



State Affairs Committee

MEETING PACKET

Thursday, January 19, 2012

8:30 AM

Morris Hall (17 HOB)

**Dean Cannon
Speaker**

**Seth McKeel
Chair**

Committee Meeting Notice

HOUSE OF REPRESENTATIVES

(AMENDED 1/18/2012 4:12:24PM)

Amended(1)

State Affairs Committee

Start Date and Time: Thursday, January 19, 2012 08:30 am
End Date and Time: Thursday, January 19, 2012 10:30 am
Location: Morris Hall (17 HOB)
Duration: 2.00 hrs

Consideration of the following bill(s):

HB 115 Land Application of Septage by Drake
CS/HB 629 Pub. Rec./Agency Personnel Information/Dates of Birth by Government Operations Subcommittee, Hooper
HB 937 Legal Notices by Workman
HB 989 Domestic Wastewater Discharged Through Ocean Outfalls by Gonzalez
HB 4121 Comprehensive Statewide Water Conservation Program by Pilon
HB 4123 Federal Environmental Permitting by Burgin
HB 4137 Basins by Pilon
HB 4171 Bonfires by Ray
HB 7033 OGSR/Personal Injury Protection and Property Damage Liability Insurance Policies by Government Operations Subcommittee, Broxson
HB 7035 OGSR/Physician Workforce Surveys by Government Operations Subcommittee, Roberson, K.
HB 7037 OGSR/Sunshine State One-Call of Florida, Inc. by Government Operations Subcommittee, Roberson, K.

NOTICE FINALIZED on 01/18/2012 16:12 by Love.John

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 115 Land Application of Septage
SPONSOR(S): Drake
TIED BILLS: None **IDEN./SIM. BILLS:** SB 558

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Agriculture & Natural Resources Subcommittee	11 Y, 3 N	Deslatte	Blalock
2) State Affairs Committee		Deslatte <i>JD</i>	Hamby <i>JD</i>

SUMMARY ANALYSIS

During the 2010 session, SB 550 was passed by the Legislature and signed into law by the Governor. The bill contained a number of provisions relating to onsite sewage treatment and disposal systems. The bill created a statewide septic tank evaluation program and required the Department of Health (DOH) to undertake rulemaking and implement the first phase of the evaluation program by January 1, 2011, with full statewide implementation by January 1, 2016. During the 2010 special session, the Legislature extended the implementation date to July 1, 2011. During the 2011 legislative session, Senate Bill 2002 (implementing bill to the general appropriations act) provided that before the implementation of the onsite sewage treatment and disposal system evaluation program, the DOH must submit a plan for approval by the Legislative Budget Commission, which includes an estimate of agency workload and funding needs.

SB 550 also prohibited the land application of septage from onsite sewage treatment and disposal systems by January 1, 2016. In addition, the bill required that the DOH, in consultation with the Department of Environmental Protection (DEP), provide a report to the Governor, the President of the Senate, and the Speaker of the House of Representatives, recommending alternative methods to establish enhanced treatment levels for the land application of septage from onsite sewage and disposal systems by February 1, 2011. The report was received on February 1, 2011.

The bill repeals the prohibition on the land application of septage from septic tank pumpouts that goes into effect on January 1, 2016, and the requirement that DOH provide a report recommending alternative methods to establish enhanced treatment levels for the land application of septage from onsite sewage and disposal systems by February 1, 2011.

The bill has a positive fiscal impact on the DOH. The DOH currently has 92 land application sites permitted, with an annual fee of \$200 per site. Total revenue to the DOH for permitting these sites is \$18,400. Repealing the ban on land application of septage would allow the DOH to continue its current permitting program for these sites. The bill does not have a fiscal impact on local governments.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

During the 2010 session, Senate Bill (SB) 550 was passed by the Legislature and signed into law by the Governor. The bill contained a number of provisions relating to onsite sewage treatment and disposal systems. The bill created a statewide septic tank evaluation program and required the Department of Health (DOH) to undertake rulemaking and implement the first phase of the evaluation program by January 1, 2011, with full statewide implementation by January 1, 2016. During the 2010 special session, the Legislature extended the implementation date to July 1, 2011. During the 2011 legislative session, SB 2002 (implementing bill to the general appropriations act) provided that before the implementation of the onsite sewage treatment and disposal system evaluation program, the DOH must submit a plan for approval by the Legislative Budget Commission, which includes an estimate of agency workload and funding needs.

SB 550 also prohibited the land application of septage from onsite sewage treatment and disposal systems by January 1, 2016. In addition, the bill required that the DOH, in consultation with the Department of Environmental Protection (DEP), provide a report to the Governor, the President of the Senate, and the Speaker of the House of Representatives, recommending alternative methods to establish enhanced treatment levels for the land application of septage from onsite sewage and disposal systems by February 1, 2011. The report¹ provided the following alternatives to land application of septage:

- **Treatment of septage at domestic wastewater treatment facilities**-treating septage takes advantage of available wastewater treatment facilities capacity while at the same time centralizing waste treatment operations. However, accepting septage, which is a high strength waste, has the potential to upset wastewater treatment facilities processes and may result in a variety of increased operation and maintenance requirements and costs.
- **Disposal of septage at landfills**-Acceptance of septage at Class I landfills increases microbial activity within the landfill and results in increased waste decomposition and more rapid waste stabilization. However, landfill instability may result due to disposal of the wet waste stream, and increased difficulty in operating compaction equipment may result due to creation of a slick working surface.
- **Increasing the treatment level for land application**-The current practice of lime stabilization for two hours at a pH of 12 meets the federal regulations, so the necessity of higher levels of treatment is questionable.
- **Possible enhancements to existing land application practices**-Current land application rules meet the requirements for nutrient reduction and management under federal regulations. Any enhancement would be above what EPA currently requires for septage management and land application. Possible enhancements include requiring third-party oversight of septage treatment and land application activities and changing operational procedures.

Effect of Proposed Changes

The bill repeals the prohibition on the land application of septage from septic tank pumpouts that goes into effect on January 1, 2016, and the requirement that DOH provide a report recommending alternative methods to establish enhanced treatment levels for the land application of septage from onsite sewage and disposal systems by February 1, 2011.

¹ The Department of Health's "Report on Alternative Methods for the Treatment and Disposal of Septage", February 1, 2011. The report can be found here: http://www.doh.state.fl.us/environment/ostds/pdf/files/forms/Septage_Alternatives.pdf

B. SECTION DIRECTORY:

Section 1. Amends s. 381.0065, F.S., repealing the prohibition on the land application of septage from septic tank pumpouts that goes into effect on January 1, 2016, and the requirement that DOH provide a report recommending alternative methods to establish enhanced treatment levels for the land application of septage from onsite sewage and disposal systems by February 1, 2011.

Section 2. Providing an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill appears to have a positive fiscal impact on state government revenues (See Fiscal Comments Section).

2. Expenditures:

None

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None

2. Expenditures:

None

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

According to the 2012 DOH analysis, land application of septage provides an additional alternative for disposal. With the termination of the ban on land application of septage, septic tank pumpers/septage haulers can continue business as usual. Without the termination of the ban on land application of septage, these businesses would, over the next five years, have to find approved municipal wastewater treatment plants or biosolids receiving facilities that accept septage at a typically higher cost than land application due to driving distance and fees for disposal. These costs would also result in higher pumpout costs to people that own septic tanks.

D. FISCAL COMMENTS:

According to the DOH analysis, repeal of the termination on land application of septage allows the DOH to continue its current permitting program for these sites. DOH currently has 92 land application sites permitted, with an annual fee of \$200 per site. Total revenue to the DOH for permitting these sites is \$18,400.

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

None.

1 A bill to be entitled
 2 An act relating to the land application of septage;
 3 amending s. 381.0065, F.S.; terminating the future
 4 imposition of the prohibition of the land application
 5 of septage from onsite sewage treatment and disposal
 6 systems; providing an effective date.

7
 8 Be It Enacted by the Legislature of the State of Florida:

9
 10 Section 1. Subsection (7) of section 381.0065, Florida
 11 Statutes, is amended to read:

12 381.0065 Onsite sewage treatment and disposal systems;
 13 regulation.—

14 ~~(7) LAND APPLICATION OF SEPTAGE PROHIBITED. Effective~~
 15 ~~January 1, 2016, the land application of septage from onsite~~
 16 ~~sewage treatment and disposal systems is prohibited. By February~~
 17 ~~1, 2011, the department, in consultation with the Department of~~
 18 ~~Environmental Protection, shall provide a report to the~~
 19 ~~Governor, the President of the Senate, and the Speaker of the~~
 20 ~~House of Representatives, recommending alternative methods to~~
 21 ~~establish enhanced treatment levels for the land application of~~
 22 ~~septage from onsite sewage and disposal systems. The report~~
 23 ~~shall include, but is not limited to, a schedule for the~~
 24 ~~reduction in land application, appropriate treatment levels,~~
 25 ~~alternative methods for treatment and disposal, enhanced~~
 26 ~~application site permitting requirements including any~~
 27 ~~requirements for nutrient management plans, and the range of~~
 28 ~~costs to local governments, affected businesses, and individuals~~

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29 | ~~for alternative treatment and disposal methods. The report shall~~
30 | ~~also include any recommendations for legislation or rule~~
31 | ~~authority needed to reduce land application of septage.~~



32 | Section 2. This act shall take effect July 1, 2012.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 629 Pub. Rec./Agency Personnel Information/Dates of Birth

SPONSOR(S): Hooper

TIED BILLS: IDEN./SIM. BILLS: SB 916

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Government Operations Subcommittee	14 Y, 0 N, As CS	Naf	Williamson
2) State Affairs Committee		Naf 	Hamby 

SUMMARY ANALYSIS

Current law provides public record exemptions for identification and location information of certain public employees and their spouses and children. Examples of protected information include:

- Home addresses and telephone numbers of the public employees;
- Home addresses, telephone numbers, and places of employment of spouses and children of the public employees; and
- Names and locations of schools and day care facilities attended by children of the public employees.

The bill expands the public record exemptions for such public employees to include the dates of birth of the public employees and of their spouses and children.

The bill also creates a definition for "telephone numbers" and specifies that the information of sworn and civilian law enforcement personnel and their spouses and children is exempt from public record requirements.

The bill specifies that the exemptions apply retroactively.

The bill provides for repeal of the exemptions on October 2, 2017, unless reviewed and saved from repeal by the Legislature. It also provides a statement of public necessity as required by the State Constitution.

Article I, s. 24(c) of the State Constitution, requires a two-thirds vote of the members present and voting for final passage of a newly created or expanded public record or public meeting exemption. The bill expands current public record exemptions; thus, it requires a two-thirds vote for final passage.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Public Records Law

Article I, s. 24(a) of the State Constitution sets forth the state's public policy regarding access to government records. The section guarantees every person a right to inspect or copy any public record of the legislative, executive, and judicial branches of government. The Legislature, however, may provide by general law for the exemption of records from the requirements of Article I, s. 24(a) of the State Constitution. The general law must state with specificity the public necessity justifying the exemption (public necessity statement) and must be no broader than necessary to accomplish its purpose.¹

Public policy regarding access to government records is addressed further in the Florida Statutes. Section 119.07(1), F.S., guarantees every person a right to inspect and copy any state, county, or municipal record. Furthermore, the Open Government Sunset Review Act² provides that a public record or public meeting exemption may be created or maintained only if it serves an identifiable public purpose. In addition, it may be no broader than is necessary to meet one of the following purposes:

- Allows the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption.
- Protects sensitive personal information that, if released, would be defamatory or would jeopardize an individual's safety; however, only the identity of an individual may be exempted under this provision.
- Protects trade or business secrets.

Public Record Exemptions for Identification and Location Information

Current law provides public record exemptions for identification and location information of certain public employees and their spouses and children.³ Public employees covered by these exemptions include:

- Law enforcement, including correctional, and specified investigatory personnel;⁴
- Firefighters;⁵
- Justices and judges;⁶
- Local and statewide prosecuting attorneys;⁷
- Magistrates, administrative law judges, and child support hearing officers;⁸
- Local government agency and water management district human resources administrators;⁹
- Code enforcement officers;¹⁰
- Guardians ad litem;¹¹

¹ Section 24(c), Art. I of the State Constitution.

² Section 119.15, F.S.

³ See s. 119.071(4)(d), F.S.

⁴ See s. 119.071(4)(d)1.a., F.S.

⁵ See s. 119.071(4)(d)1.b., F.S.

⁶ See s. 119.071(4)(d)1.c., F.S.

⁷ See s. 119.071(4)(d)1.d., F.S.

⁸ See s. 119.071(4)(d)1.e., F.S. This exemption applies only if the magistrate, administrative law judge, or child support hearing officer provides a written statement that he or she has made reasonable efforts to protect such information from being accessible through other means available to the public.

⁹ See s. 119.071(4)(d)1.f., F.S.

¹⁰ See s. 119.071(4)(d)1.g., F.S.

¹¹ See s. 119.071(4)(d)1.h., F.S. This exemption applies only if the guardian ad litem provides a written statement that he or she has made reasonable efforts to protect such information from being accessible through other means available to the public.

- Specified Department of Juvenile Justice Personnel;¹² and
- Public defenders and criminal conflict and civil regional counsel.¹³

Although the types of exempt information vary, the following information is exempt¹⁴ from public record requirements for all the above-listed public employees:

- Home addresses and telephone numbers¹⁵ of the public employees;
- Home addresses, telephone numbers, and places of employment of the spouses and children of the public employees; and
- Names and locations of schools and day care facilities attended by the children of the public employees.

If exempt information is held by an agency¹⁶ that is not the employer of the public employee, the public employee must submit a written request to that agency to maintain the public record exemption.¹⁷

Effect of Bill

The bill expands the public record exemptions for identification and location information of certain public employees to include dates of birth of the public employees and of their spouses and children. It also specifies that the public record exemption for identification and location information of law enforcement personnel applies to sworn and civilian law enforcement personnel.

The bill defines the term “telephone numbers” to include home telephone numbers, personal cellular telephone numbers, personal pager telephone numbers, and telephone numbers associated with personal communications devices.

The bill specifies that the exemptions apply to information held before, on, or after the effective date of the exemptions.¹⁸

The bill provides for repeal of the exemptions on October 2, 2017, unless reviewed and saved from repeal by the Legislature. It also provides a statement of public necessity as required by the State Constitution.¹⁹

B. SECTION DIRECTORY:

Section 1 amends s. 119.071, F.S., relating to public record exemptions for identification and location information of certain public employees.

Section 2 provides a public necessity statement.

¹² See s. 119.071(4)(d)1.i., F.S.

¹³ See s. 119.071(4)(d)1.j, F.S.

¹⁴ There is a difference between records the Legislature designates as exempt from public record requirements and those the Legislature deems confidential and exempt. A record classified as exempt from public disclosure may be disclosed under certain circumstances. (*See WFTV, Inc. v. The School Board of Seminole*, 874 So.2d 48, 53 (Fla. 5th DCA 2004), review denied 892 So.2d 1015 (Fla. 2004); *City of Riviera Beach v. Barfield*, 642 So.2d 1135 (Fla. 4th DCA 1994); *Williams v. City of Minneola*, 575 So.2d 687 (Fla. 5th DCA 1991). If the Legislature designates a record as confidential and exempt from public disclosure, such record may not be released, by the custodian of public records, to anyone other than the persons or entities specifically designated in the statutory exemption. (*See* Attorney General Opinion 85-62, August 1, 1985).

¹⁵ “Telephone number” is not currently defined in these public record exemptions.

¹⁶ Section 119.011(2), F.S., defines “agency” to mean any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency.

¹⁷ Section 119.071(4)(d)2., F.S.

¹⁸ The Supreme Court of Florida ruled that a public record exemption is not to be applied retroactively unless the legislation clearly expresses intent that such exemption is to be applied retroactively. *Memorial Hospital-West Volusia, Inc. v. News-Journal Corporation*, 729 So.2d 373 (Fla. 2001).

¹⁹ Section 24(c), Art. I of the State Constitution.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

See FISCAL COMMENTS.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

See FISCAL COMMENTS.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The bill could create a minimal fiscal impact on agencies, because staff responsible for complying with public record requests could require training related to the changes in the public record exemptions. The costs would be absorbed, however, as they are part of the day-to-day responsibilities of the agency.

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:

Vote Requirement

Article I, s. 24(c) of the State Constitution, requires a two-thirds vote of the members present and voting for final passage of a newly created or expanded public record or public meeting exemption. The bill expands current public record exemptions; thus, it requires a two-thirds vote for final passage.

Public Necessity Statement

Article I, s. 24(c) of the State Constitution, requires a public necessity statement for a newly created or expanded public record or public meeting exemption. The bill expands current public record exemptions; thus, it includes a public necessity statement.

B. RULE-MAKING AUTHORITY:

The bill does not appear to create a need for rulemaking or rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On January 11, 2012, the Government Operations Subcommittee adopted a strike-all amendment and passed HB 629 as a committee substitute. The amendment narrowed the definition of "telephone numbers" to exclude agency-assigned devices and specified that the public record exemptions apply retroactively.

The analysis is drafted to the committee substitute as passed by the Government Operations Subcommittee.

1 A bill to be entitled
 2 An act relating to public records; amending s.
 3 119.071, F.S.; including dates of birth within the
 4 types of personal identifying information of specified
 5 agency personnel and the spouses and children of such
 6 personnel that are exempt from public records
 7 requirements under s. 119.071(4)(d), F.S.; clarifying
 8 an exemption for personal identifying information of
 9 active or former law enforcement personnel and the
 10 spouses and children thereof; providing for
 11 retroactive application of the exemptions; providing
 12 for future legislative review and repeal of the
 13 exemptions; defining the term "telephone numbers";
 14 providing a statement of public necessity; providing
 15 an effective date.

16
 17 Be It Enacted by the Legislature of the State of Florida:

18
 19 Section 1. Paragraph (d) of subsection (4) of section
 20 119.071, Florida Statutes, is amended to read:

21 119.071 General exemptions from inspection or copying of
 22 public records.—

23 (4) AGENCY PERSONNEL INFORMATION.—

24 (d)1. For purposes of this paragraph, the term "telephone
 25 numbers" includes home telephone numbers, personal cellular
 26 telephone numbers, personal pager telephone numbers, and
 27 telephone numbers associated with personal communications
 28 devices.

29 2.a. The home addresses, telephone numbers, social
 30 security numbers, dates of birth, and photographs of active or
 31 former sworn or civilian law enforcement personnel, including
 32 correctional and correctional probation officers, personnel of
 33 the Department of Children and Family Services whose duties
 34 include the investigation of abuse, neglect, exploitation,
 35 fraud, theft, or other criminal activities, personnel of the
 36 Department of Health whose duties are to support the
 37 investigation of child abuse or neglect, and personnel of the
 38 Department of Revenue or local governments whose
 39 responsibilities include revenue collection and enforcement or
 40 child support enforcement; the home addresses, telephone
 41 numbers, social security numbers, photographs, dates of birth,
 42 and places of employment of the spouses and children of such
 43 personnel; and the names and locations of schools and day care
 44 facilities attended by the children of such personnel are exempt
 45 from s. 119.07(1).

46 b. The home addresses, telephone numbers, dates of birth,
 47 and photographs of firefighters certified in compliance with s.
 48 633.35; the home addresses, telephone numbers, photographs,
 49 dates of birth, and places of employment of the spouses and
 50 children of such firefighters; and the names and locations of
 51 schools and day care facilities attended by the children of such
 52 firefighters are exempt from s. 119.07(1).

53 c. The home addresses, dates of birth, and telephone
 54 numbers of justices of the Supreme Court, district court of
 55 appeal judges, circuit court judges, and county court judges;
 56 the home addresses, telephone numbers, dates of birth, and

57 places of employment of the spouses and children of justices and
 58 judges; and the names and locations of schools and day care
 59 facilities attended by the children of justices and judges are
 60 exempt from s. 119.07(1).

