RULEMAKING & REGULATION SUBCOMMITTEE MEETING

Wednesday, January 11, 2012

8:30 A.M. – 10:30 A.M.

306 House Office Building

Meeting Packet

Dean Cannon
Speaker

Chris Dorworth
Chair

Committee Meeting Notice

HOUSE OF REPRESENTATIVES

Rulemaking & Regulation Subcommittee

Start Date and Time:	Wednesday, January 11, 2012 08:30 am
End Date and Time:	Wednesday, January 11, 2012 10:30 am
Location:	306 HOB
Duration:	2.00 hrs

Consideration of the following bill(s):

CS/HB 413 Chiropractic Medicine by Health & Human Services Quality Subcommittee, Mayfield
CS/HB 503 Environmental Regulation by Agriculture & Natural Resources Subcommittee, Patronis
HB 517 Reducing and Streamlining Regulations by Grant

Consideration of the following proposed committee bill(s):

PCB RRS 12-02 -- Relating to Administrative Authority

NOTICE FINALIZED on 01/09/2012 15:18 by Thompson.Sonja

FLORIDA HOUSE OF REPRESENTATIVES

Dean Cannon, Speaker

Rules & Calendar Committee

Rulemaking & Regulation Subcommittee

Chris Dorworth
Chair

317 The Capitol
(850) 488-0608

AGENDA

Wednesday, January 11, 2012
8:30 A.M. – 10:30 A.M.
Room 306 House Office Building

Opening Remarks by Chair Dorworth

Roll Call by Sonja Thompson, CAA

Consideration of the following bill(s):

- CS/HB 413 Chiropractic Medicine by Health & Human Services Quality Subcommittee, Mayfield
- CS/HB 503 Environmental Regulation by Agriculture & Natural Resources Subcommittee, Patronis
- HB 517 Reducing and Streamlining Regulations by Grant

Consideration of the following proposed committee bill(s):

- PCB RRS 12-02 -- Relating to Administrative Authority

Closing Remarks

Meeting Adjourned

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 413 Chiropractic Medicine
SPONSOR(S): Health & Human Services Quality Subcommittee; Mayfield
TIED BILLS: **IDEN./SIM. BILLS:** SB 470

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Health & Human Services Quality Subcommittee	13 Y, 0 N, As CS	Holt	Calamas
2) Rulemaking & Regulation Subcommittee		Rubottom	Rubottom
3) Health Care Appropriations Subcommittee			
4) Health & Human Services Committee			

SUMMARY ANALYSIS

The bill makes several changes to chapter 640, F.S., the chiropractic medicine practice act. The bill revises the requirements for obtaining a chiropractic medicine faculty certificate, adds language regarding the denial of continuing education courses, requires the successful passage of parts I-IV and physiology exam of the National Board of Chiropractic Examiners, addresses the retention of patient funds and property, amends the timeframe for training and oversight of a certified chiropractic physician's assistant, and provides exceptions to the types of entities that may hire independent contractors to provide chiropractic services and states who may exercise control over a chiropractor's practice.

The bill has no fiscal impact on the state or local governments.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Medical Quality Assurance

The Florida Department of Health (DOH), Division of Medical Quality Assurance (MQA) regulates health care practitioners to ensure the health, safety and welfare of the public. Currently, MQA supports licensure and disciplinary activities for 43 professions and 37 types of facilities/establishments, and works with 22 boards and 6 councils. Boards are responsible for approving or denying applications for licensure and are involved in disciplinary hearings. The range of disciplinary actions taken by boards includes citations, suspensions, reprimands, probations, and revocations.

Boards

A board is a statutorily created entity that is authorized to exercise regulatory or rulemaking functions within the MQA.[1] Boards are responsible for approving or denying applications for licensure and making disciplinary decisions on whether a practitioner practices within the authority of their practice act. Practice acts refer to the legal authority in state statute that grants a profession the authority to provide services to the public. The range of disciplinary actions taken by a board includes citations, suspensions, reprimands, probations, and revocations.

Chiropractic Physicians

In Florida, chiropractic physicians (chiropractors) are governed by chapter 460, F.S., the chiropractic medicine act. The practice of chiropractic medicine is defined to mean a non-combative principle and practice consisting of the science of the adjustment, manipulation, and treatment of the human body.[2] A chiropractor is authorized to adjust, manipulate or treat the human body by manual, mechanical, electrical, or natural methods.[3] Chiropractors are prohibited from prescribing or administering any legend drugs with limited exceptions.[4] According to the American Chiropractic Association, there are more than 60,000 active chiropractic licenses in the United States and all 50 states officially recognize chiropractic medicine as a health care profession.[5] Currently, there are 4,667 individuals who hold an active in-state license to practice chiropractic medicine in Florida.[6]

Licensure requirements for chiropractic physicians include: graduation from a chiropractic college that is accredited by the Council on Chiropractic Education; passage of the National Board of Chiropractic Examiners certification examination; and submission of an application and fees to the department.[7] A Chiropractor may be disciplined for misconduct and violating any provision contained within the chiropractic medicine practice act.[8] A chiropractor may be disciplined for failing to preserve the identity of funds held in trust and property of a patient in any amount.[9] Currently, statute does not provide a cap on the amount of funds that a chiropractor may hold in trust as an advance for costs and expenses for rendered services.

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[1] S. 456.001, F.S.
[2] S. 460.403(9)(a), F.S.
[3] S. 460.403(9)(c), F.S.
[4] *Id.* Chiropractors may order, store, and administer, for emergency purposes only, prescription medical oxygen, any solution consisting of 25 percent ethylchloride and 75 percent dichlorodifluoromethane, and any solution consisting of 15 percent dichlorodifluormethane and 85 percent trichloromonofluoromethane.
[5] American Chiropractic Association, General Information about Chiropractic Care, *available at*: www.acatoday.org/pdf/Gen_Chiro_Info.pdf (last viewed November 30, 2011).
[6] Florida Department of Health, Division of Medical Quality Assurance, 2010-2011 MQA Annual Report, *available at*: http://doh.state.fl.us/mqa/reports.htm (last viewed October 27, 2011).
[7] S. 460.406, F.S.
[8] S. 460.412, 460.411, and 460.413, F.S.
[9] S. 460.13(1)(y), F.S.

National Examination

The Florida chiropractic licensure examination is conducted by the National Board of Chiropractic Examiners. The exam is composed of four parts and two elective examinations and: [10]

- *Part I* tests individuals on subjects in each of six basic science areas: general anatomy, spinal anatomy, physiology, chemistry, pathology, and microbiology.
- *Part II* tests individuals on each of six clinical science areas: general diagnosis, neuromusculoskeletal diagnosis, diagnostic imaging, and principles of chiropractic, chiropractic practice, and associated clinical sciences.
- *Part III* tests individuals on nine clinical areas: case history, physical examination, neuromusculoskeletal examination, diagnostic imaging, clinical laboratory and special studies, diagnosis or clinical impression, chiropractic techniques, supportive interventions, and case management.
- *Part IV* is a practical exam that tests individuals on three major areas: x-ray interpretation and diagnosis; chiropractic technique; and case management.
- *Physiotherapy* (optional) tests individuals on passive[11] and active[12] adjunctive procedures.
- *Acupuncture* (optional) tests individuals on the history and philosophy of acupuncture in a chiropractic setting, organs, Qi (life energy) and fluid, channels and pathways, acupoints, acupuncture techniques, basic treatment tenets and protocols, and safety and hygiene.

Chiropractic Practice Ownership

Generally, only a sole proprietorship, group practice, partnership, or corporation that is wholly owned by one or more chiropractic physicians, or by a chiropractic physician and the spouse, parent, child, or sibling of that chiropractic physician, may employ a chiropractic physician or hire a chiropractic physician as an independent contractor to provide chiropractic services.[13] However, exceptions are provided in statute for medical doctors, doctors of osteopathic medicine, hospitals, and state-licensed insurers.[14] Current law also prohibits certain persons from employing or entering into a contract with a chiropractic physician and thereby exercising control over patient records, decisions relating to office personnel and hours of practice, and policies relating to pricing, credit, refunds, warranties, and advertising. Persons who are not chiropractic physicians and entities not wholly owned by chiropractic physicians or chiropractic physicians and the spouse, parent, child, or sibling of a chiropractic physician, are so prohibited. No exceptions to this prohibition are contained in current law.[15]

Board of Chiropractic Medicine

Chiropractors are regulated by the Florida Board of Chiropractic Medicine (board). The board is composed of seven members:[16]

- Five are licensed instate chiropractors engaged in the practice for at least 4 years; and
- Two Florida residents who are not licensed as health care practitioners

[10] National Board of Chiropractic Examiners, Written Examinations: Overview, *available at*: http://www.nbce.org/written/overview.html (last viewed December 2, 2011).
[11] Passive adjunctive procedures include thermotherapy, electrotherapy, mechanotherapy and phototherapy.
[12] Active adjunctive procedures include functional assessment, exercise physiology, endurance training, muscle rehabilitation, neuromuscular rehabilitation, and disorder-specific rehabilitation
[13] S. 460.4167(1), F.S.
[14] *Id.*
[15] S. 460.4167 (4), F.S.
[16] S. 460.404, F.S.

All board members are appointed by the Governor and confirmed by the Senate. Members of the board are provided periodic training in the grounds for disciplinary action, actions the board and the DOH may take, changes in rules and statutes, relevant judicial and administrative decisions. Board members are appointed to probable cause panels and participate in disciplinary decisions.

The board is tasked with approving continuing education courses.[17] The board is required to approve continuing education courses that are sponsored by chiropractic colleges whose graduates are eligible to take the national examination and the courses must build upon the basic courses required for the practice of chiropractic medicine.[18] The board is permitted to approve courses in adjunctive modalities. Furthermore, the board is directed to require licensees to periodically demonstrate their professional competence as a condition of license renewal by completing at least 40 classroom hours of continuing education every biennium.[19]

Chiropractic Faculty Certificates

Section 460.4062, F.S., provides for the certification of chiropractic medical faculty at publicly funded state universities or colleges. A chiropractic medicine faculty certificate authorizes the certificate holder to practice chiropractic medicine only in conjunction with his or her full-time faculty position at a university or college and its affiliated clinics that are registered with the board as sites at which holders of chiropractic medicine faculty certificates will be practicing.[20]

DOH is authorized to issue a chiropractic medicine faculty certificate to an individual without requiring them to pass the state examination if they demonstrate to the board: [21]

- Possession of a valid license to practice in another state;
- Graduation from an accredited school or college of chiropractic medicine accredited by the Council on Chiropractic Education; and
- Acceptance of a full-time faculty appointment to teach chiropractic medicine at a publicly-funded state university or college that is accredited by the Council on Chiropractic Education, which includes a certificate from the dean of the appointing college acknowledging the appointment.

In addition, the individual must be at least 21 years of age, be of good moral character and not be the subject of any disciplinary action. As of November 2011, there are 19 schools accredited by the Council on Chiropractic Education Commission on Accreditation in the United States; two are located in Florida: Palmer College of Chiropractic (Port Orange) and National University of Health Sciences (Pinellas Park).[22] Currently, there are 8 individuals who possess a chiropractic faculty certificate.[23]

Chiropractic Assistants

Chapter 460, F.S., provides for two types of chiropractic assistants: certified and registered.[24] Both are required to work under a licensed chiropractor who has been certified by the board as a supervising chiropractor.[25] The supervising chiropractor is liable for any act or omission of any certified chiropractic assistant under their supervision or control.[26]

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[17] S. 460.408, F.S.
[18] S. 460.408(1), F.S.
[19] S.460.408(1), F.S. and 64B2-13.004, F.A.C.
[20] S. 460.4062(2), F.S.
[21] S. 460.4062(1), F.S.
[22] The Council on Chiropractic Education, Accredited Doctor of Chiropractic Programs/Institutions, *available at:* http://www.cce-usa.org/Accredited_Doctor_Chiro.html (last viewed December 1, 2011).
[23] *Supra*, note 6, page 2.
[24] Ss. 460.4165 and 460.4166, F.S.
[25] 64B2-18.005, F.A.C. Certifications are valid for 2 years and must be renewed biennially.
[26] S. 460.4165(11), F.S. and 64B2-18.006, F.A.C.

A "certified chiropractic physician's assistant" is a person who is a graduate of an approved program to perform chiropractic services under the indirect or direct supervision[27] of an approved supervising chiropractic physician or a group of physicians.[28] Training programs for certified chiropractic physician's assistants are approved and issued certificates by the board. The curriculum must consist of at least 200 didactic hours and cover a period of 24 months.[29] A person who desires to be licensed as a certified chiropractic physician's assistant is required to submit an application for licensure, remit a fee and meet eligibility criteria. A person who is not certified as a chiropractic physician's assistant and represents themselves as such, is guilty of a third degree felony.[30] Currently, there are 174 individuals who hold active in-state certificates as a chiropractic physician's assistant.[31]

A "registered chiropractic assistant" is a person who voluntarily registers[32] with the board to perform chiropractic services under the direct supervision[33] of either a chiropractic physician or certified chiropractic assistant.[34] There are no training, educational requirements, or eligibility criteria that must be met to become a registered chiropractic assistant. Section 460.4166, F.S., states that if a person wishes to register as a chiropractic assistant they must adhere to ethical and legal standards of the professional practice, recognize and respond to emergencies, and demonstrate professional characteristics. Currently, there are 2,430 individuals who hold active registrations as chiropractic assistants.[35]

Effect of Proposed Changes

Chiropractic Medicine Faculty Certificate

The bill amends the eligibility requirements for the chiropractic medicine faculty certificate, such that DOH may issue a certificate to a individual who has accepted a part-time faculty appointment or conducts research at a publicly funded state university, college, or a chiropractic college that is accredited by the Council on Chiropractic Education. This will enable individuals who have not passed the chiropractic examination required for licensure to treat patients in conjunction with their duties as faculty members or researchers. Currently, only individuals accepting full-time faculty appointment are eligible.

Patient Funds and Property

A chiropractor may be disciplined for failing to preserve the identity of any funds or property of a patient and failing to hold any money or property in entrusted in trust.[36] Currently, statute does not provide a cap on the amount of funds, value of money or property. The bill caps the value of funds and property of a patient must be over $501 and provides that the maximum amount that may be held in trust is $1,500.

National Examination

The bill adds to statute that individuals seeking licensure as a chiropractor must successfully pass parts IV and the physiotherapy optional exam conducted by the National Board of Chiropractic Examiners.

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[27] Indirect supervision requires easy availability or physical presence where the supervising chiropractor can be in a location within 30 minutes and must be available when needed for consultation and advice either in person or by electronic means. A chiropractic physician assistant working in a facility that holds a health care clinic license may only render services under direct supervision. *See* Ss. 460.403(8) and 460.4165(14), F.S. and 64B18.001, F.A.C

[28] S. 460.403(3), F.S.

[29] S. 460.414(5), F.S.

[30] Felony of the third degree are punishable by a term of imprisonment not to exceed 5 years or a fine not to exceed $5,000 (ss. 775.082 and 775.083, F.S.).

[31] *Supra,* note 6, page 2.

[32] S. 460.4166(5), F.S. The fee to voluntarily register is $25.

[33] Direct supervision means responsible supervision and control, with the licensed chiropractic physician assuming legal liability for the services rendered by a registered chiropractic assistant and requires the Chiropractor to be physically located on the premises at all times while patients are receiving patient care management or treatment. See 64B2-18.0075, F.A.C.

[34] S. 460.403(10), F.S.

[35] *Supra,* note 6, page 2.

[36] S. 460.13(1)(y), F.S.

The National Board of Chiropractic Examiners describes the physiotherapy examination as an elective examination.[37] However, state law requires individuals to only successfully complete parts I-III of the national examination.

Chiropractor Practice Ownership

The bill provides exceptions to the limitation on employment of chiropractors. First, the bill provides that a trust whose trustees are licensed chiropractors and the spouse, parent, child, or sibling of a chiropractic physician may employ a chiropractor as an independent contractor to provide chiropractic services. Secondly, the bill provides that a limited liability company, limited partnership, professional association or entity, health maintenance organization, and prepaid health clinic are entities that may also employ a chiropractor as an independent contractor. Third, the bill provides that a surviving spouse of a chiropractor may also employ a chiropractor as an independent contractor.

The bill specifies that the surviving spouse or surviving spouse, parent, child, or sibling of the chiropractic physician may hold, operate, pledge, sell, mortgage, assign, transfer, own, or control the deceased chiropractor's ownership interests as long as the survivors remain the sole proprietors of the practice. The bill states that any entities that are able to hire a chiropractor as an independent contractor may exercise control over the patient records of the employed chiropractor, the policies and decisions relating to pricing, credit, refunds, warranties, and advertising, and the decisions relating to office personnel and hour of operation. The bill corrects cross references to statutory provisions that provide the punishment for a third degree felony.

According to DOH, the board office has been unable to determine if there have ever been any incidences of surviving family members who have been prosecuted by the state for retaining ownership after the death of a practitioners, but there have been inquires concerning the need for disposing of the practice of a deceased chiropractor by his or her estate or close surviving relatives.[38] The advice has always been for the surviving relatives to seek legal guidance in this matter.[39] In practice, these situations are typically resolved by the quick sale of the practice by the estate of the deceased to another appropriately licensed practitioner.

Continuing Education

The bill prohibits the board from approving continuing education courses that include instruction on in the use, application, prescription, recommendation, or administration of a specific company's brand of products or services. Consequently, more continuing education courses may be denied by the board. The bill gives the board more discretion in approving continuing education courses sponsored by chiropractic colleges whose graduates are eligible to take the national examination by removing the mandate to approve all courses that meet the qualifications.

According to DOH, most if not all of the continuing education course offered by chiropractic colleges meet current statutory requirements, thus are automatically approved.[40] Additionally, DOH states that it does not maintain any information on courses and does not review the content of the continuing education courses, this is a board function.[41] Currently, DOH has a contract with a vendor called "CE Broker" that deals with the continuing education providers. Thus, the individuals taking the course and continuing education providers are the only entities that actually view the materials.

Certified Chiropractic Physician's Assistant

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[37] National Board of Chiropractor Examiners, Written Examinations: Applicant Eligibility, *available at*: http://www.nbce.org/written/eligibility.html#pht (last viewed December 1, 2011)
[38] Department of Health, Bill Analysis, Economic Statement and Fiscal Note for HB 413, dated November 29, 2011.
[39] *Id.*
[40] Department of Health, Bill Analysis, Economic Statement and Fiscal Note for HB 413, dated November 29, 2011.
[41] *Id.*

The bill amends the education requirements for certified chiropractic physician's assistant such that the curriculum of 200 hours does not have to occur in a 24-month period. According to DOH, currently there are two approved certified chiropractic physician's assistant education programs which are modeled to meet statutory requirements. However, there have been proposals submitted to the board for approval that propose offering the same course material over a shorter timeframe.[42]

In addition, the bill changes the location in which a certified chiropractic physician's assistant may provide services under indirect supervision. Currently, they may provide services at the address of record or place of practice. The bill limits the practice setting to the supervising chiropractor's address of record. According to DOH, this limitation will stop the practice of using certified chiropractic physician's assistant to run chiropractic branch offices without the physical presence or direct supervision of a chiropractor.[43]

B. SECTION DIRECTORY:

Section 1. Amends s. 460.4062, F.S., relating to chiropractic medicine faculty certificate.
Section 2. Amends s. 460.408, F.S., relating to continuing chiropractic education.
Section 3. Amends s. 460.406, F.S., relating to licensure by examination.
Section 4. Amends s. 460.413, F.S., relating to grounds for disciplinary action by the board or department.
Section 5. Amends s. 460.4165, F.S., relating to certified chiropractic physician's assistants.
Section 6. Amends s. 460.4167, F.S., relating to proprietorship by persons other than licensed chiropractic physicians.
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 identified.

2. Expenditures:

   None identified.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None identified.

2. Expenditures:

   None identified.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

[42] *Id.*
[43] *Id.*

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 DOH sufficient rule making authority to implement the provisions of the bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

   None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On December 6, 2011, the Health & Human Services Quality Subcommittee adopted two amendments and reported the bill favorably as a committee substitute. The amendments:

- Require individuals seeking licensure to pass the optional physiotherapy examination of the National Board of Chiropractic Examiners; and
- Delete section 7 of the bill to remove the mandatory registration of chiropractic assistants and the fiscal impact of the bill.

This analysis is drafted to the committee substitute.

A bill to be entitled

An act relating to chiropractic medicine; amending s. 460.4062, F.S.; revising the requirements for obtaining a chiropractic medicine faculty certificate; amending s. 460.408, F.S.; authorizing the Board of Chiropractic Medicine to approve continuing education courses sponsored by chiropractic colleges under certain circumstances; prohibiting the board from approving certain courses in continuing chiropractic education; amending s. 460.406, F.S.; revising requirements for a person who desires to be licensed as a chiropractic physician; amending s. 460.413, F.S.; requiring that a chiropractic physician preserve the identity of funds or property of a patient in excess of a specified amount; limiting the amount that may be advanced to a chiropractic physician for certain costs and expenses; amending s. 460.4165, F.S.; providing that services rendered by a certified chiropractic physician's assistant under indirect supervision may occur only at the supervising chiropractic physician's address of record; deleting the length of time specified for the basic program of education and training for certified chiropractic physician's assistants; amending s. 460.4167, F.S.; authorizing certain sole proprietorships, group practices, partnerships, corporations, limited liability companies, limited partnerships, professional associations, other entities, health care

clinics licensed under part X of ch. 400, F.S., health maintenance organizations, or prepaid health clinics to employ a chiropractic physician or engage a chiropractic physician as an independent contractor to provide services authorized by ch. 460, F.S.; authorizing the spouse or adult children of a deceased chiropractic physician to hold, operate, pledge, sell, mortgage, assign, transfer, own, or control the deceased chiropractic physician's ownership interests under certain conditions; authorizing an employer that employs a chiropractic physician to exercise control over the patient records of the employed chiropractic physician, the policies and decisions relating to pricing, credit, refunds, warranties, and advertising, and the decisions relating to office personnel and hours of practice; deleting an obsolete provision; providing an effective date.

