State Affairs Committee

MEETING PACKET

Wednesday, February 22, 2012
9:00 AM
Webster Hall (212 Knott)

Dean Cannon
Speaker

Seth McKeel
Chair

Committee Meeting Notice

HOUSE OF REPRESENTATIVES

State Affairs Committee

Start Date and Time:	Wednesday, February 22, 2012 09:00 am
End Date and Time:	Wednesday, February 22, 2012 12:00 pm
Location:	Webster Hall (212 Knott)
Duration:	3.00 hrs

Consideration of the following bill(s):

HB 13 Sovereignty Submerged Lands by Frishe
CS/HB 133 Assessment of Residential and Nonhomestead Real Property by Energy & Utilities Subcommittee, Frishe
CS/CS/HB 181 Sponsorship of State Greenways and Trails by Appropriations Committee, Agriculture & Natural Resources Subcommittee, Slosberg
CS/HB 355 Public Meetings by Government Operations Subcommittee, Kiar
CS/CS/HB 695 Development of Oil and Gas Resources by Appropriations Committee, Energy & Utilities Subcommittee, Ford
HB 745 State Symbols by Hukill
CS/HB 945 Broadband Internet Service by Appropriations Committee, Holder
CS/HB 959 Divestiture by the State Board of Administration by Government Operations Subcommittee, Bileca
CS/CS/HB 999 Onsite Sewage Treatment and Disposal Systems by Appropriations Committee, Economic Affairs Committee, Dorworth, Coley
CS/HB 1021 Agriculture by Criminal Justice Subcommittee, Albritton, Crisafulli
CS/HB 1117 Conservation of Wildlife by Agriculture & Natural Resources Subcommittee, Harrison
CS/CS/HB 1383 Fish and Wildlife Conservation Commission by Appropriations Committee, Agriculture & Natural Resources Subcommittee, Glorioso
CS/HB 1417 State Investments by Government Operations Subcommittee, Oliva
HB 1479 State Poet Laureate by Nelson

NOTICE FINALIZED on 02/20/2012 16:20 by Love.John

HB 13

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 13 Sovereignty Submerged Lands
SPONSOR(S): Frishe; Harrell
TIED BILLS: None **IDEN./SIM. BILLS:** SB 88

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Agriculture & Natural Resources Subcommittee	14 Y, 0 N	Smith	Blalock
2) Agriculture & Natural Resources Appropriations Subcommittee	13 Y, 0 N	Helpling	Massengale
3) State Affairs Committee		Smith TS	Hamby JDH

SUMMARY ANALYSIS

The Board of Trustees of the Internal Improvement Trust Fund is responsible for the administration and disposition of the state's sovereign submerged lands, including the authority to adopt regulations pertaining to anchoring, mooring, or otherwise attaching to the bottom and the establishment of anchorages. Waterfront landowners must receive the board's authorization to build docks and related structures on sovereign submerged lands. The Department of Environmental Protection (DEP) is required by law to perform all staff functions on behalf of the board.

The board has promulgated detailed rules regulating the design of docks and related structures, determining whether a lease is required, and setting the amount of fees a lessee must pay to the board. The DEP determines whether a lease is required for a person to build a dock or related structure on sovereign submerged lands based on a number of factors, including:

- Location within or outside of an aquatic preserve;
- Area of sovereign submerged land preempted;
- Number of wet slips or the number of boats the structure is designed to moor;
- Whether the dock is for a single-family residence or a multi-unit dwelling;
- Whether the dock generates revenue;
- Whether the dock is "private residential" or "commercial, industrial and other revenue generating/income related."

This bill provides lease requirements for private residential docks and related structures on sovereign submerged lands. Specifically, the bill:

- Extends the maximum term for an initial standard lease and for successive renewal to 10 years from the 5 years maximum currently provided by rule and requires inspection by the DEP at least once every 10 years instead of every 5 years.
- Requires standard lease contracts to disclose all applicable lease fees as established by the board.
- Exempts multi-family docks and structures that require a lease from paying a fee on minimal amounts of sovereignty submerged lands that are leased to reflect the same size-based exemption currently in place for single-family docks.
- Specifies that lessees whose upland property qualifies for a homestead exemption are not required to pay a lease fee on revenue derived from the transfer of fee simple or beneficial ownership.
- Specifies that the board and the DEP are not prohibited from imposing additional application fees, regulatory permitting fees, or other lease requirements as otherwise authorized by law.

On February 10, 2012, the Revenue Estimating Conference adopted an estimate that the additional lease exemptions will result in an annual recurring reduction in revenues of $0.1 million to the General Revenue Fund and $1 million to the Internal Improvement Trust Fund.

The bill also contains a recurring appropriation of $1 million from the General Revenue Fund to the Internal Improvement Trust Fund beginning in Fiscal Year 2012-13.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Introduction

Upon statehood, Florida gained title to all sovereign submerged lands[1] within its boundaries, to be held in trust for the public.[2] The Board of Trustees of the Internal Improvement Trust Fund is responsible for the acquisition, administration, management, control, supervision, conservation, protection, and disposition of such lands.[3] The Florida Constitution requires the sale of such lands to be authorized by law, but only when in the public interest, and private use of portions of such lands may be authorized by law, but only when not contrary to the public interest.[4] When disposing of sovereign submerged lands, the board is required to "ensure maximum benefit and use."[5] The board has the authority to adopt regulations pertaining to anchoring, mooring, or otherwise attaching to the bottom and the establishment of anchorages on sovereign submerged lands.[6]

Florida recognizes "riparian rights" for landowners with waterfront property bordering on navigable waters.[7] These rights include ingress, egress, boating, bathing, fishing, and others as defined by law.[8] Riparian landowners must obtain the board's authorization for installation and maintenance of docks, piers, and boat ramps on sovereign submerged land.[9] Under the board's rules, "dock" generally means a fixed or floating structure, including moorings and access walkways, used for the purpose of mooring and accessing vessels.[10] Authorization may be in the form of consent by rule,[11] letter of consent,[12] or lease.[13] All leases authorizing activities on sovereign submerged lands must include provisions for lease fee adjustments and annual payments.[14]

The bill creates s. 253.0347, F.S., relating to leases of sovereignty submerged lands for private residential single-family docks or piers, private residential multi-family docks or piers, and private residential multi-slip docks located in and outside of an aquatic preserve. For these types of leases, the bill affects (1) lease duration, (2) lease fee applicability and calculation, and (3) site inspection.

For ease of reading, "private residential single-family or multi-family dock" is used in this analysis to refer to private residential single-family docks or piers, private residential multi-family docks or piers, and private residential multi-slip docks.[15]

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[1] In Florida, "submerged lands" are "publicly owned lands below the ordinary high-water mark of fresh waters and below the mean high-water line of salt waters extending seaward to the outer jurisdiction of the state." Section 253.03(8)(b), F.S.
[2] *Broward v. Marbry*, 50 So. 826, 829-30 (Fla. 1909).
[3] Section 253.03(1), F.S. (2010).
[4] S. 11, Art. X of the State Constitution
[5] Section 253.03(7)(a), F.S.
[6] Section 253.03(7)(b), F.S.
[7] Section 253.141(1), F.S. These rights are appurtenant to and inseparable from the riparian land; the rights inure to the property owner, but the rights are not proprietary in nature. *Id.*
[8] Section 253.141(1), F.S.
[9] 18-21.005(1)(d), F.A.C. (2010).
[10] *See* 18-20.003(19), F.A.C.; 18-21.003(20), F.A.C.
[11] 18-21.005(1)(b), F.A.C.
[12] 18-21.005(1)(c), F.A.C.
[13] 18-21.005(1)(d), F.A.C.
[14] 18-21.008(1)(b)(2), F.A.C.
[15] For definitions of these terms as used in the board's rules, see 18-20.003(44), F.A.C. ("private residential single-family dock"); 18-20.003(45) ("private residential multi-slip dock"), 18-21.003(47), F.A.C. ("private residential multi-family dock or pier"); 18-21.003(48), F.A.C. ("private residential single-family dock or pier").

Duration of Leases

Present Situation

Currently, the duration of a standard lease is 5 years.[16] Extended term leases with durations up to 25 years are also available under limited circumstances if approved by the board.[17] According to the Department of Environmental Protection (DEP), the vast majority of residential leases are standard leases with a duration of 5 years.

Effects of Proposed Bill

The bill establishes a 10-year maximum duration for initial sovereignty submerged land standard leases for private residential single-family or multi-family docks. Upon agreement of the parties and compliance with all applicable laws and rules, such leases may be renewed for successive terms of up to 10 years. The DEP does not anticipate granting leases of a duration shorter than 10 years.

Lease Fees and Calculation

Present Situation

The board has promulgated extensive and detailed rules regulating the design of docks and related structures. Multiple factors jointly determine which docks on sovereign submerged land require a lease, and subsequently when lease fees apply, including:

- Location within or outside of an aquatic preserve;[18]
- Area of sovereign submerged land preempted;[19]
- Number of wet slips or the number of boats the structure is designed to moor;
- Whether the dock is for a single-family residence or a multi-unit dwelling;
- Whether the dock generates revenue;
- Whether the dock is "private residential"[20] or "commercial, industrial and other revenue generating/income related."[21]

The following currently require a lease and lease fees:

- All revenue-generating docks.[22]
- Outside of an aquatic preserve:
    - Single-family docks that preempt an area of more than 10 square feet for each foot of shoreline.

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[16] 18-21.008(1), F.A.C.

[17] 18-21.008(2)(a), F.A.C. Extended term leases are available where the use of sovereignty submerged lands has an expected life or amortization period equal to or greater than the requested lease term and where the applicant demonstrates the following: that the facility or activity provides access to public waters and sovereignty submerged lands for the general public on a first-come, first-served basis; that the facility is constructed operated, or maintained by the government, or funded by government secured bonds with a term greater than or equal to the requested lease term; or that an extended term is necessary to satisfy unique operational constraints. *Id.*

[18] Aquatic preserves are areas specifically designated by the legislature as having exceptional biological, aesthetic, or scientific value. *See* s. 258.37, F.S. (2010).

[19] Relevant area is determined by a ratio of the area of sovereign submerged land preempted by the dock to the total linear feet of shoreline a riparian landowner holds on the affected water body (i.e., sovereign submerged land area in square feet: feet of shoreline owned). *See* 18-21.008(4)(a), (b), F.A.C. However, the board may allow exceptions to regulation based on this ratio in certain circumstances when the dock is consistent with the public interest. *See* 18-21.008(4)(b), F.A.C.

[20] These generally include docks used for private, recreational or leisure purposes. *See* 18-20.003(44), (45), F.A.C.

[21] "Commercial, industrial and other revenue generating/income related docks" means docking facilities for any activity which produces income, through rental or any other means, or which serves as an accessory facility to other rental, commercial or industrial operations. It includes, but is not limited to, docking for: marinas, restaurants, hotels, motels, commercial fishing, shipping, boat or ship construction, repair, and sales. 18-20.003(16), F.A.C.

[22] 18-21.005(1)(d)(5), F.A.C.

- Multi-family docks that preempt an area of more than 10 square feet for each foot of shoreline and include more than two wet slips.

- Within an aquatic preserve, other than the Boca Ciega Bay or Pinellas County aquatic preserves:
  - Single-family docks that preempt an area of more than 10 square feet for each foot of shoreline.[23]
  - Multi-slip[24] docks that include two or fewer wet slips and preempt an area of more than 10 square feet for each foot of shoreline.[25]
  - Multi-slip docks that include three or more wet slips and exceed both the design criteria for single-family docks and preempt an area of more than 10 square feet for each foot of shoreline.[26]
- Within the Boca Ciega Bay or Pinellas County aquatic preserves:[27]
  - Single-family docks that preempt an area of more than 10 square feet for each foot of shoreline.[28]
  - Multi-slip docks that preempt an area of more than 10 square feet for each foot of shoreline or include more than two wet slips.[29]

Lease fees for both standard and extended term leases are calculated through a fee formula, with adjustments for applicable discounts, surcharges, and other payments.[30] The annual lease fee for a standard lease is based on either 6 percent of the annual income, the base fee, or the minimum annual fee, whichever is greatest.[31] The base fee is approximately 15 cents per square foot per year.[32] The minimum annual fee is approximately $460, adjusted annually based on the Consumer Price Index.[33] Private residential multi-family docks that include 10 or more wet slips developed in conjunction with upland property may be subject to a one-time premium when a lease is initiated calculated at three times the base fee.[34] The extended term lease formula includes a multiplier for the number of years of the lease term.[35]

Revenue derived from sale of the property is currently included as revenue for the purposes of calculating the annual lease fee.

Effects of Proposed Bill

The bill requires lease contracts for sovereignty submerged lands for private residential single-family or multi-family docks to disclose the lease fees as established by the board.

The bill also extends the same financial benefit that currently exists for private residential single-family docks—exclusion from lease fees for a preempted area of 10 square feet or less for each linear foot of shoreline—to private residential multi-family docks. This benefit is extended only to private residential

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[23] 18-21.005(1)(c)(2), F.A.C.
[24] The term "private residential multi-slip dock" refers to docks and related structures for multi-unit residential dwellings in aquatic preserves, whereas the term "private residential multi-family dock" addresses similar structures outside of aquatic preserves. 18-20.003(45), F.A.C; 18-21.003(48), F.A.C.
[25] 18-20.004(5)(c)(1), F.A.C.
[26] *Id.*
[27] Boca Ciega Bay and Pinellas County aquatic preserves are in highly developed and urban areas. As such, certain regulatory differences exist for the building and maintenance of docks and other structures in these aquatic preserves.
[28] *See* 18-21.005(1)(c)(2), F.A.C.; 18-21.005(1)(d)(1.), F.A.C.
[29] Whereas in most aquatic preserves multi-slip docks that preempt an area more than 10 square feet for each foot of shoreline are effectively prohibited, in the Boca Ciega Bay and Pinellas County aquatic preserves multi-slip docks may preempt an area of more than 10 square feet for each foot of shoreline and less than 30 square feet for each foot of shoreline, with a lease from the board. 18-20.019(7)(a), F.A.C.
[30] 18-21.011(1)(a), F.A.C.
[31] *Id.*
[32] 18-21.011(1)(b)(1), F.A.C.
[33] 18-21.011(1)(b)(4), F.A.C.
[34] 18-21.011(1)(c), F.A.C.
[35] 18-21.011(1)(a), F.A.C.

multi-family dwellings that include no more than one wet slip for each approved upland residential unit. As such, lessees of sovereign submerged land for private residential multi-family docks that include no more than one wet slip for each approved upland residential unit are not required to pay lease fees on a preempted area of 10 square feet or less for each linear foot of shoreline. However, those private residential multi-family docks that include no more than one wet slip for each approved upland residential unit but do preempt an area of more than 10 square feet for each linear foot of shoreline (exceeding the ratio under which private residential single-family docks receive the exemption from lease fees) are subject to lease fees only on the preempted area of sovereign submerged land that exceeds 10 square feet for each linear foot of shoreline.

In addition, the bill establishes that lessees whose upland property qualifies for a homestead exemption at the time of any transfer of fee simple or beneficial ownership of the property are not required to pay a lease fee on revenue derived from the transfer. Thus, the 6 percent of revenue from such a sale would be applicable to a lease fee only upon the first transfer from a non-resident developer or subsequent sale by a person who is not eligible for a homestead exemption under to s. 196.031, F.S.

The bill also codifies current board rules regarding income generated through leased sovereign submerged lands. A lessee of sovereignty submerged lands for a private residential single-family or multi-family dock must pay a lease fee on any income derived from a wet slip, dock, or pier, as determined by the board.

Lastly, the board and the DEP are not prohibited from imposing additional application fees, regulatory permitting fees, or other lease requirements as authorized by law.

Site Inspection

Present Situation

According to board rule, the DEP or water management district staff must inspect a leased site at least once every 5 years to determine compliance with the terms and conditions of the lease.[36]

Effects of Proposed Bill

The bill provides by statute for the DEP to inspect sites under lease for private residential single-family or multi-family docks at least once every 10 years. Although the bill does not include authority for the water management districts to conduct inspections, currently they perform only regulatory reviews of lease applications and do not conduct proprietary reviews, including inspections.

Appropriation

The bill provides a recurring appropriation of $1 million from the General Revenue Fund to the Internal Improvement Trust Fund beginning in Fiscal Year 2012-13.

B. SECTION DIRECTORY:

Section 1: Creates s. 253.0347, F.S., specifying the maximum initial terms for standard leases of sovereignty submerged lands for private residential single-family docks or piers, private residential multi-family docks or piers, and private residential multi-slip docks; requiring lease contracts to specify lease fees; adding an exemption for lease fees below a certain threshold for certain multi-family and multi-slip leases; eliminating lease fees on revenue generated through transfer of fee simple or beneficial ownership if property is entitled to a homestead exemption under to s. 196.031, F.S.; requiring the payment of lease fees upon income generated from sovereign submerged land leases; requiring inspections at least every 10 years.

[36] 18-21.008(1)(b)(4), F.A.C.

Section 2: Provides a recurring appropriation.

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

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   On February 10, 2012, the Revenue Estimating Conference adopted an estimate that the lease exemptions in this bill will result in an annual recurring reduction of $0.1 million to the General Revenue Fund and $1 million to the Department of Environmental Protection's Internal Improvement Trust Fund.

2. Expenditures:

   The bill specifies for a recurring appropriation of $1 million from the General Revenue Fund to the Internal Improvement Trust Fund beginning in Fiscal Year 2012-13.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   According to the Department of Environmental Protection, this bill would result in a loss of $37,868 in sales tax and $6,311 in county discretionary tax.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

This bill would have an undetermined positive impact on the private sector, based on reduced lease fees under exemptions created.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   This bill appears to implicate the mandate provision in s. 18, Art. VII, of the State Constitution by reducing the authority of the local governments to collect certain sales tax and discretionary tax; however, the bill appears to meet the insignificant fiscal impact exemption in the constitution.

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

The bill specifies that this new section of law does not prohibit the board or the DEP from imposing additional application fees, regulatory permitting fees, or other lease requirements as otherwise authorized by law.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.

A bill to be entitled

An act relating to sovereignty submerged lands; creating s. 253.0347, F.S.; providing for the lease of sovereignty submerged lands for private residential single-family docks and piers, private residential multifamily docks and piers, and private residential multislip docks; providing for the term of the lease and lease fees; providing for inspection of such docks, piers, and related structures by the Department of Environmental Protection; clarifying the authority of the Board of Trustees of the Internal Improvement Trust Fund and the department to impose additional fees and requirements; providing an appropriation; providing an effective date.

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

Section 1. Section 253.0347, Florida Statutes, is created to read:

253.0347 Lease of sovereignty submerged lands for private residential docks and piers.—

(1) The maximum initial term of a standard lease of sovereignty submerged lands for a private residential single-family dock or pier, private residential multifamily dock or pier, or private residential multislip dock is 10 years. A lease is renewable for successive terms of up to 10 years if the parties agree and the lessee complies with all terms of the lease and all applicable laws and rules.

(2)(a) A standard lease contract for sovereignty submerged lands for a private residential single-family dock or pier, private residential multifamily dock or pier, or private residential multislip dock must specify the amount of lease fees as established by the Board of Trustees of the Internal Improvement Trust Fund.

(b) If private residential multifamily docks or piers, private residential multislip docks, and other private residential structures pertaining to the same upland parcel include a total of no more than one wet slip for each approved upland residential unit, the lessee is not required to pay a lease fee on a preempted area of 10 square feet or less of sovereignty submerged lands for each linear foot of shoreline in which the lessee has a sufficient upland interest as determined by the Board of Trustees of the Internal Improvement Trust Fund.

(c) A lessee of sovereignty submerged lands for a private residential single-family dock or pier, private residential multifamily dock or pier, or private residential multislip dock is not required to pay a lease fee on revenue derived from the transfer of fee simple or beneficial ownership of private residential property that is entitled to a homestead exemption pursuant to s. 196.031 at the time of transfer.

(d) A lessee of sovereignty submerged lands for a private residential single-family dock or pier, private residential multifamily dock or pier, or private residential multislip dock must pay a lease fee on any income derived from a wet slip, dock, or pier in the preempted area under lease in an amount

determined by the Board of Trustees of the Internal Improvement Trust Fund.

(3) The Department of Environmental Protection shall inspect each private residential single-family dock or pier, private residential multifamily dock or pier, private residential multislip dock, or other private residential structure under lease at least once every 10 years to determine compliance with the terms and conditions of the lease.

(4) This section does not prohibit the Board of Trustees of the Internal Improvement Trust Fund or the Department of Environmental Protection from imposing additional application fees, regulatory permitting fees, or other lease requirements as otherwise authorized by law.

Section 2. Beginning with the 2012-2013 fiscal year, the sum of $1 million in recurring funds is appropriated from the General Revenue Fund to the Internal Improvement Trust Fund for purposes of administration, management, and disposition of sovereignty submerged lands.

Section 3. This act shall take effect July 1, 2012.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 133 Assessment of Residential and Nonhomestead Real Property
SPONSOR(S): Energy & Utilities Subcommittee, Frishe and others
TIED BILLS: None. **IDEN./SIM. BILLS:** CS/SB 156 (c)

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Energy & Utilities Subcommittee	15 Y, 0 N, As CS	Whittier	Collins
2) Community & Military Affairs Subcommittee	13 Y, 0 N	Gibson	Hoagland
3) Finance & Tax Committee	16 Y, 0 N	Aldridge	Langston
4) State Affairs Committee		Whittier	Hamby

SUMMARY ANALYSIS

In the November 2008 General Election, Florida voters approved a constitutional amendment relating to property taxes authorizing the Legislature, by general law, to prohibit consideration of the following in the determination of the assessed value of real property used for residential purposes:

- Any change or improvement made for the purpose of improving the property's resistance to wind damage.
- The installation of a renewable energy source device.

This bill implements the 2008 constitutional amendment. Specifically, the bill defines "changes or improvements made for the purpose of improving a property's resistance to wind damage" and "renewable energy source device." It provides that, in determining the assessed value of real property used for residential purposes, the property appraiser may not consider the increase in the just value attributed to changes or improvements made for the purpose of improving a property's resistance to wind damage or the installation of a renewable energy source device. The bill specifies that the provision applies to new and existing property. Specifically, the provision applies to changes or improvements made to properties on or after January 1, 2012.

The Revenue Estimating Conference (REC) has estimated that this bill will have no impact on state revenues. The REC estimated, **assuming current millage rates,** that the bill will have a negative impact on school tax revenues of $5.1 million in FY 2013-14, $10.4 million in FY 2014-15, $16.5 million in FY 2015-16 and a recurring negative impact on school tax revenues of $24.1 million. The estimated statewide negative impact on local government non-school tax revenue is $7.1 million in FY 2013-14, $14.4 million in FY 2014-15, $23.1 million in FY 2015-16 with a negative $33.6 million recurring.

The bill takes effect on July 1, 2012, and applies to assessments beginning January 1, 2013.

The bill may implicate the mandate provisions of Article VII, section 18 of the Florida Constitution, requiring a two-thirds vote of the membership of each house to become law. (See Comments section).

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Renewable Energy Property Tax Exemptions and Constitutional Amendment #3 (2008)

In 1980, Florida voters added the following authorization to Article VII, section 3(d), Florida Constitution:

> By general law and subject to conditions specified therein, there may be granted an ad valorem tax exemption to a renewable energy source device and to real property on which such device is installed and operated, to the value fixed by general law not to exceed the original cost of the device, and for the period of time fixed by general law not to exceed ten years.

During the same year, based on the new constitutional authority, the Legislature approved a property tax exemption for real property on which a renewable energy source device[1] is installed and is being operated. However, the exemption expired after 10 years, as provided in the constitution. Specifically, the exemption period authorized in statute was from January 1, 1980, through December 31, 1990. Therefore, if an exemption was granted in December 1990, the exemption terminated in December 2000. The law required that the exemption could be no more than the lesser of the following:

- The assessed value of the property less any other exemptions applicable under the chapter;
- The original cost of the device, including the installation costs, but excluding the cost of replacing previously existing property removed or improved in the course of the installation; or
- Eight percent of the assessed value of the property immediately following the installation.

In December of 2000, the last of the exemptions expired.

During the 2008 Legislative Session, HB 7135 (ch. 2008-227, L.O.F.) was enacted, removing the expiration date of the property tax exemption, thereby allowing property owners to once again apply for the exemption, effective January 1, 2009. The period of each exemption, however, remained at 10 years. The bill also revised the options for calculating the amount of the exemption for properties with renewable energy source devices by limiting the exemption to the amount of the original cost of the device, including the installation cost, but not including the cost of replacing previously existing property.

In the November 2008 General Election, Florida voters approved a constitutional amendment placed on the ballot by the Taxation and Budget Reform Commission adding the following language to Article VII, section 4, of the Florida Constitution:

> (i) The legislature, by general law and subject to conditions specified therein, may[2] prohibit the consideration of the following in the determination of the assessed value of real property used for residential purposes:
>
> (1) Any change or improvement made for the purpose of improving the property's resistance to wind damage.
>
> (2) The installation of a renewable energy source device.

[1] Sections 196.175 and 196.012(14), F.S.
[2] The 2008 constitutional amendment is permissive and does not require the Legislature to enact legislation.

The amendment also repealed the constitutional authority for the Legislature to grant an *ad valorem* tax exemption to a renewable energy source device and to real property on which such device is installed and operated. This repealed language had provided the constitutional basis for legislation passed in 1980 and in 2008.

Although the constitutional provision that the *ad valorem* tax exemption was based on has been repealed, the statutory language has not yet been repealed by the Legislature. On March 10, 2010, the House passed HB 7005, repealing the obsolete language [ss. 196.175 and 196.012(14), F.S.]. The bill, however, was not heard in the Senate and died in Messages. On April 29, 2011, the House, again, passed the measure, but the bill was not heard in the Senate.

Property Valuation

Article VII, section 4, of the Florida Constitution, provides that all property, with some exceptions, is to be assessed at "just value." Florida courts define "just value" as the estimated fair market value of the property. The constitution requires property appraisers to establish the just value of every parcel of real property as of January 1 each year.

"Assessed value of property"[3] means an annual determination of the just or fair market value of an item or property or the value of a homestead property after application of the "Save Our Homes" assessment limitation[4] and the 10 percent cap on non-homestead property.[5] In addition, "assessed value" is also the classified use value of agricultural or other special classes of property that are valued based on their current "classified" use rather than on market value.

Property Appraisals

Section 193.011, F.S., lists the following factors to be taken into consideration when determining just valuation:

(1) The present cash value of the property, which is the amount a willing purchaser would pay a willing seller, exclusive of reasonable fees and costs of purchase, in cash or the immediate equivalent thereof in a transaction at arm's length;

(2) The highest and best use to which the property can be expected to be put in the immediate future and the present use of the property, taking into consideration any applicable judicial limitation, local or state land use regulation, or historic preservation ordinance, and considering any moratorium imposed by executive order, law, ordinance, regulation, resolution, or proclamation adopted by any governmental body or agency or the Governor when the moratorium or judicial limitation prohibits or restricts the development or improvement of property as otherwise authorized by applicable law. The applicable governmental body or agency or the Governor shall notify the property appraiser in writing of any executive order, ordinance, regulation, resolution, or proclamation it adopts imposing any such limitation, regulation, or moratorium;

(3) The location of said property;

(4) The quantity or size of said property;

(5) The cost of said property and the present replacement value of any improvements thereon;

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[3] Section 192.001(2), F.S.

[4] The "Save Our Homes" amendment to the Florida Constitution was approved by voters in 1992. This amendment limits annual assessment increases to the lower of the change in the Consumer Price Index (CPI) or 3 percent of the assessment for the prior year. *See* Art. VII, s. 4(d)(1), Fla. Const.

[5] On January 29, 2008, Florida voters approved a constitutional amendment changing property taxation provisions. Some of the changes provided that the property tax assessment of certain non-homestead property cannot increase by more than 10 percent per year, so long as ownership of the property does not change. The limitation does not apply to taxes levied by school districts.

(6) The condition of said property;

(7) The income from said property; and

(8) The net proceeds of the sale of the property, as received by the seller, after deduction of all of the usual and reasonable fees and costs of the sale, including the costs and expenses of financing, and allowance for unconventional or atypical terms of financing arrangements. When the net proceeds of the sale of any property are utilized, directly or indirectly, in the determination of just valuation of realty of the sold parcel or any other parcel under the provisions of this section, the property appraiser, for the purposes of such determination, shall exclude any portion of such net proceeds attributable to payments for household furnishings or other items of personal property.

Hurricane Mitigation Discounts and Premium Credits

Since 2003, insurers have been required to provide premium credits or discounts for residential property insurance for properties on which construction techniques which reduce the amount of loss in a windstorm have been installed.[6]

Typically, policyholders are responsible for substantiating to their insurers the existence of loss mitigation features in order to qualify for a mitigation discount. The Financial Services Commission (the Governor and Cabinet) adopted a uniform mitigation verification form in 2007 for use by all insurers to corroborate a home's mitigation features. An updated form was approved by the Financial Services Commission on March 9, 2010.

Effect of Proposed Changes

The bill provides that, when determining the assessed value of real property used for residential purposes, for both new and existing property, the property appraiser may not consider the increase in the just value of the property attributable to the following:

- Changes or improvements made for the purpose of improving a property's resistance to wind damage, which include any of the following:
    - Improving the strength of the roof deck attachment.
    - Creating a secondary water barrier to prevent water intrusion.
    - Installing wind-resistant shingles.
    - Installing gable-end bracing.
    - Reinforcing roof-to-wall connections.
    - Installing storm shutters.
    - Installing opening protections.
- The installation and operation of a renewable energy source device, which means any of the following equipment which collects, transmits, stores, or uses solar energy, wind energy, or energy derived from geothermal deposits:
    - Solar energy collectors, photovoltaic modules, and inverters.
    - Storage tanks and other storage systems, excluding swimming pools used as storage tanks.
    - Rockbeds.
    - Thermostats and other control devices.

[6] The former Department of Community Affairs in cooperation with the Department of Insurance contracted with Applied Research Associates, Inc., for a public domain study to provide insurers data and information on estimated loss reduction for wind resistive building features in single-family residences. The study, entitled *Development of Loss Relativities for Wind Resistive Features of Residential Structures*, was completed in 2002. The study's mathematical results, termed "wind loss relativities," were the basis for calculating the specific mitigation discount amount on the wind premium for mitigation features contained by the property. The relativities applied only to the portion of a policy's wind premium associated with the dwelling, its contents, and loss of use.

- Heat exchange devices.
- Pumps and fans.
- Roof ponds.
- Freestanding thermal containers.
- Pipes, ducts, refrigerant handling systems, and other equipment used to interconnect such systems; however, conventional backup systems of any type are not included in this definition.
- Windmills and wind turbines.
- Wind-driven generators.
- Power conditioning and storage devices that use wind energy to generate electricity or mechanical forms of energy.
- Pipes and other equipment used to transmit hot geothermal water to a dwelling or structure from a geothermal deposit.

The bill provides that when residential real property is being assessed, any increase in the just value of the property attributable to changes or improvements made to improve its resistance to wind damage, or for the installation of a renewable energy source device, may not be considered if an application is filed with the property appraiser on or before March 1 of the first year the property owner requests the assessment. The provision applies to changes or improvements to properties made on or after January 1, 2012, and applies to assessments beginning January 1, 2013.

The property appraiser may require the taxpayer or the taxpayer's representative to furnish the property appraiser such information as may reasonably be required to establish the increase in just value attributable to the renewable energy source device, or changes or improvements made for the purpose of improving the property's resistance to wind damage.

Similar to provisions in s. 196.011, F.S., the language provides the opportunity to file a late application with the property appraiser within 25 days following the mailing of the Truth in Millage notice and authorizes the applicant to file a petition with the Value Adjustment Board (VAB), pursuant to s. 194.011(3), F.S. The applicant must pay a non-refundable fee of $15.00 upon filing the petition. Upon review of the petition by the property appraiser or the VAB, if the property is qualified to be assessed under this section and the property owner demonstrates particular extenuating circumstances to warrant granting assessment under this section, the property appraiser must recalculate the assessment in accordance with the new provision.

The bill deletes the existing definition of renewable energy source device in s. 196.012(14), F.S., and repeals the obsolete exemption (s. 196.175, F.S.), based on the repeal of the constitutional provision by the voters in 2008. Several cross-references are amended.

B. SECTION DIRECTORY:

Section 1: creates s. 193.624, F.S., relating to definitions and assessment of residential real property.

Section 2: amends s. 193.155, F.S., relating to homestead assessments.

Section 3: amends s. 193.1554, F.S., relating to the assessment of nonhomestead residential property.

Section 4: amends s. 196.012, F.S., deleting the definition of a renewable energy source device.

Section 5: amends s. 196.121, F.S., amending a cross-reference.

Section 6: amends s. 196.1995, F.S., amending cross-references.

Section 7: repeals s. 196.175, F.S., relating to the renewable energy source device property tax exemption.

Section 8: provides an effective date of July 1, 2012, and applies to assessments beginning on January 1, 2013.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   The REC estimated, **assuming current millage rates,** that the bill will have a negative impact on school tax revenues of $5.1 million in FY 2013-14, $10.4 million in FY 2014-15, $16.5 million in FY 2015-16 and a recurring negative impact on school tax revenues of $24.1 million. The estimated statewide negative impact on local government non-school tax revenue is $7.1 million in FY 2013-14, $14.4 million in FY 2014-15, $23.1 million in FY 2015-16 with a negative $33.6 million recurring.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The provisions in the bill may result in lower property tax expenses and lower insurance rates and energy costs for taxpayers who make qualifying improvements to residential real property on or after January 1, 2012.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   The county/municipality mandates provision of Article VII, section 18, of the Florida Constitution, may apply because this bill reduces local government authority to raise revenue by reducing *ad valorem* tax bases compared to that which would exist under current law. This bill does not appear to qualify under any exemption or exception. If the bill does qualify as a mandate, final passage must be approved by two-thirds of the membership of each house of the Legislature.

   Although this bill is implementing a constitutional amendment adopted by Florida voters, the constitutional language is permissive and only authorizes, not requires, the Legislature to act.

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On January 12, 2012, the Energy & Utilities Subcommittee heard and passed PCS for HB 133 as a Committee Substitute. Mainly, the Committee Substitute makes the following changes to the original bill:

- Deletes proposed direction to the Department of Revenue to review every change made to the assessed or taxable value of a parcel on the assessment roll that was the result of an informal conference;
- Deletes proposed definitions of "placed on the tax roll" for purposes of assessment of residential, nonhomestead residential, and nonresidential real properties;
- Deletes proposed subsection referring to properties that are combined or divided for purposes of assessments;
- Amends assessment calculations for purposes of the intent of the bill; and
- Specifies that the provision only apply to installations, changes or improvements to properties made on or after January 1, 2012.

This analysis addresses the current Committee Substitute.

A bill to be entitled

An act relating to the assessment of residential and nonhomestead real property; creating s. 193.624, F.S.; providing definitions; excluding the value of certain installations, changes, or improvements made after a specified date from the assessed value of residential real property; providing for application; requiring the filing of applications by specified times in order for such installations, changes, or improvements to be excluded from the assessed value of residential real property; providing procedural requirements and limitations; requiring a nonrefundable filing fee for a petition to the value adjustment board; amending s. 193.155, F.S.; specifying additional exceptions to the assessment of homestead property at just value; amending s. 193.1554, F.S.; specifying additional exceptions to assessment of nonhomestead property at just value; amending s. 196.012, F.S.; deleting the definition of the terms "renewable energy source device" and "device"; conforming a cross-reference; amending ss. 196.121 and 196.1995, F.S.; conforming cross-references; repealing s. 196.175, F.S., relating to the property tax exemption for renewable energy source devices; providing for application of the act; providing an effective date.

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

Section 1. Section 193.624, Florida Statutes, is created to read:

193.624 Assessment of residential property.—

(1) For the purposes of this section:

(a) "Changes or improvements made for the purpose of improving a property's resistance to wind damage" means:

1. Improving the strength of the roof-deck attachment;

2. Creating a secondary water barrier to prevent water intrusion;

3. Installing wind-resistant shingles;

4. Installing gable-end bracing;

5. Reinforcing roof-to-wall connections;

6. Installing storm shutters; or

7. Installing opening protections.

(b) "Renewable energy source device" means any of the following equipment that collects, transmits, stores, or uses solar energy, wind energy, or energy derived from geothermal deposits:

1. Solar energy collectors, photovoltaic modules, and inverters.

2. Storage tanks and other storage systems, excluding swimming pools used as storage tanks.

3. Rockbeds.

4. Thermostats and other control devices.

5. Heat exchange devices.

6. Pumps and fans.

7. Roof ponds.

8. Freestanding thermal containers.

9. Pipes, ducts, refrigerant handling systems, and other equipment used to interconnect such systems; however, such equipment does not include conventional backup systems of any type.

10. Windmills and wind turbines.

11. Wind-driven generators.

12. Power conditioning and storage devices that use wind energy to generate electricity or mechanical forms of energy.

13. Pipes and other equipment used to transmit hot geothermal water to a dwelling or structure from a geothermal deposit.

(2) In determining the assessed value of real property used for residential purposes, any increase in the just value of the property attributable to the installation of a renewable energy source device or changes or improvements made for the purpose of improving a property's resistance to wind damage may not be considered.

(3) This section applies to the installation of a renewable energy source device or changes or improvements made for the purpose of improving a property's resistance to wind damage installed or made on or after January 1, 2012, to new and existing residential real property.

(4) For a parcel of residential property to be assessed pursuant to this section, the owner of such property must file with the county property appraiser an application on or before March 1 of the first year such treatment is requested. The property appraiser may require the taxpayer or the taxpayer's representative to furnish the property appraiser such

information as may reasonably be required to establish the increase in just value attributable to the renewable energy source device or changes or improvements made for the purpose of improving the property's resistance to wind damage. Failure to make timely application by March 1 constitutes a waiver of the property owner to have his or her assessment calculated for that year under this section. However, an applicant who fails to file an application by March 1 may file a late application and may file, pursuant to s. 194.011(3), a petition with the value adjustment board requesting assessment under this section. The petition must be filed on or before the 25th day after the mailing of the notice by the property appraiser as provided in s. 194.011(1). Notwithstanding s. 194.013, the applicant must pay a nonrefundable fee of $15 upon filing the petition. Upon reviewing the petition, if the property is qualified to be assessed under this section and the property owner demonstrates particular extenuating circumstances judged by the property appraiser or the value adjustment board to warrant granting assessment under this section, the property appraiser shall calculate the assessment pursuant to this section.

Section 2. Paragraph (a) of subsection (4) of section 193.155, Florida Statutes, is amended to read:

193.155 Homestead assessments.—Homestead property shall be assessed at just value as of January 1, 1994. Property receiving the homestead exemption after January 1, 1994, shall be assessed at just value as of January 1 of the year in which the property receives the exemption unless the provisions of subsection (8) apply.

(4)(a) Except as provided in paragraph (b) and s. 193.624, changes, additions, or improvements to homestead property shall be assessed at just value as of the first January 1 after the changes, additions, or improvements are substantially completed.

Section 3. Paragraph (a) of subsection (6) of section 193.1554, Florida Statutes, is amended to read:

193.1554 Assessment of nonhomestead residential property.—

(6)(a) Except as provided in paragraph (b) and s. 193.624, changes, additions, or improvements to nonhomestead residential property shall be assessed at just value as of the first January 1 after the changes, additions, or improvements are substantially completed.

Section 4. Subsections (14) through (20) of section 196.012, Florida Statutes, are amended to read:

196.012 Definitions.—For the purpose of this chapter, the following terms are defined as follows, except where the context clearly indicates otherwise:

~~(14) "Renewable energy source device" or "device" means any of the following equipment which, when installed in connection with a dwelling unit or other structure, collects, transmits, stores, or uses solar energy, wind energy, or energy derived from geothermal deposits:~~

~~(a) Solar energy collectors.~~

~~(b) Storage tanks and other storage systems, excluding swimming pools used as storage tanks.~~

~~(c) Rockbeds.~~

~~(d) Thermostats and other control devices.~~

~~(e) Heat exchange devices.~~

~~(f) Pumps and fans.~~

~~(g) Roof ponds.~~

~~(h) Freestanding thermal containers.~~

~~(i) Pipes, ducts, refrigerant handling systems, and other equipment used to interconnect such systems; however, conventional backup systems of any type are not included in this definition.~~

~~(j) Windmills.~~

~~(k) Wind-driven generators.~~

~~(l) Power conditioning and storage devices that use wind energy to generate electricity or mechanical forms of energy.~~

~~(m) Pipes and other equipment used to transmit hot geothermal water to a dwelling or structure from a geothermal deposit.~~

(14) ~~(15)~~ "New business" means:

(a)1. A business or organization establishing 10 or more new jobs to employ 10 or more full-time employees in this state, paying an average wage for such new jobs that is above the average wage in the area, which principally engages in any one or more of the following operations:

a. Manufactures, processes, compounds, fabricates, or produces for sale items of tangible personal property at a fixed location and which comprises an industrial or manufacturing plant; or

b. Is a target industry business as defined in s. 288.106(2)(t);

2. A business or organization establishing 25 or more new jobs to employ 25 or more full-time employees in this state, the

sales factor of which, as defined by s. 220.15(5), for the facility with respect to which it requests an economic development ad valorem tax exemption is less than 0.50 for each year the exemption is claimed; or

3. An office space in this state owned and used by a business or organization newly domiciled in this state; provided such office space houses 50 or more full-time employees of such business or organization; provided that such business or organization office first begins operation on a site clearly separate from any other commercial or industrial operation owned by the same business or organization.

(b) Any business or organization located in an enterprise zone or brownfield area that first begins operation on a site clearly separate from any other commercial or industrial operation owned by the same business or organization.

(c) A business or organization that is situated on property annexed into a municipality and that, at the time of the annexation, is receiving an economic development ad valorem tax exemption from the county under s. 196.1995.

(15) ~~(16)~~ "Expansion of an existing business" means:

(a)1. A business or organization establishing 10 or more new jobs to employ 10 or more full-time employees in this state, paying an average wage for such new jobs that is above the average wage in the area, which principally engages in any of the operations referred to in subparagraph (15)(a)1.; or

2. A business or organization establishing 25 or more new jobs to employ 25 or more full-time employees in this state, the sales factor of which, as defined by s. 220.15(5), for the

facility with respect to which it requests an economic development ad valorem tax exemption is less than 0.50 for each year the exemption is claimed; provided that such business increases operations on a site located within the same county, municipality, or both colocated with a commercial or industrial operation owned by the same business or organization under common control with the same business or organization, resulting in a net increase in employment of not less than 10 percent or an increase in productive output or sales of not less than 10 percent.

(b) Any business or organization located in an enterprise zone or brownfield area that increases operations on a site located within the same zone or area colocated with a commercial or industrial operation owned by the same business or organization under common control with the same business or organization.

(16) ~~(17)~~ "Permanent resident" means a person who has established a permanent residence as defined in subsection (17) ~~(18)~~.

(17) ~~(18)~~ "Permanent residence" means that place where a person has his or her true, fixed, and permanent home and principal establishment to which, whenever absent, he or she has the intention of returning. A person may have only one permanent residence at a time; and, once a permanent residence is established in a foreign state or country, it is presumed to continue until the person shows that a change has occurred.

