Agriculture & Natural Resources Appropriations Subcommittee

Meeting Packet

January 31, 2012
9:00 AM – 11:30 AM
Reed Hall

Dean Cannon
Speaker

Trudi K. Williams
Chair

AGENDA

Agriculture & Natural Resources Appropriations Subcommittee
January 31, 2012
9:00 a.m. – 11:30 a.m.
Reed Hall

I. Call to Order/Roll Call

II. Opening Remarks

III. CS/HB 1389—Water Storage & Water Quality Improvements by Perman

IV CS/HB 691—Beach Management by Frishe

V. HB 1197—Agriculture by Horner

VI CS/HB 663—Solid Waste Management Facilities by Goodson

VII. Closing Remarks/Adjournment

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1389 Water Storage and Water Quality Improvements
SPONSOR(S): Perman
TIED BILLS: None **IDEN./SIM. BILLS:** SB 1858

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

SUMMARY ANALYSIS

Current law encourages and supports the development of creative public-private partnerships and programs, including opportunities for water storage and quality improvement on private lands and water quality credit trading, to facilitate or further the restoration of the surface water resources of the Lake Okeechobee watershed, the Caloosahatchee River watershed, and the St. Lucie River watershed.

However, owners of agricultural lands are hesitant to provide their land for water storage or water quality improvements that create wetlands or other surface waters on their property for fear that once the agreement expires, they may be required to mitigate impacts to these created wetlands or surface waters, or that they may be precluded altogether from carrying out other activities on their land in the future that may impact these created wetlands or surface waters.

The bill creates s. 373.4591, F.S., to specify that the Legislature encourages public-private partnerships to accomplish water storage and water quality improvements on private agricultural land. The bill also specifies that when an agreement is entered into between a water management district or the Department of Environmental Protection and a private landowner to establish such partnerships, a baseline condition determining the extent of wetlands and other surface waters on the property must be established and documented in the agreement before improvements are constructed. The determination for the baseline condition must be conducted using the methods set forth in the rules adopted pursuant to s. 373.421, F.S. The baseline condition documented in the agreement must be considered the extent of the wetlands and other surface waters on the property for the purpose of regulation under chapter 373, F.S., for the duration of the agreement and after its expiration.

The bill could provide a savings in state and local government expenditures for water supply development and water quality improvements, but are indeterminate as the number, size, and nature of agreements with private land owners are unknown.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Section 373.4595(1)(n), F.S., encourages and supports the development of creative public-private partnerships and programs, including opportunities for water storage and quality improvement on private lands and water quality credit trading, to facilitate or further the restoration of the surface water resources of the Lake Okeechobee watershed, the Caloosahatchee River watershed, and the St. Lucie River watershed. During periods of abnormally high rainfall, agricultural lands in normal production can provide temporary water storage that protects urban areas from flooding. In many regions of South Florida, significant areas of agricultural lands lie fallow during a large part of the wet season. In these areas, the fields alleviate flood conditions. Also, ranch areas containing both improved and unimproved pasturelands may provide flood protection to urban areas by retaining water on these lands as part of normal farming operations. The ability to hold floodwaters on agricultural lands for longer periods than water can be held in an urban setting also assists the overall hydrologic system in maintaining recharge rates over more extended periods of time.[1]

Since 2005, the South Florida Water Management District has been working with a number of agencies, including the Department of Environmental Protection (DEP) and the Department of Agriculture and Consumer Services (DACS), along with ranchers to store excess surface water on private, public, and tribal lands. The Dispersed Water Management Program encourages property owners to retain water on their land rather than drain it, accept and detain regional runoff, or do both. Management of the water reduces the amount of water delivered into Lake Okeechobee during the wet season and discharged to coastal estuaries for flood protection. Dispersed water is defined as shallow water distributed across parcel landscapes using simple structures. Private landowner involvement typically includes cost-share cooperative projects, easements or payment for environmental services.[2] Owners of agricultural lands are hesitant to provide their land for water storage or water quality improvements that create wetlands or other surface waters on their property, however, for fear that once the agreement expires, they may be required to mitigate impacts to these created wetlands or surface waters, or that they may be precluded altogether from carrying out other activities on their land in the future that may impact these created wetlands or surface waters.

Since October, 2011, 131,500 acre-feet of water retention/storage has been made available through a combination of public and private projects. There are more than 100 participating landowners providing water retention or storage ranging from 1 acre-foot to 30,000 acre-feet.[3]

Effect of Proposed Changes

The bill creates s. 373.4591, F.S., to specify that the Legislature encourages public-private partnerships to accomplish water storage and water quality improvements on private agricultural land. The bill specifies that when an agreement is entered into between a water management district or the DEP and a private landowner to establish such partnerships, a baseline condition determining the extent of wetlands and other surface waters on the property must be established and documented in the agreement before improvements are constructed. The determination for the baseline condition must be conducted using the methods set forth in the rules adopted pursuant to s. 373.421, F.S.[4] The baseline condition documented in the agreement must be considered the extent of the wetlands and other

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[1] Department of Agriculture and Consumer Services website, www.floridaagwaterpolicy.com/PDF/Florida_Agricultural_Water_Policy_Report.pdf - 2006-09-19

[2] South Florida Water Management District's Dispersed Water Management Program Fact Sheet, www.sfwmd.gov/portal/page/portal/.../jtf_dispersed_water_mgmt.pdf

[3] Id

[4] Section 373.421, F.S., establishes criteria for adopting a unified statewide methodology for the delineation of wetlands in the state. Chapter 62-340, F.A.C., was adopted to implement this statute.

surface waters on the property for the purpose of regulation under chapter 373, F.S., for the duration of the agreement and after its expiration.

B. SECTION DIRECTORY:

Section 1. Creates s. 373.4591, F.S., requiring a specified determination as a condition of an agreement for water storage and water quality improvements on private agricultural lands; providing a methodology for such determination; providing for regulation of such lands after expiration of the agreement.

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

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

According to the DEP, the bill could provide a savings in state expenditures for water supply development and water quality improvements. However, potential savings will depend on the number, size, and nature of the agreements eventually entered into to use private property for water storage and water quality improvements, and at this time are indeterminate.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

According to the DEP, the bill could provide a savings in local expenditures for water supply development and water quality improvements. However, potential savings will depend on the number, size, and nature of the agreements eventually entered into to use private property for water storage and water quality improvements, and at this time are indeterminate.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill could provide some economic benefit to agricultural landowners by increasing their ability to store water and provide water quality benefits on their land without incurring the permitting restrictions associated with creating wetlands.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill provides sufficient guidance to the DEP for adopting rules establishing how to determine the baseline condition of the extent of wetlands and other surface waters.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On January 24, 2012, the Agriculture & Natural Resources Subcommittee amended and passed HB 1389 as a committee substitute (CS). The CS provides that the public-private partnerships can be used on any private agricultural land in the state, as opposed to only in the Lake Okeechobee watershed as provided in the original bill.

This analysis is drawn to CS/HB1389.

A bill to be entitled

An act relating to water storage and water quality improvements; creating s. 373.4591, F.S.; requiring a specified determination as a condition of an agreement for water storage and water quality improvements on private agricultural lands; providing a methodology for such determination; providing for regulation of such lands for the duration of the agreement and after its expiration; providing an effective date.

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

Section 1. Section 373.4591, Florida Statutes, is created to read:

373.4591 Improvements on private agricultural lands.—The Legislature encourages public-private partnerships to accomplish water storage and water quality improvements on private agricultural lands. When an agreement is entered into between a water management district or the department and a private landowner to establish such a partnership, a baseline condition determining the extent of wetlands and other surface waters on the property shall be established and documented in the agreement before improvements are constructed. The determination for the baseline condition shall be conducted using the methods set forth in the rules adopted pursuant to s. 373.421. The baseline condition documented in the agreement shall be considered the extent of wetlands and other surface waters on

the property for the purpose of regulation under this chapter for the duration of the agreement and after its expiration.

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 691 Beach Management
SPONSOR(S): Frishe
TIED BILLS: None **IDEN./SIM. BILLS:** SB 758

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Agriculture & Natural Resources Subcommittee	12 Y, 0 N, As CS	Deslatte	Blalock
2) Rulemaking & Regulation Subcommittee	15 Y, 0 N	Rubottom	Rubottom
3) Agriculture & Natural Resources Appropriations Subcommittee		Helpling	Massengale
4) State Affairs Committee			

SUMMARY ANALYSIS

Current law requires that a coastal construction permit be obtained from the Department of Environmental Protection (DEP) to make any coastal construction or reconstruction or change of existing structures, or any construction or physical activity undertaken specifically for shore protection purposes, or other structures and physical activity including groins, jetties, moles, breakwaters, seawalls, revetments, artificial nourishment, inlet sediment bypassing, excavation or maintenance dredging of inlet channels, or other deposition or removal of beach material, or construction of other structures if of a solid or highly impermeable design, upon sovereignty lands of Florida, below the mean high-water line of any tidal water of the state. The DEP can require engineer certifications as necessary to assure the adequacy of the design and construction of permitted projects.

The bill amends s. 161.041, F.S., specifying that demonstration to the DEP of the adequacy of a project's design and construction is supported by plans, studies, and credible expertise that accounts for naturally occurring variables that might be reasonably expected; authorizing the DEP to issue permits for an incidental take authorization provided under the Endangered Species Act and its implementing regulations if the permits and authorizations include a condition that requires that such authorized activities not begin until the incidental take authorization is issued; requiring the DEP to adopt certain rules involving the excavation and placement of sediment; requiring the DEP to justify items listed in a request for additional information; requiring the DEP to adopt guidelines by rule; providing legislative intent with regard to permitting for periodic maintenance of certain beach nourishment and inlet management projects; requiring the DEP to amend specified rules to streamline such permitting.

