



Agriculture and Natural Resources Policy Committee

Meeting Packet

**March 25, 2010
2:45 pm - 6:00 pm
102 Reed Hall**

**Larry Cretul
Speaker**

**Trudi Williams
Chair**

Committee Meeting Notice

HOUSE OF REPRESENTATIVES

Agriculture & Natural Resources Policy Committee

Start Date and Time: Thursday, March 25, 2010 02:45 pm

End Date and Time: Thursday, March 25, 2010 06:00 pm

Location: Reed Hall (102 HOB)

Duration: 3.25 hrs

Consideration of the following bill(s):

HB 207 Contamination Notification by Kriseman
CS/HB 831 Nassau County by Military & Local Affairs Policy Committee, Adkins
HB 1285 Cadmium in Children's Products by Thompson, G.
HB 1325 Aquatic Preserves by Schultz
HB 1361 Regulation of Vessels by Steinberg
HB 1559 Recycling by Rehwinkel Vasilinda

Consideration of the following proposed committee bill(s):

PCB ANR 10-13 -- Water Supply
PCB ANR 10-14 -- Drinking Water
PCB ANR 10-15 -- Florida Keys' Area

Consideration of the following proposed committee substitute(s):

PCSMB for HB 1407, HB 1367 & HB 1605 -- Water Management

NOTICE FINALIZED on 03/23/2010 16:21 by Cunningham.Reid

Agenda

AGRICULTURE AND NATURAL RESOURCES POLICY COMMITTEE

March 25, 2010

2:45-6:00 p.m.

Reed Hall

- I. Call to Order**
- II. Roll Call**
- III. Opening Remarks by Chair Williams**
- IV. HB 207 by Rep. Kriseman – Contamination Notification**
- V. CS/HB 831 by Rep. Adkins – Nassau County**
- VI. HB 1285 by Rep. G. Thompson – Cadmium in Children’s Products**
- VII. HB 1325 by Rep. Schultz – Aquatic Preserves**
- VIII. HB 1361 by Rep. Steinberg – Regulation of Vessels**
- IX. HB 1559 by Rep. Rehwinkel-Vasilinda – Recycling**
- X. PCB ANR 10-13 – Water Supply**
- XI. PCB ANR 10-14 – Drinking Water**
- XII. PCB ANR 10-15 – Florida Keys Area**
- XIII. PCSMB for HB 1407, HB 1367 and HB 1605 – Water Management**
- XIV. Closing Remarks by Chair Williams**
- XV. Adjourn**

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 207
SPONSOR(S): Kriseman
TIED BILLS:

Contamination Notification

IDEN./SIM. BILLS: SB 358, SB 602

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Agriculture & Natural Resources Policy Committee</u>	_____	Lowrance <i>ALB</i>	Reese <i>AR</i>
2) <u>Military & Local Affairs Policy Committee</u>	_____	_____	_____
3) <u>Natural Resources Appropriations Committee</u>	_____	_____	_____
4) <u>General Government Policy Council</u>	_____	_____	_____
5) _____	_____	_____	_____

SUMMARY ANALYSIS

The bill increases the required contamination notifications by requiring additional notice of contamination be provided by the Department of Environmental Protection (DEP) to the following persons within 30 days after receiving the actual contamination notice:

- The mayor, the chair of the county commission, or the comparable senior elected official representing the affected area;
- The city manager, the county administrator, or the comparable senior elected official representing the affected area;
- The state senator, state representative, and United States Representative representing the affected area and both United States Senators;
- All real property owners, presidents and board members of any condominium association or sole owners of condominiums, lessees, and tenants of record of: 1) the property at which site rehabilitation is being conducted, if different from the person responsible for site rehabilitation; 2) any properties within a 500-foot radius of each sampling point at which contamination is discovered, if site-rehabilitation was initiated pursuant to s. 376.30701, F.S., or an administrative or court order and; 3) any properties within a 250-foot radius of each sampling point at which contamination is discovered or any properties identified on a contaminant plume map provided, if site rehabilitation was initiated pursuant to s. 376.3071(5), F.S., s. 376.3078(4), or s. 376.81, F.S.

The bill also requires the DEP to provide additional notice when property at which contamination has been discovered is the site of a private K-12 school or child care facility.

The bill requires the DEP to recoup all costs associated with notification from the person responsible for the site rehabilitation, unless the site is eligible for state-funded clean-up pursuant to s. 376.3071(5), F.S. or dry cleaning restoration pursuant s. 376.3078(4), F.S.

The bill requires local governments, within 30 days after receiving the actual contamination notice, to mail a copy of the notice to the president or comparable executive officer of each homeowners' association or neighborhood association within the affected area.

The bill appears to have a fiscal impact on state and local governments (See Fiscal Impacts Section Below).

The bill has an effective date of July 1, 2010.

HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

In 2003, the Florida Legislature passed Committee Substitute for HB 1123, commonly referred to as Global RBCA, which was signed into law by Governor Bush on June 20, 2003. Global RBCA extended the use of risk-based corrective action to all contaminated sites resulting from a discharge of pollutants or hazardous substances where legal responsibility for site rehabilitation exists pursuant to other provisions of chapters 376 and 403, F.S.¹ Risk-based corrective action is not a new principle. It has been used for several years in Florida at contaminated sites under the supervision of specific Department of Environmental Protection (DEP) programs, namely: the Petroleum Program,² the Brownfield Program,³ and the Dry-cleaning Facility Restoration Program.⁴ Risk-based corrective action utilizes site-specific data, modeling results, risk assessment studies, institutional controls (i.e., a deed restriction limiting future use to industrial only), engineering controls (i.e., placing an impervious surface over contaminated soils to prevent human exposure), or any combination thereof, to develop a unique remediation strategy for the site that considers the intended use of the property and aims to protect human health and safety and the environment. Based upon this information, risk-based corrective action may incorporate engineering controls, institutional controls, or even alternative cleanup target levels, to achieve a "No Further Action" determination from the DEP.

Shortly after the statute became effective, the DEP commenced the rulemaking process to implement the provisions of Global RBCA. During the rulemaking process there was lengthy debate over the notice provisions that required owners of contaminated property, upon the discovery of contamination beyond their property boundaries, to notify neighboring property owners that pollutants had been discovered on or under their property.

The proposed rule developed for the first rulemaking workshop was published in August 2004 and dramatically increased then existing notice requirements. These new notice provisions were developed in response to criticism of the DEP's actions in certain high profile cases in which property owners had not been notified of the migration of contamination from neighboring sites onto their property.⁵

¹ Section 376.30701, F.S.

² Section 376.3071, F.S.

³ Section 376.81, F.S.

⁴ Section 376.3078, F.S.

⁵ Ralph A. DeMeo, Carl Eldred, Leslie A. Utiger, Lynn S. Scruggs. *Insuring Against Environmental Unknowns*, 23 *J. Land Use & Envtl. L.* 61 (Fall 2007), citing Deborah Alberto, *DEP Investigates Itself in Handling of Coronet*, Tampa Trib. (Sept. 24, 2003); Scott Carroll, *A Stormy End to Tallevast Talks*, Sarasota Herald-Trib. (Dec. 9, 2005); Scott Carroll, *Warrior Women with Community*

Originally, the DEP proposed the requirement of verbal notice to affected property owners within three days of discovery of off-site migration of contaminants. Additionally, constructive notice was to be provided to residents and business tenants of any real property into which contamination migrated from the source property by publishing a "notice, at least 16 square inches in size, in a newspaper of general circulation in the area."

The DEP eventually modified these proposed notice provisions to require written notice to the DEP within ten days of the confirmed discovery (i.e., laboratory analytical data) of contamination on property beyond the boundaries of the property that is the subject of site rehabilitation activities. The final rule, which became legally effective on April 17, 2005, also sets out the specific information that is to be included when providing such notice to the DEP.

In response to the events at the Tallevast facility, the legislature passed HB 937, which essentially mirrored the notification requirements in Global RBCA. Committee Substitute for HB 937, often referred to as the Tallevast Bill, was signed into law by Governor Bush on May 24, 2004. For the most part, this legislation codified the contamination notification requirements promulgated in chapter 62-780 of the Florida Administrative Code, by requiring anyone conducting site rehabilitation of contaminated property to notify DEP of the existence of contamination and require DEP to notify owners of property at which contamination had been discovered.⁶ Specifically, the statute provides that if at any time during site rehabilitation, conducted pursuant to specific provisions of chapter 376, F.S., the person responsible for site rehabilitation or his or her agent or representative discovers from laboratory analytical results that contamination as defined in applicable DEP rules exists in any medium beyond the boundary of the property at which site rehabilitation was initiated, the person responsible for site rehabilitation shall give actual notice no later than ten days from such discovery to the DEP Division of Waste Management in Tallahassee.⁷ A copy of the notice must also be simultaneously mailed to the applicable DEP District Office, County Health Department, and all known lessees or tenants of the source property.⁸

Within thirty days of receiving the actual notice (or if the DEP already possessed information equivalent to that required by the notice, within thirty days of the effective date of the legislation), the DEP must notify all owners of record of real property, except for owners of property where contamination was discovered and where site rehabilitation was initiated.⁹ This particular provision required the DEP to review all sites undergoing DEP supervised site remediation and identify all instances of actual contamination beyond the source property boundaries.

Effect of Bill

The bill amends s. 376.30702, F.S., to add that the contamination notification requirements in this section also apply to site rehabilitation conducted pursuant to an administrative or court order.

The bill specifies that the contamination notification requirements in s. 376.30702, F.S., are triggered when the person responsible for site rehabilitation, the person's authorized agent, or another representative of the person discovers contamination in any groundwater, surface water, or soil at or beyond the boundaries of the property at which the site rehabilitation was initiated. The bill further provides that the contamination notice submitted to the DEP must include a contaminant plume map signed and sealed by a Florida-licensed professional engineer or geologist, if such a map is available.

The bill also requires the DEP, within 30 days after receiving the actual contamination notification, to verify that the person responsible for the site rehabilitation has complied with the notice requirements submitted to DEP. If the person fails to comply with the notice requirements, the DEP can pursue enforcement

Support, Sarasota Herald-Trib. (July 19, 2004); Editorial, *Coronet's Problems Were Kept Quiet for Far Too Long*, Tampa Trib. (Aug. 1, 2003).

⁶ Section 376.30702(2), F.S.

⁷ *Id.*

⁸ *Id.*

⁹ Section 376.30702(3), F.S.

The bill requires that within 30 days after receipt of the actual notice from the person responsible for site rehabilitation, DEP notify the following persons of the contamination:

- The mayor, the chair of the county commission, or the comparable senior elected official representing the affected area;
- The city manager, the county administrator, or the comparable senior administrative official representing the affected area;
- The state senator, state representative, and United States Representative representing the affected area and both United States Senators;
- All real property owners, presidents of any condominium associations or sole owners of condominiums, lessees, and the tenants of record for the property at which site rehabilitation is being conducted, if different from the person responsible for site rehabilitation;
- All real property owners, presidents of any condominium associations or sole owners of condominiums, lessees, and the tenants of record for any properties within a 500-foot radius of each sampling point at which contamination is discovered, if site rehabilitation was initiated pursuant to s. 376.30701, F.S. or an administrative court order;
- All real property owners, presidents and board members of any condominium associations or sole owners of condominiums, lessees, and tenants of record of any properties within a 250-foot radius of each sampling point at which contamination is discovered or any properties identified on a contaminant plume map provided, if site rehabilitation was initiated by the Inland Protection Trust Fund pursuant to s. 376.3071(5), F.S., dry cleaning facility restoration pursuant to s. 376.3078(4), or brownfield area cleanup pursuant to s. 376.81, F.S.

This bill specifies that the notice provided to local government officials must be mailed by certified mail and must advise the local government of its responsibility to mail a copy of the notice to the president or comparable executive officer of each homeowners' association or neighborhood association within the potentially affected area. The notice provided to real property owners, presidents of any condominium associations or sole owners of condominiums, lessees, and tenants of record can be delivered by certified mail, first-class mail, hand delivery, or door-hanger.

If the property where contamination has been discovered is the site of a school as defined in s. 1003.01, F.S.,¹⁰ the bill requires the DEP to mail a copy of the contamination notification to the superintendent of the school district in which the property is located and direct the superintendent to provide actual notice annually to teachers and parents or guardians of students or children attending the school during the period of site rehabilitation.

The bill also requires that if the property where contamination has been discovered is the site of a private K-12 school or child care facility as defined in 402.302, F.S.,¹¹ the DEP must mail a copy of the contamination notification to the governing board, principle, or owner of the school or child care facility and direct the governing board, principal, or owner to provide actual notice annually to teachers, parents or guardians of students, or children attending the school or child care facility during the period of site rehabilitation.

If any property within a 1-mile radius of the property at which contamination has been discovered during site rehabilitation pursuant to s. 376.30701 or an administrative or court order is the site of a

¹⁰ Under s. 1003.01, F.S., "School" means an organization of students for instructional purposes on an elementary, middle or junior high school, secondary or high school, or other public school level authorized under rules of the State Board of Education.

¹¹ Under 402.302, F.S., "Child care facility" includes any child care center or child care arrangement that provides child care for more than five children unrelated to the operator and that receives a payment, fee, or grant for any of the children receiving care, wherever operated, and whether or not operated for profit. The following are not included: Public schools and nonpublic schools and their integral programs; Summer camps having children in full-time residence; Summer day camps; Bible schools normally conducted during vacation periods; and Operators of transient establishments, as defined in chapter 509, which provide child care services solely for the guests of their establishment or resort, provided that all child care personnel of the establishment are screened according to the level 2 screening requirements of chapter 435.

school as defined in s. 1003.01, F.S.,¹² the bill requires the DEP to mail a copy of the notice to the superintendent of the school district in which the property is located and direct the superintendent to provide actual notice annually to the principal of the school. Further, if any property within a 250-foot radius of the property at which contamination has been discovered during site rehabilitation pursuant to s. 376.3071(5), F.S., s. 376.3078(4), F.S., or s. 376.81, F.S., is the site of a school as defined in s. 1003.01, F.S.,¹³ the DEP must mail a copy of the notice to the superintendent of the school district in which the property is located and direct the superintendent to provide actual notice annually to the principal of the school.

Within 30 days after receiving the actual notice from the DEP, the bill requires the local government to mail a copy of the notice to the president or comparable executive officer of each homeowners' association or neighborhood association within the potentially affected area.

The bill provides that the DEP shall recover all costs of postage, materials, and labor associated with notification from the responsible party, except when site rehabilitation is eligible for state-funded cleanup pursuant to the risk-based corrective action provisions found in s. 376.3071(5), F.S., or s. 376.3078(4), F.S.

B. SECTION DIRECTORY:

Section 1: Amends s. 376.30702, F.S., relating to contamination notification.

Section 2: Provides an effective date of July 1, 2010.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

According to the Department of Environmental Protection (DEP), there will be manageable startup costs to establish procedures for identifying parcels and schools that fall within a specified radius of a contamination location or are within an area defined by a plume map provided with a notice to the department. Because the department is the person responsible for site rehabilitation at sites that are eligible for state-funded cleanup programs, it will incur significant costs to identify and notify a large number of property owners, lessees and tenants each year. The Department of Health (DOH) may experience an increase in resident requests for information on public health impacts of contamination on or near their residences and drinking water supplies.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

Most local governments own contaminated property. They may incur increased costs associated with complying with the new notification requirements for those properties. The bill also requires local governments to mail a copy of any contamination notification that is received to the president or equivalent officer of each homeowner's association or neighborhood association within the

¹² Under s. 1003.01, F.S., "School" means an organization of students for instructional purposes on an elementary, middle or junior high school, secondary or high school, or other public school level authorized under rules of the State Board of Education.

¹³ Under s. 1003.01, F.S., "School" means an organization of students for instructional purposes on an elementary, middle or junior high school, secondary or high school, or other public school level authorized under rules of the State Board of Education.

potentially affected area. School districts will also experience increased costs for creating and mailing letters to teachers, parents, and guardians of schools within a 250 foot radius of a contaminated site.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

This bill appears to have a negative fiscal impact on the private sector by requiring the person responsible for site rehabilitation to reimburse the DEP for all costs associated with the additional contamination notification requirements established in the bill. Private K-12 schools and child care facilities will incur some costs to annually notify teachers and parents or guardians attending the school.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill requires local governments to mail a copy of any received contamination notification that they receive to the president or comparable executive officer of each homeowners' association or neighborhood association within the affected area. Consequently, the bill appears to require counties or municipalities to spend funds or take action requiring the expenditure of funds. However, this requirement appears to have an insignificant fiscal impact on local governments and would be exempt from the mandate provision.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

On lines 122 & 126, the bill indicates a particular radius (500 ft or 250 ft) from the contaminated "sampling point." However, on lines 172 & 180, the bill indicates that a particular radius be drawn from the contaminated "property." The irregularity of property boundaries could lead to arbitrary radium distinctions.

On line 133, 196, & 198, it is unclear who "local government officials" refers to. Assuming that "local government officials" on line 133 refers to the officials enumerated in subsection (3)(a)(1) and (3)(a)(2), clarification as to which of these parties is responsible for notifying the president or equivalent officers of each homeowners' association within the potentially affected area is still required to alleviate duplicative notification.

On lines 133-140, the bill provides explicit instruction on how to provide notice to local governments and to property owners, lessees and tenants and how persons responsible for site rehabilitation must demonstrate compliance with the law. However, similar instruction is not provided for notices sent to the department district office, the county health department, or state and federal elected officials.

On line 151-154, the bill provides that if the person responsible for site rehabilitation has not complied with the notice requirements, the department may pursue enforcement action. However, similar enforcement mechanisms are not provided for either local governments or school officials in meeting their notification requirements. Nor has the bill delegated specific rulemaking authority to DEP to pursue enforcement if such entities fail to comply with their notification requirements.

On line 160, 168, 179, & 186, it is unclear whether the superintendent is to send out contamination notifications to school officials immediately following receipt of the contamination notification from DEP and then annually thereafter; whether the superintendent has a quantified timeframe to send notification to school officials followed by annual notifications; or whether an alternative to either of these approaches was intended.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

None.

1 A bill to be entitled
 2 An act relating to contamination notification; amending s.
 3 376.30702, F.S.; revising contamination notification
 4 provisions; requiring individuals responsible for site
 5 rehabilitation to provide notice of site rehabilitation to
 6 specified entities; revising provisions relating to the
 7 content of such notice; requiring the Department of
 8 Environmental Protection to provide notice of site
 9 rehabilitation to specified entities and certain property
 10 owners; providing an exemption; requiring the department
 11 to verify compliance with notice requirements; authorizing
 12 the department to pursue enforcement measures for
 13 noncompliance with notice requirements; revising the
 14 department's contamination notification requirements for
 15 certain public schools; requiring the department to
 16 provide specified notice to private K-12 schools and child
 17 care facilities; requiring the department to provide
 18 specified notice to public schools within a specified
 19 area; providing notice requirements, including directives
 20 to extend such notice to certain other persons; requiring
 21 local governments to provide specified notice of site
 22 rehabilitation; requiring the department to recover
 23 notification costs from responsible parties; providing an
 24 effective date.

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

27
 28 Section 1. Section 376.30702, Florida Statutes, is amended

29 to read:

30 376.30702 Contamination notification.--

31 (1) FINDINGS; INTENT; APPLICABILITY.--The Legislature
 32 finds ~~and declares~~ that when contamination is discovered by any
 33 person as a result of site rehabilitation activities conducted
 34 pursuant to the risk-based corrective action provisions found in
 35 s. 376.3071(5), s. 376.3078(4), s. 376.81, or s. 376.30701, or
 36 pursuant to an administrative or court order, it is in the
 37 public's best interest that potentially affected persons be
 38 notified of the existence of such contamination. Therefore,
 39 persons discovering such contamination shall notify the
 40 department and those identified under this section of the such
 41 discovery in accordance with the requirements of this section,
 42 ~~and the department shall be responsible for notifying the~~
 43 ~~affected public.~~ The Legislature intends that ~~for the provisions~~
 44 ~~of~~ this section ~~to~~ govern the notice requirements for early
 45 notification of the discovery of contamination.

46 (2) INITIAL NOTICE OF CONTAMINATION ~~BEYOND PROPERTY~~
 47 ~~BOUNDARIES~~.--

48 (a) If at any time during site rehabilitation conducted
 49 pursuant to s. 376.3071(5), s. 376.3078(4), s. 376.81, ~~or~~ s.
 50 376.30701, or an administrative or court order the person
 51 responsible for site rehabilitation, the person's authorized
 52 agent, or another representative of the person discovers from
 53 laboratory analytical results that comply with appropriate
 54 quality assurance protocols specified in department rules that
 55 contamination as defined in applicable department rules exists
 56 in any groundwater, surface water, or soil at or ~~medium~~ beyond

57 the boundaries of the property at which site rehabilitation was
 58 initiated ~~pursuant to s. 376.3071(5), s. 376.3078(4), s. 376.81,~~
 59 ~~or s. 376.30701~~, the person responsible for site rehabilitation
 60 shall give actual notice as soon as possible, but no later than
 61 10 days after the ~~from such~~ discovery, to the Division of Waste
 62 Management at the department's Tallahassee office. The actual
 63 notice must ~~shall~~ be provided on a form adopted by department
 64 rule and mailed by certified mail, return receipt requested. The
 65 person responsible for site rehabilitation shall simultaneously
 66 provide ~~mail~~ a copy of the ~~such~~ notice to the appropriate
 67 department district office and, county health department, ~~and~~
 68 ~~all known lessees and tenants of the source property.~~

69 (b) The notice must ~~shall~~ include the following
 70 information:

71 1.(a) The location of the property at which site
 72 rehabilitation was initiated ~~pursuant to s. 376.3071(5), s.~~
 73 ~~376.3078(4), s. 376.81, or s. 376.30701~~ and contact information
 74 for the person responsible for site rehabilitation, the person's
 75 authorized agent, or another representative of the person.

76 2.(b) A listing of all record owners of the ~~any~~ real
 77 property, ~~other than the property at which site rehabilitation~~
 78 ~~was initiated pursuant to s. 376.3071(5), s. 376.3078(4), s.~~
 79 ~~376.81, or s. 376.30701~~, at which contamination has been
 80 discovered; the parcel identification number for ~~any~~ such ~~real~~
 81 property; the owner's address listed in the current county
 82 property tax office records; and the owner's telephone number.
 83 ~~The requirements of this paragraph do not apply to the notice to~~
 84 ~~known tenants and lessees of the source property.~~

85 3.(e) Separate tables for ~~by medium, such as~~ groundwater,
 86 soil, and surface water which, ~~or sediment, that~~ list sampling
 87 locations identified on the vicinity map described in
 88 subparagraph 4.; sampling dates; names of contaminants detected
 89 above cleanup target levels; their corresponding cleanup target
 90 levels; the contaminant concentrations; and whether the cleanup
 91 target level is based on health, nuisance, organoleptic, or
 92 aesthetic concerns.

93 4.(d) A vicinity map that shows each sampling location
 94 with corresponding laboratory analytical results described in
 95 subparagraph 3. ~~and the date on which the sample was collected~~
 96 and that identifies the property boundaries of the property at
 97 which site rehabilitation was initiated ~~pursuant to s.~~
 98 ~~376.3071(5), s. 376.3078(4), s. 376.81, or s. 376.30701~~ and any
 99 ~~the~~ other properties at which contamination has been discovered
 100 during such site rehabilitation. If available, a contaminant
 101 plume map signed and sealed by a state-licensed professional
 102 engineer or geologist may be included with the vicinity map.

103 (3) DEPARTMENT'S NOTICE RESPONSIBILITIES.--

104 (a) Within 30 days after receiving the actual notice
 105 required under subsection (2), the department shall notify the
 106 following persons of the contamination:

107 1. The mayor, the chair of the county commission, or the
 108 comparable senior elected official representing the affected
 109 area.

110 2. The city manager, the county administrator, or the
 111 comparable senior administrative official representing the
 112 affected area.

113 3. The state senator, state representative, and United
 114 States Representative representing the affected area and both
 115 United States Senators.

116 4. All real property owners, presidents of any condominium
 117 associations or sole owners of condominiums, lessees, and the
 118 tenants of record for:

119 a. The property at which site rehabilitation is being
 120 conducted, if different from the person responsible for site
 121 rehabilitation;

122 b. Any properties within a 500-foot radius of each
 123 sampling point at which contamination is discovered, if site
 124 rehabilitation was initiated pursuant to s. 376.30701 or an
 125 administrative or court order; and

126 c. Any properties within a 250-foot radius of each
 127 sampling point at which contamination is discovered or any
 128 properties identified on a contaminant plume map provided
 129 pursuant to subparagraph (2)(b)4., if site rehabilitation was
 130 initiated pursuant to s. 376.3071(5), s. 376.3078(4), or s.
 131 376.81.

132 (b) The notice provided to:

133 1. Local government officials shall be mailed by certified
 134 mail, return receipt requested, and must advise the local
 135 government of its responsibilities under subsection (4).

136 2. Real property owners, presidents of any condominium
 137 associations or sole owners of condominiums, lessees, and
 138 tenants of record may be delivered by certified mail, return
 139 receipt requested, first-class mail, hand delivery, or door
 140 hanger.

141 (c) Within 30 days after receiving the actual notice
 142 required under ~~pursuant to~~ subsection (2), ~~or within 30 days of~~
 143 ~~the effective date of this act if the department already~~
 144 ~~possesses information equivalent to that required by the notice,~~
 145 the department shall verify that the person responsible for site
 146 rehabilitation has complied with the notice requirements of this
 147 section ~~send a copy of such notice, or an equivalent~~
 148 ~~notification, to all record owners of any real property, other~~
 149 ~~than the property at which site rehabilitation was initiated~~
 150 ~~pursuant to s. 376.3071(5), s. 376.3078(4), s. 376.81, or s.~~
 151 ~~376.30701, at which contamination has been discovered. If the~~
 152 person responsible for site rehabilitation has not complied with
 153 the notice requirements, the department may pursue enforcement
 154 as provided under this chapter and chapter 403.

155 (d)1. If the property at which contamination has been
 156 discovered is the site of a school as defined in s. 1003.01, the
 157 department shall mail ~~also send~~ a copy of the notice to the
 158 superintendent ~~chair of the school board~~ of the school district
 159 in which the property is located and direct the superintendent
 160 ~~said school board~~ to provide actual notice annually to teachers
 161 and parents or guardians of students attending the school during
 162 the period of site rehabilitation.

163 2. If the property at which contamination has been
 164 discovered is the site of a private K-12 school or a child care
 165 facility as defined in s. 402.302, the department shall mail a
 166 copy of the notice to the governing board, principal, or owner
 167 of the school or child care facility and direct the governing
 168 board, principal, or owner to provide actual notice annually to

169 teachers and parents or guardians of students or children
 170 attending the school or child care facility during the period of
 171 site rehabilitation.

172 3. If any property within a 1-mile radius of the property
 173 at which contamination has been discovered during site
 174 rehabilitation pursuant to s. 376.30701 or an administrative or
 175 court order is the site of a school as defined in s. 1003.01,
 176 the department shall mail a copy of the notice to the
 177 superintendent of the school district in which the property is
 178 located and direct the superintendent to provide actual notice
 179 annually to the principal of the school.

180 4. If any property within a 250-foot radius of the
 181 property at which contamination has been discovered during site
 182 rehabilitation pursuant to s. 376.3071(5), s. 376.3078(4), or s.
 183 376.81 is the site of a school as defined in s. 1003.01, the
 184 department shall mail a copy of the notice to the superintendent
 185 of the school district in which the property is located and
 186 direct the superintendent to provide actual notice annually to
 187 the principal of the school.

188 (e) Along with the copy of the notice ~~or its equivalent,~~
 189 the department shall include a letter identifying sources of
 190 additional information about the contamination and a telephone
 191 number to which further inquiries should be directed. The
 192 department may collaborate with the Department of Health to
 193 develop such sources of information and to establish procedures
 194 for responding to public inquiries about health risks associated
 195 with contaminated sites.

196 (4) LOCAL GOVERNMENT'S NOTICE RESPONSIBILITIES.--Within 30

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197 days after receiving the actual notice required under subsection
 198 (2), the local government shall mail a copy of the notice to the
 199 president or equivalent officer of each homeowners' association
 200 or neighborhood association within the potentially affected area
 201 as described in subsection (2).

202 (5) RECOVERY OF NOTIFICATION COSTS.--The department shall
 203 recover the costs of postage, materials, and labor associated
 204 with notification from the responsible party, unless site
 205 rehabilitation is eligible for state-funded cleanup pursuant to
 206 the risk-based corrective action provisions found in s.
 207 376.3071(5) or s. 376.3078(4).

208 (6)-(4) RULEMAKING AUTHORITY.--The department shall adopt
 209 rules and forms pursuant to ss. 120.536(1) and 120.54 to
 210 administer ~~implement~~ the requirements of this section.

211 Section 2. This act shall take effect July 1, 2010.

Amendment No. 1

COUNCIL/COMMITTEE 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 Council/Committee hearing bill: Agriculture & Natural Resources
2 Policy Committee
3 Representative Kriseman offered the following:

Amendment (with title amendment)

6 Remove everything after the enacting clause and insert:
7 Section 1. Section 376.30702, Florida Statutes, is amended to
8 read:

9 376.30702 Contamination notification.—

10 (1) FINDINGS; INTENT; APPLICABILITY.—The Legislature finds
11 ~~and declares~~ that when contamination is discovered by any person
12 as a result of site rehabilitation activities conducted pursuant
13 to the risk-based corrective action provisions found in s.
14 376.3071(5), s. 376.3078(4), s. 376.81, or s. 376.30701, or
15 pursuant to an administrative or court order, it is in the
16 public's best interest that potentially affected persons be
17 notified of the existence of such contamination. Therefore,
18 persons discovering such contamination shall notify the
19 department and those identified under this section of the ~~such~~

COUNCIL/COMMITTEE AMENDMENT

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20 discovery in accordance with the requirements of this section,
21 ~~and the department shall be responsible for notifying the~~
22 ~~affected public.~~ The Legislature intends that ~~for the provisions~~
23 ~~of this section to~~ govern the notice requirements for early
24 notification of the discovery of contamination.

25 (2) INITIAL NOTICE OF CONTAMINATION ~~BEYOND PROPERTY~~
26 ~~BOUNDARIES.~~-

27 (a) If at any time during site rehabilitation conducted
28 pursuant to s. 376.3071(5), s. 376.3078(4), s. 376.81, ~~or~~ s.
29 376.30701, or an administrative or court order the person
30 responsible for site rehabilitation, the person's authorized
31 agent, or another representative of the person discovers from
32 laboratory analytical results that comply with appropriate
33 quality assurance protocols specified in department rules that
34 contamination as defined in applicable department rules exists
35 in any groundwater, surface water, or soil medium beyond the
36 boundaries of the property at which site rehabilitation was
37 initiated ~~pursuant to s. 376.3071(5), s. 376.3078(4), s. 376.81,~~
38 ~~or s. 376.30701~~, the person responsible for site rehabilitation
39 shall give actual notice as soon as possible, but no later than
40 45 ~~10~~ days after the ~~from such~~ discovery, to the Division of
41 Waste Management at the department's Tallahassee office. The
42 actual notice must ~~shall~~ be provided on a form adopted by
43 department rule and mailed by certified mail, return receipt
44 requested. The person responsible for site rehabilitation shall
45 simultaneously provide by certified mail, return receipt
46 requested, ~~mail~~ a copy of the ~~such~~ notice to the appropriate

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47 department district office and, county health department, ~~and~~
48 ~~all known lessees and tenants of the source property.~~

49 (b) The notice must ~~shall~~ include the following
50 information:

51 1.(a) The location of the property at which site
52 rehabilitation was initiated ~~pursuant to s. 376.3071(5), s.~~
53 ~~376.3078(4), s. 376.81, or s. 376.30701~~ and contact information
54 for the person responsible for site rehabilitation, the person's
55 authorized agent, or another representative of the person.

56 2.(b) A listing of all record owners of the any real
57 property, ~~other than the property at which site rehabilitation~~
58 ~~was initiated pursuant to s. 376.3071(5), s. 376.3078(4), s.~~
59 ~~376.81, or s. 376.30701,~~ at which contamination has been
60 discovered; the parcel identification number for any such ~~real~~
61 property; and the owner's address listed in the current county
62 property tax office records, ~~and the owner's telephone number.~~
63 ~~The requirements of this paragraph do not apply to the notice to~~
64 ~~known tenants and lessees of the source property.~~

65 3.(e) Separate tables for by ~~medium,~~ such as groundwater,
66 soil, and surface water which, ~~or sediment,~~ that list sampling
67 locations identified on the vicinity map described in
68 subparagraph 4.; sampling dates; names of contaminants detected
69 above cleanup target levels; their corresponding cleanup target
70 levels; the contaminant concentrations; and whether the cleanup
71 target level is based on health, nuisance, organoleptic, or
72 aesthetic concerns.

73 4.(d) A vicinity map that shows each sampling location
74 with corresponding laboratory analytical results described in

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75 subparagraph 3. and the date on which the sample was collected
76 and that identifies the property boundaries of the property at
77 which site rehabilitation was initiated pursuant to s.
78 376.3071(5), s. 376.3078(4), s. 376.81, or s. 376.30701 and any
79 the other properties at which contamination has been discovered
80 during such site rehabilitation. If available, a contaminant
81 plume map signed and sealed by a state-licensed professional
82 engineer or geologist may be included with the vicinity map.

83 (3) DEPARTMENT'S NOTICE RESPONSIBILITIES.—

84 (a) Within 15 30 days after receiving the actual notice
85 required under pursuant to subsection (2), or within 30 days of
86 the effective date of this act if the department already
87 possesses information equivalent to that required by the notice,
88 the department shall verify that the person responsible for site
89 rehabilitation has complied with the notice requirements of
90 subsection (2) send a copy of such notice, or an equivalent
91 notification, to all record owners of any real property, other
92 than the property at which site rehabilitation was initiated
93 pursuant to s. 376.3071(5), s. 376.3078(4), s. 376.81, or s.
94 376.30701, at which contamination has been discovered. If the
95 person responsible for site rehabilitation has not complied with
96 the notice requirements of subsection (2), then the department
97 may pursue enforcement as provided under this chapter and
98 chapter 403.

99 (b) Within 30 days after receiving the actual notice
100 required under subsection (2), the department shall notify the
101 following persons of the contamination for which notice was
102 required pursuant to subsection (2):

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103 1. The mayor, the chair of the county commission, or the
104 comparable senior elected official representing the affected
105 area.

106 2. The city manager, the county administrator, or the
107 comparable senior administrative official representing the
108 affected area.

109 3. The state representative and state senator representing
110 the affected area.

111 4. All real property owners, presidents of any condominium
112 associations or sole owners of condominiums, presidents of any
113 cooperative associations or sole owners of cooperatives,
114 lessees, and the tenants of record for:

115 a. Any real property, other than the property at which
116 site rehabilitation was initiated pursuant to s. 376.3071(5), s.
117 376.3078(4), s. 376.81, or s. 376.30701, at which contamination
118 has been discovered;

119 b. Any properties identified within the boundaries of a
120 contaminant plume located on a contaminant plume map provided
121 pursuant to subparagraph (2)(b)4., any properties identified by
122 a state licensed professional engineer or professional geologist
123 through a certified site-specific determination that such
124 contamination is reasonably likely to be present beyond the
125 boundaries of the source property, or any properties within a
126 500-foot radius of each sampling point at which contamination is
127 discovered where a contaminant plume map is not provided, if
128 site rehabilitation was initiated pursuant to s. 376.30701 or an
129 administrative or court order; and

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130 c. Any properties identified within the boundaries of a
131 contaminant plume located on a contaminant plume map provided
132 pursuant to subparagraph (2)(b)4., any properties identified by
133 a state licensed professional engineer or professional geologist
134 through a certified site-specific determination that such
135 contamination is reasonably likely to be present beyond the
136 boundaries of the source property, or any properties within a
137 250-foot radius of each sampling point at which contamination is
138 discovered where a contaminant plume map is not provided, if
139 site rehabilitation was initiated pursuant to s. 376.3071(5), s.
140 376.3078(4), or s. 376.81, or at, or in connection with, a
141 permitted solid waste management facility subject to a
142 groundwater monitoring plan.

143 (c) The notice provided to:

144 1. Local government officials described in this subsection
145 shall be mailed by certified mail, return receipt requested.

146 2. Real property owners, presidents of any homeowners'
147 associations, presidents of any condominium associations or sole
148 owners of condominiums, lessees, and tenants of record shall be
149 delivered by certified mail, return receipt requested, first-
150 class mail, hand delivery, or door hanger.

151 (d)1. If the property at which contamination has been
152 discovered is the site of a PreK-12 school as defined in s.
153 1003.01, the department shall mail ~~also send~~ a copy of the
154 notice to the superintendent ~~chair of the school board~~ of the
155 school district in which the property is located and direct the
156 superintendent ~~said school board~~ to provide actual notice within

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157 10 days to teachers and parents or guardians of students
158 attending the school during the period of site rehabilitation.

159 2. If the property at which contamination has been
160 discovered is the site of a private PreK-12 school or a child
161 care facility as defined in s. 402.302, the department shall
162 mail a copy of the notice to the governing board, principal, or
163 owner of the school or child care facility and direct the
164 governing board, principal, or owner to provide actual notice
165 within 10 days to teachers and parents or guardians of students
166 or children attending the school or child care facility during
167 the period of site rehabilitation.

168 3. If any property within a 1-mile radius of the sampling
169 point at which contamination has been discovered during site
170 rehabilitation pursuant to s. 376.30701 or an administrative or
171 court order is the site of a PreK-12 school as defined in s.
172 1003.01, the department shall mail a copy of the notice to the
173 superintendent of the school district in which the property is
174 located.

175 4. If any property within a 250-foot radius of the
176 sampling point at which contamination has been discovered during
177 site rehabilitation pursuant to s. 376.3071(5), s. 376.3078(4),
178 or s. 376.81, or at, or in connection with, a permitted solid
179 waste management facility subject to a groundwater monitoring
180 plan, is the site of a school as defined in s. 1003.01, the
181 department shall mail a copy of the notice to the superintendent
182 of the school district in which the property is located.

183 5. If the property at which contamination has been
184 discovered is the site of a public or private college or

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185 university, the department shall mail a copy of the notice to
186 the President of such private or public college or university
187 and the chair of board of governors or trustees.

188 6. If any property within a 1-mile radius of the sampling
189 point at which contamination has been discovered during site
190 rehabilitation pursuant to s. 376.30701 or an administrative or
191 court order is the site of a public or private college or
192 university, the department shall mail a copy of the notice to
193 the President of such private or public college or university
194 and the chair of the board of governors or trustees.

195 7. If any property within a 250-foot radius of the
196 sampling point at which contamination has been discovered during
197 site rehabilitation pursuant to s. 376.3071(5), s. 376.3078(4),
198 or s. 376.81 is the site of a public or private college or
199 university, the department shall mail a copy of the notice to
200 the President of such private or public college or university
201 and the chair of the board of governors or trustees.

202 (e) Along with the copy of the notice ~~or its equivalent,~~
203 the department shall include a letter identifying sources of
204 additional information about the contamination and a telephone
205 number to which further inquiries should be directed. The
206 department may collaborate with the Department of Health to
207 develop such sources of information and to establish procedures
208 for responding to public inquiries about health risks associated
209 with contaminated sites.

210 (f) The department shall provide quarterly a list to each
211 United States Representative and both United States Senators of
212 all contaminated sites being rehabilitated pursuant to s.

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213 376.3071(5), s. 376.3078(4), s. 376.81, or s. 376.30701 that are
214 located within that United States Representative's or United
215 States Senator's legislative district.

216 (4) LOCAL GOVERNMENT'S NOTICE RESPONSIBILITIES.—Within 30
217 days after receiving the notice required under subsection (3),
218 the local government shall mail a copy of the notice to the
219 president of any homeowners' association created pursuant to
220 chapter 720, the president or equivalent representative of any
221 incorporated voluntary homeowners' or neighborhood association,
222 and any other existing voluntary homeowners' or neighborhood
223 associations that are not incorporated, but have registered with
224 the applicable local government pursuant to local governmental
225 requirements that is located within the areas identified in
226 subsections (3)(b)4.a., (3)(b)4.b., or (3)(b)4.c.

227 (5) RECOVERY OF NOTIFICATION COSTS.—The department may
228 recover the costs of postage, materials, and labor associated
229 with notification from the party responsible for the
230 contamination, unless site rehabilitation is eligible for state-
231 funded cleanup pursuant to the risk-based corrective action
232 provisions found in s. 376.3071(5) or s. 376.3078(4), and
233 provided that sufficient funds exist within the trust funds to
234 cover the cost of the notification.

235 (6)(4) RULEMAKING AUTHORITY.—The department shall adopt
236 rules and forms pursuant to ss. 120.536(1) and 120.54 to
237 administer ~~implement~~ the requirements of this section.

238 Section 2. This act shall take effect July 1, 2010.

239
240

Amendment No. 1

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T I T L E A M E N D M E N T

Remove the entire title and insert:

An act relating to contamination notification; amending s.
376.30702, F.S.; revising contamination notification provisions;
requiring individuals responsible for site rehabilitation to
provide notice of site rehabilitation to specified entities;
revising provisions relating to the content of such notice;
requiring the Department of Environmental Protection to provide
notice of site rehabilitation to specified entities and certain
property owners; requiring the department to verify compliance
with notice requirements; authorizing the department to pursue
enforcement measures for noncompliance with notice requirements;
revising the department's contamination notification
requirements for certain public schools; requiring the
department to provide specified notice to private PreK-12
schools and child care facilities; requiring the department to
provide specified notice to public schools within a specified
area; providing notice requirements, including directives to
extend such notice to certain other persons; requiring the
department to recover notification costs from responsible
parties; providing an effective date.

HOUSE OF REPRESENTATIVES LOCAL BILL STAFF ANALYSIS

BILL #: CS/HB 831 Nassau County
SPONSOR(S): Military & Local Affairs Policy Committee, Adkins
TIED BILLS: **IDEN./SIM. BILLS:**

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1)	Military & Local Affairs Policy Committee	11 Y, 2 N, As CS	Fudge	Hoagland
2)	Agriculture & Natural Resources Policy Committee		Cunningham <i>PC</i>	Reese <i>AR</i>
3)	Economic Development & Community Affairs Policy Council			
4)				
5)				

SUMMARY ANALYSIS

The Nassau River-St. Johns River Marshes Aquatic Preserve (Preserve) was designated an aquatic preserve on November 24, 1969, for the primary purpose of preserving the biological resources of the Nassau Sound area marshes and associated waters. The Preserve extends south from A1A and east from State Road 17 in Nassau County, to the St. Johns River in Duval County, which includes portions of the Nassau, Amelia, and Fort George rivers. The Preserve is bordered by two incorporated cities, Fernandina Beach and Jacksonville.

Activities on sovereignty lands in aquatic preserves are regulated by the Department of Environmental Protection (department). Specifically, the department prohibits private residential single-family docks from having a terminal platform size more than 160 square feet.

The bill allows certain single-family docks within the Preserve to retain a terminal platform that does not exceed a cumulative total deck and roof area of 800 square feet. However, should more than 50 percent of a nonconforming structure fall into a state of disrepair or be destroyed as a result of any natural or manmade force, the entire structure shall be brought into full compliance with the current rules of the Board of Trustees of the Internal Improvement Trust Fund.

Pursuant to House Rule 5.5(b), a local bill providing an exemption from general law may not be placed on the Special Order Calendar for expedited consideration. The provisions of House Rule 5.5(b) appear to apply to this bill.

HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situations

The Nassau River-St. Johns River Aquatic Preserve (Preserve) was designated an aquatic preserve on November 24, 1969, for the primary purpose of preserving the biological resources of the Nassau Sound area marshes and associated waters. The Preserve extends south from A1A and east from State Road 17 in Nassau County, to the St. Johns River in Duval County, which includes portions of the Nassau, Amelia, and Fort George Rivers. The Preserve is bordered by two incorporated cities, Fernandina Beach and Jacksonville.

Activities on sovereignty lands in aquatic preserves are regulated by Rule 18-20.004, F.A.C. Section (5) of the rule prescribes the standards and criteria for docking facilities. Under this rule, private residential single-family docks may not have a terminal platform size more than 160 square feet. In addition, "should more than 50 percent of a nonconforming structure fall into a state of disrepair or be destroyed as a result of any natural or manmade force, the entire structure shall be brought into full compliance with the current rules of the Board. This shall not be construed to prevent routine repair."¹

Effect of Proposed Changes

The affects an area within the Preserve between State Road 200 to the north and a line drawn between N30°32'44.890", W-81°33'08.68" and N30°32'40.001", W-81°32'55.79" to the south. This area encompasses approximately 99 docks that have terminal platforms that exceed 160 square feet.

Those existing single-family docks may be exempt from the 160 square feet requirement so long as cumulative total deck and roof area does not exceed 800 square feet and the owner applies for a letter of consent to use sovereignty submerged land from the Department of Environmental Protection (department). In addition, existing docks may be maintained or repaired within the footprint the same as or smaller than the footprint of the current structure. However, should more than 50 percent of a nonconforming structure fall into a state of disrepair or be destroyed as a result of any natural or manmade force, the entire structure shall be brought into full compliance with the current rules of the Board of Trustees of the Internal Improvement Trust Fund. The bill does not prohibit an owner from demolishing or removing his or her dock.

¹ Rule 18-20.004(5)(a)6., F.A.C.

Moreover, the bill does not prevent the department from taking enforcement action against the owner of the riparian parcel associated with a dock that does not meet the criteria after December 31, 2010.

B. SECTION DIRECTORY:

Section 1: Authorizes certain single-family docks to retain a terminal platform that does not exceed 800 square feet.

Section 2: Provides that the Department of Environmental Protection may take enforcement action against docks that do not meet the criteria in section 1 after December 31, 2010.

Section 3: Provides an effective date of upon becoming law.

II. NOTICE/REFERENDUM AND OTHER REQUIREMENTS

A. NOTICE PUBLISHED? Yes No

IF YES, WHEN? December 19, 2009.

WHERE? In the *Florida Times-Union*, a daily newspaper published in Nassau County, Florida.

B. REFERENDUM(S) REQUIRED? Yes No

IF YES, WHEN?

C. LOCAL BILL CERTIFICATION FILED? Yes, attached No

D. ECONOMIC IMPACT STATEMENT FILED? Yes, attached No

If the bill is not passed, property owners will be forced to deconstruct existing docks, thereby reducing property values for dock owners as well as surrounding property owners resulting in a corresponding reduction in ad valorem tax revenue.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

None

B. RULE-MAKING AUTHORITY:

None

C. DRAFTING ISSUES OR OTHER COMMENTS:

Exemption from General Law

The CS exempts certain described single-family docks from the requirements of part IV of ch. 373, F.S., and ch. 258, F.S.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

On March 15, 2010, the Military & Local Affairs Policy Committee adopted a PCS allowing, with stipulations, certain single-family docks within the Preserve to retain a terminal platform that does not exceed a cumulative total deck and roof area of 800 square feet. It specifically references the rule that defines "terminal platform."

1 A bill to be entitled

2 An act relating to Nassau County; providing that certain
 3 single-family docks located in the Nassau River-St. Johns
 4 River Marshes Aquatic Preserve must meet specified
 5 criteria; authorizing the Department of Environmental
 6 Protection to take action against owners of docks that do
 7 not meet such criteria after a specified date; providing
 8 an effective date.

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

11
 12 Section 1. Existing single-family docks constructed prior
 13 to June 1, 2009, that are located within Nassau County on Lofton
 14 Creek in the Nassau River-St. Johns River Marshes Aquatic
 15 Preserve between State Road 200 to the north and a line drawn
 16 between N30°32'44.890", W-81°33'08.68 and N30°32'40.001", W-
 17 81°32'55.79 to the south shall:

18 (1) Be exempt from the need to obtain a permit under part
 19 IV of chapter 373, Florida Statutes, for the existing dock or
 20 for modifications to the existing dock necessary to meet the
 21 conditions for applying for a letter of consent pursuant to this
 22 act.

23 (2) Notwithstanding the provisions of chapter 258, Florida
 24 Statutes, and rule 18-20, Florida Administrative Code, be
 25 allowed to retain a terminal platform, as defined in rule 18-
 26 20.003(67), Florida Administrative Code, with a cumulative total
 27 deck and roof area not to exceed 800 square feet, provided that
 28 by December 31, 2010, the owner of the riparian parcel

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29 associated with the dock conforms the dock to meet the terminal
 30 platform size requirement, if necessary, and applies for a
 31 letter of consent to use sovereignty submerged lands from the
 32 Department of Environmental Protection acting on behalf of the
 33 Board of Trustees of the Internal Improvement Trust Fund. A
 34 letter of consent shall be issued once applicable criteria of
 35 this act are met and the owner shall record the original letter
 36 of consent in the Nassau County Official Records Book to run
 37 with the upland parcel.

38 (3) Be maintained or repaired within a footprint the same
 39 as or smaller than the footprint of the current structure in
 40 accordance with rule 18-21.004(7)(h), Florida Administrative
 41 Code. This subsection does not prohibit an owner from
 42 demolishing or removing such a dock. However, should more than
 43 50 percent of a nonconforming structure fall into a state of
 44 disrepair or be destroyed as a result of any natural or manmade
 45 force, the entire structure shall be brought into full
 46 compliance with the current rules of the board.

47 Section 2. Nothing in this act shall be construed to
 48 prevent the Department of Environmental Protection from taking
 49 enforcement action against the owner of the riparian parcel
 50 associated with a dock that does not meet the criteria of
 51 section 1 after December 31, 2010.

52 Section 3. This act shall take effect upon becoming a law.

1 A bill to be entitled
 2 An act relating to cadmium in children's products;
 3 defining terms; prohibiting a person from using or
 4 applying cadmium in excess of a specified amount on any
 5 item of children's jewelry, toy, or child care article
 6 sold in this state; providing an exception; providing
 7 civil fines for the sale of an item of children's jewelry,
 8 toy, or child care article that contains cadmium;
 9 requiring that certain civil fines be waived under
 10 specified circumstances; providing that a knowing and
 11 intentional violation of the act is a felony of the third
 12 degree; providing criminal penalties; providing an
 13 effective date.

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

16
 17 Section 1. Cadmium in children's products; limitations on
 18 use of cadmium; exceptions; civil fines; criminal penalties.-

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

20 (a) "Child" means an individual who is 7 years of age or
 21 younger.

22 (b) "Child care article" means a product designed or
 23 intended by the manufacturer to facilitate the sleep,
 24 relaxation, or feeding of a child or to help a child with
 25 sucking or teething.

26 (c) "Children's jewelry" means jewelry that is made for,
 27 marketed for use by, or sold to a child.

28 (d) "Consumer" means an individual; a child, by and

29 through its parent or legal guardian; or a business, firm,
 30 association, joint venture, partnership, estate, trust, business
 31 trust, syndicate, fiduciary, corporation, any commercial entity,
 32 however denominated, or any other group or combination thereof.

33 (e) "Person" has the same meaning as provided in s. 1.01,
 34 Florida Statutes.

35 (f) "Toy" means an article designed and made for the
 36 amusement of a child and for the child's use during play.

37 (2)(a) A person may not use or apply cadmium in excess of
 38 75 parts per million on any surface coating or substrate
 39 material on any item of children's jewelry, toy, or child care
 40 article, as determined through solubility testing for heavy
 41 metals defined in the American Society for Testing and Materials
 42 International Safety Specification on Toy Safety, ASTM standard
 43 F963, if the product is sold in this state.

44 (b) This section does not apply to the sale of a
 45 collectible toy that is not marketed to or intended to be used
 46 for play by a minor younger than 14 years of age.

47 (3) Except as otherwise provided in subsection (4), if a
 48 person who is not an individual consumer violates subsection
 49 (2), that person is liable for a civil fine of not more than:

50 (a) One hundred dollars per item, not to exceed \$5,000,
 51 for the first violation.

52 (b) Five hundred dollars per item, not to exceed \$25,000,
 53 for a second violation.

54 (c) One thousand dollars per item, not to exceed \$50,000,
 55 for a third or subsequent violation.

56 (4) A civil fine imposed under subsection (3) must be

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57 waived if the person acted in good faith to comply with this
58 section, pursued compliance with due diligence, and promptly
59 corrected any noncompliance after discovering the violation.

60 (5) If a person who is not an individual consumer
61 knowingly and intentionally violates subsection (2), that
62 person:

63 (a) Commits a felony of the third degree, punishable as
64 provided in s. 775.082, s. 775.083, or s. 775.084, Florida
65 Statutes; and

66 (b) Is liable for a civil fine of not more than \$3,000 per
67 item, not to exceed \$150,000 for the intentional violation.

