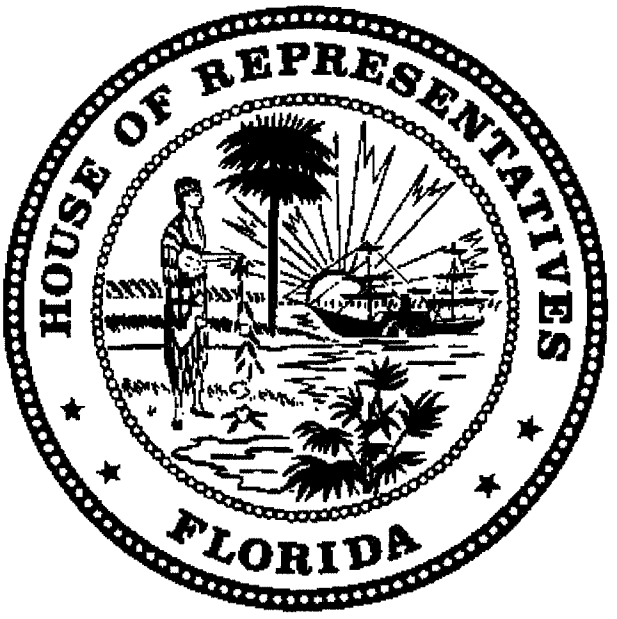

State Affairs Committee

MEETING PACKET

Wednesday, February 8, 2012
8:00 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 08, 2012 08:00 am
End Date and Time:	Wednesday, February 08, 2012 10:30 am
Location:	Webster Hall (212 Knott)
Duration:	2.50 hrs

Consideration of the following bill(s):

CS/CS/HB 157 Water Management Districts by Rulemaking & Regulation Subcommittee, Agriculture & Natural Resources Subcommittee, Porter, Pilon
HB 221 Business Enterprise Opportunities for Wartime Veterans by Nehr
HB 395 Official State Designations by Broxson
CS/CS/HB 421 Limited Certification for Urban Landscape Commercial Fertilizer Application by Community & Military Affairs Subcommittee, Agriculture & Natural Resources Subcommittee, Smith
HB 469 Special Observances by Smith, Burgin
HB 541 Administrative Procedures by Brandes
CS/CS/HB 663 Solid Waste Management Facilities by Agriculture & Natural Resources Appropriations Subcommittee, Agriculture & Natural Resources Subcommittee, Goodson
CS/HB 691 Beach Management by Agriculture & Natural Resources Subcommittee, Frishe
CS/HB 809 Communications Services Taxes by Finance & Tax Committee, Grant
CS/HB 827 Limited Agricultural Associations by Agriculture & Natural Resources Subcommittee, Porter
HB 1105 Special Observances by Perman
HB 1197 Agriculture by Horner
CS/HB 1389 Water Storage and Water Quality Improvements by Agriculture & Natural Resources Subcommittee, Perman
HB 1461 Voter Identification by Gaetz
HB 7003 Environmental Resource Permitting by Agriculture & Natural Resources Subcommittee, Crisafulli

NOTICE FINALIZED on 02/06/2012 16:16 by Love.John

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 157 Water Management Districts
SPONSOR(S): Rulemaking & Regulation Subcommittee, Agriculture & Natural Resources Subcommittee, Porter & Pilon
TIED BILLS: None **IDEN./SIM. BILLS:** SB 560

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

SUMMARY ANALYSIS

Under current law, the state of Florida has regulatory authority over various activities that affect surface waters and wetlands, primarily through the Environmental Resource Permit (ERP) program. The program is implemented jointly by the Department of Environmental Protection (DEP) and the five water management districts (WMDs). Current law also grants the WMDs the authority to implement the water supply and planning policies of the state, and issue permits for the consumptive use of water. Each WMD also is responsible for water resource management and development. Each WMD governing board is required to include in its annual budget the amount needed for the fiscal year to implement water resource development projects, as prioritized in its regional water supply plans. When the geographic area of a project or local government crosses WMD boundaries, the affected WMDs are authorized to enter into an interagency agreement designating one WMD with regulatory responsibilities for the geographic area. However, the WMDs do not have the statutory authority to enter into similar agreements for non-regulatory resource management activities, studies or projects. In addition, a WMD may not fund resource management activities in another WMD even if some benefits inure to it from the activities.

Current law also requires the WMDs to establish minimum flows and levels (MFLs) for priority water bodies to prevent significant harm from water withdrawals. If the existing flow or level of a water body is below or projected in 20 years to fall below established MFLs, then a recovery strategy must be implemented to restore the system to the established MFLs or a prevention strategy implemented to prevent the system from falling below the established MFLs. MFLs are adopted by rule by the WMDs and are subject to challenges under chapter 120, F.S., the Administrative Procedure Act (APA).

The bill provides that when the geographic area of a resource management activity, study, or project crosses WMD boundaries, the affected WMDs are authorized to designate a single affected district by interagency agreement to conduct all or part of the applicable resource management responsibilities under this chapter, not including those regulatory responsibilities that are subject to s. 373.046(6), F.S. The bill also provides that if funding assistance is provided to a resource management activity, study, or project, the WMD providing the funding must ensure that some or all the benefits accrue to the funding WMD. This will not impair any interagency agreement in effect on July 1, 2012.

The bill requires the governing board of a WMD, in determining the effect of a proposed consumptive use of water on the water resources of an adjoining district, to apply, without adopting by rule, the reservations, minimum flows and levels, and recovery or prevention strategies adopted by rule after July 1, 2012, by the adjoining WMD. The bill also provides that the governing board cannot authorize a consumptive use of water that violates any reservation adopted, or any MFL adopted after July 1, 2012, unless the permit is issued in accordance with the recovery or prevention strategy adopted by rule by the adjoining WMD. The WMD may grant a variance from the recovery or prevention strategy if the applicant identifies an alternative strategy to assist with the recovery of or the prevention of harm to a water body. The bill provides that any rule applied pursuant to this subsection that is challenged under the APA, must be defended by the WMD that adopted the rule. This does not apply to and may not be considered for any permit issued before July 1, 2012, including a review of a compliance report submitted pursuant to s. 373.236, F.S. A WMD must consider the reservations, minimum flows and levels, and recovery strategies adopted by rule after July 1, 2012, by the adjoining WMD if a modification of a permit issued prior to July 1, 2012, is requested by the permittee to increase permitted quantities or to transfer of permitted quantities to a new or existing source.

The bill allows the governing board of a WMD to provide group insurance for its employees and the employees of another WMD in the same manner and with the same provisions and limitations authorized for other public employees.

The bill directs all WMDs to jointly develop the water supply development component of a regional water supply plan with the regional water supply authority.

The bill provides that cooperative funding programs are not subject to the rulemaking requirements of chapter 120. However, any portion of an approved program which affects the substantial interests of a party would be subject to the hearing procedures established under section 120.569, F.S.

The bill does not appear to have a fiscal impact on state government. The bill has a potentially positive fiscal impact on WMDs who enter into interagency agreements by reducing the duplication of services and promoting streamlining.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Interagency Agreements

Current Situation

Under chapter 373, F.S., the state has regulatory authority over various activities that affect surface waters and wetlands, primarily through the Environmental Resource Permit (ERP) program. The program is implemented jointly by the Department of Environmental Protection (DEP) and the five water management districts (WMDs)[1]. Operating Agreements between the DEP and the WMDs outline specific responsibilities to each agency for any given application. Under those agreements, the DEP generally reviews and takes actions on applications involving:

- Solid waste, hazardous waste, domestic waste, and industrial waste facilities;
- Mining;
- Power plants, transmission and communication cables and lines, natural gas and petroleum exploration, production, and distribution lines and facilities;
- Docking facilities and attendant structures and dredging that are not part of a larger plan of residential or commercial development;
- Navigational dredging conducted by governmental entities, except when part of a larger project that a District has the responsibility to permit;
- Systems serving only one single-family dwelling unit or residential unit not part of a larger common plan of development;
- Systems located in whole or in part seaward of the coastal construction control line;
- Seaports; and
- Smaller, separate water-related activities not part of a larger plan of development (such as boat ramps, mooring buoys, and artificial reefs).

The WMDs have regulatory authority over reviewing and taking action on all other applications, mostly larger commercial and residential developments. Chapter 373, F.S., also grants the WMDs with the authority to implement the water supply and planning policies of the state, and issue permits for the consumptive use of water. Each WMD is also responsible for water resource management and development. Section 373.705, F.S., provides that it is the intent of the Legislature that WMDs take the lead in identifying and implementing water resource development projects, and be responsible for securing necessary funding for regionally significant water resource development projects. The WMDs are encouraged to implement water resource development as expeditiously as possible in areas subject to regional water supply plans. Each WMD governing board is required to include in its annual budget the amount needed for the fiscal year to implement water resource development projects, as prioritized in its regional water supply plans.

Section 373.046(4), F.S., authorizes the DEP and the WMDs to modify the division of responsibilities and to enter into further interagency agreements by rulemaking, including incorporation by reference, pursuant to chapter 120, F.S., to provide for greater efficiency and to avoid duplication in the administration of part IV of chapter 373, F.S. (management and storage of surface waters), by designating certain activities which will be regulated by either the WMDs or the DEP. In developing the interagency agreements, the WMDs and the DEP must take into consideration the technical and fiscal ability of each WMD to implement all or some of the provisions of part IV of chapter 373, F.S.

[1] The five water management districts include: Northwest Florida Water Management District, Suwannee River Water Management District, St. John's River Water Management District, Southwest Florida Water Management District, and South Florida Water Management District.

Section 373.046(6), F.S., provides that when the geographic area of a project or local government crosses WMD boundaries, the affected WMDs may designate a single affected WMD by interagency agreement to implement in that area, under the rules of the designated WMD, all or part of the applicable regulatory responsibilities under this chapter. Interagency agreements entered into under this section, which apply to the geographic area of a local government, must have the concurrence of the affected local government.

WMDs do not have the statutory authority to enter into similar agreements for non-regulatory resource management activities, studies or projects. In addition, a WMD may not fund resource management activities in another WMD even if some benefits inure to it from the activities.

Effect of Proposed Changes

The bill creates s. 373.046(7), F.S., providing that when the geographic area of a resource management activity, study, or project crosses WMD boundaries, the affected WMDs are authorized to designate a single affected district by interagency agreement to conduct all or part of the applicable resource management responsibilities, not including those regulatory responsibilities that are subject to s. 373.046(6), F.S. Under the bill, if funding assistance is provided to a resource management activity, study, or project, the WMD providing the funding must ensure that some or all the benefits accrue to the funding WMD. This will not impair any interagency agreement in effect on July 1, 2012.

Conditions for Issuance of Consumptive Use Permits

Current Situation

For uses other than private wells for domestic use, the DEP or the WMDs may require any person seeking to use "waters in the state" to obtain a consumptive use permit (CUP). A CUP establishes the duration and type of water use as well as the maximum amount that may be used. Pursuant to s. 373.219, F.S., each CUP must be consistent with the objectives of the WMD and not harmful to the water resources of the area. Section 373.223, F.S., provides that to obtain a CUP, an applicant must establish that the proposed use of water satisfies the statutory test, commonly referred to as "the three-prong test." Specifically, the proposed water use:

1. Must be a "reasonable-beneficial use" as defined in s. 373.019, F.S.[2];
2. Must not interfere with any presently existing legal use of water; and
3. Must be consistent with the public interest.

Section 373.223(4), F.S., provides that a WMD governing board, by regulation, can "reserve" from use by permit applicants, water in such locations and quantities, and for such seasons of the year, as in its judgment may be required for the protection of fish and wildlife or the public health and safety. Such reservations must be subject to periodic review and revision in the light of changed conditions. However, all presently existing legal uses of water shall be protected so long as such use is not contrary to the public interest. To help ensure that permitted withdrawals do not harm surface or groundwater resources, WMDs are required to establish:

- Minimum flows for all surface watercourses in the area. The minimum flow for a given watercourse shall be the limit at which further withdrawals would be significantly harmful to the water resources or ecology of the area;[3] and
- Minimum water level. The minimum water level is the level of groundwater in an aquifer and the level of surface water at which further withdrawals would be significantly harmful to the water resources of the area[4].

[2] "Reasonable-beneficial use" means the use of water in such quantity as is necessary for economic and efficient utilization for a purpose and in a manner which is both reasonable and consistent with the public interest.
[3] Section 373.042(1)(a), F.S.
[4] Section 373.042(1)(b), F.S.

The goal of establishing minimum flows and levels (MFLs) is to ensure there is enough water to satisfy the consumptive use of the water resource without causing significant harm to the resource. By establishing MFLs for non-consumptive uses, the WMDs are able to determine how much water is available for consumptive use. This is useful when evaluating a new CUP application. MFLs are adopted by rule by the WMDs and are subject challenges under the APA.[5] MFLs are established using the best available data and are independently and scientifically peer reviewed. To date, 322 MFLs have been adopted statewide, and an additional 200 are included on the priority lists for future adoption. If the existing flow or level of a water body is below or projected in 20 years to fall below established MFLs, then a recovery strategy must be implemented to restore the system to the established MFLs or a prevention strategy implemented to prevent the system from falling below the established MFLs.[6]

The WMDs have been established along surface hydrological boundaries. As Florida's population has grown and groundwater pumping increased, withdrawals along the boundary of one WMD can cause significant harm to the resources in an adjoining WMD. Such effects are becoming more common as technological advances have provided better data on groundwater resources. While a WMD has the authority to protect all water resources, including water bodies in an adjacent WMD, a WMD is not required to apply the adopted reservations, MFLs, and recovery and prevention strategies of a neighboring WMD in determining the effect of a proposed consumptive use of water on the water resources of an adjoining WMD. To do so would require the WMD to go through its own rule making process to adopt the regulations of the adjoining WMD. The current statutory authority may result in duplication of effort and rulemaking activity when a withdrawal affects water bodies in adjoining WMDs. It can also create inconsistent and inequitable treatment of water use permit applicants.

Effect of Proposed Changes

The bill requires the governing board of a WMD, in determining the effect of a proposed consumptive use of water on the water resources of an adjoining district, to apply, without adopting by rule, the reservations, MFLs, and recovery or prevention strategies adopted by rule after July 1, 2012, by the adjoining WMD. The bill also provides that the governing board cannot authorize a consumptive use of water that violates any reservation or any MFL adopted after July 1, 2012, unless the permit is issued in accordance with the recovery or prevention strategy adopted by rule by the adjoining WMD. The WMD may grant a variance from the recovery or prevention strategy if the applicant identifies an alternative strategy to assist with the recovery of or the prevention of harm to a water body. The bill provides that any rule applied pursuant to this subsection that is challenged under ss. 120.56 or 120.569, F.S.,[7] must be defended by the WMD that adopted the rule. This new subsection does not apply to and may not be considered for any permit issued before July 1, 2012, including a review of a compliance report submitted pursuant to s. 373.236, F.S. A WMD must consider the reservations, MFLs, and recovery or prevention strategies adopted by rule after July 1, 2012, by the adjoining WMD if a modification of a permit issued prior to July 1, 2012, is requested by the permittee to increase permitted quantities or to transfer permitted quantities to a new or existing source that increases the impact to the MFL or reservation.

[5] Section 120.56, F.S.
[6] Section 373.0421(2), F.S.
[7] Challenges to proposed or existing rules, or to policies which are alleged to be unadopted rules, are authorized under s. 120.56, F.S. Section 120.569, F.S., states the general procedures for all final agency decisions which determine the substantial interests of another party, and incorporates the procedures of s. 120.57(1), F.S., if factual disputes must be resolved, and s. 120.57(2), F.S., if there is no factual dispute. Section 120.57(1)(e), F.S., provides requirements for challenging policies, that affect substantial interests but which the agency has not adopted by rulemaking, in an action under s. 120.569, F.S.

Minimum Flows and Levels

Current Situation

DEP and each WMD are required to establish minimum flows for surface watercourses and minimum levels for ground water and surface waters within the district.[8] "Minimum flow" is the limit at which further water withdrawals from a given watercourse would significantly harm the water resources or ecology of the area.[9] "Minimum level" is the level of groundwater in an aquifer or the level of a surface water body at which further withdrawals will significantly harm the water resources of the area.[10]

A person who will be substantially affected by a proposed minimum flow or minimum level may request that DEP or the governing board of the WMD submit for independent scientific peer review all of the information and data on which the proposed flow or level is based. The request must be made in writing prior to the flow or level being established and prior to the filing of any petition for administrative hearing related to the flow or level.[11] The statute provides a process for conducting such review and that the final report is admissible in evidence in any subsequent administrative challenge to establishing the minimum flow or level.[12]

DEP has sole authority to review rules of WMDs to ensure consistency with DEP's water implementation rule.[13] This review is required to begin within 30 days of the adoption or revision of a rule by a WMD.

Effect of Proposed Changes

The bill authorizes additional recourse for those substantially affected by an adjoining WMD's proposed establishment of a minimum flow or level, reservation, or recovery or prevention strategy under proposed s. 373.223(6), F.S., which is also created under the bill (see above analysis for Conditions for Issuance of Consumptive Use Permits). A substantially affected person may request a preliminary review by DEP of the proposed action (to be made by rule). The request must be made no later than 21 days from the publication by the adjoining WMD of the notice of proposed rulemaking.[14] A timely-filed request will suspend the rulemaking for 30 days, during which DEP is to review the rule and provide comments to the governing board. This "pre-adoption review" is expressly stated as being separate from DEP's rule review authority under s. 373.114(2), F.S.

However, the bill does not specify where the written request is filed or transmitted to DEP, does not specify how the affected WMD is notified of the request, provides no clear authority for DEP to adopt a process for receiving and rendering such reviews, provides no standards for DEP to apply in conducting such reviews, and makes no provision for the WMD to notice other parties of the filing of the request or the resumption of rulemaking upon receipt of DEP's comments. The bill also does not compel DEP to review or comment; if DEP takes no action the WMD's rulemaking would still resume after 30 days.

[8] Section 373.042(1), F.S.
[9] Section 373.042(1)(a), F.S.
[10] Section 373.042(1)(b), F.S.
[11] Section 373.042(4)(a), F.S.
[12] Section 373.042(5), F.S. This subsection also requires the Administrative Law Judge to render the order within 120 days after the petition is filed.
[13] Section 373.114(2), F.S. The Water Resource Implementation Rule is promulgated as Chapter 62-40, F.A.C.
[14] This is the same period allowed to bring a challenge to proposed rulemaking. Section 120.54(3)(c)1., F.S.

Group Insurance

Current Situation

Section 373.605, F.S., authorizes the governing board of a WMD to provide group insurance for their employees, and the employees of another WMD in the same manner. Each health care plan varies among the WMDs.

Effect of Proposed Changes

The bill allows the governing board of a WMD to provide group insurance for its employees and the employees of another WMD in the same manner and with the same provisions and limitations authorized for other public employees.

Regional Water Supply Planning

Current Situation

Section 373.709, F.S., requires WMDs to conduct water supply needs assessments. A WMD that determines existing resources will not be sufficient to meet reasonable-beneficial uses for the planning period must prepare a regional water supply plan. The plans must contain:

- A water supply development component.
- A water resource development component.
- A recovery and prevention strategy.
- A funding strategy.
- The impacts on the public interest, costs, natural resources, etc.
- Technical data and information.
- Any MFLs established for the planning area.
- The water resources for which future MFLs must be developed.
- An analysis of where variances may be used to create water supply development or water resource development projects.

Currently, only the Southwest Florida WMD and a regional water supply authority within the boundary of the Southwest Florida WMD are required to jointly develop the water supply development component of a regional water supply plan.

Effect of Proposed Changes

The bill directs all WMDs to jointly develop the water supply development component of a regional water supply plan with the regional water supply authority.

Rules/Cooperative Funding Programs

Current Situation

WMDs have cost-share cooperative funding programs to foster the development of sustainable water resources, improve water quality, provide flood protection, and enhance conservation measures. It is not considered a regulatory program. Therefore, if a WMD needed to adopt rules for all of the procedures and policies in a cooperative funding program, it would be unable to adapt or modify the program as necessary. Section 373.171, F.S., authorizes WMDs to adopt rules or issue orders affecting the use of water; regulate the use of water; issue orders and adopt rules pursuant to chapter 120, F.S.

If a WMD proposes to take certain agency action within its jurisdiction that will affect the substantial interests of a party, that proposed action is subject to the hearing procedures in the APA.[15]

Effect of Proposed Changes

The bill amends s. 373.171, F.S., to provide that cooperative funding programs are not subject to the rulemaking requirements of chapter 120. However, any portion of an approved program which affects the substantial interests of a party would be made subject to the hearing procedures under section 120.569, F.S. These procedures incorporate the specific procedures available under s. 120.57, F.S.

B. SECTION DIRECTORY:

Section 1. Amending s. 373.042, F.S., authorizing substantially affected persons to request DEP to review and comment on a minimum flow or level, reservation, or recovery or prevention strategy proposed by the governing board of an adjoining WMD. This process is separate from DEP's rule review authority under s. 373.114(2), F.S.

Section 2. Amending s. 373.046, F.S., authorizing WMDs to enter into interagency agreements for resource management activities under specific conditions; providing applicability.

Section 3. Amending s. 373.223, F.S., requiring WMDs to apply specified reservations, minimum flows and levels, and recovery and prevention strategies in determining certain effects of proposed consumptive uses of water; prohibiting WMDs from authorizing certain consumptive uses of water; providing an exception; providing requirements for the challenge of specified rules; providing applicability.

Section 4. Amending s. 373.605, F.S., authorizing a WMD to provide a group health insurance for its employees and the employees of another WMD; removing obsolete provisions.

Section 5. Amending s. 373.709, F.S., relating to regional water supply planning; removing a reference to the SWFWMD; requiring a regional water supply authority and the applicable WMD to jointly develop the water supply component of the regional water supply plan.

Section 6. Amending s. 373.171, F.S., exempting cooperative funding programs from certain rulemaking requirements but providing that a party whose substantial interests are affected by any portion of an approved program would be entitled to a hearing under the provisions of s. 120.569, F.S..

Section 7. 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.

[15] A WMD comes within the definition of an agency. Section 120.52(1), F.S. The adoption of a rule or entry of a final order is "agency action" under s. 120.52(2), F.S. A party whose substantial interests are affected by the proposed agency action of a WMD is entitled to a hearing under the basic procedures set out in s. 120.569, F.S. and the specific hearing procedures provided in s. 120.57, F.S.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The bill has a potentially positive fiscal impact on WMDs who enter into interagency agreements by reducing the duplication of services and promoting streamlining.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill authorizes a water management district to apply the reservations, minimum flows and levels, and recovery or prevention strategies adopted by an adjoining district without having to adopt them by rule. The bill also provides that cooperative funding programs are not subject to the rulemaking requirements of chapter 120. However, a party whose substantial interests are affected by any portion of an approved program would be entitled to seek a hearing under the provisions of s. 120.569, F.S.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The bill authorizes a substantially affected person to request DEP to review and comment on a minimum flow or level, reservation, or recovery or prevention strategy proposed by the governing board of an adjoining WMD. A timely request suspends the pending rulemaking for that proposal for 30 days to allow time for DEP to review and comment. However, the bill does not specify where the written request is filed or transmitted to DEP, does not specify how the affected WMD is notified of the request, provides no clear authority for DEP to adopt a process for receiving and rendering such reviews, provides no standards for DEP to apply in conducting such reviews, and makes no provision for the WMD to notice other parties of the filing of the request or the resumption of rulemaking upon receipt of DEP's comments. The bill also does not compel DEP to review or comment; if DEP takes no action the WMD's rulemaking would still resume after 30 days.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On January 24, 2012, the Rulemaking & Regulation Subcommittee amended and passed CS/HB 157 as a committee substitute for the committee substitute (CS/CS). The two amendments adopted did the following:

- Created a new Section 1 which amended s. 373.042, F.S., to provide a process for a person substantially affected by a minimum flow or level, reservation, or recovery or prevention strategy proposed by the governing board of an adjoining WMD to request DEP to review and comment on the proposal.

- Added language to Section 2 of CS/HB 157 (now renumbered as Section 3 in CS/CS/HB 157) to clarify the elements adopted by an adjoining WMD a governing board must consider when reviewing requested permit modifications which increase permitted quantities or transfer permitted quantities to a new or existing source.

This analysis is drawn to the Committee Substitute for CS/CS/HB 157.

On January 11, 2012, the Agriculture & Natural Resources Subcommittee amended and passed HB 157 as a committee substitute (CS). The CS does the following:

- Interagency agreements-Requires the governing board of a WMD, in determining the effect of a proposed consumptive use of water on the water resources of an adjoining district, to apply, without adopting by rule, the reservations, minimum flows and levels, and recovery or prevention strategies adopted by rule after July 1, 2012, by the adjoining WMD; provides that the governing board cannot authorize a consumptive use of water that violates any reservation adopted pursuant to s. 373.223(4), F.S., or any MFL adopted after July 1, 2012, unless the permit is issued in accordance with the recovery or prevention strategy adopted by rule by the adjoining WMD; provides that the governing board may grant a variance from the recovery or prevention strategy if the applicant identifies an alternative strategy to assist with the recovery of or the prevention of harm to a water body; provides that any rule applied pursuant to this subsection that is challenged under chapter 120, F.S., must be defended by the WMD that adopted the rule; provides that this does not apply to and may not be considered for any permit issued before July 1, 2012, including a review of a compliance report submitted pursuant to s. 373.236, F.S.; provides that a WMD must consider the reservations, minimum flows and levels, and recovery strategies adopted by rule after July 1, 2012, by the adjoining WMD if a modification of a permit issued prior to July 1, 2012, is requested by the permittee to increase permitted quantities or to transfer of permitted quantities to a new or existing source.
- Conditions for a permit-provides that a consumptive use of water permit may not be considered if issued before July 1, 2012. Notwithstanding, a WMD must consider a reservation, minimum flows and levels, and recovery strategies adopted by rule after July 1, 2012, by the adjoining WMD if a modification of a permit issued prior to July 1, 2012, is requested by the permittee to increase permitted quantities or to transfer of permitted quantities to a new or existing source.
- Group insurance-allows a WMD to offer its employees and the employees of another WMD a group health insurance program.
- Regional water supply planning- directs the WMDs to jointly develop the water supply development component of a regional water supply plan with a regional water supply authority.
- Rules- cooperative funding programs are not subject to the rulemaking requirements of chapter 120, however any portion of an approved program which affects the substantial interests of a party is subject to chapter 120.

A bill to be entitled

An act relating to water management districts; amending s. 373.042, F.S.; providing for certain affected persons to request a review of a proposed minimum flow or level, reservation, or recovery or prevention strategy by the Department of Environmental Protection; suspending rulemaking timeframes under ch. 120 during such review; requiring the department to provide comments; providing construction; amending s. 373.046, F.S.; authorizing water management districts to enter into interagency agreements for resource management activities under specified conditions; providing applicability; amending s. 373.223, F.S.; requiring water management districts to apply specified reservations, minimum flows and levels, and recovery and prevention strategies in determining certain effects of proposed consumptive uses of water; prohibiting water management districts from authorizing certain consumptive uses of water; providing an exception; providing requirements for the challenge of specified rules; providing applicability; amending s. 373.605, F.S.; authorizing water management districts to provide group insurance for employees of other water management districts; removing obsolete provisions; amending s. 373.709, F.S., relating to regional water supply planning; removing a reference to the Southwest Florida Water Management District; requiring a regional water supply

authority and the applicable water management district to jointly develop the water supply component of the regional water supply plan; amending s. 373.171, F.S.; exempting cooperative funding programs from certain rulemaking requirements; providing an effective date.