The bill amends s. 161.101, F.S., requiring the DEP to maintain certain beach management project information on its website; requiring the DEP to notify the Governor's Office and the Legislature concerning any significant changes in project funding levels.

The bill amends s. 403.813, F.S., providing a permit exception for certain specified exploratory activities relating to beach restoration and nourishment projects and inlet management activities.

The bill appears to be an insignificant negative fiscal impact on state government. The bill appears to have a positive fiscal impact on local governments (See Fiscal Analysis section.).

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Section 1. Amends s. 161.041, F.S.

Current Situation

Section 161.041(1), F.S., requires that a coastal construction permit be obtained from the Department of Environmental Protection (DEP) to make any coastal construction or reconstruction or change of existing structures, or any construction or physical activity undertaken specifically for shore protection purposes, or other structures and physical activity including groins, jetties, moles, breakwaters, seawalls, revetments, artificial nourishment, inlet sediment bypassing, excavation or maintenance dredging of inlet channels, or other deposition or removal of beach material, or construction of other structures if of a solid or highly impermeable design, upon sovereignty lands of Florida, below the mean high-water line of any tidal water of the state.

Section 161.041(2), F.S., specifies that the DEP can authorize an excavation or erection of a structure at any coastal location upon receipt of an application from a property or riparian owner and upon consideration of facts and circumstances, including;

- Adequate engineering data concerning inlet and shoreline stability and storm tides related to shoreline topography;
- Design features of the proposed structures or activities; and
- Potential impacts of the location of such structures or activities, including potential cumulative effects of any proposed structures or activities upon such beach-dune system or coastal inlet, which, in the opinion of the department, clearly justify such a permit.

Section 161.041(3), F.S., specifies that the DEP can also require engineer certifications as necessary to assure the adequacy of the design and construction of permitted projects.

In addition, section 161.041(4), F.S., authorizes the DEP, as a condition to the granting of a coastal construction permit, to require mitigation, financial or other assurances acceptable to the DEP to assure performance of conditions of a permit, or to enter into contractual agreements to best assure compliance with any permit conditions. Biological and environmental monitoring conditions included in the permit must be based upon clearly defined scientific principles.

Section 161.055(2), F.S., specifies that an applicant must submit all necessary information to satisfy the requirements for issuance of a permit. To obtain additional information that the DEP needs (and is not contained in the original permit application) to make a decision on whether to issue a permit, the DEP will submit a request for additional information (RAI) to the applicant for this information. The DEP is required to approve or deny every application within 90 days after receipt of a completed application unless a shorter period of time for agency action is provided by law. However, there is no time limit in current law in which the applicant must respond to the RAI, nor is there a limit for the number of times the DEP may request additional information before deeming an application complete.

In 2011, the Secretary of the DEP established an RAI policy for the permitting process with the following guidelines:

- 1st RAI- will require a mandatory review by the permitting supervisor. The RAI can be signed by the permit processor or the permitting supervisor.
- 2nd RAI- must be signed by the program administrator.

- 3rd RAI- must be signed by the district director or bureau chief. In addition, each district and division must submit a monthly report through the Deputy Secretary for Regulatory Programs of the 3rd RAIs issued and an explanation of why the RAI was issued.
- 4th RAI or more- will require the DEP Secretary's approval prior to issuing the 4th or more RAIs.

Effect of Proposed Changes

The bill amends s. 161.041(3), F.S., to specify that reasonable assurance is demonstrated if the permit applicant provides competent substantial evidence that is based on plans, studies, and credible expertise that accounts for naturally occurring variables that might be reasonably expected.

The bill creates s. 161.041(5), F.S., authorizing the DEP to issue a coastal construction permit in advance of the issuance of any incidental take authorization provided under the Endangered Species Act and its implementing regulations if the permits and authorizations include a condition that requires that such authorized activities can not begin until the incidental take authorization is issued.

The bill creates s. 161.041(6), F.S., directing the DEP to adopt rules to address standard mixing zone criteria and antidegradation requirements for turbidity generation for beach management and inlet bypassing permits that involve the excavation and placement of sediment in order to eliminate the need for variances. The DEP must consider the legislative declaration that beach nourishment projects are in the public interest when processing variance requests.

The bill creates s. 161.041(7), F.S., to specify that applications for permits must be made to the DEP upon such terms and conditions as set forth by rule. If the DEP requests additional information as part of the permit process, the DEP must cite applicable statutory and rule provisions that justify any item listed in a request for additional information. The DEP cannot issue guidelines that are enforceable as standards for beach management, inlet management, and other erosion control projects without adopting such guidelines by rule.

The bill creates s. 161.041(8), F.S., to specify that the Legislature intends to simplify and expedite the permitting process for the periodic maintenance of previously permitted and constructed beach nourishment and inlet management projects under the joint coastal permit process. A detailed review of a previously permitted project is not required if there have been no substantial changes in project scope and past performance of the project indicates that it has performed according to design expectations. The bill also directs the DEP to amend certain chapters of the Florida Administrative Code to streamline the permitting process for periodic beach maintenance projects and inlet sand bypassing activities.

The bill creates s. 161.041(9), F.S., to specify that joint coastal permits issued for activities falling under this section and part IV of chapter 373 must allow for two maintenance or dredging disposal events or a permit life of 15 years, whichever is greater.

Section 2. Amends s. 161.101, F.S.

Current Situation

Section 161.101, F.S., requires the DEP to determine which beaches are critically eroded and in need of restoration and nourishment and can authorize appropriations to pay up to 75 percent of the actual costs for restoring and nourishing a critically eroded beach. The local government in which the beach is located will be responsible for the balance of such costs. Whenever a beach erosion control project has been authorized by Congress for federal financial participation in accordance with any Act of Congress relating to beach erosion control in which nonfederal participation is required, it is the policy of the state to assist with an equitable share of the funds to the extent that funds are available, as determined by the DEP. The DEP is also authorized to enter into cooperative agreements and otherwise cooperate with, and meet the requirements and conditions of federal, state, and other local governments and political entities, or any agencies or representatives thereof, for the purposes of improving, furthering, and expediting the beach management program.

With regard to a project approved in accordance with s. 161.161, F.S.,[1] the DEP is authorized to pay from legislative appropriations specifically provided for these purposes an amount up to 75 percent of the costs of contractual services, including, but not limited to, the costs for:

- Feasibility and related planning studies.
- Design.
- Construction.
- Monitoring. The state shall cost-share in all biological and physical monitoring requirements which are based upon scientifically based criteria.

Section 161.101(13), F.S., specifies that to receive state funds a project must provide for adequate public access, protect natural resources, and provide protection for endangered and threatened species. The DEP cannot fund projects that provide only recreational benefits. All funded activities must have an identifiable beach erosion control or beach preservation benefit directed toward maintaining or enhancing sand in the system. Activities ineligible for cost-sharing include, but are not limited to:

- Recreational structures such as piers, decks, and boardwalks.
- Park activities and facilities except for erosion control.
- Aesthetic vegetation.
- Water quality components of stormwater management systems.
- Experimental or demonstration projects unless favorably peer-reviewed or scientifically documented.
- Hard structures unless designed for erosion control or to enhance beach nourishment project longevity or bypassing performance.
- Operations and maintenance, with the exception of nourishment.
- Maintenance and repair of over-walks.
- Navigation construction, operation, and maintenance activities, except those elements whose purpose is to place or keep sand on adjacent beaches.

Section 161.101(14), F.S., also specifies that the intent of the Legislature in preserving and protecting Florida's sandy beaches is to direct beach erosion control appropriations to the state's most severely eroded beaches, and to prevent further adverse impact caused by improved, modified, or altered inlets, coastal armoring, or existing upland development. In establishing annual project funding priorities, the DEP shall seek formal input from local coastal governments, beach and general government interest groups, and university experts. Criteria to be considered by the DEP in determining annual funding priorities must include:

- The severity of erosion conditions, the threat to existing upland development, and recreational and/or economic benefits.
- The availability of federal matching dollars.
- The extent of local government sponsor financial and administrative commitment to the project, including a long-term financial plan with a designated funding source or sources for initial construction and periodic maintenance.
- Previous state commitment and involvement in the project.
- The anticipated physical performance of the proposed project, including the frequency of periodic planned nourishment.
- The extent to which the proposed project mitigates the adverse impact of improved, modified, or altered inlets on adjacent beaches.
- Innovative, cost-effective, and environmentally sensitive applications to reduce erosion.

[1] Section 161.161, provides the procedure for approval of beach restoration and management projects and requires the DEP to develop and maintain a comprehensive long-term management plan for the restoration and maintenance of the state's critically eroded beaches.

- Projects that provide enhanced habitat within or adjacent to designated refuges of nesting sea turtles.
- The extent to which local or regional sponsors of beach erosion control projects agree to coordinate the planning, design, and construction of their projects to take advantage of identifiable cost savings.
- The degree to which the project addresses the state's most significant beach erosion problems.

In the event that more than one project qualifies equally under the provisions of this subsection, the DEP shall assign funding priority to those projects that are ready to proceed.

Section 161.101(20), F.S., requires the DEP to maintain a current project listing and may, in its discretion and depending upon the availability of local resources and changes in the criteria listed above, revise the project listing.