68 Section 2. This act shall take effect July 1, 2010.

COUNCIL/COMMITTEE AMENDMENT

Bill No. CS/HB 831 (2010)

Amendment No. 1

COUNCIL/COMMITTEE 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 Council/Committee hearing bill: Agriculture & Natural Resources
2 Policy Committee
3 Representative(s) Adkins offered the following:

4

5 **Amendment**

6 Remove lines 16-17 and insert:
7 between N30°32'44.890", W-81°33'08.68" and N30°32'40.001", W-16
8 81°32'55.79" to the south shall:

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1285

Cadmium in Children's Products

SPONSOR(S): Thompson

TIED BILLS:

IDEN./SIM. BILLS: SB 2120

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Agriculture & Natural Resources Policy Committee		Thompson <i>[Signature]</i>	Reese <i>[Signature]</i>
2) Public Safety & Domestic Security Policy Committee			
3) Full Appropriations Council on Education & Economic Development			
4) General Government Policy Council			
5)			

SUMMARY ANALYSIS

The bill mirrors federal law, providing specific limits on the use of cadmium on children's jewelry, toys, or child care articles, and provides for definitions. The bill exempts the sale of a collectible toy that is not marketed to or intended to be used for play by a minor younger than 14 years of age.

Except as otherwise provided, the bill provides that a person who is not an individual consumer who violates this provision, is liable for a civil fine of not more than:

- One hundred dollars per item, not to exceed \$5,000, for the first violation.
- Five hundred dollars per item, not to exceed \$25,000, for a second violation.
- One thousand dollars per item, not to exceed \$50,000, for a third or subsequent violation.

The bill requires such fines to be waived if the person acted in good faith to comply with this section, pursued compliance with due diligence, and promptly corrected any noncompliance after discovering the violation.

The bill creates a new third degree unranked felony for knowing and intentional violations of the bill's limits on the use of cadmium, punishable as provided for in ss. 775.082, 775.083, 775.084, F.S.

Although the bill creates a new third degree felony, it is impossible to forecast how many violations might occur, thus the actual fiscal impact on state and local governments is unknown. Associated medical and insurance costs to the private sector may be reduced. The Criminal Justice Impact Conference determined that the bill will have an insignificant impact on prison admissions and populations. (See Fiscal Comments section for additional details)

The bill has an effective date of July 1, 2010.

HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Cadmium is a natural element that is found in the earth's crust and is classified as a heavy metal.¹ All soils and rocks, including coal and mineral fertilizers, contain some cadmium. Most cadmium is extracted during the production of other metals like zinc, lead, and copper.² The chemical properties of cadmium describe it as a soft, malleable, bluish-white metal with a low melting point. Cadmium does not corrode easily and is used in batteries, pigments, metal coatings, and plastics.

Exposure to heavy metals is a health hazard. In addition to lead and mercury, cadmium has been identified as one of the most probable causes of disease related to heavy metal exposure observed in primary care medicine.³ Both animal experiments and epidemiologic studies have confirmed that cadmium is toxic to kidney, liver, bone, and causes cancer.⁴ The Agency for Toxic Substances and Disease Registry (ATSDR) has listed cadmium among the top seven of the 275 most hazardous substances in the environment.

Both adults and children can suffer from the effects of cadmium poisoning. Cadmium exposure, however, can start at a very young age. Babies and young children are more susceptible to cadmium poisoning than adults because they often put their hands or other objects in their mouths.⁵ Once cadmium enters the body, it has a biological half-life of 10–30 years in the kidney and 5–10 years in the liver. Animal experiments have reported neurotoxic and behavioral effects of cadmium.⁶ Similar effects have also been observed in human children. Several studies have reported higher concentrations of cadmium in children with mental retardation, learning difficulties, and dyslexia.⁷

¹ Agency for Toxic Substances & Disease Registry, Case Studies in Environmental Medicine (CSEM) Cadmium Toxicity What is Cadmium; <http://atsdr.cdc.gov/csem/cadmium/cadmium.html>

² U.S. Department of Health and Human Services, Agency for Toxic Substances and Disease Registry, Division of Toxicology and Environmental Medicine ToxFAQs; Cadmium CAS #7440-43-9

³ Environmental Health Perspectives, volume 117, number 10, October 2009

⁴ Id.

⁵ Bureau Veritas Consumer Products Services; www.bureauveritas.com/cps

⁶ Gupta A, Gupta A, Chandra SV. 1991. Gestational cadmium exposure and brain development: a biochemical study. *Ind Health* 29(2):65–71.

⁷ Environmental Health Perspectives, volume 117, number 10, October 2009

Present Situation

A recent Associated Press (AP) investigation has discovered high levels of cadmium present in certain charm bracelets and pendants. In response, the U.S. Consumer Product Safety Commission (CPSC), which regulates children's products, has opened a formal investigation into children's metal jewelry to determine the action CPSC needs to take. The AP investigation tested 103 pieces of children's jewelry in New York, Ohio, Texas, and California. The following table lists the results of the AP investigation:

Seller	Item	Level of Cadmium
Wal-Mart	Three Bracelet Charms	84% to 86%
Dollar N More Store, Rochester, NY	Four Rudolph the Red-Nosed Reindeer Bracelets	82% to 91%
Claire's	Two Charms on Best Friends Bracelets	89% to 91%
Wal-Mart	Pendants from four The Princes and The Frog Necklaces	25% to 35%

The American Society for Testing and Materials International (ASTM) is an international standards organization that develops voluntary standards to serve as a guide for design, trade and manufacturing. ASTM F963⁸, is the toy safety standard. ASTM does not require or enforce compliance with its standards. Such standards, however, may become mandatory when referenced by an external contract, corporation, or government. Under the Federal 2008 Consumer Product Safety Improvement Act⁹, ASTM F963 became mandatory, therefore regulating cadmium in coatings on children's toys.

Under ASTM F963, the coatings are tested for soluble or extractable cadmium and not total content.¹⁰ Total cadmium provides for the total amount of cadmium present in a sample. Soluble cadmium provides for the amount of cadmium that can be extracted out of a sample typically using an acid solution similar to stomach acid. Depending on the type of material, soluble cadmium can be much lower than the total amount of cadmium actually present. Consequently, federal law may be unintentionally allowing for children's toys containing cadmium to enter onto the market.

Cadmium limits have been passed in California (CA Toy Safety Act) and Washington (WA Children's Safe Products Act). In addition, a New York law¹¹ requires the Health Commissioner to establish a cadmium limit for glazed ceramic tableware, crystal, china and other consumer products. States also have regulated cadmium in packaging, drinking water, batteries, electronics and e-waste. Several states have proposed legislation regulating cadmium in children's jewelry. Most of this legislation will limit the total content of cadmium in a product. The following is a table of current pending state legislation relating to cadmium:

State	Bill Number	Proposed Changes
California	SB 929	Prohibits the manufacturing, shipping, selling or offering for sale or offering for promotional purposes children's jewelry containing cadmium.
California	SB 1365	Amends an existing law that provides no person shall manufacture, sell, or exchange any toy that is contaminated with any toxic substance. Covers items coated with soluble compounds of cadmium.
Connecticut	HB 5314	Concerns child safe products and banning cadmium in children's products; phases out the use of certain chemicals in children's products and to ban cadmium in children's products.
Florida	HB 1285	Prohibits using or applying cadmium in excess of specified amount on any item of children's jewelry, toy, or child care article sold in this state

⁸ American Society for Testing and Materials International; Standard Consumer Safety Specification for Toy Safety.

⁹ PUBLIC LAW 110-314—AUG. 14, 2008

¹⁰ Federal law limits the amount of soluble cadmium in product coatings to 75 parts per million.

¹¹ McKinney's Public Health Law § 1376-a

Illinois	HB 5040	Regulates the sale and distribution of children's products or product components containing cadmium and priority chemicals of high concern. Designates cadmium as a priority chemical.
Indiana	SB 540	Sets allowable content limits for lead, cadmium and phthalates in children's products.
Minnesota	SB 2385	Bans cadmium jewelry.
Mississippi	HB 938	Relates to children's products; sets limits for phthalates, lead and cadmium in certain products.
New Jersey	A 2259	Prohibits the sale of certain children's products containing lead, mercury, or cadmium.
New York	SB 6446	Directs the commissioner of health to establish standards for the cadmium that children's jewelry may contain.
New York	A 9755	Relates to the regulation of cadmium-added novelty consumer products.
New York	A 9771	Prohibits the use of cadmium in children's products.

Currently, the Florida Department of Environmental Protection (DEP) regulates through its air, wastewater, and solid and hazardous waste programs how and when metals in toxic concentrations enter the environment. Through agency rules¹², DEP oversees the cleanup of illegally released metals in toxic concentrations through its waste cleanup program. These metals include but are not limited to: arsenic, mercury, lead, aluminum, barium, nickel, cadmium, uranium, copper, chromium, zinc and beryllium. Currently there is no Florida law that regulates cadmium in children's products.

Proposed Changes

The bill mirrors federal law, prohibiting a person from using or applying cadmium in excess of 75 parts per million on any surface coating or substrate material on any item of children's jewelry, toy, or child care article, as determined through solubility testing for heavy metals defined in the ASTM standard F963, if the product is sold in Florida. The bill exempts the sale of a collectible toy that is not marketed to or intended to be used for play by a minor younger than 14 years of age.

Except as otherwise provided, a person who is not an individual consumer who violates this provision, is liable for a civil fine of not more than:

- One hundred dollars per item, not to exceed \$5,000, for the first violation.
- Five hundred dollars per item, not to exceed \$25,000, for a second violation.
- One thousand dollars per item, not to exceed \$50,000, for a third or subsequent violation.

The bill requires civil fines imposed under this provision to be waived if the person acted in good faith to comply with this section, pursued compliance with due diligence, and promptly corrected any noncompliance after discovering the violation.

The bill creates a new third degree unranked felony for knowing and intentional violations of the limits on the use of cadmium on children's jewelry, toys, or child care articles provided for by the bill. Such violations are punishable as provided for in ss. 775.082, 775.083, 775.084, F.S.

The bill provides the following definitions:

- "Child" means an individual who is 7 years of age or younger.
- "Child care article" means a product designed or intended by the manufacturer to facilitate the sleep, relaxation, or feeding of a child or to help a child with sucking or teething.
- "Children's jewelry" means jewelry that is made for, marketed for use by, or sold to a child.
- "Consumer" means an individual; a child, by and through its parent or legal guardian; or a business, firm, association, joint venture, partnership, estate, trust, business trust, syndicate,

¹² Rule Chapter limits for surface water 62-302; Drinking water in 62-550; Target levels for water and soil can be found in 62-777

fiduciary, corporation, any commercial entity, however denominated, or any other group or combination thereof.

- "Person" has the same meaning as provided in s. 1.01, Florida Statutes, which includes individuals, children, firms, associations, joint adventures, partnerships, estates, trusts, business trusts, syndicates, fiduciaries, corporations, and all other groups or combinations.
- "Toy" means an article designed and made for the amusement of a child and for the child's use during play.

B. SECTION DIRECTORY:

Section 1. Creates an act relating to cadmium in children's products; defining terms; prohibiting a person from using or applying cadmium in excess of a specified amount on any item of children's jewelry, toy, or child care article sold in this state; providing an exception; providing civil fines for the sale of an item of children's jewelry, toy, or child care article that contains cadmium; requiring that certain civil fines be waived under specified circumstances; providing that a knowing and intentional violation of the act is a felony of the third degree; providing criminal penalties.

Section 2. Providing an effective date of July 1, 2010.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

See FISCAL COMMENTS section.

2. Expenditures:

See FISCAL COMMENTS section.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

See FISCAL COMMENTS section.

2. Expenditures:

See FISCAL COMMENTS section.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

To the extent that the bill may improve the health of children in Florida by reducing cadmium poisoning, associated medical and insurance costs to the private sector may be decreased.

D. FISCAL COMMENTS:

The bill creates a new third degree felony. According to the Department of Corrections, it costs the state approximately \$20,000 per year for an incarcerated adult male. It is impossible to predict how many violations will occur relating to this new offense. The related fiscal impact is indeterminate.

Unless the bill expressly ranks the new felony offense on the state's offense severity ranking chart, s. 921.0022, F.S., the new felony will be "unranked." According to the Criminal Justice Impact Conference, this is not uncommon. An unranked, 3rd degree felony, defaults to Level 1 on the ranking chart, which is the least severe, thus imposing a lower percentage of related prison sentences.

Pursuant to s. 216.136(5), F.S., a function of the Criminal Justice Impact Conference (CJIC) is the development of official forecasts of prison admissions and population as they relate to new felonies. Typically, a new felony is not created until a consensus has been reached within the CJIC process. On

March 17, 2010, the CJIC met and concluded that the effects of HB 1285 will have an insignificant impact on prison admissions and populations.

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:

According to the DACS, the bill's provisions do not impact the Division of Consumer Services as matters addressed by this bill are currently covered by federal law; therefore, calls addressing product safety issues of this type are referred to the federal Consumer Product Safety Commission.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

1 A bill to be entitled
 2 An act relating to cadmium in children's products;
 3 defining terms; prohibiting a person from using or
 4 applying cadmium in excess of a specified amount on any
 5 item of children's jewelry, toy, or child care article
 6 sold in this state; providing an exception; providing
 7 civil fines for the sale of an item of children's jewelry,
 8 toy, or child care article that contains cadmium;
 9 requiring that certain civil fines be waived under
 10 specified circumstances; providing that a knowing and
 11 intentional violation of the act is a felony of the third
 12 degree; providing criminal penalties; providing an
 13 effective date.

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

16
 17 Section 1. Cadmium in children's products; limitations on
 18 use of cadmium; exceptions; civil fines; criminal penalties.-

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

20 (a) "Child" means an individual who is 7 years of age or
 21 younger.

22 (b) "Child care article" means a product designed or
 23 intended by the manufacturer to facilitate the sleep,
 24 relaxation, or feeding of a child or to help a child with
 25 sucking or teething.

26 (c) "Children's jewelry" means jewelry that is made for,
 27 marketed for use by, or sold to a child.

28 (d) "Consumer" means an individual; a child, by and

29 through its parent or legal guardian; or a business, firm,
 30 association, joint venture, partnership, estate, trust, business
 31 trust, syndicate, fiduciary, corporation, any commercial entity,
 32 however denominated, or any other group or combination thereof.

33 (e) "Person" has the same meaning as provided in s. 1.01,
 34 Florida Statutes.

35 (f) "Toy" means an article designed and made for the
 36 amusement of a child and for the child's use during play.

37 (2) (a) A person may not use or apply cadmium in excess of
 38 75 parts per million on any surface coating or substrate
 39 material on any item of children's jewelry, toy, or child care
 40 article, as determined through solubility testing for heavy
 41 metals defined in the American Society for Testing and Materials
 42 International Safety Specification on Toy Safety, ASTM standard
 43 F963, if the product is sold in this state.

44 (b) This section does not apply to the sale of a
 45 collectible toy that is not marketed to or intended to be used
 46 for play by a minor younger than 14 years of age.

47 (3) Except as otherwise provided in subsection (4), if a
 48 person who is not an individual consumer violates subsection
 49 (2), that person is liable for a civil fine of not more than:

50 (a) One hundred dollars per item, not to exceed \$5,000,
 51 for the first violation.

52 (b) Five hundred dollars per item, not to exceed \$25,000,
 53 for a second violation.

54 (c) One thousand dollars per item, not to exceed \$50,000,
 55 for a third or subsequent violation.

56 (4) A civil fine imposed under subsection (3) must be

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57 waived if the person acted in good faith to comply with this
 58 section, pursued compliance with due diligence, and promptly
 59 corrected any noncompliance after discovering the violation.

60 (5) If a person who is not an individual consumer
 61 knowingly and intentionally violates subsection (2), that
 62 person:

63 (a) Commits a felony of the third degree, punishable as
 64 provided in s. 775.082, s. 775.083, or s. 775.084, Florida
 65 Statutes; and

66 (b) Is liable for a civil fine of not more than \$3,000 per
 67 item, not to exceed \$150,000 for the intentional violation.

68 Section 2. This act shall take effect July 1, 2010.

Amendment No.

COUNCIL/COMMITTEE 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 Council/Committee hearing bill: Agriculture & Natural Resources
2 Policy Committee
3 Representative Thompson, G. offered the following:
4

5 **Amendment (with title amendment)**

6 Remove everything after the enacting clause and insert:

7 Section 1. Cadmium in children's products; limitations on
8 use of cadmium; exceptions; criminal penalties.-

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

10 (a) "Child" means an individual who is 7 years of age or
11 younger, unless otherwise specified.

12 (b) "Child care article" means a product designed or
13 intended by the manufacturer to facilitate the sleep,
14 relaxation, or feeding of a child or to help a child with
15 sucking or teething.

16 (c) "Children's jewelry" means jewelry that is made for,
17 marketed for use by, or sold to a child.

18 (d) "Consumer" means an actual or prospective purchaser,
19 lessee, or recipient of consumer goods or services.

Amendment No.

20 (e) "Person" has the same meaning as provided in s. 1.01,
21 Florida Statutes.

22 (f) "Toy" means an article designed and made for the
23 amusement of a child and for the child's use during play.

24 (2) A person may not use or apply cadmium in excess of 75
25 parts per million on any surface coating or substrate material
26 on any item of children's jewelry, toy, or child care article,
27 as determined through solubility testing for heavy metals
28 defined in the ASTM International Safety Specification on Toy
29 Safety, ASTM standard F-963, if the product is sold in this
30 state. This section does not apply to the sale of a collectible
31 toy that is not marketed to or intended to be used for play by a
32 child younger than 14 years of age.

33 (3) If a person, who is not an individual consumer,
34 knowingly and intentionally violates subsection (2), that person
35 commits a felony of the third degree, punishable as provided in
36 s. 775.082, s. 775.083, or s. 775.084, Florida Statutes.

37 Section 2. This act shall take effect July 1, 2010.

38
39 -----
40 **T I T L E A M E N D M E N T**

41 Remove the entire title and insert:

42 A bill to be entitled
43 An act relating to cadmium in children's products;
44 defining terms; prohibiting a person from using or
45 applying cadmium in excess of a specified amount on
46 any item of children's jewelry, toy, or child care
47 article sold in this state; providing an exception;

COUNCIL/COMMITTEE AMENDMENT

Bill No. HB 1285 (2010)

Amendment No.

48 providing for a criminal penalty; providing an
49 effective date.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1325 Aquatic Preserves

SPONSOR(S): Schultz and others

TIED BILLS: IDEN./SIM. BILLS: SB 2674

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Agriculture & Natural Resources Policy Committee		Deslatte <i>JD</i>	Reese <i>SR</i>
2) Natural Resources Appropriations Committee			
3) General Government Policy Council			
4)			
5)			

SUMMARY ANALYSIS

The bill creates Florida's 42nd aquatic preserve, the Nature Coast Aquatic Preserve, along the coast of Pasco, Hernando, and Citrus Counties. This preserve, along with the other 41 aquatic preserves, will be managed by the Department of Environmental Protection's (DEPs) Office of Coastal and Aquatic Managed Areas.

The bill exempts privately owned uplands and submerged lands from any aquatic preserve dedication.

The bill appears to have no fiscal impact on local government; however, at the state level, the DEP estimates an initial start-up cost of \$145,000 for office supplies, computers, furniture, 2 vehicles, 2 boats, and scientific field instruments. An estimated \$350,000, in Fixed Capital Outlay, will also be needed to construct a field office, lab, meeting space and education displays. DEP hopes to co-locate with another land manager, and, if this happens, the estimated Fixed Capital Outlay needs could be reduced by half. Additionally, DEP is asking for 4 full-time employees, with \$250,000 for salaries and operating expenses annually.

The bill has an effective date of July 1, 2011.

HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

In 1975, Florida enacted the Aquatic Preserve Act with the intent that the state-owned submerged lands in areas which have exceptional biological, aesthetic, and scientific value, be set aside forever as aquatic preserves or sanctuaries for the benefit of future generations¹. Florida statutes defines an aquatic preserve as an exceptional area of submerged lands and its associated waters set aside for being maintained essentially in its natural or existing condition.

The state restricts certain activities in aquatic preserves in order to conserve their unique biological, aesthetic and scientific value. Section 258.42, F.S., prohibits even the Board of Trustees of the Internal Improvement Trust Fund (BOT) from approving the sale, lease, or transfer of sovereignty submerged lands except when the transaction is in the public interest.

Only minimal or maintenance dredging may be permitted in a preserve, and any alteration of the preserves' physical conditions is restricted unless the alteration enhances the quality or utility of the preserve or the public health generally. Minerals may not be mined (with the exception of oyster shells), and oil and gas well drilling is prohibited. This prohibition will not prohibit the state from leasing the oil and gas rights and permitting drilling from outside the preserve to explore for oil and gas if approved by the BOT. Docking facilities and even structures for shore protection are restricted as to size and location².

The DEP's Office of Coastal and Aquatic Managed Areas oversees the management of Florida's 41 aquatic preserves, three National Estuarine Research Reserves (NERR), one National Marine Sanctuary and the Coral Reef Conservation Program. These protected areas comprise more than 4 million acres of the most valuable submerged lands and select coastal uplands in Florida³.

¹ Section 258.36, F.S.

² Administrative rules applicable to aquatic preserves generally may be found in Chapter 18-20.004, F.A.C., Management Policies, Standards and Criteria. However, every aquatic preserve in the state has specific restrictions and policies that are set out in the Florida Administrative Code.

³ Department of Environmental Protection website, <http://www.dep.state.fl.us/coastal/>

Effect of Proposed Changes

The bill amends s. 258.39, F.S., by listing all counties in alphabetical order and including Pasco and Hernando Counties with aquatic preserves within the county boundaries.

The bill creates the 42nd aquatic preserve, Nature Coast Aquatic Preserve, along the coasts of Pasco, Hernando, and Citrus Counties, accounting for approximately 440,000 acres.

Finally, the bill exempts all privately owned uplands and submerged lands from all aquatic preserve dedications.

B. SECTION DIRECTORY:

Section 1. Amends s. 258.39, F.S., revising provisions relating to the boundaries of aquatic preserves; declaring described state-owned submerged lands in specified counties as aquatic preserves; creating the Nature Coast Aquatic Preserve; describing the boundaries thereof; clarifying an exemption from such dedication for certain lands.

Section 2.. Provides an effective date of July 1, 2011.

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:

None

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None

D. FISCAL COMMENTS:

According to DEP, the following is based on other aquatic preserve funding needs:

Non-recurring start up costs: \$145,000 for office supplies, computers, furniture, 2 vehicles, 2 boats (inshore and offshore) and scientific field instruments.

An estimated \$350,000 in Fixed Capital Outlay is needed to construct a field office, lab, meeting space and educational displays. DEP hopes to co-locate with another land manager to save money. If this happens, the estimated Fixed Capital Outlay needs could be reduced by half.

DEP is also asking for 4 FTE, \$250,000 for salaries and operating expenses annually.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This 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/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

1 A bill to be entitled
 2 An act relating to aquatic preserves; amending s. 258.39,
 3 F.S.; revising provisions relating to the boundaries of
 4 aquatic preserves; declaring described state-owned
 5 submerged lands in specified counties as aquatic
 6 preserves; creating the Nature Coast Aquatic Preserve;
 7 describing the boundaries thereof; clarifying an exemption
 8 from such dedication for certain lands; providing an
 9 effective date.

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

12
 13 Section 1. Section 258.39, Florida Statutes, is amended to
 14 read:

15 258.39 Boundaries of preserves.—The state-owned submerged
 16 lands included within the boundaries of Bay, Brevard, Charlotte,
 17 Citrus, Collier, Duval, Escambia, Flagler, Franklin, Gulf,
 18 Hernando, Indian River, Lake, Lee, Leon, Marion, Martin, Miami-
 19 Dade, Monroe, Nassau, Okaloosa, Orange, Palm Beach, Pasco,
 20 Pinellas, St. Johns, St. Lucie, Santa Rosa, Seminole, and
 21 Volusia ~~Nassau, Duval, St. Johns, Flagler, Volusia, Brevard,~~
 22 ~~Indian River, St. Lucie, Charlotte, Pinellas, Martin, Palm~~
 23 ~~Beach, Miami-Dade, Monroe, Collier, Lee, Citrus, Franklin, Gulf,~~
 24 ~~Bay, Okaloosa, Marion, Santa Rosa, Hernando, and Escambia~~
 25 Counties, as hereinafter described, ~~with the exception of~~
 26 ~~privately held submerged lands lying landward of established~~
 27 ~~bulkheads and of privately held submerged lands within Monroe~~
 28 ~~County where the establishment of bulkhead lines is not~~

29 ~~required,~~ are hereby declared to be aquatic preserves. Such
 30 aquatic preserve areas include:

31 (1) The Fort Clinch State Park Aquatic Preserve, as
 32 described in the Official Records of Nassau County in Book 108,
 33 pages 343-346, and in Book 111, page 409.

34 (2) Nassau River-St. Johns River Marshes Aquatic Preserve,
 35 as described in the Official Records of Duval County in Volume
 36 3183, pages 547-552, and in the Official Records of Nassau
 37 County in Book 108, pages 232-237.

38 (3) Pellicer Creek Aquatic Preserve, as described in the
 39 Official Records of St. Johns County in Book 181, pages 363-366,
 40 and in the Official Records of Flagler County in Book 33, pages
 41 131-134.

42 (4) Tomoka Marsh Aquatic Preserve, as described in the
 43 Official Records of Flagler County in Book 33, pages 135-138,
 44 and in the Official Records of Volusia County in Book 1244,
 45 pages 615-618.

46 (5) Mosquito Lagoon Aquatic Preserve, as described in the
 47 Official Records of Volusia County in Book 1244, pages 619-623,
 48 and in the Official Records of Brevard County in Book 1143,
 49 pages 190-194.

50 (6) Banana River Aquatic Preserve, as described in the
 51 Official Records of Brevard County in Book 1143, pages 195-198,
 52 and the sovereignty submerged lands lying within the following
 53 described boundaries: BEGIN at the intersection of the westerly
 54 ordinary high water line of Newfound Harbor with the North line
 55 of Section 12, Township 25 South, Range 36 East, Brevard County:
 56 Thence proceed northeasterly crossing Newfound Harbor to the

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57 intersection of the South line of Section 31, Township 24 South,
 58 Range 37 East, with the easterly ordinary high water line of
 59 said Newfound Harbor; thence proceed northerly along the
 60 easterly ordinary high water line of Newfound Harbor to its
 61 intersection with the easterly ordinary high water line of Sykes
 62 Creek; thence proceed northerly along the easterly ordinary high
 63 water line of said creek to its intersection with the southerly
 64 right-of-way of Hall Road; thence proceed westerly along said
 65 right-of-way to the westerly ordinary high water line of Sykes
 66 Creek; thence southerly along said ordinary high water line to
 67 its intersection with the ordinary high water line of Newfound
 68 Harbor; thence proceed southerly along the westerly ordinary
 69 high water line of Newfound Harbor to the POINT OF BEGINNING.

70 (7) (a) Indian River-Malabar to Vero Beach Aquatic
 71 Preserve, as described in the Official Records of Brevard County
 72 in Book 1143, pages 199-202, and in the Official Records of
 73 Indian River County in Book 368, pages 5-8 and the sovereignty
 74 submerged lands lying within the following described boundaries,
 75 excluding those lands contained within the corporate boundary of
 76 the City of Vero Beach as of the effective date of this act:
 77 Commence at the intersection of the north line of Section 31,
 78 Township 28 South, Range 38 East, and the westerly mean high
 79 water line of Indian River for a point of beginning; thence from
 80 the said point of beginning proceed northerly, westerly, and
 81 easterly along the mean high water line of Indian River and its
 82 navigable tributaries to an intersection with the north line of
 83 Section 24, Township 28 South, Range 37 East; thence proceed
 84 easterly, to a point on the easterly mean high water line of

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85 Indian River at its intersection with the north line of Section
 86 20, Township 28 South, Range 38 East; thence proceed southerly,
 87 along the easterly mean high water line of Indian River to the
 88 most westerly tip of Blue Fish Point in said Section 20, thence
 89 proceed southwesterly to the intersection of the westerly mean
 90 high water line of Indian River with the north line of Section
 91 31, Township 28 South, Range 38 East and the point of beginning:
 92 And also commence at the intersection of the northern Vero Beach
 93 city limits line in Section 25, Township 32 South, Range 39
 94 East, and the westerly mean high water line of Indian River for
 95 the point of beginning: Thence from the said point of beginning
 96 proceed northerly, along the westerly mean high water line of
 97 Indian River and its navigable tributaries to an intersection
 98 with the south line of Section 14, Township 30 South, Range 38
 99 East; thence proceed easterly, along the easterly projection of
 100 the south line of said Section 14, to an intersection with the
 101 easterly right-of-way line of the Intracoastal Waterway; thence
 102 proceed southerly, along the easterly right-of-way line of the
 103 Intracoastal Waterway, to an intersection with the northerly
 104 line of the Pelican Island National Wildlife Refuge; thence
 105 proceed easterly, along the northerly line of the Pelican Island
 106 National Wildlife Refuge, to an intersection with the easterly
 107 mean high water line of Indian River; thence proceed southerly
 108 along the easterly mean high water line of Indian River and its
 109 tributaries, to an intersection with the northern Vero Beach
 110 city limits line in Section 30, Township 32 South, Range 40
 111 East; thence proceed westerly and southerly, along the northern
 112 Vero Beach city limits line to an intersection with the easterly

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113 mean high water line of Indian River and the point of beginning.

114 (b) For purposes of the Indian River-Malabar to Vero Beach
 115 Aquatic Preserve, a lease of sovereign submerged lands for a
 116 noncommercial dock may be deemed to be in the public interest
 117 when the noncommercial dock constitutes a reasonable exercise of
 118 riparian rights and is consistent with the preservation of the
 119 exceptional biological, aesthetic, or scientific values which
 120 the aquatic preserve was created to protect.

121 (8) Indian River-Vero Beach to Fort Pierce Aquatic
 122 Preserve, as described in the Official Records of Indian River
 123 County in Book 368, pages 9-12, and in the Official Records of
 124 St. Lucie County in Book 187, pages 1083-1086. More
 125 specifically, within that description, the southern corporate
 126 line of Vero Beach refers to the southerly corporate boundary
 127 line of Vero Beach as it existed on June 3, 1970, which is also
 128 a westerly projection of the south boundary of "Indian Bay"
 129 subdivision as recorded in Plat Book 3, page 43, Docket No.
 130 59267, Public Records of Indian River County, and State Road A1A
 131 refers to State Road A1A, North Beach Causeway, located north of
 132 Fort Pierce Inlet.

133 (9) Jensen Beach to Jupiter Inlet Aquatic Preserve, as
 134 described in the Official Records of St. Lucie County in Book
 135 218, pages 2865-2869. More specifically, within that
 136 description, the southerly corporate line of the City of Fort
 137 Pierce refers to the southerly corporate boundary line of the
 138 City of Fort Pierce as it existed in 1969; and the western
 139 boundary of the preserve as it crosses the St. Lucie River is
 140 more specifically described as a line which connects the

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141 intersection point of the westerly mean high-water line of the
 142 Indian River and the northerly mean high-water line of the St.
 143 Lucie River to the intersection point of the intersection of the
 144 westerly mean high-water line of the Intracoastal Waterway and
 145 the southerly mean high-water line of the St. Lucie River, lands
 146 within this preserve are more particularly described as lying
 147 and being in Sections 12, 13, 26, 35, and 36, Township 35 South,
 148 Range 40 East, and Sections 18, 19, 29, 30, and 32, Township 35
 149 South, Range 41 East, and Sections 1 and 12, Township 36 South,
 150 Range 40 East, and Sections 5, 7, 8, 9, 16, 17, 18, 19, 20, 22,
 151 27, 29, 32, and 34, Township 36 South, Range 41 East, and
 152 Sections 2, 3, 4, 9, 10, 11, 13, 14, 15, 22, 23, 24, 26, 35, and
 153 36, Township 37 South, Range 41 East, and Sections 19, 30, 31,
 154 and 32, Township 37 South, Range 42 East, and Sections 1 and 12,
 155 Township 38 South, Range 41 East, and Sections 5, 6, 8, 16, 17,
 156 19, 20, 21, 28, 29, 32, and 33, Township 38 South, Range 42
 157 East, including the eastern portion of the Hanson Grant, east of
 158 Rocky Point Cove, and west of St. Lucie Inlet State Park, and
 159 portions of the Gomez Grant lying adjacent to Peck Lake and
 160 South Jupiter Narrows, and Sections 25, 26, 35, and 36, Township
 161 39 South, Range 42 East, and Sections 1, 12, and 13, Township 40
 162 South, Range 42 East, and Sections 7, 18, 19, 30, 31, and 32,
 163 Township 40 South, Range 43 East.

164 (10) Loxahatchee River-Lake Worth Creek Aquatic Preserve,
 165 as described in the Official Records of Martin County in Book
 166 320, pages 193-196, and in the Official Records of Palm Beach
 167 County in Volume 1860, pages 806-809, and the sovereignty
 168 submerged lands lying within the following described boundaries:

169 Begin at the intersection of the easterly mean high water line
 170 of the North Fork of the Loxahatchee River with the northerly
 171 mean high water line of the Loxahatchee River, being in Section
 172 36, Township 40 South, Range 43 East, Palm Beach County: Thence
 173 proceed easterly along the northerly mean high water line of the
 174 Loxahatchee River to the westerly right-of-way of U.S. Highway
 175 1; thence proceed southerly along said right-of-way to the
 176 southerly mean high water line of said river; thence proceed
 177 easterly along the southerly mean high water line of said river
 178 to its intersection with the easterly mean high water line of
 179 the Lake Worth Creek; thence proceed northwesterly crossing the
 180 Loxahatchee River to the point of beginning: And also: Commence
 181 at the southwest corner of Section 16, Township 40 South, Range
 182 42 East Martin County; thence proceed north along the west line
 183 of Section 16 to the mean high water line of the Loxahatchee
 184 River being the point of beginning: Thence proceed southerly
 185 along the easterly mean high water line of said river and its
 186 tributaries to a point of nonnavigability; thence proceed
 187 westerly to the westerly mean high water line of said river;
 188 thence proceed northerly along the westerly mean high water line
 189 of said river and its tributaries to its intersection with the
 190 westerly line of Section 16, Township 40 South, Range 42 East;
 191 thence proceed southerly along the said westerly section line to
 192 the point of beginning: And also begin where the southerly mean
 193 high water line of the Southwest Fork of the Loxahatchee River
 194 intersects the westerly line of Section 35, Township 40 South,
 195 Range 42 East: Thence proceed southwesterly along the southerly
 196 mean high water line of the Southwest Fork to the northeasterly

197 face of structure #46; thence proceed northwesterly along the
 198 face of said structure to the northerly mean high water line of
 199 the Southwest Fork; thence proceed northeasterly along said mean
 200 high water line to its intersection with the westerly line of
 201 Section 35, Township 40 South, Range 42 East; thence proceed
 202 southerly along westerly line of said section to the point of
 203 beginning.

204 (11) Biscayne Bay-Cape Florida to Monroe County Line
 205 Aquatic Preserve, as described in the Official Records of Miami-
 206 Dade County in Book 7055, pages 852-856, less, however, those
 207 lands and waters as described in s. 258.397.

208 (12) North Fork, St. Lucie Aquatic Preserve, as described
 209 in the Official Records of Martin County in Book 337, pages
 210 2159-2162, and in the Official Records of St. Lucie County in
 211 Book 201, pages 1676-1679.

212 (13) Yellow River Marsh Aquatic Preserve, as described in
 213 the Official Records of Santa Rosa County in Book 206, pages
 214 568-571.

215 (14) Fort Pickens State Park Aquatic Preserve, as
 216 described in the Official Records of Santa Rosa County in Book
 217 220, pages 60-63, and in the Official Records of Escambia County
 218 in Book 518, pages 659-662.

219 (15) Rocky Bayou State Park Aquatic Preserve, as described
 220 in the Official Records of Okaloosa County in Book 593, pages
 221 742-745.

222 (16) St. Andrews State Park Aquatic Preserve, as described
 223 in the Official Records of Bay County in Book 379, pages 547-
 224 550.

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225 (17) St. Joseph Bay Aquatic Preserve, as described in the
 226 Official Records of Gulf County in Book 46, pages 73-76.

227 (18) Apalachicola Bay Aquatic Preserve, as described in
 228 the Official Records of Gulf County in Book 46, pages 77-81, and
 229 in the Official Records of Franklin County in Volume 98, pages
 230 102-106.

231 (19) Alligator Harbor Aquatic Preserve, as described in
 232 the Official Records of Franklin County in Volume 98, pages 82-
 233 85.

234 (20) St. Martins Marsh Aquatic Preserve, as described in
 235 the Official Records of Citrus County in Book 276, pages 238-
 236 241.

237 (21) Matlacha Pass Aquatic Preserve, as described in the
 238 Official Records of Lee County in Book 800, pages 725-728.

239 (22) Pine Island Sound Aquatic Preserve, as described in
 240 the Official Records of Lee County in Book 648, pages 732-736.

241 (23) Cape Romano-Ten Thousand Islands Aquatic Preserve, as
 242 described in the Official Records of Collier County in Book 381,
 243 pages 298-301.

244 (24) Lignumvitae Key Aquatic Preserve, as described in the
 245 Official Records of Monroe County in Book 502, pages 139-142.

246 (25) Coupon Bight Aquatic Preserve, as described in the
 247 Official Records of Monroe County in Book 502, pages 143-146.

248 (26) Lake Jackson Aquatic Preserve, as established by
 249 chapter 73-534, Laws of Florida, and defined as authorized by
 250 law.

251 (27) Pinellas County Aquatic Preserve, as established by
 252 chapter 72-663, Laws of Florida; Boca Ciega Aquatic Preserve, as

253 established by s. 258.396; and the Biscayne Bay Aquatic
 254 Preserve, as established by s. 258.397. If any provision of this
 255 act is in conflict with an aquatic preserve established by s.
 256 258.396, chapter 72-663, Laws of Florida, or s. 258.397, the
 257 stronger provision for the maintenance of the aquatic preserve
 258 shall prevail.

259 (28) Estero Bay Aquatic Preserve, the boundaries of which
 260 are generally: All of those sovereignty submerged lands located
 261 bayward of the mean high-water line being in Sections 13, 14,
 262 15, 16, 17, 18, 21, 22, 23, 24, 25, 26, 27, 35, and 36, Township
 263 46 South, Range 24 East; and in Sections 19, 20, 28, 29, and 34,
 264 Township 46 South, Range 24 East, lying north and east of
 265 Matanzas Pass Channel; and in Sections 19, 30, and 31, Township
 266 46 South, Range 25 East; and in Sections 6, 7, 17, 18, 19, 20,
 267 29, 30, 31, and 32, Township 47 South, Range 25 East; and in
 268 Sections 1, 2, 3, 11, 12, 13, 14, 24, and 25, Township 47 South,
 269 Range 24 East, in Lee County, Florida. Any and all submerged
 270 lands conveyed by the Trustees of the Internal Improvement Trust
 271 Fund prior to October 12, 1966, and any and all uplands now in
 272 private ownership are specifically exempted from this preserve.

273 (29) Cape Haze Aquatic Preserve, the boundaries of which
 274 are generally: That part of Gasparilla Sound, Catfish Creek,
 275 Whiddon Creek, "The Cutoff," Turtle Bay, and Charlotte Harbor
 276 lying within the following described limits: Northerly limits:
 277 Commence at the northwest corner of Section 18, Township 42
 278 South, Range 21 East, thence south along the west line of said
 279 Section 18 to its intersection with the Government Meander Line
 280 of 1843-1844, and the point of beginning, thence southeasterly

281 | along said meander line to the northwesterly shoreline of
 282 | Catfish Creek, thence northeasterly along said shoreline to the
 283 | north line of said Section 18, thence east along said north line
 284 | to the easterly shoreline of Catfish Creek, thence southeasterly
 285 | along said shoreline to the east line of said Section 18, thence
 286 | south along said east line, crossing an arm of said Catfish
 287 | Creek to the southerly shoreline of said creek, thence westerly
 288 | along said southerly shoreline and southerly along the easterly
 289 | shoreline of Catfish Creek to said Government Meander Line,
 290 | thence easterly and southeasterly along said meander line to the
 291 | northerly shoreline of Gasparilla Sound in Section 21, Township
 292 | 42 South, Range 21 East, thence easterly along said northerly
 293 | shoreline and northeasterly along the westerly shoreline of
 294 | Whiddon Creek to the east west quarter line in Section 16,
 295 | Township 42 South, Range 21 East, thence east along said quarter
 296 | line and the quarter Section line of Section 15, Township 42
 297 | South, Range 21 East to the easterly shoreline of Whiddon Creek,
 298 | thence southerly along said shoreline to the northerly shoreline
 299 | of "The Cutoff," thence easterly along said shoreline to the
 300 | westerly shoreline of Turtle Bay, thence northeasterly along
 301 | said shoreline to its intersection with said Government Meander
 302 | Line in Section 23, Township 42 South, Range 21 East, thence
 303 | northeasterly along said meander line to the east line of
 304 | Section 12, Township 42 South, Range 21 East, thence north along
 305 | the east line of said Section 12, and the east line of Section
 306 | 1, Township 42 South, Range 21 East to the northwest corner of
 307 | Section 6, Township 42 South, Range 22 East, thence east along
 308 | the north line and extension thereof of said Section 6 to a

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309 | point 2,640 feet east of the westerly shoreline of Charlotte
 310 | Harbor and the end of the northerly limits. Easterly limits:
 311 | Commence at the northwest corner of Section 6, Township 42
 312 | South, Range 22 East, thence east along the north line of said
 313 | Section 6 and extension thereof to a point 2,640 feet east of
 314 | the westerly shoreline of Charlotte Harbor and the point of
 315 | beginning, thence southerly along a line 2,640 feet easterly of
 316 | and parallel with the westerly shoreline of Charlotte Harbor and
 317 | along a southerly extension of said line to the line dividing
 318 | Charlotte and Lee Counties and the end of the easterly limits.
 319 | Southerly limits: Begin at the point of ending of the easterly
 320 | limits, above described, said point being in the line dividing
 321 | Charlotte and Lee Counties, thence southwesterly along a
 322 | straight line to the most southerly point of Devil Fish Key,
 323 | thence continue along said line to the easterly right-of-way of
 324 | the Intracoastal Waterway and the end of the southerly limits.
 325 | Westerly limits: Begin at the point of ending of the southerly
 326 | limits as described above, thence northerly along the easterly
 327 | right-of-way line of the Intracoastal Waterway to its
 328 | intersection with a southerly extension of the west line of
 329 | Section 18, Township 42 South, Range 21 East, thence north along
 330 | said line to point of beginning.

331 | (30) Wekiva River Aquatic Preserve, the boundaries of
 332 | which are generally: All the state-owned sovereignty lands lying
 333 | waterward of the ordinary high-water mark of the Wekiva River
 334 | and the Little Wekiva River and their tributaries lying and
 335 | being in Lake, Seminole, and Orange counties and more
 336 | particularly described as follows:

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337 (a) In Sections 15, 16, 17, 20, 21, 22, 27, 28, 29, and
 338 30, Township 20 South, Range 29 East. These sections are also
 339 depicted on the Forest City Quadrangle (U.S.G.S. 7.5 minute
 340 series-topographic) 1959 (70PR); and

341 (b) In Sections 3, 4, 8, 9, and 10, Township 20 South,
 342 Range 29 East and in Sections 21, 28, and 33, Township 19 South,
 343 Range 29 East lying north of the right-of-way for the Atlantic
 344 Coast Line Railroad and that part of Section 33, Township 19
 345 South, Range 29 East lying between the Lake and Orange County
 346 lines and the right-of-way of the Atlantic Coast Line Railroad.
 347 These sections are also depicted on the Sanford SW Quadrangle
 348 (U.S.G.S. 7.5 minute series-topographic) 1965 (70-1); and

349 (c) All state-owned sovereignty lands, public lands, and
 350 lands whether public or private below the ordinary high-water
 351 mark of the Wekiva River and the Little Wekiva and their
 352 tributaries within the Peter Miranda Grant in Lake County lying
 353 below the 10 foot m.s.l. contour line nearest the meander line
 354 of the Wekiva River and all state-owned sovereignty lands,
 355 public lands, and lands whether public or private below the
 356 ordinary high-water mark of the Wekiva River and the Little
 357 Wekiva and their tributaries within the Moses E. Levy Grant in
 358 Lake County below the 10 foot m.s.l. contour line nearest the
 359 meander lines of the Wekiva River and Black Water Creek as
 360 depicted on the PINE LAKES 1962 (70-1), ORANGE CITY 1964 (70PR),
 361 SANFORD 1965 (70-1), and SANFORD S.W. 1965 (70-1) QUADRANGLES
 362 (U.S.G.S. 7.5 minute topographic); and

363 (d) All state-owned sovereignty lands, public lands, and
 364 lands whether public or private below the ordinary high-water

365 mark of the Wekiva River and the Little Wekiva River and their
 366 tributaries lying below the 10 foot m.s.l. contour line nearest
 367 the meander line of the Wekiva and St. Johns Rivers as shown on
 368 the ORANGE CITY 1964 (70PR), SANFORD 1965 (70-1), and SANFORD
 369 S.W. 1965 (70-1) QUADRANGLES (U.S.G.S. 7.5 minute topographic)
 370 within the following described property: Beginning at a point on
 371 the south boundary of the Moses E. Levy Grant, Township 19
 372 South, Range 29 East, at its intersection with the meander line
 373 of the Wekiva River; thence south 60 1/2 degrees east along said
 374 boundary line 4,915.68 feet; thence north 29 1/2 degrees east
 375 15,516.5 feet to the meander line of the St. Johns River; thence
 376 northerly along the meander line of the St. Johns River to the
 377 mouth of the Wekiva River; thence southerly along the meander
 378 line of the Wekiva River to the beginning; and

379 (e) All state-owned sovereignty lands, public lands, and
 380 lands whether public or private below the ordinary high-water
 381 mark of the Wekiva River and the Little Wekiva River and their
 382 tributaries within the Peter Miranda Grant lying east of the
 383 Wekiva River, less the following:

384 1. State Road 46 and all land lying south of said State
 385 Road No. 46.

386 2. Beginning 15.56 chains West of the Southeast corner of
 387 the SW 1/4 of the NE 1/4 of Section 21, Township 19 South,
 388 Range 29 East, run east 600 feet; thence north 960 feet; thence
 389 west 340 feet to the Wekiva River; thence southwesterly along
 390 said Wekiva River to point of beginning.

391 3. That part of the east 1/4 of the SW 1/4 of Section
 392 22, Township 19 South, Range 29 East, lying within the Peter

393 | Miranda Grant east of the Wekiva River.

394 | (f) All the sovereignty submerged lands lying within the
 395 | following described boundaries: Begin at the intersection of
 396 | State Road 44 and the westerly ordinary high water line of the
 397 | St. Johns River, Section 22, Township 17 South, Range 29 East,
 398 | Lake County: Thence proceed southerly along the westerly
 399 | ordinary high water line of said river and its tributaries to
 400 | the intersection of the northerly right-of-way of State Road
 401 | 400; thence proceed northeasterly along said right-of-way to the
 402 | easterly ordinary high water line of the St. Johns River; thence
 403 | proceed northerly along said ordinary high water line of the St.
 404 | Johns River and its tributaries to its intersection with the
 405 | easterly ordinary high water line of Lake Beresford; thence
 406 | proceed northerly along the ordinary high water line of said
 407 | lake to its intersection with the westerly line of Section 24,
 408 | Township 17 South, Range 29 East; thence proceed northerly to
 409 | the southerly right-of-way of West New York Avenue; thence
 410 | proceed westerly along the southerly right-of-way of said avenue
 411 | to its intersection with the southerly right-of-way line of
 412 | State Road 44; thence proceed southwesterly along said right-of-
 413 | way to the point of beginning.

414 | (31) Rookery Bay Aquatic Preserve, the boundaries of which
 415 | are generally: All of the state-owned sovereignty lands lying
 416 | waterward of the mean high-water line in Rookery Bay and in
 417 | Henderson Creek and the tributaries thereto in Collier County,
 418 | Florida. Said lands are more particularly described as lying and
 419 | being in Sections 27, 34, 35, and 36, Township 50 South, Range
 420 | 25 East; in Section 31, Township 50 South, Range 26 East; in

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421 Sections 1, 2, 3, 10, 11, 12, 13, 14, 23, 24, and 25, Township
 422 51 South, Range 25 East; and in Sections 5, 6, 7, 8, 9, 10, 15,
 423 16, 17, 18, 19, 20, 30, and 31, Township 51 South, Range 26
 424 East, Collier County, Florida, and all the sovereignty submerged
 425 lands lying within the following described boundaries: Begin at
 426 the southwest corner of Section 30, Township 52 South, Range 27
 427 East, Collier County: Thence proceed easterly along the
 428 southerly line of said Section 30 to the southwest corner of
 429 Section 29, Township 52 South, Range 27 East; proceed thence
 430 northerly along the westerly lines of Sections 29, 20 and 17 to
 431 the northwest corner of said Section 17; thence proceed westerly
 432 along the northerly line of Section 18 to the southeast corner
 433 of Section 12, Township 52 South, Range 26 East; thence proceed
 434 northerly along the easterly lines of Sections 12, 1, 36 and 25
 435 to the northeast corner of said Section 25, Township 51 South,
 436 Range 26 East; thence proceed westerly along the northerly lines
 437 of Sections 25 and 26 to the northwest corner of said Section
 438 26; thence proceed northerly to northeast corner of said Section
 439 22; thence proceed westerly along the northerly lines of
 440 Sections 22 and 21 to the northwest corner of said Section 21;
 441 thence proceed southerly to the southwest corner of said Section
 442 21; thence proceed westerly along the northerly line of Section
 443 29 to the northwest corner thereof; thence proceed southerly
 444 along the westerly lines of Sections 29 and 32 to the southwest
 445 corner of said Section 32; thence proceed westerly to the
 446 northwest corner of Section 6, Township 52 South, Range 26 East;
 447 thence proceed southerly along a projection of Range line 25
 448 East to its intersection with a line which runs westerly from

449 the southwest corner of Cape Romano - Ten Thousand Islands
 450 Aquatic Preserve; thence proceed easterly to the southwest
 451 corner of Cape Romano - Ten Thousand Islands Aquatic Preserve;
 452 thence proceed northerly to the point of beginning. Less and
 453 except: Begin at the southeast corner of Section 21, Township 52
 454 South, Range 26 East; thence proceed northerly along the
 455 easterly lines of Sections 21 and 16 to the northeast corner of
 456 said Section 16, thence proceed northerly to the thread of John
 457 Stevens Creek; thence proceed northwesterly along the thread of
 458 said creek to its intersection with the thread of Marco River;
 459 thence proceed northwesterly and westerly along the thread of
 460 said river to its intersection with the thread of Big Marco
 461 Pass; thence proceed southwesterly along the thread of Big Marco
 462 Pass to its intersection with Range line 25 East; thence proceed
 463 southerly along Range line 25 East to a point which is west from
 464 the point of beginning: Thence proceed easterly to the point of
 465 beginning.

466 (32) Rainbow Springs Aquatic Preserve, the boundaries of
 467 which are generally: Commencing at the intersection of Blue Run
 468 with the Withlacoochee River in Section 35, Township 16 South,
 469 Range 18 East; thence run southeasterly and easterly along said
 470 Blue Run to the east boundary of said Section 35; thence
 471 continue easterly and northerly along said Blue Run through
 472 Section 36, Township 16 South, Range 18 East, to the north
 473 boundary of said Section 36; thence continue northerly and
 474 northeasterly along said Blue Run in Section 25, Township 16
 475 South, Range 18 East, to the north boundary of the city limits
 476 of Dunnellon, Florida; thence from the north boundary of the

477 city limits of Dunnellon, Florida, in Section 25, Township 16
 478 South, Range 18 East; thence run easterly along said Blue Run to
 479 its intersection with the east boundary line of said Section 25;
 480 thence continue easterly along said Rainbow River (Blue Run)
 481 into Section 30, Township 16 South, Range 19 East, thence
 482 northerly along said Rainbow River (Blue Run) through Sections
 483 30 and 19, Township 16 South, Range 19 East, to a point on the
 484 north boundary of the northwest 1/4 of Section 18; thence
 485 continue to run northwesterly to the head of Rainbow Springs in
 486 Section 12, Township 16 South, Range 18 East.