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

Section 1. Present subsection (5) of section 373.042, Florida Statutes, is renumbered as subsection (6), and a new subsection (5) is added to that section to read:

373.042 Minimum flows and levels.—

(5) A person substantially affected under s. 373.223(6) by a proposed establishment of a minimum flow or level, reservation, or recovery or prevention strategy in an adjoining district may request a preliminary review by the department before the rule adoption hearing by the governing board. Such a request shall be made within 21 days after publication of the notice of proposed rulemaking and shall suspend the applicable rulemaking timeframes under s. 120.54 for 30 days, during which time the department shall review the proposed rule and provide comments for consideration by the governing board. The review under this subsection is separate from the review under s. 373.114(2).

Section 2. Subsection (7) is added to section 373.046, Florida Statutes, to read:

373.046 Interagency agreements.—

(7) If the geographic area of a resource management

activity, study, or project crosses water management district boundaries, the affected districts may designate a single affected district to conduct all or part of the applicable resource management responsibilities under this chapter, with the exception of those regulatory responsibilities that are subject to subsection (6). If funding assistance is provided to a resource management activity, study, or project, the district providing the funding must ensure that some or all of the benefits accrue to the funding district. This subsection does not impair any interagency agreement in effect on July 1, 2012.

Section 3. Subsection (6) is added to section 373.223, Florida Statutes, to read:

373.223 Conditions for a permit.—

(6) In determining the effect of a proposed consumptive use of water on the water resources of an adjoining district, the governing board shall apply, without adopting by rule, the reservations, minimum flows and levels, and recovery or prevention strategies adopted by rule after July 1, 2012, by the adjoining district. The governing board may not authorize a consumptive use of water that violates any reservation adopted pursuant to subsection (4) or any minimum flow or level adopted pursuant to ss. 373.042 and 373.0421 after July 1, 2012, unless such permit is issued in accordance with the recovery or prevention strategy adopted by rule by the adjoining district. The governing board may grant a variance from the recovery or prevention strategy if the applicant identifies an alternative strategy to assist with the recovery of or the prevention of harm to a water body. Any rule applied pursuant to this

subsection that is challenged under s. 120.56 or s. 120.569 shall be defended by the district that adopted the rule. This subsection does not apply to and may not be considered for any permit issued before July 1, 2012, including a review of a compliance report submitted pursuant to s. 373.236. However, the governing board must consider the reservations, minimum flows and levels, and recovery or prevention strategies adopted by rule after July 1, 2012, by the adjoining district if a modification of a permit issued prior to July 1, 2012, is requested by the permittee to increase permitted quantities or to transfer permitted quantities to a new or existing source that increases the impact to the minimum flow or level or reservation.

Section 4. Section 373.605, Florida Statutes, is amended to read:

373.605 Group insurance for water management districts.—

(1) The governing board of a ~~any~~ water management district may ~~is hereby authorized and empowered to~~ provide group insurance for its employees in the same manner and with the same provisions and limitations authorized for other public employees by ss. 112.08, 112.09, 112.10, 112.11, and 112.14.

(2) The governing board of a water management district may provide group insurance for its employees and the employees of another water management district in the same manner and with the same provisions and limitations authorized for other public employees by ss. 112.08, 112.09, 112.10, 112.11, and 112.14.

~~(2) Any and all insurance agreements in effect as of October 1, 1974, which conform to the provisions of this section~~

~~are hereby ratified.~~

Section 5. Subsection (3) of section 373.709, Florida Statutes, is amended to read:

373.709 Regional water supply planning.—

(3) The water supply development component of a regional water supply plan which deals with or affects public utilities and public water supply for those areas served by a regional water supply authority and its member governments ~~within the boundary of the Southwest Florida Water Management District~~ shall be developed jointly by the authority and the applicable water management district. In areas not served by regional water supply authorities, or other multijurisdictional water supply entities, and where opportunities exist to meet water supply needs more efficiently through multijurisdictional projects identified pursuant to paragraph (2)(a), water management districts are directed to assist in developing multijurisdictional approaches to water supply project development jointly with affected water utilities, special districts, and local governments.

Section 6. Subsection (5) is added to section 373.171, Florida Statutes, to read:

373.171 Rules.—

(5) Cooperative funding programs are not subject to the rulemaking requirements of chapter 120. However, any portion of an approved program which affects the substantial interests of a party is subject to s. 120.569.

Section 7. 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 Porter offered the following:

Amendment (with title amendment)

Remove lines 37-52 and insert:

Section 1. Section 373.042(2) is amended and present subsection (5) of section 373.042, Florida statutes, is renumbered as subsection (6), and a new subsection (5) is added to that section to read:

373.042 Minimum flows and levels.-

(2) By November 15, 1997, and annually thereafter, each water management district shall submit to the department for review and approval a priority list and schedule for the establishment of minimum flows and levels for surface watercourses, aquifers, and surface waters within the district. The priority list shall ~~also~~ identify those listed water bodies for which the district will voluntarily undertake independent scientific peer review. The priority list and schedule shall also identify any reservations proposed by the district to be

established under s. 373.223(4). In addition, the priority list and schedule shall identify those water bodies that have the potential to be affected by withdrawals in an adjacent water management district, and may be appropriate for department adoption of the minimum flow or level under s. 373.042(1) or the reservation under s.373.223(4).

By March 1, 2006, and annually thereafter, each water management district shall include its approved priority list and schedule in the consolidated annual report required by s. 373.036(7). The priority list shall be based upon the importance of the waters to the state or region and the existence of or potential for significant harm to the water resources or ecology of the state or region, and shall include those waters which are experiencing or may reasonably be expected to experience adverse impacts. Each water management district's priority list and schedule shall include all first magnitude springs, and all second magnitude springs within state or federally owned lands purchased for conservation purposes. The specific schedule for establishment of spring minimum flows and levels shall be commensurate with the existing or potential threat to spring flow from consumptive uses. Springs within the Suwannee River Water Management District, or second magnitude springs in other areas of the state, need not be included on the priority list if the water management district submits a report to the Department of Environmental Protection demonstrating that adverse impacts are not now occurring nor are reasonably expected to occur from consumptive uses during the next 20 years. The priority list

and schedule shall not be subject to any proceeding pursuant to chapter 120. Except as provided in subsection (3), the development of a priority list and compliance with the schedule for the establishment of minimum flows and levels pursuant to this subsection shall satisfy the requirements of subsection (1).

(3) Minimum flows or levels for priority waters in the counties of Hillsborough, Pasco, and Pinellas shall be established by October 1, 1997. Where a minimum flow or level for the priority waters within those counties has not been established by the applicable deadline, the secretary of the department shall, if requested by the governing body of any local government within whose jurisdiction the affected waters are located, establish the minimum flow or level in accordance with the procedures established by this section. The department's reasonable costs in establishing a minimum flow or level shall, upon request of the secretary, be reimbursed by the district.

(4)(a) Upon written request to the department or governing board by a substantially affected person, or by decision of the department or governing board, prior to the establishment of a minimum flow or level and prior to the filing of any petition for administrative hearing related to the minimum flow or level, all scientific or technical data, methodologies, and models, including all scientific and technical assumptions employed in each model, used to establish a minimum flow or level shall be subject to independent scientific peer review. Independent scientific peer review means review by a panel of independent,

recognized experts in the fields of hydrology, hydrogeology, limnology, biology, and other scientific disciplines, to the extent relevant to the establishment of the minimum flow or level.

(b) If independent scientific peer review is requested, it shall be initiated at an appropriate point agreed upon by the department or governing board and the person or persons requesting the peer review. If no agreement is reached, the department or governing board shall determine the appropriate point at which to initiate peer review. The members of the peer review panel shall be selected within 60 days of the point of initiation by agreement of the department or governing board and the person or persons requesting the peer review. If the panel is not selected within the 60-day period, the time limitation may be waived upon the agreement of all parties. If no waiver occurs, the department or governing board may proceed to select the peer review panel. The cost of the peer review shall be borne equally by the district and each party requesting the peer review, to the extent economically feasible. The panel shall submit a final report to the governing board within 120 days after its selection unless the deadline is waived by agreement of all parties. Initiation of peer review pursuant to this paragraph shall toll any applicable deadline under chapter 120 or other law or district rule regarding permitting, rulemaking, or administrative hearings, until 60 days following submittal of the final report. Any such deadlines shall also be tolled for 60 days following withdrawal of the request or following agreement of the parties that peer review will no longer be

pursued. The department or the governing board shall give significant weight to the final report of the peer review panel when establishing the minimum flow or level.

(c) If the final data, methodologies, and models, including all scientific and technical assumptions employed in each model upon which a minimum flow or level is based, have undergone peer review pursuant to this subsection, by request or by decision of the department or governing board, no further peer review shall be required with respect to that minimum flow or level.

(d) No minimum flow or level adopted by rule or formally noticed for adoption on or before May 2, 1997, shall be subject to the peer review provided for in this subsection.

(5) A reservation, minimum flow or level, or recovery or prevention strategy adopted by rule by the department shall be applied by the water management districts, without adopting by rule, the reservation, minimum flow or level, or recovery or prevention strategy. The applicable water management districts shall provide the department with technical information and staff support for development and rule making for a reservation, minimum flow or level, or recovery or prevention strategy that will be adopted by rule by the department.

(6~~5~~) If a petition for administrative hearing is filed under chapter 120 challenging the establishment of a minimum flow or level, the report of an independent scientific peer review conducted under subsection (4) is admissible as evidence in the final hearing, and the administrative law judge must render the order within 120 days after the filing of the petition. The time limit for rendering the order shall not be extended except

by agreement of all the parties. To the extent that the parties agree to the findings of the peer review, they may stipulate that those findings be incorporated as findings of fact in the final order.

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

Remove lines 3-9 and insert:

Amending s. 373.042, F.S.; requiring a priority list and schedule to include reservations; requiring a priority list and schedule to identify water bodies that are affected by withdrawals from an adjoining district; providing the Department of Environmental Protection may adopt minimum flows and levels having specific affects; requiring water management districts to apply a specific reservation, minimum flow or level, and recovery and prevention strategy; requiring water management districts to provide support; providing applicability; amending s.

Amendment No. 2

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

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

Amendment (with title amendment)

Remove lines 67-97 and insert:

Section 3. Effective January 1, 2013, subsection (1) and paragraph (e) of subsection (2) of section 373.073, Florida Statutes, are amended to read:

373.073 Governing board.—

(1)(a) The governing board of each water management district shall be composed of 9 members who shall reside within the district~~, except that the Southwest Florida Water Management District shall be composed of 13 members who shall reside within the district~~. Members of the governing boards shall be appointed by the Governor, subject to confirmation by the Senate at the next regular session of the Legislature, and the refusal or failure of the Senate to confirm an appointment creates a vacancy in the office to which the appointment was made. The term of office for a governing board member is 4 years and

commences on March 2 of the year in which the appointment is made and terminates on March 1 of the fourth calendar year of the term or may continue until a successor is appointed, but not more than 180 days. Terms of office of governing board members shall be staggered to help maintain consistency and continuity in the exercise of governing board duties and to minimize disruption in district operations.

(b) Commencing January 1, 2011, the Governor shall appoint the following number of governing board members in each year of the Governor's 4-year term of office:

1. In the first year of the Governor's term of office, the Governor shall appoint ~~four members to the governing board of the Southwest Florida Water Management District and appoint~~ three members to the governing board of each ~~other~~ district.

2. In the second year of the Governor's term of office, the Governor shall appoint ~~three members to the governing board of the Southwest Florida Water Management District and~~ two members to the governing board of each ~~other~~ district.

3. In the third year of the Governor's term of office, the Governor shall appoint ~~three members to the governing board of the Southwest Florida Water Management District and~~ two members to the governing board of each ~~other~~ district.

4. In the fourth year of the Governor's term of office, the Governor shall appoint ~~three members to the governing board of the Southwest Florida Water Management District and~~ two members to the governing board of each ~~other~~ district.

For any governing board vacancy that occurs before the date scheduled for the office to be filled under this paragraph, the Governor shall appoint a person meeting residency requirements of subsection (2) for a term that will expire on the date scheduled for the term of that office to terminate under this subsection. In addition to the residency requirements for the governing boards as provided by subsection (2), the Governor shall consider appointing governing board members to represent an equitable cross-section of regional interests and technical expertise.

(2) Membership on governing boards shall be selected from candidates who have significant experience in one or more of the following areas, including, but not limited to: agriculture, the development industry, local government, government-owned or privately owned water utilities, law, civil engineering, environmental science, hydrology, accounting, or financial businesses. Notwithstanding the provisions of any other general or special law to the contrary, vacancies in the governing boards of the water management districts shall be filled according to the following residency requirements, representing areas designated by the United States Water Resources Council in United States Geological Survey, River Basin and Hydrological Unit Map of Florida—1975, Map Series No. 72:

(e) Southwest Florida Water Management District:

1. <u>One member</u> ~~Two members~~ shall reside in Hillsborough County.

~~2. One member shall reside in the area consisting of Hillsborough and Pinellas Counties.~~

2.~~3.~~ One member ~~Two members~~ shall reside in Pinellas County.

~~4. One member shall reside in Manatee County.~~

3.~~5.~~ One member ~~Two members~~ shall reside in Polk County.

4.~~6.~~ One member shall reside in Pasco County.

5. One member shall be appointed at large from Sarasota and Manatee Counties.

6.~~7.~~ One member shall be appointed at large from Levy, Citrus, Sumter, and Lake Counties.

7.~~8.~~ One member shall be appointed at large from Hardee~~,~~ ~~DeSoto,~~ and Highlands Counties.

8.~~9.~~ One member shall be appointed at large from Marion and Hernando Counties.

9.~~10.~~ One member shall be appointed at large from DeSoto ~~Sarasota~~ and Charlotte Counties.

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

Remove lines 13-21 and insert:

providing applicability; amending s. 373.073, F.S., reducing the number of governing board members of the Southwest Florida Water Management District; revising membership residency requirements;

Amendment No. 3

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 Porter offered the following:

Amendment (with title amendment)

Remove lines 67-97

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

Remove lines 13-21 and insert:

providing applicability;

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 221 Business Enterprise Opportunities for Wartime Veterans
SPONSOR(S): Nehr and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 152

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Government Operations Subcommittee	15 Y, 0 N	Meadows	Williamson
2) Government Operations Appropriations Subcommittee	11 Y, 0 N	Lloyd	Topp
3) State Affairs Committee		Meadows	Hamby

SUMMARY ANALYSIS

Florida law provides for a vendor preference in state contracting for service-disabled veteran business enterprises. To qualify for this preference, a veteran must certify that he or she is a permanent Florida resident with a service-connected disability as determined by the United States Department of Veterans Affairs or who has been terminated from military service by reason of disability by the United States Department of Defense.

The bill expands the vendor preference to include wartime veterans and veterans of a period of war. The bill provides definitions of wartime veteran and veterans of a period of war to indentify eligible applicants for the Veteran Business Enterprise Opportunity program. In addition, the bill revises application and documentation requirements to qualify for the program.

The bill will have an insignificant fiscal impact on the Department of Management Services (DMS). Based on prior year reversions the costs to implement the provisions of HB 221, can be absorbed within existing resources.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Florida Service-Disabled Veteran Business Enterprise Opportunity Act
The intent of the Florida Service-Disabled Veteran Business Enterprise Opportunity Act[1] (act) is to

> [R]ectify the economic disadvantage of service-disabled veterans, who are statistically the least likely to be self-employed when compared to the veteran population as a whole and who have made extraordinary sacrifices on behalf of the nation, the state, and the public, by providing opportunities for service-disabled veteran business enterprises as set forth in this section.[2]

Current law provides that a "service-disabled veteran" is a veteran who is a permanent Florida resident with a service-connected disability as determined by the United States Department of Veterans Affairs or who has been terminated from military service by reason of disability by the United States Department of Defense.[3]

In order for a service-disabled veteran business enterprise (SDVBE) to be certified, it must be an independently owned and operated business that:

- Employs 200 or fewer permanent full-time employees.
- Together with its affiliates has a net worth of $5 million or less or, if a sole proprietorship, has a net worth of $5 million or less including both personal and business investments.
- Is organized to engage in commercial transactions.
- Is domiciled in this state.
- Is at least 51 percent owned by one or more service-disabled veterans.
- Is managed and controlled by one or more service-disabled veterans or, for a service-disabled veteran with a permanent and total disability, by the spouse or permanent caregiver of the veteran.[4]

Florida law provides for a certification process that is administered by the Department of Management Services (DMS), in coordination with the Florida Department of Veterans' Affairs.[5] The certification process requires applicants to submit documentation[6] demonstrating that the business meets the requirements found in s. 295.187(3)(c), F.S. Certification is renewed biennially and may be revoked for one year if the SDVBE fails to inform DMS within 30 days of a change in circumstances that renders the business ineligible for certification.[7]

Currently, there are 222 certified service-disabled veteran business enterprises in Florida.[8]

Service-disabled veteran-owned businesses that are certified through DMS are eligible for benefits such as:

- First tier referrals to state agencies for contract opportunities;
- Business development guidance from established corporations;
- Participation at regional workshops, seminars, and corporate roundtables; and

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[1] *See* s. 295.187, F.S.
[2] Section 295.187(2), F.S.
[3] Section 295.187(3)(b), F.S.
[4] Section 295.187(3)(c)1.-6., F.S.
[5] *See* s. 295.187(5) – (7), F.S.
[6] *See* 60A-9.005, F.A.C.
[7] See s. 295.187(5)(d) and (e), F.S.
[8] Information provided by telephone on January 19, 2012, by Mr. Thad Fortune, Certification Administrator (Senior Manager), Office of Supplier Diversity, DMS.

- Inclusion in an exclusive listing of state-certified minority business enterprises in an online directory.[9]

Vendor Preference
Current law provides that a state agency, when considering two or more bids, proposals, or replies for the procurement of commodities or contractual services, and one is a certified SDVBE, the agency must award the procurement to the SDVBE if all relevant considerations[10] are equal.[11] However, if a certified SDVBE and one or more SDVBE or businesses eligible for another statutory vendor preference, such as a minority business enterprise[12], submit bids or proposals that are equal with respect to all relevant considerations, the state agency must award the contract or proposal to the business having the smallest net worth.[13]

Effect of Proposed Changes

Florida Veteran Business Enterprise Opportunity Act
The bill provides that the act may be cited as the "Florida Veteran Business Enterprise Opportunity Act." It also expands the intent of the act to include the recognition of wartime veterans and veterans of a period of war for their sacrifices.

The bill expands the Florida Veteran Business Opportunity Act to include "wartime veterans." It defines the term "wartime veteran" as:

- A wartime veteran as defined in s. 1.01(14), F.S.[14]; or
- A veteran of a period of war, as used in 38 U.S.C. 1521, who served in active military, naval, or air service:
    - For 90 days or more during a period of war;
    - During a period of war and was discharged or released from such service for a service-connected disability;
    - For a period of 90 consecutive days or more and such period began or ended during a period of war; or
    - For an aggregate of 90 days or more in two or more separate periods of service during more than one period of war.

The bill requires wartime veteran applicants to provide documentation of wartime service from the United States Department of Veterans Affairs or the United States Department of Defense during the veteran business enterprise certification process. The Department of Veterans' Affairs is tasked with assisting DMS in the expansion of the certification process.

Vendor Preference
The bill expands the vendor preference for service-disabled veterans to include wartime veterans and veterans of a period of war whose businesses are certified as a veteran business enterprise by DMS.

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[9] *See* Office of Supplier Diversity Annual Report for Fiscal Year 2009-10. Available at: http://www.dms.myflorida.com/other_programs/office_of_supplier_diversity_osd/publications/annual_reports (last visited January 19, 2012).
[10] Relevant considerations include price, quality, and service. *See* s. 295.187(4)(a), F.S.
[11] Section 295.187(4)(a), F.S.
[12] Section 288.703, F.S., defines the term "minority business enterprise" to mean any small business which is organized to engage in commercial transactions, which is domiciled in Florida, and which is at least 51 percent owned by minority persons who are members of an insular group that is of a particular racial, ethnic, or gender makeup or national origin, which has been subjected historically to disparate treatment due to identification in and with that group.
[13] Section 295.187(4)(b), F.S.
[14] As defined in s. 1.01(14), F.S., the term "wartime veteran" means a veteran who has served in a campaign or expedition for which a campaign badge has been authorized or a veteran who has served during one of the following periods of wartime service: Spanish-American War, Mexican Border period, World War I, World War II, Korean Conflict, Vietnam Era, Persian Gulf War, Operation Enduring Freedom, or Operation Iraqi Freedom.

B. SECTION DIRECTORY:

Section 1 amends s. 295.187, F.S., to revise the legislative intent; to expand vendor preferences to include wartime veterans and veterans of a period of war.

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:

The cost to implement HB 221 is expected to be insignificant. The DMS estimates the cost of implementing HB 221, to be approximately $10,000 related to programming system updates and $30,000 to hire temporary staff (Other Personal Services) to process the certification applications of wartime veterans.[15]

Based on prior year spending by the DMS, the cost to implement the provisions of HB 221 can be covered within existing resources. In FY 2010-11, DMS reverted over $79,000 in Other Personal Services budget authority. A review of the first six months of FY 2011-12, indicates the department is estimated to revert in excess of $60,000.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

This bill may assist wartime veterans in competing for state contracts by expanding the Service-Disable Veteran Business Enterprise certification program to include wartime veterans and veterans of a period of war. This bill may have a negative impact on the service-disable veteran enterprises as the bill may diminish their ability to secure contracts under the preference as it expands the pool of vendors by allowing wartime veterans and veterans of a period of war to be certified as a Veteran Business Enterprise.

D. FISCAL COMMENTS:

None.

[15] Department of Management Services' Bill Analysis, September 15, 2011, on file with the House Government Operations Appropriations Subcommittee.

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:

Section 295.187(9), F.S., currently authorizes the Department of Veterans' Affairs and the Department of Management Services to adopt rules, as necessary, to administer the Florida Service-Disabled Veteran Business Enterprise program. The departments may need to adopt additional rules to account for the expansion of the Florida Veteran Business Enterprise Opportunity program.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The Department of Management Services provided the following comments:

> At present time there are 1,650,876 veterans living in Florida - 1,229,096 are considered "war-time" veterans (around 74 percent). Also, there are 3256 Florida veteran owned businesses registered on the US Federal Contractor Registration – only registered contractors are allowed to contract with the federal government.[16]

The Office of Supplier Diversity of the Department of Management Services projects that including wartime veterans and veterans of a period of war in the Veteran Business Enterprise Program would result in the registration and certification of 1,500-2,000 veteran businesses.[17]

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.

[16] *Id.* at 1.

[17] Information provided by telephone on January 19, 2012, by Mr. Thad Fortune, Certification Administrator (Senior Manager), Office of Supplier Diversity, DMS.

A bill to be entitled

An act relating to business enterprise opportunities for wartime veterans; amending s. 295.187, F.S.; revising legislative intent; renaming and revising the Florida Service-Disabled Veteran Business Enterprise Opportunity Act to expand the vendor preference in state contracting to include certain businesses owned and operated by wartime veterans or veterans of a period of war; providing an effective date.

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

Section 1. Section 295.187, Florida Statutes, is amended to read:

295.187 Florida ~~Service-Disabled~~ Veteran Business Enterprise Opportunity Act.—

(1) SHORT TITLE.—This section may be cited as the "Florida ~~Service-Disabled~~ Veteran Business Enterprise Opportunity Act."

(2) INTENT.—It is the intent of the Legislature to rectify the economic disadvantage of service-disabled veterans, who are statistically the least likely to be self-employed when compared to the veteran population as a whole and who have made extraordinary sacrifices on behalf of the nation, the state, and the public, by providing opportunities for service-disabled veteran business enterprises as set forth in this section. The Legislature also intends to recognize wartime veterans and veterans of a period of war for their sacrifices as set forth in this section.

(3) DEFINITIONS.—For the purpose of this section, the term:

(a) "Certified ~~service-disabled~~ veteran business enterprise" means a business that has been certified by the Department of Management Services to be a ~~service-disabled~~ veteran business enterprise as defined in paragraph (c).

(b) "Service-disabled veteran" means a veteran who is a permanent Florida resident with a service-connected disability as determined by the United States Department of Veterans Affairs or who has been terminated from military service by reason of disability by the United States Department of Defense.

(c) "~~Service-disabled~~ Veteran business enterprise" means an independently owned and operated business that:

1. Employs 200 or fewer permanent full-time employees;

2. Together with its affiliates has a net worth of $5 million or less or, if a sole proprietorship, has a net worth of $5 million or less including both personal and business investments;

3. Is organized to engage in commercial transactions;

4. Is domiciled in this state;

5. Is at least 51 percent owned by one or more wartime veterans or service-disabled veterans; and

6. The management and daily business operations of which are controlled by one or more wartime veterans or service-disabled veterans or, for a service-disabled veteran having ~~with~~ a permanent and total disability, by the spouse or permanent caregiver of the veteran.

(d) "Wartime veteran" means:

1. A wartime veteran as defined in s. 1.01(14); or

2. A veteran of a period of war, as used in 38 U.S.C. s. 1521, who served in the active military, naval, or air service:

a. For 90 days or more during a period of war;

b. During a period of war and was discharged or released from such service for a service-connected disability;

c. For a period of 90 consecutive days or more and such period began or ended during a period of war; or

d. For an aggregate of 90 days or more in two or more separate periods of service during more than one period of war.

(4) VENDOR PREFERENCE.—

(a) A state agency, when considering two or more bids, proposals, or replies for the procurement of commodities or contractual services, at least one of which is from a certified ~~service-disabled~~ veteran business enterprise, which ~~that~~ are equal with respect to all relevant considerations, including price, quality, and service, shall award such procurement or contract to the certified ~~service-disabled~~ veteran business enterprise.

(b) Notwithstanding s. 287.057(11), if a ~~service-disabled~~ veteran business enterprise entitled to the vendor preference under this section and one or more businesses entitled to this preference or another vendor preference provided by law submit bids, proposals, or replies for procurement of commodities or contractual services which ~~that~~ are equal with respect to all relevant considerations, including price, quality, and service, ~~then~~ the state agency shall award the procurement or contract to the business having the smallest net worth.

(c) Political subdivisions of the state are encouraged to offer a similar consideration to businesses certified under this section.

(5) CERTIFICATION PROCEDURE.—

(a) The application for certification as a ~~service-disabled~~ veteran business enterprise must, at a minimum, include:

1. The name of the business enterprise applying for certification and the name of the ~~service-disabled~~ veteran submitting the application on behalf of the business enterprise.

2. The names of all owners of the business enterprise, including owners who are wartime veterans, service-disabled veterans, and owners who are not a wartime veteran or a service-disabled veteran ~~veterans~~, and the percentage of ownership interest held by each owner.

3. The names of all persons involved in both the management and daily operations of the business, including the spouse or permanent caregiver of a veteran who has ~~with~~ a permanent and total disability.

4. The service-connected disability rating of all persons listed under subparagraphs 1., 2., and 3., as applicable, with supporting documentation from the United States Department of Veterans Affairs or the United States Department of Defense.

5. Documentation of the wartime service of all persons listed under subparagraphs 1., 2., and 3., as applicable, from the United States Department of Veterans Affairs or the United States Department of Defense.

6.~~5.~~ The number of permanent full-time employees.

7.~~6.~~ The location of the business headquarters.

8.~~7.~~ The total net worth of the business enterprise and its affiliates. In the case of a sole proprietorship, the net worth includes personal and business investments.

(b) To maintain certification, a ~~service-disabled~~ veteran business enterprise shall renew its certification biennially.

(c) ~~The provisions of~~ Chapter 120, relating to application, denial, and revocation procedures, applies ~~shall apply~~ to certifications under this section.