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

Section 1. Paragraph (e) of subsection (1) of section 460.4062, Florida Statutes, is amended to read:

460.4062 Chiropractic medicine faculty certificate.—

(1) The department may issue a chiropractic medicine faculty certificate without examination to an individual who remits a nonrefundable application fee, not to exceed $100 as determined by rule of the board, and who demonstrates to the board that he or she meets the following requirements:

(e)1. Performs research or has been offered and has accepted a full-time or part-time faculty appointment to teach in a program of chiropractic medicine at a publicly funded state university or college or at a college of chiropractic located in the state and accredited by the Council on Chiropractic Education; and

2. Provides a certification from the dean of the appointing college acknowledging the appointment.

Section 2. Subsection (1) of section 460.408, Florida Statutes, is amended to read:

460.408 Continuing chiropractic education.—

(1) The board shall require licensees to periodically demonstrate their professional competence as a condition of renewal of a license by completing up to 40 contact classroom hours of continuing education.

(a) Continuing education courses sponsored by chiropractic colleges whose graduates are eligible for examination under any provision of this chapter may ~~shall~~ be approved upon review by the board if all other requirements of board rules setting forth criteria for course approval are met.

(b) The board shall approve those courses that build upon the basic courses required for the practice of chiropractic medicine, and the board may also approve courses in adjunctive modalities. Courses that consist of instruction in the use, application, prescription, recommendation, or administration of a specific company's brand of products or services are not eligible for approval.

Section 3. Paragraph (e) of subsection (1) of section

460.406, Florida Statutes, is amended to read:

460.406 Licensure by examination.—

(1) Any person desiring to be licensed as a chiropractic physician must apply to the department to take the licensure examination. There shall be an application fee set by the board not to exceed $100 which shall be nonrefundable. There shall also be an examination fee not to exceed $500 plus the actual per applicant cost to the department for purchase of portions of the examination from the National Board of Chiropractic Examiners or a similar national organization, which may be refundable if the applicant is found ineligible to take the examination. The department shall examine each applicant who the board certifies has:

(e) Successfully completed the National Board of Chiropractic Examiners certification examination in parts I, II, ~~and~~ III, and IV, and the physiotherapy examination of the National Board of Chiropractic Examiners, with a score approved by the board.

The board may require an applicant who graduated from an institution accredited by the Council on Chiropractic Education more than 10 years before the date of application to the board to take the National Board of Chiropractic Examiners Special Purposes Examination for Chiropractic, or its equivalent, as determined by the board. The board shall establish by rule a passing score.

Section 4. Paragraph (y) of subsection (1) of section 460.413, Florida Statutes, is amended to read:

460.413 Grounds for disciplinary action; action by board or department.—

(1) The following acts constitute grounds for denial of a license or disciplinary action, as specified in s. 456.072(2):

(y) Failing to preserve identity of funds and property of a patient, the value of which is greater than $501. As provided by rule of the board, money or other property entrusted to a chiropractic physician for a specific purpose, including advances for costs and expenses of examination or treatment which may not exceed the value of $1,500, is to be held in trust and must be applied only to that purpose. Money and other property of patients coming into the hands of a chiropractic physician are not subject to counterclaim or setoff for chiropractic physician's fees, and a refusal to account for and deliver over such money and property upon demand shall be deemed a conversion. This is not to preclude the retention of money or other property upon which the chiropractic physician has a valid lien for services or to preclude the payment of agreed fees from the proceeds of transactions for examinations or treatments. Controversies as to the amount of the fees are not grounds for disciplinary proceedings unless the amount demanded is clearly excessive or extortionate, or the demand is fraudulent. All funds of patients paid to a chiropractic physician, other than advances for costs and expenses, shall be deposited into ~~in~~ one or more identifiable bank accounts maintained in the state in which the chiropractic physician's office is situated, and ~~no~~ funds belonging to the chiropractic physician may not ~~shall~~ be deposited therein except as follows:

1. Funds reasonably sufficient to pay bank charges may be deposited therein.

2. Funds belonging in part to a patient and in part presently or potentially to the physician must be deposited therein, but the portion belonging to the physician may be withdrawn when due unless the right of the physician to receive it is disputed by the patient, in which event the disputed portion may ~~shall~~ not be withdrawn until the dispute is finally resolved.

Every chiropractic physician shall maintain complete records of all funds, securities, and other properties of a patient coming into the possession of the physician and render appropriate accounts to the patient regarding them. In addition, every chiropractic physician shall promptly pay or deliver to the patient, as requested by the patient, the funds, securities, or other properties in the possession of the physician which the patient is entitled to receive.

Section 5. Subsections (2) and (5) of section 460.4165, Florida Statutes, are amended to read:

460.4165 Certified chiropractic physician's assistants.—

(2) PERFORMANCE BY CERTIFIED CHIROPRACTIC PHYSICIAN'S ASSISTANT.—Notwithstanding any other provision of law, a certified chiropractic physician's assistant may perform chiropractic services in the specialty area or areas for which the certified chiropractic physician's assistant is trained or experienced when such services are rendered under the supervision of a licensed chiropractic physician or group of

chiropractic physicians certified by the board. Any certified chiropractic physician's assistant certified under this section to perform services may perform those services only:

(a) In the office of the chiropractic physician to whom the certified chiropractic physician's assistant has been assigned, in which office such physician maintains her or his primary practice;

(b) Under indirect supervision if the indirect supervision occurs at the supervising chiropractic physician's address of record ~~or place of practice~~ required by s. 456.035, other than at a clinic licensed under part X of chapter 400, of the chiropractic physician to whom she or he is assigned as defined by rule of the board;

(c) In a hospital in which the chiropractic physician to whom she or he is assigned is a member of the staff; or

(d) On calls outside ~~of~~ the office of the chiropractic physician to whom she or he is assigned, on the direct order of the chiropractic physician to whom she or he is assigned.

(5) PROGRAM APPROVAL.—The department shall issue certificates of approval for programs for the education and training of certified chiropractic physician's assistants which meet board standards. Any basic program curriculum certified by the board ~~shall cover a period of 24 months. The curriculum~~ must consist of a curriculum of at least 200 didactic classroom hours ~~during those 24 months~~.

(a) In developing criteria for program approval, the board shall give consideration to, and encourage, the use ~~utilization~~ of equivalency and proficiency testing and other mechanisms

whereby full credit is given to trainees for past education and experience in health fields.

(b) The board shall create groups of specialty classifications of training for certified chiropractic physician's assistants. These classifications must ~~shall~~ reflect the training and experience of the certified chiropractic physician's assistant. The certified chiropractic physician's assistant may receive training in one or more such classifications, which shall be shown on the certificate issued.

(c) The board shall adopt and publish standards to ensure that such programs operate in a manner that ~~which~~ does not endanger the health and welfare of the patients who receive services within the scope of the program. The board shall review the quality of the curricula, faculties, and facilities of such programs; issue certificates of approval; and take whatever other action is necessary to determine that the purposes of this section are being met.

Section 6. Section 460.4167, Florida Statutes, is amended to read:

460.4167 Proprietorship by persons other than licensed chiropractic physicians.—

(1) A ~~No~~ person ~~other than a sole proprietorship, group practice, partnership, or corporation that is wholly owned by one or more chiropractic physicians licensed under this chapter or by a chiropractic physician licensed under this chapter and the spouse, parent, child, or sibling of that chiropractic physician~~ may not employ a chiropractic physician licensed under this chapter or engage a chiropractic physician licensed under

this chapter as an independent contractor to provide services that chiropractic physicians are authorized to offer ~~by this chapter to be offered by a chiropractic physician licensed~~ under this chapter, unless the person is any of the following~~, except for~~:

(a) A sole proprietorship, group practice, partnership, corporation, limited liability company, limited partnership, professional association, or any other entity that is wholly owned by:

1. One or more chiropractic physicians licensed under this chapter;

2. A chiropractic physician licensed under this chapter and the spouse or surviving spouse, parent, child, or sibling of the chiropractic physician; or

3. A trust whose trustees are chiropractic physicians licensed under this chapter and the spouse, parent, child, or sibling of a chiropractic physician.

If the chiropractic physician described in subparagraph (a)2. dies, notwithstanding part X of chapter 400, the surviving spouse or adult children may hold, operate, pledge, sell, mortgage, assign, transfer, own, or control the chiropractic physician's ownership interests for so long as the surviving spouse or adult children remain the sole proprietors of the chiropractic practice.

(b) ~~(a)~~ A sole proprietorship, group practice, partnership, ~~or~~ corporation, limited liability company, limited partnership, professional association, or any other entity that is wholly

owned by a physician or physicians licensed under this chapter, chapter 458, chapter 459, or chapter 461.

(c) ~~(b)~~ An entity ~~Entities~~ that is wholly ~~are~~ owned, directly or indirectly, by an entity licensed or registered by the state under chapter 395.

(d) ~~(c)~~ A clinical facility that is ~~facilities~~ affiliated with a college of chiropractic accredited by the Council on Chiropractic Education at which training is provided for chiropractic students.

(e) ~~(d)~~ A public or private university or college.

(f) ~~(e)~~ An entity wholly owned and operated by an organization that is exempt from federal taxation under s. 501(c)(3) or (4) of the Internal Revenue Code, a ~~any~~ community college or university clinic, or an ~~and any~~ entity owned or operated by the Federal Government or by state government, including any agency, county, municipality, or other political subdivision thereof.

(g) ~~(f)~~ An entity owned by a corporation the stock of which is publicly traded.

(h) ~~(g)~~ A clinic licensed under part X of chapter 400 which ~~that~~ provides chiropractic services by a chiropractic physician licensed under this chapter and other health care services by physicians licensed under chapter 458 or~~,~~ chapter 459, ~~or chapter 460,~~ the medical director of which is licensed under chapter 458 or chapter 459.

(i) ~~(h)~~ A state-licensed insurer.

(j) A health maintenance organization or prepaid health clinic regulated under chapter 641.

(2) A ~~No~~ person other than a chiropractic physician licensed under this chapter may not ~~shall~~ direct, control, or interfere with a chiropractic physician's clinical judgment regarding the medical necessity of chiropractic treatment. For purposes of this subsection, a chiropractic physician's clinical judgment does not apply to chiropractic services that are contractually excluded, the application of alternative services that may be appropriate given the chiropractic physician's prescribed course of treatment, or determinations that compare ~~comparing~~ contractual provisions and scope of coverage with a chiropractic physician's prescribed treatment on behalf of a covered person by an insurer, health maintenance organization, or prepaid limited health service organization.

(3) Any lease agreement, rental agreement, or other arrangement between a person other than a licensed chiropractic physician and a chiropractic physician whereby the person other than a licensed chiropractic physician provides the chiropractic physician with chiropractic equipment or chiropractic materials must ~~shall~~ contain a provision whereby the chiropractic physician expressly maintains complete care, custody, and control of the equipment or practice.

(4) The purpose of this section is to prevent a person other than the ~~a~~ licensed chiropractic physician from influencing or otherwise interfering with the exercise of the ~~a~~ chiropractic physician's independent professional judgment. In addition to the acts specified in subsection (2) ~~(1)~~, a person or entity other than an employer or entity authorized in subsection (1) ~~a licensed chiropractic physician and any entity~~

~~other than a sole proprietorship, group practice, partnership, or corporation that is wholly owned by one or more chiropractic physicians licensed under this chapter or by a chiropractic physician licensed under this chapter and the spouse, parent, child, or sibling of that physician,~~ may not employ or engage a chiropractic physician licensed under this chapter. A person or entity may not ~~or~~ enter into a contract or arrangement with a chiropractic physician pursuant to which such ~~unlicensed~~ person or ~~such~~ entity exercises control over the following:

(a) The selection of a course of treatment for a patient, the procedures or materials to be used as part of the ~~such~~ course of treatment, and the manner in which the ~~such~~ course of treatment is carried out by the chiropractic physician ~~licensee~~;

(b) The patient records of the chiropractic physician ~~a chiropractor~~;

(c) The policies and decisions relating to pricing, credit, refunds, warranties, and advertising; or

(d) The decisions relating to office personnel and hours of practice.

However, a person or entity that is authorized to employ a chiropractic physician under subsection (1) may exercise control over the patient records of the employed chiropractic physician; the policies and decisions relating to pricing, credit, refunds, warranties, and advertising; and the decisions relating to office personnel and hours of practice.

(5) Any person who violates this section commits a felony of the third degree, punishable as provided in s. 775.082 ~~s.~~

~~775.081~~, s. 775.083, or s. 775.084 ~~s. 775.035~~.

(6) Any contract or arrangement entered into or undertaken in violation of this section is ~~shall be~~ void as contrary to public policy. ~~This section applies to contracts entered into or renewed on or after July 1, 2008.~~

Section 7. This act shall take effect July 1, 2012.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 503 Environmental Regulation
SPONSOR(S): Patronis
TIED BILLS: None **IDEN./SIM. BILLS:** SB 716

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

SUMMARY ANALYSIS

The bill creates, amends, and revises numerous provisions relating to development, construction, operating, and building permits; permit application requirements and procedures; programmatic general permits and regional general permits; and permits for certain projects. Specifically the bill:

- Prohibits a county or municipality from conditioning the approval for a development permit on an applicant obtaining a permit or approval from any other state or federal agency.
- Provides that terms and conditions for coastal construction permit applications must be set forth by rule; requires the DEP to cite certain provisions in a request for additional information; prohibits the DEP from issuing guidelines that are enforceable as standards without going through rulemaking; provides legislative intent with respect to permitting for periodic maintenance of certain beach nourishment and inlet management projects; provides conditions under which the DEP is authorized to issue permits in advance of the issuance of incidental take authorizations as provided under the Endangered Species Act
- Includes entities created by special act or local ordinance or interlocal agreement by counties or municipalities for purposes of DEP and Water Management Districts (WMDs) reduced or waived permit processing fees.
- Exempts a municipality from showing extreme hardship for sale, transfer, or lease of sovereignty submerged lands in the Biscayne Bay Aquatic Preserve, and allows dredging and filling for the purpose of creating a waterfront promenade.
- Expands the use of Internet-based self-certification services for certain exemptions and general permits.
- Requires action on certain permit applications within 60 days of receipt of last timely requested material; precludes state agencies from delaying action because of pending approval from other local, state, or federal agencies.
- Provides for the DEP to obtain an expanded state programmatic general permit from the federal government for certain activities in waters of the U.S. governed by the Clean Water Act and Rivers and Harbors Act.
- Excludes expenditures associated with program deductibles, copayments, and limited contamination assessment reports from state restoration funds available for low-scored site initiatives.
- Provides that the transfer of title for a petroleum contaminated site to a child of the owner or a corporate entity created by the owner to hold title for the site does not disqualify the site from financial assistance.
- Provides expedited permitting for any inland multimodal facility receiving and/or sending cargo to and/or from Florida ports.
- Exempts owners of onsite sewage treatment and disposal systems from the evaluation and assessment program unless the board of county commissioners has adopted a resolution to the contrary.
- Requires the DEP to establish reasonable zones of mixing for discharges into specified waters.
- Clarifies circumstances in which the DEP can revoke certain air and water pollution permits issued under Chapter 403, F.S., for stationary installations.
- Excludes the term sludge from a waste treatment works from the definition of solid waste under certain circumstances.
- Exempts the new solid waste disposal areas at an already permitted facility from having to be specifically authorized in a permit if monitored by an existing or modified groundwater monitoring plan; extends the duration of all permits issued to solid waste management facilities that are designed with a leachate control system.
- Provides a general permit for a surface water management system under 10 acres may be authorized without agency action.
- Adds groundwater usage and services to religious institutions to the definition of transient noncommunity water systems.
- Provides for the creation of regional action teams for expedited permitting for certain businesses.
- Expands the definition of blended gasoline, defines the term 'renewable fuel', and authorizes the sale of unblended fuels for certain uses.

The bill appears to have a negative fiscal impact on state government, and appears to have both negative and positive fiscal impacts on local governments. See Fiscal Comments Section for details.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Section 1 amends s. 125.022, F.S., and Section 3 amends s. 166.033, F.S., prohibiting a county or municipality from requiring as a condition of approval for a development permit that an applicant obtain a permit or approval from any other state or federal agency.

Current Situation

Some in the development community say there have been instances when the approval of a local government development permit was conditioned on the applicant first acquiring permit approval from a state or federal agency, regardless of whether the development proposal required state or federal approval.

Effect of Proposed Changes

The bill prohibits a county or a municipality from conditioning the approval for a development permit on an applicant obtaining a permit or approval from any other state or federal agency, unless the agency has issued a notice of intent to deny the federal or state permit prior to the county action on the local development permit. The bill also provides that the issuance of a development permit by a county or municipality does not create any rights on the part of the applicant to obtain a permit from a state or federal agency and does not create liability on the part of the local government for the applicant's failure to obtain requisite state or federal approval. Counties may attach this disclaimer to the issuance of development permits and may include a permit condition that all other applicable state or federal permits must be obtained prior to development. This provision does not prohibit a county from providing information to an applicant regarding what other state or federal permits may be applicable.

Section 2. Amends s. 161.041, F.S., providing requirements for application for permits; prohibiting the DEP from issuing specified guidelines unless adopted by rule; requiring the DEP to cite certain provisions in a request for additional information; providing legislative intent with respect to permitting for periodic maintenance of certain beach nourishment and inlet management projects; directing the DEP to amend specified rules for permitting of such projects; providing conditions under which the DEP is authorized to issue permits in advance of the issuance of incidental take authorizations as provided under the Endangered Species Act.

Current Situation

Section 161.041, F.S., requires that a coastal construction permit be obtained from the 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. Applications for coastal construction permits are made on terms and conditions as DEP requires by rule.

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.

The DEP can also require engineer certifications as necessary to assure the adequacy of the design and construction of permitted projects. In addition, the DEP is authorized, 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.

Current law also provides that the permit application is not considered "complete" until the agency determines that it has all of the information it needs to approve or deny the application. 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 on when the applicant must respond to the RAI, nor is there a limit to the number of times the agency 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, F.S., to provide that applications for all permits under the statutory section 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 the request for additional information.

The bill also provides that the DEP may not issue guidelines that are enforceable as standards for beach management, inlet management, and other erosion control projects without adopting guidelines by rule.

The bill states the intent of the Legislature to simplify the permitting process for periodic maintenance of certain projects and directs the DEP to amend certain chapters of the Florida Administrative Code (F.A.C.) to streamline the permitting process for periodic beach maintenance projects and inlet sand bypassing activities. A detailed review of a previously permitted project is not required if there have been no substantial changes in project scope of the project and past performance of the project indicates that it has performed according to design expectations.

Lastly, the bill authorizes the DEP to issue a coastal construction permit in advance of the issuance of any incidental take authorization as provided under the Endangered Species Act and its implementing regulations if the permit and authorization include a condition requiring that authorized activities not begin until the incidental take authorization is issued.

Section 4. Amends s. 218.075, F.S., authorizing the Department of Environmental Protection (DEP) and Water Management Districts (WMDs) to reduce or waive permit processing fees for certain entities.

Current Situation

Section 218.075, F.S., provides that the DEP or a WMD can reduce or waive permit processing fees for counties with a population of 50,000 or less until that county exceeds a population of 75,000, and for municipalities with a population of 25,000 or less. Fee reductions or waivers are approved on the basis of fiscal hardship or environmental need for a particular project or activity. The governing body must certify that the cost of the permit processing fee is a fiscal hardship due to certain factors[1].

Effect of Proposed Change

The bill amends s. 218.075, F.S., to include entities created by a special act or local ordinance or interlocal agreement by counties or municipalities for purposes of the DEP and WMD reduced or waived permit processing fees.

Section 5. Amends s. 258.397, F.S., exempting a municipality from the requirement to showing extreme hardship for sale, transfer, or lease of sovereignty submerged lands in the Biscayne Bay Aquatic Preserve if the project is proposed under this section.

Current Situation

In 1975, the Florida Legislature enacted the Aquatic Preserve Act with the intent that the state-owned submerged lands in areas which have exceptional biological, aesthetic, and scientific value be set aside forever as aquatic preserves or sanctuaries for the benefit of future generations[2]. Florida statutes define an aquatic preserve as an exceptional area of submerged lands and its associated waters set aside for being maintained essentially in its natural or existing condition.

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

Only minimal or maintenance dredging may be permitted in a preserve, and any alteration of the preserves' physical conditions is restricted unless the alteration enhances the quality or utility of the preserve or the public health generally. Minerals may not be mined (with the exception of oyster shells), and oil and gas well drilling is prohibited. This prohibition does not prohibit the state from leasing the oil and gas rights and permitting drilling from outside the preserve to explore for oil and gas if approved by the BOT. Docking facilities and even structures for shore protection are restricted as to size and location[3].

Section 258.397, F.S., provides that in the Biscayne Bay Aquatic Preserve, no further sale, transfer, or lease of sovereignty submerged lands in the preserve will be approved or consummated by the BOT, except upon a showing of extreme hardship on the part of the applicant and a determination by the BOT that such sale, transfer, or lease is in the public interest. Furthermore, no further dredging or filling of submerged lands of the preserve will be approved or tolerated by the BOT except under certain conditions.

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[1] Section 218.075, F.S.
[2] Section 258.36, F.S.
[3] Administrative rules applicable to aquatic preserves generally may be found in Rule 18-20.004, F.A.C., Management Policies, Standards and Criteria. However, every aquatic preserve in the state has specific restrictions and policies that are set out in the Florida Administrative Code.

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

Effect of Proposed Change

The bill exempts a municipality from showing extreme hardship for sale, transfer, or lease of sovereignty submerged lands in the Biscayne Bay Aquatic Preserve (Preserve) if the project is for purposes authorized under s.258.397 F.S., and adds, as a permissible dredging and filling activity in the Preserve, such dredging and filling as is necessary for the creation of public waterfront promenades.