487 (33) Nature Coast Aquatic Preserve, including all the
 488 state-owned submerged lands lying west of the west right-of-way
 489 line of U.S. Highway 19 within the boundaries of Pasco County,
 490 as described in s. 7.51, Hernando County, as described in s.
 491 7.27, and Citrus County, as described in s. 7.09, to the
 492 southern boundary of St. Martins Marsh Aquatic Preserve as
 493 described in subsection (20) and the western projection thereof,
 494 and also including all the state-owned submerged lands within
 495 Citrus County lying west of the west boundary of St. Martins
 496 Marsh Aquatic Preserve, lying north of the westerly projection
 497 of the south boundary of St. Martins Marsh Aquatic Preserve, and
 498 lying south of a line extending westerly along northerly
 499 coordinate 1663693 feet, Florida West Zone (NAD83).

500
 501 Any and all privately owned uplands and submerged lands
 502 ~~theretofore conveyed by the Trustees of the Internal Improvement~~
 503 ~~Trust Fund and any and all uplands now in private ownership~~ are
 504 specifically exempted from this dedication.

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Section 2. This act shall take effect July 1, 2011.

HB 1361

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1361

Regulation of Vessels

SPONSOR(S): Steinberg

TIED BILLS:

IDEN./SIM. BILLS: SB 2506

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1)	Agriculture & Natural Resources Policy Committee		Deslatte <i>DD</i>	Reese <i>AR</i>
2)				
3)				
4)				
5)				

SUMMARY ANALYSIS

During the 2009 Legislative Session, the Legislature passed HB 1423, which directed the Florida Fish and Wildlife Conservation Commission (FWCC), in consultation with the Department of Environmental Protection (DEP), to establish a pilot program in five locations to explore potential options for regulating the anchoring or mooring of non-live-aboard vessels outside the marked boundaries of public mooring fields.

The goals of the pilot program are to encourage the establishment of additional public mooring fields and to develop and test policies and regulatory regimes that:

- Promote the establishment and use of public mooring fields;
- Promote public access to the waters of this state;
- Enhance navigational safety;
- Protect maritime infrastructure;
- Protect the marine environment;
- Deter improperly stored, abandoned, or derelict vessels.

Each location must be associated with a properly permitted mooring field. The FWCC, in consultation with the DEP, must select all locations prior to July 1, 2011.

If enacted, this bill deletes s. 327.60 (2)(f), F.S., and changes s. 327.60 (3), F.S., back to the language before the 2009 Legislative Session. The reinstated language states that "local governmental authorities are prohibited from regulating the anchoring outside of properly permitted mooring fields of non-live-aboard vessels in navigation." In doing so, the bill allows local government authorities to regulate the anchoring of live-aboard vessels not in navigation outside of the permitted marked boundaries of mooring fields.

According to the FWCC, there does not appear to be a fiscal impact to state agencies or local governments with the way the bill is currently written. See Fiscal Comments section.

The bill will take effect upon becoming law.

HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Currently, local governments are prohibited from regulating the anchoring of vessels other than live-aboard vessels outside the marked boundaries of legally permitted mooring fields. According to FWCC, the unregulated anchoring and mooring leads to various problems including:

- The accumulation of anchored vessels in inappropriate locations;
- Unattended vessels;
- Vessels with no anchor watch (dragging anchor, no lights, bilge);
- Vessels that are not properly maintained;
- Vessels ignored by owners that tend to become derelict;
- Confusion with the interpretation of statutes that provide jurisdictional guidance for local governments.

A live-aboard vessel is defined as any vessel used solely as a residence and not for navigation; any vessel represented as a place of business or a professional or other commercial enterprise; or any vessel for which a declaration of domicile has been filed pursuant to s. 222.17, F.S. A commercial fishing boat is expressly excluded from the term 'live-aboard vessel' in s. 327.02 (17), F.S.¹

FWCC staff met with interested stakeholders over a two-year period prior to the 2010 Legislative Session, to try to find solutions to the unregulated anchoring. FWCC Commissioners came up with two recommendations:

- Develop a model anchoring/mooring ordinance that local governments can adopt.
- Clarify State and local authority to regulate vessels. This would address the issues of unregulated anchoring, waterway management, and local government authority and recommend cleanup language for some of the more confusing boating statutes. Examples of this approach include combining and clarifying s. 327.22, F.S., (regulation of vessels by municipalities or counties); s. 327.40, F.S., (uniform waterway markers for safety and navigation; informational markers); s. 327.41, F.S., (uniform waterway regulatory markers); s. 327.46, F.S., (restricted areas); s. 327.60, F.S., (local regulations; limitations); and rule 68D-22 (Uniform Waterway Markers in Florida Waters), Florida Administrative Code.

¹ FWCC 2010 analysis, on file
STORAGE NAME: h1361.ANR.doc
DATE: 3/3/2010

HB 1423, which was passed during the 2009 Legislative Session, directed the FWCC, in consultation with the DEP, to establish a pilot program in five locations to explore potential options for regulating the anchoring or mooring of non-live-aboard vessels outside the marked boundaries of public mooring fields.

The goals of the pilot program are to encourage the establishment of additional public mooring fields and to develop and test policies and regulatory regimes that:

- Promote the establishment and use of public mooring fields;
- Promote public access to the waters of this state;
- Enhance navigational safety;
- Protect maritime infrastructure;
- Protect the marine environment;
- Deter improperly stored, abandoned, or derelict vessels.

Each location must be associated with a properly permitted mooring field. The FWCC, in consultation with the DEP, must select all locations prior to July 1, 2011.

Notwithstanding the provisions of s. 327.60, F.S., a county or municipality selected for participation in the program may regulate by ordinance the anchoring of vessels, other than live-aboard vessels as defined in s. 327.02, F.S., outside of a mooring field. Any ordinance enacted under the pilot program may take effect and become enforceable only after the FWCC's approval. The FWCC may not approve any ordinance not consistent with the goals of the pilot program.

The FWCC shall:

- Provide consultation and technical assistance to each municipality or county selected for participation in the pilot program to facilitate accomplishment of the pilot program's goals;
- Coordinate the review of any proposed ordinance with the DEP, the Coast Guard; the Florida Inland Navigation District or the West Coast Inland Navigation District, as appropriate; and associations or other organizations representing vessel owners or operators;
- Monitor and evaluate at least annually each location selected for participation in the pilot program and make such modifications as may be necessary to accomplish the pilot program's goals.

The FWCC must submit a report of its findings and recommendations to the Governor, the President of the Senate, and the Speaker of the House of Representatives by January 1, 2014. The pilot program will expire on July 1, 2014, unless reenacted by the Legislature. All ordinances enacted under this section shall expire concurrently with the expiration of the pilot program and shall be inoperative and unenforceable thereafter.

Effect of Proposed Changes

The bill deletes s. 327.60 (2)(f), F.S., and changes s. 327.60 (3), F.S., back to the language before passage of HB 1423 during the 2009 Legislative Session. The reinstated language states that local governmental authorities are prohibited from regulating the anchoring outside of properly permitted mooring fields² of non-live-aboard vessels in navigation. In doing so, the bill allows local government authorities to regulate the anchoring of live-aboard vessels not in navigation outside of the permitted marked boundaries of mooring fields.

B. SECTION DIRECTORY:

Section 1. Amends s. 327.60, F.S., removing restrictions on county and municipality regulation of certain non-live-aboard vessels not in navigation.

² S. 327.40, F.S.

Section 2. Provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

Unknown

2. Expenditures:

Unknown

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

See Fiscal Comments

2. Expenditures:

See Fiscal Comments

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

FWCC states that if changes are made to the bill language to either match the bill to the title language (which pertains to certain non-live-aboard vessels not in navigation, whereas the bill refers to non-live-aboard vessels in navigation), or to try to provide local governments with more power to regulate live-aboard vessels then the following groups would be affected: Florida and non-resident boaters, the marine industry, boater groups, environmental groups, and commercial and residential waterside property owners subject to the provisions of this bill.

D. FISCAL COMMENTS:

According to FWCC, state agencies and local governments would not be fiscally impacted by the bill as currently written. If changes are made to the bill language to match the bill title, FWCC states the following state entities, as well as local governments, could be fiscally affected to an unknown degree: state law enforcement personnel, the DEP, the Board of Trustees of the Internal Improvement Trust Fund, the Department of Community Affairs, and FWCC.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This 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:

FWCC offered the following comments:

The reinsertion of the term "in navigation" to this statute does not affect the current state of the law for the following reason, "in navigation" is not defined within Florida Statute. Federal admiralty law however defines "in navigation" so broadly that only a vessel rendered practically incapable of transportation or movement is found to be not navigation. Therefore, the current bill language would allow local governments to regulate floating structures being used as living space (ie: live-aboards) that are incapable of transport upon the water. Local governments have that authority under the existing statute.

One way to achieve the purpose set forth in the title is to redefine the terms, "in navigation" or "live-aboard". Narrowing the definition of "live-aboard" found in 327.02(17) , F.S., or providing a definition of "in navigation" that is narrower than the Federal admiralty definition would provide local governments with more authority to regulate live-aboard vessels within their jurisdictions. However, it is important to note that any amendments to HB 1361 that provide a definition of "in navigation" or any change made to the 327.02, F.S., statutory definition of "live-aboard" will affect what vessels are impacted by the statutorily created pilot program. The current bill language will not affect the pilot program but if the bill language is changed to match the statement laid out in the title of the bill it could render the legislatively established pilot program moot.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

1 A bill to be entitled
 2 An act relating to regulation of vessels; amending s.
 3 327.60, F.S.; removing restrictions on county and
 4 municipality regulation of certain non-live-aboard vessels
 5 not in navigation; providing an effective date.

6
 7 Be It Enacted by the Legislature of the State of Florida:
 8

9 Section 1. Subsections (2) and (3) of section 327.60,
 10 Florida Statutes, are amended to read:

11 327.60 Local regulations; limitations.—

12 (2) Nothing in this chapter or chapter 328 shall be
 13 construed to prevent the adoption of any ordinance or local
 14 regulation relating to operation of vessels, except that a
 15 county or municipality shall not enact, continue in effect, or
 16 enforce any ordinance or local regulation:

17 (a) Establishing a vessel or associated equipment
 18 performance or other safety standard, imposing a requirement for
 19 associated equipment, or regulating the carrying or use of
 20 marine safety articles;

21 (b) Relating to the design, manufacture, installation, or
 22 use of any marine sanitation device on any vessel;

23 (c) Regulating any vessel upon the Florida Intracoastal
 24 Waterway;

25 (d) Discriminating against personal watercraft;

26 (e) Discriminating against airboats, for ordinances
 27 adopted after July 1, 2006, unless adopted by a two-thirds vote
 28 of the governing body enacting such ordinance;

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29 ~~(f) Regulating the anchoring of vessels other than live-~~
 30 ~~aboard vessels outside the marked boundaries of mooring fields~~
 31 ~~permitted as provided in s. 327.40;~~

32 (f) ~~(g)~~ Regulating engine or exhaust noise, except as
 33 provided in s. 327.65; or

34 (g) ~~(h)~~ That conflicts with any provisions of this chapter
 35 or any amendments thereto or rules adopted thereunder.

36 (3) Nothing in this section shall be construed to prohibit
 37 local governmental authorities from the enactment or enforcement
 38 of regulations which prohibit or restrict the mooring or
 39 anchoring of floating structures or live-aboard vessels within
 40 their jurisdictions or of any vessels within the marked
 41 boundaries of mooring fields permitted as provided in s. 327.40.
 42 However, local governmental authorities are prohibited from
 43 regulating the anchoring outside of such mooring fields of non-
 44 live-aboard vessels in navigation ~~vessels other than live-aboard~~
 45 ~~vessels as defined in s. 327.02.~~

46 Section 2. This act shall take effect upon becoming a law.

COUNCIL/COMMITTEE AMENDMENT

Bill No. HB 1361 (2010)

Amendment No.

COUNCIL/COMMITTEE 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 Council/Committee hearing bill: Agriculture & Natural Resources
2 Policy Committee
3 Representative Steinberg offered the following:
4

Amendment (with title amendment)

6 -----

T I T L E A M E N D M E N T

7 Remove lines 3-5 and insert:
8
9 327.60, F.S.; revising language related to the prohibition of
10 county and municipality regulation of certain non-live-aboard
11 vessels in navigation; providing an effective date.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1559 Recycling

SPONSOR(S): Rehwinkel and others

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

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Agriculture & Natural Resources Policy Committee</u>		Thompson <i>JT</i>	Reese <i>RR</i>
2) <u>Natural Resources Appropriations Committee</u>			
3) <u>General Government Policy Council</u>			
4) _____			
5) _____			

SUMMARY ANALYSIS

The bill directs the Department of Environmental Protection (DEP) and Enterprise Florida, Inc. (EFI), to create the Recycling Business Assistance Center (Center) by July 1, 2010. The bill directs EFI to consult with state agency economic development liaisons and to coordinate between state agencies and the private sector on the strategy for developing new markets and expanding and enhancing existing markets for recyclable materials. The bill provides for specific duties of the Center.

The bill requires each county to reduce the amount of solid waste disposed of in landfills by 50 percent by 2012, 55 percent by 2014, 60 percent by 2016, 70 percent by 2018, and 75 percent by 2020 and provides that counties failing to meet and report such reduction requirements are to be placed on a noncompliance list posted on the DEP's website.

The bill requires the DEP to conduct at least one unannounced inspection annually at all waste-to-energy facilities to ensure that said facilities are in compliance with the solid waste permit conditions. Additionally, the DEP is required to give the facility only 24 hours' notice of a forthcoming inspection.

The bill provides a directive for EFI, in cooperation with the DEP, to contract with a solid waste consultant to conduct a study on the impact of the recycling industry on the state's economy and to submit the study to the Governor and the Legislature by January 1, 2011.

The bill repeals s. 288.1185, F.S., the Recycling Markets Advisory Committee, since it has been inactive for approximately 20 years. Also, the bill conforms a cross reference relating to the solid waste permitting section of law that is renumbered by the bill.

The mandates provision may apply because the bill arguably requires counties to spend funds or take actions requiring them to spend funds and reduces the authority of counties to raise total aggregate revenue over February 1, 1989, levels. The costs of implementing the new recycling goals and the amount of the reduction of revenues are indeterminate; therefore it is not known whether the bill is exempt due to having an insignificant fiscal impact.

Many of the bill's provisions will have no direct fiscal impact. Some of the provisions are expected to have an indirect fiscal impact on state and local governments and on the private sector. For details, see the FISCAL COMMENTS section of the analysis.

This bill's effective date is July 1, 2010.

HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Recyclable Solid Waste

In 1988, the Florida Legislature passed the Solid Waste Management Act (SWMA) which included a 30% recycling goal. According to the Department of Environmental Protection (DEP), as of 2007, Florida generates more than 32 million tons of municipal solid waste annually and the state's average recycling rate is 28%.

The Energy, Climate Change and Economic Security Act of 2008 (ECCESA)¹ described the long term goals for state and local governments, companies, and the general public to reduce the amount of recyclable solid waste disposed of by a statewide average of at least 75 percent by 2020. The ECCESA directed the DEP to conduct public hearings and submit a report, by January 1, 2010, with recommendations, on how to reach the goal. DEP's report to the Legislature recommended:

- Each state agency should report to the Department of Management Services (DMS) its total expenditures on materials with recycled content;
- An increase in recycling education opportunities in K-12 public schools;
- Development of statewide recognition programs to reward citizens, schools, cities and municipalities recycling efforts;
- That the Legislature direct DEP to review in five years the number of local governments that have implemented pay as you throw (PAYT) to determine if additional measures are needed to increase the adoption of PAYT;
- That the Legislature require all construction and demolition (C&D) waste be processed at a materials recovery facility prior to disposal;
- That the Legislature require commercial recycling in counties with over a 100,000 population and cities with over 50,000 population;
- That the Legislature consider the creation of a landfill disposal fee;
- That the Legislature consider enacting a bottle bill to increase recycling of beverage containers;
- That the Legislature allow DEP to reduce or modify the composting goal;
- That the Legislature create a Recycling Business Assistance Center to promote markets for the entire spectrum of recyclable municipal solid waste materials; and

¹ (House Bill 7135) signed into law by Governor Crist created section 403.7032, F.S.

- Encourage the flow of materials such as food waste, yard trash, and paper to organic recycling centers, etc.

According to the DEP, section 403.706, F.S., requires each county to implement a recycling program designed to reduce the amount of solid waste disposed of by 30%. Counties with populations of 100,000 or less may offer their citizens an "opportunity to recycle" in lieu of achieving the 30% reduction. Counties are authorized to achieve up to half of the goal through converting wood waste to fuels for use in facilities other than waste-to-energy facilities. Counties and municipalities are encouraged to form cooperative arrangements for implementing such programs.

The Recycling Markets Advisory Committee (RMAC) was created in conjunction with the state's Advance Disposal Fee (ADF) on bottles. Housed in the Office of Tourism Trade and Economic Development (OTTED), its purpose was to advise on developing markets for the materials affected by the ADF. The ADF was in effect for two years (1993-1995), at which point the Legislature allowed it to sunset. Consequently, while RMAC is still in the statutes,² it has been inactive since the mid 1990's.

Enterprise Florida, Inc.

Enterprise Florida, Inc. (EFI),³ is a not-for-profit, public-private partnership that serves as Florida's statewide economic development organization. Florida law⁴ provides that EFI's mission is to diversify Florida's economy and create better-paying jobs for its citizens by supporting, attracting and helping create business in innovative, high-growth industries. EFI is funded by the Legislature and cash and in-kind donations from private businesses. The law⁵ provides that EFI is to aggressively market Florida's rural communities, distressed urban communities, brownfields, and enterprise zones as locations for potential new investment, to aggressively assist in the retention and expansion of existing businesses in these communities, and to aggressively assist these communities in the identification and development of new economic development opportunities for job creation. In support of its efforts, EFI is authorized to develop and implement programs or strategies that create and further Florida business, global business, and the import and export trade.

Proposed Changes

The bill directs the DEP and EFI to create the Recycling Business Assistance Center (Center) by July 1, 2010. The bill directs EFI to consult with state agency economic development liaisons⁶ and to coordinate between state agencies and the private sector on the policy and overall strategic planning for developing new markets and expanding and enhancing existing markets for recyclable materials in this state, other states, and foreign countries. Specifically, the duties of the Center must include:

- Identifying and developing new markets and expanding and enhancing existing markets for recyclable materials;
- Pursuing expanded end uses for recycled materials;
- Targeting materials for concentrated market-development efforts;
- Developing proposals for new incentives for market development, focusing on targeted materials;
- Providing guidance on issues such as permitting, finance options for recycling-market development, site location, research and development, grant program criteria for recycled materials markets, and recycling markets education and information;
- Coordinating the efforts of various governmental entities having market-development responsibilities in order to optimize supply and demand for recyclable materials;
- Evaluating source-reduced products as they relate to state procurement policy, which must include, but not be limited to, the environmental and economic impact of source-reduced product purchases to the state. The term "source-reduced" means any method that reduces the

² s. 288.1185, F.S.

³ Part VII, Chapter 288, F.S.

⁴ s. 288.9015, F.S.

⁵ s. 288.9015(2), F.S.

⁶ s. 288.021, F.S.

volume or weight of a product while providing similar performance and service to users of such materials;

- Providing innovative solid waste management grants,⁷ to reduce the flow of solid waste to disposal facilities and encourage the sustainable recovery of materials from Florida's waste stream;
- Providing below-market financing for companies that manufacture products from recycled materials or convert recyclable materials into raw materials for use in manufacturing, pursuant to the Florida Recycling Loan Program as administered by the Florida First Capital Finance Corporation;
- Maintaining a continuously updated online directory listing the public and private entities that collect, transport, broker, process, or remanufacture recyclable materials in the state;
- Providing information to private entities and industries in the state on the availability and benefits of using recycled materials;
- Distributing any materials prepared in implementing this subsection to the public, private entities, industries, governmental entities, or other organizations upon request; and
- Coordinating with the Agency for Workforce Innovation and its partners to provide job placement and job training services to job seekers.

The bill requires each county to reduce the amount of solid waste disposed of in landfills by 50 percent by 2012, 55 percent by 2014, 60 percent by 2016, 70 percent by 2018, and 75 percent by 2020. The bill provides that counties failing to meet such reduction requirements and failing to report to the DEP using the DEP's designated reporting format, are to be placed on a noncompliance list posted on the DEP's website.

The bill requires the DEP to conduct at least one unannounced inspection annually, at all waste-to-energy facilities, to ensure that said facilities are in compliance with their permit⁸ conditions. Additionally, the DEP is required to give the facility only 24 hours' notice of a forthcoming inspection.

The bill provides a directive for Enterprise Florida, Inc., in cooperation with the DEP, to contract with a solid waste consultant to conduct a study on the impact of the recycling industry on the state's economy and to submit the study to the Governor, the President of the Senate, and the Speaker of the House of Representatives by January 1, 2011.

The bill repeals the Recycling Markets Advisory Committee⁹ since it has been inactive for approximately 20 years. Also, the bill conforms a cross reference¹⁰ relating to the solid waste permitting section of law¹¹ that is renumbered by the bill.

B. SECTION DIRECTORY:

Section 1. Amends s. 288.90151, F.S., directing the Department of Environmental Protection (DEP) and Enterprise Florida, Inc. (EFI), to create the Recycling Business Assistance Center by a certain date; requiring EFI to consult with state economic development liaisons.

Section 2. Amends s. 403.702, F.S., directing the DEP and EFI to create the Recycling Business Assistance Center by a certain date; providing duties.

Section 3. Amends s. 403.706, F.S., requiring counties to meet specified goals in reducing the disposal of solid waste in landfills; providing for a noncompliance list.

Section 4. Amends s. 403.707, F.S., providing for inspections of waste-to-energy facilities by the DEP.

⁷ s. 403.7095, F.S.

⁸ s. 403.707, F.S.

⁹ s. 288.1185, F.S.

¹⁰ s. 403.703, F.S.

¹¹ s. 403.707, F.S.

Section 5. Directs EFl and the DEP to contract for a specified study and to submit the study to the Governor and the Legislature.

Section 6. Amends s. 403.703, F.S.; conforming a cross-reference.

Section 7. Repeals s. 288.1185, 16 F.S., relating to the Recycling Markets Advisory Committee.

Section 8. Provides that the bill will take effect on July 1, 2010.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

See Fiscal Comments below.

2. Expenditures:

See Fiscal Comments below.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

See Fiscal Comments below.

2. Expenditures:

See Fiscal Comments below.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

See Fiscal Comments below.

D. FISCAL COMMENTS:

The bill provides for the development of new markets and expanding and enhancing existing markets for recyclable materials through the creation of the Recycling Business Assistance Center. These activities could lead to developments that may create positive fiscal impacts on the private sector and state and local governments. According to DEP, until the funding for the Recycling Business Assistance Center is established, it is difficult to estimate total revenues and expenditures to DEP.

Various counties and private businesses rely on landfills as a revenue source. Recycling rather than landfilling additional solid waste will likely reduce related revenues for county governments and the private sector. Also, the proposed county recycling requirements will likely increase related expenditures for counties. As the cost of implementing a new goal is difficult to determine, the fiscal impact to counties and the private sector is indeterminate.

According to DEP, "the more successful the proposed recycling initiatives are, the more economic benefits will accrue to that part of the private sector involved with processing and markets for recyclable materials. Various studies have shown that recycling creates more jobs directly and indirectly than disposal. Success of the proposed recycling initiatives in the bill should result in more competition and increased employment opportunities in both the private and the public sector."

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Article VII, section 18(a) of the state constitution provides that counties or municipalities shall not be bound by laws requiring them to spend funds or take actions requiring them to spend funds unless the law fulfills an important state interest and the law is passed by 2/3 of the membership of each house of the Legislature. Additionally, Article VII, section 18(b) of the state constitution prohibits the Legislature from enacting, amending or repealing any general law if the anticipated effect of doing so would be to reduce the authority that municipalities or counties have to raise revenues in the aggregate, as such authority exists on February 1, 1989.

The bill requires counties to achieve solid waste reduction goals. Meeting such goals will require counties to increase expenditures and will reduce the amount of taxable solid waste currently being received by landfills. Due to these requirements, the mandates provision may apply because the bill arguably requires counties to spend funds or take actions requiring them to spend funds and reduces the authority of counties to raise total aggregate revenue over February 1, 1989, levels. The costs of implementing the new recycling goals and the amount of the reduction of revenues are indeterminate; therefore it is not known whether the bill is exempt due to having an insignificant fiscal impact.

2. Other:

None

B. RULE-MAKING AUTHORITY:

None

C. DRAFTING ISSUES OR OTHER COMMENTS:

According to Enterprise Florida, Inc. (EFI): the bill is not consistent with EFI's mission. EFI has a specific mission to diversify Florida's economy through innovative, high-tech, high wage businesses; does not develop new markets within the state, rather it identifies existing markets within Florida that can be further developed; and is already able to assist recycling businesses that qualify under the incentive program.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

1 A bill to be entitled
 2 An act relating to recycling; amending ss. 288.90151 and
 3 403.7032, F.S.; directing the Department of Environmental
 4 Protection and Enterprise Florida, Inc., to create the
 5 Recycling Business Assistance Center by a certain date;
 6 providing requirements; requiring Enterprise Florida,
 7 Inc., to consult with state agency personnel; amending s.
 8 403.706, F.S.; requiring counties to meet specified goals
 9 in reducing the disposal of solid waste in landfills;
 10 amending s. 403.707, F.S.; providing for inspections of
 11 waste-to-energy facilities by the Department of
 12 Environmental Protection; directing Enterprise Florida,
 13 Inc., and the Department of Environmental Protection to
 14 contract for a specified study and to submit the study to
 15 the Governor and the Legislature; amending s. 403.703,
 16 F.S.; conforming a cross-reference; repealing s. 288.1185,
 17 F.S., relating to the Recycling Markets Advisory
 18 Committee; providing an effective date.

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

21
 22 Section 1. Subsection (9) is added to section 288.90151,
 23 Florida Statutes, to read:

24 288.90151 Return on investment from activities of
 25 Enterprise Florida, Inc.—

26 (9) Enterprise Florida, Inc., in cooperation with the
 27 Department of Environmental Protection, shall create the
 28 Recycling Business Assistance Center by July 1, 2011, pursuant

29 to the requirements of s. 403.7032(4). In carrying out its
 30 duties under this subsection, Enterprise Florida, Inc., shall
 31 consult with state agency personnel appointed to serve as
 32 economic development liaisons under s. 288.021.

33 Section 2. Subsection (4) is added to section 403.7032,
 34 Florida Statutes, to read:

35 403.7032 Recycling.—

36 (4) The Department of Environmental Protection, in
 37 cooperation with Enterprise Florida, Inc., shall create the
 38 Recycling Business Assistance Center by July 1, 2011. The
 39 purpose of the center shall be to serve as the mechanism for
 40 coordination among state agencies and the private sector to
 41 coordinate policy and overall strategic planning for developing
 42 new markets and expanding and enhancing existing markets for
 43 recyclable materials in this state, other states, and foreign
 44 countries. The duties of the center shall include, at a minimum:

45 (a) Identifying and developing new markets and expanding
 46 and enhancing existing markets for recyclable materials;

47 (b) Pursuing expanded end uses for recycled materials;

48 (c) Targeting materials for concentrated market-
 49 development efforts;

50 (d) Developing proposals for new incentives for market
 51 development, particularly focusing on targeted materials;

52 (e) Providing guidance on issues such as permitting,
 53 finance options for recycling-market development, site location,
 54 research and development, grant program criteria for recycled
 55 materials markets, and recycling markets education and
 56 information;

57 (f) Coordinating the efforts of various governmental
 58 entities having market-development responsibilities in order to
 59 optimize supply and demand for recyclable materials;

60 (g) Evaluating source-reduced products as they relate to
 61 state procurement policy. The evaluation shall include, but is
 62 not limited to, the environmental and economic impact of source-
 63 reduced product purchases to the state. For the purposes of this
 64 subsection, the term "source-reduced" means any method, process,
 65 product, or technology that significantly or substantially
 66 reduces the volume or weight of a product while providing, at a
 67 minimum, equivalent or generally similar performance and service
 68 to and for the users of such materials;

69 (h) Providing innovative solid waste management grants,
 70 pursuant to s. 403.7095, to reduce the flow of solid waste to
 71 disposal facilities and encourage the sustainable recovery of
 72 materials from Florida's waste stream;

73 (i) Providing below-market financing for companies that
 74 manufacture products from recycled materials or convert
 75 recyclable materials into raw materials for use in
 76 manufacturing, pursuant to the Florida Recycling Loan Program as
 77 administered by the Florida First Capital Finance Corporation;

78 (j) Maintaining a continuously updated online directory
 79 listing the public and private entities that collect, transport,
 80 broker, process, or remanufacture recyclable materials in the
 81 state;

82 (k) Providing information to private entities and
 83 industries in the state on the availability and benefits of
 84 using recycled materials;

85 (l) Distributing any materials prepared in implementing
 86 this subsection to the public, private entities, industries,
 87 governmental entities, or other organizations upon request; and

88 (m) Coordinating with the Agency for Workforce Innovation
 89 and its partners to provide job placement and job training
 90 services to job seekers through the state's workforce services
 91 programs.

92 Section 3. Paragraph (a) of subsection (2) of section
 93 403.706, Florida Statutes, is amended to read:

94 403.706 Local government solid waste responsibilities.—

95 (2)(a) Each county shall implement a recyclable materials
 96 recycling program. Each county must reduce the amount of solid
 97 waste disposed of in landfills by 50 percent by 2012, 55 percent
 98 by 2014, 60 percent by 2016, 70 percent by 2018, and 75 percent
 99 by 2020. Counties that fail to meet such reduction requirements
 100 and report progress on their efforts to do so to the department
 101 using the department's designated reporting format shall be
 102 placed on a noncompliance list posted on the department's
 103 website. Counties and municipalities are encouraged to form
 104 cooperative arrangements for implementing recycling programs.

105 Section 4. Present subsections (8) through (14) of section
 106 403.707, Florida Statutes, are renumbered as subsections (9)
 107 through (15), respectively, and a new subsection (8) is added to
 108 that section to read:

109 403.707 Permits.—

110 (8) The department must conduct annually at least one
 111 inspection of each waste-to-energy facility for the purposes of
 112 determining compliance with permit conditions. The facility

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113 | shall be given only 24 hours' notice of the inspection required
 114 | under this subsection.

115 | Section 5. Enterprise Florida, Inc., in cooperation with
 116 | the Department of Environmental Protection, is directed to
 117 | contract with a solid waste consultant to conduct a study on the
 118 | impact of the recycling industry on the state's economy and to
 119 | submit the study to the Governor, the President of the Senate,
 120 | and the Speaker of the House of Representatives by January 1,
 121 | 2011.

122 | Section 6. Paragraph (b) of subsection (6) of section
 123 | 403.703, Florida Statutes, is amended to read:

124 | 403.703 Definitions.—As used in this part, the term:

125 | (6) "Construction and demolition debris" means discarded
 126 | materials generally considered to be not water-soluble and
 127 | nonhazardous in nature, including, but not limited to, steel,
 128 | glass, brick, concrete, asphalt roofing material, pipe, gypsum
 129 | wallboard, and lumber, from the construction or destruction of a
 130 | structure as part of a construction or demolition project or
 131 | from the renovation of a structure, and includes rocks, soils,
 132 | tree remains, trees, and other vegetative matter that normally
 133 | results from land clearing or land development operations for a
 134 | construction project, including such debris from construction of
 135 | structures at a site remote from the construction or demolition
 136 | project site. Mixing of construction and demolition debris with
 137 | other types of solid waste will cause the resulting mixture to
 138 | be classified as other than construction and demolition debris.
 139 | The term also includes:

140 | (b) Except as provided in s. 403.707(10) ~~s. 403.707(9)(j)~~,

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141 yard trash and unpainted, nontreated wood scraps and wood
142 pallets from sources other than construction or demolition
143 projects;

144 Section 7. Section 288.1185, Florida Statutes, is
145 repealed.

146 Section 8. This act shall take effect July 1, 2010.

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COUNCIL/COMMITTEE 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 Council/Committee hearing bill: Agriculture & Natural Resources
2 Policy Committee
3 Representative Rehwinkel Vasilinda offered the following:
4

Amendment (with title amendment)

5
6 Remove everything after the enacting clause and insert:
7 Section 1. Section 403.7032, Florida Statutes, is amended
8 to read:

9 403.7032 Recycling.—

10 (1) The Legislature finds that the failure or inability to
11 economically recover material and energy resources from solid
12 waste results in the unnecessary waste and depletion of our
13 natural resources. As the state continues to grow, so will the
14 potential amount of discarded material that must be treated and
15 disposed of, necessitating the improvement of solid waste
16 collection and disposal. Therefore, the maximum recycling and
17 reuse of such resources are considered high-priority goals of
18 the state.

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19 (2) By the year 2020, the long-term goal for the recycling
20 efforts of state and local governmental entities, private
21 companies and organizations, and the general public is to reduce
22 the amount of recyclable solid waste disposed of in waste
23 management facilities, landfills, or incineration facilities by
24 a statewide average of at least 75 percent. ~~However, any solid
25 waste used for the production of renewable energy shall count
26 toward the long-term recycling goal as set forth in this
27 section.~~

28 (3) All state agencies, K-12 public schools, public
29 institutions of higher learning, community colleges, and state
30 universities must, at a minimum, annually report to the county
31 using the department's designated reporting format all recycled
32 materials from these entities. This includes all buildings that
33 are occupied by municipal, county, or state employees or, if the
34 building is managed by the Department of Management Services,
35 those entities must report their recycling data to the county
36 using the department's designated reporting format. Private
37 businesses, other than certified recovered materials dealers,
38 which have 50 or more employees and generate recyclable
39 materials, such as, but not limited to, paper, metals, glass,
40 plastics, textiles, rubber materials, and mulch, are strongly
41 encouraged to report the amount of recycled materials to the
42 county biennially starting January 1, 2011, using the
43 department's designated reporting format. For reporting
44 purposes, businesses that choose to contract with local entities
45 to remove recyclables from their businesses for recycling may
46 submit appropriate verification to the department and will be

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47 considered as reporting a recycling rate. Private businesses
48 that are not required to report recycling rates are encouraged
49 to participate. Notwithstanding any other provision of state or
50 local law, those private businesses reporting, other than
51 certified recovered materials dealers, according to this
52 subsection shall not be required to comply with any additional
53 recycling reporting requirements regarding their recycling
54 rates. Private businesses in compliance with the reporting
55 requirement and those that voluntarily report shall be given
56 additional preference under the procurement guidelines of s.
57 287.045. Private businesses having 25 employees or more which do
58 not report recycling rates to the department shall have a zero
59 percent recycling rate reported and are not eligible for
60 additional preference under the procurement guidelines of s.
61 287.045.

62 ~~(4)(3)~~ The Department of Environmental Protection shall
63 develop a comprehensive recycling program that is designed to
64 achieve the percentage under subsection (2) and submit the
65 program to the President of the Senate and the Speaker of the
66 House of Representatives by January 1, 2010. The program may not
67 be implemented until approved by the Legislature. The program
68 must be developed in coordination with input from state and
69 local entities, private businesses, and the public. Under the
70 program, recyclable materials shall include, but are not limited
71 to, metals, paper, glass, plastic, textile, rubber materials,
72 and mulch. Components of the program shall include, but are not
73 limited to:

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74 (a) Programs to identify environmentally preferable
75 purchasing practices to encourage the purchase of recycled,
76 durable, and less toxic goods. The Department of Management
77 Services shall modify its procurement system to report on green
78 and recycled products purchased through the system by September
79 30, 2011.

80 (b) Programs to educate students in grades K-12 in the
81 benefits of, and proper techniques for, recycling.

82 (c) Programs for statewide recognition of successful
83 recycling efforts by schools, businesses, public groups, and
84 private citizens.

85 (d) Programs for municipalities and counties to develop
86 and implement efficient recycling efforts to return valuable
87 materials to productive use, conserve energy, and protect
88 natural resources.

89 (e) Programs by which the department can provide technical
90 assistance to municipalities and counties in support of their
91 recycling efforts.

92 (f) Programs to educate and train the public in proper
93 recycling efforts.

94 (g) Evaluation of how financial assistance can best be
95 provided to municipalities and counties in support of their
96 recycling efforts.

97 (h) Evaluation of why existing waste management and
98 recycling programs in the state have not been better used.

99 (5) The Department of Environmental Protection shall
100 create the Recycling Business Assistance Center by December 1,
101 2010. In carrying out its duties under this subsection, the

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102 Department of Environmental Protection shall consult with state
103 agency personnel appointed to serve as economic development
104 liaisons under s. 288.021 and seek technical assistance from
105 Enterprise Florida, Inc., to ensure the Recycling Business
106 Assistance Center is positioned to succeed. The purpose of the
107 center shall be to serve as the mechanism for coordination among
108 state agencies and the private sector in order to coordinate
109 policy and overall strategic planning for developing new markets
110 and expanding and enhancing existing markets for recyclable
111 materials in this state, other states, and foreign countries.

112 The duties of the center must include, at a minimum:

113 (a) Identifying and developing new markets and expanding
114 and enhancing existing markets for recyclable materials;

115 (b) Pursuing expanded end uses for recycled materials;

116 (c) Targeting materials for concentrated market-
117 development efforts;

118 (d) Developing proposals for new incentives for market
119 development, particularly focusing on targeted materials;

120 (e) Providing guidance on issues such as permitting,
121 finance options for recycling market development, site location,
122 research and development, grant program criteria for recycled
123 materials markets, recycling markets education and information,
124 and minimum content;

125 (f) Coordinating the efforts of various governmental
126 entities having market-development responsibilities in order to
127 optimize supply and demand for recyclable materials;

128 (g) Evaluating source-reduced products as they relate to
129 state procurement policy. The evaluation shall include, but is

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130 not limited to, the environmental and economic impact of source-
131 reduced product purchases to the state. For the purposes of this
132 paragraph, the term "source-reduced" means any method, process,
133 product, or technology that significantly or substantially
134 reduces the volume or weight of a product while providing, at a
135 minimum, equivalent or generally similar performance and service
136 to and for the users of such materials;

137 (h) Providing evaluation of solid waste management grants,
138 pursuant to s. 403.7095, to reduce the flow of solid waste to
139 disposal facilities and encourage the sustainable recovery of
140 materials from Florida's waste stream;

141 (i) Providing below-market financing for companies that
142 manufacture products from recycled materials or convert
143 recyclable materials into raw materials for use in
144 manufacturing, pursuant to the Florida Recycling Loan Program as
145 administered by the Florida First Capital Finance Corporation;

146 (j) Maintaining a continuously updated online directory,
147 listing the public and private entities that collect, transport,
148 broker, process, or remanufacture recyclable materials in the
149 state;

150 (k) Providing information on the availability and benefits
151 of using recycled materials to private entities and industries
152 in the state;

153 (l) Distributing any materials prepared in implementing
154 this subsection to the public, private entities, industries,
155 governmental entities, or other organizations upon request; and

156 (m) Coordinating with the Agency for Workforce Innovation
157 and its partners to provide job placement and job training

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158 services to job seekers through the state's workforce services
159 programs.

160 Section 2. Subsection (9) is added to section 288.9015,
161 Florida Statutes, to read:

162 288.9015 Enterprise Florida, Inc.; purpose; duties.—

163 (9) Enterprise Florida, Inc., shall provide technical
164 assistance to the Department of Environmental Protection in the
165 creation of the Recycling Business Assistance Center pursuant to
166 s. 403.7032(5). As the state's primary organization devoted to
167 statewide economic development, Enterprise Florida, Inc., is
168 encouraged to cooperate with the Department of Environmental
169 Protection to ensure that the Recycling Business Assistance
170 Center is positioned to succeed in helping to enhance and expand
171 existing markets for recyclable materials in Florida, other
172 states, and foreign countries.

173 Section 3. Subsection (1) of section 403.7046, Florida
174 Statutes, is amended to read:

175 403.7046 Regulation of recovered materials.—

176 (1) Any person who handles, purchases, receives, recovers,
177 sells, or is an end user of recovered materials shall annually
178 certify to the department on forms provided by the department.
179 The department may by rule exempt from this requirement
180 generators of recovered materials; persons who handle or sell
181 recovered materials as an activity which is incidental to the
182 normal primary business activities of that person; or persons
183 who handle, purchase, receive, recover, sell, or are end users
184 of recovered materials in small quantities as defined by the
185 department. The department shall adopt rules for the

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186 certification of and reporting by such persons and shall
187 establish criteria for revocation of such certification. ~~Prior~~
188 ~~to the adoption of such rules, the department shall appoint a~~
189 ~~technical advisory committee of no more than nine persons,~~
190 ~~including, at a minimum, representatives of the Florida~~
191 ~~Association of Counties, the Florida League of Cities, the~~
192 ~~Florida Recyclers Association, and the Florida Chapter of the~~
193 ~~National Solid Waste Management Association, to aid in the~~
194 ~~development of such rules.~~ Such rules shall be designed to
195 elicit, at a minimum, the amount and types of recovered
196 materials handled by registrants, and the amount and disposal
197 site, or name of person with whom such disposal was arranged, of
198 any solid waste generated by such facility. By February 1 of
199 each year, registrants shall report all required information to
200 the department and to all counties from which it received
201 materials. Such rules may provide for the department to conduct
202 periodic inspections. The department may charge a fee of up to
203 \$50 for each registration, which shall be deposited into the
204 Solid Waste Management Trust Fund for implementation of the
205 program.

206 Section 4. Subsection (3) of section 403.705, Florida
207 Statutes, is amended to read:

208 403.705 State solid waste management program.—

209 (3) The department shall ~~periodically seek information~~
210 ~~from counties to~~ evaluate and report to the Legislature
211 biennially on the state's success in meeting the solid waste
212 reduction goal as described in s. 403.706(2).

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213 Section 5. Subsections (2), (4), (7), and (21) of section
214 403.706, Florida Statutes, are amended to read:

215 403.706 Local government solid waste responsibilities.—

216 (2)(a) Each county shall implement a recyclable materials
217 recycling program that shall have a goal of recycling solid
218 waste by 40 percent by December 31, 2012, 50 percent by December
219 31, 2014, 60 percent by December 31, 2016, 70 percent by
220 December 31, 2018, and 75 percent by December 31, 2020. Counties
221 and municipalities are encouraged to form cooperative
222 arrangements for implementing recycling programs.

223 (b) In order to assist in attaining the goals provided in
224 this subsection, the Legislature finds that the recycling of
225 construction and demolition debris is in the state's interest.
226 Each county shall implement a program that shall have a goal of
227 reducing construction and demolition debris disposed of in
228 landfills by 40 percent by December 31, 2012, 50 percent by
229 December 31, 2014, 60 percent by December 31, 2016, 70 percent
230 by December 31, 2018, and 75 percent by December 31, 2020.

231 (c) All commercial and multifamily construction projects,
232 including, but not limited to, apartment complexes, which begin
233 construction on or after July 1, 2010, must provide an
234 opportunity for the tenants and owners to recycle, including, if
235 necessary, designated space for the placement of recycle
236 receptacles for the occupants.

237 (d) If, by January 1 of 2013, 2015, 2017, 2019, or 2021,
238 the county, as determined by the department, has not reached the
239 previous year's recycling goal, as provided in this subsection,
240 the department may direct the county to develop a plan to expand

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241 recycling programs to existing commercial and multifamily
242 dwelling, including, but not limited to, apartment complexes.

243 (e) If the state's recycling rate for the 2013 calendar
244 year is below 40 percent, the department shall provide a report
245 to the Legislature. The report may identify those additional
246 programs or statutory changes needed to achieve the goals
247 provided in this subsection. The report must include an
248 evaluation of the costs to the public and private sectors to
249 enact and administer these programs. The report shall be
250 provided no later than 30 days prior to the 2015 Regular Session
251 of the Legislature.

252 (f)-(b) Such programs shall be designed to recover a
253 significant portion of at least four of the following materials
254 from the solid waste stream prior to final disposal at a solid
255 waste disposal facility and to offer these materials for
256 recycling: newspaper, aluminum cans, steel cans, glass, plastic
257 bottles, cardboard, office paper, and yard trash. Local
258 governments which operate permitted waste-to-energy facilities
259 may retrieve ferrous and nonferrous metal as a byproduct of
260 combustion.

261 (g)-(e) Local governments are encouraged to separate all
262 plastics, metal, and all grades of paper for recycling prior to
263 final disposal and are further encouraged to recycle yard trash
264 and other mechanically treated solid waste into compost
265 available for agricultural and other acceptable uses.

266 ~~(d) By July 1, 2010, each county shall develop and~~
267 ~~implement a plan to achieve a goal to compost organic materials~~
268 ~~that would otherwise be disposed of in a landfill. The goal~~

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269 ~~shall provide that up to 10 percent and no less than 5 percent~~
270 ~~of organic material would be composted within the county and the~~
271 ~~municipalities within its boundaries. The department may reduce~~
272 ~~or modify the compost goal if the county demonstrates to the~~
273 ~~department that achievement of the goal would be impractical~~
274 ~~given the county's unique demographic, urban density, or~~
275 ~~inability to separate normally compostable material from the~~
276 ~~solid waste stream. The composting plan is encouraged to address~~
277 ~~partnership with the private sector.~~

278 (h)(e) Each county is encouraged to consider plans for
279 composting or mulching organic materials that would otherwise be
280 disposed of in a landfill. The composting or mulching plans are
281 encouraged to address partnership with the private sector.

282 (4) (a) A county's solid waste management and recycling
283 programs shall be designed to provide for sufficient reduction
284 of the amount of solid waste generated within the county and the
285 municipalities within its boundaries in order to meet goals for
286 the reduction of municipal solid waste prior to the final
287 disposal or the incineration of such waste at a solid waste
288 disposal facility. The goals shall provide, at a minimum, that
289 the amount of municipal solid waste that would be disposed of
290 within the county and the municipalities within its boundaries
291 is designed to meet the requirements of subsection (2) ~~is~~
292 ~~reduced by at least 30 percent.~~

293 (b) A county may receive credit for one-half of the goal
294 for waste reduction from the use of yard trash, or other clean
295 wood waste or paper waste, in innovative programs including, but
296 not limited to, programs that produce alternative clean-burning

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297 fuels such as ethanol or that provide for the conversion of yard
298 trash or other clean wood waste or paper waste to clean-burning
299 fuel for the production of energy for use at facilities other
300 than a waste-to-energy facility as defined in s. 403.7061. The
301 provisions of this paragraph apply only if a county can
302 demonstrate that:

303 1. The county has implemented a yard trash mulching or
304 composting program, and

305 2. As part of the program, compost and mulch made from
306 yard trash is available to the general public and in use at
307 county-owned or maintained and municipally owned or maintained
308 facilities in the county and state agencies operating in the
309 county as required by this section.

310 (c) Solid waste used for the production of renewable
311 energy shall count toward the long-term recycling goal as set
312 forth in this section, provided the county in which a waste-to-
313 energy facility is located has implemented and maintains a
314 program that is designed to recycle at least 50 percent of
315 municipal solid waste by means other than gasification or
316 combustion. The duty to implement and maintain such recycling
317 program does not apply to counties where debt service payment is
318 pledged along with net revenues derived from the operation of
319 the waste-to-energy facility.

320 (d) ~~(e)~~ A county with a population of 100,000 or less may
321 provide its residents with the opportunity to recycle in lieu of
322 achieving the goal set forth in this section ~~paragraph (a)~~. For
323 the purposes of this section ~~subsection~~, the "opportunity to
324 recycle" means that the county:

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325 1.a. Provides a system for separating and collecting
326 recyclable materials prior to disposal that is located at a
327 solid waste management facility or solid waste disposal area; or

328 b. Provides a system of places within the county for
329 collection of source-separated recyclable materials.

330 2. Provides a public education and promotion program that
331 is conducted to inform its residents of the opportunity to
332 recycle, encourages source separation of recyclable materials,
333 and promotes the benefits of reducing, reusing, recycling, and
334 composting materials.

335 (7) In order to assess the progress in meeting the goal
336 established in subsection (2) ~~(4)~~, each county shall, by April 1
337 ~~November~~ each year, provide information to the department
338 regarding its annual solid waste management program and
339 recycling activities. The information by the county must, at a
340 minimum, include:

341 (a) The amount of municipal solid waste disposed of at
342 solid waste disposal facilities, by type of waste such as yard
343 trash, white goods, clean debris, tires, and unseparated solid
344 waste;

345 (b) The amount and type of materials from the municipal
346 solid waste stream that were recycled; and

347 (c) The percentage of the population participating in
348 various types of recycling activities instituted.

349 (d) Beginning with the data for the 2012 calendar year,
350 the department shall annually, by July 1, post on its website
351 the recycling rates of each county for the prior calendar year.

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352 (21) Local governments are authorized to enact ordinances
353 that require and direct all residential properties, multifamily
354 dwellings, and apartment complexes and industrial, commercial,
355 and institutional establishments as defined by the local
356 government to establish programs for the separation of
357 recyclable materials designated by the local government, which
358 recyclable materials are specifically intended for purposes of
359 recycling and for which a market exists, and to provide for
360 their collection. Such ordinances may include, but are not
361 limited to, provisions that prohibit any person from knowingly
362 disposing of recyclable materials designated by the local
363 government and that ensure the collection of recovered materials
364 as necessary to protect public health and safety.

365 Section 6. Subsection (1) of section 403.7145, Florida
366 Statutes, is amended, and subsections (3) and (4) are added to
367 that section, to read:

368 403.7145 Recycling.—

369 (1) The Capitol and the House and Senate office buildings
370 constitute the Capitol recycling area. The Florida House of
371 Representatives, the Florida Senate, and the Office of the
372 Governor, the Secretary of State, and each Cabinet officer who
373 heads a department that occupies office space in the Capitol,
374 shall institute a recycling program for their respective offices
375 in the House and Senate office buildings and the Capitol.
376 Provisions shall be made to collect and sell wastepaper and
377 empty ~~aluminum~~ beverage containers ~~can~~s generated by employee
378 activities in these offices. The collection and sale of such
379 materials shall be reported to Leon County using the

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380 department's designated reporting format and coordinated with
381 Department of Management Services recycling activities to
382 maximize the efficiency and economy of this program. The
383 Governor, the Speaker of the House of Representatives, the
384 President of the Senate, the Secretary of State, and the Cabinet
385 officers may authorize the use of proceeds from recyclable
386 material sales for employee benefits and other purposes, in
387 order to provide incentives to their respective employees for
388 participation in the recycling program. Such proceeds may also
389 be used to offset any costs of the recycling program. As a
390 demonstration of leading by example, the Capitol Building's
391 recycling rates shall be posted on the website of the Department
392 of Management Services and shall include the details of the
393 recycling rates for each Department of Management Services pool
394 facility. The Department of Environmental Protection shall post
395 recycling rates of each state-owned facility reported to the
396 Department of Management Services.

397 (3) Prior to awarding any grants pursuant to s. 403.7095,
398 the department shall develop and contract for an innovative
399 recycling pilot project for the Capitol recycling area. Such
400 project shall be designed to collect recyclable materials and
401 create a more sustainable recycling system. Components of the
402 project shall be designed to increase convenience, incentivize
403 and measure participation, reduce material volume, and assist in
404 achieving the recycling goals enumerated in s. 403.706.

405 (4) Each public airport operating in this state shall, to
406 the greatest extent practicable, collect aluminum beverage cans
407 and recyclable plastic and glass from the airlines and other

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408 entities doing business at the airport and offer such materials
409 for recycling. Each airport may retain and use any proceeds
410 received from the sale of these materials for recycling to
411 offset the costs associated with collecting and recycling such
412 materials. Airport administration offices, airport vendors, and
413 airlines are encouraged to coordinate the collection of
414 recyclable waste to the greatest extent practicable. The
415 provisions of this subsection are not intended to interfere with
416 any already established recycling activity.

417 Section 7. Subsection (9) of section 403.707, Florida
418 Statutes, is amended, and subsection (15) is added to that
419 section, to read:

420 403.707 Permits.—

421 (9) The department shall establish a separate category for
422 solid waste management facilities that accept only construction
423 and demolition debris for disposal or recycling. The department
424 shall establish a reasonable schedule for existing facilities to
425 comply with this section to avoid undue hardship to such
426 facilities. However, a permitted solid waste disposal unit that
427 receives a significant amount of waste prior to the compliance
428 deadline established in this schedule shall not be required to
429 be retrofitted with liners or leachate control systems.