(d) A certified ~~service-disabled~~ veteran business enterprise must notify the Department of Management Services within 30 business days after any event that may significantly affect the certification of the business, including, but not limited to, a change in ownership or change in management and daily business operations.

(e) The certification of a ~~service-disabled~~ veteran business enterprise shall be revoked for 12 months if the Department of Management Services determines that the business enterprise violated paragraph (d). An owner of a certified ~~service-disabled~~ veteran business enterprise whose certification is revoked may ~~is~~ not ~~permitted to~~ reapply for certification under this section as an owner of any business enterprise during the 12-month revocation period.

1. During the 12-month revocation period, a ~~service-disabled~~ veteran business enterprise whose certification has been revoked may bid on state contracts but is not eligible for any preference available under this section.

2. A ~~service-disabled~~ veteran business enterprise whose

certification has been revoked may apply for certification at the conclusion of the 12-month revocation period by complying with requirements applicable to initial certifications.

(6) DUTIES OF THE DEPARTMENT OF VETERANS' AFFAIRS.—The department shall:

(a) Assist the Department of Management Services in establishing a certification procedure, which shall be reviewed biennially and updated as necessary.

(b) Identify eligible ~~service-disabled~~ veteran business enterprises by any electronic means, including electronic mail or Internet website, or by any other reasonable means.

(c) Encourage and assist eligible ~~service-disabled~~ veteran business enterprises to apply for certification under this section.

(d) Provide information regarding services that are available from the Office of Veterans' Business Outreach of the Florida Small Business Development Center to ~~service-disabled~~ veteran business enterprises.

(7) DUTIES OF THE DEPARTMENT OF MANAGEMENT SERVICES.—The department shall:

(a) With assistance from the Department of Veterans' Affairs, establish a certification procedure, which shall be reviewed biennially and updated as necessary.

(b) Grant, deny, or revoke the certification of a ~~service-disabled~~ veteran business enterprise under this section.

(c) Maintain an electronic directory of certified ~~service-disabled~~ veteran business enterprises for use by the state, political subdivisions of the state, and the public.

(8) REPORT.—The Small Business Development Center shall include in its report required by s. 288.705 the percentage of certified ~~service-disabled~~ veteran business enterprises using the statewide contracts register.

(9) RULES.—The Department of Veterans' Affairs and the Department of Management Services, as appropriate, may adopt rules as necessary 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 Smith offered the following:

Amendment

Remove line 35 and insert:

section is exempt from seasonal or calendar-based prohibited application period bans

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 Smith offered the following:

Amendment (with title amendment)

Between lines 46 and 47, insert:

(12) Nothing in this section shall be construed to limit the authority of the Florida Department of Environmental Protection or a water management district under Chapter 373 or 403 to adopt rules or issue orders requiring fertilizer practices that are necessary to achieve compliance with applicable water quality standards or to implement federally authorized or delegated programs.

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

Remove line 13 and insert:

and administrative actions; protecting the authority of the Florida Department of Environmental Protection and water management districts to adopt rules and issue orders to achieve compliance with water quality standards or to implement certain federal or delegated programs; providing an effective

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 395 Official State Designations
SPONSOR(S): Broxson
TIED BILLS: **IDEN./SIM. BILLS:** SB 326

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Government Operations Subcommittee	13 Y, 0 N	Thompson	Williamson
2) State Affairs Committee		Thompson	Hamby

SUMMARY ANALYSIS

Current law does not contain a designation for an official state flagship. The bill designates the schooner Western Union as an official flagship of the State of Florida.

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

The bill takes effect upon becoming a law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Schooner Western Union

The schooner Western Union is a 130-foot vintage, wooden, sailing vessel of the tall ship class.[1] Made of mahogany and yellow pine, construction began in Grand Cayman and was completed in Key West on April 7, 1939. For 35 years, the schooner served as a cable vessel for the Western Union Telegraph Company, repairing and maintaining undersea telegraph cable throughout Key West, Cuba, and the Caribbean. After retiring from Western Union, the schooner was used as a charter boat and in various events celebrating the United States' Bicentennial. Today, the schooner Western Union is being prepared to open as a maritime museum that will be open to the public for sailing and dock tours. The schooner Western Union is one of the oldest working wooden schooners in the United States, it is the official flagship of Key West, and it is on the National Register of Historic Places. [2,3]

The Schooner Western Union Preservation Society (SWUPS) is a not-for-profit corporation founded for the purpose of restoring, maintaining and operating the Schooner Western Union Maritime Museum in Key West. In addition to the restoration of the schooner, SWUPS plans to operate the boat as a maritime museum with an educational outreach program. Initial funding will be obtained through corporate sponsorships, grants, and individual donations. Once initial restoration is complete and Coast Guard certification is restored, funds will be generated from the daily operation of the vessel. Additionally, a fund will be created from income exceeding operating expenses for the purpose of maintaining the vessel for future generations.[4]

State Designations

Current law designates 39 official state designations including official state maritime, transportation, and railroad museums. However, current law does not provide a designation for an official flagship of the State of Florida.[5]

Proposed Changes

The bill designates the schooner Western Union as an official flagship of the State of Florida.

B. SECTION DIRECTORY:

Section 1 creates s. 15.0465 F.S., designating the schooner Western Union as an official flagship of the State of Florida.

Section 2 provides an effective date of upon becoming a law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

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[1] Merriam Webster online dictionary, at http://www.merriam-webster.com/dictionary/tall%20ship, defines a tall ship as a sailing vessel with at least two masts (last visited January 25, 2012).

[2] *See* http://www.schoonerwesternunion.org/key-west/boat-history.htm (last visited January 25, 2012).

[3] National Park Service Digital Library, National Register of Historic Places, at http://nrhp.focus.nps.gov/natreghome.do?searchtype=natreghome (last visited January 25, 2012).

[4] http://www.schoonerwesternunion.org/key-west/flagship-about-us.htm (last visited January 25, 2012).

[5] *See* chapter 15, F.S.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Obtaining the status of state flagship could increase the marketability of the Schooner Western Union Maritime Museum, thereby generating additional revenue that the Schooner Western Union Preservation Society may use for the purpose of maintaining the vessel.[6]

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.

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

None.

[6] Key West's Flagship Schooner Western Union Maritime Museum, at Funding & Sponsorships, http://www.schoonerwesternunion.org/key-west/schooner-preservation-society.htm (last visited December 22, 2011).

A bill to be entitled

An act relating to official state designations; creating s. 15.0465, F.S.; designating an official flagship of the state; providing an effective date.

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

Section 1. Section 15.0465, Florida Statutes, is created to read:

15.0465 Official state flagship.—The schooner Western Union, a 130-foot historic sailing vessel of the tallship class, built in Key West, Florida, and first launched in 1939, is designated an official flagship of the State of Florida.

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 421 Limited Certification for Urban Landscape Commercial Fertilizer Application
SPONSOR(S): Community & Military Affairs Subcommittee, Agriculture and Natural Resources Subcommittee, and Smith
TIED BILLS: None **IDEN./SIM. BILLS:** SB 604

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Agriculture & Natural Resources Subcommittee	10 Y, 3 N, As CS	Cunningham	Blalock
2) Community & Military Affairs Subcommittee	9 Y, 6 N, As CS	Gibson	Hoagland
3) State Affairs Committee		Kaiser	Hamby

SUMMARY ANALYSIS

In order to provide a means of documenting and ensuring compliance with the best management practices (BMPs) for commercial fertilizer application to urban landscapes, s. 482.1562, F.S., provides a limited certification for urban landscape commercial fertilizer application. Beginning January 1, 2014, any person applying commercial fertilizer to an urban landscape must be certified. In order to obtain a limited certification for urban landscape commercial fertilizer application, an applicant must submit to the Department of Agriculture and Consumer Services (DACS) a training certificate issued by the Department of Environmental Protection (DEP) and pay a certification fee.

The certification for urban landscape commercial fertilizer application does not authorize:

- the application of pesticides to turf or ornamentals, or pesticide fertilizer including pesticide fertilizer mixtures;
- the operation of a pest control business; or
- the application of pesticides or fertilizers by unlicensed or uncertified personnel under the supervision of the certified person.

DACS may provide information concerning the certification status of certified persons to local and state governmental agencies, and DACS is encouraged to create an online database listing those persons who are certified. DACS also is granted the authority to adopt rules to administer the limited certification. Yard workers who only apply fertilizer to individual residential properties are exempt from the certification requirements.

The bill amends s. 482.1562, F.S., to provide that the Legislature finds that the implementation of BMPs for commercial fertilizer application to urban landscapes is a critical component of the state's efforts to minimize potential impacts to water quality. The bill also provides that persons who have obtained the limited certification for urban landscape commercial fertilizer application are required to follow the BMPs and are exempt from the prohibited application period bans within local government ordinances that address the fertilization of urban turfs, lawns, and landscapes. In addition, the bill now requires, instead of merely allows, DACS to provide information to local and state governmental agencies concerning the certification status of persons that have obtained the limited certification. Lastly, the bill grants DACS enforcement authority over persons that have obtained the limited certification for urban landscape commercial fertilizer application.

The bill has no fiscal impact on state government but may have an indeterminate negative fiscal impact on local governments to the extent that any increased local cleanup is required due to the exemptions from the prohibited application period bans. (See Fiscal Analysis)

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

The Florida Consumer Fertilizer Task Force & Model Ordinance

The Florida Consumer Fertilizer Task Force was created by the Florida Legislature, in 2007, to review and provide recommendations on the state's policies and programs addressing consumer fertilizers. One recommendation of the task force was the creation of a model ordinance concerning the use of nonagricultural fertilizer for use by local governments that chose to adopt an ordinance. The Model Ordinance for Florida-Friendly Fertilizer Use on Urban Landscapes (2008)[1] was developed by the Department of Environmental Protection (DEP) in conjunction with the Florida Consumer Fertilizer Task Force, the Department of Agriculture and Consumer Services (DACS) and the University of Florida's Institute of Food and Agricultural Sciences (IFAS).

The Task Force also recommended that local governments be allowed to adopt additional or more stringent provisions to the model ordinance provided a local government could demonstrate that it met certain criteria. In 2009, the Legislature established findings that implementation of the Model Ordinance for Florida-Friendly Fertilizer Use on Urban Landscapes would assist in protecting the quality of Florida's surface water and groundwater resources. The Legislature further found that local conditions, including variations in the types and quality of water bodies, site-specific soils and geology, and urban or rural densities and characteristics, could necessitate the implementation of additional or more stringent fertilizer-management practices at the local government level.[2]

All county and municipal governments are encouraged to adopt and enforce the model ordinance or an equivalent requirement as a mechanism for protecting local surface and groundwater quality.[3] Certain counties and municipalities located within a watershed of a water body or water segment listed as impaired by nutrients pursuant to s. 403.067, F.S., must, at a minimum, adopt the model ordinance and may adopt additional or more stringent standards if certain criteria are met.[4] There is an exemption for local governments that adopted a fertilizer use ordinance before January 1, 2009.[5]

Limited Certification for Urban Landscape Commercial Fertilizer Application

Section 403.9338, instructs DEP, in cooperation with IFAS to provide training and testing programs in urban landscape best management practices (BMPs)[6] and to approve other training and testing programs that are equivalent to or more comprehensive. A person who successfully completes a training program may apply to DACS to receive a limited certification for urban landscape commercial fertilizer application.[7] A person possessing this certification is then not subject to additional local testing.

In order to provide a means of documenting and ensuring compliance with the BMPs for commercial fertilizer application to urban landscapes, s. 482.1562, F.S., provides the limited certification for urban

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[1] This model ordinance was updated in 2010 to reflect changes to various laws, correct errors and clarify wording, and incorporate new research results.
[2] S. 403.9336, F.S.
[3] S. 403.9337, F.S.
[4] *Id.*
[5] *Id.*
[6] *See* DEP'T OF ENV. PROTECTION, FLORIDA-FRIENDLY BEST MANAGEMENT PRACTICES FOR PROTECTION OF WATER RESOURCES BY THE GREEN INDUSTRIES (2010), *available at*: http://www.dep.state.fl.us/water/nonpoint/pubs.htm (last accessed January 25, 2012).
[7] S. 482.021(6), F.S., defines "commercial fertilizer application" as "the application of fertilizer for payment or other consideration to property not owned by the person or firm applying the fertilizer or the employer of the applicator." S. 482.021(29) defines "urban landscape" as "pervious areas on residential, commercial, industrial, institutional, highway rights-of-way, or other nonagricultural lands that are planted with turf or horticultural plants," agriculture has the same meaning as in s. 570.02.

landscape commercial fertilizer application.[8] Beginning January 1, 2014, any person applying commercial fertilizer to an urban landscape must be certified. In order to obtain a limited certification for urban landscape commercial fertilizer application, an applicant must submit to DACS:

- A training certificate issued by s. 403.9338, F.S.; and
- Pay a certification fee, which is set by DACS in an amount of at least $25, but not more than $75.

The limited certification is valid for four years and recertification requires that the applicant complete four hours of acceptable continuing education, two hours of which, must address fertilizer best management practices.

An application for recertification must be made 90 days before the expiration of the current certificate and include proof of the four hour continuing education class, and a recertification fee of at least $25 but not more than $75. A late renewal charge of $50 per month will be assessed 30 days after the date the application for recertification is due and must be paid in addition to the renewal fee. Unless timely recertified, a certificate automatically expires 90 days after the recertification date. Upon expiration, an applicant must reapply in the manner described above.

The certification for urban landscape commercial fertilizer application does not authorize:

- Application of pesticides to turf or ornamentals, or pesticide fertilizer including pesticide fertilizer mixtures;
- Operation of a pest control business; or
- Application of pesticides or fertilizers by unlicensed or uncertified personnel under the supervision of the certified person.

Current law also provides that DACS may provide information concerning the certification status of those certified to local and state governmental agencies, and DACS is encouraged to create an online database listing those persons who are certified. DACS has the authority to adopt rules to administer this limited certification for urban landscape commercial fertilizer application.

Yard workers who apply fertilizer only to individual residential property using fertilizer and equipment provided by the residential property owner or resident are exempt from the limited certification requirements.[9] Currently, the statute does not provide an exemption for certified persons from local ordinances that prohibit the application of fertilizer to urban turfs, lawns, and landscapes during certain time periods.

Local Government Fertilizer Application Ban Ordinances

Local governments have enacted a wide variety of ordinances through their home rule powers to regulate the commercial fertilization of urban turfs, lawns, and landscapes. These ordinances relate to composition of applied fertilizer, fertilizer application rate, fertilizer free zones, setback requirements, and strict no application time period bans. Local prohibited application period bans generally restrict the application of fertilizers containing nitrogen and phosphorous to turfs, lawns, and landscapes during the months of June through September, known as the rainy season.[10]

Because rainfall that exceeds the ability of the soil to retain moisture in the root zone may lead to runoff into surface waters or leaching through the soil to ground water, the BMPs[11] also contain a prohibited

[8] As of June 30, 2011, DACS has issued 767 limited certificates.
[9] S. 482.1562(9), F.S.
[10] *See* Venice, Fla., Ordinance No. 2009-07, s. 7 (2009) (prohibiting application from June 1- Sep. 30; Bonita Springs, Fla., Ordinance No. 08-23, s. 7 (2008) (prohibiting application from June 1-Sep. 30); and Sanibel, Fla., Ordinance No. 07-003, s. 5 (2007) (prohibiting application from July 1- Sep. 30) (copies of ordinances on file with the committee).
[11] *See* DEP'T OF ENV. PROTECTION, FLORIDA-FRIENDLY BEST MANAGEMENT PRACTICES FOR PROTECTION OF WATER RESOURCES BY THE GREEN INDUSTRIES (2010), *available at*: http://www.dep.state.fl.us/water/nonpoint/pubs.htm (last accessed January 25, 2012).

application period ban when the National Weather Service has issued a flood, tropical storm, or hurricane watch or warning, or if heavy rains[12] are likely. Some local governments have also adopted similar local ordinance application period bans that prohibit fertilizer application when heavy rains are likely.[13]

Currently, DEP determines impaired waters[14] throughout the state, which are those not meeting water quality standards for a particular pollutant or pollutants, and adopts by rule a TMDL for each of the pollutants causing the water quality problems.[15] With local input, a Basin Management Action Plan (BMAP) is then developed that outlines strategies and actions for cleanup within a local government's jurisdiction.[16] As part of the strategy to achieve restoration, DEP grants a load reduction credit to the local government in the BMAP if the local government has adopted comprehensive nonpoint source pollution reduction efforts, of which the model ordinance for fertilizer application is one part.[17] However, DEP currently does not offer a local government any additional credit for a calendar based prohibited application period ban; because according to the Department, as of now, the science has not been proven.[18] Public testimony from stakeholders on this bill also revealed that disagreement exists as to the effectiveness of local prohibited application period bans.

Effect of Proposed Changes

The bill amends s. 482.1562, F.S., to provide that the Legislature finds that the implementation of BMPs for commercial fertilizer application to urban landscapes is a critical component of the state's efforts to minimize potential impacts to water quality. The bill also provides that persons who have obtained the limited certification for urban landscape commercial fertilizer application are required to follow BMPs and are exempt from the prohibited application period bans within local government ordinances that address the fertilization of urban turfs, lawns, and landscapes. Certified persons would still be required to follow the prohibited application period ban guidelines contained in the BMPs.

In addition, the bill amends current law to now require DACS to provide information to local and state governmental agencies concerning the certification status of persons that have obtained the limited certification. An analysis of the legislation completed by DACS stated that mandating the providing of information to local governments will not create any fiscal impact on the department since the Division of Agricultural Environmental Services currently has a tracking and reporting method in place.

Lastly, the bill grants DACS enforcement authority over persons that have obtained the limited certification for urban landscape commercial fertilizer application, and specifies that all penalties, fines, and administrative actions must be consistent with ch. 482.[19]

B. SECTION DIRECTORY:

Section 1. Amends s. 482.1562, F.S., providing that the Legislature finds that best management practices for commercial fertilizer application to urban landscapes is a critical component to minimize potential impacts to Florida's water quality; providing that persons who have obtained the limited certification for urban landscape commercial fertilizer application are required to follow best management practices; exempts persons certified and licensed by the Department of Agriculture and

[12] The BMPs define "heavy rain" as rainfall greater than or equal to 50mm (2 inches) in a 24 hour period, which is the definition used by the World Meteorological Organization. Further the BMPs state that while only about 3 to 5% of Florida rain events exceed two inches, caution should always be used to avoid runoff or leaching from saturated or copacted soils or in other high-risk situations.
[13] *See* Stuart, Fla., Code s. 20-163 (2011) and Jacksonville, Fla., Code s. 366.604 (2008).
[14] Water bodies that do not meet certain water quality standards are identified as "impaired" for the particular pollutants of concern--nutrients, bacteria, mercury, etc.--and total maximum daily loads (TMDLs) must be developed, adopted and implemented for those pollutants to reduce pollutants and clean up the water body.
[15] *See* DEP Total Maximum Daily Loads Program, *available at*: http://www.dep.state.fl.us/water/tmdl/index.htm (last accessed January 26, 2012).
[16] *Id.*
[17] Staff correspondence with DEP.
[18] *Id.*
[19] S. 482.191, F.S., provides that a person who violates any provision of this chapter is guilty of a misdemeanor of the second degree, which is punishable by up to 60 days in jail and a $500 fine.

Consumer Services (DACS) from the prohibited application period bans within local ordinances that address the fertilization of urban turfs, lawns, and landscapes; requires DACS to provide specified information to other local and state governmental agencies; provides DACS with certain enforcement authority; and provides a requirement for related penalties, fines, and administrative actions.

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:

   Because of the exemption from the prohibited application period bans within local ordinances, local governments may experience an increase in expenditures in order to comply with state and federally mandated water quality programs, if following the BMPs is insufficient to maintain the mandated water quality. There is, however, disagreement among stakeholders regarding the effectiveness of local prohibited application period bans. Therefore, the fiscal impact on local government expenditures, if any, is indeterminate at this time.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Certified persons in the business of commercial fertilizer application are likely to benefit from no longer having to comply with prohibited application period bans within local ordinances as this may increase the months of the year in which they are able to conduct business. The impact on certified persons will vary based on the business and whether they operate in a local jurisdiction with a prohibited application period ban. Therefore, the direct positive economic impact on the private sector is indeterminate.

D. FISCAL COMMENTS:

See above

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

   None

B. RULE-MAKING AUTHORITY:

None

C. DRAFTING ISSUES OR OTHER COMMENTS:

None

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On November 15, 2011, the Agriculture & Natural Resources Subcommittee amended and passed HB 421 as a Committee Substitute (CS). The amendment requires that persons who have obtained the limited certification for urban landscape commercial fertilizer application are required to follow best management practices as established by the Department of Environmental Protection.

On January 18, 2012, the Community & Military Affairs Subcommittee adopted an amendment to CS/HB 421 that narrowed the exemption provided to certified persons from "local government ordinances that address the fertilization of urban turfs, lawns, and landscapes" to an exemption for certified persons only from "the prohibited application period bans within local government ordinances that address the fertilization of urban turfs, lawns, and landscapes." The analysis has been updated to reflect this amendment.

A bill to be entitled

An act relating to limited certification for urban landscape commercial fertilizer application; amending s. 482.1562, F.S.; providing legislative findings; requiring persons who hold a limited certification to follow certain best management practices; providing an exemption from certain prohibited application period bans; requiring the Department of Agriculture and Consumer Services to provide specified information to other local and state governmental agencies; providing the department with certain enforcement authority; providing a requirement for related penalties, fines, and administrative actions; providing an effective date.

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

Section 1. Subsections (1) through (10) of section 482.1562, Florida Statutes, are renumbered as subsections (2) through (11), respectively, a new subsection (1) is added to that section, and present subsections (2), (8), and (10) of that section are amended, to read:

482.1562 Limited certification for urban landscape commercial fertilizer application.—

(1) The Legislature finds that the implementation of best management practices for commercial fertilizer application to urban landscapes is a critical component of the state's efforts to minimize potential impacts to water quality.

(3) ~~(2)~~ Beginning January 1, 2014, any person applying commercial fertilizer to an urban landscape must be certified under this section. A person certified under this section must follow best management practices for commercial fertilizer application to urban landscapes as established by the Department of Environmental Protection. A person certified under this section is exempt from the prohibited application period bans within local government ordinances that address the fertilization of urban turfs, lawns, and landscapes.

(9) ~~(8)~~ The department shall ~~may~~ provide information concerning the certification status of persons certified under this section to other local and state governmental agencies. The department is encouraged to create an online database that lists all persons certified under this section.

(11) ~~(10)~~ The department has enforcement authority over persons certified under this section and may adopt rules to administer this section. All penalties, fines, and administrative actions must be consistent with this chapter.

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 469 Special Observances
SPONSOR(S): Smith and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 276

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Government Operations Subcommittee	13 Y, 0 N	Thompson	Williamson
2) State Affairs Committee		Thompson	Hamby

SUMMARY ANALYSIS

Current law establishes 50 legal holidays and special observance days, including Memorial Day, Veterans' Day, and Patriots' Day. Current law does not provide a designation for Purple Heart Day.

The bill designates August 7 of each year as "Purple Heart Day." It authorizes the Governor to annually issue a proclamation designating August 7 as "Purple Heart Day." The bill encourages public officials, schools, private organizations, and all residents of the state to commemorate Purple Heart Day and to honor those wounded or killed while serving in any branch of the United States Armed Services.

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

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

The Purple Heart

The Purple Heart was established by General George Washington on August 7, 1782, during the Revolutionary War, and reestablished by President Franklin D. Roosevelt in 1932.[1] The Purple Heart currently is awarded pursuant to executive order and federal law.[2] The award is given in the name of the President of the United States (U.S.) and is limited to members of the U.S. Armed Forces who, while serving under component authority in any capacity after April 5, 1917, has been:

- Wounded or killed;
- Died or may hereafter die after being wounded; or
- Wounded or killed as a result of friendly fire and in acts of terrorism.[3]

Legal Holidays and Special Observance Days

Current law establishes 50 legal holidays and special observance days, including Memorial Day, Veterans' Day, and Patriots' Day.[4] Legal holidays and special observances may apply throughout the state or they may be limited to particular counties. Designation of a day as a legal holiday does not necessarily make that day a paid holiday for public employees.[5] Current law does not contain a designation for Purple Heart Day.[6]

Proposed Changes

The bill designates August 7 of each year as "Purple Heart Day." It authorizes the Governor to annually issue a proclamation designating August 7 as "Purple Heart Day." The bill encourages public officials, schools, private organizations, and all residents of the state to commemorate Purple Heart Day and to honor those wounded or killed while serving in any branch of the United States Armed Services.

B. SECTION DIRECTORY:

Section 1 creates s. 683.146, F.S., to designate August 7 of each year as "Purple Heart Day."

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.

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[1] *See* Army Regulation 600-8-22, Personnel-General, Military Awards, Chapter 2, Section 8, page 19, at http://www.apd.army.mil/pdffiles/r600_8_22.pdf (last visited January 18, 2012).
[2] Executive Order 11016, April 25, 1962; Executive Order 12464, February 23, 1984; and Public Law 98-525, October 19, 1984.
[3] *See* Army Regulation 600-8-22, Personnel-General, Military Awards, Chapter 2, Section 8, page 20, at http://www.apd.army.mil/pdffiles/r600_8_22.pdf, provides definitions and examples of what qualifies and what does not qualify as a "wound" and other stipulations of who may receive the Purple Heart Award. (Last visited January 18, 2012).
[4] *See* chapter 683, F.S.
[5] Section 110.117, F.S., establishes which legal holidays are paid holidays for public employees.
[6] *See* chapter 683, F.S.

2. Expenditures:

   The Office of External Affairs within the Executive Office of the Governor prepares all proclamations. Reviewing and processing a proclamation may incur a cost. However, according to the Governor's office the cost is likely insignificant and provided as a courtesy.[7]

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

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

None.

[7] Information received by telephone from Brenda Burdette, the Executive Office of the Governor, Legislative Affairs Office, January 18, 2012.

A bill to be entitled

An act relating to special observances; creating s. 683.146, F.S.; designating August 7 of each year as "Purple Heart Day"; providing an effective date.

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

Section 1. Section 683.146, Florida Statutes, is created to read:

683.146 Purple Heart Day.—

(1) August 7 of each year is designated as "Purple Heart Day."

(2) The Governor may annually issue a proclamation designating August 7 as "Purple Heart Day." Public officials, schools, private organizations, and all residents of the state are encouraged to commemorate Purple Heart Day and honor those wounded or killed while serving in any branch of the United States Armed Services.

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 Smith offered the following:

Amendment (with title amendment)

Remove line 8 and insert:

Section 1. Section 265.003, Florida Statutes, is amended to read:

265.003 Florida Veterans' Hall of Fame.—

(1) It is the intent of the Legislature to recognize and honor those military veterans who, through their works and lives during or after military service, have made a significant contribution to the State of Florida.

(2) There is established the Florida Veterans' Hall of Fame.

(a) The Florida Veterans' Hall of Fame is administered by the Florida Department of Veterans' Affairs without appropriation of state funds.

(b) The Department of Management Services shall set aside an area on the Plaza Level of the Capitol Building along the

northeast front wall and shall consult with the Department of Veterans' Affairs regarding the design and theme of the area.

(c) Each person who is inducted into the Florida Veterans' Hall of Fame shall have his or her name placed on a plaque displayed in the designated area of the Capitol Building.