Effect of Proposed Changes

The bill amends s. 161.101(20), F.S., to require the DEP to maintain active project listings on its website by fiscal year to provide transparency regarding those projects receiving funding and the funding amounts, and to facilitate legislative reporting and oversight. The bill also specifies that in consideration of this intent:

- The DEP must notify the Executive Office of the Governor and the Legislature regarding any significant changes in the funding levels of a given project as initially requested in the DEP's budget submission and subsequently included in approved annual funding allocations. The bill defines the term "significant change" to mean those changes exceeding 25 percent of a project's original allocation. If there is surplus funding, notification must be provided to the Executive Office of the Governor and the Legislature to indicate whether additional dollars are intended to be used for inlet management, offered for reversion as part of the next appropriations process, or used for other specified priority projects on active project lists.
- The DEP must prepare a summary of specific project activities for the current fiscal year, funding status, and changes to annual project lists and the summary must be included with the DEP's submission of its annual legislative budget request.
- A local project sponsor can at any time release, in whole or in part, appropriated project dollars by formal notification to the DEP, which must notify the Executive office of the Governor and the Legislature. Notification must indicate how the project dollars are intended to be used.

Section 3. Amends s. 403.813, F.S.

Current Situation

Section 403.813, F.S., provides the criteria required for permitting exceptions under chapter 373, F.S.

Effect of Proposed Changes

The bill amends s. 403.813, F.S., to create an additional permit exception, notwithstanding any other provision in chapter 403, chapter 373, or chapter 161, for the following exploratory activities associated with beach restoration and nourishment projects and inlet management activities:

- The collection of geotechnical, geophysical and cultural resource data, including surveys, mapping, acoustic soundings, benthic and other biologic sampling, and coring.
- Oceanographic instrument deployment, including temporary installation on the seabed of coastal and oceanographic data collection equipment.
- Incidental excavation associated with any of the activities listed under the two bullets above.

Section 4. Provides an effective date of July 1, 2012.

B. SECTION DIRECTORY:

Section 1. Amends s. 161.041, F.S., specifying that demonstration to the DEP of the adequacy of a project's design and construction is supported by certain evidence; authorizing the DEP to issue permits for an incidental take authorization under certain circumstances; requiring the DEP to adopt certain rules involving the excavation and placement of sediment; requiring the DEP to justify items listed in a request for additional information; requiring the DEP to adopt guidelines by rule; providing legislative intent with regard to permitting for periodic maintenance of certain beach nourishment and inlet management projects; requiring the DEP to amend specified rules to streamline such permitting.

Section 2. Amends s. 161.101, F.S., requiring the DEP to maintain certain beach management project information on its website; requiring the DEP to notify the Governor's Office and the Legislature concerning any significant changes in project funding levels.

Section 3. Amends s. 403.813, F.S., providing a permit exception for certain specified exploratory activities relating to beach restoration and nourishment projects and inlet management activities.

Section 4. Provides an effective date of July 1, 2012.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

	FY 2012-13	FY 2013-14
Permit Fee Trust Fund		
30 permits/year @ $100	($3,000)	($3,000)
General Revenue Fund		
8% Service Charge	($240)	($240)

2. Expenditures:

According to the DEP, there could be a cost savings associated with issuing long-term permits for multiple events without the need of detailed review when there are no substantive changes to the project, but the savings are expected to be minimal. There will also be a minor cost associated with the DEP rulemaking. The cost is not currently known, however, the DEP can accomplish the rulemaking with its current resources.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

Local governments could see a cost savings associated with streamlining current regulations, including the issuance of long-term permits for multiple events without the need for detailed DEP review when there are no substantive changes to the project.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The private sector could see a cost savings associated with streamlining current regulations, including the issuance of long-term permits for multiple events without the need for detailed DEP review when there are no substantive changes to the project.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

A rule is an agency statement of general applicability which interprets, implements, or prescribes law or policy, including the procedure and practice requirements of an agency as well as certain types of forms.[2] Rulemaking authority is delegated by the Legislature[3] through statute and authorizes an agency to "adopt, develop, establish, or otherwise create"[4] a rule. Agencies do not have discretion whether to engage in rulemaking.[5] To adopt a rule an agency must have a general grant of authority to implement a specific law by rulemaking.[6] The grant of rulemaking authority itself need not be detailed.[7] The specific statute being interpreted or implemented through rulemaking must provide specific standards and guidelines to preclude the administrative agency from exercising unbridled discretion in creating policy or applying the law.[8]

Consistent with the above stated legal principles, the bill specifically prohibits the application of standard for beach management without adoption through rulemaking.

The bill directs the DEP to adopt rules to address standard mixing zone criteria and anti-degradation requirements for turbidity generation for permits that involve the excavation and placement of sediment for the purpose of eliminating variances. The bill appears to provide sufficient guidelines and standards to limit the department's discretion.

The bill moves the rulemaking provision related to application for coastal construction permits.[9] The section appears to provide sufficient guidance to limit the department's discretion.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On January 11, 2012, the Agriculture & Natural Resources Subcommittee amended and passed HB 691 as a committee substitute (CS). The CS:

- Deleted language requiring the DEP to work in good faith with permit applicants.

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[2] Section 120.52(16), F.S.; *Florida Department of Financial Services v. Capital Collateral Regional Counsel-Middle Region,* 969 So.2d 527, 530 (Fla. 1st DCA 2007).
[3] *Southwest Florida Water Management District v. Save the Manatee Club, Inc.,* 773 So.2d 594 (Fla. 1st DCA 2000).
[4] Section 120.52(17), F.S.
[5] Section 120.54(1)(a), F.S.
[6] Sections 120.52(8) and 120.536(1), F.S.
[7] *Supra Save the Manatee Club, Inc.,* at 599.
[8] *Sloban v. Florida Board of Pharmacy,* 982 So.2d 26, 29-30 (Fla. 1st DCA 2008); *Board of Trustees of the Internal Improvement Trust Fund v. Day Cruise Association, Inc.,* 794 So.2d 696, 704 (Fla. 1st DCA 2001).
[9] Rulemaking language is stricken in s. 161.041(1)(a), and added without substantive change to the new s. 161.041(7).

- Directs the DEP to adopt rules to address standard mixing zone criteria and anti-degradation requirements for turbidity generation for permits that involve excavation and placement of sediment in order to eliminate the need for variances.
- Deletes language authorizing the DEP to issue joint coastal permits for activities falling under s. 161.041 and part IV of chapter 373, F.S.
- Amends s. 403.813, F.S., to provide exceptions for exploratory activities and deletes *de minimis* language.

This analysis is drawn to CS/HB 691.

A bill to be entitled

An act relating to beach management; amending s. 161.041, F.S.; specifying that demonstration to the Department of Environmental Protection of the adequacy of a project's design and construction is supported by certain evidence; authorizing the department to issue permits for an incidental take authorization under certain circumstances; requiring the department to adopt certain rules involving the excavation and placement of sediment; requiring the department to justify items listed in a request for additional information; requiring the department to adopt guidelines by rule; providing legislative intent with regard to permitting for periodic maintenance of certain beach nourishment and inlet management projects; requiring the department to amend specified rules to streamline such permitting; providing a permit life for certain joint coastal permits; amending s. 161.101, F.S.; requiring the department to maintain certain beach management project information on its website; requiring the department to notify the Governor's Office and the Legislature concerning any significant changes in project funding levels; amending s. 403.813, F.S.; providing a permit exemption for certain specified exploratory activities relating to beach restoration and nourishment projects and inlet management activities; providing an effective date.

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

Section 1. Section 161.041, Florida Statutes, is amended to read:

161.041 Permits required.—

(1) If a ~~any~~ person, firm, corporation, county, municipality, township, special district, or ~~any~~ public agency desires to make any coastal construction or reconstruction or change of existing structures, or any construction or physical activity undertaken specifically for shore protection purposes, or other structures and physical activity including groins, jetties, moles, breakwaters, seawalls, revetments, artificial nourishment, inlet sediment bypassing, excavation or maintenance dredging of inlet channels, or other deposition or removal of beach material, or construction of other structures ~~if~~ of a solid or highly impermeable design~~,~~ upon state sovereignty lands ~~of Florida,~~ below the mean high-water line of any tidal water of the state, a coastal construction permit must be obtained from the department before ~~prior to~~ the commencement of such work. The department may exempt interior tidal waters of the state from the permit requirements of this section. ~~No such development shall interfere,~~

(a) Except during construction, such development may not interfere with the public use ~~by the public~~ of any area of a beach seaward of the mean high-water line unless the department determines that the ~~such~~ interference is unavoidable for purposes of protecting the beach or an ~~any~~ endangered upland

structure. ~~The department may require,~~ As a condition of ~~to~~ granting permits under this section, the department may require the provision of alternative access if ~~when~~ interference with public access along the beach is unavoidable. The width of such alternate access may not be required to exceed the width of the access that will be obstructed as a result of the permit being granted. ~~Application for coastal construction permits as defined above shall be made to the department upon such terms and conditions as set forth by rule of the department.~~

(b) Except for the deepwater ports identified in s. 403.021(9)(b), the department shall not issue a ~~any~~ permit for the construction of a coastal inlet jetty or the excavation or maintenance of such an inlet if the activity authorized by the permit will have a significant adverse impact on the sandy beaches of this state without a mitigation program approved by the department. In evaluating the mitigation program, the department shall consider ~~take into consideration~~ the benefits of the long-term sand management plan of the permittee and the overall public benefits of the inlet activity.

(2) The department may authorize an excavation or erection of a structure at any coastal location upon receipt of an application from a property or riparian owner and upon consideration of facts and circumstances, including:

(a) Adequate engineering data concerning inlet and shoreline stability and storm tides related to shoreline topography;

(b) Design features of the proposed structures or activities; and

(c) Potential effects ~~impacts~~ of the location of such structures or activities, including potential cumulative effects of any proposed structures or activities upon such beach-dune system or coastal inlet, which, in the opinion of the department, clearly justify such ~~a~~ permit.

(3) The department may require ~~such~~ engineer certifications as necessary to assure the adequacy of the design and construction of permitted projects. Reasonable assurance is demonstrated if the permit applicant provides competent substantial evidence based on plans, studies, and credible expertise that accounts for naturally occurring variables that might reasonably be expected.