Section 6. Amends s. 373.026, F.S., expanding the use of Internet-based self-certifications.

Current Situation

The Florida Legislative Committee on Intergovernmental Relations (LCIR) in March, 2007, issued an interim project report titled "Improving Consistency and Predictability in Dock and Marina Permitting"[5]. This report concluded a 2-year project to review current permitting practices and identify opportunities to improve the consistency and predictability in the permitting of water related facilities in Florida. Recommendation 3, 4, and 5, of the LCIR report suggested that the Department of Environmental Protection (DEP) expand the use of the Internet for permitting and certification purposes.

The DEP currently accepts certain types of permit applications on-line and provides an online self-certification process for private docks associated with detached individual single-family homes on the adjacent uplands, provided the dock being constructed is the sole dock on the parcel. Through this electronic process, one may immediately determine whether a private single family dock can be constructed without further notice or review by the DEP. This includes notification of qualification for the Army Core of Engineers (COE) State Programmatic General Permit (SPGP IV). In addition, Florida's five water management districts (WMDs) have designed and support a shared permitting portal. This portal is designed to direct the user to the appropriate WMD's Web site for obtaining information regarding the WMD's permitting programs, applying for permits, and submitting permit compliance information. The WMDs issue several types of permits. The three most common deal with how much water is used (consumptive use permits), the construction of wells (well construction permits), and how new development affects water resources (environmental resource permits)[6].

According to the LCIR report, interviews with stakeholder groups indicated some local governments often do not accept self-certification for permit-exempt projects identified in statute, rule, or listed in the DEP's Self-Certification Process for Single-Family Docks. Some local governments require a "signature" from the DEP permit review staff to verify the exempt status of the projects submitted under Self-Certification, notwithstanding the fact that current law neither requires nor provides for a "signature" from the DEP as an alternative or as supplemental to Self-Certification.

Effect of Proposed Change

The bill authorizes the DEP and WMDs to expand the use of internet based self certification services for appropriate exemptions and general permits issued by the DEP and the WMDs, providing such expansion is economically feasible. In addition to expanding the use of internet based self certification services for appropriate exemptions and general permits, the DEP and WMDs are directed to identify and develop general permits for activities currently requiring individual review that could be expedited through the use of professional certifications.

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[4] Department of Environmental Protection website, http://www.dep.state.fl.us/coastal/
[5] http://www.floridalcir.gov/UserContent/docs/File/reports/marina07.pdf
[6] See http://www.flwaterpermits.com/

Section 7. Amends s. 373.4141, F.S., reducing the amount of time the Department of Environmental Protection (DEP) or a water management district (WMD) has to approve a permit from 90 to 60 days after receipt of original application or last item of timely requested additional material; providing that a state agency cannot require, as a condition of approval for a environmental resource permit, that an applicant obtain permit approval from local, state or federal agencies without statutory authority.

Current Situation

Under Part IV of chapter 373, F.S., the DEP and the WMDs issue Environmental Resource Permits (ERPs) to any person seeking to construct or alter any stormwater management system, dam, impoundment, reservoir, appurtenant work, or works. Section 373.4141, F.S., provides that upon receipt of an application for an ERP, the DEP is required within 30 days to examine the application and request submittal of all additional information the DEP or WMD is permitted by law to require. If the applicant believes any request for additional information (RAI) is not authorized by law or rule, the applicant may request a hearing pursuant to s. 120.57, F.S. Within 30 days after receipt of such additional information, the DEP or WMD must review it and may request only that information needed to clarify such additional information or to answer new questions raised by or directly related to such additional information. If the applicant believes the request of the DEP or WMD for such additional information is not authorized by law or rule, the DEP or WMD, at the applicant's request, shall proceed to process the permit application. A permit must be approved or denied within 90 days after receipt of the original application, the last item of timely requested additional material, or the applicant's written request to begin processing the permit application.

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. 373.4141, F.S., by providing that a permit shall be approved, denied, or subject to a notice of proposed agency action within 60 days after receipt of the original application, the last item of timely requested additional material, or the applicant's written request to begin processing the permit application. The bill also provides that a state agency or an agency of the state cannot require, as a condition of approval for an ERP or as an item to complete a pending ERP application, that an applicant obtain a permit or approval from other local, state, or federal agency without explicit statutory authority to require such permit or approval.

Section 8. Amends s. 373.4144, F.S., providing for the expansion of the use of State Programmatic General Permits (SPGP).

Current Situation

Regulation of Florida's wetlands includes permitting by both the state and federal government. The federal wetland regulatory program is administered under two federal laws. The first is Section 10 of the Rivers and Harbors Act of 1899 (Act). This Act prohibits the construction of any bridge, dam, dike, or causeway over or in navigable waterways of the U.S. without Congressional approval. The second law is the Clean Water Act (CWA). In 1972, Congress substantially amended the federal Water Pollution Control Act and initiated the CWA. Section 404 of the CWA is the foundation for federal regulation of

some activities that occur in or near the nation's wetlands. The regulatory plan is intended to control discharge from dredge or fill materials into wetlands and other water bodies throughout the United States.

Under section 404 of the CWA and section 10 of the Rivers and Harbors Act, the U.S. Army Corps of Engineers (COE) and the U.S. Environmental Protection Agency (EPA) share responsibility for implementing a permitting program for dredging and filling wetland areas. The COE administers the permitting provisions of both federal laws, with EPA oversight, in effect combining Clean Water Act and Rivers and Harbor Act permits into a single action. The COE issues two types of permits: general and individual. An individual permit is required for potentially significant impacts. It is reviewed by the COE, which evaluates applications under a public interest review, as well as the environmental criteria set forth in the CWA Section 404(b)(1) Guidelines. Under the general permit, there are three types of classification: nationwide, regional, and state. The use of a nationwide permit is limited and generally addresses storm drain lines, utility lines, bank stabilization, and maintenance activities. A regional permit will state what fill actions are allowed, what mitigation is necessary, how to get an individual project authorized, and how long it will take. National and regional permits are issued by the COE in Florida, although the COE could authorize Florida to issue regional permits on its behalf.

The third permit is a SPGP. This permit is limited to similar classes of projects that have minimal individual and cumulative impacts. Due to the class limitations, the complexity and physical size of projects are limited as well. Wetland impacts allowed in general permits usually range from 5,000 square feet to one acre. Activities covered by the current SPGP include: construction of shoreline stabilization activities; boat ramps and boat launch areas and structures associated with such ramps or launch areas; docks, piers, marinas, and associated facilities; maintenance dredging of canals and channels; selected regulatory exemptions; and selected ERP noticed general permits. Monroe County and those counties within the jurisdiction of the Northwest Florida WMD are excluded from the SPGP permit.

Under current law, the Department of Environmental Protection (DEP) works with the COE to streamline the issuance of both the state and federal permits for work in wetlands and other surface waters in Florida. The SPGP process allows the DEP or WMD to grant both the ERP and the federal permit, instead of requiring both agencies to process the application.

The general permit process is supposed to eliminate individual review by the COE and allow certain activities to proceed with little or no delay. In most instances, anyone complying with the conditions of the general permit can receive project specific authorization; however, this is not always the case. Since the general permit authorizes the issuance of federal permits, federal resource agency coordination requirements remain. If a permit impacts a listed species, the permit must be forwarded to the COE for coordination with federal resource agencies.

Effect of Proposed Changes

The bill authorizes the DEP to obtain issuance of an expanded SPGP or a series of regional general permits from the COE for categories of activities in waters of the U.S. governed by the Clean Water Act and Rivers and Harbors Act of 1899, which are similar in nature, which will only cause minimal adverse environmental effects when performed separately, and will have only minimal cumulative adverse effects on the environment. In appropriate cases, the need for a separate individual approval from the COE would be eliminated.

The bill directs the DEP to not seek issuance of or take any action pursuant to such permits unless the conditions are at least as protective of the environment and natural resources as existing state law under Part IV of chapter 373, F.S., and federal law under the Clean Water and the Rivers and Harbors Act of 1899.

The bill authorizes the DEP and WMDs to implement a voluntary SPGP for all dredge and fill activities impacting 3 acres or less of wetlands or other surface waters, including navigable waters, subject to agreement with the COE if the general permit is at least as protective of the environment and natural

resources as existing state law under Part IV of ch. 373, F.S., and federal law under the Clean Water Act and Rivers and Harbors Act of 1899. The bill would not preclude the DEP from pursuing a series of regional general permits for construction activities in wetlands or surface waters.

Section 9. Amends s. 373.441, F.S., requiring that certain counties or municipalities apply by a specified date to the Department of Environmental Protection (DEP) or water management districts (WMDs) for authority to issue certain state permits; providing that following such delegation, the DEP or WMD can not regulate activities that are subject to the delegation; clarifying the authority of local governments to adopt pollution control programs under certain conditions; providing applicability with respect to solid mineral mining.

Current Situation

Florida Statutes and Florida Administrative Code (F.A.C.) sections authorize and provide procedures and considerations for the DEP to delegate the Environmental Resource Permit (ERP) program to local governments.[7] Delegation allows the local government to review and approve or deny the state permits at the same time the local authorizations are granted or denied. Current law directs that the rules must "seek to increase governmental efficiency" and "maintain environmental standards." Delegations can be granted only where:

- The local government can demonstrate that delegation would further the goal of providing an efficient, effective, and streamlined permitting program; and
- The local government can demonstrate that it has the financial, technical, and administrative capabilities and desire to effectively and efficiently implement and enforce the program, and protection of environmental resources will be maintained[8].

Any denial by the DEP of a local government's request for a delegation of authority must provide specific detail of those statutory or rule provisions that were not satisfied. Such detail must also include specific actions that can be taken in order to allow for the delegation of authority. A local government, upon being denied a request for a delegation of authority, can petition the Governor and Cabinet for a review of the request. The Governor and Cabinet can reverse the decision of the department and may provide any necessary conditions to allow the delegation of authority to occur[9].

Effect of Proposed Changes

The bill provides that any county or municipality having a population of 400,000 or more that implements a local pollution control program regulating all or a portion of the wetlands or surface waters throughout its geographic boundary must apply for delegation of state environmental resource permitting authority on or before January 1, 2014. If a county or municipality fails to receive delegation of all or a portion of state environmental resource permitting authority within 2 years after submitting its application for delegation or by January 1, 2016, at the latest, it may not require permits that in part or in full are substantially similar to the requirements needed to obtain an environmental resource permit. A county or municipality that has received delegation before January 1, 2014, does not have to reapply. The DEP must grant or deny an application for delegation within 2 years after receipt of the application. If an application for delegation is denied, any available legal challenge to such denial will toll the preemption deadline until resolution of the legal challenge. Upon delegation to a qualified local government, the DEP and WMD cannot regulate the activities subject to the delegation within that jurisdiction unless regulation is required pursuant to the terms of the delegation agreement.

In addition, the bill provides that this provision does not apply to ERP or reclamation applications for solid mineral mining, and does not prohibit the application of local government regulations to any new

[7] In an effort to place the planning and regulatory program into the hands of the local governments, s. 373.441, F.S., and its implementing rule, chapter 62-344, F.A.C., provide delegation authority.
[8] Chapter 62-344 of the Florida Administrative Code provides a guide to local governments in the application process, as well as the criteria that will be used to approve or deny a delegation request.
[9] Section 373.441, F.S.

solid mineral mine or any proposed addition to, change to, or expansion of an existing solid mineral mine.

Section 10. Amends s. 376.3071, F.S., providing that program deductibles, copayments, and contamination assessment report requirements do not apply to expenditures under the low-scored initiative within the Inland Protection Trust Fund.

Current Situation

The Legislature created the Inland Protection Trust Fund (fund) with the intent that it serve as a repository for funds which will enable the department to respond without delay to incidents of inland contamination related to the storage of petroleum and petroleum products in order to protect the public health, safety, and welfare and to minimize environmental damage.[10] Section 376.3071(4), F.S., directs the Department of Environmental Protection (DEP) obligate moneys available in the fund whenever incidents of inland contamination related to the storage of petroleum or petroleum products may pose a threat to the environment or the public health, safety, or welfare to provide for:

- Prompt investigation and assessment of contamination sites.
- Expeditious restoration or replacement of potable water supplies.
- Rehabilitation of contamination sites.
- Maintenance and monitoring of contamination sites.
- Payment of expenses incurred by the department in its efforts to obtain from responsible parties the payment or recovery of reasonable costs resulting from the activities described in this subsection.
- Payment of any other reasonable costs of administration, including those administrative costs incurred by the Department of Health in providing field and laboratory services, toxicological risk assessment, and other assistance to the department in the investigation of drinking water contamination complaints and costs associated with public information and education activities.
- Establishment and implementation of the compliance verification program.
- Activities related to removal and replacement of petroleum storage systems.
- Reasonable costs of restoring property as nearly as practicable to the conditions which existed prior to activities associated with contamination assessment or remedial action.
- Repayment of loans to the fund.
- Expenditure of sums from the fund to cover ineligible sites or costs if the department deems it necessary to do so.

Section 376.3071(5), F.S., provides for the site selection and cleanup criteria that the department uses in determining the priority ranking for sites seeking state funded rehabilitation. The priority ranking is based upon a scoring system for state-conducted cleanup at petroleum contamination sites based upon factors that include, but need not be limited to:

- The degree to which human health, safety, or welfare may be affected by exposure to the contamination;
- The size of the population or area affected by the contamination;
- The present and future uses of the affected aquifer or surface waters, with particular consideration as to the probability that the contamination is substantially affecting, or will migrate to and substantially affect, a known public or private source of potable water; and
- The effect of the contamination on the environment.

Section 376.3071(11), F.S., provides for a low-scored site initiative for sites with a priority ranking score of 10 points or less and provides conditions for voluntary participation, including:

- Upon reassessment pursuant to DEP rule, the site retains a priority ranking score of 10 points or less;

[10] Section 376.3071, F.S.

- No excessively contaminated soil, as defined by DEP rule, exists onsite as a result of a release of petroleum products;
- A minimum of 6 months of groundwater monitoring indicates that the plume is shrinking or stable;
- The release of petroleum products at the site does not adversely affect adjacent surface waters, including their effects on human health and the environment;
- The area of groundwater containing the petroleum products' chemicals of concern is less than one-quarter acre and is confined to the source property boundaries of the real property on which the discharge originated;
- Soils onsite that are subject to human exposure found between land surface and 2 feet below land surface meet the soil cleanup target levels established by DEP rule, or human exposure is limited by appropriate institutional or engineering controls.

If these conditions are met, the DEP must issue a No Further Action determination, which means minimal contamination exists onsite and that contamination is not a threat to human health or the environment. If no contamination is detected, the DEP may issue a site rehabilitation completion order (SRCO). Sites that are eligible must be voluntarily initiated by the source property owner or responsible party for the contamination. For sites eligible for state restoration funding, the DEP may pre-approve the costs of the site assessment, including 6 months of groundwater monitoring, not to exceed $30,000 for each site. The DEP may not pay the costs associated with the establishment of institutional or engineering controls. Assessment work must be completed no later than 6 months after the DEP issues its approval.

Effect of Proposed Change

The bill clarifies that program deductibles, copayments, and contamination assessment report requirements do not apply to expenditures under the low-scored site initiative within the Inland Protection Trust Fund.

Section 11. Amends s. 376.30715, F.S., providing that the transfer of title for a petroleum contaminated site to a child or a corporate entity created by the owner to hold title for the site does not disqualify the site from financial assistance.

Current Situation

In 2005, the Legislature created the Innocent Victim Petroleum Storage System Restoration Program to provide state clean-up assistance to property owners of petroleum-contaminated sites that were acquired prior to July 1, 1990. To be eligible for clean up, the site must have ceased operating as a petroleum storage or retail business prior to January 1, 1985. A conveyance of property to a spouse, a surviving spouse in trust or free of trust, or a revocable trust created for the benefit of the settlor, does not disqualify the site from participating in the Innocent Victim Petroleum Storage System Restoration Program. The current property owner of the contaminated site must have acquired the property prior to July 1, 1990.

Effect of Proposed Changes

The bill amends s. 376.30715, F.S., to provide that the transfer of title for a petroleum contaminated site to a child of the owner or a corporate entity created by the owner to hold title to the site does not disqualify the site from financial assistance. The bill also provides that applicants previously denied coverage may reapply.

Section 12. Amends s. 380.0657, F.S., authorizing certain inland multimodal facilities for expedited permitting.

Current Situation

Section 380.0657, F.S., provides that the Department of Environmental Protection (DEP) and the water management districts (WMDs) are required to adopt programs to expedite the processing of wetland resource and environmental resource permits when such permits are for the purpose of economic development projects that have been identified by a municipality or county as meeting the definition of target industry businesses under s. 288.106, F.S.

Pursuant to s. 288.106(1)(q), F.S., a "target industry business" means a corporate headquarters business or any business that is engaged in one of the target industries identified pursuant to the following criteria developed by Division of Strategic Business Development in consultation with Enterprise Florida, Inc.:

- Future growth—Industry forecasts should indicate strong expectation for future growth in both employment and output, according to the most recent available data. Special consideration should be given to businesses that export goods to, or provide services in, international markets and businesses that replace domestic and international imports of goods or services.
- Stability—The industry should not be subject to periodic layoffs, whether due to seasonality or sensitivity to volatile economic variables such as weather. The industry should also be relatively resistant to recession, so that the demand for products of this industry is not typically subject to decline during an economic downturn.
- High wage—The industry should pay relatively high wages compared to statewide or area averages.
- Market and resource independent—The location of industry businesses should not be dependent on Florida markets or resources as indicated by industry analysis, except for businesses in the renewable energy industry.
- Industrial base diversification and strengthening—The industry should contribute toward expanding or diversifying the state's or area's economic base, as indicated by analysis of employment and output shares compared to national and regional trends. Special consideration should be given to industries that strengthen regional economies by adding value to basic products or building regional industrial clusters as indicated by industry analysis. Special consideration should also be given to the development of strong industrial clusters that include defense and homeland security businesses.
- Positive economic impact—The industry is expected to have strong positive economic impacts on or benefits to the state or regional economies. Special consideration should be given to industries that facilitate the development of the state as a hub for domestic and global trade and logistics.

Effect of Proposed Changes

The bill amends s. 380.0657, F.S., to include any inland multimodal facility receiving or sending cargo to or from Florida ports as a type of economic development project that should receive expedited processing of water resource and environmental resource permits.

Section 13. Amends s. 381.0065, F.S., limiting applicability of the onsite sewage treatment and disposal system evaluation and assessment program.

Current Situation

During the 2010 legislative session, the Legislature passed HB 550, which, in part, created an onsite sewage treatment and disposal system evaluation program (program) to be administered by the Department of Health (DOH) beginning January 1, 2011. The purpose of the program is to assess the fundamental operational condition of septic systems and identify failures within the systems. Section 381.0065(5), F.S., directs the DOH to adopt rules implementing the program standards, procedures, and requirements, including a schedule for a 5-year evaluation cycle, requirements for the pump-out of a system or repair of a failing system, enforcement procedures for failure of a system owner to obtain an evaluation of the system, and failure of a contractor to timely submit evaluation results to the DOH and the system owner. The DOH must ensure statewide implementation of the program by January 1, 2016.

The program requires the owner of a septic system, excluding a system that is required to obtain an operating permit,[11] to have the system evaluated at least once every 5 years to assess the fundamental operational condition of the system, and identify any system failures. The evaluation must include a tank and drain field evaluation, a written assessment of the condition of the system, and, if necessary, a disclosure statement. A septic system owner must pay the cost of the evaluation as well as a 5-year evaluation report fee of not less than $15, or more than $30, which is collected by the person conducting the septic system evaluation and remitted to the DOH. The actual cost of an evaluation, as well as the cost of any necessary remedial actions, is one of the issues currently under review by the DOH.

Owners of septic systems are responsible for paying the cost of any required pump-out, repair, or replacement, and cannot request partial evaluation or the omission of portions of the evaluation. Each evaluation or pump-out must be performed by a registered septic tank contractor of master septic tank contractor, a licensed professional engineer with wastewater treatment system experience, or an environmental health professional certified in the area of onsite sewage treatment and disposal system evaluation. Prior to any evaluation deadline, the DOH must provide a minimum 60 days notice to owners that their systems must be evaluated by that deadline.

Systems being evaluated that were installed prior to January 1, 1983, must meet a minimum 6-inch separation from the bottom of the drain field to the wettest season water table elevation. All drain field repairs, replacements, or modifications to systems installed prior to January 1, 1983, must meet a minimum 12-inch separation from the bottom of the drain field to the wettest season water table elevation. Systems being evaluated that were installed after January 1, 1983, must meet a minimum 12-inch separation from bottom of drain field to the wettest season water table elevation, and all drain field repairs, replacements, or modifications to these systems must meet a minimum 24-inch separation from bottom of drain field to the wettest season water table elevation.

A pump-out of a septic system is not required if documentation of a pump-out or a permitted new installation, repair, or modification of the system within the previous 5 years is provided, and the documentation states the capacity of the tank and indicates that the condition of the tank is not a sanitary or public health nuisance as defined by DOH rule.

Beginning on January 1, 2012, the DOH is directed to administer a grant program to assist low-income owners of septic systems to defray some of the cost of complying with the requirements of the evaluation program. A grant can be awarded to an owner for the purpose of inspecting, pumping, repairing, or replacing a system serving a single-family residence occupied by an owner with a family income of less than or equal to 133% of the federal poverty level.[12] At least $1, but no more than $5, of the evaluation report fee described above must be used to fund the grant program.