(3)(a) The Florida Veterans' Hall of Fame Council is created within the Department of Veterans' Affairs as an advisory council, as defined in s. 20.03(7), consisting of seven members who are all honorably discharged veterans, at least four of whom must be members of a congressionally chartered veterans service organization. The Governor, the President of the Senate, the Speaker of the House of Representatives, the Attorney General, the Chief Financial Officer, the Commissioner of Agriculture, and the executive director of the Department of Veterans' Affairs shall each appoint one member. For the purposes of ensuring staggered terms, the council members appointed by the Governor, the Attorney General, the Chief Financial Officer, and the Commissioner of Agriculture shall be appointed to 4-year terms beginning on January 1 of the year of appointment, and the council members appointed by the President of the Senate, the Speaker of the House of Representatives, and the executive director of the Department of Veterans' Affairs shall be appointed to 2-year terms beginning on January 1 of the year of appointment. After the initial appointments, all appointees shall be appointed to 4-year terms. A member whose term expires shall continue to serve on the council until a replacement is appointed.

(b) The members shall annually elect a chair from among their number. The council shall meet at the call of the chair, at the request of the executive director of the Department of Veterans' Affairs, or at such times as may be prescribed by the council. A majority of the members of the council currently appointed constitutes a quorum, and a meeting may not be held unless a quorum is present. The affirmative vote of a majority of the members of the council present is necessary for any official action by the council.

(c) Members of the council may not receive compensation or honorarium for their services. Members may be reimbursed for travel expenses incurred in the performance of their duties, as provided in s. 112.061, however, no state funds may be used for this purpose.

(d) The original appointing authority may remove his or her appointee from the council for misconduct or malfeasance in office, neglect of duty, incompetence, or permanent inability to perform official duties or if the member is adjudicated guilty of a felony.

(4) ~~(3)~~ (a) The Florida Veterans' Hall of Fame Council ~~Department of Veterans' Affairs~~ shall annually accept nominations of persons to be considered for induction into the Florida Veterans' Hall of Fame and shall ~~then~~ transmit a list of up to 20 nominees ~~its recommendations~~ to the Department of Veterans' Affairs for submission to the Governor and the Cabinet who will select the nominees to be inducted.

(b) In selecting its nominees for submission ~~making its recommendations~~ to the Governor and the Cabinet, the Florida

Veterans' Hall of Fame Council ~~Department of Veterans' Affairs~~ shall give preference to veterans who were born in Florida or adopted Florida as their home state or base of operation and who have made a significant contribution to the state in civic, business, public service, or other pursuits.

(5)~~(4)~~ The Florida Veterans' Hall of Fame Council ~~Department of Veterans' Affairs~~ may establish criteria and set specific time periods for acceptance of nominations and for the process of selection of nominees for membership and establish a formal induction ceremony to coincide with the annual commemoration of Veterans' Day.

Section 2. Section 683.146, Florida Statutes, is created

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

Remove line 2 and insert:

An act relating to recognition of military personnel and veterans; amending s. 265.003, F.S.; creating the Florida Veterans' Hall of Fame Council within the Department of Veterans' Affairs; providing for membership, terms of members, and organization of the council; revising provisions relating to nomination of persons to the Florida Veterans' Hall of Fame; providing for annual acceptance of nominations by the council; authorizing the council to establish criteria for such nominations; creating s.

Amendment No.

103

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 541 Administrative Procedures
SPONSOR(S): Brandes
TIED BILLS: **IDEN./SIM. BILLS:** SB 1084

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Government Operations Subcommittee	15 Y, 0 N	Meadows	Williamson
2) Transportation & Economic Development Appropriations Subcommittee	14 Y, 0 N	Rayman	Davis
3) State Affairs Committee		Meadows	Hamby

SUMMARY ANALYSIS

The bill revises provisions with respect to the *Florida Administrative Code* and the *Florida Administrative Weekly*.

The bill provides that the online version of the *Florida Administrative Code* is the official version for the state. The Department of State is no longer required to publish a printed version of the *Florida Administrative Code*.

In addition, the bill changes the name of the *Florida Administrative Weekly* to the *Florida Administrative Register*. The online version of the *Florida Administrative Register* is the official version. The Department of State may no longer provide free print copies of the *Florida Administrative Register* to federal and state government entities. A printed copy of the *Florida Administrative Register* may be made available on an annual subscription basis.

The bill provides that the Department of State is no longer responsible for reviewing entity submissions to the *Florida Administrative Register* for formatting, grammatical, or typographical errors. Entities are responsible for proofreading their documents and assume full responsibility for the accuracy of documents submitted.

Finally, the bill directs the Division of Statutory Revision to prepare a reviser's bill for the 2013 Regular Session to substitute the term *Florida Administrative Register* for the term *Florida Administrative Weekly* throughout the Florida Statutes.

The bill will likely reduce the workload on the Department of State, but this impact is indeterminate.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

The *Florida Administrative Code* (FAC) is the official compilation of administrative rules for the State of Florida. The Department of State (DOS or department) oversees the publishing of the FAC and the monthly supplements. The online, unofficial version of the FAC is updated weekly on the department's rulemaking website.

DOS is required to publish the FAC, which contains all rules adopted by agencies, together with references to rulemaking authority and history notes.[1] The FAC must be supplemented at least monthly.[2] DOS currently contracts with LexisNexis for the printing of the FAC.[3] Current law provides that the printed version of the FAC is the official version.[4]

Under current law, DOS is required to publish notices and various other materials filed by the state's administrative agencies in the *Florida Administrative Weekly* (FAW).[5,6] The FAW must contain:

- Notice of adoption of, and an index to, all rules filed during the preceding week;
- All notices required by s. 120.54(3)(a), F.S., concerning agency rulemaking, showing the text of all rules proposed for consideration or a reference to the location in the FAW where the text of the proposed rules is published;
- All notices of public meetings, hearings, and workshops, including a statement of the manner in which a copy of the agenda may be obtained;
- A notice of each request for authorization to amend or repeal an existing uniform rule or for the adoption of new uniform rules;
- Notice of petitions for declaratory statements or administrative determinations;
- A summary of each objection to any rule filed by the Administrative Procedures Committee during the preceding week; and
- Any other material required or authorized by law or deemed useful by the department.[7]

Responsibility for the grammatical editing of the FAW is statutorily assigned to DOS.[8] Additionally, DOS is required to adopt rules prescribing the style and form required for rules submitted for filing and establishing the form for rule certification.[9]

DOS contracts with LexisNexis for publication of the FAW in a printed format.[10] The FAW is published on Fridays and distributed for free to administrative agencies, courts, libraries, law schools, and legislative offices.[11,12] According to DOS, the FAW has approximately 191 paid subscribers, who pay

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[1] Section 120.55(1)(a)1., F.S.
[2] *Id.*
[3] Information provided by telephone on December 9, 2011, by Mr. Pierce Schuessler, Legislative Affairs Director, Department of State.
[4] Section 120.55(1)(a)1., F.S.
[5] Section 120.55(1)(b), F.S.
[6] According to DOS, approximately 300 entities in the state publish notices in the Florida Administrative Weekly. These entities include state agencies, other units of state and local government, and nongovernmental entities.
[7] Section 120.55(1)(b), F.S.
[8] Section 120.55(1)(e), F.S.
[9] Section 120.55(1)(d), F.S.
[10] Information provided by telephone on December 9, 2011, by Mr. Pierce Schuessler, Legislative Affairs Director, Department of State.
[11] Section 120.55(7)(a)1., F.S., requires the department to furnish the FAW, without charge and upon request, as follows:

- One subscription to each federal and state court having jurisdiction over the residents of the state, the Legislative Library, each state university library, the State Library, each depository library designated pursuant to s. 257.05, F.S., and each standing committee of the Senate and House of Representatives and each state legislator;
- Two subscriptions to each state department;

an annual subscription fee of $307 per year.[13] Subscription fees charged to FAW subscribers are retained by the publisher as compensation for printing the FAW.[14] In addition to producing the paper version of the FAW, DOS posts copies of the FAW in Adobe Acrobat Portable Document Format (PDF) at *www.flrules.org.*, which may be accessed by the public for free.[15] Additionally, printed copies of the FAC are sold by LexisNexis. The majority of revenues from the sale of the FAC are retained by the company as compensation for printing the code. DOS receives a small amount in royalties.[16]

Current law requires all fees and moneys collected by DOS under the Administrative Procedure Act (APA)[17] to be deposited in the Records Management Trust Fund for the purpose of paying for the publication of the FAC and FAW, and for associated costs incurred by the department in administering the APA's requirements.[18] Revenue collected includes the space rate, known as the line charge, at $1.24 per line.

Effect of Proposed Changes

The bill revises provisions with respect to the *Florida Administrative Code* and the *Florida Administrative Weekly.*

Florida Administrative Code
The bill amends s. 120.55, F.S., to provide that the online version of the FAC is the official version for the state. In addition, DOS is no longer required to publish a print version of the FAC. DOS may contract for the publication of a print version of the FAC, but the print version is not the official publication.

The bill also requires that adopted rules and material incorporated by reference be filed in an electronic format.

Florida Administrative Weekly
The bill amends s. 120.55, F.S., to change the name of that the *Florida Administrative Weekly* to the *Florida Administrative Register*. The bill provides that the online version of the *Florida Administrative Register* (FAR) is the official version, and is available at *www.flrules.org*. DOS must continually revise the online version of the FAR, rather than on a weekly basis. The bill removes the requirement that the internet website for FAR must contain notices of adoption of, and an index to, all rules filed during the preceding week. It also removes the requirement that the internet website include a cumulative list of all rules that have been filed but not filed for adoption.

DOS may contract with a publishing firm to provide a print version of the FAR, but the print version is not the official publication. DOS may no longer provide free print copies of the FAR to federal and state government entities. A printed copy of the FAR may be made available on an annual subscription basis.

- Three subscriptions to the library of the Supreme Court of Florida, the library of each state district court of appeal, the division, the library of the Attorney General, each law school library in Florida, the Secretary of the Senate, and the Clerk of the House of Representatives; and
- Ten subscriptions to the committee.

[12] As of April 15, 2011, there are 145 subscriptions that are comped for federal, state, and local government entities. Information provided by electronic mail on December 16, 2011, by Mr. Pierce Schuessler, Legislative Affairs Director, Department of State. (On file with the Government Operations Subcommittee.)
[13] Information provided by telephone on December 16, 2011, by Mr. Pierce Schuessler, Legislative Affairs Director, Department of State.
[14] Information provided by budget office on January 20, 2012, and by Mr. Pierce Schuessler, Legislative Affairs Director, Department of State.
[15] Section 120.55(2), F.S.
[16] Information provided by budget office on January 20, 2012, and by Mr. Pierce Schuessler, Legislative Affairs Director, Department of State.
[17] Chapter 120, F.S.
[18] Section 120.55(8)(a), F.S.

In addition, the bill provides that DOS is not responsible for reviewing agency and other entities submissions to the FAR for formatting and numbering requirements, grammatical errors, and typographical errors. Entities are responsible for proofreading documents before submitting them electronically in a word processing format. The submitting entity assumes full responsibility for the document's accuracy when submitted.

Finally, the bill directs the Division of Statutory Revision to prepare a reviser's bill for the 2013 Regular Session to substitute the term *Florida Administrative Register* for the term *Florida Administrative Weekly* throughout the Florida Statutes.

B. SECTION DIRECTORY:

Section 1. Amends s. 120.55, F.S., revising provisions with respect to the revision and publication of the *Florida Administrative Code* and the *Florida Administrative Weekly*.

Section 2. Provides a directive to the Division of Statutory Revision to prepare a reviser's bill.

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

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None. This bill does not address or change the current revenue stream collected by DOS for administering APA requirements.

2. Expenditures:

Indeterminate. The bill will likely reduce the workload for staff of the DOS.

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 will reduce the workload related to current weekly reporting for DOS and entities using the FAC and FAW. The Department of State indicates creating a continuous or "live" publication system (FAR) will reduce the timeline needed to advertise public meetings and workshops while maintaining the current statutory timelines for effective public notice.

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 expands the current rule-making authority for the Department of State. It authorizes the department to prescribe by rule the electronic form for agencies to file adopted rules.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.

A bill to be entitled

An act relating to administrative procedures; amending s. 120.55, F.S.; revising provisions with respect to the revision and publication of the Florida Administrative Code to provide that the Department of State is not required to publish a printed version of the code but may contract with a publishing firm for a printed publication; providing that the electronic version of the code is the official compilation of the administrative rules of the state; providing for adopted rules and material incorporated by reference to be filed in electronic forms; renaming the "Florida Administrative Weekly" as the "Florida Administrative Register"; requiring a continuous revision and publication of the Florida Administrative Register on an Internet website managed by the Department of State; revising content and website search requirements; deleting a requirement to provide printed copies of the Florida Administrative Register to certain federal and state entities; providing a directive to the Division of Statutory Revision; providing an effective date.

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

Section 1. Section 120.55, Florida Statutes, is amended to read:

120.55 Publication.—

(1) The Department of State shall:

(a)1. Through a continuous revision and publication system, compile and publish electronically, on an Internet website managed by the department, the "Florida Administrative Code." The Florida Administrative Code shall contain all rules adopted by each agency, citing the grant of rulemaking authority and the specific law implemented pursuant to which each rule was adopted, all history notes as authorized in s. 120.545(7), complete indexes to all rules contained in the code, and any other material required or authorized by law or deemed useful by the department. The electronic code shall display each rule chapter currently in effect in browse mode and allow full text search of the code and each rule chapter. The department ~~shall publish a printed version of the Florida Administrative Code and~~ may contract with a publishing firm for a ~~such~~ printed publication; however, the department shall retain responsibility for the code as provided in this section. ~~Supplementation of the printed code shall be made as often as practicable, but at least monthly.~~ The electronic ~~printed~~ publication shall be the official compilation of the administrative rules of this state. The Department of State shall retain the copyright over the Florida Administrative Code.

2. Rules general in form but applicable to only one school district, community college district, or county, or a part thereof, or state university rules relating to internal personnel or business and finance shall not be published in the Florida Administrative Code. Exclusion from publication in the Florida Administrative Code shall not affect the validity or

effectiveness of such rules.

3. At the beginning of the section of the code dealing with an agency that files copies of its rules with the department, the department shall publish the address and telephone number of the executive offices of each agency, the manner by which the agency indexes its rules, a listing of all rules of that agency excluded from publication in the code, and a statement as to where those rules may be inspected.

4. Forms shall not be published in the Florida Administrative Code; but any form which an agency uses in its dealings with the public, along with any accompanying instructions, shall be filed with the committee before it is used. Any form or instruction which meets the definition of "rule" provided in s. 120.52 shall be incorporated by reference into the appropriate rule. The reference shall specifically state that the form is being incorporated by reference and shall include the number, title, and effective date of the form and an explanation of how the form may be obtained. Each form created by an agency which is incorporated by reference in a rule notice of which is given under s. 120.54(3)(a) after December 31, 2007, must clearly display the number, title, and effective date of the form and the number of the rule in which the form is incorporated.

5. The department shall allow <u>adopted rules and</u> material incorporated by reference to be filed in electronic form as prescribed by department rule. When a rule is filed for adoption with incorporated material in electronic form, the department's publication of the Florida Administrative Code on its Internet

website must contain a hyperlink from the incorporating reference in the rule directly to that material. The department may not allow hyperlinks from rules in the Florida Administrative Code to any material other than that filed with and maintained by the department, but may allow hyperlinks to incorporated material maintained by the department from the adopting agency's website or other sites.

(b) Electronically publish on an Internet website managed by the department a continuous revision and ~~weekly~~ publication entitled the "Florida Administrative Register ~~Weekly~~," which shall serve as the official ~~Internet website for such~~ publication and must contain:

~~1. Notice of adoption of, and an index to, all rules filed during the preceding week.~~

1.~~2.~~ All notices required by s. 120.54(3)(a), showing the text of all rules proposed for consideration.

2.~~3.~~ All notices of public meetings, hearings, and workshops conducted in accordance with ~~the provisions of~~ s. 120.525, including a statement of the manner in which a copy of the agenda may be obtained.

3.~~4.~~ A notice of each request for authorization to amend or repeal an existing uniform rule or for the adoption of new uniform rules.

4.~~5.~~ Notice of petitions for declaratory statements or administrative determinations.

5.~~6.~~ A summary of each objection to any rule filed by the Administrative Procedures Committee ~~during the preceding week~~.

~~7. A cumulative list of all rules that have been proposed~~

~~but not filed for adoption.~~

6.~~8.~~ Any other material required or authorized by law or deemed useful by the department.

The department may contract with a publishing firm for a printed publication ~~shall publish a printed version~~ of the Florida Administrative Register ~~Weekly~~ and make copies available on an annual subscription basis. ~~The department may contract with a publishing firm for printed publication of the Florida Administrative Weekly.~~

~~(c) Review notices for compliance with format and numbering requirements before publishing them on the Florida Administrative Weekly Internet website.~~

(c)~~(d)~~ Prescribe by rule the style and form required for rules, notices, and other materials submitted for filing.

~~(e) Correct grammatical, typographical, and like errors not affecting the construction or meaning of the rules, after having obtained the advice and consent of the appropriate agency, and insert history notes.~~

(d)~~(f)~~ Charge each agency using the Florida Administrative Register ~~Weekly~~ a space rate to cover the costs related to the Florida Administrative Register ~~Weekly~~ and the Florida Administrative Code.

(e)~~(g)~~ Maintain a permanent record of all notices published in the Florida Administrative Register ~~Weekly~~.

(2) The Florida Administrative Register ~~Weekly~~ Internet website must allow users to:

(a) Search for notices by type, publication date, rule

number, word, subject, and agency.~~;~~

(b) Search a database that makes available all notices published on the website for a period of at least 5 years.~~;~~

(c) Subscribe to an automated e-mail notification of selected notices to be sent out before or concurrently with ~~weekly~~ publication of the ~~printed and~~ electronic Florida Administrative Register ~~Weekly~~. Such notification must include in the text of the e-mail a summary of the content of each notice.~~;~~

(d) View agency forms and other materials submitted to the department in electronic form and incorporated by reference in proposed rules.~~; and~~

(e) Comment on proposed rules.

(3) Publication of material required by paragraph (1)(b) on the Florida Administrative Register ~~Weekly~~ Internet website does not preclude publication of such material on an agency's website or by other means.

(4) Each agency shall provide copies of its rules upon request, with citations to the grant of rulemaking authority and the specific law implemented for each rule.

(5) Any publication of a proposed rule promulgated by an agency, whether published in the Florida Administrative Register ~~Code~~ or elsewhere, shall include, along with the rule, the name of the person or persons originating such rule, the name of the agency head who approved the rule, and the date upon which the rule was approved.

(6) Access to the Florida Administrative Register ~~Weekly~~ Internet website and its contents, including the e-mail

notification service, shall be free for the public.

~~(7)(a) Each year the Department of State shall furnish the Florida Administrative Weekly, without charge and upon request, as follows:~~

~~1. One subscription to each federal and state court having jurisdiction over the residents of the state; the Legislative Library; each state university library; the State Library; each depository library designated pursuant to s. 257.05; and each standing committee of the Senate and House of Representatives and each state legislator.~~

~~2. Two subscriptions to each state department.~~

~~3. Three subscriptions to the library of the Supreme Court of Florida, the library of each state district court of appeal, the division, the library of the Attorney General, each law school library in Florida, the Secretary of the Senate, and the Clerk of the House of Representatives.~~

~~4. Ten subscriptions to the committee.~~

~~(b) The Department of State shall furnish one copy of the Florida Administrative Weekly, at no cost, to each clerk of the circuit court and each state department, for posting for public inspection.~~

(7)~~(8)~~(a) All fees and moneys collected by the Department of State under this chapter shall be deposited in the Records Management Trust Fund for the purpose of paying for costs incurred by the department in carrying out this chapter.

(b) The unencumbered balance in the Records Management Trust Fund for fees collected pursuant to this chapter may not exceed $300,000 at the beginning of each fiscal year, and any

excess shall be transferred to the General Revenue Fund.

Section 2. The Division of Statutory Revision of the Office of Legislative Services is requested to prepare a reviser's bill for the 2013 Regular Session of the Legislature to substitute the term "Florida Administrative Register" for the term "Florida Administrative Weekly" throughout the Florida Statutes."

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 663 Solid Waste Management Facilities
SPONSOR(S): Agriculture & Natural Resources Appropriations Subcommittee and Agriculture & Natural Resources Subcommittee and Goodson
TIED BILLS: None **IDEN./SIM. BILLS:** SB 738

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

SUMMARY ANALYSIS

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

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

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

The bill creates a solid waste landfill closure account, within the Solid Waste Management Trust Fund. The bill specifies that the DEP may use the funds to contract with a third part to provide funding for the closing and long-term care of solid waste management facilities if certain requirements are met, including written documentation that the insurance company issuing the closure insurance policy will provide or reimburse most or all of the funds required to complete closing and long-term care of the facility. Funds received as reimbursement from the insurance company by the DEP must be deposited into the solid waste landfill closure account.

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

The bill may have an insignificant negative fiscal impact to state government for rulemaking. The bill provides a $2.9 million appropriation in nonrecurring funds so the DEP can pay a third party contractor for the closure and long-term care of solid waste management facilities supported by insurance reimbursement. The bill appears to have an indeterminate positive fiscal impact on local governments over the long term. (See Fiscal Analysis section.)

The effective date for the bill is July 1, 2012, except for the appropriation, which takes effect upon the act becoming a law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Solid Waste Management Facility Permits

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

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

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

Solid Waste Management Trust Fund

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

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

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

Financial Assurance

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

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

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

Effect of Proposed Changes

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

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

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

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

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

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

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

- The facility had or has a DEP permit to operate the facility.
- The permittee provided proof of financial assurance for closure in the form of an insurance certificate.
- The facility has been deemed to be abandoned or has been ordered to close by the DEP.
- Closure will be accomplished in substantial accordance with a closure plan approved by the DEP.
- The DEP has written documentation that the insurance company issuing the closure insurance policy will provide or reimburse most or all of the funds required to complete closing and long-term care of the facility.

Funds received as reimbursement from the insurance company by the DEP must be deposited into the solid waste landfill closure account.

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

The bill provides the DEP an appropriation of $2,888,460 from the Solid Waste Management Trust Fund to pay a third party contractor for the closure and long-term care of solid waste management facilities supported by insurance reimbursement. The appropriation is effective upon the bill becoming a law.

B. SECTION DIRECTORY:

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

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

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

Section 4. Provides an appropriation.

Section 5. Provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

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

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

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

   The bill provides the DEP an appropriation of $2,888,460 from the Solid Waste Management Trust Fund to pay a third party contractor for the closure and long-term care of solid waste management facilities supported by insurance reimbursement. The appropriation is effective upon the bill becoming law.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

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

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Direct Private Sector Costs:

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

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

longer-term permits will see a significant increase in permit fees in the near future. However, the permit would not have to be renewed for 10 years, that is, the total amount of permit fees would be the same, while there would be a 2-fold drop in costs associated with filing renewal applications. If the owners and operators elect to continue to renew permits on a 5-year cycle, permit fees would not increase.

Direct Private Sector Benefits:

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

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

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

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

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

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

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

- Authorizes the DEP to issue 10-year permits for solid waste management facilities that do not have a leachate control system, if the applicant meets certain criteria.
- Authorizes the DEP to adopt rules to administer the permits.
- Specifies that the DEP is not required to submit the rules to the Environmental Regulation Commission for approval.
- Creates a solid waste landfill closure account within the Solid Waste Management Trust Fund to provide funding for the closing and long-term care of solid waste management facilities; enables the DEP to activate a closure of a facility in compliance with the approved closure plan.
- Specifies that the DEP must require that the owner or operator of a solid waste management facility that receives waste after October 9, 1993, and is required to undertake corrective actions for violations of water quality standards provide financial assurance for the cost of completing such corrective actions. The same financial assurance mechanisms that are available for closure costs will be available for costs associated with undertaking corrective actions.

On January 31, 2012, the Agriculture & Natural Resources Appropriations Subcommittee adopted two amendments and passed CS/HB 663 as a committee substitute.

The first amendment amends the Solid Waste Management Trust Fund to allow the Department of Environmental Protection to pay a third party contractor for the closure and long-term care of solid waste management facilities supported by insurance reimbursement.

The second amendment provides an appropriation to pay a third party contractor for the closure and long-term care of solid waste management facilities supported by insurance reimbursement.

This analysis is drawn to CS/CS HB 663.

A bill to be entitled

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

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

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

403.707 Permits.—

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

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

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

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

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

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

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

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

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

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

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

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

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

the facility;

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

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

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

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

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

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

403.7125 Financial assurance ~~for closure~~.—

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

(2) The owner or operator of a landfill owned or operated by a local or state government or the Federal Government shall

establish a fee, or a surcharge on existing fees or other appropriate revenue-producing mechanism, to ensure the availability of financial resources for the proper closure of the landfill. However, the disposal of solid waste by persons on their own property, as described in s. 403.707(2), is exempt from this section.

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

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

(c) The revenue generated under this subsection and any

accumulated interest thereon may be applied to the payment of, or pledged as security for, the payment of revenue bonds issued in whole or in part for the purpose of complying with state and federal landfill closure requirements. Such application or pledge may be made directly in the proceedings authorizing such bonds or in an agreement with an insurer of bonds to assure such insurer of additional security therefor.

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

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

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

resources to cover, at a minimum, the costs of complying with applicable closure requirements. The owner or operator shall estimate such costs to the satisfaction of the department.

(4) This section does not repeal, limit, or abrogate any other law authorizing local governments to fix, levy, or charge rates, fees, or charges for the purpose of complying with state and federal landfill closure requirements.

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

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

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

Section 5. Except as otherwise expressly provided in this act, 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 Williams, T. offered the following:

Amendment (with title amendment)

Between lines 186 and 187, insert:

Section 4. Subsection (1) and paragraph (b) of subsection (3) of section 403.717, Florida Statutes, are amended to read:

403.717 Waste tire and lead-acid battery requirements.—

(1) For purposes of this section and ss. 403.718 and 403.7185:

(a) "Department" means the Department of Environmental Protection.

(b) ~~(i)~~ "Indoor" means within a structure that excludes rain and public access and would control air flows in the event of a fire.

(c) ~~(h)~~ "Lead-acid battery" means a lead-acid battery designed for use in motor vehicles, vessels, and aircraft, and includes such batteries when sold new as a component part of a

motor vehicle, vessel, or aircraft, but not when sold to recycle components.

(d) ~~(b)~~ "Motor vehicle" means an automobile, motorcycle, truck, trailer, semitrailer, truck tractor and semitrailer combination, or any other vehicle operated in this state, used to transport persons or property and propelled by power other than muscular power. The term does not include traction engines, road rollers, vehicles that run only upon a track, bicycles, mopeds, or farm tractors and trailers.

(e) ~~(j)~~ "Processed tire" means a tire that has been treated mechanically, chemically, or thermally so that the resulting material is a marketable product or is suitable for proper disposal.

(f) ~~(c)~~ "Tire" means a continuous solid or pneumatic rubber covering encircling the wheel of a motor vehicle.

(g) ~~(k)~~ "Used tire" means a waste tire which has a minimum tread depth of 3/32 inch or greater and is suitable for use on a motor vehicle.

(h) ~~(d)~~ "Waste tire" means a tire that has been removed from a motor vehicle and has not been retreaded or regrooved. The term includes, but is not limited to, used tires and processed tires. The term does not include solid rubber tires and tires that are inseparable from the rim.

(i) ~~(e)~~ "Waste tire collection center" means a site where waste tires are collected from the public prior to being offered for recycling and where fewer than 1,500 tires are kept on the site on any given day.