(4) The department may, as a condition to ~~the~~ granting ~~of~~ a permit under this section, require mitigation, financial, or other assurances acceptable to the department as ~~may be~~ necessary to assure performance of the conditions of a permit or enter into contractual agreements to best assure compliance with any permit conditions. Biological and environmental monitoring conditions included in the permit must ~~shall~~ be based upon clearly defined scientific principles. The department may also require notice of the required permit conditions ~~required~~ and the contractual agreements entered into pursuant to ~~the provisions of~~ this subsection to be filed in the public records of the county in which the permitted activity is located.

(5) Notwithstanding any other provision of law, the department may issue permits pursuant to this part in advance of the issuance of an incidental take authorization provided under the Endangered Species Act and its implementing regulations if

the permits and authorizations include a condition that requires that such authorized activities not begin until the incidental take authorization is issued.

(6) The department shall adopt rules to address standard mixing zone criteria and antidegradation requirements for turbidity generation for beach management and inlet bypassing permits that involve the excavation and placement of sediment in order to reduce or eliminate the need for variances. In processing variance requests, the department must consider the legislative declaration that, pursuant to s. 161.088, beach nourishment projects are in the public interest.

(7) Application for permits shall be made to the department upon such terms and conditions as set forth by rule.

(a) If, as part of the permit process, the department requests additional information, it must cite applicable statutory and rule provisions that justify any item listed in a request for additional information.

(b) The department may not issue guidelines that are enforceable as standards for beach management, inlet management, and other erosion control projects without adopting such guidelines by rule.

(8) The Legislature intends to simplify and expedite the permitting process for the periodic maintenance of previously permitted and constructed beach nourishment and inlet management projects under the joint coastal permit process. A detailed review of a previously permitted project is not required if there have been no substantial changes in project scope and past performance of the project indicates that the project has

performed according to design expectations. The department shall amend chapters 62B-41 and 62B-49, Florida Administrative Code, to streamline the permitting process for periodic beach maintenance projects and inlet sand bypassing activities.

(9) Joint coastal permits issued for activities falling under this section and part IV of chapter 373 must allow for two maintenance or dredging disposal events or a permit life of 15 years, whichever is greater.

Section 2. Subsection (20) of section 161.101, Florida Statutes, is amended to read:

161.101 State and local participation in authorized projects and studies relating to beach management and erosion control.—

(20) The department shall maintain active ~~a current~~ project listings on its website by fiscal year in order to provide transparency regarding those projects receiving funding and the funding amounts, and to facilitate legislative reporting and oversight. In consideration of this intent: ~~listing and may, in its discretion and dependent upon the availability of local resources and changes in the criteria listed in subsection (14), revise the project listing.~~

(a) The department shall notify the Executive Office of the Governor and the Legislature regarding any significant changes in the funding levels of a given project as initially requested in the department's budget submission and subsequently included in approved annual funding allocations. The term "significant change" means those changes exceeding 25 percent of a project's original allocation. If there is surplus funding,

notification shall be provided to the Executive Office of the Governor and the Legislature to indicate whether additional dollars are intended to be used for inlet management pursuant to s. 161.143, offered for reversion as part of the next appropriations process, or used for other specified priority projects on active project lists.

(b) A summary of specific project activities for the current fiscal year, funding status, and changes to annual project lists shall be prepared by the department and included with the department's submission of its annual legislative budget request.

(c) A local project sponsor may at any time release, in whole or in part, appropriated project dollars by formal notification to the department, which shall notify the Executive Office of the Governor and the Legislature. Notification must indicate how the project dollars are intended to be used.

Section 3. Paragraph (v) is added to subsection (1) of section 403.813, Florida Statutes, to read:

403.813 Permits issued at district centers; exceptions.—

(1) A permit is not required under this chapter, chapter 373, chapter 61-691, Laws of Florida, or chapter 25214 or chapter 25270, 1949, Laws of Florida, for activities associated with the following types of projects; however, except as otherwise provided in this subsection, nothing in this subsection relieves an applicant from any requirement to obtain permission to use or occupy lands owned by the Board of Trustees of the Internal Improvement Trust Fund or any water management district in its governmental or proprietary capacity or from

complying with applicable local pollution control programs authorized under this chapter or other requirements of county and municipal governments:

(v) Notwithstanding any other provision in this chapter, chapter 373, or chapter 161, a permit or other authorization is not required for the following exploratory activities associated with beach restoration and nourishment projects and inlet management activities:

1. The collection of geotechnical, geophysical, and cultural resource data, including surveys, mapping, acoustic soundings, benthic and other biologic sampling, and coring.

2. Oceanographic instrument deployment, including temporary installation on the seabed of coastal and oceanographic data collection equipment.

3. Incidental excavation associated with any of the activities listed under subparagraph 1. or subparagraph 2.

Section 4. This act shall take effect July 1, 2012.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1197 Agriculture
SPONSOR(S): Horner
TIED BILLS: None **IDEN./SIM. BILLS:** None

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Agriculture & Natural Resources Subcommittee	13 Y, 0 N	Cunningham	Blalock
2) Community & Military Affairs Subcommittee	13 Y, 0 N	Duncan	Hoagland
3) Agriculture & Natural Resources Appropriations Subcommittee		Lolley	Massengale
4) State Affairs Committee			

SUMMARY ANALYSIS

This bill addresses several issues relating to agriculture in the state.

- Florida apiary inspectors certify movement of honey bee colonies throughout the state and nation. These colonies are monitored for diseases, honey bee pests and unwanted species. The Department of Agriculture and Consumer Services (department) has a comprehensive state program (e.g., numbers of inspectors and traps) to prevent the accidental introduction of the unwanted Africanized honey bee. Current law provides the department specific powers to oversee apiaries, honeybee operations, and honeybee products. The bill provides the department with the exclusive authority to regulate beekeeping, apiaries, and apiary locations. It also specifies that an apiary may be located on land classified as agricultural land or on land that is integral to a beekeeping operation.

- Any nonresidential farm building or farm fence is exempt from the Florida Building Code and any county or municipal code or fee, except for code provisions implementing local, state, or federal floodplain management regulations. The bill exempts farm signs from the Florida Building Code and any county or municipal code or fee. The bill also defines "farm sign" as "a sign erected, used, or maintained on a farm by the owner or lessee of the farm which displays a message exclusively relating to farm produce, merchandise, services, or entertainment sold, produced, manufactured, or furnished on the farm."

- Under the Florida Right to Farm Act (act), the Legislature has stated that agricultural activities conducted on farm land in urbanizing areas are potentially subject to lawsuits based on the theory of nuisance and that these suits encourage and even force the premature removal of the farm land from agricultural use. The purpose of the act is to protect reasonable agricultural activities conducted on farm land from nuisance suits. The act also provides that a local government cannot adopt any ordinance, regulation, rule, or policy to prohibit, restrict, regulate, or otherwise limit an activity of a bona fide farm operation on land classified as agricultural land where such activity is regulated through implemented best management practices or interim measures developed by the department, the Department of Environmental Protection, or the water management districts and adopted under chapter 120, F.S., as part of a statewide or regional program. The bill amends the definition of "farm," "farm operation," and "farm product" to include land and buildings used in the production of honeybee products, the placement and operation of an apiary, and insects that are useful to humans within the purview of the act.

There is no fiscal impact on state government. The fiscal impact on local government is expected to be insignificant. See Fiscal Analysis & Economic Impact State.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Beekeeping, Apiaries, and Apiary Locations

Present Situation

Apiary inspection plays a vital role in Florida agriculture as inspectors work to prevent introduction and establishment of honey bee pests and diseases. Florida's honey industry is consistently ranked among the top five in the nation with an annual worth of $13 million. In addition, the Florida honey bee industry benefits the state's fruit and vegetable industry by providing an estimated $20 million in increased production numbers created by managed pollination services that are available in no other way. There are more than 100 varieties of popular fruits and vegetables that use pollination to ensure fruitful crops.

Florida apiary inspectors certify movement of honey bee colonies throughout the state and nation.[1] These colonies are monitored for diseases, honey bee pests and unwanted species. The Department of Agriculture and Consumer Services (department) has a comprehensive state program (e.g., numbers of inspectors and traps) to prevent the accidental introduction of the unwanted Africanized honey bee.