(18) ~~(19)~~ "Enterprise zone" means an area designated as an enterprise zone pursuant to s. 290.0065. This subsection expires

on the date specified in s. 290.016 for the expiration of the Florida Enterprise Zone Act.

(19) ~~(20)~~ "Ex-servicemember" means any person who has served as a member of the United States Armed Forces on active duty or state active duty, a member of the Florida National Guard, or a member of the United States Reserve Forces.

Section 5. Subsection (2) of section 196.121, Florida Statutes, is amended to read:

196.121 Homestead exemptions; forms.—

(2) The forms shall require the taxpayer to furnish certain information to the property appraiser for the purpose of determining that the taxpayer is a permanent resident as defined in s. 196.012(16) ~~196.012(17)~~. Such information may include, but need not be limited to, the factors enumerated in s. 196.015.

Section 6. Subsections (6) and (8), paragraph (d) of subsection (9), and paragraph (d) of subsection (11) of section 196.1995, Florida Statutes, are amended to read:

196.1995 Economic development ad valorem tax exemption.—

(6) With respect to a new business as defined by s. 196.012(14)(c) ~~196.012(15)(c)~~, the municipality annexing the property on which the business is situated may grant an economic development ad valorem tax exemption under this section to that business for a period that will expire upon the expiration of the exemption granted by the county. If the county renews the exemption under subsection (7), the municipality may also extend its exemption. A municipal economic development ad valorem tax exemption granted under this subsection may not extend beyond the duration of the county exemption.

(8) Any person, firm, or corporation which desires an economic development ad valorem tax exemption shall, in the year the exemption is desired to take effect, file a written application on a form prescribed by the department with the board of county commissioners or the governing authority of the municipality, or both. The application shall request the adoption of an ordinance granting the applicant an exemption pursuant to this section and shall include the following information:

(a) The name and location of the new business or the expansion of an existing business;

(b) A description of the improvements to real property for which an exemption is requested and the date of commencement of construction of such improvements;

(c) A description of the tangible personal property for which an exemption is requested and the dates when such property was or is to be purchased;

(d) Proof, to the satisfaction of the board of county commissioners or the governing authority of the municipality, that the applicant is a new business or an expansion of an existing business, as defined in s. 196.012~~(15) or (16)~~;

(e) The number of jobs the applicant expects to create along with the average wage of the jobs and whether the jobs are full-time or part-time;

(f) The expected time schedule for job creation; and

(g) Other information deemed necessary or appropriate by the department, county, or municipality.

(9) Before it takes action on the application, the board

of county commissioners or the governing authority of the municipality shall deliver a copy of the application to the property appraiser of the county. After careful consideration, the property appraiser shall report the following information to the board of county commissioners or the governing authority of the municipality:

(d) A determination as to whether the property for which an exemption is requested is to be incorporated into a new business or the expansion of an existing business, as defined in s. 196.012~~(15) or (16)~~, or into neither, which determination the property appraiser shall also affix to the face of the application. Upon the request of the property appraiser, the department shall provide to him or her such information as it may have available to assist in making such determination.

(11) An ordinance granting an exemption under this section shall be adopted in the same manner as any other ordinance of the county or municipality and shall include the following:

(d) A finding that the business named in the ordinance meets the requirements of s. 196.012(14) or (15) ~~196.012 (15) or (16)~~.

Section 7. Section 196.175, Florida Statutes, is repealed.

Section 8. This act shall take effect July 1, 2012, and applies to assessments beginning January 1, 2013.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 181 Sponsorship of State Greenways and Trails
SPONSOR(S): Appropriations Committee, Agriculture & Natural Resources Subcommittee, Slosberg
TIED BILLS: None **IDEN./SIM. BILLS:** CS/CS/CS/SB 268

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Agriculture & Natural Resources Subcommittee	14 Y, 0 N, As CS	Cunningham	Blalock
2) Rulemaking & Regulation Subcommittee	14 Y, 1 N	Miller	Rubottom
3) Appropriations Committee	21 Y, 0 N, As CS	Helpling	Leznoff
4) State Affairs Committee		Deslatte JD	Hamby

SUMMARY ANALYSIS

The Florida Greenways and Trails Act was established to conserve, develop, and use Florida's natural resources for healthful and recreational purposes, as well as to provide people access, where appropriate, to environmentally sensitive lands and wildlife. The act creates the Florida Greenways and Trails System and identifies the general powers of the Department of Environmental Protection (DEP). The Office of Greenways and Trails (OGT), an office within the DEP's Division of Recreation and Parks, facilitates the establishment of the Florida Greenways and Trails System. Among its responsibilities, the OGT manages eight state trails and the Marjorie Harris Carr Cross Florida Greenway. The OGT also subleases state acquired properties to local governments for management. Currently, there is no mechanism for the OGT to generate revenue through naming rights or advertising on any of these state-owned properties.

This bill authorizes the DEP to enter into a concession agreement with a not-for-profit entity or private business or entity for commercial sponsorship to be displayed on state greenway and trail facilities or property. The DEP is authorized to establish the cost for entering into these concession agreements. Signage or displays are limited to one per trailhead or parking area and one per public access point, and are authorized in seven specified trails and greenways. The size of any sign or display located at a trailhead or parking area cannot exceed 16 square feet, and signs or displays located at public access points cannot exceed 4 square feet.

The concession agreements administered by the DEP must be for a minimum of 1 year and may be terminated for just cause with 60 days advance notice by the DEP. Before installation, each name or advertising display must be approved by the DEP. The bill specifies that the DEP shall ensure that the size, color, materials, construction, and location of all signs are consistent with the management plan for the property. All costs pertaining to the signage must be paid by the concessionaire.

Eighty-five percent of the proceeds must be deposited in the appropriate DEP trust fund that is the source of funding for management and operation of state greenway and trail facilities and properties. Fifteen percent of the proceeds must be deposited into the State Transportation Trust Fund for use in the Traffic and Bicycle Safety Education Program and the Safe Paths to School Program administered by the Department of Transportation.

The section of law created in the bill is named the "John Anthony Wilson Bicycle Safety Act."

The bill appears to have a positive but indeterminate fiscal impact on state government revenues. However, the federal Department of Transportation has not yet stated conclusively whether the receipt of income from proposed uses under the bill would negatively impact the allocation or use of federal funds. The bill also appears to have an indeterminate but likely insignificant negative fiscal impact on the DEP, which will need to expend funds for staff time involved in developing the rule to implement this bill and to establish the program, as well as to develop and manage concessionaire agreements.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Chapter 260, F.S., was established to conserve, develop, and use Florida's natural resources for healthful and recreational purposes, as well as to provide people access, where appropriate, to environmentally sensitive lands and wildlife. Chapter 260, F.S., also creates the Florida Greenways and Trails System and identifies the general powers of the Department of Environmental Protection (DEP). The Office of Greenways and Trails (OGT), an office within the DEP's Division of Recreation and Parks (DRP), facilitates the establishment of the Florida Greenways and Trails System. Among its responsibilities, the OGT manages seven state trails, the Marjorie Harris Carr Cross Florida Greenway, and has three additional facilities currently in development.[1] The OGT also subleases state acquired properties to local governments for management. The OGT administers the Recreational Trails Program, a federally funded competitive grant program, which provides financial assistance for local communities to develop trails. According to the OGT, portions of the Greenways and Trails System receive certain funding from the federal Department of Transportation (USDOT), which has recently indicated that generating income from these facilities may impact the receipt of federal funds by the state. The USDOT has not yet stated conclusively whether the receipt of income from naming concessions or its proposed uses under the bill would negatively impact the allocation or use of federal funds.

Section 260.016, F.S., sets forth general powers that the DEP is authorized to use in managing and overseeing the Florida Greenways and Trails System. These powers include charging user fees or rentals, but do not specifically authorize DEP to sell naming rights or allow commercial displays. The DEP is authorized to negotiate with private land owners the terms under which those lands may be accessed and used as part of the Greenways and Trails System.[2] The DEP and the Department of Transportation (DOT) are authorized to coordinate on the abandonment of road rights-of-way for use in the Greenways and Trail System.[3]

The public policy of the DRP in administering the lands under its authority is detailed by statute and includes the promotion of the state park system for the use, enjoyment, and benefit of the public, to acquire and conserve property indicative of Florida's original environment, and to administer the development, use, and maintenance of these lands.[4] The DRP is authorized to grant privileges, leases, concessions, and permits for the use of land for the accommodation of visitors in the various state parks, monuments, and memorials. These leases, concessions, and so on may be made without advertising or competitive bid, but may not be transferred by the lessee, concessionaire, and so on without consent from the DRP.[5] Within the park system, the DRP by rule prohibits the sale of any merchandise or the display of items for sale without prior authorization; the activity must not adversely affect park resources, must not impair existing contracts, must provide a needed visitor service, and must be consistent with park management practices pursuant to statute.[6]

Currently, there is no mechanism for the OGT to generate revenue through naming rights or advertising on any of these state-owned properties nor any process to seek the best compensation for granting such rights. When the state acquires personal property or services, a competitive public process is required to curb any improprieties in the acquisition and to ensure public funds are spent equitably and effectively.[7] Contracts for construction of public buildings are made through competitive bidding.[8]

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[1] Information accessed from website of OGT at http://www.dep.state.fl.us/gwt/state/default.htm (last accessed on 1/19/2012).
[2] Section 260.016(3), F.S.
[3] Section 260.0161, F.S.
[4] Section 258.037, F.S.
[5] Section 258.007(3), F.S.
[6] Rule 62D-2.014(14), F.A.C.
[7] Section 287.001, F.S.

Competitive bidding is also required before the Board of Trustees of the Internal Improvement Trust Fund enters into agreements leasing state lands for oil and gas extraction in exchange for royalty payments to the state.[9] Before obtaining a permit for an oil or gas well, the applicant must post a security assuring its compliance with all safety and environmental requirements under Florida law. The security must be made payable to the State of Florida and executed by the applicant's owner or operator as principal and by a surety approved by the General Counsel for the DEP.[10]

No sign may be placed in the right-of-way of a road in a State Park Road System. The DOT has the power to order the removal of an improperly-placed sign, but cannot authorize the placement of any sign prohibited by a local government entity with jurisdiction.[11] The general regulation of outdoor advertising is placed under the DOT.[12] Unless exempt by statute, no sign may be erected in the State Highway System without a permit from the DOT.[13] It is not clear whether all the signage provided under the authority of the bill would be exempt from the present permitting requirements.[14]

Effect of Proposed Changes

The bill creates s. 260.0144, F.S., authorizing the DEP to enter into a concession agreement with a not-for-profit entity or private business or entity for commercial sponsorship to be displayed on state greenway and trail facilities or property. The bill does not mandate that the DEP enter into such an agreement through any public process such as publication and bidding, does not specify whether DEP may enter into concession agreements with more than one vender, and does not specify the scope and compatibility with existing uses of the proposed content for any signage.

A concession agreement must be administered by the DEP and must include the following requirements:

- The agreement must be for a minimum of 1 year, but can be for a longer period under a multi-year agreement, and may be terminated for just cause with a 60-day advanced notice by the DEP. The bill specifies that just cause for termination includes, but is not limited to, violation of the terms of the concession agreement or any provision of the bill.
- Before installation, each name or sponsorship display must be approved by the DEP.
- The DEP must ensure that the size, color, materials, construction, and location of all signs are consistent with the management plan for the property and the standards of the department, and do not intrude on natural and historic settings.
- All costs of a display, including its development, construction, installation, operation, maintenance, and removal must be paid by the concessionaire.

Signs shall contain only a logo selected by the sponsor and sponsorship wording constructed as follows; "...(Name of the sponsor)...proudly sponsors the costs of maintaining the ...(Name of the greenway or trail)..."

The bill specifies that sponsored greenways and trails are authorized only at the following:

- Florida Keys Overseas Heritage Trail.
- Blackwater Heritage Trail.
- Tallahassee-St. Marks Historic Railroad State Trail.

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[8] Section 255.0525, F.S.
[9] Sections 253.47, 253.53, F.S.
[10] Rule 62C-26.002
[11] Section 337.407, F.S.
[12] Section 479.402, F.S.
[13] Section 479.07, F.S.
[14] Section 479.16, F.S. For example, currently signs not in excess of 8 square feet owned by and relating to the facilities and activities of units or agencies of government are exempt from DOT permitting, which may conflict with the bill's provision for signs or displays up to 16 square feet at trailheads or parking areas if such a location also intersects the State Park Road System. Section 479.16(12), F.S.

- Nature Coast State Trail.
- Withlacoochee State Trail.
- General James A. Van Fleet State Trail.
- Palatka-Lake Butler State Trail.

Signage or displays must be in compliance with s. 337.407 and s. 479.11(8), F.S.,[15] and shall be limited as follows:

- One large sign or display, not to exceed 16 square feet in area, may be located at each trailhead or parking area.
- One small sign or display, not to exceed 4 square feet in area, may be located at each designated trail public access point.

The bill does not provide for the DEP to coordinate its control of signs by concessionaires when that overlaps with the DOT's statewide authority to regulate signs affecting state rights-of-way.

Commercial sponsorship pursuant to a concession agreement are for public relations or advertising purposes of the not-for-profit entity or private sector business or entity, and are not to be construed by such as having a relationship to any other actions of the DEP.

The above provisions do not create a proprietary or compensable interest in any sign or display site or location.

Proceeds from concession agreements must be distributed as follows:

- Eighty-five percent must be deposited into the appropriate DEP trust fund that is the source of funding for management and operation of state greenway and trail facilities and properties.
- Fifteen percent must be deposited into the State Transportation Trust Fund for the use in the Traffic and Bicycle Safety Education Program and the Safe Paths to School Program administered by the Department of Transportation.

The bill grants the DEP with the authority to adopt rules to administer this program.

B. SECTION DIRECTORY:

Section 1. Cites the act as the "John Anthony Wilson Bicycle Safety Act."

Section 2. Creates section 260.0144, F.S., authorizing the Department of Environmental Protection to enter into concession agreements for commercial sponsorship to be displayed on state greenway and trail facilities or property if certain requirements are met; provides for the distribution of proceeds from such concession agreements.

Section 3. Provides an effective date of July 1, 2012.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   The authority to enter into concession agreements for commercial sponsorship on state greenway and trail facilities and property will result in an increase to certain DEP trust funds. The bill also provides that 15 percent of the proceeds from concession agreements shall be deposited into the

[15] Sections 337.407 and 479.11(8), F.S., prohibit advertising signs from being placed in the right-of-way of any road on the interstate highway system, the federal-aid primary highway system, the State Highway system, or the State Park Road System.

State Transportation Trust Fund for use in the Traffic and Bicycle Safety Education Program and the Safe Paths to School Program administered by the Department of Transportation. However, the amount of revenue that might be realized is not known at this time.

In addition, portions of the Greenways and Trails System receive certain funding from the USDOT, which has recently indicated that generating income from these facilities may impact the receipt of federal funds by the state. The USDOT has not yet stated conclusively whether the receipt of income from proposed uses under the bill would negatively impact the allocation or use of federal funds.

The bill does not provide specific guidance on calculating the "proceeds" the DEP is to receive under any concession agreement. The use of a bidding process would assist to establish the amount to be paid in a public and competitive manner.

2. Expenditures:

According to the DEP, the department will need to expend funds for staff time involved in developing the rule to implement this bill and establish the program, as well as to develop and manage concessionaire agreements. The specific fiscal impact associated with that time is unknown, but likely insignificant.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Sponsorship of brand names and services provided by non-profits and private sector businesses could have a potential positive fiscal impact.

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:

a. Control of Content in Allowed Signs

The bill requires the DEP's approval prior to the installation of a display. It is not clear whether the intent of this language is to provide authority to regulate the content of a message communicated by a display or simply whether the signage meets material and construction standards. The provision may give rise to claims based on alleged interference with constitutionally protected free speech if the DEP approves or disapproves a sign or display based on the content of the speech. Notable is a DRP rule that controls the time, place, and manner of free speech activities consistent with uses of the particular park, public safety, and to prevent interference with other visitors' enjoyment of the park facilities.[16]

[16] Rule 62D-2.014(18), F.A.C.

Because valid Florida law prohibits placing signs within certain property controlled or regulated by the state,[17] the terms of the bill in conjunction with existing law effectively asserts the state's legitimate interests in the forms of speech allowed on state-owned or controlled lands through a grant of limited exclusivity to "sponsor" a state program. Freedom of speech protections are extended to so-called "commercial speech," those statements pertaining to proposed commercial transactions, which the government is able to regulate to assert a substantial governmental interest.[18] Because the bill only authorizes the DEP to grant a concession for a commercial use where the activity is presently proscribed, Florida has a clear interest in allowing only those forms of speech that are consistent with the present use of the land. The bill in its present form provides specific guidance as to the scope of wording, but not logos, which the DEP may permit under the concession agreements.

b. Impairment of Contracts

Where access to certain private property for the Greenways and Trails system is by agreement between the property owner and DEP, placing signs on such property under a subsequent concession agreement without a modification to the existing contract may be construed as an improper impairment of existing contract rights.[19] The concession agreements should expressly state the availability of certain property for signage is subject to existing agreements with private property owners. As these property use agreements expire or are renegotiated, replacement use agreements should include an express provision about the placement of signs under applicable concession agreements. Instances should be limited as signage will only be approved for trailheads or parking areas and public access points at the seven designated trails.

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.[20] Rulemaking authority is delegated by the Legislature[21] through statute and authorizes an agency to "adopt, develop, establish, or otherwise create"[22] a rule. Agencies do not have discretion whether to engage in rulemaking.[23] To adopt a rule an agency must have an express grant of authority to implement a specific law by rulemaking.[24] The grant of rulemaking authority itself need not be detailed.[25] 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.[26]

This bill gives the DEP the authority to establish rules regarding commercial sponsorship on state greenway and trail facilities or property. However, the bill does not provide for the manner of choosing prospective concessionaires, how the DEP coordinates with the DOT about the regulation of design, materials, and content of proposed signs, or the coordination by the DEP of concession contracts with existing agreements for the use of private party lands in the Greenways and Trails System. Without sufficient statutory standards and guidelines, rules proposed by DEP to implement the provisions of the bill may be challenged and prevented from going into effect.

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[17] Section 479.07, F.S.

[18] *Central Hudson Gas & Electric Corp. v. Public Service Commission of New York,* 447 U.S. 557, 100 S.Ct. 2343 (1980); *Kortum v. Sink,* 54 So. 3d 1012 (Fla. 1st DCA 2010).

[19] Art. I, s. 10, U.S. Const.; Art., I, s. 10, Fla. Const.

[20] 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).

[21] *Southwest Florida Water Management District v. Save the Manatee Club, Inc.,* 773 So. 2d 594 (Fla. 1st DCA 2000).

[22] Section 120.52(17), F.S.

[23] Section 120.54(1)(a), F.S.

[24] Section 120.52(8) & s. 120.536(1), F.S.

[25] *Save the Manatee Club, Inc.,* supra at 599.

[26] *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).

C. DRAFTING ISSUES OR OTHER COMMENTS:

The bill does not provide for the manner of choosing prospective concessionaires, how the DEP attains the best price, how the DEP coordinates with the DOT about the regulation of design, materials, and content of proposed signs, or the coordination by the DEP of concession contracts with existing agreements for the use of private party lands in the Greenways and Trails System. The bill references s. 337.407 and chapter 479, F.S., to incorporate the signage requirements administered by the DOT, but does not distinguish signs developed and emplaced pursuant to proposed s. 260.144 from the DOT's regulatory authority.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On January 11, 2012, the Agriculture & Natural Resources Subcommittee amended and passed HB 181 as a committee substitute (CS). The CS:

- Changed the word "advertising" to the word "sponsorship" throughout the bill.
- Added mandated compliance with s. 337.407, F.S, and Ch. 479, F.S.
- Added a 60-day notice period should the department choose to end a concession agreement for just cause.
- Added paragraph (5), which clarifies that concession agreements under this section do not create proprietary or compensable interests in any sign or display site or location.
- Changed the allocation of revenue from this section from 90 percent to 85 percent allocated to the appropriate Department of Environmental Protection trust fund; and from10 percent allocated to district school boards which must be used to enhance funds for the school district's bicycle education program or Safe Route to Schools Program, prorated by population, to 15 percent allocated to the State Transportation Trust Fund for use in Florida Traffic and Bicycle Safety Education program and the Florida Safe Routes to School program.

On February 15, 2012, the Appropriations Committee amended and passed CS/HB 181 as a committee substitute. The CS:

- Removes DEP's authorization to enter into concessions for naming rights;
- Specifies just cause for termination of a concession agreement;
- Specifies that only one large sign be allowed per trail head or parking area and one small sign per public access point;
- Authorizes seven specific trails and greenways for sponsorship;
- Authorizes the DEP to establish cost for entering into a concession agreement;
- Specifies that the DEP shall ensure that the size, color, materials, construction, and location of all signs are consistent with the management plan for the property and the standards of the department, do not intrude on natural and historic settings; and
- Specifies that all signs shall contain only a logo selected by the sponsor and specified wording.

This analysis is drawn to CS/CS/HB 181.

A bill to be entitled

An act relating to the sponsorship of state greenways and trails; creating the "John Anthony Wilson Bicycle Safety Act"; creating s. 260.0144, F.S.; providing for the Department of Environmental Protection to enter into concession agreements for commercial sponsorship displays to be displayed on certain state greenway and trail facilities or property; providing requirements for concession agreements; specifying which greenways and trails may be included in the sponsorship program; providing for distribution of proceeds from the concession agreements; authorizing the department to adopt rules; providing an effective date.

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

Section 1. This act may be cited as the "John Anthony Wilson Bicycle Safety Act."

Section 2. Section 260.0144, Florida Statutes, is created to read:

260.0144 Sponsorship of state greenways and trails.—The department may enter into a concession agreement with a not-for-profit entity or private sector business or entity for commercial sponsorship to be displayed on state greenway and trail facilities or property specified in this section. The department may establish the cost for entering into a concession agreement.

(1) A concession agreement shall be administered by the

department and must include the requirements found in this section.

(2)(a) Space for a commercial sponsorship display may be provided through a concession agreement on certain state-owned greenway or trail facilities or property.

(b) Signage or displays erected under this section shall comply with the provisions of s. 337.407 and chapter 479, and shall be limited as follows:

1. One large sign or display, not to exceed 16 square feet in area, may be located at each trailhead or parking area.

2. One small sign or display, not to exceed 4 square feet in area, may be located at each designated trail public access point.

(c) Before installation, each name or sponsorship display must be approved by the department.

(d) The department shall ensure that the size, color, materials, construction, and location of all signs are consistent with the management plan for the property and the standards of the department, do not intrude on natural and historic settings, and contain only a logo selected by the sponsor and the following sponsorship wording:

...(Name of the sponsor)...proudly sponsors the costs of maintaining the...(Name of the greenway or trail)....

(e) Sponsored trails and greenways are authorized only at:

1. Florida Keys Overseas Heritage Trail.

2. Blackwater Heritage Trail.

3. Tallahassee-St. Marks Historic Railroad State Trail.

4. Nature Coast State Trail.

5. Withlacoochee State Trail.

6. General James A. Van Fleet State Trail.

7. Palatka-Lake Butler State Trail.

(f) All costs of a display, including development, construction, installation, operation, maintenance, and removal costs, shall be paid by the concessionaire.

(3) A concession agreement shall be for a minimum of 1 year, but may be for a longer period under a multiyear agreement, and may be terminated for just cause by the department upon 60 days' advance notice. Just cause for termination of a concession agreement includes, but is not limited to, violation of the terms of the concession agreement or any provision of this section.

(4) Commercial sponsorship pursuant to a concession agreement is for public relations or advertising purposes of the not-for-profit entity or private sector business or entity, and may not be construed by that not-for-profit entity or private sector business or entity as having a relationship to any other actions of the department.

(5) This section does not create a proprietary or compensable interest in any sign, display site, or location.

(6) Proceeds from concession agreements shall be distributed as follows:

(a) Eighty-five percent shall be deposited into the appropriate department trust fund that is the source of funding

for management and operation of state greenway and trail facilities and properties.

(b) Fifteen percent shall be deposited into the State Transportation Trust Fund for use in the Traffic and Bicycle Safety Education Program and the Safe Paths to School Program administered by the Department of Transportation.

(7) The department may adopt rules to administer this section.

Section 3. This act shall take effect July 1, 2012.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 355 Public Meetings
SPONSOR(S): Government Operations Subcommittee, Kiar and others
TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 206

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Government Operations Subcommittee	14 Y, 0 N, As CS	Williamson	Williamson
2) Rulemaking & Regulation Subcommittee	11 Y, 3 N	Rubottom	Rubottom
3) State Affairs Committee		Williamson	Hamby

SUMMARY ANALYSIS

The State Constitution and the Florida Statutes set forth the state's public policy regarding access to government meetings; however, both are silent concerning whether citizens have a right to be heard at a public meeting. To date, Florida courts have heard two cases concerning whether a member of the public has a right to be heard at a meeting when he or she is not a party to the proceedings. In both cases, the court found that while Florida law requires meetings to be open to the public, it does not give the public the right to speak.

The bill requires members of the public to be given a reasonable opportunity to be heard on a proposition before a board or commission. However, the opportunity to be heard does not have to occur at the same meeting at which the board or commission takes official action if certain requirements are met. The bill also provides that the opportunity to be heard is not required at certain meetings of a board or commission.

The bill provides that the opportunity to be heard is subject to reasonable rules or policies adopted by the board or commission. It limits the scope of the rules and policies and requires each board or commission subject to the Administrative Procedure Act (APA) to adopt the rules under provisions in the APA. Only boards or commissions subject to the APA are authorized to adopt the limited rules and policies. Consequently, most local boards and commissions would not have authority to adopt rules implementing the law.

Finally, if a board or commission adopts rules or policies in compliance with the law and follows the rules or policies when providing an opportunity for the public to speak, it is presumed that the board or commission is acting in compliance with the requirement that citizens be given the opportunity to be heard.

The bill could have a negative fiscal impact on state and local governments.

This bill may be a county or municipality mandate. *See* Section III.A.1. of the analysis.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

State Constitution: Open Meetings

Article I, s. 24(b) of the State Constitution sets forth the state's public policy regarding access to government meetings. The section requires that all meetings of any collegial public body of the executive branch of state government or of any collegial public body of a county, municipality, school district, or special district, at which official acts are to be taken or at which public business of such body is to be transacted or discussed, be open and noticed to the public.

Article I, s. 24(c) of the State Constitution authorizes the Legislature to provide exemptions from the open meeting requirements upon a two-thirds vote of both legislative chambers, in a bill that specifies the public necessity giving rise to the exemption.

Government in the Sunshine Law

Public policy regarding access to government meetings also is addressed in the Florida Statutes. Section 286.011, F.S., also known as the "Government in the Sunshine Law" or "Sunshine Law," further requires that all meetings of any board or commission of any state agency or authority or of any agency or authority of any county, municipal corporation, or political subdivision, at which official acts are to be taken be open to the public at all times.[1] The board or commission must provide reasonable notice of all public meetings.[2] Public meetings may not be held at any location that discriminates on the basis of sex, age, race, creed, color, origin or economic status or which operates in a manner that unreasonably restricts the public's access to the facility.[3] Minutes of a public meeting must be promptly recorded and be open to public inspection.[4]

Right to Speak at Meetings

The State Constitution and the Florida Statutes are silent concerning whether citizens have a right to be heard at a public meeting. To date, Florida courts have heard two cases concerning whether a member of the public has a right to be heard at a meeting when he or she is not a party to the proceedings.[5]

In *Keesler v. Community Maritime Park Associates, Inc.*,[6] the plaintiffs sued the Community Maritime Park Associates, Inc., (CMPA) alleging that the CMPA violated the Sunshine Law by not providing the plaintiffs with the opportunity to speak at a meeting concerning the development of certain waterfront property. The plaintiffs argued that the phrase "open to the public" granted citizens the right to speak at public meetings. The First District Court of Appeal held:

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[1] Section 286.011(1), F.S.

[2] *Id.*

[3] Section 286.011(6), F.S.

[4] Section 286.011(2), F.S.

[5] Florida courts have heard numerous cases regarding Sunshine Law violations; however, only two appear to be on point regarding the public's right to speak at a public meeting. Other cases have merely opined that the public has an inalienable right to be present and to be heard. The courts have opined that "boards should not be allowed, through devious methods, to 'deprive the public of this inalienable right to be present and to be heard at all deliberations wherein decisions affecting the public are being made.'" *See, e.g., Board of Public Instruction of Broward County v. Doran*, 224 So.2d 693, 699 (Fla. 1969) (specified boards and commissions . . . should not be allowed to deprive the public of this inalienable right to be present and to be heard at all deliberations wherein decisions affecting the public are being made); *Krause v. Reno,* 366 So.2d 1244, 1250 (Fla. 3rd DCA 1979) ("citizen input factor" is an important aspect of public meetings); *Homestead-Miami Speedway, LLC v. City of Miami*, 828 So.2d 411 (Fla. 3rd DCA 2002) (city did not violate Sunshine Law when there was public participation and debate in some but not all meetings regarding a proposed contract).

[6] 32 So.3d 659 (Fla. 1st DCA 2010).

> Relying on the language in *Marston*,[7] the trial court determined that, although the Sunshine Law requires that meetings be open to the public, the law does not give the public the right to speak at the meetings. Appellants have failed to point to any case construing the phrase "open to the public" to grant the public the right to speak, and in light of the clear and unambiguous language in *Marston* (albeit dicta), we are not inclined to broadly construe the phrase as granting such a right here.[8]

The second case, *Kennedy v. St. Johns Water Management District*,[9] was argued before the Fifth District Court of Appeal on October 13, 2011. At a meeting of the St. Johns Water Management District (District), the overflow crowd was put in other rooms and provided a video feed of the meeting. Additionally, the District limited participation in the meeting by members of a group called "The St. Johns Riverkeeper." Only the St. Johns Riverkeeper representative and attorney were allowed to address the District board. Mr. Kennedy, who wanted to participate in the discussion, sued arguing that the Sunshine Law requires that citizens be given the opportunity to be heard. Mr. Kennedy also alleged that the District violated the Sunshine Law by failing to have a large enough facility to allow all who were interested in attending the meeting to be present in the meeting room. On October 25, 2011, the Fifth District Court of Appeal affirmed the trial court's ruling that the District did not violate the Sunshine Law as alleged.

Effect of Bill

The bill creates a new section of law governing the opportunity for the public to be heard at public meetings of a board or commission. The bill does not define a board or commission for purposes of the new requirements. For example, the Sunshine Law provides that it applies to all meetings of any board or commission of any state agency or authority or of any agency or authority of any county, municipal corporation, or political subdivision.

The bill requires members of the public to be given a reasonable opportunity to be heard on a proposition before a board or commission. However, the opportunity to be heard does not have to occur at the same meeting at which the board or commission takes official action if the opportunity:

- Occurs at a meeting that meets the same notice requirements as the meeting at which the board or commission will take official action on the item;
- Occurs at a meeting that is during the decisionmaking process; and
- Is within reasonable proximity before the meeting at which the board or commission takes official action.

It is unclear what is meant by "reasonable proximity" because the term is not defined.

The opportunity to be heard is not required when a board or commission is considering:

- An official act that must be taken to deal with an emergency situation affecting the public health, welfare, or safety, when compliance with the requirements would cause an unreasonable delay in the ability of the board or commission to act;
- An official act involving no more than a ministerial act; or
- A meeting in which the board or commission is acting in a quasi-judicial capacity with respect to the rights or interests of a person, except as otherwise provided by law.

It is unclear what is considered an "unreasonable delay" when deciding if the public's opportunity to be heard should be usurped.

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[7] In *Wood v Marston*, the Florida Supreme Court held that the University of Florida improperly closed meetings of a committee charged with soliciting and screening applicants for the deanship of the college of law. However, the *Marston* court noted "nothing in this decision gives the public the right to be more than spectators. The public has no authority to participate in or to interfere with the decision-making process." *Wood v. Marston*, 442 So.2d 934, 941 (Fla. 1983).

[8] *Keesler* at 660-661.

[9] 2011 WL 5124949 (Fla. 5th DCA 2011).

The bill authorizes a board or commission to adopt reasonable rules or policies to ensure the orderly conduct of public meetings. Boards or commissions subject to the Administrative Procedure Act[10] must adopt rules under ss. 120.536(1) and 120.54, F.S., governing the opportunity to be heard. The bill provides that rules or policies of a board or commission may:

- Limit the time that an individual has to address the board or commission;
- Require, at meetings in which a large number of individuals wish to be heard, that a representative of a group or faction on an item, rather than all of the members of the group or faction, address the board or commission; or
- Prescribe procedures or forms for an individual to use in order to inform the board or commission of a desire to be heard.

The bill further provides that the opportunity to be heard is subject to reasonable rules or policies adopted by the board or commission to ensure the orderly conduct of a public meeting. However, the bill limits the scope of the rules and policies and requires each board or commission subject to the Administrative Procedure Act to adopt the rules under ss. 120.536(1) and 120.54, F.S. Rules or policies adopted by the board or commission are limited to rules or policies that:

- Designate a specified period of time for public comment;
- Limit the time an individual has to address the board or commission;
- Require, at meetings in which a large number of individuals wish to be heard, that representatives of groups or factions on an item, rather than all of the members of the groups or factions, address the board or commission; or
- Prescribe procedures or forms for an individual to use in order to inform the board or commission of a desire to be heard, to indicate his or her support, opposition, or neutrality on a proposition, and to indicate his or her designation of a representative to speak for him or her or his or her group on a proposition if he or she so chooses.

Only boards or commissions subject to the Administrative Procedure Act are authorized to adopt the limited rules and policies. As a result, most local boards and commissions would not be authorized to adopt rules to implement the law.

Finally, if a board or commission adopts rules or policies in compliance with the law and follows the rules or policies when providing an opportunity for the public to speak, it is presumed that the board or commission is acting in compliance with the requirement that citizens be given the opportunity to be heard. A presumption in the law may be overcome. Some presumptions are overcome by the presentation of reliable evidence inconsistent with the fact presumed. Other presumptions are overcome by clear and convincing evidence. As the bill does not specify the meaning of the presumption, the courts would determine the force of the presumption. A true safe harbor principle would make it clear that if the conditions were met, that the actor meeting the conditions would be deemed in compliance as a matter of law.

B. SECTION DIRECTORY:

Section 1 creates s. 286.0114, F.S., providing that the public be provided with a reasonable opportunity to be heard at public meetings.

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.

[10] *See* chapter 120, F.S.

2. Expenditures:

   See FISCAL COMMENTS.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   See FISCAL COMMENTS.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

Governmental entities could incur additional meeting related expenses because longer and more frequent meetings could be required when considering items of great public interest. As a result, it is likely staff would have to be compensated, security would have to be provided, and other expenses related to the meeting and meeting facility would be incurred. The amount of those potential expenses is indeterminate and would vary depending on the magnitude of each issue and the specific associated meeting requirements.[11]

In addition, the uncertainties in the bill could generate lawsuits over its meaning and application to particular situations. The cost of defending such suits would be indeterminate.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   The mandates provision of Art. VII, s. 18 of the State Constitution may apply because this bill could cause counties and municipalities to incur additional expenses associated with longer meetings or increased meetings due to the new requirement that the public be provided with the opportunity to speak at such meetings; however, an exemption may apply if the bill results in an insignificant fiscal impact to county or municipal governments. The exceptions to the mandates provision of Art. VII, s. 18, of the Florida Constitution appear to be inapplicable because the bill does not articulate a threshold finding of serving an important state interest.

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

The bill authorizes a board or commission to adopt reasonable rules or policies to ensure the orderly conduct of public meetings. Boards or commissions subject to the Administrative Procedure Act (APA) must adopt rules under ss. 120.536(1) and 120.54, F.S., governing the opportunity to be heard. The bill provides guidelines regarding the rules or policies that may be adopted by a board or commission subject to the APA.

[11] According to the Commission on Ethics, "the only potential concern would be an increase in the length of the meetings and the possible need, and fiscal impact, of Commission members extending their stay in Tallahassee." Analysis of HB 355 (2012) by the Commission on Ethics (on file with the Government Operations Subcommittee).

Boards and commissions subject to the APA include state agencies, school boards and local boards and commissions having a jurisdiction extending beyond one county, as well as other entities that are expressly made subject to the APA by law or judicial decision. Thus, most local boards and commissions are not covered by the APA and would not have authority under the bill to adopt rules implementing the law.

Some of those boards and commissions may have rulemaking authority sufficient to organize their own meetings, but likely would not have authority to define what a reasonable time might be for a person to testify at such meetings. Thus the bill leaves a gap between the rulemaking authority necessary to implement the law and the actual authority such boards and commissions possess.

For boards and commissions governed by the APA, the bill provides guidance for rulemaking. It requires representatives of factions or groups to address the board, but does not allow rulemaking to govern the manner of selecting such representatives. Neither does the bill define factions or groups.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Placement in Law

The bill creates s. 286.0114, F.S., to provide provisions governing the opportunity for the public to be heard at a public meeting of a board or commission. It is suggested that the provisions be created in s. 286.0110, F.S., in order to ensure that the provisions are placed in law behind the Sunshine Law. As currently drafted, the opportunity to speak provisions would be placed in law behind exemptions to the Sunshine Law.

Boards and Commissions

The bill governs the opportunity for the public to be heard at public meetings of a board or commission. The bill does not define a board or commission for purposes of the new requirements. It is suggested that the bill be amended to clarify that it applies to "any board or commission of any state agency or authority or of any agency or authority of any county, municipal corporation, or political subdivision" as provided in the Sunshine Law.

Exceptions

The bill provides three exceptions to the opportunity to be heard at a public meeting: emergencies that do not permit unreasonable delay; ministerial acts; and an administrative hearing adjudicating the rights or interests of a person; however, the bill does not provide an exception for meetings that have been made exempt from open meeting requirements.[12] For instance, current law exempts from open meeting requirements, those meetings that would reveal a security system plan or portion thereof that is confidential and exempt from public record requirements.[13] Thus, the bill would require a board or commission to permit public comment on confidential matters that involve sensitive public security information. It also would allow public comment on closed meetings involving competitive negotiations[14] and litigation.[15] Therefore, the bill may invite public advocacy on such confidential matters and could undermine the public necessity that justified the exemption from open meeting requirements.

Rules and Procedures

The bill provides that the opportunity to be heard is subject to reasonable rules or policies adopted by the board or commission. It limits the scope of the rules and policies and requires each board or commission subject to the Administrative Procedure Act (APA) to adopt the rules under ss. 120.536(1) and 120.54, F.S. As currently drafted, the bill only authorizes boards or commissions subject to the APA to adopt the limited rules and policies. Local governments generally are not subject to the APA. As such, the bill could be interpreted in three ways:

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[12] Section 24(c), Art. I of the State Constitution authorizes the Legislature to enact exemptions from public record and public meeting requirements.

[13] Section 286.0113(1), F.S.

[14] *See* s. 286.0113(2), F.S.

[15] *See* s. 286.011(8), F.S.

1. Local boards and commissions would not be afforded the same opportunity to adopt the limited rules and policies;
2. Local boards and commissions would not be limited in the rules and policies they could adopt; or
3. Local boards and commissions would have to adopt rules and policies under ss. 120.536(1) and 120.54, F.S., if they wanted to adopt any rules or policies.

As such, it is suggested that the bill be amended to clarify the authorization to adopt rules or policies.

In addition, as described under section III.B. RULE-MAKING AUTHORITY, the bill could more comprehensively address practical matters necessary to ensure orderly meetings when public participation is required.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On January 18, 2012, the Government Operations Subcommittee adopted a strike-all amendment and reported the bill favorably as a committee substitute. The strike-all amendment removes placement of the provisions from the Sunshine Law and, instead, places the provisions in a new s. 286.0114, F.S. It also removes the fines, penalties, and attorney's fees. The bill removes the provision providing that if the board or commission violates the provisions governing the right to speak, then the actions of the board or commission are nullified. Finally, it removes the public meeting exemption.

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

A bill to be entitled

An act relating to public meetings; creating s. 286.0114, F.S.; requiring that a member of the public be given a reasonable opportunity to be heard before a board or commission takes official action on a proposition before the board or commission; providing that the opportunity to be heard is subject to rules or policies adopted by the board or commission; specifying certain exceptions; providing requirements for rules or policies governing the opportunity to be heard; providing that compliance with the requirements of the act is presumed under certain circumstances; requiring that a board or commission that is subject to ch. 120, F.S., adopt rules; providing an effective date.

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

Section 1. Section 286.0114, Florida Statutes, is created to read:

286.0114 Public meetings; reasonable opportunity to be heard.—

(1) Members of the public shall be given a reasonable opportunity to be heard on a proposition before a board or commission. The opportunity to be heard need not occur at the same meeting at which the board or commission takes official action on the item, if the opportunity occurs at a meeting that meets the same notice requirements as the meeting at which the

board or commission takes official action on the item, occurs at a meeting that is during the decisionmaking process, and is within reasonable proximity before the meeting at which the board or commission takes the official action. The opportunity to be heard is subject to reasonable rules or policies adopted by the board or commission to ensure the orderly conduct of a public meeting, as provided in subsection (3).

(2) The requirements in subsection (1) do not apply to:

(a) An official act that must be taken to deal with an emergency situation affecting the public health, welfare, or safety, when compliance with the requirements would cause an unreasonable delay in the ability of the board or commission to act;

(b) An official act involving no more than a ministerial act; or

(c) A meeting in which the board or commission is acting in a quasi-judicial capacity with respect to the rights or interests of a person. This paragraph does not affect the right of a person to be heard as otherwise provided by law.

(3) Rules or policies of a board or commission adopted under subsection (5) must be limited to rules or policies that:

(a) Designate a specified period of time for public comment;

(b) Limit the time an individual has to address the board or commission;

(c) Require, at meetings in which a large number of individuals wish to be heard, that representatives of groups or factions on an item, rather than all of the members of the

groups or factions, address the board or commission; or

(d) Prescribe procedures or forms for an individual to use in order to inform the board or commission of a desire to be heard, to indicate his or her support, opposition, or neutrality on a proposition, and to indicate his or her designation of a representative to speak for him or her or his or her group on a proposition if he or she so chooses.

(4) If a board or commission adopts rules or policies in compliance with this section and follows such rules or policies when providing an opportunity for members of the public to be heard, it is presumed that the board or commission is acting in compliance with this section.

(5) Each board or commission that is subject to chapter 120 shall adopt rules under ss. 120.536(1) and 120.54 to administer this section.

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

Amendment No.

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED ____ (Y/N)

ADOPTED AS AMENDED ____ (Y/N)

ADOPTED W/O OBJECTION ____ (Y/N)

FAILED TO ADOPT ____ (Y/N)

WITHDRAWN ____ (Y/N)

OTHER

Committee/Subcommittee hearing bill: State Affairs Committee

Representative Kiar offered the following:

Amendment (with title amendment)

Remove everything after the enacting clause and insert:

Section 1. Section 286.0114, Florida Statutes, is created to read:

286.0114 Public meetings; reasonable opportunity to be heard; attorney fees.—

(1) Members of the public shall be given a reasonable opportunity to be heard on a proposition before a board or commission of any state agency or authority or of any agency or authority of any county, municipal corporation, or political subdivision. The opportunity to be heard need not occur at the same meeting at which the board or commission takes official action on the item, if the opportunity occurs at a meeting that meets the same notice requirements as the meeting at which the board or commission takes official action on the item, occurs at a meeting that is during the decisionmaking process, and is

within reasonable proximity before the meeting at which the board or commission takes the official action. The opportunity to be heard is subject to reasonable rules or policies adopted by the board or commission to ensure the orderly conduct of a public meeting, as provided in subsection (3).