(j) ~~(f)~~ "Waste tire processing facility" means a site, permitted or approved by the department, where equipment is used to treat waste tires mechanically, chemically, or thermally so that the resulting material is a marketable product or is suitable for proper disposal. The term includes mobile waste tire processing equipment.

(k) ~~(g)~~ "Waste tire site" means a site at which 1,500 or more waste tires are accumulated.

(3)

(b) It is unlawful for any person to:

1. Dispose of waste tires or processed tires in the state except at a permitted solid waste management facility. Collection or storage of waste tires at a permitted waste tire processing facility or waste tire collection center prior to processing or use does not constitute disposal, provided that the collection and storage complies with rules established by the department.

2. Bale, wrap, or otherwise bundle together whole waste tires for purposes other than disposal pursuant to this section or facilitating transportation between waste tire processing facilities.

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

Between lines 24 and 25, insert:

amending s. 403.717, F.S.; revising the definition of the term "waste tire processing facility"; providing that it is unlawful to bale, wrap, or otherwise bundle together whole waste tires for certain purposes;

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 691 Beach Management
SPONSOR(S): Agriculture & Natural Resources Subcommittee, Frishe
TIED BILLS: None **IDEN./SIM. BILLS:** SB 758

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Agriculture & Natural Resources Subcommittee	12 Y, 0 N, As CS	Deslatte	Blalock
2) Rulemaking & Regulation Subcommittee	15 Y, 0 N	Rubottom	Rubottom
3) Agriculture & Natural Resources Appropriations Subcommittee	13 Y, 0 N	Helpling	Massengale
4) State Affairs Committee		Deslatte JD	Hamby

SUMMARY ANALYSIS

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

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

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

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

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

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

Current Situation

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

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

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

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

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

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

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

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

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

Effect of Proposed Changes

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

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

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

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

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

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

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

Current Situation

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

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

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

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

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

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

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

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

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

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

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

Effect of Proposed Changes

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

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

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

Current Situation

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

Effect of Proposed Changes

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

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

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

B. SECTION DIRECTORY:

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

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

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

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

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

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

2. Expenditures:

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

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

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

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

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

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

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

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

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

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

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

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

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

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

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

This analysis is drawn to CS/HB 691.

A bill to be entitled

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

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

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

161.041 Permits required.—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

403.813 Permits issued at district centers; exceptions.—

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

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

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

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

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

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

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 809 Communications Services Taxes
SPONSOR(S): Finance & Tax Committee, Grant
TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 1060

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Finance & Tax Committee	23 Y, 0 N	Flieger	Langston
2) Energy & Utilities Subcommittee	13 Y, 0 N	Keating	Collins
3) State Affairs Committee		Keating	Hamby

SUMMARY ANALYSIS

CS/HB 809 updates and modernizes a number of definitions related to the communications services tax:

- The term "cable service" is replaced with "video service."
- The term "internet access" is defined through reference to federal statute.
- Definitions for the terms "digital good" and "digital service" are provided and both terms are exempted from the communications services tax.
- The definition of "sales price" is revised to allow additional nontaxable items to be billed together in a single line item on a customer's invoice without the entire amount of the line item being taxable.

The provisions that govern the assignment of customers to local taxing jurisdictions for the purpose of imposing the applicable local communications services tax are revised to modify the liability of a communications services tax dealer in the event of underpayment of the tax resulting from the dealer assigning a service address to the incorrect local taxing jurisdiction.

The bill makes these revised definitions and liability provisions retroactive and remedial.

The 2012 Revenue Estimating Conference estimates that the changes to dealer liability for incorrectly assigned service addresses will have a negative impact to local governments of -$4.3 million in FY 2012-13 and a recurring negative impact of -$4.7 million. Other changes made by the bill will have a negative indeterminate effect on local government revenues.

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

This bill may be a county or municipality mandate requiring a two-thirds vote of the membership of the House. See Section III.A.1. of the analysis.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Chapter 202, F.S., provides that the sale of communications services,[1] except direct-to-home satellite service,[2] is subject to a state communications services tax ("CST"), gross receipts tax, and a locally levied CST. Federal law prohibits direct-to-home satellite sales from being subject to a local CST. Collected local and state communications services taxes are remitted to the Department of Revenue ("the department"), who distributes the proceeds to the appropriate jurisdictions.[3]

The revenue collected pursuant to this tax (except for 37 percent of the direct-to-home satellite tax revenue) is distributed by the same formula as the state sales tax, as provided by s. 212.20(6), F.S. Approximately 10.8 percent is distributed to local governments through county and municipal revenue sharing, the Local Government Half-cent Sales Tax Clearing Trust Fund, and the distribution to counties of $29,915,500 that was formerly funded from pari-mutuel tax revenues. Smaller amounts are distributed to qualified counties for emergency distributions, selected sports facilities, and to the Public Employee Relations Trust Fund. The remainder of state CST remitted goes into the General Revenue Fund.

The state CST is currently set at a rate of 6.65 percent.[4] The gross receipt tax is 2.37 percent plus an additional 0.15 percent, for a combined rate of 2.52 percent.[5] Thus, the state CST and gross receipt tax are imposed at a combined rate of 9.17 percent. Local CST rates, as authorized in s. 202.19, F.S., vary widely, ranging from 0.1% to 7.0%.[6]

Direct-to-home satellite service sales are subject to a state CST at a rate of 10.8 percent[7] and a gross receipt tax of 2.37 percent,[8] for a combined rate of 13.17 percent.

Prior to 2001, much of what is now taxed under ch. 202, F.S. as communication services was subject to the state sales and use tax imposed by ch. 212, F.S. The Communications Services Tax Simplification Law[9] revamped definitions and consolidated the taxation of communications services into ch. 202, F.S.

Current law defines communications services as "the transmission, conveyance, or routing of voice, data, audio, video, or any other information or signals, including cable services, to a point, or between or among points, by or through any electronic, radio, satellite, cable, optical, microwave, or other medium or method now in existence or hereafter devised, regardless of the protocol used for such transmission or conveyance."[10] Section 202.11(2), F.S., lists a number of specifically excluded items,

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[1] For purposes of ch. 202, F.S., "communications services" is defined in s. 202.11(2), F.S., as "the transmission, conveyance, or routing of voice, data, audio, video, or any other information or signals, including cable services, to a point, or between or among points, by or through any electronic, radio, satellite, cable, optical, microwave, or other medium or method now in existence or hereafter devised, regardless of the protocol used for such transmission or conveyance. The term includes such transmission, conveyance, or routing in which computer processing applications are used to act on the form, code, or protocol of the content for purposes of transmission, conveyance, or routing without regard to whether such service is referred to as voice-over-Internet-protocol services or is classified by the Federal Communications Commission as enhanced or value-added."

[2] For purposes of ch. 202, F.S., direct-to-home satellite service is defined in 47 U.S.C. s. 303(v) as the distribution or broadcasting of programming or services by satellite directly to the subscriber's premises without the use of ground receiving or distribution equipment, except at the subscriber's premises or in the uplink process to the satellite.

[3] Section 202.18, F.S.

[4] Section 202.12(1)(a), F.S.

[5] Section 203.01(1)(b), F.S.

[6] Local CST rates can be found at the "Jurisdiction Rate Table" at http://dor.myflorida.com/dor/taxes/local_tax_rates.html.

[7] Section 202.12(1)(b), F.S.

[8] Section 203.01(1)(b), F.S.

[9] Chapter 2000-260, L.O.F.

[10] Section 202.11(2), F.S.

such as information services, bad check and late payment charges, internet access services (currently undefined in statute), and the sale or rental of tangible personal property, which are not subject to the communications services tax.

Digital Goods and Services

There is no provision in ch. 202, F.S., defining "digital goods" or "digital services" or providing for their communications services tax treatment.

Situsing

Currently, communications services dealers must assign customers to local tax jurisdictions ("situsing") so that the correct local CST rate can be applied to each sale. Section 202.22, F.S., provides that a dealer who uses one of three specific methods to determine to which local taxing jurisdiction a customer's service address should be assigned and who exercises due diligence in that use is held harmless from any taxes, penalties, and interest that result from incorrect assignation of a customer. The three methods are:

- Employing an electronic database provided by the department.
- Employing a database developed by the dealer or supplied by a vendor that has been certified by the department.[11]
- Employing enhanced zip codes to assign each street address, address range, post office box, or post office box range in the dealer's service area to a specific local taxing jurisdiction.[12]

A dealer that does not use one of the approved methods may be held liable for any tax, interest, or penalty which is due as a result of incorrectly assigning service addresses among jurisdictions. However, a dealer is not liable for taxes, interest, or penalties to the extent that such amount was collected and remitted with respect to a tax imposed by another jurisdiction.

A dealer who uses one of the three methods is granted a collection allowance deduction of 0.75 percent of the amount of tax due, while a dealer who does not use one of these methods is permitted to deduct only 0.25 percent.

Taxation of items that are not separately stated

Federal law exempts internet access from state or local taxation.[13] In complying with that directive, s. 202.11(13)(b)8., F.S., allows charges for Internet access services that are not separately itemized on a customer's bill but which can be reasonably identified from the selling dealer's books and records to be excluded from the taxable sale. However, s. 202.11(13), F.S., defines the "sales price" as the total amount charged by a dealer, including any services that are part of the sale.

Thus, if a single line item contains both communications services and products that are not communications services, the CST is imposed on that entire sale unless the non-communications service product is Internet access and the charges for Internet access can be reasonably identified. If a dealer wishes to carve out nontaxable items,[14] those items would need to be separately stated.

[11] The certification process currently involves testing the accuracy of the third-party database against the master database maintained by the department.
[12] Section 202.22(1)(a)-(c), F.S.
[13] 47 U.S.C. §151.
[14] E.g., the sale or rental of personal property such as a cable box.

Effect of Proposed Changes

The bill makes a number of definitional and terminology updates. The bill redefines "cable service" as "video service,"[15] and language is changed throughout ch. 202, F.S., to conform to that redefinition. The previously undefined term "Internet access service" is defined to have the same meaning as "Internet access" as used in the relevant federal law.[16]

The bill also updates the legislative intent contained in s. 202.105, F.S.

Digital Goods and Services

The bill defines the terms "digital goods" and "digital services" and adds both to the list of items that are excluded from the definition of "communication services" in s. 202.11, F.S.

The bill defines "digital good" to mean any downloaded good or product that is delivered or transferred by means other than tangible storage media, including downloaded games, software, music,[17] or other digital content. The term does not include video service, which remains taxable.

The bill defines "digital service" as any service, other than video service, that is provided electronically, including remotely provided access to or use of software or another digital good. Digital services also include the following services, if they are provided remotely: monitoring, security, distance learning, energy management, medical diagnostic, mechanical diagnostic, and vehicle tracking services.

Situsing

The bill modifies the requirements of s. 202.22, F.S., relating to a dealer that does not use one of the three approved situsing methods. A dealer who incorrectly assigns a customer to a local CST taxing jurisdiction may be held liable for the net aggregate underpaid local CST tax and any penalties or interest due as a result of that incorrect assignment only if:

- The failure to use one of the approved situsing methods results in a net aggregate underpayment of local tax, and
- The department has first determined the amount misallocated by the dealer between all jurisdictions.

The bill also provides that if a dealer does use one of the three methods described in s. 202.22(1), F.S., with or without due diligence, the department may not deny that dealer's collection allowance because of incorrectly assigned customers.

The bill requires the department to make monthly reports on jurisdiction-by-jurisdiction gross taxable sales and net tax information available to the public.

Taxation of items that are not separately stated

The bill revises the definition of "sales price" in renumbered s. 202.11(15), F.S., to expand the existing provisions relating to what charges a dealer may exclude from the taxable sales price of

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[15] "Video service" is defined in the bill to mean "the transmission of video, audio, or other programming service to a purchaser, and the purchaser interaction, if any, required for the selection or use of a programming service, regardless of whether the programming is transmitted over facilities owned or operated by the video service provider or over facilities owned or operated by another dealer of communications services. The term includes point-to-point and point-to-multipoint distribution services through which programming is transmitted or broadcast by microwave or other equipment directly to the purchaser's premises, but the term does not include direct-to-home satellite service. The term includes basic, extended, premium, pay-per-view, digital video, two-way cable, and music services."

[16] 47 U.S.C. §151.

[17] Including ringtones, etc.

communications services.[18] The bill provides that a dealer may exclude charges for any good or service that is exempt from the CST, except those listed in renumbered s. 202.11(15)(a), F.S.,[19] so long as those exempt items can be reasonably identified from the selling dealer's books and records. The bill extends the list of allowable excluded charges that do not need to be separately stated from Internet access to any good or service that is not otherwise taxable.

Remedial and Retroactive Nature of Changes

The definition changes, modification of taxation of items not separately stated, and new situsing procedures contained within the bill are remedial and retroactive but do not provide a basis for a right to a refund or credit for any tax paid, nor do they provide the basis for an assessment of tax not paid.

B. SECTION DIRECTORY:

Section 1 . Amends s. 202.105, F.S., modifying legislative intent.

Section 2. Amends s. 202.11, F.S., modifying definitions, including cable service, digital good, digital service, sales price, and video service.

Section 3. Amends s. 202.125, F.S., conforming terminology to changed definitions.

Section 4. Amends s. 202.16, F.S., conforming terminology to changed definitions.

Section 5. Amends s. 202.24, F.S., conforming adjustment process to new situsing procedures.

Section 6. Amends s. 202.18, F.S., clarifying public records status of certain confidential information.

Section 7. Amends s. 202.195, F.S., clarifying public records status of certain confidential information.

Section 8. Amends s. 202.22, F.S., modifying situsing procedure for assigning customer service addresses to local taxing jurisdictions, changing the liability dealers of communications services have in cases of incorrectly assigned service addresses.

Section 9. Amends s. 202.231, F.S., requiring the department to make monthly reports available to the public.

Section 10. Amends s. 202.24, F.S., conforming terminology to changed definitions.

Section 11. Amends s. 202.26, F.S., changing a cross-reference.

Section 12. Amends s. 203.01, F.S., changing a cross-reference.

Section 13. Amends s. 610.118, F.S., changing a cross-reference.

Section 14. Amends s. 624.105, F.S., changing a cross-reference.

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[18] Currently solely applicable to the cost of Internet access.

[19] Section 202.11(15)(a), as revised in the bill, establishes that charges for the following items are included in the sales price of communications services:

1. The connection, movement, change, or termination of communications services.
2. The detailed billing of communications services.
3. The sale of directory listings in connection with a communications service.
4. Central office and custom calling features.
5. Voice mail and other messaging service.
6. Directory assistance.
7. The service of sending or receiving a document commonly referred to as a facsimile or "fax," except when performed during the course of providing professional or advertising services.

Section 15. Establishes that some of the changes above are of a remedial nature and have retroactive application.

Section 16. Provides an effective date of July 1, 2012.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   The 2012 Revenue Estimating Conference estimates that the bill will have a negative indeterminate impact on state revenues.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   The 2012 Revenue Estimating Conference estimates the changes to dealer liability for incorrectly assigned service addresses will have a negative recurring impact to local governments of -$4.3 million in FY 2012-13 and a recurring negative impact of -$4.7 million. Other changes made by the bill will have a negative indeterminate effect on local government revenues.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The changes to the situsing process may decrease the administrative burden placed on communications services dealers.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   The county/municipality mandates provision of Art. VII, section 18, of the Florida Constitution may apply because this bill may reduce the revenues collected by local governs by revising the liability dealers of communications services have in cases of underpayment due to incorrect assigned of service addresses. 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.

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS / COMMITTEE SUBSTITUTE CHANGES

On January 26, 2012, the Finance and Tax Committee adopted a proposed committee substitute that included the following changes to the original bill:

- Removes the elimination of the situsing database procedure and replaces that with significant modifications to when a dealer has liability for incorrectly assigning a customer's service address to a local taxing jurisdiction.
- Removes a change to the definition of "prepaid calling arrangement."

These changes are reflected in the committee substitute that is the subject of this analysis.

A bill to be entitled

An act relating to communications services taxes; amending s. 202.105, F.S.; revising legislative intent; amending s. 202.11, F.S.; modifying definitions; removing the definition of the term "cable service"; adding definitions for the terms "digital good," "digital service," "Internet access service," and "video service"; revising the definition of the term "sales price"; amending ss. 202.125, 202.16, 202.20, and 202.24, F.S.; conforming provisions to changes in terminology; amending s. 202.18, F.S.; removing a cross-reference to conform; amending s. 202.195, F.S.; clarifying provisions exempting from the public records law certain proprietary confidential business information held by a local governmental entity for the purpose of assessing the local communications services tax; amending s. 202.22, F.S.; revising provisions relating to a communications services dealer's liability for tax underpayments that result from the incorrect assignment of service addresses to local taxing jurisdictions and providing requirements and conditions with respect thereto; prohibiting the department from denying a dealer of communications services a deduction of a specified amount as a collection allowance under certain circumstances; amending s. 202.231, F.S.; requiring the Department of Revenue to aggregate monthly and make available to the

public on a jurisdiction-by-jurisdiction basis certain sales and net tax information; amending s. 202.26, F.S.; conforming a cross-reference; amending ss. 203.01, 610.118, and 624.105, F.S.; conforming cross-references; providing for certain retroactive effect; providing an effective date.

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

Section 1. Subsection (1) of section 202.105, Florida Statutes, is amended to read:

202.105 Legislative findings and intent.—

(1) It is declared to be a specific legislative finding that the creation of this chapter fulfills important state interests by reforming the tax laws to provide a fair, efficient, and uniform method for taxing communications services sold in this state. This chapter is essential to the continued economic vitality of this increasingly important industry because it restructures state and local taxes and fees to account for the impact of federal legislation, industry deregulation, and the multitude of ~~convergence of service offerings that is now taking place among~~ providers offering functionally equivalent communications services in today's marketplace. This chapter promotes the increased competition that accompanies deregulation by embracing a competitively neutral tax policy that will free consumers to choose a provider based on tax-neutral considerations. This chapter further spurs new competition by simplifying an extremely complicated state

and local tax and fee system. Simplification will lower the cost of collecting taxes and fees, increase service availability, and place downward pressure on price. Newfound administrative efficiency is demonstrated by a reduction in the number of returns that a provider must file each month. By restructuring separate taxes and fees into a revenue-neutral communications services tax centrally administered by the department, this chapter will ensure that the growth of the industry is unimpaired by excessive governmental regulation. The tax imposed pursuant to this chapter is a replacement for taxes and fees previously imposed and is not a new tax. The taxes imposed and administered pursuant to this chapter are of general application and are imposed in a uniform, consistent, and nondiscriminatory manner.

Section 2. Section 202.11, Florida Statutes, is amended to read:

202.11 Definitions.—As used in this chapter:

~~(1) "Cable service" means the transmission of video, audio, or other programming service to purchasers, and the purchaser interaction, if any, required for the selection or use of any such programming service, regardless of whether the programming is transmitted over facilities owned or operated by the cable service provider or over facilities owned or operated by one or more other dealers of communications services. The term includes point-to-point and point-to-multipoint distribution services by which programming is transmitted or broadcast by microwave or other equipment directly to the purchaser's premises, but does not include direct-to-home~~

~~satellite service. The term includes basic, extended, premium, pay-per-view, digital, and music services.~~

(1) ~~(2)~~ "Communications services" means the transmission, conveyance, or routing of voice, data, audio, video, or any other information or signals, including video ~~cable~~ services, to a point, or between or among points, by or through any electronic, radio, satellite, cable, optical, microwave, or other medium or method now in existence or hereafter devised, regardless of the protocol used for such transmission or conveyance. The term includes such transmission, conveyance, or routing in which computer processing applications are used to act on the form, code, or protocol of the content for purposes of transmission, conveyance, or routing without regard to whether such service is referred to as voice-over-Internet-protocol services or is classified by the Federal Communications Commission as enhanced or value-added. The term does not include:

(a) Information services.

(b) Installation or maintenance of wiring or equipment on a customer's premises.

(c) The sale or rental of tangible personal property.

(d) The sale of advertising, including, but not limited to, directory advertising.

(e) Bad check charges.

(f) Late payment charges.

(g) Billing and collection services.

(h) Internet access service, electronic mail service, electronic bulletin board service, or similar online computer

services.

(i) Digital goods.

(j) Digital services.

(2) ~~(3)~~ "Dealer" means a person registered with the department as a provider of communications services in this state.

(3) ~~(4)~~ "Department" means the Department of Revenue.

(4) "Digital good" means any downloaded good or product that is delivered or transferred by means other than tangible storage media, including downloaded games, software, music, or other digital content. The term does not include video service.

(5) "Digital service" means any service, other than video service, which is provided electronically, including remotely provided access to or use of software or another digital good, and also includes the following services, if they are provided remotely: monitoring, security, distance learning, energy management, medical diagnostic, mechanical diagnostic, and vehicle tracking services. If a digital service is bundled for sale with the transmission, conveyance, or routing of any information or signals, the bundled service is a digital service unless the tax imposed under this chapter and chapter 203 has not been paid with respect to such transmission, conveyance, or routing.

(6) ~~(5)~~ "Direct-to-home satellite service" has the meaning ascribed in the Communications Act of 1934, 47 U.S.C. s. 303(v).

(7) ~~(6)~~ "Information service" means the offering of a capability for generating, acquiring, storing, transforming, processing, retrieving, using, or making available information

via communications services, including, but not limited to, electronic publishing, web-hosting service, and end-user 900 number service. The term does not include ~~any~~ video~~, audio, or other programming service that uses point-to-multipoint distribution by which programming is delivered, transmitted, or broadcast by any means, including any interaction that may be necessary for selecting and using the service, regardless of whether the programming is delivered, transmitted, or broadcast over facilities owned or operated by the seller or another, or whether denominated as cable service or as basic, extended, premium, pay-per-view, digital, music, or two-way cable~~ service.

(8) "Internet access service" has the same meaning as ascribed to the term "Internet access" by s. 1105(5) of the Internet Tax Freedom Act, 47 U.S.C. s. 151 note, as amended by Pub. L. No. 110-108.

(9)~~(7)~~ "Mobile communications service" means ~~commercial~~ mobile ~~radio~~ service, as defined in 47 C.F.R. s. 20.3 as in effect on June 1, 1999. The term does not include air-ground radiotelephone service as defined in 47 C.F.R. s. 22.99 as in effect on June 1, 1999.

(10)~~(8)~~ "Person" has the meaning ascribed in s. 212.02.

(11)~~(9)~~ "Prepaid calling arrangement" means the separately stated retail sale by advance payment of communications services that consist exclusively of telephone calls originated by using an access number, authorization code, or other means that may be manually, electronically, or otherwise entered;~~,~~ and that are sold in predetermined units or dollars of which the number declines with use in a known amount.

(12)~~(10)~~ "Purchaser" means the person paying for or obligated to pay for communications services.

(13)~~(11)~~ "Retail sale" means the sale of communications services for any purpose other than for resale or for use as a component part of or for integration into communications services to be resold in the ordinary course of business. However, any sale for resale must comply with s. 202.16(2) and the rules adopted thereunder.

(14)~~(12)~~ "Sale" means the provision of communications services for a consideration.

(15)~~(13)~~ "Sales price" means the total amount charged in money or other consideration by a dealer for the sale of the right or privilege of using communications services in this state, including any property or other service, not described in paragraph (a), which is ~~services that are~~ part of the sale and for which the charge is not separately itemized on a customer's bill or separately allocated under subparagraph (b)8. The sales price of communications services may ~~shall~~ not be reduced by any separately identified components of the charge which ~~that~~ constitute expenses of the dealer, including, but not limited to, sales taxes on goods or services purchased by the dealer, property taxes, taxes measured by net income, and universal-service fund fees.

(a) The sales price of communications services includes ~~shall include~~, whether or not separately stated, charges for any of the following:

1. The connection, movement, change, or termination of communications services.

2. The detailed billing of communications services.

3. The sale of directory listings in connection with a communications service.

4. Central office and custom calling features.

5. Voice mail and other messaging service.

6. Directory assistance.

7. The service of sending or receiving a document commonly referred to as a facsimile or "fax," except when performed during the course of providing professional or advertising services.

(b) The sales price of communications services does not include charges for any of the following:

1. An ~~Any~~ excise tax, sales tax, or similar tax levied by the United States or any state or local government on the purchase, sale, use, or consumption of any communications service, including, but not limited to, a ~~any~~ tax imposed under this chapter or chapter 203 which is permitted or required to be added to the sales price of such service, if the tax is stated separately.

2. A ~~Any~~ fee or assessment levied by the United States or any state or local government, including, but not limited to, regulatory fees and emergency telephone surcharges, which must ~~is required to~~ be added to the price of the ~~such~~ service if the fee or assessment is separately stated.

3. Communications services paid for by inserting coins into coin-operated communications devices available to the public.

4. The sale or recharge of a prepaid calling arrangement.

5. The provision of air-to-ground communications services, defined as a radio service provided to a purchaser ~~purchasers~~ while on board an aircraft.

6. A dealer's internal use of communications services in connection with its business of providing communications services.

7. Charges for property or other services that are not part of the sale of communications services, if such charges are stated separately from the charges for communications services.

8. ~~To the extent required by federal law,~~ Charges for goods and services that are exempt from tax under this chapter, including Internet access services but excluding any item described in paragraph (a), that ~~which~~ are not separately itemized on a customer's bill, but that ~~which~~ can be reasonably identified from the selling dealer's books and records kept in the regular course of business. The dealer may support the allocation of charges with books and records kept in the regular course of business covering the dealer's entire service area, including territories outside this state.

(16)~~(14)~~ "Service address" means:

(a) Except as otherwise provided in this section:

1. The location of the communications equipment from which communications services originate or at which communications services are received by the customer;

2. In the case of a communications service paid through a credit or payment mechanism that does not relate to a service address, such as a bank, travel, debit, or credit card, and in the case of third-number and calling-card calls, the term

"service address" means the address of the central office, as determined by the area code and the first three digits of the seven-digit originating telephone number; or

3. If the location of the equipment described in subparagraph 1. is not known and subparagraph 2. is inapplicable, the term "service address" means the location of the customer's primary use of the communications service. For purposes of this subparagraph, the location of the customer's primary use of a communications service is the residential street address or the business street address of the customer.

(b) In the case of video ~~cable~~ services and direct-to-home satellite services, the location where the customer receives the services in this state.

(c) In the case of mobile communications services, the customer's place of primary use.

(17) ~~(15)~~ "Unbundled network element" means a network element, as defined in 47 U.S.C. s. 153(29), to which access is provided on an unbundled basis pursuant to 47 U.S.C. s. 251(c)(3).

(18) ~~(16)~~ "Private communications service" means a communications service that entitles the subscriber or user to exclusive or priority use of a communications channel or group of channels between or among channel termination points, regardless of the manner in which such channel or channels are connected, and includes switching capacity, extension lines, stations, and any other associated services that ~~which~~ are provided in connection with the use of such channel or channels.

(19) ~~(17)~~ (a) "Customer" means:

1. The person or entity that contracts with the home service provider for mobile communications services; or

2. If the end user of mobile communications services is not the contracting party, the end user of the mobile communications service. This subparagraph only applies for the purpose of determining the place of primary use.

(b) "Customer" does not include:

1. A reseller of mobile communications services; or

2. A serving carrier under an agreement to serve the customer outside the home service provider's licensed service area.

(20) ~~(18)~~ "Enhanced zip code" means a United States postal zip code of 9 or more digits.

(21) ~~(19)~~ "Home service provider" means the facilities-based carrier or reseller with which the customer contracts for the provision of mobile communications services.

(22) ~~(20)~~ "Licensed service area" means the geographic area in which the home service provider is authorized by law or contract to provide mobile communications service to the customer.