430 (a) The department shall establish reasonable
431 construction, operation, monitoring, recordkeeping, financial
432 assurance, and closure requirements for such facilities. The
433 department shall take into account the nature of the waste
434 accepted at various facilities when establishing these
435 requirements, and may impose less stringent requirements,

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436 including a system of general permits or registration
437 requirements, for facilities that accept only a segregated waste
438 stream which is expected to pose a minimal risk to the
439 environment and public health, such as clean debris. The
440 Legislature recognizes that incidental amounts of other types of
441 solid waste are commonly generated at construction or demolition
442 projects. In any enforcement action taken pursuant to this
443 section, the department shall consider the difficulty of
444 removing these incidental amounts from the waste stream.

445 (b) The department shall ~~not~~ require liners and leachate
446 collection systems at individual disposal units constructed
447 after July 1, 2010 ~~facilities unless it demonstrates, based upon~~
448 ~~the types of waste received, the methods for controlling types~~
449 ~~of waste disposed of, the proximity of groundwater and surface~~
450 ~~water, and the results of the hydrogeological and geotechnical~~
451 ~~investigations, that the facility is reasonably expected to~~
452 ~~result in violations of groundwater standards and criteria~~
453 ~~otherwise.~~

454 (c) The owner or operator shall provide financial
455 assurance for closing of the facility in accordance with the
456 requirements of s. 403.7125. The financial assurance shall cover
457 the cost of closing the facility and 5 years of long-term care
458 after closing, unless the department determines, based upon
459 hydrogeologic conditions, the types of wastes received, or the
460 groundwater monitoring results, that a different long-term care
461 period is appropriate. However, unless the owner or operator of
462 the facility is a local government, the escrow account described

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463 in s. 403.7125(2) may not be used as a financial assurance
464 mechanism.

465 (d) The department shall establish training requirements
466 for operators of facilities, and shall work with the State
467 University System or other providers to assure that adequate
468 training courses are available. The department shall also assist
469 the Florida Home Builders Association in establishing a
470 component of its continuing education program to address proper
471 handling of construction and demolition debris, including best
472 management practices for reducing contamination of the
473 construction and demolition debris waste stream.

474 (e) The issuance of a permit under this subsection does
475 not obviate the need to comply with all applicable zoning and
476 land use regulations.

477 (f) A permit is not required under this section for the
478 disposal of construction and demolition debris on the property
479 where it is generated, but such property must be covered,
480 graded, and vegetated as necessary when disposal is complete.

481 (g) By January 1, 2012, all construction and demolition
482 debris must be processed prior to disposal at a permitted
483 materials recovery facility or at a permitted disposal facility.
484 The facility must be designed and operated to separate and offer
485 for recycling at least 60 percent of the material accepted and
486 must have a long-term plan to separate at least 75 percent of
487 the material accepted by December 31, 2020. This paragraph does
488 not apply to any materials that have been source separated and
489 offered for recycling. It is the policy of the Legislature to
490 encourage facilities to recycle. The department shall establish

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491 ~~criteria and guidelines that encourage recycling where practical~~
492 ~~and provide for the use of recycled materials in a manner that~~
493 ~~protects the public health and the environment. Facilities are~~
494 ~~authorized to recycle, provided such activities do not conflict~~
495 ~~with such criteria and guidelines.~~

496 (h) The department shall ensure that the requirements of
497 this section are applied and interpreted consistently throughout
498 the state. In accordance with s. 20.255, the Division of Waste
499 Management shall direct the district offices and bureaus on
500 matters relating to the interpretation and applicability of this
501 section.

502 (i) The department shall provide notice of receipt of a
503 permit application for the initial construction of a
504 construction and demolition debris disposal facility to the
505 local governments having jurisdiction where the facility is to
506 be located.

507 (j) The Legislature recognizes that recycling, waste
508 reduction, and resource recovery are important aspects of an
509 integrated solid waste management program and as such are
510 necessary to protect the public health and the environment. If
511 necessary to promote such an integrated program, the county may
512 determine, after providing notice and an opportunity for a
513 hearing prior to April 30, 2008, that some or all of the
514 material described in s. 403.703(6)(b) shall be excluded from
515 the definition of "construction and demolition debris" in s.
516 403.703(6) within the jurisdiction of such county. The county
517 may make such a determination only if it finds that, prior to
518 June 1, 2007, the county has established an adequate method for

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Amendment No.

519 the use or recycling of such wood material at an existing or
520 proposed solid waste management facility that is permitted or
521 authorized by the department on June 1, 2007. The county is not
522 required to hold a hearing if the county represents that it
523 previously has held a hearing for such purpose, or if the county
524 represents that it previously has held a public meeting or
525 hearing that authorized such method for the use or recycling of
526 trash or other nonputrescible waste materials and that such
527 materials include those materials described in s. 403.703(6)(b).
528 The county shall provide written notice of its determination to
529 the department by no later than April 30, 2008; thereafter, the
530 materials described in s. 403.703(6) shall be excluded from the
531 definition of "construction and demolition debris" in s.
532 403.703(6) within the jurisdiction of such county. The county
533 may withdraw or revoke its determination at any time by
534 providing written notice to the department.

535 (k) Brazilian pepper and other invasive exotic plant
536 species as designated by the department resulting from
537 eradication projects may be processed at permitted construction
538 and demolition debris recycling facilities or disposed of at
539 permitted construction and demolition debris disposal facilities
540 or Class III facilities. The department may adopt rules to
541 implement this paragraph.

542 (15) The department must, at a minimum, conduct at least
543 one unannounced inspection, on an annual basis, of each waste-
544 to-energy facility for the purposes of determining compliance
545 with permit conditions.

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546 Section 8. Subsection (5) of section 403.7049, Florida
547 Statutes, is amended to read:

548 403.7049 Determination of full cost for solid waste
549 management; local solid waste management fees.—

550 (5) In order to assist in achieving the municipal solid
551 waste reduction goal and the recycling provisions of s.
552 403.706(2) ~~s. 403.706(4)~~, a county or a municipality which owns
553 or operates a solid waste management facility is hereby
554 authorized to charge solid waste disposal fees which may vary
555 based on a number of factors, including, but not limited to, the
556 amount, characteristics, and form of recyclable materials
557 present in the solid waste that is brought to the county's or
558 the municipality's facility for processing or disposal.

559 Section 9. Paragraph (c) of subsection (2) of section
560 403.705, Florida Statutes, is amended to read:

561 403.705 State solid waste management program.—

562 (2) The state solid waste management program shall
563 include, at a minimum:

564 (c) Planning guidelines and technical assistance to
565 counties and municipalities to aid in meeting the municipal
566 solid waste reduction goals established in s. 403.706(2) ~~s.~~
567 ~~403.706(4)~~.

568 Section 10. Paragraph (c) of subsection (3) of section
569 403.7061, Florida Statutes, is amended to read:

570 403.7061 Requirements for review of new waste-to-energy
571 facility capacity by the Department of Environmental
572 Protection.—

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573 (3) An applicant must provide reasonable assurance that
574 the construction of a new waste-to-energy facility or the
575 expansion of an existing waste-to-energy facility will comply
576 with the following criteria:

577 (c) The county in which the facility is located has
578 implemented and maintains a solid waste management and recycling
579 program that is designed to achieve the waste reduction goal set
580 forth in s. 403.706(2) ~~s. 403.706(4)~~. For the purposes of this
581 section, the provisions of s. 403.706(2) ~~s. 403.706(4)(c)~~ for
582 counties having populations of 100,000 or fewer do not apply.

583 Section 11. Section 288.1185, Florida Statutes, is
584 repealed.

585 Section 12. This act shall take effect July 1, 2010.
586
587
588

589 -----

590 **T I T L E A M E N D M E N T**

591 Remove the entire title and insert:

592 A bill to be entitled

593 An act relating to environmental protection; amending s.
594 403.7032, F.S.; requiring all public entities to report
595 recycling data to the county using the format designated by the
596 Department of Environmental Protection; requiring that certain
597 private entities report the disposal of recyclable materials;
598 requiring that businesses reporting such data be given
599 preference under certain procurement guidelines; requiring the
600 Department of Management Services to report on green and

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601 recycled products purchased through its procurement system;
602 directing the Department of Environmental Protection to create
603 the Recycling Business Assistance Center; providing requirements
604 for the center; amending s. 288.9015, F.S.; requiring Enterprise
605 Florida, Inc., to provide technical assistance to the Department
606 of Environmental Protection in the creation of the Recycling
607 Business Assistance Center; amending s. 403.7046, F.S.; deleting
608 a requirement that the Department of Environmental Protection
609 appoint a technical advisory committee; clarifying reporting
610 requirements; amending s. 403.705, F.S.; requiring that the
611 department report biennially to the Legislature on the state's
612 success in meeting solid waste reduction goals; amending s.
613 403.706, F.S.; requiring counties to meet specific recycling
614 benchmarks; requiring the recycling of materials for new
615 commercial and multifamily projects; providing authority for the
616 Department of Environmental Protection to require a plan under
617 certain conditions; requiring a report to the Legislature by the
618 Department of Environmental Protection if recycling benchmarks
619 are not met; eliminating a requirement that counties develop
620 composting goals; clarifying the conditions under which waste to
621 energy may be used as an option for meeting the recycling
622 benchmarks; providing exceptions; providing deadlines for the
623 reporting of recycling data; amending s. 403.7145, F.S.;;
624 revising recycling requirements for state buildings; providing
625 for a pilot project; requiring each public airport in the state
626 to collect aluminum beverage cans and recyclable plastic and
627 glass from its place of business, or from the entities doing
628 business at the airport, and to offer such materials for

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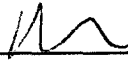

Bill No. HB 1559 (2010)

Amendment No.

629 recycling; amending s. 403.707, F.S.; requiring liners for new
630 construction and demolition debris landfills; establishing
631 recycling rates for source-separation activities; requiring
632 inspections for waste-to-energy facilities; amending ss.
633 403.7049, 403.705, and 403.7061, F.S.; conforming cross-
634 references; repealing s. 288.1185, F.S., relating to the
635 Recycling Markets Advisory Committee; providing an effective
636 date.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB ANR 10-13 **Water Supply**
SPONSOR(S): Agriculture & Natural Resources Policy Committee
TIED BILLS: **IDEN./SIM. BILLS:**

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.:	Agriculture & Natural Resources Policy Committee		Kliner 	Reese 
1)				
2)				
3)				
4)				
5)				

SUMMARY ANALYSIS

The bill amends state policy regarding alternative water supply development. The bill isolates conservation measures (or programs) that reduce the need for potable water, and construction projects that result in the beneficial use of reclaimed water and calls these measures "demand management." On the other hand, programs or projects that include desalinization, aquifer storage and recovery, reservoirs, and treated surface water or stormwater will comprise alternative water supply development.

The bill also:

- Sets goals to eliminate the use of potable water for landscape irrigation in all new residential and commercial construction and in all redevelopment of existing residential and commercial construction by the year 2013, and to use all reclaimed wastewater for beneficial purposes by the year 2030. Water management districts (WMDs) are directed to include demand management activities in their annual budgets and consolidated annual reports. Like alternative water supply development projects, Water Protection and Sustainability Program funds must be available for demand management activities.
- Directs the Department of Environmental Protection (DEP) Secretary to exercise general supervisory authority to ensure cooperative efforts between the DEP, WMDs, counties, municipalities, and special districts result in the construction and operation of certain alternative water supply projects. The Public Service Commission is required to provide for costs recovery for the construction of certain facilities and the applicable rate-setting authority is required to provide a specific rate structure for a utility that receives financial assistance from a WMD for demand management activities.
- Amends provisions relating to conditions for the issuance of a consumptive use permit (CUP) and prohibits the DEP or WMD board from issuing a CUP if the use will cause the source water body to fall below an established minimum flow or minimum level (MFL), and defines "source water body" as either surface water or groundwater. The bill also amends the "three-prong test" and directs the DEP or WMD board to consider and balance the specific factors to determine whether the proposed use of water is a reasonable-beneficial use, will not interfere with a present, existing legal use of water, and is consistent with the public interest.
- Provides that a public water supply system that uses traditional groundwater and alternative sources may continue to use groundwater sources if the alternative water supply is unreliable due to rainfall patterns. Such groundwater use will be considered to be in the public interest.
- Corrects several statutory cross references and deletes obsolete appropriations language.

See Fiscal Comments regarding the fiscal impact of the bill. At the state government level, there may be costs associated with rulemaking by the DEP. The bill has an effective date of July 1, 2010.

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

STORAGE NAME: pcb13.ANR.doc
DATE: 3/20/2010

HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

State Water Supply Planning

In response to concerns about comprehensive water supply planning, the Florida Legislature in 1997 amended Chapter 373, F.S., to include a new process for regional water supply planning. The process requires each water management district (WMD) to assess whether existing and anticipated sources of water are sufficient to serve projected future population needs over a 20-year planning period. Based on the assessments, WMDs are required to develop and update regional water supply plans for those areas where water supplies are determined to be inadequate to supply projected demand over the planning period. The WMDs are required to develop their regional water supply plans in an open public process. They share the data and modeling tools with all affected parties during this process and consider input and comments.¹

The statute makes a distinction between water resource and water supply development. Water resource development is primarily the responsibility of the WMDs and includes such things as collection and evaluation of water resource data, structural and nonstructural programs to manage water resources, construction and operation of major public works facilities for flood control and water storage, and technical assistance to water utilities.² Water resource development projects are designed to create identifiable, quantifiable supplies of water from traditional or alternative sources.

Water supply development is primarily the responsibility of water utilities and other water users and is defined as the planning, design, construction, operation and maintenance of public or private facilities for water collection, treatment and distribution for sale, resale or end use.³ Water supply development assistance represents the WMDs' financial assistance for regional or local water supply development projects.

Based on earlier reports from the state's WMDs, it became clear that if the state's population growth meets the estimated projections, then some parts of the state will not have adequate groundwater to meet the demand that is expected to come from that growth. This understanding became the foundation of the development of "alternative" water supplies to supplement traditional groundwater sources.

¹ Section 373.0361(5), F.S.

² Section 373.019(19), F.S.

³ Section 373.019(21), F.S.

Alternative Water Supply Development

The Florida Water Protection and Sustainability Program was created through passage of Senate Bill 444 during the 2005 Legislative Session. The law encourages cooperation between municipalities, counties, and the state's five WMDs in the protection and development of water supplies. More specifically, the law requires the regional water supply planning function of WMDs to promote alternative water supply projects. For example, a project that traps and treats stormwater accommodates growth and serves to reduce the use of traditional ground and surface water supplies, such as aquifers and lakes.⁴ The overarching purpose of the program is to provide cost-share funding for construction of alternative water supply projects.

Cost-sharing occurs on a reimbursement basis for construction costs of alternative water supply development projects. To be considered eligible for the cost-share funding program, projects must first be identified in the WMD District Water Supply Plan (DWSP). After projects are incorporated into the DWSP, they are evaluated as to their suitability for the funding program. The identification of water supply development projects in the DWSP does not guarantee funding assistance through this funding program. Projects are evaluated for cost-share funding based on consideration of the 13 factors described in 373.1961(3)(f) and (g), F.S. WMD staff evaluates potential projects and recommends projects to the WMD's governing board, which selects projects for inclusion in the program. The cost-share reimbursement caps at 40 percent of construction costs, although projects selected for the program may be allocated less than 40 percent reimbursement. The WMD determines the percentage of reimbursement typically on a case-by-case basis. The entity constructing the project is required to pay at least 60 percent of the project construction costs.

Although the law allows the governing board some flexibility to consider its own factors, it lists specific criteria for evaluating and selecting priority projects, to wit:

- Whether the project provides substantial environmental benefits by preventing or limiting adverse water resource impacts.
- Whether the project reduces competition for water supplies.
- Whether the project brings about replacement of traditional sources in order to help implement a minimum flow or level or a reservation.
- Whether the project will be implemented by a consumptive use permittee that has achieved the targets contained in a goal-based water conservation program approved pursuant to s. 373.227.
- The quantity of water supplied by the project as compared to its cost.
- Projects in which the construction and delivery to end users of reuse water is a major component.
- Whether the project will be implemented by a multijurisdictional water supply entity or regional water supply authority.
- Whether the project implements reuse that assists in the elimination of domestic wastewater ocean outfalls as provided in s. 403.086(9).
- Whether the project is part of a plan to implement two or more alternative water supply projects, all of which will be operated to produce water at a uniform rate for the participants in a multijurisdictional water supply entity or regional water supply authority.
- The percentage of project costs to be funded by the water supplier or water user.
- Whether the project proposal includes sufficient preliminary planning and engineering to demonstrate that the project can reasonably be implemented within the timeframes provided in the regional water supply plan.
- Whether the project is a subsequent phase of an alternative water supply project that is underway.

⁴ Other examples of alternative water supply projects that will be considered for funding include the use of saline water sources, Aquifer Storage and Recovery (storing water deep in an aquifer system during times of excess and recovering the stored water during dry times when it is needed), and Reclaimed Water Use (utilizing reclaimed water for a beneficial purpose, including irrigation of residential lots, golf courses and other green space, ground water recharge, and industrial use).

- Whether and in what percentage a local government or local government utility is transferring water supply system revenues to the local government general fund in excess of reimbursements for services received from the general fund, including direct and indirect costs and legitimate payments in lieu of taxes.⁵

Beginning in fiscal year 2005-2006, the state annually provides a portion of those revenues deposited into the Water Protection and Sustainability Program Trust Fund for the purpose of providing funding assistance for the development of alternative water supplies pursuant to the Water Protection and Sustainability Program.⁶ The Water Protection and Sustainability Program was established in 2005 to support water-related programs such as Total Maximum Daily Loads, Surface Water Improvement Management and Disadvantaged Small Community Wastewater Grants.⁷ When available, the program also includes funding for alternative water supply development projects such as desalination, reuse and reservoirs. Statutorily these revenues are distributed into the alternative water supply trust fund accounts created by each WMD for the purpose of alternative water supply development under the following formula:

- Thirty percent to the South Florida Water Management District;
- Twenty-five percent to the Southwest Florida Water Management District;
- Twenty-five percent to the St. Johns River Water Management District;
- Ten percent to the Suwannee River Water Management District; and
- Ten percent to the Northwest Florida Water Management District.

The statewide funds provided pursuant to the Water Protection and Sustainability Program serve to supplement existing WMD funding for alternative water supply development assistance. The WMDs are required to include the amount of funds allocated for water resource development that supports alternative water supply development and the funds allocated for alternative water supply projects selected for inclusion in the Water Protection and Sustainability Program in their annual tentative and adopted budget submittals. The goal of each WMD is to match the state funding provided to the WMD for alternative water supply development. Only the Suwannee River and the Northwest Florida WMDs are not required to meet the match requirements, but they are encouraged to try to achieve the match requirement to the greatest extent practicable.

Consumptive Use Permits and the “Three-prong Test”

A consumptive use permit (CUP), also called a water use permit, constitutes authorization to withdraw a specified amount of water for a specified time either from the ground or from a surface water body. CUPs are generally issued by the WMDs under Part II of Chapter 373, specifically s. 373.223, F.S. State law allows the DEP to issue CUPs where an applicant proposes an “inter-district transfer” of water (i.e. from a source within one water management district to a user in another district).

The water permitted to be withdrawn under a CUP is most often used for agricultural and other types of irrigation, for drinking water for public consumption, and in the manufacturing processes of various products. CUPs were created as the key mechanism by which the WMDs and the state can regulate the consumption of water for the most beneficial uses and in the best interest of the public. People or entities wishing to utilize a water supply – whether an aquifer, a river or lake, or an “alternative supply” such as stormwater or seawater – must obtain a CUP if they exceed certain thresholds. For example, persons who propose withdrawing water through a well whose diameter exceeds 6 inches, or who would withdraw more than 100,000 gallons a day, or who are supplying more than their domestic needs, must obtain a CUP.

A CUP may be issued only if the applicant can establish that the proposed use of the water meets the “three prong test” specified in s. 373. 223(1), F.S., that states:

⁵ Section 373.1961(3)(f) and (g), F.S.

⁶ In 2009 funding for that program ended in the 2009 Special Session “A” and the trust fund was swept. Currently, no funds are flowing into that trust fund.

⁷Section 403.890, F.S.

(1) To obtain a permit pursuant to the provisions of this chapter, the applicant must establish that the proposed use of water:

- (a) Is a reasonable-beneficial use as defined in s. 373.019;
- (b) Will not interfere with any presently existing legal use of water; and
- (c) Is consistent with the public interest.

The three-prong test actually has two “public interest” tests. Paragraph (c) requires the CUP applicant establish that the proposed use of water is consistent with the public interest. In paragraph (a), the term “reasonable-beneficial use” is defined in subsection 373.019(16), F.S., to mean “the use of water in such quantity as is necessary for economic and efficient utilization for a purpose and in a manner which is both reasonable and consistent with the public interest.”

In order to discern the reason why there are two public interest tests in the “three prong test”, one may turn to A Model Water Code (“Code”), the legislative proposal drafted by law professors at the University of Florida, upon which the Florida Water Resources Act of 1972 was patterned.⁸ The authors published the Code with a Commentary that helps explain the complex and nuanced model law. The Commentary note on Section 2.02 of the Code helps to explain the reason for two public interest tests:

. . . . Subpart (a) requires that the proposed use meet the requirements of the reasonable-beneficial standard. Subpart (b) requires that the proposed use not interfere with presently existing uses of water. This category would include domestic uses exempted under Sec. 2.01(1) of the Model Code, as well as existing uses exercised under the authority of a valid permit. Subpart (c) requires that the use not conflict with the public interest. For example, a proposed use otherwise valid, which would have an unreasonably harmful effect on fish and wildlife might well be rejected as being inconsistent with the express statement of public interest in the protection of fish and wildlife found in Sec. 1.02(3). . . .

Sec. 1.02(3) of the Code provides that “adequate provision shall be made for the protection and procreation of fish and wildlife, the maintenance of proper ecological balance and scenic beauty, and the preservation and enhancement of waters of the state for navigation, public recreation, municipal uses, and public water supply; such objectives are declared to be in the public interest.”

Under paragraph (a), the evaluation of the public interest component of the reasonable-beneficial use test concerns whether the proposed utilization of water is consistent with the public interest. This evaluation may turn on how much water is proposed to be used and how that water is going to be used. The public interest test under paragraph (c) is used, therefore, to evaluate any adverse impacts to the waterbody from which the water is proposed to be withdrawn, including whether there are adverse environmental impacts that would conflict with the public interest in providing protection from these impacts.

Administrative Rules and the “Three-prong Test”

The DEP administrative rule for water supply protection and management is found at Rule 62-40.410, F.A.C., and is applicable to the regulated use of water pursuant to Part II of Chapter 373, F.S. Subsection (2) of that rule provides eighteen factors to consider in determining whether the proposed water use is a reasonable-beneficial use. The administrative rule does not list factors that specifically address consistency with “the public interest.” Subsection (2) states:

- (2) In determining whether a water use is a reasonable-beneficial use, the following factors will be considered:
- (a) The quantity of water requested for the use;
 - (b) The demonstrated need for the use;
 - (c) The suitability of the use to the source of water;

⁸ Frank E. Maloney, Professor of Law and former Dean, Holland Law Center, University of Florida, Richard C. Ausness, Associate professor of Law, Holland Law Center, and J. Scott Morris, Associate Professor of Law, Law Center, Southern Methodist University. In addition to the Code, House staff acknowledges Tampa Bay Water’s General Counsel, Rick Lotspiech, who generously shared his thoughts and notes on the “three-prong test” issue.

- (d) The purpose and value of the use;
- (e) The extent and amount of harm caused;
- (f) The practicality of mitigating any harm by adjusting the quantity or method of use;
- (g) Whether the impact of the withdrawal extends to land not owned or legally controlled by the user;
- (h) The method and efficiency of use;
- (i) Water conservation measures taken and available to be taken;
- (j) The feasibility of alternative sources such as reclaimed water, stormwater, aquifer storage and recovery, brackish water and salt water;
- (k) The present and projected demand for the source of water;
- (l) The long-term yield available from the source of water;
- (m) The extent of water quality degradation caused;
- (n) Whether the proposed use would cause or contribute to flood damage;
- (o) Whether the proposed use would significantly induce or increase saltwater intrusion;
- (p) The amount of water which can be withdrawn without causing harm to the resource;
- (q) Whether the proposed use would adversely affect public health; and
- (r) Whether the proposed use would significantly affect natural systems.

Of the listed “reasonable-beneficial use” factors in the DEP rule, it is clear that several paragraphs address how much water is proposed to be used and how that water is going to be used, and several paragraphs address impacts of the withdrawal of water from the source waterbody.

Water Management District Rules

Currently, Northwest Florida WMD and Suwannee River WMD require that the CUP applicant meet the three-prong test and “comply with the provisions of Rule 62-40.210, F.A.C.”⁹ The Southwest Florida WMD administrative rule 40D-2.301, F.A.C., lists conditions for the issuance of water use permits that reiterates the three-prong rule of s. 373. 223(1), F.S., and provides 14 additional criteria that relate to the amount of water to be used, how it is to be used, and possible adverse impacts to the water body. The St. Johns River and the South Florida WMDs do not have administrative rules that mirror the DEP Rule. The Southwest Florida, St. Johns River and the South Florida WMDs have also published guidelines for navigating the CUP procedure that may be found online.¹⁰

Effect of Proposed Changes

The bill amends state policy regarding alternative water supply development. In short, the bill isolates conservation measures (or programs) that reduce the need for potable water, and construction projects that result in the beneficial use of reclaimed water, and calls these measures “demand management.” On the other hand, programs or projects that include desalinization, aquifer storage and recovery, reservoirs, and treated surface water or stormwater will comprise alternative water supply development.

The bill identifies the conservation of potable water and the use of reclaimed wastewater as two demand management tools and sets two goals in this conservation effort: to eliminate the use of potable water for landscape irrigation in all new residential and commercial construction and in all redevelopment of existing residential and commercial construction by the year 2013, and to use all reclaimed wastewater for beneficial purposes by the year 2030. Current state policy for resource allocation continues to encourage “local sources first” to meet a geographic area’s need for water and the bill adds *recovery and storage of surface groundwater, stormwater, and reclaimed water* to the list of alternative water supply sources that should be considered.

The bill provides the following definitions:

"Alternative water supplies" means potential supplies of water from nontraditional groundwater sources that may be developed for potable uses, including, but not limited to, desalinated surface and

⁹ (FN Northwest Florida WMD rules are found in Rule 40A-2.301, F.A.C. Suwannee River WMD rules are found in Rule 40B-2.301, F.A.C.).

¹⁰ St. John’s 137 page Guide may be found at <http://www.sjrwmd.com/handbooks/cuphandbook.html>, while South Florida’s 128 page Guide is here: <http://my.sfwmd.gov/portal/page/portal/xweb%20-%20release%202/water%20use%20permits>. Southwest Florida’s 103 page guide may be found at: <http://www.swfwmd.state.fl.us/permits/wup/#manual>.

groundwater and treated fresh surface waters. Such supplies do not include conservation measures or waters that are used to reduce the demand for potable water supplies.

"Capital costs" means planning, design, engineering, and project construction costs for alternative water supply projects and demand management activities.

"Demand management" means methods used by water utilities to reduce the demand for potable water supplies, including, but not limited to, programs that result in the conservation of potable water and construction projects that result in the beneficial use of reclaimed water for nonpotable uses.

"Program costs" means costs associated with the implementation of water conservation activities that result in the conservation of potable water and reduce the need for the construction of alternative water supply projects.

The bill amends current statutory roles of WMDs, local governments, water supply authorities and entities, special districts, and water utilities with regard to alternative water supply development to include demand management activities. Current law directs WMD's to provide technical and financial assistance to local governments and publicly-owned water utilities regarding alternative water supply development, and directs WMDs to support the development and implementation of regional water resource management strategies, the construction, operation, and maintenance of public works facilities, and the formulation of structural and non-structural programs for alternative water supply projects. The bill requires WMDs to do all of the above for demand management activities as well. The bill directs the DEP Secretary to exercise general supervisory authority to ensure cooperative efforts between the DEP, WMDs, counties, municipalities, and special districts result in the timely construction and operation of certain alternative water supply projects.

The bill directs local governments, regional water supply authorities, multijurisdictional water supply entities, special districts, and publicly-owned and privately owned water utilities to work cooperatively to formulate and implement strategies for demand management as well as alternative water supply development. These entities are directed further to cooperatively plan, design, construct, operate, and maintain projects for both.

The bill includes demand management activities in provisions relating to the identification of water supply needs and funding criteria. WMDs are directed to include demand management activities in their annual budgets and consolidated annual reports. Water Protection and Sustainability Program funds must be available for demand management activities as they are currently for alternative water supply development projects.¹¹ Demand management activities may be included in projects and activities submitted to WMD governing boards for financial assistance. The Public Service Commission is required to provide for cost recovery for the construction of certain facilities and to provide a specific rate structure for a utility that receives financial assistance from a WMD for demand management activities.

The bill amends provisions relating to conditions for the issuance of a CUP. The DEP or WMD board is prohibited from issuing a CUP if the use will cause the source water body to fall below an established MFL, and the term "source water body" is defined to mean either surface water or groundwater. The bill also amends the "three-prong test" and directs the DEP or WMD board to consider and balance the following factors to determine whether the proposed use of water is a reasonable-beneficial use, will not interfere with a present, existing legal use of water, and is consistent with the public interest.

Under the reasonable-beneficial use test:

- (a) The quantity of water requested for the use;
- (b) The demonstrated need for the use;
- (c) The suitability of the source of water for the use;
- (d) The purpose and value of the use;
- (e) The method and efficiency of the use;

¹¹ The bill directs sixty percent of revenues to fund alternative water supply projects with the remainder funding demand management activities.

- (f) Whether the use will cause or contribute to flood damage; and
- (g) Whether the use will adversely affect public health.

Under the test determining an interference with an existing use of water:

- (a) All existing permitted uses of water from the proposed source;
- (b) The quantity of water that each permit authorizes to be withdrawn;
- (c) The use of water that each permit authorizes; and
- (d) The term of each permit.

Under the consistent with the public interest test:

- (a) Whether the impact of the withdrawal to the source water body extends to land not owned or legally controlled by the user;
- (b) The feasibility of using alternative sources to the source water body such as reclaimed water, stormwater, aquifer storage and recovery, brackish water, and salt water;
- (c) The present and projected demand for the source water body;
- (d) The long-term yield available from the source water body;
- (e) The extent of water quality degradation caused to the source water body;
- (f) Whether the use will significantly induce or increase saltwater intrusion to the source water body; and
- (g) The water conservation measures implemented and the water conservation measures available for implementation.

The bill provides additional factors for the public interest test, in addition to the ones above, if a MFL has not been established for the source water body:

- (a) The extent and amount of harm caused to the fish and wildlife resources of the source water body;
- (b) The practicality of mitigating any harm caused to the source water body by adjusting the quantity or method of use; and
- (c) The amount of water that can be withdrawn from the source water body without causing harm to the resource.

The bill authorizes the DEP or WMD to reserve water for specified purposes but restricts their authority to issue a CUP if the proposed withdrawal would adversely affect the reservation of water.

The bill provides that a public water supply system that uses traditional groundwater and alternative sources may continue to use groundwater sources if the alternative water supply is unreliable due to rainfall patterns. Such groundwater use will be considered to be in the public interest.

Finally, the bill makes several statutory cross references and deletes obsolete appropriations language.

B. SECTION DIRECTORY:

Section 1. Amends s. 373.016, F.S., revising provisions relating to the declaration of policy for the state water resource plan to include demand management, and providing specified goals for the conservation of potable water and the use of reclaimed water. Also conforms a statutory cross-reference.

Section 2. Amends s. 373.019, F.S., clarifying the definitions of "alternative water supplies" and "capital costs", and defining the terms "demand management" and "program costs".

Section 3. Amends s. 373.196, F.S., revising provisions relating to alternative water supply development to include demand management, and directing the Secretary of the Department of Environmental Protection to exercise general supervisory authority regarding the construction and operation of certain alternative water supply projects. This section provides direction for the roles of WMDs, local governments, water supply authorities and entities, special districts, and water utilities with regard to demand management activities. This section requires the inclusion of demand management activities in WMD annual budgets and requires funds from the Water Protection and Sustainability Program be made available for demand management activities.

Section 4. Amends s. 373.1961, F.S., revising provisions relating to the identification of water supply needs and funding criteria for water supply projects to include demand management activities, clarifying provisions relating to projects and activities submitted to WMD governing boards for financial assistance, requiring certain rate structures for utilities receiving financial assistance for demand management activities, providing for the disbursement of specified revenues to fund the implementation of demand management activities, requiring WMDs to include demand management activities in consolidated annual reports, and providing for recovery of costs for the construction of certain facilities. This section also deletes obsolete appropriation provisions.

Section 5. Amends s. 373.223, F.S., revising provisions relating to conditions for issuance of a consumptive use of water permit and prohibiting the issuance of permits under specified conditions. The bill directs WMD boards and the DEP to consider specified criteria in evaluating permit applications and authorizes WMD boards and the DEP to reserve waters for specified purposes. This section provides authority to a water supplier that relies upon traditional groundwater and an alternative supply to use groundwater if the alternative supply is unreliable due to rainfall patterns and provides the continued use of groundwater sources to be in the public interest.

Section 6. Amends s. 403.890, F.S., deleting obsolete appropriation provisions and revising provisions relating to the Water Protection and Sustainability Program to provide funding for the implementation of demand management.

Sections 7 - 15. Amends ss. 373.036, 373.0361, 373.1962, 373.217, 373.2234, 373.229, 373.421, 403.813, and 556.102, F.S., conforming statutory cross-references.

Section 16. Provides an effective date of July 1, 2010.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

There may be costs associated with rulemaking by the DEP and the WMDs.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

Local government public water supply utilities may benefit from the conservation measures in the same manner as private utilities. See, Part II, C., below.

2. Expenditures:

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The implementation of demand management activities may inure to the benefit of utilities that provide public water resources and implement demand management practices. In theory, demand management activities will "flatten" the demand curve for the subject resource. In practice, one of the activities that might be used is "cost-reflective pricing" in which the cost of water is increased to incentivize conservation. A utility that increases its prices to reduce demand for water may be able to sell to a greater number of customers who will use less but pay more per gallon.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, does not appear to reduce the authority that counties or municipalities have to raise revenue in the aggregate, and does not appear to reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None noted.

B. RULE-MAKING AUTHORITY:

None is provided. Existing law grants broad rulemaking authority to the DEP for the amended subsections in s. 373.227, F.S.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The bill directs the DEP Secretary to exercise general supervisory authority to ensure cooperative efforts between the DEP, WMDs, counties, municipalities, and special districts result in the timely construction and operation of certain alternative water supply projects. The DEP Secretary does not have supervisory authority over counties, municipalities or other special districts and only has statutory authorization to exercise general supervisory authority over WMDs. Section 373.026(7), F.S

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

1 A bill to be entitled
 2 An act relating to water resources; amending s. 373.016,
 3 F.S.; revising provisions relating to the declaration of
 4 policy for the state water resource plan to include demand
 5 management; providing specified goals for the conservation
 6 of potable water and the use of reclaimed water;
 7 conforming a cross-reference; amending s. 373.019, F.S.;
 8 clarifying the definitions of "alternative water supplies"
 9 and "capital costs"; defining the terms "demand
 10 management" and "program costs"; amending s. 373.196,
 11 F.S.; revising provisions relating to alternative water
 12 supply development to include demand management; providing
 13 for the Secretary of Environmental Protection to exercise
 14 general supervisory authority regarding the construction
 15 and operation of certain alternative water supply
 16 projects; providing for the roles of water management
 17 districts, local governments, water supply authorities and
 18 entities, special districts, and water utilities with
 19 regard to demand management activities; providing for the
 20 inclusion of demand management activities in water
 21 management district annual budgets; requiring funds from
 22 the Water Protection and Sustainability Program to be made
 23 available for demand management activities; amending s.
 24 373.1961, F.S.; revising provisions relating to the
 25 identification of water supply needs and funding criteria
 26 for water supply projects to include demand management
 27 activities; clarifying provisions relating to projects and
 28 activities submitted to water management district

29 governing boards for financial assistance; requiring
 30 certain rate structures for utilities receiving financial
 31 assistance for demand management activities; providing for
 32 the disbursal of specified revenues to fund the
 33 implementation of demand management activities; providing
 34 for the inclusion of demand management activities in water
 35 management district consolidated annual reports; providing
 36 for recovery of costs for the construction of certain
 37 facilities; deleting obsolete appropriation provisions;
 38 amending s. 373.223, F.S.; revising provisions relating to
 39 conditions for issuance of a consumptive use of water
 40 permit; prohibiting the issuance of permits under
 41 specified conditions; defining the term "source water
 42 body"; requiring water management district governing
 43 boards and the Department of Environmental Protection to
 44 consider specified criteria in evaluating permit
 45 applications; authorizing governing boards and the
 46 department to reserve waters for specified purposes;
 47 providing that the continued use of groundwater sources is
 48 in the public interest under certain conditions; amending
 49 s. 403.890, F.S.; deleting obsolete appropriation
 50 provisions; revising provisions relating to the Water
 51 Protection and Sustainability Program to provide funding
 52 for the implementation of demand management; amending ss.
 53 373.036, 373.0361, 373.1962, 373.217, 373.2234, 373.229,
 54 373.421, 403.813, and 556.102, F.S.; conforming cross-
 55 references; providing an effective date.

56

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

58

59 Section 1. Paragraph (a) of subsection (4) of section
60 373.016, Florida Statutes, is amended, and subsection (7) is
61 added to that section, to read:

62 373.016 Declaration of policy.—

63 (4) (a) Because water constitutes a public resource
64 benefiting the entire state, it is the policy of the Legislature
65 that the waters in the state be managed on a state and regional
66 basis. Consistent with this directive, the Legislature
67 recognizes the need to allocate water throughout the state so as
68 to meet all reasonable-beneficial uses. However, the Legislature
69 acknowledges that such allocations have in the past adversely
70 affected the water resources of certain areas in this state. To
71 protect such water resources and to meet the current and future
72 needs of those areas with abundant water, the Legislature
73 directs the department and the water management districts to
74 encourage the use of water from sources nearest the area of use
75 or application whenever practicable. Such sources shall include
76 all naturally occurring water sources and all alternative water
77 sources, including, but not limited to, desalination,
78 conservation, reuse of nonpotable reclaimed water and
79 stormwater, and aquifer storage and recovery of surficial
80 groundwater, stormwater, and reclaimed water. Reuse of potable
81 reclaimed water and stormwater shall not be subject to the
82 evaluation described in s. 373.223(9)(a)-(g) ~~s. 373.223(3)(a)-~~
83 ~~(g)~~. However, this directive to encourage the use of water,
84 whenever practicable, from sources nearest the area of use or

85 application shall not apply to the transport and direct and
 86 indirect use of water within the area encompassed by the Central
 87 and Southern Florida Flood Control Project, nor shall it apply
 88 anywhere in the state to the transport and use of water supplied
 89 exclusively for bottled water as defined in s. 500.03(1)(d), nor
 90 shall it apply to the transport and use of reclaimed water for
 91 electrical power production by an electric utility as defined in
 92 section 366.02(2).

93 (7)(a) The Legislature recognizes that managing the demand
 94 for water supplies, including surface water and groundwater, is
 95 critical to ensuring the availability of sufficient water for
 96 all existing and future reasonable-beneficial uses and natural
 97 systems and that two of the most important demand management
 98 tools are the conservation of potable water and the use of
 99 reclaimed wastewater.

100 (b) The Legislature strongly encourages the use of
 101 nonpotable water for nonpotable uses and recognizes that an
 102 unacceptable amount of potable water is used to irrigate
 103 residential and commercial landscapes. Therefore, the
 104 Legislature establishes a goal to eliminate the use of potable
 105 water for landscape irrigation in all new residential and
 106 commercial construction and in all redevelopment of existing
 107 residential and commercial construction by the year 2013. The
 108 Legislature further encourages the elimination of the use of
 109 potable water for nonpotable uses if it is economically and
 110 technologically feasible to use nonpotable water for such uses.

111 (c) The Legislature also recognizes that an unacceptable
 112 amount of highly treated domestic wastewater is discharged into

113 surface waters and underground aquifers and that such reclaimed
 114 wastewater is a valuable resource that can be stored and used
 115 for nonpotable uses. Therefore, the Legislature establishes a
 116 goal to use all reclaimed wastewater for beneficial purposes by
 117 the year 2030.

118 Section 2. Section 373.019, Florida Statutes, is amended
 119 to read:

120 373.019 Definitions.—When appearing in this chapter or in
 121 any rule, regulation, or order adopted pursuant thereto, the
 122 term:

123 (1) "Alternative water supplies" means potential supplies
 124 of water from nontraditional groundwater sources that may be
 125 developed for potable uses, including, but not limited to,
 126 desalinated surface and groundwater and treated fresh surface
 127 waters. Such supplies do not include conservation measures or
 128 waters that are used to reduce the demand for potable water
 129 supplies salt water; brackish surface and groundwater; surface
 130 water captured predominately during wet-weather flows; sources
 131 made available through the addition of new storage capacity for
 132 surface or groundwater, water that has been reclaimed after one
 133 or more public supply, municipal, industrial, commercial, or
 134 agricultural uses; the downstream augmentation of water bodies
 135 with reclaimed water; stormwater; and any other water supply
 136 source that is designated as nontraditional for a water supply
 137 planning region in the applicable regional water supply plan.

138 (2) "Capital costs" means planning, design, engineering,
 139 and project construction costs for alternative water supply
 140 projects and demand management activities.

141 (3) "Coastal waters" means waters of the Atlantic Ocean or
 142 the Gulf of Mexico within the jurisdiction of the state.

143 (4) "Demand management" means methods used by water
 144 utilities to reduce the demand for potable water supplies,
 145 including, but not limited to, programs that result in the
 146 conservation of potable water and construction projects that
 147 result in the beneficial use of reclaimed water for nonpotable
 148 uses.

149 (5)-(4) "Department" means the Department of Environmental
 150 Protection or its successor agency or agencies.

151 (6)-(5) "District water management plan" means the regional
 152 water resource plan developed by a governing board under s.
 153 373.036.

154 (7)-(6) "Domestic use" means the use of water for the
 155 individual personal household purposes of drinking, bathing,
 156 cooking, or sanitation. All other uses shall not be considered
 157 domestic.

158 (8)-(7) "Florida water plan" means the state-level water
 159 resource plan developed by the department under s. 373.036.

160 (9)-(8) "Governing board" means the governing board of a
 161 water management district.

162 (10)-(9) "Groundwater" means water beneath the surface of
 163 the ground, whether or not flowing through known and definite
 164 channels.

165 (11)-(10) "Impoundment" means any lake, reservoir, pond, or
 166 other containment of surface water occupying a bed or depression
 167 in the earth's surface and having a discernible shoreline.

168 (12)-(11) "Independent scientific peer review" means the

169 review of scientific data, theories, and methodologies by a
 170 panel of independent, recognized experts in the fields of
 171 hydrology, hydrogeology, limnology, and other scientific
 172 disciplines relevant to the matters being reviewed under s.
 173 373.042.

174 (13)~~(12)~~ "Multijurisdictional water supply entity" means
 175 two or more water utilities or local governments that have
 176 organized into a larger entity, or entered into an interlocal
 177 agreement or contract, for the purpose of more efficiently
 178 pursuing water supply development or alternative water supply
 179 development projects listed pursuant to a regional water supply
 180 plan.

181 (14)~~(13)~~ "Nonregulated use" means any use of water which
 182 is exempted from regulation by the provisions of this chapter.

183 (15)~~(14)~~ "Other watercourse" means any canal, ditch, or
 184 other artificial watercourse in which water usually flows in a
 185 defined bed or channel. It is not essential that the flowing be
 186 uniform or uninterrupted.

187 (16)~~(15)~~ "Person" means any and all persons, natural or
 188 artificial, including any individual, firm, association,
 189 organization, partnership, business trust, corporation, company,
 190 the United States of America, and the state and all political
 191 subdivisions, regions, districts, municipalities, and public
 192 agencies thereof. The enumeration herein is not intended to be
 193 exclusive or exhaustive.

194 (17) "Program costs" means costs associated with the
 195 implementation of water conservation activities that result in
 196 the conservation of potable water and reduce the need for the

197 | construction of alternative water supply projects.

198 | ~~(18)-(16)~~ "Reasonable-beneficial use" means the use of
 199 | water in such quantity as is necessary for economic and
 200 | efficient utilization for a purpose and in a manner which is
 201 | both reasonable and consistent with the public interest.

202 | ~~(19)-(17)~~ "Regional water supply plan" means a detailed
 203 | water supply plan developed by a governing board under s.
 204 | 373.0361.

205 | ~~(20)-(18)~~ "Stream" means any river, creek, slough, or
 206 | natural watercourse in which water usually flows in a defined
 207 | bed or channel. It is not essential that the flowing be uniform
 208 | or uninterrupted. The fact that some part of the bed or channel
 209 | has been dredged or improved does not prevent the watercourse
 210 | from being a stream.

211 | ~~(21)-(19)~~ "Surface water" means water upon the surface of
 212 | the earth, whether contained in bounds created naturally or
 213 | artificially or diffused. Water from natural springs shall be
 214 | classified as surface water when it exits from the spring onto
 215 | the earth's surface.

216 | ~~(22)-(20)~~ "Water" or "waters in the state" means any and
 217 | all water on or beneath the surface of the ground or in the
 218 | atmosphere, including natural or artificial watercourses, lakes,
 219 | ponds, or diffused surface water and water percolating,
 220 | standing, or flowing beneath the surface of the ground, as well
 221 | as all coastal waters within the jurisdiction of the state.

222 | ~~(23)-(21)~~ "Water management district" means any flood
 223 | control, resource management, or water management district
 224 | operating under the authority of this chapter.

225 (24)~~(22)~~ "Water resource development" means the
 226 formulation and implementation of regional water resource
 227 management strategies, including the collection and evaluation
 228 of surface water and groundwater data; structural and
 229 nonstructural programs to protect and manage water resources;
 230 the development of regional water resource implementation
 231 programs; the construction, operation, and maintenance of major
 232 public works facilities to provide for flood control, surface
 233 and underground water storage, and groundwater recharge
 234 augmentation; and related technical assistance to local
 235 governments and to government-owned and privately owned water
 236 utilities.

237 (25)~~(23)~~ "Water resource implementation rule" means the
 238 rule authorized by s. 373.036, which sets forth goals,
 239 objectives, and guidance for the development and review of
 240 programs, rules, and plans relating to water resources, based on
 241 statutory policies and directives. The waters of the state are
 242 among its most basic resources. Such waters should be managed to
 243 conserve and protect water resources and to realize the full
 244 beneficial use of these resources.

245 (26)~~(24)~~ "Water supply development" means the planning,
 246 design, construction, operation, and maintenance of public or
 247 private facilities for water collection, production, treatment,
 248 transmission, or distribution for sale, resale, or end use.

249 (27)~~(25)~~ For the sole purpose of serving as the basis for
 250 the unified statewide methodology adopted pursuant to s.
 251 373.421(1), as amended, "wetlands" means those areas that are
 252 inundated or saturated by surface water or groundwater at a

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253 frequency and a duration sufficient to support, and under normal
 254 circumstances do support, a prevalence of vegetation typically
 255 adapted for life in saturated soils. Soils present in wetlands
 256 generally are classified as hydric or alluvial, or possess
 257 characteristics that are associated with reducing soil
 258 conditions. The prevalent vegetation in wetlands generally
 259 consists of facultative or obligate hydrophytic macrophytes that
 260 are typically adapted to areas having soil conditions described
 261 above. These species, due to morphological, physiological, or
 262 reproductive adaptations, have the ability to grow, reproduce,
 263 or persist in aquatic environments or anaerobic soil conditions.
 264 Florida wetlands generally include swamps, marshes, bayheads,
 265 bogs, cypress domes and strands, sloughs, wet prairies, riverine
 266 swamps and marshes, hydric seepage slopes, tidal marshes,
 267 mangrove swamps and other similar areas. Florida wetlands
 268 generally do not include longleaf or slash pine flatwoods with
 269 an understory dominated by saw palmetto. Upon legislative
 270 ratification of the methodology adopted pursuant to s.
 271 373.421(1), as amended, the limitation contained herein
 272 regarding the purpose of this definition shall cease to be
 273 effective.

274 (28)~~(26)~~ "Works of the district" means those projects and
 275 works, including, but not limited to, structures, impoundments,
 276 wells, streams, and other watercourses, together with the
 277 appurtenant facilities and accompanying lands, which have been
 278 officially adopted by the governing board of the district as
 279 works of the district.

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280 Section 3. Section 373.196, Florida Statutes, is amended
 281 to read:

282 373.196 Alternative water supply development and demand
 283 management.—

284 (1) The purpose of this section is to encourage
 285 cooperation in the development of water supplies and to provide
 286 for alternative water supply development and demand management.

287 (a) Demands on natural supplies of fresh water to meet the
 288 needs of a rapidly growing population and the needs of the
 289 environment, agriculture, industry, and mining will continue to
 290 increase.

291 (b) There is a need for the development of alternative
 292 water supplies for Florida to sustain its economic growth,
 293 economic viability, and natural resources.

294 (c) Cooperative efforts between municipalities, counties,
 295 special districts, water management districts, and the
 296 Department of Environmental Protection are mandatory in order to
 297 meet the water needs of rapidly urbanizing areas in a manner
 298 that will supply adequate and dependable supplies of water where
 299 needed without resulting in adverse effects upon the areas from
 300 which such water is withdrawn. Such efforts should use all
 301 practical means of obtaining water, including, but not limited
 302 to, withdrawals of surface water and groundwater, reuse, and
 303 desalinization, and will necessitate not only cooperation but
 304 also well-coordinated activities. Municipalities, counties, and
 305 special districts are encouraged to create regional water supply
 306 authorities as authorized in s. 373.1962 or multijurisdictional
 307 water supply entities. The Secretary of Environmental Protection

308 shall exercise general supervisory authority pursuant to s.
 309 373.026(7) as necessary to ensure that such cooperative efforts
 310 result in the timely construction and operation of alternative
 311 water supply projects needed to meet the public water supply
 312 demand.

313 (d) Alternative water supply development and demand
 314 management must receive priority funding attention to decrease
 315 demand for potable water and increase the available supplies of
 316 water to meet all existing and future reasonable-beneficial uses
 317 and to benefit the natural systems.

318 (e) Cooperation between counties, municipalities, regional
 319 water supply authorities, multijurisdictional water supply
 320 entities, special districts, and publicly owned and privately
 321 owned water utilities in the development of countywide and
 322 multicountywide alternative water supply projects will allow for
 323 necessary economies of scale and efficiencies to be achieved in
 324 order to accelerate the development of new, dependable, and
 325 sustainable alternative water supplies.

326 (f) It is in the public interest that county, municipal,
 327 industrial, agricultural, and other public and private water
 328 users, the Department of Environmental Protection, and the water
 329 management districts cooperate and work together in the
 330 development of alternative water supplies and the implementation
 331 of demand management activities to avoid the adverse effects of
 332 competition for limited supplies of water. Public moneys or
 333 services provided to private entities for alternative water
 334 supply development and demand management may constitute public
 335 purposes that also are in the public interest.

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336 (2) (a) Sufficient water must be available for all existing
 337 and future reasonable-beneficial uses and the natural systems,
 338 and the adverse effects of competition for water supplies must
 339 be avoided.

340 (b) Water supply development, ~~and~~ alternative water supply
 341 development, and demand management must be conducted in
 342 coordination with water management district regional water
 343 supply planning.

344 (c) Funding for the development of alternative water
 345 supplies and the implementation of demand management activities
 346 shall be a shared responsibility of water suppliers and users,
 347 the State of Florida, and the water management districts, with
 348 water suppliers and users having the primary responsibility and
 349 the State of Florida and the water management districts being
 350 responsible for providing funding assistance.

351 (3) The primary roles of the water management districts in
 352 water resource development as it relates to supporting
 353 alternative water supply development and demand management are:

354 (a) The formulation and implementation of regional water
 355 resource management strategies that support alternative water
 356 supply development and demand management;

357 (b) The collection and evaluation of surface water and
 358 groundwater data to be used for a planning level assessment of
 359 the feasibility of alternative water supply development
 360 projects;

361 (c) The construction, operation, and maintenance of major
 362 public works facilities for flood control, surface and
 363 underground water storage, and groundwater recharge augmentation

364 to support alternative water supply development and demand
 365 management;

366 (d) Planning for alternative water supply development and
 367 demand management as provided in regional water supply plans in
 368 coordination with local governments, regional water supply
 369 authorities, multijurisdictional water supply entities, special
 370 districts, and publicly owned and privately owned water
 371 utilities and self-suppliers;

372 (e) The formulation and implementation of structural and
 373 nonstructural programs to protect and manage water resources in
 374 support of alternative water supply projects and demand
 375 management activities; and

376 (f) The provision of technical and financial assistance to
 377 local governments and publicly owned and privately owned water
 378 utilities for alternative water supply projects and demand
 379 management activities.