(2) The requirements in subsection (1) do not apply to:

(a) An official act that must be taken to deal with an emergency situation affecting the public health, welfare, or safety, when compliance with the requirements would cause an unreasonable delay in the ability of the board or commission to act;

(b) An official act involving no more than a ministerial act;

(c) Any meeting that is exempt from the provisions of s. 286.011; or

(d) A meeting in which the board or commission is acting in a quasi-judicial capacity with respect to the rights or interests of a person. This paragraph does not affect the right of a person to be heard as otherwise provided by law.

(3) Rules or policies of a board or commission must be limited to rules or policies that:

(a) Limit the time an individual has to address the board or commission;

(b) Require, at meetings in which a large number of individuals wish to be heard, that representatives of groups or factions on an item, rather than all of the members of the groups or factions, address the board or commission;

(c) Prescribe procedures or forms for an individual to use in order to inform the board or commission of a desire to be heard; to indicate his or her support, opposition, or neutrality on a proposition; and to indicate his or her designation of a representative to speak for him or her or his or her group on a proposition if he or she so chooses; or

(d) Designate a specified period of time for public comment.

(4)(a) If a board or commission adopts rules or policies in compliance with this section and follows such rules or policies when providing an opportunity for members of the public to be heard, it is presumed that the board or commission is acting in compliance with this section.

(b) Whenever an action is filed against a board or commission of any state agency or authority of a county, municipal corporation, or political subdivision to enforce the provisions of this section, the court shall assess reasonable attorney fees against such agency or authority if the court determines that the defendant to such action acted in violation of this section. The court may assess reasonable attorney fees against the individual filing such an action if the court finds that the action was filed in bad faith or was frivolous. This paragraph does not apply to a state attorney or his or her duly authorized assistants or any officer charged with enforcing the provisions of this section.

(c) Any action taken by a board or commission which is found to be in violation of this section is not void as a result of that violation.

(d) The circuit courts shall have jurisdiction to issue injunctions for the purpose of enforcing this section upon the filing of an application for such injunction by any citizen of this state.

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

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

Remove the entire title and insert:

A bill to be entitled

An act relating to public meetings; creating s. 286.0114, F.S.; requiring that a member of the public be given a reasonable opportunity to be heard before a board or commission takes official action on a proposition before a board or commission of any state agency or authority or of any agency or authority of any county, municipal corporation, or political subdivision; providing that the opportunity to be heard is subject to rules or policies adopted by the board or commission; specifying certain exceptions; providing requirements for rules or policies governing the opportunity to be heard; providing that compliance with the requirements of the act is presumed under certain circumstances; authorizing a court to assess reasonable attorney fees in actions filed against a board or commission; providing that any action taken by a board or commission which is found in violation

of the act is not void; providing that circuit courts have jurisdiction to issue injunctions for purposes of the act; providing an effective date.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 695 Development of Oil and Gas Resources
SPONSOR(S): Appropriations Committee, Energy & Utilities Subcommittee and Ford
TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 1158

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Energy & Utilities Subcommittee	11 Y, 1 N, As CS	Keating	Collins
2) Appropriations Committee	16 Y, 3 N, As CS	Lolley	Leznoff
3) State Affairs Committee		Keating CK	Hamby JH

SUMMARY ANALYSIS

For purposes of the oil and gas development and production, the Board of Trustees of the Internal Improvement Trust Fund (comprising the Governor and Cabinet) is authorized under chapter 253, F.S., to negotiate, sell, and convey leasehold estates in lands whose title is vested in any state board, department, or agency or is vested in the state and controlled and managed by any such board, department or agency. If the board believes there is a demand for the purchase of oil and gas leases on a portion of the land owned, controlled, or managed by a state board, department, or agency, then the board must place such oil and gas leases on the market. Applicants for a lease must submit sealed bids to the board, which, at a public meeting, will consider the bids. In its discretion, the board may award the lease to the highest and best bidder. If the board finds that the bids do not represent the fair value of the lease, that the execution of the lease is contrary to the public welfare, that the responsibility of the bidder offering the highest amount has not been established to its satisfaction, or for any other reason, it may reject all bids, give notice and call for new bids, or withdraw the land from the market.

The bill creates an undesignated section of law that, notwithstanding the provisions of chapter 253, F.S., authorizes a land management agency to establish, by contract, a public-private partnership with a business entity if the agency determines that there is an opportunity to develop oil and gas resources from onshore lands west of the Tallahassee Meridian owned by a board, department, or agency of the state and that such development would "yield greater, near-term revenue returns for the state." The bill requires a business entity that wishes to enter into a public-private partnership contract to submit to the land management agency a business proposal that describes the exploration for oil or gas resources and the development of state lands for those purposes and is consistent with approved land management plans. The business entity may nominate state land that is to be explored and developed under the public-private partnership contract. The bill specifies the matters that the land management agency must consider and requires that the land management agency select a private partner based on the business proposal.

A public-private partnership contract created under the bill requires approval by the board and must provide:

- A minimum 3-year period during which the private partner may explore specified state lands by geophysical seismic methods for the feasibility of oil and gas resource development and production.
- A selection process, after geophysical operations are concluded, in which the private partner may select and lease prospective parcels of state land for exploration and production.
- The leasing of state lands identified as a result of the geophysical seismic operations for a term of at least 5 years.
- Negotiated royalty rates and a lease bonus.

The bill's impact on state revenues and expenditures is indeterminate. The impact on state revenues will depend on the response of oil and gas exploration and production companies, the terms of any public-private partnership contracts negotiated with such companies by land management agencies, and actual oil and gas production. State land management agencies may be required to expend funds to obtain the necessary resources to review proposals and negotiate public-private partnership contracts. The bill may encourage oil and gas exploration and production companies to pursue opportunities to conduct operations on state lands, which could provide potential new investment and job growth.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Chapter 253, F.S., governs the acquisition, administration, and disposition of state lands.

Pursuant to s. 253.03, F.S., the Board of Trustees of the Internal Improvement Trust Fund[1] is empowered to acquire, administer, manage, control, supervise, conserve, protect, and dispose of all lands owned by, or which may inure to, the state or any of its agencies, departments, boards, or commissions. The Florida Department of Environmental Protection (DEP), through its Division of State Lands (DSL), serves as staff to the board.[2]

The board is directed and authorized to enter into leases for the use, benefit, and possession of public lands by agencies that may properly use and possess them for the benefit of the state.[3] The DSL manages the leases, subleases, easements, use agreements, deed restrictions, reverter revisions, and other approvals for all activities on state-owned lands the title to which is or will be vested in the board.[4]

Florida has more than 3.8 million acres of conservation lands. Nearly all of this land is open for public recreation and nearly all of the lands require some form of stewardship activity. The DSL leases these lands to state agencies and local governments to manage. Section 253.034(5), F.S., requires that each manager of conservation lands submit a land management plan to the Division of State Lands at least every 10 years and must be updated whenever the manager proposes to add new facilities or make substantive land use or management changes that were not addressed in the approved plan, or within 1 year of the addition of significant new lands. Land management plans must provide a desired outcome, describe both short-term and long-term management goals, and include measurable objectives to achieve those goals.

Land management plans must contain certain information, including, among other things:

- The common name of the property.
- A map showing the location and boundaries of the property.
- The designated single use or multiple use management for the property, including other managing agencies and private land managers that could facilitate restoration or management of the land.
- Proximity of the property to other significant State, local, or federal land or water resources.
- A statement as to whether the property is within an aquatic preserve or a designated area of critical State concern.
- The location and description of known and reasonably identifiable renewable and non-renewable resources of the property including, among other things, mineral resources, such as oil, gas, and phosphate.
- A description of actions the agency plans to take to locate and identify unknown resources such as surveys of unknown archaeological and historical resources.
- A detailed description of existing and planned use(s) of the property.
- A detailed assessment of the impact of planned uses on the renewable and non-renewable resources of the property and a detailed description of the specific actions that will be taken to protect, enhance, and conserve these resources and to mitigate damage caused by such uses.
- Identification of adjacent land uses that conflict with the planned use of the property.

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[1] The Board comprises the Governor, the Attorney General, the Chief Financial Officer, and the Commissioner of Agriculture. Section 253.02(1), F.S.
[2] Section 253.002(1), F.S.
[3] Section 253.03(2), F.S.
[4] http://www.dep.state.fl.us/lands/use.htm (viewed on January 23, 2012)

- A description of legislative or executive directives that constrain the use of such property.
- A finding regarding whether each planned use complies with the State Lands Management Plan.[5]

The DSL has leased more than 500 conservation areas that include parks, preserves, forests, wildlife management areas, and other conservation and recreation areas. The DSL also leases non-conservation lands to state agencies and local governments for uses such as universities, correctional institutions, and other government buildings.

For purposes of the development and production of oil and gas, the board is authorized to negotiate, sell, and convey leasehold estates in lands whose title is vested in any state board, department, or agency or is vested in the state and controlled and managed by any such board, department or agency.[6] If the board believes there is a demand for the purchase of oil and gas leases on a portion of the land owned, controlled, or managed by a state board, department, or agency, then the board must place such oil and gas leases on the market.[7] The board may designate the blocks, tracts, or parcels available for lease. A lease may be made only after public notice, and the lease form must be made publicly available at the board's office.[8] For lands not already developed for oil or gas, the board must determine in advance the amount of royalty, never less than one-eighth in kind or in value, and a definite rental, increasing annually after the first 2 years.[9]

Applicants for a lease must submit sealed bids to the board, which may not be opened until the time and place specified in the public notice.[10] At a public meeting, the board will consider any and all bids timely submitted for leasing the advertised lands and, in its discretion, may award the lease to the highest and best bidder. If the board finds that the bids do not represent the fair value of the lease, that the execution of the lease is contrary to the public welfare, that the responsibility of the bidder offering the highest amount has not been established to its satisfaction, or for any other reason, it may reject all bids, give notice and call for new bids, or withdraw the land from the market.[11]

Each lease must be for a primary term no longer than 10 years and must require that, to remain in full force and effect, operations be carried on in good faith and in a skillful and diligent manner with no cessation of more than 30 consecutive days or that oil or gas is being produced from the leased land in paying quantities. Each lease must provide for its termination in the absence of drilling or reworking operations or production of oil or gas in paying quantities.[12]

The board may require a surety or property bond, an irrevocable letter of credit, or other proof of financial responsibility from each lessee of public land or mineral interest prior to the time the lessee mines, drills, or extracts petroleum, petroleum products, or gas from the land. The surety bond, irrevocable letter of credit, or other proof of financial responsibility serves as security and is to be forfeited to the board to pay for any damages caused by mining or drilling operations performed by the lessee.[13]

Florida law prohibits oil and gas leases in specified areas except under certain conditions. In particular, no board or agency or the state has the authority to sell, execute, or enter into any such lease relating to any of the following lands, submerged or unsubmerged:

- Lands within the corporate limits of any municipality, unless the governing authority of the municipality shall have first duly consented to the granting or sale of such lease by resolution.

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[5] Rule 18-2.021, F.A.C.
[6] Section 253.51, F.S.
[7] Section 253.52, F.S.
[8] *Id.*
[9] Section 253.53, F.S.
[10] *Id.*
[11] Section 253.54, F.S.
[12] Section 253.55, F.S.
[13] Section 253.571, F.S. Damages include, but are not limited to, air, water, and ground pollution, destruction of wildlife or marine productivity and any other damage which impairs the health and general welfare of the citizens of the state.

- Lands in the tidal waters of the state, abutting on or immediately adjacent to the corporate limits of a municipality or within 3 miles of such corporate limits extending from the line of mean high tide into such waters, unless the governing authority of the municipality shall have first duly consented to the granting or sale of such lease by resolution.
- Lands on any improved beach, located outside of an incorporated town or municipality, or covering such lands in the tidal waters of the state abutting on or immediately adjacent to any improved beach, or within 3 miles of an improved beach extending from the line of mean high tide into such tidal waters, unless the county commissioners of the county in which such beach is located shall have first duly consented to the granting or sale of such lease by resolution.
- Defined submerged lands in territorial waters.[14]

A person wishing to conduct geophysical operations in search of oil, gas, or minerals must first obtain a permit from the Department of Environmental Protection.[15] The application must contain a statement, in general terms, of the location in which the operation is intended to be conducted. Any information relating to the location of the operation and other information relating to leasing plans, exploration budgets, and other proprietary information that could provide an economic advantage to competitors must be kept confidential by the department for 10 years and exempt from the provisions of s. 119.07(1), F.S., and may not be released to the public without the consent of the person submitting the application.[16]

Whenever geophysical operations are conducted on state-owned mineral lands, the person conducting the operations must provide the Division of Resource Management within DEP, acting as agent of the owner of the minerals, a copy of the noninterpreted information derived from the geophysical operations. Any information received by the division must, upon request of the person conducting the geophysical operations, be held confidential for 10 years from the date of receipt by the division and is exempt from disclosure under any state statute.[17]

Effect of Proposed Changes

The bill creates an undesignated section of law that, notwithstanding the provisions of chapter 253, F.S., authorizes a land management agency to establish a public-private partnership with a business entity if the agency determines that there is an opportunity to develop oil and gas resources from onshore lands west of the Tallahassee Meridian owned by a board, department, or agency of the state and that such development would "yield greater, near-term revenue returns for the state."

The bill requires a business entity that wishes to enter into a public-private partnership to submit to the land management agency a business proposal that describes the exploration for oil or gas resources and the development of state lands for those purposes and is consistent with approved land management plans. The business entity may nominate state land that is to be explored and developed under the public-private partnership. The proposal must provide an estimate of the revenues that the project is expected to generate for the state.

The land management agency must review the proposal in a timely manner and "in a manner that is consistent with contemporary industry practices." The bill requires that the proposed geophysical seismic exploration, drilling, and production activities must be of a duration consistent with industry practices. The geophysical data acquired and the subsequent interpretation must be made available to the land management agency or its representatives for review during the period of geophysical seismic exploration, but the bill provides that this information shall remain in the sole possession of the business entity until the business entity has selected the lease areas.

The bill requires that the land management agency select a private partner based on the business proposal. In selecting a private partner, the land management agency must consider, at a minimum,

[14] Section 253.61, F.S.
[15] Section 377.2408 and 377.2424, F.S.
[16] Section 377.2408, F.S.
[17] Section 377.2409, F.S.

"the technical quality of the exploration program proposed and the proposed timetable of geophysical and drilling activities which expedites the potential for generating revenues." If more than one business entity submits a proposal for substantially the same area, the land management agency must evaluate each proposal and select the proposal that it finds will provide the best value for the state.

The bill specifies that the public-private partnership must be established through a contract that provides for the following:

- A minimum 3-year period during which the private partner may explore specified state lands by geophysical seismic methods for the feasibility of oil and gas resource development and production.
- A selection process, after geophysical operations are concluded, in which the private partner may select and lease prospective parcels of state land for exploration and production.
- The leasing of state lands identified as a result of the geophysical seismic operations for a term of at least 5 years.
- Negotiated royalty rates and a lease bonus.

The bill specifies that this contract must be approved by the Board of Trustees of the Internal Improvement Trust Fund to be legally binding on the State of Florida. The bill further specifies that the financial, technical, and operational risk for the exploration, development, and production of oil and gas resources is the responsibility of the private business entity.

The bill provides an alternative mechanism for obtaining leasing rights to develop oil and gas resources on certain state lands that departs from current law in a number of ways:

- The business entity nominates state lands to explore and develop, rather than the board placing leases on the market for development and production of oil and gas if it believes there is a demand.
- The business entity obtains a contractual right to lease the state lands it identifies through geophysical seismic operations for development and production of oil and gas resources, rather than the board publicly soliciting and receiving sealed bids and having the discretion to award the lease to the highest and best bidder or reject all bids and withdraw the land from the market.
- The business entity negotiates royalty rates and a lease bonus with the land management agency, rather than the board determining the amount of royalty in advance based on the statutory minimum of one-eighth in kind or in value, and a definite, escalating rental.
- The business entity retains sole possession of geophysical data it produces (but would make it available for review by land management agency or its representatives), rather than the state holding the information as confidential and exempt from disclosure under the public records law.
- The bill does not appear to require the business entity to provide a surety or property bond, an irrevocable letter of credit, or other proof of financial responsibility as security to pay for any damages caused by mining or drilling operations performed by the entity.

The bill states in one instance that a land management agency *may participate* in a public-private partnership but states elsewhere that the land management agency, after receiving and reviewing a business proposal or proposals, *shall select* a private partner. Thus, it is not clear whether the bill permits or requires a land management agency to enter into such a partnership. If the land management agency has discretion, the only specific criteria that a land management agency must use to exercise its discretion is to consider the technical quality of the exploration program proposed and the proposed timetable of geophysical and drilling activities, which expedites the potential for generating revenues.

B. SECTION DIRECTORY:

Section 1. Creates an undesignated section of law establishing a process that allows land management agencies to create public-private partnerships with business entities to explore for oil and gas resources and to develop such resources on state lands west of the Tallahassee Meridian and consistent with approved land management plans.

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

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   The bill's impact on state revenues is indeterminate. The impact will depend on the response of oil and gas exploration and production companies, the terms of any public-private partnership contracts negotiated with such companies by land management agencies, and actual oil and gas production.

2. Expenditures:

   The bill's impact on state expenditures is indeterminate. The bill is not clear as to whether the land management agencies have the discretion to decline to select a private partner after receiving and reviewing a public-private partnership proposal. If the land management agencies do not retain this discretion, these agencies may be required to expend funds to obtain the necessary resources to review proposals and negotiate public-private partnership contracts.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may encourage oil and gas exploration and production companies to pursue opportunities to conduct operations on state lands which could provide potential new investment and job growth.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   Not applicable. This bill does not appear to require counties or municipalities to spend funds or take an action requiring the expenditure of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with counties or municipalities.

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

Not applicable.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The bill states in one instance that a land management agency *may* participate in a public-private partnership but states elsewhere that the land management agency, after receiving and reviewing a business proposal or proposals, *shall* select a private partner. Thus, it is not clear whether the bill permits or requires a land management agency to enter into such a partnership.

The bill provides that a land management agency must review a business proposal in a timely manner. The bill does not define what may be considered timely or untimely.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On January 25, 2012, the Energy & Utilities Subcommittee adopted a strike-all amendment to HB 695, which is reflected in the committee substitute for the bill. The strike-all amendment resulted in the following changes to the bill:

- Reorganizes the provisions of the bill.
- Removes a requirement that the public-private partnership contract contain a confidentiality provision for the data obtained through geophysical seismic exploration.

On February 15, 2012, the Appropriations Committee adopted two amendments and passed CS/HB 695 as a committee substitute. The two amendments resulted in the following changes to the bill:

- Limits the opportunity for development of oil and gas resources under onshore lands owned by a board, department, or agency of this state to lands west of the Tallahassee Meridian.
- Requires that a proposal be consistent with approved land management plans.

A bill to be entitled

An act relating to the development of oil and gas resources; authorizing a land management agency to enter into a public-private partnership with a business entity to develop oil and gas resources upon certain onshore state lands if the development yields near-term revenues for the state; providing that the financial, technical, and operational risk for the exploration, development, and production of oil and gas resources is the responsibility of the private business entity; requiring that a business entity seeking a public-private partnership contract submit a business proposal to the agency for review; specifying the information to be included in the business proposal; providing criteria for the agency to use in selecting the exploration proposal by a business entity; requiring that the geophysical data and the subsequent interpretation be made available to the agency or its representative for review but remain in the possession of the business entity; providing criteria for the public-private partnership contract; requiring a proposed public-private partnership contract to be approved by the Governor and Cabinet sitting as the Board of Trustees of the Internal Improvement Trust Fund; providing an effective date.

WHEREAS, the exploration and development of oil and gas deposits under onshore lands owned by a board, department, or

agency of the state may provide the opportunity to produce higher, near-term revenues to the state, and

WHEREAS, the monetary reward for discovering new reserves of oil and gas deposits may be significant, and

WHEREAS, the exploration for oil and gas deposits via modern three-dimensional, geophysical seismic methods and production, with its technological improvements, including directional and horizontal drilling, although costly, is more efficient and yields better results than older methods of exploration and production employed during the past 50 years, NOW, THEREFORE,

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

Section 1. (1) DUTIES; AUTHORITY.—Notwithstanding the provisions in chapter 253, Florida Statutes, if a land management agency determines that there is an opportunity to develop oil and gas resources under onshore lands west of the Tallahassee Meridian, longitude 84°16'37.59" west, owned by a board, department, or agency of this state to yield greater, near-term revenue returns for the state, the land management agency may participate with a business entity authorized to conduct business in the state in a public-private partnership contract.

(2) PRIVATE-PARTNER RESPONSIBILITIES.—The financial, technical, and operational risk for the exploration, development, and production of oil and gas resources is the responsibility of the private business entity.

(3) PROPOSAL SELECTION.—

(a) A business entity seeking a public-private partnership contract shall submit a business proposal that describes the exploration for oil or gas resources and the development of state lands for those purposes. The business entity may nominate state land that is to be explored and developed under the public-private partnership contract. The proposal shall provide an estimate of the revenues that the project is expected to generate for the state. The proposal for upland state lands must be consistent with approved land management plans approved pursuant to s. 253.034, Florida Statutes.

(b) The land management agency shall review the business proposal in a timely manner and in a manner that is consistent with contemporary industry practices. The geophysical seismic exploration, drilling, and production activities proposed shall be of a duration consistent with industry practices.

(c) The land management agency shall select a private partner based on the business proposal. The land management agency's consideration must include, but need not be limited to, the technical quality of the exploration program proposed and the proposed timetable of geophysical and drilling activities which expedites the potential for generating revenues. If more than one entity submits a proposal for a public-private partnership for substantially the same area, the land management agency shall evaluate and select the single proposal that will provide the best value for the state.

(d) The geophysical data acquired and the subsequent interpretation shall be made available to the land management

agency or its representatives for review during the period provided in paragraph (4)(a), but shall remain in the sole possession of the business entity until the business entity has selected the lease areas.

(4) PUBLIC-PRIVATE PARTNERSHIP CONTRACT.—The public-private partnership contract shall provide for:

(a) A period of 3 years or longer during which the private partner may explore specified state lands by geophysical seismic methods for the feasibility of oil and gas resource development and production;

(b) A selection process after geophysical operations are concluded in which the private partner may select and lease prospective parcels of state land for the purpose of exploration and production;

(c) The leasing of state lands identified as a result of the geophysical seismic operations, which shall be for a term of at least 5 years; and

(d) Negotiated royalty rates and a lease bonus.

(5) APPROVAL OF CONTRACT.—The proposed public-private partnership contract must be approved by the Governor and Cabinet sitting as the Board of Trustees of the Internal Improvement Trust Fund in order to be legally binding on the State of Florida.

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

Amendment No.

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

Committee/Subcommittee hearing bill: State Affairs Committee
Representative Ford offered the following:

Amendment (with title amendment)

Remove everything after the enacting clause and insert:

Section 1. (1) DUTIES; AUTHORITY.—Notwithstanding the provisions in ss. 253.52, 253.53, and 253.54, Florida Statutes, if the Board of Trustees of the Internal Improvement Trust Fund determines that there is an opportunity to develop oil and gas resources under onshore lands owned by a board, department, or agency of this state to yield greater, near-term revenue returns for the state, the Board of Trustees may participate with a business entity authorized to conduct business in the state in a public-private partnership contract. This section applies only to lands in the Blackwater River State Forest.

(2) PRIVATE-PARTNER RESPONSIBILITIES.—The financial, technical, and operational risk for the exploration, development, and production of oil and gas resources is the responsibility of the private business entity.

(3) PROPOSAL SELECTION.—

(a) A business entity seeking a public-private partnership contract shall submit a business proposal that describes the exploration for oil or gas resources and the development of state lands for those purposes. The business entity may nominate state land that is to be explored and developed under the public-private partnership contract. The proposal shall provide an estimate of the revenues that the project is expected to generate for the state. The proposal for upland state lands must be consistent with approved land management plans approved pursuant to s. 253.034, Florida Statutes.

(b) The Board of Trustees shall review the business proposal in a timely manner and in a manner that is consistent with contemporary industry practices. The geophysical seismic exploration, drilling, and production activities proposed shall be of a duration consistent with industry practices.

(c) The Board of Trustees shall select a private partner based on the business proposal. The Board of Trustees' consideration must include, but need not be limited to, the technical quality of the exploration program proposed and the proposed timetable of geophysical and drilling activities which expedites the potential for generating revenues. If more than one entity submits a proposal for a public-private partnership for substantially the same area, the Board of Trustees shall evaluate and select the single proposal that will provide the best value for the state.

(d) The geophysical data acquired and the subsequent interpretation shall be made available to the Board of Trustees

or its representatives for review during the period provided in paragraph (4)(a), but shall remain in the sole possession of the business entity until the business entity has selected the lease areas.

(4) PUBLIC-PRIVATE PARTNERSHIP CONTRACT.—The public-private partnership contract shall provide for:

(a) A period of 3 years or longer during which the private partner may explore specified state lands by geophysical seismic methods for the feasibility of oil and gas resource development and production;

(b) A selection process after geophysical operations are concluded in which the private partner may select and lease prospective parcels of state land for the purpose of exploration and production;

(c) The leasing of state lands identified as a result of the geophysical seismic operations, which shall be for a term of at least 5 years; and

(d) Negotiated royalty rates and a lease bonus.

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

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

Remove the entire title and insert:

A bill to be entitled

An act relating to the development of oil and gas resources; authorizing the Board of Trustees of the Internal Improvement Trust Fund to enter into a

public-private partnership with a business entity to develop oil and gas resources upon certain onshore state lands if the development yields near-term revenues for the state; providing that the financial, technical, and operational risk for the exploration, development, and production of oil and gas resources is the responsibility of the private business entity; requiring that a business entity seeking a public-private partnership contract submit a business proposal to the Board for review; specifying the information to be included in the business proposal; providing criteria for the Board to use in selecting the exploration proposal by a business entity; requiring that the geophysical data and the subsequent interpretation be made available to the Board or its representative for review but remain in the possession of the business entity; providing criteria for the public-private partnership contract; providing an effective date.

WHEREAS, the exploration and development of oil and gas deposits under onshore lands owned by a board, department, or agency of the state may provide the opportunity to produce higher, near-term revenues to the state, and

WHEREAS, the monetary reward for discovering new reserves of oil and gas deposits may be significant, and

WHEREAS, the exploration for oil and gas deposits via modern three-dimensional, geophysical seismic methods and

production, with its technological improvements, including directional and horizontal drilling, although costly, is more efficient and yields better results than older methods of exploration and production employed during the past 50 years, NOW, THEREFORE,

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 745 State Symbols
SPONSOR(S): Hukill
TIED BILLS: **IDEN./SIM. BILLS:** SB 266

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) State Affairs Committee		Thompson	Hamby
2) Rules & Calendar Committee			

SUMMARY ANALYSIS

Current law does not provide a designation for an official state sport. The bill designates the sport of automobile racing as the official state sport.

The bill provides an effective date of July 1, 2012.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Automobile Racing

Current law prohibits street racing on highways, roadways, or parking lots. However, this prohibition does not apply to licensed or duly authorized racetracks, drag strips, or other designated areas set aside by proper authorities for such purposes.[1] As such, municipalities are authorized to issue a permit to conduct a racing event on a highway, street or park;[2] and a written notice must be submitted by a person intending to hold a race, to the sheriff in the county where a race will take place.[3]

Automobile racing, in general, is a professional and amateur automobile sport practiced throughout the world in a variety of forms on roads, tracks, or closed circuits. It includes Grand Prix racing, speedway racing, stock-car racing, sports-car racing, drag racing, midget-car racing, and karting, as well as hill climbs and trials.[4]

Automobile racing premiered in Florida between the years 1903 and 1910 on the suitable hard packed beaches within the communities of Ormond and Daytona. Races were held and speed records were established on a variety of vehicles such as bicycles, motorcycles, and automobiles. Jacksonville and St. Augustine also hosted races as early as 1905 and 1906.[5]

In 1947, meetings began in Daytona Beach, which would eventually lead to the creation of the National Association of Stock Car Auto Racing (NASCAR).[6] Currently, Florida is home to the NASCAR headquarters in Daytona Beach, the Daytona International Speedway, and the Homestead-Miami Speedway and serves as host to three annual NASCAR Sprint Cup Series events.[7] In addition to NASCAR events, the Homestead-Miami Speedway hosts the Grand Prix of Miami, which is a GRAND-AM Rolex Sports Car Series.[8]

The Sebring International Raceway, in Sebring, Florida, is America's oldest permanent road racing circuit. The circuit was created from a WWII, B-17 training base called Hendricks Field in 1950. It hosts a twelve-hour endurance classic of the American Le Mans Series, featuring the same cars and drivers that compete in the 24 Hours of Le Mans in France.[9] The circuit also hosts the Legends of Motorsports,[10] the Historic Sportscar Racing series[11], and the Skip Barber Racing School.[12] Various types of cars such as the IndyCar, sports prototype, NASCAR, and Grand Touring teams use the Sebring circuit for winter testing.[13]

In addition to the major sanctioned tracks, Florida is home to 50 local amateur automobile racing tracks. Located throughout the state, these tracks provide local amateur racers and enthusiasts the

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[1] *See* s. 316.191, F.S.
[2] *See* s. 549.08, F.S.
[3] Section 549.01, F.S.
[4] Encyclopedia Britannica online, at http://www.britannica.com/EBchecked/topic/45020/automobile-racing (Last visited February 20, 2012).
[5] *See* Randal L. Hall, *Before NASCAR: The Corporate and Civic Promotion of Automobile Racing in the American South, 1903-1927*, The Journal of Southern History, (August 2002).
[6] *Id.*
[7] HR 9115, 2010.
[8] *See* http://www.homesteadmiamispeedway.com/Tickets-Events/Events/2012/GRAND-AM-Series/Grand-Prix-of-Miami.aspx (Last visited February 20, 2012).
[9] *See* http://www.lemans.org/en/ (Last visited February 20, 2012).
[10] *See* http://sebringraceway.com/legends.lasso (Last visited February 20, 2012).
[11] *See* http://sebringraceway.com/hsr.lasso (Last visited February 20, 2012).
[12] *See* http://www.skipbarber.com/location.asp?lid=SEBRING (Last visited February 20, 2012).
[13] Sebring International Raceway, http://sebringraceway.com/news-1-16-2012-Historics.lasso (Last visited February 20, 2012).

opportunity to be involved with the sport.[14] Automobile racing attracts national and international participants and spectators and likely provides positive impacts to Florida's tourism industry.

State Designations
Current law designates 39 official state designations including an official state play, air fair, rodeo, festival, renaissance festival, pageant, and fiddle contest. However, current law does not provide a designation for an official state sport.[15]

Proposed Changes

This bill designates the sport of automobile racing as the official state sport.

B. SECTION DIRECTORY:

Section 1 creates s. 15.0527, F.S., to designate automobile racing as the official state sport.

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

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:
   None.

2. Expenditures:
   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:
   None.

2. Expenditures:
   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:
None.

D. FISCAL COMMENTS:
None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:
   Not Applicable. This bill does not appear to affect county or municipal government.

[14] Florida Race Track Directory of Asphalt & Dirt Tracks & Drag Strips available at http://www.racingin.com/track/florida.aspx (Last visited February 20, 2012).
[15] *See* chapter 15, F.S.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

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

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

Not applicable.

A bill to be entitled

An act relating to state symbols; creating s. 15.0527, F.S.; designating the sport of automobile racing as the official state sport; providing an effective date.

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

Section 1. Section 15.0527, Florida Statutes, is created to read:

15.0527 Official state sport.—The sport of automobile racing is designated as the official state sport.

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 945 Broadband Internet Service
SPONSOR(S): Appropriations Committee, Holder
TIED BILLS: **IDEN./SIM. BILLS:** SB 1242

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Energy & Utilities Subcommittee	14 Y, 1 N	Keating	Collins
2) Economic Affairs Committee	15 Y, 0 N	Fennell	Tinker
3) Appropriations Committee	20 Y, 0 N, As CS	Topp	Leznoff
4) State Affairs Committee		Keating CK	Hamby

SUMMARY ANALYSIS

The American Recovery and Reinvestment Act of 2009 (ARRA) provided $7.2 billion in funding for the purpose of developing and expanding broadband services to rural and underserved communities. In 2009, the Legislature authorized the Florida Department of Management Services (DMS) to work collaboratively with Enterprise Florida, state agencies, local governments, private businesses, and community organizations to:

- Assess the needs for broadband Internet service and develop data and maps that provide a baseline assessment of the availability and speed of broadband service throughout Florida.
- Create a strategic plan to increase use of broadband Internet service in Florida.
- Build local technology planning teams representing, among others, libraries, schools, colleges and universities, local health care providers, private businesses, community organizations, economic development organizations, local governments, tourism, parks and recreation, and agriculture.
- Encourage the use of broadband Internet service, especially in rural, unserved, and underserved areas of the state through grant programs.

DMS is also authorized to apply for and accept federal funds, as well as gifts and donations from individuals, foundations, and private organizations, for these purposes.

In 2011, the Legislature created the Department of Economic Opportunity (DEO) "to assist the Governor in working with the Legislature, state agencies, business leaders, and economic development professionals to formulate and implement coherent and consistent policies and strategies designed to promote economic opportunities for all Floridians."

CS/HB 945 replaces DMS with DEO as the agency responsible for implementing the state's broadband program and designates DEO as the single state entity to receive and manage all federal State Broadband Initiative (SBI) funds. Further, the bill:

- Requires DEO to establish a public-private partnership that will work collaboratively with the entities with which DMS is currently required to work and adds "nonprofit corporations" to this list of entities.
- Adds community development as a goal of sustainable broadband adoption.
- Requires that DEO's strategic plan to increase use of broadband Internet service in Florida be developed with the use of consumer research into residential and business technology utilization data.
- Specifies that broadband mapping efforts conducted under DEO must, at a minimum, identify transmission speeds and unserved and underserved areas at the census block level of detail.

The bill requires DMS to request federal approval to transfer an existing federal broadband grant from DMS to DEO and, upon such approval, to request a budget amendment requiring Legislative Budget Commission (LBC) approval to transfer all funds. LBC approval will initiate a type two transfer of all funds and authority of the program from DMS to DEO.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

In 2008, Congress passed the Broadband Data Improvement Act[1] to improve the quality of federal and state data regarding the availability and quality of broadband services and to promote the deployment of affordable broadband services to all parts of the nation. In early 2009, Congress directed the Federal Communications Commission (FCC) to develop a National Broadband Plan to ensure every American has "access to broadband capability." Congress also required that this plan include a detailed strategy for achieving affordability and maximizing use of broadband to advance "consumer welfare, civic participation, public safety and homeland security, community development, health care delivery, energy independence and efficiency, education, employee training, private sector investment, entrepreneurial activity, job creation and economic growth, and other national purposes."[2] The Plan developed by the FCC can be found at http://www.broadband.gov/plan/.

The American Recovery and Reinvestment Act of 2009 (ARRA) provided $7.2 billion in funding for the purpose of developing and expanding broadband services to rural and underserved communities, focusing on schools, libraries, health care, educational institutions, non-profit community organizations, and the construction of broadband infrastructure. Two federal agencies are handling the distribution of broadband grants/awards through an application process. The U.S. Department of Agriculture's Rural Utilities Service (RUS) was authorized to make loans and grants totaling $2.5 billion for broadband infrastructure projects in rural areas through its Broadband Initiatives Program (BIP). The U.S. Department of Commerce's National Telecommunications Information Administration (NTIA) was authorized to provide grants totaling $4.7 billion to fund comprehensive broadband infrastructure projects, public computer centers, and sustainable broadband adoption projects through its Broadband Technology Opportunities Program (BTOP).

In 2009, the Legislature authorized the Florida Department of Management Services (DMS) to work collaboratively with Enterprise Florida, state agencies, local governments, private businesses, and community organizations to:

- Assess the needs for broadband Internet service and develop data and maps that provide a baseline assessment of the availability and speed of broadband service throughout Florida.
- Create a strategic plan to increase use of broadband Internet service in Florida.
- Build local technology planning teams representing, among others, libraries, schools, colleges and universities, local health care providers, private businesses, community organizations, economic development organizations, local governments, tourism, parks and recreation, and agriculture.
- Encourage the use of broadband Internet service, especially in rural, unserved, and underserved areas of the state through grant programs.

DMS is also authorized to apply for and accept federal funds, as well as gifts and donations from individuals, foundations, and private organizations, for these purposes.[3]

Current law provides that "[t]he Legislature finds that the sustainable adoption of broadband Internet service is critical to the economic and business development of the state and is beneficial for libraries, schools, colleges and universities, health care providers, and community organizations."[4]

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[1] Broadband Data Improvement Act, Pub. L. No. 110-385, S. 1492, 122 Stat. 4096.
[2] See http://www.broadband.gov/plan/executive-summary/.
[3] Section 364.0135, F.S.
[4] Section 364.0135(1), F.S.

In 2009, the NTIA launched the State Broadband Initiative (SBI) to implement the purposes of the ARRA and the Broadband Data Improvement Act. According to the NTIA's SBI website,[5] twelve separate entities within Florida have been awarded a combined total of $183.7 million for broadband infrastructure, sustainable adoption, and public computer center projects. Among those awards, DMS was awarded a total of $8,877,028[6] for the following purposes:

- Provide technical assistance to Florida anchor institutions for the E-rate program for increasing school and library telecommunications funding to procure services and technology from the private sector.
- Develop regional planning teams, in partnership with the Florida Regional Planning Councils, to assist in local and regional broadband planning.
- Provide further funding opportunity development and assistance to anchor institutions to secure additional funding to expand broadband usage throughout the state from the private sector.
- Provide for broadband data inventory, analysis, and mapping.
- Provide technology assessments to libraries to increase funding to purchase broadband from the private sector.

With some of the funds provided through the ARRA, DMS partnered with a national organization called Connected Nation[7] to map landline and wireless broadband services using information from service providers and other sources. This mapping project is intended to better identify the location of Florida's unserved and underserved areas. The efforts of this project can be found at http://www.connect-florida.org/.

In addition to its role in promoting broadband service adoption, DMS, through its Division of Telecommunications, has managed a number of telecommunications service programs for the state. According to DMS, the duties of its Division of Telecommunications include the following:

- Implementing SUNCOM, the state enterprise telecommunications system for providing local and long-distance communications services to state agencies, political subdivisions of the state, municipalities, and nonprofit corporations.[8,9]
- Managing public safety communications planning, coordination, and procurement, including the Statewide Law Enforcement Radio System (SLERS) and contract.[10]
- Managing 911 communications and technology planning and coordination, and managing related grants.[11]

In 2011, the Legislature created the Department of Economic Opportunity (DEO) "to assist the Governor in working with the Legislature, state agencies, business leaders, and economic development professionals to formulate and implement coherent and consistent policies and strategies designed to promote economic opportunities for all Floridians."[12] To accomplish this purpose, DEO is provided the following duties:

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[5] http://www2.ntia.doc.gov/SBDD

[6] http://www2.ntia.doc.gov/grantee/florida-department-of-management-services. According to DMS, it also developed and applied for a broadband adoption grant under the BTOP on two occasions using a "community development" model proposed by Connected Nation (see footnote below), though both applications, along with applications from other states proposing similar programs, were denied.

[7] Connected Nation is a nonprofit corporation whose Board of Directors is represented by CTIA-The Wireless Association, the Telecommunications Industry Association, the American Farm Bureau Federation, The Children's Partnership, and Intel. Its work is directed by the Board and a National Advisory Council comprised of a number of telecommunications companies and industry organizations, technology companies, and nonprofit organizations. The full list of members can be found at http://connectednation.org/who_we_are/national_advisors/.

[8] Section 282.703, F.S. The SUNCOM Network must be developed to transmit all types of telecommunications signals, including, but not limited to, voice, data, video, image, and radio.

[9] According to DMS, SUNCOM represents a public-private model in which over 95% of the budget is outsourced to telecommunications vendors in the state.

[10] Section 282.709, F.S.

[11] Section 365.171, F.S.

[12] Section 1, ch. 2011-142, Laws of Florida.

- Facilitate the direct involvement of the Governor and the Lieutenant Governor in economic development and workforce development projects designed to create, expand, and retain businesses in this state, to recruit business from around the world, and to facilitate other job-creating efforts.
- Recruit new businesses to this state and promote the expansion of existing businesses by expediting permitting and location decisions, worker placement and training, and incentive awards.
- Promote viable, sustainable communities by providing technical assistance and guidance on growth and development issues, grants, and other assistance to local communities.
- Ensure that the state's goals and policies relating to economic development, workforce development, community planning and development, and affordable housing are fully integrated with appropriate implementation strategies.
- Manage the activities of public-private partnerships and state agencies in order to avoid duplication and promote coordinated and consistent implementation of programs in areas including, but not limited to, tourism; international trade and investment; business recruitment, creation, retention, and expansion; minority and small business development; rural community development; commercialization of products, services, or ideas developed in public universities or other public institutions; and the development and promotion of professional and amateur sporting events.[13]

Effect of Proposed Changes

The bill replaces the Department of Management Services (DMS) with the Department of Economic Opportunity (DEO) as the state's single designated entity to receive and manage all federal State Broadband Initiative (SBI) funds. As discussed in the Fiscal Comments section, below, a transfer of grant funds previously awarded to DMS would require approval by the SBI.

The bill requires DEO to establish a public-private partnership that will work collaboratively with the same list of entities that DMS currently works with (i.e., Enterprise Florida, state agencies, local governments, private businesses, and community organizations), and the bill adds "nonprofit corporations" to this list of entities. The bill does not specify the type of private entity that DEO should consider in developing a public-private partnership (as opposed to those private entities with which the partnership must work collaboratively).

The bill also modifies the existing legislative finding in s. 364.0135(1), F.S., to state that "that the sustainable adoption of broadband Internet service is critical to the economic, business, *and community* development of the state ...."

The bill provides that DEO's strategic plan to increase use of broadband Internet service in Florida must be "developed with the use of consumer research into residential and business technology utilization data ...." Further, the bill specifies that broadband mapping efforts conducted under DEO must "at a minimum" identify transmission speeds and unserved and underserved areas at the census block level of detail. Current law provides that these areas be identified at the census tract level. This will require mapping at a higher level of detail.

Finally, the bill outlines a process by which the Broadband Initiative Program within DMS would be transferred to DEO. First, DMS, in consultation with DEO, must submit a request to the U.S. Department of Commerce to transfer the federal grant award for the program. Upon approval of such request, DMS must submit a budget amendment to transfer these funds, subject to approval by the Legislative Budget Commission (LBC). With LBC approval, a type two transfer becomes effective, thereby transferring all powers, duties, functions, records, offices, property, pending issues, existing contracts, administrative authority and rules, unspent appropriations, allocations, and funds of this program to DEO.

[13] Section 20.60(4), F.S.

B. SECTION DIRECTORY:

Section 1. Amends s. 364.0135, F.S., relating to promotion of broadband adoption.

Section 2. Provides for a type two transfer from the Department of Management Services (DMS) to the Department of Economic Opportunity of specified authority and funding associated with the Broadband Initiative Program within DMS.