During the 2010 November special session, SB 2A was passed to change the initial implementation date of the statewide septic tank evaluation program from January 1, 2011 to July 1, 2011. However, the DOH has not adopted a rule to implement the program. During the 2011 legislative session, Senate Bill 2002 (implementing bill to the general appropriations act) provided that before the implementation of the onsite sewage treatment and disposal system evaluation program, described in s. 381.0065(5)(a), F.S., the DOH must submit a plan for approval by the Legislative Budget Commission, which includes an estimate of agency workload and funding needs. The DOH may not expend funds in the evaluation program until the 2012 legislative session.

Effect of Proposed Changes

The bill amends s. 381.0065, F.S., exempting owners of onsite sewage treatment and disposal systems from the evaluation and assessment program unless the board of county commissioners has adopted a

[11] Systems that require an operating permit are typically large scale complex commercial systems and anaerobic systems. Typical residential septic systems require a permit for installation, but not an annual operating permit.

[12] Depending on the size of a family, 133% of the federal poverty level equals a yearly income of between $14,404 and $49,223. https://www.cms.gov/MedicaidEligibility/07_IncomeandResourceGuidelines.asp.

resolution subjecting owners to the requirements of the evaluation program and submitted a copy of the resolution to the DEP.

Section 14. Amends s. 403.061, F.S., requiring the Department of Environmental Protection (DEP) to establish reasonable zones of mixing for discharges into specified waters and providing certain discharges do not create liability for site cleanup.

Current Situation

Section 403.061, F.S., authorizes the DEP with the power and the duty to control and prohibit pollution of air and water. The DEP is required to adopt rules to establish ambient air quality and water quality standards for the state as a whole or for any part thereof, and standards for the abatement of excessive and unnecessary noise. The DEP is also authorized to establish reasonable zones of mixing for discharges into waters.

Effect of Proposed Changes

The bill amends s. 403.061, F.S., to provide that for existing installations as defined by Rule 62-520.200(10), F.A.C.[13], zones of discharge to groundwater are authorized to a facility or owner's property boundary and extending to the base of a specifically designated aquifer or aquifers. Exceedance of primary and secondary groundwater standards that occur within a zone of discharge does not create liability pursuant to chapter 403 or 376, F.S., for site cleanup, and the exceedance of soil cleanup target levels is not a basis for enforcement or site cleanup.

Section 15. Amends s. 403.087, F.S., revising conditions under which the Department of Environmental Protection (DEP) is authorized to revoke permits.

Current Situation

Section 403.087(1), F.S., provides that a stationary installation that is reasonably expected to be a source of air or water pollution must not be operated, maintained, constructed, expanded, or modified without an appropriate and valid permit issued by the DEP, unless exempted by DEP rule.

Section 403.087(7), F.S., provides that the DEP may revoke permits issued pursuant to this section for the following reasons:

- The permit holder has submitted false or inaccurate information on the application;
- The permit holder has violated law, the DEP's orders, rules, or regulations, or permit conditions;
- The permit holder has failed to submit operational reports or other information required by the DEP's rule or regulation;
- The permit holder has refused lawful inspection under s. 403.091, F.S.[14]

Effect of Proposed Changes

The bill amends s. 403.087(7), F.S., by limiting, in the follow manner, the reasons described above for which the DEP can revoke a permit:

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[13] The term "existing installations" is defined in Rule 62-520.200(10), F.A.C., to mean any installation which had filed a complete application for a water discharge permit on or before January 1, 1983, or which submitted a groundwater monitoring plan no later than six months after the date required for that type of installation as listed in Rule 17-4.245, F.A.C. (1983), and a plan was subsequently approved by the department; or which was in fact an installation reasonably expected to release contaminants into the groundwater on or before July 1, 1982, and operated consistently with statutes and rules relating to groundwater discharge in effect at the time of operation.

[14] Section 403.091(c), F.S., states that no person shall refuse reasonable entry or access to any authorized representative of the DEP who requests entry for purposes of inspection and who presents appropriate credentials; nor shall any person obstruct, hamper, or interfere with any such inspection. The owner or operator of the premises shall receive a report, if requested, setting forth all facts found which relate to compliance status.

- Specifies that inaccurate or false information must relate directly to the application for the permit;
- Specifies that the failure to submit operational reports and other information required by the DEP only applies to those reports or information which directly relate to the permit and where the applicant has refused to correct or cure such violations when requested to do so; and
- Specifies that the refusal of a lawful inspection only pertains to the facility authorized by the permit.

Section 16. Amends s. 403.1838, F.S., relating to the Small Community Sewer Construction Assistance Act

Current Situation

Section 403.1838, F.S., establishes the Small Community Sewer Construction Assistance Act (Act), and directs the Department of Environmental Protection (DEP) to use funds specifically appropriated to assist financially disadvantaged small communities with their needs for adequate sewer facilities. For the purposes of the Act, the term "financially disadvantaged small community" means a municipality with a population of 7,500 or less, according to the latest decennial census and a per capita annual income less than the state per capita annual income as determined by the United States Department of Commerce. The DEP is authorized to provide grants, from funds specifically appropriated for this purpose, to financially disadvantaged small communities for up to 100 percent of the costs of planning, designing, constructing, upgrading, or replacing wastewater collection, transmission, treatment, disposal, and reuse facilities, including necessary legal and administrative expenses. The Act also provides that the rules implementing the grant program must:

- Require that projects to plan, design, construct, upgrade, or replace wastewater collection, transmission, treatment, disposal, and reuse facilities be cost-effective, environmentally sound, permittable, and implementable.
- Require appropriate user charges, connection fees, and other charges sufficient to ensure the long-term operation, maintenance, and replacement of the facilities constructed under each grant.
- Require grant applications to be submitted on appropriate forms with appropriate supporting documentation, and require records to be maintained.
- Establish a system to determine eligibility of grant applications.
- Establish a system to determine the relative priority of grant applications. The system must consider public health protection and water pollution abatement.
- Establish requirements for competitive procurement of engineering and construction services, materials, and equipment.
- Provide for termination of grants when program requirements are not met.

Effect of Proposed Changes

The bill amends s. 403.1838, F.S., by expanding the population ceiling from 7,500 to 10,000 for communities eligible to apply for grants under the Small Community Sewer Construction Assistance Act.

Section 17. Amends s. 403.7045, F.S., providing that sludge from an industrial waste treatment works meets certain exemption requirements.

Current Situation

Section 403.708(1)(a), F.S., states that no person can place or deposit any solid waste in or on the land or waters located within the state except in a manner approved by the DEP. Section 403.703, F.S., defines 'solid waste' as sludge unregulated under the federal Clean Water Act or Clean Air Act, sludge from a waste treatment works, water supply treatment plant, or air pollution control facility, or garbage, rubbish, refuse, special waste, or other discarded material, including solid, liquid, semisolid, or contained gaseous material resulting from domestic, industrial, commercial, mining, agricultural, or governmental operations. "Sludge" includes the accumulated solids, residues, and precipitates generated as a result

of waste treatment or processing, including wastewater treatment, water supply treatment, or operation of an air pollution control facility, and mixed liquids and solids pumped from septic tanks, grease traps, privies, or similar waste disposal appurtenances.

While virtually all discarded materials are considered solid waste, the following wastes or activities are not regulated under the Act if they are otherwise regulated by the DEP or the federal government pursuant to s. 403.7045, F.S.:

- Nuclear material, except for certain mixtures of hazardous waste and radioactive waste.
- Suspended solids or dissolved materials in domestic sewage effluent or irrigation return flows or other point source discharges.
- Air emissions.
- Drilling fluids and wastes associated with oil and natural gas exploration.
- Recovered materials (defined to include only metal, paper, glass, plastic, textiles, or rubber materials), if a majority of the recovered materials at a facility are demonstrated to be sold, used, or reused within one year, if the recovered materials or byproducts are managed so that they do not pose a pollution threat and are not considered hazardous waste, and if the facility managing the materials is registered as required by s. 403.7046, F.S.
- Industrial byproducts, if a majority of the recovered materials at a facility are demonstrated to be sold, used, or reused within one year, and if the recovered materials or byproducts are managed so that they do not pose a pollution threat, do not cause a significant threat to public health, and are not considered hazardous waste.

Effect of Proposed Change

The bill provides that sludge from an industrial waste treatment works that meets the exemption requirements for industrial byproducts is not to be considered a solid waste as defined under s. 403.703, F.S.

Section 18. Amends s. 403.707, F.S., deletes the public nuisance condition for issuing permits for a solid waste management facility; exempts new solid waste disposal areas at an already permitted facility from having to be specifically authorized in a permit if monitored by an existing or modified monitoring plan; extends the duration of all permits issued to solid waste management facilities that meet specified criteria.

Current Situation

Currently, a solid waste management facility may not be operated, maintained, constructed, expanded, modified, or closed without valid permits issued by the Department of Environmental Protection (DEP). Permits under s. 403.707, F.S., are 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, 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.

Effect of Proposed Changes

The bill deletes the public nuisance requirements in s. 403.707(2), F.S., which provides that a permit is not required 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.

The bill provides that if a facility has a permit authorizing disposal activity, new areas where solid waste is being disposed of which are monitored by an existing or modified groundwater monitoring plan are not required to be specifically authorized in a permit or other certification.

The bill also provides that any 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 lesser permit term. Existing permit fees for qualifying solid waste management facilities must be prorated to the permit term authorized under current law. This provision applies to all qualifying solid waste management facilities that apply for an operating or construction permit or renew an existing operating or construction permit on or after July 1, 2012.

Section 19. Amends s. 403.814, F.S., providing for the issuance of general permits for certain surface water management systems without agency action of the Department of Environmental Protection (DEP) or a water management district (WMD).

Current Situation

Currently, the DEP is authorized to adopt rules establishing and providing for a program of general permits for projects, which have, either singly or cumulatively, a minimal adverse environmental effect. Such rules must specify design or performance criteria which, if applied, would result in compliance with appropriate standards. Any person complying with the requirements of a general permit may use the permit 30 days after giving notice to the DEP without any agency action by the DEP[15]. Projects 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.
- Construction and modification of certain utility and public roadway construction activities.

Effect of Proposed Changes

The bill amends current law to require the DEP to grant a general permit for the construction, alteration, and maintenance of surface water management systems serving a total project area of up to 10 acres. The construction of such a system can proceed without an agency action by the DEP or WMD if:

- The total project area is less than 10 acres;
- The total project area involves less than two acres of impervious surface;
- No activities will impact wetlands or other surface waters;
- No activities are conducted in, on, or over wetlands or other surface waters;
- Drainage facilities will not include pipes having diameters greater than 24 inches, or the hydraulic equivalent, and will not use pumps in any manner; and
- The project is not part of a larger common plan of development or sale.
- The project does not:
    - Cause adverse water quantity or flooding impacts to receiving water and adjacent lands;
    - Cause adverse impacts to existing surface water storage and conveyance capabilities;
    - Cause a violation of state water quality standards; or

[15] Section 403.814(1), F.S.

- Cause an adverse impact to the maintenance of surface or groundwater levels or surface water flows established pursuant to s. 373.042, F.S., or a work of the district established pursuant to s. 373.086, F.S.; and
- The surface water management system design plans are signed and sealed by a Florida registered professional who attests that the system will perform and function as proposed and has been designed in accordance with appropriate, generally accepted performance standards and scientific principles.

Section 20. Amends s. 403.853, F.S., adding groundwater usage and services to religious institutions to the definition of transient noncommunity water systems for the purpose of obtaining a sanitary survey related to drinking water standards and possible reduction in monitoring requirements.

Current Situation

Under the Federal Safe Drinking Water Act, the Environmental Protection Agency (EPA) has promulgated national primary drinking water regulation for contaminants that may adversely affect human health, if the contaminant is likely to occur in public water systems often and at levels of public health concern, and if EPA's Administrator decides that regulating the contaminant will meaningfully reduce health risks for those served by public water systems. The federal act also authorizes states to assume the implementation and enforcement of the federal act. In 1977, Florida adopted the Florida Safe Drinking Water Act (FSDWA), which is jointly administered by the Florida Department of Environmental Protection (DEP), in a lead-agency role, and the Florida Department of Health (DOH), in a supportive role with specific duties and responsibilities of its own. The DOH and its agents have general supervision and control over all private water systems and public water systems not covered or included in the FSDWA. Every county health department in Florida has a minimum degree of mandatory participation in the FSDWA. This minimal level of participation is supportive in nature because most of the county health departments do not have sufficient staff or capability to be fully responsible for the program. In those counties where the county health department is without adequate capability, the appropriate DEP office is heavily involved in administering all aspects of the program.

Under the FSDWA, a regulated "public water system" is a system that provides water for human consumption through pipes or other constructed conveyances, and such system has at least 15 service connections or regularly serves at least 25 individuals daily at least 60 days out of the year.[16] The only exception is for those systems which, in addition to meeting the criteria for being a public water system, also meet all four additional criteria which form the basis for exemption.[17]

Public water systems are either community or noncommunity. A community water system serves at least 15 service connections used by year-round residents or regularly serves at least 25 year-round residents.[18] A noncommunity water system is either a nontransient noncommunity system or a transient noncommunity water system.[19] A nontransient noncommunity water system serves at least 25 of the same persons over six months per year.[20] A transient noncommunity water system has at least 15 service connections or regularly serves at least 25 persons daily at least 60 days out of the year but does not regularly serve 25 or more of the same persons for more than six months per year.[21]

Under the FSDWA, the DEP is required to adopt and enforce state primary drinking water regulations that shall be no less stringent at any given time than the complete interim or revised national primary drinking water regulations in effect at such time[22] and state secondary drinking water regulations patterned after the national drinking water regulations.[23] The DEP also is to adopt and enforce primary

[16] Section 403.852(2), F.S.
[17] Section 403.853(2), F.S.
[18] Section 403.852(3), F.S.
[19] Section 403.852(4), F.S.
[20] Section 403.852(17), F.S.
[21] Section 403.852(18), F.S.
[22] Section 403.853(1)(a) 1, F.S.
[23] Section 403.853(1)(a) 2, F.S.

and secondary drinking water regulations for nontransient noncommunity water systems and transient noncommunity water systems, which shall be no more stringent than the corresponding national primary or secondary drinking water regulations in effect at such time, except that nontransient, noncommunity systems shall monitor and comply with additional primary drinking water regulations as determined by the DEP.[24] A "primary drinking water regulation" is a rule that applies to public water systems; specifies contaminants that may have an adverse effect on the health of the public; specifies a maximum contaminant level for each contaminant or a treatment technique to reduce the level of the contaminant; and contains criteria and procedures to assure a supply of drinking water that dependably complies with maximum contaminant levels, including monitoring and inspection procedures.[25] A "secondary drinking water regulation" is a rule that applies to public water systems and specifies maximum contaminant levels, and such regulations may vary according to geographic and other circumstances.[26] Upon the request of the owner or operator of a transient noncommunity water system serving businesses, other than restaurants or other public food service establishments, and using groundwater as a source of supply, the DEP, or a local county health department designated by the DEP, shall perform a sanitary survey of the facility. Upon receipt of satisfactory survey results according to DEP criteria, the DEP shall reduce the requirements of such owner or operator from monitoring and reporting on a quarterly basis to performing these functions on an annual basis.

Effect of Proposed Change

The bill provides that the DEP, or a local county health department designated by the DEP, is authorized at the request of the owner or operator of a transient noncommunity water systems using groundwater as a source of supply and serving religious institutions (except those with school or day care services) to perform a sanitary survey, and upon receipt of satisfactory results, the DEP must reduce the monitoring and reporting requirements.

Section 21. Amends s. 403.973, F.S., providing for the creation of regional action teams for expedited permitting for businesses that will house one or more other businesses or operations that would collectively create at least 50 jobs and clarifying the process and use of Memorandum of Agreement (MOA).

Current Situation

Section 403.973, F.S., provides for expedited permitting and a process for amendments to comprehensive plans for certain projects that are identified to encourage and facilitate the location and expansion of those types of economic development projects which offer job creation and high wages, strengthen and diversify the state's economy, and have been thoughtfully planned to take into consideration the protection of the state's environment.

Under s. 403.973, F.S., the secretary of the Department of Environmental Protection (DEP) must direct the creation of regional permit action teams for the purpose of expediting the review of permit applications and local comprehensive plan amendments submitted by:

- Businesses creating at least 50 jobs; or
- Businesses creating at least 25 jobs if the project is located in an enterprise zone, or in a county have a population of fewer than 75,000 or in a county having a population of fewer than 125,000 which is contiguous to a county having a population of fewer than 75,000, as determined by the most recent decennial census, residing in incorporated and unincorporated areas of the county.

Regional Permit Action Teams are established by a Memoranda of Agreement (MOA) with the Secretary of DEP directing the creation of these teams. The MOA is between the secretary and the applicant with input solicited from the Department of Transportation; Department of Agriculture & Consumer Services; the Florida Fish & Wildlife Conservation Commission; the Regional Planning Councils; and the WMDs.

[24] Section 403.853(1)(b), F.S.
[25] Section 403.852(12), F.S.
[26] Section 403.852(13), F.S.

The MOA accommodates participation by federal agencies, as necessary. At a local government's option, a special MOA may be developed on a case-by-case basis to allow some or all local development permits or orders to be covered under the expedited review. Implementation of the local government MOA requires a noticed public workshop and hearing.

The MOA may provide for the waiver or modification of procedural rules prescribing forms, fees, procedures, or time limits for the review or processing of permit applications under the jurisdiction of those agencies that are party to the MOA. A MOA must, to the extent feasible, provide for proceedings and hearings otherwise held separately by the parties of the MOA to be combined into one proceeding or held jointly and at one location. Such waivers or modifications are not available for permit applications governed by federally delegated or approved permitting programs, the requirements of which would prohibit, or be inconsistent with, such a waiver or modification.

The MOA guidelines may include, but are not limited to, the following:

- A central contact point for filing permit applications and local comprehensive plan amendments and for obtaining information on permit and local comprehensive plan amendment requirements.
- Identification of the individual or individuals within each respective agency who will be responsible for processing the expedited permit application or local comprehensive plan amendment for that agency.
- A mandatory pre-application review process to reduce permitting conflicts by providing guidance to applicants regarding the permits needed from each agency and governmental entity, site planning and development, site suitability and limitations, facility design, and steps the applicant can take to ensure expeditious permit application and local comprehensive plan amendment review. As a part of this process, the first interagency meeting to discuss a project shall be held within 14 days after the secretary's determination that the project is eligible for expedited review. Subsequent interagency meetings may be scheduled to accommodate the needs of participating local governments that are unable to meet public notice requirements for executing a memorandum of agreement within this timeframe. This accommodation may not exceed 45 days from the secretary's determination that the project is eligible for expedited review.
- The preparation of a single coordinated project description form and checklist and an agreement by state and regional agencies to reduce the burden on an applicant to provide duplicate information to multiple agencies.
- Establishment of a process for the adoption and review of any comprehensive plan amendment needed by any certified project within 90 days after the submission of an application for a comprehensive plan amendment. However, the memorandum of agreement may not prevent affected persons as defined in s. 163.3184, F.S., from appealing or participating in this expedited plan amendment process and any review or appeals of decisions made under this paragraph.
- Additional incentives for an applicant who proposes a project that provides a net ecosystem benefit.

Appeals of expedited permitting projects are subject to the summary hearing provisions of s. 120.574, F.S. The administrative law judge's recommended order is not the final state agency action unless the participating agencies of the state opt at the preliminary hearing conference to allow the administrative law judge's decision to constitute the final agency action. Where one state agency action is challenged, the agency of the state shall issue the final order within 45 working days of receipt of the administrative law judge's recommended order. In those proceedings where the more than one state agency action is challenged, the Governor shall issue the final order within 45 working days of receipt of the administrative law judge's recommended order.

Expedited permitting provides a special assistance process for Rural Economic Development Initiative (REDI) counties. The Department of Economic Opportunity, working with REDI and the regional permitting teams, is to provide technical assistance in preparing permit applications for rural counties. This additional assistance may include providing guidance in land development regulations and permitting processes, and working cooperatively with state, regional and local entities to identify areas within these counties that may be suitable or adaptable for preclearance review of specified types of land uses and other activities requiring permits.

Effect of Proposed Changes

The bill revises the structure and process for expedited permitting of targeted industries. The bill adds commercial or industrial development projects that will be occupied by businesses that would individually or collectively create at least 50 jobs to activities qualifying for expedited review; requires regional teams to be established through the execution of a project-specific MOA; provides that the standard form of the MOA will be used only if the local government participates in the expedited review process.

Section 22. Amends s. 526.203, F.S., expanding the state Renewable Fuel Standard to include other renewable fuel and clarifies that the state Renewable Fuel Standard does not prohibit the sale of unblended fuel for exempted purposes.