380 (4) The primary roles of local government, regional water
 381 supply authorities, multijurisdictional water supply entities,
 382 special districts, and publicly owned and privately owned water
 383 utilities in alternative water supply development and demand
 384 management shall be:

385 (a) The planning, design, construction, operation, and
 386 maintenance of alternative water supply development projects and
 387 demand management activities;

388 (b) The formulation and implementation of alternative
 389 water supply development and demand management strategies and
 390 programs;

391 (c) The planning, design, construction, operation, and

392 maintenance of facilities to collect, divert, produce, treat,
 393 transmit, and distribute water for sale, resale, or end use; and

394 (d) The coordination of alternative water supply
 395 development projects and demand management activities with the
 396 appropriate water management district having jurisdiction over
 397 the activity.

398 (5) Nothing in this section shall be construed to preclude
 399 the various special districts, municipalities, and counties from
 400 continuing to operate existing water production and transmission
 401 facilities or to enter into cooperative agreements with other
 402 special districts, municipalities, and counties for the purpose
 403 of meeting their respective needs for dependable and adequate
 404 supplies of water; however, the obtaining of water through such
 405 operations shall not be done in a manner that results in adverse
 406 effects upon the areas from which such water is withdrawn.

407 (6) (a) The statewide funds provided pursuant to the Water
 408 Protection and Sustainability Program serve to supplement
 409 existing water management district or basin board funding for
 410 alternative water supply development and demand management
 411 assistance and should not result in a reduction of such funding.
 412 Therefore, the water management districts shall include in the
 413 annual tentative and adopted budget submittals required under
 414 this chapter the amount of funds allocated for water resource
 415 development that supports alternative water supply development
 416 and demand management and the funds allocated for alternative
 417 water supply projects and demand management activities selected
 418 for inclusion in the Water Protection and Sustainability
 419 Program. It shall be the goal of each water management district

420 and basin boards that the combined funds allocated annually for
 421 these purposes be, at a minimum, the equivalent of 100 percent
 422 of the state funding provided to the water management district
 423 for alternative water supply development and demand management.
 424 If this goal is not achieved, the water management district
 425 shall provide in the budget submittal an explanation of the
 426 reasons or constraints that prevent this goal from being met, an
 427 explanation of how the goal will be met in future years, and
 428 affirmation of match is required during the budget review
 429 process as established under s. 373.536(5). The Suwannee River
 430 Water Management District and the Northwest Florida Water
 431 Management District shall not be required to meet the match
 432 requirements of this paragraph; however, they shall try to
 433 achieve the match requirement to the greatest extent
 434 practicable.

435 (b) State funds from the Water Protection and
 436 Sustainability Program created in s. 403.890 shall be made
 437 available for financial assistance for the project construction
 438 costs of alternative water supply development projects and
 439 demand management activities selected by a water management
 440 district governing board for inclusion in the program.

441 Section 4. Subsections (2), (3), (5), and (6) of section
 442 373.1961, Florida Statutes, are amended to read:

443 373.1961 Water production; general powers and duties;
 444 identification of needs; funding criteria; economic incentives;
 445 reuse funding.—

446 (2) IDENTIFICATION OF WATER SUPPLY NEEDS IN DISTRICT
 447 BUDGET.—The water management district shall implement its

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448 responsibilities as expeditiously as possible in areas subject
449 to regional water supply plans. Each district's governing board
450 shall include in its annual budget the amount needed for the
451 fiscal year to assist in implementing alternative water supply
452 development projects and demand management activities.

453 (3) FUNDING.—

454 (a) The water management districts and the state shall
455 share a percentage of revenues with water providers and users,
456 including local governments, water, wastewater, and reuse
457 utilities, municipal, special district, industrial, and
458 agricultural water users, and other public and private water
459 users, to be used to supplement other funding sources in the
460 development of alternative water supplies and the implementation
461 of demand management activities.

462 (b) Beginning in fiscal year 2005-2006, the state shall
463 annually provide a portion of those revenues deposited into the
464 Water Protection and Sustainability Program Trust Fund for the
465 purpose of providing funding assistance for the development of
466 alternative water supplies and the implementation of demand
467 management activities pursuant to the Water Protection and
468 Sustainability Program. At the beginning of each fiscal year,
469 beginning with fiscal year 2005-2006, such revenues shall be
470 distributed by the department into the alternative water supply
471 and demand management trust fund accounts created by each
472 district for the purpose of alternative water supply development
473 and demand management under the following funding formula:

474 1. Thirty percent to the South Florida Water Management
475 District;

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476 2. Twenty-five percent to the Southwest Florida Water
477 Management District;

478 3. Twenty-five percent to the St. Johns River Water
479 Management District;

480 4. Ten percent to the Suwannee River Water Management
481 District; and

482 5. Ten percent to the Northwest Florida Water Management
483 District.

484 (c) The financial assistance for alternative water supply
485 projects and demand management projects allocated in each
486 district's budget as required in s. 373.196(6) shall be combined
487 with the state funds and used to assist in funding the ~~project~~
488 construction costs of alternative water supply projects and the
489 construction and program costs of demand management activities
490 selected by the governing board. If the district has not
491 completed any regional water supply plan, or the regional water
492 supply plan does not identify the need for any alternative water
493 supply projects or demand management activities, funds deposited
494 in that district's trust fund may be used for water resource
495 development projects, including, but not limited to, springs
496 protection.

497 (d) All alternative water supply projects and demand
498 management activities submitted to the governing board for
499 consideration shall reflect the total capital costs ~~cost~~ for
500 implementation. The costs shall be itemized ~~segregated~~ pursuant
501 to the categories described in s. 373.019(2) ~~the definition of~~
502 ~~capital costs~~. Demand management activities that do not involve
503 construction projects shall reflect the total program costs

504 pursuant to s. 373.019(17).

505 (e) Applicants for alternative water supply projects and
 506 demand management activities that may receive funding assistance
 507 pursuant to the Water Protection and Sustainability Program
 508 shall, at a minimum, be required to pay 60 percent of the
 509 project's construction costs. The water management districts
 510 may, at their discretion, totally or partially waive this
 511 requirement for projects and activities sponsored by financially
 512 disadvantaged small local governments as defined in former s.
 513 403.885(5). The water management districts or basin boards may,
 514 at their discretion, use ad valorem or federal revenues to
 515 assist an ~~a project~~ applicant in meeting the requirements of
 516 this paragraph.

517 (f) The governing boards shall determine those alternative
 518 water supply projects and demand management activities that will
 519 be selected for financial assistance. The governing boards may
 520 establish factors to determine project and activity funding;
 521 however, significant weight shall be given to the following
 522 factors:

523 1. Whether the project or activity provides substantial
 524 environmental benefits by preventing or limiting adverse water
 525 resource impacts.

526 2. Whether the project or activity reduces competition for
 527 water supplies.

528 3. Whether the project or activity brings about
 529 replacement of traditional sources in order to help implement a
 530 minimum flow or level or a reservation.

531 4. Whether the project or activity will be implemented by

532 a consumptive use permittee that has achieved the targets
 533 contained in a goal-based water conservation program approved
 534 pursuant to s. 373.227.

535 5. The quantity of water supplied by the project or
 536 activity as compared to its cost.

537 6. Projects or activities in which the construction and
 538 delivery to end users of reuse water is a major component.

539 7. Whether the project or activity will be implemented by
 540 a multijurisdictional water supply entity or regional water
 541 supply authority.

542 8. Whether the project or activity implements reuse that
 543 assists in the elimination of domestic wastewater ocean outfalls
 544 as provided in s. 403.086(9).

545 (g) Additional factors to be considered in determining
 546 alternative water supply project and demand management activity
 547 funding shall include:

548 1. Whether the project or activity is part of a plan to
 549 implement two or more alternative water supply projects, all of
 550 which will be operated to produce water at a uniform rate for
 551 the participants in a multijurisdictional water supply entity or
 552 regional water supply authority.

553 2. The percentage of project or activity costs to be
 554 funded by the water supplier or water user.

555 3. Whether the project or activity proposal includes
 556 sufficient preliminary planning and engineering to demonstrate
 557 that the project can reasonably be implemented within the
 558 timeframes provided in the regional water supply plan.

559 4. Whether the project or activity is a subsequent phase

560 of an alternative water supply project or demand management
 561 activity that is underway.

562 5. Whether and in what percentage a local government or
 563 local government utility is transferring water supply system
 564 revenues to the local government general fund in excess of
 565 reimbursements for services received from the general fund,
 566 including direct and indirect costs and legitimate payments in
 567 lieu of taxes.

568 (h) After conducting one or more meetings to solicit
 569 public input on eligible projects, including input from those
 570 entities identified pursuant to s. 373.036(2)(a)3.d. for
 571 implementation of alternative water supply projects, the
 572 governing board of each water management district shall select
 573 projects for funding assistance based upon the criteria set
 574 forth in paragraphs (f) and (g). The governing board may select
 575 a project identified or listed as an alternative water supply
 576 development project in the regional water supply plan, or
 577 allocate up to 20 percent of the funding for alternative water
 578 supply projects that are not identified or listed in the
 579 regional water supply plan but are consistent with the goals of
 580 the plan.

581 (i) Without diminishing amounts available through other
 582 means described in this paragraph, the governing boards are
 583 encouraged to consider establishing revolving loan funds to
 584 expand the total funds available to accomplish the objectives of
 585 this section. A revolving loan fund created under this paragraph
 586 must be a nonlapsing fund from which the water management
 587 district may make loans with interest rates below prevailing

588 market rates to public or private entities for the purposes
 589 described in this section. The governing board may adopt
 590 resolutions to establish revolving loan funds which must specify
 591 the details of the administration of the fund, the procedures
 592 for applying for loans from the fund, the criteria for awarding
 593 loans from the fund, the initial capitalization of the fund, and
 594 the goals for future capitalization of the fund in subsequent
 595 budget years. Revolving loan funds created under this paragraph
 596 must be used to expand the total sums and sources of cooperative
 597 funding available for the development of alternative water
 598 supplies. The Legislature does not intend for the creation of
 599 revolving loan funds to supplant or otherwise reduce existing
 600 sources or amounts of funds currently available through other
 601 means.

602 (j) For each utility that receives financial assistance
 603 from the state or a water management district for an alternative
 604 water supply project or demand management activity, the water
 605 management district shall require the appropriate rate-setting
 606 authority to develop rate structures for water customers in the
 607 service area of the funded utility that will:

- 608 1. Promote the conservation of water; ~~and~~
- 609 2. Promote the use of water from alternative water
 610 supplies; and
- 611 3. Promote demand management.

612 (k) The governing boards shall establish a process for the
 613 disbursement of revenues pursuant to this subsection.

614 (l) Sixty percent of revenues dispersed pursuant to this
 615 subsection shall fund the development of alternative water

616 supplies and 40 percent of such revenues shall fund the
 617 implementation of demand management activities.

618 ~~(m)(1)~~ All revenues made available pursuant to this
 619 subsection must be encumbered annually by the governing board
 620 when it approves alternative water supply projects and demand
 621 management activities sufficient to expend the available
 622 revenues.

623 ~~(n)(m)~~ This subsection is not subject to the rulemaking
 624 requirements of chapter 120.

625 ~~(o)(n)~~ By March 1 of each year, as part of the
 626 consolidated annual report required by s. 373.036(7), each water
 627 management district shall submit a report on the disbursement of
 628 all budgeted amounts pursuant to this section. Such report shall
 629 describe all alternative water supply projects and demand
 630 management activities funded as well as the quantity of new
 631 water to be created or saved as a result of such projects and
 632 activities and shall account separately for any other moneys
 633 provided through grants, matching grants, revolving loans, and
 634 the use of district lands or facilities to implement regional
 635 water supply plans.

636 ~~(p)(e)~~ The Florida Public Service Commission shall allow
 637 entities under its jurisdiction constructing or participating in
 638 constructing facilities that provide alternative water supplies
 639 or reduce the demand for potable water to recover their full,
 640 prudently incurred cost of constructing such facilities through
 641 their rate structure. If construction of a facility or
 642 participation in construction is pursuant to or in furtherance
 643 of a regional water supply plan, the cost shall be deemed to be

644 prudently incurred. Every component of an alternative water
 645 supply or demand management facility constructed by an investor-
 646 owned utility shall be recovered in current rates. Any state or
 647 water management district cost-share is not subject to the
 648 recovery provisions allowed in this paragraph.

649 ~~(5) FUNDING FOR ALTERNATIVE WATER SUPPLY. Notwithstanding~~
 650 ~~subsection (3), and for the 2008-2009 fiscal year only,~~
 651 ~~\$5,000,000 provided for alternative water supply shall be~~
 652 ~~allocated as shown in the General Appropriations Act. This~~
 653 ~~subsection expires July 1, 2009.~~

654 ~~(6) For the 2008-2009 fiscal year only, funds remaining to~~
 655 ~~be distributed, after the distribution provided for in~~
 656 ~~subsection (5), pursuant to paragraph (3)(b) shall be allocated~~
 657 ~~as follows:~~

658 ~~(a) Fifty percent to the Northwest Florida Water~~
 659 ~~Management District.~~

660 ~~(b) Fifty percent to the Suwannee River Water Management~~
 661 ~~District.~~

662 Section 5. Section 373.223, Florida Statutes, is amended
 663 to read:

664 373.223 Conditions for a permit.—

665 (1) To obtain a permit pursuant to the provisions of this
 666 chapter, the applicant must establish that the proposed use of
 667 water:

668 (a) Is a reasonable-beneficial use as defined in s.
 669 373.019;

670 (b) Will not interfere with any presently existing legal
 671 use of water; and

672 (c) Is consistent with the public interest.

673 (2) The governing board or the department may not issue a
 674 permit if the proposed use would cause the source water body to
 675 fall below the minimum flow or minimum water level established
 676 pursuant to ss. 373.042 and 373.0421. As used in this section,
 677 the term "source water body" means the water body, either
 678 surface water or groundwater, from which an applicant is
 679 proposing to withdraw water.

680 (3) In determining whether the proposed use of water is a
 681 reasonable-beneficial use, the governing board or the department
 682 shall consider and balance the following criteria:

- 683 (a) The quantity of water requested for the use;
- 684 (b) The demonstrated need for the use;
- 685 (c) The suitability of the source of water for the use;
- 686 (d) The purpose and value of the use;
- 687 (e) The method and efficiency of the use;
- 688 (f) Whether the use will cause or contribute to flood
 689 damage; and
- 690 (g) Whether the use will adversely affect public health.

691 (4) In determining whether the proposed use of water will
 692 interfere with an existing use of water, the governing board or
 693 the department shall consider and balance the following
 694 criteria:

- 695 (a) All existing permitted uses of water from the proposed
 696 source;
- 697 (b) The quantity of water that each permit authorizes to
 698 be withdrawn;
- 699 (c) The use of water that each permit authorizes; and

700 (d) The term of each permit.

701 (5) In determining whether the proposed use of water is
 702 consistent with the public interest, the governing board or the
 703 department shall consider and balance the following criteria:

704 (a) Whether the impact of the withdrawal to the source
 705 water body extends to land not owned or legally controlled by
 706 the user;

707 (b) The feasibility of using alternative sources to the
 708 source water body such as reclaimed water, stormwater, aquifer
 709 storage and recovery, brackish water, and salt water;

710 (c) The present and projected demand for the source water
 711 body;

712 (d) The long-term yield available from the source water
 713 body;

714 (e) The extent of water quality degradation caused to the
 715 source water body;

716 (f) Whether the use will significantly induce or increase
 717 saltwater intrusion to the source water body; and

718 (g) The water conservation measures implemented and the
 719 water conservation measures available for implementation.

720 (6) If a minimum flow or minimum water level has not been
 721 established for the source water body, in determining whether
 722 the proposed use is consistent with the public interest, the
 723 governing board or the department, in addition to the criteria
 724 listed in subsection (5), shall consider and balance the
 725 following criteria:

726 (a) The extent and amount of harm caused to the fish and
 727 wildlife resources of the source water body;

728 (b) The practicality of mitigating any harm caused to the
 729 source water body by adjusting the quantity or method of use;
 730 and

731 (c) The amount of water that can be withdrawn from the
 732 source water body without causing harm to the resource.

733 (7) Reservations of water may be established pursuant to
 734 subsection (10) by the governing board or the department for the
 735 purpose of reserving certain quantities of water from use. Such
 736 reservations may be needed in order to provide for additional
 737 protection of fish and wildlife or the public health and safety,
 738 beyond that which can be provided by minimum flows and minimum
 739 water levels. The governing board or the department may not
 740 issue a permit if the proposed withdrawal would adversely impact
 741 a reservation of water established for the source water body.

742 (8)-(2) The governing board or the department may authorize
 743 the holder of a use permit to transport and use ground or
 744 surface water beyond overlying land, across county boundaries,
 745 or outside the watershed from which it is taken if the governing
 746 board or department determines that such transport and use is
 747 consistent with the public interest, and no local government
 748 shall adopt or enforce any law, ordinance, rule, regulation, or
 749 order to the contrary.

750 (9)-(3) Except for the transport and use of water supplied
 751 by the Central and Southern Florida Flood Control Project, and
 752 anywhere in the state when the transport and use of water is
 753 supplied exclusively for bottled water as defined in s.
 754 500.03(1)(d), any water use permit applications pending as of
 755 April 1, 1998, with the Northwest Florida Water Management

756 District and self-suppliers of water for which the proposed
 757 water source and area of use or application are located on
 758 contiguous private properties, when evaluating whether a
 759 potential transport and use of ground or surface water across
 760 county boundaries is consistent with the public interest,
 761 pursuant to paragraph (1)(c), the governing board or department
 762 shall consider:

763 (a) The proximity of the proposed water source to the area
 764 of use or application.

765 (b) All impoundments, streams, groundwater sources, or
 766 watercourses that are geographically closer to the area of use
 767 or application than the proposed source, and that are
 768 technically and economically feasible for the proposed transport
 769 and use.

770 (c) All economically and technically feasible alternatives
 771 to the proposed source, including, but not limited to,
 772 desalination, conservation, reuse of nonpotable reclaimed water
 773 and stormwater, and aquifer storage and recovery.

774 (d) The potential environmental impacts that may result
 775 from the transport and use of water from the proposed source,
 776 and the potential environmental impacts that may result from use
 777 of the other water sources identified in paragraphs (b) and (c).

778 (e) Whether existing and reasonably anticipated sources of
 779 water and conservation efforts are adequate to supply water for
 780 existing legal uses and reasonably anticipated future needs of
 781 the water supply planning region in which the proposed water
 782 source is located.

783 (f) Consultations with local governments affected by the

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784 proposed transport and use.

785 (g) The value of the existing capital investment in water-
786 related infrastructure made by the applicant.

787

788 Where districtwide water supply assessments and regional water
789 supply plans have been prepared pursuant to ss. 373.036 and
790 373.0361, the governing board or the department shall use the
791 applicable plans and assessments as the basis for its
792 consideration of the applicable factors in this subsection.

793 (10)~~(4)~~ The governing board or the department, by
794 regulation, may reserve from use by permit applicants, water in
795 such locations and quantities, and for such seasons of the year,
796 as in its judgment may be required for the protection of fish
797 and wildlife or the public health and safety. Such reservations
798 shall be subject to periodic review and revision in the light of
799 changed conditions. However, all presently existing legal uses
800 of water shall be protected so long as such use is not contrary
801 to the public interest.

802 (11)~~(5)~~ In evaluating an application for consumptive use
803 of water which proposes the use of an alternative water supply
804 project as described in the regional water supply plan and
805 provides reasonable assurances of the applicant's capability to
806 design, construct, operate, and maintain the project, the
807 governing board or department shall presume that the alternative
808 water supply use is consistent with the public interest under
809 paragraph (1)(c). However, where the governing board identifies
810 the need for a multijurisdictional water supply entity or
811 regional water supply authority to develop the alternative water

812 supply project pursuant to s. 373.0361(2)(a)2., the presumption
 813 shall be accorded only to that use proposed by such entity or
 814 authority. This subsection does not effect evaluation of the use
 815 pursuant to the provisions of paragraphs (1)(a) and (b),
 816 subsections (8) ~~(2)~~ and (9) ~~(3)~~, and ss. 373.2295 and 373.233.

817 (12) If a proposed alternative water supply project is
 818 part of an integrated public water supply system that uses water
 819 from both alternative sources and traditional groundwater
 820 sources, and the alternative water supply is unreliable due to
 821 rainfall patterns, the continued use of more reliable
 822 groundwater sources shall be presumed to be consistent with the
 823 public interest as a means of providing for the public health,
 824 safety, and welfare of the water supply system customers.

825 Section 6. Section 403.890, Florida Statutes, is amended
 826 to read:

827 403.890 Water Protection and Sustainability Program;
 828 ~~intent; goals; purposes.-~~

829 ~~(1) Effective July 1, 2006, revenues transferred from the~~
 830 ~~Department of Revenue pursuant to s. 201.15(1)(c)2. shall be~~
 831 ~~deposited into the Water Protection and Sustainability Program~~
 832 ~~Trust Fund in the Department of Environmental Protection. These~~
 833 ~~revenues and any other additional revenues deposited into or~~
 834 ~~appropriated to the Water Protection and Sustainability Program~~
 835 ~~Trust Fund shall be distributed by the Department of~~
 836 ~~Environmental Protection in the following manner:~~

837 ~~(a) Sixty percent to the Department of Environmental~~
 838 ~~Protection for the implementation of an alternative water supply~~
 839 ~~program as provided in s. 373.1961.~~

840 ~~(b) Twenty percent for the implementation of best~~
 841 ~~management practices and capital project expenditures necessary~~
 842 ~~for the implementation of the goals of the total maximum daily~~
 843 ~~load program established in s. 403.067. Of these funds, 85~~
 844 ~~percent shall be transferred to the credit of the Department of~~
 845 ~~Environmental Protection Water Quality Assurance Trust Fund to~~
 846 ~~address water quality impacts associated with nonagricultural~~
 847 ~~nonpoint sources. Fifteen percent of these funds shall be~~
 848 ~~transferred to the Department of Agriculture and Consumer~~
 849 ~~Services General Inspection Trust Fund to address water quality~~
 850 ~~impacts associated with agricultural nonpoint sources. These~~
 851 ~~funds shall be used for research, development, demonstration,~~
 852 ~~and implementation of the total maximum daily load program under~~
 853 ~~s. 403.067, suitable best management practices or other measures~~
 854 ~~used to achieve water quality standards in surface waters and~~
 855 ~~water segments identified pursuant to s. 303(d) of the Clean~~
 856 ~~Water Act, Pub. L. No. 92-500, 33 U.S.C. ss. 1251 et seq.~~
 857 ~~Implementation of best management practices and other measures~~
 858 ~~may include cost-share grants, technical assistance,~~
 859 ~~implementation tracking, and conservation leases or other~~
 860 ~~agreements for water quality improvement. The Department of~~
 861 ~~Environmental Protection and the Department of Agriculture and~~
 862 ~~Consumer Services may adopt rules governing the distribution of~~
 863 ~~funds for implementation of capital projects, best management~~
 864 ~~practices, and other measures. These funds shall not be used to~~
 865 ~~abrogate the financial responsibility of those point and~~
 866 ~~nonpoint sources that have contributed to the degradation of~~
 867 ~~water or land areas. Increased priority shall be given by the~~

868 ~~department and the water management district governing boards to~~
 869 ~~those projects that have secured a cost-sharing agreement~~
 870 ~~allocating responsibility for the cleanup of point and nonpoint~~
 871 ~~sources.~~

872 ~~(c) Ten percent shall be disbursed for the purposes of~~
 873 ~~funding projects pursuant to ss. 373.451-373.459 or surface~~
 874 ~~water restoration activities in water-management-district-~~
 875 ~~designated priority water bodies. The Secretary of Environmental~~
 876 ~~Protection shall ensure that each water management district~~
 877 ~~receives the following percentage of funds annually:~~

- 878 ~~1. Thirty-five percent to the South Florida Water~~
- 879 ~~Management District;~~
- 880 ~~2. Twenty-five percent to the Southwest Florida Water~~
- 881 ~~Management District;~~
- 882 ~~3. Twenty-five percent to the St. Johns River Water~~
- 883 ~~Management District;~~
- 884 ~~4. Seven and one-half percent to the Suwannee River Water~~
- 885 ~~Management District; and~~
- 886 ~~5. Seven and one-half percent to the Northwest Florida~~
- 887 ~~Water Management District.~~

888 ~~(d) Ten percent to the Department of Environmental~~
 889 ~~Protection for the Disadvantaged Small Community Wastewater~~
 890 ~~Grant Program as provided in s. 403.1838.~~

891 ~~(2) Applicable beginning in the 2007-2008 fiscal year,~~
 892 ~~revenues transferred from the Department of Revenue pursuant to~~
 893 ~~s. 201.15(1)(c)2. shall be deposited into the Water Protection~~
 894 ~~and Sustainability Program Trust Fund in the Department of~~
 895 ~~Environmental Protection. These revenues and any other~~

896 ~~additional~~ Revenues deposited into or appropriated to the Water
 897 Protection and Sustainability Program Trust Fund shall be
 898 distributed by the Department of Environmental Protection in the
 899 following manner:

900 (1)~~(a)~~ Sixty-five percent to the Department of
 901 Environmental Protection for the implementation of an
 902 alternative water supply projects and demand management
 903 activities ~~program~~ as provided in s. 373.1961.

904 (2)~~(b)~~ Twenty-two and five-tenths percent for the
 905 implementation of best management practices and capital project
 906 expenditures necessary for the implementation of the goals of
 907 the total maximum daily load program established in s. 403.067.
 908 Of these funds, 83.33 percent shall be transferred to the credit
 909 of the Department of Environmental Protection Water Quality
 910 Assurance Trust Fund to address water quality impacts associated
 911 with nonagricultural nonpoint sources. Sixteen and sixty-seven
 912 hundredths percent of these funds shall be transferred to the
 913 Department of Agriculture and Consumer Services General
 914 Inspection Trust Fund to address water quality impacts
 915 associated with agricultural nonpoint sources. These funds shall
 916 be used for research, development, demonstration, and
 917 implementation of the total maximum daily load program under s.
 918 403.067, suitable best management practices or other measures
 919 used to achieve water quality standards in surface waters and
 920 water segments identified pursuant to s. 303(d) of the Clean
 921 Water Act, Pub. L. No. 92-500, 33 U.S.C. ss. 1251 et seq.
 922 Implementation of best management practices and other measures
 923 may include cost-share grants, technical assistance,

924 implementation tracking, and conservation leases or other
 925 agreements for water quality improvement. The Department of
 926 Environmental Protection and the Department of Agriculture and
 927 Consumer Services may adopt rules governing the distribution of
 928 funds for implementation of capital projects, best management
 929 practices, and other measures. These funds shall not be used to
 930 abrogate the financial responsibility of those point and
 931 nonpoint sources that have contributed to the degradation of
 932 water or land areas. Increased priority shall be given by the
 933 department and the water management district governing boards to
 934 those projects that have secured a cost-sharing agreement
 935 allocating responsibility for the cleanup of point and nonpoint
 936 sources.

937 (3)~~(e)~~ Twelve and five-tenths percent to the Department of
 938 Environmental Protection for the Disadvantaged Small Community
 939 Wastewater Grant Program as provided in s. 403.1838.

940 (4)~~(d)~~ On June 30, 2009, and every 24 months thereafter,
 941 the Department of Environmental Protection shall request the
 942 return of all unencumbered funds distributed pursuant to this
 943 section. These funds shall be deposited into the Water
 944 Protection and Sustainability Program Trust Fund and
 945 redistributed pursuant to the provisions of this section.

946 ~~(3) For the 2008-2009 fiscal year only, moneys in the~~
 947 ~~Water Protection and Sustainability Program Trust Fund shall be~~
 948 ~~transferred to the Ecosystem Management and Restoration Trust~~
 949 ~~Fund for grants and aids to local governments for water projects~~
 950 ~~as provided in the General Appropriations Act. This subsection~~
 951 ~~expires July 1, 2009.~~

952 ~~(4) For fiscal year 2005-2006, funds deposited or~~
 953 ~~appropriated into the Water Protection and Sustainability~~
 954 ~~Program Trust Fund shall be distributed as follows:~~
 955 ~~(a) One hundred million dollars to the Department of~~
 956 ~~Environmental Protection for the implementation of an~~
 957 ~~alternative water supply program as provided in s. 373.1961.~~
 958 ~~(b) Funds remaining after the distribution provided for in~~
 959 ~~subsection (1) shall be distributed as follows:~~
 960 ~~1. Fifty percent for the implementation of best management~~
 961 ~~practices and capital project expenditures necessary for the~~
 962 ~~implementation of the goals of the total maximum daily load~~
 963 ~~program established in s. 403.067. Of these funds, 85 percent~~
 964 ~~shall be transferred to the credit of the Department of~~
 965 ~~Environmental Protection Water Quality Assurance Trust Fund to~~
 966 ~~address water quality impacts associated with nonagricultural~~
 967 ~~nonpoint sources. Fifteen percent of these funds shall be~~
 968 ~~transferred to the Department of Agriculture and Consumer~~
 969 ~~Services General Inspection Trust Fund to address water quality~~
 970 ~~impacts associated with agricultural nonpoint sources. These~~
 971 ~~funds shall be used for research, development, demonstration,~~
 972 ~~and implementation of suitable best management practices or~~
 973 ~~other measures used to achieve water quality standards in~~
 974 ~~surface waters and water segments identified pursuant to s.~~
 975 ~~303(d) of the Clean Water Act, Pub. L. No. 92-500, 33 U.S.C. ss.~~
 976 ~~1251 et seq. Implementation of best management practices and~~
 977 ~~other measures may include cost-share grants, technical~~
 978 ~~assistance, implementation tracking, and conservation leases or~~
 979 ~~other agreements for water quality improvement. The Department~~

980 ~~of Environmental Protection and the Department of Agriculture~~
 981 ~~and Consumer Services may adopt rules governing the distribution~~
 982 ~~of funds for implementation of best management practices. These~~
 983 ~~funds shall not be used to abrogate the financial responsibility~~
 984 ~~of those point and nonpoint sources that have contributed to the~~
 985 ~~degradation of water or land areas. Increased priority shall be~~
 986 ~~given by the department and the water management district~~
 987 ~~governing boards to those projects that have secured a cost-~~
 988 ~~sharing agreement allocating responsibility for the cleanup of~~
 989 ~~point and nonpoint sources.~~

990 ~~2. Twenty-five percent for the purposes of funding~~
 991 ~~projects pursuant to ss. 373.451-373.459 or surface water~~
 992 ~~restoration activities in water management district-designated~~
 993 ~~priority water bodies. The Secretary of Environmental Protection~~
 994 ~~shall ensure that each water management district receives the~~
 995 ~~following percentage of funds annually:~~

996 ~~a. Thirty-five percent to the South Florida Water~~
 997 ~~Management District;~~

998 ~~b. Twenty-five percent to the Southwest Florida Water~~
 999 ~~Management District;~~

1000 ~~c. Twenty-five percent to the St. Johns River Water~~
 1001 ~~Management District;~~

1002 ~~d. Seven and one-half percent to the Suwannee River Water~~
 1003 ~~Management District; and~~

1004 ~~e. Seven and one-half percent to the Northwest Florida~~
 1005 ~~Water Management District.~~

1006 ~~3. Twenty-five percent to the Department of Environmental~~
 1007 ~~Protection for the Disadvantaged Small Community Wastewater~~

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1008 ~~Grant Program as provided in s. 403.1838.~~
 1009
 1010 ~~Prior to the end of the 2008 Regular Session, the Legislature~~
 1011 ~~must review the distribution of funds under the Water Protection~~
 1012 ~~and Sustainability Program to determine if revisions to the~~
 1013 ~~funding formula are required. At the discretion of the President~~
 1014 ~~of the Senate and the Speaker of the House of Representatives,~~
 1015 ~~the appropriate substantive committees of the Legislature may~~
 1016 ~~conduct an interim project to review the Water Protection and~~
 1017 ~~Sustainability Program and the funding formula and make written~~
 1018 ~~recommendations to the Legislature proposing necessary changes,~~
 1019 ~~if any.~~
 1020 ~~(5) For the 2009-2010 fiscal year only, funds shall be~~
 1021 ~~distributed as follows:~~
 1022 ~~(a) Thirty-one and twenty-one hundredths percent to the~~
 1023 ~~Department of Environmental Protection for the implementation of~~
 1024 ~~an alternative water supply program as provided in s. 373.1961.~~
 1025 ~~(b) Twenty-six and eighty-seven hundredths percent for the~~
 1026 ~~implementation of best management practices and capital project~~
 1027 ~~expenditures necessary for the implementation of the goals of~~
 1028 ~~the total maximum daily load program established in s. 403.067.~~
 1029 ~~Of these funds, 86 percent shall be transferred to the credit of~~
 1030 ~~the Water Quality Assurance Trust Fund of the Department of~~
 1031 ~~Environmental Protection to address water quality impacts~~
 1032 ~~associated with nonagricultural nonpoint sources. Fourteen~~
 1033 ~~percent of these funds shall be transferred to the General~~
 1034 ~~Inspection Trust Fund of the Department of Agriculture and~~
 1035 ~~Consumer Services to address water quality impacts associated~~

1036 ~~with agricultural nonpoint sources. These funds shall be used~~
 1037 ~~for research, development, demonstration, and implementation of~~
 1038 ~~the total maximum daily load program under s. 403.067, suitable~~
 1039 ~~best management practices, or other measures used to achieve~~
 1040 ~~water quality standards in surface waters and water segments~~
 1041 ~~identified pursuant to s. 303(d) of the Clean Water Act, Pub. L.~~
 1042 ~~No. 92-500, 33 U.S.C. ss. 1251 et seq. Implementation of best~~
 1043 ~~management practices and other measures may include cost-share~~
 1044 ~~grants, technical assistance, implementation tracking, and~~
 1045 ~~conservation leases or other agreements for water quality~~
 1046 ~~improvement. The Department of Environmental Protection and the~~
 1047 ~~Department of Agriculture and Consumer Services may adopt rules~~
 1048 ~~governing the distribution of funds for implementation of~~
 1049 ~~capital projects, best management practices, and other measures.~~
 1050 ~~These funds may not be used to abrogate the financial~~
 1051 ~~responsibility of those point and nonpoint sources that have~~
 1052 ~~contributed to the degradation of water or land areas. Increased~~
 1053 ~~priority shall be given by the department and the water~~
 1054 ~~management district governing boards to those projects that have~~
 1055 ~~secured a cost-sharing agreement that allocates responsibility~~
 1056 ~~for the cleanup of point and nonpoint sources.~~

1057 ~~(c) Forty-one and ninety-two hundredths percent to the~~
 1058 ~~Department of Environmental Protection for the Disadvantaged~~
 1059 ~~Small Community Wastewater Grant Program as provided in s.~~
 1060 ~~403.1838.~~

1061
 1062 ~~This subsection expires July 1, 2010.~~

1063 Section 7. Paragraph (d) of subsection (1) and paragraph

1064 (b) of subsection (7) of section 373.036, Florida Statutes, are
 1065 amended to read:

1066 373.036 Florida water plan; district water management
 1067 plans.—

1068 (1) FLORIDA WATER PLAN.—In cooperation with the water
 1069 management districts, regional water supply authorities, and
 1070 others, the department shall develop the Florida water plan. The
 1071 Florida water plan shall include, but not be limited to:

1072 (d) Goals, objectives, and guidance for the development
 1073 and review of programs, rules, and plans relating to water
 1074 resources, based on statutory policies and directives. The state
 1075 water policy rule, renamed the water resource implementation
 1076 rule pursuant to s. 373.019(25) ~~s. 373.019(23)~~, shall serve as
 1077 this part of the plan. Amendments or additions to this part of
 1078 the Florida water plan shall be adopted by the department as
 1079 part of the water resource implementation rule. In accordance
 1080 with s. 373.114, the department shall review rules of the water
 1081 management districts for consistency with this rule. Amendments
 1082 to the water resource implementation rule must be adopted by the
 1083 secretary of the department and be submitted to the President of
 1084 the Senate and the Speaker of the House of Representatives
 1085 within 7 days after publication in the Florida Administrative
 1086 Weekly. Amendments shall not become effective until the
 1087 conclusion of the next regular session of the Legislature
 1088 following their adoption.

1089 (7) CONSOLIDATED WATER MANAGEMENT DISTRICT ANNUAL REPORT.—

1090 (b) The consolidated annual report shall contain the
 1091 following elements, as appropriate to that water management

1092 district:

1093 1. A district water management plan annual report or the

1094 annual work plan report allowed in subparagraph (2)(e)4.

1095 2. The department-approved minimum flows and levels annual

1096 priority list and schedule required by s. 373.042(2).

1097 3. The annual 5-year capital improvements plan required by

1098 s. 373.536(6)(a)3.

1099 4. The alternative water supplies annual report required

1100 by s. 373.1961(3)(o) ~~s. 373.1961(3)(n)~~.

1101 5. The final annual 5-year water resource development work

1102 program required by s. 373.536(6)(a)4.

1103 6. The Florida Forever Water Management District Work Plan

1104 annual report required by s. 373.199(7).

1105 7. The mitigation donation annual report required by s.

1106 373.414(1)(b)2.

1107 Section 8. Paragraph (h) of subsection (2) and subsection

1108 (7) of section 373.0361, Florida Statutes, are amended to read:

1109 373.0361 Regional water supply planning.—

1110 (2) Each regional water supply plan shall be based on at

1111 least a 20-year planning period and shall include, but need not

1112 be limited to:

1113 (h) Reservations of water adopted by rule pursuant to s.

1114 373.223(10) ~~s. 373.223(4)~~ within each planning region.

1115 (7) Nothing contained in the water supply development

1116 component of a regional water supply plan shall be construed to

1117 require local governments, government-owned or privately owned

1118 water utilities, special districts, self-suppliers, regional

1119 water supply authorities, multijurisdictional water supply

1120 entities, or other water suppliers to select a water supply
 1121 development project identified in the component merely because
 1122 it is identified in the plan. Except as provided in s.
 1123 373.223(9) and (11) ~~s. 373.223(3) and (5)~~, the plan may not be
 1124 used in the review of permits under part II unless the plan or
 1125 an applicable portion thereof has been adopted by rule. However,
 1126 this subsection does not prohibit a water management district
 1127 from employing the data or other information used to establish
 1128 the plan in reviewing permits under part II, nor does it limit
 1129 the authority of the department or governing board under part
 1130 II.

1131 Section 9. Subsection (9) of section 373.1962, Florida
 1132 Statutes, is amended to read:

1133 373.1962 Regional water supply authorities.—

1134 (9) Where a water supply authority exists pursuant to this
 1135 section or s. 373.1963 under a voluntary interlocal agreement
 1136 that is consistent with requirements in s. 373.1963(1)(b) and
 1137 receives or maintains consumptive use permits under this
 1138 voluntary agreement consistent with the water supply plan, if
 1139 any, adopted by the governing board, such authority shall be
 1140 exempt from consideration by the governing board or department
 1141 of the factors specified in s. 373.223(3)(a)-(g) and the
 1142 submissions required by s. 373.229(9) ~~s. 373.229(3)~~. Such
 1143 exemptions shall apply only to water sources within the
 1144 jurisdictional areas of such voluntary water supply interlocal
 1145 agreements.

1146 Section 10. Subsection (2) of section 373.217, Florida
 1147 Statutes, is amended to read:

1148 373.217 Superseded laws and regulations.—

1149 (2) It is the further intent of the Legislature that Part
 1150 II of the Florida Water Resources Act of 1972, as amended, as
 1151 set forth in ss. 373.203–373.249, shall provide the exclusive
 1152 authority for requiring permits for the consumptive use of water
 1153 and for authorizing transportation thereof pursuant to s.
 1154 373.223(8) ~~s. 373.223(2)~~.

1155 Section 11. Section 373.2234, Florida Statutes, is amended
 1156 to read:

1157 373.2234 Preferred water supply sources.—The governing
 1158 board of a water management district is authorized to adopt
 1159 rules that identify preferred water supply sources for
 1160 consumptive uses for which there is sufficient data to establish
 1161 that a preferred source will provide a substantial new water
 1162 supply to meet the existing and projected reasonable-beneficial
 1163 uses of a water supply planning region identified pursuant to s.
 1164 373.0361(1), while sustaining existing water resources and
 1165 natural systems. At a minimum, such rules must contain a
 1166 description of the preferred water supply source and an
 1167 assessment of the water the preferred source is projected to
 1168 produce. If an applicant proposes to use a preferred water
 1169 supply source, that applicant's proposed water use is subject to
 1170 s. 373.223(1), except that the proposed use of a preferred water
 1171 supply source must be considered by a water management district
 1172 when determining whether a permit applicant's proposed use of
 1173 water is consistent with the public interest pursuant to s.
 1174 373.223(1)(c). A consumptive use permit issued for the use of a
 1175 preferred water supply source must be granted, when requested by

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1176 the applicant, for at least a 20-year period and may be subject
 1177 to the compliance reporting provisions of s. 373.236(4). Nothing
 1178 in this section shall be construed to exempt the use of
 1179 preferred water supply sources from the provisions of ss.
 1180 373.016(4) and 373.223(8) and (9) ~~373.223(2) and (3)~~, or be
 1181 construed to provide that permits issued for the use of a
 1182 nonpreferred water supply source must be issued for a duration
 1183 of less than 20 years or that the use of a nonpreferred water
 1184 supply source is not consistent with the public interest.
 1185 Additionally, nothing in this section shall be interpreted to
 1186 require the use of a preferred water supply source or to
 1187 restrict or prohibit the use of a nonpreferred water supply
 1188 source. Rules adopted by the governing board of a water
 1189 management district to implement this section shall specify that
 1190 the use of a preferred water supply source is not required and
 1191 that the use of a nonpreferred water supply source is not
 1192 restricted or prohibited.

1193 Section 12. Subsection (3) of section 373.229, Florida
 1194 Statutes, is amended to read:

1195 373.229 Application for permit.—

1196 (3) In addition to the information required in subsection
 1197 (1), all permit applications filed with the governing board or
 1198 the department which propose the transport and use of water
 1199 across county boundaries shall include information pertaining to
 1200 factors to be considered, pursuant to s. 373.223(9) ~~s.~~
 1201 ~~373.223(3)~~, unless exempt under s. 373.1962(9).

1202 Section 13. Subsection (1) of section 373.421, Florida
 1203 Statutes, is amended to read:

1204 373.421 Delineation methods; formal determinations.—
 1205 (1) The Environmental Regulation Commission shall adopt a
 1206 unified statewide methodology for the delineation of the extent
 1207 of wetlands as defined in s. 373.019(27) ~~s. 373.019(25)~~. This
 1208 methodology shall consider regional differences in the types of
 1209 soils and vegetation that may serve as indicators of the extent
 1210 of wetlands. This methodology shall also include provisions for
 1211 determining the extent of surface waters other than wetlands for
 1212 the purposes of regulation under s. 373.414. This methodology
 1213 shall not become effective until ratified by the Legislature.
 1214 Subsequent to legislative ratification, the wetland definition
 1215 in s. 373.019(27) ~~s. 373.019(25)~~ and the adopted wetland
 1216 methodology shall be binding on the department, the water
 1217 management districts, local governments, and any other
 1218 governmental entities. Upon ratification of such wetland
 1219 methodology, the Legislature preempts the authority of any water
 1220 management district, state or regional agency, or local
 1221 government to define wetlands or develop a delineation
 1222 methodology to implement the definition and determines that the
 1223 exclusive definition and delineation methodology for wetlands
 1224 shall be that established pursuant to s. 373.019(27) ~~s.~~
 1225 ~~373.019(25)~~ and this section. Upon such legislative
 1226 ratification, any existing wetlands definition or wetland
 1227 delineation methodology shall be superseded by the wetland
 1228 definition and delineation methodology established pursuant to
 1229 this chapter. Subsequent to legislative ratification, a
 1230 delineation of the extent of a surface water or wetland by the
 1231 department or a water management district, pursuant to a formal

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1232 determination under subsection (2), or pursuant to a permit
 1233 issued under this part in which the delineation was field-
 1234 verified by the permitting agency and specifically approved in
 1235 the permit, shall be binding on all other governmental entities
 1236 for the duration of the formal determination or permit. All
 1237 existing rules and methodologies of the department, the water
 1238 management districts, and local governments, regarding surface
 1239 water or wetland definition and delineation shall remain in full
 1240 force and effect until the common methodology rule becomes
 1241 effective. However, this shall not be construed to limit any
 1242 power of the department, the water management districts, and
 1243 local governments to amend or adopt a surface water or wetland
 1244 definition or delineation methodology until the common
 1245 methodology rule becomes effective.

1246 Section 14. Paragraphs (r) and (u) of subsection (1) of
 1247 section 403.813, Florida Statutes, are amended to read:

1248 403.813 Permits issued at district centers; exceptions.—

1249 (1) A permit is not required under this chapter, chapter
 1250 373, chapter 61-691, Laws of Florida, or chapter 25214 or
 1251 chapter 25270, 1949, Laws of Florida, for activities associated
 1252 with the following types of projects; however, except as
 1253 otherwise provided in this subsection, nothing in this
 1254 subsection relieves an applicant from any requirement to obtain
 1255 permission to use or occupy lands owned by the Board of Trustees
 1256 of the Internal Improvement Trust Fund or any water management
 1257 district in its governmental or proprietary capacity or from
 1258 complying with applicable local pollution control programs
 1259 authorized under this chapter or other requirements of county

1260 and municipal governments:

1261 (r) The removal of aquatic plants, the removal of
 1262 tussocks, the associated replanting of indigenous aquatic
 1263 plants, and the associated removal from lakes of organic
 1264 detrital material when such planting or removal is performed and
 1265 authorized by permit or exemption granted under s. 369.20 or s.
 1266 369.25, provided that:

1267 1. Organic detrital material that exists on the surface of
 1268 natural mineral substrate shall be allowed to be removed to a
 1269 depth of 3 feet or to the natural mineral substrate, whichever
 1270 is less;

1271 2. All material removed pursuant to this paragraph shall
 1272 be deposited in an upland site in a manner that will prevent the
 1273 reintroduction of the material into waters in the state except
 1274 when spoil material is permitted to be used to create wildlife
 1275 islands in freshwater bodies of the state when a governmental
 1276 entity is permitted pursuant to s. 369.20 to create such islands
 1277 as a part of a restoration or enhancement project;

1278 3. All activities are performed in a manner consistent
 1279 with state water quality standards; and

1280 4. No activities under this exemption are conducted in
 1281 wetland areas, as defined by s. 373.019(27) ~~s. 373.019(25)~~,
 1282 which are supported by a natural soil as shown in applicable
 1283 United States Department of Agriculture county soil surveys,
 1284 except when a governmental entity is permitted pursuant to s.
 1285 369.20 to conduct such activities as a part of a restoration or
 1286 enhancement project.

1287

1288 The department may not adopt implementing rules for this
 1289 paragraph, notwithstanding any other provision of law.

1290 (u) Notwithstanding any provision to the contrary in this
 1291 subsection, a permit or other authorization under chapter 253,
 1292 chapter 369, chapter 373, or this chapter is not required for an
 1293 individual residential property owner for the removal of organic
 1294 detrital material from freshwater rivers or lakes that have a
 1295 natural sand or rocky substrate and that are not Aquatic
 1296 Preserves or for the associated removal and replanting of
 1297 aquatic vegetation for the purpose of environmental enhancement,
 1298 providing that:

1299 1. No activities under this exemption are conducted in
 1300 wetland areas, as defined by s. 373.019(27) ~~s. 373.019(25)~~,
 1301 which are supported by a natural soil as shown in applicable
 1302 United States Department of Agriculture county soil surveys.

1303 2. No filling or peat mining is allowed.

1304 3. No removal of native wetland trees, including, but not
 1305 limited to, ash, bay, cypress, gum, maple, or tupelo, occurs.

1306 4. When removing organic detrital material, no portion of
 1307 the underlying natural mineral substrate or rocky substrate is
 1308 removed.

1309 5. Organic detrital material and plant material removed is
 1310 deposited in an upland site in a manner that will not cause
 1311 water quality violations.

1312 6. All activities are conducted in such a manner, and with
 1313 appropriate turbidity controls, so as to prevent any water
 1314 quality violations outside the immediate work area.

1315 7. Replanting with a variety of aquatic plants native to

1316 the state shall occur in a minimum of 25 percent of the
 1317 preexisting vegetated areas where organic detrital material is
 1318 removed, except for areas where the material is removed to bare
 1319 rocky substrate; however, an area may be maintained clear of
 1320 vegetation as an access corridor. The access corridor width may
 1321 not exceed 50 percent of the property owner's frontage or 50
 1322 feet, whichever is less, and may be a sufficient length
 1323 waterward to create a corridor to allow access for a boat or
 1324 swimmer to reach open water. Replanting must be at a minimum
 1325 density of 2 feet on center and be completed within 90 days
 1326 after removal of existing aquatic vegetation, except that under
 1327 dewatered conditions replanting must be completed within 90 days
 1328 after reflooding. The area to be replanted must extend waterward
 1329 from the ordinary high water line to a point where normal water
 1330 depth would be 3 feet or the preexisting vegetation line,
 1331 whichever is less. Individuals are required to make a reasonable
 1332 effort to maintain planting density for a period of 6 months
 1333 after replanting is complete, and the plants, including
 1334 naturally recruited native aquatic plants, must be allowed to
 1335 expand and fill in the revegetation area. Native aquatic plants
 1336 to be used for revegetation must be salvaged from the
 1337 enhancement project site or obtained from an aquatic plant
 1338 nursery regulated by the Department of Agriculture and Consumer
 1339 Services. Plants that are not native to the state may not be
 1340 used for replanting.

1341 8. No activity occurs any farther than 100 feet waterward
 1342 of the ordinary high water line, and all activities must be
 1343 designed and conducted in a manner that will not unreasonably

1344 restrict or infringe upon the riparian rights of adjacent upland
 1345 riparian owners.

1346 9. The person seeking this exemption notifies the
 1347 applicable department district office in writing at least 30
 1348 days before commencing work and allows the department to conduct
 1349 a preconstruction site inspection. Notice must include an
 1350 organic-detrital-material removal and disposal plan and, if
 1351 applicable, a vegetation-removal and revegetation plan.

1352 10. The department is provided written certification of
 1353 compliance with the terms and conditions of this paragraph
 1354 within 30 days after completion of any activity occurring under
 1355 this exemption.

1356 Section 15. Subsection (6) of section 556.102, Florida
 1357 Statutes, is amended to read:

1358 556.102 Definitions.—As used in this act:

1359 (6) "Excavate" or "excavation" means any manmade cut,
 1360 cavity, trench, or depression in the earth's surface, formed by
 1361 removal of earth, intended to change the grade or level of land,
 1362 or intended to penetrate or disturb the surface of the earth,
 1363 including land beneath the waters of the state, as defined in s.
 1364 373.019(22) ~~s. 373.019(20)~~, and the term includes pipe bursting
 1365 and directional drilling or boring from one point to another
 1366 point beneath the surface of the earth, or other trenchless
 1367 technologies.

1368 Section 16. This act shall take effect July 1, 2010.

Amendment No. 1

COUNCIL/COMMITTEE 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 Council/Committee hearing PCB: Agriculture & Natural Resources
2 Policy Committee
3 Representative(s) Williams offered the following:
4

5 **Amendment 1**

6 Remove lines 79-80 and insert:
7 stormwater, ~~and~~ aquifer storage and recovery and the recovery
8 and storage of surficial groundwater, stormwater, and reclaimed
9 water. Reuse of potable

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB ANR 10-14 Drinking Water
SPONSOR(S): Agriculture & Natural Resources Policy Committee
TIED BILLS: IDEN./SIM. BILLS:

Table with 4 columns: REFERENCE, ACTION, ANALYST, STAFF DIRECTOR. Row 1: Agriculture & Natural Resources Policy Committee, Lowrance, Reese. Rows 2-5 are empty.