Section 3. Requires the Department of Management Services (DMS) to request federal approval to transfer an existing federal broadband grant from DMS to the Department of Economic Opportunity and, upon such approval, to request a budget amendment requiring Legislative Budget Commission approval to transfer all funds.

Section 4. Provides a contingent effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   See Fiscal Comments section.

2. Expenditures:

   See Fiscal Comments section.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

See Fiscal Comments section.

D. FISCAL COMMENTS:

Currently, the Department of Management Services (DMS) is the sole entity designated by the State of Florida to accept funds under the federal State Broadband Initiative (SBI) program. To maintain the grants awarded to DMS to date, a transfer of these awards to a new entity would require approval by the SBI within the U.S. Department of Commerce.[14] According to DMS, the SBI has approved two transfers, and the process may require significant work and lead time for the existing grantee, new grantee, and the SBI office. DMS also indicates that, to achieve approval of such a transfer, the grant award must be transferred in its entirety to the new entity, and the new entity must continue the same work as set forth in the original award. The Department of Economic Opportunity (DEO) has indicated that they plan to continue the grant in the exact manner as set forth in the original award.

Contingent upon necessary approvals by the U.S Department of Commerce and the Legislative Budget Commission, all funding allocations and necessary authority related to this program are transferred from DMS to DEO.

[14] See U.S. Department of Commerce Grants Manual, Chapter 16, W., *Transfer of Award.*

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to: require counties or municipalities to spend funds or take an action requiring the expenditure of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill transfers from the Department of Management Services (DMS) to the Department of Economic Opportunity the existing authority to adopt rules to implement s. 364.0135, F.S. To date, DMS has not adopted rules to implement this section.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On February 15, 2012, the Appropriations Committee adopted one amendment which does the following:

- Provides for a type two transfer from the Department of Management Services (DMS) to the Department of Economic Opportunity (DEO) of specified authority and funding associated with the Broadband Initiative Program.
- Requires DMS, in consultation with DEO, to submit a request to the U.S. Department of Commerce to transfer the federal broadband grant from DMS to DEO.
- Requires DMS, upon federal approval, to submit a budget amendment for approval by the Legislative Budget Commission (LBC) to transfer funds from DMS to DEO.
- Specifies that the portion of the bill requiring DMS to submit a request to the U.S. Department of Commerce to transfer the federal broadband grant from DMS to DEO and to submit a budget amendment to the LBC upon such approval, will become effective upon becoming law.
- Specifies that the remainder of the bill will become effective upon LBC approval of the required budget amendment.

The amendment is reflected in the committee substitute for the bill that is the subject of this analysis.

A bill to be entitled

An act relating to broadband Internet service; amending s. 364.0135, F.S.; revising provisions to promote adoption of broadband Internet service; providing for the Department of Economic Opportunity to receive and manage certain federal funds; directing the department to establish a public-private partnership to perform certain functions; authorizing the department to accept certain funds, enter into contracts, and establish committees and workgroups for certain purposes; authorizing the department to adopt rules; removing authority of the Department of Management Services to perform certain functions; providing for a type two transfer of the Broadband Initiative Program from the Department of Management Services to the Department of Economic Opportunity; requiring the Department of Management Services to submit to the United States Department of Commerce a request to transfer its federal broadband grant to the Department of Economic Opportunity; requiring the Department of Management Services to notify the Governor and Legislature of the decision of the United States Department of Commerce; requiring the Department of Management Services, if the request is approved, to submit a budget amendment for approval by the Legislative Budget Commission to transfer from the department to the Department of Economic Opportunity

the funds necessary to implement this act; providing a contingent effective date.

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

Section 1. Section 364.0135, Florida Statutes, is amended to read:

364.0135 Promotion of broadband adoption.—

(1) The Legislature finds that the sustainable adoption of broadband Internet service is critical to the economic, ~~and~~ business, and community development of the state and is beneficial for libraries, schools, colleges and universities, health care providers, and community organizations. The term "sustainable adoption" means the ability for communications service providers to offer broadband services in all areas of the state by encouraging adoption and utilization levels that allow for these services to be offered in the free market absent the need for governmental subsidy.

(2) The Department of Economic Opportunity shall be the state's single designated entity to receive and manage all federal Department of Commerce State Broadband Initiative funds and shall establish a public-private partnership that will ~~Management Services is authorized to~~ work collaboratively with, and ~~to~~ receive staffing support and other resources from, Enterprise Florida, Inc., state agencies, local governments, private businesses, nonprofit corporations, and community organizations to:

(a) Monitor the adoption of broadband Internet service in

collaboration with communications service providers, including, but not limited to, wireless and wireline Internet service providers, to develop geographical information system maps ~~at the census tract level~~ that will, at a minimum:

1. Identify geographic gaps in broadband services, including areas unserved by any broadband provider and areas served by a single broadband provider at the census block level of detail;

2. Identify the download and upload transmission speeds made available to businesses and individuals in the state, at the census block ~~tract~~ level of detail, using data rate benchmarks for broadband service used by the Federal Communications Commission to reflect different speed tiers; and

3. Provide a baseline assessment of statewide broadband deployment in terms of percentage of households with broadband availability.

(b) Create a strategic plan, developed with the use of consumer research into residential and business technology utilization data, which ~~that~~ has goals and strategies for increasing the use of broadband Internet service in the state.

(c) Build and facilitate local technology planning teams or partnerships with members representing cross-sections of the community, which may include, but are not limited to, representatives from the following organizations and industries: libraries, K-12 education, colleges and universities, local health care providers, private businesses, community organizations, economic development organizations, local governments, tourism, parks and recreation, and agriculture.

(d) Encourage the use of broadband Internet service, especially in the rural, unserved, and underserved communities of the state through grant programs having effective strategies to facilitate the statewide deployment of broadband Internet service. For any grants ~~to be~~ awarded, priority must be given to projects that:

1. Provide access to broadband education, awareness, training, access, equipment, and support to libraries, schools, colleges and universities, health care providers, and community support organizations.

2. Encourage the sustainable adoption of broadband in primarily unserved areas by removing barriers to entry.

3. Work toward encouraging investments in establishing affordable and sustainable broadband Internet service in unserved areas of the state.

4. Facilitate the development of applications, programs, and services, including, but not limited to, telework, telemedicine, and e-learning to increase the usage of, and demand for, broadband Internet service in the state.

(3) The department may apply for and accept federal funds for purposes of this section, as well as gifts and donations from individuals, foundations, and private organizations.

(4) The department may enter into contracts necessary or useful to carry out the purposes of this section.

(5) The department may establish any committee or workgroup to administer and carry out the purposes of this section.

(6) The department may adopt rules necessary to carry out

the purposes of this section. Any rule, contract, grant, or other activity undertaken by the department shall ensure that all entities are in compliance with any applicable federal or state laws, rules, and regulations, including, but not limited to, those applicable to private entities providing communications services for hire and the requirements of s. 350.81.

Section 2. All powers, duties, functions, records, offices, property, pending issues, existing contracts, administrative authority, administrative rules, and unexpended balance of appropriations, allocations, and other funds relating to the Broadband Initiative Program in the Department of Management Services are transferred by a type two transfer, as defined in s. 20.06(2), Florida Statutes, to the Department of Economic Opportunity.

Section 3. (1) The Department of Management Services, in consultation with the Department of Economic Opportunity, shall develop and submit to the United States Department of Commerce a request to transfer the federal broadband grant from the Department of Management Services to the Department of Economic Opportunity. Upon receipt from the United States Department of Commerce of its approval or denial of the request for a transfer of the broadband grant, the Department of Management Services shall, in writing, immediately notify the Governor, the President of the Senate, and the Speaker of the House of Representatives of that decision.

(2) If the request for a transfer of the federal broadband grant is approved pursuant to subsection (1), the Department of

Management Services shall submit a budget amendment for approval by the Legislative Budget Commission pursuant to s. 216.292(4)(d), Florida Statutes, to transfer from the department to the Department of Economic Opportunity the funds necessary to implement this act.

(3) This section shall take effect upon this act becoming a law.

Section 4. Except as otherwise expressly provided in this act and except for this section, which shall take effect upon this act becoming a law, this act shall take effect upon approval of the budget amendment required under section 3.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 959 Divestiture by the State Board of Administration
SPONSOR(S): Government Operations Subcommittee; Bileca and others
TIED BILLS: None **IDEN./SIM. BILLS:** SB 1144

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Government Operations Subcommittee	15 Y, 0 N, As CS	Meadows	Williamson
2) Judiciary Committee	17 Y, 0 N	Cary	Havlicak
3) State Affairs Committee		Meadows	Hamby

SUMMARY ANALYSIS

The State Board of Administration (SBA or "board") is established by Article IV, s. 4(e) of the Florida Constitution, and is composed of the Governor as Chair, the Chief Financial Officer as Treasurer, and the Attorney General as Secretary. The board derives its powers to oversee state funds from Art. XII, Sec. 9 of the Florida Constitution.

The bill prohibits the SBA from serving as a fiduciary with respect to voting on a proxy resolution that advocates for expanded United States trade with Cuba or Syria. In addition, the SBA cannot vote in favor of a proxy resolution that would expand United States trade with Cuba or Syria. The bill requires the SBA to report on its activities in its Annual Proxy Voting Report.

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

The bill provides an effective date of July 1, 2012.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

State Board of Administration

The State Board of Administration ("SBA" or "board") is established by Article IV, Sec. 4(e) of the Florida Constitution, and is composed of the Governor as Chair, the Chief Financial Officer as Treasurer, and the Attorney General as Secretary. The board members are commonly referred to as "Trustees." The board derives its powers to oversee state funds from Art. XII, Sec. 9 of the Florida Constitution.

The SBA has responsibility for managing investments for the Florida Retirement System (FRS) Pension Plan and for administering the FRS Investment Plan, which represent approximately $125.1 billion, or 85%, of the $147.5 billion in assets managed by the SBA, as of November 30, 2011.[1] The SBA also manages 33 other investment portfolios, with combined assets of $21.7 billion[2], including the Florida Hurricane Catastrophe Fund, the Florida Lottery Fund, the Florida Pre-Paid College Plan, and various debt-service accounts for state bond issues.

Divestiture from Cuba

Current law prohibits the SBA from investing in stocks, securities, or other obligations of any institution or company domiciled in the United States that does business of any kind with Cuba, in violation of federal law.[3] In addition, the SBA is prohibited from investing in any company domiciled outside of the United States if the President of the United States has applied sanctions against the country in which that company is domiciled.[4]

Florida law also provides that state agencies are prohibited from investing in any financial institution or company domiciled in the United States, which directly through the domestically domiciled company or a foreign subsidiary, issues a loan, extends credit, or makes purchases or trades goods with Cuba.[5] State agencies also are prohibited from investing in any foreign company if the President of the United States has applied sanctions to the country in which that company is domiciled.[6]

Divestment of Securities

Divestment of securities is one method of applying economic pressures to companies, groups, or countries whose practices are not condoned by shareholders. Divestment may be used in conjunction with or in lieu of other sanctioning methods such as economic embargoes, and diplomatic and military activities. Alternatively, divestment may be used as a protective device if a particular investment carries a high level of risk to the performance of a fund.[7]

The State of Florida has practiced divestment four times in modern history.[8] From 1986 to 1993, the Legislature directed the SBA to divest from companies doing business with South Africa.[9] Beginning October 1, 1988, the Legislature placed restrictions on investments in any institution or company doing

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[1] *See* State Board of Administration of Florida, *Monthly Performance Report to the Trustees*, November 30, 2011, *issued* December 31, 2011, at 7 (on file with the Government Operations Subcommittee).
[2] *Id.*
[3] Section 215.471, F.S.
[4] *Id.*
[5] Section 215.472(1), F.S.
[6] Section 215.472(2), F.S.
[7] *See generally* Cody Ferguson, *Fallacies on Divestment*, Pensions & Investments, January 7, 2008 http://www.pionline.com/article/20080107/PRINTSUB/241283606 (last visited February 9, 2012).
[8] Information provided to Government Operations Subcommittee staff on February 3, 2012, by Mr. Ron Poppell, Senior Defined Contribution Programs Officer, State Board of Administration.
[9] *Id.*

business in or with Northern Ireland.[10] From 1997 until 2001, the SBA made a decision to divest of 16 tobacco stocks due to pending litigation involving the state and those companies.[11] From 2007 to the present, the Legislature has directed the SBA to divest funds from companies that are actively seeking and providing certain business opportunities with Iran and Sudan.[12]

Effect of Proposed Changes

The bill prohibits the SBA from serving as a fiduciary with respect to voting on a proxy resolution that advocates for expanded United States trade with Cuba or Syria. In addition, the SBA cannot vote in favor of a proxy that would expand United States trade with Cuba or Syria. The bill requires the SBA to report on its activities in its Annual Proxy Voting Report.

The bill provides for an effective date of July 1, 2012.

B. SECTION DIRECTORY:

Section 1 amends s. 215.471, F.S., relating to Divestiture by the State Board of Administration.

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

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   The bill does not appear to have any impact on state revenues.

2. Expenditures:

   The bill does not appear to have any impact on state expenditures.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   The bill does not appear to have any impact on local government revenues.

2. Expenditures:

   The bill does not appear to have any impact on local government expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill has the potential to negatively impact companies who seek to expand business in Cuba or Syria if the SBA votes against that expansion by proxy vote.

D. FISCAL COMMENTS:

None.

[10] Section 121.153, F.S.
[11] Information provided to Government Operations Subcommittee staff on February 3, 2012, by Mr. Ron Poppell, Senior Defined Contribution Programs Officer, State Board of Administration.
[12] Section 215.473, F.S.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On February 6, 2012, the Government Operations Subcommittee adopted a strike-all amendment and reported the bill favorably as a committee substitute. The strike-all amendment provides that the SBA will not be a fiduciary with respect to voting on a proxy resolution that would expand United States trade with Cuba or Syria. In addition, the SBA cannot vote in favor of a proxy that would expand United States trade with Cuba or Syria. The strike-all amendment requires the SBA to report on its activities in its Annual Proxy Voting Report.

The strike-all amendment removes the requirement that the SBA create a scrutinized companies list for businesses with prohibited business operations in Cuba or Syria. It also removes the requirement that the SBA divest of investments in companies who have business relationships with Cuba or Syria.

This analysis is drafted to the committee substitute as passed by the Governmental Operations Subcommittee.

A bill to be entitled

An act relating to divestiture by the State Board of Administration; amending s. 215.471, F.S.; prohibiting the State Board of Administration from being a fiduciary with respect to voting on any proxy resolution advocating expanded United States trade with Cuba or Syria; prohibiting the State Board of Administration from being a fiduciary with respect to having the right to vote in favor of any proxy resolution advocating expanded United States trade with Cuba or Syria; creating reporting requirements; providing an effective date.

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

Section 1. Section 215.471, Florida Statutes, is amended to read:

215.471 Divestiture by the State Board of Administration; reporting requirements.—

(1) The State Board of Administration shall divest any investment under s. 121.151 and ss. 215.44-215.53, and is prohibited from investment in stocks, securities, or other obligations of:

(a) ~~(1)~~ Any institution or company domiciled in the United States, or foreign subsidiary of a company domiciled in the United States, doing business in or with Cuba, or with agencies or instrumentalities thereof in violation of federal law.

(b) ~~(2)~~ Any institution or company domiciled outside of the

United States if the President of the United States has applied sanctions against the foreign country in which the institution or company is domiciled pursuant to s. 4 of the Cuban Democracy Act of 1992.

(2) The State Board of Administration may not be a fiduciary under this section with respect to voting on, and may not have the right to vote in favor of, any proxy resolution advocating expanded United States trade with Cuba or Syria. The board's staff shall report on its activities in its annual proxy voting report.

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

Amendment No.

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

Committee/Subcommittee hearing bill: State Affairs Committee
Representative Bileca offered the following:

Amendment (with title amendment)

Remove line 39 and insert:

Section 2. Section 287.135, Florida Statutes, is amended to read:

287.135 Prohibition against contracting with scrutinized companies.—

(1) In addition to the terms defined in ss. 287.012 and 215.473, as used in this section, the term:

(a) "Awarding body" means, for purposes of state contracts, an agency or the department, and for purposes of local contracts, the governing body of the local governmental entity.

(b) "Business operations" means, for purposes specifically related to Cuba or Syria, engaging in commerce in any form in Cuba or Syria, including, but not limited to, acquiring, developing, maintaining, owning, selling, possessing, leasing,

or operating equipment, facilities, personnel, products, services, personal property, real property, military equipment, or any other apparatus of business or commerce.

(c) ~~(b)~~ "Local governmental entity" means a county, municipality, special district, or other political subdivision of the state.

(2) A company that, at the time of bidding or submitting a proposal for a new contract or renewal of an existing contract, is on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, created pursuant to s. 215.473, or is engaged in business operations in Cuba or Syria, is ineligible for, and may not bid on, submit a proposal for, or enter into or renew a contract with an agency or local governmental entity for goods or services of $1 million or more.

(3)(a) Any contract with an agency or local governmental entity for goods or services of $1 million or more entered into or renewed on or after July 1, 2011, through June 30, 2012, must contain a provision that allows for the termination of such contract at the option of the awarding body if the company is found to have submitted a false certification as provided under subsection (5) or been placed on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List.

(b) Any contract with an agency or local governmental entity for goods or services of $1 million or more entered into or renewed on or after July 1, 2012, must contain a provision that allows for the termination of such contract at the option

of the awarding body if the company is found to have submitted a false certification as provided under subsection (5), been placed on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or been engaged in business operations in Cuba or Syria.

(4) Notwithstanding subsection (2) or subsection (3), an agency or local governmental entity, on a case-by-case basis, may permit a company on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or a company with business operations in Cuba or Syria, to be eligible for, bid on, submit a proposal for, or enter into or renew a contract for goods or services of $1 million or more under ~~either of~~ the ~~following~~ conditions set forth in paragraph (a) or the conditions set forth in paragraph (b):

(a)1. With respect to a company on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, all of the following occur:

a.~~1.~~ The scrutinized business operations were made before July 1, 2011.

b.~~2.~~ The scrutinized business operations have not been expanded or renewed after July 1, 2011.

c.~~3.~~ The agency or local governmental entity determines that it is in the best interest of the state or local community to contract with the company.

d.~~4.~~ The company has adopted, has publicized, and is implementing a formal plan to cease scrutinized business operations and to refrain from engaging in any new scrutinized business operations.

2. With respect to a company engaged in business operations in Cuba or Syria, all of the following occur:

a. The business operations were made before July 1, 2012.

b. The business operations have not been expanded or renewed after July 1, 2012.

c. The agency or local governmental entity determines that it is in the best interest of the state or local community to contract with the company.

d. The company has adopted, has publicized, and is implementing a formal plan to cease business operations and to refrain from engaging in any new business operations.

(b) One of the following occurs:

1. The local governmental entity makes a public finding that, absent such an exemption, the local governmental entity would be unable to obtain the goods or services for which the contract is offered.

2. For a contract with an executive agency, the Governor makes a public finding that, absent such an exemption, the agency would be unable to obtain the goods or services for which the contract is offered.

3. For a contract with an office of a state constitutional officer other than the Governor, the state constitutional officer makes a public finding that, absent such an exemption,

the office would be unable to obtain the goods or services for which the contract is offered.

(5) At the time a company submits a bid or proposal for a contract or before the company enters into or renews a contract with an agency or governmental entity for goods or services of $1 million or more, the company must certify that the company is not on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or that it does not have business operations in Cuba or Syria.

(a) If, after the agency or the local governmental entity determines, using credible information available to the public, that the company has submitted a false certification, the agency or local governmental entity shall provide the company with written notice of its determination. The company shall have 90 days following receipt of the notice to respond in writing and to demonstrate that the determination of false certification was made in error. If the company does not make such demonstration within 90 days after receipt of the notice, the agency or the local governmental entity shall bring a civil action against the company. If a civil action is brought and the court determines that the company submitted a false certification, the company shall pay the penalty described in subparagraph 1. and all reasonable attorney ~~attorney's~~ fees and costs, including any costs for investigations that led to the finding of false certification.

1. A civil penalty equal to the greater of $2 million or twice the amount of the contract for which the false certification was submitted shall be imposed.

2. The company is ineligible to bid on any contract with an agency or local governmental entity for 3 years after the date the agency or local governmental entity determined that the company submitted a false certification.

(b) A civil action to collect the penalties described in paragraph (a) must commence within 3 years after the date the false certification is submitted.

(6) Only the agency or local governmental entity that is a party to the contract may cause a civil action to be brought under this section. This section does not create or authorize a private right of action or enforcement of the penalties provided in this section. An unsuccessful bidder, or any other person other than the agency or local governmental entity, may not protest the award of a contract or contract renewal on the basis of a false certification.

(7) This section preempts any ordinance or rule of any agency or local governmental entity involving public contracts for goods or services of $1 million or more with a company engaged in scrutinized business operations.

(8) The department shall submit to the Attorney General of the United States a written notice:

(a) Describing this section within 30 days after July 1, 2011.

(b) Within 30 days after July 1, 2012, apprising the Attorney General of the United States of the inclusion of

companies with business operations in Cuba or Syria within the provisions of this section.

(9) This section becomes inoperative on the date that federal law ceases to authorize the states to adopt and enforce the contracting prohibitions of the type provided for in this section.

Section 3. This act shall take effect July 1, 2012.

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

Remove the entire title and insert:

An act relating to state and local government relations with Cuba or Syria; amending s. 215.471, F.S.; prohibiting the State Board of Administration from being a fiduciary with respect to voting on any proxy resolution advocating expanded United States trade with Cuba or Syria; prohibiting the State Board of Administration from being a fiduciary with respect to having the right to vote in favor of any proxy resolution advocating expanded United States trade with Cuba or Syria; creating reporting requirements; amending s. 287.135, F.S.; prohibiting a state agency or local governmental entity from contracting for goods and services of more than a certain amount with a company that has business operations in Cuba or Syria; requiring a contract provision that allows for termination of the contract if the company is found to have business operations in Cuba or Syria; providing exceptions; requiring certification upon

submission of a bid or proposal for a contract, or before a company enters into or renews a contract, with an agency or governmental entity that the company is not engaged in business operations in Cuba or Syria; providing procedures upon determination that a company has submitted a false certification; providing for civil action; providing penalties; providing attorney fees and costs; providing a statute of repose; prohibiting a private right of action; requiring the Department of Management Services to notify the Attorney General after the act becomes law; providing an effective date.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 999 Onsite Sewage Treatment and Disposal Systems
SPONSOR(S): Appropriations Committee, Dorworth and others
TIED BILLS: **IDEN./SIM. BILLS:** CS/CS/SB 820

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Economic Affairs Committee	14 Y, 1 N	Rojas	Tinker
2) Appropriations Committee	19 Y, 0 N, As CS	Clark	Leznoff
3) State Affairs Committee		Deslatte JD	Hamby

SUMMARY ANALYSIS

The bill repeals the onsite sewage treatment and disposal system evaluation program, including legislative intent, program requirements, and the Department of Health's (DOH) rulemaking authority to implement the program.

The bill also:

- Creates a definition of bedroom for purposes of establishing thresholds for required treatment capacity.
- Provides that a permit issued by the DOH for the installation, modification, or repair of a septic system transfers with title to the property. Title is not encumbered when the title is transferred if new permit requirements are in place at the time of transfer.
- Provides for the reconnection of properly functioning septic systems, and clarifies that such systems are not considered abandoned.
- Clarifies that the rules applicable and in effect at the time of approval for construction apply at the time of final approval of the system under certain circumstances.
- Clarifies that a modification, replacement, or upgrade of a septic system is not required for a remodeling addition to a single-family home if a bedroom is not added.
- Reduces the annual operating permit fee for waterless, incinerating, or organic waste composting toilets to a range of $15-$30 from a range of $30-$150.
- Repeals the grant program for low-income residents to repair and replace septic systems.
- Requires counties and municipalities with a first magnitude spring to develop and adopt by ordinance a local evaluation and assessment program, unless the county or municipality opts out.
- Authorizes all other counties and municipalities to establish local evaluation and assessment programs.

If an evaluation program is adopted by a county or municipality by ordinance, the bill sets the framework and allowable criteria, which includes:

- a pump out and evaluation of a septic system to be performed every five years;
- only persons authorized in the bill may perform the pump out and evaluation;
- notice to be given to septic system owners at least 60 days before the septic system is due for an evaluation;
- that a local ordinance may authorize the assessment of a reasonable fee to cover the costs of administering the evaluation program;
- penalties for qualified contractors and septic system owners who do not comply with the requirements of the evaluation program;
- a county or municipality must notify the Secretary of Environmental Protection, DOH and the local health department upon the adoption of the ordinance establishing the program; and
- the Department of Environmental Protection (DEP), within existing resources, must notify a county or municipality of potential funding under the Clean Water Act or Clean Water State Revolving Fund and assist such counties or municipalities to model and establish low-interest loan programs.

The bill has an unknown but likely insignificant fiscal impact that can be absorbed within the DOH's existing resources.

The bill is effective upon becoming a law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

The Department of Health's Regulation of Septic Tanks

The DOH oversees an environmental health program as part of fulfilling the state's public health mission. The purpose of this program is to detect and prevent disease caused by natural and manmade factors in the environment. One component of the program is administration of septic systems.[1]

An "onsite sewage treatment and disposal system" is a system that contains a standard subsurface, filled, or mound drainfield system; an aerobic treatment unit; a graywater system tank; a laundry wastewater system tank; a septic tank; a grease interceptor; a pump tank; a solid or effluent pump; a waterless, incinerating, or organic waste-composting toilet; or a sanitary pit privy that is installed or proposed to be installed beyond the building sewer on land of the owner or on other land to which the owner has the legal right to install a system. The term includes any item placed within, or intended to be used as a part of or in conjunction with, the system. The term does not include package sewage treatment facilities and other treatment works regulated under ch. 403, F.S.[2]

The DOH estimates there are approximately 2.67 million septic tanks in use statewide.[3] The DOH's Bureau of Onsite Sewage (bureau) develops statewide rules and provides training and standardization for county health department employees responsible for permitting the installation and repair of septic systems within the state. The bureau also licenses septic system contractors, approves continuing education courses and courses provided for septic system contractors, funds a hands-on training center, and mediates septic system contracting complaints. The bureau manages a state-funded research program, prepares research grants, and reviews and approves innovative products and septic system designs.[4]

In 2008, the Legislature directed the DOH to submit a report to the Executive Office of the Governor, the President of the Senate, and the Speaker of the House of Representatives by no later than October 1, 2008, which identifies the range of costs to implement a mandatory statewide five-year septic tank inspection program to be phased in over 10 years pursuant to the DOH's procedure for voluntary inspection, including use of fees to offset costs.[5] This resulted in the "Report on Range of Costs to Implement a Mandatory Statewide 5-Year Septic Tank Inspection Program" (report).[6] According to the report, three Florida counties, Charlotte, Escambia and Santa Rosa, have implemented mandatory septic tank inspections at a cost of $83 to $215 per inspection.

The report stated that 99 percent of septic tanks in Florida are not under any management or maintenance requirements. Also, the report found that while these systems were designed and installed in accordance with the regulations at the time of construction and installation, many are aging and may be under-designed by today's standards. The DOH's statistics indicate that approximately 2 million septic systems are 20 years or older, which is the average lifespan of a septic system in

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[1] *See* s. 381.006, F.S.
[2] Section 381.0065(2)(j), F.S.
[3] Florida Dep't of Health, Bureau of Onsite Sewage, *Home*, http://www.myfloridaeh.com/ostds/index.html (last visited Jan. 13, 2012).
[4] Florida Dep't of Health, Bureau of Onsite Sewage, *OSTDS Description*, http://www.myfloridaeh.com/ostds/OSTDSdescription.html (last visited Jan.13, 2012).
[5] *See* ch. 2008-152, Laws of Fla.
[6] Florida Dep't of Health, Bureau of Onsite Sewage, *Report on Range of Costs to Implement a Mandatory Statewide 5-Year Septic Tank Inspection Program*, October 1, 2008, available at http://www.doh.state.fl.us/environment/ostds/pdfiles/forms/MSIP.pdf (last visited Jan. 13, 2012).

Florida.[7] Because repairs of septic systems were not regulated or permitted by the DOH until March 1992, some septic systems may have been unlawfully repaired, modified or replaced. Furthermore, 1.3 million septic systems were installed prior to 1983. Pre-1983 septic systems were required to have a six inch separation from the bottom of the drainfield to the estimated seasonal high water table. The standard since 1983 for drainfield separation is 24 inches and is based on the 1982 Water Quality Assurance Act and on research findings compiled by the DOH that indicate for septic tank effluent, the presence of at least 24 inches of unsaturated fine sandy soil is needed to provide a relatively high degree of treatment for pathogens and most other septic system effluent constituents.[8] Therefore, Florida's pre-1983 septic systems and any illegally repaired, modified or installed septic systems may not provide the same level of protection expected from systems permitted and installed under current construction standards.[9]

Flow and Septic System Design Determinations

For residences, domestic sewage flows are calculated using the number of bedrooms and the building area as criteria for consideration, including existing structures and any proposed additions.[10] Depending on the estimated sewage flow, the septic system may or may not be approved by the DOH. For example, a current three bedroom, 1,300 square foot home is able to add building area to have a total of 2,250 square feet of building area with no change in their approved system, provided no additional bedrooms are added.[11]

Minimum design flows for septic systems serving any structure, building or group of buildings are based on the estimated daily sewage flow. For residences, the flows are based on the number of bedrooms and square footage of building area. For a single or multiple family dwelling unit, the estimated sewage flows are: for one bedroom with 750 square feet or less building area, 100 gallons; for two bedrooms with 751-1,200 square feet, 200 gallons; for three bedrooms with 1,201-2,250 square feet, 300 gallons; and for four bedrooms with 2,251-3,300 square feet, 400 gallons. For each additional bedroom or each additional 750 square feet of building area or fraction thereof in a dwelling unit, system sizing is to be increased by 100 gallons.[12]

Current Status of Evaluation Program

In 2010, SB 550 was signed into law, which became ch. 2010-205, L.O.F. This law provides for additional legislative intent on the importance of properly managing septic tanks and creates a septic system evaluation program. The DOH was to implement the evaluation program beginning January 1, 2011, with full implementation by January 1, 2016.[13] The evaluation program:

- requires all septic tanks to be evaluated for functionality at least once every five years;
- directs the DOH to provide proper notice to septic owners that their evaluations are due;
- ensures proper separations from the wettest-season water table; and
- specifies the professional qualifications necessary to carry out an evaluation.

The law also establishes a grant program under s. 381.00656, F.S., for owners of septic systems earning less than or equal to 133 percent of the federal poverty level. The grant program is to provide funding for inspections, pump-outs, repairs, or replacements. The DOH is authorized under the law to adopt rules to establish the application and award process for grants.

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[7] Florida Dep't of Health, Bureau of Onsite Sewage, *Onsite Sewage Treatment and Disposal Systems in Florida (2010)*, available at http://www.doh.state.fl.us/Environment/ostds/statistics/newInstallations.pdf (last visited Dec. 22, 2011). *See also* Florida Dep't of Health, Bureau of Onsite Sewage, *What's New?*, available at http://www.doh.state.fl.us/environment/ostds/New.htm (last visited on Dec. 22, 2011).

[8] Florida Dep't of Heath, Bureau of Onsite Sewage, *Bureau of Onsite Sewage Programs Introduction*, available at http://www.doh.state.fl.us/Environment/learning/hses-intro-transcript.htm (last visited Jan. 15, 2012).

[9] *Id.*

[10] Rule 64E-6.001, F.A.C.

[11] *Id.*

[12] Rule 64E-6.008, F.A.C.

[13] However, implementation was delayed until July 1, 2011, by the Legislature's enactment of SB 2-A (2010). *See also* ch. 2010-283, L.O.F.

Finally, ch. 2010-205, L.O.F., amended s. 381.0066, F.S., establishing a minimum and maximum evaluation fee that the DOH can collect. No more than $5 of each evaluation fee may be used to fund the grant program. The State's Surgeon General, in consultation with the Revenue Estimating Conference, must determine a revenue neutral evaluation fee.

Several bills were introduced during the 2011 Regular Session aimed at either eliminating the inspection program or scaling it back. Although none passed, language was inserted into a budget implementing bill that prohibited the DOH from expending funds to implement the inspection program until it submitted a plan to the Legislative Budget Commission (LBC).[14] If approved, the DOH would then be able to expend funds to begin implementation. Currently, the DOH has not submitted a plan to the LBC for approval.

Springs in Florida

Florida has more than 700 recognized springs. It also has 33 historical first magnitude springs in 19 counties that discharge more than 64 million gallons of water per day.[15] First magnitude springs are those that discharge 100 cubic feet of water per second or greater. Spring discharges, primarily from the Floridian Aquifer, are used to determine ground water quality and the degree of human impact on the spring's recharge area. Rainfall, surface conditions, soil type, mineralogy, the composition and porous nature of the aquifer system, flow, and length of time in the aquifer all contribute to ground water chemistry. Springs are historically low nitrogen systems. The DEP recently submitted numeric nutrient standards to the Legislature for ratification that include a nitrate-nitrite (variants of nitrogen) limit of 0.35 milligrams per liter for springs. For comparison, the U.S. Environmental Protection Agency's drinking water standard for nitrite is 1.0 milligrams per liter; for nitrate, 10 milligrams per liter.[16]

Local Government Powers and Legislative Preemption

The Florida Constitution grants counties or municipalities broad home rule authority. Specifically, non-charter county governments may exercise those powers of self-government that are provided by general or special law.[17] Those counties operating under a county charter have all powers of self-government not inconsistent with general law, or special law approved by the vote of the electors.[18] Likewise, municipalities have those governmental, corporate, and proprietary powers that enable them to conduct municipal government, perform their functions and provide services, and exercise any power for municipal purposes, except as otherwise provided by law.[19] Section 125.01, F.S., enumerates the powers and duties of all county governments, unless preempted on a particular subject by general or special law.

Under its broad home rule powers, a municipality or a charter county may legislate concurrently with the Legislature on any subject which has not been expressly preempted to the State.[20] Express preemption of a municipality's power to legislate requires a specific statement; preemption cannot be made by implication or by inference.[21] A county or municipality cannot forbid what the Legislature has expressly licensed, authorized or required, nor may it authorize what the Legislature has expressly forbidden.[22] The Legislature can preempt a county's broad authority to enact ordinances and may do so either expressly or by implication.[23]

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[14] *See* ch. 2011-047, s. 13, Laws of Fla.
[15] Florida Geological Survey, Bulletin No. 66, *Springs of Florida*, available at http://www.dep.state.fl.us/geology/geologictopics/springs/bulletin66.htm (last visited Dec. 19, 2011).
[16] U.S. Environmental Protection Agency, *National Primary Drinking Water Regulations*, available at http://water.epa.gov/drink/contaminants/upload/mcl-2.pdf (last visited Jan. 22, 2012).
[17] FLA. CONST. art. VIII, s. 1(f).
[18] FLA. CONST. art. VIII, s. 1(g).
[19] FLA. CONST. art. VIII, s. 2(b); *see also* s. 166.021, F.S.
[20] *See, e.g., City of Hollywood v. Mulligan*, 934 So. 2d 1238 (Fla. 2006); *Phantom of Clearwater, Inc. v. Pinellas County*, 894 So. 2d 1011 (Fla. 2d DCA 2005).
[21] *Id.*
[22] *Rinzler v. Carson*, 262 So. 2d 661 (Fla. 1972); *Phantom of Clearwater, Inc. v. Pinellas County*, 894 So. 2d 1011 (Fla. 2d

Effect of the Bill

The bill repeals the state wide septic system evaluation program, including program requirements, and the DOH's rulemaking authority to implement the program. It repeals legislative intent regarding the DOH's administration of a state wide septic system evaluation program and an obsolete reporting requirement regarding the land application of septage.

The bill also repeals s. 381.00656, F.S., related to a low-income grant program to assist residents with costs associated from a septic system evaluation program and any necessary repairs or replacements.

The bill defines "bedroom" as a room that can be used for sleeping that, for site-built dwellings, has a minimum 70 square feet of conditioned space; or for manufactured homes, constructed to HUD standards having a minimum of 50 square feet of floor area. The room must be located along an exterior wall, have a closet and a door or an entrance where a door could be reasonably installed. It also must have an emergency means of escape and rescue opening to the outside. A room may not be considered a bedroom if it is used to access another room, unless the room that is accessed is a bathroom or closet. The term does not include a hallway, bathroom, kitchen, living room, family room, dining room, den, breakfast nook, pantry, laundry room, sunroom, recreation room, media/video room, or exercise room. The bill also corrects two cross references. One is related to research fees collected to fund hands-on training centers for septic systems. The other relates to determining the mean annual flood line.

The bill provides that a permit issued and approved by the DOH for the installation, modification, or repair of a septic system transfers with the title to the property. A title is not encumbered when transferred by new permit requirements that differ from the original permit requirements in effect when the septic system was permitted, modified or repaired. It also prohibits a government entity from requiring a septic system inspection at the point of sale in a real estate transaction. Additionally, the bill prohibits a governmental entity from requiring an engineer-designed performance-based system after January 31, 2012.

The bill specifies a septic system serving a foreclosed property is not considered abandoned. It also specifies a septic system is not considered abandoned if it was properly functioning when disconnected from a structure made unusable or destroyed following a disaster, and the septic system was not adversely affected by the disaster. The septic system may be reconnected to a rebuilt structure if:

- reconnection of the septic system is to the same type of structure, which contains the same number of bedrooms or less, provided the square footage is less than or equal to 110 percent of the original square footage, that existed prior to the disaster;
- the septic system is not a sanitary nuisance; and
- the septic system has not been altered without prior authorization.

The bill provides that the rules applicable and in effect at the time of approval for construction apply at the time of the final approval of the septic system if fundamental site conditions have not changed between the time of construction approval and final approval. The bill also provides that a modification, replacement, or upgrade of a septic system is not required for a remodeling addition to a single-family home if a bedroom is not added.

A county or municipality containing a first magnitude spring within its boundary must develop and adopt by ordinance a local septic system evaluation and assessment program meeting the requirements of this bill within all or part of its geographic area by January 1, 2013, unless it opts out. All other counties and municipalities may opt in but otherwise are not required to take any affirmative action. Evaluation programs adopted before July 1, 2011, and that do not contain a mandatory septic system inspection at the point of sale in a real estate transaction are not affected. Existing evaluation programs that require point of sale inspections are preempted regardless of when the program was adopted.

DCA 2005).

[23] *Phantom of Clearwater, Inc. v. Pinellas County*, 894 So. 2d 1011 (Fla. 2d DCA 2005).

A county or municipality may opt out by a majority plus one vote of the local elected body before January 1, 2013, by adopting a separate resolution. The resolution must be filed with the Secretary of State. Absent an interlocal agreement or county charter provision to the contrary, a municipality may elect to opt out of the requirements of this section notwithstanding the decision of the county in which it is located. A county or municipality may subsequently adopt an ordinance imposing a septic system evaluation and assessment program if the program meets the requirements of this bill. The bill preempts counties' and municipalities' authority to adopt more stringent requirements for a septic system evaluation program than those contained in the bill.

Local ordinances must provide for the following:

- An evaluation of a septic system, including drainfield, every five years to assess the fundamental operational condition of the system and to identify system failures.
- The ordinance may not mandate an evaluation or a soil examination at the point of sale in a real estate transaction.
- Each evaluation must be performed by:
    - a septic tank contractor or master septic tank contractor registered under part III of ch. 489, F.S.;
    - a professional engineer having wastewater treatment system experience and licensed pursuant to ch. 471, F.S.;
    - an environmental health professional certified under ch. 381, F.S., in the area of septic system evaluation; or
    - an authorized employee working under the supervision of any of the above four listed individuals. Soil samples may only be conducted by certified individuals.

Evaluation forms must be written or electronically signed by a qualified contractor.

The local ordinance may not require a repair, modification or replacement of a septic system as a result of an evaluation unless the evaluation identifies a failure. The term "system failure" is defined as:

- a condition existing within a septic system that results in the discharge of untreated or partially treated wastewater onto the ground surface or into surface water; or
- results in a sanitary nuisance caused by the failure of building plumbing to discharge properly.

A system is not a failure if an obstruction in a sanitary line or an effluent screen or filter prevents effluent from flowing into a drainfield. The bill specifies that a drainfield not achieving the minimum separation distance from the bottom of the drainfield to the wettest season water table contained in current law is not a system failure.

The local ordinance may not require more than the least costly remedial measure to resolve the system failure. The homeowner may choose the remedial measure to fix the system. There may be instances in which a pump out is sufficient to resolve a system failure. Remedial measures to resolve a system failure must meet, to the extent possible, the requirements in effect at the time the repair is made, subject to the exceptions specified in s. 381.0065(4)(g), F.S. This allows certain older septic systems to be repaired instead of replaced if they cannot be repaired to operate to current code. An ordinance may not require an engineer-designed performance-based system as an alternative septic system to remediate a failure of a conventional septic system.

The bill specifies that a septic system that is required to obtain an operating permit or that is inspected by the department on an annual basis pursuant to ch. 513, F.S., related to mobile home and recreational vehicle parks is exempt from inclusion in a local septic system evaluation program. The bill also exempts a septic system serving a residential dwelling unit on a lot with a ratio of one bedroom per acre or greater.

The bill requires the owner of a septic system subject to an evaluation program to have it pumped out and evaluated at least once every five years. A pump out is not required if the owner can provide documentation to show a pump out has been performed or there has been a permitted new installation,

repair or modification of the septic system within the previous five years. The documentation must show both the capacity and that the condition of the tank is structurally sound and watertight.

If a tank, in the opinion of the qualified contractor, is in danger of being damaged by leaving the tank empty after inspection, the tank must be refilled before concluding the inspection. Replacing broken or damaged lids or manholes does not require a repair permit.

In addition to a pump out, the evaluation procedures require an assessment of the apparent structural condition and watertightness of the tank and an estimation of its size. A visual inspection of a tank is required when the tank is empty to detect cracks, leaks or other defects. The baffles or tees must be checked to ensure that they are intact and secure. The evaluation must note the presence and condition of:

- outlet devices;
- effluent filters;
- compartment walls;
- any structural defect in the tank; and
- the condition and fit of the tank lid, including manholes.

The bill also requires a drainfield evaluation and requires certain assessments to be performed when a system contains pumps, siphons or alarms. The drainfield evaluation must include a determination of the approximate size and location of the drainfield. The evaluation must contain a statement noting whether there is any visible effluent on the ground or discharging to a ditch or water body and identifying the location of any downspout or other source of water near the drainfield.

If the septic system contains pumps, siphons or alarms, the following information must be provided:

- an assessment of dosing tank integrity, including the approximate volume and the type of material used in construction;
- whether the pump is elevated off of the bottom of the chamber and its operational status;
- whether the septic system has a check valve and purge hole; and
- whether there is a high-water alarm, including whether the type of alarm is audio, visual or both, the location of the alarm, its operational condition and whether the electrical connections appears satisfactory.