61 d. The home addresses, telephone numbers, social security
 62 numbers, dates of birth, and photographs of current or former
 63 state attorneys, assistant state attorneys, statewide
 64 prosecutors, or assistant statewide prosecutors; the home
 65 addresses, telephone numbers, social security numbers,
 66 photographs, dates of birth, and places of employment of the
 67 spouses and children of current or former state attorneys,
 68 assistant state attorneys, statewide prosecutors, or assistant
 69 statewide prosecutors; and the names and locations of schools
 70 and day care facilities attended by the children of current or
 71 former state attorneys, assistant state attorneys, statewide
 72 prosecutors, or assistant statewide prosecutors are exempt from
 73 s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

74 e. The home addresses, dates of birth, and telephone
 75 numbers of general magistrates, special magistrates, judges of
 76 compensation claims, administrative law judges of the Division
 77 of Administrative Hearings, and child support enforcement
 78 hearing officers; the home addresses, telephone numbers, dates
 79 of birth, and places of employment of the spouses and children
 80 of general magistrates, special magistrates, judges of
 81 compensation claims, administrative law judges of the Division
 82 of Administrative Hearings, and child support enforcement
 83 hearing officers; and the names and locations of schools and day
 84 care facilities attended by the children of general magistrates,

85 special magistrates, judges of compensation claims,
 86 administrative law judges of the Division of Administrative
 87 Hearings, and child support enforcement hearing officers are
 88 exempt from s. 119.07(1) and s. 24(a), Art. I of the State
 89 Constitution if the general magistrate, special magistrate,
 90 judge of compensation claims, administrative law judge of the
 91 Division of Administrative Hearings, or child support hearing
 92 officer provides a written statement that the general
 93 magistrate, special magistrate, judge of compensation claims,
 94 administrative law judge of the Division of Administrative
 95 Hearings, or child support hearing officer has made reasonable
 96 efforts to protect such information from being accessible
 97 through other means available to the public. ~~This sub-~~
 98 ~~subparagraph is subject to the Open Government Sunset Review Act~~
 99 ~~in accordance with s. 119.15, and shall stand repealed on~~
 100 ~~October 2, 2013, unless reviewed and saved from repeal through~~
 101 ~~reenactment by the Legislature.~~

102 f. The home addresses, telephone numbers, dates of birth,
 103 and photographs of current or former human resource, labor
 104 relations, or employee relations directors, assistant directors,
 105 managers, or assistant managers of any local government agency
 106 or water management district whose duties include hiring and
 107 firing employees, labor contract negotiation, administration, or
 108 other personnel-related duties; the names, home addresses,
 109 telephone numbers, dates of birth, and places of employment of
 110 the spouses and children of such personnel; and the names and
 111 locations of schools and day care facilities attended by the
 112 children of such personnel are exempt from s. 119.07(1) and s.

113 24(a), Art. I of the State Constitution.

114 g. The home addresses, telephone numbers, dates of birth,
 115 and photographs of current or former code enforcement officers;
 116 the names, home addresses, telephone numbers, dates of birth,
 117 and places of employment of the spouses and children of such
 118 personnel; and the names and locations of schools and day care
 119 facilities attended by the children of such personnel are exempt
 120 from s. 119.07(1) and s. 24(a), Art. I of the State
 121 Constitution.

122 h. The home addresses, telephone numbers, places of
 123 employment, dates of birth, and photographs of current or former
 124 guardians ad litem, as defined in s. 39.820; the names, home
 125 addresses, telephone numbers, dates of birth, and places of
 126 employment of the spouses and children of such persons; and the
 127 names and locations of schools and day care facilities attended
 128 by the children of such persons are exempt from s. 119.07(1) and
 129 s. 24(a), Art. I of the State Constitution, if the guardian ad
 130 litem provides a written statement that the guardian ad litem
 131 has made reasonable efforts to protect such information from
 132 being accessible through other means available to the public.
 133 ~~This sub-subparagraph is subject to the Open Government Sunset~~
 134 ~~Review Act in accordance with s. 119.15 and shall stand repealed~~
 135 ~~on October 2, 2015, unless reviewed and saved from repeal~~
 136 ~~through reenactment by the Legislature.~~

137 i. The home addresses, telephone numbers, dates of birth,
 138 and photographs of current or former juvenile probation
 139 officers, juvenile probation supervisors, detention
 140 superintendents, assistant detention superintendents, juvenile

141 justice detention officers I and II, juvenile justice detention
 142 officer supervisors, juvenile justice residential officers,
 143 juvenile justice residential officer supervisors I and II,
 144 juvenile justice counselors, juvenile justice counselor
 145 supervisors, human services counselor administrators, senior
 146 human services counselor administrators, rehabilitation
 147 therapists, and social services counselors of the Department of
 148 Juvenile Justice; the names, home addresses, telephone numbers,
 149 dates of birth, and places of employment of spouses and children
 150 of such personnel; and the names and locations of schools and
 151 day care facilities attended by the children of such personnel
 152 are exempt from s. 119.07(1) and s. 24(a), Art. I of the State
 153 Constitution.

154 j. The home addresses, telephone numbers, dates of birth,
 155 and photographs of current or former public defenders, assistant
 156 public defenders, criminal conflict and civil regional counsel,
 157 and assistant criminal conflict and civil regional counsel; the
 158 home addresses, telephone numbers, dates of birth, and places of
 159 employment of the spouses and children of such defenders or
 160 counsel; and the names and locations of schools and day care
 161 facilities attended by the children of such defenders or counsel
 162 are exempt from s. 119.07(1) and s. 24(a), Art. I of the State
 163 Constitution. ~~This sub-subparagraph is subject to the Open
 164 Government Sunset Review Act in accordance with s. 119.15 and
 165 shall stand repealed on October 2, 2015, unless reviewed and
 166 saved from repeal through reenactment by the Legislature.~~

167 ~~3.2.~~ An agency that is the custodian of the information
 168 specified in subparagraph 2. 1. and that is not the employer of

169 the officer, employee, justice, judge, or other person specified
 170 in subparagraph 2. ~~4.~~ shall maintain the exempt status of that
 171 information only if the officer, employee, justice, judge, other
 172 person, or employing agency of the designated employee submits a
 173 written request for maintenance of the exemption to the
 174 custodial agency.

175 4. The exemptions in this paragraph apply to information
 176 held by an agency before, on, or after the effective date of the
 177 exemption.

178 5. This paragraph is subject to the Open Government Sunset
 179 Review Act in accordance with s. 119.15, and shall stand
 180 repealed on October 2, 2017, unless reviewed and saved from
 181 repeal through reenactment by the Legislature.

182 Section 2. It is the finding of the Legislature that the
 183 dates of birth of agency personnel enumerated in s.
 184 119.071(4)(d), Florida Statutes, and of the spouses and children
 185 of such personnel be included within the types of identification
 186 and location information for such agency personnel and the
 187 spouses and children thereof that are exempt from public record
 188 requirements under s. 119.071(4)(d), Florida Statutes. It is the
 189 finding of the Legislature that date of birth information can be
 190 used as a tool to perpetuate fraud against an individual and to
 191 acquire sensitive personal, financial, medical, and familial
 192 information, the release of which could cause great financial
 193 harm to an individual. It is also the finding of the Legislature
 194 that, with respect to the existing exemptions from public record
 195 requirements for the telephone numbers of agency personnel
 196 enumerated in s. 119.071(4)(d), Florida Statutes, and the

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197 | telephone numbers of the spouses and children of such personnel,
 198 | the term "telephone number" should be defined and clarified to
 199 | include personal pager numbers. Personal pager numbers are
 200 | another means by which any of the agency personnel enumerated in
 201 | s. 119.071(4)(d), Florida Statutes, and the spouses and children
 202 | of such personnel, could potentially be identified, located, and
 203 | put at risk.

204 | Section 3. This act shall take effect October 1, 2012.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 937 Legal Notices
SPONSOR(S): Workman
TIED BILLS: IDEN./SIM. BILLS: SB 292

Table with 4 columns: REFERENCE, ACTION, ANALYST, STAFF DIRECTOR or BUDGET/POLICY CHIEF. Row 1: 1) State Affairs Committee, Thompson, Hamby.

SUMMARY ANALYSIS

Current law provides requirements for publishing legal notices and official advertisements. Publications must be in a newspaper that is printed and published at least once a week and that contains at least 25 percent of its words in the English language.

The bill creates a new section of law requiring a legal notice to be placed on a newspaper's website on the same day the notice appears in the newspaper. Effective July 1, 2013, a newspaper that publishes legal notices must provide a free link to access legal notices on its website; optimize online visibility; dominantly present the notices on the website; provide a search function for the notices; upon request, provide free e-mail notification of the notices; and place the notice on the Florida Press Association website established for such notices.

The bill also:

- Authorizes electronic proof of publication affidavits;
• Limits the rate that may be charged for certain government notices required to be published more than once;
• Requires certain local governmental maps that appear in newspaper advertisements to be noticed online;
• Deletes the requirement that a legal notice be published in Leon County for agency licensee actions, bond validation actions, market offerings for state owned oil or gas leases, and certain administrative complaints;
• Requires that notice to certain professional licensees be posted on a newspaper website and provided to certain broadcast network affiliates;
• Deletes requirements relating to newspaper publication of certain notices relating to Department of Agriculture and Consumer Services marketing orders and provides for Internet publication and for information to certain broadcast network affiliates; and
• Allows the Department of Financial Services to require notification of insolvency by e-mail or telephone, instead of by newspaper.

The bill may reduce state and local government expenditures associated with publishing required notices and advertisements in the newspaper by limiting the rate that may be charged for government notices required to be published more than once. In addition, the bill may reduce expenditures for the agencies that would no longer be required to publish a legal notice in Leon County. The bill may increase newspaper expenditures associated with the requirements for newspapers to provide notices on their websites; however, many newspapers are currently doing this.

The bill has an effective date of July 1, 2012, except as otherwise expressly provided. The act applies to legal notices published on or after that date.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

The publication of legal notices in newspapers is a long established practice in Florida and throughout the United States. According to newspaper trade associations and independent analysts, "it's unclear how much newspapers collect in total from such publicly financed advertising."¹ According to the most recent analysis by the Newspaper Association of America, the ad grouping that includes legal and public notices remained moderately stable, declining 10.9 percent in 2009, and only 4.3 percent in 2010.²

Current law requires reasonable notice of all public meetings of any board or commission of any state agency or authority or of any agency or authority of any county, municipal corporation, or political subdivision, except as otherwise provided in the State Constitution, at which official acts are to be taken, but does not provide a specific definition for reasonable notice.³ Similarly, the State Constitution provides only that public business "shall be open and noticed," but does not specify the medium by which notice shall be given.⁴ As a result, the Legislature may define what constitutes reasonable notice for a public action.

The requirements for legal and official advertisements are provided for in chapter 50, F.S. Current law requires that publication must be in a newspaper that is printed and published at least once a week and that contains at least 25 percent of its words in the English language. The newspaper must qualify or be entered to qualify as periodicals matter at the post office in the county where published, and be generally available to the public for the purpose of publication of official or other notices.⁵

When there is no weekly newspaper published in the county the advertisement may be made by posting three copies in three different places in the county, one of which must be at the front door of the courthouse, and by publication in the nearest county in which a newspaper is published.⁶

Current law also provides requirements for newspapers. A newspaper must have been in existence for at least one year. Also, it must meet the requirements for periodicals matter at the post office in the county where published. An exception is provided for counties in which no newspaper in existence has been published for a year.⁷ Proof of publication also is required in the form of a uniform affidavit.⁸

The amount a newspaper can charge for publication is standardized at 70 cents per square inch for the first insertion, and 40 cents per square inch for each subsequent insertion.⁹ Where the regular established minimum commercial rate per square inch of the newspaper publishing the official notice or legal advertisement is greater than the per square inch rate established in statute, the minimum commercial rate may be charged or the government agency may procure publication through bids.¹⁰ All official notices and legal advertisements must be charged and paid for on the basis of 6-point type

¹ *Move to Online Public Notices Looms Over Papers*, USA Today, May 22, 2009, http://www.usatoday.com/tech/news/2009-05-22-online-notices_N.htm (last visited January 19, 2011).

² Business Analysis and Research, Research Dept., Newspaper Association of America, Last Update: March 2011, <http://www.naa.org/TrendsandNumbers/Advertising-Expenditures.aspx> (last visited January 11, 2012).

³ Section 286.011 F.S.

⁴ Section 24(b), Art. I of the State Constitution.

⁵ Section 50.011, F.S.

⁶ Section 50.021, F.S.

⁷ Section 50.031, F.S.

⁸ Section 50.041, F.S.

⁹ Section 50.061(2)(a) and (b), F.S., provides that counties with a population in excess of 304,000 may charge 80 cents per square inch for the first insertion and 60 cents per square inch for each subsequent insertion. Counties with a population in excess of 450,000 may charge 95 cents per square inch for the first insertion and 75 cents per square inch for each subsequent insertion.

¹⁰ Section 50.061(3), F.S.

on 6-point body, unless otherwise specified in statute.¹¹ There are criminal penalties for non-compliance with these rates and charges.¹²

Effect of Proposed Changes

The bill creates a new section of law that applies to legal notices published in accordance with the requirements for legal and official advertisements provided in chapter 50, F.S. A legal notice is required to be placed on a newspaper's website on the same day the notice appears in the newspaper. Effective July 1, 2013, a newspaper that publishes legal notices:

- Must provide a link to access the legal notices on the front page of the newspaper's website without charge;
- Should optimize its online visibility in keeping with print requirements, if there is a specified size and placement required for a printed legal notice;
- Must present the legal notices as the dominant subject matter of the newspaper's web pages that contain legal notices;
- Must contain a search function on the newspaper's website to facilitate searching the legal notices; and
- Must, upon request, provide e-mail notification of new legal notices when they are printed in the newspaper and added to the newspaper's website. Such e-mail notification must be provided without charge and notification for the registry must be available on the front page of the legal notices section of the newspaper's website.

A newspaper publishing a notice is required to place the notice on the website established and maintained as an initiative of the Florida Press Association as a repository for such notices.¹³

An error in a notice placed on a newspaper or statewide website must be considered harmless and proper legal notice requirements must be considered met if the notice published in the newspaper is correct.

The bill deletes the requirement for a newspaper proof of publication affidavit to be printed only on bond paper containing at least 25 percent rag material. In addition, the bill allows a newspaper to provide such affidavits in electronic rather than paper form, if the notarization of the affidavit complies with statutory electronic notarization requirements.¹⁴

The bill limits the rate that newspapers are authorized to charge for government notices required to be published more than once in which the cost is paid for by the government and not paid in advance by or allowed to be recouped from private parties. Such charges, for the second and successive insertions may not be greater than 85 percent of the original rate. The original rate is 70 cents per square inch for the first insertion and 40 cents per square inch for each subsequent insertion.¹⁵ This would be equal to a 15 percent cost reduction for such charges.

The bill requires maps that appear in newspaper advertisements for the following purposes to also be part of the online notice requirements provided in the bill:

- A county¹⁶ or a municipal¹⁷ rezoning or change of land use ordinance or resolution;
- A public hearing on a petition for the establishment of a community development district;¹⁸ and
- A determination of millage by a taxing authority, if an increase in ad valorem tax rates will affect only a portion of the jurisdiction of the taxing authority.¹⁹

¹¹ Section 50.061(4), F.S.

¹² Section 50.061(5) and (6), F.S.

¹³ www.floridapublicnotices.com

¹⁴ See s. 117.021, F.S.

¹⁵ Section 50.061(2), F.S.

¹⁶ Section 125.66(4)(b), F.S.

¹⁷ Section 166.041(3)(c), F.S.

¹⁸ Section 190.005(1)(d), F.S.

¹⁹ Section 200.065(3)(h), F.S.

The bill authorizes, rather than requires as under current law, the Chief Financial Officer (CFO) to advertise the availability of the governmental efficiency hotline in newspapers of general circulation in this state and to post notices in conspicuous places in state agency offices, city halls, county courthouses, and places where there is exposure to significant numbers of the general public, including, but not limited to, local convenience stores, shopping malls, shopping centers, gasoline stations, or restaurants.

The bill deletes the requirement that a legal notice be published in Leon County for the revocation, suspension, annulment, or withdrawal of an agency licensee pursuant to the Administrative Procedure Act, for an applicant who cannot be contacted by personal service or certified mail and whose address is in another state or foreign territory or country.

The bill deletes the requirement that a public notice be published in Leon County for actions to validate bonds issued by the Florida Hurricane Catastrophe Fund Finance Corporation. Such notice would still be required to be published in two newspapers of general circulation in the state.

The bill deletes the requirement that the Board of Trustees of the Internal Improvement Trust Fund²⁰ provide notice of publication in Leon County and in a similar newspaper for a similar period of time and for the last publication to be in both newspapers, for the placement on the market of an oil or gas lease located on any area, tract, or parcel of land owned, controlled, or managed, by any state board, department, or agency. Such notice would still be required to be made not less than once a week for 4 consecutive weeks in a newspaper of general circulation in the vicinity of the lands offered to be leased.

The bill deletes the requirement that a legal notice be published in Leon County for an administrative complaint regarding actions to validate bonding obligations²¹ used to fund the Florida Building and Facilities Act (FBFA),²² and The Florida Environmental Land and Water Management Act of 1972 (FELWMA).²³ The FBFA notice would still be required to be published in two newspapers of general circulation in the state, and the FELWMA notice would still be required to be published in newspapers of general circulation in the county where the critical state concern is located.

The bill deletes the requirement for the Department of Business and Professional Regulation (DBPR) to publish a short plain notice once a week for 4 consecutive weeks in a newspaper published in Leon County, Florida, when contact cannot be made by personal service or certified mail for an administrative complaint regarding the validation of disciplinary actions against certified public accountants licensed in other states and authorized to provide accounting services in Florida. The bill also deletes the requirement that the newspaper meet the requirements prescribed by law for such purposes.

The bill makes the following changes to DBPR notice provisions that are initiated when contact cannot be made by DBPR regarding an administrative complaint for failure of a DBPR licensee to notify DBPR of a change of address:

- Deletes the requirement to publish such notice once each week for 4 consecutive weeks in a newspaper published in the county of the licensee's last known address of record;
- Deletes the authorization to publish the administrative complaint in a newspaper of general circulation in the county, if a newspaper is not published in the county;
- Deletes the authorization to publish the administrative complaint in Leon County pursuant to licensing revocation notice procedures in the Administrative Procedure Act,²⁴ if the licensee's last known address is located in another state or in a foreign jurisdiction;
- Requires the notice to be posted on the front page of DBPR's website; and

²⁰ Section 253.001, F.S.

²¹ Section 255.502(9), F.S., defines "obligations" to mean collectively, revenue bonds and revenue notes.

²² Section 255.501, F.S.

²³ Sections 380.012, 380.021, 380.031, 380.04, 380.05, 380.06, 380.07, and 380.08, F.S.

²⁴ Section 120.60(5), F.S.

- Requires DBPR to send notice via e-mail to all newspapers of general circulation and all news departments of broadcast network affiliates in the county of the licensee's last known address of record.

The bill deletes the requirement for the Department of Agriculture and Consumer Services (DACS) to publish referendum results of a Florida Propane Gas Education, Safety, and Research Act²⁵ marketing order and any referendum conducted under the Florida Agricultural Commodities Marketing Law,²⁶ in a newspaper of general circulation in the state and in such other newspapers as DACS prescribes. The bill requires DACS to publish such referendum results on the front page of its website and to send notice via e-mail to all publications of general circulation and all news departments of broadcast network affiliates located within the state.

The bill deletes the requirement for DACS to publish a notice of the issuance, suspension, amendment, or termination of a marketing order in a newspaper of general circulation in the state and in such other newspaper or newspapers prescribed by DACS. The bill deletes the requirement for such notices to be sent by DACS to the newspaper or newspapers by first-class mail and also deletes the requirement that DACS include instructions for the newspaper to publish the notice as a legal advertisement the first date after receipt of the notice as such newspaper's policy for publishing legal advertisements provides. As such, DACS would still be required to post such notice on the public bulletin board maintained by DACS in the Division of Marketing and Development in the Nathan Mayo Building, Tallahassee, Leon County, however, a copy of the notice will be required to be posted on DACS's website the same day the notice is posted on the bulletin board.

The bill provides that the Department of Financial Services may require the Florida Insurance Guarantee Association to notify insureds of an insolvent insurer and any other interested parties of a determination of insolvency and of their rights, by e-mail or telephone, instead of by publication in a newspaper of general circulation, if sufficient notification by mail is not available.

B. SECTION DIRECTORY:

Section 1 creates s. 50.0211, F.S., requiring each legal notice that appears in the newspaper to be placed on the newspaper's website on the same day; requiring a link; providing requirements for size and placement of such website publication; requiring free access to such online publications; requiring that legal notices published in newspapers to also be published on the Florida Press Association website established for such notices; requiring newspapers that publish legal notice to provide e-mail notification of new legal notices; requiring an error on a newspaper or statewide website to be considered a harmless error and legal notice requirements shall be considered met if the notice published in the newspaper is correct.

Section 2 amends s. 50.041, F.S. authorizing electronic proof of publication affidavits and revising the physical requirements for such affidavits.

Section 3 amends s. 50.061, F.S., limiting the rate that may be charged for government notices required to be published more than once.

Section 4 amends s. 125.66, F.S., requiring maps that appear in newspaper advertisements that are part of a county rezoning or change of land use ordinance or resolution to be part of the online notice required in s. 50.021, F.S.

Section 5 amends s. 166.041, F.S., requiring maps that appear in newspaper advertisements that are part of a municipal rezoning or change of land use ordinance or resolution to be part of the online notice required in s. 50.021, F.S.

²⁵ Sections 527.20 through 527.23, F.S.

²⁶ Sections 573.101 through 573.124, F.S.

Section 6 amends s. 190.005, F.S., requiring maps that appear in newspaper advertisements that are part of a public hearing on a petition for the establishment of a community development district to be part of the online notice required in s. 50.021, F.S.