Current Situation

In FY 2010-2011, Florida consumed approximately 8.2 billion gallons of gasoline[27] and is the third largest consumer of gasoline in the nation.[28] From January through August of 2011, approximately 2.65 billion gallons of unblended gasoline and approximately 7 billion gallons of blended gasoline (9 to 10 percent ethanol) were sold in the state.[29] [30] According to the Florida Biofuels Association, there are several commercial advanced biofuel ethanol projects in development that encompass a total investment in excess of $1 billion in capital.[31] The state has invested approximately $39 million in grant awards for the development of ethanol since 2006.[32]

Federal Renewable Fuel Standard

The federal government requires the U.S. Environmental Protection Agency (EPA) to develop and implement regulations to ensure that transportation fuel sold in the United States contains a minimum volume of renewable fuel, through a Renewable Fuel Standard (RFS). The RFS program was created under the Energy Policy Act of 2005, which established the first renewable fuel volume mandate in the United States. Originally, the program required 7.5 billion gallons of renewable fuel to be blended into gasoline by 2012.[33] However, the federal Energy Independence and Security Act of 2007, signed into law on December 19, 2007, set the renewable fuel standard minimum annual goal for renewable fuel use at 9 billion gallons in 2008 and 36 billion gallons by 2022.[34]

Florida Renewable Fuel Standard Act (Act)

In 2008, the Legislature passed the Florida Renewable Fuel Standard Act (ss. 526.201-526.207, F.S.), which provided findings that "it is vital to the public interest and to the state's economy to establish a market and the necessary infrastructure for renewable fuels in this state by requiring that all gasoline offered for sale in this state include a percentage of agriculturally derived, denatured ethanol." Further, "that the use of renewable fuel reduces greenhouse gas emissions and dependence on imports of foreign oil, improves the health and quality of life for Floridians, and stimulates economic development and the creation of a sustainable industry that combines agricultural production with state-of-the-art technology."[35]

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[27] Fuel Tax Distributions spreadsheet found on Department of Revenue website: http://dor.myflorida.com/dor/taxes/fuel.
[28] Texas and California lead Florida in amount of gasoline consumed.
[29] By terminal suppliers, importers, blenders, and wholesalers.
[30] Department of Revenue correspondence, December 2, 2011.
[31] These include, but are not limited to: INEOS – New Planet BioEnergy; Highlands EnviroFuels, LLC; Vercipia Biofuels/BP Biofuels; Algenol; Petro Algae; LS9; and Southeast Renewable Fuels, LLC.
[32] Correspondence with the Department of Agriculture and Consumer Services, December 5, 2011.
[33] See the EPA website: http://www.epa.gov/otaq/fuels/renewablefuels.
[34] *EPA Proposes 2012 Renewable Fuel Standards and 2013 Biomass-Based Diesel Volume,* EPA-420-F-11-018, Office of Transportation and Air Quality, June 2011, p. 1.
[35] Section 526.202, F.S.

Based on these findings, the Legislature established the standard that, beginning December 31, 2010, all gasoline sold or offered for sale in Florida by a terminal supplier, importer, blender, or wholesaler shall be blended gasoline.[36] The Act does not address retail sales of gasoline.

"Blended gasoline" is defined as a mixture of 90 to 91 percent gasoline and 9 to 10 percent fuel ethanol, by volume, that meets the specifications as adopted by the Department of Agriculture and Consumer Services (DACS or Department). The fuel ethanol portion may be derived from any agricultural source. "Fuel ethanol" means an anhydrous denatured alcohol produced by the conversion of carbohydrates that meets the specifications as adopted by the Department.[37] The Act does not include other types of renewable fuel in the standard.

The Act provides specific exemptions from the standard.[38] They include the following:

- Fuel used in aircraft
- Fuel sold for use in boats and similar watercraft
- Fuel sold to a blender
- Fuel sold for use in collector vehicles or vehicles eligible to be licensed as collector vehicles, off-road vehicles, motorcycles, or small engines
- Fuel unable to comply due to requirements of the United States Environmental Protection Agency
- Fuel transferred between terminals
- Fuel exported from the state in accordance with s. 206.052, F.S.
- Fuel qualifying for any exemption in accordance with Chapter 206, F.S.
- Fuel for a railroad locomotive
- Fuel for equipment, including vehicle or vessel, covered by a warranty that would be voided, if explicitly stated in writing by the vehicle or vessel manufacturer, if the equipment were to be operated using fuel meeting the requirements of the Act.

Effect of Proposed Changes

The bill expands the renewable fuel standard by including "other renewable fuel" in the definition of "blended gasoline". "Renewable fuel" is defined in the bill to mean "a fuel produced from renewable biomass that is used to replace or reduce the quantity of fossil fuel present in a transportation fuel." "Biomass" is defined in Florida law as "a power source that is comprised of, but not limited to, combustible residues or gases from forest products manufacturing, waste, byproducts, or products from agricultural and orchard crops, waste or coproducts from livestock and poultry operations, waste or byproducts from food processing, urban wood waste, municipal solid waste, municipal liquid waste treatment operations, and landfill gas."[39]

The bill, in effect, may capture future renewable products, such as biobutanol,[40] that can be compatibly blended with gasoline and requires that the "other renewable fuel" meet the specifications as adopted by the Department of Agriculture and Consumer Services. This section of law applies to gasoline only. Therefore, the expansion does not include biodiesel or biomass-based diesel, which cannot be blended with gasoline.

The bill clarifies that the state Renewable Fuel Standard does not prohibit the sale of unblended fuel for exempted uses. [See above list of exemptions.] Although these exemptions are enumerated in statute, there has been confusion over whether the law prevents retailers from selling unblended gas. The law does not address retailers. This addition to the section is provided to add clarification that unblended gasoline can be sold for exempted purposes, without penalty.

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[36] Section 526.203(2), F.S.
[37] Section 526.203(1), F.S.
[38] Section 526.203(3), F.S.
[39] Section 366.91(2)(a), F.S.
[40] Biobutanol is a four-carbon alcohol derived mainly from the fermentation of the sugars in organic feedstocks. (http://alternativefuels.about.com/od/thedifferenttypes/a/biobutanol.htm)

Section 23. Provides an effective date.

This act shall take effect on July 1, 2012.

B. SECTION DIRECTORY:

Section 1. Amends s. 125.022, F.S., prohibiting a county from requiring as a condition of approval for a development permit that an applicant obtain a permit or approval from any other state or federal agency; authorizing a county to attach certain disclaimers to the issuance of a development permit.

Section 2. Amends s. 161.041, F.S., specifying certain requirements related to the coastal construction permit application process.

Section 3. Amends s. 166.033, F.S., prohibiting a municipality from requiring as a condition of approval for a development permit that an applicant obtain a permit or approval from any other state or federal agency; authorizing a county to attach certain disclaimers to the issuance of a development permit.

Section 4. Amends s. 218.075, F.S., to include entities created by special act or local ordinance or interlocal agreement by counties or municipalities for purposes of the DEP and WMD reduced or waived permit processing fees

Section 5. Amends s. 258.397, F.S., to exempt a municipality from being required to show extreme hardship for sale, transfer, or lease of sovereign submerged lands in the Biscayne Bay Aquatic Preserve and adds as permissible activity dredging and filling for creation of public waterfront promenades in the Aquatic Preserve.

Section 6. Amends s. 373.026, F.S., expanding the use of internet-based self-certification services.

Section 7. Amends s. 373.4141, F.S., providing for applicants to timely respond to RAIs for ERP applications.

Section 8. Amends s. 373.4144, F.S., providing legislative intent in the coordination of regulatory duties among state and federal agencies; requiring that the DEP report annually to the Legislature on efforts to expand the state programmatic general permit or regional general permits; providing for a voluntary state programmatic general permit for certain dredge and fill activities.

Section 9. Amends s. 373.441, F.S., directing the DEP and water management districts to regulate activities pursuant to delegation agreements.

Section 10. Amends s. 376.3071, F.S., clarifying that that program deductibles, copayments, and contamination assessment report requirements do not apply as expenditures under the low-scored site initiative within the Inland Protection Trust Fund.

Section 11. Amends s. 376.30715, F.S., providing that the transfer of title for a petroleum contaminated site to a child of the owner or a corporate entity created by the owner to hold title for the site does not disqualify the site from financial assistance.

Section 12. Amends s. 380.0657, F.S., authorizing expedited permitting for certain inland multimodal facilities.

Section 13. Amends s. 381.0065, F.S., limiting applicability of the onsite sewage treatment and disposal system evaluation and assessment program

Section 14. Amends s. 403.061, F.S., requiring the DEP to establish reasonable zones of mixing for discharges into specified waters and providing certain discharges do not create liability for site cleanup.

Section 15. Amends s. 403.087, F.S., revising conditions under which the DEP is authorized to revoke a permit.

Section 16. Amends s. 403.1838, F.S., expanding the population ceiling from 7,500 to 10,000 for communities eligible to apply for grants under the Small Community Sewer Construction Assistance Act

Section 17. Amends s. 403.7045, F.S., providing that sludge from an industrial waste treatment works that meets certain exemption requirements will not be considered to be a solid waste as defined under s. 403.703(32), F.S.

Section 18. Amends s. 403.707, F.S., providing that a permit for a solid waste management facility shall be for 20 years as established by the applicant or a lesser period if requested by the applicant.

Section 19. Amends s. 403.814, F.S., providing for issuance of general permits for certain surface water management systems without action by the DEP or water management districts; specifies conditions for those permits.

Section 20. Amends s. 403.853(6), F.S., adding groundwater usage and services to religious institutions to the definition of transient noncommunity water systems.

Section 21. Amends s. 403.973, F.S., authorizing expedited permitting for certain commercial or industrial development projects; providing for a project-specific memorandum of agreement to apply to a project subject to expedited permitting; providing for review of the expedited permitting by the Secretary of the DEP instead of OTTED.

Section 22. Amends s. 526.203, F.S., revising the definitions for 'blended gasoline' and 'unblended gasoline'; defining the term 'renewable fuel'; and authorizing the sale of unblended fuels for certain uses.

Section 23. Provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None

2. Expenditures:

   Recurring Effects: The Department of Environmental Protection provided the following:

   - There will be an unknown impact to the permit fee trust fund associated with reducing or waiving permit processing fees for entities created by special acts, local ordinances, and interlocal agreements by low-population counties.
   - Expanding the eligibility criteria for the Innocent Victim Petroleum Storage System Restoration will likely result in more sites being eligible to participate in the state-funded cleanup program. The number of additional sites that may be eligible is unknown. The cost of each such cleanup averages $380,000.

Extending the length of solid waste permits to 20 years may result in reductions in the amount of time dedicated to permit review.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues: The Department of Environmental Protection provided the following:

- Local governments that have their environmental regulatory programs preempted will notice a cost savings from program elimination.
- When a local government is a permit applicant, increased availability of Internet based self certifications and general permits should reduce permitting costs.
- When a local government is an ERP permit applicant, shortened permitting time frames might reduce costs to obtain a permit if overall permit times are actually reduced, and the provisions do not result in additional permit denials or the need for time frame waivers.
- Local governments that operate solid waste management facilities would have permit fees reduced to one-quarter of current costs. Local governments that operate landfills that have caused environmental impacts would be relieved of the costs of addressing these impacts.
- Entities created by special acts, local ordinances or interlocal agreements of certain local governments will pay fewer permit fees so the savings would likely be passed on to the local government but without knowing how many of these entities exist, the actual effect is unknown.

The bill expands the population ceiling from 7,000 to 10,000 for communities that are eligible to apply for grants under the Small Community Sewer Construction Assistance Act, which will allow for more municipalities to receive grants for sewage facilities.

2. Expenditures:

According to the DEP analysis, additional costs will be required to apply for delegation of the ERP permitting program if a county wishes to maintain an existing environmental regulatory program.

Local governments providing drinking water to their citizens will likely incur additional costs to remove contaminants from drinking water sources if those responsible for discharging the contaminants are not liable for those costs.

Any county or municipality having a population of 400,000 or more that implements a local pollution control program regulating all or a portion of the wetlands or surface waters must apply for delegation of a state ERP authority. Those counties or municipalities could incur additional costs for having to apply for delegation.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR: The Department of Environmental Protection provided the following:

Direct Private Sector Benefits:

- Increased availability of Internet based self certifications and general permits should reduce permitting costs.
- Shortened ERP permitting time frames might reduce costs to obtain a permit if overall permit times are actually reduced, and the provisions do not result in additional permit denials or the need for time frame waivers.
- Owners or operators of transient non-community water systems using groundwater as a source of supply and serving religious institutions may see reduced costs from reduced monitoring and reporting requirements.

Producers of other types of renewable fuel (other than ethanol) may see an increase in demand for renewable fuel products and may experience facilitated lending as a result of the expanded Renewable Fuel Standard.

D. FISCAL COMMENTS:

Under the bill, owners of onsite sewage treatment and disposal systems would be exempt from the evaluation and assessment program pursuant to s. 381.0065, F.S., unless the board of county commissioners has adopted a resolution subjecting owners to the requirements of the evaluation program. Therefore, owners of septic systems in counties where the board of county commissioners

has not adopted such a resolution would not be subject to any costs resulting from the evaluation and assessment program.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None

B. RULE-MAKING AUTHORITY:

The bill directs DEP to implement the legislative intent to "simplify" certain permitting processes by amending existing rules to "streamline" the permitting process. To adopt a rule an agency must have an express grant of authority to implement a specific law by rulemaking.[41] The grant of rulemaking authority itself need not be detailed.[42] 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.[43] As the bill does not further refine the use of "simplify" and "streamline," the standard will be for DEP to implement these terms using their ordinary and customary meanings.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On December 6, 2011, the Agriculture & Natural Resource Subcommittee amended and passed HB 503 as a committee substitute (CS).

Amendment 1 amended s. 161.041, F.S., by providing that coastal construction permit applications must be made to the Department of Environmental Protection (DEP) upon terms and conditions set by rule; requiring the DEP to justify items listed in a request for additional information; prohibiting the DEP from issuing guidelines that are enforceable as standards for beach management, inlet management, and other erosion control projects without adopting the 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 rules in the F.A.C. to streamline the permitting process for periodic beach maintenance projects and inlet sand bypassing activities; and authorizing the DEP to issue permits for an incidental take authorization under certain circumstances.

Amendment 2 deleted language that provides an exemption from level-of-service standards adopted under the Strategic Intermodal System for certain inland multimodal facilities.

Amendment 3 amended s. 526.203, F.S., by revising the definitions of the terms "blended gasoline" and "unblended gasoline" and defines the term "renewable fuel".

Amendment 4 deleted language that provided an extension of the deadline for certain fuel service stations to install fuel tank upgrades to secondary containment systems.

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

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

[43] *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).

This analysis is drawn to CS/HB 503.

A bill to be entitled

An act relating to environmental regulation; amending s. 125.022, F.S.; prohibiting a county from requiring an applicant to obtain a permit or approval from any state or federal agency as a condition of processing a development permit under certain conditions; authorizing a county to attach certain disclaimers to the issuance of a development permit; amending s. 161.041, F.S.; providing requirements for application for permits under the Beach and Shore Preservation Act; prohibiting the department from issuing specified guidelines unless adopted by rule; requiring the department to cite certain provisions in a request for additional information; providing legislative intent with respect to permitting for periodic maintenance of certain beach nourishment and inlet management projects; directing the department to amend specified rules relating to permitting for such projects; providing conditions under which the department is authorized to issue such permits in advance of the issuance of incidental take authorizations as provided under the Endangered Species Act; amending s. 166.033, F.S.; prohibiting a municipality from requiring an applicant to obtain a permit or approval from any state or federal agency as a condition of processing a development permit under certain conditions; authorizing a municipality to attach certain disclaimers to the issuance of a development permit;

amending s. 218.075, F.S.; providing for the reduction or waiver of permit processing fees relating to projects that serve a public purpose for certain entities created by special act, local ordinance, or interlocal agreement; amending s. 258.397, F.S.; providing an exemption from a showing of extreme hardship relating to the sale, transfer, or lease of sovereignty submerged lands in the Biscayne Bay Aquatic Preserve for certain municipal applicants; providing for additional dredging and filling activities in the preserve; amending s. 373.026, F.S.; requiring the department to expand its use of Internet-based self-certification services for exemptions and permits issued by the department and water management districts; amending s. 373.4141, F.S.; reducing the time within which a permit must be approved, denied, or subject to notice of proposed agency action; prohibiting a state agency or an agency of the state from requiring additional permits or approval from a local, state, or federal agency without explicit authority; amending s. 373.4144, F.S.; providing legislative intent with respect to the coordination of regulatory duties among specified state and federal agencies; encouraging expanded use of the state programmatic general permit or regional general permits; providing for a voluntary state programmatic general permit for certain dredge and fill activities; amending s. 373.441, F.S.; requiring

that certain counties or municipalities apply by a specified date to the department or water management district for authority to require certain permits; providing that following such delegation, the department or district may not regulate activities that are subject to the delegation; clarifying the authority of local governments to adopt pollution control programs under certain conditions; providing applicability with respect to solid mineral mining; amending s. 376.3071, F.S.; exempting program deductibles, copayments, and certain assessment report requirements from expenditures under the low-scored site initiative; amending s. 376.30715, F.S.; providing that the transfer of a contaminated site from an owner to a child of the owner or corporate entity does not disqualify the site from the innocent victim petroleum storage system restoration financial assistance program; authorizing certain applicants to reapply for financial assistance; amending s. 380.0657, F.S.; authorizing expedited permitting for certain inland multimodal facilities that individually or collectively will create a minimum number of jobs; amending s. 381.0065, F.S.; limiting applicability of the onsite sewage treatment and disposal system evaluation and assessment program; amending s. 403.061, F.S.; requiring the department to establish reasonable zones of mixing for discharges into specified waters; providing that exceedance of certain

groundwater standards does not create liability for site cleanup; providing that exceedance of soil cleanup target levels is not a basis for enforcement or cleanup; amending s. 403.087, F.S.; revising conditions under which the department is authorized to revoke permits for sources of air and water pollution; amending s. 403.1838, F.S.; revising the definition of the term "financially disadvantaged small community" for the purposes of the Small Community Sewer Construction Assistance Act; amending s. 403.7045, F.S.; providing conditions under which sludge from an industrial waste treatment works is not solid waste; amending s. 403.707, F.S.; exempting the disposal of solid waste monitored by certain groundwater monitoring plans from specific authorization; extending the duration of all permits issued to solid waste management facilities that meet specified criteria; providing an exception; providing for prorated permit fees; providing applicability; amending s. 403.814, F.S.; providing for issuance of general permits for the construction, alteration, and maintenance of certain surface water management systems without the action of the department or a water management district; specifying conditions for the general permits; amending s. 403.853, F.S.; providing for the department, or a local county health department designated by the department, to perform sanitary surveys for certain transient noncommunity

water systems; amending s. 403.973, F.S.; authorizing expedited permitting for certain commercial or industrial development projects that individually or collectively will create a minimum number of jobs; providing for a project-specific memorandum of agreement to apply to a project subject to expedited permitting; clarifying the authority of the department to enter final orders for the issuance of certain licenses; revising criteria for the review of certain sites; amending s. 526.203, F.S.; revising the definitions of the terms "blended gasoline" and "unblended gasoline"; defining the term "renewable fuel"; authorizing the sale of unblended fuels for certain uses; providing an effective date.

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

Section 1. Section 125.022, Florida Statutes, is amended to read:

125.022 Development permits.—When a county denies an application for a development permit, the county shall give written notice to the applicant. The notice must include a citation to the applicable portions of an ordinance, rule, statute, or other legal authority for the denial of the permit. As used in this section, the term "development permit" has the same meaning as in s. 163.3164. A county may not require as a condition of processing a development permit that an applicant obtain a permit or approval from any state or federal agency

unless the agency has issued a notice of intent to deny the federal or state permit before the county action on the local development permit. Issuance of a development permit by a county does not in any way create any rights on the part of the applicant to obtain a permit from a state or federal agency and does not create any liability on the part of the county for issuance of the permit if the applicant fails to fulfill its legal obligations to obtain requisite approvals or fulfill the obligations imposed by a state or federal agency. A county may attach such a disclaimer to the issuance of a development permit, and may include a permit condition that all other applicable state or federal permits be obtained before commencement of the development. This section does not prohibit a county from providing information to an applicant regarding what other state or federal permits may apply.

Section 2. Subsections (5), (6), and (7) are added to section 161.041, Florida Statutes, to read:

161.041 Permits required.—

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

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

(6) The Legislature intends to simplify 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 the scope of the project and past performance of the project indicates that it has performed according to design expectations. The department shall amend chapters 62B-41 and 62B-49 of the Florida Administrative Code to streamline the permitting process for periodic beach maintenance projects and inlet sand bypassing activities.

(7) Notwithstanding any other provision of law, the department may issue a permit pursuant to this part in advance of the issuance of an incidental take authorization as provided under the Endangered Species Act and its implementing regulations if the permit and authorization include a condition requiring that authorized activities not begin until the incidental take authorization is issued.

Section 3. Section 166.033, Florida Statutes, is amended to read:

166.033 Development permits.—When a municipality denies an application for a development permit, the municipality shall give written notice to the applicant. The notice must include a citation to the applicable portions of an ordinance, rule, statute, or other legal authority for the denial of the permit. As used in this section, the term "development permit" has the same meaning as in s. 163.3164. A municipality may not require as a condition of processing a development permit that an

applicant obtain a permit or approval from any state or federal agency unless the agency has issued a notice of intent to deny the federal or state permit before the municipal action on the local development permit. Issuance of a development permit by a municipality does not in any way create any right on the part of an applicant to obtain a permit from a state or federal agency and does not create any liability on the part of the municipality for issuance of the permit if the applicant fails to fulfill its legal obligations to obtain requisite approvals or fulfill the obligations imposed by a state or federal agency. A municipality may attach such a disclaimer to the issuance of development permits and may include a permit condition that all other applicable state or federal permits be obtained before commencement of the development. This section does not prohibit a municipality from providing information to an applicant regarding what other state or federal permits may apply.

Section 4. Section 218.075, Florida Statutes, is amended to read:

218.075 Reduction or waiver of permit processing fees.—Notwithstanding any other provision of law, the Department of Environmental Protection and the water management districts shall reduce or waive permit processing fees for counties with a population of 50,000 or less on April 1, 1994, until such counties exceed a population of 75,000 and municipalities with a population of 25,000 or less, or for an entity created by special act, local ordinance, or interlocal agreement of such counties or municipalities, or for any county or municipality not included within a metropolitan statistical area. Fee

reductions or waivers shall be approved on the basis of fiscal hardship or environmental need for a particular project or activity. The governing body must certify that the cost of the permit processing fee is a fiscal hardship due to one of the following factors:

(1) Per capita taxable value is less than the statewide average for the current fiscal year;

(2) Percentage of assessed property value that is exempt from ad valorem taxation is higher than the statewide average for the current fiscal year;

(3) Any condition specified in s. 218.503(1) which results in the county or municipality being in a state of financial emergency;

(4) Ad valorem operating millage rate for the current fiscal year is greater than 8 mills; or

(5) A financial condition that is documented in annual financial statements at the end of the current fiscal year and indicates an inability to pay the permit processing fee during that fiscal year.