The reporting procedures provided for in the bill require:

- the qualified contractor to document all the evaluation procedures used;
- the qualified contractor to provide a copy of a written, signed evaluation report to the property owner and the county health department within 30 days after the evaluation;
- the name and license number of the company providing the report;
- the local county health department to retain a copy of the evaluation report for a minimum of five years and until a subsequent report is filed;
- the front cover of the report to identify any system failure and include a clear and conspicuous notice to the owner that the owner has a right to have any remediation performed by a contractor other than the contractor performing the evaluation;
- the report to identify tank defects, improper fit or other defects in the tank, manhole or lid, and any other missing component of the septic system;
- noting if any sewage or effluent is present on the ground or discharging to a ditch or surface water body;
- stating if any downspout, stormwater or other source of water is directed onto or towards the septic system;
- identification of any maintenance need or condition that has the potential to interfere with or restrict any future repair or modification to the existing septic system; and
- conclude with an overall assessment of the fundamental operational condition of the septic system.

The county health department will be responsible for administering the program on behalf of a county or municipality. A county or municipality may develop a reasonable fee schedule in consultation with a

county health department. The fee must only be used to pay for the costs of administering the program and must be revenue neutral. The fee schedule must be included in the adopted ordinance for a septic system evaluation program. The fee shall be assessed to the septic system owner, collected by the qualified contractor and remitted to the county health department.

The county health department in a jurisdiction where a septic system evaluation program is adopted must:

- provide a notice to a septic system owner at least 60 days before the septic system is due for an evaluation;
- in consultation with the DOH, provide for uniform disciplinary procedures and penalties for qualified contractors who do not comply with the requirements of the adopted ordinance;
- be the sole entity to assess penalties against a septic tank owner who fails to comply with the requirements of an adopted ordinance;

The bill requires DOH to provide access to the Environmental Health Database to county health departments and qualified contractors for use in the assimilation of data to track relevant information resulting from an assessment and evaluation. The Environmental Health Database will be used by contractors to report all service and evaluation events and by the county health department to notify owners of onsite sewage treatment and disposal systems when evaluations are due. Data and information will be recorded and updated as service and evaluations are conducted and reported.

The bill requires a county or municipality that adopts a septic system evaluation and assessment program to notify the Secretary of the DEP, the DOH and the requisite county health department. Once the DEP receives notice a county or municipality has adopted an evaluation program, it must, within existing resources, notify the county or municipality of the potential availability of Clean Water Act or Clean Water State Revolving Fund grants. If a county or municipality requests, the DEP must, within existing resources, provide guidance in the application process to access the above mentioned funding sources and provide advice and technical assistance on how to establish a low-interest revolving loan program or how to model a revolving loan program after the low-interest loan program of the Clean Water State Revolving Fund. The DEP is not required to provide any money to fund such programs. The bill specifically prohibits the DOH from adopting any rule that alters the provisions contained within the bill.

The bill specifies that it does not derogate or limit county and municipal home rule authority to act outside the scope of the evaluation program created in this bill. The bill clarifies it does not repeal or affect any other law relating to the subject matter of this section. It does not prohibit a county or municipality that has adopted an evaluation program pursuant to this section from:

- enforcing existing ordinances or adopting new ordinances if such ordinances do not repeal, suspend or alter the requirements or limitations of this section; or
- exercising its independent and existing authority to use and meet the requirements of s. 381.00655, F.S. (relating to connection to central sewer systems).

B. SECTION DIRECTORY:

Section 1: Amends s. 381.0065, F.S., to repeal the onsite sewage treatment and disposal system evaluation program, including legislative intent, program requirements, and the DOH rulemaking authority to implement the program.

Section 2: Creates s. 381.00651, F.S., requiring evaluation programs to be adopted by a county or municipality with a first magnitude spring and authorizing evaluation programs to be adopted by any other county or municipality by ordinance and sets the framework and allowable criteria.

Section 3: Repeals s. 381.00656, F.S., related to a low-income grant program to assist residents with costs associated from a septic system evaluation program and any necessary repairs or replacements.

Section 4: Amends s. 381.0066, F.S., related to septic system fees. Deletes the existing fees for the five-year evaluation report and reduces the annual operating permit fee for waterless, incinerating or organic waste composting.

Section 5: Provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The projected revenues would have been $3.12 million for Fiscal Year 2011-2012, based on a July 1, 2011, implementation date for the onsite sewage treatment and disposal system evaluation program. These projected revenues would have offset the costs to the DOH to administer the evaluation program, including providing assistance to low income families for septic systems needing repair. However, this bill eliminates the requirement to implement the statewide septic tank evaluation and grant programs, and therefore results in no fiscal impact to the DOH.

The bill also decreases the amount of revenue the department will receive as a result of the reduction of the annual operating permit fees for waterless, incinerating, or organic waste composting toilets from a range of $50 to $150 to a range of $15 to $30. The amount is unknown, but expected to be insignificant.

2. Expenditures:

The department identifies potential expenditures related to the Environmental Health Database that the individual counties or municipalities will use to track onsite systems in Florida. It is unknown if any counties or how many counties will adopt an onsite sewage evaluation program that would require county use of the department's centralized database. The department notes potential costs associated with IT infrastructure and staff needs, however, these costs are insignificant and can be absorbed within existing department resources.

The bill also requires the Department of Environmental Protection, upon being notified that a county or municipality has adopted a septic system evaluation and assessment program, to notify the county or municipality of the potential availability of Clean Water Act or Clean Water State Revolving Fund grants. The DEP must provide this service within existing resources. If a county or municipality requests, the DEP must provide guidance in the application process and provide technical assistance on how to establish a low-interest revolving loan program. The fiscal impact to DEP is estimated to be minimal and could be handled with existing staff and resources.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill allows a county or municipality to assess a reasonable fee to cover the costs of administering the evaluation program. The fee will likely vary from jurisdiction to jurisdiction.

2. Expenditures:

The cost to counties or municipalities adopting evaluation programs is indeterminate as it depends on how large an area is covered by the evaluation program and how many septic systems are included.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Owners of septic systems subject to the evaluation program will have to pay for septic system evaluations, including pump outs, every five years.

The DOH estimates a cost savings to the public of $2,500 to $7,500 per system through preventive maintenance, thus eliminating the need for costly repairs associated with neglected, failing or improperly functioning systems.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to require counties or municipalities to 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 specifically prohibits the DOH from adopting any rule that alters the provisions contained within the bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On January 19, 2012, the Economic Affairs Committee adopted a strike-all amendment. The strike-all differs from the bill as follows:

- Requires counties and municipalities with a first magnitude spring to develop and adopt by ordinance a local evaluation and assessment program, unless the county or municipality opts out.
- Exempts a septic system serving a residential dwelling unit on a lot with a ratio of one bedroom per acre or greater.
- Deletes the requirement for local governments who establish evaluation and assessment programs to develop monitoring databases and replaces it with the requirement for DOH to provide access to the Environmental Health Database to county Health Departments and qualified contractors for use in the assimilation of data to track relevant information resulting from an assessment and evaluation.

The bill was reported favorably as a committee substitute and the analysis has been updated to reflect the adopted strike-all amendment.

On February 15, 2012, the Appropriations Committee adopted a strike-all amendment. The strike-all amendment differs from the bill as follows:

- Prohibits a governmental entity from requiring an engineer-designed performance-based system after January 31, 2012.
- Makes the opt out requirement for a county or municipality containing a first magnitude spring a majority plus one vote of the local governing board.

The bill was reported favorably as a committee substitute to the committee substitute. The analysis has been updated to reflect the adopted strike-all amendment.

A bill to be entitled

An act relating to onsite sewage treatment and disposal systems; amending s. 381.0065, F.S.; deleting legislative intent; defining the term "bedroom"; conforming cross-references; providing for any permit issued and approved by the Department of Health for the installation, modification, or repair of an onsite sewage treatment and disposal system to transfer with the title of the property; providing circumstances in which an onsite sewage treatment and disposal system is not considered abandoned; providing for the validity of an onsite sewage treatment and disposal system permit if rules change before final approval of the constructed system, under certain conditions; providing that a system modification, replacement, or upgrade is not required unless a bedroom is added to a single-family home; prohibiting governmental entities from requiring certain systems after a specified date; deleting provisions requiring the department to administer an evaluation and assessment program of onsite sewage treatment and disposal systems and requiring property owners to have such systems evaluated at least once every 5 years; deleting obsolete provisions; creating s. 381.00651, F.S.; requiring a county or municipality containing a first magnitude spring to adopt by ordinance, under certain circumstances, the program for the periodic evaluation and assessment of onsite sewage treatment and disposal

systems; requiring the county or municipality to notify the Secretary of State of the ordinance; authorizing a county or municipality, in specified circumstances, to opt out by a majority plus one vote of certain requirements by a specified date; authorizing a county or municipality to adopt or repeal, after a specified date, an ordinance creating an evaluation and assessment program, subject to notification of the Secretary of State; providing criteria for evaluations, qualified contractors, and repair of systems; providing for certain procedures and exemptions in special circumstances; defining the term "system failure"; requiring that certain procedures be used for conducting tank and drainfield evaluations; providing for certain procedures in special circumstances; providing for contractor immunity from liability under certain conditions; providing for assessment procedures; providing requirements for county health departments; requiring the Department of Health to allow county health departments and qualified contractors to access the state database to track data and evaluation reports; requiring counties and municipalities to notify the Secretary of Environmental Protection and the Department of Health when an evaluation program ordinance is adopted; requiring the Department of Environmental Protection to notify those counties or municipalities of the use of, and access to, certain

state and federal program funds and to provide certain guidance and technical assistance upon request; prohibiting the adoption of certain rules by the Department of Health; providing for applicability; repealing s. 381.00656, F.S., relating to a grant program for the repair of onsite sewage treatment and disposal systems; amending s. 381.0066, F.S.; lowering the fees imposed by the department for certain permits; conforming cross-references; providing an effective date.

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

Section 1. Subsections (1), (5), (6), and (7) of section 381.0065, Florida Statues, are amended, paragraphs (b) through (p) of subsection (2) of that section are redesignated as paragraphs (c) through (q), respectively, a new paragraph (b) is added to that subsection, paragraph (j) of subsection (3) and paragraph (n) of subsection (4) of that section are amended, and paragraphs (w) through (z) are added to subsection (4) of that section, to read:

381.0065 Onsite sewage treatment and disposal systems; regulation.—

(1) LEGISLATIVE INTENT.—

~~(a)~~ It is the intent of the Legislature that proper management of onsite sewage treatment and disposal systems is paramount to the health, safety, and welfare of the public. ~~It is further the intent of the Legislature that the department~~

~~shall administer an evaluation program to ensure the operational condition of the system and identify any failure with the system.~~

~~(b)~~ It is the intent of the Legislature that where a publicly owned or investor-owned sewerage system is not available, the department shall issue permits for the construction, installation, modification, abandonment, or repair of onsite sewage treatment and disposal systems under conditions as described in this section and rules adopted under this section. It is further the intent of the Legislature that the installation and use of onsite sewage treatment and disposal systems not adversely affect the public health or significantly degrade the groundwater or surface water.

(2) DEFINITIONS.—As used in ss. 381.0065-381.0067, the term:

(b)1. "Bedroom" means a room that can be used for sleeping and that:

a. For site-built dwellings, has a minimum of 70 square feet of conditioned space;

b. For manufactured homes, is constructed according to standards of the United States Department of Housing and Urban Development and has a minimum of 50 square feet of floor area;

c. Is located along an exterior wall;

d. Has a closet and a door or an entrance where a door could be reasonably installed; and

e. Has an emergency means of escape and rescue opening to the outside.

2. A room may not be considered a bedroom if it is used to

access another room except a bathroom or closet.

3. "Bedroom" does not include a hallway, bathroom, kitchen, living room, family room, dining room, den, breakfast nook, pantry, laundry room, sunroom, recreation room, media/video room, or exercise room.

(3) DUTIES AND POWERS OF THE DEPARTMENT OF HEALTH.—The department shall:

(j) Supervise research on, demonstration of, and training on the performance, environmental impact, and public health impact of onsite sewage treatment and disposal systems within this state. Research fees collected under s. 381.0066(2)(k) ~~381.0066(2)(l)~~ must be used to develop and fund hands-on training centers designed to provide practical information about onsite sewage treatment and disposal systems to septic tank contractors, master septic tank contractors, contractors, inspectors, engineers, and the public and must also be used to fund research projects which focus on improvements of onsite sewage treatment and disposal systems, including use of performance-based standards and reduction of environmental impact. Research projects shall be initially approved by the technical review and advisory panel and shall be applicable to and reflect the soil conditions specific to Florida. Such projects shall be awarded through competitive negotiation, using the procedures provided in s. 287.055, to public or private entities that have experience in onsite sewage treatment and disposal systems in Florida and that are principally located in Florida. Research projects shall not be awarded to firms or entities that employ or are associated with persons who serve on

either the technical review and advisory panel or the research review and advisory committee.

(4) PERMITS; INSTALLATION; AND CONDITIONS.—A person may not construct, repair, modify, abandon, or operate an onsite sewage treatment and disposal system without first obtaining a permit approved by the department. The department may issue permits to carry out this section, but shall not make the issuance of such permits contingent upon prior approval by the Department of Environmental Protection, except that the issuance of a permit for work seaward of the coastal construction control line established under s. 161.053 shall be contingent upon receipt of any required coastal construction control line permit from the Department of Environmental Protection. A construction permit is valid for 18 months from the issuance date and may be extended by the department for one 90-day period under rules adopted by the department. A repair permit is valid for 90 days from the date of issuance. An operating permit must be obtained prior to the use of any aerobic treatment unit or if the establishment generates commercial waste. Buildings or establishments that use an aerobic treatment unit or generate commercial waste shall be inspected by the department at least annually to assure compliance with the terms of the operating permit. The operating permit for a commercial wastewater system is valid for 1 year from the date of issuance and must be renewed annually. The operating permit for an aerobic treatment unit is valid for 2 years from the date of issuance and must be renewed every 2 years. If all information pertaining to the siting, location, and installation conditions or repair of an

onsite sewage treatment and disposal system remains the same, a construction or repair permit for the onsite sewage treatment and disposal system may be transferred to another person, if the transferee files, within 60 days after the transfer of ownership, an amended application providing all corrected information and proof of ownership of the property. There is no fee associated with the processing of this supplemental information. A person may not contract to construct, modify, alter, repair, service, abandon, or maintain any portion of an onsite sewage treatment and disposal system without being registered under part III of chapter 489. A property owner who personally performs construction, maintenance, or repairs to a system serving his or her own owner-occupied single-family residence is exempt from registration requirements for performing such construction, maintenance, or repairs on that residence, but is subject to all permitting requirements. A municipality or political subdivision of the state may not issue a building or plumbing permit for any building that requires the use of an onsite sewage treatment and disposal system unless the owner or builder has received a construction permit for such system from the department. A building or structure may not be occupied and a municipality, political subdivision, or any state or federal agency may not authorize occupancy until the department approves the final installation of the onsite sewage treatment and disposal system. A municipality or political subdivision of the state may not approve any change in occupancy or tenancy of a building that uses an onsite sewage treatment and disposal system until the department has reviewed the use of

the system with the proposed change, approved the change, and amended the operating permit.

(n) Evaluations for determining the seasonal high-water table elevations or the suitability of soils for the use of a new onsite sewage treatment and disposal system shall be performed by department personnel, professional engineers registered in the state, or such other persons with expertise, as defined by rule, in making such evaluations. Evaluations for determining mean annual flood lines shall be performed by those persons identified in paragraph (2)(j) ~~(2)(i)~~. The department shall accept evaluations submitted by professional engineers and such other persons as meet the expertise established by this section or by rule unless the department has a reasonable scientific basis for questioning the accuracy or completeness of the evaluation.

(w) Any permit issued and approved by the department for the installation, modification, or repair of an onsite sewage treatment and disposal system shall transfer with the title to the property in a real estate transaction. A title may not be encumbered at the time of transfer by new permit requirements by a governmental entity for an onsite sewage treatment and disposal system which differ from the permitting requirements in effect at the time the system was permitted, modified, or repaired. No inspection of a system shall be mandated by any governmental entity at the point of sale in a real estate transaction. A governmental entity may not require an engineer-designed performance-based system after January 31, 2012.

(x)1. An onsite sewage treatment and disposal system is

not considered abandoned if the system is disconnected from a structure that was made unusable or destroyed following a disaster and was properly functioning at the time of disconnection and not adversely affected by the disaster. The onsite sewage treatment and disposal system may be reconnected to a rebuilt structure if:

a. The reconnection of the system is to the same type of structure which contains the same number of bedrooms or less, provided the square footage of the structure is less than or equal to 110 percent of the original square footage of the structure that existed prior to the disaster;

b. The system is not a sanitary nuisance; and

c. The system has not been altered without prior authorization.

2. An onsite sewage treatment and disposal system that serves a property that is foreclosed upon is not considered abandoned.

(y) If an onsite sewage treatment and disposal system permittee receives, relies upon, and undertakes construction of a system based upon a validly issued construction permit under rules applicable at the time of construction but a change to a rule occurs within 5 years after the approval of the system for construction but before the final approval of the system, the rules applicable and in effect at the time of construction approval apply at the time of final approval if fundamental site conditions have not changed between the time of construction approval and final approval.

(z) A modification, replacement, or upgrade of an onsite

sewage treatment and disposal system is not required for a remodeling addition to a single-family home if a bedroom is not added.

~~(5) EVALUATION AND ASSESSMENT.~~

~~(a) Beginning July 1, 2011, the department shall administer an onsite sewage treatment and disposal system evaluation program for the purpose of assessing the fundamental operational condition of systems and identifying any failures within the systems. The department shall adopt rules implementing the program standards, procedures, and requirements, including, but not limited to, a schedule for a 5-year evaluation cycle, requirements for the pump-out of a system or repair of a failing system, enforcement procedures for failure of a system owner to obtain an evaluation of the system, and failure of a contractor to timely submit evaluation results to the department and the system owner. The department shall ensure statewide implementation of the evaluation and assessment program by January 1, 2016.~~

~~(b) Owners of an onsite sewage treatment and disposal system, excluding a system that is required to obtain an operating permit, shall have the system evaluated at least once every 5 years to assess the fundamental operational condition of the system, and identify any failure within the system.~~

~~(c) All evaluation procedures must be documented and nothing in this subsection limits the amount of detail an evaluator may provide at his or her professional discretion. The evaluation must include a tank and drainfield evaluation, a written assessment of the condition of the system, and, if~~

~~necessary, a disclosure statement pursuant to the department's procedure.~~

~~(d)1. Systems being evaluated that were installed prior to January 1, 1983, shall meet a minimum 6-inch separation from the bottom of the drainfield to the wettest season water table elevation as defined by department rule. All drainfield repairs, replacements or modifications to systems installed prior to January 1, 1983, shall meet a minimum 12-inch separation from the bottom of the drainfield to the wettest season water table elevation as defined by department rule.~~

~~2. Systems being evaluated that were installed on or after January 1, 1983, shall meet a minimum 12-inch separation from the bottom of the drainfield to the wettest season water table elevation as defined by department rule. All drainfield repairs, replacements or modification to systems developed on or after January 1, 1983, shall meet a minimum 24-inch separation from the bottom of the drainfield to the wettest season water table elevation.~~

~~(e) If documentation of a tank pump-out or a permitted new installation, repair, or modification of the system within the previous 5 years is provided, and states the capacity of the tank and indicates that the condition of the tank is not a sanitary or public health nuisance pursuant to department rule, a pump-out of the system is not required.~~

~~(f) Owners are responsible for paying the cost of any required pump-out, repair, or replacement pursuant to department rule, and may not request partial evaluation or the omission of portions of the evaluation.~~

~~(g) Each evaluation or pump-out required under this subsection must be performed by a septic tank contractor or master septic tank contractor registered under part III of chapter 489, a professional engineer with wastewater treatment system experience licensed pursuant to chapter 471, or an environmental health professional certified under chapter 381 in the area of onsite sewage treatment and disposal system evaluation.~~

~~(h) The evaluation report fee collected pursuant to s. 381.0066(2)(b) shall be remitted to the department by the evaluator at the time the report is submitted.~~

~~(i) Prior to any evaluation deadline, the department must provide a minimum of 60 days' notice to owners that their systems must be evaluated by that deadline. The department may include a copy of any homeowner educational materials developed pursuant to this section which provides information on the proper maintenance of onsite sewage treatment and disposal systems.~~

(5)~~(6)~~ ENFORCEMENT; RIGHT OF ENTRY; CITATIONS.—

(a) Department personnel who have reason to believe noncompliance exists, may at any reasonable time, enter the premises permitted under ss. 381.0065-381.0066, or the business premises of any septic tank contractor or master septic tank contractor registered under part III of chapter 489, or any premises that the department has reason to believe is being operated or maintained not in compliance, to determine compliance with the provisions of this section, part I of chapter 386, or part III of chapter 489 or rules or standards

adopted under ss. 381.0065-381.0067, part I of chapter 386, or part III of chapter 489. As used in this paragraph, the term "premises" does not include a residence or private building. To gain entry to a residence or private building, the department must obtain permission from the owner or occupant or secure an inspection warrant from a court of competent jurisdiction.

(b)1. The department may issue citations that may contain an order of correction or an order to pay a fine, or both, for violations of ss. 381.0065-381.0067, part I of chapter 386, or part III of chapter 489 or the rules adopted by the department, when a violation of these sections or rules is enforceable by an administrative or civil remedy, or when a violation of these sections or rules is a misdemeanor of the second degree. A citation issued under ss. 381.0065-381.0067, part I of chapter 386, or part III of chapter 489 constitutes a notice of proposed agency action.

2. A citation must be in writing and must describe the particular nature of the violation, including specific reference to the provisions of law or rule allegedly violated.

3. The fines imposed by a citation issued by the department may not exceed $500 for each violation. Each day the violation exists constitutes a separate violation for which a citation may be issued.

4. The department shall inform the recipient, by written notice pursuant to ss. 120.569 and 120.57, of the right to an administrative hearing to contest the citation within 21 days after the date the citation is received. The citation must contain a conspicuous statement that if the recipient fails to

pay the fine within the time allowed, or fails to appear to contest the citation after having requested a hearing, the recipient has waived the recipient's right to contest the citation and must pay an amount up to the maximum fine.

5. The department may reduce or waive the fine imposed by the citation. In determining whether to reduce or waive the fine, the department must consider the gravity of the violation, the person's attempts at correcting the violation, and the person's history of previous violations including violations for which enforcement actions were taken under ss. 381.0065-381.0067, part I of chapter 386, part III of chapter 489, or other provisions of law or rule.

6. Any person who willfully refuses to sign and accept a citation issued by the department commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

7. The department, pursuant to ss. 381.0065-381.0067, part I of chapter 386, or part III of chapter 489, shall deposit any fines it collects in the county health department trust fund for use in providing services specified in those sections.

8. This section provides an alternative means of enforcing ss. 381.0065-381.0067, part I of chapter 386, and part III of chapter 489. This section does not prohibit the department from enforcing ss. 381.0065-381.0067, part I of chapter 386, or part III of chapter 489, or its rules, by any other means. However, the department must elect to use only a single method of enforcement for each violation.

(6) ~~(7)~~ LAND APPLICATION OF SEPTAGE PROHIBITED.—Effective

January 1, 2016, the land application of septage from onsite sewage treatment and disposal systems is prohibited. ~~By February 1, 2011, the department, in consultation with the Department of Environmental Protection, shall provide a report to the Governor, the President of the Senate, and the Speaker of the House of Representatives, recommending alternative methods to establish enhanced treatment levels for the land application of septage from onsite sewage and disposal systems. The report shall include, but is not limited to, a schedule for the reduction in land application, appropriate treatment levels, alternative methods for treatment and disposal, enhanced application site permitting requirements including any requirements for nutrient management plans, and the range of costs to local governments, affected businesses, and individuals for alternative treatment and disposal methods. The report shall also include any recommendations for legislation or rule authority needed to reduce land application of septage.~~

Section 2. Section 381.00651, Florida Statutes, is created to read:

381.00651 Periodic evaluation and assessment of onsite sewage treatment and disposal systems.—

(1) For the purposes of this section, the term "first magnitude spring" means a spring that has a median water discharge of greater than or equal to 100 cubic feet per second for the period of record, as determined by the Department of Environmental Protection.

(2) A county or municipality that contains a first magnitude spring shall, by no later than January 1, 2013,

develop and adopt by local ordinance an onsite sewage treatment and disposal system evaluation and assessment program that meets the requirements of this section. The ordinance may apply within all or part of its geographic area. Those counties or municipalities containing a first magnitude spring which have already adopted an onsite sewage treatment and disposal system evaluation and assessment program and which meet the grandfathering requirements contained in this section, or have chosen to opt out of this section in the manner provided herein, are exempt from the requirement to adopt an ordinance implementing an evaluation and assessment program. The governing body of a local government that chooses to opt out of this section, by a majority plus one vote of the members of the governing board, shall do so by adopting a resolution that indicates an intent on the part of such local government not to adopt an onsite sewage treatment and disposal system evaluation and assessment program. Such resolution shall be addressed and transmitted to the Secretary of State. Absent an interlocal agreement or county charter provision to the contrary, a municipality may elect to opt out of the requirements of this section, by a majority plus one vote of the members of the governing board, notwithstanding a contrary decision of the governing body of a county. Any local government that has properly opted out of this section but subsequently chooses to adopt an evaluation and assessment program may do so only pursuant to the requirements of this section and may not deviate from such requirements.

(3) Any county or municipality that does not contain a

first magnitude spring may at any time develop and adopt by local ordinance an onsite sewage treatment and disposal system evaluation and assessment program, provided such program meets and does not deviate from the requirements of this section.

(4) Notwithstanding any other provision in this section, a county or municipality that has adopted a program before July 1, 2011, may continue to enforce its current program without having to meet the requirements of this section, provided such program does not require an evaluation at the point of sale in a real estate transaction.

(5) Any county or municipality may repeal an ordinance adopted pursuant to this section only if the county or municipality notifies the Secretary of State by letter of the repeal. No county or municipality may adopt an onsite sewage treatment and disposal system evaluation and assessment program except pursuant to this section.

(6) The requirements for an onsite sewage treatment and disposal system evaluation and assessment program are as follows:

(a) Evaluations.—An evaluation of each onsite sewage treatment and disposal system within all or part of the county's or municipality's jurisdiction must take place once every 5 years to assess the fundamental operational condition of the system and to identify system failures. The ordinance may not mandate an evaluation at the point of sale in a real estate transaction and may not require a soil examination. The location of the system shall be identified. A tank and drainfield evaluation and a written assessment of the overall condition of

the system pursuant to the assessment procedure prescribed in subsection (7) are required.

(b) Qualified contractors.—Each evaluation required under this subsection must be performed by a qualified contractor, who may be a septic tank contractor or master septic tank contractor registered under part III of chapter 489, a professional engineer having wastewater treatment system experience and licensed under chapter 471, or an environmental health professional certified under this chapter in the area of onsite sewage treatment and disposal system evaluation. Evaluations and pump-outs may also be performed by an authorized employee working under the supervision of an individual listed in this paragraph; however, all evaluation forms must be signed by a qualified contractor in writing or by electronic signature.

(c) Repair of systems.—The local ordinance may not require a repair, modification, or replacement of a system as a result of an evaluation unless the evaluation identifies a system failure. For purposes of this subsection, the term "system failure" means a condition existing within an onsite sewage treatment and disposal system which results in the discharge of untreated or partially treated wastewater onto the ground surface or into surface water or that results in the failure of building plumbing to discharge properly and presents a sanitary nuisance. A system is not in failure if the system does not have a minimum separation distance between the drainfield and the wettest season water table or if an obstruction in a sanitary line or an effluent screen or filter prevents effluent from flowing into a drainfield. If a system failure is identified and

several allowable remedial measures are available to resolve the failure, the system owner may choose the least costly allowable remedial measure to fix the system. There may be instances in which a pump-out is sufficient to resolve a system failure. Allowable remedial measures to resolve a system failure are limited to what is necessary to resolve the failure and must meet, to the maximum extent practicable, the requirements of the repair code in effect when the repair is made, subject to the exceptions specified in s. 381.0065(4)(g). An engineer-designed performance-based treatment system to reduce nutrients may not be required as an alternative remediation measure to resolve the failure of a conventional system.

(d) Exemptions.—

1. The local ordinance shall exempt from the evaluation requirements any system that is required to obtain an operating permit pursuant to state law or that is inspected by the department pursuant to the annual permit inspection requirements of chapter 513.

2. The local ordinance may provide for an exemption or an extension of time to obtain an evaluation and assessment if connection to a sewer system is available, connection to the sewer system is imminent, and written arrangements for payment of any utility assessments or connection fees have been made by the system owner.

3. An onsite sewage treatment and disposal system serving a residential dwelling unit on a lot with a ratio of one bedroom per acre or greater is exempt from the requirements of this section and may not be included in any onsite sewage treatment

and disposal system inspection program.

(7) The following procedures shall be used for conducting evaluations:

(a) Tank evaluation.—The tank evaluation shall assess the apparent structural condition and watertightness of the tank and shall estimate the size of the tank. The evaluation must include a pump-out. However, an ordinance may not require a pump-out if there is documentation indicating that a tank pump-out or a permitted new installation, repair, or modification of the system has occurred within the previous 5 years, identifying the capacity of the tank, and indicating that the condition of the tank is structurally sound and watertight. Visual inspection of the tank must be made when the tank is empty to detect cracks, leaks, or other defects. Baffles or tees must be checked to ensure that they are intact and secure. The evaluation shall note the presence and condition of outlet devices, effluent filters, and compartment walls; any structural defect in the tank; the condition and fit of the tank lid, including manholes; whether surface water can infiltrate the tank; and whether the tank was pumped out. If the tank, in the opinion of the qualified contractor, is in danger of being damaged by leaving the tank empty after inspection, the tank shall be refilled before concluding the inspection. Broken or damaged lids or manholes shall be replaced without obtaining a repair permit.

(b) Drainfield evaluation.—The drainfield evaluation must include a determination of the approximate size and location of the drainfield. The evaluation shall state whether there is any sewage or effluent visible on the ground or discharging to a

ditch or other water body and the location of any downspout or other source of water near or in the vicinity of the drainfield.

(c) Special circumstances.—If the system contains pumps, siphons, or alarms, the following information may be provided at the request of the homeowner:

1. An assessment of dosing tank integrity, including the approximate volume and the type of material used in the tank's construction;

2. Whether the pump is elevated off the bottom of the chamber and its operational status;

3. Whether the system has a check valve and purge hole; and

4. Whether the system has a high-water alarm, and if so whether the alarm is audio or visual or both, the location and operational condition of the alarm, and whether the electrical connections to the alarm appear satisfactory.

If the homeowner does not request this information, the qualified contractor and its employee are not liable for any damages directly relating from a failure of the system's pumps, siphons, or alarms. This exclusion of liability must be stated on the front cover of the report required under paragraph (d).

(d) Assessment procedure.—All evaluation procedures used by a qualified contractor shall be documented in the environmental health database of the Department of Health. The qualified contractor shall provide a copy of a written, signed evaluation report to the property owner upon completion of the evaluation and to the county health department within 30 days

after the evaluation. The report shall contain the name and license number of the company providing the report. A copy of the evaluation report shall be retained by the local county health department for a minimum of 5 years and until a subsequent inspection report is filed. The front cover of the report must identify any system failure and include a clear and conspicuous notice to the owner that the owner has a right to have any remediation of the failure performed by a qualified contractor other than the contractor performing the evaluation. The report must further identify any crack, leak, improper fit, or other defect in the tank, manhole, or lid, and any other damaged or missing component; any sewage or effluent visible on the ground or discharging to a ditch or other surface water body; any downspout, stormwater, or other source of water directed onto or toward the system; and any other maintenance need or condition of the system at the time of the evaluation which, in the opinion of the qualified contractor, would possibly interfere with or restrict any future repair or modification to the existing system. The report shall conclude with an overall assessment of the fundamental operational condition of the system.

(8) The county health department shall administer any evaluation program on behalf of a county, or a municipality within the county, that has adopted an evaluation program pursuant to this section. In order to administer the evaluation program, the county or municipality, in consultation with the county health department, may develop a reasonable fee schedule to be used solely to pay for the costs of administering the

evaluation program. Such a fee schedule shall be identified in the ordinance that adopts the evaluation program. When arriving at a reasonable fee schedule, the estimated annual revenues to be derived from fees may not exceed reasonable estimated annual costs of the program. Fees shall be assessed to the system owner during an inspection and separately identified on the invoice of the qualified contractor. Fees shall be remitted by the qualified contractor to the county health department. The county health department's administrative responsibilities include the following:

(a) Providing a notice to the system owner at least 60 days before the system is due for an evaluation. The notice may include information on the proper maintenance of onsite sewage treatment and disposal systems.

(b) In consultation with the Department of Health, providing uniform disciplinary procedures and penalties for qualified contractors who do not comply with the requirements of the adopted ordinance, including, but not limited to, failure to provide the evaluation report as required in this subsection to the system owner and the county health department. Only the county health department may assess penalties against system owners for failure to comply with the adopted ordinance, consistent with existing requirements of law.

(9)(a) A county or municipality that adopts an onsite sewage treatment and disposal system evaluation and assessment program pursuant to this section shall notify the Secretary of Environmental Protection, the Department of Health, and the applicable county health department upon the adoption of its

ordinance establishing the program.

(b) Upon receipt of the notice under paragraph (a), the Department of Environmental Protection shall, within existing resources, notify the county or municipality of the potential use of, and access to, program funds under the Clean Water State Revolving Fund or s. 319 of the Clean Water Act, provide guidance in the application process to receive such moneys, and provide advice and technical assistance to the county or municipality on how to establish a low-interest revolving loan program or how to model a revolving loan program after the low-interest loan program of the Clean Water State Revolving Fund. This paragraph does not obligate the Department of Environmental Protection to provide any county or municipality with money to fund such programs.

(c) The Department of Health may not adopt any rule that alters the provisions of this section.

(d) The Department of Health must allow county health departments and qualified contractors access to the environmental health database to track relevant information and assimilate data from assessment and evaluation reports of the overall condition of onsite sewage treatment and disposal systems. The environmental health database must be used by contractors to report each service and evaluation event and by a county health department to notify owners of onsite sewage treatment and disposal systems when evaluations are due. Data and information must be recorded and updated as service and evaluations are conducted and reported.

(10) This section does not:

(a) Limit county and municipal home rule authority to act outside the scope of the evaluation and assessment program set forth in this section;

(b) Repeal or affect any other law relating to the subject matter of onsite sewage treatment and disposal systems; or

(c) Prohibit a county or municipality from:

1. Enforcing existing ordinances or adopting new ordinances relating to onsite sewage treatment facilities to address public health and safety if such ordinances do not repeal, suspend, or alter the requirements or limitations of this section.

2. Adopting local environmental and pollution abatement ordinances for water quality improvement as provided for by law if such ordinances do not repeal, suspend, or alter the requirements or limitations of this section.

3. Exercising its independent and existing authority to meet the requirements of s. 381.0065.

Section 3. Section 381.00656, Florida Statutes, is repealed.

Section 4. Subsection (2) of section 381.0066, Florida Statutes, is amended to read:

381.0066 Onsite sewage treatment and disposal systems; fees.—

(2) The minimum fees in the following fee schedule apply until changed by rule by the department within the following limits:

(a) Application review, permit issuance, or system inspection, including repair of a subsurface, mound, filled, or

other alternative system or permitting of an abandoned system: a fee of not less than $25, or more than $125.

~~(b) A 5-year evaluation report submitted pursuant to s. 381.0065(5): a fee not less than $15, or more than $30. At least $1 and no more than $5 collected pursuant to this paragraph shall be used to fund a grant program established under s. 381.00656.~~

(b) ~~(c)~~ Site evaluation, site reevaluation, evaluation of a system previously in use, or a per annum septage disposal site evaluation: a fee of not less than $40, or more than $115.

(c) ~~(d)~~ Biennial Operating permit for aerobic treatment units or performance-based treatment systems: a fee of not more than $100.

(d) ~~(e)~~ Annual operating permit for systems located in areas zoned for industrial manufacturing or equivalent uses or where the system is expected to receive wastewater which is not domestic in nature: a fee of not less than $150, or more than $300.

(e) ~~(f)~~ Innovative technology: a fee not to exceed $25,000.

(f) ~~(g)~~ Septage disposal service, septage stabilization facility, portable or temporary toilet service, tank manufacturer inspection: a fee of not less than $25, or more than $200, per year.

(g) ~~(h)~~ Application for variance: a fee of not less than $150, or more than $300.

(h) ~~(i)~~ Annual operating permit for waterless, incinerating, or organic waste composting toilets: a fee of not less than $15 ~~$50~~, or more than $30 ~~$150~~.

(i) ~~(j)~~ Aerobic treatment unit or performance-based treatment system maintenance entity permit: a fee of not less than $25, or more than $150, per year.

(j) ~~(k)~~ Reinspection fee per visit for site inspection after system construction approval or for noncompliant system installation per site visit: a fee of not less than $25, or more than $100.

(k) ~~(l)~~ Research: An additional $5 fee shall be added to each new system construction permit issued to be used to fund onsite sewage treatment and disposal system research, demonstration, and training projects. Five dollars from any repair permit fee collected under this section shall be used for funding the hands-on training centers described in s. 381.0065(3)(j).

(l) ~~(m)~~ Annual operating permit, including annual inspection and any required sampling and laboratory analysis of effluent, for an engineer-designed performance-based system: a fee of not less than $150, or more than $300.

~~On or before January 1, 2011, the Surgeon General, after consultation with the Revenue Estimating Conference, shall determine a revenue neutral fee schedule for services provided pursuant to s. 381.0065(5) within the parameters set in paragraph (b). Such determination is not subject to the provisions of chapter 120.~~ The funds collected pursuant to this subsection must be deposited in a trust fund administered by the department, to be used for the purposes stated in this section and ss. 381.0065 and 381.00655.

Section 5. This act shall take effect upon becoming a law.

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: State Affairs Committee
Representative Dorworth offered the following:

Amendment

Remove lines 222-223 and insert:

transaction.

(x) No governmental entity, including municipality, county, or statutorily created commission may require an engineered-designed performance-based treatment system, with the exception of passive engineer-designed performance-based treatment systems, prior to the completion of the Florida Onsite Sewage Nitrogen Reduction Strategies Project or December 31, 2014, whichever comes first. This prohibition does not apply to any governmental entity, including municipality, county, or statutorily created commission that adopted a local law, ordinance, or regulation on or before January 31, 2012. Notwithstanding this prohibition, an engineer-designed performance-based treatment system may be used to meet the

requirements of the Variance Review and Advisory Committee recommendations.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1021 Agriculture
SPONSOR(S): Criminal Justice Subcommittee; Albritton
TIED BILLS: None **IDEN./SIM. BILLS:** CS/SB 1184

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Agriculture & Natural Resources Subcommittee	13 Y, 2 N	Kaiser	Blalock
2) Criminal Justice Subcommittee	14 Y, 0 N, As CS	Cunningham	Cunningham
3) Agriculture & Natural Resources Appropriations Subcommittee	13 Y, 0 N	Lolley	Massengale
4) State Affairs Committee		Kaiser	Hamby

SUMMARY ANALYSIS

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

- Current law prohibits a county from charging an assessment or fee for stormwater management on a bona fide farm operation on land classified as agricultural, under certain circumstances. Current law also permits any county that, before March 1, 2009, had adopted certain ordinances or resolutions, to continue to charge an assessment or fee for stormwater management on a bona fide farm operation on agricultural land, under certain circumstances. The bill replaces the word "county" with "governmental entity" in the provisions described above to expand the types of governmental entities for which the above provisions apply.

- Current law provides that a person who uses motor fuel for agricultural or aquacultural purposes in farm equipment that has not been driven or operated upon the public highways of the state is entitled to a refund of state taxes imposed on the motor fuel. The public highway use restriction does not apply to the movement of a farm vehicle or farm equipment between farms. The bill adds citrus harvesting equipment and citrus fruit loaders to the types of equipment that can move between farms on public highways in the State and not violate the public highway use restriction for the purpose of qualifying for the motor fuel tax refund described above. The bill also amends the Florida Uniform Traffic Control Law to include citrus harvesting equipment and citrus fruit loaders, not exceeding 50 feet in length, to the list of machinery that are authorized to transport certain perishable farm products, and includes citrus in the list of perishable farm products specified in statute that are authorized to be transported by such machinery.

- The bill revises the powers and duties of the Department of Agriculture and Consumer Services to include enforcing the state laws and rules relating to the use of commercial feed stocks. In addition, the bill requires the department to adopt rules establishing standards for the sale, use, and distribution of commercial feed or feedstuff to ensure usage that is consistent with animal health, safety, and welfare and, to the extent that meat, poultry, and other animal products may be affected by commercial feed or feedstuff, with the safety of these products for human consumption. If adopted, such standards must be developed in consultation with the Commercial Feed Technical Council.

The bill does not appear to have a fiscal impact on state government. On January 20, 2012, the Revenue Estimating Conference adopted an estimate that the bill would have a significant annualized fiscal impact on cities and special districts by exempting certain farm operations from local stormwater management fees or assessments—from $54.3 million for Fiscal Year 2012-13 to $68.5 million for Fiscal Year 2015-16.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Stormwater Management Assessments

In 2011, the Legislature overrode the veto of CS/HB 7103, which passed the House and Senate during the 2010 Legislative Session. CS/HB 7103, in part, amended s. 163.3162(3)(b), F.S., to specify that a county cannot charge an assessment or fee for stormwater management on a bona fide farm operation on land classified as agricultural if the farm operation has a National Pollutant Discharge Elimination System (NPDES) permit, environmental resources permit (ERP) or works-of-the-district permit, or implements best management practices (BMPs).[1]

In addition, CS/HB 7103 amended s. 163.3162(3)(c), F.S., to specify that each county that, before March 1, 2009, adopted a stormwater utility ordinance or resolution, adopted an ordinance or resolution establishing a municipal services benefit unit, or adopted a resolution stating the county's intent to use the uniform method of collection for such stormwater ordinances, can continue to charge an assessment or fee for stormwater management on a bona fide farm operation on agricultural land, if the ordinance or resolution provides credits against the assessment or fee on a bona fide farm operation for the water quality or flood control benefit of:

- The implementation of BMPs;[2]
- The stormwater quality and quantity measures required as part of the NPDES permit, ERP, or works-of-the-district permit; or
- The implementation of BMPs or alternative measures, which the landowner demonstrates to the county to be of equivalent or greater stormwater benefit than the BMPs adopted by the Department of Environmental Protection, Department of Agriculture and Consumer Services, or a water management district as part of a statewide or regional program, or stormwater quality and quantity measures required as part of an NPDES permit, ERP, or works-of-the-district permit.

Since the veto override of CS/HB 7103, the City of Palm Coast has adopted and implemented a stormwater fee that affects thousands of acres of timber and agricultural lands. However, since the stormwater management assessment provisions described above currently only apply to counties, they do not currently apply to the City of Palm Coast.

Effect of Proposed Changes

The bill creates s. 163.3162(2)(d), F.S., to define the term "governmental entity" as "having the same meaning as provided in s. 164.1031, F.S.,"[3] and amends ss. 163.3162(3)(b) and 163.3162(3)(c), F.S., by replacing the word "county" with the words "governmental entity" in the provisions of those sections described above. This has the effect of expanding the types of entities that are prohibited from charging an assessment or fee for stormwater management on a bona fide farm operation on land classified as agricultural if the farm operation has an NPDES permit, ERP, or works-of-the-district permit or implements best management practices (BMPs), and that can continue, if certain requirements are met, to charge an assessment or fee for stormwater management on a bona fide farm operation on land classified as agricultural.