Section 7 amends s. 200.065, F.S., requiring maps that appear in newspaper advertisements that are part of a determination of millage by a taxing authority, if an increase in ad valorem tax rates will affect only a portion of the jurisdiction of the taxing authority, to be part of the online notice required in s. 50.021, F.S.

Section 8 amends s. 17.325, F.S., making it optional for the Chief Financial Officer to advertise the availability of the governmental efficiency hotline.

Section 9 amends s. 120.60, F.S., deleting the requirement that a legal notice be published in Leon County for the revocation, suspension, annulment, or withdrawal of an agency licensee who cannot be contacted.

Section 10 amends s. 215.555, F.S., deleting the requirement that a legal notice be published in Leon County for Florida Hurricane Catastrophe Fund Finance Corporation bond validation.

Section 11 amends s. 253.52, F.S., deleting the requirement that a legal notice be published in Leon County for the placement of state oil and gas leases on the market by the Board of Trustees of the Internal Improvement Trust Fund.

Section 12 amends s. 255.518, F.S., deleting the requirement that a legal notice be published in Leon County to validate bonding obligations used to fund the Florida Building and Facilities Act.

Section 13 amends s. 380.0668, F.S., deleting the requirement that a legal notice be published in Leon County to validate bonding obligations used to fund The Florida Environmental Land and Water Management Act of 1972.

Section 14 amends s. 455.275, F.S., providing changes regarding the Department of Business and Professional Regulation (DBPR) notice provisions that are initiated when contact cannot be made by DBPR regarding an administrative complaint for failure of a DBPR licensee to notify DBPR of a change of address.

Section 15 amends s. 473.3141, F.S. deleting the requirement for DBPR to publish a notice in Leon County, Florida when contact cannot be made regarding disciplinary actions against certified public accountants.

Section 16 amends s. 527.23, F.S., deleting the requirements for the Department of Agriculture and Consumer Services (DACS) to publish Florida Propane Gas Education, Safety, and Research Act²⁷ marketing order referendum results in a newspaper; requiring DACS website publication of such orders and for e-mailing the information to broadcast network affiliates.

Section 17 amends s. 573.109, F.S., deleting the requirements for DACS to publish the results of any referendum conducted under the Florida Agricultural Commodities Marketing Law in a newspaper; requiring DACS website publication of such orders and for e-mailing the information to broadcast network affiliates.

Section 18 amends s. 573.111, F.S., deleting the requirement for DACS to publish a notice of the issuance, suspension, amendment, or termination of a marketing order in a newspaper; requiring DACS to post such notice on its website.

Section 19 amends s. 631.59, F.S., changing the provision allowing notices concerning insolvent insurers to be in noticed by e-mail or telephone rather than in a newspaper.

²⁷ Sections 527.20 through 527.23, F.S.

Section 20 provides an effective date of July 1, 2012, except as otherwise expressly provided. The act applies to legal notices published on or after that date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The bill may reduce state government expenditures associated with publishing required notices and advertisements in the newspaper by limiting the rate that may be charged for government notices.

The bill may reduce expenditures for the agencies that would no longer be required to publish a legal notice in Leon County.

The bill may reduce expenditures of the Department of Financial Services by allowing the Chief Financial Officer to advertise the availability of the governmental efficiency hotline at her or his discretion.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

The bill may reduce local government expenditures associated with publishing required notices and advertisements in the newspaper by limiting the rate that may be charged for government notices.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may increase newspaper expenditures associated with the requirements for newspapers to upload and provide free access for notices to their own websites; provide free email notification to readers, when requested; post all notices to the Florida Press Association (FPA) website; and incorporate the changes the bill makes to the affidavit process. However, according to the FPA, many newspapers are currently publishing and providing free access to legal notices on their websites.²⁸

D. FISCAL COMMENTS:

It is unclear whether the current statutory fees include the online publication of these notices. As such, it is unclear if the fees associated with such publication will increase since the bill does not prohibit newspapers from charging for publication on their website.

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

²⁸ Information received via e-mail from Sam Morley, the Florida Press Association, on January 13, 2012. (On file with the House Government Operations Subcommittee).

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:

The bill does not appear to create a need for rulemaking or rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

As stated in the Fiscal Comments, it is unclear if the fees associated with online publication will increase since the bill does not prohibit newspapers from charging for publication on their website. The bill may need an amendment prohibiting such.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

Not applicable.

1 A bill to be entitled
2 An act relating to legal notices; creating s. 50.0211,
3 F.S.; requiring that, after a specified date, if a
4 legal notice is published in a newspaper, the
5 newspaper publishing the notice shall also place the
6 notice on a website maintained by the newspaper;
7 providing requirements for size and placement of such
8 website publication; requiring free access to such
9 online publications; requiring that legal notices
10 published in newspapers also be published on another
11 specified website; requiring that, after a specified
12 date, newspapers that publish legal notice must
13 provide e-mail notification of new legal notices;
14 providing requirements for such notice; providing that
15 an error on a newspaper or statewide website shall be
16 considered a harmless error and legal notice
17 requirements shall be considered met if the notice
18 published in the newspaper is correct; amending s.
19 50.041, F.S.; revising physical requirements for proof
20 of publication affidavits; authorizing electronic
21 affidavits that meet specified requirements; amending
22 s. 50.061, F.S.; limiting the rate that may be charged
23 for government notices required to be published more
24 than once in certain circumstances; deleting
25 provisions specifying rates for legal notices based on
26 county population; amending ss. 125.66, 166.041,
27 190.005, and 200.065, F.S.; requiring that website
28 publication of certain legal notices include maps that

29 appear in the newspaper advertisements; amending s.
 30 17.325, F.S.; making it optional for the Chief
 31 Financial Officer to advertise the availability of the
 32 governmental efficiency hotline; amending ss. 120.60
 33 215.555, 253.52, 255.518, and 380.0668, F.S.; deleting
 34 requirements that certain legal notices be published
 35 in Leon County; amending s. 455.275, F.S.; deleting a
 36 requirement that certain notices concerning
 37 professional licensees who cannot be personally served
 38 be published in Leon County; requiring that plain
 39 notice to the licensee to be posted on the front page
 40 of the Department of Business and Professional
 41 Regulation's website and provided to certain news
 42 outlets; amending s. 473.3141, F.S.; deleting a
 43 requirement that notices concerning discipline of
 44 certain certified public accountants be published in
 45 Leon County; amending s. 527.23, F.S.; deleting
 46 requirements relating to the newspaper publication of
 47 certain notices relating to marketing orders for
 48 propane gas; providing for Internet publication of
 49 such orders and for providing information to certain
 50 news outlets; amending ss. 573.109 and 573.111, F.S.;
 51 deleting requirements relating to the newspaper
 52 publication of certain notices relating to
 53 agricultural marketing orders; providing for Internet
 54 publication of such orders and for providing
 55 information to certain news outlets; amending s.
 56 631.59, F.S.; deleting requirements for the newspaper

57 publication of certain notices concerning insolvent
 58 insurers; providing for notice by e-mail or telephone;
 59 providing applicability; providing effective date.

60

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

62

63 Section 1. Section 50.0211, Florida Statutes, is created
 64 to read:

65 50.0211 Internet website publication.—

66 (1) This section applies to legal notices that must be
 67 published in accordance with this chapter unless otherwise
 68 specified.

69 (2) Each legal notice must be placed on the newspaper's
 70 website on the same day the notice appears in the newspaper. A
 71 link to legal notices shall be provided on the front page of the
 72 newspaper's website that provides access to the legal notices
 73 without charge. If there is a specified size and placement
 74 required for a printed legal notice, the size and placement of
 75 the notice on the newspaper's website should optimize its online
 76 visibility in keeping with the print requirements. The
 77 newspaper's web pages that contain legal notices shall present
 78 the legal notices as the dominant subject matter of those pages.
 79 The newspaper's website shall contain a search function to
 80 facilitate searching the legal notices. This subsection shall
 81 take effect July 1, 2013.

82 (3) If a legal notice is published in a newspaper, the
 83 newspaper publishing the notice shall place the notice on the
 84 website established and maintained as an initiative of the

85 Florida Press Association as a repository for such notices
 86 located at the following address: www.floridapublicnotices.com.

87 (4) Newspapers that publish legal notices shall, upon
 88 request, provide e-mail notification of new legal notices when
 89 they are printed in the newspaper and added to the newspaper's
 90 website. Such e-mail notification shall be provided without
 91 charge and notification for such an e-mail registry shall be
 92 available on the front page of the legal notices section of the
 93 newspaper's website. This subsection shall take effect July 1,
 94 2013.

95 (5) An error in the notice placed on the newspaper or
 96 statewide website shall be considered a harmless error and
 97 proper legal notice requirements shall be considered met if the
 98 notice published in the newspaper is correct.

99 Section 2. Subsection (2) of section 50.041, Florida
 100 Statutes, is amended to read:

101 50.041 Proof of publication; uniform affidavits required.—

102 (2) Each such affidavit shall be printed upon white ~~bond~~
 103 ~~paper containing at least 25 percent rag material~~ and shall be 8
 104 1/2 inches in width and of convenient length, not less than 5
 105 1/2 inches. A white margin of not less than 2 1/2 inches shall
 106 be left at the right side of each affidavit form and upon or in
 107 this space shall be substantially pasted a clipping which shall
 108 be a true copy of the public notice or legal advertisement for
 109 which proof is executed. Alternatively, the affidavit may be
 110 provided in electronic rather than paper form, provided the
 111 notarization of the affidavit complies with the requirements of
 112 s. 117.021.

113 Section 3. Subsections (2) and (3) of section 50.061,
 114 Florida Statutes, are amended to read:

115 50.061 Amounts chargeable.—

116 (2) The charge for publishing each such official public
 117 notice or legal advertisement shall be 70 cents per square inch
 118 for the first insertion and 40 cents per square inch for each
 119 subsequent insertion, except that government notices required to
 120 be published more than once whose cost is paid for by the
 121 government and not paid in advance by or allowed to be recouped
 122 from private parties may not be charged for the second and
 123 successive insertions at a rate greater than 85 percent of the
 124 original rate.+

125 ~~(a) In all counties having a population of more than~~
 126 ~~304,000 according to the latest official decennial census, the~~
 127 ~~charge for publishing each such official public notice or legal~~
 128 ~~advertisement shall be 80 cents per square inch for the first~~
 129 ~~insertion and 60 cents per square inch for each subsequent~~
 130 ~~insertion.~~

131 ~~(b) In all counties having a population of more than~~
 132 ~~450,000 according to the latest official decennial census, the~~
 133 ~~charge for publishing each such official public notice or legal~~
 134 ~~advertisement shall be 95 cents per square inch for the first~~
 135 ~~insertion and 75 cents per square inch for each subsequent~~
 136 ~~insertion.~~

137 ~~(3) Where the regular established minimum commercial rate~~
 138 ~~per square inch of the newspaper publishing such official public~~
 139 ~~notices or legal advertisements is in excess of the rate herein~~
 140 ~~stipulated, said minimum commercial rate per square inch may be~~

141 | ~~charged for all such legal advertisements or official public~~
 142 | ~~notices for each insertion, except that~~

143 | (3) A governmental agency publishing an official public
 144 | notice or legal advertisement may procure publication by
 145 | soliciting and accepting written bids from newspapers published
 146 | in the county, in which case the specified charges in this
 147 | section do not apply.

148 | Section 4. Paragraph (b) of subsection (4) of section
 149 | 125.66, Florida Statutes, is amended to read:

150 | 125.66 Ordinances; enactment procedure; emergency
 151 | ordinances; rezoning or change of land use ordinances or
 152 | resolutions.—

153 | (4) Ordinances or resolutions, initiated by other than the
 154 | county, that change the actual zoning map designation of a
 155 | parcel or parcels of land shall be enacted pursuant to
 156 | subsection (2). Ordinances or resolutions that change the actual
 157 | list of permitted, conditional, or prohibited uses within a
 158 | zoning category, or ordinances or resolutions initiated by the
 159 | county that change the actual zoning map designation of a parcel
 160 | or parcels of land shall be enacted pursuant to the following
 161 | procedure:

162 | (b) In cases in which the proposed ordinance or resolution
 163 | changes the actual list of permitted, conditional, or prohibited
 164 | uses within a zoning category, or changes the actual zoning map
 165 | designation of a parcel or parcels of land involving 10
 166 | contiguous acres or more, the board of county commissioners
 167 | shall provide for public notice and hearings as follows:

168 | 1. The board of county commissioners shall hold two

169 advertised public hearings on the proposed ordinance or
 170 resolution. At least one hearing shall be held after 5 p.m. on a
 171 weekday, unless the board of county commissioners, by a majority
 172 plus one vote, elects to conduct that hearing at another time of
 173 day. The first public hearing shall be held at least 7 days
 174 after the day that the first advertisement is published. The
 175 second hearing shall be held at least 10 days after the first
 176 hearing and shall be advertised at least 5 days prior to the
 177 public hearing.

178 2. The required advertisements shall be no less than 2
 179 columns wide by 10 inches long in a standard size or a tabloid
 180 size newspaper, and the headline in the advertisement shall be
 181 in a type no smaller than 18 point. The advertisement shall not
 182 be placed in that portion of the newspaper where legal notices
 183 and classified advertisements appear. The advertisement shall be
 184 placed in a newspaper of general paid circulation in the county
 185 and of general interest and readership in the community pursuant
 186 to chapter 50, not one of limited subject matter. It is the
 187 legislative intent that, whenever possible, the advertisement
 188 shall appear in a newspaper that is published at least 5 days a
 189 week unless the only newspaper in the community is published
 190 less than 5 days a week. The advertisement shall be in
 191 substantially the following form:

192
 193 NOTICE OF (TYPE OF) CHANGE
 194

195 The ...(name of local governmental unit)... proposes to
 196 adopt the following by ordinance or resolution:...(title of

197 ordinance or resolution)....

198

199 A public hearing on the ordinance or resolution will be
200 held on ...(date and time)... at ...(meeting place)....

201

202 Except for amendments which change the actual list of permitted,
203 conditional, or prohibited uses within a zoning category, the
204 advertisement shall contain a geographic location map which
205 clearly indicates the area within the local government covered
206 by the proposed ordinance or resolution. The map shall include
207 major street names as a means of identification of the general
208 area. In addition to being published in the newspaper, the map
209 must be part of the online notice required pursuant to s.
210 50.0211.

211 3. In lieu of publishing the advertisements set out in
212 this paragraph, the board of county commissioners may mail a
213 notice to each person owning real property within the area
214 covered by the ordinance or resolution. Such notice shall
215 clearly explain the proposed ordinance or resolution and shall
216 notify the person of the time, place, and location of both
217 public hearings on the proposed ordinance or resolution.

218 Section 5. Paragraph (c) of subsection (3) of section
219 166.041, Florida Statutes, is amended to read:

220 166.041 Procedures for adoption of ordinances and
221 resolutions.-

222 (3)

223 (c) Ordinances initiated by other than the municipality
224 that change the actual zoning map designation of a parcel or

225 parcels of land shall be enacted pursuant to paragraph (a).
 226 Ordinances that change the actual list of permitted,
 227 conditional, or prohibited uses within a zoning category, or
 228 ordinances initiated by the municipality that change the actual
 229 zoning map designation of a parcel or parcels of land shall be
 230 enacted pursuant to the following procedure:

231 1. In cases in which the proposed ordinance changes the
 232 actual zoning map designation for a parcel or parcels of land
 233 involving less than 10 contiguous acres, the governing body
 234 shall direct the clerk of the governing body to notify by mail
 235 each real property owner whose land the municipality will
 236 redesignate by enactment of the ordinance and whose address is
 237 known by reference to the latest ad valorem tax records. The
 238 notice shall state the substance of the proposed ordinance as it
 239 affects that property owner and shall set a time and place for
 240 one or more public hearings on such ordinance. Such notice shall
 241 be given at least 30 days prior to the date set for the public
 242 hearing, and a copy of the notice shall be kept available for
 243 public inspection during the regular business hours of the
 244 office of the clerk of the governing body. The governing body
 245 shall hold a public hearing on the proposed ordinance and may,
 246 upon the conclusion of the hearing, immediately adopt the
 247 ordinance.

248 2. In cases in which the proposed ordinance changes the
 249 actual list of permitted, conditional, or prohibited uses within
 250 a zoning category, or changes the actual zoning map designation
 251 of a parcel or parcels of land involving 10 contiguous acres or
 252 more, the governing body shall provide for public notice and

253 | hearings as follows:

254 | a. The local governing body shall hold two advertised
 255 | public hearings on the proposed ordinance. At least one hearing
 256 | shall be held after 5 p.m. on a weekday, unless the local
 257 | governing body, by a majority plus one vote, elects to conduct
 258 | that hearing at another time of day. The first public hearing
 259 | shall be held at least 7 days after the day that the first
 260 | advertisement is published. The second hearing shall be held at
 261 | least 10 days after the first hearing and shall be advertised at
 262 | least 5 days prior to the public hearing.

263 | b. The required advertisements shall be no less than 2
 264 | columns wide by 10 inches long in a standard size or a tabloid
 265 | size newspaper, and the headline in the advertisement shall be
 266 | in a type no smaller than 18 point. The advertisement shall not
 267 | be placed in that portion of the newspaper where legal notices
 268 | and classified advertisements appear. The advertisement shall be
 269 | placed in a newspaper of general paid circulation in the
 270 | municipality and of general interest and readership in the
 271 | municipality, not one of limited subject matter, pursuant to
 272 | chapter 50. It is the legislative intent that, whenever
 273 | possible, the advertisement appear in a newspaper that is
 274 | published at least 5 days a week unless the only newspaper in
 275 | the municipality is published less than 5 days a week. The
 276 | advertisement shall be in substantially the following form:

277 |
 278 | NOTICE OF (TYPE OF) CHANGE

279 |
 280 | The ... (name of local governmental unit) ... proposes to

281 adopt the following ordinance:...(title of the ordinance)....

282

283 A public hearing on the ordinance will be held on ...(date
284 and time)... at ...(meeting place)....

285

286 Except for amendments which change the actual list of permitted,
287 conditional, or prohibited uses within a zoning category, the
288 advertisement shall contain a geographic location map which
289 clearly indicates the area covered by the proposed ordinance.
290 The map shall include major street names as a means of
291 identification of the general area. In addition to being
292 published in the newspaper, the map must be part of the online
293 notice required pursuant to s. 50.0211.

294 c. In lieu of publishing the advertisement set out in this
295 paragraph, the municipality may mail a notice to each person
296 owning real property within the area covered by the ordinance.
297 Such notice shall clearly explain the proposed ordinance and
298 shall notify the person of the time, place, and location of any
299 public hearing on the proposed ordinance.

300 Section 6. Paragraph (d) of subsection (1) of section
301 190.005, Florida Statutes, is amended to read:

302 190.005 Establishment of district.—

303 (1) The exclusive and uniform method for the establishment
304 of a community development district with a size of 1,000 acres
305 or more shall be pursuant to a rule, adopted under chapter 120
306 by the Florida Land and Water Adjudicatory Commission, granting
307 a petition for the establishment of a community development
308 district.

309 (d) A local public hearing on the petition shall be
 310 conducted by a hearing officer in conformance with the
 311 applicable requirements and procedures of the Administrative
 312 Procedure Act. The hearing shall include oral and written
 313 comments on the petition pertinent to the factors specified in
 314 paragraph (e). The hearing shall be held at an accessible
 315 location in the county in which the community development
 316 district is to be located. The petitioner shall cause a notice
 317 of the hearing to be published in a newspaper at least once a
 318 week for the 4 successive weeks immediately prior to the
 319 hearing. Such notice shall give the time and place for the
 320 hearing, a description of the area to be included in the
 321 district, which description shall include a map showing clearly
 322 the area to be covered by the district, and any other relevant
 323 information which the establishing governing bodies may require.
 324 The advertisement shall not be placed in that portion of the
 325 newspaper where legal notices and classified advertisements
 326 appear. The advertisement shall be published in a newspaper of
 327 general paid circulation in the county and of general interest
 328 and readership in the community, not one of limited subject
 329 matter, pursuant to chapter 50. Whenever possible, the
 330 advertisement shall appear in a newspaper that is published at
 331 least 5 days a week, unless the only newspaper in the community
 332 is published fewer than 5 days a week. In addition to being
 333 published in the newspaper, the map referenced above must be
 334 part of the online advertisement required pursuant to s.
 335 50.0211. All affected units of general-purpose local government
 336 and the general public shall be given an opportunity to appear

337 at the hearing and present oral or written comments on the
 338 petition.

339 Section 7. Paragraph (h) of subsection (3) of section
 340 200.065, Florida Statutes, is amended to read:

341 200.065 Method of fixing millage.—

342 (3) The advertisement shall be no less than one-quarter
 343 page in size of a standard size or a tabloid size newspaper, and
 344 the headline in the advertisement shall be in a type no smaller
 345 than 18 point. The advertisement shall not be placed in that
 346 portion of the newspaper where legal notices and classified
 347 advertisements appear. The advertisement shall be published in a
 348 newspaper of general paid circulation in the county or in a
 349 geographically limited insert of such newspaper. The geographic
 350 boundaries in which such insert is circulated shall include the
 351 geographic boundaries of the taxing authority. It is the
 352 legislative intent that, whenever possible, the advertisement
 353 appear in a newspaper that is published at least 5 days a week
 354 unless the only newspaper in the county is published less than 5
 355 days a week, or that the advertisement appear in a
 356 geographically limited insert of such newspaper which insert is
 357 published throughout the taxing authority's jurisdiction at
 358 least twice each week. It is further the legislative intent that
 359 the newspaper selected be one of general interest and readership
 360 in the community and not one of limited subject matter, pursuant
 361 to chapter 50.