SUMMARY ANALYSIS

Funds to establish or capitalize the Clean Water State Revolving Fund (CWSRF) programs are provided through federal government grants and state matching funds. The CWSRF provides low-interest loans to eligible entities for planning, designing, and constructing water pollution control facilities; loan repayments are then recycled back into the program to fund additional water quality protection projects.

The Safe Drinking Water Act of 1996 established a Drinking Water SRF (DWSRF) program, administered by the Department of Environmental Protection (DEP) to make funds available to drinking water systems to finance infrastructure improvements to ensure the protection of safe drinking water.

The bill renames the Florida Water Pollution Control Financing Corporation as the Florida Water Pollution Control and Drinking Water Financing Corporation (Corporation) and expands the authority of the Corporation to authorize bonds for the DEP's DWSRF program. The proceeds from the bonds related to the DWSRF will be used to fund local government drinking water infrastructure projects.

Expansion of the Corporation's authority to issue bonds to finance drinking water projects does not require the appropriation of state dollars nor are any state dollars at risk as a result of bond issuance. All bonds will be backed exclusively by the repayments of the local governments and other owners of drinking water systems receiving SRF loans.

The bill provides that this bill will take effect upon becoming a law.

HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

State Revolving Fund (SRF) programs provide financial savings for projects that benefit the environment, including protection of public health and conservation of local watersheds. Federal and state contributions fund loans for a wide variety of water quality projects including all types of stormwater, watershed protection or restoration, and estuary management projects, as well as more traditional municipal wastewater treatment projects including water reuse and conservation projects.¹

The SRF programs allow states to provide funding for their highest-priority water quality needs. Funds to establish or capitalize the Clean Water State Revolving Fund (CWSRF) programs are provided through federal government grants and state matching funds that are equal to 20 percent of federal government grants. CWSRF provides low-interest loans to eligible entities for planning, designing, and constructing *water pollution control facilities*; loan repayments are then recycled back into the program to fund additional water quality protection projects. The revolving nature of these programs provides for an ongoing funding source.²

The Florida Water Pollution Control Financing Corporation (Corporation) is a nonprofit public-benefit corporation that was established to finance or refinance water pollution control activities.³ The long-term purpose for the Corporation is to contribute to statewide compliance with water quality standards through the planning, design and construction of cost-effective wastewater treatment and stormwater management facilities, non-point source pollution management systems, and estuary conservation and management programs.⁴ The Corporation is governed by a board of directors consisting of the Governor's Budget Director (or designee), the Chief Financial Officer (or designee), and the Secretary of Environmental Protection (or designee). The executive director of the State Board of Administration shall direct and supervise the affairs of the corporation.⁵

According to the U.S. Environmental Protection Agency, water systems must make significant investments to install, upgrade, or replace infrastructure to continue to ensure the provision of safe drinking water. Installation of new treatment facilities can improve the quality of drinking water and

¹ Florida DEP, "Water Facilities Funding", www.dep.state.fl.us/water/wff

² Florida DEP, "Clean Water State Revolving Fund Loan Program", <http://www.dep.state.fl.us/water/wff/cwsrf/index.htm>

³ Section 403.1837(1)

⁴ Florida DEP, "Clean Water State Revolving Fund Loan Program", <http://www.dep.state.fl.us/water/wff/cwsrf/index.htm>

⁵ Section 403.1837(2)

better protect public health. Improvements are also needed to help those water systems experiencing a threat of contamination due to aging infrastructure systems.⁶

The Safe Drinking Water Act of 1996 established a Drinking Water SRF (DWSRF) program, administered by the Department of Environmental Protection (DEP) to make funds available to drinking water systems to finance infrastructure improvements to ensure the protection of safe drinking water. The DWSRF Program provides low-interest loans to eligible entities for planning, designing, and constructing *public water facilities*. The DEP solicits project information throughout the year. The information is used to establish the project priority list for the following annual cycle. Funds are made available for pre-construction loans to rate-based public water systems, construction loans of at least \$75,000, and pre-construction grants and construction grants to small financially disadvantaged communities. The loan terms include a 20-year (30-year for financially disadvantaged communities) amortization and low-interest rates. Small community assistance is available for communities having populations less than 10,000. Each year 15% of the funds are reserved exclusively for their use. In addition, small communities may qualify for loans from the unreserved 85% of the funds.⁷

Effect of Bill

The bill adds the definitions of "bonds" and "corporation."

The bill renames the Florida Water Pollution Control Financing Corporation as the Florida Water Pollution Control and Drinking Water Financing Corporation (Corporation). Subsequently, the bill expands the authority of the Corporation to authorize bonds to fulfill the purposes of the DWSRF as well as the Clean Water SRF (CWSRF). The Corporation is authorized to:

- Borrow money and issue notes, bonds, certificates of indebtedness, or other obligations in the DWSRF;
- Operate any program to provide financial assistance authorized under the DWSRF, which may be funded from funds received under a service contract with the DEP, from the proceeds of bonds issued by the Corporation, or from any other funding sources obtained by the Corporation;
- Sell all or any portion of the loans issued under DWSRF;
- Evaluate all financial and market conditions necessary for the purpose of making prudent, sound, financially responsible, and cost-effective decisions in order to secure additional funds to fulfill the purposes of the DWSRF;
- Enter into one or more service contracts with the DEP in connection with financing the functions, projects, and activities provided in the DWSRF. The service contracts may provide for the transfer of all or a portion of the funds in the Drinking Water Revolving Loan Trust Fund to the Corporation for use by the Corporation for costs incurred in its operations.

The Corporation is exempt from taxation and assessments on its income and any property, assets or revenues acquired, received, or used in the furtherance of the purposes of the DWSRF. Benefits or earnings of the Corporation may not benefit any private person, except persons receiving loans under the DWSRF.

Under the provisions of the bill, DEP is authorized to:

- Make or request the Corporation to make loans, grants, and deposits to community water systems, nonprofit transient noncommunity water systems, and nonprofit nontransient noncommunity water systems to assist them in planning, designing, and constructing public water systems, unless such systems are for-profit privately owned or investor-owned public water systems that regularly serve 1,500 service connections or more within a single certified or franchised area.
- Administer all programs operated from funds secured through the activities of the Corporation

⁶ U.S. EPA, Drinking Water State Revolving Fund (DWSRF), <http://www.epa.gov/safewater/dwsrf/index.html>

⁷ Florida DEP, Drinking Water State Revolving Fund (DWSRF), <http://www.dep.state.fl.us/water/wff/dwsrf/>

- Adopt rules regarding the procedural and contractual relationship between the DEP and the Corporation.
- Require evidence of credit worthiness and adequate security to ensure that each loan recipient can meet their loan obligations.

The bill stipulates that payments from the DWSRF under any service contract entered into by the DEP is subject to annual appropriation by the Legislature. The Fund is exempt from the termination provisions of s.19(f)(2), Art. III of the State Constitution.

B. SECTION DIRECTORY:

Section 1: Amends s. 403.1837, F.S. renaming the Florida Water Pollution Control Financing Corporation as the Florida Water Pollution Control and Drinking Water Financing Corporation and revising provisions regarding purpose, powers, and duties of Corporation.

Section 2: Amends s. 403.8532, F.S. to define “bonds” and “corporation”, and to specify the scope of DEPs authority.

Section 3: Amends s. 403.8533, F.S. to specify that payments under any service contract are subject to annual appropriation and the fund is exempt from specified termination provisions of the State constitution.

Section 4: Amends ss. 11.45, F.S., to conform terminology to convey that the Auditor General has authority to conduct audits of the Florida Water Pollution Control and Drinking Water Financing Corporation.

Section 5: Amends s. 403.1835, F.S. to conform terminology.

Section 6: Provides that the act shall be effective upon becoming a law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

According to the DEP, the revenues from bond proceeds will depend on decisions by the Financing Corporation, under advice from the Division of Bond Finance, the DEP and other advisors, relating to funding demand, the characteristics of the loan pool, and market conditions. The ability periodically to bond is expected to enhance program funding capacity by 25-30% over time from its current \$60-\$70 million per year capacity.

2. Expenditures:

As with current SRF bonds, loan repayments to the DWSRF will be used to cover the debt service on any bonds issued for drinking water. The DEP provides that state appropriations are not required to implement the bonding aspects of the SRF programs.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The DEP suggests that the ability to issue bonds on behalf of the DWSRF will expand the program’s capacity to provide below market rate loans to local governments and other owners of water systems to fund infrastructure projects. The low-interest rate loans provide cost saving to local governments and owners that might otherwise seek loans or issue local government bonds at market rates that they may not be able to afford.

The ability of the Corporation to issue bonds, combined with additional federal funding—if state match is made available by the Legislature—expands the long term capacity of the SRF (similar to the effect of compounding interest), which in turn makes more funds available for local governments and other water system owners.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

According to the DEP, the ability of the Corporation to issue bonds will allow the DWSRF to fund more projects, thereby creating jobs for consulting firms, engineers, construction contractors, and other workers, who in turn inject money into the local economies. The lower financing costs of the SRF benefit owners of water systems by allowing them to build more infrastructure for less cost, which in turn means lower rates and other charges for system customers.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This 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:

The bill authorizes the Department of Environmental Protection (DEP) to adopt rules regarding the procedural and contractual relationship between the DEP and the Corporation.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

1 A bill to be entitled
 2 An act relating to drinking water; amending s. 403.1837,
 3 F.S.; renaming the Florida Water Pollution Control
 4 Financing Corporation as the Florida Water Pollution
 5 Control and Drinking Water Financing Corporation; revising
 6 provisions regarding the purpose, powers, and duties of
 7 the corporation; providing that specified drinking water
 8 projects and activities are eligible for financing;
 9 amending s. 403.8532, F.S.; defining the terms "bonds" and
 10 "corporation"; authorizing the Department of Environmental
 11 Protection to make or request the corporation to make
 12 loans, grants, and deposits for planning, designing, and
 13 constructing specified public water systems; requiring the
 14 department to administer programs funded by the
 15 corporation; authorizing the department to adopt rules
 16 regarding the procedural and contractual relationship
 17 between the department and the corporation; clarifying
 18 requirements for rules relating to loan security criteria;
 19 clarifying the purpose of the Drinking Water Revolving
 20 Loan Trust Fund; amending s. 403.8533, F.S.; providing
 21 that specified use of funds from the trust fund is subject
 22 to annual appropriation; providing that the trust fund is
 23 exempt from specified termination provisions; amending ss.
 24 11.45 and 403.1835, F.S.; conforming terminology;
 25 providing an effective date.

26
 27 Be It Enacted by the Legislature of the State of Florida:
 28

29 Section 1. Subsection (1), paragraphs (f), (g), and (h) of
 30 subsection (3), and subsections (4), (5), (7), and (11) of
 31 section 403.1837, Florida Statutes, are amended to read:

32 403.1837 Florida Water Pollution Control and Drinking
 33 Water Financing Corporation.—

34 (1) The Florida Water Pollution Control and Drinking Water
 35 Financing Corporation is created as a nonprofit public-benefit
 36 corporation for the purpose of financing or refinancing the
 37 costs of water pollution control projects and activities
 38 described in ss. ~~s.~~ 403.1835 and 403.8532. The projects and
 39 activities described in those sections ~~that section~~ are found to
 40 constitute a public governmental purpose; be necessary for the
 41 health, safety, and welfare of all residents; and include
 42 legislatively approved fixed capital outlay projects. The
 43 fulfillment of the purposes of the corporation promotes the
 44 health, safety, and welfare of the people of the state and
 45 serves essential governmental functions and a paramount public
 46 purpose. The activities of the corporation are specifically
 47 limited to assisting the department in implementing financing
 48 activities to provide funding for the programs authorized in ss.
 49 ~~s.~~ 403.1835 and 403.8532. All other activities relating to the
 50 purposes for which the corporation raises funds are the
 51 responsibility of the department, including, but not limited to,
 52 development of program criteria, review of applications for
 53 financial assistance, decisions relating to the number and
 54 amount of loans or other financial assistance to be provided,
 55 and enforcement of the terms of any financial assistance
 56 agreements provided through funds raised by the corporation. The

57 corporation shall terminate upon fulfillment of the purposes of
 58 this section.

59 (3) The corporation shall have all the powers of a
 60 corporate body under the laws of the state to the extent not
 61 inconsistent with or restricted by this section, including, but
 62 not limited to, the power to:

63 (f) Borrow money and issue notes, bonds, certificates of
 64 indebtedness, or other obligations or evidences of indebtedness
 65 described in ss. ~~s.~~ 403.1835 and 403.8532.

66 (g) Operate, as specifically directed by the department,
 67 any program to provide financial assistance authorized under ss.
 68 ~~s.~~ 403.1835(3) and 403.8532, which may be funded from any funds
 69 received under a service contract with the department, from the
 70 proceeds of bonds issued by the corporation, or from any other
 71 funding sources obtained by the corporation.

72 (h) Sell all or any portion of the loans issued under ss.
 73 ~~s.~~ 403.1835 and 403.8532 to accomplish the purposes of this
 74 section and ss. ~~s.~~ 403.1835 and 403.8532.

75 (4) The corporation shall evaluate all financial and
 76 market conditions necessary and prudent for the purpose of
 77 making sound, financially responsible, and cost-effective
 78 decisions in order to secure additional funds to fulfill the
 79 purposes of this section and ss. ~~s.~~ 403.1835 and 403.8532.

80 (5) The corporation may enter into one or more service
 81 contracts with the department under which the corporation shall
 82 provide services to the department in connection with financing
 83 the functions, projects, and activities provided for in ss. ~~s.~~
 84 403.1835 and 403.8532. The department may enter into one or more

85 service contracts with the corporation and provide for payments
 86 under those contracts pursuant to ss. ~~s.~~ 403.1835(9) and
 87 403.8532, subject to annual appropriation by the Legislature.
 88 The service contracts may provide for the transfer of all or a
 89 portion of the funds in the Wastewater Treatment and Stormwater
 90 Management Revolving Loan Trust Fund and the Drinking Water
 91 Revolving Loan Trust Fund to the corporation for use by the
 92 corporation for costs incurred by the corporation in its
 93 operations, including, but not limited to, payment of debt
 94 service, reserves, or other costs in relation to bonds issued by
 95 the corporation, for use by the corporation at the request of
 96 the department to directly provide the types of local financial
 97 assistance provided for in ss. ~~s.~~ 403.1835(3) and 403.8532(3),
 98 or for payment of the administrative costs of the corporation.
 99 The department may not transfer funds under any service contract
 100 with the corporation without specific appropriation for such
 101 purpose in the General Appropriations Act, except for
 102 administrative expenses incurred by the State Board of
 103 Administration or other expenses necessary under documents
 104 authorizing or securing previously issued bonds of the
 105 corporation. The service contracts may also provide for the
 106 assignment or transfer to the corporation of any loans made by
 107 the department. The service contracts may establish the
 108 operating relationship between the department and the
 109 corporation and shall require the department to request the
 110 corporation to issue bonds before any issuance of bonds by the
 111 corporation, to take any actions necessary to enforce the
 112 agreements entered into between the corporation and other

113 parties, and to take all other actions necessary to assist the
 114 corporation in its operations. In compliance with s. 287.0641
 115 and other applicable provisions of law, the obligations of the
 116 department under the service contracts do not constitute a
 117 general obligation of the state or a pledge of the faith and
 118 credit or taxing power of the state, nor may the obligations be
 119 construed in any manner as an obligation of the State Board of
 120 Administration or entities for which it invests funds, or of the
 121 department except as provided in this section as payable solely
 122 from amounts available under any service contract between the
 123 corporation and the department, subject to appropriation. In
 124 compliance with this subsection and s. 287.0582, service
 125 contracts must expressly include the following statement: "The
 126 State of Florida's performance and obligation to pay under this
 127 contract is contingent upon an annual appropriation by the
 128 Legislature."

129 (7) The corporation is exempt from taxation and
 130 assessments of any nature whatsoever upon its income and any
 131 property, assets, or revenues acquired, received, or used in the
 132 furtherance of the purposes provided in ss. 403.1835, and
 133 403.1838, and 403.8532. The obligations of the corporation
 134 incurred under subsection (6) and the interest and income on the
 135 obligations and all security agreements, letters of credit,
 136 liquidity facilities, or other obligations or instruments
 137 arising out of, entered into in connection with, or given to
 138 secure payment of the obligations are exempt from all taxation;
 139 however, the exemption does not apply to any tax imposed by
 140 chapter 220 on the interest, income, or profits on debt

141 obligations owned by corporations.

142 (11) The benefits or earnings of the corporation may not
 143 inure to the benefit of any private person, except persons
 144 receiving grants and loans under ss. s. 403.1835 and 403.8532.

145 Section 2. Subsections (2), (3), (9), and (14) of section
 146 403.8532, Florida Statutes, are amended to read:

147 403.8532 Drinking water state revolving loan fund; use;
 148 rules.—

149 (2) For purposes of this section, the term:

150 (a) "Bonds" means bonds, certificates, or other
 151 obligations of indebtedness issued by the Florida Water
 152 Pollution Control and Drinking Water Financing Corporation under
 153 this section and s. 403.1837.

154 (b) "Corporation" means the Florida Water Pollution
 155 Control and Drinking Water Financing Corporation.

156 (c) ~~(a)~~ "Financially disadvantaged community" means the
 157 service area of a project to be served by a public water system
 158 that meets criteria established by department rule and in
 159 accordance with federal guidance.

160 (d) ~~(b)~~ "Local governmental agency" means any municipality,
 161 county, district, or authority, or any agency thereof, or a
 162 combination of two or more of the foregoing acting jointly in
 163 connection with a project, having jurisdiction over a public
 164 water system.

165 (e) ~~(c)~~ "Public water system" means all facilities,
 166 including land, necessary for the treatment and distribution of
 167 water for human consumption and includes public water systems as
 168 defined in s. 403.852 and as otherwise defined in the federal

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169 Safe Drinking Water Act, as amended. Such systems may be
 170 publicly owned, privately owned, investor-owned, or
 171 cooperatively held.

172 ~~(f)-(d)~~ "Small public water system" means a public water
 173 system which regularly serves fewer than 10,000 people.

174 (3) The department is authorized to make or request the
 175 corporation to make loans, grants, and deposits to community
 176 water systems, nonprofit transient noncommunity water systems,
 177 and nonprofit nontransient noncommunity water systems to assist
 178 them in planning, designing, and constructing public water
 179 systems, unless such public water systems are for-profit
 180 privately owned or investor-owned systems that regularly serve
 181 1,500 service connections or more within a single certified or
 182 franchised area. However, a for-profit privately owned or
 183 investor-owned public water system that regularly serves 1,500
 184 service connections or more within a single certified or
 185 franchised area may qualify for a loan only if the proposed
 186 project will result in the consolidation of two or more public
 187 water systems. The department is authorized to provide loan
 188 guarantees, to purchase loan insurance, and to refinance local
 189 debt through the issue of new loans for projects approved by the
 190 department. Public water systems are authorized to borrow funds
 191 made available pursuant to this section and may pledge any
 192 revenues or other adequate security available to them to repay
 193 any funds borrowed. The department shall administer all programs
 194 operated from funds secured through the activities of the
 195 corporation under s. 403.1837 to carry out the purposes of this
 196 section. The department shall administer loans so that amounts

197 credited to the Drinking Water Revolving Loan Trust Fund in any
 198 fiscal year are reserved for the following purposes:

199 (a) At least 15 percent to qualifying small public water
 200 systems.

201 (b) Up to 15 percent to qualifying financially
 202 disadvantaged communities.

203 (c) However, if an insufficient number of the projects for
 204 which funds are reserved under this subsection ~~paragraph~~ have
 205 been submitted to the department at the time the funding
 206 priority list authorized under this section is adopted, the
 207 reservation of these funds shall no longer apply. The department
 208 may award the unreserved funds as otherwise provided in this
 209 section.

210 (9) The department may adopt rules regarding the
 211 procedural and contractual relationship between the department
 212 and the corporation under s. 403.1837 and ~~is authorized to make~~
 213 rules necessary to carry out the purposes of this section and
 214 the federal Safe Drinking Water Act, as amended. Such rules
 215 shall:

216 (a) Set forth a priority system for loans based on public
 217 health considerations, compliance with state and federal
 218 requirements relating to public drinking water systems, and
 219 affordability. The priority system shall give special
 220 consideration to the following:

221 1. Projects that provide for the development of
 222 alternative drinking water supply projects and management
 223 techniques in areas where existing source waters are limited or
 224 threatened by saltwater intrusion, excessive drawdowns,

225 | contamination, or other problems;

226 | 2. Projects that provide for a dependable, sustainable
227 | supply of drinking water and that are not otherwise financially
228 | feasible; and

229 | 3. Projects that contribute to the sustainability of
230 | regional water sources.

231 | (b) Establish the requirements for the award and repayment
232 | of financial assistance.

233 | (c) Require evidence of credit worthiness and adequate
234 | security, including identification of revenues to be pledged and
235 | documentation of their sufficiency for loan repayment and
236 | pledged revenue coverage, to ensure that each loan recipient can
237 | meet its loan repayment requirements.

238 | (d) Require each project receiving financial assistance to
239 | be cost-effective, environmentally sound, implementable, and
240 | self-supporting.

241 | (e) Implement other provisions of the federal Safe
242 | Drinking Water Act, as amended.

243 | (14) ~~All moneys available for financial assistance under~~
244 | ~~this section shall be deposited in~~ The Drinking Water Revolving
245 | Loan Trust Fund established under s. 403.8533 shall be used
246 | exclusively to carry out the purposes of this section. Any funds
247 | therein which are not needed on an immediate basis for financial
248 | assistance shall be invested pursuant to s. 215.49. State
249 | revolving fund capitalization grants awarded by the Federal
250 | Government, state matching funds, and investment earnings
251 | thereon shall be deposited into the fund. The principal and
252 | interest of all loans repaid and investment earnings thereon

253 shall be deposited into the fund.

254 Section 3. Section 403.8533, Florida Statutes, is amended
 255 to read:

256 403.8533 Drinking Water Revolving Loan Trust Fund.—

257 (1) There is created the Drinking Water Revolving Loan
 258 Trust Fund to be administered by the Department of Environmental
 259 Protection for the purposes of:

260 (a) Funding for low-interest loans for planning,
 261 engineering design, and construction of public drinking water
 262 systems and improvements to such systems;

263 (b) Funding for compliance activities, operator
 264 certification programs, and source water protection programs;
 265 ~~and~~

266 (c) Funding for administering loans by the department; and
 267 (d) Payment of amounts payable under any service contract
 268 entered into by the department under s. 403.1837, subject to
 269 annual appropriation by the Legislature.

270 (2) The trust fund shall be used for the deposit of all
 271 moneys awarded by the Federal Government to fund revolving loan
 272 programs. All moneys in the fund that are not needed on an
 273 immediate basis for loans shall be invested pursuant to s.
 274 215.49. The principal and interest of all loans repaid and
 275 investment earnings shall be deposited into this fund.

276 (3) Pursuant to s. 19(f)(3), Art. III of the State
 277 Constitution, the Drinking Water Revolving Loan Trust Fund is
 278 exempt from the termination provisions of s. 19(f)(2), Art. III
 279 of the State Constitution.

280 Section 4. Paragraph (o) of subsection (3) of section
 281 11.45, Florida Statutes, is amended to read:

282 11.45 Definitions; duties; authorities; reports; rules.—

283 (3) AUTHORITY FOR AUDITS AND OTHER ENGAGEMENTS.—The
 284 Auditor General may, pursuant to his or her own authority, or at
 285 the direction of the Legislative Auditing Committee, conduct
 286 audits or other engagements as determined appropriate by the
 287 Auditor General of:

288 (o) The Florida Water Pollution Control and Drinking Water
 289 Financing Corporation created pursuant to s. 403.1837.

290 Section 5. Paragraphs (b) and (c) of subsection (2) and
 291 subsections (3) and (10) of section 403.1835, Florida Statutes,
 292 are amended to read:

293 403.1835 Water pollution control financial assistance.—

294 (2) For the purposes of this section, the term:

295 (b) "Bonds" means bonds, certificates, or other
 296 obligations of indebtedness issued by the Florida Water
 297 Pollution Control and Drinking Water Financing Corporation under
 298 this section and s. 403.1837.

299 (c) "Corporation" means the Florida Water Pollution
 300 Control and Drinking Water Financing Corporation.

301 (3) The department may provide financial assistance
 302 through any program authorized under s. 603 of the Federal Water
 303 Pollution Control Act (Clean Water Act), Pub. L. No. 92-500, as
 304 amended, including, but not limited to, making grants and loans,
 305 providing loan guarantees, purchasing loan insurance or other
 306 credit enhancements, and buying or refinancing local debt. This
 307 financial assistance must be administered in accordance with

308 | this section and applicable federal authorities. The department
 309 | shall administer all programs operated from funds secured
 310 | through the activities of the Florida Water Pollution Control
 311 | and Drinking Water Financing Corporation under s. 403.1837, to
 312 | fulfill the purposes of this section.

313 | (a) The department may make or request the corporation to
 314 | make loans to local government agencies, which agencies may
 315 | pledge any revenue available to them to repay any funds
 316 | borrowed.

317 | (b) The department may make or request the corporation to
 318 | make loans, grants, and deposits to other entities eligible to
 319 | participate in the financial assistance programs authorized
 320 | under the Federal Water Pollution Control Act, or as a result of
 321 | other federal action, which entities may pledge any revenue
 322 | available to them to repay any funds borrowed. Notwithstanding
 323 | s. 17.57, the department may make deposits to financial
 324 | institutions which earn less than the prevailing rate for United
 325 | States Treasury securities with corresponding maturities for the
 326 | purpose of enabling such financial institutions to make below-
 327 | market interest rate loans to entities qualified to receive
 328 | loans under this section and the rules of the department.

329 | (c) The department shall administer financial assistance
 330 | so that at least 15 percent of the funding made available each
 331 | year under this section is reserved for use by small communities
 332 | during the year it is reserved.

333 | (d) The department may make grants to financially
 334 | disadvantaged small communities, as defined in s. 403.1838,
 335 | using funds made available from grant allocations on loans

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336 | authorized under subsection (4). The grants must be administered
 337 | in accordance with s. 403.1838.

338 | (10) The department may adopt rules regarding program
 339 | administration; project eligibilities and priorities, including
 340 | the development and management of project priority lists;
 341 | financial assistance application requirements associated with
 342 | planning, design, construction, and implementation activities,
 343 | including environmental and engineering requirements; financial
 344 | assistance agreement conditions; disbursement and repayment
 345 | provisions; auditing provisions; program exceptions; the
 346 | procedural and contractual relationship between the department
 347 | and the Florida Water Pollution Control and Drinking Water
 348 | Financing Corporation under s. 403.1837; and other provisions
 349 | consistent with the purposes of this section.

350 | Section 6. This act shall take effect upon becoming a law.

Amendment No. 1

COUNCIL/COMMITTEE 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 Council/Committee hearing PCB: Agriculture & Natural Resources
2 Policy Committee
3 Representative(s) Williams offered the following:

4

5 **Amendment**

6 Remove line 87 and insert:

7 403.8533, subject to annual appropriation by the legislature.

Amendment No. 2

COUNCIL/COMMITTEE 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 Council/Committee hearing PCB: Agriculture & Natural Resources
2 Policy Committee
3 Representative(s) Williams offered the following:

4
5
6
7
8

Amendment

Remove lines 193-196 and insert:
any funds borrowed. The department shall administer the loans
so that amounts

Amendment No. 3

COUNCIL/COMMITTEE 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 Council/Committee hearing PCB: Agriculture & Natural Resources
2 Policy Committee
3 Representative(s) Williams offered the following:

4
5 **Amendment**

6 Remove lines 308-312 and insert:
7 this section and applicable federal authorities. ~~The department~~
8 ~~shall administer all programs operated from funds secured~~
9 ~~through the activities of the Florida Water Pollution Control~~
10 ~~Financing Corporation under s. 403.1837, to fulfill the purposes~~
11 ~~of this section.~~

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB ANR 10-15 Florida Keys' Wastewater

SPONSOR(S): Agriculture & Natural Resources Policy Committee

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

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.:	Agriculture & Natural Resources Policy Committee		Deslatte <i>SD</i>	Reese <i>JR</i>
1)				
2)				
3)				
4)				
5)				

SUMMARY ANALYSIS

The bill clarifies current law authorizing the issuance of Everglades restoration bonds to finance wastewater facilities within the Florida Keys Area of Critical State Concern. Authorized bonds may not to exceed \$200 million and are limited to \$50 million per fiscal year.

The bill revises legislative intent relating to the Keys Area of Critical State Concern to add intent to: promote an appropriate land acquisition and protection strategy for environmental lands within the Florida Keys; protect and improve the nearshore water quality of the Florida Keys through the construction and operation of wastewater management facilities; and ensure that the population of the Florida Keys can be safely evacuated.

The bill makes removal of the Area of Critical State Concern designation for the Keys Area contingent on the completion of the wastewater treatment work plan, specified in rules of the Florida Administration Commission (Commission).

The bill adds the detailed onsite sewage treatment system requirements in chapter 99-395, L.O.F. to statute, and requires, after July 1, 2010, all new, modified, or repaired systems to meet higher treatment standards. The bill extends the wastewater compliance deadline for existing onsite sewage treatment systems from July 1, 2010, to July 1, 2015.

The bill extends from July 1, 2010, to December 31, 2015, the completion deadline for required wastewater treatment facilities, and requires all new and improved facilities to meet standards by December 31, 2015. Wastewater treatment facilities in operation as of July 1, 2010, which are located within areas to be served by Monroe County, municipalities in Monroe County, or special districts, and which are owned by other entities, are not required to comply with the standards until January 1, 2016. Permits in effect for those facilities as of June 30, 2010, are extended until December 31, 2015, or until the facility is connected to a local government central wastewater system.

All wastewater treatment facilities in operation after December 31, 2015, must comply with the treatment and disposal requirements and with Department of Environmental Protection (DEP) rules.

The DEP is authorized to adopt rules necessary to carry out the bill's provisions relating to sewage disposal facilities. All sewage treatment facilities must monitor effluent for total nitrogen and total phosphorus concentration as required by DEP rule.

The bill repeals sections 4 of chapter 99-395, LOF, as amended by section 6 of chapter 2006-223, LOF, and sections 5 and 6 of chapter 99-395, LOF.

The bill does not appear to have a direct fiscal impact on the state. The bill delays implementation of current wastewater treatment standards. Many local governments have already met requirements under the Area of Critical State Concern Work Program, and others are in the process of meeting the requirements and have generated the majority of revenues. See Fiscal Comments Section.

HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

The Florida Keys Area was designated as an area of critical state concern over 30 years ago for the purpose of providing state policies to guide decision making at the local level to protect natural resources and the environment, reverse the deterioration of water quality, and facilitate orderly, well-planned growth while protecting property rights. Current law provides that while any land development regulation or element of a local comprehensive plan in the Florida Keys (all of Monroe County excluding the city of Key West) may be enacted, amended or rescinded by the local government, the regulation or element is not effective until approved by the Department of Community Affairs (DCA), and that all local development regulations or comprehensive plans must be in compliance with statutory principles for guiding development.

Under current law (s. 380.0552, F.S.), the area of critical state concern designation for the Florida Keys was to be removed by October 1, 2009, unless the Florida Administration Commission found that substantial progress toward achieving specified goals – including wastewater treatment requirements -- has not been achieved. After removal of the designation as an area of critical state concern, DCA was required to review proposed local comprehensive plans, and any amendments to existing comprehensive plans, which are applicable to the Florida Keys Area, for compliance with the following:

- Adoption of construction schedules for wastewater facilities improvements in the annually adopted capital improvements element and adoption of standards for the construction of wastewater treatment facilities which meet or exceed the criteria of chapter 99-395, Laws of Florida.
- Adoption of goals, objectives, and policies to protect public safety and welfare in the event of a natural disaster by maintaining a hurricane evacuation clearance time for permanent residents of no more than 24 hours.

In the 1990s, concerns were raised about nutrients from sewage entering the nearshore waters of the Florida Keys from both onsite sewage treatment and disposal systems (septic tanks and cesspits) and from central wastewater treatment facilities. In order to address these concerns, the 1999 Legislature established uniform sewage treatment and disposal standards in the Keys for both onsite sewage treatment and disposal systems (OSTDS), which are permitted by the Department of Health (DOH), and wastewater treatment plants, which are permitted by the DEP.

Ch. 99-395, L.O.F., requires that each OSTDS either cease discharging or comply with the stringent effluent water quality standards provided by law and the rules of the DEP or the DOH, as applicable, by 2010. For central wastewater treatment facilities, the treatment standards were strengthened by: eliminating all surface water discharges by the year 2006; requiring proper operation, maintenance and performance monitoring of all sewage treatment systems; and requiring the upgrading of all systems to meet the enhanced sewage treatment requirements specified in the bill by the year 2010.

In the Annual Assessment Report for the Florida Keys Area of Critical State Concern covering the time period of July 13, 2006, to July 12, 2007, the DCA recommended to the Administration Commission that it make a finding that Monroe County has not made substantial progress toward completion of Year 10 of the Work Program. The recommendation was based on the DEP's June 2007 report, "Report to the Department of Community Affairs – 10-Year Work Program for Monroe County Florida Keys Wastewater Improvements." The report concluded that:

While progress has been made in upgrading and building new wastewater infrastructure in the Keys, there is a long way to go and a tremendous amount of work to be done. There are indications, at least in some areas, that progress has slowed. It is clear from both on-site inspection and the information provided by local governments - both in terms of the progress to date and the uncertainty of many of the completion schedules - that not all facilities will meet the July 1, 2010 deadline.

During the 2007 Legislative Session, concerns were expressed regarding the lack of specific plans and estimated costs associated with meeting the wastewater requirements established in ch. 99-395, L.O.F. Due in part to these concerns, the Legislature did not appropriate funds to assist local governments in the Keys with the construction of wastewater systems necessary to meet the 2010 deadline. During the 2007 Legislative Interim, the House Environment & Natural Resources Council conducted an interim project to develop a plan to address the wastewater needs of the Florida Keys in the most cost effective and efficient manner. The goal of the project was to work with the DEP to facilitate the establishment, through interlocal agreements or other means, of a single local government entity responsible for coordinating with the state throughout the life of the project. This local government entity selected to serve this role was the Monroe County Board of County Commissioners. The coordinated entity was expected to provide the following items:

- A single comprehensive plan identifying existing and proposed projects, including a priority of sequencing projects, needed to meet the comprehensive wastewater needs in the Keys.
- The status of existing and proposed projects and whether they are expected to meet the 2010 deadline.
- A listing of the projected and actual project costs associated with completed and proposed projects.
- A listing of existing and proposed sources and amount of funds needed to complete the necessary projects.

In addition, policy options were developed and analyzed to provide assistance in funding the expedited implementation of the comprehensive wastewater plan contingent upon receipt of the information listed above.

After a series of meetings and ongoing conversations, Monroe County submitted a Keys Wastewater Plan on December 4, 2007, that, with subsequent addendums, addresses the above requirements.

The Keys Wastewater Plan provides a comprehensive summary of county-wide progress toward achieving compliance with the 2010 wastewater effluent standards. The plan includes background information for each local government and utility responsible for installation of wastewater treatment facilities. The plan also includes costs associated with completed and remaining projects, which is provided on a county-wide basis, as well as for each wastewater project. A summary of unfunded costs per year was compiled based on information submitted by each wastewater entity.

The 2008 Legislature amended s. 215.619, F.S., to authorize the issuance of Everglades restoration bonds to fund costs associated with the Florida Keys Area of Critical State Concern Protection Program to restore and conserve natural systems through the implementation of water management projects, including wastewater management projects identified in the Key's Wastewater Plan dated November 2007. Total bonds are not to exceed \$50 million per fiscal year, for no more than 4 fiscal years. The duration of the bonds may not exceed 20 annual maturities, and the bonds must mature by December 31, 2040.

As of February 2010, Key West, Key Colony Beach and Layton operate facilities compliant with the July 1, 2010 deadline. Marathon and Key Largo are nearing completion of central systems, but will not meet the deadline. Islamorada and unincorporated Monroe County are in various stages of planning, design and construction-but facilities to serve the majority of people in these areas are years from completion. Any of the more than 200 existing facilities that have not upgraded to meet the treatment standards will be in violation on July 1, 2010-this includes most existing facilities and many homeowners¹.

Effect of Proposed Changes

The bill amends s. 215.619, F.S., clarifying that the issuance of any state bonds to finance wastewater facilities within the Florida Keys Area of Critical State Concern. Bonds are not to exceed \$200 million and are limited to \$50 million per fiscal year. Proceeds from the bonds must be managed by DEP for the purpose of entering into financial assistance agreements with local governments located in the Florida Keys Area of Critical State Concern to finance or refinance the cost of constructing sewage collection, treatment, and disposal facilities.

The bill amends s. 380.0552, F.S., relating to the Keys Area designation as an Area of Critical State Concern, adding legislative intent to promote an appropriate land acquisition and protection strategy for environmentally sensitive lands within the Florida Keys; to protect and improve the nearshore water quality of the Florida Keys through the construction and operation of wastewater management facilities; and to ensure that the population of the Florida Keys can be safely evacuated.

The bill makes removal of the Florida Keys Area of Critical State Concern designation contingent on the work program completion, specified in rules of the Commission. Starting on November 30, 2010, a written report must be submitted annually by the Department of Community Affairs (DCA) to the Commission describing the progress of the Florida Keys toward completing the work program tasks. The DCA must recommend removal of the designation if it determines that:

1. All of the work program tasks have been completed, including the construction of, operation of, and connection to central wastewater management facilities pursuant to s. 403.086(10), F.S., and upgrade of onsite sewage treatment and disposal systems pursuant to s. 381.0065(4)(1), F.S.
2. All local comprehensive plans and land development regulations and the administration of such plans and regulations are adequate to protect the Florida Keys Area, fulfill legislative intent, and are consistent with and further the principles for guiding development.
3. A local government has adopted a resolution at a public hearing recommending the removal of the designation.

Once the Commission receives the report, the Commission must determine if the requirements have been fulfilled and may remove the designation of the Florida Keys as an area of critical state concern. If the designation is removed, the Commission will initiate rulemaking to repeal any rules relating to the designation within 60 days. If the requirements have not been met for removal, the Commission will provide a written report to the local governments within 30 days detailing the tasks that must be completed by the local government. The Commission's determination may be reviewed pursuant to chapter 120, F.S. All proceedings must be conducted by the Division of Administrative Hearings and must be initiated within 30 days after the Commission issues its determination. The Commission may adopt rules or revise existing rules as necessary to administer these provisions.

¹ Department of Environmental Protection 2010 analysis, on file
STORAGE NAME: pcb15.ANR.doc
DATE: 3/18/2010

The bill revises the statutory principles for guiding development in the Keys to add the following principles:

1. Protecting and improving water quality by providing for the construction, operation, maintenance, and replacement of stormwater management facilities; central sewage collection; treatment and disposal facilities; and the installation and proper operation and maintenance of onsite sewage treatment.
2. Ensuring the improvement of nearshore water quality by requiring the construction and operation of wastewater management facilities that meet the requirements of s. 381.0065(4)(l) and s. 403.086(10), F.S., as applicable, and by directing growth to areas served by central wastewater treatment facilities through permit allocation systems.

The bill provides that any amendments to local comprehensive plans in the Florida Keys Area must be reviewed for compliance with the following:

1. Construction schedules and detailed capital financing plans for wastewater management improvements in the annually adopted capital improvements element, and standards for the construction of wastewater treatment and disposal facilities or collection systems that meet or exceed the criteria in s. 403.086910, F.S., for wastewater treatment and disposal facilities or s. 381.0065(4)(1), F.S., for onsite sewage treatment and disposal systems.
2. Goals, objectives, and policies to protect public safety and welfare in the event of a natural disaster by maintaining a hurricane evacuation clearance time for permanent residents of no more than 24 hours, which will be in accordance with a methodology approved by the DCA.

The bill amends s. 381.0065, F.S., to require Monroe County, each municipality, and those special districts established for the purpose of the collection, transmission, treatment, or disposal of sewage to ensure, in accordance with the specific schedules adopted by the Commission under s. 380.0552, F.S., the completion of onsite sewage treatment and disposal system upgrades to meet the requirements applicable to onsite sewage treatment systems. The bill adds the detailed onsite sewage treatment system requirements in chapter 99-395, L.O.F, to the statute, and extends the wastewater compliance deadline for existing onsite sewage treatment systems from July 1, 2010, to July 1, 2015. The bill requires that after July 1, 2010, all new, modified, or repaired systems must meet the higher treatment standards. The onsite sewage treatment and disposal systems must produce an effluent that contains no more than the following concentrations:

- Biochemical Oxygen Demand of 10 mg/1.
- Suspended Solids of 10 mg/1.
- Total Nitrogen of 10 mg/1.
- Total Phosphorus of 1 mg/1.

In addition, onsite sewage treatment and disposal systems discharging to injection wells must provide basic disinfection as defined by DEP rule.

In areas scheduled to be served by central sewer by December 31, 2015, an exception is made to the 2010 deadline to provide that if the property owner has paid a connection fee or assessment for connection to the central sewer system, an onsite sewage treatment and disposal system may be repaired to certain minimum standards. Onsite sewage treatment and disposal systems must be monitored for total nitrogen and phosphorous concentrations.

The Department of Health (DOH) is required to enforce proper installation, operation, and maintenance of onsite sewage treatment and disposal systems pursuant to this chapter, including ensuring that the appropriate level of treatment described above is met.

Monroe County, each municipality, and those special districts established for the purpose of collection, transmission, treatment, or disposal of sewage may require connecting onsite sewage treatment and disposal systems to a central sewer system within 30 days after notice of availability of service.

The bill amends s. 403.086, F.S., providing legislative findings that the only practical and cost-effective way to fundamentally improve wastewater management in the Florida Keys is for local governments to complete the wastewater or sewage treatment and disposal facilities initiated under the work program of Commission rule 28-20, Florida Administrative Code (FAC), and the Monroe County Sanitary Master Wastewater Plan of 2000. The bill declares that the construction and operation of comprehensive central wastewater systems in accordance with this subsection is in the public interest. To give effect to those findings, the bill applies these requirements to all domestic wastewater facilities in Monroe County, including privately owned facilities, unless otherwise provided.

The bill adds the detailed onsite sewage treatment system requirements in chapter 99-395, L.O.F to the statute, and prohibits the discharge of domestic wastewater into surface waters. All new required wastewater systems must be completed by December 31, 2015, including facilities located outside local government and special district service areas.

Wastewater treatment facilities that have design capacities greater than or equal to 100,000 gallons/day must produce an effluent that contains no more than the following concentrations:

- Biochemical Oxygen Demand of 5 mg/1.
- Suspended Solids of 5 mg/1.
- Total Nitrogen of 3 mg/1.
- Total Phosphorus of 1 mg/1.

Facilities that have design capacities of less than 100,000 gallons/day must produce an effluent that contains no more of the following:

- Biochemical Oxygen Demand of 10 mg/1.
- Suspended Solids of 10 mg/1.
- Total Nitrogen of 10 mg/1.
- Total Phosphorus of 1 mg/1.

Class V injection wells must also meet certain requirements. A backup well may only be used under certain conditions. However, disposal systems serving as backups to reuse systems must comply with the provisions of this section.

For wastewater treatment facilities in operation as of July 1, 2010, which are located within areas to be served by Monroe County, municipalities in Monroe County, or special districts, and which are owned by other entities, the above requirements do not apply until January 1, 2016. Permits in effect for those facilities as of June 30, 2010, are extended until December 31, 2015, or until the facility is connected to a local government central wastewater system.

Wastewater treatment facilities in operation after December 31, 2015, must comply with the treatment and disposal requirements of this section and DEP rules.

The bill provides that if it is demonstrated that a discharge, even if the discharge is otherwise in compliance with the standards established in the bill, will cause or contribute to a violation of state water quality standards, the DEP shall:

1. Require more stringent effluent limitations;
2. Order the point or method of discharge changed;
3. Limit the duration or volume of the discharge; or
4. Prohibit the discharge.

All sewage treatment facilities must monitor effluent for total nitrogen and total phosphorus concentration as required by DEP rule. The county, each municipality, or special districts may require connecting wastewater treatment facilities owned by other entities to a central sewer system within 30

days after notice of availability of service. DEP may adopt rules necessary to carry out the section relating to sewage disposal facilities.

The bill repeals sections 4 of chapter 99-395, LOF, as amended by section 6 of chapter 2006-223, LOF, and sections 5 and 6 of chapter 99-395, LOF.

B. SECTION DIRECTORY:

Section 1. Amends s. 215.619, F.S., authorizing the issuance of bonds to be used to finance the cost of construction sewage facilities in the Florida Keys Area.

Section 2. Amends s. 380.0552, F.S., revising legislative intent relating to the designation of the Florida Keys as an area of critical state concern; revising the procedures for removing the designation; providing for administrative review of such removal rather than judicial review; authorizing the Administration Commission to adopt rules or revise existing rules; revising the principles guiding development; revising compliance requirements for reviewing comprehensive plan amendments.

Section 3. Amends s. 381.0065, F.S., providing additional requirements for onsite sewage treatment and disposal systems in Monroe County.

Section 4. Amends s. 403.086, F.S., providing legislative findings and discharge requirements for wastewater facilities in Monroe County.

Section 5. Repeals sections 4, 5, and 6 of chapter 99-395, Laws of Florida, as amended, relating to sewage treatment in the Florida Keys.

Section 6. Provides an effective date.

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 section

2. Expenditures:

See Fiscal Comments section

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

DEP offered the following comments:

Direct Private Sector Costs: Private sector costs (whether business owners or individual homeowners) would be experienced in one of two ways: paying for central sewer service through connection fees, impact fees and monthly sewer charges (or similar system charges); or paying for an upgraded onsite sewage treatment and disposal system. The cost of central sewer service depends on a wide range of factors, including: facility construction costs, which vary based on design as well as economic conditions; amount of wastewater flow contributed to

the system, or amount of water used; composition of charges, as different utility systems include different elements in their charges; cost of financing, both to the local government and to the customer if the local government offers financing options for system charges; and receipt of external funding, whether state or federal grants or loans. The cost of upgraded onsite systems are more straightforward and may be \$10,000 - \$20,000 depending on circumstances.

There is no single master source of comparative water and sewer rates; even where rate completely; there are different minimum charges (base rates); and unit charges ("gallons per") vary significantly as well—all of which may reflect policies about water conservation, energy use and other factors. The Miami-Dade Water & Sewer Department periodically compiles limited comparative water and sewer rate information, most recently updated in September 2009 and posted on the agency's website at <http://www.miamidadegov.com/wasd/rate-compare.asp>. It reflects rates ranging between \$25.24 per month (Chicago) and \$138.31 per month (Atlanta). Average monthly bills posted for Florida communities are Cape Coral (\$108.79), St. Petersburg (\$63.02), Jacksonville (\$58.62), Ft. Lauderdale (\$56.79), Tampa (\$45.64), Orlando (\$45.38), Palm Beach County (\$44.82), and Miami-Dade (\$40.03). Rates for Islamorada and unincorporated Monroe County would be expected to fall toward the higher end of these rates. As previously noted, the receipt of external funding, whether state or federal grants or loans, helps underwrite costs and reduce customer rates and other charges.

Direct Private Sector Benefits: Central sewer service typically raises property values. Construction and construction-related activities provide jobs and inject money into local economies in the short run (typically 2-4 years). Longer term jobs related to facility operation, administration, laboratory work, etc., often result. Improved local water quality would likely enhance tourism, including eco-tourism, fishing (sporting and commercial), and other marine recreation—all of which provide substantial economic benefits.

D. FISCAL COMMENTS:

DEP offered the following comments:

To the extent the construction of central wastewater facilities is already required under the Area of Critical State Concern Work Program, the legislation itself does not impose any new costs on local governments in the Florida Keys. Furthermore, Key West, Key Colony Beach and Layton have already met the requirements and Key Largo and Marathon have generated the majority of revenues to do so (including funds from DEP grants and loans).

The estimated cost of the remaining central systems to be completed in Islamorada and unincorporated Monroe County vary greatly and will continue to vary based on shifting designs as well as economic circumstances. In July 2009, these costs were estimated by Monroe County local governments to be just over \$357.3 million (\$132.8 million for Islamorada and \$224.5 million for unincorporated Monroe County). The impact of these costs, aside from changes relating to shifting designs and economic circumstances, depend on financing rates (from whatever sources), the term over which costs are amortized, and whether or not supplementary grants or other state and federal financial assistance has been secured. The provision of wastewater service is a common local government responsibility, generally paid for through connection fees, impact fees, assessments, monthly user charges, or other system charges. These charges may be reduced by success in securing grants or low-interest loans from the state, as have other local governments in the Keys. The costs of building wastewater facilities in the Keys generally run higher than they do in the rest of Florida because of the geology. The income and wealth levels in these communities are generally substantially higher than the state average.

Long Run Effects Other Than Normal Growth: The completion of central wastewater systems would provide jobs and likely increase area property values, both of which enhance local economies. Improved local water quality would likely enhance tourism, including eco-tourism, fishing (sporting and commercial), and other marine recreation—all of which provide substantial economic benefits.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This 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:

The bill grants the Administration Commission rulemaking authority to administer revised statutory provisions governing the removal of designation as an Area of Critical State Concern. The bill grants DEP rulemaking authority to carry out discharge requirements for sewage treatment facilities.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

1 A bill to be entitled
2 An act relating to the Florida Keys Area; amending s.
3 215.619, F.S.; authorizing the issuance of bonds to be
4 used to finance the cost of constructing sewage facilities
5 in the Florida Keys Area; amending s. 380.0552, F.S.;
6 revising legislative intent relating to the designation of
7 the Florida Keys as an area of critical state concern;
8 revising the procedures for removing the designation;
9 providing for administrative review of such removal rather
10 than judicial review; authorizing the Administration
11 Commission to adopt rules or revise existing rules;
12 revising the principles guiding development; revising
13 compliance requirements for reviewing comprehensive plan
14 amendments; amending s. 381.0065, F.S.; providing
15 additional requirements for onsite sewage treatment and
16 disposal systems in Monroe County; amending s. 403.086,
17 F.S.; providing legislative findings and discharge
18 requirements for wastewater facilities in Monroe County;
19 repealing sections 4, 5, and 6 of ch. 99-395, Laws of
20 Florida, as amended, relating to sewage treatment in the
21 Florida Keys; providing an effective date.

22
23 Be It Enacted by the Legislature of the State of Florida:

24
25 Section 1. Subsection (1) of section 215.619, Florida
26 Statutes, is amended to read:

27 215.619 Bonds for Everglades restoration.—

28 (1) The issuance of Everglades restoration bonds to

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29 finance or refinance the cost of the acquisition and improvement
 30 of land, water areas, and related property interests and
 31 resources for the purpose of implementing the Comprehensive
 32 Everglades Restoration Plan under s. 373.470, the Lake
 33 Okeechobee Watershed Protection Plan under s. 373.4595, the
 34 Caloosahatchee River Watershed Protection Plan under s.
 35 373.4595, the St. Lucie River Watershed Protection Plan under s.
 36 373.4595, and the Florida Keys Area of Critical State Concern
 37 protection program under ss. 380.05 and 380.0552 in order to
 38 restore and conserve natural systems through the implementation
 39 of water management projects, including wastewater management
 40 projects identified in the "Keys Wastewater Plan," dated
 41 November 2007, and submitted to the Florida House of
 42 Representatives on December 4, 2007, is authorized in accordance
 43 with s. 11(e), Art. VII of the State Constitution.

44 (a) Everglades restoration bonds, except refunding bonds,
 45 may be issued only in fiscal years 2002-2003 through 2019-2020
 46 and may not be issued in an amount exceeding \$100 million per
 47 fiscal year unless:

48 1.(a) The Department of Environmental Protection has
 49 requested additional amounts in order to achieve cost savings or
 50 accelerate the purchase of land; or

51 2.(b) The Legislature authorizes an additional amount of
 52 bonds not to exceed \$200 million, and limited to \$50 million per
 53 fiscal year, for no more than 4 fiscal years, specifically for
 54 the purpose of funding the Florida Keys Area of Critical State
 55 Concern protection program. Proceeds from the bonds shall be
 56 managed by the Department of Environmental Protection for the

57 purpose of entering into financial assistance agreements with
 58 local governments located in the Florida Keys Area of Critical
 59 State Concern to finance or refinance the cost of constructing
 60 sewage collection, treatment, and disposal facilities.