Motor Fuel Tax Refund

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[1] The BMPs must have been adopted as rules under Chapter 120, F.S., by the Department of Environmental Protection, the Department of Agriculture and Consumer Services or a water management district as part of a statewide or regional program.

[2] *Id.*

[3] Governmental entity is defined in s. 164.1031, F.S., to include local and regional governmental entities. "Local governmental entities" includes municipalities, counties, school boards, special districts, and other local entities within the jurisdiction of one county created by general or special law or local ordinance. "Regional governmental entities" includes regional planning councils, metropolitan planning organizations, water supply authorities that include more than one county, local health councils, water management districts, and other regional entities that are authorized and created by general or special law that have duties or responsibilities extending beyond the jurisdiction of a single county.

Section 206.41(4)(c), F.S., specifies that a person who uses motor fuel for agricultural, aquacultural, commercial fishing, or commercial aviation purposes that has paid the local option fuel tax, an additional tax designated as the "State Comprehensive Enhanced Transportation System Tax," or fuel sales tax, is entitled to a refund of such tax. For the purpose of establishing what activities qualify for the tax refund, "agricultural and aquacultural purposes" means "motor fuel used in any tractor, vehicle, or other farm equipment that is used exclusively on a farm or for processing farm products on the farm, and no part of which fuel is used in any vehicle or equipment driven or operated upon the public highways of this state." This restriction from being driven or operated upon the public highways of the state does not apply to the movement of a farm vehicle or farm equipment between farms.

Effect of Proposed Changes
The bill amends s. 206.41(4)(c), F.S., to add citrus harvesting equipment and citrus fruit loaders to the types of equipment that can move between farms on public highways in the State and not violate the public highway use restriction for the purpose of qualifying for the motor fuel tax refund described above.

Transporting Farm Products
Chapter 316, F.S., establishes the Florida Uniform Traffic Control Law. Section 316.515(5)(a), F.S., specifies that, notwithstanding any other provisions of law, certain agricultural equipment such as straight trucks, agricultural tractors, and cotton module movers, not exceeding 50 feet in length, or any combination of up to and including three implements of husbandry, including the towing power unit, and any single agricultural trailer with a load thereon or any agricultural implements attached to a towing power unit, or a self-propelled agricultural implement or an agricultural tractor, is authorized to transport peanuts, grains, soybeans, cotton, hay, straw, or other perishable farm products from their point of production to the first point of change of custody or of long-term storage, and for the purpose of returning to such point of production, or for the purpose of moving such tractors, movers, and implements from one point of agricultural production to another, by a person engaged in the production of any such product or custom hauler, if such vehicle or combination of vehicles otherwise complies with this section of law.

Effect of Proposed Changes
The bill amends s. 316.515(5)(a), F.S., to include citrus harvesting equipment and citrus fruit loaders, not exceeding 50 feet in length, to the list of machinery that are authorized to transport certain perishable farm products, and includes citrus in the list of perishable farm products specified in statute that are authorized to be transported by specified equipment.

DACS—Rulemaking Authority
The Department of Agriculture and Consumer Services has the authority under s. 570.07, F.S., to enforce the laws and rules of the state relating to the registration, labeling, inspection, sale, composition, formulation, wholesale and retail distribution, and analysis of commercial stock feeds.

Chapter 580, F.S., provides for the regulation of commercial feed and feedstuff. Section 580.036, F.S., authorizes the department to adopt rules pursuant to chapter 120, F.S., to enforce the provisions of chapter 580, F.S., and specifies that such rules must be consistent with the rules and standards of the United States Food and Drug Administration and United States Department of Agriculture, when applicable. Such rules must include:

- Establishing definitions and reasonable standards for commercial feed or feedstuff and permissible tolerances for pesticide chemicals, chemical additives, non-nutritive ingredients, or drugs in or on commercial feed or feedstuff in such amounts as will ensure the safety of livestock and poultry and their products, which are used for human consumption.
- Adopting standards for the manufacture and distribution of medicated feedstuff.
- Establishing definitions and reasonable standards for the certification of laboratories for the conduct of testing and analyses as required by Florida law.
- Establishing product labeling requirements for distributors.
- Limiting the use of drugs in commercial feed and prescribe feeding directions to be used to ensure safe usage of medicated feed.

- Establishing standards for evaluating quality-assurance/quality-control plans, including testing protocols, for exemptions to certified laboratory testing requirements.

Effect of Proposed Changes
The bill amends s. 570.07, F.S., authorizing the department to enforce laws and rules of the state relating to the use of commercial feed and feedstuff.

The bill also amends s. 580.036, F.S., requiring the department to adopt rules establishing standards for the sale, use, and distribution of commercial feed or feedstuff to ensure usage that is consistent with animal health, safety, and welfare and, to the extent that meat, poultry, and other animal products may be affected by commercial feed or feedstuff, with the safety of these products for human consumption. These standards, if adopted, must be developed in consultation with the Commercial Feed Technical Council.

B. SECTION DIRECTORY:
Section 1: Amends s. 163.3162, F.S., relating to agricultural lands and practices.

Section 2: Amends s. 206.41, F.S., relating to state taxes imposed on motor fuel.

Section 3: Amends s. 316.515, F.S., relating to maximum width, height, length.

Section 4: Amends s. 570.07, F.S., relating to Department of Agriculture and Consumer Services; functions, powers, and duties.

Section 5: Amends s. 580.036, F.S., relating to powers and duties.

Section 6: Providing an effective date of July 1, 2012.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   On January 20, 2012, the Revenue Estimating Conference adopted an estimate of the fiscal impact as a result of amending s. 163.3162, F.S., replacing the word "county" with "governmental entity."

	FY 2012-13	FY 2013-14	FY 2014-15	FY 2015-16
Cities	($.9 million)	($1 million)	($1 million)	($1.1 million)
Special Districts	($53.4 million)	($57.7 million)	($62.3 million)	($67.4 million)
Total	**($54.3 million)**	**($58.7 million)**	**($63.3 million)**	**($68.5 million)**

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill provides relief to agricultural producers who are being assessed with stormwater management fees by certain governmental entities.

D. FISCAL COMMENTS:

The Department of Revenue has determined that pursuant to s. 206.41(4), F.S., citrus harvesting equipment and citrus fruit loaders fall under the existing definition of farm equipment and already qualify for the motor fuel tax refund.

The Department of Transportation expects no fiscal impact as a result of including citrus harvesting equipment and citrus fruit loaders, not exceeding 50 feet in length, as authorized to transport citrus or other perishable farm products.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Section 18(b), Art. VII of the State Constitution may apply because the bill may reduce the authority that counties and cities have to raise revenues in the aggregate, as such authority existed on February 1, 1989. The bill prohibits a county or city from imposing an assessment or fee for stormwater management on certain lands. The terms of the mandates provision of the constitution specifically apply to legislation affecting counties and municipalities. It is not clear whether this provision applies to legislation affecting dependent special districts—those whose millage rates are included in the county's millage cap and that are subject to greater direct control by the county.

Section 18(d), Art. VII of the State Constitution, provides an exemption for laws that have an insignificant fiscal impact. The Revenue Estimating Conference has interpreted "insignificant fiscal impact," in the context of s. 18(d), Art. VII, to mean an amount not greater than the average statewide population for the applicable fiscal year times 10 cents, or $1.9 million. Although the revenue loss to cities is estimated to be $.9 million for Fiscal Year 2012-13 up to $1.1 million for Fiscal Year 2015-16, the amount of revenue loss for dependent special districts is unknown.

If the bill has a significant fiscal impact, a two-thirds vote of the membership of each house may be necessary to have the legislation binding on municipalities and dependent special districts if the bill reduces the authority that counties and cities have to raise revenues in the aggregate, as such authority existed on February 1, 1989.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

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

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On January 25, 2012, the Criminal Justice Subcommittee adopted one amendment and reported the bill favorably as a committee substitute. The amendment removed section 6 of the bill, which made it a first degree misdemeanor for a person to knowingly enter upon any nonpublic area of a farm and, without prior written consent of the farm's owner or the owner's authorized representative, operate the audio or video recording function of any device with the intent of recording sounds or images of the farm or farm operation.

This analysis is drafted to the committee substitute as passed by the Criminal Justice Subcommittee.

A bill to be entitled

An act relating to agriculture; amending s. 163.3162, F.S.; defining the term "governmental entity"; prohibiting certain governmental entities from charging stormwater management assessments or fees on certain bona fide farm operations except under certain circumstances; providing for applicability; amending s. 206.41, F.S.; revising the definition of the term "agricultural and aquacultural purposes" for purposes of the required refund of state taxes imposed on motor fuel used for such purposes; amending s. 316.515, F.S.; revising the Florida Uniform Traffic Control Law to authorize the use of citrus harvesting equipment and citrus fruit loaders to transport certain agricultural products and to authorize the use of certain motor vehicles to transport citrus; amending s. 570.07, F.S.; revising the powers and duties of the Department of Agricultural and Consumer Services to enforce laws and rules relating to the use of commercial stock feeds; amending s. 580.036, F.S.; authorizing the department to adopt rules establishing certain standards for regulating commercial feed or feedstuff; requiring the department to consult with the Commercial Feed Technical Council in the development of such rules; providing an effective date.

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

Section 1. Paragraph (d) is added to subsection (2) of section 163.3162, Florida Statutes, and paragraphs (b), (c), and (i) of subsection (3) of that section are amended to read:

163.3162 Agricultural Lands and Practices.—

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

(d) "Governmental entity" has the same meaning as provided in s. 164.1031.

(3) DUPLICATION OF REGULATION.—Except as otherwise provided in this section and s. 487.051(2), and notwithstanding any other law, including any provision of chapter 125 or this chapter:

(b) A governmental entity ~~county~~ may not charge an assessment or fee for stormwater management on a bona fide farm operation on land classified as agricultural land pursuant to s. 193.461, if the farm operation has a National Pollutant Discharge Elimination System permit, environmental resource permit, or works-of-the-district permit or implements best management practices adopted as rules under chapter 120 by the Department of Environmental Protection, the Department of Agriculture and Consumer Services, or a water management district as part of a statewide or regional program.

(c) For each governmental entity ~~county~~ that, before March 1, 2009, adopted a stormwater utility ordinance or resolution, adopted an ordinance or resolution establishing a municipal services benefit unit, or adopted a resolution stating the governmental entity's ~~county's~~ intent to use the uniform method of collection pursuant to s. 197.3632 for such stormwater

ordinances, the governmental entity ~~county~~ may continue to charge an assessment or fee for stormwater management on a bona fide farm operation on land classified as agricultural pursuant to s. 193.461, if the ordinance or resolution provides credits against the assessment or fee on a bona fide farm operation for the water quality or flood control benefit of:

1. The implementation of best management practices adopted as rules under chapter 120 by the Department of Environmental Protection, the Department of Agriculture and Consumer Services, or a water management district as part of a statewide or regional program;

2. The stormwater quality and quantity measures required as part of a National Pollutant Discharge Elimination System permit, environmental resource permit, or works-of-the-district permit; or

3. The implementation of best management practices or alternative measures which the landowner demonstrates to the governmental entity ~~county~~ to be of equivalent or greater stormwater benefit than those provided by implementation of best management practices adopted as rules under chapter 120 by the Department of Environmental Protection, the Department of Agriculture and Consumer Services, or a water management district as part of a statewide or regional program, or stormwater quality and quantity measures required as part of a National Pollutant Discharge Elimination System permit, environmental resource permit, or works-of-the-district permit.

(i) The provisions of this subsection that limit a governmental entity's ~~county's~~ authority to adopt or enforce any

ordinance, regulation, rule, or policy, or to charge any assessment or fee for stormwater management, apply only to a bona fide farm operation as described in this subsection.

Section 2. Paragraph (c) of subsection (4) of section 206.41, Florida Statutes, is amended to read:

206.41 State taxes imposed on motor fuel.—

(4)

(c)1. Any person who uses any motor fuel for agricultural, aquacultural, commercial fishing, or commercial aviation purposes on which fuel the tax imposed by paragraph (1)(e), paragraph (1)(f), or paragraph (1)(g) has been paid is entitled to a refund of such tax.

2. For the purposes of this paragraph, "agricultural and aquacultural purposes" means motor fuel used in any tractor, vehicle, or other farm equipment which is used exclusively on a farm or for processing farm products on the farm, and no part of which fuel is used in any vehicle or equipment driven or operated upon the public highways of this state. This restriction does not apply to the movement of a farm vehicle, ~~or~~ farm equipment, citrus harvesting equipment, or citrus fruit loaders between farms. The transporting of bees by water and the operating of equipment used in the apiary of a beekeeper shall be also deemed an agricultural purpose.

3. For the purposes of this paragraph, "commercial fishing and aquacultural purposes" means motor fuel used in the operation of boats, vessels, or equipment used exclusively for the taking of fish, crayfish, oysters, shrimp, or sponges from salt or fresh waters under the jurisdiction of the state for

resale to the public, and no part of which fuel is used in any vehicle or equipment driven or operated upon the highways of this state; however, the term may in no way be construed to include fuel used for sport or pleasure fishing.

4. For the purposes of this paragraph, "commercial aviation purposes" means motor fuel used in the operation of aviation ground support vehicles or equipment, no part of which fuel is used in any vehicle or equipment driven or operated upon the public highways of this state.

Section 3. Paragraph (a) of subsection (5) of section 316.515, Florida Statutes, is amended to read:

316.515 Maximum width, height, length.—

(5) IMPLEMENTS OF HUSBANDRY AND FARM EQUIPMENT; AGRICULTURAL TRAILERS; FORESTRY EQUIPMENT; SAFETY REQUIREMENTS.—

(a) Notwithstanding any other provisions of law, straight trucks, agricultural tractors, <u>citrus harvesting equipment, citrus fruit loaders,</u> and cotton module movers, not exceeding 50 feet in length, or any combination of up to and including three implements of husbandry, including the towing power unit, and any single agricultural trailer with a load thereon or any agricultural implements attached to a towing power unit, or a self-propelled agricultural implement or an agricultural tractor, is authorized for the purpose of transporting peanuts, grains, soybeans, <u>citrus,</u> cotton, hay, straw, or other perishable farm products from their point of production to the first point of change of custody or of long-term storage, and for the purpose of returning to such point of production, or for the purpose of moving such tractors, movers, and implements from

one point of agricultural production to another, by a person engaged in the production of any such product or custom hauler, if such vehicle or combination of vehicles otherwise complies with this section. The Department of Transportation may issue overlength permits for cotton module movers greater than 50 feet but not more than 55 feet in overall length. Such vehicles shall be operated in accordance with all safety requirements prescribed by law and rules of the Department of Transportation.

Section 4. Paragraph (c) of subsection (16) of section 570.07, Florida Statutes, is amended to read:

570.07 Department of Agriculture and Consumer Services; functions, powers, and duties.—The department shall have and exercise the following functions, powers, and duties:

(16) To enforce the state laws and rules relating to:

(c) Registration, labeling, inspection, sale, use, composition, formulation, wholesale and retail distribution, and analysis of commercial stock feeds and registration, labeling, inspection, and analysis of commercial fertilizers;

In order to ensure uniform health and safety standards, the adoption of standards and fines in the subject areas of paragraphs (a)-(n) is expressly preempted to the state and the department. Any local government enforcing the subject areas of paragraphs (a)-(n) must use the standards and fines set forth in the pertinent statutes or any rules adopted by the department pursuant to those statutes.

Section 5. Paragraph (g) is added to subsection (2) of section 580.036, Florida Statutes, to read:

580.036 Powers and duties.—

(2) The department is authorized to adopt rules pursuant to ss. 120.536(1) and 120.54 to enforce the provisions of this chapter. These rules shall be consistent with the rules and standards of the United States Food and Drug Administration and the United States Department of Agriculture, when applicable, and shall include:

(g) Establishing standards for the sale, use, and distribution of commercial feed or feedstuff to ensure usage that is consistent with animal health, safety, and welfare and, to the extent that meat, poultry, and other animal products may be affected by commercial feed or feedstuff, with the safety of these products for human consumption. Such standards, if adopted, must be developed in consultation with the Commercial Feed Technical Council created under s. 580.151.

Section 6. This act shall take effect July 1, 2012.

Amendment No.

COMMITTEE/SUBCOMMITTEE ACTION

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

Committee/Subcommittee hearing bill: State Affairs Committee
Representative Albritton offered the following:

Amendment (with title amendment)

Remove everything after the enacting clause and insert:

Section 1. Subsection (2) and paragraphs (b), (c), and (i) of subsection (3) of section 163.3162, Florida Statutes, are amended to read:

163.3162 Agricultural Lands and Practices.—

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

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

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

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

(d) "Governmental entity" has the same meaning as provided in s. 164.1031. The term does not include a water control

district established under chapter 298 or a special district created by special act for water management purposes.

(3) DUPLICATION OF REGULATION.—Except as otherwise provided in this section and s. 487.051(2), and notwithstanding any other law, including any provision of chapter 125 or this chapter:

(b) A governmental entity ~~county~~ may not charge an assessment or fee for stormwater management on a bona fide farm operation on land classified as agricultural land pursuant to s. 193.461, if the farm operation has a National Pollutant Discharge Elimination System permit, environmental resource permit, or works-of-the-district permit or implements best management practices adopted as rules under chapter 120 by the Department of Environmental Protection, the Department of Agriculture and Consumer Services, or a water management district as part of a statewide or regional program.

(c) For each governmental entity ~~county~~ that, before March 1, 2009, adopted a stormwater utility ordinance or resolution, adopted an ordinance or resolution establishing a municipal services benefit unit, or adopted a resolution stating the governmental entity's ~~county's~~ intent to use the uniform method of collection pursuant to s. 197.3632 for such stormwater ordinances, the governmental entity ~~county~~ may continue to charge an assessment or fee for stormwater management on a bona fide farm operation on land classified as agricultural pursuant to s. 193.461, if the ordinance or resolution provides credits against the assessment or fee on a bona fide farm operation for the water quality or flood control benefit of:

1. The implementation of best management practices adopted as rules under chapter 120 by the Department of Environmental Protection, the Department of Agriculture and Consumer Services, or a water management district as part of a statewide or regional program;

2. The stormwater quality and quantity measures required as part of a National Pollutant Discharge Elimination System permit, environmental resource permit, or works-of-the-district permit; or

3. The implementation of best management practices or alternative measures which the landowner demonstrates to the governmental entity ~~county~~ to be of equivalent or greater stormwater benefit than those provided by implementation of best management practices adopted as rules under chapter 120 by the Department of Environmental Protection, the Department of Agriculture and Consumer Services, or a water management district as part of a statewide or regional program, or stormwater quality and quantity measures required as part of a National Pollutant Discharge Elimination System permit, environmental resource permit, or works-of-the-district permit.

(i) The provisions of this subsection that limit a governmental entity's ~~county's~~ authority to adopt or enforce any ordinance, regulation, rule, or policy, or to charge any assessment or fee for stormwater management, apply only to a bona fide farm operation as described in this subsection.

Section 2. Paragraph (c) of subsection (4) of section 206.41, Florida Statutes, is amended to read:

206.41 State taxes imposed on motor fuel.—

(4)

(c)1. Any person who uses any motor fuel for agricultural, aquacultural, commercial fishing, or commercial aviation purposes on which fuel the tax imposed by paragraph (1)(e), paragraph (1)(f), or paragraph (1)(g) has been paid is entitled to a refund of such tax.

2. For the purposes of this paragraph, "agricultural and aquacultural purposes" means motor fuel used in any tractor, vehicle, or other farm equipment which is used exclusively on a farm or for processing farm products on the farm, and no part of which fuel is used in any vehicle or equipment driven or operated upon the public highways of this state. This restriction does not apply to the movement of a farm vehicle, ~~or~~ farm equipment, citrus harvesting equipment, or citrus fruit loaders between farms. The transporting of bees by water and the operating of equipment used in the apiary of a beekeeper shall be also deemed an agricultural purpose.

3. For the purposes of this paragraph, "commercial fishing and aquacultural purposes" means motor fuel used in the operation of boats, vessels, or equipment used exclusively for the taking of fish, crayfish, oysters, shrimp, or sponges from salt or fresh waters under the jurisdiction of the state for resale to the public, and no part of which fuel is used in any vehicle or equipment driven or operated upon the highways of this state; however, the term may in no way be construed to include fuel used for sport or pleasure fishing.

4. For the purposes of this paragraph, "commercial aviation purposes" means motor fuel used in the operation of

aviation ground support vehicles or equipment, no part of which fuel is used in any vehicle or equipment driven or operated upon the public highways of this state.

Section 3. Paragraph (a) of subsection (5) of section 316.515, Florida Statutes, is amended to read:

316.515 Maximum width, height, length.—

(5) IMPLEMENTS OF HUSBANDRY AND FARM EQUIPMENT; AGRICULTURAL TRAILERS; FORESTRY EQUIPMENT; SAFETY REQUIREMENTS.—

(a) Notwithstanding any other provisions of law, straight trucks, agricultural tractors, citrus harvesting equipment, citrus fruit loaders, and cotton module movers, not exceeding 50 feet in length, or any combination of up to and including three implements of husbandry, including the towing power unit, and any single agricultural trailer with a load thereon or any agricultural implements attached to a towing power unit, or a self-propelled agricultural implement or an agricultural tractor, is authorized for the purpose of transporting peanuts, grains, soybeans, citrus, cotton, hay, straw, or other perishable farm products from their point of production to the first point of change of custody or of long-term storage, and for the purpose of returning to such point of production, or for the purpose of moving such tractors, movers, and implements from one point of agricultural production to another, by a person engaged in the production of any such product or custom hauler, if such vehicle or combination of vehicles otherwise complies with this section. The Department of Transportation may issue overlength permits for cotton module movers greater than 50 feet but not more than 55 feet in overall length. Such vehicles shall

be operated in accordance with all safety requirements prescribed by law and rules of the Department of Transportation.

Section 4. Paragraph (c) of subsection (16) of section 570.07, Florida Statutes, is amended to read:

570.07 Department of Agriculture and Consumer Services; functions, powers, and duties.—The department shall have and exercise the following functions, powers, and duties:

(16) To enforce the state laws and rules relating to:

(c) Registration, labeling, inspection, sale, use, composition, formulation, wholesale and retail distribution, and analysis of commercial stock feeds and registration, labeling, inspection, and analysis of commercial fertilizers;

In order to ensure uniform health and safety standards, the adoption of standards and fines in the subject areas of paragraphs (a)-(n) is expressly preempted to the state and the department. Any local government enforcing the subject areas of paragraphs (a)-(n) must use the standards and fines set forth in the pertinent statutes or any rules adopted by the department pursuant to those statutes.

Section 5. Paragraph (g) is added to subsection (2) of section 580.036, Florida Statutes, to read:

580.036 Powers and duties.—

(2) The department is authorized to adopt rules pursuant to ss. 120.536(1) and 120.54 to enforce the provisions of this chapter. These rules shall be consistent with the rules and standards of the United States Food and Drug Administration and

the United States Department of Agriculture, when applicable, and shall include:

(g) Establishing standards for the sale, use, and distribution of commercial feed or feedstuff to ensure usage that is consistent with animal safety and wellbeing and, to the extent that meat, poultry, and other animal products for human consumption may be affected by commercial feed or feedstuff, to ensure that these products are safe for human consumption. Such standards, if adopted, must be developed in consultation with the Commercial Feed Technical Council created under s. 580.151.

Section 6. Paragraph (a) of subsection (1) of section 599.004, Florida Statutes, is amended to read:

599.004 Florida Farm Winery Program; registration; logo; fees.—

(1) The Florida Farm Winery Program is established within the Department of Agriculture and Consumer Services. Under this program, a winery may qualify as a tourist attraction only if it is registered with and certified by the department as a Florida Farm Winery. A winery may not claim to be certified unless it has received written approval from the department.

(a) To qualify as a certified Florida Farm Winery, a winery must ~~shall meet the following standards~~:

1. Produce or sell less than 250,000 gallons of wine annually.

2. Maintain a minimum of 5 ~~10~~ acres of owned or managed land ~~vineyards~~ in Florida which produces commodities used in the production of wine.

3. Be open to the public for tours, tastings, and sales at least 30 hours each week.

4. Make annual application to the department for recognition as a Florida Farm Winery, on forms provided by the department.

5. Pay an annual application and registration fee of $100.

Section 7. For the purpose of incorporating the amendment made by this act to section 599.004, Florida Statutes, in a reference thereto, subsection (5) of section 561.24, Florida Statutes, is reenacted to read:

561.24 Licensing manufacturers as distributors or registered exporters prohibited; procedure for issuance and renewal of distributors' licenses and exporters' registrations.—

(5) Notwithstanding any of the provisions of the foregoing subsections, any corporation which holds a license as a distributor on June 3, 1947, shall be entitled to a renewal thereof, provided such corporation complies with all of the provisions of the Beverage Law of Florida, as amended, and of this section and establishes by satisfactory evidence to the division that, during the 6-month period next preceding its application for such renewal, of the total volume of its sales of spirituous liquors, in either dollars or quantity, not more than 40 percent of such spirituous liquors sold by it, in either dollars or quantity, were manufactured, rectified, or distilled by any corporation with which the applicant is affiliated, directly or indirectly, including any corporation which owns or controls in any way any stock in the applicant corporation or any corporation which is a subsidiary or affiliate of the

corporation so owning stock in the applicant corporation. Any manufacturer of wine holding a license as a distributor on the effective date of this act shall be entitled to a renewal of such license notwithstanding the provisions of subsections (1)-(5). This section does not apply to any winery qualifying as a certified Florida Farm Winery under s. 599.004.

Section 8. Section 604.50, Florida Statutes, is reordered and amended to read:

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

(1) Notwithstanding any provision of ~~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. A farm sign located on a public road may not be erected, used, operated, or maintained in a manner that violates any of the standards provided in s. 479.11(4), (5)(a), and (6)-(8).

(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 relates solely to farm produce, merchandise, or services 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 9. This act shall take effect July 1, 2012.

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

Remove the entire title and insert:

An act relating to agriculture; amending s. 163.3162, F.S.; defining the term "governmental entity"; prohibiting certain governmental entities from charging stormwater management assessments or fees on certain bona fide farm operations except under certain circumstances; providing for applicability; conforming provisions; amending s. 206.41, F.S.; revising the definition of the term "agricultural and aquacultural purposes" for purposes of the required refund of state taxes imposed on motor fuel used for such purposes; amending s. 316.515, F.S.; revising the Florida Uniform Traffic Control Law to authorize the use of citrus harvesting equipment and citrus fruit loaders to transport certain agricultural products and to authorize the use of certain motor vehicles to transport citrus; amending s. 570.07, F.S.; revising the powers and duties of the Department of Agricultural and Consumer Services to enforce laws and rules

relating to the use of commercial stock feeds; amending s. 580.036, F.S.; authorizing the department to adopt rules establishing certain standards for regulating commercial feed or feedstuff; requiring the department to consult with the Commercial Feed Technical Council in the development of such rules; amending s. 599.004, F.S.; revising qualifications for a certified Florida Farm Winery; reenacting s. 561.24(5), F.S., relating to limitations on the issuance of wine distributor licenses and exporter registrations, to incorporate changes made by the act to s. 599.004, F.S., in a reference thereto; amending s. 604.50, F.S.; defining the term "farm sign"; providing an exemption from the Florida Building Code for farm signs; prohibiting farm signs located on public roads from violating certain standards; limiting the authority of local governments to enforce certain requirements with respect to farm signs; providing an effective date.

Amendment No.

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

Committee/Subcommittee hearing bill: State Affairs Committee
Representative Albritton offered the following:

Amendment to Amendment (689433) by Representative Albritton (with title amendment)

Between lines 133 and 134 of the amendment, insert:

Section 4. Paragraph (a) of subsection (41) of section 570.07, Florida Statutes, is amended to read:

570.07 Department of Agriculture and Consumer Services; functions, powers, and duties.—The department shall have and exercise the following functions, powers, and duties:

(41)(a) Except as otherwise provided in paragraph (b), to exercise the exclusive authority to regulate the sale, composition, packaging, labeling, wholesale and retail distribution, nutrient application rates, and formulation, including nutrient content level and release rates, of fertilizer under chapter 576. This subsection expressly preempts such regulation of fertilizer to the state and precludes the adoption or enforcement of any local ordinance that regulates

the application of fertilizer based upon the fertilizer's composition or formulation, including nutrient content level and release rates.

Section 5. Paragraph (a) of subsection (5) of section 576.181, Florida Statutes, is amended to read:

576.181 Administration; rules; procedure.—

(5)(a) Except as otherwise provided in paragraph (b), the department has exclusive authority to regulate the sale, composition, packaging, labeling, wholesale and retail distribution, nutrient application rates, and formulation, including nutrient content level and release rates, of fertilizer. This subsection expressly preempts such regulation of fertilizer to the state and precludes the adoption or enforcement of any local ordinance that regulates the application of fertilizer based upon the fertilizer's composition or formulation, including nutrient content level and release rates.

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

Remove line 267 of the amendment and insert:

use of certain motor vehicles to transport citrus; amending ss. 570.07 and 576.181, F.S.; preempting the regulation of fertilizer nutrient application rates to the state; providing for applicability of certain provisions preempting fertilizer regulations to the state; amending s.

Amendment No.

48

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1117 Conservation of Wildlife
SPONSOR(S): Agriculture & Natural Resources Subcommittee, Harrison
TIED BILLS: None **IDEN./SIM. BILLS:** SB 1456

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	13 Y, 0 N	Massengale	Massengale
3) State Affairs Committee		Deslatte	Hamby

SUMMARY ANALYSIS

Current law specifies that the Board of Trustees of the Internal Improvement Trust Fund (BOT) is vested and charged with the acquisition, administration, management, control, supervision, conservation, protection, and disposition of all lands owned by the state. Current law also specifies that state-owned lands must be managed to provide for areas of natural resource based recreation, and to ensure the survival of plant and animal species and the conservation of finite and renewable natural resources. Where feasible and consistent with the goals of protection and conservation of natural resources associated with lands held in the public trust by the BOT, public land not designated for single-use purposes should be managed for multiple-use purposes. All multiple-use land management strategies must address public access and enjoyment, resource conservation and protection, ecosystem maintenance and protection, protection of threatened and endangered species, and the degree to which public-private partnerships or endowments may allow the entity with management responsibility to enhance its ability to manage these lands.

The bill specifies that a zoo or aquarium that is accredited by the Association of Zoos and Aquariums (AZA) and operating a facility in the state can apply to the BOT or to the governing board of a water management district (WMD) for authorization to use state lands for the purpose of conducting enhanced research in husbandry, reproductive biology, endocrinology, nutrition, genetics, behavior, health, and ecology of selected population of ungulates and avian species. The application must provide certain criteria. The BOT or the governing board of the WMD is authorized to approve the application if the BOT or governing board determines that the proposed project is in the best interest of the state by considering the following:

- Whether the project is consistent with the state's goals for the lands that will be used for the project, as described in the approved land management plan for those lands, and will not cause harm to the land or the surrounding land.
- Whether the project, through alliances and relationships with organizations, universities, federal and state agencies, or other members of the AZA, or otherwise, will have a positive economic impact on the state or the communities surrounding the project location.

The bill directs the Florida Fish and Wildlife Conservation Commission (FWCC) to provide technical assistance to the BOT or to the governing board of a WMD in reviewing each application.

The bill's impact on state revenues and expenditures is indeterminate. The impact on state revenues will depend on the response of aquariums and zoos applying to use state lands and the negotiated terms of the leases. The FWCC may experience an increased workload in assisting with the review of project applications, as well as monitoring sites for compliance with laws. The bill appears to have no fiscal impact on local government.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Board of Trustees of the Internal Improvement Trust Fund (BOT)

At statehood on March 3, 1845, Florida received 500,000 acres of land from the federal government for the benefit of internal improvements. Through the Swamp and Overflowed Lands Act of 1850, the state received an additional 20 million acres of land. In 1855, the Board of Trustees of the Internal Improvement Trust Fund (BOT) was created as an agency of the Florida government to hold these lands. The federal government also made other land grants to the state for varied purposes such as educational facilities, and the seat of government. In 1967, the Florida Legislature vested the BOT with most of the lands owned by the various agencies, boards, and commissions of the state and made the BOT responsible for all state lands, with but few exceptions. These lands are held in trust for the use and benefit of the people of the State of Florida.

The BOT consists of the Governor, the Attorney General, the Chief Financial Officer, and the Commissioner of Agriculture. The BOT is recognized in the State Constitution, and its powers and duties are provided by statute as the acquisition, administration, management, control, supervision, conservation, protection, and disposition of the state-owned lands under its control. The Department of Environmental Protection, through its Division of State Lands, performs all staff duties and functions related to the acquisition, administration, and disposition of state-owned lands to which title is vested in the BOT, with exceptions for certain activities of the water management districts and the Department of Agriculture and Consumer Services.

The BOT administers one of the largest conservation and recreation land buying programs in the nation, with more than 3.3 million acres of conservation and non-conservation uplands. These include state parks, forests, wildlife management areas, historic sites, public universities, and state facilities. The Board of Trustees oversees its conservation lands as a trust on behalf of the citizens of Florida for the protection of the state's natural resources and scenic beauty.

The BOT also administers the state's sovereignty lands, those water bodies within the state's territorial limits that were navigable at the date of statehood. These include coastal shores below mean high water, and navigable fresh waters such as rivers and lakes below ordinary high water. The public status of these lands is protected by the Public Trust Doctrine as codified in Article X, Section 11 of the Florida Constitution.[1]

Section 253.02, F.S., specifies that the BOT cannot sell, transfer, or otherwise dispose of any lands the title to which is vested in the BOT except by vote of at least three of the four trustees.

Section 253.03, F.S., specifies that the BOT is vested and charged with the acquisition, administration, management, control, supervision, conservation, protection, and disposition of all lands owned by the state. These lands specifically include:

- All swamp and overflowed lands held by the state or which may hereafter inure to the state;
- All lands owned by the state by right of its sovereignty;
- All internal improvement lands proper;
- All tidal lands;
- All lands covered by shallow waters of the ocean or gulf, or bays or lagoons thereof, and all lands owned by the state covered by fresh water;

[1] Cabinet Affairs website, http://cabinet.myflorida.com/cabprocess.html

- All parks, reservations, or lands or bottoms set aside in the name of the state, excluding lands held for transportation facilities and transportation corridors and canal rights-of-way; and
- All lands which have accrued, or which may hereafter accrue, to the state from any source whatsoever, excluding lands held for transportation facilities and transportation corridors and canal rights-of-way, spoil areas, or borrow pits or any land, the title to which is vested or may become vested in any port authority, flood control district, water management district, or navigation district or agency created by any general or special act.

The BOT is authorized and directed to administer all state-owned lands and is responsible for the creation of an overall and comprehensive plan of development concerning the acquisition, management, and disposition of state-owned lands so as to ensure maximum benefit and use.

State owned lands and uses

Section 253.034(1), F.S., specifies that all lands acquired must be managed to serve the public interest by protecting and conserving land, air, water, and the state's natural resources, which contribute to the public health, welfare, and economy of the state. These lands must also be managed to provide for areas of natural resource based recreation, and to ensure the survival of plant and animal species and the conservation of finite and renewable natural resources. The statute further states that it is the intent of the Legislature that, where feasible and consistent with the goals of protection and conservation of natural resources associated with lands held in the public trust by the BOT, public land not designated for single-use purposes be managed for multiple-use purposes. All multiple-use land management strategies shall address public access and enjoyment, resource conservation and protection, ecosystem maintenance and protection, and protection of threatened and endangered species, and the degree to which public-private partnerships or endowments may allow the entity with management responsibility to enhance its ability to manage these lands.

Section 253.034(5), F.S., specifies that a manager of state conservation lands must submit to the Division of State Lands a land management plan every 10 years. Whenever the manager of conservation lands intends to make substantive land use or management changes that were not addressed in the approved plan, the land manager must update the land management plan.

Section 253.034(10), F.S., provides additional uses of conservation lands to include water resource development projects, water supply development projects, stormwater management projects, linear facilities, and sustainable agriculture and forestry. When the lands are used for these purposes, they must meet the following conditions:

- The use must not be inconsistent with the management plan for the lands;
- The use must be compatible with the natural ecosystem and resource values of such lands;
- The proposed use must be appropriately located on such lands where due consideration is given to the use of other available lands;
- The using entity must reasonably compensate the titleholder for the use based on an appropriate measure of value; and
- The use must be consistent with the public interest.

Association of Zoos & Aquariums

The Association of Zoos & Aquariums (AZA) was founded in 1924 and is dedicated to the advancement of zoos and aquariums in the areas of conservation, education, science, and recreation. Zoos and aquariums can apply to be accredited by the AZA. The AZA selects Accreditation Commission members who are experts in their fields to evaluate the zoo or aquarium. The zoo or aquarium must meet the AZA's standards for animal management and care, including living environments, social groupings, health, and nutrition. The Accreditation Commission also evaluates the veterinary program, involvement in conservation and research, education programs, safety policies and procedures, security, physical facilities, guest services, and the quality of the institution's staff. The application takes months to complete and 6 months to study and evaluate. Zoos and aquariums that are

accredited must keep up with evolving standards and must go through the accreditation process every 5 years. Currently, there are 16 zoos and aquariums in Florida that are accredited by the AZA.

Effect of Proposed Changes

The bill specifies that a zoo or aquarium that is accredited by the AZA and operating a facility in the state can apply to the BOT for authorization to use state lands, or to the governing board of a water management district (WMD), for authorization to use lands of the WMD, for the purpose of conducting enhanced research in husbandry, reproductive biology, endocrinology, nutrition, genetics, behavior, health, and ecology of selected populations of ungulates[2] and avian species.

The application must provide the following:

- Information relating to the principals and sponsors of the project.
- A description of the funding and sources of funding that will be used to support the project.
- The size, proximate location, and type of land sought.
- A detailed description of the proposed project, including a description of the research to be conducted and the animals that will be used in the research. Projects that involve mammalian species that are carnivores or primates are prohibited.
- A description of the infrastructure necessary to conduct the research project, including buildings, utilities, roadways, and containment facilities.
- A description of a plan to ensure timely recovery of animals that have escaped because of natural disasters or other unforeseen events.

The BOT or the governing board of the WMD is authorized to approve the application if the BOT or governing board determines that the proposed project is in the best interest of the state by considering the following:

- Whether the project is consistent with the state's goals for the lands that will be used for the project, as described in the approved land management plan for those lands, and will not cause harm to the land or the surrounding land.
- Whether the project, through alliances and relationships with organizations, universities, federal and state agencies, or other members of the AZA, or otherwise, will have a positive economic impact on the state or the communities surrounding the project location.

The bill directs the Fish and Wildlife Conservation Commission (FWCC) to provide technical assistance to the BOT or to the governing board of a WMD in reviewing each application.

B. SECTION DIRECTORY:

Section 1. Provides for certain zoos and aquariums to apply to the BOT, or to the governing board of a WMD, for authorization to use state lands for the purpose of conducting enhanced research; providing application requirements; providing criteria that the board or the governing board of a WMD, must consider in reviewing the application; requiring the FWCC to assist the board, or the governing board of a WMD.

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

[2] Ungulates are defined as hoofed animals. Commonly known examples of ungulates include: horses, zebras, donkeys, cattle/bison, rhinoceroses, camels, hippos, tapirs, goats, pigs, sheep, giraffes, okapis, moose, elk, deer, antelopes, and gazelles.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill's impact on state revenues is indeterminate. The impact will depend on the response of aquariums and zoos applying to use state lands and the negotiated terms of the leases.

2. Expenditures:

The bill's impact on state expenditures is indeterminate. The FWCC may experience an increased workload in assisting with the review of project applications, as well as monitoring sites for compliance with laws, but may perform these responsibilities within existing resources.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On January 31, 2012, the Agriculture & Natural Resources Subcommittee amended and passed HB 1117 as a committee substitute (CS). The CS provides that a zoo or aquarium can apply to the BOT or a governing board of a WMD for the purpose of conducting enhanced research in husbandry, reproductive biology, endocrinology, nutrition, genetics, behavior, health, and ecology of selected populations of ungulates and avian species. The CS provides that the application must provide a description of a plan to ensure timely recovery of escaped animals resulting from natural disasters or other unforeseen events. The CS provides that the BOT or the governing board of a WMD may approve the application. Lastly, the CS provides that the FWCC must provide technical support to the BOT or to the governing board of a WMD.

A bill to be entitled

An act relating to conservation of wildlife; authorizing certain zoos and aquariums to apply to the Board of Trustees of the Internal Improvement Trust Fund or the governing board of a water management district to use state lands or water management district lands for specified purposes; providing application requirements; providing criteria for the approval of such uses; requiring the Fish and Wildlife Conservation Commission to provide technical assistance in reviewing such applications; providing an effective date.

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

Section 1. (1) A zoo or aquarium having current accreditation with the Association of Zoos and Aquariums and operating a facility in the state may apply to the Board of Trustees of the Internal Improvement Trust Fund for authorization to use state lands, or to the governing board of a water management district for authorization to use district lands, for the purpose of conducting enhanced research in husbandry, reproductive biology, endocrinology, nutrition, genetics, behavior, health, and ecology of selected populations of ungulate and avian species.

(2) The application must:

(a) Provide information relating to the principals and sponsors of the project.

(b) Provide a description of the funding and sources of funding that will be used to support the project.

(c) Identify the size, proximate location, and type of land sought.

(d) Provide a detailed description of the proposed project, including a description of the research to be conducted and the animals that will be used in the research. A project involving mammalian species that are carnivores or primates is prohibited.

(e) Provide a description of the infrastructure necessary to conduct the research project, including buildings, utilities, roadways, and containment facilities.

(f) Provide a description of a plan to ensure timely recovery of animals that have escaped due to natural disasters or other unforeseen events.

(3) The Board of Trustees of the Internal Improvement Trust Fund or the governing board of the water management district may approve the application if it determines that the proposed project is in the best interest of the state. In making its determination, the board of trustees or governing board shall consider:

(a) Whether the project is consistent with the state's goals for the lands that will be used for the project, as described in the approved land management plan for those lands, and will not cause harm to the land or the surrounding land.

(b) Whether the project, through alliances and relationships with organizations, universities, federal and state agencies, or other members of the Association of Zoos and

Aquariums, or otherwise, will have a positive economic impact on the state and the communities surrounding the project location.

(4) The Fish and Wildlife Conservation Commission shall provide technical assistance to the Board of Trustees of the Internal Improvement Trust Fund or to the governing board of the water management district in reviewing each application.