362 (h) In no event shall any taxing authority add to or
 363 delete from the language of the advertisements as specified
 364 herein unless expressly authorized by law, except that, if an

365 increase in ad valorem tax rates will affect only a portion of
 366 the jurisdiction of a taxing authority, advertisements may
 367 include a map or geographical description of the area to be
 368 affected and the proposed use of the tax revenues under
 369 consideration. In addition, if published in the newspaper, the
 370 map must be part of the online advertisement required by s.
 371 50.0211. The advertisements required herein shall not be
 372 accompanied, preceded, or followed by other advertising or
 373 notices which conflict with or modify the substantive content
 374 prescribed herein.

375 Section 8. Subsection (2) of section 17.325, Florida
 376 Statutes, is amended to read:

377 17.325 Governmental efficiency hotline; duties of Chief
 378 Financial Officer.—

379 (2) The Chief Financial Officer shall operate the hotline
 380 24 hours a day. The Chief Financial Officer may ~~shall~~ advertise
 381 the availability of the hotline in newspapers of general
 382 circulation in this state and shall provide for the posting of
 383 notices in conspicuous places in state agency offices, city
 384 halls, county courthouses, and places in which there is exposure
 385 to significant numbers of the general public, including, but not
 386 limited to, local convenience stores, shopping malls, shopping
 387 centers, gasoline stations, or restaurants. The Chief Financial
 388 Officer shall use the slogan "Tell us where we can 'Get Lean'"
 389 for the hotline and in advertisements for the hotline.

390 Section 9. Subsection (5) of section 120.60, Florida
 391 Statutes, is amended to read:

392 120.60 Licensing.—

393 (5) No revocation, suspension, annulment, or withdrawal of
 394 any license is lawful unless, prior to the entry of a final
 395 order, the agency has served, by personal service or certified
 396 mail, an administrative complaint which affords reasonable
 397 notice to the licensee of facts or conduct which warrant the
 398 intended action and unless the licensee has been given an
 399 adequate opportunity to request a proceeding pursuant to ss.
 400 120.569 and 120.57. When personal service cannot be made and the
 401 certified mail notice is returned undelivered, the agency shall
 402 cause a short, plain notice to the licensee to be published once
 403 each week for 4 consecutive weeks in a newspaper published in
 404 the county of the licensee's last known address as it appears on
 405 the records of the agency. If no newspaper is published in that
 406 county, the notice may be published in a newspaper of general
 407 circulation in that county. ~~If the address is in some state~~
 408 ~~other than this state or in a foreign territory or country, the~~
 409 ~~notice may be published in Leon County.~~

410 Section 10. Paragraph (d) of subsection (6) of section
 411 215.555, Florida Statutes, is amended to read:

412 215.555 Florida Hurricane Catastrophe Fund.—

413 (6) REVENUE BONDS.—

414 (d) Florida Hurricane Catastrophe Fund Finance
 415 Corporation.—

416 1. In addition to the findings and declarations in
 417 subsection (1), the Legislature also finds and declares that:

418 a. The public benefits corporation created under this
 419 paragraph will provide a mechanism necessary for the cost-
 420 effective and efficient issuance of bonds. This mechanism will

421 eliminate unnecessary costs in the bond issuance process,
 422 thereby increasing the amounts available to pay reimbursement
 423 for losses to property sustained as a result of hurricane
 424 damage.

425 b. The purpose of such bonds is to fund reimbursements
 426 through the Florida Hurricane Catastrophe Fund to pay for the
 427 costs of construction, reconstruction, repair, restoration, and
 428 other costs associated with damage to properties of
 429 policyholders of covered policies due to the occurrence of a
 430 hurricane.

431 c. The efficacy of the financing mechanism will be
 432 enhanced by the corporation's ownership of the assessments, by
 433 the insulation of the assessments from possible bankruptcy
 434 proceedings, and by covenants of the state with the
 435 corporation's bondholders.

436 2.a. There is created a public benefits corporation, which
 437 is an instrumentality of the state, to be known as the Florida
 438 Hurricane Catastrophe Fund Finance Corporation.

439 b. The corporation shall operate under a five-member board
 440 of directors consisting of the Governor or a designee, the Chief
 441 Financial Officer or a designee, the Attorney General or a
 442 designee, the director of the Division of Bond Finance of the
 443 State Board of Administration, and the senior employee of the
 444 State Board of Administration responsible for operations of the
 445 Florida Hurricane Catastrophe Fund.

446 c. The corporation has all of the powers of corporations
 447 under chapter 607 and under chapter 617, subject only to the
 448 provisions of this subsection.

449 d. The corporation may issue bonds and engage in such
 450 other financial transactions as are necessary to provide
 451 sufficient funds to achieve the purposes of this section.

452 e. The corporation may invest in any of the investments
 453 authorized under s. 215.47.

454 f. There shall be no liability on the part of, and no
 455 cause of action shall arise against, any board members or
 456 employees of the corporation for any actions taken by them in
 457 the performance of their duties under this paragraph.

458 3.a. In actions under chapter 75 to validate any bonds
 459 issued by the corporation, the notice required by s. 75.06 shall
 460 be published ~~only in Leon County and~~ in two newspapers of
 461 general circulation in the state, and the complaint and order of
 462 the court shall be served only on the State Attorney of the
 463 Second Judicial Circuit.

464 b. The state hereby covenants with holders of bonds of the
 465 corporation that the state will not repeal or abrogate the power
 466 of the board to direct the Office of Insurance Regulation to
 467 levy the assessments and to collect the proceeds of the revenues
 468 pledged to the payment of such bonds as long as any such bonds
 469 remain outstanding unless adequate provision has been made for
 470 the payment of such bonds pursuant to the documents authorizing
 471 the issuance of such bonds.

472 4. The bonds of the corporation are not a debt of the
 473 state or of any political subdivision, and neither the state nor
 474 any political subdivision is liable on such bonds. The
 475 corporation does not have the power to pledge the credit, the
 476 revenues, or the taxing power of the state or of any political

477 subdivision. The credit, revenues, or taxing power of the state
 478 or of any political subdivision shall not be deemed to be
 479 pledged to the payment of any bonds of the corporation.

480 5.a. The property, revenues, and other assets of the
 481 corporation; the transactions and operations of the corporation
 482 and the income from such transactions and operations; and all
 483 bonds issued under this paragraph and interest on such bonds are
 484 exempt from taxation by the state and any political subdivision,
 485 including the intangibles tax under chapter 199 and the income
 486 tax under chapter 220. This exemption does not apply to any tax
 487 imposed by chapter 220 on interest, income, or profits on debt
 488 obligations owned by corporations other than the Florida
 489 Hurricane Catastrophe Fund Finance Corporation.

490 b. All bonds of the corporation shall be and constitute
 491 legal investments without limitation for all public bodies of
 492 this state; for all banks, trust companies, savings banks,
 493 savings associations, savings and loan associations, and
 494 investment companies; for all administrators, executors,
 495 trustees, and other fiduciaries; for all insurance companies and
 496 associations and other persons carrying on an insurance
 497 business; and for all other persons who are now or may hereafter
 498 be authorized to invest in bonds or other obligations of the
 499 state and shall be and constitute eligible securities to be
 500 deposited as collateral for the security of any state, county,
 501 municipal, or other public funds. This sub-subparagraph shall be
 502 considered as additional and supplemental authority and shall
 503 not be limited without specific reference to this sub-
 504 subparagraph.

505 6. The corporation and its corporate existence shall
 506 continue until terminated by law; however, no such law shall
 507 take effect as long as the corporation has bonds outstanding
 508 unless adequate provision has been made for the payment of such
 509 bonds pursuant to the documents authorizing the issuance of such
 510 bonds. Upon termination of the existence of the corporation, all
 511 of its rights and properties in excess of its obligations shall
 512 pass to and be vested in the state.

513 Section 11. Section 253.52, Florida Statutes, is amended
 514 to read:

515 253.52 Placing oil and gas leases on market by board.—
 516 Whenever in the opinion of the Board of Trustees of the Internal
 517 Improvement Trust Fund there shall be a demand for the purchase
 518 of oil and gas leases on any area, tract, or parcel of the land
 519 so owned, controlled, or managed, by any state board,
 520 department, or agency, then the board shall place such oil and
 521 gas lease or leases on the market in such blocks, tracts, or
 522 parcels as it may designate. The lease or leases shall only be
 523 made after notice by publication thereof has been made not less
 524 than once a week for 4 consecutive weeks in a newspaper of
 525 general circulation ~~published in Leon County, and in a similar~~
 526 ~~newspaper for a similar period of time~~ published in the vicinity
 527 of the lands offered to be leased, the last publication ~~in both~~
 528 ~~newspapers~~ to be not less than 5 days in advance of the sale
 529 date. Such notice shall be to the effect that a lease or leases
 530 will be offered for sale at such date and time as may be named
 531 in said notice and shall describe the land upon which such
 532 lease, or leases, will be offered. This notice may be combined

533 with the notice required pursuant to s. 253.115. Before any
 534 lease of any block, tract, or parcel of land, submerged, or
 535 unsubmerged, within a radius of 3 miles of the boundaries of any
 536 incorporated city, or town, or within such radius of any bathing
 537 beach, or beaches, outside thereof, such board, department, or
 538 agency, shall through one or more of its members hold a public
 539 hearing, after notice thereof by publication once in a newspaper
 540 of general circulation published at least 1 week prior to said
 541 hearing in the vicinity of the land, or lands, offered to be
 542 leased, of the offer to lease the same, calling upon all
 543 interested persons to attend said hearing where they would be
 544 given the opportunity to be heard, all of which shall be
 545 considered by the board prior to the execution of any lease or
 546 leases to said land, and the board may withdraw said land, or
 547 any part thereof, from the market, and refuse to execute such
 548 lease or leases if after such hearing, or otherwise, it
 549 considers such execution contrary to the public welfare. Before
 550 advertising any land for lease the form of the lease or leases
 551 to be offered for sale, not inconsistent with law, or the
 552 provisions of this section, shall be prescribed by the board and
 553 a copy, or copies, thereof, shall be available to the general
 554 public at the office of the Board of Trustees of the Internal
 555 Improvement Trust Fund and the advertisements of such sale shall
 556 so state.

557 Section 12. Paragraph (b) of subsection (4) of section
 558 255.518, Florida Statutes, is amended to read:

559 255.518 Obligations; purpose, terms, approval,
 560 limitations.-

561 (4)

562 (b) In actions to validate such obligations pursuant to
 563 chapter 75, the complaint shall be filed in the Circuit Court of
 564 Leon County, the notice required by s. 75.06, shall be published
 565 ~~only in Leon County and~~ in two newspapers of general circulation
 566 in the state, and the complaint and order of the court shall be
 567 served only on the state attorney of the Second Judicial
 568 Circuit.

569 Section 13. Paragraph (b) of subsection (4) of section
 570 380.0668, Florida Statutes, is amended to read:

571 380.0668 Bonds; purpose, terms, approval, limitations.-

572 (4)

573 (b) In actions to validate such bonds pursuant to chapter
 574 75, the complaint shall be filed in the Circuit Court of Leon
 575 County, the notice required by s. 75.06 shall be published in
 576 newspapers of general circulation in ~~Leon County and~~ the county
 577 in which the area or areas of critical state concern involved
 578 are located, and the complaint and order of the court shall be
 579 served on the state attorney of the Second Judicial Circuit and
 580 the circuit in which the area or areas of critical state concern
 581 involved are located.

582 Section 14. Paragraph (b) of subsection (3) of section
 583 455.275, Florida Statutes, is amended to read:

584 455.275 Address of record.-

585 (3)

586 (b) If service, as provided in paragraph (a), does not
 587 provide the department with proof of service, the department
 588 shall call the last known telephone number of record and cause a

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589 short, plain notice to the licensee to be posted on the front
 590 page of the department's website and shall send notice via e-
 591 mail to all newspapers of general circulation and all news
 592 departments of broadcast network affiliates in the county of the
 593 licensee's last known address of record ~~published once each week~~
 594 ~~for 4 consecutive weeks in a newspaper published in the county~~
 595 ~~of the licensee's last known address of record. If a newspaper~~
 596 ~~is not published in the county, the administrative complaint may~~
 597 ~~be published in a newspaper of general circulation in the~~
 598 ~~county. If the licensee's last known address is located in~~
 599 ~~another state or in a foreign jurisdiction, the administrative~~
 600 ~~complaint may be published in Leon County pursuant to s.~~
 601 ~~120.60(5).~~

602 Section 15. Subsection (5) of section 473.3141, Florida
 603 Statutes, is amended to read:

604 473.3141 Certified public accountants licensed in other
 605 states.—

606 (5) Disciplinary action against an individual or firm that
 607 practices pursuant to this section is not valid unless, prior to
 608 the entry of a final order, the agency has served, by personal
 609 service pursuant to this chapter or chapter 48 or by certified
 610 mail, an administrative complaint that provides reasonable
 611 notice to the individual or firm of facts or conduct that
 612 warrants the intended action and unless the individual or firm
 613 has been given an adequate opportunity to request a proceeding
 614 pursuant to ss. 120.569 and 120.57. ~~When personal service cannot~~
 615 ~~be made and the certified mail notice is returned undelivered,~~
 616 ~~the agency shall have a short, plain notice to the individual or~~

617 ~~firm with practice privileges published once a week for 4~~
 618 ~~consecutive weeks in a newspaper published in Leon County,~~
 619 ~~Florida. The newspaper shall meet the requirements prescribed by~~
 620 ~~law for such purposes.~~

621 Section 16. Paragraph (b) of subsection (5) of section
 622 527.23, Florida Statutes, is amended to read:

623 527.23 Marketing orders; referendum requirements;
 624 assessments.—

625 (5)

626 (b) It is the duty of the producers or dealers of propane
 627 gas who vote in each referendum to send their marked ballots to
 628 the department, which shall have the ballots counted by
 629 qualified and impartial personnel in its office, and the
 630 department shall, within 10 days after the closing date for
 631 submitting ballots in any referendum, certify in writing and
 632 publish the results of such referendum on the front page of
 633 their website and shall send notice via e-mail to all
 634 publications of general circulation and all news departments of
 635 broadcast network affiliates located within the state ~~in a~~
 636 ~~newspaper of general circulation in the state and in such other~~
 637 ~~newspapers as the department prescribes.~~

638 Section 17. Subsection (2) of section 573.109, Florida
 639 Statutes, is amended to read:

640 573.109 Procedure for referendum.—

641 (2) It shall be the duty of the producers or handlers
 642 affected who vote in each referendum to send their marked
 643 ballots to the department, which shall have the ballots counted
 644 by qualified and impartial personnel in its office, and the

645 department shall, within 10 days after the closing date for
 646 submitting ballots in any referendum, certify in writing and
 647 publish the results of such referendum on the front page of
 648 their website and shall send notice via e-mail to all
 649 publications of general circulation and all news departments of
 650 broadcast network affiliates located within the state ~~in a~~
 651 ~~newspaper of general circulation in the state and in such other~~
 652 ~~newspapers as the department may prescribe.~~

653 Section 18. Section 573.111, Florida Statutes, is amended
 654 to read:

655 573.111 Notice of effective date of marketing order.-
 656 Before the issuance of any marketing order, or any suspension,
 657 amendment, or termination thereof, a notice shall be posted on a
 658 public bulletin board to be maintained by the department in the
 659 Division of Marketing and Development of the department in the
 660 Nathan Mayo Building, Tallahassee, Leon County, and a copy of
 661 the notice shall be posted on the department website ~~published~~
 662 ~~in a newspaper of general circulation in the state and in such~~
 663 ~~other newspaper or newspapers as the department may prescribe.~~
 664 ~~The notices published in the newspaper or newspapers shall be~~
 665 ~~sent by first class mail, by the department to those newspapers~~
 666 ~~designated by it, the same date that the notice is posted on the~~
 667 ~~bulletin board with instructions to publish the same as a legal~~
 668 ~~advertisement the first date after receipt of the notice as such~~
 669 ~~newspaper's policy for publishing legal advertisements provides.~~
 670 No marketing order, or any suspension, amendment, or termination
 671 thereof, shall become effective until the termination of a
 672 period of 5 days from the date of posting and publication.

673 Section 19. Subsection (2) of section 631.59, Florida
 674 Statutes, is amended to read:

675 631.59 Duties and powers of department and office.—

676 (2) The department may require that the association notify
 677 the insureds of the insolvent insurer and any other interested
 678 parties of the determination of insolvency and of their rights
 679 under this part. Such notification shall be by mail at their
 680 last known addresses, when available, but if sufficient
 681 information for notification by mail is not available, notice by
 682 e-mail or telephone ~~publication in a newspaper of general~~
 683 ~~circulation~~ shall be sufficient.

684 Section 20. Except as otherwise expressly provided in this
 685 act, this act shall take effect July 1, 2012, and shall apply to
 686 legal notices that must be published on or after that date.

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 937 (2012)

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: State Affairs Committee
2 Representative Workman offered the following:

3
4 **Amendment (with title amendment)**

5 Remove lines 69-70 and insert:

6 (2) Each legal notice must be placed on the newspaper's
7 website on the same day the notice appears in the newspaper, at
8 no additional charge. A

9
10 -----
11 **T I T L E A M E N D M E N T**

12 Remove line 6 and insert:

13 notice on a website maintained by the newspaper at no
14 additional charge;

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 937 (2012)

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: State Affairs Committee
2 Representative Workman offered the following:

3
4 **Amendment**

5 Remove lines 113-147 and insert:

6 Section 3. Subsections (2) and (3) of section 50.061, Florida
7 Statutes, are amended, and a new subsection (4) is created:

8 50.061 Amounts chargeable.-

9 (2) The charge for publishing each such official public notice
10 or legal advertisement shall be 70 cents per square inch for the
11 first insertion and 40 cents per square inch for each subsequent
12 insertion, except that government notices required to be published
13 more than once whose cost is paid for by the government and not
14 paid in advance by or allowed to be recouped from private parties
15 may not be charged for the second and successive insertions at a
16 rate greater than 85 percent of the original rate.+

17 ~~(a) In all counties having a population of more than 304,000~~
18 ~~according to the latest official decennial census, the charge for~~

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 937 (2012)

Amendment No.

19 ~~publishing each such official public notice or legal advertisement~~
20 ~~shall be 80 cents per square inch for the first insertion and 60~~
21 ~~cents per square inch for each subsequent insertion.~~

22 ~~(b) In all counties having a population of more than 450,000~~
23 ~~according to the latest official decennial census, the charge for~~
24 ~~publishing each such official public notice or legal advertisement~~
25 ~~shall be 95 cents per square inch for the first insertion and 75~~
26 ~~cents per square inch for each subsequent insertion.~~

27 (3) Where the regular established minimum commercial rate
28 per square inch of the newspaper publishing such official public
29 notices or legal advertisements is in excess of the rate herein
30 stipulated, said minimum commercial rate per square inch may be
31 charged for all such legal advertisements or official public
32 notices for each insertion, except that government notices required
33 to be published more than once whose cost is paid for by the
34 government and not paid in advance by or allowed to be recouped
35 from private parties may not be charged for the second and
36 successive insertions at a rate greater than 85 percent of the
37 original rate.

38 (4) A governmental agency publishing an official public notice
39 or legal advertisement may procure publication by soliciting and
40 accepting written bids from newspapers published in the county, in
41 which case the specified charges in this section do not apply.

42 ~~(4)(5)~~ All official public notices and legal advertisements
43 shall be charged and paid for on the basis of 6-point type on 6-
44 point body, unless otherwise specified by statute.

45 ~~(5)(6)~~ Any person violating a provision of this section,
46 either by allowing or accepting any rebate, commission, or

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 937 (2012)

Amendment No.

47 refund, commits a misdemeanor of the second degree, punishable
48 as provided in s. 775.082 or s. 775.083.

49 ~~(6)~~ (7) Failure to charge the rates prescribed by this
50 section shall in no way affect the validity of any official
51 public notice or legal advertisement and shall not subject same
52 to legal attack upon such grounds.