The permit applicant must be the governing body of a county or municipality or a third party under contract with a county or municipality or an entity created by special act, local ordinance, or interlocal agreement and the project for which the fee reduction or waiver is sought must serve a public purpose. If a permit processing fee is reduced, the total fee shall not exceed $100.

Section 5. Paragraphs (a) and (b) of subsection (3) of

section 258.397, Florida Statutes, are amended to read:

258.397 Biscayne Bay Aquatic Preserve.—

(3) AUTHORITY OF TRUSTEES.—The Board of Trustees of the Internal Improvement Trust Fund is authorized and directed to maintain the aquatic preserve hereby created pursuant and subject to the following provisions:

(a) ~~No further~~ Sale, transfer, or lease of sovereignty submerged lands in the preserve may not ~~shall~~ be approved or consummated by the board of trustees, except upon a showing of extreme hardship on the part of the applicant and a determination by the board of trustees that such sale, transfer, or lease is in the public interest. A municipal applicant proposing a project under paragraph (b) is exempt from showing extreme hardship.

(b) ~~No further~~ Dredging or filling of submerged lands of the preserve may not ~~shall~~ be approved or tolerated by the board of trustees except:

1. Such minimum dredging and spoiling as may be authorized for public navigation projects or for such minimum dredging and spoiling as may be constituted as a public necessity or for preservation of the bay according to the expressed intent of this section.

2. Such other alteration of physical conditions, including the placement of riprap, as may be necessary to enhance the quality and utility of the preserve.

3. Such minimum dredging and filling as may be authorized for the creation and maintenance of marinas, piers, and docks and their attendant navigation channels and access roads. Such

projects may ~~only~~ be authorized only upon a specific finding by the board of trustees that there is assurance that the project will be constructed and operated in a manner that will not adversely affect the water quality and utility of the preserve. This subparagraph does ~~shall~~ not authorize the connection of upland canals to the waters of the preserve.

4. Such dredging as is necessary for the purpose of eliminating conditions hazardous to the public health or for the purpose of eliminating stagnant waters, islands, and spoil banks, the dredging of which would enhance the aesthetic and environmental quality and utility of the preserve and be clearly in the public interest as determined by the board of trustees.

5. Such dredging and filling as is necessary for the creation of public waterfront promenades.

Any dredging or filling under this subsection or improvements under subsection (5) may ~~shall~~ be approved only after public notice as provided by s. 253.115.

Section 6. Subsection (10) is added to section 373.026, Florida Statutes, to read:

373.026 General powers and duties of the department.—The department, or its successor agency, shall be responsible for the administration of this chapter at the state level. However, it is the policy of the state that, to the greatest extent possible, the department may enter into interagency or interlocal agreements with any other state agency, any water management district, or any local government conducting programs related to or materially affecting the water resources of the

state. All such agreements shall be subject to the provisions of s. 373.046. In addition to its other powers and duties, the department shall, to the greatest extent possible:

(10) Expand the use of Internet-based self-certification services for appropriate exemptions and general permits issued by the department and the water management districts, if such expansion is economically feasible. In addition to expanding the use of Internet-based self-certification services for appropriate exemptions and general permits, the department and water management districts shall identify and develop general permits for appropriate activities currently requiring individual review which could be expedited through the use of applicable professional certification.

Section 7. Subsection (2) of section 373.4141, Florida Statutes, is amended, and subsection (4) is added to that section, to read:

373.4141 Permits; processing.—

(2) A permit shall be approved, ~~or~~ denied, or subject to a notice of proposed agency action within 60 ~~90~~ days after receipt of the original application, the last item of timely requested additional material, or the applicant's written request to begin processing the permit application.

(4) A state agency or an agency of the state may not require as a condition of approval for a permit or as an item to complete a pending permit application that an applicant obtain a permit or approval from any other local, state, or federal agency without explicit statutory authority to require such permit or approval.

Section 8. Section 373.4144, Florida Statutes, is amended to read:

373.4144 Federal environmental permitting.—

(1) It is the intent of the Legislature to:

(a) Facilitate coordination and a more efficient process of implementing regulatory duties and functions between the Department of Environmental Protection, the water management districts, the United States Army Corps of Engineers, the United States Fish and Wildlife Service, the National Marine Fisheries Service, the United States Environmental Protection Agency, the Fish and Wildlife Conservation Commission, and other relevant federal and state agencies.

(b) Authorize the Department of Environmental Protection to obtain issuance by the United States Army Corps of Engineers, pursuant to state and federal law and as set forth in this section, of an expanded state programmatic general permit, or a series of regional general permits, for categories of activities in waters of the United States governed by the Clean Water Act and in navigable waters under the Rivers and Harbors Act of 1899 which are similar in nature, which will cause only minimal adverse environmental effects when performed separately, and which will have only minimal cumulative adverse effects on the environment.

(c) Use the mechanism of such a state general permit or such regional general permits to eliminate overlapping federal regulations and state rules that seek to protect the same resource and to avoid duplication of permitting between the United States Army Corps of Engineers and the department for

minor work located in waters of the United States, including navigable waters, thus eliminating, in appropriate cases, the need for a separate individual approval from the United States Army Corps of Engineers while ensuring the most stringent protection of wetland resources.

(d) Direct the department not to seek issuance of or take any action pursuant to any such permit or permits unless such conditions are at least as protective of the environment and natural resources as existing state law under this part and federal law under the Clean Water Act and the Rivers and Harbors Act of 1899. ~~The department is directed to develop, on or before October 1, 2005, a mechanism or plan to consolidate, to the maximum extent practicable, the federal and state wetland permitting programs. It is the intent of the Legislature that all dredge and fill activities impacting 10 acres or less of wetlands or waters, including navigable waters, be processed by the state as part of the environmental resource permitting program implemented by the department and the water management districts. The resulting mechanism or plan shall analyze and propose the development of an expanded state programmatic general permit program in conjunction with the United States Army Corps of Engineers pursuant to s. 404 of the Clean Water Act, Pub. L. No. 92-500, as amended, 33 U.S.C. ss. 1251 et seq., and s. 10 of the Rivers and Harbors Act of 1899. Alternatively, or in combination with an expanded state programmatic general permit, the mechanism or plan may propose the creation of a series of regional general permits issued by the United States Army Corps of Engineers pursuant to the referenced statutes. All~~

~~of the regional general permits must be administered by the department or the water management districts or their designees.~~

(2) In order to effectuate efficient wetland permitting and avoid duplication, the department and water management districts are authorized to implement a voluntary state programmatic general permit for all dredge and fill activities impacting 3 acres or less of wetlands or other surface waters, including navigable waters, subject to agreement with the United States Army Corps of Engineers, if the general permit is at least as protective of the environment and natural resources as existing state law under this part and federal law under the Clean Water Act and the Rivers and Harbors Act of 1899. ~~The department is directed to file with the Speaker of the House of Representatives and the President of the Senate a report proposing any required federal and state statutory changes that would be necessary to accomplish the directives listed in this section and to coordinate with the Florida Congressional Delegation on any necessary changes to federal law to implement the directives.~~

(3) ~~Nothing in~~ This section may not ~~shall~~ be construed to preclude the department from pursuing a series of regional general permits for construction activities in wetlands or surface waters or complete assumption of federal permitting programs regulating the discharge of dredged or fill material pursuant to s. 404 of the Clean Water Act, Pub. L. No. 92-500, as amended, 33 U.S.C. ss. 1251 et seq., and s. 10 of the Rivers and Harbors Act of 1899, so long as the assumption encompasses all dredge and fill activities in, on, or over jurisdictional

wetlands or waters, including navigable waters, within the state.

Section 9. Present subsections (3), (4), and (5) of section 373.441, Florida Statutes, are renumbered as subsections (7), (8), and (9), respectively, and new subsections (3), (4), (5), and (6) are added to that section to read:

373.441 Role of counties, municipalities, and local pollution control programs in permit processing; delegation.—

(3) A county or municipality having a population of 400,000 or more that implements a local pollution control program regulating all or a portion of the wetlands or surface waters throughout its geographic boundary must apply for delegation of state environmental resource permitting authority on or before January 1, 2014. If such a county or municipality fails to receive delegation of all or a portion of state environmental resource permitting authority within 2 years after submitting its application for delegation or by January 1, 2016, at the latest, it may not require permits that in part or in full are substantially similar to the requirements needed to obtain an environmental resource permit. A county or municipality that has received delegation before January 1, 2014, does not need to reapply.

(4) The department is responsible for all delegations of state environmental resource permitting authority to local governments. The department must grant or deny an application for delegation submitted by a county or municipality that meets the criteria in subsection (3) within 2 years after the receipt of the application. If an application for delegation is denied,

any available legal challenge to such denial shall toll the preemption deadline until resolution of the legal challenge. Upon delegation to a qualified local government, the department and water management district may not regulate the activities subject to the delegation within that jurisdiction.

(5) This section does not prohibit or limit a local government that meets the criteria in subsection (3) from regulating wetlands or surface waters after January 1, 2014, if the local government receives delegation of all or a portion of state environmental resource permitting authority within 2 years after submitting its application for delegation.

(6) Notwithstanding subsections (3), (4), and (5), this section does not apply to environmental resource permitting or reclamation applications for solid mineral mining and does not prohibit the application of local government regulations to any new solid mineral mine or any proposed addition to, change to, or expansion of an existing solid mineral mine.

Section 10. Paragraph (b) of subsection (11) of section 376.3071, Florida Statutes, is amended to read:

376.3071 Inland Protection Trust Fund; creation; purposes; funding.—

(11)

(b) Low-scored site initiative.—Notwithstanding s. 376.30711, any site with a priority ranking score of 10 points or less may voluntarily participate in the low-scored site initiative, whether or not the site is eligible for state restoration funding.

1. To participate in the low-scored site initiative, the

responsible party or property owner must affirmatively demonstrate that the following conditions are met:

a. Upon reassessment pursuant to department rule, the site retains a priority ranking score of 10 points or less.

b. No excessively contaminated soil, as defined by department rule, exists onsite as a result of a release of petroleum products.

c. A minimum of 6 months of groundwater monitoring indicates that the plume is shrinking or stable.

d. The release of petroleum products at the site does not adversely affect adjacent surface waters, including their effects on human health and the environment.

e. The area of groundwater containing the petroleum products' chemicals of concern is less than one-quarter acre and is confined to the source property boundaries of the real property on which the discharge originated.

f. Soils onsite that are subject to human exposure found between land surface and 2 feet below land surface meet the soil cleanup target levels established by department rule or human exposure is limited by appropriate institutional or engineering controls.

2. Upon affirmative demonstration of the conditions under subparagraph 1., the department shall issue a determination of "No Further Action." Such determination acknowledges that minimal contamination exists onsite and that such contamination is not a threat to human health or the environment. If no contamination is detected, the department may issue a site rehabilitation completion order.

3. Sites that are eligible for state restoration funding may receive payment of preapproved costs for the low-scored site initiative as follows:

a. A responsible party or property owner may submit an assessment plan designed to affirmatively demonstrate that the site meets the conditions under subparagraph 1. Notwithstanding the priority ranking score of the site, the department may preapprove the cost of the assessment pursuant to s. 376.30711, including 6 months of groundwater monitoring, not to exceed $30,000 for each site. The department may not pay the costs associated with the establishment of institutional or engineering controls.

b. The assessment work shall be completed no later than 6 months after the department issues its approval.

c. No more than $10 million for the low-scored site initiative may ~~shall~~ be encumbered from the Inland Protection Trust Fund in any fiscal year. Funds shall be made available on a first-come, first-served basis and shall be limited to 10 sites in each fiscal year for each responsible party or property owner.

d. Program deductibles, copayments, and the limited contamination assessment report requirements under paragraph (13)(c) do not apply to expenditures under this paragraph.

Section 11. Section 376.30715, Florida Statutes, is amended to read:

376.30715 Innocent victim petroleum storage system restoration.—A contaminated site acquired by the current owner prior to July 1, 1990, which has ceased operating as a petroleum

storage or retail business prior to January 1, 1985, is eligible for financial assistance pursuant to s. 376.305(6), notwithstanding s. 376.305(6)(a). For purposes of this section, the term "acquired" means the acquisition of title to the property; however, a subsequent transfer of the property to a spouse or child of the owner, a surviving spouse or child of the owner in trust or free of trust, ~~or~~ a revocable trust created for the benefit of the settlor, or a corporate entity created by the owner to hold title to the site does not disqualify the site from financial assistance pursuant to s. 376.305(6) and applicants previously denied coverage may reapply. Eligible sites shall be ranked in accordance with s. 376.3071(5).

Section 12. Subsection (1) of section 380.0657, Florida Statutes, is amended to read:

380.0657 Expedited permitting process for economic development projects.—

(1) The Department of Environmental Protection and, as appropriate, the water management districts created under chapter 373 shall adopt programs to expedite the processing of wetland resource and environmental resource permits for economic development projects that have been identified by a municipality or county as meeting the definition of target industry businesses under s. 288.106, or any inland multimodal facility receiving or sending cargo to or from Florida ports, with the exception of those projects requiring approval by the Board of Trustees of the Internal Improvement Trust Fund.

Section 13. Paragraph (j) is added to subsection (5) of section 381.0065, Florida Statutes, to read:

381.0065 Onsite sewage treatment and disposal systems; regulation.—

(5) EVALUATION AND ASSESSMENT.—

(j) This subsection only applies to owners of onsite sewage treatment and disposal systems in a county in which the board of county commissioners has adopted a resolution subjecting owners to the requirements of the program and submitted a copy of the resolution to the department.

Section 14. Subsection (11) of section 403.061, Florida Statutes, is amended to read:

403.061 Department; powers and duties.—The department shall have the power and the duty to control and prohibit pollution of air and water in accordance with the law and rules adopted and promulgated by it and, for this purpose, to:

(11) Establish ambient air quality and water quality standards for the state as a whole or for any part thereof, and also standards for the abatement of excessive and unnecessary noise. The department is authorized to establish reasonable zones of mixing for discharges into waters. For existing installations as defined by rule 62-520.200(10), Florida Administrative Code, effective July 12, 2009, zones of discharge to groundwater are authorized to a facility's or owner's property boundary and extending to the base of a specifically designated aquifer or aquifers. Exceedance of primary and secondary groundwater standards that occur within a zone of discharge does not create liability pursuant to this chapter or chapter 376 for site cleanup, and the exceedance of soil cleanup target levels is not a basis for enforcement or site cleanup.

(a) When a receiving body of water fails to meet a water quality standard for pollutants set forth in department rules, a steam electric generating plant discharge of pollutants that is existing or licensed under this chapter on July 1, 1984, may nevertheless be granted a mixing zone, provided that:

1. The standard would not be met in the water body in the absence of the discharge;

2. The discharge is in compliance with all applicable technology-based effluent limitations;

3. The discharge does not cause a measurable increase in the degree of noncompliance with the standard at the boundary of the mixing zone; and

4. The discharge otherwise complies with the mixing zone provisions specified in department rules.

(b) ~~No~~ Mixing zones ~~zone~~ for point source discharges are not ~~shall be~~ permitted in Outstanding Florida Waters except for:

1. Sources that have received permits from the department prior to April 1, 1982, or the date of designation, whichever is later;

2. Blowdown from new power plants certified pursuant to the Florida Electrical Power Plant Siting Act;

3. Discharges of water necessary for water management purposes which have been approved by the governing board of a water management district and, if required by law, by the secretary; and

4. The discharge of demineralization concentrate which has been determined permittable under s. 403.0882 and which meets the specific provisions of s. 403.0882(4)(a) and (b), if the

proposed discharge is clearly in the public interest.

(c) The department, by rule, shall establish water quality criteria for wetlands which criteria give appropriate recognition to the water quality of such wetlands in their natural state.

~~Nothing in~~ This act may not be ~~shall~~ be construed to invalidate any existing department rule relating to mixing zones. The department shall cooperate with the Department of Highway Safety and Motor Vehicles in the development of regulations required by s. 316.272(1).

The department shall implement such programs in conjunction with its other powers and duties and shall place special emphasis on reducing and eliminating contamination that presents a threat to humans, animals or plants, or to the environment.

Section 15. Subsection (7) of section 403.087, Florida Statutes, is amended to read:

403.087 Permits; general issuance; denial; revocation; prohibition; penalty.—

(7) A permit issued pursuant to this section does ~~shall~~ not become a vested right in the permittee. The department may revoke any permit issued by it if it finds that the permitholder has:

(a) ~~Has~~ Submitted false or inaccurate information in the ~~his or her~~ application for the permit;

(b) ~~Has~~ Violated law, department orders, rules, ~~or regulations,~~ or ~~permit~~ conditions;

(c) ~~Has~~ Failed to submit operational reports or other information required by department rule which directly relate to the permit and has refused to correct or cure such violations when requested to do so ~~or regulation~~; or

(d) ~~Has~~ Refused lawful inspection under s. 403.091 at the facility authorized by the permit.

Section 16. Subsection (2) of section 403.1838, Florida Statutes, is amended to read:

403.1838 Small Community Sewer Construction Assistance Act.—

(2) The department shall use funds specifically appropriated to award grants under this section to assist financially disadvantaged small communities with their needs for adequate sewer facilities. For purposes of this section, the term "financially disadvantaged small community" means a municipality that has ~~with~~ a population of 10,000 ~~7,500~~ or fewer ~~less~~, according to the latest decennial census and a per capita annual income less than the state per capita annual income as determined by the United States Department of Commerce.

Section 17. Paragraph (f) of subsection (1) of section 403.7045, Florida Statutes, is amended to read:

403.7045 Application of act and integration with other acts.—

(1) The following wastes or activities shall not be regulated pursuant to this act:

(f) Industrial byproducts, if:

1. A majority of the industrial byproducts are demonstrated to be sold, used, or reused within 1 year.

2. The industrial byproducts are not discharged, deposited, injected, dumped, spilled, leaked, or placed upon any land or water so that such industrial byproducts, or any constituent thereof, may enter other lands or be emitted into the air or discharged into any waters, including groundwaters, or otherwise enter the environment such that a threat of contamination in excess of applicable department standards and criteria or a significant threat to public health is caused.

3. The industrial byproducts are not hazardous wastes as defined under s. 403.703 and rules adopted under this section.

Sludge from an industrial waste treatment works that meets the exemption requirements of this paragraph is not solid waste as defined in s. 403.703(32).

Section 18. Subsections (2) and (3) of section 403.707, Florida Statutes, are amended to read:

403.707 Permits.—

(2) Except as provided in s. 403.722(6), a permit under this section 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~~:

(a) Disposal by persons of solid waste resulting from their own activities on their own property, if such waste is ordinary household waste from their residential property or is rocks, soils, trees, tree remains, and other vegetative matter that normally result from land development operations. Disposal

of materials that could create a public nuisance or adversely affect the environment or public health, such as white goods; automotive materials, such as batteries and tires; petroleum products; pesticides; solvents; or hazardous substances, is not covered under this exemption.

(b) Storage in containers by persons of solid waste resulting from their own activities on their property, leased or rented property, or property subject to a homeowners' ~~homeowners~~ or maintenance association for which the person contributes association assessments, if the solid waste in such containers is collected at least once a week.

(c) 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:

1. Addressed or authorized by a site certification order issued under part II or a permit issued by the department under this chapter or rules adopted pursuant to this chapter; or

2. Addressed or authorized by, or exempted from the requirement to obtain, a groundwater monitoring plan approved by the department. If a facility has a permit authorizing disposal activity, new areas where solid waste is being disposed of which are monitored by an existing or modified groundwater monitoring plan are not required to be specifically authorized in a permit or other certification.

(d) Disposal by persons of solid waste resulting from their own activities on their own property, if such disposal occurred prior to October 1, 1988.

(e) 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.

(f) 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.

(g) 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.

(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) Any 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 lesser permit term. Existing permit fees for qualifying solid waste management facilities shall be prorated to the permit term authorized by this section. This paragraph applies to all qualifying solid waste management facilities that apply for an operating or construction permit or

renew an existing operating or construction permit on or after July 1, 2012.

Section 19. Subsection (12) is added to section 403.814, Florida Statutes, to read:

403.814 General permits; delegation.—

(12) A general permit shall be granted for the construction, alteration, and maintenance of a surface water management system serving a total project area of up to 10 acres. The construction of such a system may proceed without any agency action by the department or water management district if:

(a) The total project area is less than 10 acres;

(b) The total project area involves less than 2 acres of impervious surface;

(c) No activities will impact wetlands or other surface waters;

(d) No activities are conducted in, on, or over wetlands or other surface waters;

(e) Drainage facilities will not include pipes having diameters greater than 24 inches, or the hydraulic equivalent, and will not use pumps in any manner;

(f) The project is not part of a larger common plan, development, or sale;

(g) The project does not:

1. Cause adverse water quantity or flooding impacts to receiving water and adjacent lands;

2. Cause adverse impacts to existing surface water storage and conveyance capabilities;

3. Cause a violation of state water quality standards; or

4. Cause an adverse impact to the maintenance of surface or ground water levels or surface water flows established pursuant to s. 373.042 or a work of the district established pursuant to s. 373.086; and

(h) The surface water management system design plans are signed and sealed by a Florida registered professional who attests that the system will perform and function as proposed and has been designed in accordance with appropriate, generally accepted performance standards and scientific principles.

Section 20. Subsection (6) of section 403.853, Florida Statutes, is amended to read:

403.853 Drinking water standards.—

(6) Upon the request of the owner or operator of a transient noncommunity water system using groundwater as a source of supply and serving religious institutions or businesses, other than restaurants or other public food service establishments or religious institutions with school or day care services~~, and using groundwater as a source of supply~~, the department, or a local county health department designated by the department, shall perform a sanitary survey of the facility. Upon receipt of satisfactory survey results according to department criteria, the department shall reduce the requirements of such owner or operator from monitoring and reporting on a quarterly basis to performing these functions on an annual basis. Any revised monitoring and reporting schedule approved by the department under this subsection shall apply until such time as a violation of applicable state or federal primary drinking water standards is determined by the system

owner or operator, by the department, or by an agency designated by the department, after a random or routine sanitary survey. Certified operators are not required for transient noncommunity water systems of the type and size covered by this subsection. Any reports required of such system shall be limited to the minimum as required by federal law. When not contrary to the provisions of federal law, the department may, upon request and by rule, waive additional provisions of state drinking water regulations for such systems.