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 1383 Fish and Wildlife Conservation Commission
SPONSOR(S): Appropriations Committee, Agriculture & Natural Resources Subcommittee, Glorioso
TIED BILLS: None **IDEN./SIM. BILLS:** CS/HB 1782

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Agriculture & Natural Resources Subcommittee	15 Y, 0 N, As CS	Deslatte	Blalock
2) Appropriations Committee	19 Y, 0 N, As CS	Massengale	Leznoff
3) State Affairs Committee		Deslatte	Hamby

SUMMARY ANALYSIS

Pursuant to chapter 2011-66, Laws of Florida, an Environmental Unit Sub-Team of a Law Enforcement Consolidation Task Force was established to conduct a review of the conservation law enforcement activities and assets of the Department of Agriculture and Consumer Services (DACS), the Department of Environmental Protection (DEP), and the Florida Fish and Wildlife Conservation Commission (FWCC), to determine if any duplication of law enforcement functions exist between the agencies. The Environmental Unit Sub-Team determined the patrol of state-owned and managed lands provided by the FWCC, DEP, and DACS has elements that are duplicative, and, in turn, has exacerbated a manpower shortage for the agencies. A list of recommendations was presented to the President of the Senate and the Speaker of the House of Representatives, which included integrating the DEP Division of Law Enforcement and DACS Office of Agricultural Law Enforcement officers assigned to the conservation and recreation lands (CARL) program patrol and the investigator responsible for commercial aquaculture violations into the FWCC Division of Law Enforcement.

The bill transfers and reassigns the functions and responsibilities of the DEP's Division of Law Enforcement, excluding the Bureau of Emergency Response, to the FWCC Division of Law Enforcement. The bill also transfers and reassigns the functions and responsibilities of sworn positions funded by the CARL program assigned to the Florida Forest Service and the investigator responsible for the enforcement of aquaculture violations within DACS to the FWCC Division of Law Enforcement. The bill reassigns the Bureau of Emergency Response to the Secretary of the DEP as the Office of Emergency Response, created within the DEP.

The bill also provides for support positions to be transferred to the FWCC, and requires a memorandum of agreement between FWCC and the DEP and DACS detailing the responsibilities of the FWCC to the DEP and DACS. In addition, the bill provides for transition advisory working groups to be created during the 2012-13 fiscal year.

The bill specifies that any employee transferred from the DEP and DACS to fill positions transferred to the FWCC must retain and transfer any accrued annual lave, sick leave, and regular and special compensatory leave balances.

The bill creates part IV, Miscellaneous Provision, within chapter 258, F.S., and creates s. 258.601, F.S., within the new part IV, to provide that any prohibited activities under the state parks and preserves chapter 258, F.S., will be enforced by the DEP and the Division of Law Enforcement within the FWCC and its officers.

The bill has a significant positive fiscal impact on state expenditures as a result of staggered implementation of reclassifying supervisory and managerial positions to officer positions. The bill may reduce local government expenditures as a result of decreased demand for local law enforcement (see Fiscal Analysis and Economic Impact section).

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Pursuant to Chapter 2011-66, a Environmental Unit Sub-Team of a Law Enforcement Consolidation Task Force was established to conduct a review of the conservation law enforcement activities and assets of the Department of Agriculture and Consumer Services (DACS), the Department of Environmental Protection (DEP), and the Fish and Wildlife Conservation Commission (FWCC) to evaluate if any duplication of law enforcement functions exist between the agencies.[1]

The Environmental Unit Sub-Team identified the following findings:

- All three agencies have responsibility to provide law enforcement patrol, investigative, and forensic services on state-managed lands, which are frequently located within close proximity to each other.
- The enforcement functions for each entity are established by the Legislature.
- Investigative activities of the three agencies are similar in scope and approach.
- The three Bureaus within the DEP Division of Law Enforcement (Park police, Environmental Investigations, and Emergency Response) are interdependent with each other resulting in value-added services that are not present when separated.
- Integration of DEP officers and DACS Conservation and Recreational Land (CARL) and Aquaculture officers in the FWC Division of Law Enforcement will improve response time, increase personnel available for patrol coverage across conservation lands and state waters, and decrease the burden on local law enforcement agencies.
- Consolidation will result in a streamlined agency with approximately 10 percent of sworn supervisory positions being reassigned to field positions leading to increased response time.
- In 2008, the Office of Program Policy Analysis and Government Accountability (OPPAGA) provided the Legislature with four policy options related to environmental law enforcement. The third option was the centralization of environmental law enforcement under one state agency that currently has this function. The joint agency recommendation is a variation of the third option, capturing all of the advantages while minimizing adverse impacts.

The Environmental Unit Sub-Team recommended the following:

- Integration of the DEP Division of Law Enforcement, in its entirety, into the FWCC Division of Law Enforcement (147 positions and additional support positions).
- Integration of DACS Office of Agricultural Law Enforcement officers assigned to CARL Patrol and the investigator responsible for commercial aquaculture violations into the FWCC Division of Law Enforcement (15 positions).
- Enact statutory and administrative code changes where appropriate to integrate the functions.

Department of Environmental Protection Division of Law Enforcement

The DEP's Division of Law Enforcement is Florida's oldest state law enforcement agency, dating back to 1913 when the Legislature created the shellfish commission to supervise the newly emerging commercial fishing industry. The division oversees the following bureaus:

- **Emergency Response**—The Division of Law Enforcement's Bureau of Emergency Response (BER) responds to environmental pollution threats in every form. Responding to incidents

[1] *Integration of Florida's Environmental Law Enforcement Functions increases Efficiency and Enhances Patrol Capability and Response Time*, October 11, 2011. Document on file with staff.

involving petroleum spills caused by vehicle accidents to chemical plant explosions to coastal oil spills, BER provides technical and on-site assistance to ensure threats to the environment and human safety are quickly and effectively addressed. In addition, BER works with local public safety officials and emergency response contractors to minimize threats to the environment. BER offices are located throughout the state, with headquarters in Tallahassee.[2]

- **Criminal Investigations**—Special agents from the Criminal Investigations Bureau are sworn state law enforcement investigators, with full powers of arrest in Florida and its jurisdictional waters. Special agents investigate crimes and violations that generally have a negative impact on Florida's environment, including the improper storage, transport, or disposal of hazardous waste; destruction or illegal filling of wetlands; or the burying or burning of prohibited materials. Fraud, forgery, conspiracy, and organized crime are some of the traditional crimes that can be associated with environmental violations. These specialized criminal investigations are often long-term, complex and are built upon the expert assessment and testimony of the DEP regulatory and scientific professionals.[3]

- **Park Police**—The Division of Law Enforcement's Bureau of Park Police comprises state law enforcement officers with full powers of arrest and who patrol more than 800,000 acres of Florida's state-owned lands, providing law enforcement and public service within state parks, preserves, recreational areas, as well as greenways and trails. The officers also patrol more than 4 million acres of submerged coastal and aquatic managed areas that include 41 aquatic preserves, three national estuarine research reserves, and the Florida Keys National Marine Sanctuary. Officers are called on to respond to hurricanes, civil disorder, or other threatening conditions that may endanger life, property, Florida's natural resources and also provide assistance with search and rescue missions.[4]

- **Office of Training and Professional Standards**—The Division of Law Enforcement's Office of Training and Professional Standards provides training courses for DEP's 138 officers. The Office of Training and Professional Standards works closely with the Florida Department of Law Enforcement's (FDLE) Division of Law Enforcement Professionalism, the Florida Criminal Justice Standards and Training Commission and other Florida law enforcement training centers to provide consistent and current law enforcement information and training to DEP law enforcement officers.[5]

Department of Agriculture and Consumer Services

The Bureau of Investigative Services (BIS) is one of three designated bureaus in the Office of Agricultural Law Enforcement, responsible for the initiation and investigation of matters over which the department has jurisdiction and on property owned, managed or controlled by DACS. The bureau responsibilities include the enforcement of criminal and civil violations occurring within state forests or any crimes involving agriculture such as farms or farm equipment, animals, livestock, poultry, and any crimes involving horticulture, aquaculture, or citrus products. The BIS is an active member in the joint response team comprised of the Department of Health and the DEP, which is responsible for the investigation of crimes relating to bioterrorism statewide. The BIS is also responsible for enforcement of laws governing consumer issues including illegal telemarketing operations, sale of business opportunities, solicitations of contributions, sellers of travel, motor vehicle repair fraud, health studios, dance studios, pawnshops, and moving and storage companies. In addition to these duties, they are also engaged in a cooperative partnership with all federal, state, and local agencies in all 67 counties, providing investigative support in all matters over which the DACS has jurisdiction. The BIS is also actively involved in issues relating to domestic security and actively participates in all seven regional domestic security task forces statewide. The bureau continues to conduct threat assessments of

[2] DEP's Bureau of Emergency Response website, http://www.dep.state.fl.us/law/ber/default.htm
[3] DEP's Criminal Investigations Bureau website, http://www.dep.state.fl.us/law/bei/default.htm
[4] DEP's Bureau of Park Police website, http://www.dep.state.fl.us/law/park/default.htm
[5] DEP's Office of Training and Professional Standards website, http://www.dep.state.fl.us/law/training/default.htm

regulated entities affiliated with fertilizer, pesticide, food, petroleum production and distribution points, as well as investigating theft, shrinkage and suspicious activities regarding these materials.[6]

Florida Fish and Wildlife Conservation Commission Law Enforcement

FWCC officers provide protection to residents and visitors who enjoy Florida's natural resources, while enforcing resource protection and boating safety laws in the woods and on the waters of the state in keeping with the division's core missions. FWCC officers have full police powers and statewide jurisdiction. They patrol rural, wilderness, inshore and offshore areas, and are often the sole law enforcement presence in many remote parts of the state. The Division of Law Enforcement has cooperative agreements with the National Marine Fisheries Service and the U.S. Fish and Wildlife Service. Officers are also cross-deputized to enforce federal marine fisheries and wildlife laws, thus ensuring state and federal consistency in resource-protection efforts. The Division of Law Enforcement is divided into the following sections:

- **Operations**—The Operations section's six regions throughout the state are responsible for uniformed patrol and investigative law enforcement services of the FWCC's 700-plus officer workforce. The officers and investigators protect fish, wildlife and the citizens of Florida and provide boating safety patrols. Investigations are able to conduct both overt (uniform) and covert (plainclothes) investigations. They allow the FWCC to target hard-core commercial violators by conducting long-term undercover investigations. Investigators are also responsible for inspecting personal and commercial native and exotic wildlife facilities, as well as investigating hunting and boating accidents. This section also provides statewide coordination of all aviation, offshore vessel, K-9 and Special Operations Group activities. Aviation assets play a vital role in the agency's effort to enforce conservation and boating laws, protect endangered and threatened species and safeguard outdoor users. The division's offshore patrol vessels concentrate on offshore fisheries and protected marine areas, as well as public safety. The K-9 teams are specially trained in tracking and wildlife detection. The K-9s receive no aggression training and are very "user-friendly." In addition to their law enforcement functions, they have proved to be a great community-oriented policing relations tool.

- **Law Enforcement Support**

    - *Boating, Waterways and Program Coordination*—This section's employees manage state waterways and their markers and signs to protect boaters and wildlife. They coordinate the removal of derelict vessels and the development of boating infrastructure. They use many methods to promote boating safety, from education and outreach to investigation and analysis of boating accident data.
    - *Field Services*—This section provides officer support with radio technology and systems engineering; fleet management; research, testing and acquisition of new computer and telecommunications technology; and arrest/warning citation and disposition data management. They maintain the Computer Aided Dispatch (CAD) system, which enhances officer safety and efficiency.
    - *Training*—This section provides professional basic recruit and advanced training and career development programs to officers statewide. They train FWCC officers in the aspects of non-traditional policing, as well as ensuring basic law enforcement standards are met and maintained.

- **Officers' Authority**—Sworn personnel are fully constituted police officers as provided under s. 379.3311, F.S. This gives them the authority to enforce all laws of the state, not just those relating to resource enforcement. The officers are also cross-deputized to enforce federal fisheries and wildlife laws.

[6] DACS Bureau of Investigative Services website, http://www.fl-aglaw.com/bis/bis.html

- **Officers' Responsibilities**

    - Provide protection and enforce laws relating to all wild animal and aquatic resources of the state. This includes game, non-game, furbearers, threatened and endangered wildlife and fish, and marine mammals; encompassing approximately 672 species of wildlife, 208 species of freshwater fish and over 500 saltwater fish species. In doing so, officers patrol more than 37 million acres of public and private land, 8,246 miles of tidal coastline, 12,000 miles of rivers and streams, 3 million acres of lakes and ponds, and 11,000 miles of canals.
    - Provide boating safety enforcement on the state's waters to ensure the safe use of our resources. Includes enforcing boating under the influence laws, as well as laws relating to the safe and prudent operation of watercraft, investigating boating accidents, and search and rescue missions.
    - Provide general law enforcement protection to the human resources of the state. One aspect of this is providing general law enforcement patrol in rural, semi-wilderness, wilderness, and offshore areas where no other law enforcement agencies routinely patrol. Officers also respond to a variety of emergencies including natural disasters, civil disturbances, and search and rescue missions. These include such diverse phenomena as hurricanes, riots, wildfires, floods, and providing protection for elected officials (governors and presidents).

Effect of Proposed Changes

Section1—Transfering Law Enforcement from DEP to FWCC.

The bill transfers all powers, duties, functions, records, offices, personnel, property, pending issues and existing contracts, administrative authority, administrative rules, and unexpended balances of appropriations, allocations, and other funds relating to the DEP Division of Law Enforcement, excluding the Bureau of Emergency Response, by a type two transfer,[7] to the Division of Law Enforcement within the FWCC. The bill also provides that the Bureau of Emergency Response is reassigned to the Secretary of the DEP, as the new Office of Emergency Response, created within the DEP.

The Secretary of the DEP must transfer to the FWCC the number of administrative, auditing, inspector general, attorney, and operational support positions, including any related powers, duties, functions, property, and funding, proportionate to the number of Division of Law Enforcement full-time equivalent and other personal services positions being transferred from the DEP to the FWCC. The DEP and FWCC must develop a memorandum of agreement detailing the responsibilities of the FWCC to the DEP, and must include, at a minimum, the following:

- Support and response for oil spills, hazardous spills, and natural disasters.
- Law enforcement patrol and investigative services for all state-owned lands managed by the DEP.
- Law enforcement services, including investigative services for al criminal law violations.
- Enforcement services for all civil violations of all DEP administrative rules related to the following programs:
    - Division of Recreation and Parks.
    - Office of Coastal and Aquatic Managed Areas.
    - Office of Greenways and Trails.

[7] Section 20.06(2), F.S., defines a type two transfer as merging into another agency or department of an existing agency or department or a program, activity, or function or, if certain identifiable units or subunits, programs, activities, or functions are removed from the existing agency or department with the certain identifiable units or subunits, programs, activities, or functions removed therefrom or abolished. Any agency transferred by a type two transfer has all its statutory powers, duties, and functions. Unless provided by law, the administrative rules of any agency or department involved in the transfer which are in effect immediately before the transfer remain in effect until specifically changed in the manner provided by law.

- Current and future funding for positions and property being transferred from the DEP to the FWCC that is funded through any trust fund.

Section 2—Transfering Sworn Positions from DACS to FWCC.

The bill transfers all powers, duties, functions, records, offices, personnel, property, pending issues and existing contracts, administrative authority, administrative rules, and unexpended balances of appropriations, allocations, and other funds relating to sworn positions funded by the Conservation and Recreation Lands (CARL) Program and assigned to the Florida Forest Service within the DACS as of July 1, 2011, and the investigator responsible for the enforcement of aquaculture violations at DACS as of July 1, 2012, by a type two transfer to the Division of Law Enforcement within the FWCC.

DACS and the FWCC must develop a memorandum of agreement detailing the responsibilities between the FWCC and the DACS and must include, at a minimum, the following:

- Law enforcement patrol and investigative services for all state-owned forests managed by DACS.
- Current and future funding for positions and property assigned to the Conservation and Recreation Lands Program that are transferred from DACS to the FWCC.

Section 3—Creating Transition Advisory Groups.

The bill creates a transition advisory working group. The DEP and the FWCC are required to each appoint three staff members to the working group to review and determine the following:

- The appropriate proportionate number of administrative, auditing, inspector general attorney, and operational support positions and their related funding levels and sources and assigned property to be transferred from the Office of General Counsel, Office of Inspector General, and Division of Administrative Services or other relevant offices or divisions within the DEP to the FWCC.
- The development of a recommended plan addressing the transfer or shared use of buildings, regional offices, and other facilities used or owned by the DEP.
- Any operating budget adjustments as necessary to implement the requirements of this act. Any adjustments made to the operating budgets of the DEP and FWCC must be made in consultation with the appropriate substantive and fiscal committees of the Senate and the House of Representatives. Revisions to the approved operating budgets for the 2012-2013 fiscal year that are necessary to reflect the organizational changes made by this act must be implemented pursuant to s. 216.292(4)(d), F.S., and subject to s. 216.177, F.S. Any subsequent adjustments that are deemed necessary by the DEP or FWCC and approved by the Executive Office of the Governor are authorized and subject to s. 216.177, F.S. The appropriate substantive committees of the Senate and House of Representatives will be notified of the proposed revisions.

The bill specifies that the Secretary of the DEP, the Commissioner of DACS, and the Executive Director of FWCC must each appoint two staff members to a transition advisory working group to identify rules of the DEP, the Board of Trustees of the Internal Improvement Trust Fund (BOT), DACS, and the FWCC that need to be amended to reflect the changes made by this bill.

Section 4—Assigning Powers and Duties for Enforcement of Laws and Rules of the DEP and DACS to the FWCC.

The bill assigns to the FWCC all powers, duties, responsibilities, functions, positions, and property necessary for enforcement of the laws and rules governing:

- Management, protection, conservation, improvement, and expansion of the state-owned lands managed by the DEP, including state parks, coastal and aquatic managed areas, and greenways and trails.

- Conservation and recreation lands and commercial aquaculture managed by DACS.

The bill specifies that FWCC law enforcement officers are given full power to investigate and arrest for any violation of the rules of DACS, the DEP, and the Board of Trustees of the Internal Improvement Trust Fund.

Section 5—Specifying the Retention and Transfer of Accrued Leave.

The bill specifies that any employee transferred from the DEP and DACS to fill positions transferred to the FWCC must retain and transfer any accrued annual lave, sick leave, and regular and special compensatory leave balances.

Section 6—Specifying the Powers and Duties of the FWCC Relating to Parks and Preserves and Wild and Scenic Rivers.

The bill creates part IV, Miscellaneous Provision, within chapter 258, F.S., and creates s. 258.601, F.S., within the new part IV, to provide that any prohibited activities under the state parks and preserves chapter, chapter 258, F.S., will be enforced by the DEP and the Division of Law Enforcement within the FWCC and its officers.

Section 7—Adding a Special Office within the DEP to be Headed by Managers Appointed by the Secretary of the DEP.

The bill adds the Office of Emergency Management to the list of established offices within the DEP

Sections 8-31—Providing conforming provisions to changes made by the bill

Section 32—Providing an effective date of July, 1, 2012.

B. SECTION DIRECTORY:

Section 1. Transferring and reassigning functions and responsibilities of the Division of Law Enforcement, excluding the Bureau of Emergency Response, within the DEP to the Division of Law Enforcement within the FWCC; reassigning the Bureau of Emergency Response within the DEP to the Secretary of DEP as the Office of Emergency Response; providing for the transfer of additional positions to the FWCC; providing for a memorandum of agreement between the DEP and the FWCC regarding the responsibilities of the FWCC to the DEP.

Section 2. Transferring and reassigning functions and responsibilities of sworn positions funded by the Conservation and Recreation Lands Program and assigned to the Florida Forest Service with DACS and the investigator responsible for the enforcement of aquaculture violations at DACS to the Division of Law Enforcement within the FWCC; providing for a memorandum of agreement between DACS and the FWCC regarding the responsibilities between the FWCC and DACS.

Section 3. Creating transition advisory working groups.

Section 4. Assigning powers, duties, responsibilities, and functions for enforcement of the laws and rules governing certain lands managed by the DEP and certain lands and aquaculture managed by DACS to the FWCC; conferring full power to the law enforcement officers of the FWCC to investigate and arrest for violations of rules of DACS, the DEP, and the Board of Trustees of the Internal Improvement Trust Fund.

Section 5. Providing for the retention and transfer of specified benefits for employees that are transferred from the DEP and DACS to fill positions transferred to the FWCC.

Section 6. Creating s. 258.601, F.S., specifying powers and duties of the FWCC relating to the enforcement of prohibited activities under chapter 258, F.S.

Section 7. Amending s. 20.255, F.S., adding the Office of Emergency Management to the list of established offices within the DEP.

Sections 8-31. Conforming provisions to changes made by the act.

Section 32. Providing an effective date of July 1, 2012.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

	FY 12-13	FY 13-14	FY 14-15	FY 15-16	FY 16-17	FY 17-18
Salaries/Ben. Reclass	($346,321)	($440,202)	($623,884)	($909,426)	($1,320,002)	($1,330,111)
Expense						
Equipment	$138,577					
IT	$90,425	$37,925	$37,925	$37,925	$37,925	$37,925
Training	$81,704					
Total Expense	$310,706	$37,925	$37,925	$37,925	$37,925	$37,925
Total Expenditures	($35,615)	($402,277)	($585,959)	($871,501)	($1,282,077)	($1,292,186)

According to the FWCC, there will be a cost savings in expenditures as a result of a staggered implementation of eliminating duplicative management positions (e.g., division directors, training section/bureau leaders, etc.) and support staff while establishing additional patrol and first response capacity, that is, position reclassification as soon as positions are vacated and re-filled. However, expenditures do not include leave payouts.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

According to the FWCC, the consolidation should decrease demands on local law enforcement to respond to calls for service on state-owned lands because of stronger state officer presence available to meet public safety needs.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to require counties or municipalities to spend funds or take an action requiring the expenditure of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill transfers all administrative authority and rules relating to the Division of Law Enforcement within the DEP, excluding the Bureau of Emergency Response, and relating to sworn positions funded by the Conservation and Recreation Lands Program and assigned to the Florida Forest Service within DACS as of July 1, 2011, to the Division of Law Enforcement within the FWCC.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On February 15, 2012, the Appropriations Committee amended and passed CS/HB 1383 as a committee substitute. The CS removed the authorization for salary parity and other pay adjustments.

On January 31, 2012, the Agriculture & Natural Resources Subcommittee amended and passed HB 1383 as a committee substitute (CS). The CS specifies that the Bureau of Emergency Response will be reassigned to the Secretary of the DEP, as a new Office of Emergency Response, created within the DEP. The CS specifies that the Secretary of the DEP, Commissioner of DACS, and the Executive Director of FWCC must each appoint two staff members each to a transition advisory working group to identify rules of the DEP, the BOT, DACS, and the FWCC that need to be amended to reflect the changes made by this bill. Lastly, the CS specified that any prohibited activities under the state parks and preserves chapter will be enforced by the DEP and the Division of Law Enforcement within the FWCC and its officers.

A bill to be entitled

An act relating to the Fish and Wildlife Conservation Commission; transferring and reassigning functions and responsibilities of the Division of Law Enforcement, excluding the Bureau of Emergency Response, within the Department of Environmental Protection to the Division of Law Enforcement within the Fish and Wildlife Conservation Commission; reassigning the Bureau of Emergency Response within the Department of Environmental Protection to the Secretary of Environmental Protection as the Office of Emergency Response within the Department of Environmental Protection; providing for the transfer of additional positions to the commission; providing for a memorandum of agreement between the department and the commission regarding the responsibilities of the commission to the department; transferring and reassigning functions and responsibilities of sworn positions funded by the Conservation and Recreation Lands Program and assigned to the Florida Forest Service within the Department of Agriculture and Consumer Services and the investigator responsible for the enforcement of aquaculture violations at the Department of Agriculture and Consumer Services to the Division of Law Enforcement within the Fish and Wildlife Conservation Commission; providing for a memorandum of agreement between the department and the commission regarding the responsibilities between the

commission and the department; providing for transition advisory working groups; assigning powers, duties, responsibilities, and functions for enforcement of the laws and rules governing certain lands managed by the Department of Environmental Protection and certain lands and aquaculture managed by the Department of Agriculture and Consumer Services to the Fish and Wildlife Conservation Commission; conferring full power to the law enforcement officers of the Fish and Wildlife Conservation Commission to investigate and arrest for violations of rules of the Department of Agriculture and Consumer Services, the Department of Environmental Protection, and the Board of Trustees of the Internal Improvement Trust Fund; providing for the retention and transfer of specified benefits for employees that are transferred from the Department of Environmental Protection and the Department of Agriculture and Consumer Services to fill positions transferred to the Fish and Wildlife Conservation Commission; creating s. 258.601, F.S.; specifying powers and duties of the commission relating to state parks and preserves and wild and scenic rivers; amending ss. 20.255, 258.008, 258.501, 282.709, 316.003, 316.2397, 316.640, 375.041, 376.065, 376.07, 376.071, 376.16, 376.3071, 379.3311, 379.3312, 379.3313, 379.333, 379.341, 379.343, 403.413, 784.07, 843.08, 843.085, 870.04, and 932.7055, F.S.;

conforming provisions to changes made by the act; providing an effective date.

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

Section 1. (1) All powers, duties, functions, records, offices, personnel, property, pending issues and existing contracts, administrative authority, administrative rules, and unexpended balances of appropriations, allocations, and other funds relating to the Division of Law Enforcement within the Department of Environmental Protection, excluding the Bureau of Emergency Response, are transferred by a type two transfer, as defined in s. 20.06(2), Florida Statutes, to the Division of Law Enforcement within the Florida Fish and Wildlife Conservation Commission.

(2) The Bureau of Emergency Response within the Department of Environmental Protection is reassigned to the Secretary of Environmental Protection as the Office of Emergency Response within the Department of Environmental Protection.

(3) The Secretary of Environmental Protection shall transfer to the Fish and Wildlife Conservation Commission the number of administrative, auditing, inspector general, attorney, and operational support positions, including any related powers, duties, functions, property, and funding, proportionate to the number of Division of Law Enforcement full-time equivalent and other personal services positions being transferred from the department to the commission.

(4) A memorandum of agreement shall be developed between

the department and the commission detailing the responsibilities of the commission to the department, to include, at a minimum, the following:

(a) Support and response for oil spills, hazardous spills, and natural disasters.

(b) Law enforcement patrol and investigative services for all state-owned lands managed by the department.

(c) Law enforcement services, including investigative services, for all criminal law violations of chapters 161, 258, 373, 376, and 403, Florida Statutes.

(d) Enforcement services for all civil violations of all department administrative rules related to the following program areas:

1. Division of Recreation and Parks.

2. Office of Coastal and Aquatic Managed Areas.

3. Office of Greenways and Trails.

(e) Current and future funding for positions and property being transferred from the department to the commission that is funded through any trust fund.

Section 2. (1) All powers, duties, functions, records, property, pending issues and existing contracts, administrative authority, administrative rules, and unexpended balances of appropriations, allocations, and other funds relating to sworn positions funded by the Conservation and Recreation Lands Program and assigned to the Florida Forest Service within the Department of Agriculture and Consumer Services as of July 1, 2011, and the investigator responsible for the enforcement of aquaculture violations at the Department of Agriculture and

Consumer Services as of July 1, 2011, are transferred by a type two transfer, as defined in s. 20.06(2), Florida Statutes, to the Division of Law Enforcement within the Fish and Wildlife Conservation Commission.

(2) A memorandum of agreement shall be developed between the department and the commission detailing the responsibilities between the commission and the department, to include, at a minimum, the following:

(a) Law enforcement patrol and investigative services for all state-owned forests managed by the department.

(b) Current and future funding for positions and property assigned to the Conservation and Recreation Lands Program that are transferred from the department to the commission.

Section 3. (1) The Secretary of Environmental Protection and the Executive Director of the Fish and Wildlife Conservation Commission shall each appoint three staff members to a transition advisory working group to review and determine the following:

(a) The appropriate proportionate number of administrative, auditing, inspector general, attorney, and operational support positions and their related funding levels and sources and assigned property to be transferred from the Office of General Counsel, Office of Inspector General, and Division of Administrative Services or other relevant offices or divisions within the Department of Environmental Protection to the Fish and Wildlife Conservation Commission.

(b) The development of a recommended plan addressing the transfer or shared use of buildings, regional offices, and other

facilities used or owned by the Department of Environmental Protection.

(c) Any operating budget adjustments as necessary to implement the requirements of this act. Adjustments made to the operating budgets of the department and the commission in the implementation of this act must be made in consultation with the appropriate substantive and fiscal committees of the Senate and the House of Representatives. The revisions to the approved operating budgets for the 2012-2013 fiscal year which are necessary to reflect the organizational changes made by this act shall be implemented pursuant to s. 216.292(4)(d), Florida Statutes, and subject to s. 216.177, Florida Statutes. Subsequent adjustments between agencies that are determined necessary by the department or commission and approved by the Executive Office of the Governor are authorized and subject to s. 216.177, Florida Statutes. The appropriate substantive committees of the Senate and the House of Representatives shall also be notified of the proposed revisions to ensure consistency with legislative policy and intent.

(2) The Secretary of Environmental Protection, the Commissioner of Agriculture, and the Executive Director of the Fish and Wildlife Conservation Commission shall each appoint two staff members to a transition advisory working group to identify rules of the Department of Environmental Protection, the Board of Trustees of the Internal Improvement Trust Fund, the Department of Agriculture and Consumer Services, and the Fish and Wildlife Conservation Commission that need to be amended to reflect the changes made by this act.

Section 4. (1) The Fish and Wildlife Conservation Commission is assigned all powers, duties, responsibilities, functions, positions, and property necessary for enforcement of the laws and rules governing:

(a) Management, protection, conservation, improvement, and expansion of the state-owned lands managed by the Department of Environmental Protection, including state parks, coastal and aquatic managed areas, and greenways and trails.

(b) Conservation and recreation lands and commercial aquaculture managed by the Department of Agriculture and Consumer Services.

(2) Law enforcement officers of the Fish and Wildlife Conservation Commission are conferred full power to investigate and arrest for any violation of the rules of the Department of Agriculture and Consumer Services, the Department of Environmental Protection, and the Board of Trustees of the Internal Improvement Trust Fund.

Section 5. Notwithstanding chapter 60K-5, Florida Administrative Code, or any provision of law to the contrary, employees who are transferred from the Department of Environmental Protection and the Department of Agriculture and Consumer Services to fill positions transferred to the Fish and Wildlife Conservation Commission shall retain and transfer any accrued annual leave, sick leave, and regular and special compensatory leave balances.

Section 6. Part IV of chapter 258, Florida Statutes, consisting of section 258.601, is created to read:

PART IV

MISCELLANEOUS PROVISIONS

258.601 Enforcement of prohibited activities.-Prohibited activities under this chapter shall be enforced by the Department of Environmental Protection and the Division of Law Enforcement of the Fish and Wildlife Conservation Commission and its officers.

Section 7. Subsections (5) through (8) of section 20.255, Florida Statutes, are renumbered as subsections (4) through (7), respectively, and present subsections (2), (3), and (4) of that section are amended to read:

20.255 Department of Environmental Protection.—There is created a Department of Environmental Protection.

(2)(a) There shall be three deputy secretaries who are to be appointed by and shall serve at the pleasure of the secretary. The secretary may assign any deputy secretary the responsibility to supervise, coordinate, and formulate policy for any division, office, or district. The following special offices are established and headed by managers, each of whom is to be appointed by and serve at the pleasure of the secretary:

1. Office of Chief of Staff;
2. Office of General Counsel;
3. Office of Inspector General;
4. Office of External Affairs;
5. Office of Legislative Affairs;
6. Office of Intergovernmental Programs; and
7. Office of Greenways and Trails.
8. Office of Emergency Response.

(b) There shall be six administrative districts involved

in regulatory matters of waste management, water resource management, wetlands, and air resources, which shall be headed by managers, each of whom is to be appointed by and serve at the pleasure of the secretary. Divisions of the department may have one assistant or two deputy division directors, as required to facilitate effective operation.

The managers of all divisions and offices specifically named in this section and the directors of the six administrative districts are exempt from part II of chapter 110 and are included in the Senior Management Service in accordance with s. 110.205(2)(j).

(3) The following divisions of the Department of Environmental Protection are established:

(a) Division of Administrative Services.

(b) Division of Air Resource Management.

(c) Division of Water Resource Management.

~~(d) Division of Law Enforcement.~~

(d) ~~(e)~~ Division of Environmental Assessment and Restoration.

(e) ~~(f)~~ Division of Waste Management.

(f) ~~(g)~~ Division of Recreation and Parks.

(g) ~~(h)~~ Division of State Lands, the director of which is to be appointed by the secretary of the department, subject to confirmation by the Governor and Cabinet sitting as the Board of Trustees of the Internal Improvement Trust Fund.

In order to ensure statewide and intradepartmental consistency,

the department's divisions shall direct the district offices and bureaus on matters of interpretation and applicability of the department's rules and programs.

~~(4) Law enforcement officers of the Department of Environmental Protection who meet the provisions of s. 943.13 are constituted law enforcement officers of this state with full power to investigate and arrest for any violation of the laws of this state, and the rules of the department and the Board of Trustees of the Internal Improvement Trust Fund. The general laws applicable to investigations, searches, and arrests by peace officers of this state apply to such law enforcement officers.~~

Section 8. Subsection (1) of section 258.008, Florida Statutes, is amended to read:

258.008 Prohibited activities; penalties.—

(1) Except as provided in subsection (3), any person who violates or otherwise fails to comply with the rules adopted under this chapter commits a noncriminal infraction for which ejection from all property managed by the Division of Recreation and Parks and a fine of up to $500 may be imposed by the division. Fines paid under this subsection shall be paid to the Fish and Wildlife Conservation Commission ~~Department of Environmental Protection~~ and deposited in the State Game ~~Park~~ Trust Fund as provided in ss. 379.338, 379.339, and 379.3395.

Section 9. Subsection (16) of section 258.501, Florida Statutes, is amended to read:

258.501 Myakka River; wild and scenic segment.—

(16) ENFORCEMENT.~~—Officers of~~ The department and the Fish and Wildlife Conservation Commission shall have full authority to enforce any rule adopted by the department ~~under this section with the same police powers given them by law to enforce the rules of state parks and the rules pertaining to saltwater areas under the jurisdiction of the Florida Marine Patrol~~.

Section 10. Paragraph (a) of subsection (2) of section 282.709, Florida Statutes, is amended to read:

282.709 State agency law enforcement radio system and interoperability network.—

(2) The Joint Task Force on State Agency Law Enforcement Communications is created adjunct to the department to advise the department of member-agency needs relating to the planning, designing, and establishment of the statewide communication system.

(a) The Joint Task Force on State Agency Law Enforcement Communications shall consist of the following ~~eight~~ members~~, as follows~~:

1. A representative of the Division of Alcoholic Beverages and Tobacco of the Department of Business and Professional Regulation who shall be appointed by the secretary of the department.

2. A representative of the Division of Florida Highway Patrol of the Department of Highway Safety and Motor Vehicles who shall be appointed by the executive director of the department.

3. A representative of the Department of Law Enforcement who shall be appointed by the executive director of the

department.

4. A representative of the Fish and Wildlife Conservation Commission who shall be appointed by the executive director of the commission.

~~5. A representative of the Division of Law Enforcement of the Department of Environmental Protection who shall be appointed by the secretary of the department.~~

5.~~6.~~ A representative of the Department of Corrections who shall be appointed by the secretary of the department.

6.~~7.~~ A representative of the Division of State Fire Marshal of the Department of Financial Services who shall be appointed by the State Fire Marshal.

7.~~8.~~ A representative of the Department of Transportation who shall be appointed by the secretary of the department.

Section 11. Subsection (1) of section 316.003, Florida Statutes, is amended to read:

316.003 Definitions.—The following words and phrases, when used in this chapter, shall have the meanings respectively ascribed to them in this section, except where the context otherwise requires:

(1) AUTHORIZED EMERGENCY VEHICLES.—Vehicles of the fire department (fire patrol), police vehicles, and such ambulances and emergency vehicles of municipal departments, public service corporations operated by private corporations, the Fish and Wildlife Conservation Commission, the Department of Environmental Protection, the Department of Health, the Department of Transportation, and the Department of Corrections as are designated or authorized by their respective department

or the chief of police of an incorporated city or any sheriff of any of the various counties.

Section 12. Subsections (3) and (9) of section 316.2397, Florida Statutes, are amended to read:

316.2397 Certain lights prohibited; exceptions.—

(3) Vehicles of the fire department and fire patrol, including vehicles of volunteer firefighters as permitted under s. 316.2398, vehicles of medical staff physicians or technicians of medical facilities licensed by the state as authorized under s. 316.2398, ambulances as authorized under this chapter, and buses and taxicabs as authorized under s. 316.2399 may ~~are permitted to~~ show or display red lights. Vehicles of the fire department, fire patrol, police vehicles, and such ambulances and emergency vehicles of municipal and county departments, public service corporations operated by private corporations, the Fish and Wildlife Conservation Commission, the Department of Environmental Protection, the Department of Transportation, the Department of Agriculture and Consumer Services, and the Department of Corrections as are designated or authorized by their respective department or the chief of police of an incorporated city or any sheriff of any county may ~~are hereby authorized to~~ operate emergency lights and sirens in an emergency. Wreckers, mosquito control fog and spray vehicles, and emergency vehicles of governmental departments or public service corporations may show or display amber lights when in actual operation or when a hazard exists provided they are not used going to and from the scene of operation or hazard without specific authorization of a law enforcement officer or law

enforcement agency. Wreckers must use amber rotating or flashing lights while performing recoveries and loading on the roadside day or night, and may use such lights while towing a vehicle on wheel lifts, slings, or under reach if the operator of the wrecker deems such lights necessary. A flatbed, car carrier, or rollback may not use amber rotating or flashing lights when hauling a vehicle on the bed unless it creates a hazard to other motorists because of protruding objects. Further, escort vehicles may show or display amber lights when in the actual process of escorting overdimensioned equipment, material, or buildings as authorized by law. Vehicles owned or leased by private security agencies may show or display green and amber lights, with either color being no greater than 50 percent of the lights displayed, while the security personnel are engaged in security duties on private or public property.

(9) Flashing red lights may be used by emergency response vehicles of the Fish and Wildlife Conservation Commission, the Department of Environmental Protection, and the Department of Health when responding to an emergency in the line of duty.

Section 13. Paragraph (a) of subsection (1) of section 316.640, Florida Statutes, is amended to read:

316.640 Enforcement.—The enforcement of the traffic laws of this state is vested as follows:

(1) STATE.—

(a)1.a. The Division of Florida Highway Patrol of the Department of Highway Safety and Motor Vehicles; the Division of Law Enforcement of the Fish and Wildlife Conservation Commission; ~~the Division of Law Enforcement of the Department of~~

~~Environmental Protection;~~ and the agents, inspectors, and officers of the Department of Law Enforcement each have authority to enforce all of the traffic laws of this state on all the streets and highways thereof and elsewhere throughout the state wherever the public has a right to travel by motor vehicle.

b. University police officers may ~~shall have authority to~~ enforce all of the traffic laws of this state when violations occur on or within 1,000 feet of any property or facilities that are under the guidance, supervision, regulation, or control of a state university, a direct-support organization of such state university, or any other organization controlled by the state university or a direct-support organization of the state university, or when such violations occur within a specified jurisdictional area as agreed upon in a mutual aid agreement entered into with a law enforcement agency pursuant to s. 23.1225(1). Traffic laws may also be enforced off-campus when hot pursuit originates on or within 1,000 feet of any such property or facilities, or as agreed upon in accordance with the mutual aid agreement.

c. Community college police officers may ~~shall have the authority to~~ enforce all the traffic laws of this state only when such violations occur on any property or facilities that are under the guidance, supervision, regulation, or control of the community college system.

d. Police officers employed by an airport authority may ~~shall have the authority to~~ enforce all of the traffic laws of this state only when such violations occur on any property or

facilities that are owned or operated by an airport authority.

(I) An airport authority may employ as a parking enforcement specialist any individual who successfully completes a training program established and approved by the Criminal Justice Standards and Training Commission for parking enforcement specialists but who does not otherwise meet the uniform minimum standards established by the commission for law enforcement officers or auxiliary or part-time officers under s. 943.12. ~~Nothing in~~ This sub-sub-subparagraph may not ~~shall~~ be construed to permit the carrying of firearms or other weapons, nor shall such parking enforcement specialist have arrest authority.

(II) A parking enforcement specialist employed by an airport authority may ~~is authorized to~~ enforce all state, county, and municipal laws and ordinances governing parking only when such violations are on property or facilities owned or operated by the airport authority employing the specialist, by appropriate state, county, or municipal traffic citation.

e. The Office of Agricultural Law Enforcement of the Department of Agriculture and Consumer Services may ~~shall have the authority to~~ enforce traffic laws of this state.

f. School safety officers may ~~shall have the authority to~~ enforce all of the traffic laws of this state when such violations occur on or about any property or facilities that ~~which~~ are under the guidance, supervision, regulation, or control of the district school board.

2. An agency of the state as described in subparagraph 1. is prohibited from establishing a traffic citation quota. A

violation of this subparagraph is not subject to the penalties provided in chapter 318.

3. Any disciplinary action taken or performance evaluation conducted by an agency of the state as described in subparagraph 1. of a law enforcement officer's traffic enforcement activity must be in accordance with written work-performance standards. Such standards must be approved by the agency and any collective bargaining unit representing such law enforcement officer. A violation of this subparagraph is not subject to the penalties provided in chapter 318.

4. The Division of the Florida Highway Patrol may employ as a traffic accident investigation officer any individual who successfully completes instruction in traffic accident investigation and court presentation through the Selective Traffic Enforcement Program as approved by the Criminal Justice Standards and Training Commission and funded through the National Highway Traffic Safety Administration or a similar program approved by the commission, but who does not necessarily meet the uniform minimum standards established by the commission for law enforcement officers or auxiliary law enforcement officers under chapter 943. Any such traffic accident investigation officer who makes an investigation at the scene of a traffic accident may issue traffic citations, based upon personal investigation, when he or she has reasonable and probable grounds to believe that a person who was involved in the accident committed an offense under this chapter, chapter 319, chapter 320, or chapter 322 in connection with the accident. This subparagraph does not permit the officer to carry

firearms or other weapons, and such an officer does not have authority to make arrests.

Section 14. Subsection (4) of section 375.041, Florida Statutes, is amended to read:

375.041 Land Acquisition Trust Fund.—

(4) The department may disburse moneys in the Land Acquisition Trust Fund to pay all necessary expenses to carry out the purposes of this act. The department shall disburse moneys from the Land Acquisition Trust Fund to the Fish and Wildlife Conservation Commission for the purpose of funding law enforcement services on state lands.

Section 15. Subsection (5) of section 376.065, Florida Statutes, is amended to read:

376.065 Operation of terminal facility without discharge prevention and response certificate prohibited; penalty.—

(5)(a) A ~~Any~~ person who violates this section or the terms and requirements of such certification commits a noncriminal infraction. The civil penalty for any such infraction shall be $500, except as otherwise provided in this section.

(b) A ~~Any~~ person cited for an infraction under this section may:

1. Pay the civil penalty;

2. Post a bond equal to the amount of the applicable civil penalty; or

3. Sign and accept a citation indicating a promise to appear before the county court.

The department employee ~~officer~~ authorized to issue these

citations may indicate on the citation the time and location of the scheduled hearing and shall indicate the applicable civil penalty.

(c) A ~~Any~~ person who willfully refuses to post bond or accept and sign a citation commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(d) After compliance with ~~the provisions of~~ subparagraph (b)2. or subparagraph (b)3., a ~~any~~ person charged with a noncriminal infraction under this section may:

1. Pay the civil penalty, either by mail or in person, within 30 days after the date of receiving the citation; or

2. If the person has posted bond, forfeit the bond by not appearing at the designated time and location.

A person cited for an infraction under this section who pays the civil penalty or forfeits the bond has admitted the infraction and waives the right to a hearing on the issue of commission of the infraction. Such admission may not be used as evidence in any other proceedings.