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HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 989 Domestic Wastewater Discharged Through Ocean Outfalls

SPONSOR(S): Gonzalez

TIED BILLS: None **IDEN./SIM. BILLS:** SB 724

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Agriculture & Natural Resources Subcommittee	13 Y, 0 N	Deslatte	Blalock
2) State Affairs Committee		Deslatte 	Hamby 

SUMMARY ANALYSIS

In 2008, SB 1302 was passed by the Legislature and signed into law. The intent of the bill was to protect Florida's coastal waters, including coral reefs, by decreasing the amount of nutrients discharged into coastal waters. The bill required that by 2018, existing outfall discharges must meet advanced wastewater treatment and management requirements. By 2025, 60% of the facility flows were to be reused for beneficial purposes. The bill also authorized the Department of Environmental Protection (DEP) to establish enforceable compliance schedules for treatment upgrades and ultimate outfall elimination. In addition, the bill prohibited the new construction or expansion of wastewater ocean outfalls and limited the discharge of wastewater through ocean outfalls to the permitted capacity in effect on July 1, 2008. It required that discharge of domestic wastewater through ocean outfalls meet advanced wastewater treatment and management requirements no later than December 31, 2018.

The current bill postpones the date by which domestic wastewater facilities must meet advanced treatment and management requirements from December 31, 2018, to December 31, 2020. The bill provides that each utility that had a permit for a domestic wastewater facility that discharged through an ocean outfall on July 1, 2008, must install a functioning reuse system by December 31, 2025. The bill provides that a "functioning reuse system" means an environmentally, economically, and technically feasible system that provides a minimum of 60% of a facility's baseline flow or, for utilities operating more than one facility, 60% of the utility's entire wastewater system flow on an annual basis on December 31, 2025. The bill also defines "baseline flow" to mean the annual average flow of domestic wastewater discharging through the facility's ocean outfall, using monitoring data available from 2003 through 2007. The bill provides that for utilities operating more than one outfall, the reuse requirement may be apportioned between the facilities served by the outfalls. Utilities that shared a common ocean outfall on July 1, 2008, regardless of which utility operates the ocean outfall, are individually responsible for meeting the reuse requirement and can enter into binding agreements to share or transfer the responsibility among the utilities.

The discharge of wastewater through an oceans outfall is prohibited after December 31, 2025, except as a backup discharge that is part of a functioning reuse system or other wastewater management system. Unless otherwise provided in this statute, backup discharges can only occur during periods of reduced demand for reclaimed water in the reuse system, such as periods of wet weather, or as the result of peak flows from other wastewater management systems. The bill provides that peak flow discharges from other wastewater management systems cannot cumulatively exceed 5% of a facility's baseline flow, measured as a 5-year rolling average, and are subject to applicable secondary waste treatment and water-quality-based effluent limitations specified in DEP's rules. When in compliance with the effluent limitations, the peak flow backup discharges must be deemed to meet the advanced wastewater treatment requirements.

The bill revises current planning requirements to require permit holders to submit to the Secretary of the DEP by October 1, 2014, rather than July 1, 2013, a detailed plan to meet the outfalls and reuse requirements. The plan must include the identification of the technical, environmental, and economic feasibility of various reuse options; a cost analysis to meet the discharge and reuse requirements, which includes the level of treatment necessary to satisfy state water quality requirements and local water quality considerations; and a cost comparison of reuse using flows from ocean outfalls and flows from other domestic wastewater sources. An updated plan must be submitted by July 1, 2018, rather than July 1, 2016. The bill also requires the DEP, the South Florida Water Management District, and affected utilities to provide a report to the Legislature by February 15, 2015, containing recommendations for any changes necessary to the reuse and discharge requirements.

The bill does not appear to have a fiscal impact on state government. The bill does appear to have a significant positive fiscal impact on local governments by extending the deadline for implementation of upgrading treatment plants and developing alternative disposal options including reuse of reclaimed water. By revising the reuse requirements and extending the deadline for meeting these requirements, the bill also has a positive fiscal impact on facilities that would not treat or manage peak flows. See the Fiscal Comments Section for more detail.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

STORAGE NAME: h0989b.SAC.DOCX

DATE: 1/18/2012

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

In 2008, SB 1302 was passed by the Legislature and signed by the governor. The intent of the bill was to protect Florida's coastal waters, including coral reefs, by decreasing the amount of nutrients discharged into coastal waters.

The bill directed the South Florida WMD to include water resource and water supply development projects that promote the elimination of wastewater ocean outfalls within its regional water supply plan. It also provided that such projects should be given first consideration for state or water management district (WMD) funding assistance. Subject to specified conditions, the South Florida WMD must require the use of reclaimed water made available by the elimination of the wastewater ocean outfalls as part of their consumptive use permitting process.

The bill prohibited the new construction or expansion of wastewater ocean outfalls and limits the discharge of wastewater through ocean outfalls to the permitted capacity in effect on July 1, 2008. It required that discharge of domestic wastewater through ocean outfalls meet advanced wastewater treatment and management requirements no later than December 31, 2018. Such requirements are defined to include:

- Meeting the standards in s. 403.086 (4), F.S.¹; or
- A reduction in baseline loadings of total nitrogen and total phosphorus, equivalent to advanced wastewater treatment requirements in s. 403.086 (4), F.S., or a reduction in cumulative outfall loadings of total nitrogen and total phosphorus occurring between December 31, 2008 and December 31, 2025 which is equivalent to that which would be achieved if the requirements of s. 403.086 (4), F.S., were fully implemented December 31, 2018 and continued through December 31, 2025, as determined by the Department of Environmental Protection (DEP) pursuant to specified criteria, by December 31, 2018.

Facilities that meet 100 percent reuse for domestic wastewater discharge by December 31, 2018 are exempt from the treatment standards.

The bill also required all facilities that discharge wastewater through ocean outfalls to achieve, at a minimum, 60 percent reuse of the facilities actual annual flow by December 31, 2025, and prohibited discharge through ocean outfalls beyond that date, unless as a backup to the functioning reuse system.

The bill created a reporting schedule for permit holders who discharge domestic wastewater through ocean outfalls. Permit holders are required to detail the plan to meet the requirements of the act and provide a summary of actions accomplished to date. The bill provided a reporting schedule for the DEP to summarize the progress to date, to be submitted to the Legislature.

Effect of Proposed Changes

The bill postpones the date by which domestic wastewater facilities must meet advanced treatment and management requirements from December 31, 2018, to December 31, 2020.

¹ Section 403.086(4), F.S., sets the standards for the following concentrations:

1. Biochemical Oxygen Demand-5mg/l;
2. Suspended Solids-5 mg/l;
3. Total Nitrogen-3 mg/l;
4. Total Phosphorus-1 mg/l.

Each utility that had a permit for a domestic wastewater facility that discharged through an ocean outfall on July 1, 2008, must still install a functioning reuse system by December 31, 2025. The bill provides that a "functioning reuse system" means a system that provides a minimum of 60% of a facility's baseline flow or, for utilities operating more than one facility, 60% of the utility's entire wastewater system flow on an annual basis on December 31, 2025. The bill also defines "baseline flow" to mean the annual average flow of domestic wastewater discharging through the facility's ocean outfall, using monitoring data available from 2003 through 2007. For utilities operating more than one outfall, the reuse requirement can be apportioned between the facilities served by the outfalls. In addition, utilities that shared a common ocean outfall for the discharge of domestic wastewater on July 1, 2008, regardless of which utility operates the ocean outfall, are individually responsible for meeting the reuse requirement and may enter into binding agreements to share or transfer the responsibility among the utilities.

The discharge of wastewater through an oceans outfall continues to be prohibited after December 31, 2025, except as a backup discharge that is part of a functioning reuse system or other wastewater management system authorized by the DEP. Unless otherwise provided in this statute, backup discharges can only occur during periods of reduced demand for reclaimed water in the reuse system, such as periods of wet weather, or as the result of peak flows from other wastewater management systems. Peak flow backup discharges from other wastewater management systems cannot cumulatively exceed 5% of a facility's baseline flow, measured as a 5-year rolling average, and are subject to applicable secondary waste treatment and water-quality-based effluent limitations specified in DEP rules. When in compliance with the effluent limitations, the peak flow backup discharges must be deemed to meet the advanced wastewater treatment and management requires.

The bill revises current planning requirements to delay submission from July 1, 2013, to October 1, 2014, and to require each ocean outfalls discharge permit holder submit to the DEP a detailed plan to meet the outfalls and reuse requirements that includes:

- The identification of the technical, environmental, and economic feasibility of various reuse options; and
- A cost analysis to meet the discharge and reuse requirements, which includes the level of treatment necessary to satisfy state water quality requirements and local water quality considerations and a cost comparison of reuse using flows from ocean outfalls and flows from other domestic wastewater sources.

The plan must also evaluate reuse demand in the context of future regional water supply demands, the availability of traditional water supplies, the need for development of alternative water supplies, the degree to which various reuse options offset potable water supplies, and other factors considered in the South Florida Water Management District's Lower East Coast Regional Water Supply Plan. The plan must include a detailed schedule for the completion of all actions and must be submitted by October 1, 2014. An updated plan must be submitted by July 1, 2018, rather than July 1, 2016.

The DEP, South Florida WMD, and affected utilities must consider the information in the detailed plan for the purposes of adjusting, as necessary, the reuse requirements. The DEP must submit a report to the Legislature by February 15, 2015, containing recommendations for any changes necessary to the reuse and discharge requirements.

B. SECTION DIRECTORY:

Section 1. Amends s. 403.086, F.S., postponing the dates by which domestic wastewater facilities must meet more stringent treatment and management requirements; providing exceptions; revising the definition of the term "functioning reuse system"; changing the term "facility's actual flow on an annual basis" to "baseline flow" revising plan requirements for the elimination of ocean outfalls; providing that certain utilities that shared a common ocean outfall on a specified date are individually responsible for meeting the reuse requirement; authorizing those utilities to enter into binding agreements to share or transfer responsibility for meeting reuse requirements; revising provisions authorizing the backup

discharge of domestic wastewater through ocean outfalls; requiring a holder of a DEP permit authorizing the discharge of domestic wastewater through an ocean outfall to submit certain information; requiring the DEP, the South Florida Water management District, and affected utilities to consider certain information for the purpose of adjusting reuse requirements; requiring the DEP to submit a report to the Legislature.

Section 2. Provides an effective date of July 1, 2012.

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:

See Fiscal Comments

2. Expenditures:

See Fiscal Comments

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Direct Private Sector Costs:

The bill does appear to have a significant positive fiscal impact on local governments by extending the deadline for implementation of upgrading treatment plants and developing alternative disposal options including reuse of reclaimed water. By revising the reuse requirements and extending the deadline for meeting these requirements, the bill also has a positive fiscal impact on facilities that would not treat or manage peak flows. The cost savings would also benefit utility ratepayers.

Private Section Benefits:

According to the DEP, the bill would delay certain treatment upgrades, allow for construction of smaller sized facilities that would not treat or manage peak flows, and provide additional flexibility in meeting reuse requirements. Expected cost savings from these new provisions would be passed on to individuals or businesses served by the utilities through their utility rates.

D. FISCAL COMMENTS:

DEP provided the following fiscal comments on local governments:

Non-recurring Effects:

The bill includes two provisions with fiscal impacts: A two year delay in meeting the 2018 advanced wastewater management and treatment, outfall elimination and reuse requirements, along with a provision that would allow five percent of peak flows from the wastewater treatment facilities to continue to be discharged through the outfalls.

There are significant local government costs for the treatment plant upgrades needed to comply with the advanced wastewater management and treatment requirements. To account for these costs, utilities will have to increase their utility rates. A two-year deferral of these upgrades would allow the affected local governments to take advantage of interest earnings on funds already reserved for the

upgrades and implement more gradual rate increases to reduce customer impact. The risk to the local governments is the potential that increases in the future costs of materials, labor, fuels, etc., from inflation or other factors would exceed the value the accrued savings.

Another potential benefit of the two-year delay is that the economic circumstances of the affected local governments and the overall cost of the bonding may be more favorable as economic conditions improve. Whether the potential for higher bond yields in a better economy, and thus more expensive borrowing, outweighs the overall benefits of an improved economy is another risk.

The allowance for the discharging limited peak flows after 2025 would allow the construction of smaller, less expensive wastewater management facilities:

- Hollywood estimates the cost savings at \$174 million in capital costs for peak flows of 10 percent of annual flows, \$162 million for peak flows of 5 percent, and \$142 million for peak flows of 3 percent.
- Broward County estimates cost savings of \$620 million in capital costs for peak flows of 10 percent of annual flows, \$600 million for peak flows of 5 percent, and \$560 million for peak flows of 3 percent.
- Miami Dade estimates cost savings for their central, north, and south wastewater treatment plans of \$867 million in capital costs for peak flows of 5 percent of annual flows.

The cost curves for the three county utilities shows the majority of the costs savings occur in the 1-3 percent peak flow range with significantly diminishing cost savings above 5 percent of peak flows, lending support for the 5 percent figures used in the bill.

Recurring Effects:

Any reduction in size of wastewater treatment plant upgrades associated with the peak flow allowance would also decrease long-term operation and maintenance costs of the associated wastewater treatment systems. These savings would likely be passed on to utility customers.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.

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A bill to be entitled
 An act relating to domestic wastewater discharged
 through ocean outfalls; amending s. 403.086, F.S.;
 postponing the dates by which domestic wastewater
 facilities must meet more stringent treatment and
 management requirements; providing exceptions;
 revising the definition of the term "functioning reuse
 system"; changing the term "facility's actual flow on
 an annual basis" to "baseline flow"; revising plan
 requirements for the elimination of ocean outfalls;
 providing that certain utilities that shared a common
 ocean outfall on a specified date are individually
 responsible for meeting the reuse requirement;
 authorizing those utilities to enter into binding
 agreements to share or transfer responsibility for
 meeting reuse requirements; revising provisions
 authorizing the backup discharge of domestic
 wastewater through ocean outfalls; requiring a holder
 of a department permit authorizing the discharge of
 domestic wastewater through an ocean outfall to submit
 certain information; requiring the Department of
 Environmental Protection, the South Florida Water
 Management District, and affected utilities to
 consider certain information for the purpose of
 adjusting reuse requirements; requiring the department
 to submit a report to the Legislature; providing an
 effective date.

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

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

33 403.086 Sewage disposal facilities; advanced and secondary
 34 waste treatment.—

35 (9) The Legislature finds that the discharge of domestic
 36 wastewater through ocean outfalls wastes valuable water supplies
 37 that should be reclaimed for beneficial purposes to meet public
 38 and natural systems demands. The Legislature also finds that
 39 discharge of domestic wastewater through ocean outfalls
 40 compromises the coastal environment, quality of life, and local
 41 economies that depend on those resources. The Legislature
 42 declares that more stringent treatment and management
 43 requirements for such domestic wastewater and the subsequent,
 44 timely elimination of ocean outfalls as a primary means of
 45 domestic wastewater discharge are in the public interest.

46 (a) The construction of new ocean outfalls for domestic
 47 wastewater discharge and the expansion of existing ocean
 48 outfalls for this purpose, along with associated pumping and
 49 piping systems, are prohibited. Each domestic wastewater ocean
 50 outfall shall be limited to the discharge capacity specified in
 51 the department permit authorizing the outfall in effect on July
 52 1, 2008, which discharge capacity shall not be increased.
 53 Maintenance of existing, department-authorized domestic
 54 wastewater ocean outfalls and associated pumping and piping
 55 systems is allowed, subject to the requirements of this section.
 56 The department is directed to work with the United States

57 Environmental Protection Agency to ensure that the requirements
 58 of this subsection are implemented consistently for all domestic
 59 wastewater facilities in Florida which discharge through ocean
 60 outfalls.

61 (b) The discharge of domestic wastewater through ocean
 62 outfalls must ~~shall~~ meet advanced wastewater treatment and
 63 management requirements by December 31, 2020 ~~no later than~~
 64 ~~December 31, 2018~~. For purposes of this subsection, the term
 65 "advanced wastewater treatment and management requirements"
 66 means the advanced waste treatment requirements set forth in
 67 subsection (4), a reduction in outfall baseline loadings of
 68 total nitrogen and total phosphorus which is equivalent to that
 69 which would be achieved by the advanced waste treatment
 70 requirements in subsection (4), or a reduction in cumulative
 71 outfall loadings of total nitrogen and total phosphorus
 72 occurring between December 31, 2008, and December 31, 2025,
 73 which is equivalent to that which would be achieved if the
 74 advanced waste treatment requirements in subsection (4) were
 75 fully implemented beginning December 31, 2020 ~~2018~~, and
 76 continued through December 31, 2025. The department shall
 77 establish the average baseline loadings of total nitrogen and
 78 total phosphorus for each outfall using monitoring data
 79 available for calendar years 2003 through 2007 and ~~shall~~
 80 establish required loading reductions based on this baseline.
 81 The baseline loadings and required loading reductions of total
 82 nitrogen and total phosphorus shall be expressed as an average
 83 annual daily loading value. The advanced wastewater treatment
 84 and management requirements of this paragraph are ~~shall be~~

85 deemed ~~to be~~ met for any domestic wastewater facility
 86 discharging through an ocean outfall on July 1, 2008, which has
 87 installed by no later than December 31, 2018, a fully
 88 operational reuse system comprising 100 percent of the
 89 facility's annual average daily flow for reuse activities
 90 authorized by the department.

91 (c)1. Each utility that had a permit for a domestic
 92 wastewater facility that discharged ~~discharges~~ through an ocean
 93 outfall on July 1, 2008, must ~~shall~~ install a functioning reuse
 94 system by no later than December 31, 2025. For purposes of this
 95 subsection, a "functioning reuse system" means an
 96 environmentally, economically, and technically feasible system
 97 that provides a minimum of 60 percent of a the facility's
 98 baseline actual flow or, for utilities operating more than one
 99 facility, 60 percent of the utility's entire wastewater system
 100 flow on an annual basis on December 31, 2025. Reuse may be ~~on an~~
 101 ~~annual basis~~ for irrigation of public access areas, residential
 102 properties, or agricultural crops; aquifer recharge; groundwater
 103 recharge; industrial cooling; or other acceptable reuse purposes
 104 authorized by the department. For purposes of this subsection,
 105 the term "baseline flow" ~~"facility's actual flow on an annual~~
 106 ~~basis"~~ means the annual average flow of domestic wastewater
 107 discharging through the facility's ocean outfall, as determined
 108 by the department, using monitoring data available for calendar
 109 years 2003 through 2007.

110 2. Flows diverted from facilities to other facilities that
 111 provide 100 percent reuse of the diverted flows before ~~prior to~~
 112 December 31, 2025, are ~~shall be~~ considered to contribute to

113 meeting the ~~60 percent~~ reuse requirement. For utilities
 114 operating more than one outfall, the reuse requirement may ~~can~~
 115 be apportioned between the met if the combined actual reuse
 116 ~~flows from~~ facilities served by the outfalls ~~is at least 60~~
 117 ~~percent of the sum of the total actual flows from the~~
 118 ~~facilities, including flows diverted to other facilities for 100~~
 119 percent reuse before ~~prior to~~ December 31, 2025. Utilities that
 120 shared a common ocean outfall for the discharge of domestic
 121 wastewater on July 1, 2008, regardless of which utility operates
 122 the ocean outfall, are individually responsible for meeting the
 123 reuse requirement and may enter into binding agreements to share
 124 or transfer such responsibility among the utilities. If ~~in the~~
 125 ~~event~~ treatment in addition to the advanced wastewater treatment
 126 and management requirements described in paragraph (b) is needed
 127 ~~in order~~ to support a functioning reuse system, the such
 128 treatment must ~~shall~~ be fully operational by ~~no later than~~
 129 December 31, 2025.

130 (d) The discharge of domestic wastewater through ocean
 131 outfalls is prohibited after December 31, 2025, except as a
 132 backup discharge that is part of a functioning reuse system or
 133 other wastewater management system authorized by the department
 134 ~~as provided for in paragraph (c)~~. Except as otherwise provided
 135 in this subsection, a backup discharge may occur only during
 136 periods of reduced demand for reclaimed water in the reuse
 137 system, such as periods of wet weather, or as the result of peak
 138 flows from other wastewater management systems, and must ~~shall~~
 139 comply with the advanced wastewater treatment and management
 140 requirements of paragraph (b). Peak flow backup discharges from

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141 other wastewater management systems may not cumulatively exceed
142 5 percent of a facility's baseline flow, measured as a 5-year
143 rolling average, and are subject to applicable secondary waste
144 treatment and water-quality-based effluent limitations specified
145 in department rules. When in compliance with the effluent
146 limitations, the peak flow backup discharges shall be deemed to
147 meet the advanced wastewater treatment and management
148 requirements of this subsection.