(23) ~~(21)~~ "Place of primary use" means the street address representative of where the customer's use of the mobile communications service primarily occurs, which must be:

(a) The residential street address or the primary business street address of the customer; and

(b) Within the licensed service area of the home service provider.

(24) ~~(22)~~ (a) "Reseller" means a provider who purchases

communications services from another communications service provider and then resells, uses as a component part of, or integrates the purchased services into a mobile communications service.

(b) The term ~~"Reseller"~~ does not include a serving carrier with which a home service provider arranges for the services to its customers outside the home service provider's licensed service area.

(25) ~~(23)~~ "Serving carrier" means a facilities-based carrier providing mobile communications service to a customer outside a home service provider's or reseller's licensed service area.

(26) ~~(24)~~ "Video service" means the transmission of video, audio, or other programming service to a purchaser, and the purchaser interaction, if any, required for the selection or use of a programming service, regardless of whether the programming is transmitted over facilities owned or operated by the video service provider or over facilities owned or operated by another dealer of communications services. The term includes point-to-point and point-to-multipoint distribution services through which programming is transmitted or broadcast by microwave or other equipment directly to the purchaser's premises, but does not include direct-to-home satellite service. The term includes basic, extended, premium, pay-per-view, digital video, two-way cable, and music services ~~has the same meaning as that provided in s. 610.103~~.

Section 3. Subsection (1) of section 202.125, Florida Statutes, is amended to read:

202.125 Sales of communications services; specified exemptions.—

(1) The separately stated sales price of communications services sold to residential households is exempt from the tax imposed by s. 202.12 and s. 203.01(1)(b)3. This exemption does not apply to any residence that constitutes all or part of a transient public lodging establishment as defined in chapter 509, any mobile communications service, any video ~~cable~~ service, or any direct-to-home satellite service.

Section 4. Paragraph (a) of subsection (2) of section 202.16, Florida Statutes, is amended to read:

202.16 Payment.—The taxes imposed or administered under this chapter and chapter 203 shall be collected from all dealers of taxable communications services on the sale at retail in this state of communications services taxable under this chapter and chapter 203. The full amount of the taxes on a credit sale, installment sale, or sale made on any kind of deferred payment plan is due at the moment of the transaction in the same manner as a cash sale.

(2)(a) A sale of communications services that are used as a component part of or integrated into a communications service or prepaid calling arrangement for resale, including, but not limited to, carrier-access charges, interconnection charges paid by providers of mobile communication services or other communication services, charges paid by a video ~~cable~~ service provider ~~providers~~ for the purchase of video programming or the transmission of video or other programming by another dealer of communications services, charges for the sale of unbundled

network elements, and any other intercompany charges for the use of facilities for providing communications services for resale, must be made in compliance with the rules of the department. A ~~Any~~ person who makes a sale for resale which is not in compliance with these rules is liable for any tax, penalty, and interest due for failing to comply, to be calculated pursuant to s. 202.28(2)(a).

Section 5. Paragraph (c) of subsection (3) of section 202.18, Florida Statutes, is amended to read:

202.18 Allocation and disposition of tax proceeds.—The proceeds of the communications services taxes remitted under this chapter shall be treated as follows:

(3)

(c)1. Except as otherwise provided in this paragraph, proceeds of the taxes levied pursuant to s. 202.19, less amounts deducted for costs of administration in accordance with paragraph (b), shall be distributed monthly to the appropriate jurisdictions. The proceeds of taxes imposed pursuant to s. 202.19(5) shall be distributed in the same manner as discretionary surtaxes are distributed, in accordance with ss. 212.054 and 212.055.

2. The department shall make any adjustments to the distributions pursuant to this section which are necessary to reflect the proper amounts due to individual jurisdictions or trust funds. In the event that the department adjusts amounts due to reflect a correction in the situsing of a customer, such adjustment shall be limited to the amount of tax actually collected from such customer by the dealer of communication

services.

3.a. ~~Notwithstanding the time period specified in s. 202.22(5),~~ Adjustments in distributions which are necessary to correct misallocations between jurisdictions shall be governed by this subparagraph. If the department determines that misallocations between jurisdictions occurred, it shall provide written notice of such determination to all affected jurisdictions. The notice shall include the amount of the misallocations, the basis upon which the determination was made, data supporting the determination, and the identity of each affected jurisdiction. The notice shall also inform all affected jurisdictions of their authority to enter into a written agreement establishing a method of adjustment as described in sub-subparagraph c.

b. An adjustment affecting a distribution to a jurisdiction which is less than 90 percent of the average monthly distribution to that jurisdiction for the 6 months immediately preceding the department's determination, as reported by all communications services dealers, shall be made in the month immediately following the department's determination that misallocations occurred.

c. If an adjustment affecting a distribution to a jurisdiction equals or exceeds 90 percent of the average monthly distribution to that jurisdiction for the 6 months immediately preceding the department's determination, as reported by all communications services dealers, the affected jurisdictions may enter into a written agreement establishing a method of adjustment. If the agreement establishing a method of adjustment

provides for payments of local communications services tax monthly distributions, the amount of any such payment agreed to may not exceed the local communications services tax monthly distributions available to the jurisdiction that was allocated amounts in excess of those to which it was entitled. If affected jurisdictions execute a written agreement specifying a method of adjustment, a copy of the written agreement shall be provided to the department no later than the first day of the month following 90 days after the date the department transmits notice of the misallocation. If the department does not receive a copy of the written agreement within the specified time period, an adjustment affecting a distribution to a jurisdiction made pursuant to this sub-subparagraph shall be prorated over a time period that equals the time period over which the misallocations occurred.

Section 6. Subsections (1) and (3) of section 202.195, Florida Statutes, are amended to read:

202.195 Proprietary confidential business information; public records exemption.—

(1) Proprietary confidential business information obtained from a telecommunications company or from a franchised or certificated video service provider ~~cable company~~ for the purposes of ~~imposing fees for occupying the public rights-of-way,~~ assessing the local communications services tax pursuant to s. 202.19, or occupying or regulating the public rights-of-way, held by a local governmental entity, is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. Such proprietary confidential business information

held by a local governmental entity may be used only for the purposes of ~~imposing such fees,~~ assessing such tax~~,~~ or regulating such rights-of-way, and may not be used for any other purposes, including, but not limited to, commercial or competitive purposes.

(3) ~~Nothing in~~ This exemption does not expand ~~expands~~ the information or documentation that a local governmental entity may properly request under applicable law pursuant to ~~the imposition of fees for~~ occupying the rights-of-way, the local communication services tax, or the regulation of its public rights-of-way.

Section 7. Paragraph (b) of subsection (2) of section 202.20, Florida Statutes, is amended to read:

202.20 Local communications services tax conversion rates.—

(2)

(b) Except as otherwise provided in this subsection, the term "replaced revenue sources," as used in this section, means the following taxes, charges, fees, or other impositions to the extent that the respective local taxing jurisdictions were authorized to impose them prior to July 1, 2000.

1. With respect to municipalities and charter counties and the taxes authorized by s. 202.19(1):

a. The public service tax on telecommunications authorized by former s. 166.231(9).

b. Franchise fees on video ~~cable~~ service providers as authorized by 47 U.S.C. s. 542.

c. The public service tax on prepaid calling arrangements.

d. Franchise fees on dealers of communications services which use the public roads or rights-of-way, up to the limit set forth in s. 337.401. For purposes of calculating rates under this section, it is the legislative intent that charter counties be treated as having had the same authority as municipalities to impose franchise fees on recurring local telecommunication service revenues before ~~prior to~~ July 1, 2000. However, the Legislature recognizes that the authority of charter counties to impose such fees is in dispute, and the treatment provided in this section is not an expression of legislative intent that charter counties actually do or do not possess such authority.

e. Actual permit fees relating to placing or maintaining facilities in or on public roads or rights-of-way, collected from providers of long-distance, cable, and mobile communications services for the fiscal year ending September 30, 1999; however, if a municipality or charter county elects the option to charge permit fees pursuant to s. 337.401(3)(c)1.a., such fees may ~~shall~~ not be included as a replaced revenue source.

2. With respect to all other counties and the taxes authorized in s. 202.19(1), franchise fees on video ~~cable~~ service providers as authorized by 47 U.S.C. s. 542.

Section 8. Subsections (5) and (6) of section 202.22, Florida Statutes, are amended to read:

202.22 Determination of local tax situs.—

(5) If a dealer of communications services does not use one or more of the methods specified in subsection (1) for determining the local taxing jurisdiction in which one or more

service addresses are ~~a service address is~~ located and:~~,~~

(a) The dealer's failure to use one or more of such methods results in a net aggregate underpayment of all taxes levied pursuant to s. 202.19 with respect to one or more tax periods that are being examined by the department; and

(b) The department has determined the misallocations between jurisdictions for all taxes levied pursuant to s. 202.19 and collected by the dealer with respect to any tax period being examined by the department; then,

the dealer of communications services may be held liable to the department for the net aggregate underpayment of ~~any~~ tax, and for ~~including~~ interest and penalties attributable to the net aggregate underpayment of tax, which is due as a result of assigning one or more ~~the~~ service addresses ~~address~~ to an incorrect local taxing jurisdiction. However, the dealer of communications services is not liable for any tax, interest, or penalty under this subsection unless the department has determined the net aggregate underpayment of tax for any tax period that is being examined, taking into account all underpayments and overpayments for such period or periods ~~to the extent that such amount was collected and remitted by the dealer of communications services with respect to a tax imposed by another local taxing jurisdiction. Upon determining that an amount was collected and remitted by a dealer of communications services with respect to a tax imposed by another local taxing jurisdiction, the department shall adjust the respective amounts of the proceeds paid to each such taxing jurisdiction under s.~~

~~202.18 in the month immediately following such determination~~.

(6)(a) Pursuant to rules adopted by the department, each dealer of communications services must notify the department of the methods it intends to employ for determining the local taxing jurisdiction in which service addresses are located.

(b) Notwithstanding s. 202.28, if a dealer of communications services:

1. Employs a method of assigning service addresses other than as set forth in paragraph (1)(a), paragraph (1)(b), or paragraph (1)(c), the deduction allowed to the dealer of communications services as compensation under s. 202.28 shall be 0.25 percent of that portion of the tax due and accounted for and remitted to the department which is attributable to such method of assigning service addresses other than as set forth in paragraph (1)(a), paragraph (1)(b), or paragraph (1)(c).

2. Employs a method of assigning service addresses as set forth in paragraph (1)(a), paragraph (1)(b), or paragraph (1)(c), the department may not deny the deduction allowed to the dealer of communications services as compensation allowed under s. 202.28 because the dealer assigned one or more service addresses to an incorrect local taxing jurisdiction.

Section 9. Subsection (3) is added to section 202.231, Florida Statutes, to read:

202.231 Provision of information to local taxing jurisdictions.—

(3) The gross taxable sales and net tax information contained in the monthly reports required by this section shall be aggregated on a jurisdiction-by-jurisdiction basis, and the

aggregate jurisdiction-by-jurisdiction information shall be made available by the department to the public through the department's website for each fiscal year this chapter has been in effect.

Section 10. Paragraphs (a) and (c) of subsection (2) of section 202.24, Florida Statutes, are amended to read:

202.24 Limitations on local taxes and fees imposed on dealers of communications services.—

(2)(a) Except as provided in paragraph (c), each public body is prohibited from:

1. Levying on or collecting from dealers or purchasers of communications services any tax, charge, fee, or other imposition on or with respect to the provision or purchase of communications services.

2. Requiring any dealer of communications services to enter into or extend the term of a franchise or other agreement that requires the payment of a tax, charge, fee, or other imposition.

3. Adopting or enforcing any provision of any ordinance or agreement to the extent that such provision obligates a dealer of communications services to charge, collect, or pay to the public body a tax, charge, fee, or other imposition.

Municipalities and counties may not negotiate those terms and conditions related to franchise fees or the definition of gross revenues or other definitions or methodologies related to the payment or assessment of franchise fees on providers of ~~cable or~~ video services.

(c) This subsection does not apply to:

1. Local communications services taxes levied under this chapter.

2. Ad valorem taxes levied pursuant to chapter 200.

3. Business taxes levied under chapter 205.

4. "911" service charges levied under chapter 365.

5. Amounts charged for the rental or other use of property owned by a public body which is not in the public rights-of-way to a dealer of communications services for any purpose, including, but not limited to, the placement or attachment of equipment used in the provision of communications services.

6. Permit fees of general applicability which are not related to placing or maintaining facilities in or on public roads or rights-of-way.

7. Permit fees related to placing or maintaining facilities in or on public roads or rights-of-way pursuant to s. 337.401.

8. Any in-kind requirements, institutional networks, or contributions for, or in support of, the use or construction of public, educational, or governmental access facilities allowed under federal law and imposed on providers of ~~cable or~~ video service pursuant to any existing ordinance or an existing franchise agreement granted by each municipality or county, under which ordinance or franchise agreement service is provided before ~~prior to~~ July 1, 2007, or as permitted under chapter 610. ~~Nothing in~~ This subparagraph does not ~~shall~~ prohibit ~~the ability of~~ providers of ~~cable or~~ video service from recovering the ~~to recover such~~ expenses as allowed under federal law.

9. Special assessments and impact fees.

10. Pole attachment fees that are charged by a local government for attachments to utility poles owned by the local government.

11. Utility service fees or other similar user fees for utility services.

12. Any other generally applicable tax, fee, charge, or imposition authorized by general law on July 1, 2000, which is not specifically prohibited by this subsection or included as a replaced revenue source in s. 202.20.

Section 11. Paragraph (j) of subsection (3) of section 202.26, Florida Statutes, is amended to read:

202.26 Department powers.—

(3) To administer the tax imposed by this chapter, the department may adopt rules relating to:

(j) The types of books and records kept in the regular course of business which must be available during an audit of a dealer's books and records when the dealer has made an allocation or attribution pursuant to the definition of sales prices in s. 202.11(15)(b)8. ~~202.11(13)(b)8.~~ and examples of methods for determining the reasonableness thereof. Books and records kept in the regular course of business include, but are not limited to, general ledgers, price lists, cost records, customer billings, billing system reports, tariffs, and other regulatory filings and rules of regulatory authorities. The ~~Such~~ records may be required to be made available to the department in an electronic format when so kept by the dealer. The dealer may support the allocation of charges with books and records

kept in the regular course of business covering the dealer's entire service area, including territories outside this state. During an audit, the department may reasonably require production of any additional books and records found necessary to assist in its determination.

Section 12. Paragraph (a) of subsection (1) of section 203.01, Florida Statutes, is amended to read:

203.01 Tax on gross receipts for utility and communications services.—

(1)(a)1. A tax is imposed on gross receipts from utility services that are delivered to a retail consumer in this state. The ~~Such~~ tax shall be levied as provided in paragraphs (b)-(j).

2. A tax is levied on communications services as defined in s. 202.11(1) ~~202.11(2)~~. The ~~Such~~ tax shall be applied to the same services and transactions as are subject to taxation under chapter 202, and to communications services that are subject to the exemption provided in s. 202.125(1). The ~~Such~~ tax shall be applied to the sales price of communications services when sold at retail, as the ~~such~~ terms are defined in s. 202.11, shall be due and payable at the same time as the taxes imposed pursuant to chapter 202, and shall be administered and collected pursuant to the provisions of chapter 202.

Section 13. Paragraph (a) of subsection (1) of section 610.118, Florida Statutes, is amended to read:

610.118 Impairment; court-ordered operations.—

(1) If an incumbent cable or video service provider is required to operate under its existing franchise and is legally prevented by a lawfully issued order of a court of competent

jurisdiction from exercising its right to terminate its existing franchise pursuant to the terms of s. 610.105, any certificateholder providing cable service or video service in whole or in part within the service area that is the subject of the incumbent cable or video service provider's franchise shall, for as long as the court order remains in effect, comply with the following franchise terms and conditions as applicable to the incumbent cable or video service provider in the service area:

(a) The certificateholder shall pay to the municipality or county:

1. Any prospective lump-sum or recurring per-subscriber funding obligations to support public, educational, and governmental access channels or other prospective franchise-required monetary grants related to public, educational, or governmental access facilities equipment and capital costs. Prospective lump-sum payments shall be made on an equivalent per-subscriber basis calculated as follows: the amount of the prospective funding obligations divided by the number of subscribers being served by the incumbent cable service provider at the time of payment, divided by the number of months remaining in the incumbent cable or video service provider's franchise equals the monthly per subscriber amount to be paid by the certificateholder until the expiration or termination of the incumbent cable or video service provider's franchise; and

2. If the incumbent cable or video service provider is required to make payments for the funding of an institutional network, the certificateholder shall pay an amount equal to the

incumbent's funding obligations but not to exceed 1 percent of the sales price, as defined in s. 202.11(15) ~~202.11(13)~~, for the taxable monthly retail sales of cable or video programming services the certificateholder received from subscribers in the affected municipality or county. All definitions and exemptions under chapter 202 apply in the determination of taxable monthly retail sales of cable or video programming services.

Section 14. Section 624.105, Florida Statutes, is amended to read:

624.105 Waiver of customer liability.—Any regulated company as defined in s. 350.111, any electric utility as defined in s. 366.02(2), any utility as defined in s. 367.021(12) or s. 367.022(2) and (7), and any provider of communications services as defined in s. 202.11(1) ~~202.11(2)~~ may charge for and include an optional waiver of liability provision in their customer contracts under which the entity agrees to waive all or a portion of the customer's liability for service from the entity for a defined period in the event of the customer's call to active military service, death, disability, involuntary unemployment, qualification for family leave, or similar qualifying event or condition. Such provisions may not be effective in the customer's contract with the entity unless affirmatively elected by the customer. No such provision shall constitute insurance so long as the provision is a contract between the entity and its customer.

Section 15. The following changes made in this act are intended to be remedial in nature and apply retroactively, but do not provide a basis for an assessment of any tax not paid or

create a right to a refund or credit of any tax paid before the general effective date of this act:

(1) The changes made in section 2 of this act to subsections renumbered as subsections (9) and (15) of s. 202.11, Florida Statutes.

(2) The changes made in section 8 of this act to s. 202.22, Florida Statutes.

Section 16. This act shall take effect July 1, 2012.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 827 Limited Agricultural Associations
SPONSOR(S): Agriculture & Natural Resources Subcommittee, Porter
TIED BILLS: None **IDEN./SIM. BILLS:** SB 222

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Agriculture & Natural Resources Subcommittee	14 Y, 0 N, As CS	Cunningham	Blalock
2) Transportation & Economic Development Appropriations Subcommittee	9 Y, 0 N	Rayman	Davis
3) State Affairs Committee		Kaiser	Hamby

SUMMARY ANALYSIS

Limited agricultural associations (LAAs) have existed in Florida since the 1940's and mostly consist of the 60 county farm bureaus and 140,000 members that comprise the Florida Farm Bureau. Any three or more persons engaged in agricultural pursuits may form an LAA and exercise all the powers granted by the laws of this state to LAAs. Under current law, no member of an LAA can be held personally responsible for any of the claims against or the indebtedness and obligations of the association. Many LAAs in other states are converting to not for profit corporations, but there is no efficient way to seamlessly convert an LAA into a not for profit corporation under Florida law.

CS/HB 827 provides a process that allows LAAs to convert to a domestic corporation not for profit. The bill also requires a $35 filing fee for a certificate of conversion of a LAA to a domestic corporation to be collected by the Department of State (department).

The bill authorizes an LAA to convert to a domestic corporation not for profit by filing the following documents to the department:

- A certificate of conversion, which must be executed by an authorized person and such other persons that may be required in the association's articles of association or bylaws; and
- Articles of incorporation.

The certificate of conversion must include:

- The date upon which the association was initially formed;
- The name of the association immediately before filing the certificate of conversion;
- The name of the domestic corporation as set forth in its articles of incorporation; and
- The effective date of the conversion.

When the certificate of conversion and articles of incorporation are filed with the department, or upon the delayed effective date, the LAA is converted to a domestic corporation. However, the existence of the corporation is deemed to have commenced when the LAA was initially formed. The conversion of an LAA to a domestic corporation does not affect any obligation or liability of the LAA that was incurred before the conversion. When the conversion takes effect, all rights, privileges, and powers of the converting LAA, all property, real, personal and mixed, and all debts due to the LAA, as well as all other assets and causes of action belonging to the LAA, are vested in the domestic corporation to which the LAA is converted and are the property of the corporation as they were of the LAA. The title to any real property that is vested by deed or otherwise in the converting LAA does not revert and is not impaired by the operation of law pertaining to not for profit corporations, but all rights of creditors and all liens upon any property of the LAA are preserved unimpaired, and all debts, liabilities, and duties of the association attach to the domestic corporation and are enforceable against it to the same extent as if the debts, liabilities, and duties had been incurred or contracted by the corporation.

The bill appears to have a positive but insignificant fiscal impact on state government revenues by requiring LAAs that choose to convert to a domestic corporation not for profit to pay a $35 filing fee to the Department of State for a certificate of conversion. Currently no LAAs are paying fees to the Department of State. The bill does not appear to have a fiscal impact on local governments.

The effective date of this bill is upon becoming law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Limited agricultural associations (LAAs) have existed in Florida since the 1940's and mostly consist of the 60 county farm bureaus and 140,000 members that comprise the Florida Farm Bureau. Under current law, any three or more persons engaged in agricultural pursuits may form an LAA and exercise all the powers granted by the laws of this state to LAAs. No member of an LAA can be held personally responsible for any of the claims against or the indebtedness and obligations of the association.[1]

The articles of association must be subscribed by the original members and acknowledged by one of the original members before an officer of the state authorized to take acknowledgements and administer oaths. Two copies of the articles of association, together with a certificate of the Department of State stating that there is no other LAA within the state having the same name, is required to be filed with the clerk of the circuit court in the county where the principal place of business of the association is to be located. The proposed articles of association must be endorsed and approved by the circuit judge. Upon endorsement by the circuit judge, the articles of association must be recorded by the clerk of the circuit court. The clerk of the circuit court must then transmit a copy of the articles of association to the Department of State for filing. The Department of State and the clerk of the court are entitled to a fee of $5.25 for services rendered in connection with the formation of the LAA.[2]

The articles of association must set forth:

- The name of the LAA and the location of the principal place of business.
- The purpose for which the LAA is formed.
- The term of existence for the LAA.
- Which officers will conduct the business of the LAA, as well as the names of the officers who will conduct the business until their successors are eligible to serve.[3]
- The number, to be not less than three, of the LAA's managing committee members.[4]
- The fact that the members may not be held personally liable for any claims against or indebtedness and obligations of the LAA.

The name of the proposed LAA must be different from that of any other LAA in the state and must include the words "Limited Agricultural Association" or the letters "LAA" to distinguish it from a natural person, firm, co-partnership, or corporation.

Each LAA must adopt bylaws within 30 days after organization. The bylaws must provide for such matters as the acceptance of memberships, the issuance of certificates of membership, the fixing of the voting and participation rights of the owners of such certificates, the assign ability of such certificates, the election of a managing committee and the determination of its powers, the time and place of meetings of the LAA and the election, powers, and duties of its officers.

LAAs can be dissolved if the members present a petition of dissolution to the circuit judge of the circuit wherein its principal place of business is located. Such judge may make all orders necessary to the preservation of the rights of the members and creditors and the winding up of the affairs of the

[1] Section 604.10, F.S.
[2] Section 604.11, F.S.
[3] Officers must be members of the LAA.
[4] Managing committee members must be members of the LAA.

association. Such notice of hearing on the petition for dissolution shall be given as may by the judge be deemed proper.[5]

According to the Florida Farm Bureau, many Farm Bureaus in other states have converted LAAs to not for profit corporations, but there is no efficient way to seamlessly convert an LAA into a not for profit corporation under Florida law.

Any business corporation incorporated under the laws of Florida, which is engaged solely in carrying out the purposes and objects for which nonprofit corporations are authorized under Florida law to carry out, may change its corporate nature from a business corporation to that of a nonprofit corporation. Upon approval of the conversion, the resulting nonprofit corporation will succeed to the rights, liabilities, and assets of its corporate predecessor;[6] in turn, its rights, powers, immunities, duties, and liabilities as a business corporation will cease and determine, and it will instead become subject to all the rights, powers, immunities, duties, and liabilities of nonprofit corporations under Florida law.[7]

The conversion from business to nonprofit status is accomplished by the filing of a petition for conversion in the circuit court of the county wherein the corporation seeking to convert has its principal place of business, in the name of the corporation, signed by an officer of the corporation and under its corporate seal, setting forth the purposes and objects in which it is solely engaged, and requesting that the nature of the corporation be changed.[8] It must be accompanied by the written consent of all the shareholders authorizing the change in the corporate nature and directing an authorized officer to file the petition before the court, together with a statement agreeing to accept all the property of the petitioning corporation and agreeing to assume and pay all its indebtedness and liabilities, and the proposed articles of incorporation, signed by the president and secretary of the petitioning corporation.[9]

If the circuit judge to whom the petition and proposed articles of incorporation are presented finds that the petition and proposed articles are in proper form, the judge will approve the articles of incorporation by endorsing his or her approval on such. Thereafter the articles, endorsed with the judge's approval, are sent to the Florida Department of State (department).[10]

Upon receipt of the articles, and upon the payment of all taxes due the state by the petitioning corporation, if any, the department will issue a certificate showing the receipt of the articles of incorporation with the endorsement of approval thereon and of the payment of all taxes to the state. Upon payment of specified filing fees, the department will file the articles of incorporation. Thenceforth, the petitioning corporation will be a nonprofit corporation under the name adopted in the articles of incorporation.[11]

Effect of Proposed Changes

The bill amends s. 604.14, F.S., to provide that LAAs may convert to a corporation not for profit in accordance with s. 617.1809, F.S. The bill also amends s. 617.0122, F.S. to include a $35 fee for a certificate of conversion of a limited agricultural association to a domestic corporation.

Section 617.1809, F.S., is created to provide a method for conversion of an LAA to a domestic corporation not for profit. An LAA may convert to a domestic corporation not for profit by filing the following documents to the department:

[5] Section 604.14, F.S.
[6] Section 617.1805, F.S.
[7] Section 617.1807, F.S.
[8] Section 617.1805, F.S.
[9] Section 617.1806, F.S.
[10] Section 617.1807, F.S.
[11] Section 617.1807, F.S.

- A certificate of conversion, which must be executed by a person authorized in S. 617.01201(6), F.S.,[12] and such other persons that may be required in the association's articles of association or bylaws; and
- Articles of incorporation;[13]

The certificate of conversion must include:

- The date upon which the association was initially formed;
- The name of the association immediately before filing the certificate of conversion;
- The name of the domestic corporation as set forth in its articles of incorporation; and
- The effective date of the conversion. If the conversion does not take effect upon filing the certificate of conversion and articles of incorporation, the delayed effective date for the conversion must be a date certain and the same as the effective date of the articles of incorporation.

When the certificate of conversion and articles of incorporation are filed with the department, or upon the delayed effective date, the LAA is converted to a domestic corporation, and the corporation becomes subject to the provisions in chapter 617, F.S. [14] However, the existence of the corporation is deemed to have commenced when the LAA was initially formed. The conversion of an LAA to a domestic corporation does not affect any obligation or liability of the LAA that was incurred before the conversion. When the conversion takes effect, all rights, privileges, and powers of the converting LAA, all property, real, personal and mixed, and all debts due to the LAA, as well as all other assets and causes of action belonging to the LAA, are vested in the domestic corporation to which the LAA is converted and are the property of the corporation as they were of the LAA. The title to any real property that is vested by deed or otherwise in the converting LAA does not revert and is not impaired by the operation of chapter 617, F.S., but all rights of creditors and all liens upon any property of the LAA are preserved unimpaired, and all debts, liabilities, and duties of the association attach to the domestic corporation and are enforceable against it to the same extent as if the debts, liabilities, and duties had been incurred or contracted by the corporation.