(e) A ~~Any~~ person who elects to appear before the county court or who is required to so appear waives the limitations of the civil penalty specified in paragraph (a). The court, after a hearing, shall make a determination as to whether an infraction has been committed. If the commission of the infraction is proved, the court shall impose a civil penalty of $500.

(f) At a hearing under this subsection, the commission of a charged infraction must be proved by the greater weight of the evidence.

(g) A person who is found by the hearing official to have committed an infraction may appeal that finding to the circuit court.

(h) A ~~Any~~ person who has not posted bond and who fails either to pay the fine specified in paragraph (a) within 30 days after receipt of the citation or to appear before the court commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

Section 16. Subsection (3) of section 376.07, Florida Statutes, is amended to read:

376.07 Regulatory powers of department; penalties for inadequate booming by terminal facilities.—

(3) The department shall not require vessels to maintain discharge prevention gear, holding tanks, and containment gear which exceed federal requirements. However, a terminal facility transferring heavy oil to or from a vessel with a heavy oil storage capacity greater than 10,000 gallons shall be required, considering existing weather and tidal conditions, to adequately boom or seal off the transfer area during a transfer, including, but not limited to, a bunkering operation, to minimize the escape of such pollutants from the containment area. As used in this subsection, the term "adequate booming" means booming with proper containment equipment which is employed and located for the purpose of preventing, for the most likely discharge, as much of the pollutant as possible from escaping out of the containment area.

(a) The owner or operator of a terminal facility involved in the transfer of such pollutant to or from a vessel which is

not adequately boomed commits a noncriminal infraction and shall be cited for such infraction. The civil penalty for such an infraction shall be $2,500, except as otherwise provided in this section.

(b) A ~~Any~~ person cited for an infraction under this section may:

1. Pay the civil penalty;

2. Post bond equal to the amount of the applicable civil penalty; or

3. Sign and accept a citation indicating a promise to appear before the county court.

The department employee ~~officer~~ authorized to issue these citations may indicate on the citation the time and location of the scheduled hearing and shall indicate the applicable civil penalty.

(c) A ~~Any~~ person who willfully refuses to post bond or accept and sign a citation commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(d) After compliance with subparagraph (b)2. or subparagraph (b)3., a ~~any~~ person charged with a noncriminal infraction under this section may:

1. Pay the civil penalty, either by mail or in person, within 30 days after the date of receiving the citation; or

2. If the person has posted bond, forfeit the bond by not appearing at the designated time and location.

A person cited for an infraction under this section who pays the

civil penalty or forfeits the bond has admitted the infraction and waives the right to a hearing on the issue of commission of the infraction. Such admission may not be used as evidence in any other proceedings.

(e) A ~~Any~~ person who elects to appear before the county court or who is required to appear waives the limitations of the civil penalty specified in paragraph (a). The issue of whether an infraction has been committed and the severity of the infraction shall be determined by a hearing official at a hearing. If the commission of the infraction is proved by the greater weight of the evidence, the court shall impose a civil penalty of $2,500. If the court determines that the owner or operator of the terminal facility failed to deploy any boom equipment during such a transfer, including, but not limited to, a bunkering operation, the civil penalty shall be $5,000.

(f) A person who is found by the hearing official to have committed an infraction may appeal that finding to the circuit court.

(g) A ~~Any~~ person who has not posted bond and who fails either to pay the civil penalty specified in paragraph (a) within 30 days after receipt of the citation or to appear before the court commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

Section 17. Subsection (2) of section 376.071, Florida Statutes, is amended to read:

376.071 Discharge contingency plan for vessels.—

(2)(a) A ~~Any~~ master of a vessel that ~~which~~ violates subsection (1) commits a noncriminal infraction and shall be

cited for such infraction. The civil penalty for such an infraction shall be $5,000, except as otherwise provided in this subsection.

(b) A ~~Any~~ person charged with a noncriminal infraction under this section may:

1. Pay the civil penalty;

2. Post bond equal to the amount of the applicable civil penalty; or

3. Sign and accept a citation indicating a promise to appear before the county court for the county in which the violation occurred or the county closest to the location at which the violation occurred.

The department employee ~~officer~~ authorized to issue these citations may indicate on the citation the time and location of the scheduled hearing and shall indicate the applicable civil penalty.

(c) A ~~Any~~ person who willfully refuses to post bond or accept and sign a citation commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(d) After complying with the provisions of subparagraph (b)2. or subparagraph (b)3., a ~~any~~ person charged with a noncriminal infraction under this section may:

1. Pay the civil penalty, either by mail or in person, within 30 days after the date of receiving the citation; or

2. If the person has posted bond, forfeit the bond by not appearing at the designated time and location.

A person cited for an infraction under this section who pays the civil penalty or forfeits the bond has admitted the infraction and waives the right to a hearing on the issue of commission of the infraction. Such admission may not be used as evidence in any other proceedings.

(e) A ~~Any~~ person who elects to appear before the county court or who is required to appear waives the limitations of the civil penalty specified in paragraph (a). The court, after a hearing, shall make a determination as to whether an infraction has been committed. If the commission of the infraction is proved, the court shall impose a civil penalty of $5,000.

(f) At a hearing under this subsection, the commission of a charged infraction must be proved by the greater weight of the evidence.

(g) A person who is found by the hearing official to have committed an infraction may appeal that finding to the circuit court.

(h) A ~~Any~~ person who has not posted bond and who fails either to pay the civil penalty specified in paragraph (a) within 30 days after receipt of the citation or to appear before the court commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

Section 18. Subsection (4) of section 376.16, Florida Statutes, is amended to read:

376.16 Enforcement and penalties.—

(4) A ~~Any~~ person charged with a noncriminal infraction pursuant to subsection (2) or subsection (3) may:

(a) Pay the civil penalty;

(b) Post a bond equal to the amount of the applicable civil penalty; or

(c) Sign and accept a citation indicating a promise to appear before the county court.

The department employee ~~officer~~ authorized to issue these citations may indicate on the citation the time and location of the scheduled hearing and shall indicate the applicable civil penalty.

Section 19. Paragraph (q) is added to subsection (4) of section 376.3071, Florida Statutes, to read:

376.3071 Inland Protection Trust Fund; creation; purposes; funding.—

(4) USES.—Whenever, in its determination, incidents of inland contamination related to the storage of petroleum or petroleum products may pose a threat to the environment or the public health, safety, or welfare, the department shall obligate moneys available in the fund to provide for:

(q) Enforcement of this section and ss. 376.30-376.317 by the Fish and Wildlife Conservation Commission. The department shall disburse moneys to the commission for such purpose.

The Inland Protection Trust Fund may only be used to fund the activities in ss. 376.30-376.317 except ss. 376.3078 and 376.3079. Amounts on deposit in the Inland Protection Trust Fund in each fiscal year shall first be applied or allocated for the payment of amounts payable by the department pursuant to paragraph (o) under a service contract entered into by the

department pursuant to s. 376.3075 and appropriated in each year by the Legislature prior to making or providing for other disbursements from the fund. Nothing in this subsection shall authorize the use of the Inland Protection Trust Fund for cleanup of contamination caused primarily by a discharge of solvents as defined in s. 206.9925(6), or polychlorinated biphenyls when their presence causes them to be hazardous wastes, except solvent contamination which is the result of chemical or physical breakdown of petroleum products and is otherwise eligible. Facilities used primarily for the storage of motor or diesel fuels as defined in ss. 206.01 and 206.86 shall be presumed not to be excluded from eligibility pursuant to this section.

Section 20. Section 379.3311, Florida Statutes, is amended to read:

379.3311 Police powers of commission and its agents.—

(1) The ~~Fish and Wildlife Conservation~~ commission, the executive director and the executive director's assistants designated by her or him, and each commission ~~wildlife~~ officer are constituted peace officers with the power to make arrests for violations of the laws of this state when committed in the presence of the officer or when committed on lands under the supervision and management of the commission, the department, the Board of Trustees of the Internal Improvement Trust Fund, or the Department of Agricultural and Consumer Services, including state parks, coastal and aquatic managed areas, and greenways and trails. The general laws applicable to arrests by peace officers of this state shall also be applicable to such ~~said~~

director, assistants, and commission ~~wildlife~~ officers. Such persons may enter upon any land or waters of the state for performance of their lawful duties and may take with them any necessary equipment, and such entry does ~~shall~~ not constitute a trespass.

(2) Such officers may ~~shall have power and authority to~~ enforce throughout the state all laws relating to game, nongame birds, fish, and fur-bearing animals and all rules and regulations of the ~~Fish and Wildlife Conservation~~ commission relating to wild animal life, marine life, and freshwater aquatic life, and in connection with such ~~said~~ laws, rules, and regulations, in the enforcement thereof and in the performance of their duties thereunder, to:

(a) Go upon all premises, posted or otherwise;

(b) Execute warrants and search warrants for the violation of such ~~said~~ laws;

(c) Serve subpoenas issued for the examination, investigation, and trial of all offenses against such ~~said~~ laws;

(d) Carry firearms or other weapons, concealed or otherwise, in the performance of their duties;

(e) Arrest upon probable cause without warrant any person found in the act of violating any such ~~of the provisions of said~~ laws or, in pursuit immediately following such violations, to examine any person, boat, conveyance, vehicle, game bag, game coat, or other receptacle for wild animal life, marine life, or freshwater aquatic life, or any camp, tent, cabin, or roster, in the presence of any person stopping at or belonging to such camp, tent, cabin, or roster, when such ~~said~~ officer has reason

to believe, and has exhibited her or his authority and stated to the suspected person in charge the officer's reason for believing, that any of the aforesaid laws have been violated at such camp;

(f) Secure and execute search warrants and in pursuance thereof to enter any building, enclosure, or car and to break open, when found necessary, any apartment, chest, locker, box, trunk, crate, basket, bag, package, or container and examine the contents thereof;

(g) Seize and take possession of all wild animal life, marine life, or freshwater aquatic life taken or in possession or under control of, or shipped or about to be shipped by, any person at any time in any manner contrary to such ~~said~~ laws.

(3) It is unlawful for any person to resist an arrest authorized by this section or in any manner to interfere, either by abetting, assisting such resistance, or otherwise interfering with such ~~said~~ executive director, assistants, or commission ~~wildlife~~ officers while engaged in the performance of the duties imposed upon them by law or regulation of the ~~Fish and Wildlife Conservation~~ commission, the department, the Board of Trustees of the Internal Improvement Trust Fund, or the Department of Agriculture and Consumer Services.

(4) Upon final disposition of any alleged offense for which a citation for any violation of this chapter or the rules of the commission has been issued, the court shall, within 10 days after the final disposition of the action, certify the disposition to the commission.

Section 21. Section 379.3312, Florida Statutes, is amended

to read:

379.3312 Powers of arrest by agents of ~~Department of Environmental Protection or Fish and Wildlife Conservation~~ commission.—Any certified law enforcement officer of the ~~Department of Environmental Protection or the Fish and Wildlife Conservation~~ commission, upon receiving information, relayed to her or him from any law enforcement officer stationed on the ground, on the water, or in the air, that a driver, operator, or occupant of any vehicle, boat, or airboat has violated any section of chapter 327, chapter 328, or this chapter, or s. 597.010 or s. 597.020, may arrest the driver, operator, or occupant for violation of <u>such</u> ~~said~~ laws when reasonable and proper identification of the vehicle, boat, or airboat and reasonable and probable grounds to believe that the driver, operator, or occupant has committed or is committing any such offense have been communicated to the arresting officer by the other officer stationed on the ground, on the water, or in the air.

Section 22. Subsection (1) of section 379.3313, Florida Statutes, is amended to read:

379.3313 Powers of commission law enforcement officers.—

(1) Law enforcement officers of the commission are constituted law enforcement officers of this state with full power to investigate and arrest for any violation of the laws of this state and the rules of the commission<u>, the department, the Board of Trustees of the Internal Improvement Trust Fund, and the Department of Agriculture and Consumer Services</u> under their jurisdiction. The general laws applicable to arrests by peace

officers of this state shall also be applicable to law enforcement officers of the commission. Such law enforcement officers may enter upon any land or waters of the state for performance of their lawful duties and may take with them any necessary equipment, and such entry will not constitute a trespass. It is lawful for any boat, motor vehicle, or aircraft owned or chartered by the commission or its agents or employees to land on and depart from any of the beaches or waters of the state. Such law enforcement officers have the authority, without warrant, to board, inspect, and search any boat, fishing appliance, storage or processing plant, fishhouse, spongehouse, oysterhouse, or other warehouse, building, or vehicle engaged in transporting or storing any fish or fishery products. Such authority to search and inspect without a search warrant is limited to those cases in which such law enforcement officers have reason to believe that fish or any saltwater products are taken or kept for sale, barter, transportation, or other purposes in violation of laws or rules adopted ~~promulgated~~ under this law. ~~Any~~ Such law enforcement officers ~~officer~~ may at any time seize or take possession of any saltwater products or contraband which have been unlawfully caught, taken, or processed or which are unlawfully possessed or transported in violation of any of the laws of this state or any rule of the commission. Such law enforcement officers may arrest any person in the act of violating ~~any of the provisions of~~ this law, the rules of the commission, or any of the laws of this state. It is ~~hereby declared~~ unlawful for a ~~any~~ person to resist such arrest or in any manner interfere, either by abetting or assisting such

resistance or otherwise interfering, with any such law enforcement officer while engaged in the performance of the duties imposed upon him or her by law or rule of the commission.

Section 23. Subsections (1) and (2) of section 379.333, Florida Statutes, are amended to read:

379.333 Arrest by officers of the ~~Fish and Wildlife Conservation~~ commission; recognizance; cash bond; citation.—

(1) In all cases of arrest by officers of the ~~Fish and Wildlife Conservation~~ commission ~~and the Department of Environmental Protection~~, the person arrested shall be delivered forthwith by such ~~said~~ officer to the sheriff of the county, or shall obtain from such person arrested a recognizance or, if deemed necessary, a cash bond or other sufficient security conditioned for her or his appearance before the proper tribunal of such county to answer the charge for which the person has been arrested.

(2) All officers of the commission shall ~~and the department are hereby directed to~~ deliver all bonds accepted and approved by them to the sheriff of the county in which the offense is alleged to have been committed.

Section 24. Subsection (1) of section 379.341, Florida Statutes, is amended to read:

379.341 Disposition of illegal fishing devices; exercise of police power.—

(1) In all cases of arrest and conviction for use of illegal nets or traps or fishing devices, as provided in this chapter, such illegal net, trap, or fishing device is declared to be a nuisance and shall be seized and carried before the

court having jurisdiction of such offense and such ~~said~~ court shall order such illegal trap, net, or fishing device forfeited to the commission immediately after trial and conviction of the person in whose possession they were found. When any illegal net, trap, or fishing device is found in the fresh waters of the state, and its ~~the~~ owner is ~~of same shall~~ not ~~be~~ known to the officer finding it ~~the same~~, such officer shall immediately procure from the county court judge an order forfeiting such ~~said~~ illegal net, trap, or fishing device to the commission. The commission may destroy such illegal net, trap, or fishing device, if in its judgment such ~~said~~ net, trap, or fishing device is not of value in the work of the commission ~~department~~.

Section 25. Section 379.343, Florida Statutes, is amended to read:

379.343 Rewards.—The Fish and Wildlife Conservation Commission is authorized to offer rewards in amounts of up to $500 to any person furnishing information leading to the arrest and conviction of any person who has inflicted or attempted to inflict bodily injury upon any commission ~~wildlife~~ officer engaged in the enforcement of the provisions of this chapter or the rules and regulations of the Fish and Wildlife Conservation Commission.

Section 26. Subsection (2) of section 403.413, Florida Statutes, is amended to read:

403.413 Florida Litter Law.—

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

(f) ~~(a)~~ "Litter" means any garbage; rubbish; trash; refuse; can; bottle; box; container; paper; tobacco product; tire;

appliance; mechanical equipment or part; building or construction material; tool; machinery; wood; motor vehicle or motor vehicle part; vessel; aircraft; farm machinery or equipment; sludge from a waste treatment facility, water supply treatment plant, or air pollution control facility; or substance in any form resulting from domestic, industrial, commercial, mining, agricultural, or governmental operations.

(h) ~~(b)~~ "Person" means any individual, firm, sole proprietorship, partnership, corporation, or unincorporated association.

(e) ~~(c)~~ "Law enforcement officer" means any officer of the Florida Highway Patrol, a county sheriff's department, a municipal law enforcement department, a law enforcement department of any other political subdivision, ~~the department,~~ or the Fish and Wildlife Conservation Commission. In addition, and solely for the purposes of this section, "law enforcement officer" means any employee of a county or municipal park or recreation department designated by the department head as a litter enforcement officer.

(a) ~~(d)~~ "Aircraft" means a motor vehicle or other vehicle that is used or designed to fly but does not include a parachute or any other device used primarily as safety equipment.

(b) ~~(e)~~ "Commercial purpose" means for the purpose of economic gain.

(c) ~~(f)~~ "Commercial vehicle" means a vehicle that is owned or used by a business, corporation, association, partnership, or sole proprietorship or any other entity conducting business for a commercial purpose.

(d) ~~(g)~~ "Dump" means to dump, throw, discard, place, deposit, or dispose of.

(g) ~~(h)~~ "Motor vehicle" means an automobile, motorcycle, truck, trailer, semitrailer, truck tractor, or semitrailer combination or any other vehicle that is powered by a motor.

(i) "Vessel" means a boat, barge, or airboat or any other vehicle used for transportation on water.

Section 27. Paragraph (d) of subsection (1) of section 784.07, Florida Statutes, is amended to read:

784.07 Assault or battery of law enforcement officers, firefighters, emergency medical care providers, public transit employees or agents, or other specified officers; reclassification of offenses; minimum sentences.—

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

(d) "Law enforcement officer" includes a law enforcement officer, a correctional officer, a correctional probation officer, a part-time law enforcement officer, a part-time correctional officer, an auxiliary law enforcement officer, and an auxiliary correctional officer, as those terms are respectively defined in s. 943.10, and any county probation officer; an employee or agent of the Department of Corrections who supervises or provides services to inmates; an officer of the Parole Commission; a federal law enforcement officer as defined in s. 901.1505; and law enforcement personnel of the Fish and Wildlife Conservation Commission~~, the Department of Environmental Protection,~~ or the Department of Law Enforcement.

Section 28. Section 843.08, Florida Statutes, is amended to read:

843.08 Falsely personating officer, etc.—A person who falsely assumes or pretends to be a sheriff, officer of the Florida Highway Patrol, officer of the Fish and Wildlife Conservation Commission, ~~officer of the Department of Environmental Protection,~~ officer of the Department of Transportation, officer of the Department of Financial Services, officer of the Department of Corrections, correctional probation officer, deputy sheriff, state attorney or assistant state attorney, statewide prosecutor or assistant statewide prosecutor, state attorney investigator, coroner, police officer, lottery special agent or lottery investigator, beverage enforcement agent, or watchman, or any member of the Parole Commission and any administrative aide or supervisor employed by the commission, or any personnel or representative of the Department of Law Enforcement, or a federal law enforcement officer as defined in s. 901.1505, and takes upon himself or herself to act as such, or to require any other person to aid or assist him or her in a matter pertaining to the duty of any such officer, commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.~~,~~ However, a person who falsely personates any such officer during the course of the commission of a felony commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.~~; except that~~ If the commission of the felony results in the death or personal injury of another human being, the person commits a felony of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Section 29. Section 843.085, Florida Statutes, is amended

to read:

843.085 Unlawful use of police badges or other indicia of authority.—It is unlawful for any person:

(1) Unless appointed by the Governor pursuant to chapter 354, authorized by the appropriate agency, or displayed in a closed or mounted case as a collection or exhibit, to wear or display any authorized indicia of authority, including any badge, insignia, emblem, identification card, or uniform, or any colorable imitation thereof, of any federal, state, county, or municipal law enforcement agency, or other criminal justice agency as now or hereafter defined in s. 943.045, which could deceive a reasonable person into believing that such item is authorized by any of the agencies described above for use by the person displaying or wearing it, or which displays in any manner or combination the word or words "police," "patrolman," "agent," "sheriff," "deputy," "trooper," "highway patrol," "commission officer," "Wildlife Officer," "Marine Patrol Officer," "state attorney," "public defender," "marshal," "constable," or "bailiff," which could deceive a reasonable person into believing that such item is authorized by any of the agencies described above for use by the person displaying or wearing it.

(2) To own or operate a motor vehicle marked or identified in any manner or combination by the word or words "police," "patrolman," "sheriff," "deputy," "trooper," "highway patrol," "commission officer," "Wildlife Officer," "Marine Patrol Officer," "marshal," "constable," or "bailiff," or by any lettering, marking, or insignia, or colorable imitation thereof, including, but not limited to, stars, badges, or shields,

officially used to identify the vehicle as a federal, state, county, or municipal law enforcement vehicle or a vehicle used by a criminal justice agency as now or hereafter defined in s. 943.045, which could deceive a reasonable person into believing that such vehicle is authorized by any of the agencies described above for use by the person operating the motor vehicle, unless such vehicle is owned or operated by the appropriate agency and its use is authorized by such agency, or the local law enforcement agency authorizes the use of such vehicle or unless the person is appointed by the Governor pursuant to chapter 354.

(3) To sell, transfer, or give away the authorized badge, or colorable imitation thereof, including miniatures, of any criminal justice agency as now or hereafter defined in s. 943.045, or bearing in any manner or combination the word or words "police," "patrolman," "sheriff," "deputy," "trooper," "highway patrol," <u>"commission officer,"</u> "Wildlife Officer," "Marine Patrol Officer," "marshal," "constable," "agent," "state attorney," "public defender," or "bailiff," which could deceive a reasonable person into believing that such item is authorized by any of the agencies described above, except for agency purchases or upon the presentation and recordation of both a driver's license and other identification showing any transferee to actually be a member of such criminal justice agency or unless the person is appointed by the Governor pursuant to chapter 354. A transferor of an item covered by this subsection is required to maintain for 2 years a written record of such transaction, including records showing compliance with this subsection, and if such transferor is a business, it shall make

such records available during normal business hours for inspection by any law enforcement agency having jurisdiction in the area where the business is located.

(4) Nothing in this section shall prohibit a fraternal, benevolent, or labor organization or association, or their chapters or subsidiaries, from using the following words, in any manner or in any combination, if those words appear in the official name of the organization or association: "police," "patrolman," "sheriff," "deputy," "trooper," "highway patrol," "commission officer," "Wildlife Officer," "Marine Patrol Officer," "marshal," "constable," or "bailiff."

(5) Violation of any provision of this section is a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083. This section is cumulative to any law now in force in the state.

Section 30. Section 870.04, Florida Statutes, is amended to read:

870.04 Specified officers to disperse riotous assembly.—If any number of persons, whether armed or not, are unlawfully, riotously, or tumultuously assembled in any county, city, or municipality, the sheriff or the sheriff's deputies, or the mayor, or any commissioner, council member, alderman, or police officer of the ~~said~~ city or municipality, or any officer or member of the Florida Highway Patrol, or any officer or agent of the Fish and Wildlife Conservation Commission~~, Department of Environmental Protection~~, any ~~or~~ beverage enforcement agent, any personnel or representatives of the Department of Law Enforcement or its successor, or any other peace officer, shall

go among the persons so assembled, or as near to them as may be done with safety, and shall in the name of the state command all the persons so assembled immediately and peaceably to disperse.~~;~~ ~~and~~ If such persons do not thereupon immediately and peaceably disperse, such ~~said~~ officers shall command the assistance of all such persons in seizing, arresting, and securing such persons in custody.~~; and~~ If any person present being so commanded to aid and assist in seizing and securing such rioter or persons so unlawfully assembled, or in suppressing such riot or unlawful assembly, refuses or neglects to obey such command, or, when required by such officers to depart from the place, refuses and neglects to do so, the person shall be deemed one of the rioters or persons unlawfully assembled, and may be prosecuted and punished accordingly.

Section 31. Paragraphs (c) through (n) of subsection (6) of section 932.7055, Florida Statutes, are redesignated as paragraphs (b) through (m), respectively, and present paragraph (b) of that subsection is amended to read:

932.7055 Disposition of liens and forfeited property.—

(6) If the seizing agency is a state agency, all remaining proceeds shall be deposited into the General Revenue Fund. However, if the seizing agency is:

~~(b) The Department of Environmental Protection, the proceeds accrued pursuant to the provisions of the Florida Contraband Forfeiture Act shall be deposited into the Internal Improvement Trust Fund.~~

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1417 State Investments
SPONSOR(S): Oliva
TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 880

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Government Operations Subcommittee	11 Y, 4 N, As CS	Meadows	Williamson
2) Finance & Tax Committee	18 Y, 5 N	Wilson	Langston
3) State Affairs Committee		Meadows	Hamby

SUMMARY ANALYSIS

The State Board of Administration (SBA) is created in Art. IV, s. 4(e) of the Florida Constitution. The SBA members are the Governor, the Chief Financial Officer, and the Attorney General. The SBA derives its powers to oversee state funds from Art. XII, s. 9 of the Florida Constitution. The SBA has responsibility for managing investments for the Florida Retirement System (FRS) Pension Plan and for administering the FRS Investment Plan.

The SBA's ability to invest the FRS assets is governed by a "legal list" of investments provided in current law. The "legal list" of guidelines specific to the investment of FRS Pension Plan assets includes the ability of the SBA to invest 10 percent of any fund in alternative investments.

CS/HB 1417 authorizes the SBA to invest up to 20 percent of any fund in alternative investments, up from 10 percent.

The bill should have no direct impact on state or local government revenues or expenditures.

The bill provides for an effective date of July 1, 2012.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

The State Board of Administration (SBA) is established by Article IV, s. 4(e) of the Florida Constitution, and is composed of the Governor as Chair, the Chief Financial Officer as Treasurer, and the Attorney General as Secretary. The SBA members are commonly referred to as "Trustees." The SBA derives its powers to oversee state funds from Art. XII, s. 9 of the Florida Constitution.

The SBA has responsibility for managing investments for the Florida Retirement System (FRS) Pension Plan and for administering the FRS Investment Plan, which represent approximately $125.1 billion (85 percent) of the $147.5 billion in assets managed by the SBA, as of November 30, 2011.[1] The SBA also manages 33 other investment portfolios, with combined assets of $21.7 billion[2], including the Florida Hurricane Catastrophe Fund, the Florida Lottery Fund, the Florida Pre-Paid College Plan, and various debt-service accounts for state bond issues.

The SBA must follow fiduciary standards of care when investing assets, subject to certain limitations.[3] A six-member Investment Advisory Council provides recommendations on investment policy, strategy, and procedures.[4]

The SBA's ability to invest the FRS assets is governed by s. 215.47, F.S., which provides for a "legal list" of the types of investments and for how much of the total fund may be invested in each investment type. The "legal list" of guidelines[5] specific to the investment of FRS Pension Plan assets includes the authorization to invest no more than 10 percent of assets in alternative investments[6], alternative investment vehicles[7], and other non publicly-traded investments.[8] The cap on alternative investments was last changed in 2008, when it was raised from five percent to 10 percent.[9]

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[1] *See* State Board of Administration of Florida, *Monthly Performance Report to the Trustees*, November 30, 2011, *issued* December 31, 2011, at 7 (on file with the Government Operations Subcommittee).
[2] *Id.*
[3] *See* s. 215.44, F.S.
[4] *See* s. 215.444, F.S.
[5] The legal list of guidelines specific to the investment of FRS Pension Plan assets includes:
- No more than 80 percent of assets should be invested in domestic common stocks.
- No more than 75 percent of assets should be invested in internally managed common stocks.
- No more than three percent of equity assets should be invested in the equity securities of any one corporation, except when the securities of that corporation are included in any broad equity index or with approval of the board; and in such case, no more than 10 percent of equity assets can be invested in the equity securities of any one corporation.
- No more than 80 percent of assets should be placed in corporate fixed income securities.
- No more than 25 percent of assets should be invested in notes secured by FHA-insured or VA-guaranteed first mortgages on Florida real property, or foreign government general obligations with a 25-year default-free history.
- No more than 20 percent of assets should be invested in foreign corporate or commercial securities or obligations.
- No more than 35 percent of assets should be invested in foreign securities.
- No more than 10 percent of assets should be invested in alternative investments, alternative investment vehicles, and other non publicly-traded investments.

[6] Section 215.4401(3)(a)1., F.S., defines an "alternative investment" as "an investment by the State Board of Administration in a private equity fund, venture fund, hedge fund, or distress fund or a direct investment in a portfolio company through an investment manager."
[7] Section 215.4401(3)(a)2., F.S., defines an "alternative investment vehicle" as "the limited partnership, limited liability company, or similar legal structure or investment manager through which the State Board of Administration invests in a portfolio company."
[8] *See* s. 215.47, F.S.
[9] *See* chapter 2008-31, L.O.F.

Currently, the SBA has nine percent of its funds invested in alternative investments.[10] Current alternative investments include strategic investments[11] and private equity[12].[13] As of November 30, 2011, the pension plan had $5.7 billion in private equity, and $4.9 billion in strategic investments.[14] The SBA's current allocation to alternative investments is relatively low compared to other large and leading public and corporate pension plans.[15]

Hewitt EnnisKnupp[16] (HEK) performed asset liability studies on the SBA's investment strategy in 2010 and 2011. The recommendations from the studies provided by HEK would require the SBA to have increased authority to allocate funds to alternative investments.[17] HEK's recommendations to increase the allocation to alternative investments were approved by the SBA Trustees and the SBA Investment Advisory Council in both 2010 and 2011.[18]

Effect of Proposed Changes

The bill authorizes the SBA to invest up to 20 percent of any fund in alternative investments, up from the current 10 percent.

B. SECTION DIRECTORY:

Section 1: Amends s. 215.47, F.S., to increase the amount of money that may be invested in alternative investments by the SBA.

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

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None.

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[10] Information provided by electronic mail on February 2, 2012, by Mr. Ron Poppell, Senior Defined Contribution Programs Officer, State Board of Administration (on file with the Government Operations Subcommittee).

[11] Strategic investments may include: debt oriented funds, infrastructure, absolute return funds, long and short equity, global macro and multi-strategy funds, commodities, and timberland. Definition provided by electronic mail, on February 2, 2012, by Mr. Ron Poppell, Senior Defined Contribution Programs Officer, State Board of Administration (on file with the Government Operations Subcommittee).

[12] Private equity is investment strategies that provide working capital to companies in order to nurture expansion, new product development, or the restructuring of operations, management, or ownership. Definition provided by electronic mail, on February 2, 2012, by Mr. Ron Poppell, Senior Defined Contribution Programs Officer, State Board of Administration (on file with the Government Operations Subcommittee).

[13] Information provided by electronic mail, on February 2, 2012, by Mr. Ron Poppell, Senior Defined Contribution Programs Officer, State Board of Administration (on file with the Government Operations Subcommittee).

[14] *See* State Board of Administration of Florida, *Monthly Performance Report to the Trustees*, November 30, 2011, *issued* December 31, 2011, at 7 (on file with the Government Operations Subcommittee).

[15] Analysis of HB 1417, State Board of Administration, January 10, 2012, at 2 (on file with the Government Operations Subcommittee).

[16] Hewitt EnnisKnupp is an advisor to institutional investors, including numerous large public pension funds such as the one overseen by the SBA.

[17] Analysis of HB 1417, State Board of Administration, January 10, 2012, at 2 (on file with the Government Operations Subcommittee).

[18] *Id.*

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The increase in alternative investment capacity will allow for greater access to state investments for portfolio investment managers.

D. FISCAL COMMENTS:

The bill may have impacts, unknown at this time, on returns earned by the SBA on its invested funds.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

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

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On February 6, 2012, the Government Operations Subcommittee passed a proposed committee substitute for House Bill 1417. The committee substitute removes from the bill changes made to the Lawton Chiles Endowment Fund.

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

A bill to be entitled

An act relating to state investments; amending s. 215.47, F.S.; increasing the amount of money that may be invested in alternative investments by the State Board of Administration; providing an effective date.

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

Section 1. Subsection (15) of section 215.47, Florida Statutes, is amended to read:

215.47 Investments; authorized securities; loan of securities.—Subject to the limitations and conditions of the State Constitution or of the trust agreement relating to a trust fund, moneys available for investments under ss. 215.44-215.53 may be invested as follows:

(15) With no more, in the aggregate, than 20 ~~10~~ percent of any fund in alternative investments~~, as defined in s. 215.4401(3)(a)1.,~~ through participation in an alternative investment vehicle as those terms are ~~the vehicles~~ defined in s. 215.4401(3)(a)~~2.~~, or in securities or investments that are not publicly traded and ~~are~~ not otherwise authorized by this section.

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1479 State Poet Laureate
SPONSOR(S): Nelson
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Government Operations Subcommittee	12 Y, 0 N	Naf	Williamson
2) Transportation & Economic Development Appropriations Subcommittee	15 Y, 0 N	Rayman	Davis
3) State Affairs Committee		Naf	Hamby

SUMMARY ANALYSIS

The position of State Poet Laureate was created by governor's proclamation in 1928, but is not addressed in current statutory law. HB 1479 creates the position of State Poet Laureate in law and provides requirements for the selection, terms of service, and duties of the State Poet Laureate.

The bill assigns the Florida Council on Arts and Culture certain responsibilities relating to the promotion of poetry and to the State Poet Laureate. It also grants rulemaking authority for implementation of provisions relating to the State Poet Laureate to the Department of State.

The bill has an insignificant fiscal impact on state government.

The bill provides an effective date of July 1, 2012.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Florida Council on Arts and Culture

The Florida Council on Arts and Culture is an advisory body within the Department of State.[1] Its duties are to:

- Advocate for arts and culture;
- Advise the Secretary of State in matters pertaining to arts and cultural programs and grants administered by the Division of Cultural Affairs;[2]
- Encourage the participation in and appreciation of arts and culture;
- Encourage and assist freedom of artistic expression;
- Advise the Secretary of State in matters concerning the awarding of grants for arts and culture; and
- Review applications for grants for the acquisition, renovation, or construction of cultural facilities and recommend a priority for the receipt of such grants.[3]

State Poets Laureate

Generally

As of November 2011, 42 states had a State Poet Laureate position.[4] Duties of such poets laureate vary, but all involve the promotion of reading, writing, and poetry appreciation.[5] Whether the poet laureate receives compensation or holds a term-limited or lifetime appointment also varies from state to state.[6]

In Florida

In 1928, the position of Poet Laureate of the State of Florida was established by governor's proclamation.[7] The position is a lifetime appointment.[8] Three poet laureates have been appointed since the inception of the position.[9]

Current statutory law does not contain provisions relating to a state poet laureate.

Effect of Proposed Changes

Summary

The bill creates the position of State Poet Laureate in law and provides requirements for the selection, terms of service, and duties of the State Poet Laureate.

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[1] *See* s. 265.285(1)(a), F.S.

[2] The Division of Cultural Affairs of the Department of State is the state arts administrative agency. Among its duties are the acceptance and administration of state and federal funds provided for the fine arts, grants, and certain programs. *See* s. 265.284, F.S.

[3] *See* s. 265.285(2), F.S.

[4] *See* "Current State Poets Laureate," Library of Congress, http://www.loc.gov/rr/main/poets/current.html (last visited January 27, 2012).

[5] *See* Department of State bill analysis (January 26, 2012) (On file with the Government Operations Subcommittee).

[6] *Id.*

[7] *See* "U.S. State Poets Laureate, Florida," Library of Congress, http://www.loc.gov/rr/main/poets/florida.html (last visited January 27, 2012).

[8] *See id.* and "Florida's Poet Laureate," Florida Division of Cultural Affairs, http://www.florida-arts.org/programs/poetlaureate/ (last visited January 27, 2012).

[9] The current state poet laureate is Edmund Skellings, who was appointed by Governor Robert Graham in 1980, after a competition and selection by an anonymous national panel. *See id.*

The bill assigns certain responsibilities relating to poetry and to the State Poet Laureate to the Florida Council on Arts and Culture (council). It also grants rulemaking authority for implementation of provisions relating to the State Poet Laureate to the Department of State (department).

Duties of the Florida Council on Arts and Culture
The bill amends the current duties of the council to also require the council to:

- Promote the reading, writing, and appreciation of poetry throughout the state; and
- Accept nominations and recommend nominees for appointment as the State Poet Laureate.

Establishment, Selection, and Duties of the State Poet Laureate
The bill establishes the honorary position of State Poet Laureate within the department.

The bill requires the council to accept nominations for State Poet Laureate. The council must solicit nominations from a broad array of literary sources and individuals, including, but not limited to:

- Faculty of college and university literature departments;
- Literary organizations, societies, and centers;
- Publishers and editors of books of poetry; and
- The state poet laureates of any state.

The bill also requires the council to recommend at least three nominees to the Secretary of State. Each nominee must be:

- A permanent resident of the state;
- A public literary poet who has significant standing inside and outside of the state; and
- Willing and physically able to perform the duties of the State Poet Laureate, which may include, but are not limited to, engaging in outreach and mentoring for the benefit of schools and communities throughout the state and performing readings of his or her own poetry, as requested.

The bill requires the Secretary of State to submit at least two of the council's nominees to the Governor. The Governor must appoint one such nominee the State Poet Laureate.

Terms of Service of the State Poet Laureate
The bill specifies that the State Poet Laureate will serve a term of 4 years, which runs concurrently with the term of the appointing Governor, and which runs until the successor of the State Poet Laureate is appointed. A vacancy for the remainder of the unexpired term must be filled in the same manner as the original appointment.

The bill also provides that each of the state's poets laureate appointed before the effective date of the bill and each State Poet Laureate appointed under the bill's provisions, upon the appointment of his or her successor, will be designated a State Poet Laureate Emeritus in recognition of his or her service to the state.

The bill specifies that the State Poet Laureate and State Poets Laureate Emeritus serve without compensation.

Rulemaking Authority
The bill authorizes the department to adopt rules to implement provisions relating to the position of State Poet Laureate. It also implicitly requires the department to adopt rules governing nominations for the position by the council and setting out the duties of the State Poet Laureate.

The bill provides an effective date of July 1, 2012.

B. SECTION DIRECTORY:

Section 1. Amends s. 265.285, F.S., relating to duties of the Florida Council on Arts and Culture.

Section 2. Creates s. 265.2863, F.S., relating to a State Poet Laureate.

Section 3. 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:

   See FISCAL COMMENTS.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The bill adds duties relating to promotion of poetry and selection of the State Poet Laureate for the Florida Council on Arts and Culture, and creates duties relating to the selection of the State Poet Laureate for the Department of State and for the Governor. It also authorizes the department to adopt rules to implement provisions relating to the State Poet Laureate. Department staff states costs incurred by solicitation and review of nominations and by rule promulgation will be absorbed by the agency within existing resources.[10] It is likely that costs incurred by the Governor to appoint each State Poet Laureate will also be absorbed within existing resources.

The bill does not compensate the State Poet Laureate for expenses.

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:

A rule is an agency statement of general applicability that interprets, implements, or prescribes law or policy, including the procedure and practice requirements of an agency as well as certain types of

[10] *See* Department of State bill analysis (January 26, 2012) (On file with the Government Operations Subcommittee).

forms.[11] Rulemaking authority is delegated by the Legislature through statute and authorizes an agency to "adopt, develop, establish, or otherwise create" a rule. Because legislative power involves the exercise of policy-related discretion over the content of law,[12] any discretion given an agency to implement a law must be "pursuant to some minimal standards and guidelines ascertainable by reference to the enactment establishing the program."[13]

The bill provides the Department of State rulemaking authority to implement the provisions relating to the position of State Poet Laureate. The requirements included in the provisions appear to satisfy the threshold of "some minimal standards and guidelines."

C. DRAFTING ISSUES OR OTHER COMMENTS:

The bill does not provide a process by which a State Poet Laureate may be removed from the position for reasons such as misconduct. The Legislature may wish to consider whether such a provision would be appropriate.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.

[11] *See* s. 120.52(16), F.S.; *Sloban v. Florida Board of Pharmacy*, 982 So.2d 26 (Fla. 1st DCA 2008); *Board of Trustees of the Internal Improvement Trust Fund v. Day Cruise Association, Inc.*, 794 So.2d 696 (Fla. 1st DCA 2001).
[12] *See State ex rel. Taylor v. City of Tallahassee*, 177 So.2d 719 (Fla. 1937).
[13] *See Askew v. Cross Key Waterways*, 372 So.2d 913 (Fla. 1978).

A bill to be entitled

An act relating to the State Poet Laureate; amending s. 265.285, F.S.; assigning duties to the Florida Council on Arts and Culture relating to the promotion of poetry and recommendations for the appointment of the State Poet Laureate; creating s. 265.2863, F.S.; creating the honorary position of State Poet Laureate within the Department of State; providing for the acceptance of nominations, the qualifications and recommendation of nominees, and the appointment of the State Poet Laureate; providing terms and the process for filling vacancies; specifying that any former poet laureate becomes a State Poet Laureate Emeritus; providing that the State Poet Laureate and State Poet Laureate Emeritus shall serve without compensation; authorizing the department to adopt rules; providing an effective date.

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

Section 1. Paragraph (h) is added to subsection (2) of section 265.285, Florida Statutes, to read:

265.285 Florida Council on Arts and Culture; membership, duties.—

(2) The council shall:

(h) Promote the reading, writing, and appreciation of poetry throughout the state and accept nominations and recommend

nominees for appointment as the State Poet Laureate under s. 265.2863.

Section 2. Section 265.2863, Florida Statutes, is created to read:

265.2863 State Poet Laureate.—

(1) The honorary position of State Poet Laureate is created within the Department of State.

(2)(a) The Florida Council on Arts and Culture, in accordance with procedures adopted by the department, shall accept nominations for appointment as the State Poet Laureate. The council shall solicit nominations from a broad array of literary sources and individuals, including, but not limited to:

1. Faculty of college and university literature departments.

2. Literary organizations, societies, and centers.

3. Publishers and editors of books of poetry.

4. The state poets laureate of any state.

(b) The council shall recommend to the Secretary of State at least three nominees for appointment as the State Poet Laureate, each of whom must be:

1. A permanent resident of the state;

2. A public literary poet who has significant standing inside and outside of the state; and

3. Willing and physically able to perform the duties of the State Poet Laureate as prescribed by the department, which may include, but are not limited to, engaging in outreach and mentoring for the benefit of schools and communities throughout the state and performing readings of his or her own poetry, as

requested.

(c) The Secretary of State shall, from among the nominees recommended by the council, submit at least two nominees to the Governor. The Governor shall, from among the nominees submitted by the Secretary of State, appoint the State Poet Laureate.

(3) The State Poet Laureate shall serve a term of 4 years, such term to run concurrently with the term of the appointing Governor, and until his or her successor is appointed. A vacancy shall be filled for the remainder of the unexpired term in the same manner as the original appointment.

(4) Each of the state's poets laureate appointed before the effective date of this section and each State Poet Laureate appointed under this section, upon the appointment of his or her successor, shall be designated a State Poet Laureate Emeritus in recognition of his or her service to the state.

(5) The State Poet Laureate and each State Poet Laureate Emeritus shall serve without compensation.

(6) The department may adopt rules to administer this section.

Section 3. This act shall take effect July 1, 2012.