Seventeen million pounds of honey are produced in Florida each year.[2]

Chapter 586, F.S., regulates honey production and beekeeping in Florida. Section 586.10, F.S., specifies that the department has the powers and duties to:

- Administer and enforce the provisions of this chapter;
- Promulgate rules necessary to the enforcement of this chapter;
- Promulgate rules relating to standard grades for honey and other honeybee products;
- Enter any public or private premise during regular business hours for the purpose of inspection, quarantine, destruction, or treatment of honeybees, used beekeeping equipment, unwanted races of honeybees, or regulated articles;
- Declare a honeybee pest or unwanted race of honeybees to be a nuisance;
- Declare a quarantine;
- Enter into cooperative arrangements with any person, municipality, county, or other department of this state or any agency, officer, or authority of other states or the United States Department of Agriculture, for inspection of honeybees, honeybee pests, or unwanted races of honeybees, and contribute a share of the expenses incurred under such arrangements.
- Carry on investigations of methods of control, eradication, and prevention of dissemination of honeybee pests or unwanted races of honeybees;
- Inspect or cause to be inspected all apiaries of the state to include: name of the apiary, name of the apiary owner, mailing address of the apiary owner, number of hives of the apiary owner, pest problems associated with the apiary, and brands used by beekeepers where applicable;
- Collect or accept arthropods, nematodes, fungi, bacteria, or other organisms for identification;
- Confiscate, destroy, or make use of abandoned beehives or beekeeping equipment;
- Require the identification of ownership of apiaries;
- Enter into a compliance agreement with any person engaged in purchasing, assembling, exchanging, processing, utilizing, treating, or moving beekeeping equipment or honeybees;
- Make and issue to beekeepers certificates of registration and inspection, following proper inspection and certification of their honeybee colonies;
- Revoke or suspend a certificate of inspection or the use of any certificate or permit issued by the department if a beekeeper or honeybee product processor violates this section;

[1] Rule 5B-54.006, F.A.C.
[2] http://www.freshfromflorida.com/onestop/plt/apiaryinsp.html

- Refuse the certification of any honeybees, honeybee products, or beekeeping equipment when it is determined that an unwanted race of honeybees, honeybee products, or beekeeping equipment, or that the condition of the apiary inhibits a thorough and efficient inspection by the department;
- Conduct, supervise, or cause the fumigation, destruction, or treatment of honeybees, including unwanted races of honeybees, honeybee products, and used beekeeping equipment or other articles infested or infected by honeybee pests or unwanted races of honeybees or so exposed that infection or infestation could exist; and
- May require the removal from this state of any honeybees or beekeeping equipment brought into the state in violation of this chapter.[3]

Effect of Proposed Changes

The bill amends s. 586.10, F.S., to specify that the department has the exclusive authority to regulate beekeeping, apiaries, and apiary locations. The bill also specifies that an apiary can be located on land classified as agricultural land or on land that is integral to a beekeeping operation.

Farm Signs

Present Situation

Section 604.50, F.S., specifies that any nonresidential farm building or farm fence is exempt from the Florida Building Code and any county or municipal code or fee, except for code provisions implementing local, state, or federal floodplain management regulations.[4] "Farm" means the land, buildings, support facilities, machinery, and other appurtenances used in the production of farm or aquaculture products.[5] "Nonresidential farm building" means any temporary or permanent building or support structure that is classified as a nonresidential farm building on a farm under s. 553.73(10)(c), F.S., or that is used primarily for agricultural purposes, is located on land that is an integral part of a farm operation or is classified as agricultural land under s. 193.461, F.S., and is not intended to be used as a residential dwelling. The term may include, but is not limited to, a barn, greenhouse, shade house, farm office, storage building, or poultry house.

Effect of Proposed Changes

The bill exempts farm signs from the Florida Building Code and any county or municipal code or fee, except for code provisions implementing local, state, or federal floodplain management regulations. The bill also defines "farm sign" as a sign erected, used, or maintained on a farm by the owner or lessee of the farm which displays a message exclusively relating to farm produce, merchandise, services, or entertainment sold, produced, manufactured, or furnished on the farm.

Florida Right to Farm Act

Present Situation

The Florida Right to Farm Act[6] states that the Legislature finds that agricultural production is a major contributor to the economy of the state and agricultural lands constitute unique and irreplaceable resources of statewide importance. The Legislature also finds that agricultural activities conducted on farm land in urbanizing areas are potentially subject to lawsuits based on the theory of nuisance and that these suits encourage and even force the premature removal of the farm land from agricultural use. The purpose of this act is to protect reasonable agricultural activities conducted on farm land from nuisance suits. The act, in general, states that no farm operation that has been in operation for 1 year or more since its established date of operation and which was not a nuisance at the time of its

[3] Section 586.10, F.S.
[4] Section 604.50, F.S.
[5] Section 823.14, F.S.
[6] Section 823.14, F.S.

established date of operation shall be a public or private nuisance if the farm operation conforms to generally accepted agricultural and management practices.

The act also specifies that a local government may not adopt any ordinance, regulation, rule, or policy to prohibit, restrict, regulate, or otherwise limit an activity of a bona fide farm operation on land classified as agricultural land where such activity is regulated through implemented best management practices or interim measures developed by the Department of Environmental Protection, the department, or water management districts and adopted under chapter 120 as part of a statewide or regional program.

The act defines "farm" to mean the land, buildings, support facilities, machinery, and other appurtenances used in the production of farm or aquaculture products. "Farm operation" is defined in the act to mean all conditions or activities by the owner, lessee, agent, independent contractor, and supplier which occur on a farm in connection with the production of farm products and includes, but is not limited to, the marketing of produce at roadside stands or farm markets; the operation of machinery and irrigation pumps; the generation of noise, odors, dust, and fumes; ground or aerial seeding and spraying; the application of chemical fertilizers, conditioners, insecticides, pesticides, and herbicides; and the employment and use of labor. "Farm product" is also defined in the act to mean any plant, as defined in s. 581.011, F.S.,[7] or animal useful to humans and includes, but is not limited to, any product derived therefrom.

Effect of Proposed Changes

The bill revises the Right to Farm Act by amending the definition of "farm" to include production of honeybee products in addition to farm and aquaculture products. The bill also amends the definition of "farm operation" to integrate production of honeybee products, which may include the placement and operation of an apiary. The definition of "farm product" is amended to include any insect useful to humans. These definitional changes brings land and buildings used in the production of honeybee products, the placement and operation of an apiary, and insects that are useful to humans within the purview of the Right to Farm Act.

B. SECTION DIRECTORY:

Section 1: Amends s. 586.10, F.S., providing the department with the exclusive authority to regulate beekeeping, apiaries, and apiary locations. It also specifies that an apiary may be located on land classified as agricultural land or on land that is integral to a beekeeping operation

Section 2: Amends s. 604.50, F.S., to exempt farm signs from the Florida Building Code and any county or municipal code or fee; provides a definition for the term "farm sign."

Section 3: Amends s. 823.14, F.S., to revise the definitions of farm, farm products, and farm operation to include honeybee products, the placement and operation of apiaries, and insects that are useful to humans within the purview of the Florida Right to Farm Act.

Section 4: Provides an effective date of July 1, 2012.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

[7] Plant means trees, shrubs, vines, forage and cereal plants, and all other plants and plant parts, including cuttings, grafts, scions, buds, fruit, vegetables, roots, bulbs, seeds, wood, lumber, and all products made from them, unless specifically excluded by rule.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

By amending s. 604.50, F.S., counties and municipalities that collect fees or fines associated with farm signs, may experience a decrease in revenues. Although the fiscal impact is indeterminate, it is likely to be insignificant.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

By amending s. 604.50, F.S., agricultural producers may be exempt from paying fees or fines assessed by certain governmental entities for farm signs.

By amending s. 823.14, F.S., the Florida Right to Farm Act, the number of lawsuits for agricultural nuisances relating to honeybee production, products, and insects may be reduced.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Section 18, Article VII of the State Constitution limits the power of the Legislature to enact laws impacting certain revenues and expenditures of municipalities and counties. The mandates provision appears to apply because the bill exempts farm signs from any county or municipal code or fee; however, this provision appears to have a fiscal impact of less than $1.9 million statewide on counties and municipalities and is deemed an insignificant fiscal impact, and thus, an exemption for the purposes of Section 18, Article VII of the Constitution appears to apply.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to agriculture; amending s. 586.10, F.S.; specifying that the Department of Agriculture and Consumer Services has exclusive authority over the regulation of beekeeping, apiaries, and apiary locations; authorizing the placement of apiaries on certain lands; amending s. 604.50, F.S.; defining the term "farm sign"; exempting farm signs from the Florida Building Code and county and municipal codes and fees; amending s. 823.14, F.S.; revising definitions and adding honeybee products to the list of farm operations that are not considered a public or private nuisance under the Florida Right to Farm Act; providing an effective date.

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

Section 1. Section 586.10, Florida Statutes, is amended to read:

586.10 Powers and duties of department.—

(1) The department has ~~shall have~~ the powers and duties to:

(a) ~~(1)~~ Administer and enforce ~~the provisions of~~ this chapter.

(b) ~~(2)~~ Adopt ~~Promulgate~~ rules necessary to the enforcement of this chapter.

(c) ~~(3)~~ Adopt ~~Promulgate~~ rules relating to standard grades for honey and other honeybee products.

(d) ~~(4)~~ Enter upon any public or private premise or carrier during regular business hours for the purpose of inspection, quarantine, destruction, or treatment of honeybees, used beekeeping equipment, unwanted races of honeybees, or regulated articles.

(e) ~~(5)~~ Declare a honeybee pest or unwanted race of honeybees to be a nuisance to the beekeeping industry as well as any honeybee or other article infested or infected therewith or that has been exposed to infestation or infection in a manner believed likely to communicate the infection or infestation.

(f) ~~(6)~~ Declare a quarantine against any area, place, or political unit within this state or other states, territories, or foreign countries, or portion thereof, in reference to honeybee pests or unwanted races of honeybees and prohibit the movement within this state from other states, territories, or foreign countries of all honeybees, honeybee products, used beekeeping equipment, or other articles from such quarantined places or areas which are likely to carry honeybee pests or unwanted races of honeybees if the quarantine is determined, after due investigation, to be necessary in order to protect this state's beekeeping industry, honeybees, and the public. In such cases, the quarantine may be made absolute or rules may be adopted prescribing the method and manner under which the prohibited articles may be moved into or within, sold in, or otherwise disposed of in this state.

(g) ~~(7)~~ Enter into cooperative arrangements with any person, municipality, county, or other department of this state or any agency, officer, or authority of other states or the

United States Government, including the United States Department of Agriculture, for inspection of honeybees, honeybee pests, or unwanted races of honeybees and products thereof and the control or eradication of honeybee pests and unwanted races of honeybees, and contribute a share of the expenses incurred under such arrangements.

(h) ~~(8)~~ Carry on investigations of methods of control, eradication, and prevention of dissemination of honeybee pests or unwanted races of honeybees.