The LAA is not required to wind up its affairs or pay its liabilities and distribute its assets. Conversion does not constitute dissolution of the LAA, but is a continuation of the LAA's existence in the form of a domestic corporation. Before the LAA can file a certificate of conversion with the department, unless the LAA's bylaws or articles of conversion specify otherwise, the conversion must be approved by a majority vote of the association's members, and the articles of incorporation must be approved in the same manner as the approval for conversion. The converting LAA may provide a plan or other record of conversion which describes the manner and basis of converting the membership interests in the association into membership interests in the domestic corporation. The plan or other record can also contain other provisions relating to conversion, including, but not limited to the right of the converting LAA to abandon the proposed conversion or an effective date for the conversion.

B. SECTION DIRECTORY:

Section 1: Amends s. 604.14, F.S., providing that a limited agricultural association may convert to a corporation not for profit.

Section 2: Amends s. 617.0122, F.S., providing a $35 fee to file a certificate of conversion of a limited agricultural association to a domestic corporation.

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[12] Section 617.01201(6), F.S. The document must be executed: by a director of a domestic or foreign corporation, or by its president or by another of its officers; if directors or officers have not been selected or the corporation has not been formed, by an incorporator; or if the corporation is in the hands of a receiver, trustee, or other court-appointed fiduciary, by the fiduciary.

[13] Must be in compliance with s. 617.0202, F.S., and be executed by a person authorized in s. 617.01201(6), F.S.; a fee of $35 shall be collected by the department documents delivered for filing, s. 617.0122(1), F.S.

[14] Chapter 617, F.S., is the "Florida Not For Profit Corporation Act."

Section 3: Creates 617.1809, F.S., providing a process for LAAs to convert to a domestic corporation not for profit.

Section 4: Provides that this act shall take effect upon becoming law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The Department of State indicates the impact is insignificant. The bill requires LAAs that seek to convert to a domestic corporation not for profit shall pay a filing fee of $35 to the Department of State for a certificate of conversion from the limited agricultural association to a domestic corporation not for profit. Currently no LAAs are paying fees to the Department of State. If the estimated 60 LAAs were to opt to become a domestic corporation not for profit, the additional revenue from the conversion would be $4,200. Furthermore, each year domestic corporations not for profit are required to submit an annual report to the Department of State, along with a filing fee of $61.25. If all the estimated 60 LAAs were to convert to a domestic corporation not for profit, the Department of State would receive $3,675 in filing fees from the annual reports.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

LAAs that wish to take advantage of the provisions in the bill and convert to a domestic corporation not for profit will pay the $35 filing fee required in the bill. Currently no LAAs are paying fees to the Department of State.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On January 11, 2012, the Agriculture & Natural Resources Subcommittee amended and passed HB 827 as a committee substitute (CS). The amendment corrected a typographical error in the bill.

The bill was reported favorably as a committee substitute. The analysis reflects the committee substitute.

A bill to be entitled

An act relating to limited agricultural associations; amending s. 604.14, F.S.; providing for the conversion of limited agricultural associations to corporations not for profit; conforming provisions; amending s. 617.0122, F.S.; specifying a fee for filing a limited agricultural association's certificate of conversion to a domestic corporation; creating s. 617.1809, F.S.; defining the term "limited agricultural association" for purposes of the act; providing procedures for conversion of a limited agricultural association to a domestic corporation not for profit; requiring the filing of a certificate of conversion and articles of incorporation with the Department of State; providing for the effective date of the conversion; providing that the conversion does not affect any obligation or liability of the association; providing that all rights, property, and obligations of the association are vested in the corporation; specifying that the association is not required to wind up its affairs or pay its liabilities and distribute its assets; providing for the association's approval before the certificate of conversion is filed; authorizing the association to provide a plan or other record of conversion; providing an effective date.

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

Section 1. Section 604.14, Florida Statutes, is amended to read:

604.14 Limited agricultural association; dissolution; conversion to a corporation not for profit.—

(1) A ~~Any~~ limited agricultural association may be dissolved upon the presentation by its members of a petition for dissolution to a ~~the~~ circuit judge of the circuit in which the association's ~~wherein its~~ principal place of business is located. The ~~Such~~ judge may issue any ~~make all~~ orders necessary for ~~to the~~ preservation of the rights of the members and creditors and the winding up of the affairs of the association. ~~Such~~ Notice of hearing on the petition for dissolution must ~~shall~~ be given as ~~may by~~ the judge deems ~~be deemed~~ proper.

(2) A limited agricultural association may convert to a corporation not for profit in accordance with s. 617.1809.

Section 2. Subsection (22) of section 617.0122, Florida Statutes, is renumbered as subsection (23), and a new subsection (22) is added to that section to read:

617.0122 Fees for filing documents and issuing certificates.—The Department of State shall collect the following fees on documents delivered to the department for filing:

(22) Certificate of conversion of a limited agricultural association to a domestic corporation: $35.

Any citizen support organization that is required by rule of the Department of Environmental Protection to be formed as a nonprofit organization and is under contract with the department

is exempt from any fees required for incorporation as a nonprofit organization, and the Secretary of State may not assess any such fees if the citizen support organization is certified by the Department of Environmental Protection to the Secretary of State as being under contract with the Department of Environmental Protection.

Section 3. Section 617.1809, Florida Statutes, is created to read:

617.1809 Limited agricultural association; conversion to a domestic corporation not for profit.—

(1) As used in this section, the term "limited agricultural association" or "association" means a limited agricultural association formed under ss. 604.09-604.14.

(2) A limited agricultural association may convert to a domestic corporation not for profit by filing the following documents with the department in accordance with s. 617.01201:

(a) A certificate of conversion, which must be executed by a person authorized in s. 617.01201(6) and such other persons that may be required in the association's articles of association or bylaws.

(b) Articles of incorporation, which must comply with s. 617.0202 and be executed by a person authorized in s. 617.01201(6).

(3) The certificate of conversion must include:

(a) The date upon which the association was initially formed under ss. 604.09-604.14.

(b) The name of the association immediately before filing the certificate of conversion.

(c) The name of the domestic corporation as set forth in its articles of incorporation.

(d) The effective date of the conversion. If the conversion does not take effect upon filing the certificate of conversion and articles of incorporation, the delayed effective date for the conversion, subject to the limitation in s. 617.0123(2), must be a date certain and the same as the effective date of the articles of incorporation.

(4) When the certificate of conversion and articles of incorporation are filed with the department, or upon the delayed effective date, the association is converted to the domestic corporation, and the corporation becomes subject to this chapter. However, notwithstanding s. 617.0123, the existence of the corporation is deemed to have commenced when the association was initially formed under ss. 604.09-604.14.

(5) Conversion of a limited agricultural association to a domestic corporation does not affect any obligation or liability of the association that was incurred before the conversion.

(6) When a conversion takes effect under this section, all rights, privileges, and powers of the converting association, all property, real, personal, and mixed, and all debts due to the association, as well as all other assets and causes of action belonging to the association, are vested in the domestic corporation to which the association is converted and are the property of the corporation as they were of the association. The title to any real property that is vested by deed or otherwise in the converting association does not revert and is not impaired by the operation of this chapter, but all rights of

creditors and all liens upon any property of the association are preserved unimpaired, and all debts, liabilities, and duties of the association attach to the domestic corporation and are enforceable against it to the same extent as if the debts, liabilities, and duties had been incurred or contracted by the corporation.

(7) The limited agricultural association is not required to wind up its affairs or pay its liabilities and distribute its assets. Conversion does not constitute a dissolution of the association but is a continuation of the association's existence in the form of the domestic corporation.

(8) Before a limited agricultural association may file a certificate of conversion with the department, unless otherwise specified in the association's articles of association or bylaws, the conversion must be approved by a majority vote of the association's members, and the articles of incorporation must be approved by the same authorization required for approval of the conversion. As part of the approval, the converting association may provide a plan or other record of conversion which describes the manner and basis of converting the membership interests in the association into membership interests in the domestic corporation. The plan or other record may also contain other provisions relating to the conversion, including, but not limited to, the right of the converting association to abandon the proposed conversion or an effective date for the conversion that is consistent with paragraph (3)(d).

Section 4. This act shall take effect upon becoming a law.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1105 Special Observances
SPONSOR(S): Perman and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 924

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Government Operations Subcommittee	13 Y, 0 N	Thompson	Williamson
2) State Affairs Committee		Thompson	Hamby

SUMMARY ANALYSIS

Current law establishes 50 legal holidays and special observance days. Current law does not contain a legal holiday or special observance related to an ecosystem such as the Everglades. The bill designates April 7 of each year as "Everglades Day."

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

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Everglades

The Everglades is a two million acre wetland ecosystem that reaches from central Florida, near Orlando, all the way south to Florida Bay. During the wet season, Lake Okeechobee overflows, releasing water into a very slow moving, shallow, saw grass marsh dubbed the "river of grass."[1]

The Everglades contains diverse environments, resources, and conditions that have helped to shape the course of history and development in South Florida and remain a key component of the physical and economic landscape.[2] However, agriculture and urban development have reduced the size of the Everglades considerably. Originally covering almost 11,000 square miles, today the Everglades is half the size that it was a century ago.[3]

Marjory Stoneman Douglas

Marjory Stoneman Douglas, writer and conservationist, was born in Minneapolis, Minnesota on April 7, 1890. She moved to Miami, Florida in 1915, at the age of 25. In 1947, she published the book "The Everglades: River of Grass," which significantly impacted the environmental history of Florida redefining the Everglades as an essential source of free flowing fresh water. Marjory Stoneman Douglas helped found the conservation organization Friends of the Everglades,[4] led the campaign to establish the Everglades National Park,[5] and was present at the Park's dedication by President Harry Truman in 1947.[6]

Everglades National Park

Everglades National Park is the largest designated sub-tropical wilderness reserve on the North American continent.[7] Authorized by Congress in 1934 and established in 1947,[8] the park celebrates its 65th anniversary in 2012. The United Nations Educational, Scientific and Cultural Organization designated the park a Biosphere Reserve in 1976,[9] and a World Heritage site in 1979.[10] The park also was designated a Wetland of International Importance by the Ramsar Convention in 1987.[11] The

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[1] National Wildlife Federation, Everglades, at http://www.nwf.org/Wildlife/Wild-Places/Everglades.aspx (last visited January 20, 2012).

[2] Unites States Geological Society Fact Sheet, at http://fl.biology.usgs.gov/Center_Publications/Fact_Sheets/everglades.pdf (last visited January 18, 2012).

[3] South Florida Water Management District, America's Everglades, at http://my.sfwmd.gov/portal/page/portal/xweb%20protecting%20and%20restoring/americas%20everglades (last visited January 20, 2012).

[4] Friends of the Everglades, at http://www.everglades.org/ (last visited January 20, 2012).

[5] National Park Service, Unites States Department of the Interior, Everglades, at http://www.nps.gov/ever/index.htm (last visited January 20, 2012).

[6] Marjory Stoneman Douglas Writer & Conservationist, Special Collections, University of Miami Libraries, at http://scholar.library.miami.edu/msdouglas/index.html (last visited January 18, 2012).

[7] National Park Service, Unites States Department of the Interior, at http://www.nps.gov/ever/index.htm (last visited January 20, 2012).

[8] The Act of May 1934 (48 Stat 816).

[9] United Nations Educational, Scientific and Cultural Organization, Biosphere Reserves Directory, United States of America, Everglades & Dry Tortugas, at http://www.unesco.org/mabdb/br/brdir/directory/biores.asp?mode=all&code=USA+09 (last visited January 18, 2012).

[10] United Nations Educational, Scientific and Cultural Organization, World Heritage List, at http://whc.unesco.org/en/list/76 (last visited January 18, 2012).

[11] The Ramsar Convention on Wetlands of International Importance is an international treaty for the conservation and sustainable utilization of wetlands, at http://www.ramsar.org/cda/en/ramsar-documents-list/main/ramsar/1-31-218_4000_0__ (last visited January 20, 2012).

boundaries of Everglades National Park protect the southern one-fifth of the Everglades ecosystem.[12]

Legal Holidays and Special Observance Days
Current law establishes 50 legal holidays and special observance days.[13] Legal holidays and special observances may apply throughout the state or they may be limited to particular counties. Designation of a day as a legal holiday does not necessarily make that day a paid holiday for public employees.[14] Currently, there is not a legal holiday or special observance day related to an ecosystem such as Everglades Day.

Proposed Changes

The bill designates April 7 of each year as "Everglades Day."

B. SECTION DIRECTORY:

Section 1 creates s. 683.185, F.S., to designate April 7 of each year as "Everglades Day."

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 governments.

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[12] National Park Service, United States Department of the Interior, Nature & Science, at http://www.nps.gov/ever/naturescience/index.htm (last visited January 25, 2012).
[13] *See* chapter 683, F.S.
[14] Section 110.117, F.S., establishes which legal holidays are paid holidays for public employees.

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

None.

A bill to be entitled

An act relating to special observances; creating s. 683.185, F.S.; designating April 7 of each year as "Everglades Day"; providing an effective date.

WHEREAS, as one of the largest wetlands in the world, the Everglades ecosystem provides water supplies to one in three Floridians and is an important aspect of South Florida's tourism, agricultural, real estate, and recreational economies, and

WHEREAS, Everglades National Park, which draws an average of 1 million visitors annually, will celebrate its 65th anniversary in 2012 and has been designated an International Biosphere Reserve, a World Heritage Site, and a Wetland of International Importance in recognition of both its local and global significance, and

WHEREAS, Marjory Stoneman Douglas, born on April 7, 1890, was known as "the Mother of the Everglades" after writing the bestselling book *The Everglades: River of Grass* and raising public awareness for the preservation and restoration of the Florida wetlands, and

WHEREAS, Marjory Stoneman Douglas served on the committees that created the Everglades and Biscayne National Parks, created the organization Friends of the Everglades, and spearheaded efforts to enact legislation that would protect and preserve the parks and their wildlife, and

WHEREAS, continued restoration and preservation of the greater Everglades ecosystem, which originally spanned from Lake

Okeechobee to Florida Bay, are needed to protect the habitat of many species of animals, including 67 endangered species, and

WHEREAS, the significant economic and ecological importance of the Everglades ecosystem and the memory of Marjory Stoneman Douglas and her dedicated efforts to preserve the Everglades are an invaluable part of Florida's heritage and its future, NOW, THEREFORE,

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

Section 1. Section 683.185, Florida Statutes, is created to read:

683.185 Everglades Day.—April 7 of each year is designated as "Everglades Day."

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

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

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Agriculture & Natural Resources Subcommittee	13 Y, 0 N	Cunningham	Blalock
2) Community & Military Affairs Subcommittee	13 Y, 0 N	Duncan	Hoagland
3) Agriculture & Natural Resources Appropriations Subcommittee	12 Y, 0 N	Lolley	Massengale
4) State Affairs Committee		Kaiser	Hamby

SUMMARY ANALYSIS

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

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

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

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

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Beekeeping, Apiaries, and Apiary Locations

Present Situation

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

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

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

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

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

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

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

Effect of Proposed Changes

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

Farm Signs

Present Situation

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

Effect of Proposed Changes

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

Florida Right to Farm Act

Present Situation

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

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

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

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

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

Effect of Proposed Changes

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

B. SECTION DIRECTORY:

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

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

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

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

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

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

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

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

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

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

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

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

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

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

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

586.10 Powers and duties of department.—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

823.14 Florida Right to Farm Act.—

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

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

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

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

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

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 Horner offered the following:

Amendment (with title amendment)

Remove everything after the enacting clause and insert:

Section 1. Paragraphs (b) and (c) of subsection (3) of section 823.14, Florida Statutes, are amended to read:

823.14 Florida Right to Farm Act.—

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

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

insecticides, pesticides, and herbicides; and the employment and use of labor.

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

Section 2. Subsection (1) of section 586.02, Florida Statutes, is amended, present subsections (2) through (14) of that section are redesignated as subsections (3) through (15), respectively, and a new subsection (2) is added to that section, to read:

586.02 Definitions.—As used in this chapter:

(1) "Apiary" means a beeyard or site where honeybee hives, honeybees, or honeybee equipment is located. The beeyard or site may be located on land classified as agricultural under s. 193.461 or on land that is integral to a beekeeping operation.

(2) "Apiculture" means the raising, caring, and breeding of honeybees.

Section 3. Section 586.10, Florida Statutes, is amended to read:

586.10 Powers and duties of department.—The authority to regulate, inspect, and permit managed honeybee colonies and to adopt rules on the placement and location of registered inspected managed honeybee colonies is preempted to the state through the department and supersedes any related ordinance adopted by a county, municipality, or political subdivision thereof. The department shall ~~have the powers and duties to~~:

(1) After consulting with local governments and other affected stakeholders, adopt rules to administer this section.

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

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

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

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

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

(7) ~~(6)~~ Declare a quarantine against any area, place, or political unit within this state or other states, territories, or foreign countries, or portion thereof, in reference to honeybee pests or unwanted races of honeybees and prohibit the movement within this state from other states, territories, or foreign countries of all honeybees, honeybee products, used beekeeping equipment, or other articles from such quarantined places or areas which are likely to carry honeybee pests or unwanted races of honeybees if the quarantine is determined, after due investigation, to be necessary in order to protect this state's beekeeping industry, honeybees, and the public. In

such cases, the quarantine may be made absolute or rules may be adopted prescribing the method and manner under which the prohibited articles may be moved into or within, sold in, or otherwise disposed of in this state.

(8) ~~(7)~~ Enter into cooperative arrangements with any person, municipality, county, or other department of this state or any agency, officer, or authority of other states or the United States Government, including the United States Department of Agriculture, for inspection of honeybees, honeybee pests, or unwanted races of honeybees and products thereof and the control or eradication of honeybee pests and unwanted races of honeybees, and contribute a share of the expenses incurred under such arrangements.

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

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

(a) Name of the apiary.

(b) Name of the owner of the apiary.

(c) Mailing address of the apiary owner.

(d) Location of the apiary.

(e) Number of hives in the apiary.

(f) Pest problems associated with the apiary.

(g) Brands used by beekeepers where applicable.

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

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

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

(14) ~~(13)~~ Enter into a compliance agreement with any person engaged in purchasing, assembling, exchanging, processing, utilizing, treating, or moving beekeeping equipment or honeybees.

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

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

(17) ~~(16)~~ ~~The department may~~ Refuse the certification of any honeybees, honeybee products, or beekeeping equipment if ~~when~~ it is determined that an unwanted race of honeybees exists,

or honeybee pests exist on honeybees, honeybee products, or beekeeping equipment, or that the condition of the apiary inhibits a thorough and efficient inspection by the department.

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

(19) ~~(18) The department may~~ Require the removal from this state of any honeybees or beekeeping equipment that ~~which~~ has been brought into the state in violation of this chapter or the rules adopted under this chapter.

Section 4. Section 604.50, Florida Statutes, is reordered and amended to read:

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

(1) Notwithstanding any other law to the contrary, any nonresidential farm building, ~~or~~ farm fence, or farm sign is exempt from the Florida Building Code and any county or municipal code or fee, except for code provisions implementing local, state, or federal floodplain management regulations. Farm signs located on public roads shall meet the requirements of ss. 479.11(4)-(8). However, section 479.16(1) does not apply to farm signs.

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

Amendment No.

(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.

(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.

Section 5. 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. 823.14, F.S.; revising definitions relating to the Florida Right to Farm Act to include beekeeping; amending s. 586.02, F.S.; revising the definition of the term "apiary" and adding a definition for the term "apiculture"; amending s. 586.10, F.S.; providing that authority to regulate honeybee colonies is preempted

to the state; requiring that the Department of Agriculture and Consumer Services adopt rules after consulting with local governments and other affected stakeholders; reordering and amending s. 604.50, F.S.; providing an exemption from the Florida Building Code for farm signs; providing an effective date.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

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

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

SUMMARY ANALYSIS

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

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

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

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

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

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

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

Effect of Proposed Changes

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

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

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

[3] *Id*

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

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

B. SECTION DIRECTORY:

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

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

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

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

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

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

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

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

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

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

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

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

This analysis is drawn to CS/HB1389.

A bill to be entitled

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

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

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

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

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

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1461 Voter Identification
SPONSOR(S): Gaetz
TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 1596

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Government Operations Subcommittee	9 Y, 4 N	Naf	Williamson
2) State Affairs Committee		Naf	Hamby

SUMMARY ANALYSIS

Current law requires a voter to present valid picture identification before he or she is allowed to vote at a polling place. It also contains two provisions that appear to be in conflict:

- A prohibition against use of a voter's identification to confirm or otherwise challenge the voter's address; and
- A prohibition against asking a voter to provide additional information or to recite his or her address if the address on the voter's identification matches the address in the supervisor's records.

This bill removes the prohibition against use of a voter's identification to confirm or otherwise challenge the voter's address.

The bill provides an effective date of upon becoming a law.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Requirements for and use of elector[1] identification at polls are governed by s. 101.043, F.S.

The precinct register[2] is used at the polls to identify an elector before he or she is allowed to vote. Each elector must present one of the following current and valid picture identifications to the clerk or inspector:[3]

- Florida driver's license.
- Florida identification card issued by the Department of Highway Safety and Motor Vehicles.
- United States passport.
- Debit or credit card.
- Military identification.
- Student identification.
- Retirement center identification.
- Neighborhood association identification.
- Public assistance identification.[4]

If the picture identification does not contain the elector's signature, the elector must provide an additional identification that contains his or her signature.[5]

The address appearing on the identification presented by the elector may not be used as the basis to confirm an elector's legal residence or otherwise challenge an elector's legal residence.[6]

The elector must sign his or her name in the space provided on the precinct register or on an electronic device provided for that purpose. The clerk or inspector must compare the signature with that on the identification provided by the elector and enter his or her initials in the space provided on the precinct register or on an electronic device provided for that purpose. If the clerk or inspector is satisfied as to the identity of the elector, the elector must be allowed to vote.[7]

When an elector presents his or her picture identification to the clerk or inspector and the elector's address on the picture identification matches the elector's address in the supervisor's records, the elector may not be asked to provide additional information or to recite his or her home address.[8] This provision appears to be in conflict with the previous prohibition against using an elector's identification to confirm an elector's legal residence at all.[9]

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[1] Section 97.021, F.S., provides that "elector" is synonymous with "voter" or "qualified elector or voter," except where the word is used to describe presidential electors.

[2] Section 98.461(2), F.S., provides that a computer printout or electronic database shall be used at the polls as a precinct register. The precinct register must contain the date of the election, the precinct number, and the following information concerning each registered elector: last name, first name, middle name or initial, and suffix; party affiliation; residence address; registration number; date of birth; sex, if provided; race, if provided; whether the voter needs assistance in voting; and such other additional information as to readily identify the elector. The precinct register must also contain a space for the elector's signature and a space for the initials of the witnessing clerk or inspector, or an electronic device may be provided for that purpose.

[3] If the elector does not provide the required identification, he or she may vote a provisional ballot. *See* s. 101.043(2), F.S.

[4] Section 101.043(1)(a), F.S.

[5] *See* s. 101.043(1)(b), F.S.

[6] *Id.* This sentence was added to the statute by ch. 2011-40, L.O.F. (CS/CS/HB 1355).

[7] Section 101.043(1)(b), F.S.

[8] Section 101.043(1)(c), F.S. This sentence was added to the statute by ch. 2011-40, L.O.F. (CS/CS/HB 1355).

[9] *See* note 6.

Effect of Proposed Changes

The bill deletes the prohibition against using the address on the identification presented by the elector to confirm or otherwise challenge the elector's legal residence.

B. SECTION DIRECTORY:

Section 1 amends s. 101.043, F.S., relating to elector identification at the polls.

Section 2 provides an effective date of upon becoming a law.

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

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

The bill does not appear to create a need for rulemaking or rulemaking authority. If the Division of Elections of the Department of State needs to amend current rules as a result of the bill, it appears to have sufficient authority to do so.[10]

C. DRAFTING ISSUES OR OTHER COMMENTS:

Under section 5 of the Voting Rights Act, new statewide legislation that implements a voting change, including but not limited to, a change in the manner of voting, change in candidacy requirements and qualifications, change in the composition of the electorate that may vote for a candidate, or change affecting the creation or abolition of an elective office is subject to preclearance review before it can be legally enforced.[11] Preclearance review may be obtained through submission to the U.S. Department of Justice or through a declaratory judgment action filed in the U.S. District Court for the District of Columbia.[12] The preclearance review is conducted to determine if the change has a discriminatory purpose or effect that denies or abridges the right to vote on account of race, color, or membership in a language minority group in a covered jurisdiction. Florida has five covered jurisdictions subject to preclearance: Collier, Hardee, Hendry, Hillsborough, and Monroe counties. Until precleared by the U.S. Attorney General or the U.S. District Court for the District of Columbia, legislation that implements a voting change is unenforceable in Florida's five covered jurisdictions.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.

[10] *See* s. 97.012(1), F.S., and s. 102.014(5), F.S. (granting the Department of State general authority to adopt rules to implement chapters 97-102 and chapter 105, F.S.; and granting the Department of State authority to create a polling place procedures manual, respectively).
[11] 42 U.S.C. s. 1973c.
[12] *Id.*

A bill to be entitled

An act relating to voter identification; amending s. 101.043, F.S.; deleting a provision which prohibits the use of the address appearing on the identification presented by an elector at the polls as a basis to confirm or challenge the elector's legal residence; providing an effective date.

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

Section 1. Paragraph (b) of subsection (1) of section 101.043, Florida Statutes, is amended to read:

101.043 Identification required at polls.—

(1)

(b) If the picture identification does not contain the signature of the elector, an additional identification that provides the elector's signature shall be required. ~~The address appearing on the identification presented by the elector may not be used as the basis to confirm an elector's legal residence or otherwise challenge an elector's legal residence.~~ The elector shall sign his or her name in the space provided on the precinct register or on an electronic device provided for recording the elector's signature. The clerk or inspector shall compare the signature with that on the identification provided by the elector and enter his or her initials in the space provided on the precinct register or on an electronic device provided for that purpose and allow the elector to vote if the clerk or inspector is satisfied as to the identity of the elector.

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

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 Clemens offered the following:

Amendment (with title amendment)

Remove lines 17-20 and insert:

provides the elector's signature shall be required. The address appearing on the identification presented by the elector may not be used as the basis to ~~confirm an elector's legal residence or otherwise~~ challenge an elector's legal residence. The elector

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

Remove line 6 and insert:

confirm the elector's legal residence;

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 7003 PCB ANRS 12-02 Environmental Resource Permitting
SPONSOR(S): Agriculture & Natural Resources Subcommittee, Crisafulli
TIED BILLS: **IDEN./SIM. BILLS:** SB 1354

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Agriculture & Natural Resources Subcommittee	12 Y, 0 N	Deslatte	Blalock
1) State Affairs Committee		Deslatte JD	Hamby

SUMMARY ANALYSIS

Part IV of Chapter 373, F.S., establishes the Environmental Resource Permit (ERP) program, which is the primary tool used by the Department of Environmental Protection (DEP) and the Water Management Districts (WMDs) for preserving natural resources, fish and wildlife, minimizing degradation of water resources caused by stormwater discharges, and providing for the management of water and related land resources. The ERP program is a merging of much of DEP's dredge and fill permitting program, previously implemented under ss. 403.91 and 403.929, F.S., with the WMD's management and storage of surface waters (MSSW) permitting program under chapter 373, part IV.

