

FRWA 2020 Session Report

The Florida Legislative Session ended on Friday, March 13, 2020. The budget needed a few extra days and a deal was reached (\$93 billion) and approved on Thursday, March 19th. All policy matters not finalized by March 13th died, and there were many; out of 3500 bills filed, roughly 200 passed. Early themes included health care reform and raising teacher pay – these two items made it through but as the Covid-19 pandemic spread, the Florida Legislature began to sputter.

Bills of interest to the Florida Rural Water Association membership focused on water quality issues – SB 712 and environmental accountability – HB 1091. Both bills have a major impact on the industry and FRWA. The bills were priorities of Governor DeSantis and the Department of Environmental Protection Secretary, Noah Valenstein. Set forth below is a recap of FRWA bills of interest.

CS/CS/SB 178 - Public Financing of Construction Projects

By: Appropriations; Infrastructure and Security; Rodriguez and others

Tied Bills: None

Companion Bills: CS/HB 579

Committee(s) of Reference: Environment and Natural Resources; Infrastructure and Security; Appropriations Subcommittee on Agriculture, Environment, and General Government; Appropriations

Category: Environmental Protection; Government Operations; Local Government; Natural Resources

The bill requires the Department of Environmental Protection (DEP) to adopt rules to develop a standard by which a governmental entity must conduct a sea level impact projection (SLIP) study under certain circumstances. Beginning one year after the date the rules are finalized and are otherwise in effect, the bill prohibits a governmental entity from commencing construction of a state-funded coastal structure unless the entity has conducted a SLIP study, submitted the SLIP study to DEP, and received notification from DEP that the SLIP study was received and has been published on DEP's website for at least 30 days.

The bill specifies requirements for the SLIP study rule and authorizes DEP to institute a civil action if a governmental entity commences construction of a state-funded coastal structure but has not conducted the SLIP study.

Subject to the Governor's veto powers, the effective date of this bill is July 1, 2020, except as otherwise provided.

CS/HB 549 - Pub. Rec./Site-specific Location Information of Endangered and Threatened Species

By: Agriculture & Natural Resources Subcommittee; Overdorf

Tied Bills: None

Companion Bills: CS/CS/SB 812

Committee(s) of Reference: Agriculture & Natural Resources Subcommittee; State Affairs Committee

Category: Environmental Protection; Government in the Sunshine; Natural Resources

The bill provides a public record exemption for site-specific location information concerning a federally designated endangered or threatened species or a state-designated threatened species held by an agency. The public record exemption does not apply to animals in captivity. The bill provides for future review and repeal of the exemption and provides a public necessity statement as required by the Florida Constitution.

Subject to the Governor's veto powers, the effective date of this bill is July 1, 2020.

CS/CS/SB 712 - Environmental Resource Management

By: Appropriations; Community Affairs; Mayfield and others

Tied Bills: None

Companion Bills: CS/HB 1343; includes HB 1199; includes parts of HB 405, SB 686, CS/CS/HB 715, CS/CS/HB 1091, CS/HB 1363, CS/SB 1382, CS/CS/SB 1450, and CS/CS/SB 1656

Committee(s) of Reference: Community Affairs; Appropriations Subcommittee on Agriculture, Environment, and General Government; Appropriations

Category: Agriculture; Environmental Protection; Government Operations; Natural Resources

