrappings, or disposable plastic bags used by~~  
52 ~~consumers to carry products from retail establishments. The~~  
53 ~~updated report must include input from state and local~~  
54 ~~government agencies, stakeholders, private businesses, and~~  
55 ~~citizens and must evaluate the efficacy and necessity of both~~  
56 ~~statewide and local regulation of these materials. To ensure~~  
57 ~~consistent and effective implementation, the department shall~~  
58 ~~submit the updated report with conclusions and recommendations~~  
59 ~~to the Legislature no later than December 31, 2021. Until such~~  
60 ~~time that the Legislature adopts the recommendations of the~~  
61 ~~department,~~ A local government, local governmental agency, or  
62 state governmental agency may not enact any rule, regulation, or  
63 ordinance regarding use, disposition, sale, prohibition,  
64 restriction, or tax of ~~such~~ auxiliary containers. The regulation  
65 of auxiliary containers is expressly preempted to the state,  
66 ~~wrappings, or disposable plastic bags.~~

67 Section 3. Paragraph (j) of subsection (9) of section  
68 403.707, Florida Statutes, is amended to read:

69 403.707 Permits.—

70 (9) The department shall establish a separate category for  
71 solid waste management facilities that accept only construction  
72 and demolition debris for disposal or recycling. The department  
73 shall establish a reasonable schedule for existing facilities to  
74 comply with this section to avoid undue hardship to such  
75 facilities. However, a permitted solid waste disposal unit that

76 receives a significant amount of waste prior to the compliance  
 77 deadline established in this schedule shall not be required to  
 78 be retrofitted with liners or leachate control systems.

79 (j) The Legislature recognizes that recycling, waste  
 80 reduction, and resource recovery are important aspects of an  
 81 integrated solid waste management program and as such are  
 82 necessary to protect the public health and the environment. If  
 83 necessary to promote such an integrated program, the county may  
 84 determine, after providing notice and an opportunity for a  
 85 hearing prior to April 30, 2008, that some or all of the  
 86 material described in s. 403.703(7)(b) ~~s. 403.703(6)(b)~~ shall be  
 87 excluded from the definition of "construction and demolition  
 88 debris" in s. 403.703(7) ~~s. 403.703(6)~~ within the jurisdiction  
 89 of such county. The county may make such a determination only if  
 90 it finds that, prior to June 1, 2007, the county has established  
 91 an adequate method for the use or recycling of such wood  
 92 material at an existing or proposed solid waste management  
 93 facility that is permitted or authorized by the department on  
 94 June 1, 2007. The county is not required to hold a hearing if  
 95 the county represents that it previously has held a hearing for  
 96 such purpose, or if the county represents that it previously has  
 97 held a public meeting or hearing that authorized such method for  
 98 the use or recycling of trash or other nonputrescible waste  
 99 materials and that such materials include those materials  
 100 described in s. 403.703(7)(b) ~~s. 403.703(6)(b)~~. The county shall

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101 provide written notice of its determination to the department by  
102 no later than April 30, 2008; thereafter, the materials  
103 described in s. 403.703(7) ~~s. 403.703(6)~~ shall be excluded from  
104 the definition of "construction and demolition debris" in s.  
105 403.703(7) ~~s. 403.703(6)~~ within the jurisdiction of such county.  
106 The county may withdraw or revoke its determination at any time  
107 by providing written notice to the department.

108 Section 4. This act shall take effect July 1, 2024.