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

153 1. A detailed plan to meet the requirements of this
154 subsection, including the identification of the technical,
155 environmental, and economic feasibility of various reuse
156 options; the ~~an~~ identification of all land acquisition and
157 facilities necessary to provide for reuse of the domestic
158 wastewater; an analysis of the costs to meet the requirements,
159 including the level of treatment necessary to satisfy state
160 water quality requirements and local water quality
161 considerations and a cost comparison of reuse using flows from
162 ocean outfalls and flows from other domestic wastewater sources;
163 and a financing plan for meeting the requirements, including
164 identifying any actions necessary to implement the financing
165 plan, such as bond issuance or other borrowing, assessments,
166 rate increases, fees, other charges, or other financing
167 mechanisms. The plan must evaluate reuse demand in the context
168 of future regional water supply demands, the availability of

169 traditional water supplies, the need for development of
 170 alternative water supplies, the degree to which various reuse
 171 options offset potable water supplies, and other factors
 172 considered in the South Florida Water Management District's
 173 Lower East Coast Regional Water Supply Plan. The plan ~~must~~ ~~shall~~
 174 include a detailed schedule for the completion of all necessary
 175 actions and ~~shall~~ be accompanied by supporting data and other
 176 documentation. The plan must ~~shall~~ be submitted by October 1,
 177 2014 ~~no later than July 1, 2013.~~

178 2. By July 1, 2018 ~~No later than July 1, 2016,~~ an update
 179 of the plan required in subparagraph 1. documenting any
 180 refinements or changes in the costs, actions, or financing
 181 necessary to eliminate the ocean outfall discharge in accordance
 182 with this subsection or a written statement that the plan is
 183 current and accurate.

184 (f) By December 31, 2009, and by December 31 every 5 years
 185 thereafter, the holder of a department permit authorizing the
 186 discharge of domestic wastewater through an ocean outfall shall
 187 submit to the secretary of the department a report summarizing
 188 the actions accomplished to date and the actions remaining and
 189 proposed to meet the requirements of this subsection, including
 190 progress toward meeting the specific deadlines set forth in
 191 paragraphs (b) through (e). The report shall include the
 192 detailed schedule for and status of the evaluation of reuse and
 193 disposal options, preparation of preliminary design reports,
 194 preparation and submittal of permit applications, construction
 195 initiation, construction progress milestones, construction
 196 completion, initiation of operation, and continuing operation

197 and maintenance.

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

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

211 (i) The renewal of each permit that authorizes the
 212 discharge of domestic wastewater through an ocean outfall as of
 213 July 1, 2008, shall be accompanied by an order in accordance
 214 with s. 403.088(2)(e) and (f) which establishes an enforceable
 215 compliance schedule consistent with the requirements of this
 216 subsection.

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

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225 the receiving facility's reuse requirement shall be recalculated
 226 accordingly.

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228 The department, the South Florida Water Management District, and
 229 the affected utilities must consider the information in the
 230 detailed plan under paragraph (e) for the purpose of adjusting,
 231 as necessary, the reuse requirements of this subsection. The
 232 department shall submit a report to the Legislature by February
 233 15, 2015, containing recommendations for any changes necessary
 234 to the requirements of this subsection.

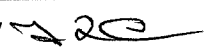
235 Section 2. This act shall take effect July 1, 2012.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 4121 Comprehensive Statewide Water Conservation Program

SPONSOR(S): Pilon

TIED BILLS: None **IDEN./SIM. BILLS:** SB 1426

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Agriculture & Natural Resources Subcommittee	14 Y, 0 N	Cunningham	Blalock
2) State Affairs Committee		Cunningham	Hamby 

SUMMARY ANALYSIS

This bill repeals an obsolete requirement for the Department of Environmental Protection to report by December 1, 2005, on the progress made in developing a statewide water conservation report.

Under current law, the Legislature finds that the social, economic, and cultural conditions of the state relating to the use of public water supply vary by service area and that public water supply utilities must have the flexibility to tailor water conservation measures to best suit their individual circumstances. Current law also provides that the Legislature encourages the use of efficient, effective, and affordable water conservation measures. Where water is provided by a public water supply utility, the legislature intends that a variety of conservation measures be made available and used to encourage efficient water use. To implement these findings, current law directs the Department of Environmental Protection (DEP), in cooperation with the water management districts (WMDs) and other stakeholders, to develop a comprehensive statewide water conservation program for public water supply that:

- Encourages utilities to implement water conservation programs that are economically efficient, effective, affordable, and appropriate;
- Allows no reduction in, and increase where possible, utility-specific water conservation effectiveness over current programs;
- Is goal-based, accountable, measurable, and implemented collaboratively with water suppliers, water users, and water management agencies;
- Includes cost and benefit data on individual water conservation practices;
- Creates a clearinghouse or inventory for water conservation programs and practices available to public water supply utilities which will provide an integrated statewide database for the collection, evaluation, and dissemination of quantitative and qualitative information on public water supply conservation programs and practices and their effectiveness;
- Develops a standardized water conservation planning process for utilities; and
- Develops and maintains a Florida-specific water conservation guidance document containing a menu of affordable and effective water conservation practices to assist public water supply utilities in the design and implementation of goal-based, utility-specific water conservation plans.

The DEP is required to submit a report by December 1, 2005, to the President of the Senate, the Speaker of the House of Representatives, and the appropriate subcommittees of the Senate and the House of Representatives on the progress made in implementing the water conservation program described above. The report must include any statutory changes and funding necessary for the continued development and implementation of the program. The DEP has submitted the required report.

The bill repeals this provision in current law requiring the DEP to submit this report since it is obsolete and no longer effective.

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

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

STORAGE NAME: h4121b.SAC.DOCX

DATE: 1/18/2012

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Under s. 373.227(1), F.S., the Legislature finds that the social, economic, and cultural conditions of the state relating to the use of public water supply vary by service area and that public water supply utilities must have the flexibility to tailor water conservation measures to best suit their individual circumstances. Section 373.227(1), F.S., also provides that water is provided by a public water supply utility, the Legislature intends that a variety of conservation measures be made available and used to encourage efficient water use. To implement these findings, S. 373.227(2), F.S., directs the Department of Environmental Protection (DEP), in cooperation with the water management districts (WMDs) and other stakeholders, to develop a comprehensive statewide water conservation program for public water supply that:

- Encourages utilities to implement water conservation programs that are economically efficient, effective, affordable, and appropriate;
- Allows no reduction in, and increase where possible, utility-specific water conservation effectiveness over current programs;
- Is goal-based, accountable, measurable, and implemented collaboratively with water suppliers, water users, and water management agencies;
- Includes cost and benefit data on individual water conservation practices;
- Creates a clearinghouse or inventory for water conservation programs and practices available to public water supply utilities which will provide an integrated statewide database for the collection, evaluation, and dissemination of quantitative and qualitative information on public water supply conservation programs and practices and their effectiveness;
- Develops a standardized water conservation planning process for utilities; and
- Develop and maintain a Florida-specific water conservation guidance document containing a menu of affordable and effective water conservation practices to assist public water supply utilities in the design and implementation of goal-based, utility-specific water conservation plans.

Section 373.227(5), F.S., directs the DEP to submit a report by December 1, 2005, to the President of the Senate, the Speaker of the House of Representatives, and the appropriate subcommittees of the Senate and the House of Representatives on the progress made in implementing the water conservation program described above. The report must include any statutory changes and funding necessary for the continued development and implementation of the program. The DEP has submitted the required report.

Effect of Proposed Changes

This bill repeals s. 373.227(5), F.S., requiring the DEP to submit the report described above since it is obsolete and no longer effective.

B. SECTION DIRECTORY:

Section 1. Repeals the requirement that the DEP submit a report by December 1, 2005, to the President of the Senate, the Speaker of the House of Representatives, and the appropriate subcommittees of the Senate and the House of Representatives on the progress made in implementing the water conservation program.

Section 2. Provides an effective date of July 1, 2012.

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 an 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 a 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

None.

HB 4121

2012

1 A bill to be entitled
 2 An act relating to the comprehensive statewide water
 3 conservation program; amending s. 373.227, F.S.;
 4 repealing an obsolete provision requiring the
 5 Department of Environmental Protection to submit a
 6 specified report to the President of the Senate, the
 7 Speaker of the House of Representatives, and the
 8 appropriate substantive committees of the Legislature;
 9 providing an effective date.

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

12
 13 Section 1. Subsection (6) of section 373.227, Florida
 14 Statutes, is renumbered as subsection (5), and present
 15 subsection (5) of that section is amended to read:

16 373.227 Water conservation; legislative findings;
 17 legislative intent; objectives; comprehensive statewide water
 18 conservation program requirements.-

19 ~~(5) By December 1, 2005, the department shall submit a~~
 20 ~~written report to the President of the Senate, the Speaker of~~
 21 ~~the House of Representatives, and the appropriate substantive~~
 22 ~~committees of the Senate and the House of Representatives on the~~
 23 ~~progress made in implementing the comprehensive statewide water~~
 24 ~~conservation program for public water supply required by this~~
 25 ~~section. The report must include any statutory changes and~~
 26 ~~funding requests necessary for the continued development and~~
 27 ~~implementation of the program.~~

28 Section 2. This act shall take effect July 1, 2012.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 4123 Federal Environmental Permitting

SPONSOR(S): Burgin

TIED BILLS: None **IDEN./SIM. BILLS:** SB 994

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Agriculture & Natural Resources Subcommittee	14 Y, 0 N	Cunningham	Blalock
2) State Affairs Committee		Cunningham <i>lc</i>	Hamby <i>ARQ</i>

SUMMARY ANALYSIS

The bill repeals an obsolete reporting requirement related to the development of a mechanism or plan to consolidate federal and state wetland permitting programs.

The dredging and filling of wetlands is regulated under both Florida and federal law. Florida law requires a person seeking to dredge or fill wetlands to obtain an Environmental Resource Permit (ERP) from the Department of Environmental Protection (DEP), and the federal Clean Water Act (Act) requires the same person to obtain a 404 permit from the U.S. Army Corps of Engineers (USCOE) if the wetlands in question fall within the jurisdiction of the Act. To reduce duplication of regulation and streamline the permitting process, the state has worked with the federal government to develop a state programmatic general permit (SPGP) for certain activities impacting wetlands. The SPGP process allows the DEP to issue a single permit and eliminates individual review by the USCOE. The SPGP is limited to similar classes of projects that have minimal individual and cumulative impacts. Due to the class limitations, the complexity and physical size of the projects are limited as well. Wetland impacts allowed in a SPGP usually range from 5,000 square feet to one acre. Activities covered by the current SPGP include, but are not limited to: construction of shoreline stabilization activities; boat ramps and boat launch areas and structures associated with such ramps or launch areas; docks, piers, marinas and associated facilities; and maintenance dredging of canals and channels.

To further reduce duplication of regulation and streamline the permitting process for certain activities impacting wetlands, the DEP was directed to develop, on or before October 1, 2005, a mechanism or plan to consolidate, to the maximum extent practicable, the federal and state wetland permitting programs. The law required that the mechanism or plan analyze and propose the development of an expanded state programmatic general permit program. The DEP was also directed to file with the Speaker of the House of Representatives and the President of the Senate a report proposing any required federal and state statutory changes that would be necessary to accomplish the directives stated above and to coordinate with the Florida Congressional Delegation on any necessary changes to federal law to implement the directives. The DEP has fulfilled these requirements.

The bill repeals the provision in the law requiring the DEP to file the report described above and to coordinate with the Florida Congressional Delegation on any necessary changes to federal law.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Regulation of Florida's wetlands includes permitting by both the state and federal government. The federal wetland regulatory program is administered under two federal laws. The first is Section 10 of the Rivers and Harbors Act of 1899 (Act). This Act prohibits the construction of any bridge, dam, dike, or causeway over or in navigable waterways of the U.S. without Congressional approval. The second law is the Clean Water Act (CWA). In 1972, Congress substantially amended the federal Water Pollution Control Act and initiated the CWA. Section 404 of the CWA is the foundation for federal regulation of certain activities that occur in or near the nation's wetlands and surface waters. The regulatory plan is intended to control the dredging and filling of wetlands and other water bodies throughout the United States.

Under section 404 of the CWA and section 10 of the Rivers and Harbors Act, the U.S. Army Corps of Engineers (COE) and the U.S. Environmental Protection Agency (EPA) share responsibility for implementing a permitting program for dredging and filling wetland areas. The COE administers the permitting provisions of both federal laws, with EPA oversight, in effect combining Clean Water Act and Rivers and Harbor Act permits into a single action. The COE issues two types of permits: general and individual. An individual permit is required for potentially significant impacts. It is reviewed by the COE, which evaluates applications under a public interest review, as well as the environmental criteria set forth in the CWA Section 404(b)(1) Guidelines. Under the general permit, there are three types of classification: nationwide, regional, and state. The use of a nationwide permit is limited and generally addresses storm drain lines, utility lines, bank stabilization, and maintenance activities. A regional permit will state what fill actions are allowed, what mitigation is necessary, how to get an individual project authorized, and how long it will take. National and regional permits are issued by the COE in Florida, although the COE could authorize Florida to issue regional permits on its behalf.

The dredging and filling of wetlands is regulated under both Florida and federal law. Florida law requires a person seeking to dredge or fill wetlands to obtain an Environmental Resource Permit (ERP) from the Department of Environmental Protection (DEP), and the federal Clean Water Act (Act) requires the same person to obtain a 404 permit from the U.S. Army Corps of Engineers (USCOE) if the wetlands in question fall within the jurisdiction of the Act. To reduce duplication of regulation and streamline the permitting process, the state has worked with the federal government to develop a state programmatic general permit (SPGP) for certain activities impacting wetlands. The SPGP process allows the DEP to issue a single permit and eliminates individual review by the USCOE. The SPGP is limited to similar classes of projects that have minimal individual and cumulative impacts. Due to the class limitations, the complexity and physical size of the projects are limited as well. Wetland impacts allowed in a SPGP usually range from 5,000 square feet to one acre. Activities covered by the current SPGP include, but are not limited to: construction of shoreline stabilization activities; boat ramps and boat launch areas and structures associated with such ramps or launch areas; docks, piers, marinas and associated facilities; and maintenance dredging of canals and channels.

To further reduce duplication of regulation and streamline the permitting process for certain activities impacting wetlands, the DEP was directed to develop, on or before October 1, 2005, a mechanism or plan to consolidate, to the maximum extent practicable, the federal and state wetland permitting programs. The law required that the mechanism or plan analyze and propose the development of an expanded state programmatic general permit program. The DEP was also directed to file with the Speaker of the House of Representatives and the President of the Senate a report proposing any required federal and state statutory changes that would be necessary to accomplish the directives stated above and to coordinate with the Florida Congressional Delegation on any necessary changes to federal law to implement the directives. The DEP has fulfilled these requirements.

Effect of Proposed Changes

This bill repeals s. 373.4144(2), F.S., requiring the DEP to file with the Speaker of the House of Representatives and the President of the Senate a report proposing any required federal and state statutory changes that would be necessary to accomplish the directives stated above and to coordinate with the Florida Congressional Delegation on any necessary changes to federal law to implement the directives.

B. SECTION DIRECTORY:

Section 1. Repeals s. 373.4144(2), F.S., directing the DEP to file a report with the Speaker of the House of Representatives and the President of the Senate proposing any required federal and state statutory changes that would be necessary to accomplish consolidation state and federal wetland permitting programs, and to coordinate with the Florida congressional Delegation on any necessary changes to federal law.

Section 2. Provides an effective date of July 1, 2012.

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 an 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 a 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

None.

HB 4123

2012

1 A bill to be entitled
 2 An act relating to federal environmental permitting;
 3 amending s. 373.4144, F.S.; repealing provisions
 4 directing the Department of Environmental Protection
 5 to file specified reports with the Speaker of the
 6 House of Representatives and the President of the
 7 Senate and to coordinate with the Florida
 8 Congressional Delegation on certain matters; providing
 9 an effective date.

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

12
 13 Section 1. Section 373.4144, Florida Statutes, is amended
 14 to read:

15 373.4144 Federal environmental permitting.—

16 (1) The department is directed to develop, on or before
 17 October 1, 2005, a mechanism or plan to consolidate, to the
 18 maximum extent practicable, the federal and state wetland
 19 permitting programs. It is the intent of the Legislature that
 20 all dredge and fill activities impacting 10 acres or less of
 21 wetlands or waters, including navigable waters, be processed by
 22 the state as part of the environmental resource permitting
 23 program implemented by the department and the water management
 24 districts. The resulting mechanism or plan shall analyze and
 25 propose the development of an expanded state programmatic
 26 general permit program in conjunction with the United States
 27 Army Corps of Engineers pursuant to s. 404 of the Clean Water
 28 Act, Pub. L. No. 92-500, as amended, 33 U.S.C. ss. 1251 et seq.,

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29 and s. 10 of the Rivers and Harbors Act of 1899. Alternatively,
 30 or in combination with an expanded state programmatic general
 31 permit, the mechanism or plan may propose the creation of a
 32 series of regional general permits issued by the United States
 33 Army Corps of Engineers pursuant to the referenced statutes. All
 34 of the regional general permits must be administered by the
 35 department or the water management districts or their designees.

36 ~~(2) The department is directed to file with the Speaker of~~
 37 ~~the House of Representatives and the President of the Senate a~~
 38 ~~report proposing any required federal and state statutory~~
 39 ~~changes that would be necessary to accomplish the directives~~
 40 ~~listed in this section and to coordinate with the Florida~~
 41 ~~Congressional Delegation on any necessary changes to federal law~~
 42 ~~to implement the directives.~~

43 (2)(3) ~~Nothing in~~ This section does not ~~shall be construed~~
 44 ~~to~~ preclude the department from pursuing complete assumption of
 45 federal permitting programs regulating the discharge of dredged
 46 or fill material pursuant to s. 404 of the Clean Water Act, Pub.
 47 L. No. 92-500, as amended, 33 U.S.C. ss. 1251 et seq., and s. 10
 48 of the Rivers and Harbors Act of 1899, so long as the assumption
 49 encompasses all dredge and fill activities in, on, or over
 50 jurisdictional wetlands or waters, including navigable waters,
 51 within the state.

52 Section 2. This act shall take effect July 1, 2012.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 4137 Basins
SPONSOR(S): Pilon
TIED BILLS: None **IDEN./SIM. BILLS:** None

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Agriculture & Natural Resources Subcommittee	13 Y, 0 N	Deslatte	Blalock
2) State Affairs Committee		Deslatte JD	Hamby JAO

SUMMARY ANALYSIS

The Department of Environmental Protection (DEP) manages the quality and quantity of water in Florida through its relationship with the state's water management districts (WMDs), which are tasked with the preservation and management of Florida's water resources. The WMDs include the Northwest Florida Water Management District, Suwannee River Water Management District, St. Johns River Water Management District, South Florida Water Management District, and the Southwest Florida Water Management District¹.

Any areas within a WMD may be designated by the WMD governing board as subdistricts or basins by resolution, with the exception of basins within the St. Johns River Water Management District (SJRWMD), which are approved by the Legislature. Each basin has a board composed of not less than three members, but must include one representative from each of the counties included in the basin. Members serve for a period of 3 years or until a successor is appointed, but usually not more than 180 days after the end of the term. Each basin board chooses a vice chair and a secretary to serve for a period of 1 year. The basin board chair is typically a member of the WMD governing board of the district residing in the basin. If no member resides in the basin, a member of the governing board is designated as chair by the chair of the WMD board. Members of basin boards are appointed by the Governor and subject to confirmation by the Senate. Refusal or failure of the Senate to confirm an appointment creates a vacancy in the office.

Current law provides that at 11:59 p.m. on December 31, 1976, the Manasota Watershed Basin, is to be formed into a subdistrict or basin of the Southwest Florida Water Management District (SWFWMD), and states that two members from Manatee County and two members from Sarasota County shall serve on the Board. The statute also provides that at 11:59 p.m. on June 30, 1988, the Oklawaha River Basin and Greater St. Johns River Basin will cease to be a subdistrict or basin in the St. Johns River WMD.

The bill repeals these provisions in current law, which includes repealing the Manasota Basin and board.

This bill does not appear to have a fiscal impact on state government. The bill appears to have a potentially positive fiscal impact on the SWFWMD due to not having to operate the basin boards; however, the SWFWMD currently has not appointed any members to the board.

¹ The Water Resources Act of 1972 (Chapter 373, Florida Statutes) mandated that five WMDs be created to manage the water resources of the state. After a process which took several years, the WMDs' boundaries were drawn based on natural, hydrologic basins rather than political or county limits to allow for effective and efficient planning and management. These boundaries are generally as they exist today.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

STORAGE NAME: h4137b.SAC.DOCX

DATE: 1/18/2012

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

The DEP manages the quality and quantity of water in Florida through its relationship with the state's WMDs, which are tasked with the preservation and management of Florida's water resources. The WMDs include the Northwest Florida Water Management District, Suwannee River Water Management District, St. Johns River Water Management District, South Florida Water Management District and the Southwest Florida Water Management District.

Chapter 373, F.S., charges the WMDs with managing regional water supplies, water quality, flood protection, and the protection of natural systems. The Legislature has directed the WMDs to engage in plan development and implementation, regulation, land acquisition, financial and technical assistance, water resource restoration, water resource development, and other activities to achieve the statutory water management objectives. By statute, each WMD is overseen by a governing board appointed by the Governor and confirmed by the Senate.

Basin Boards

Florida has 52 large watersheds. In order to make environmental management easier, more effective and more uniform across programs, the DEP has grouped these watersheds into 29 groups of basins.