The bill addresses various impacts to the water quality of the state by

- transferring the Onsite Sewage Program from the Department of Health to the Department of Environmental Protection (DEP),
- repealing certain onsite sewage treatment and disposal system (OSTDS) advisory committees,
- creating an OSTDS technical advisory committee to make recommendations that increase the availability of nutrient-reducing OSTDSs and assist DEP in the development of setback distances,
- requiring OSTDS remediation plans,
- requiring DEP staff training to include field inspections of stormwater structural controls,
- requiring DEP and the water management districts to update the stormwater regulations using the most recent science,
- requiring the model stormwater management program to contain model ordinances targeting nutrient reduction,
- requiring local governments to create wastewater treatment plans,
- requiring sanitary sewage facilities to take steps to prevent sanitary sewer overflows,
- requiring DEP to establish real-time water quality monitoring,
- requiring advanced wastewater treatment for domestic wastewater discharges to the Indian River Lagoon,
- prohibiting the land application of biosolids on certain sites, unless an exception applies,
- requiring the Department of Agriculture and Consumer Services to conduct inspections of producers enrolled in best management practices (BMPs),
- requiring the University of Florida to develop research plans for developing new BMPs, and
- creating grant programs for the funding of water quality projects.

To address water quantity in the state, the bill requires DEP to conduct a study on the bottled water industry in the state and adopt rules relating to potable water reuse based on the Potable Reuse Commission's 2020 report.

The bill prohibits a local government regulation from recognizing or granting any legal right to a plant, animal, body of water, or any other part of the natural environment that is not a person or political subdivision, or from granting a person or political subdivision any specific rights relating to the natural environment.

Subject to the Governor’s veto powers, the effective date of this bill is July 1, 2020, except as otherwise provided.

CS/CS/HB 1091 - Environmental Accountability By: State Affairs Committee; Agriculture & Natural Resources Subcommittee; Fine and others Tied Bills: None Companion Bills: CS/CS/SB 1450; includes parts of SB 150, CS/CS/SB 712, and CS/HB 1343 Committee(s) of Reference: Agriculture & Natural Resources Subcommittee; Agriculture & Natural Resources Appropriations Subcommittee; State Affairs Committee Category: Environmental Protection; Local Government; Real Property The bill increases various statutory penalties for violations of environmental laws. For certain violations, the bill specifies that each day during any portion of which the violation occurs constitutes a separate offense. The bill further specifies that each day the cause of an unauthorized discharge of domestic wastewater is not addressed constitutes a separate offense until the violation is resolved by order or judgment. By July 1, 2022, the bill encourages each county and municipality to establish an evaluation and rehabilitation program for sanitary sewer laterals on residential and commercial properties within its jurisdiction to identify and reduce extraneous flow from leaking sanitary sewer laterals. The bill also requires a seller of real property, before executing a contract for sale, to disclose to a prospective purchaser any known defects in the property’s sanitary sewer lateral. Subject to the Governor’s veto powers, the effective date of this bill is July 1, 2020.

ENVIRONMENTAL VIOLATIONS

Florida Statutes	Violations	Existing Penalties	Changes in CS/CS/HB 1091
161.054 (1), F.S.	Violating statutes, rules or orders regarding coastal construction or activities	An administrative fine for each offense of up to \$10,000.	An administrative fine for each offense of up to \$15,000 .
258.397 (7), F.S.	Violating a statute or rules regarding Biscayne Bay Aquatic Preserve	Authorizes the Department of Legal Affairs to bring an action for civil penalties of \$5,000 per day.	Authorizes the Department of Legal Affairs to bring an action for civil penalties of \$7,500 per day. Each day during any portion of which a violation occurs constitutes a separate offense.
258.46, F.S.	Violating the Florida Aquatic Preserve Act or related rules	A civil penalty of not less than \$500 per day and not more than	A civil penalty of not less than \$750 per day and not more than