(i) ~~(9)~~ Inspect or cause to be inspected all apiaries in the state at such intervals as it may deem best and to keep a complete, accurate, and current list of all inspected apiaries to include the:

1. ~~(a)~~ Name of the apiary.

2. ~~(b)~~ Name of the owner of the apiary.

3. ~~(c)~~ Mailing address of the apiary owner.

4. ~~(d)~~ Location of the apiary.

5. ~~(e)~~ Number of hives in the apiary.

6. ~~(f)~~ Pest problems associated with the apiary.

7. ~~(g)~~ Brands used by beekeepers where applicable.

(j) ~~(10)~~ Collect or accept from other agencies or individuals specimens of arthropods, nematodes, fungi, bacteria, or other organisms for identification.

(k) ~~(11)~~ Confiscate, destroy, or make use of abandoned beehives or beekeeping equipment.

(l) ~~(12)~~ Require the identification of ownership of apiaries.

(m) ~~(13)~~ Enter into a compliance agreement with any person

engaged in purchasing, assembling, exchanging, processing, utilizing, treating, or moving beekeeping equipment or honeybees.

(n) ~~(14)~~ Make and issue to beekeepers certificates of registration and inspection, following proper inspection and certification of their honeybee colonies.

(2) ~~(15)~~ If the department determines that a beekeeper or honeybee product processor is selling or offering for sale or is distributing or offering to distribute honeybees, honeybee products, or beekeeping equipment in violation of this chapter or rules adopted under this chapter, or has aided or abetted in the violation, the department may revoke or suspend her or his certificate of inspection or the use of any certificate or permit issued by the department.

(3) ~~(16)~~ The department may refuse the certification of any honeybees, honeybee products, or beekeeping equipment when it is determined that an unwanted race of honeybees exists, or honeybee pests exist on honeybees, honeybee products, or beekeeping equipment, or that the condition of the apiary inhibits a thorough and efficient inspection by the department.

(4) ~~(17)~~ The department is authorized to conduct, supervise, or cause the fumigation, destruction, or treatment of honeybees, including unwanted races of honeybees, honeybee products, and used beekeeping equipment or other articles infested or infected by honeybee pests or unwanted races of honeybees or so exposed to infection or infestation that it is reasonably believed that infection or infestation could exist.

(5) ~~(18)~~ The department may require the removal from this

state of any honeybees or beekeeping equipment ~~which has been~~ brought into the state in violation of this chapter or the rules adopted under this chapter.

(6) The department has exclusive authority to regulate beekeeping, apiaries, and apiary locations. However, an apiary may be located on land classified as agricultural land under s. 193.461 or on land that is integral to a beekeeping operation.

Section 2. Section 604.50, Florida Statutes, is amended to read:

604.50 Nonresidential farm buildings, ~~and~~ farm fences, and farm signs.—

(1) Notwithstanding any other law to the contrary, any nonresidential farm building, ~~or~~ farm fence, or farm sign is exempt from the Florida Building Code and any county or municipal code or fee, except for code provisions implementing local, state, or federal floodplain management regulations.

(2) As used in this section, the term:

(a) ~~(b)~~ "Farm" has the same meaning as provided in s. 823.14.

(b) "Farm sign" means a sign erected, used, or maintained on a farm by the owner or lessee of the farm which displays a message exclusively relating to farm produce, merchandise, services, or entertainment sold, produced, manufactured, or furnished on the farm.

(c) ~~(a)~~ "Nonresidential farm building" means any temporary or permanent building or support structure that is classified as a nonresidential farm building on a farm under s. 553.73(9)(c) or that is used primarily for agricultural purposes, is located

on land that is an integral part of a farm operation or is classified as agricultural land under s. 193.461, and is not intended to be used as a residential dwelling. The term may include, but is not limited to, a barn, greenhouse, shade house, farm office, storage building, or poultry house.

Section 3. Paragraphs (a), (b), and (c) of subsection (3) of section 823.14, Florida Statutes, are amended to read:

823.14 Florida Right to Farm Act.—

(3) DEFINITIONS.—As used in this section:

(a) "Farm" means the land, buildings, support facilities, machinery, and other appurtenances used in the production of farm products, honeybee products, or aquaculture products.

(b) "Farm operation" means all conditions or activities by the owner, lessee, agent, independent contractor, and supplier which occur on a farm in connection with the production of farm products or honeybee products, which may include ~~and includes~~, but is not limited to, the marketing of produce at roadside stands or farm markets; the operation of machinery and irrigation pumps; the generation of noise, odors, dust, and fumes; ground or aerial seeding and spraying; the application of chemical fertilizers, conditioners, insecticides, pesticides, and herbicides; ~~and~~ the employment and use of labor; or the placement and operation of an apiary.

(c) "Farm product" means any plant, as defined in s. 581.011, ~~or~~ animal, or insect useful to humans and includes, but is not limited to, any product derived therefrom.

Section 4. This act shall take effect July 1, 2012.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 663 Solid Waste Management Facilities
SPONSOR(S): Goodson
TIED BILLS: None **IDEN./SIM. BILLS:** SB 738

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Agriculture & Natural Resources Subcommittee	15 Y, 0 N, As CS	Deslatte	Blalock
2) Agriculture & Natural Resources Appropriations Subcommittee		Helpling	Massengale
3) State Affairs Committee			

SUMMARY ANALYSIS

Currently, a solid waste management facility may not be operated, maintained, constructed, expanded, modified, or closed without an appropriate and currently valid permit issued by the Department of Environmental Protection (DEP). Current law also provides that permits are not required for certain solid waste disposal activities if the activity does not create a public nuisance or any condition adversely affecting the environment or public health and does not violate other state or local laws, ordinances, rules, regulations or orders. Currently, the DEP's rules limit a permit's duration to 5 years, except for certain long-term care permits for closed facilities that may last up to 10 years.

The bill specifies that a permit, including a general permit, issued to a solid waste management facility that is designed with a leachate control system that meets the DEP's requirements must be issued for a term of 20 years unless the applicant requests a shorter permit term. Existing permit fees for a qualifying solid waste management facility must be prorated to the permit term authorized under this section of law. These provisions apply to a qualifying solid waste management facility that applies for an operating or construction permit or renews an existing operating or construction permit on or after October 1, 2012.

The bill also specifies that a permit, including a general permit, but not including a registration, issued to a solid waste management facility that does not have a leachate control system must be renewed for 10 years, unless the applicant requests a shorter term, if certain conditions are met.

The bill creates a solid waste landfill closure account, within the Solid Waste Management Trust Fund, to provide funding for the closing and long-term care of solid waste management facilities, if certain requirements are met. The bill also states that the DEP has reasonable expectations that the insurance company issuing the closure insurance policy will provide or reimburse most or all of the funds required to complete closing and long-term care of the facility. If the insurance company reimburses the DEP for the costs of closing or long-term care of the facility, the DEP must deposit the funds into the solid waste landfill closure account.

Lastly, the bill states that the DEP must, by rule, require that the owner or operator of a solid waste management facility that receives waste after October 9, 1993, and that is required to undertake corrective actions for violations of water quality standards provide financial assurance for the cost of completing such corrective actions. The same financial assurance mechanisms that are available for closure costs will be available for costs associated with undertaking corrective actions.

The bill may have an insignificant negative fiscal impact to state government for rulemaking and for the creation of a solid waste landfill closure account, and a significant negative fiscal impact to local governments that operate lined solid waste management facilities and choose to apply for the 20-year permit authorized in the bill. The bill does not appear to have a fiscal impact on state government over the long term, and appears to have an indeterminate positive fiscal impact over the long term on local governments that operate lined solid waste management facilities and choose to apply for the 20-year or 10-year permit authorized in the bill. (See Fiscal Analysis section.)

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Solid Waste Management Facility Permits

403.707(1), F.S., specifies that a solid waste management facility may not be operated, maintained, constructed, expanded, modified, or closed without an appropriate and currently valid permit issued by the Department of Environmental Protection (DEP). Currently the DEP's rules limit permit duration to 5 years, except certain long-term care permits for closed facilities may last up to 10 years.

Section 403.707(2), F.S., specifies that a permit is not required for the following, if the activity does not create a public nuisance or any condition adversely affecting the environment or public health and does not violate other state or local laws, ordinances, rules, regulations or orders:

- Disposal by persons of solid waste resulting from their own activities on their property, if such waste is ordinary household waste or rocks, soils, trees, tree remains, and other vegetative matter that normally result from land development operations.
- Storage in containers by persons of solid waste resulting from their own activities on their property, leased or rental property, or property subject to a homeowner or maintenance association assessment, if the solid waste is collected at least once a week.
- Disposal by persons of solid waste resulting from their own activities on their property if the environmental effects of such disposal on groundwater and surface waters are addressed or authorized by a site certification order issued under part II or a permit issued by the DEP under chapter 403, F.S., or rules adopted pursuant to this chapter; or addressed or authorized by, or exempted from the requirement to obtain, a groundwater monitoring plan approved by the DEP.
- Disposal by persons of solid waste resulting from their own activities on their own property, if such disposal occurred prior to October 1, 1988.
- Disposal of solid waste resulting from normal farming operations as defined by department rule. Polyethylene agricultural plastic, damaged, nonsalvageable, untreated wood pallets, and packing material that cannot be feasibly recycled, which are used in connection with agricultural operations related to the growing, harvesting, or maintenance of crops, may be disposed of by open burning if a public nuisance or any condition adversely affecting the environment or the public health is not created by the open burning and state or federal ambient air quality standards are not violated.
- The use of clean debris as fill material in any area. However, this paragraph does not exempt any person from obtaining any other required permits, and does not affect a person's responsibility to dispose of clean debris appropriately if it is not to be used as fill material.
- Compost operations that produce less than 50 cubic yards of compost per year when the compost produced is used on the property where the compost operation is located.