Section 21. Paragraph (a) of subsection (3) and subsections (4), (5), (10), (11), (14), (15), and (18) of section 403.973, Florida Statutes, are amended to read:

403.973 Expedited permitting; amendments to comprehensive plans.—

(3)(a) The secretary shall direct the creation of regional permit action teams for the purpose of expediting review of permit applications and local comprehensive plan amendments submitted by:

1. Businesses creating at least 50 jobs or a commercial or industrial development project that will be occupied by businesses that would individually or collectively create at least 50 jobs; or

2. Businesses creating at least 25 jobs if the project is located in an enterprise zone, or in a county having a population of fewer than 75,000 or in a county having a population of fewer than 125,000 which is contiguous to a county having a population of fewer than 75,000, as determined by the most recent decennial census, residing in incorporated and

unincorporated areas of the county.

(4) The regional teams shall be established through the execution of a project-specific memoranda of agreement developed and executed by the applicant and the secretary, with input solicited from ~~the Department of Economic Opportunity and~~ the respective heads of the Department of Transportation and its district offices, the Department of Agriculture and Consumer Services, the Fish and Wildlife Conservation Commission, appropriate regional planning councils, appropriate water management districts, and voluntarily participating municipalities and counties. The memoranda of agreement should also accommodate participation in this expedited process by other local governments and federal agencies as circumstances warrant.

(5) In order to facilitate local government's option to participate in this expedited review process, the secretary shall, in cooperation with local governments and participating state agencies, create a standard form memorandum of agreement. The standard form of the memorandum of agreement shall be used only if the local government participates in the expedited review process. In the absence of local government participation, only the project-specific memorandum of agreement executed pursuant to subsection (4) applies. A local government shall hold a duly noticed public workshop to review and explain to the public the expedited permitting process and the terms and conditions of the standard form memorandum of agreement.

(10) The memoranda of agreement may provide for the waiver or modification of procedural rules prescribing forms, fees,

procedures, or time limits for the review or processing of permit applications under the jurisdiction of those agencies that are members of the regional permit action team ~~party to the memoranda of agreement~~. Notwithstanding any other provision of law to the contrary, a memorandum of agreement must to the extent feasible provide for proceedings and hearings otherwise held separately ~~by the parties to the memorandum of agreement~~ to be combined into one proceeding or held jointly and at one location. Such waivers or modifications are not authorized ~~shall not be available~~ for permit applications governed by federally delegated or approved permitting programs, the requirements of which would prohibit, or be inconsistent with, such a waiver or modification.

(11) The ~~standard form for~~ memoranda of agreement shall include guidelines to be used in working with state, regional, and local permitting authorities. Guidelines may include, but are not limited to, the following:

(a) A central contact point for filing permit applications and local comprehensive plan amendments and for obtaining information on permit and local comprehensive plan amendment requirements.~~;~~

(b) Identification of the individual or individuals within each respective agency who will be responsible for processing the expedited permit application or local comprehensive plan amendment for that agency.~~;~~

(c) A mandatory preapplication review process to reduce permitting conflicts by providing guidance to applicants regarding the permits needed from each agency and governmental

entity, site planning and development, site suitability and limitations, facility design, and steps the applicant can take to ensure expeditious permit application and local comprehensive plan amendment review. As a part of this process, the first interagency meeting to discuss a project shall be held within 14 days after the secretary's determination that the project is eligible for expedited review. Subsequent interagency meetings may be scheduled to accommodate the needs of participating local governments that are unable to meet public notice requirements for executing a memorandum of agreement within this timeframe. This accommodation may not exceed 45 days from the secretary's determination that the project is eligible for expedited review.~~;~~

(d) The preparation of a single coordinated project description form and checklist and an agreement by state and regional agencies to reduce the burden on an applicant to provide duplicate information to multiple agencies.~~;~~

(e) Establishment of a process for the adoption and review of any comprehensive plan amendment needed by any certified project within 90 days after the submission of an application for a comprehensive plan amendment. However, the memorandum of agreement may not prevent affected persons as defined in s. 163.3184 from appealing or participating in this expedited plan amendment process and any review or appeals of decisions made under this paragraph.~~; and~~

(f) Additional incentives for an applicant who proposes a project that provides a net ecosystem benefit.

(14)(a) Challenges to state agency action in the expedited

permitting process for projects processed under this section are subject to the summary hearing provisions of s. 120.574, except that the administrative law judge's decision, as provided in s. 120.574(2)(f), shall be in the form of a recommended order and do not constitute the final action of the state agency. In those proceedings where the action of only one agency of the state other than the Department of Environmental Protection is challenged, the agency of the state shall issue the final order within 45 working days after receipt of the administrative law judge's recommended order, and the recommended order shall inform the parties of their right to file exceptions or responses to the recommended order in accordance with the uniform rules of procedure pursuant to s. 120.54. In those proceedings where the actions of more than one agency of the state are challenged, the Governor shall issue the final order within 45 working days after receipt of the administrative law judge's recommended order, and the recommended order shall inform the parties of their right to file exceptions or responses to the recommended order in accordance with the uniform rules of procedure pursuant to s. 120.54. For ~~This paragraph does not apply to~~ the issuance of department licenses required under any federally delegated or approved permit program~~. In such instances~~, the department, and not the Governor, shall enter the final order. The participating agencies of the state may opt at the preliminary hearing conference to allow the administrative law judge's decision to constitute the final agency action.

(b) Projects identified in paragraph (3)(f) or challenges

to state agency action in the expedited permitting process for establishment of a state-of-the-art biomedical research institution and campus in this state by the grantee under s. 288.955 are subject to the same requirements as challenges brought under paragraph (a), except that, notwithstanding s. 120.574, summary proceedings must be conducted within 30 days after a party files the motion for summary hearing, regardless of whether the parties agree to the summary proceeding.

(15) The Department of Economic Opportunity, working with the agencies providing cooperative assistance and input regarding the memoranda of agreement, shall review sites proposed for the location of facilities that the Department of Economic Opportunity has certified to be eligible for the Innovation Incentive Program under s. 288.1089. Within 20 days after the request for the review by the Department of Economic Opportunity, the agencies shall provide to the Department of Economic Opportunity a statement as to each site's necessary permits under local, state, and federal law and an identification of significant permitting issues, which if unresolved, may result in the denial of an agency permit or approval or any significant delay caused by the permitting process.

(18) The Department of Economic Opportunity, working with the Rural Economic Development Initiative ~~and the agencies participating in the memoranda of agreement~~, shall provide technical assistance in preparing permit applications and local comprehensive plan amendments for counties having a population of fewer than 75,000 residents, or counties having fewer than

125,000 residents which are contiguous to counties having fewer than 75,000 residents. Additional assistance may include, but not be limited to, guidance in land development regulations and permitting processes, working cooperatively with state, regional, and local entities to identify areas within these counties which may be suitable or adaptable for preclearance review of specified types of land uses and other activities requiring permits.

Section 22. Subsection (1) of section 526.203, Florida Statutes, is amended, and subsection (5) is added to that section, to read:

526.203 Renewable fuel standard.—

(1) DEFINITIONS.—As used in this act:

(a) "Blender," "importer," "terminal supplier," and "wholesaler" are defined as provided in s. 206.01.

(b) "Blended gasoline" means a mixture of 90 to 91 percent gasoline and 9 to 10 percent fuel ethanol or other renewable fuel, by volume, that meets the specifications as adopted by the department. The fuel ethanol portion may be derived from any agricultural source.

(c) "Fuel ethanol" means an anhydrous denatured alcohol produced by the conversion of carbohydrates that meets the specifications as adopted by the department.

(d) "Renewable fuel" means a fuel produced from renewable biomass that is used to replace or reduce the quantity of fossil fuel present in a transportation fuel.

(e) ~~(d)~~ "Unblended gasoline" means gasoline that has not been blended ~~with fuel ethanol~~ and that meets the specifications

as adopted by the department.

(5) SALE OF UNBLENDED FUELS.—This section does not prohibit the sale of unblended fuels for the uses exempted under subsection (3).

Section 23. This act shall take effect July 1, 2012.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 517 Reducing and Streamlining Regulations
SPONSOR(S): Grant
TIED BILLS: **IDEN./SIM. BILLS:** SB 762

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Business & Consumer Affairs Subcommittee	11 Y, 0 N	Livingston	Creamer
2) Rulemaking & Regulation Subcommittee		Miller	Rubottom
3) Economic Affairs Committee			

SUMMARY ANALYSIS

In addition to administering numerous professional boards, the Department of Business and Professional Regulation (department) processes applications for licensure and license renewal. The department also receives and investigates complaints made against licensees and, if necessary, brings administrative charges.

Chapter 455, F.S., provides the general powers of the department and sets forth the procedural and administrative frame-work for professional boards housed under the department, as well as the Divisions of Certified Public Accounting, Professions, Real Estate, and Regulation. Section 455.213, F.S., establishes general licensing provisions for the department, including the authority to charge licensing fees. Section 455.271(4), F.S., provides an inactive licensee may change his or her status to active provided the licensee meets all requirements for active status, pays the appropriate fees, and meets all continuing education requirements.

The bill reduces regulatory requirements for professions and businesses, and streamlines regulatory functions primarily for programs under the department.

Specifically, the bill:

- reduces the required continuing education requirements to reactivate an inactive license to only one cycle of hours required, instead of the hours required for the years the license was inactive;
- decriminalizes specified violations of several professional boards' rules and administrative requirements that currently carry second-degree misdemeanor fines and penalties; and
- amends appraisal regulations and deletes references to Uniform Standards of Professional Appraisal Practice and provides that the professional standards be adopted by board rule.

The bill may have an insignificant negative fiscal impact on state funds related to the reduction in fees, fines, and penalties.

The effective date of the bill is July 1, 2012.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Continuing Education

A licensee may practice a profession only if the licensee has an active status license.[1] At the time of license renewal a licensee may choose to an active or inactive status.[2] An inactive status licensee may change to active status provided the licensee meets requirements for active status, pays applicable fees and meets continuing education requirements.

Generally, a licensee with an inactive license may choose at any time to change to an active status but must meet all the requirements for an active license, pay any additional fees including applicable reactivation fees, and must complete enough continuing education to fulfill the continuing education requirement for each licensure cycle during which the license was inactive.[3] For example, a community association manager on inactive status for two biennial license cycles who then chose to make the license active must complete 40 hours of continuing education.[4]

Proposed Changes

The bill amends ss. 455.271(10),[5] 468.4338,[6] 468.8317,[7] 468.8417,[8] 477.0212,[9] 481.217,[10] 481.315,[11] 489.116,[12] and 489.519,[13] F.S., reducing the amount of continuing education a licensee must complete to the equivalent of one renewal cycle[14] before reactivating an inactive licensee.

Current Situation

Decriminalization of Rule Violations

Currently, Florida Statutes criminalize violations of rules and orders of several professions under the oversight of the department, including auctioneers, real estate professionals, real property appraisers, barbers, and cosmetologists.[15]

As a result, a licensee is subject to criminal sanctions for specified violations, including minor rule infractions.[16] In addition, violations are subject to imposition of administrative fines that can range from

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[1] Section 455.271(1), F.S.
[2] Section 455.271(2), F.S.
[3] Section 455.271(4), F.S.
[4] The continuing education requirement for biennial renewal of an active community association manager license is 20 hours. Section 468.4338, F.S.; Rule 61E14-4.001(1), F.A.C.
[5] General requirements for reactivating an inactive or delinquent license.
[6] Reactivation requirements for a community association manager license.
[7] Reactivation requirements for a home inspector license.
[8] Reactivation requirements for a mold assessor or remediator license.
[9] Reactivation requirements for a cosmetologist license.
[10] Reactivation requirements for an architect or interior designer license.
[11] Reactivation requirements for a landscape architect license.
[12] Reactivation requirements for a contractor license.
[13] Reactivation requirements for an electrical contractor license.
[14] "Renewal cycle" is not defined in the bill. The statutes use the term "licensure cycle" or "license cycle" when referring to the biennial period for license renewal.
[15] Sections 468.391, 475.42, 475.626, 476.194, and 477.0265, F.S., respectively.

$500-$5,000 per occurrence, depending on which practice act is violated, as well as the suspension or revocation of the license.

Proposed changes

The bill decriminalizes violations of administrative rules and certain statutes by amending the criminal penalty provisions of specific practice acts. State attorneys may still file criminal charges against a licensee for more serious violations. The applicable regulatory board will still be able to impose administrative discipline against a licensee for violating administrative rules, under the following statutes:

- Florida Board of Auctioneers, under s. 468.389(1)(j), F.S.
- Florida Real Estate Commission, under s. 475.25(1)(e), F.S.
- Florida Real Estate Appraisal Board, under s. 475.624(4), F.S.
- Barbers' Board, under s. 476.204(1)(i), F.S.
- Board of Cosmetology, under s. 477.029(1)(i), F.S.

Current Situation

Appraisal regulations

State-licensed or state-certified appraisers must be used in the performance of an appraisal for any federally-related transaction, and those appraisals must comply with the Uniform Standards of Professional Appraisal Practice (USPAP). A federally-related transaction is defined as any real estate related financial transaction which:

- involves the transfer of an interest in real property, the financing or refinancing of a transfer of an interest in real property, or the use of an interest in real property as security for a loan or for mortgage-backed securities or
- involves a federal financial regulatory agency or one of the specific agencies names in Title XI of the U.S.C. that require the services of a state-licensed or state-certified appraiser.

Chapter 475, Part II, F.S., (the Real Estate Appraisal Act), specifically incorporates, references, and requires compliance with the USPAP standards by all registered, licensed, or certified Florida real estate appraisers.[17] These standards apply to all real estate appraisal connected with all federally-related financial transactions (as defined above). Although the federal authorities have changed the USPAP guidelines several times since Florida first adopted the Act in 1991,[18] the Florida Statutes have not reincorporated the USPAP since 1998.[19] Under the doctrine of recent appellate and DOAH rulings, the 1998 version of USPAP is applicable in Florida as the last version specifically incorporated by our statutes.[20] [21] The current USPAP is version 2010-2011.

Proposed changes

The bill amends various references to appraisal regulations and deletes certain references to the Uniform Standards of Professional Appraisal Practice. The bill provides that the professional standards

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[16] Under the criminal penalty statutes listed in note 15, a conviction for violating a rule of the Florida Board of Auctioneers is sentenced as a third degree felony but a conviction for violating a rule of the Florida Real Estate Commission, Florida Real Estate Appraisal Board, Barbers' Board, or Board of Cosmetology would be sentenced as a second degree misdemeanor.

[17] Section 475.628, F.S.

[18] Chapter 91-89, F.S.

[19] Section 35, Chapter 98-250, Laws of Florida, amended and readopted s. 475.628, F.S.

[20] *Abbott Laboratories v. Mylan Pharmaceuticals, Inc.,* 15 So. 3d 642, 655 (Fla. 1st DCA 2009); *Department of Business and Professional Regulation v. Lester,* Agency Case No. 2008001566, Final Order dated May 17, 2010, adopting *in toto* Recommended Final Order rendered by DOAH in Case No. 09-0642PL, 2009 WL 4099146 (November 24, 2009).

[21] By rule the Florida Real Estate Appraisal Board presently applies the 2008-2009 version of the USPAP. Rule 61J-1.9001, Florida Administrative Code. The doctrine stated in *Abbott Laboratories* calls into question whether the Board has authority to adopt such a rule.

be adopted by applicable board rule. These sections of part II of chapter 475, F.S., include: 475.615, 475.617, 475.6175, 475.6235, 475.25, 475.624, 475.6245, 475.628, and 373.461 (relating to the restoration of water resources in the Lake Apopka Basin), F.S.

B. SECTION DIRECTORY:

Section 1 amends s. 455.271, F.S., to require only one renewal cycle of continuing education to reactivate a license.

Section 2 amends s. 468.4338, F.S., to reduce the required continuing education requirements to reactivate an inactive Community Association Manager license to only one cycle of hours required, instead of the hours required for the years the license was inactive.

Sections 3 and 4 amend ss. 468.8317 and 468.8417, F.S., to reduce the required continuing education requirements to reactivate an inactive home inspector license and a mold assessor or mold remediator license to only one cycle of hours required, instead of the hours required for the years the license was inactive.

Section 5 amends s. 475.615, F.S., to remove references to the Uniform Standards of Professional Appraisal Practice and provides the standards of professional practice will be established by board rule.

Sections 6 and 7 amend ss. 475.617 and 475.6175(1), F.S., to conform with other changes in the bill relating to the equivalency of board-adopted rules to the Uniform Standards of Professional Appraisal Practice.

Section 8 amends s. 477.0212(2), F.S., to provide the Board of Cosmetology shall require a licensee to complete one renewal cycle of continuing education requirements prior to renewing an inactive license.

Sections 9 - 12 amend ss. 481.217, 481.315, 489.116, and 489.519, F.S., to provide architects, interior designers, landscape architects, construction contractors, electrical contractors, and alarm system contractor licensees shall only be required to complete one renewal cycle of continuing education to reactivate a license.

Section 13 amends s. 475.6235(4), F.S., to remove references to the Uniform Standards of Professional Appraisal Practice and provides the standards of professional practice will be established by board rule. In addition, this section clarifies an application for registration of an appraisal management company shall expire one year after the date received "by the department".

Section 14 amends s. 468.391, F.S., to limit the application of criminal penalties relating to auctioneering.

Section 15 amends s. 475.25, F.S., to remove references to the Uniform Standards of Professional Appraisal Practice and provides the standards of professional practice will be established by board rule.

Section 16 amends s. 475.42, F.S., to eliminate rule violations of the Florida Real Estate Commission from the list of violations which may result in criminal penalties.

Section 17 amends subsection (14) of s. 475.624, F.S., to remove references to the Uniform Standards of Professional Appraisal Practice, to provide the standards of professional practice will be established by board rule.

Section 18 amends s. 475.6245(1), F.S., to provide the standards of professional practice will be established by board rule.

Sections 19 amends s. 475.626, F.S., to delete criminal penalties for persons who violate orders or rules of the Florida Real Estate Appraisal Board or related grounds for disciplinary action.

Sections 20 and 21 amend ss. 476.194 and 477.0265, F.S., to delete criminal penalties for persons who commit certain violations relating to barbering and cosmetology.

Sections 22 amends s. 475.628, F.S., to remove references to the Uniform Standards of Professional Appraisal Practice, to provide the standards of professional practice will be established by board rule.

Section 23 amends s. 373.461(5)(c), F.S., to remove references to the Uniform Standards of Professional Appraisal Practice as it relates to water resources and provides the standards of professional practice will be established by rule of the Florida Real Estate Appraisal Board.

Section 24. Provides an effective date of July 1, 2012.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   The bill may have an insignificant negative fiscal impact on DBPR's Regulatory Trust Fund related to the reduction in fees, fines, and penalties.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill provides a reduction in the continuing education requirements for activating an inactive license. The reduction in requirements and potential for fee waivers would decrease costs to licensees.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

The bill reduces the required continuing education requirements to reactivate an inactive license to only one cycle of hours required, instead of the hours required for the years the license was inactive. Section 11 of the bill requires licensed contractors who activate an inactive or delinquent license to "...meet all continuing education requirements prescribed by the board." The Construction Industry Licensing Board has adequate existing rulemaking authority under ss. 489.108 and 489.115(4)(b), F.S.

Section 22 of the bill provides the standards of professional practice for real estate appraisers will be established by board rule and creates adequate rulemaking authority in the amendment to s. 475.628, F.S.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.

A bill to be entitled

An act relating to reducing and streamlining regulations; amending ss. 455.271, 468.4338, 468.8317, 468.8417, 475.615, 475.617, 475.6175, 477.0212, 481.217, 481.315, 489.116, and 489.519, F.S.; revising the continuing education requirements for reactivating a license, certificate, or registration to practice certain professions and occupations regulated by the Department of Business and Professional Regulation or a board or council within the department, including community association management, home inspection, mold-related services, real estate appraisal, cosmetology, architecture and interior design, landscape architecture, construction contracting, and electrical and alarm system contracting; amending s. 475.6235, F.S.; revising registration requirements for appraisal management companies; amending ss. 468.391, 475.25, 475.42, 475.624, 475.6245, 475.626, 476.194, and 477.0265, F.S., relating to auctioneering, real estate brokering and appraisal, barbering, and cosmetology; revising language with respect to certain penalties; revising grounds for discipline to which penalties apply; amending s. 475.628, F.S.; requiring the Florida Real Estate Appraisal Board to adopt rules establishing professional practice standards; amending s. 373.461, F.S.; requiring certain appraisers to follow specific standards of professional practice in

appraisals involving the restoration of the Lake Apopka Basin; providing an effective date.

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

Section 1. Subsection (10) of section 455.271, Florida Statutes, is amended to read:

455.271 Inactive and delinquent status.—

(10) The board, or the department when there is no board, may not require ~~Before reactivation,~~ an inactive or delinquent licensee, except for a licensee under chapter 473 or chapter 475, to complete more than one renewal cycle of ~~shall meet the same~~ continuing education to reactivate a license. ~~requirements, if any, imposed on an active status licensee for all biennial licensure periods in which the licensee was inactive or delinquent. This subsection does not apply to persons regulated under chapter 473.~~

Section 2. Section 468.4338, Florida Statutes, is amended to read:

468.4338 Reactivation; continuing education.—The council shall prescribe by rule continuing education requirements for reactivating a license. The continuing education requirements for reactivating a license may not exceed more than one renewal cycle of continuing education ~~exceed 10 classroom hours for each year the license was inactive~~.