		\$5,000 per day of a violation.	\$7,500 per day of a violation. Each day during any portion of which a violation occurs constitutes a separate offense.
373.129 (5), F.S.	Violating ch. 373, F.S., relating to water resources	Authorizes the DEP, any water management district, any local board, or certain local governments ⁵⁶ to recover a civil penalty for each offense, in an amount not to exceed \$10,000 per offense.	Authorizes the DEP, any water management district, any local board, or certain local governments to recover a civil penalty for each offense, in an amount not to exceed \$15,000 per offense.
373.209 (3)(b), F.S.	Violating a statute regarding artesian wells	A civil penalty of \$100 per day for each day of a violation and each act of a violation.	A civil penalty of \$150 per day for each day of a violation and each act of a violation.
373.430 (4) and (5), F.S.	Violating statutes regarding surface waters by causing pollution due to reckless indifference or gross careless disregard	A fine of not more than \$5,000 or 60 days in jail, or both, for each offense: causing certain pollution. A fine of not more than \$10,000, 6 months in jail, or both for willfully committing the following violation: knowingly falsifying required documentation or falsifying, tampering with, or rendering inaccurate required monitoring devices or methods.	A fine of not more than \$10,000 or 60 days in jail, or both , for each offense: causing certain pollution; failing to obtain any permit; or violating or failing to comply with any rule, regulation, order, or permit. A fine of not more than \$10,000, 6 months in jail, or both for committing the following violation: knowingly falsifying required documentation or falsifying, tampering with, or rendering inaccurate required monitoring devices or methods.
376.065 (5)(a) and (e), F.S.	Violating a statute regarding terminal facility certifications	A civil penalty of \$500 for any violation of the section or a certification.	A civil penalty of \$750 for any violation of the section or a certification.

		A civil penalty of \$500 imposed by a county court if commission of the infraction is proved.	A civil penalty of \$750 imposed by a county court if commission of the infraction is proved.
376.071 (2)(a) and (e), F.S.	Violations regarding discharge contingency plans for vessels	A civil penalty of \$5,000 for each infraction. A civil penalty of \$5,000 imposed by a county court if commission of the infraction is proved.	A civil penalty of \$7,500 for each infraction. A civil penalty of \$7,500 imposed by a county court if commission of the infraction is proved.
376.16 (1), F.S.	Violating the Pollutant Discharge Prevention and Control Act or the DEP rules or orders	A civil penalty of up to \$50,000 per violation per day.	A civil penalty of up to \$75,000 per violation per day.
376.16 (2), (3), (7), and (8), F.S.	Violating the Pollutant Discharge Prevention and Control Act or the DEP rules or orders	In addition to the penalty in subsection (1), for persons responsible for two or more discharges within a 12-month period at the same facility, the statute provides the following penalties: <input type="checkbox"/> Gasoline/diesel over 5 gallons - a civil penalty of \$500 for the second discharge and \$1,000 for each subsequent discharge within a 12-month period. <input type="checkbox"/> Other pollutants - a civil penalty of \$2,500 for the second discharge and \$5,000 for each subsequent discharge within a 12-month period. For persons responsible for two or more discharges within a 12-month period at the same facility, the statute provides the following penalties:	In addition to the penalty in subsection (1), for persons responsible for two or more discharges within a 12-month period at the same facility, the statute provides the following penalties: <input type="checkbox"/> Gasoline/diesel over 5 gallons - a civil penalty of \$750 for the second discharge and \$1,500 for each subsequent discharge within a 12-month period. <input type="checkbox"/> Other pollutants - a civil penalty of \$3,750 for the second discharge and \$7,500 for each subsequent discharge within a 12-month period. For persons responsible for two or more discharges within a 12-month period at the same facility, the statute provides the following penalties:

		<p>☐ Gasoline/diesel equal to or less than 5 gallons - a civil penalty of \$50 for each discharge subsequent to the first.</p> <p>☐ Other pollutants equal to or less than 5 gallons - a civil penalty of \$100 for each discharge subsequent to the first.</p> <p>Authorizes the county court to impose the following civil penalties if the commission of an infraction is proved: up to \$500 for the second discharge of gasoline/diesel and up to \$1,000 for each subsequent discharge of gasoline/diesel within a 12-month period; up to \$5,000 for the second discharge of other pollutants and up to \$10,000 for each subsequent discharge within a 12-month period.</p>	<p>☐ Gasoline/diesel equal to or less than 5 gallons - a civil penalty of \$75 for each discharge subsequent to the first;</p> <p>☐ Other pollutants equal to or less than 5 gallons - a civil penalty of \$150 for each discharge subsequent to the first.</p> <p>Authorizes the county court to impose the following civil penalties if the commission of an infraction is proved: up to \$750 for the second discharge of gasoline/diesel and up to \$1,500 for each subsequent discharge of gasoline/diesel within a 12-month period; up to \$7,500 for the second discharge of other pollutants and up to \$15,000 for each subsequent discharge within a 12-month period.</p>
403.121 (3)(d), F.S.	Administrative penalty schedule: violations regarding mangrove trimming	\$5,000 per violation for conducting mangrove trimming or alterations without a permit.	\$7,500 per violation for conducting mangrove trimming or alterations without a permit.
403.121 (3)(e), F.S.	Administrative penalty schedule: violations regarding solid waste	\$2,000 for unlawful disposal or storage of solid waste; plus \$1,000 for Class I or III or construction and demolition debris in excess of 20 cubic yards; plus \$1,000 if the waste is disposed of or	\$3,000 for unlawful disposal or storage of solid waste; plus \$1,000 for Class I or III or construction and demolition debris in excess of 20 cubic yards; plus \$1,500 if the waste is disposed of or

		<p>stored in a waterbody or within 500 feet of a potable water well; plus \$1,000 if the waste contains certain amounts of PCB, untreated biomedical waste, friable asbestos, used oil, or lead acid batteries.</p> <p>\$3,000 for failure to maintain leachate control, unauthorized burning, failure to have a trained spotter on duty, or failure to provide access control for three consecutive inspections.</p> <p>\$2,000 for failure to construct or maintain a required stormwater management system.</p>	<p>stored in a waterbody or within 500 feet of a potable water well; plus \$1,500 if the waste contains certain amounts of PCB, untreated biomedical waste, friable asbestos, used oil, or lead acid batteries.</p> <p>\$4,500 for failure to maintain leachate control, unauthorized burning, failure to have a trained spotter on duty, or failure to provide access control for three consecutive inspections.</p> <p>\$3,000 for failure to construct or maintain a required stormwater management system.</p>
403.121 (3)(f), F.S.	Administrative penalty schedule: violations regarding air emissions	<p>\$1,000 for an unlawful air emission or exceedance; plus \$1,000 if the emission results in an air quality violation; plus \$3,000 for emissions from the major source of the violating pollutant; plus \$1,000 if over 150% of the allowable level.</p>	<p>\$1,500 for an unlawful air emission or exceedance; plus \$4,500 for emissions from the major source of the violating pollutant; plus \$1,500 if over 150% of the allowable level.</p>
403.121 (3)(g), F.S.	Administrative penalty schedule: violations regarding storage tank system and petroleum contamination	<p>\$5,000 for failure to empty a damaged storage system as necessary to ensure a release does not occur until repairs are completed, when a release has occurred, failure to timely recover free product, or failure to conduct remediation or monitoring activities until a no-further-action or site-rehabilitation</p>	<p>\$7,500 for failure to empty a damaged storage system as necessary to ensure a release does not occur until repairs are completed, when a release has occurred, failure to timely recover free product, or failure to conduct remediation or monitoring activities until a no-further-action or site-rehabilitation</p>