Section 373.0693, F.S., provides that any areas within a WMD may be designated by the WMD governing board as subdistricts or basins by resolution, with the exception of basins within the SJRWMD, which are approved by the Legislature. Each basin has a board composed of not less than three members, but must include one representative from each of the counties included in the basin. Members serve for a period of 3 years or until a successor is appointed, but usually not more than 180 days after the end of the term. Each basin board chooses a vice chair and a secretary to serve for a period of 1 year. The basin board chair is typically a member of the WMD governing board of the district residing in the basin. If no member resides in the basin, a member of the governing board is designated as chair by the chair of the WMD board. Members of basin boards are appointed by the Governor and subject to confirmation by the Senate. Refusal or failure of the Senate to confirm an appointment creates a vacancy in the office.

Statutory duties of basin boards, pursuant to section 373.0695, F.S., include:

- The preparation of engineering plans for development of the water resources of the basin and the conduct of public hearings on such plans.
- The development and preparation of an overall basin plan of secondary water control facilities for the guidance of subdrainage districts and private land owners in the development of their respective systems of water control, which will be connected to the primary works of the basin to complement the engineering plan of primary works for the basin.
- The preparation of the annual budget for the basin and the submission of such budget to the WMD governing board for inclusion in the WMD budget.
- The consideration and prior approval of final construction plans of the WMD for works to be constructed in the basin.
- The administration of the affairs of the basin.
- Planning for and, upon request by a county, municipality, private utility, or regional water supply authority, providing water supply and transmission facilities for the purpose of assisting such counties, municipalities, private utilities, or regional water supply authorities within or serving the basin.

Section 373.0693(7), F.S., provides that at 11:59 p.m. on December 31, 1976, the Manasota Watershed Basin of the Ridge and Lower Gulf Coast WMD, which is annexed to the SWFWMD by

change of its boundaries pursuant to chapter 76-243, Laws of Florida, must be formed into a subdistrict or basin of the SWFWMD, subject to the same provisions as the other basins in the WMD. This subdistrict is designated as the Manasota Basin. Beginning on July 1, 2001, the basin board must be comprised of two members from Manatee County and two members from Sarasota County.

Section 373.0693(8)(a), F.S., provides that at 11:59 p.m. on June 30, 1988, the Oklawaha River Basin will cease to be a subdistrict or basin in the St. Johns River WMD. However, this area will continue to be part of the SJRWMD.

Section 373.0693(8)(b), F.S., provides that the area of the St. Johns River Water Management District known as the Greater St. Johns River Basin and the Greater St. Johns River Basin will cease to be a subdistrict or basin of the SJRWMD known as the and this basin will cease to exist. However, this area will continue to be part of the SJRWMD.

Section 373.0693(8)(c), F.S., provides that as of 11:59 p.m. on June 30, 1988, assets and liabilities of the former Oklawaha River and Greater St. Johns River Basins will be assets and liabilities of the SJRWMD. Any contracts, plans, orders, or agreements will continue to be in effect, but may be modified or repealed by the SJRWMD in accordance with law.

Effect of Proposed Changes

The bill repeals subsections (7) and (8) of s. 373.0693, F.S., detailed above, which includes repealing the Manasota Basin and board.

B. SECTION DIRECTORY:

Section 1. Amends s. 373.0693, F.S., repealing provisions relating to the formation and designation of the Manasota Basin; repealing provisions relating to the termination of the Oklawaha River Basin and the Greater St. Johns River Basin.

Section 2. Provides an effective date of July 1, 2012.

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:

The bill has a potentially positive fiscal impact on the SWFWMD due to not having to operate the two basin boards; however, the SWFWMD currently has not appointed any members to the board.

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

None.

HB 4137

2012

1 A bill to be entitled
 2 An act relating to basins; amending s. 373.0693, F.S.;
 3 repealing provisions relating to the formation and
 4 designation of the Manasota Basin; repealing
 5 provisions relating to the termination of the Oklawaha
 6 River Basin and the Greater St. Johns River Basin;
 7 providing an effective date.

8

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

10

11 Section 1. Subsections (9) and (10) of section 373.0693,
 12 Florida Statutes, are renumbered as subsections (7) and (8),
 13 respectively, and present subsections (7) and (8) of that
 14 section are amended to read:

15

373.0693 Basins; basin boards.-

16

~~(7) At 11:59 p.m. on December 31, 1976, the Manasota~~

17

~~Watershed Basin of the Ridge and Lower Gulf Coast Water~~

18

~~Management District, which is annexed to the Southwest Florida~~

19

~~Water Management District by change of its boundaries pursuant~~

20

~~to chapter 76-243, Laws of Florida, shall be formed into a~~

21

~~subdistrict or basin of the Southwest Florida Water Management~~

22

~~District, subject to the same provisions as the other basins in~~

23

~~such district. Such subdistrict shall be designated initially as~~

24

~~the Manasota Basin. The members of the governing board of the~~

25

~~Manasota Watershed Basin of the Ridge and Lower Gulf Coast Water~~

26

~~Management District shall become members of the governing board~~

27

~~of the Manasota Basin of the Southwest Florida Water Management~~

28

~~District. Notwithstanding other provisions in this section,~~

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2012

29 ~~beginning on July 1, 2001, the membership of the Manasota Basin~~
 30 ~~Board shall be comprised of two members from Manatee County and~~
 31 ~~two members from Sarasota County. Matters relating to tie votes~~
 32 ~~shall be resolved pursuant to subsection (6) by the chair~~
 33 ~~designated by the governing board to vote in case of a tie vote.~~

34 ~~(8)(a) At 11:59 p.m. on June 30, 1988, the area~~
 35 ~~transferred from the Southwest Florida Water Management District~~
 36 ~~to the St. Johns River Water Management District by change of~~
 37 ~~boundaries pursuant to chapter 76-243, Laws of Florida, shall~~
 38 ~~cease to be a subdistrict or basin of the St. Johns River Water~~
 39 ~~Management District known as the Oklawaha River Basin and said~~
 40 ~~Oklawaha River Basin shall cease to exist. However, any~~
 41 ~~recognition of an Oklawaha River Basin or an Oklawaha River~~
 42 ~~Hydrologic Basin for regulatory purposes shall be unaffected.~~
 43 ~~The area formerly known as the Oklawaha River Basin shall~~
 44 ~~continue to be part of the St. Johns River Water Management~~
 45 ~~District.~~

46 ~~(b) Also, the entire area of the St. Johns River Water~~
 47 ~~Management District, less those areas formerly in the Oklawaha~~
 48 ~~Basin, shall cease to be a subdistrict or basin of the St. Johns~~
 49 ~~River Water Management District known as the Greater St. Johns~~
 50 ~~River Basin and said Greater St. Johns River Basin shall cease~~
 51 ~~to exist. The area formerly known as the Greater St. Johns River~~
 52 ~~Basin shall continue to be part of the St. Johns River Water~~
 53 ~~Management District.~~

54 ~~(c) As of 11:59 p.m. on June 30, 1988, assets and~~
 55 ~~liabilities of the former Oklawaha River and Greater St. Johns~~
 56 ~~River Basins shall be assets and liabilities of the St. Johns~~

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2012

57 ~~River Water Management District. Any contracts, plans, orders,~~
 58 ~~or agreements of such basins shall continue to be in effect, but~~
 59 ~~may be modified or repealed by the St. Johns River Water~~
 60 ~~Management District in accordance with law. For all purposes for~~
 61 ~~assessing and levying the millage rate authorized under s.~~
 62 ~~373.503, subsequent to December 31, 1987, including the purposes~~
 63 ~~of certifying the millage rate for fiscal year 1988-1989,~~
 64 ~~pursuant to chapter 200, said millage rate shall be levied~~
 65 ~~retroactive to January 1, 1988.~~

66 Section 2. This act shall take effect July 1, 2012.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 4171 Bonfires
SPONSOR(S): Ray
TIED BILLS: None IDEN./SIM. BILLS: None

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Agriculture & Natural Resources Subcommittee	13 Y, 0 N	Cunningham	Blalock
2) State Affairs Committee		Cunningham	Hamby <i>42e</i>

SUMMARY ANALYSIS

Current law provides that anyone concerned in causing or making a bonfire within 10 rods¹ of any house or building shall be guilty of a misdemeanor of the second degree punishable by a term of imprisonment not to exceed 60 days imprisonment or a fine not to exceed \$500.

Presently, bonfires are typically regulated by local ordinances. The statute is antiquated and not necessary.

The bill repeals this section.

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

¹ A rod is a unit of land measurement. One rod is equal to 16.5 feet.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Current law provides that anyone concerned in causing or making a bonfire within 10 rods of any house or building shall be guilty of a misdemeanor of the second degree punishable by a term of imprisonment not to exceed 60 days imprisonment or a fine not to exceed \$500.²

Presently, bonfires are regulated by local ordinances. The statute is antiquated and not necessary.

Effect of Proposed Changes

The bill repeals s. 823.02, F.S.

B. SECTION DIRECTORY:

Section 1: Repeals s. 823.02, F.S.

Section 2: Provides an effective date of July 1, 2012.

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.

² S. 775.082 and s. 775.083, F.S.
STORAGE NAME: h4171b.SAC.DOCX
DATE: 1/17/2012

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

None.

HB4171

2012

1 A bill to be entitled
2 An act relating to bonfires; repealing s. 823.02,
3 F.S., relating to a prohibition on building bonfires
4 within 10 rods of any house or building; providing an
5 effective date.

6
7 Be It Enacted by the Legislature of the State of Florida:

8
9 Section 1. Section 823.02, Florida Statutes, is repealed.

10 Section 2. This act shall take effect July 1, 2012.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 7033 PCB GVOPS 12-06 OGSR/Personal Injury Protection and Property Damage Liability Insurance Policies
SPONSOR(S): Government Operations Subcommittee, Broxson
TIED BILLS: IDEN./SIM. BILLS: SB 1232

Table with 4 columns: REFERENCE, ACTION, ANALYST, STAFF DIRECTOR or BUDGET/POLICY CHIEF. Row 1: Orig. Comm.: Government Operations Subcommittee, 14 Y, 0 N, Thompson, Williamson. Row 2: 1) State Affairs Committee, Thompson, Hamby, [Signature]

SUMMARY ANALYSIS

The Open Government Sunset Review Act requires the Legislature to review each public record and each public meeting exemption five years after enactment. If the Legislature does not reenact the exemption, it automatically repeals on October 2nd of the fifth year after enactment.

Current law provides that personal identifying information of an insured or former insured and an insurance policy number, regarding personal injury protection and property damage liability insurance policies, held by the Department of Highway Safety and Motor Vehicles (DHSMV) is confidential and exempt from public records requirements. Upon receipt of a written request and a copy of a crash report, DHSMV must release the policy number for a policy covering a vehicle involved in a motor vehicle accident to any person involved in the accident, the attorney of any person involved in the accident, or a representative of the insurer of any person involved in the accident. The law provides for retroactive application of the public record exemption.

The bill reenacts the public record exemption, which will repeal on October 2, 2012, if this bill does not become law.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Open Government Sunset Review Act

The Open Government Sunset Review Act¹ sets forth a legislative review process for newly created or substantially amended public record or public meeting exemptions. It requires an automatic repeal of the exemption on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.

The Act provides that a public record or public meeting exemption may be created or maintained only if it serves an identifiable public purpose. In addition, it may be no broader than is necessary to meet one of the following purposes:

- Allows the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption.
- Protects sensitive personal information that, if released, would be defamatory or would jeopardize an individual's safety; however, only the identity of an individual may be exempted under this provision.
- Protects trade or business secrets.

If, and only if, in reenacting an exemption that will repeal, the exemption is expanded (essentially creating a new exemption), then a public necessity statement and a two-thirds vote for passage are required.² If the exemption is reenacted with grammatical or stylistic changes that do not expand the exemption, if the exemption is narrowed, or if an exception to the exemption is created³ then a public necessity statement and a two-thirds vote for passage are not required.

No-Fault Motor Vehicle Insurance

Under a no-fault insurance system, medical and other benefits are provided without regard to fault in return for limitations on lawsuits for non-economic damages.

In Special Session C of 2007, the Legislature passed CS/HB 13C, which revived and reenacted the Florida Motor Vehicle No-Fault Law (No-Fault Law), effective January 1, 2008.⁴ The No-Fault Law requires every owner and registrant of a motor vehicle that is required to be licensed and registered in this state to maintain \$10,000 worth of first-party insurance known as personal injury protection,⁵ and \$10,000 worth of property damage liability coverage.⁶

Insurers must notify the named insured, in writing, that a cancellation or nonrenewal of the required policies will be reported to the Department of Highway Safety and Motor Vehicles (DHSMV), and that failure to maintain such coverage will result in the loss of registration and driving privileges in this state. Also, the notification must include the amount of the reinstatement fees. The insurer, however, is not civilly liable for failing to provide notice.⁷

To ensure compliance with the No-Fault Law, every insurer issuing either of the required policies must report information regarding renewal, cancellation, or nonrenewal to DHSMV within 45 days of the

¹ Section 119.15, F.S.

² Section 24(c), Art. I of the State Constitution.

³ An example of an exception to a public record exemption would be allowing another agency access to confidential or exempt records.

⁴ Chapter 2007-324, L.O.F.; codified as ss. 627.730 - 627.7405, F.S.

⁵ See ss. 627.733 and 627.736, F.S.

⁶ Section 324.022, F.S.

⁷ See s. 324.0221(1)(b), F.S.

effective date or within 30 days of the issuance of a new policy. The failure of an insurer to file the proper reports to DHSMV constitutes a violation of the Florida Insurance Code.⁸ DHSMV only uses the information for enforcement and regulatory purposes.

Public Record Exemption under Review

Current law provides that personal identifying information of an insured or former insured and an insurance policy number, regarding personal injury protection and property damage liability insurance policies, held by DHSMV is confidential and exempt⁹ from public records requirements. Upon receipt of a written request and a copy of a crash report,¹⁰ DHSMV must release the policy number for a policy covering a vehicle involved in a motor vehicle accident to:

- Any person involved in the accident;
- The attorney of any person involved in the accident; or
- A representative of the insurer of any person involved in the accident.¹¹

The law provides for retroactive application of the public record exemption.¹²

Pursuant to the Open Government Sunset Review Act, the exemption will repeal on October 2, 2012, unless reenacted by the Legislature.¹³

Effect of Bill

The bill removes the repeal date, thereby reenacting the public record exemption for personal identifying information of an insured or former insured and an insurance policy number held by DHSMV. It also codifies in law the original effective date of the exemption for purposes of determining when retroactive application took effect.

B. SECTION DIRECTORY:

Section 1 amends s. 324.242, F.S., to reenact the public record exemption for the Florida Motor Vehicle No-Fault Law.

Section 2 provides an effective date of October 1, 2012.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

⁸ See s. 324.0221(1)(a), F.S.

⁹ There is a difference between records the Legislature designates as exempt from public record requirements and those the Legislature deems confidential and exempt. A record classified as exempt from public disclosure may be disclosed under certain circumstances. (See *WFTV, Inc. v. The School Board of Seminole*, 874 So.2d 48, 53 (Fla. 5th DCA 2004), review denied 892 So.2d 1015 (Fla. 2004); *City of Riviera Beach v. Barfield*, 642 So.2d 1135 (Fla. 4th DCA 1994); *Williams v. City of Minneola*, 575 So.2d 687 (Fla. 5th DCA 1991) If the Legislature designates a record as confidential and exempt from public disclosure, such record may not be released, by the custodian of public records, to anyone other than the persons or entities specifically designated in the statutory exemption. (See Attorney General Opinion 85-62, August 1, 1985).

¹⁰ Sections 316.065, 316.066, and 316.068, F.S., provide crash report requirements.

¹¹ Section 324.242(2), F.S.

¹² Section 324.242(3), F.S.

¹³ Section 324.242(4), F.S.

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:

The bill does not appear to create a need for rulemaking or rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.

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A bill to be entitled
An act relating to a review under the Open Government
Sunset Review Act; amending s. 324.242, F.S., relating
to an exemption from public records requirements for
personal identifying information and policy numbers
regarding personal injury protection and property
damage liability insurance policies; clarifying
applicability of the exemption; removing the scheduled
repeal of the exemption; providing an effective date.

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

Section 1. Section 324.242, Florida Statutes, is amended
to read:

324.242 Personal injury protection and property damage
liability insurance policies; public records exemption.-

(1) The following information regarding personal injury
protection and property damage liability insurance policies held
by the department is confidential and exempt from s. 119.07(1)
and s. 24(a), Art. I of the State Constitution:

(a) Personal identifying information of an insured or
former insured; and

(b) An insurance policy number.

(2) Upon receipt of a written request and a copy of a
crash report as required under s. 316.065, s. 316.066, or s.
316.068, the department shall release the policy number for a
policy covering a vehicle involved in a motor vehicle accident
to:

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- 29 (a) Any person involved in such accident;
 30 (b) The attorney of any person involved in such accident;
 31 or
 32 (c) A representative of the insurer of any person involved
 33 in such accident.

34 (3) This exemption applies to personal identifying
 35 information of an insured or former insured and insurance policy
 36 numbers held by the department before, on, or after October 11,
 37 2007 ~~the effective date of this section.~~

38 ~~(4) This section is subject to the Open Government Sunset~~
 39 ~~Review Act in accordance with s. 119.15 and shall stand repealed~~
 40 ~~on October 2, 2012, unless reviewed and saved from repeal~~
 41 ~~through reenactment by the Legislature.~~

42 Section 2. This act shall take effect October 1, 2012.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 7035 PCB GVOPS 12-07 OGSR/Physician Workforce Surveys
SPONSOR(S): Government Operations Subcommittee, Roberson
TIED BILLS: IDEN./SIM. BILLS: SB 830

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Government Operations Subcommittee	14 Y, 0 N	Thompson	Williamson
1) State Affairs Committee		Thompson	Hamby <i>JKB</i> <i>FXO</i>

SUMMARY ANALYSIS

The Open Government Sunset Review Act requires the Legislature to review each public record and each public meeting exemption five years after enactment. If the Legislature does not reenact the exemption, it automatically repeals on October 2nd of the fifth year after enactment.

Currently, personal identifying information contained in records provided by Florida-licensed medical physicians and osteopathic physicians in response to the Department of Health's (DOH) physician workforce survey is confidential and exempt from public records requirements. DOH must disclose the confidential and exempt information under specific circumstances.

The bill reenacts the public record exemptions, which will repeal on October 2, 2012, if this bill does not become law.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Open Government Sunset Review Act

The Open Government Sunset Review Act¹ sets forth a legislative review process for newly created or substantially amended public record or public meeting exemptions. It requires an automatic repeal of the exemption on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.

The Act provides that a public record or public meeting exemption may be created or maintained only if it serves an identifiable public purpose. In addition, it may be no broader than is necessary to meet one of the following purposes:

- Allows the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption.
- Protects sensitive personal information that, if released, would be defamatory or would jeopardize an individual's safety; however, only the identity of an individual may be exempted under this provision.
- Protects trade or business secrets.

If, and only if, in reenacting an exemption that will repeal, the exemption is expanded (essentially creating a new exemption), then a public necessity statement and a two-thirds vote for passage are required.² If the exemption is reenacted with grammatical or stylistic changes that do not expand the exemption, if the exemption is narrowed, or if an exception to the exemption is created³ then a public necessity statement and a two-thirds vote for passage are not required.

Physician Workforce Surveys

Current law requires the Department of Health (DOH) to serve as the coordinating and strategic planning body to actively assess Florida's current and future physician workforce needs. DOH is directed to maximize the use of its existing programs and coordinate with other governmental and nongovernment stakeholders to develop a state physician workforce strategic plan.⁴ In support of this plan, DOH collects pertinent information by means of a physician workforce survey.

All Florida-licensed medical and osteopathic physicians are required to complete a physician workforce survey⁵ in conjunction with their biennial licensure renewal.⁶ The survey information must include, but is not limited to frequency and geographic location of practice within Florida, practice setting, percentage of time spent in direct patient care, anticipated change of license or practice status, areas of specialty or certification, and the availability and trends related to critically needed services, as specified in law and determined by the DOH.

The law provides DOH with rulemaking authority to implement the physician workforce survey.⁷ The survey must be completed on-line if the renewal is conducted on-line; otherwise, a paper copy of the survey must be completed and submitted with the renewal application.⁸

¹ Section 119.15, F.S.

² Section 24(c), Art. I of the State Constitution

³ An example of an exception to a public record exemption would be allowing another agency access to confidential or exempt records.

⁴ Chapter 2007-172, L.O.F.; codified in s. 381.4018, F.S.

⁵ Chapter 2007-172, L.O.F.; codified in s. 458.3191, F.S., for medical physicians, and s. 459.0081, F.S., for osteopathic physicians.

⁶ See s. 458.319, F.S., for medical physicians, and s. 459.008, F.S., for osteopathic physicians.

⁷ See s. 458.3191(4), F.S., for medical physicians, and 459.0081(4), F.S., for osteopathic physicians, which authorizes the promulgation of Rule 64B-9.002, F.A.C.