Solid Waste Management Trust Fund

Section 403.709, F.S., creates the Solid Waste Management Trust Fund (SWMTF) to fund solid waste management activities. Annual revenues deposited into the trust fund are used for the following activities:

- Up to 40 percent for funding solid waste activities of the DEP and other state agencies.
- Up to 4.5 percent for funding research and training programs relating to solid waste management through the Center for Solid and Hazardous Waste Management.
- Up to 11 percent to Department of Agriculture and Consumer Services for mosquito control.

- A minimum of 40 percent for funding a competitive and innovative grant program relating to recycling and reducing the volume of municipal solid waste, including waste tires requiring final disposal.

Financial Assurance

Section 403.704(9), F.S., requires the Department of Environmental Protection (DEP) to develop rules to require closure of solid waste management facilities. The rules currently require that all disposal facilities close within 6 months after they cease receiving waste by properly sloping the sides, covering the waste with 2 feet of dirt and in some cases a barrier layer, vegetating the dirt, and establishing a storm water system.[1] The rules also require that disposal facilities perform long-term care for between 5 and 30 years, which includes monitoring ground water and gas, maintaining the final cover, and maintaining the storm water system.[2]

Section 403.7125, F.S., requires that landfills provide financial assurance to cover closure costs. Section 403.707(9)(c), F.S., makes this requirement applicable to construction and demolition debris disposal facilities. Both sections allow the DEP to specify allowable financial mechanisms, but neither specifically requires that insurance be allowed. The DEP authorizes the use of insurance policies for financial assurance in rule 62-701.630, Florida Administrative Code. According to the DEP, this option is often selected because it is more cost-effective than other financial assurance mechanisms such as bonds or letters of credit.

The DEP has identified seven facilities that currently use insurance for their financial assurance that have been abandoned or were ordered closed, and pose or are expected to pose an environmental threat if closure is not completed. In all seven cases the owner/operator is a limited liability company that has no assets or is otherwise financially unable to pay for closure costs. The DEP needs a mechanism to access the insurance money to pay third party contractors to perform closure and long-term care activities.[3]

Effect of Proposed Changes

The bill amends s. 403.707, F.S., to specify that a permit, including a general permit, issued to a solid waste management facility that is designed with a leachate control system that meets the DEP's requirements must be issued for a term of 20 years unless the applicant requests a shorter permit term. Existing permit fees for a qualifying solid waste management facility must be prorated to the permit term authorized under this section of law. These provisions apply to a qualifying solid waste management facility that applies for an operating or construction permit or renews an existing operating or construction permit on or after October 1, 2012.

The bill also specifies that a permit, including a general permit, but not including registration, issued to a solid waste management facility that does not have a leachate control system must be renewed for 10 years, unless the applicant requests a shorter term. The following conditions must be met:

- The applicant has conducted the activity at the same site for at least 4 years and 6 months before the permit application is received.
- At the time of applying for the renewal permit:
    1. The applicant is not subject to a notice of violation, consent order, or administrative order issued by the DEP for violation of an applicable law or rule
    2. The DEP has not notified the applicant that it is required to implement assessment or evaluation monitoring as a result of exceedances of applicable groundwater standards, or the applicant is completing corrective actions in accordance with applicable DEP rules.

[1] Rule 62-701.600, Florida Administrative Code
[2] Rule 62-701.620, Florida Administrative Code
[3] January 23, 2012, e-mail on file with Agriculture and Natural Resources Appropriations Subcommittee staff.

3. The applicant must be in compliance with the applicable financial assurance requirements.

The bill authorizes the DEP to adopt rules to administer these provisions. However, the DEP is not required to submit rules to the Environmental Regulation Commission for approval. Permit fee caps for solid waste management facilities must be prorated to reflect the extended permit term.

The bill amends s. 403.709, F.S., to create a solid waste landfill closure account, within the Solid Waste Management Trust Fund, to provide funding for the closing and long-term care of solid waste management facilities. This is offered to facilities if:

- The facility had or has a DEP permit to operate the facility.
- The permittee provided proof of financial assurance for closure in the form of an insurance certificate.
- The facility has been deemed to be abandoned or has been ordered to close by the DEP.
- Closure will be accomplished in substantial accordance with a closure plan approved by the DEP.

DEP must have a reasonable expectation that the insurer issuing the policy will provide or reimburse most of the funds needed for closure and long-term care of the facility; any funds so reimbursed must be deposited into the account.

The bill amends s. 403.7125, F.S., to provide that the DEP must require that the owner or operator of a solid waste management facility that receives waste after October 9, 1993, and is required to undertake corrective actions for violations of water quality standards provide financial assurance for the cost of completing such corrective actions. The same financial assurance mechanisms that are available for closure costs will be available for costs associated with undertaking corrective actions.

B. SECTION DIRECTORY:

Section 1. Amends s. 403.707, F.S., relating to the permit term for a solid waste management facility under certain conditions.

Section 2. Amends s. 403.709, F.S., creating a solid waste landfill closure account within the Solid Waste Management Trust Fund to fund the closing and long-term care of solid waste facilities under certain circumstances; requiring that the DEP deposit funds that are reimbursed into the solid waste landfill closure account.

Section 3. Amends s. 403.7125, F.S., relating financial assurance requirements for the cost of completing corrective action for violations of water quality standards.

Section 4. Provides an effective date of July 1, 2012.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   The DEP will be required to adopt rules to implement the changes in permit duration and fees. This will require minor expenditures for publication of rulemaking notices.

   Extending the length of some solid waste permits to 10 years and 20 years may, in the long run, result in reductions in the amount of time dedicated to permit review, and thus, a reduction in expenditures.

The creation of a solid waste landfill closure account requires that the DEP be appropriated budget authority from the Solid Waste Management Trust Fund (SWMTF) to pay third party contractors to perform closure and long-term care activities, if necessary.[4] The DEP expects that the insurance company insuring landfill closure will either pay the third party directly (in which case no state would actually be used) or will reimburse the DEP for any payments the DEP makes to the third party. DEP rules currently require the insurance company to reimburse closure and long-term care costs upon direction by the DEP,[5] and thus, the department will make every effort to require the insurer pay the contractors for work directly and avoid use of cash from the SWMTF.[6]

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   Local governments that operate solid waste management facilities and opt for longer-term permits would see permit fees increased. For example, a Class I landfill operation permit fee is currently $10,000 for a 5-year permit; if the bill becomes law, the permit fee will increase to a maximum of $40,000 for a 20-year permit. However, the permit would not have to be renewed for 20 years, that is, the total amount of permit fees would be the same while there would be a 4-fold drop in costs associated with filing renewal applications. In the long run, such local governments should see significant cost savings. If the local government elects to continue to renew permits on a 5-year cycle, permit fees would not increase.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Direct Private Sector Costs:

Owners and operators of solid waste management facilities with a leachate control system that opt for longer-term permits will see a significant increase in permit fees in the near future. However, the permit would not have to be renewed for 20 years, that is, the total amount of permit fees would be the same, while there would be a 4-fold drop in the costs associated with filing renewal applications. Similarly, owners and operators of solid waste management facilities without a leachate control system that opt for longer-term permits will see a significant increase in permit fees in the near future. However, the permit would not have to be renewed for 10 years, that is, the total amount of permit fees would be the same, while there would be a 2-fold drop in costs associated with filing renewal applications. If the owners and operators elect to continue to renew permits on a 5-year cycle, permit fees would not increase.

Direct Private Sector Benefits:

Owners and operators of solid waste management facilities that opt for longer-term permits may benefit from the increased predictability such longer permits provide. For example, it may be easier to obtain financing for these projects and operational and design criteria are less likely to need updating and amending as frequently. After 5 years, the cost savings from not having to apply for permit renewals could be significant.

Authorizing the DEP to encumber funds from the Solid Waste Management Trust Fund to close facilities that use insurance policies for financial assurance will have the effect of allowing facilities to benefit from the continued use of insurance under current regulations. Without this authorization, the DEP may remove insurance from the list of available financial assurance mechanisms, or at least modify the rules in ways that will probably make financial assurance costs more expensive.

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[4] Id.
[5] Rule 62-701.630, Florida Administrative Code
[6] January 23, 2012, e-mail on file with the Agriculture and Natural Resources Appropriations Subcommittee staff.

Authorizing the DEP to require financial assurance for corrective actions assures that the state program will remain approved in accordance with EPA regulations. Without this authorization, there is a chance that EPA could withdraw the state approval resulting in permit applicants having to comply with both state and federal regulations, which could increase the cost of such applications and lead to potential conflict between regulations.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill authorizes the DEP to adopt rules to administer 20-year permits for solid waste management facilities that are designed with a leachate control system and 10-year permits for solid waste management facilities that do not have leachate control systems if the applicant meets certain criteria. However, the DEP is not required to submit the rules to the Environmental Regulation Commission for approval.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Certain issues in section 2 may need clarification. There is no requirement that the insurer be authorized to do business in Florida.[7] In addition, the bill is unclear whether the allocation of the Solid Waste Management Trust Fund under s. 403.709(1), F.S., may be used by the DEP to provide funding under the new subsection if needed. Moreover, the flush left sentence "The department has a reasonable expectation that the insurance company issuing the closure insurance policy will provide or reimburse most or all of the funds required to complete closing and long-term care of the facility" appears to be a statement of fact rather a direction to or authorization for the department. Finally, the phrase "reasonable expectation" may not provide sufficient guidance for the DEP to determine if a proffered insurance plan will adequately protect the interests of the trust fund.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On January 11, 2012, the Agriculture & Natural Resources Subcommittee amended and passed HB 663 as a committee substitute (CS). The CS:

- Authorizes the DEP to issue 10-year permits for solid waste management facilities that do not have a leachate control system, if the applicant meets certain criteria.
- Authorizes the DEP to adopt rules to administer the permits.
- Specifies that the DEP is not required to submit the rules to the Environmental Regulation Commission for approval.
- Creates a solid waste landfill closure account within the Solid Waste Management Trust Fund to provide funding for the closing and long-term care of solid waste management facilities; enables the DEP to activate a closure of a facility in compliance with the approved closure plan.