		<p>completion order has been issued. \$3,000 for failure to timely upgrade a storage tank system. \$2,000 for failure to conduct or maintain required release detection, failure to timely investigate a suspected release, depositing motor fuel into an unregistered storage tank system, failure to timely assess or remediate petroleum contamination, or failure to properly install a storage tank system. \$1,000 for failure to properly operate, maintain, or close a storage tank system.</p>	<p>completion order has been issued. \$4,500 for failure to timely upgrade a storage tank system. \$3,000 for failure to conduct or maintain required release detection, failure to timely investigate a suspected release, depositing motor fuel into an unregistered storage tank system, failure to timely assess or remediate petroleum contamination, or failure to properly install a storage tank system. \$1,500 for failure to properly operate, maintain, or close a storage tank system.</p>
<p>403.121 (4), F.S.</p>	<p>Violating ch. 403, F.S., regarding environmental control</p>	<p>In administrative proceedings, in addition to penalties assessed under subsection (3):</p> <ul style="list-style-type: none"> <input type="checkbox"/> \$5,000 for failure to satisfy financial responsibility requirements or for oil and gas pollution violations. <input type="checkbox"/> \$4,000 for failure to install, maintain, or use a required pollution control system or device. <input type="checkbox"/> \$3,000 for failure to obtain a required permit before construction or modification. <input type="checkbox"/> \$2,000 for failure to conduct required monitoring or testing, conduct required release detection, or 	<p>In administrative proceedings, in addition to penalties assessed under subsection (3):</p> <ul style="list-style-type: none"> <input type="checkbox"/> \$7,500 for failure to satisfy financial responsibility requirements or for oil and gas pollution violations. <input type="checkbox"/> \$6,000 for failure to install, maintain, or use a required pollution control system or device. <input type="checkbox"/> \$4,500 for failure to obtain a required permit before construction or modification. <input type="checkbox"/> \$3,000 for failure to conduct required monitoring or testing, conduct required release detection, or

		<p>construct in compliance with a permit.</p> <p><input type="checkbox"/> \$1,000 for failure to maintain required staff to respond to emergencies, failure to conduct required training, failure to prepare, maintain, or update required contingency plans, failure to adequately respond to emergencies to bring an emergency situation under control, or failure to submit required notification to the DEP.</p> <p><input type="checkbox"/> \$500 for failure to prepare, submit, maintain, or use required reports or documentation.</p>	<p>construct in compliance with a permit.</p> <p><input type="checkbox"/> \$1,500 for failure to maintain required staff to respond to emergencies, failure to conduct required training, failure to prepare, maintain, or update required contingency plans, failure to adequately respond to emergencies to bring an emergency situation under control, or failure to submit required notification to the DEP.</p> <p><input type="checkbox"/> \$750 for failure to prepare, submit, maintain, or use required reports or documentation.</p>
<p>403.121 (5), (7), (8), and (9), F.S.</p>	<p>Violating ch. 403, F.S., regarding environmental control</p>	<p>A penalty of \$500 for failure to comply with any other department regulatory statute or rule.</p> <p>A violator's history of noncompliance for any previous violation found in an executed consent order finding violation, or resulting in a final order or judgment involving the imposition of \$2,000 or more must be taken into consideration in a manner specified in statute.</p> <p>The total administrative penalty, including direct economic benefit gained by the violator that is added to the scheduled administrative penalty,</p>	<p>A penalty of \$1,000 for failure to comply with any other department regulatory statute or rule.</p> <p>A violator's history of noncompliance for any previous violation found in an executed consent order finding violation, or resulting in a final order or judgment involving the imposition of \$3,000 or more must be taken into consideration in a manner specified in statute.</p> <p>The total administrative penalty, including direct economic benefit gained by the violator that is added to the scheduled administrative penalty,</p>

		<p>may not exceed \$10,000.</p> <p>The administrative penalties for a particular violation that are assessed against any one violator may not exceed \$5,000, unless there is a history of noncompliance, the economic benefit exceeds \$5,000, or there are multiday violations. Total administrative penalties may not exceed \$10,000 per assessment for all violations attributable to a specific person in a notice of violation.</p>	<p>may not exceed \$15,000.</p> <p>The administrative penalties for a particular violation that are assessed against any one violator may not exceed \$10,000, unless there is a history of noncompliance, the economic benefit exceeds \$10,000, or there are multiday violations. Total administrative penalties may not exceed \$50,000 per assessment for all violations attributable to a specific person in a notice of violation.</p>
403.141 (1), F.S.	Violating ch. 403, F.S., regarding environmental control, by committing prohibited acts	A civil penalty for each offense in an amount not to exceed \$10,000.	A civil penalty for each offense in an amount not to exceed \$15,000. If a violation is an unauthorized discharge of domestic wastewater, each day the cause of the violation is not addressed constitutes a separate offense until the violation is resolved by order or judgement.
403.161 (4), F.S.	Violating ch. 403, F.S., regarding environmental control, by committing prohibited acts specified in the statute	A violation causing pollution due to reckless indifference or gross careless disregard is punishable by a fine of not more than \$5,000, 60 days in jail, or both, for each offense.	A violation causing pollution; failure to obtain a permit required under Ch. 403, F.S., or rules; or violating any rule, order, permit or certification adopted or issued by the DEP due to reckless indifference or gross careless disregard is punishable by a fine of not more than \$10,000, 60 days in jail, or both , for each offense.