61 (b) The duration of Everglades restoration bonds may not
 62 exceed 20 annual maturities, ~~and these bonds~~ must mature by
 63 December 31, 2040. Except for refunding bonds, a series of bonds
 64 may not be issued unless an amount equal to the debt service
 65 coming due in the year of issuance has been appropriated by the
 66 Legislature. Beginning July 1, 2010, the Legislature shall
 67 analyze the ratio of the state's debt to projected revenues
 68 before authorizing the issuance of ~~prior to the authorization to~~
 69 ~~issue any~~ bonds under this section.

70 Section 2. Subsections (2), (4), (7), and (9) of section
 71 380.0552, Florida Statutes, are amended to read:

72 380.0552 Florida Keys Area; protection and designation as
 73 area of critical state concern.—

74 (2) LEGISLATIVE INTENT.—It is ~~hereby declared that~~ the
 75 intent of the Legislature to is:

76 (a) ~~To~~ Establish a land use management system that
 77 protects the natural environment of the Florida Keys.

78 (b) ~~To~~ Establish a land use management system that
 79 conserves and promotes the community character of the Florida
 80 Keys.

81 (c) ~~To~~ Establish a land use management system that
 82 promotes orderly and balanced growth in accordance with the
 83 capacity of available and planned public facilities and
 84 services.

85 (d) ~~To~~ Provide ~~for~~ affordable housing in close proximity
 86 to places of employment in the Florida Keys.

87 (e) ~~To~~ Establish a land use management system that
 88 promotes and supports a diverse and sound economic base.

89 (f) ~~To~~ Protect the constitutional rights of property
 90 owners to own, use, and dispose of their real property.

91 (g) ~~To~~ Promote coordination and efficiency among
 92 governmental agencies that have ~~with~~ permitting jurisdiction
 93 over land use activities in the Florida Keys.

94 (h) Promote an appropriate land acquisition and protection
 95 strategy for environmentally sensitive lands within the Florida
 96 Keys.

97 (i) Protect and improve the nearshore water quality of the
 98 Florida Keys through the construction and operation of
 99 wastewater management facilities that meet the requirements of
 100 ss. 381.0065(4)(1) and 403.086(10), as applicable.

101 (j) Ensure that the population of the Florida Keys can be
 102 safely evacuated.

103 (4) REMOVAL OF DESIGNATION.—

104 (a) ~~Between July 12, 2008, and August 30, 2008, the state~~
 105 ~~land planning agency shall submit a written report to the~~
 106 ~~Administration Commission describing in detail the progress of~~
 107 ~~the Florida Keys Area toward accomplishing the tasks of the work~~
 108 ~~program as defined in paragraph (c) and providing a~~
 109 ~~recommendation as to whether substantial progress toward~~
 110 ~~accomplishing the tasks of the work program has been achieved.~~
 111 ~~Subsequent to receipt of the report, the Administration~~
 112 ~~Commission shall determine, prior to October 1, 2008, whether~~

113 ~~substantial progress has been achieved toward accomplishing the~~
 114 ~~tasks of the work program.~~ The designation of the Florida Keys
 115 Area as an area of critical state concern under this section may
 116 be recommended for removal upon fulfilling the legislative
 117 intent under subsection (2) and completion of all the work
 118 program tasks specified in rules of the Administration
 119 Commission shall be removed October 1, 2009, unless the
 120 ~~Administration Commission finds, after receipt of the state land~~
 121 ~~planning agency report, that substantial progress has not been~~
 122 ~~achieved toward accomplishing the tasks of the work program. If~~
 123 ~~the designation of the Florida Keys Area as an area of critical~~
 124 ~~state concern is removed, the Administration Commission, within~~
 125 ~~60 days after removal of the designation, shall initiate~~
 126 ~~rulemaking pursuant to chapter 120 to repeal any rules relating~~
 127 ~~to the designation of the Florida Keys Area as an area of~~
 128 ~~critical state concern. If, after receipt of the state land~~
 129 ~~planning agency's report, the Administration Commission finds~~
 130 ~~that substantial progress toward accomplishing the tasks of the~~
 131 ~~work program has not been achieved, the Administration~~
 132 ~~Commission shall provide a written report to the Monroe County~~
 133 ~~Commission within 30 days after making such finding detailing~~
 134 ~~the tasks under the work program that must be accomplished in~~
 135 ~~order for substantial progress to be achieved within the next 12~~
 136 ~~months.~~

137 (b) Beginning November 30, 2010, the state land planning
 138 agency shall annually submit a written report to the
 139 Administration Commission describing the progress of the Florida
 140 Keys Area toward completing the work program tasks specified in

141 commission rules. The land planning agency shall recommend
 142 removing the Florida Keys Area from being designated as an area
 143 of critical state concern to the commission if it determines
 144 that:

145 1. All of the work program tasks have been completed,
 146 including construction of, operation of, and connection to
 147 central wastewater management facilities pursuant to s.
 148 403.086(10) and upgrade of onsite sewage treatment and disposal
 149 systems pursuant to s. 381.0065(4)(1);

150 2. All local comprehensive plans and land development
 151 regulations and the administration of such plans and regulations
 152 are adequate to protect the Florida Keys Area, fulfill the
 153 legislative intent specified in subsection (2), and are
 154 consistent with and further the principles guiding development;
 155 and

156 3. A local government has adopted a resolution at a public
 157 hearing recommending the removal of the designation.

158 ~~(b) If the designation of the Florida Keys Area as an area~~
 159 ~~of critical state concern is not removed in accordance with~~
 160 ~~paragraph (a), the state land planning agency shall submit a~~
 161 ~~written annual report to the Administration Commission on~~
 162 ~~November 1 of each year, until such time as the designation is~~
 163 ~~removed, describing the progress of the Florida Keys Area toward~~
 164 ~~accomplishing remaining tasks under the work program and~~
 165 ~~providing a recommendation as to whether substantial progress~~
 166 ~~toward accomplishing the tasks of the work program has been~~
 167 ~~achieved. The Administration Commission shall determine, within~~
 168 ~~45 days after receipt of the annual report, whether substantial~~

169 ~~progress has been achieved toward accomplishing the remaining~~
 170 ~~tasks of the work program. The designation of the Florida Keys~~
 171 ~~Area as an area of critical state concern under this section~~
 172 ~~shall be removed unless the Administration Commission finds that~~
 173 ~~substantial progress has not been achieved toward accomplishing~~
 174 ~~the tasks of the work program. If the designation of the Florida~~
 175 ~~Keys Area as an area of critical state concern is removed, the~~
 176 ~~Administration Commission, within 60 days after removal of the~~
 177 ~~designation, shall initiate rulemaking pursuant to chapter 120~~
 178 ~~to repeal any rules relating to the designation of the Florida~~
 179 ~~Keys Area as an area of critical state concern. If the~~
 180 ~~Administration Commission finds that substantial progress has~~
 181 ~~not been achieved, the Administration Commission shall provide~~
 182 ~~to the Monroe County Commission, within 30 days after making its~~
 183 ~~finding, a report detailing the tasks under the work program~~
 184 ~~that must be accomplished in order for substantial progress to~~
 185 ~~be achieved within the next 12 months.~~

186 (c) After receipt of the state land planning agency report
 187 and recommendation, the Administration Commission shall
 188 determine whether the requirements have been fulfilled and may
 189 remove the designation of the Florida Keys as an area of
 190 critical state concern. If the commission removes the
 191 designation, it shall initiate rulemaking to repeal any rules
 192 relating such designation within 60 days. If, after receipt of
 193 the state land planning agency's report and recommendation, the
 194 commission finds that the requirements for recommending removal
 195 of designation have not been met, the commission shall provide a
 196 written report to the local governments within 30 days after

197 making such a finding detailing the tasks that must be completed
 198 by the local government.

199 ~~(c) For purposes of this subsection, the term "work~~
 200 ~~program" means the 10-year work program as set forth in rule 28-~~
 201 ~~20.110, Florida Administrative Code, on January 1, 2006,~~
 202 ~~excluding amendments to the work program that take effect after~~
 203 ~~January 1, 2006.~~

204 (d) ~~The determination of the Administration Commission's~~
 205 determination concerning the removal of the designation of the
 206 Florida Keys as an area of critical state concern Commission as
 207 ~~to whether substantial progress has been made toward~~
 208 ~~accomplishing the tasks of the work program may be judicially~~
 209 ~~reviewed pursuant to chapter 120 §6. All proceedings shall be~~
 210 ~~conducted by the Division of Administrative Hearings and must be~~
 211 initiated within 30 days after the commission issues its
 212 determination in the circuit court of the judicial circuit where
 213 ~~the Administration Commission maintains its headquarters and~~
 214 ~~shall be initiated within 30 days after rendition of the~~
 215 ~~Administration Commission's determination. The Administration~~
 216 ~~Commission's determination as to whether substantial progress~~
 217 ~~has been made toward accomplishing the tasks of the work program~~
 218 ~~shall be upheld if it is supported by competent and substantial~~
 219 ~~evidence and shall not be subject to administrative review under~~
 220 ~~chapter 120.~~

221 (e) After removal of the designation of the Florida Keys
 222 as an area of critical state concern, the state land planning
 223 agency shall review proposed local comprehensive plans, and any
 224 amendments to existing comprehensive plans, which are applicable

225 to the Florida Keys Area, the boundaries of which were described
 226 in chapter 28-29, Florida Administrative Code, as of January 1,
 227 2006, for compliance with ~~subparagraphs 1. and 2., in addition~~
 228 ~~to reviewing proposed local comprehensive plans and amendments~~
 229 ~~for compliance~~ as defined in s. 163.3184. All procedures and
 230 penalties described in s. 163.3184 apply to the review conducted
 231 pursuant to this paragraph.

232 ~~1. Adoption of construction schedules for wastewater~~
 233 ~~facilities improvements in the annually adopted capital~~
 234 ~~improvements element and adoption of standards for the~~
 235 ~~construction of wastewater treatment facilities which meet or~~
 236 ~~exceed the criteria of chapter 99-395, Laws of Florida.~~

237 ~~2. Adoption of goals, objectives, and policies to protect~~
 238 ~~public safety and welfare in the event of a natural disaster by~~
 239 ~~maintaining a hurricane evacuation clearance time for permanent~~
 240 ~~residents of no more than 24 hours. The hurricane evacuation~~
 241 ~~clearance time shall be determined by a hurricane evacuation~~
 242 ~~study conducted in accordance with a professionally accepted~~
 243 ~~methodology and approved by the state land planning agency.~~

244 (f) The Administration Commission may adopt rules or
 245 revise existing rules as necessary to administer this
 246 subsection.

247 (7) PRINCIPLES FOR GUIDING DEVELOPMENT.—State, regional,
 248 and local agencies and units of government in the Florida Keys
 249 Area shall coordinate their plans and conduct their programs and
 250 regulatory activities consistent with the principles for guiding
 251 development as specified ~~set forth~~ in chapter 27F-8, Florida
 252 Administrative Code, as amended effective August 23, 1984, which

253 ~~chapter~~ is hereby adopted and incorporated herein by reference.
 254 For the purposes of reviewing the consistency of the adopted
 255 plan, or any amendments to that plan, with the principles for
 256 guiding development, and any amendments to the principles, the
 257 principles shall be construed as a whole and ~~no~~ specific
 258 provisions may not ~~provision shall~~ be construed or applied in
 259 isolation from the other provisions. However, the principles for
 260 guiding development ~~as set forth in chapter 27F-8, Florida~~
 261 ~~Administrative Code, as amended effective August 23, 1984,~~ are
 262 repealed 18 months from July 1, 1986. After repeal, ~~the~~
 263 ~~following shall be the principles with which~~ any plan amendments
 264 must be consistent with the following principles:

265 (a) Strengthening ~~To strengthen~~ local government
 266 capabilities for managing land use and development so that local
 267 government is able to achieve these objectives without
 268 continuing the continuation of the area of critical state
 269 concern designation.

270 (b) Protecting ~~To protect~~ shoreline and marine resources,
 271 including mangroves, coral reef formations, seagrass beds,
 272 wetlands, fish and wildlife, and their habitat.

273 (c) Protecting ~~To protect~~ upland resources, tropical
 274 biological communities, freshwater wetlands, native tropical
 275 vegetation (for example, hardwood hammocks and pinelands), dune
 276 ridges and beaches, wildlife, and their habitat.

277 (d) Ensuring ~~To ensure~~ the maximum well-being of the
 278 Florida Keys and its citizens through sound economic
 279 development.

280 (e) Limiting ~~To limit~~ the adverse impacts of development

281 on the quality of water throughout the Florida Keys.

282 (f) Enhancing ~~To enhance~~ natural scenic resources,
 283 promoting ~~promote~~ the aesthetic benefits of the natural
 284 environment, and ensuring ~~ensure~~ that development is compatible
 285 with the unique historic character of the Florida Keys.

286 (g) Protecting ~~To protect~~ the historical heritage of the
 287 Florida Keys.

288 (h) Protecting ~~To protect~~ the value, efficiency, cost-
 289 effectiveness, and amortized life of existing and proposed major
 290 public investments, including:

- 291 1. The Florida Keys Aqueduct and water supply facilities;
- 292 2. Sewage collection, treatment, and disposal facilities;
- 293 3. Solid waste collection, treatment, and disposal
 294 facilities;
- 295 4. Key West Naval Air Station and other military
 296 facilities;
- 297 5. Transportation facilities;
- 298 6. Federal parks, wildlife refuges, and marine
 299 sanctuaries;
- 300 7. State parks, recreation facilities, aquatic preserves,
 301 and other publicly owned properties;
- 302 8. City electric service and the Florida Keys Electric Co-
 303 op; and
- 304 9. Other utilities, as appropriate.

305 (i) Protecting and improving water quality by providing
 306 for the construction, operation, maintenance, and replacement of
 307 stormwater management facilities; central sewage collection;
 308 treatment and disposal facilities; and the installation and

309 proper operation and maintenance of onsite sewage treatment and
 310 disposal systems.

311 (j) Ensuring the improvement of nearshore water quality by
 312 requiring the construction and operation of wastewater
 313 management facilities that meet the requirements of s.
 314 381.0065(4)(l) and s. 403.086(10), as applicable, and by
 315 directing growth to areas served by central wastewater treatment
 316 facilities through permit allocation systems.

317 (k)-(i) Limiting ~~To limit~~ the adverse impacts of public
 318 investments on the environmental resources of the Florida Keys.

319 (l)-(j) Making ~~To make~~ available adequate affordable
 320 housing for all sectors of the population of the Florida Keys.

321 (m)-(k) Providing ~~To provide~~ adequate alternatives for the
 322 protection of public safety and welfare in the event of a
 323 natural or manmade disaster and for a postdisaster
 324 reconstruction plan.

325 (n)-(l) Protecting ~~To protect~~ the public health, safety,
 326 and welfare of the citizens of the Florida Keys and maintain the
 327 Florida Keys as a unique Florida resource.

328 (9) MODIFICATION TO PLANS AND REGULATIONS.—

329 (a) Any land development regulation or element of a local
 330 comprehensive plan in the Florida Keys Area may be enacted,
 331 amended, or rescinded by a local government, but the enactment,
 332 amendment, or rescission becomes ~~shall become~~ effective only
 333 upon ~~the~~ approval ~~thereof~~ by the state land planning agency. The
 334 state land planning agency shall review the proposed change to
 335 determine if it is in compliance with the principles for guiding
 336 development specified ~~set forth~~ in chapter 27F-8, Florida

337 Administrative Code, as amended effective August 23, 1984, and
 338 must ~~shall either~~ approve or reject the requested changes within
 339 60 days after ~~of~~ receipt ~~thereof~~. Amendments to local
 340 comprehensive plans in the Florida Keys Area must also be
 341 reviewed for compliance with the following:

342 1. Construction schedules and detailed capital financing
 343 plans for wastewater management improvements in the annually
 344 adopted capital improvements element, and standards for the
 345 construction of wastewater treatment and disposal facilities or
 346 collection systems that meet or exceed the criteria in s.
 347 403.086(10) for wastewater treatment and disposal facilities or
 348 s. 381.0065(4)(1) for onsite sewage treatment and disposal
 349 systems.

350 2. Goals, objectives, and policies to protect public
 351 safety and welfare in the event of a natural disaster by
 352 maintaining a hurricane evacuation clearance time for permanent
 353 residents of no more than 24 hours. The hurricane evacuation
 354 clearance time shall be determined by a hurricane evacuation
 355 study conducted in accordance with a professionally accepted
 356 methodology and approved by the state land planning agency.

357 (b) Further, The state land planning agency, after
 358 consulting with the appropriate local government, may, no more
 359 ~~often~~ than once per ~~a~~ year, recommend to the Administration
 360 Commission the enactment, amendment, or rescission of a land
 361 development regulation or element of a local comprehensive plan.
 362 Within 45 days following the receipt of such recommendation ~~by~~
 363 ~~the state land planning agency,~~ the commission shall reject the
 364 recommendation, or accept it with or without modification and

365 adopt it, by rule, including any changes. ~~Any~~ Such local
 366 development regulation or plan must ~~shall~~ be in compliance with
 367 the principles for guiding development.

368 Section 3. Paragraph (1) of subsection (4) of section
 369 381.0065, Florida Statutes, is amended to read:

370 381.0065 Onsite sewage treatment and disposal systems;
 371 regulation.—

372 (4) PERMITS; INSTALLATION; AND CONDITIONS.—A person may
 373 not construct, repair, modify, abandon, or operate an onsite
 374 sewage treatment and disposal system without first obtaining a
 375 permit approved by the department. The department may issue
 376 permits to carry out this section, but shall not make the
 377 issuance of such permits contingent upon prior approval by the
 378 Department of Environmental Protection, except that the issuance
 379 of a permit for work seaward of the coastal construction control
 380 line established under s. 161.053 shall be contingent upon
 381 receipt of any required coastal construction control line permit
 382 from the Department of Environmental Protection. A construction
 383 permit is valid for 18 months from the issuance date and may be
 384 extended by the department for one 90-day period under rules
 385 adopted by the department. A repair permit is valid for 90 days
 386 following ~~from~~ the date of issuance. An operating permit must be
 387 obtained prior to the use of any aerobic treatment unit or if
 388 the establishment generates commercial waste. Buildings or
 389 establishments that use an aerobic treatment unit or generate
 390 commercial waste shall be inspected by the department at least
 391 annually to assure compliance with the terms of the operating
 392 permit. The operating permit for a commercial wastewater system

393 is valid for 1 year from the date of issuance and must be
 394 renewed annually. The operating permit for an aerobic treatment
 395 unit is valid for 2 years from the date of issuance and must be
 396 renewed every 2 years. If all information pertaining to the
 397 siting, location, and installation conditions or repair of an
 398 onsite sewage treatment and disposal system remains the same, a
 399 construction or repair permit for the onsite sewage treatment
 400 and disposal system may be transferred to another person, if the
 401 transferee files, within 60 days after the transfer of
 402 ownership, an amended application providing all corrected
 403 information and proof of ownership of the property. There is no
 404 fee associated with the processing of this supplemental
 405 information. A person may not contract to construct, modify,
 406 alter, repair, service, abandon, or maintain any portion of an
 407 onsite sewage treatment and disposal system without being
 408 registered under part III of chapter 489. A property owner who
 409 personally performs construction, maintenance, or repairs to a
 410 system serving his or her own owner-occupied single-family
 411 residence is exempt from registration requirements for
 412 performing such construction, maintenance, or repairs on that
 413 residence, but is subject to all permitting requirements. A
 414 municipality or political subdivision of the state may not issue
 415 a building or plumbing permit for any building that requires the
 416 use of an onsite sewage treatment and disposal system unless the
 417 owner or builder has received a construction permit for such
 418 system from the department. A building or structure may not be
 419 occupied and a municipality, political subdivision, or any state
 420 or federal agency may not authorize occupancy until the

421 department approves the final installation of the onsite sewage
 422 treatment and disposal system. A municipality or political
 423 subdivision of the state may not approve any change in occupancy
 424 or tenancy of a building that uses an onsite sewage treatment
 425 and disposal system until the department has reviewed the use of
 426 the system with the proposed change, approved the change, and
 427 amended the operating permit.

428 (a) Subdivisions and lots in which each lot has a minimum
 429 area of at least one-half acre and either a minimum dimension of
 430 100 feet or a mean of at least 100 feet of the side bordering
 431 the street and the distance formed by a line parallel to the
 432 side bordering the street drawn between the two most distant
 433 points of the remainder of the lot may be developed with a water
 434 system regulated under s. 381.0062 and onsite sewage treatment
 435 and disposal systems, provided the projected daily sewage flow
 436 does not exceed an average of 1,500 gallons per acre per day,
 437 and provided satisfactory drinking water can be obtained and all
 438 distance and setback, soil condition, water table elevation, and
 439 other related requirements of this section and rules adopted
 440 under this section can be met.

441 (b) Subdivisions and lots using a public water system as
 442 defined in s. 403.852 may use onsite sewage treatment and
 443 disposal systems, provided there are no more than four lots per
 444 acre, provided the projected daily sewage flow does not exceed
 445 an average of 2,500 gallons per acre per day, and provided that
 446 all distance and setback, soil condition, water table elevation,
 447 and other related requirements that are generally applicable to
 448 the use of onsite sewage treatment and disposal systems are met.

449 (c) Notwithstanding paragraphs (a) and (b), for
 450 subdivisions platted of record on or before October 1, 1991,
 451 when a developer or other appropriate entity has previously made
 452 or makes provisions, including financial assurances or other
 453 commitments, acceptable to the Department of Health, that a
 454 central water system will be installed by a regulated public
 455 utility based on a density formula, private potable wells may be
 456 used with onsite sewage treatment and disposal systems until the
 457 agreed-upon densities are reached. In a subdivision regulated by
 458 this paragraph, the average daily sewage flow may not exceed
 459 2,500 gallons per acre per day. This section does not affect the
 460 validity of existing prior agreements. After October 1, 1991,
 461 the exception provided under this paragraph is not available to
 462 a developer or other appropriate entity.

463 (d) Paragraphs (a) and (b) do not apply to any proposed
 464 residential subdivision with more than 50 lots or to any
 465 proposed commercial subdivision with more than 5 lots where a
 466 publicly owned or investor-owned sewerage system is available.
 467 It is the intent of this paragraph not to allow development of
 468 additional proposed subdivisions in order to evade the
 469 requirements of this paragraph.

470 (e) Onsite sewage treatment and disposal systems must not
 471 be placed closer than:

- 472 1. Seventy-five feet from a private potable well.
- 473 2. Two hundred feet from a public potable well serving a
 474 residential or nonresidential establishment having a total
 475 sewage flow of greater than 2,000 gallons per day.
- 476 3. One hundred feet from a public potable well serving a

477 residential or nonresidential establishment having a total
 478 sewage flow of less than or equal to 2,000 gallons per day.

479 4. Fifty feet from any nonpotable well.

480 5. Ten feet from any storm sewer pipe, to the maximum
 481 extent possible, but in no instance shall the setback be less
 482 than 5 feet.

483 6. Seventy-five feet from the mean high-water line of a
 484 tidally influenced surface water body.

485 7. Seventy-five feet from the mean annual flood line of a
 486 permanent nontidal surface water body.

487 8. Fifteen feet from the design high-water line of
 488 retention areas, detention areas, or swales designed to contain
 489 standing or flowing water for less than 72 hours after a
 490 rainfall or the design high-water level of normally dry drainage
 491 ditches or normally dry individual lot stormwater retention
 492 areas.

493 (f) Except as provided under paragraphs (e) and (t), no
 494 limitations shall be imposed by rule, relating to the distance
 495 between an onsite disposal system and any area that either
 496 permanently or temporarily has visible surface water.

497 (g) All provisions of this section and rules adopted under
 498 this section relating to soil condition, water table elevation,
 499 distance, and other setback requirements must be equally applied
 500 to all lots, with the following exceptions:

501 1. Any residential lot that was platted and recorded on or
 502 after January 1, 1972, or that is part of a residential
 503 subdivision that was approved by the appropriate permitting
 504 agency on or after January 1, 1972, and that was eligible for an

505 onsite sewage treatment and disposal system construction permit
 506 on the date of such platting and recording or approval shall be
 507 eligible for an onsite sewage treatment and disposal system
 508 construction permit, regardless of when the application for a
 509 permit is made. If rules in effect at the time the permit
 510 application is filed cannot be met, residential lots platted and
 511 recorded or approved on or after January 1, 1972, shall, to the
 512 maximum extent possible, comply with the rules in effect at the
 513 time the permit application is filed. At a minimum, however,
 514 those residential lots platted and recorded or approved on or
 515 after January 1, 1972, but before January 1, 1983, shall comply
 516 with those rules in effect on January 1, 1983, and those
 517 residential lots platted and recorded or approved on or after
 518 January 1, 1983, shall comply with those rules in effect at the
 519 time of such platting and recording or approval. In determining
 520 the maximum extent of compliance with current rules that is
 521 possible, the department shall allow structures and
 522 appurtenances thereto which were authorized at the time such
 523 lots were platted and recorded or approved.

524 2. Lots platted before 1972 are subject to a 50-foot
 525 minimum surface water setback and are not subject to lot size
 526 requirements. The projected daily flow for onsite sewage
 527 treatment and disposal systems for lots platted before 1972 may
 528 not exceed:

529 a. Two thousand five hundred gallons per acre per day for
 530 lots served by public water systems as defined in s. 403.852.

531 b. One thousand five hundred gallons per acre per day for
 532 lots served by water systems regulated under s. 381.0062.

533 (h)1. The department may grant variances in hardship cases
 534 which may be less restrictive than the provisions specified in
 535 this section. If a variance is granted and the onsite sewage
 536 treatment and disposal system construction permit has been
 537 issued, the variance may be transferred with the system
 538 construction permit, if the transferee files, within 60 days
 539 after the transfer of ownership, an amended construction permit
 540 application providing all corrected information and proof of
 541 ownership of the property and if the same variance would have
 542 been required for the new owner of the property as was
 543 originally granted to the original applicant for the variance.
 544 There is no fee associated with the processing of this
 545 supplemental information. A variance may not be granted under
 546 this section until the department is satisfied that:

547 a. The hardship was not caused intentionally by the action
 548 of the applicant;

549 b. No reasonable alternative, taking into consideration
 550 factors such as cost, exists for the treatment of the sewage;
 551 and

552 c. The discharge from the onsite sewage treatment and
 553 disposal system will not adversely affect the health of the
 554 applicant or the public or significantly degrade the groundwater
 555 or surface waters.

556
 557 Where soil conditions, water table elevation, and setback
 558 provisions are determined by the department to be satisfactory,
 559 special consideration must be given to those lots platted before
 560 1972.

561 2. The department shall appoint and staff a variance
 562 review and advisory committee, which shall meet monthly to
 563 recommend agency action on variance requests. The committee
 564 shall make its recommendations on variance requests at the
 565 meeting in which the application is scheduled for consideration,
 566 except for an extraordinary change in circumstances, the receipt
 567 of new information that raises new issues, or when the applicant
 568 requests an extension. The committee shall consider the criteria
 569 in subparagraph 1. in its recommended agency action on variance
 570 requests and shall also strive to allow property owners the full
 571 use of their land where possible. The committee consists of the
 572 following:

573 a. The Division Director for Environmental Health of the
 574 department or his or her designee.

575 b. A representative from the county health departments.

576 c. A representative from the home building industry
 577 recommended by the Florida Home Builders Association.

578 d. A representative from the septic tank industry
 579 recommended by the Florida Onsite Wastewater Association.

580 e. A representative from the Department of Environmental
 581 Protection.

582 f. A representative from the real estate industry who is
 583 also a developer in this state who develops lots using onsite
 584 sewage treatment and disposal systems, recommended by the
 585 Florida Association of Realtors.

586 g. A representative from the engineering profession
 587 recommended by the Florida Engineering Society.

588

589 Members shall be appointed for a term of 3 years, with such
 590 appointments being staggered so that the terms of no more than
 591 two members expire in any one year. Members shall serve without
 592 remuneration, but if requested, shall be reimbursed for per diem
 593 and travel expenses as provided in s. 112.061.

594 (i) A construction permit may not be issued for an onsite
 595 sewage treatment and disposal system in any area zoned or used
 596 for industrial or manufacturing purposes, or its equivalent,
 597 where a publicly owned or investor-owned sewage treatment system
 598 is available, or where a likelihood exists that the system will
 599 receive toxic, hazardous, or industrial waste. An existing
 600 onsite sewage treatment and disposal system may be repaired if a
 601 publicly owned or investor-owned sewerage system is not
 602 available within 500 feet of the building sewer stub-out and if
 603 system construction and operation standards can be met. This
 604 paragraph does not require publicly owned or investor-owned
 605 sewerage treatment systems to accept anything other than
 606 domestic wastewater.

607 1. A building located in an area zoned or used for
 608 industrial or manufacturing purposes, or its equivalent, when
 609 such building is served by an onsite sewage treatment and
 610 disposal system, must not be occupied until the owner or tenant
 611 has obtained written approval from the department. The
 612 department shall not grant approval when the proposed use of the
 613 system is to dispose of toxic, hazardous, or industrial
 614 wastewater or toxic or hazardous chemicals.

615 2. Each person who owns or operates a business or facility
 616 in an area zoned or used for industrial or manufacturing

617 | purposes, or its equivalent, or who owns or operates a business
 618 | that has the potential to generate toxic, hazardous, or
 619 | industrial wastewater or toxic or hazardous chemicals, and uses
 620 | an onsite sewage treatment and disposal system that is installed
 621 | on or after July 5, 1989, must obtain an annual system operating
 622 | permit from the department. A person who owns or operates a
 623 | business that uses an onsite sewage treatment and disposal
 624 | system that was installed and approved before July 5, 1989, need
 625 | not obtain a system operating permit. However, upon change of
 626 | ownership or tenancy, the new owner or operator must notify the
 627 | department of the change, and the new owner or operator must
 628 | obtain an annual system operating permit, regardless of the date
 629 | that the system was installed or approved.

630 | 3. The department shall periodically review and evaluate
 631 | the continued use of onsite sewage treatment and disposal
 632 | systems in areas zoned or used for industrial or manufacturing
 633 | purposes, or its equivalent, and may require the collection and
 634 | analyses of samples from within and around such systems. If the
 635 | department finds that toxic or hazardous chemicals or toxic,
 636 | hazardous, or industrial wastewater have been or are being
 637 | disposed of through an onsite sewage treatment and disposal
 638 | system, the department shall initiate enforcement actions
 639 | against the owner or tenant to ensure adequate cleanup,
 640 | treatment, and disposal.

641 | (j) An onsite sewage treatment and disposal system for a
 642 | single-family residence that is designed by a professional
 643 | engineer registered in the state and certified by such engineer
 644 | as complying with performance criteria adopted by the department

645 must be approved by the department subject to the following:

646 1. The performance criteria applicable to engineer-
 647 designed systems must be limited to those necessary to ensure
 648 that such systems do not adversely affect the public health or
 649 significantly degrade the groundwater or surface water. Such
 650 performance criteria shall include consideration of the quality
 651 of system effluent, the proposed total sewage flow per acre,
 652 wastewater treatment capabilities of the natural or replaced
 653 soil, water quality classification of the potential surface-
 654 water-receiving body, and the structural and maintenance
 655 viability of the system for the treatment of domestic
 656 wastewater. However, performance criteria shall address only the
 657 performance of a system and not a system's design.

658 2. The technical review and advisory panel shall assist
 659 the department in the development of performance criteria
 660 applicable to engineer-designed systems.

661 3. A person electing to utilize an engineer-designed
 662 system shall, upon completion of the system design, submit such
 663 design, certified by a registered professional engineer, to the
 664 county health department. The county health department may
 665 utilize an outside consultant to review the engineer-designed
 666 system, with the actual cost of such review to be borne by the
 667 applicant. Within 5 working days after receiving an engineer-
 668 designed system permit application, the county health department
 669 shall request additional information if the application is not
 670 complete. Within 15 working days after receiving a complete
 671 application for an engineer-designed system, the county health
 672 department either shall issue the permit or, if it determines

673 that the system does not comply with the performance criteria,
 674 shall notify the applicant of that determination and refer the
 675 application to the department for a determination as to whether
 676 the system should be approved, disapproved, or approved with
 677 modification. The department engineer's determination shall
 678 prevail over the action of the county health department. The
 679 applicant shall be notified in writing of the department's
 680 determination and of the applicant's rights to pursue a variance
 681 or seek review under the provisions of chapter 120.

682 4. The owner of an engineer-designed performance-based
 683 system must maintain a current maintenance service agreement
 684 with a maintenance entity permitted by the department. The
 685 maintenance entity shall obtain a biennial system operating
 686 permit from the department for each system under service
 687 contract. The department shall inspect the system at least
 688 annually, or on such periodic basis as the fee collected
 689 permits, and may collect system-effluent samples if appropriate
 690 to determine compliance with the performance criteria. The fee
 691 for the biennial operating permit shall be collected beginning
 692 with the second year of system operation. The maintenance entity
 693 shall inspect each system at least twice each year and shall
 694 report quarterly to the department on the number of systems
 695 inspected and serviced.

696 5. If an engineer-designed system fails to properly
 697 function or fails to meet performance standards, the system
 698 shall be re-engineered, if necessary, to bring the system into
 699 compliance with the provisions of this section.

700 (k) An innovative system may be approved in conjunction

701 with an engineer-designed site-specific system which is
 702 certified by the engineer to meet the performance-based criteria
 703 adopted by the department.

704 (1) For the Florida Keys, the department shall adopt a
 705 special rule for the construction, installation, modification,
 706 operation, repair, maintenance, and performance of onsite sewage
 707 treatment and disposal systems which considers the unique soil
 708 conditions and ~~which considers~~ water table elevations,
 709 densities, and setback requirements. On lots where a setback
 710 distance of 75 feet from surface waters, saltmarsh, and
 711 buttonwood association habitat areas cannot be met, an injection
 712 well, approved and permitted by the department, may be used for
 713 disposal of effluent from onsite sewage treatment and disposal
 714 systems. The following additional requirements apply to onsite
 715 sewage treatment and disposal systems in Monroe County:

716 1. The county, each municipality, and those special
 717 districts established for the purpose of the collection,
 718 transmission, treatment, or disposal of sewage shall ensure, in
 719 accordance with the specific schedules adopted by the
 720 Administration Commission under s. 380.0552, the completion of
 721 onsite sewage treatment and disposal system upgrades to meet the
 722 requirements of this paragraph.

723 2. Onsite sewage treatment and disposal systems must cease
 724 discharge by December 31, 2015, or must comply with department
 725 rules and provide the level of treatment which, on a permitted
 726 annual average basis, produces an effluent that contains no more
 727 than the following concentrations:

728 a. Biochemical Oxygen Demand (CBOD5) of 10 mg/l.

- 729 b. Suspended Solids of 10 mg/l.
- 730 c. Total Nitrogen, expressed as N, of 10 mg/l.
- 731 d. Total Phosphorus, expressed as P, of 1 mg/l.

732

733 In addition, onsite sewage treatment and disposal systems
 734 discharging to an injection well must provide basic disinfection
 735 as defined by department rule.

736 3. On or after July 1, 2010, all new, modified, and
 737 repaired onsite sewage treatment and disposal systems must
 738 provide the level of treatment described in subparagraph 2.
 739 However, in areas scheduled to be served by central sewer by
 740 December 31, 2015, if the property owner has paid a connection
 741 fee or assessment for connection to the central sewer system, an
 742 onsite sewage treatment and disposal system may be repaired to
 743 the following minimum standards:

- 744 a. The existing tanks must be pumped and inspected and
 745 certified as being watertight and free of defects in accordance
 746 with department rule; and
- 747 b. A sand-lined drainfield or injection well in accordance
 748 with department rule must be installed.

749 4. Onsite sewage treatment and disposal systems must be
 750 monitored for total nitrogen and total phosphorus concentrations
 751 as required by department rule.

752 5. The department shall enforce proper installation,
 753 operation, and maintenance of onsite sewage treatment and
 754 disposal systems pursuant to this chapter, including ensuring
 755 that the appropriate level of treatment described in
 756 subparagraph 2. is met.

757 6. The county, each municipality, and those special
 758 districts established for the purpose of collection,
 759 transmission, treatment, or disposal of sewage may require
 760 connecting onsite sewage treatment and disposal systems to a
 761 central sewer system within 30 days after notice of availability
 762 of service.

763 (m) No product sold in the state for use in onsite sewage
 764 treatment and disposal systems may contain any substance in
 765 concentrations or amounts that would interfere with or prevent
 766 the successful operation of such system, or that would cause
 767 discharges from such systems to violate applicable water quality
 768 standards. The department shall publish criteria for products
 769 known or expected to meet the conditions of this paragraph. In
 770 the event a product does not meet such criteria, such product
 771 may be sold if the manufacturer satisfactorily demonstrates to
 772 the department that the conditions of this paragraph are met.

773 (n) Evaluations for determining the seasonal high-water
 774 table elevations or the suitability of soils for the use of a
 775 new onsite sewage treatment and disposal system shall be
 776 performed by department personnel, professional engineers
 777 registered in the state, or such other persons with expertise,
 778 as defined by rule, in making such evaluations. Evaluations for
 779 determining mean annual flood lines shall be performed by those
 780 persons identified in paragraph (2)(i). The department shall
 781 accept evaluations submitted by professional engineers and such
 782 other persons as meet the expertise established by this section
 783 or by rule unless the department has a reasonable scientific
 784 basis for questioning the accuracy or completeness of the

785 evaluation.

786 (o) The department shall appoint a research review and
 787 advisory committee, which shall meet at least semiannually. The
 788 committee shall advise the department on directions for new
 789 research, review and rank proposals for research contracts, and
 790 review draft research reports and make comments. The committee
 791 is comprised of:

- 792 1. A representative of the Division of Environmental
 793 Health of the Department of Health.
- 794 2. A representative from the septic tank industry.
- 795 3. A representative from the home building industry.
- 796 4. A representative from an environmental interest group.
- 797 5. A representative from the State University System, from
 798 a department knowledgeable about onsite sewage treatment and
 799 disposal systems.
- 800 6. A professional engineer registered in this state who
 801 has work experience in onsite sewage treatment and disposal
 802 systems.
- 803 7. A representative from local government who is
 804 knowledgeable about domestic wastewater treatment.
- 805 8. A representative from the real estate profession.
- 806 9. A representative from the restaurant industry.
- 807 10. A consumer.

808
 809 Members shall be appointed for a term of 3 years, with the
 810 appointments being staggered so that the terms of no more than
 811 four members expire in any one year. Members shall serve without
 812 remuneration, but are entitled to reimbursement for per diem and

813 travel expenses as provided in s. 112.061.

814 (p) An application for an onsite sewage treatment and
 815 disposal system permit shall be completed in full, signed by the
 816 owner or the owner's authorized representative, or by a
 817 contractor licensed under chapter 489, and shall be accompanied
 818 by all required exhibits and fees. No specific documentation of
 819 property ownership shall be required as a prerequisite to the
 820 review of an application or the issuance of a permit. The
 821 issuance of a permit does not constitute determination by the
 822 department of property ownership.

823 (q) The department may not require any form of subdivision
 824 analysis of property by an owner, developer, or subdivider prior
 825 to submission of an application for an onsite sewage treatment
 826 and disposal system.

827 (r) Nothing in this section limits the power of a
 828 municipality or county to enforce other laws for the protection
 829 of the public health and safety.

830 (s) In the siting of onsite sewage treatment and disposal
 831 systems, including drainfields, shoulders, and slopes, guttering
 832 shall not be required on single-family residential dwelling
 833 units for systems located greater than 5 feet from the roof drip
 834 line of the house. If guttering is used on residential dwelling
 835 units, the downspouts shall be directed away from the
 836 drainfield.

837 (t) Notwithstanding the provisions of subparagraph (g)1.,
 838 onsite sewage treatment and disposal systems located in
 839 floodways of the Suwannee and Aucilla Rivers must adhere to the
 840 following requirements:

841 1. The absorption surface of the drainfield shall not be
 842 subject to flooding based on 10-year flood elevations. Provided,
 843 however, for lots or parcels created by the subdivision of land
 844 in accordance with applicable local government regulations prior
 845 to January 17, 1990, if an applicant cannot construct a
 846 drainfield system with the absorption surface of the drainfield
 847 at an elevation equal to or above 10-year flood elevation, the
 848 department shall issue a permit for an onsite sewage treatment
 849 and disposal system within the 10-year floodplain of rivers,
 850 streams, and other bodies of flowing water if all of the
 851 following criteria are met:

- 852 a. The lot is at least one-half acre in size;
- 853 b. The bottom of the drainfield is at least 36 inches
 854 above the 2-year flood elevation; and
- 855 c. The applicant installs either: a waterless,
 856 incinerating, or organic waste composting toilet and a graywater
 857 system and drainfield in accordance with department rules; an
 858 aerobic treatment unit and drainfield in accordance with
 859 department rules; a system approved by the State Health Office
 860 that is capable of reducing effluent nitrate by at least 50
 861 percent; or a system approved by the county health department
 862 pursuant to department rule other than a system using
 863 alternative drainfield materials. The United States Department
 864 of Agriculture Soil Conservation Service soil maps, State of
 865 Florida Water Management District data, and Federal Emergency
 866 Management Agency Flood Insurance maps are resources that shall
 867 be used to identify flood-prone areas.

868 2. The use of fill or mounding to elevate a drainfield

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869 system out of the 10-year floodplain of rivers, streams, or
 870 other bodies of flowing water shall not be permitted if such a
 871 system lies within a regulatory floodway of the Suwannee and
 872 Aucilla Rivers. In cases where the 10-year flood elevation does
 873 not coincide with the boundaries of the regulatory floodway, the
 874 regulatory floodway will be considered for the purposes of this
 875 subsection to extend at a minimum to the 10-year flood
 876 elevation.

877 (u) The owner of an aerobic treatment unit system shall
 878 maintain a current maintenance service agreement with an aerobic
 879 treatment unit maintenance entity permitted by the department.
 880 The maintenance entity shall obtain a system operating permit
 881 from the department for each aerobic treatment unit under
 882 service contract. The maintenance entity shall inspect each
 883 aerobic treatment unit system at least twice each year and shall
 884 report quarterly to the department on the number of aerobic
 885 treatment unit systems inspected and serviced. The owner shall
 886 allow the department to inspect during reasonable hours each
 887 aerobic treatment unit system at least annually, and such
 888 inspection may include collection and analysis of system-
 889 effluent samples for performance criteria established by rule of
 890 the department.

891 (v) The department may require the submission of detailed
 892 system construction plans that are prepared by a professional
 893 engineer registered in this state. The department shall
 894 establish by rule criteria for determining when such a
 895 submission is required.

896 Section 4. Subsection (10) is added to section 403.086,

897 Florida Statutes, to read:
 898 403.086 Sewage disposal facilities; advanced and secondary
 899 waste treatment.—
 900 (10) The Legislature finds that the discharge of
 901 inadequately treated and managed domestic wastewater from dozens
 902 of small wastewater facilities and thousands of septic tanks and
 903 other onsite systems in the Florida Keys compromises the quality
 904 of the coastal environment, including nearshore and offshore
 905 waters, and threatens the quality of life and local economies
 906 that depend on those resources. The Legislature also finds that
 907 the only practical and cost-effective way to fundamentally
 908 improve wastewater management in the Florida Keys is for the
 909 local governments in Monroe County, including those special
 910 districts established for the purpose of collection,
 911 transmission, treatment, or disposal of sewage, to timely
 912 complete the wastewater or sewage treatment and disposal
 913 facilities initiated under the work program of Administration
 914 Commission rule 28-20, Florida Administrative Code, and the
 915 Monroe County Sanitary Master Wastewater Plan, dated June 2000.
 916 The Legislature therefore declares that the construction and
 917 operation of comprehensive central wastewater systems in
 918 accordance with this subsection is in the public interest. To
 919 give effect to those findings, the requirements of this
 920 subsection apply to all domestic wastewater facilities in Monroe
 921 County, including privately owned facilities, unless otherwise
 922 provided under this subsection.
 923 (a) The discharge of domestic wastewater into surface
 924 waters is prohibited.

925 (b) Monroe County, each municipality, and those special
 926 districts established for the purpose of collection,
 927 transmission, treatment, or disposal of sewage in Monroe County
 928 shall complete the wastewater collection, treatment, and
 929 disposal facilities within its jurisdiction designated as hot
 930 spots in the Monroe County Sanitary Master Wastewater Plan,
 931 dated June 2000, specifically listed in Exhibits 6-1 through 6-3
 932 of Chapter 6 of the plan and mapped in Exhibit F-1 of Appendix F
 933 of the plan. The required facilities and connections, and any
 934 additional facilities or other adjustments required by rules
 935 adopted by the Administration Commission under s. 380.0552, must
 936 be completed by December 31, 2015, pursuant to specific
 937 schedules established by the commission. Domestic wastewater
 938 facilities located outside local government and special district
 939 service areas must meet the treatment and disposal requirements
 940 of this subsection by December 31, 2015.

941 (c) After December 31, 2015, all new or expanded domestic
 942 wastewater discharges must comply with the treatment and
 943 disposal requirements of this subsection and department rules.

944 (d) Wastewater treatment facilities having design
 945 capacities:

946 1. Greater than or equal to 100,000 gallons per day must
 947 provide basic disinfection as defined by department rule and the
 948 level of treatment which, on a permitted annual average basis,
 949 produces an effluent that contains no more than the following
 950 concentrations:

- 951 a. Biochemical Oxygen Demand (CBOD5) of 5 mg/l.
- 952 b. Suspended Solids of 5 mg/l.

- 953 | c. Total Nitrogen, expressed as N, of 3 mg/l.
- 954 | d. Total Phosphorus, expressed as P, of 1 mg/l.
- 955 | 2. Less than 100,000 gallons per day must provide basic
- 956 | disinfection as defined by department rule and the level of
- 957 | treatment which, on a permitted annual average basis, produces
- 958 | an effluent that contains no more than the following
- 959 | concentrations:
- 960 | a. Biochemical Oxygen Demand (CBOD5) of 10 mg/l.
- 961 | b. Suspended Solids of 10 mg/l.
- 962 | c. Total Nitrogen, expressed as N, of 10 mg/l.
- 963 | d. Total Phosphorus, expressed as P, of 1 mg/l.
- 964 | (e) Class V injection wells, as defined by department or
- 965 | Department of Health rule, must meet the following requirements
- 966 | and otherwise comply with department or Department of Health
- 967 | rules, as applicable:
- 968 | 1. If the design capacity of the facility is less than 1
- 969 | million gallons per day, the injection well must be at least 90
- 970 | feet deep and cased to a minimum depth of 60 feet or to such
- 971 | greater cased depth and total well depth as may be required by
- 972 | department rule.
- 973 | 2. Except as provided in subparagraph 3. for backup wells,
- 974 | if the design capacity of the facility is equal to or greater
- 975 | than 1 million gallons per day, each primary injection well must
- 976 | be cased to a minimum depth of 2,000 feet or to such greater
- 977 | depth as may be required by department rule.
- 978 | 3. If an injection well is used as a backup to a primary
- 979 | injection well, the following conditions apply:
- 980 | a. The backup well may be used only when the primary

981 injection well is out of service because of equipment failure,
 982 power failure, or the need for mechanical integrity testing or
 983 repair;

984 b. The backup well may not be used for more than a total
 985 of 500 hours during any 5-year period unless specifically
 986 authorized in writing by the department;

987 c. The backup well must be at least 90 feet deep and cased
 988 to a minimum depth of 60 feet, or to such greater cased depth
 989 and total well depth as may be required by department rule; and

990 d. Fluid injected into the backup well must meet the
 991 requirements of paragraph (d).

992 (f) The requirements of paragraphs (d) and (e) do not
 993 apply to:

994 1. Class I injection wells as defined by department rule,
 995 including any authorized mechanical integrity tests;

996 2. Authorized mechanical integrity tests associated with
 997 Class V wells as defined by department rule; or

998 3. The following types of reuse systems authorized by
 999 department rule:

1000 a. Slow-rate land application systems;

1001 b. Industrial uses of reclaimed water; and

1002 c. Use of reclaimed water for toilet flushing, fire
 1003 protection, vehicle washing, construction dust control, and
 1004 decorative water features.

1005

1006 However, disposal systems serving as backups to reuse systems
 1007 must comply with the other provisions of this subsection.

1008 (g) For wastewater treatment facilities in operation as of

1009 July 1, 2010, which are located within areas to be served by
 1010 Monroe County, municipalities in Monroe County, or those special
 1011 districts established for the purpose of collection,
 1012 transmission, treatment, or disposal of sewage but which are
 1013 owned by other entities, the requirements of paragraphs (d) and
 1014 (e) do not apply until January 1, 2016. Wastewater operating
 1015 permits issued pursuant to this chapter and in effect for these
 1016 facilities as of June 30, 2010, are extended until December 31,
 1017 2015, or until the facility is connected to a local government
 1018 central wastewater system, whichever occurs first. Wastewater
 1019 treatment facilities in operation after December 31, 2015, must
 1020 comply with the treatment and disposal requirements of this
 1021 subsection and department rules.

1022 (h) If it is demonstrated that a discharge, even if the
 1023 discharge is otherwise in compliance with this subsection, will
 1024 cause or contribute to a violation of state water quality
 1025 standards, the department shall:

- 1026 1. Require more stringent effluent limitations;
- 1027 2. Order the point or method of discharge changed;
- 1028 3. Limit the duration or volume of the discharge; or
- 1029 4. Prohibit the discharge.

1030 (i) All sewage treatment facilities must monitor effluent
 1031 for total nitrogen and total phosphorus concentration as
 1032 required by department rule.

1033 (j) The department shall require the levels of operator
 1034 certification and staffing necessary to ensure proper operation
 1035 and maintenance of sewage facilities.

1036 (k) The department may adopt rules necessary to carry out

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1037 this subsection.

1038 (1) The county, each municipality, and those special
 1039 districts established for the purpose of collection,
 1040 transmission, treatment, or disposal of sewage may require
 1041 connecting wastewater treatment facilities owned by other
 1042 entities to a central sewer system within 30 days after notice
 1043 of availability of service.

1044 Section 5. Section 4 of chapter 99-395, Laws of Florida,
 1045 as amended by section 6 of chapter 2006-223, Laws of Florida;
 1046 section 5 of chapter 99-395, Laws of Florida; and section 6 of
 1047 chapter 99-395, Laws of Florida, as amended by section 1 of
 1048 chapter 2001-337 and section 1 of chapter 2004-455, Laws of
 1049 Florida, are repealed.

1050 Section 6. This act shall take effect upon becoming a law.

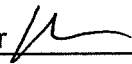

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCSMB for HB 1407, HB 1367 & HB 1605

Water Management

SPONSOR(S): Hays, Holder, Mayfield

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

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.:	Agriculture & Natural Resources Policy Committee		Kliner 	Reese 
1)				
2)				
3)				
4)				
5)				

SUMMARY ANALYSIS

The bill directs county and municipal governments that use state water resources for water supply purposes, in cooperation with the applicable water management district (WMD), to conduct an evaluation of water resources that might reasonably be considered to be a primary source of water and determine if the water resources are adequately protected from sources of pollution and from land uses incompatible with their protection.

The bill amends statutory provisions relating to the make-up of water basin boards. If there are two WMD board members sitting on a water basin board, the pair will rotate the chair/co-chair position on an annual basis. If there is a vacancy on a water basin board, a quorum of total remaining basin board members may transact business until a successor is appointed. Finally, the bill places a Southwest Florida WMD board member on the Manasota Basin Board beginning July 1, 2010.

The bill exempts WMD cooperative funding programs from Chapter 120, F.S., rulemaking requirements unless any portion of an approved program affects the substantial interests of a party. The bill requires a WMD board to acquire specific Legislative authority for acquisition costs in excess of \$50 million and for professional service procurement costs in excess of \$5 million. The bill restricts the issuance of certificates of participation by a WMD for the purchase of land. The bill directs WMD governing boards to conduct reviews for lands for which title is vested in the WMD. The purpose of the review is to determine which lands are no longer needed for conservation and restoration, or are no longer considered environmentally critical or sensitive. Such lands will be made available for purchase so the property can be reentered onto the county ad valorem tax roll of the county in which such land is located.

The bill creates a water management district governing board nominating commission consisting of 9 members, three appointed by the Governor, three appointed by the President of the Senate, and three appointed by the Speaker of the House of Representatives. The Executive Office of the Governor will provide all administrative support for the governing board nominating commission and shall adopt rules necessary to administer this section.