ERP applications are processed by either the DEP or one of the state's WMDs in accordance with the division of responsibilities specified in operating agreements between the DEP and the WMDs. The agreements set out which entity has regulatory authority for implementing the ERP program based on the type of permitted activity. The division of responsibility ensures that applicants need only apply for permits from the DEP or the individual WMD, but not both.

The WMDs review all other ERP applications.

The bill directs the DEP, in coordination with the WMDs, to adopt statewide ERP rules. The bill also provides that, upon adoption of the rules, the WMDs and local governments delegated local pollution control authority must implement the rules without the need for further rulemaking pursuant to ch. 120, F.S.[1] The purpose of the rules is to improve statewide consistency in implementing criteria and standards for issuance of permits, permitting thresholds, permit types, application and reporting forms, procedural review, agency action, and noticing requirements. The rules are to be based on existing DEP and WMD rules, except to reconcile differences and conflicts that are not based on geographic differences in physical or natural characteristics. The bill also provides that the DEP's Applicant's Handbook must contain, at a minimum, general program information, application and review procedures, a specific discussion of how environmental criteria are evaluated, and a discussion of stormwater quality and quantity criteria.

The WMDs can continue to adopt rules governing the design and performance standards for stormwater quality and quantity, and the DEP can incorporate these design and performance standards by reference for use within the geographical jurisdiction of each WMD. When a stormwater management system is designed in accordance with the stormwater treatment requirements and criteria adopted by DEP or WMD rules, then that system design will be presumed to not cause or contribute to violations of applicable state water quality standards. When a stormwater management system is constructed, operated, and maintained for stormwater treatment in accordance with a valid permit or exemption, then there is a presumption that stormwater discharged from that system will not cause or contribute to violations of applicable state water quality standards.

Until the rules adopted become effective, existing rules adopted pursuant to part IV of chapter 373, F.S., remain in full force and effect. Existing rules that are superseded by the rules adopted pursuant to this section may be repealed without further rulemaking pursuant to s. 120.54, F.S., by publication of a notice of repeal in the Florida Administrative Weekly and subsequent filing of a list of the rules repealed with the Department of State.

There does not appear to be a fiscal impact on state or local governments. According to the DEP, the ERP application fees would not be changed at this time. The permitting thresholds may cause some entities to have to obtain a permit where they currently do not, and other entities to not require a permit where they currently do.

[1] Chapter 120, F.S., is the Administrative Procedures Act.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Part IV of Chapter 373, F.S., establishes the Environmental Resource Permit (ERP) program, which is the primary tool used by the Department of Environmental Protection (DEP) and the Water Management Districts (WMDs) for preserving natural resources, fish and wildlife, minimizing degradation of water resources caused by stormwater discharges, and providing for the management of water and related land resources. The ERP program is a merging of much of DEP's dredge and fill permitting program, previously implemented under ss. 403.91 and 403.929, F.S., with the WMD's management and storage of surface waters (MSSW) permitting program under chapter 373, part IV.

The activities regulated under the ERP program include the construction, alteration, operation, maintenance, abandonment and removal of "stormwater management systems", "dams", "impoundments", "reservoirs", "appurtenant works", and "works". Individually and collectively these terms are referred to as "surface water management systems" or "systems". Common examples of surface water management systems which affect surface waters include ditches, canals, borrow pits, mines, buildings, parking lots, and roads with their associated culverts. The "dredging" and "filling" of wetlands or other surface waters is also regulated under the ERP program, just as it was under the MSSW program prior to the ERP consolidation. In addition to DEP, the "dredging and filling" of certain wetlands and navigable water bodies is also regulated by the U.S. Army Corps of Engineers and local governments. The term "filling" includes the placement or depositing of any material that is placed in wetlands or other surface waters. Dirt, sand, gravel, rocks, shell, pilings, and concrete are all considered fill if placed in wetlands. The term "dredging" refers to any type of excavation conducted in wetlands or other surface waters. Dredging includes digging, pulling up vegetation by the roots, leaving vehicular ruts, or any other activity that disturbs the soil.

Alteration of wetlands and other surface waters may have a detrimental impact on the environment. Such impacts can extend beyond the limits of the work site, affecting other public or private property. Polluted waters can be conveyed off-site through connecting water bodies. The elimination or degradation of wetlands causes a reduction of beneficial functions provided by the wetlands. A person proposing to construct a regulated surface water management system or a person seeking to dredge or fill wetlands must first receive an ERP.

ERP applications are processed by either the DEP or one of the state's WMDs in accordance with the division of responsibilities specified in operating agreements between the DEP and the WMDs. The agreements set out which entity has regulatory authority for implementing the ERP program based on the type of permitted activity. The division of responsibility ensures that applicants need only apply for permits from the DEP or the individual WMD, but not both. Generally, the DEP reviews permit applications that involve the following:

- Solid, hazardous, domestic and industrial waste facilities;
- Mining, except borrow pits;
- Power plants, transmission and communication cables and lines, and oil and gas activities;
- Certain docking facilities and structures, and dredging that is not part of a larger development plan;
- Navigational dredging by government entities that is not part of a larger project permitted by a WMD;
- Certain types of systems located seaward of the coastal construction control line or those serving a single family dwelling unit or residential unit;
- Seaports; and

- Smaller, separate water-related activities not part of a larger development plan.

The WMDs review all other ERP applications.

To obtain an ERP, an applicant must provide reasonable assurance that:

- The construction or alteration of a surface water management system or "system" will not be harmful to the water resources of the district[2].
- The operation or maintenance of a surface water management system will not be harmful to the water resources of the district and will not be inconsistent with the overall objectives of the district[3].
- The abandonment or removal of a surface water management system will not be inconsistent with the overall objectives of the district[4].

In addition, proposed projects must meet all permit conditions and a public interest balancing test, pursuant to s. 373.414(1)(a), F.S. The public interest test is based on the following criteria:

- Whether the activity will adversely affect the public health, safety, or welfare or the property of others;
- Whether the activity will adversely affect the conservation of fish and wildlife, including endangered or threatened species, or their habitats;
- Whether the activity will adversely affect navigation or the flow of water or cause harmful erosion or shoaling;
- Whether the activity will adversely affect the fishing or recreational values or marine productivity in the vicinity of the activity;
- Whether the activity will be of a temporary or permanent nature;
- Whether the activity will adversely affect or will enhance significant historical and archaeological resources under the provisions of s. 367.061, F.S.; and
- The current condition and relative value of functions being performed by areas affected by the proposed activity.

The statutory standards described above, harm to the water resources and inconsistency with the overall objectives of the district, have been implemented by the DEP and WMDs through their rules. The rules of the WMDs are partly codified in the Florida Administrative Code, and partly contained in manuals published by the WMDs. The manuals of each of the WMDs are called either an Applicant's Handbook or a Basis of Review. The relevant portions of each WMDs Applicant's Handbook or Basis of Review are adopted as rules by reference in the Florida Administrative Code. Provisions of the St. Johns River Water Management District's (SJRWMD) Applicant's Handbook are adopted as rules by reference in Rule 40C–4.091. The other water management districts adopt provisions of their Applicant's Handbooks or Basis of Review as rules by reference in Rules 40B–400.091(1), 40C–4.091, 40D–4.091, and 40E–4.091. These Applicant's Handbooks provide detailed criteria and guidelines that permit applicants must follow, and that each WMD rely on when deciding whether to issue a permit or what conditions to place on a permit.

The ERP rules delineate the substantive conditions for issuance of a permit in two primary rule sections. One is entitled "Conditions for Issuance of Permits" and the other is "Additional Conditions for Issuance of Permits." The criteria in the "Conditions for Issuance" rules were based primarily on the WMDs MSSW permitting rules in effect before the ERP rules became effective. There is no balancing of the criteria, and thus, an applicant must establish compliance with each criterion. The Suwannee River Water Management District (SRWMD), SJRWMD, Southwest Florida Water Management District (SWFWMD), and South Florida Water Management District (SFWMD) have all adopted these rules; however, each WMD has certain variations.[5]

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[2] Section 373.413(1), F.S.
[3] Section 373.416(1), F.S.
[4] Section 373.426(1), F.S.
[5] Rules 40B-400.103, 40B-400.104, 40C-4.301, 40C-4.302, 40D-4.301, 40D-4.302, 40E-4.301, 40E-4.302, F.A.C.

The criteria in the rules entitled "Additional Conditions for Issuance of Permits" were based primarily on DEP's dredge and fill permitting rules in existence before the ERP rules became effective. The rule criteria are derived from s. 373.414(1), F.S., detailed above.

Certain activities have been exempted by statute and rule from the need for obtaining an ERP under state law or by agency rule. To be exempt by rule, the activities have been previously determined by the agencies to be capable of causing no more than minimal individual and cumulative adverse impacts to wetlands and other surface waters. Examples of exempt activities include, but are not limited to:

- Construction, repair, and replacement of certain private docking facilities below certain size thresholds;
- Maintenance dredging of existing navigational channels and canals;
- Construction and alteration of boat ramps within certain size limits;
- Construction, repair, and replacement of seawalls and rip rap in artificial waters;
- Repair and replacement of structures; and
- Construction of certain agricultural activities.

In addition, the state has issued a number of "noticed general permits" for activities that are slightly larger than those that qualify for the above exemptions and that otherwise have been determined to have the potential for no more than minimal individual direct and secondary impacts. These include, but are not limited to:

- Construction and modification of boat ramps of certain sizes;
- Installation and repair of riprap at the base of existing seawalls;
- Installation of culverts associated with stormwater discharge facilities; and
- Construction and modification of certain utility and public roadway construction activities.

Anything that does not specifically qualify for an exemption or noticed general permit generally requires an ERP permit.

Each of the WMDs and the DEP operate under separate ERP rules and guidelines. This has resulted in different implementation and enforcement of the ERP criteria by the different WMDs causing confusion and inconsistency around the state for those applicants that seek permits from the various WMDs and DEP. The WMDs use a combination of the DEP's environmental criteria and the WMD's former MSSW rules, which were independently adopted by each WMD. After the four WMD's adopted their own ERP rules, the DEP incorporated, by reference, each of the WMDs rules to be able to do DEP permitting activities in the WMDs. For the DEP to incorporate the WMD rules by reference, the DEP must undertake rulemaking. However, the DEP does not appear to be up to date on all WMD rules. Each of the WMDs have also established their own general permits for certain activities, which has led to the different WMDs having varying degrees of general permits and criteria resulting in an additional lack of uniformity throughout the state for applicants.

The ERP implementation in the Northwest Florida WMD was developed more recently than the other WMDs, with close coordination with the DEP, as directed by the Legislature. Pursuant to s. 373.4145, F.S., the Northwest Florida WMD is specifically authorized to implement the jointly developed rules without adoption. As a result, both the DEP and the WMD regulate ERPs under a unified rule. Any changes or amendments to the rules may be adopted by the DEP under normal rulemaking procedures. The Northwest Florida WMD may then begin implementing any such changes without rulemaking[6].

[6] Senate Statewide Environmental Resource Permit interim report, 2011.

Effect of Proposed Changes

The bill directs the Department of Environmental Protection (DEP), in coordination with the Water Management Districts (WMDs), to adopt statewide Environmental Resource Permitting (ERP) rules by October 1, 2012, governing the construction, alteration, operation, maintenance, repair, abandonment, and removal of any stormwater management system, dam, impoundment, reservoir, appurtenant work, or works. The bill provides that the rules must provide for statewide, consistent regulation of these activities, and include, at a minimum:

- Criteria and thresholds for requiring permits.
- Types of permits.
- Procedures governing the review of applications and notices, duration and modification of permits, operational requirements, transfers of permits, provisions for emergencies, and provisions for abandonment and removal of systems.
- Exemptions and general permits that do not allow significant adverse impacts to occur individually or cumulatively.
- Conditions for issuance.
- General permit conditions, including monitoring, inspection, and reporting requirements.
- Standardized fee categories for activities under part IV of chapter 373, F.S., to promote consistency. The DEP and WMDs are authorized to amend their fee rules to reflect these categories, but are not required to adopt identical fees for those categories.
- Application, notice, and reporting forms. To the maximum extent practicable, the DEP and WMDs shall provide for electronic submittal of forms and notices.
- An Applicant's Handbook that, at a minimum, contain general program information, application and review procedures, a specific discussion of how environmental criteria are evaluated, and discussion of stormwater quality and quantity criteria .

The bill also requires that the rules rely primarily on the existing rules of the DEP and the WMDs in effect immediately prior to the effective date of this section, except that the DEP can:

- Reconcile differences and conflicts to achieve a consistent statewide approach;
- Account for different physical or natural characteristics, including special basin considerations, of individual WMDs; and
- Implement additional permit streamlining measures.

The application of the rules are to continue to be governed by the first sentence of s. 70.001(12), F.S., which provides that no cause of action exists under the Bert Harris Private Property Rights Protection Act as to the application of any law enacted on or before May 11, 1005, or as to the application of any rule, regulation, or ordinance adopted, or formally noticed for adoption, on or before that date.

Upon adoption of the rules, the WMDs and local governments delegated local pollution control program authority under s. 373.441, F.S.[7], must implement the rules, but are not required to follow the rulemaking procedures under chapter 120.54, F.S. Rules adopted by the DEP pursuant to this section shall also be considered rules of the WMDs and local governments delegated local pollution control program authority under s. 373.441, F.S. The WMDs and local governments must have substantive jurisdiction to implement and interpret rules adopted by the DEP under Part IV of chapter 373, F.S.

A county, municipality, or local pollution control program that has a delegation of local pollution control program authority or proposes to be delegated of such authority under s. 373.441, F.S., must:

[7] Section 373.441, F.S., describes the process and requirements that must be met for a local government to obtain delegation of the state ERP program from the DEP.

- Without modification incorporate by reference and use the rules adopted to implement the provisions described above when reviewing and taking action on the department's behalf on a delegated permitting, compliance, or enforcement matter under this part.
- Amend its local ordinances or regulations to conform to the requirements of this bill within 12 months after the effective date of the rules adopted to implement the provisions described above.

The DEP and each local program with the authority to implement or seeking to implement a delegation of local pollution control program authority must identify and reconcile any duplicative permitting as part of the delegation.

Until the adopted rules required under this bill become effective, existing rules remain in full force and effect. Existing rules that are superseded by the rules adopted to implement the provisions in the bill can be repealed without further rulemaking under chapter 120, F.S., by publication of a notice of repeal in the Florida Administrative Weekly and subsequent filing of a list of the rules repealed with the Department of State.

The WMDs, with the DEP's oversight, can continue to adopt rules governing the design and performance standards for stormwater quality and quantity, and the DEP can incorporate the design and performance standards by reference for use within the geographical jurisdiction of each WMD. If a stormwater management system is designed in accordance with the stormwater treatment requirements and criteria adopted by the DEP or WMD rules, then that system design is presumed to not cause or contribute to violations of applicable state water quality standards. If a stormwater management system is constructed, operated, and maintained for stormwater treatment in accordance with a valid permit or exemption, then there is a presumption that stormwater discharged from that system does not cause or contribute to violations of applicable state water quality standards.

Regardless of the adoption of rules to implement the provisions in the bill, the following activities will continue to be governed by the rules of the DEP, the WMDs, and any delegated local program in effect before the effective date of such rules, unless the applicant elects review in accordance with the rules adopted pursuant to the provisions in the bill:

- The operation and maintenance of any stormwater management system, dam, impoundment, reservoir, appurtenant work, or works, or any combination thereof, legally in existence before the effective date of the rules adopted pursuant to this section if the terms and conditions of the permit, exemption, or other authorization for such activity continues to be met;
- Activities determined in writing by the DEP, a WMD, or a local government delegated under s. 373.441, F.S., to be exempt from, or not subject to, the permitting requirements of this part, including self-certifications submitted to the DEP, a WMD, or a delegated local government prior to the effective date of this section; and
- The activities approved in a permit issued pursuant to this part and the review of activities proposed in a permit application that is complete before the effective date of the rules adopted pursuant to this section. This paragraph also applies to any modification of the plans, terms, and conditions of the permit, including new activities, within the geographical area to which the permit applies; and to any modification that lessens or does not increase impacts. However, this paragraph does not apply to a modification that is reasonably expected to lead to additional or substantially different impacts.

Lastly, the bill provides that to ensure consistent implementation and interpretation of the rules adopted to implement the provisions in the bill, the DEP must conduct or oversee regular assessment and training of its staff and the staffs of the WMDs and local governments delegated local pollution control program authority.

B. SECTION DIRECTORY:

Section 1. Creates s. 373.4131, F.S.; requiring the DEP, in coordination with the WMDs, to adopt statewide environmental resource permitting rules for activities impacting wetlands and surface waters;

providing rule requirements; preserving an exemption from causes of action under the "Bert J. Harris, Jr., Private Property Rights Protection Act"; providing an exemption from the rulemaking provisions of ch. 120, F.S., for implementation of the rules by WMDs and delegated local programs; requiring counties, municipalities, and delegated local programs to amend ordinances and regulations within a specified timeframe to conform with the rules; providing for applicability, effect, and repeal of specified rules; authorizing WMDs to adopt and retain specified rules; authorizing the DEP to incorporate certain rules; providing a presumption of compliance for specified design, construction, operation, and maintenance of certain stormwater management systems; providing exemptions for specified stormwater management systems and permitted activities; requiring the DEP to conduct or oversee staff assessment and training.

Section 2. Reenacts s. 70.001(12), F.S., relating the "Bert J. Harris, Jr., Private Property Rights Protection Act," for purposes of a cross-reference in s. 373.4131, F.S.

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

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   According to the DEP, the costs of the statewide ERP processes and procedures will likely be similar to those currently existing because the rules are expected to be based primarily on the existing rules of the DEP and the WMDs, except to reconcile differences and conflicts that are not based on geographic differences in physical or natural characteristics.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   According to the DEP, the ERP permitting processes and procedures costs will likely be similar to those currently existing because the rules are expected to be based primarily on the existing rules of the DEP and the WMDs, except to reconcile differences and conflicts that are not based on geographic differences in physical or natural characteristics.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

According to the DEP, existing application fees are not proposed to be changed at this time. The proposed rules are expected to be based primarily on the existing rules of the DEP and the WMDs, except to reconcile differences and conflicts that are not based on geographic differences in physical or natural characteristics. However, permitting thresholds, which currently differ throughout the state, are proposed to be unified to the maximum extent practical, which may cause some entities to have to obtain a permit where they currently do not, and other entities to not require a permit where they currently do.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill directs the DEP, in coordination with the WMDs, to adopt a statewide ERP rule. The bill also provides that, upon adoption of the rules, the WMDs and local governments delegated local pollution control program authority must implement the rules without the need for further rulemaking pursuant to s. 120.54, F.S.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On December 6, 2011, the Agriculture & Natural Resources Subcommittee amended and passed PCB ANRS 12-02 as a committee substitute (CS).

Amendment 1 specifies that the Department of Environmental Protection's rules adopted under this section are considered rules of the water management districts and local governments delegated local pollution control program authority.

Amendment 2 deletes the word 'directly' to avoid potential confusion with the 12-month timeframe for delegated local governments to amend ordinances to conform to statewide rules.

Amendment 3 ensures that water management districts and delegated local governments do not have to wait until adoption of the statewide ERP rule to adopt other necessary rules related to stormwater quantity and quality under part IV of chapter 373, F.S.

A bill to be entitled

An act relating to environmental resource permitting; creating s. 373.4131, F.S.; requiring the Department of Environmental Protection, in coordination with the water management districts, to adopt statewide environmental resource permitting rules for activities relating to the management and storage of surface waters; providing rule requirements; preserving an exemption from causes of action under the "Bert J. Harris, Jr., Private Property Rights Protection Act"; providing an exemption from the rulemaking provisions of ch. 120, F.S., for implementation of the rules by water management districts and delegated local programs; requiring counties, municipalities, and delegated local programs to amend ordinances and regulations within a specified timeframe to conform with the rules; providing for applicability, effect, and repeal of specified rules; authorizing water management districts to adopt and retain specified rules; authorizing the department to incorporate certain rules; providing a presumption of compliance for specified design, construction, operation, and maintenance of certain stormwater management systems; providing exemptions for specified stormwater management systems and permitted activities; requiring the department to conduct or oversee staff assessment and training; reenacting s. 70.001(12), F.S., relating the "Bert J. Harris, Jr., Private Property Rights

Protection Act," for purposes of a cross-reference in s. 373.4131, F.S.; providing an effective date.

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

Section 1. Section 373.4131, Florida Statutes, is created to read:

373.4131 Statewide environmental resource permitting rules.—

(1)(a) No later than October 1, 2012, the department shall initiate rulemaking to adopt, in coordination with the water management districts, statewide environmental resource permitting rules governing the construction, alteration, operation, maintenance, repair, abandonment, and removal of any stormwater management system, dam, impoundment, reservoir, appurtenant work, works, or any combination thereof, under this part.

(b) The rules shall provide for statewide, consistent regulation of activities under this part and shall include, at a minimum:

1. Criteria and thresholds for requiring permits.

2. Types of permits.

3. Procedures governing the review of applications and notices, duration and modification of permits, operational requirements, transfers of permits, provisions for emergencies, and provisions for abandonment and removal of systems.

4. Exemptions and general permits that do not allow significant adverse impacts to occur individually or cumulatively.

5. Conditions for issuance.

6. General permit conditions, including monitoring, inspection, and reporting requirements.

7. Standardized fee categories for activities under this part to promote consistency. The department and water management districts may amend fee rules to reflect the standardized fee categories but are not required to adopt identical fees for those categories.

8. Application, notice, and reporting forms. To the maximum extent practicable, the department and water management districts shall provide for electronic submittal of forms and notices.

9. An applicant's handbook that, at a minimum, contains general program information, application and review procedures, a specific discussion of how environmental criteria are evaluated, and discussion of stormwater quality and quantity criteria.

(c) The rules shall rely primarily on the rules of the department and water management districts in effect immediately prior to the effective date of this section, except that the department may:

1. Reconcile differences and conflicts to achieve a consistent statewide approach.

2. Account for different physical or natural characteristics, including special basin considerations, of individual water management districts.

3. Implement additional permit streamlining measures.

(d) The application of the rules shall continue to be governed by the first sentence of s. 70.001(12).

(2)(a) Upon adoption of the rules, the water management districts and local governments delegated local pollution control program authority under s. 373.441 shall implement the rules without the need for further rulemaking pursuant to s. 120.54. The rules adopted by the department pursuant to this section shall also be considered the rules of the water management districts and local governments delegated local pollution control program authority under s. 373.441. The districts and local governments shall have substantive jurisdiction to implement and interpret rules adopted by the department under this part, consistent with any guidance from the department, in any license or final order pursuant to s. 120.60 or s. 120.57(1)(l).

(b)1. A county, municipality, or local pollution control program that has a delegation of local pollution control program authority or proposes to be delegated such authority under s. 373.441 shall without modification incorporate by reference and use the rules adopted pursuant this section when reviewing and taking action on the department's behalf on a delegated permitting, compliance, or enforcement matter under this part.

2. A county, municipality, or local pollution control program that has a delegation of local pollution control program

authority under s. 373.441 must amend its local ordinances or regulations to conform to the requirements of this section within 12 months after the effective date of the rules adopted pursuant to this section.

3. The department and each local program with the authority to implement or seeking to implement a delegation of local pollution control program authority under s. 373.441 shall identify and reconcile any duplicative permitting as part of the delegation.

(c) Until the rules adopted pursuant to this section become effective, existing rules adopted pursuant to this part remain in full force and effect. Existing rules that are superseded by the rules adopted pursuant to this section may be repealed without further rulemaking pursuant to s. 120.54 by publication of a notice of repeal in the Florida Administrative Weekly and subsequent filing of a list of the rules repealed with the Department of State.

(3)(a) The water management districts, with department oversight, may continue to adopt rules governing design and performance standards for stormwater quality and quantity, and the department may incorporate the design and performance standards by reference for use within the geographic jurisdiction of each district.

(b) If a stormwater management system is designed in accordance with the stormwater treatment requirements and criteria adopted by the department or a water management district under this part, the system design is presumed not to

cause or contribute to violations of applicable state water quality standards.

(c) If a stormwater management system is constructed, operated, and maintained for stormwater treatment in accordance with a valid permit or exemption under this part, the stormwater discharged from the system is presumed not to cause or contribute to violations of applicable state water quality standards.

(4) Notwithstanding the adoption of rules pursuant to this section, the following activities shall continue to be governed by the rules adopted by the department, the water management districts, and delegated local programs under this part in effect before the effective date of the rules adopted pursuant to this section, unless the applicant elects review in accordance with the rules adopted pursuant to this section:

(a) The operation and maintenance of any stormwater management system, dam, impoundment, reservoir, appurtenant work, works, or any combination thereof legally in existence before the effective date of the rules adopted pursuant to this section if the terms and conditions of the permit, exemption, or other authorization for such activity continue to be met.

(b) The activities determined in writing by the department, a water management district, or a local government delegated local pollution control program authority under s. 373.441 to be exempt from the permitting requirements of this part, including self-certifications submitted to the department, a water management district, or a delegated local government

before the effective date of the rules adopted pursuant to this section.

(c) The activities approved in a permit issued pursuant to this part and the review of activities proposed in a permit application that is complete before the effective date of the rules adopted pursuant to this section. This paragraph applies to any modification of the plans, terms, and conditions of the permit, including new activities, within the geographical area to which the permit applies and to any modification that lessens or does not increase impacts. However, this paragraph does not apply to a modification that is reasonably expected to lead to additional or substantially different impacts.

(5) To ensure consistent implementation and interpretation of the rules adopted pursuant to this section, the department shall conduct or oversee regular assessment and training of its staff and the staffs of the water management districts and local governments delegated local pollution control program authority under s. 373.441.

Section 2. For the purpose of a cross-reference in section 373.4131, Florida Statutes, as created by this act, subsection (12) of section 70.001, Florida Statutes, is reenacted to read:

70.001 Private property rights protection.—

(12) No cause of action exists under this section as to the application of any law enacted on or before May 11, 1995, or as to the application of any rule, regulation, or ordinance adopted, or formally noticed for adoption, on or before that date. A subsequent amendment to any such law, rule, regulation, or ordinance gives rise to a cause of action under this section

only to the extent that the application of the amendatory language imposes an inordinate burden apart from the law, rule, regulation, or ordinance being amended.

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

Amendment No. 1

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

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

Amendment (with title amendment)

Remove lines 88-94 and insert:

districts shall implement the rules without the need for further rulemaking pursuant to s. 120.54. The rules adopted by the department pursuant to this section shall also be considered the rules of the water management districts. The

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

Remove lines 13-15 and insert:

water management districts; requiring counties and municipalities to amend ordinances and

Amendment No. 2

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

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

Amendment (with title amendment)

Remove lines 100-117 and insert:

(b)1. A county, municipality, or local pollution control program that has a delegation of the environmental resource permit program authority or proposes to be delegated such authority under s. 373.441 shall without modification incorporate by reference the rules adopted pursuant to this section.

2. A county, municipality, or local pollution control program that has a delegation of the environmental resource permit program authority under s. 373.441 must amend its local ordinances or regulations to incorporate by reference the applicable rules adopted pursuant to this section within 12 months of their effective date.

3. Consistent with s. 373.441, nothing contained herein shall be construed to prohibit a county, municipality, or local

pollution control program from adopting or implementing regulations that are stricter than those adopted pursuant to this section.

4. The department and each local program with the authority to implement or seeking to implement a delegation of environmental resource permit program authority under s. 373.441 shall identify and reconcile any duplicative permitting processes as part of the delegation.

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

Remove lines 16-18 and insert:

regulations within a specified timeframe to incorporate applicable rules; allowing counties, municipalities, and delegated local pollution control programs to have stricter regulations; requiring reconciliation of duplicative permitting processes; authorizing water