[7] For example, licensed sellers of travel must post an assurance that may be a surety bond; the surety company must be authorized to conduct such business in Florida (s. 559.929(1), F.S.)

- Specifies that the DEP must require that the owner or operator of a solid waste management facility that receives waste after October 9, 1993, and is required to undertake corrective actions for violations of water quality standards provide financial assurance for the cost of completing such corrective actions. The same financial assurance mechanisms that are available for closure costs will be available for costs associated with undertaking corrective actions.

A bill to be entitled

An act relating to solid waste management facilities; amending s. 403.707, F.S.; specifying a permit term for solid waste management facilities designed with leachate control systems that meet department requirements; providing applicability; specifying a permit term for solid waste management facilities that do not have leachate control systems meeting department requirements under certain conditions; authorizing the department to adopt rules; providing that the department is not required to submit the rules to the Environmental Regulation Commission for approval; requiring permit fee caps to be prorated; amending s. 403.709, F.S.; creating a solid waste landfill closure account within the Solid Waste Management Trust Fund to fund the closing and long-term care of solid waste facilities under certain circumstances; requiring the department to deposit certain funds into the solid waste landfill closure account; amending s. 403.7125, F.S.; requiring the department to require by rule that owners or operators of solid waste management facilities receiving waste after October 9, 1993, provide financial assurance for the cost of completing certain corrective actions; providing an effective date.

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

Section 1. Subsection (3) of section 403.707, Florida Statutes, is amended to read:

403.707 Permits.—

(3)(a) All applicable provisions of ss. 403.087 and 403.088, relating to permits, apply to the control of solid waste management facilities.

(b) A permit, including a general permit, issued to a solid waste management facility that is designed with a leachate control system that meets department requirements shall be issued for a term of 20 years unless the applicant requests a shorter permit term. This paragraph applies to a qualifying solid waste management facility that applies for an operating or construction permit or renews an existing operating or construction permit on or after October 1, 2012.

(c) A permit, including a general permit, but not including a registration, issued to a solid waste management facility that does not have a leachate control system meeting department requirements shall be renewed for a term of 10 years, unless the applicant requests a shorter permit term, if the following conditions are met:

1. The applicant has conducted the regulated activity at the same site for which the renewal is sought for at least 4 years and 6 months before the date that the permit application is received by the department; and

2. At the time of applying for the renewal permit:

a. The applicant is not subject to a notice of violation, consent order, or administrative order issued by the department for violation of an applicable law or rule;

b. The department has not notified the applicant that it is required to implement assessment or evaluation monitoring as a result of exceedances of applicable groundwater standards or criteria or, if applicable, the applicant is completing corrective actions in accordance with applicable department rules; and

c. The applicant is in compliance with the applicable financial assurance requirements.

(d) The department may adopt rules to administer this subsection. However, the department is not required to submit such rules to the Environmental Regulation Commission for approval. Notwithstanding the limitations of s. 403.087(6)(a), permit fee caps for solid waste management facilities shall be prorated to reflect the permit terms authorized by this subsection.

Section 2. Subsection (5) is added to section 403.709, Florida Statutes, to read:

403.709 Solid Waste Management Trust Fund; use of waste tire fees.—There is created the Solid Waste Management Trust Fund, to be administered by the department.

(5) A solid waste landfill closure account is created within the Solid Waste Management Trust Fund to provide funding for the closing and long-term care of solid waste management facilities, if:

(a) The facility had or has a department permit to operate the facility;

(b) The permittee provided proof of financial assurance for closure in the form of an insurance certificate;

(c) The facility has been deemed to be abandoned or has been ordered to close by the department; and

(d) Closure will be accomplished in substantial accordance with a closure plan approved by the department.

The department has a reasonable expectation that the insurance company issuing the closure insurance policy will provide or reimburse most or all of the funds required to complete closing and long-term care of the facility. If the insurance company reimburses the department for the costs of closing or long-term care of the facility, the department shall deposit the funds into the solid waste landfill closure account.

Section 3. Section 403.7125, Florida Statutes, is amended to read:

403.7125 Financial assurance ~~for closure~~.—

(1) Every owner or operator of a landfill is jointly and severally liable for the improper operation and closure of the landfill, as provided by law. As used in this section, the term "owner or operator" means any owner of record of any interest in land wherein a landfill is or has been located and any person or corporation that owns a majority interest in any other corporation that is the owner or operator of a landfill.

(2) The owner or operator of a landfill owned or operated by a local or state government or the Federal Government shall establish a fee, or a surcharge on existing fees or other appropriate revenue-producing mechanism, to ensure the availability of financial resources for the proper closure of the landfill. However, the disposal of solid waste by persons on

their own property, as described in s. 403.707(2), is exempt from this section.

(a) The revenue-producing mechanism must produce revenue at a rate sufficient to generate funds to meet state and federal landfill closure requirements.

(b) The revenue shall be deposited in an interest-bearing escrow account to be held and administered by the owner or operator. The owner or operator shall file with the department an annual audit of the account. The audit shall be conducted by an independent certified public accountant. Failure to collect or report such revenue, except as allowed in subsection (3), is a noncriminal violation punishable by a fine of not more than $5,000 for each offense. The owner or operator may make expenditures from the account and its accumulated interest only for the purpose of landfill closure and, if such expenditures do not deplete the fund to the detriment of eventual closure, for planning and construction of resource recovery or landfill facilities. Any moneys remaining in the account after paying for proper and complete closure, as determined by the department, shall, if the owner or operator does not operate a landfill, be deposited by the owner or operator into the general fund or the appropriate solid waste fund of the local government of jurisdiction.

(c) The revenue generated under this subsection and any accumulated interest thereon may be applied to the payment of, or pledged as security for, the payment of revenue bonds issued in whole or in part for the purpose of complying with state and federal landfill closure requirements. Such application or

pledge may be made directly in the proceedings authorizing such bonds or in an agreement with an insurer of bonds to assure such insurer of additional security therefor.

(d) The provisions of s. 212.055 which relate to raising of revenues for landfill closure or long-term maintenance do not relieve a landfill owner or operator from the obligations of this section.

(e) The owner or operator of any landfill that had established an escrow account in accordance with this section and the conditions of its permit prior to January 1, 2007, may continue to use that escrow account to provide financial assurance for closure of that landfill, even if that landfill is not owned or operated by a local or state government or the Federal Government.

(3) An owner or operator of a landfill owned or operated by a local or state government or by the Federal Government may provide financial assurance to the department in lieu of the requirements of subsection (2). An owner or operator of any other landfill, or any other solid waste management facility designated by department rule, shall provide financial assurance to the department for the closure of the facility. Such financial assurance may include surety bonds, certificates of deposit, securities, letters of credit, or other documents showing that the owner or operator has sufficient financial resources to cover, at a minimum, the costs of complying with applicable closure requirements. The owner or operator shall estimate such costs to the satisfaction of the department.

(4) This section does not repeal, limit, or abrogate any

other law authorizing local governments to fix, levy, or charge rates, fees, or charges for the purpose of complying with state and federal landfill closure requirements.

(5) The department shall by rule require that the owner or operator of a solid waste management facility that receives waste after October 9, 1993, and that is required by department rule to undertake corrective actions for violations of water quality standards provide financial assurance for the cost of completing such corrective actions. The same financial assurance mechanisms that are available for closure costs shall be available for costs associated with undertaking corrective actions.

(6) ~~(5)~~ The department shall adopt rules to implement this section.

Section 4. This act shall take effect July 1, 2012.

Amendment No. 1

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

Committee/Subcommittee hearing bill: Agriculture & Natural Resources Appropriations Subcommittee

Representative(s) Goodson offered the following:

Amendment

Remove lines 77-96 and insert:

(5) Notwithstanding the provisions of subsection (1), a solid waste landfill closure account is created within the Solid Waste Management Trust Fund to provide funding for the closing and long-term care of solid waste management facilities. The department may use funds from the account to contract with a third party for the closing and long-term care of solid waste management facilities if:

(a) The facility had or has a department permit to operate the facility;

(b) The permittee provided proof of financial assurance for closure in the form of an insurance certificate;

(c) The facility has been deemed to be abandoned or has been ordered to close by the department;

Amendment No. 1

(d) Closure will be accomplished in substantial accordance with a closure plan approved by the department; and

(e) The department has written documentation that the insurance company issuing the closure insurance policy will provide or reimburse most or all of the funds required to complete closing and long-term care of the facility.

The department shall deposit the funds received from the insurance company as reimbursement for the costs of closing or long-term care of the facility into the solid waste landfill closure account.

Amendment No. 2

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

Committee/Subcommittee hearing bill: Agriculture & Natural Resources Appropriations Subcommittee

Representative Goodson offered the following:

Amendment (with title amendment)

Between lines 182 and 183, insert:

Section 4. The sum of $2,888,460 in nonrecurring funds is appropriated to the Department of Environmental Protection from the Solid Waste Management Trust Fund in the Fixed Capital Outlay-Agency Managed-Closing and Long-Term Care of Solid Waste Management Facilities appropriation category pursuant to s. 403.709(5). This section is effective upon the act of becoming law.

Section 5. Except as otherwise provided, this act shall take effect July 1, 2012.

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

Amendment No. 2

Remove line 25 and insert:

providing an appropriation; providing an effective date.