DOH is required to issue a non-disciplinary citation to any licensed medical or osteopathic physician if the physician fails to complete the survey within 90 days of licensure renewal.⁹ The citation notifies a physician who fails to complete the survey that he or she cannot renew his or her license, until the physician completes the survey.¹⁰

DOH must report its findings to the Governor, the President of the Senate, and the Speaker of the House of Representatives by November 1 each year.¹¹ This report is known as the Physician Workforce Annual Report.

Public Record Exemptions under Review

Current law provides that personal identifying information contained in records provided by Florida-licensed medical and osteopathic physicians in response to physician workforce surveys and held by DOH is confidential and exempt¹² from public records requirements.¹³ Such information may be disclosed:

- With the express written consent of the individual to whom the information pertains or the individual's legally authorized representative;
- By court order upon a showing of good cause;
- To a research entity, if the entity seeks the records or data pursuant to a research protocol approved by DOH, maintains the records or data in accordance with the approved protocol, and enters into a purchase and data-use agreement with DOH, the fee provisions of which are consistent with s. 119.07(4), F.S.¹⁴

DOH is authorized to deny a request for records or data if the protocol:

- Provides for intrusive follow-back contacts;
- Does not plan for the destruction of confidential records after the research is concluded;
- Is administratively burdensome; or
- Does not have scientific merit.¹⁵

Such an agreement between DOH and a research entity must restrict the release of any information that would permit the identification of persons, limit the use of records or data to the approved research protocol, and prohibit any other use of the records or data.¹⁶ Copies of records or data issued pursuant to such an agreement remain the property of DOH.¹⁷

Pursuant to the Open Government Sunset Review Act, the exemptions will repeal on October 2, 2012, unless reenacted by the Legislature.

⁸ See Rule 64B-9.002(1), F.A.C.

⁹ See Rule 64B-9.002(2), F.A.C., s. 458.3191(3)(a), F.S., for medical physicians, and s. 459.0081(3)(a), F.S., for osteopathic physicians.

¹⁰ See Rule 64B-9.002(2), F.A.C., s. 458.3191(3)(b), F.S., for medical physicians, and s. 459.0082, F.S., for osteopathic physicians.

¹¹ See s. 458.3192, F.S. for medical physicians, and 459.0082, F.S., for osteopathic physicians.

¹² There is a difference between records the Legislature designates as exempt from public record requirements and those the Legislature deems confidential and exempt. A record classified as exempt from public disclosure may be disclosed under certain circumstances. (See *WFTV, Inc. v. The School Board of Seminole*, 874 So.2d 48, 53 (Fla. 5th DCA 2004), review denied 892 So.2d 1015 (Fla. 2004); *City of Riviera Beach v. Barfield*, 642 So.2d 1135 (Fla. 4th DCA 1994); *Williams v. City of Minneola*, 575 So.2d 687 (Fla. 5th DCA 1991) If the Legislature designates a record as confidential and exempt from public disclosure, such record may not be released, by the custodian of public records, to anyone other than the persons or entities specifically designated in the statutory exemption. (See Attorney General Opinion 85-62, August 1, 1985).

¹³ See s. 458.3193, F.S., for medical physicians, and s. 459.0083, F.S., for osteopathic physicians.

¹⁴ See s. 458.3193(1), F.S., for medical physicians, and s. 459.0083(1), F.S., for osteopathic physicians.

¹⁵ See s. 458.3193(1)(c), F.S., for medical physicians, and s. 459.0083(1)(c), F.S., for osteopathic physicians.

¹⁶ *Id.*

¹⁷ *Id.*

Effect of Bill

The bill removes the repeal date, thereby reenacting the public record exemptions for personal identifying information contained in records provided by Florida-licensed medical and osteopathic physicians in response to the physician workforce survey. It also removes superfluous language.

B. SECTION DIRECTORY:

Section 1 amends s. 458.3193, F.S., to reenact the public record exemption for personal identifying information contained in physician workforce surveys.

Section 2 amends s. 459.0083, F.S., to reenact the public record exemption for personal identifying information contained in physician workforce surveys.

Section 3 provides an effective date of October 1, 2012.

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 affect county or municipal governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill does not appear to create a need for rulemaking or rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

In 2009 and 2010, 57,750 physicians were eligible for licensure renewal, and 99 percent of all the physicians renewing responded to the physician workforce survey.¹⁸

According to DOH and the medical community, the information contained in the survey is tied to the physician's license number and identifying information and, thus, confidential and sensitive in nature. The protection of this information from public disclosure likely promotes open and honest participation from responding physicians, thereby, ensuring the integrity of physician workforce data that is collected and analyzed in support of the State's physician workforce strategic plan.¹⁹

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.

¹⁸ Florida Department of Health Physician Workforce Annual Report 2010, published November 1, 2010, at 9 and 10, available at: http://www.doh.state.fl.us/Workforce/Workforce/Annual_Reports/PhysicianWorkforce_Nov2010.pdf (last visited on December 14, 2011).

¹⁹ Open Government Sunset Review of ss. 458.3193, and 459.0083, F.S., relating to the public record exemption for physician surveys, joint questionnaires sent to DOH, the Florida Osteopathic Medical Association, the Florida Medical Association, the Board of Medicine, and the Board of Osteopathic Medicine, by Senate and House staff, July and August 2011. (On file with the Government Operations Subcommittee).

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A bill to be entitled
An act relating to a review under the Open Government
Sunset Review Act; amending ss. 458.3193 and 459.0083,
F.S., relating to exemptions from public records
requirements for personal identifying information
contained in physician workforce surveys submitted to
the Department of Health by physicians and osteopathic
physicians; removing superfluous language; removing
the scheduled repeal of the exemptions; providing an
effective date.

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

Section 1. Section 458.3193, Florida Statutes, is amended
to read:

458.3193 Confidentiality of certain information contained
in physician workforce surveys.—

~~(1)~~ All personal identifying information contained in
records provided by physicians licensed under this chapter or
chapter 459 in response to physician workforce surveys required
as a condition of license renewal and held by the Department of
Health is confidential and exempt from s. 119.07(1) and s.
24(a), Art. I of the State Constitution, ~~except as otherwise
provided in this subsection.~~ Information made confidential and
exempt by this section ~~subsection~~ shall be disclosed:

(1) ~~(a)~~ With the express written consent of the individual
to whom the information pertains or the individual's legally
authorized representative.

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29 ~~(2)(b)~~ By court order upon a showing of good cause.
 30 (3)(e) To a research entity, if the entity seeks the
 31 records or data pursuant to a research protocol approved by the
 32 Department of Health, maintains the records or data in
 33 accordance with the approved protocol, and enters into a
 34 purchase and data-use agreement with the department, the fee
 35 provisions of which are consistent with s. 119.07(4). The
 36 department may deny a request for records or data if the
 37 protocol provides for intrusive follow-back contacts, does not
 38 plan for the destruction of confidential records after the
 39 research is concluded, is administratively burdensome, or does
 40 not have scientific merit. The agreement must restrict the
 41 release of information that would identify individuals, must
 42 limit the use of records or data to the approved research
 43 protocol, and must prohibit any other use of the records or
 44 data. Copies of records or data issued pursuant to this
 45 subsection ~~paragraph~~ remain the property of the department.

46 ~~(2) This section is subject to the Open Government Sunset~~
 47 ~~Review Act in accordance with s. 119.15 and shall stand repealed~~
 48 ~~on October 2, 2012, unless reviewed and saved from repeal~~
 49 ~~through reenactment by the Legislature.~~

50 Section 2. Section 459.0083, Florida Statutes, is amended
 51 to read:

52 459.0083 Confidentiality of certain information contained
 53 in physician workforce surveys.—

54 ~~(1)~~ All personal identifying information contained in
 55 records provided by physicians licensed under chapter 458 or
 56 this chapter in response to physician workforce surveys required

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57 as a condition of license renewal and held by the Department of
 58 Health is confidential and exempt from s. 119.07(1) and s.
 59 24(a), Art. I of the State Constitution, ~~except as otherwise~~
 60 ~~provided in this subsection~~. Information made confidential and
 61 exempt by this section ~~subsection~~ shall be disclosed:

62 (1) ~~(a)~~ With the express written consent of the individual
 63 to whom the information pertains or the individual's legally
 64 authorized representative.

65 (2) ~~(b)~~ By court order upon a showing of good cause.

66 (3) ~~(c)~~ To a research entity, if the entity seeks the
 67 records or data pursuant to a research protocol approved by the
 68 Department of Health, maintains the records or data in
 69 accordance with the approved protocol, and enters into a
 70 purchase and data-use agreement with the department, the fee
 71 provisions of which are consistent with s. 119.07(4). The
 72 department may deny a request for records or data if the
 73 protocol provides for intrusive follow-back contacts, does not
 74 plan for the destruction of confidential records after the
 75 research is concluded, is administratively burdensome, or does
 76 not have scientific merit. The agreement must restrict the
 77 release of information that would identify individuals, must
 78 limit the use of records or data to the approved research
 79 protocol, and must prohibit any other use of the records or
 80 data. Copies of records or data issued pursuant to this
 81 subsection ~~paragraph~~ remain the property of the department.

82 ~~(2) This section is subject to the Open Government Sunset~~
 83 ~~Review Act in accordance with s. 119.15 and shall stand repealed~~

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84 | ~~on October 2, 2012, unless reviewed and saved from repeal~~
85 | ~~through reenactment by the Legislature.~~

86 | Section 3. This act shall take effect October 1, 2012.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 7037 PCB GVOPS 12-08 OGSR/Sunshine State One-Call of Florida, Inc.
SPONSOR(S): Government Operations Subcommittee, Roberson
TIED BILLS: IDEN./SIM. BILLS: SB 844

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Government Operations Subcommittee	14 Y, 0 N	Thompson	Williamson
1) State Affairs Committee		Thompson <i>JAG</i>	Hamby <i>Hamby</i>

SUMMARY ANALYSIS

The Open Government Sunset Review Act requires the Legislature to review each public record and each public meeting exemption five years after enactment. If the Legislature does not reenact the exemption, it automatically repeals on October 2nd of the fifth year after enactment.

Current law provides for the Underground Facility Damage Prevention and Safety Act (Act). The intent of the Act is to provide access for excavating contractors and the public to provide notification to the system of their intent to engage in excavation or demolition.

Sunshine State One-Call Of Florida, Inc., (One-Call) is a non-profit corporation created to administer the notification system. Each operator of an underground facility is a member. The membership elects a board of directors to administer the system, which is a free-access notification system established by One-Call. The board is subject to the public records and public meetings laws.

Current law provides for a public record exemption for proprietary confidential business information held by One-Call for the purpose of describing the extent and root cause of damage to an underground facility or using the member ticket management software system.

The bill reenacts this public record exemption, which will repeal on October 2, 2012, if this bill does not become law.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Open Government Sunset Review Act

The Open Government Sunset Review Act¹ sets forth a legislative review process for newly created or substantially amended public record or public meeting exemptions. It requires an automatic repeal of the exemption on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.

The Act provides that a public record or public meeting exemption may be created or maintained only if it serves an identifiable public purpose. In addition, it may be no broader than is necessary to meet one of the following purposes:

- Allows the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption.
- Protects sensitive personal information that, if released, would be defamatory or would jeopardize an individual's safety; however, only the identity of an individual may be exempted under this provision.
- Protects trade or business secrets.

If, and only if, in reenacting an exemption that will repeal, the exemption is expanded (essentially creating a new exemption), then a public necessity statement and a two-thirds vote for passage are required.² If the exemption is reenacted with grammatical or stylistic changes that do not expand the exemption, if the exemption is narrowed, or if an exception to the exemption is created³ then a public necessity statement and a two-thirds vote for passage are not required.

Sunshine State One-Call, Inc.

Chapter 556, F.S., is the Underground Facility Damage Prevention and Safety Act (Act).⁴ The intent of the Act is to provide access for excavating contractors and the public to provide notification to the system of their intent to engage in excavation or demolition.⁵

The Act provides for creation of the Sunshine State One-Call Of Florida, Inc. (One-Call), as a not-for-profit corporation.⁶ Each operator of an underground facility⁷ is a member.⁸ The membership elects a board of directors to administer the system,⁹ which is a free-access notification system established by One-Call. The board of directors is subject to public records and public meetings laws.¹⁰

¹ Section 119.15, F.S.

² Section 24(c), Art. I of the State Constitution

³ An example of an exception to a public record exemption would be allowing another agency access to confidential or exempt records.

⁴ Section 556.101(1), F.S.

⁵ Section 556.101(2), F.S.

⁶ Section 556.103(1), F.S.

⁷ Section 556.102(13), F.S., defines "underground facility" as any public or private personal property which is buried, placed below ground, or submerged on any member operators right-of-way, easement, or permitted use which is being used or will be used in connection with the storage or conveyance of water; sewage, electronic, telephonic, or telegraphic communication; electric energy; oil; petroleum products; natural gas; optical signals; or other substances, and includes, but is not limited to pipelines, pipes, sewers, conduits, cables, valves, and lines.

⁸ Section 556.103(1), F.S.

⁹ Section 556.103(2), F.S.

¹⁰ Attorney General Opinion 94-35 provides in sum, "[m]eetings of the Board of Directors of Sunshine State One-Call of Florida, Inc., are subject to the requirements of the Government in the Sunshine Law and records of the corporation and its board of directors come within the scope of the Public Records Law." (April 21, 1994)

The notification system must provide a single toll-free telephone number within Florida that excavators can use to notify member operators of planned excavation or demolition activities.¹¹ When notice of intent to engage in excavation or demolition is filed, the systems managed by One-Call provide notice to the member operators of proposed excavation and give the opportunity for member operators to locate and identify their underground facilities.¹²

One-Call is not required or permitted to locate or mark underground facilities.¹³ However, those member operators who are provided notice of an excavation must locate and mark underground facilities not less than two business days after notification,¹⁴ or not less than 10 business days after notification for facilities located beneath the waters of the state.¹⁵

To initiate an excavation or demolition, an excavator must contact One-Call by phone or electronically to file a "ticket" that provides specific information about the proposed excavation, such as the name of the company or person, intended depth of the excavation, and the location of the intended excavation.¹⁶

In 2002, One-Call invested in a member ticket management software system that allows all excavators the opportunity to file tickets electronically and eliminates the cost of purchasing these systems for individual companies. Prior to this investment, electronic ticket filing was accessible only to member operators who bought ticket management systems.¹⁷

Public Record Exemption under Review

Current law provides a public record exemption for Sunshine State One-Call of Florida, Inc., (One-Call). Proprietary confidential business information held by One-Call, for the purpose of describing the extent and root cause of damage to an underground facility or using the member ticket management software system, is exempt¹⁸ from public records requirements.¹⁹

"Proprietary confidential business information" is defined as information provided by:

- A member operator that is a map, plan, facility location diagram, internal damage investigation report or analysis, dispatch methodology, trade secret, or that describes the exact location of a utility underground facility or the protection, repair, or restoration thereof.²⁰
- An excavator that is an internal damage investigation report or analysis relating to underground utility facilities damages.²¹

¹¹ Section 556.104, F.S.

¹² See s. 556.105, F.S.

¹³ Section 556.101(2), F.S.

¹⁴ Section 556.105(5)(a), F.S.

¹⁵ Section 556.105(5)(b), F.S.

¹⁶ See s. 556.105(1)(a), F.S.

¹⁷ Professional Staff Analysis and Economic Impact Statement for SB 1510, Senate Communications and Public Utilities Committee, March 19, 2007, at 2.

¹⁸ There is a difference between records the Legislature designates as exempt from public record requirements and those the Legislature deems confidential and exempt. A record classified as exempt from public disclosure may be disclosed under certain circumstances. (See *WFTV, Inc. v. The School Board of Seminole*, 874 So.2d 48, 53 (Fla. 5th DCA 2004), review denied 892 So.2d 1015 (Fla. 2004); *City of Riviera Beach v. Barfield*, 642 So.2d 1135 (Fla. 4th DCA 1994); *Williams v. City of Minneola*, 575 So.2d 687 (Fla. 5th DCA 1991) If the Legislature designates a record as confidential and exempt from public disclosure, such record may not be released, by the custodian of public records, to anyone other than the persons or entities specifically designated in the statutory exemption. (See Attorney General Opinion 85-62, August 1, 1985).

¹⁹ Section 556.113(2), F.S.

²⁰ The definition further provides that the information is intended to be and is treated by the member operator as confidential; the disclosure would be reasonably likely to be used by a competitor to harm the business interests of the member operator or could be used for the purpose of inflicting damage on underground facilities; and is not otherwise readily ascertainable or publicly available by proper means by other persons from another source in the same configuration as provided to One-Call. (Section 556.113(1)(a), F.S.)

²¹ The definition further provides that the information is intended to be and is treated by the excavator as confidential; the disclosure of which would be reasonably likely to be used by a competitor to harm the business interests of the excavator or could be used for the purpose of inflicting damage on underground facilities; and is not otherwise readily ascertainable or publicly available by proper means by other persons from another source in the same configuration as provided to One-Call. (Section 556.113(1)(b), F.S.)

Pursuant to the Open Government Sunset Review Act, the exemption will repeal on October 2, 2012, unless reenacted by the Legislature.²²

Effect of Bill

The bill removes the repeal date, thereby reenacting the public record exemption for proprietary confidential business information held by One-Call for the purpose of describing the extent and root cause of damage to an underground facility or using the member ticket management software system.

B. SECTION DIRECTORY:

Section 1 amends s. 556.113, F.S., to reenact the public record exemption for Sunshine State One-Call of Florida, Inc.

Section 2 provides an effective date of October 1, 2012.

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.

²² See s. 556.113(3), F.S.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill does not appear to create a need for rulemaking or rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

One-Call has requested that the exemption be reenacted. According to One-Call, its members are not required to report damage information, this is a voluntary function. Also, One-Call uses the extent and root cause data to detect damage patterns, which are used to focus One-Call resources where needed. Such information could be used to disclose the exact location of underground facilities, thereby, compromising competitive trade secrets and public safety.²³

Also according to One-Call, the ticket management software system contains internal business information that if disclosed could compromise trade secrets, thereby, giving an unfair market advantage to its member's competitors. Very few users of the ticket management system existed until the creation of the public records exemption. Currently, there are approximately 127 users of the system. Also, many One-Call members are small utilities that can provide safer, better, and more reasonably priced services using the One-Call ticket management system.²⁴

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.

²³ Open Government Sunset Review of s. 556.113, F.S., relating to the public record exemption for Sunshine State One-Call, background information from One-Call, July, 2011, at page 2. (On file with the Government Operations Subcommittee).

²⁴ *Id.* at 2.

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1 A bill to be entitled
 2 An act relating to a review under the Open Government
 3 Sunset Review Act; amending s. 556.113, F.S., relating
 4 to an exemption from public records requirements for
 5 proprietary confidential business information held by
 6 Sunshine State One-Call of Florida, Inc.; removing the
 7 scheduled repeal of the exemption; providing an
 8 effective date.

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

11
 12 Section 1. Section 556.113, Florida Statutes, is amended
 13 to read:

14 556.113 Sunshine State One-Call of Florida, Inc.; public
 15 records exemption.—

16 (1) As used in this section, the term "proprietary
 17 confidential business information" means information provided
 18 by:

19 (a) A member operator which is a map, plan, facility
 20 location diagram, internal damage investigation report or
 21 analysis, dispatch methodology, or trade secret as defined in s.
 22 688.002, or which describes the exact location of a utility
 23 underground facility or the protection, repair, or restoration
 24 thereof, and:

25 1. Is intended to be and is treated by the member operator
 26 as confidential;

27 2. The disclosure of which would likely be used by a
 28 competitor to harm the business interests of the member operator

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29 or could be used for the purpose of inflicting damage on
 30 underground facilities; and

31 3. Is not otherwise readily ascertainable or publicly
 32 available by proper means by other persons from another source
 33 in the same configuration as provided to Sunshine State One-Call
 34 of Florida, Inc.

35 (b) An excavator in an internal damage investigation
 36 report or analysis relating to damage to underground utility
 37 facilities, and:

38 1. Is intended to be and is treated by the excavator as
 39 confidential;

40 2. The disclosure of which would be reasonably likely to
 41 be used by a competitor to harm the business interests of the
 42 excavator or could be used for the purpose of inflicting damage
 43 on underground facilities; and

44 3. Is not otherwise readily ascertainable or publicly
 45 available by proper means by other persons from another source
 46 in the same configuration as provided to Sunshine State One-Call
 47 of Florida, Inc.

48 (2) Proprietary confidential business information held by
 49 Sunshine State One-Call of Florida, Inc., for the purpose of
 50 describing the extent and root cause of damage to an underground
 51 facility or using the member ticket management software system
 52 is exempt from s. 119.07(1) and s. 24(a), Art. I of the State
 53 Constitution.

54 ~~(3) This section is subject to the Open Government Sunset~~
 55 ~~Review Act in accordance with s. 119.15 and shall stand repealed~~

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56 | ~~on October 2, 2012, unless reviewed and saved from repeal~~
57 | ~~through reenactment by the Legislature.~~

58 | Section 2. This act shall take effect October 1, 2012.