Under the bill, a commissioner is considered a "state officer" for purposes of financial disclosure requirements, may not be a current or former WMD governing board member, may hold public office, is not eligible during his or her term of office and for a period of 2 years thereafter for appointment to any board for which the commission has the authority to make nominations, may be suspended for cause by the person who appointed him or her, and must submit to the Governor three recommended nominees for each district governing board position. Under the bill, a nominee must reside in the territorial jurisdiction of the governing board to which the commission will recommend appointments, and must have significant experience in one or more of the following areas: agriculture, the development industry, local government, government-owned or privately owned water utilities, law, civil engineering, environmental science, hydrology, accounting, or finance. The Governor shall select appointees from the list of recommended nominees for any vacant WMD board position.

The bill appears to have no negative fiscal impact on local governments. At the state government level, there may be costs associated with rulemaking and administrative duties by the Executive Office of the Governor. The bill has an effective date of July 1, 2010.

HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Management of Surface and Ground Waters

State and District

The Florida Department of Environmental Protection (DEP) regulates activities that affect natural systems primarily through the Environmental Resource Permit (ERP) program, implemented jointly by the DEP and the water management districts (WMDs). The ERP program regulates most land (upland, wetland, and other surface water) alterations throughout the state. In addition to the Federal State Programmatic General Permit, the regulatory program also includes implementation of a statewide National Pollutant Discharge Elimination System (NPDES) program. In addition, activities located on or using state-owned sovereign submerged lands also require applicable proprietary authorizations (including Consents of Use, Leases, and Easements).

The comprehensive nature of the state program is broader than the federal regulatory program in that it also regulates alterations of uplands that may affect surface water flows, addresses issues of flooding and stormwater treatment, and protects isolated wetlands¹. The Clean Water Act does not give the federal government regulatory jurisdiction over isolated wetlands, except when such wetlands are adjacent to navigable waters of the United States². The state program is in addition to, not in place of or superseded by, the federal permit programs. Applicants must get all applicable permits and authorizations from both the state and the federal government before beginning work³.

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

¹ Section 373.414(2), F.S., allows the DEP and/or the WMDs to establish size thresholds of isolated wetlands below which "impacts on fish and wildlife and their habitats will not be considered... and shall be based on biological and hydrological evidence that shows the fish and wildlife values of such areas to be minimal." In addition, paragraph (a) of that subsection provides that the DEP and the WMDs must establish criteria for the protection of threatened and endangered species in isolated wetlands regardless of size and land use.

² On January 9, 2001, the United States Supreme Court held that the U.S. Army Corps of Engineers (ACOE) does not have regulatory jurisdiction under the Clean Water Act over isolated, non-navigable, intrastate, wetlands, except when such wetlands are adjacent to navigable waters of the United States. *Solid Waste Agency of Northern Cook County v. U.S. Army Corps of Engineers*, No. 99-1178, 531 U.S. 159 (January 9, 2001).

³ An applicant for a federal dredge and fill permit will apply directly to either the DEP or the applicable WMD using the same form that is used for the state ERP or wetland resource permit. The DEP and the WMD will forward the application to the ACOE for concurrent federal permit processing (which can only be issued after issuance of the applicable state permit that grants or waives water quality certification).

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 Southwest Florida Water Management District⁴.



Operating Agreements between the DEP and the WMDs outline specific responsibilities to each agency for any given application. Under those agreements, the DEP generally reviews and takes actions on applications involving:

- Solid waste, hazardous waste, domestic waste, and industrial waste facilities;
- Mining;
- Power plants, transmission and communication cables and lines, natural gas and petroleum exploration, production, and distribution lines and facilities;
- Docking facilities and attendant structures and dredging that are not part of a larger plan of residential or commercial development;
- Navigational dredging conducted by governmental entities, except when part of a larger project that a WMD has the responsibility to permit;
- Systems serving only one single-family dwelling unit or residential unit not part of a larger common plan of development;
- Systems located in whole or in part seaward of the coastal construction control line;
- Seaports; and
- Smaller, separate water-related activities not part of a larger plan of development (such as boat ramps, mooring buoys, and artificial reefs)

Chapter 373, Florida Statutes, 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 objectives⁵. By statute, each WMD is overseen by a governing board which is appointed by the Governor and confirmed by the Senate⁶.

⁴ 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.

⁵ In 1975, the Legislature proposed a constitutional amendment to authorize WMDs to levy ad valorem property taxes to help fund water resource management efforts. As a result, Article VII, Section 9 of the Florida Constitution authorizes the WMDs to levy ad valorem taxes based on taxable property values within each district's boundaries. The Northwest Florida WMD is limited to a constitutional millage cap of 0.05 mill, while the remaining four WMDs are limited to a maximum of 1.00 mill. In addition to ad valorem, other WMDs revenue sources include the United States Government, the State of Florida, local governments within the district, and other district sources like permit fees and interest earnings on investments.

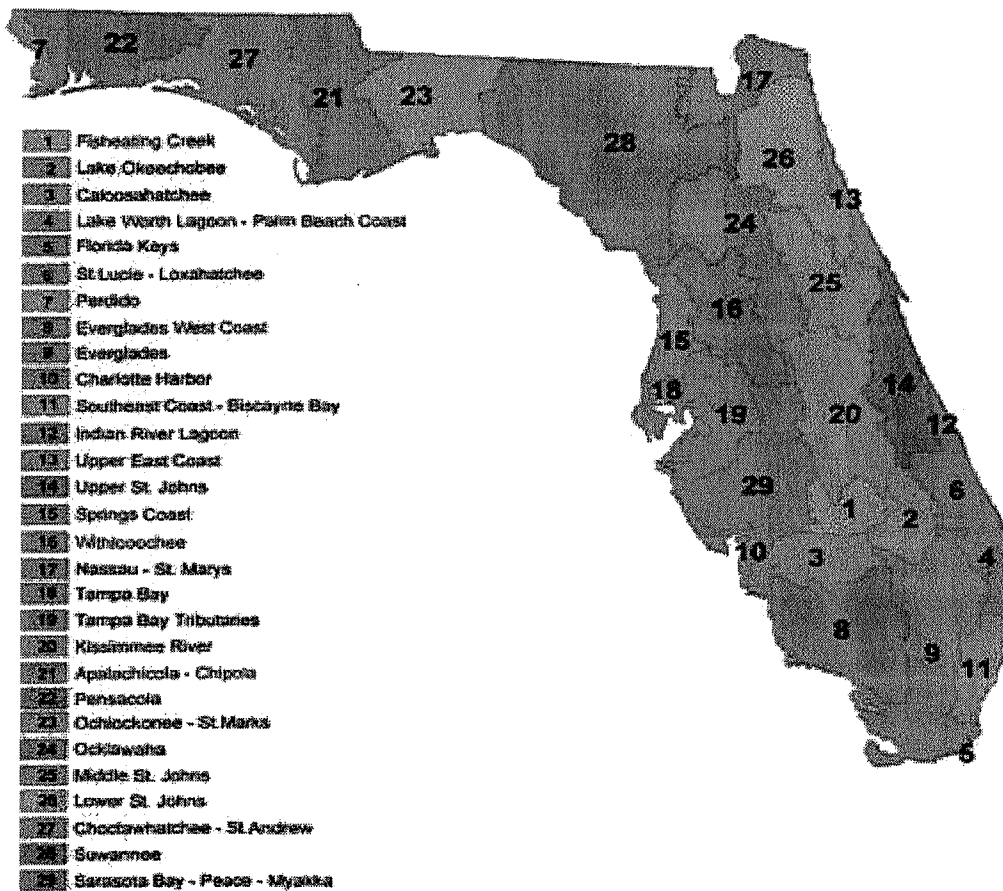
⁶ Each of the WMDs has nine board members, with the exception of the Southwest Florida WMD, which has eleven members.

WMDs have the authority to levy ad valorem (property) taxes to support water management activities. In addition to the authority to issue general obligation bonds, pursuant to s. 373.563, F.S., the WMDs are authorized to issue revenue bonds in accordance with guidelines provided in s. 373.584, F.S.⁷

The DEP and WMDs use a watershed approach in the regulation of natural systems. A watershed is the geographic area through which water flows across the land and drains into a common body of water, whether a stream, river, lake, or ocean. Much of the water comes from rainfall and the stormwater runoff. The quality and quantity of stormwater is affected by all the alterations to the land including agriculture, roadways, urban development, and the activities of people within a watershed. Because the surface water features and stormwater runoff within a watershed ultimately drain to other bodies of water, it is essential to consider these downstream impacts when developing and implementing water quality protection and restoration actions.

Basin Boards

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



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, 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.

⁷ Pursuant to s. 373.584(4)(a), F.S., “bonds” means bonds, debentures, notes, certificates of indebtedness, certificates of participation, mortgage certificates, or other obligations or evidences of indebtedness of any type or character.

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 s. 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 district 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.

Local Governments

In addition to complying with state and WMD ordinances, county and city governments manage natural systems through compliance with Chapter 163, Part II, F.S. (The Local Government Comprehensive Planning and Land Development Regulation Act (or the Growth Management Act, or Act)). The Growth Management Act requires cities and counties to adopt comprehensive plans and authorizes the Department of Community Affairs (DCA), Division of Community Planning, to review comprehensive plans and plan amendments for compliance with the Act and related administrative rules. Other review agencies, including the regional planning councils, WMDs, the Departments of State, Transportation, Environmental Protection, and Agriculture and Consumer Services, and the Florida Fish and Wildlife Conservation Commission also review comprehensive plans and amendments and issue recommended objections to the DCA. With limited exceptions, local governments may amend their comprehensive plans twice per year⁸.

Regarding policy objectives, a comprehensive plan must include a conservation element for “the conservation, use, and protection of natural resources in the area, including air, water, water recharge areas, wetlands, waterwells, estuarine marshes, soils, beaches, shores, flood plains, rivers, bays, lakes, harbors, forests, fisheries and wildlife, marine habitat, minerals, and other natural and environmental resources⁹.” The broadly drafted statute and rule afford local government latitude to tailor protection for wetlands in addition to the regulations provided by state environmental laws. The Florida Administrative Rule authorized by the statutory conservation requirement provides very general considerations for wetland protection and conservation¹⁰:

(3) Policies Addressing the Protection and Conservation of Wetlands.

(a) Wetlands and the natural functions of wetlands shall be protected and conserved. The adequate and appropriate protection and conservation of wetlands shall be accomplished through a comprehensive planning process which includes consideration

⁸ For instance, small-scale amendments, as defined by section 163.3187(1)(c), F.S., are not reviewed by the DCA. Small-scale amendments take effect within 31 days unless challenged by an affected party. An affected party has 30 days following the local government’s adoption at a public hearing to challenge the small-scale amendment.

⁹ Section 163.3177(6)(d), F.S. See also: <http://www.dca.state.fl.us/fdcp/dcp/compplanning/>.

¹⁰ Rule 9J-5.013(3), F.A.C. Conservation Element (Submission Procedures, revised April 17, 2006)

of the types, values, functions, sizes, conditions and locations of wetlands, and which is based on supporting data and analysis.

(b) Future land uses which are incompatible with the protection and conservation of wetlands and wetland functions shall be directed away from wetlands. The type, intensity or density, extent, distribution and location of allowable land uses and the types, values, functions, sizes, conditions and locations of wetlands are land use factors which shall be considered when directing incompatible land uses away from wetlands. Land uses shall be distributed in a manner that minimizes the effect and impact on wetlands. The protection and conservation of wetlands by the direction of incompatible land uses away from wetlands shall occur in combination with other goals, objectives and policies in the comprehensive plan. Where incompatible land uses are allowed to occur, mitigation shall be considered as one means to compensate for loss of wetlands functions.

Using its comprehensive plan, a local government creates a future land use map that identifies environmentally sensitive areas, such as wetland systems, and uses policy objectives within the comprehensive plan to restrict wetland impingement or direct incompatible land uses away from sensitive areas. Local governments may direct incompatible land uses away from wetlands by imposing buffers or setbacks either through a component of their land use plan or through land development regulations. In addition, a local government may pass ordinances requiring no net loss of wetlands, prohibiting impacts altogether, restricting single family home density, prohibiting development, requiring on-site mitigation or mitigation in-county, or requiring specific mitigation ratios for wetland restorative efforts.

Florida Statutes and Administrative Code sections authorize and provide procedures and considerations for the DEP to delegate the ERP program to local governments. (FN Section 373.441, F.S., and its implementing rule chapter 62-344, F.A.C., provides delegation authority.) Delegation allows the local government to review and approve or deny the state permits at the same time the local authorizations are granted or denied. The statute directs that rules shall “seek to increase governmental efficiency” and “maintain environmental standards.” Delegations can be granted only where:

- The local government can demonstrate that delegation would further the goal of providing an efficient, effective, and streamlined permitting program; and
- The local government can demonstrate that it has the financial, technical, and administrative capabilities and desire to effectively and efficiently implement and enforce the program, and protection of environmental resources will be maintained.

According to the statute, delegation includes the applicability of Chapter 120, F. S., to local government programs when the ERP program is delegated to counties, municipalities, or local pollution control programs. Since its implementation in 1993, only Broward County has a comprehensive ERP delegation that is subject to certain limits, for instance, issues relating to Sovereignty Submerged Lands¹¹.

Effect of Proposed Change

The bill directs county and municipal governments that use state water resources for water supply purposes, in cooperation with the applicable WMD, to conduct an evaluation of water resources that might reasonably be considered to be a primary source of water and determine if the water resources are adequately protected from sources of pollution and from land uses incompatible with their protection.

The bill amends statutory provisions relating to the make-up of water basin boards. If there are two WMD board members sitting on a water basin board, the pair will rotate the chair/co-chair position on

¹¹ Six local governments have delegation for mangrove trimming (Mangrove Coordination), and other local jurisdictions have some limited delegated authority (Local Program Delegation).

an annual basis. If there is a vacancy on a water basin board, a quorum of total remaining basin board members may transact business until a successor is appointed. Finally, the bill places a Southwest Florida WMD board member on the Manasota Basin board beginning July 1, 2010.

The bill exempts WMD cooperative funding programs from Chapter 120, F.S., rulemaking requirements unless any portion of an approved program affects the substantial interests of a party. The bill requires a WMD board to acquire specific Legislative authority for land acquisition costs in excess of \$50 million and for professional service procurement costs in excess of \$5 million. The bill restricts a WMD from issuing certificates of participation for the purchase of land. The bill directs WMD governing boards to conduct reviews for lands for which title is vested in the WMD. The purpose of the review is to determine which lands are no longer needed for conservation and restoration, or are no longer considered environmentally critical or sensitive. Such lands will be made available for purchase so the property can be reentered onto the county ad valorem tax roll.

The bill creates a Water Management District Nominating Commission consisting of 9 members:

- Three shall be appointed by the Governor to serve terms ending July 1, 2014.
- Three shall be appointed by the President of the Senate to serve terms ending July 1, 2013.
- Three shall be appointed by the Speaker of the House of Representatives to serve terms ending July 1, 2012. Thereafter, appointed commissioners shall serve four year terms.

In making appointments, the Governor, the President of the Senate, and the Speaker of the House of Representatives shall seek to ensure that, to the extent possible, the membership of the governing board nominating commission reflects the racial, ethnic, and gender diversity of the state and shall also consider the adequacy of representation of each geographic region within the state. The Executive Office of the Governor will provide all administrative support for the governing board nominating commission and shall adopt rules necessary to administer this section.

Under the bill, a commissioner:

- Is considered a "state officer" for purposes of financial disclosure requirements;
- May not be a current or former WMD governing board member;
- May hold public office;
- Is not eligible during his or her term of office and for a period of 2 years thereafter for appointment to any board for which the commission has the authority to make nominations;
- May be suspended for cause by the person who appointed him or her; and,
- Shall submit to the Governor three recommended nominees for each district governing board position.

Under the bill, a nominee:

- Must reside in the territorial jurisdiction of the governing board to which the commission will recommend appointments; and,
- Must have significant experience in one or more of the following areas: agriculture, the development industry, local government, government-owned or privately-owned water utilities, law, civil engineering, environmental science, hydrology, accounting, or finance.

The Governor shall select appointees from the list of recommended nominees for a vacant WMD board position.

B. SECTION DIRECTORY:

Section 1 creates s. 153.112, F.S., directing county commissions, in cooperation with WMDs, to conduct an evaluation of primary water resources.

Section 2 creates s. 180.133, F.S., directing municipalities, in cooperation with WMDs, to conduct an evaluation of primary water resources.

Section 3 amends s. 373.0693, F.S.; revising provisions relating to the membership, terms of service, and quorum requirements, of basin boards; revising provisions relating to the membership of the Manasota Basin board; providing for the designation of a member of the Southwest Florida WMD governing board to serve on the basin board.

Section 4 amends s. 373.171, F.S., exempting WMD cooperative funding programs from certain rulemaking requirements.

Section 5 creates s. 373.0725, F.S., establishing a water management district governing board nominating commission, establishing selection and eligibility criteria for nominees and commissioners, providing for terms and duties of commission members, requiring the Executive Office of the Governor to provide administrative support to the commission and to adopt rules.

Section 6 amends s. 373.086, F.S., requiring WMD governing boards to obtain legislative authorization for acquisition costs and professional service procurement costs in excess of specified amounts.

Section 7 amends s. 373.089, F.S.; requiring WMD governing boards to review inventory of and make available for purchase specified lands.

Section 8 amends s. 373.584, F.S., restricting a WMD from issuing certificates of participation for the purchase of land.

Section 9 amends s. 112.3145, F.S., providing that members of the WMD governing board nominating commission are state officers for purposes of financial disclosure requirements

Section 10 provides an effective date of July 1, 2010.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

See, FISCAL COMMENTS.

2. Expenditures:

See, FISCAL COMMENTS.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

See, FISCAL COMMENTS.

2. Expenditures:

See, FISCAL COMMENTS.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Lands titled to WMDs may become open for sale to the public if the governing boards determine that certain lands are not needed for conservation and restoration, or are no longer considered environmentally critical or sensitive.

D. FISCAL COMMENTS:

WMD boards that sell certain lands in their inventories will no longer need to expend funds for the management of said lands. If the land was purchased with state funds, proceeds from said sales will be returned to a trust fund. Lands purchased with WMD ad valorem will be returned to the WMD operating budget. Local governments may experience an increase in ad valorem revenue if WMDs sell certain lands that are subsequently returned to the county tax roll.

There will be expenses for the Executive Office of the Governor associated with rulemaking and with providing administrative duties for the Water Management District Nominating Commission.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, does not appear to reduce the authority that counties or municipalities have to raise revenue in the aggregate, and does not appear to reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None noted.

B. RULE-MAKING AUTHORITY:

Rulemaking authority is provided to the Executive Office of the Governor relating to the administration of the Water Management District Nominating Commission.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The bill section creating the Water Management District Nominating Commission provides a very broad grant of rulemaking authority to the Executive Office of the Governor. In addition, that section does not authorize compensation, per diem, or travel expenses that may be incurred by Commissioners in the execution of their duties.

Commission nominees are required to have significant experience in one or more of the following areas: agriculture, the development industry, local government, government-owned or privately owned water utilities, law, civil engineering, environmental science, hydrology, accounting, or finance. Staff notes that tourism and activities that are water dependent (e.g., boating, fishing) also add significantly to state revenues.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

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1 A bill to be entitled
 2 An act relating to water management; creating ss. 153.112
 3 and 180.133, F.S.; directing counties and municipalities,
 4 in cooperation with water management districts, to conduct
 5 an evaluation of primary water resources; amending s.
 6 373.0693, F.S.; revising provisions relating to the
 7 membership of basin boards; specifying the terms of
 8 service for basin board members designated by district
 9 governing board chairs; providing that basin board members
 10 designated by district governing board chairs are voting
 11 members and counted for quorum purposes; providing for
 12 designated district governing board members to serve as
 13 basin board chairs and co-chairs; authorizing basin boards
 14 to transact official business under certain conditions;
 15 revising provisions relating to the membership of the
 16 Manasota Basin board; providing for the designation of a
 17 member of the district governing board to serve on the
 18 basin board; amending s. 373.171, F.S.; exempting
 19 cooperative funding programs from certain rulemaking
 20 requirements; creating s. 373.0725, F.S.; establishing a
 21 water management district governing board nominating
 22 commission; providing criteria for governing board member
 23 nominees; providing for the appointment of commission
 24 members by the Governor, the President of the Senate, and
 25 the Speaker of the House of Representatives; providing for
 26 terms and duties of commission members; requiring the
 27 Executive Office of the Governor to provide administrative
 28 support to the commission and to adopt rules; amending s.

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29 373.086, F.S.; requiring governing boards to obtain
 30 legislative authorization for acquisition costs and
 31 professional service procurement costs in excess of
 32 specified amounts; amending s. 373.089, F.S.; requiring
 33 governing boards to review and make available for purchase
 34 specified lands; amending section 373.584, F.S.,
 35 restricting the issuance of certificates of participation
 36 by districts for the purchase of land; amending s.
 37 112.3145, F.S.; providing that members of the water
 38 management district governing board nominating commission
 39 are state officers for purposes of financial disclosure
 40 requirements; providing an effective date.

41
 42 Be It Enacted by the Legislature of the State of Florida:

43
 44 Section 1. Section 153.112, Florida Statutes, is created
 45 to read:

46 153.112 Protection of water resources.—A county commission
 47 that uses state water resources for water supply purposes shall,
 48 in cooperation with the relevant water management districts,
 49 conduct an evaluation of water resources that might reasonably
 50 be considered to be a primary source of water from which all or
 51 part of the county's water supplies are derived. The evaluation
 52 must determine if the water resources are adequately protected
 53 from sources of pollution and from land uses incompatible with
 54 their protection.

55 Section 2. Section 180.133, Florida Statutes, is created
 56 to read:

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57 180.133 Protection of municipal water resources.—The
 58 governing body of a municipality that provides water utility
 59 services that use state water resources for water supply
 60 purposes shall, in cooperation with the relevant water
 61 management districts, conduct an evaluation of water resources
 62 that might reasonably be considered to be a primary source of
 63 water from which all or part of the municipality's water
 64 supplies are derived. The evaluation must determine if the water
 65 resources are adequately protected from sources of pollution and
 66 from land uses incompatible with their protection.

67 Section 3. Subsections (1) through (7) of section
 68 373.0693, Florida Statutes, are amended to read:

69 373.0693 Basins; basin boards.—

70 (1) (a) Any areas within a district may be designated by
 71 the district governing board as subdistricts or basins. The
 72 designations of such basins shall be made by resolution of the
 73 district governing board ~~by resolutions thereof~~. The district
 74 governing board ~~of the district~~ may change the boundaries of
 75 such basins, or create new basins, by resolution.

76 (2) Each basin shall be under the control of a basin board
 77 ~~which shall be composed of at least not less than~~ three members,
 78 including one or more representatives ~~but shall include one~~
 79 ~~representative~~ from each of the counties included in the basin.

80 (3) Except for a member of the district governing board
 81 serving on a basin board pursuant to subsection (6), each member
 82 of a the various basin board boards shall be appointed ~~serve~~ for
 83 ~~a period of~~ 3 years or until a successor is appointed, but not
 84 more than 180 days after the end of the term. ~~except that~~ The

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85 ~~board~~ membership of each new basin board shall be divided into
 86 three groups as equally as possible, with members in such groups
 87 to be appointed for 1, 2, and 3 years, respectively. Each basin
 88 board shall choose a vice chair and a secretary to serve for a
 89 ~~period of~~ 1 year. The term of office of a basin board member
 90 shall ~~be construed to~~ commence on March 2 preceding the date of
 91 appointment and ~~to~~ terminate March 1 of the year of the end of a
 92 term or ~~may continue~~ until a successor is appointed, but not
 93 more than 180 days after the end of the expired term. A member
 94 of the district governing board serving on a basin board
 95 pursuant to subsection (6) shall serve for a period commensurate
 96 with his or her term on the governing board.

97 (4) Except for a member of the district governing board
 98 serving on a basin board pursuant to subsection (6), members of
 99 a basin board ~~boards~~ shall be appointed by the Governor, subject
 100 to confirmation by the Senate at the next regular session of the
 101 Legislature; and the refusal or failure of the Senate to confirm
 102 an appointment shall create a vacancy in the office to which the
 103 appointment was made.

104 (5) Basin board members shall serve without ~~receive no~~
 105 compensation ~~for services as such;~~ but are entitled to
 106 reimbursement for per diem and travel expenses as provided in s.
 107 112.061, while officially on work for the district, they shall
 108 ~~receive their actual travel expenses between their respective~~
 109 ~~places of residence and the place where official district~~
 110 ~~business is conducted, subsistence, lodging, and other expenses~~
 111 ~~in the amount actually incurred. These expenses may not exceed~~
 112 ~~the statutory amount allowed state officers and employees. This~~

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113 subsection applies retroactively to the effective date of the
 114 creation of each of the five separate water management
 115 districts.

116 (6) (a) Notwithstanding any other provision of the
 117 ~~provisions of any other~~ general or special law ~~to the contrary,~~
 118 a member of the district governing board ~~of the district~~
 119 residing in the basin or, if no member resides in the basin, a
 120 member of the district governing board designated by the chair
 121 of the district governing board shall be a voting member of the
 122 basin board and counted for purposes of establishing a quorum.

123 (b) A governing board member shall serve as the chair of
 124 the basin board. If more than one governing board member is
 125 designated to a basin board, each shall rotate as co-chair of
 126 the basin board. The chair or co-chair shall preside at all
 127 meetings of the basin board, except that the vice chair may
 128 preside in the his or her absence of the chair and co-chair. The
 129 chair shall be the liaison officer of the district in all
 130 affairs in the basin and shall be kept informed of all such
 131 affairs.

132 (c) If a vacancy occurs on a basin board, a quorum of the
 133 total remaining members of the basin board may continue to
 134 transact official business until a successor is appointed.

135 (d) ~~(b)~~ Basin boards within the Southwest Florida Water
 136 Management District shall meet regularly as determined by a
 137 majority vote of the basin board members. Subject to notice
 138 requirements of chapter 120, special meetings, both emergency
 139 and nonemergency, may be called ~~either~~ by the chair or the
 140 elected vice chair ~~of the basin board~~ or upon request of two

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141 basin board members. The district staff shall include on the
 142 agenda of any basin board meeting any item for discussion or
 143 action requested by a member of that basin board. The district
 144 staff shall notify any basin board, as well as their respective
 145 counties, of any vacancies occurring in the district governing
 146 board or their respective basin boards.

147 (7) ~~At 11:59 p.m. on December 31, 1976, the Manasota~~
 148 ~~Watershed Basin of the Ridge and Lower Gulf Coast Water~~
 149 ~~Management District, which is annexed to the Southwest Florida~~
 150 ~~Water Management District by change of its boundaries pursuant~~
 151 ~~to chapter 76-243, Laws of Florida, shall be formed into a~~
 152 ~~subdistrict or basin of the Southwest Florida Water Management~~
 153 ~~District, subject to the same provisions as the other basins in~~
 154 ~~such district. Such subdistrict shall be designated initially as~~
 155 ~~the Manasota Basin. The members of the governing board of the~~
 156 ~~Manasota Watershed Basin of the Ridge and Lower Gulf Coast Water~~
 157 ~~Management District shall become members of the governing board~~
 158 ~~of the Manasota Basin of the Southwest Florida Water Management~~
 159 ~~District. Notwithstanding other provisions in this section,~~
 160 ~~beginning on July 1, 2010~~ 2001, the membership of the Manasota
 161 Basin Board shall be comprised of two members from Manatee
 162 County, and two members from Sarasota County, and a member of
 163 the district governing board designated by the chair of the
 164 district governing board pursuant to subsection (6). ~~Matters~~
 165 ~~relating to tie votes shall be resolved pursuant to subsection~~
 166 ~~(6) by the chair designated by the governing board to vote in~~
 167 ~~case of a tie vote.~~

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168 Section 4. Paragraph (d) is added to subsection (1) of
 169 section 373.171, Florida Statutes, to read:

170 373.171 Rules.—

171 (5) Cooperative funding programs are not subject to the
 172 rulemaking requirements of chapter 120. However, any portion of
 173 an approved program which affects the substantial interests of a
 174 party shall be subject to s. 120.569.

175 Section 5. Section 373.0725, Florida Statutes, is created
 176 to read:

177 373.0725 Water management district governing board
 178 nominating commission.—

179 (1) (a) Members of each water management district governing
 180 board shall be nominated for appointment by a commission
 181 composed of 9 members.

182 (b) Commission members shall submit to the Governor three
 183 recommended nominees for each district governing board position.
 184 Nominees must reside in the territorial jurisdiction of the
 185 governing board to which the commission will recommend
 186 appointments and must have significant experience in one or more
 187 of the following areas: agriculture, the development industry,
 188 local government, government-owned or privately owned water
 189 utilities, law, civil engineering, environmental science,
 190 hydrology, accounting, or finance.

191 (c) The Governor shall select appointees from the list of
 192 nominees recommended for a position.

193 (2) A current or former governing board member may not be
 194 a member of the governing board nominating commission. A member
 195 of the governing board nominating commission may hold public

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196 office. A member of the governing board nominating commission is
 197 not eligible for appointment, during his or her term of office
 198 and for a period of 2 years thereafter, to any board for which
 199 the commission has the authority to make nominations. All acts
 200 of the governing board nominating commission must be made with a
 201 concurrence of a majority of its members.

202 (3) Members shall be appointed to the governing board
 203 nominating commission in the following manner:

204 (a) The Governor shall appoint three members for terms
 205 ending July 1, 2014.

206 (b) The President of the Senate shall appoint three
 207 members for terms ending July 1, 2013.

208 (c) The Speaker of the House of Representatives shall
 209 appoint three members for terms ending July 1, 2012.

210
 211 Every subsequent appointment, except the appointment of a member
 212 of the Senate and of the House of Representatives and an
 213 appointment to fill a vacant, unexpired term, shall be for 4
 214 years. Each expired term or vacancy shall be filled by
 215 appointment in the same manner as the member whose position is
 216 being filled.

217 (4) In making appointments, the Governor, the President of
 218 the Senate, and the Speaker of the House of Representatives
 219 shall seek to ensure that, to the extent possible, the
 220 membership of the governing board nominating commission reflects
 221 the racial, ethnic, and gender diversity of the state and shall
 222 also consider the adequacy of representation of each geographic
 223 region within the state.

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224 (5) A member of the governing board nominating commission
 225 may be suspended for cause by the person who appointed him or
 226 her.

227 (6) The governing board nominating commission shall
 228 recommend appointments to the governing board of a water
 229 management district pursuant to s. 373.073. A quorum of the
 230 commission is necessary to take any action or transact any
 231 business. For purposes of this section, a majority of the
 232 commission members shall constitute a quorum. However, if a
 233 vacancy occurs, a majority of the total remaining commission
 234 members shall constitute a quorum.

235 (7) The Executive Office of the Governor shall provide all
 236 administrative support for the governing board nominating
 237 commission and shall adopt rules necessary to administer this
 238 section.

239 Section 6. Subsection (4) is added to section 373.086,
 240 Florida Statutes, to read:

241 373.086 Providing for district works.—

242 (4) The governing board must obtain specific legislative
 243 authorization for any acquisition costs in excess of \$50 million
 244 and for any professional service procurement costs in excess of
 245 \$5 million.

246 Section 7. Paragraph (e) is added to subsection (6) of
 247 section 373.089, Florida Statutes, to read:

248 373.089 Sale or exchange of lands, or interests or rights
 249 in lands.—The governing board of the district may sell lands, or
 250 interests or rights in lands, to which the district has acquired
 251 title or to which it may hereafter acquire title in the

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252 following manner:

253 (6) Any lands the title to which is vested in the
 254 governing board of a water management district may be surplusd
 255 pursuant to the procedures set forth in this section and s.
 256 373.056 and the following:

257 (e) For any lands for which title is vested in the
 258 governing board, the governing board shall conduct reviews to
 259 determine which lands are no longer needed for conservation and
 260 restoration purposes or no longer considered environmentally
 261 critical or sensitive and make such lands available for purchase
 262 so long as the property can be reentered onto the county ad
 263 valorem tax roll.

264 Section 8. Subsection (2) of section 373.584, Florida
 265 Statutes, is amended to read:

266 (2) Revenues derived by the district from the Water
 267 Management Lands Trust Fund as provided in s. 373.59 or any
 268 other revenues of the district may be pledged to the payment of
 269 such revenue bonds; however, the ad valorem taxing powers of the
 270 district may not be pledged to the payment of such revenue bonds
 271 without prior compliance with the requirements of the State
 272 Constitution as to the affirmative vote of the electors of the
 273 district and with the requirements of s. 373.563, and bonds
 274 payable from the Water Management Lands Trust Fund shall be
 275 issued solely for the purposes set forth in s. 373.59. Revenue
 276 bonds and notes shall be, and shall be deemed to be, for all
 277 purposes, negotiable instruments, subject only to the provisions
 278 of the revenue bonds and notes for registration. Except as
 279 otherwise provided in this section, the~~The~~ powers and authority

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280 of districts to issue revenue bonds, including, but not limited
 281 to, bonds to finance a stormwater management system as defined
 282 by s. 373.403, and to enter into contracts incidental thereto,
 283 and to do all things necessary and desirable in connection with
 284 the issuance of revenue bonds, shall be coextensive with the
 285 powers and authority of municipalities to issue bonds under
 286 state law. The provisions of this section constitute ~~full and~~
 287 ~~complete~~ authority for the issuance of revenue bonds and shall
 288 be liberally construed to effectuate its purpose. However,
 289 notwithstanding any provision of this section or any other law,
 290 districts shall not have the power or authority to issue
 291 certificates of participation to fund the acquisition of land.

292 Section 9. Paragraph (c) of subsection (1) of section
 293 112.3145, Florida Statutes, is amended to read:

294 112.3145 Disclosure of financial interests and clients
 295 represented before agencies.—

296 (1) For purposes of this section, unless the context
 297 otherwise requires, the term:

298 (c) "State officer" means:

299 1. Any elected public officer, excluding those elected to
 300 the United States Senate and House of Representatives, not
 301 covered elsewhere in this part and any person who is appointed
 302 to fill a vacancy for an unexpired term in such an elective
 303 office.

304 2. An appointed member of each board, commission,
 305 authority, or council having statewide jurisdiction, excluding a
 306 member of an advisory body.

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307 3. A member of the Board of Governors of the State
308 University System or a state university board of trustees, the
309 Chancellor and Vice Chancellors of the State University System,
310 and the president of a state university.

311 4. A member of the judicial nominating commission for any
312 district court of appeal or any judicial circuit.

313 5. A member of the water management district governing
314 board nominating commission.

315 Section 10. This act shall take effect July 1, 2010.



Agriculture and Natural Resources Policy Committee

**Meeting Packet
Addendum A
March 25, 2010
2:45 pm - 6:00 pm
102 Reed Hall**

**Larry Cretul
Speaker**

**Trudi Williams
Chair**

Amendment No. 1

COUNCIL/COMMITTEE 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 Council/Committee hearing bill: Agriculture & Natural Resources
2 Policy Committee
3 Representative(s) Williams offered the following:
4

Amendment (with title amendment)

6 Remove everything after the resolving clause and insert:

7 Section 1. Subsections (1) through (7) of section

8 373.0693, Florida Statutes, are amended to read:

9 373.0693 Basins; basin boards.—

10 (1) (a) Any areas within a district may be designated by
11 the district governing board as subdistricts or basins. The
12 designations of such basins shall be made by resolution of the
13 district governing board ~~by resolutions thereof~~. The district
14 governing board ~~of the district~~ may change the boundaries of
15 such basins, or create new basins, by resolution.

16 (2) Each basin shall be under the control of a basin board
17 ~~which shall be~~ composed of at least ~~not less than~~ three members,
18 including one or more representatives ~~but shall include one~~
19 ~~representative~~ from each of the counties included in the basin.

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20 (3) Except for a member of the district governing board
21 serving on a basin board pursuant to subsection (6), each member
22 of ~~a the various~~ basin board boards shall be appointed ~~serve~~ for
23 ~~a period of~~ 3 years or until a successor is appointed, but not
24 more than 180 days after the end of the term, ~~except that~~ The
25 ~~board~~ membership of each new basin board shall be divided into
26 three groups as equally as possible, with members in such groups
27 to be appointed for 1, 2, and 3 years, respectively. Each basin
28 board shall choose a vice chair and a secretary to serve for a
29 ~~period of~~ 1 year. The term of office of a basin board member
30 shall ~~be construed to~~ commence on March 2 preceding the date of
31 appointment and ~~to~~ terminate March 1 of the year of the end of a
32 term or ~~may continue~~ until a successor is appointed, but not
33 more than 180 days after the end of the expired term. A member
34 of the district governing board serving on a basin board
35 pursuant to subsection (6) shall serve for a period commensurate
36 with his or her term on the governing board.

37 (4) Except for a member of the district governing board
38 serving on a basin board pursuant to subsection (6), members of
39 a basin board boards shall be appointed by the Governor, subject
40 to confirmation by the Senate at the next regular session of the
41 Legislature; and the refusal or failure of the Senate to confirm
42 an appointment shall create a vacancy in the office to which the
43 appointment was made.

44 (5) Basin board members shall serve without ~~receive no~~
45 ~~compensation for services as such,~~ but are entitled to
46 reimbursement for per diem and travel expenses as provided in s.
47 112.061, ~~while officially on work for the district, they shall~~

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48 ~~receive their actual travel expenses between their respective~~
49 ~~places of residence and the place where official district~~
50 ~~business is conducted, subsistence, lodging, and other expenses~~
51 ~~in the amount actually incurred. These expenses may not exceed~~
52 ~~the statutory amount allowed state officers and employees. This~~
53 subsection applies retroactively to the effective date of the
54 creation of each of the five separate water management
55 districts.

56 (6) (a) Notwithstanding any other provision of the
57 ~~provisions of any other~~ general or special law ~~to the contrary,~~
58 a member of the district governing board ~~of the district~~
59 residing in the basin or, if no member resides in the basin, a
60 member of the district governing board designated by the chair
61 of the district governing board shall be a voting member of the
62 basin board and counted for purposes of establishing a quorum.

63 (b) A governing board member shall serve as the chair of
64 the basin board. If more than one governing board member is
65 designated to a basin board, each shall rotate as co-chair of
66 the basin board. The chair or co-chair shall preside at all
67 meetings of the basin board, except that the vice chair may
68 preside in the his or her absence of the chair and co-chair. The
69 chair shall be the liaison officer of the district in all
70 affairs in the basin and shall be kept informed of all such
71 affairs.

72 (c) If a vacancy occurs on a basin board, a quorum of the
73 total remaining members of the basin board may continue to
74 transact official business until a successor is appointed.

Amendment No. 1

75 ~~(d)(b)~~ Basin boards within the Southwest Florida Water
76 Management District shall meet regularly as determined by a
77 majority vote of the basin board members. Subject to notice
78 requirements of chapter 120, special meetings, both emergency
79 and nonemergency, may be called ~~either~~ by the chair or the
80 elected vice chair ~~of the basin board~~ or upon request of two
81 basin board members. The district staff shall include on the
82 agenda of any basin board meeting any item for discussion or
83 action requested by a member of that basin board. The district
84 staff shall notify any basin board, as well as their respective
85 counties, of any vacancies occurring in the district governing
86 board or their respective basin boards.

87 ~~(7) At 11:59 p.m. on December 31, 1976, the Manasota~~
88 ~~Watershed Basin of the Ridge and Lower Gulf Coast Water~~
89 ~~Management District, which is annexed to the Southwest Florida~~
90 ~~Water Management District by change of its boundaries pursuant~~
91 ~~to chapter 76-243, Laws of Florida, shall be formed into a~~
92 ~~subdistrict or basin of the Southwest Florida Water Management~~
93 ~~District, subject to the same provisions as the other basins in~~
94 ~~such district. Such subdistrict shall be designated initially as~~
95 ~~the Manasota Basin. The members of the governing board of the~~
96 ~~Manasota Watershed Basin of the Ridge and Lower Gulf Coast Water~~
97 ~~Management District shall become members of the governing board~~
98 ~~of the Manasota Basin of the Southwest Florida Water Management~~
99 ~~District.~~ Notwithstanding other provisions in this section,
100 beginning on July 1, 2010 ~~2001~~, the membership of the Manasota
101 Basin Board shall be comprised of two members from Manatee
102 County, ~~and~~ two members from Sarasota County, and a member of

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103 the district governing board designated by the chair of the
104 district governing board pursuant to subsection (6). Matters
105 ~~relating to tie votes shall be resolved pursuant to subsection~~
106 ~~(6) by the chair designated by the governing board to vote in~~
107 ~~ease of a tie vote.~~

108 Section 2. Paragraph (d) is added to subsection (1) of
109 section 373.171, Florida Statutes, to read:

110 373.171 Rules.—

111 (5) Cooperative funding programs are not subject to the
112 rulemaking requirements of chapter 120. However, any portion of
113 an approved program which affects the substantial interests of a
114 party shall be subject to s. 120.569.

115 Section 3. Section 373.0725, Florida Statutes, is created
116 to read:

117 373.0725 Water management district governing board
118 nominating commission.—

119 (1)(a) Members of each water management district governing
120 board shall be nominated for appointment by a commission
121 composed of 9 members.

122 (b) Commission members shall submit to the Governor three
123 recommended nominees for each district governing board position.
124 Nominees must reside in the territorial jurisdiction of the
125 governing board to which the commission will recommend
126 appointments and must have significant experience in one or more
127 of the following areas: agriculture, the development industry,
128 local government, government-owned or privately owned water
129 utilities, law, civil engineering, environmental science,
130 hydrology, accounting, finance, or landscape professional.

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131 (c) The Governor shall select appointees from the list of
132 nominees recommended for a position.

133 (2) A current or former governing board member may not be
134 a member of the governing board nominating commission. A member
135 of the governing board nominating commission may hold public
136 office. A member of the governing board nominating commission is
137 not eligible for appointment, during his or her term of office
138 and for a period of 2 years thereafter, to any board for which
139 the commission has the authority to make nominations. All acts
140 of the governing board nominating commission must be made with a
141 concurrence of a majority of its members.

142 (3) Members shall be appointed to the governing board
143 nominating commission in the following manner:

144 (a) The Governor shall appoint three members for terms
145 ending July 1, 2014.

146 (b) The President of the Senate shall appoint three
147 members for terms ending July 1, 2013.

148 (c) The Speaker of the House of Representatives shall
149 appoint three members for terms ending July 1, 2012.

150
151 Every subsequent appointment, except the appointment of a member
152 of the Senate and of the House of Representatives and an
153 appointment to fill a vacant, unexpired term, shall be for 4
154 years. Each expired term or vacancy shall be filled by
155 appointment in the same manner as the member whose position is
156 being filled.

157 (4) In making appointments, the Governor, the President of
158 the Senate, and the Speaker of the House of Representatives

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159 | shall seek to ensure that, to the extent possible, the
160 | membership of the governing board nominating commission reflects
161 | the racial, ethnic, and gender diversity of the state and shall
162 | also consider the adequacy of representation of each geographic
163 | region within the state.

164 | (5) A member of the governing board nominating commission
165 | may be suspended for cause by the person who appointed him or
166 | her.

167 | (6) The governing board nominating commission shall
168 | recommend appointments to the governing board of a water
169 | management district pursuant to s. 373.073. A quorum of the
170 | commission is necessary to take any action or transact any
171 | business. For purposes of this section, a majority of the
172 | commission members shall constitute a quorum. However, if a
173 | vacancy occurs, a majority of the total remaining commission
174 | members shall constitute a quorum.

175 | (7) The Executive Office of the Governor shall provide all
176 | administrative support for the governing board nominating
177 | commission and shall adopt rules necessary to administer this
178 | section.

179 | Section 4. Subsection (4) is added to section 373.086,
180 | Florida Statutes, to read:

181 | 373.086 Providing for district works.-

182 | (4) The governing board must obtain specific legislative
183 | authorization for any acquisition costs in excess of \$50 million
184 | and for any professional service procurement costs in excess of
185 | \$5 million.

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186 Section 5. Paragraph (e) is added to subsection (6) of
187 section 373.089, Florida Statutes, to read:

188 373.089 Sale or exchange of lands, or interests or rights
189 in lands.—The governing board of the district may sell lands, or
190 interests or rights in lands, to which the district has acquired
191 title or to which it may hereafter acquire title in the
192 following manner:

193 (6) Any lands the title to which is vested in the
194 governing board of a water management district may be surplused
195 pursuant to the procedures set forth in this section and s.
196 373.056 and the following:

197 (e) For any lands for which title is vested in the
198 governing board, the governing board shall conduct reviews to
199 determine which lands are no longer needed for conservation and
200 restoration purposes or no longer considered environmentally
201 critical or sensitive and make such lands available for purchase
202 so long as the property can be reentered onto the county ad
203 valorem tax roll.

204 Section 6. Subsection (2) of section 373.584, Florida
205 Statutes, is amended to read:

206 (2) Revenues derived by the district from the Water
207 Management Lands Trust Fund as provided in s. 373.59 or any
208 other revenues of the district may be pledged to the payment of
209 such revenue bonds; however, the ad valorem taxing powers of the
210 district may not be pledged to the payment of such revenue bonds
211 without prior compliance with the requirements of the State
212 Constitution as to the affirmative vote of the electors of the
213 district and with the requirements of s. 373.563, and bonds

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214 payable from the Water Management Lands Trust Fund shall be
215 issued solely for the purposes set forth in s. 373.59. Revenue
216 bonds and notes shall be, and shall be deemed to be, for all
217 purposes, negotiable instruments, subject only to the provisions
218 of the revenue bonds and notes for registration. Except as
219 otherwise provided in this section, the The powers and authority
220 of districts to issue revenue bonds, including, but not limited
221 to, bonds to finance a stormwater management system as defined
222 by s. 373.403, and to enter into contracts incidental thereto,
223 and to do all things necessary and desirable in connection with
224 the issuance of revenue bonds, shall be coextensive with the
225 powers and authority of municipalities to issue bonds under
226 state law. The provisions of this section constitute ~~full and~~
227 ~~complete~~ authority for the issuance of revenue bonds and shall
228 be liberally construed to effectuate its purpose. However,
229 notwithstanding any provision of this section or any other law,
230 districts shall not have the power or authority to issue
231 certificates of participation to fund the acquisition of land.

232 Section 7. Paragraph (c) of subsection (1) of section
233 112.3145, Florida Statutes, is amended to read:

234 112.3145 Disclosure of financial interests and clients
235 represented before agencies.—

236 (1) For purposes of this section, unless the context
237 otherwise requires, the term:

238 (c) "State officer" means:

239 1. Any elected public officer, excluding those elected to
240 the United States Senate and House of Representatives, not
241 covered elsewhere in this part and any person who is appointed

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242 to fill a vacancy for an unexpired term in such an elective
243 office.

244 2. An appointed member of each board, commission,
245 authority, or council having statewide jurisdiction, excluding a
246 member of an advisory body.

247 3. A member of the Board of Governors of the State
248 University System or a state university board of trustees, the
249 Chancellor and Vice Chancellors of the State University System,
250 and the president of a state university.

251 4. A member of the judicial nominating commission for any
252 district court of appeal or any judicial circuit.

253 5. A member of the water management district governing
254 board nominating commission.

255 Section 8. Section 373.228, Florida Statutes is amended to
256 read:

257 373.228 Landscape irrigation ~~design~~.—

258 (2) The Legislature finds that landscape irrigation
259 comprises a significant portion of water use and that current
260 typical landscape irrigation systems, and Florida-friendly
261 landscaping designs, and landscape irrigation restrictions offer
262 significant potential water conservation benefits.

263 (3) It is the intent of the Legislature to improve
264 landscape irrigation water use efficiency by ensuring that
265 landscape irrigation systems meet or exceed minimum design
266 criteria, and that, pursuant to s. 373.609, the landscape
267 irrigation restrictions of a water management district may be
268 implemented by ordinance of applicable local governments.

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269 (4) The water management districts shall work with the
270 Florida Nursery, Growers and Landscape Association, the Florida
271 Native Plant Society, the Florida Chapter of the American
272 Society of Landscape Architects, the Florida Irrigation Society,
273 the Department of Agriculture and Consumer Services, the
274 Institute of Food and Agricultural Sciences, the Department of
275 Environmental Protection, the Department of Transportation, the
276 Florida League of Cities, the Florida Association of Counties,
277 and the Florida Association of Community Developers to develop
278 landscape irrigation and Florida-friendly landscaping design
279 standards for new construction which incorporate a landscape
280 irrigation system and develop scientifically based model
281 guidelines for urban, commercial, and residential landscape
282 irrigation, including drip irrigation, for plants, trees, sod,
283 and other landscaping. The standards ~~shall~~ must be based on the
284 irrigation code defined in the Florida Building Code, Plumbing
285 Volume, Appendix F. Local governments shall use the standards
286 and guidelines when developing landscape irrigation and Florida-
287 friendly landscaping ordinances. By January 1, 2011, the
288 agencies and entities specified in this subsection shall review
289 the standards and guidelines to determine whether new research
290 findings require a change or modification of the standards and
291 guidelines.

292 (5) Local governments may adopt ordinances that implement
293 landscape irrigation restrictions as set forth in water
294 management district rules or orders. In evaluating water use
295 applications from public water suppliers, water management
296 districts shall consider whether the applicable local government

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297 has adopted an ordinance implementing such landscape irrigation
298 restrictions and has adopted ordinances for landscaping and
299 irrigation systems consistent with the Florida-friendly
300 landscaping provisions of s. 373.185.

301 Section 9. Subsection (9) is added to section 373.246,
302 Florida Statutes, to read:

303 (9) Local governments are authorized to adopt ordinances
304 that implement water shortage and emergency orders under this
305 section and s. 373.175.

306 Section 10. Section 298.66, Florida Statutes, is amended
307 to read:

308 298.66 Obstruction of drainage canals, etc., prohibited;
309 damages; penalties.—No person may willfully, or otherwise,
310 obstruct any public canal, drain, ditch or watercourse or damage
311 or destroy any public drainage works constructed in any
312 district.

313 (1) Any person who shall willfully obstruct any public
314 canal, drain, ditch or watercourse or shall damage or destroy
315 any public drainage works constructed ~~by~~ in any district, shall
316 be liable to any person injured thereby for the full amount of
317 the injury occasioned to any land or crops or other property by
318 reason of such misconduct, and shall be liable to the district
319 constructing the said work for double the cost of removing such
320 obstruction or repairing such damage.

321 (2) Whoever shall willfully or otherwise obstruct any
322 public canal, drain, ditch, or watercourse, or impede or
323 obstruct the flow of water therein, or shall damage or destroy
324 any drainage works constructed ~~by~~ in any district shall be

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325 guilty of a felony of the third degree, punishable as provided
326 in s. 775.082, s. 775.083, or s. 775.084.

327 Section 11. This act shall take effect July 1, 2010.
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332 **T I T L E A M E N D M E N T**

333 Remove the entire title and insert:

334 A bill to be entitled

335 An act relating to water management; amending s. 373.0693,
336 F.S.; revising provisions relating to the membership of
337 basin boards; specifying the terms of service for basin
338 board members designated by district governing board
339 chairs; providing that basin board members designated by
340 district governing board chairs are voting members and
341 counted for quorum purposes; providing for designated
342 district governing board members to serve as basin board
343 chairs and co-chairs; authorizing basin boards to transact
344 official business under certain conditions; revising
345 provisions relating to the membership of the Manasota
346 Basin board; providing for the designation of a member of
347 the district governing board to serve on the basin board;
348 amending s. 373.171, F.S.; exempting cooperative funding
349 programs from certain rulemaking requirements; creating s.
350 373.0725, F.S.; establishing a water management district
351 governing board nominating commission; providing criteria
352 for governing board member nominees; providing for the

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353 appointment of commission members by the Governor, the
354 President of the Senate, and the Speaker of the House of
355 Representatives; providing for terms and duties of
356 commission members; requiring the Executive Office of the
357 Governor to provide administrative support to the
358 commission and to adopt rules; amending s. 373.086, F.S.;
359 requiring governing boards to obtain legislative
360 authorization for acquisition costs and professional
361 service procurement costs in excess of specified amounts;
362 amending s. 373.089, F.S.; requiring governing boards to
363 review and make available for purchase specified lands;
364 amending s. 373.584, F.S., restricting the issuance of
365 certificates of participation by districts for the
366 purchase of land; amending s. 112.3145, F.S.; providing
367 that members of the water management district governing
368 board nominating commission are state officers for
369 purposes of financial disclosure requirements; amending s.
370 373.228, F.S., clarifying local government authority to
371 implement water management district landscape irrigation
372 restrictions; amending s. 373.246, F.S., authorizing local
373 governments to adopt ordinances that implement water
374 management district water shortage and emergency orders
375 during drought conditions; amending s. 298.66, F.S.,
376 clarifying prohibitions against obstructing public canals;
377 providing an effective date.

378