403.161 (5), F.S.	Violating ch. 403, F.S., regarding environmental control, by willfully causing pollution	A fine of not more than \$10,000, 6 months in jail, or both for willfully committing the following violation: knowingly falsifying required documentation or falsifying, tampering with, or rendering inaccurate required monitoring devices or methods.	A fine of not more than \$10,000, 6 months in jail, or both for committing the following violation: knowingly falsifying required documentation or falsifying, tampering with, or rendering inaccurate required monitoring devices or methods.
403.413 (6)(a), F.S.	Dumping litter	A civil penalty of \$100 for dumping litter (not for commercial purposes) not exceeding 15 pounds or 27 cubic feet.	A civil penalty of \$150 for dumping litter (not for commercial purposes) not exceeding 15 pounds or 27 cubic feet.
403.7234 (5), F.S.	Violations involving small quantity generators	A fine of between \$50 and \$100 per day for a maximum of 100 days for a noncompliant small quantity generator.	A fine of between \$75 and \$150 per day for a maximum of 100 days for a noncompliant small quantity generator.
403.726 (3), F.S.	Violations regarding hazardous waste creating an imminent hazard	Authorizes the DEP to institute action to abate an imminent hazard and may recover a civil penalty of not more than \$25,000 for each day of continued violation.	Authorizes the DEP to institute action to abate an imminent hazard and may recover a civil penalty of not more than \$37,500 for each day of continued violation.
403.727 (3)(a), F.S.	Violations regarding hazardous waste	A civil penalty of not more than \$50,000 for each day of continued violation.	A civil penalty of not more than \$75,000 for each day of continued violation.

<p>403.93345 (8)(a)-(c) and (g), F.S.</p>	<p>Civil penalty schedule: violating the Florida Coral Reef Protection Act</p>	<p>Damage to a coral reef less than or equal to 1 square meter: \$150; additional \$150 with aggravating circumstances; additional \$150 if occurring within a state park or aquatic preserve. Damage to a coral reef of more than 1 square meter but less than or equal to 10 square meters: \$300 per square meter; additional \$300 per square meter with aggravating circumstances; additional \$300 per square meter if occurring within a state park or aquatic preserve. Damage exceeding an area of 10 square meters: \$1,000 per square meter; additional \$1,000 per square meter with aggravating circumstances; additional \$1,000 per square meter if occurring within a state park or aquatic preserve. The total penalties levied may not exceed \$250,000 per occurrence.</p>	<p>Damage to a coral reef less than or equal to 1 square meter: \$225; additional \$225 with aggravating circumstances; additional \$225 if occurring within a state park or aquatic preserve. Damage to a coral reef of more than 1 square meter but less than or equal to 10 square meters: \$450 per square meter; additional \$450 per square meter with aggravating circumstances; additional \$450 per square meter if occurring within a state park or aquatic preserve. Damage exceeding an area of 10 square meters: \$1,500 per square meter; additional \$1,500 per square meter with aggravating circumstances; additional \$1,500 per square meter if occurring within a state park or aquatic preserve. The total penalties levied may not exceed \$375,000 per occurrence.</p>
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