Section 3. Subsection (2) of section 468.8317, Florida Statutes, is amended to read:

468.8317 Inactive license.—

(2) A license that becomes ~~has become~~ inactive may be reactivated upon application to the department. The department may prescribe by rule continuing education requirements as a condition of reactivating a license. The rules may not require more than one renewal cycle of continuing education to reactivate ~~requirements for reactivating~~ a license ~~may not exceed 14 hours for each year the license was inactive~~.

Section 4. Subsection (2) of section 468.8417, Florida Statutes, is amended to read:

468.8417 Inactive license.—

(2) A license that becomes ~~has become~~ inactive may be reactivated upon application to the department. The department may prescribe by rule continuing education requirements as a condition of reactivating a license. The rules may not require more than one renewal cycle of continuing education to reactivate ~~requirements for reactivating~~ a license ~~may not exceed 14 hours for each year the license was inactive~~.

Section 5. Subsection (5) of section 475.615, Florida Statutes, is amended to read:

475.615 Qualifications for registration or certification.—

(5) At the time of filing an application for registration or certification, the applicant must sign a pledge indicating that upon becoming registered or certified, she or he will comply with the standards of professional practice established by rule of the board, including standards for the development or communication of a real estate appraisal, ~~to comply with the Uniform Standards of Professional Appraisal Practice upon registration or certification~~ and must indicate in writing that

she or he understands the types of misconduct for which disciplinary proceedings may be initiated. The application shall expire 1 year after the date received by the department.

Section 6. Subsection (1), paragraph (b) of subsection (2), and paragraph (b) of subsection (3) of section 475.617, Florida Statutes, are amended to read:

475.617 Education and experience requirements.—

(1) To be registered as a trainee appraiser, an applicant must present evidence satisfactory to the board that she or he has successfully completed at least 100 hours of approved academic courses in subjects related to real estate appraisal, which shall include coverage of the Uniform Standards of Professional Appraisal Practice, or its equivalent, as established by rule of the board, from a nationally recognized or state-recognized appraisal organization, career center, accredited community college, college, or university, state or federal agency or commission, or proprietary real estate school that holds a permit pursuant to s. 475.451. The board may increase the required number of hours to not more than 125 hours. A classroom hour is defined as 50 minutes out of each 60-minute segment. Past courses may be approved on an hour-for-hour basis.

(2) To be certified as a residential appraiser, an applicant must present satisfactory evidence to the board that she or he has met the minimum education and experience requirements prescribed by rule of the board. The board shall prescribe by rule education and experience requirements that meet or exceed the following real property appraiser

qualification criteria adopted on February 20, 2004, by the Appraisal Qualifications Board of the Appraisal Foundation:

(b) Has successfully completed at least 200 classroom hours, inclusive of examination, of approved academic courses in subjects related to real estate appraisal, which shall include a 15-hour National Uniform Standards of Professional Appraisal Practice course, or its equivalent, as established by rule of the board, from a nationally recognized or state-recognized appraisal organization, career center, accredited community college, college, or university, state or federal agency or commission, or proprietary real estate school that holds a permit pursuant to s. 475.451. A classroom hour is defined as 50 minutes out of each 60-minute segment. Past courses may be approved by the board and substituted on an hour-for-hour basis.

(3) To be certified as a general appraiser, an applicant must present evidence satisfactory to the board that she or he has met the minimum education and experience requirements prescribed by rule of the board. The board shall prescribe education and experience requirements that meet or exceed the following real property appraiser qualification criteria adopted on February 20, 2004, by the Appraisal Qualifications Board of the Appraisal Foundation:

(b) Has successfully completed at least 300 classroom hours, inclusive of examination, of approved academic courses in subjects related to real estate appraisal, which shall include a 15-hour National Uniform Standards of Professional Appraisal Practice course, or its equivalent, as established by rule of the board, from a nationally recognized or state-recognized

appraisal organization, career center, accredited community college, college, or university, state or federal agency or commission, or proprietary real estate school that holds a permit pursuant to s. 475.451. A classroom hour is defined as 50 minutes out of each 60-minute segment. Past courses may be approved by the board and substituted on an hour-for-hour basis.

Section 7. Subsection (1) of section 475.6175, Florida Statutes, is amended to read:

475.6175 Registered trainee appraiser; postlicensure education required.—

(1) The board shall prescribe postlicensure educational requirements in order for a person to maintain a valid registration as a registered trainee appraiser. If prescribed, the postlicensure educational requirements consist of one or more courses which total no more than the total educational hours required to qualify as a state certified residential appraiser. Such courses must be in subjects related to real estate appraisal and shall include coverage of the Uniform Standards of Professional Appraisal Practice <u>or its equivalent, as established by rule of the board</u>. Such courses are provided by a nationally or state-recognized appraisal organization, career center, accredited community college, college, or university, state or federal agency or commission, or proprietary real estate school that holds a permit pursuant to s. 475.451.

Section 8. Subsection (2) of section 477.0212, Florida Statutes, is amended to read:

477.0212 Inactive status.—

(2) The board shall adopt ~~promulgate~~ rules relating to licenses that ~~which have~~ become inactive and for the renewal of inactive licenses. The rules may not require more than one renewal cycle of continuing education to reactivate a license. The board shall prescribe by rule a fee not to exceed $50 for the reactivation of an inactive license and a fee not to exceed $50 for the renewal of an inactive license.

Section 9. Subsection (1) of section 481.217, Florida Statutes, is amended to read:

481.217 Inactive status.—

(1) The board may prescribe by rule continuing education requirements as a condition of reactivating a license. The rules may not require more than one renewal cycle of continuing education to reactivate ~~requirements for reactivating~~ a license for a registered architect or interior designer ~~may not exceed 12 contact hours for each year the license was inactive. The minimum continuing education requirement for reactivating a license for a registered interior designer shall be those of the most recent biennium plus one-half of the requirements in s. 481.215 for each year or part thereof during which the license was inactive~~. The board may ~~shall~~ only approve continuing education for an interior designer which ~~that~~ builds upon the basic knowledge of interior design.

Section 10. Subsection (1) of section 481.315, Florida Statutes, is amended to read:

481.315 Inactive status.—

(1) A license that has become inactive or delinquent may be reactivated under this section upon application to the

department and payment of any applicable biennial renewal or delinquency fee, or both, and a reactivation fee. The board may not require a licensee to complete more than one renewal cycle of continuing education requirements ~~The board may prescribe by rule continuing education requirements as a condition of reactivating the license. The continuing education requirements for reactivating a license may not exceed 12 classroom hours for each year the license was inactive~~.

Section 11. Subsections (3) and (6) of section 489.116, Florida Statutes, are amended to read:

489.116 Inactive and delinquent status; renewal and cancellation notices.—

(3) An inactive status certificateholder or registrant may change to active status at any time, if ~~provided~~ the certificateholder or registrant meets all requirements for active status, pays any additional licensure fees necessary to equal those imposed on an active status certificateholder or registrant, ~~and~~ pays any applicable late fees, and meets all continuing education requirements prescribed by the board.

(6) The board may not require an inactive certificateholder or registrant to complete more than one renewal cycle of ~~shall comply with the same~~ continuing education for reactivating a certificate or registration ~~requirements, if any, that are imposed on an active status certificateholder or registrant~~.

Section 12. Subsection (1) of section 489.519, Florida Statutes, is amended to read:

489.519 Inactive status.—

(1) A certificate or registration that becomes ~~has become~~ inactive may be reactivated under s. 489.517 upon application to the department. The board may not require a licensee to complete more than one renewal cycle of ~~prescribe, by rule,~~ continuing education to reactivate ~~requirements as a condition of reactivating~~ a certificate or registration. ~~The continuing education requirements for reactivating a certificate or registration may not exceed 12 classroom hours for each year the certificate or registration was inactive.~~

Section 13. Subsection (4) of section 475.6235, Florida Statutes, is amended to read:

475.6235 Registration of appraisal management companies required.—

(4) At the time of filing an application for registration of an appraisal management company, each person listed in paragraph (2)(f) must sign a pledge to comply with the standards of professional practice established by rule of the board, including standards for the development or communication of a real estate appraisal, ~~Uniform Standards of Professional Appraisal Practice upon registration~~ and must indicate in writing that she or he understands the types of misconduct for which disciplinary proceedings may be initiated. The application shall expire 1 year after the date received by the department.

Section 14. Section 468.391, Florida Statutes, is amended to read:

468.391 Penalty.—Any auctioneer, apprentice, or auction business or any owner or manager thereof, or, in the case of corporate ownership, any substantial stockholder of the

corporation owning the auction business, who operates without an active license or violates any of the provisions ~~provision~~ of the prohibited acts listed under s. 468.389(1)(c), (e), (f), (h), and (i) commits a felony of the third degree, punishable as provided in s. 775.082 or s. 775.083.

Section 15. Paragraph (t) of subsection (1) of section 475.25, Florida Statutes, is amended to read:

475.25 Discipline.—

(1) The commission may deny an application for licensure, registration, or permit, or renewal thereof; may place a licensee, registrant, or permittee on probation; may suspend a license, registration, or permit for a period not exceeding 10 years; may revoke a license, registration, or permit; may impose an administrative fine not to exceed $5,000 for each count or separate offense; and may issue a reprimand, and any or all of the foregoing, if it finds that the licensee, registrant, permittee, or applicant:

(t) Has violated any standard of professional practice established by rule of the Florida Real Estate Appraisal Board, including standards for the development or communication of a real estate appraisal ~~or other provision of the Uniform Standards of Professional Appraisal Practice, as defined in s. 475.611~~, as approved and adopted by the Appraisal Standards Board of the Appraisal Foundation, as defined in s. 475.611. This paragraph does not apply to a real estate broker or sales associate who, in the ordinary course of business, performs a comparative market analysis, gives a broker price opinion, or gives an opinion of value of real estate. However, in no event

may this comparative market analysis, broker price opinion, or opinion of value of real estate be referred to as an appraisal, as defined in s. 475.611.

Section 16. Paragraphs (f) through (o) of subsection (1) of section 475.42, Florida Statutes, are redesignated as paragraphs (e) through (n), respectively, and present paragraph (e) of that subsection is amended to read:

475.42 Violations and penalties.—

(1) VIOLATIONS.—

~~(e) A person may not violate any lawful order or rule of the commission which is binding upon her or him.~~

Section 17. Subsection (14) of section 475.624, Florida Statutes, is amended to read:

475.624 Discipline of appraisers.—

The board may deny an application for registration or certification of an appraiser; may investigate the actions of any appraiser registered, licensed, or certified under this part; may reprimand or impose an administrative fine not to exceed $5,000 for each count or separate offense against any such appraiser; and may revoke or suspend, for a period not to exceed 10 years, the registration, license, or certification of any such appraiser, or place any such appraiser on probation, if the board finds that the registered trainee, licensee, or certificateholder:

(14) Has violated any standard <u>of professional practice, including standards</u> for the development or communication of a real estate appraisal<u>, as established by rule of the board</u> ~~or other provision of the Uniform Standards of Professional~~

~~Appraisal Practice~~.

Section 18. Paragraph (n) of subsection (1) of section 475.6245, Florida Statutes, is amended to read:

475.6245 Discipline of appraisal management companies.—

(1) The board may deny an application for registration of an appraisal management company; may investigate the actions of any appraisal management company registered under this part; may reprimand or impose an administrative fine not to exceed $5,000 for each count or separate offense against any such appraisal management company; and may revoke or suspend, for a period not to exceed 10 years, the registration of any such appraisal management company, or place any such appraisal management company on probation, if the board finds that the appraisal management company or any person listed in s. 475.6235(2)(f):

(n) Has instructed an appraiser to violate any standard <u>of professional practice established by rule of the board, including standards</u> for the development or communication of a real estate appraisal or other provision of the Uniform Standards of Professional Appraisal Practice.

Section 19. Paragraphs (d) through (h) of subsection (1) of section 475.626, Florida Statutes, are redesignated as paragraphs (b) through (f), respectively, and present paragraphs (b) and (c) of that subsection are amended to read:

475.626 Violations and penalties.—

(1) A person may not:

~~(b) Violate any lawful order or rule of the board which is binding upon her or him.~~

~~(c) If a registered trainee appraiser or a licensed or~~

~~certified appraiser, commit any conduct or practice set forth in s. 475.624.~~

Section 20. Paragraphs (c) through (f) of subsection (1) of section 476.194, Florida Statutes, are redesignated as paragraphs (b) through (e), respectively, and present paragraph (b) of that subsection is amended to read:

476.194 Prohibited acts.—

(1) It is unlawful for any person to:

~~(b) Engage in willful or repeated violations of this act or of any of the rules adopted by the board.~~

Section 21. Paragraphs (d) through (h) of subsection (1) of section 477.0265, Florida Statutes, are redesignated as paragraphs (c) through (g), respectively, and present paragraph (c) of that subsection is amended to read:

477.0265 Prohibited acts.—

(1) It is unlawful for any person to:

~~(c) Engage in willful or repeated violations of this chapter or of any rule adopted by the board.~~

Section 22. Section 475.628, Florida Statutes, is amended to read:

475.628 Professional standards for appraisers registered, licensed, or certified under this part.—The board shall adopt rules establishing standards of professional practice that meet or exceed nationally recognized standards of appraisal practice, including standards adopted by the Appraisal Standards Board of the Appraisal Foundation. Each appraiser registered, licensed, or certified under this part must ~~shall~~ comply with the rules ~~Uniform Standards of Professional Appraisal Practice~~. Statements

on appraisal standards which may be issued for the purpose of clarification, interpretation, explanation, or elaboration through the Appraisal Foundation shall also be binding on any appraiser registered, licensed, or certified under this part, upon adoption by rule of the board.

Section 23. Paragraph (c) of subsection (5) of section 373.461, Florida Statutes, is amended to read:

373.461 Lake Apopka improvement and management.—

(5) PURCHASE OF AGRICULTURAL LANDS.—

(c) The district shall explore the availability of funding from all sources, including any federal, state, regional, and local land acquisition funding programs, to purchase the agricultural lands described in paragraph (a). It is the Legislature's intent that, if such funding sources can be identified, acquisition of the lands described in paragraph (a) may be undertaken by the district to purchase these properties from willing sellers. However, the purchase price paid for acquisition of such lands that were in active cultivation during 1996 may ~~shall~~ not exceed the highest appraisal obtained by the district for these lands from a state-certified general appraiser following the standards of professional practice established by rule of the Florida Real Estate Appraisal Board, including standards for the development or communication of a real estate appraisal ~~Uniform Standards of Professional Appraisal Practice~~. This maximum purchase price limitation may ~~shall~~ not include, nor be applicable to, that portion of the purchase price attributable to consideration of income described in paragraph (b), or that portion attributable to related

facilities, or closing costs.

Section 24. This act shall take effect July 1, 2012.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB RRS 12-02 Relating to Administrative Authority
SPONSOR(S): Rulemaking & Regulation Subcommittee
TIED BILLS: **IDEN./SIM. BILLS:** SB 1312

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Rulemaking & Regulation Subcommittee		Miller	Rubottom

SUMMARY ANALYSIS

Officers of the executive branch of government implement and enforce the law through administrative departments organized by the Legislature[1] and powers delegated directly by the Legislature. The Legislature has a continuing responsibility to supervise and regulate the exercise of powers allotted or delegated to administrative agencies. The Legislature is also responsible to monitor delegations of power, such as administrative rulemaking, to determine the continuing need for those delegations. PCB RRS 12-02 addresses these aspects of administrative authority.

Rulemaking is the express authority delegated by the Legislature to an administrative agency to adopt policy statements that implement or interpret statute and are generally applicable to the public. Unless otherwise provided by law, rulemaking must be conducted according to the process established in the Administrative Procedure Act ("APA").[2] The PCB supplies express legislative authorization for the direction and supervision by elected officials over the exercise of administrative authority by appointees of those officials, except when the Legislature clearly and expressly provides otherwise. This responds to an invitation for legislative clarification by the Florida Supreme Court in *Whiley v. Scott.*[3]

The PCB also exercises legislative supervision of delegated powers by repealing or revising certain statutory provisions authorizing rulemaking. A large number of statutes which authorize agency rulemaking have proven unnecessary or for other reasons has never been used. Some statutes contain unnecessary, confusing or obsolete rulemaking language. The PCB repeals or revises a number of these provisions.

Significantly, the PCB:

- Makes findings clarifying the Legislature's intent that non-elected agency heads appointed by and serving at the pleasure of the Governor are subject to the direction and supervision of elected officers who are directly accountable to the People of Florida.
- Clarifies that the laws placing the administration of executive branch departments under the direct supervision of agency heads appointed by and serving at the pleasure of the Governor do not imply that those non-elected agency heads exercise any power independent from the Governor's direction and supervision but exercise such independence only when expressly provided by law.
- Clarifies that the APA requirements for certain actions to be taken by agency heads do not establish non-elected appointees serving at the pleasure of the Governor as exercising such power or authority exempt from the Governor's direction and supervision, unless expressly stated otherwise in law.
- Codifies the historically-accepted principle that appointees serving at the pleasure of the Governor remain subject to the Governor's direction and supervision. Because the authority to remove an agency head from office at any time, required by the Florida Constitution and incorporated in general law, necessarily incorporates the authority to oversee and directly influence the appointee in the performance of assigned duties, the power to remove is analogous to the power to direct unless altered by express statutory language to the contrary.
- Authorizes the Office of Statutory Revision to include duplicative, redundant or unused rulemaking authority in revisers bill recommendations as part of the ongoing process of statutory revision.
- Repeals certain statutory provisions containing duplicative, redundant or unused rulemaking authority.

[1] Section 6, Art. IV, Fla. Const.
[2] Ch. 120, F.S.
[3] --So. 3d--, 2011 WL 3568804, 2011 Lexis 1900, 36 Fla. L. Weekly S 451 (Fla. 2011).

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

1. Administrative Authority: Supervision and Direction of Rulemaking

a. Structure of Executive Branch

The People of Florida possess in themselves all political power of this State[4] and vest that power in three governmental branches: Legislative, Executive, and Judicial.[5] Unlike the U.S. Constitution, the Florida Constitution is not a limited grant of power to the government but a vesting of the People's full and complete[6] political power subject to specific express limitations.[7] Since the founding of the state each version of the Constitution reflected the 1787 national constitution's philosophy of separated powers including the established and accepted view that good government requires executive powers of significant strength and energy.[8]

As with every prior version of the state constitution since 1845, the present Florida Constitution vests the supreme executive power in the Governor.[9] This is not the complete executive power because certain executive authority is distributed to the Cabinet Officers, including the Attorney General,[10] Chief Financial Officer,[11] and Commissioner of Agriculture,[12] entities composed of the Governor and two or more Cabinet Officers,[13] or separate entities.[14] [15] Other than those departments or entities directly created in the Constitution, the Legislature has authority to organize the Executive Branch by law into no more than twenty-five departments. The administration of these statutorily-created departments must be placed under the direct supervision of the Governor, the Lieutenant Governor, the Governor and Cabinet, a Cabinet member, or an officer or board appointed by and serving at the pleasure of the Governor.[16]

The language in Section 6 of Article IV of the Constitution requires the Legislature to *allot* executive branch *functions* among the various departments and place those departments under the *administration* of a specified officer. The Constitution does not authorize the Legislature to *create* any executive power but only to place the supervision of an executive department under one of the enumerated officers.

The executive branch organization authorized in the Constitution was implemented in 1969.[17] The principle organizational unit is the "department."[18] The Florida Statutes use the term "agency" more broadly; depending

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[4] Preamble; Section 1, Art. I, Fla. Const.
[5] Section 3, Art. II; s. 1, Art. III; s. 1, Art. IV; s. 1, Art. V; Fla. Const.
[6] Often referred to as "plenary" power.
[7] *Florida House of Representatives v. Crist,* 999 So. 2d 601, 611 (Fla. 2008).
[8] Alexander Hamilton, *The Federalist, No. 70,* in Michael Lloyd Chadwick (ed.), *The Federalist* (Global Affairs Publishing Company, Washington, D.C., 1987), 380-381.
[9] Section 1(a), Art. IV, Fla. Const.
[10] Section 4(b), Art. IV, Fla. Const.
[11] Section 4(c), Art. IV, Fla. Const.
[12] Section 4(d), Art. IV, Fla. Const.
[13] Section 4(e), (f), (g), Art. IV, Fla. Const.
[14] One example is the Fish and Wildlife Conservation Commission. Section 9, Art. IV, Fla. Const.
[15] The Lt. Governor is also named in Article IV but no particular authority is distributed to that office. Section 2, Art. IV, Fla. Const.
[16] "Executive departments.—All functions of the executive branch of state government shall be allotted among not more than twenty-five departments, exclusive of those specifically provided for or authorized in this constitution. The administration of each department, unless otherwise provided in this constitution, shall be placed by law under the direct supervision of the governor, the lieutenant governor, the governor and cabinet, a cabinet member, or an officer or board appointed by and serving at the pleasure of the governor, except:
(a) When provided by law, confirmation by the senate or the approval of three members of the cabinet shall be required for appointment to or removal from any designated statutory office.
(b) Boards authorized to grant and revoke licenses to engage in regulated occupations shall be assigned to appropriate departments and their members appointed for fixed terms, subject to removal only for cause." Section 6, Art. IV, Fla. Const. This section has not been amended since its adoption. Section 6, Art. IV, Fla. Const. (historical note).
[17] Ch. 69-106, Laws of Florida.

on the context in a particular statute, "agency" could mean an officer, official, department, commission, board, or other unit of government.[19] The "head" in charge of a department could be an individual or a board,[20] but a "Secretary" is specifically defined as an individual appointed by the Governor to head a department but is not otherwise named in the Constitution.[21]

Unless otherwise provided by law, agency heads are required to plan, direct, coordinate, and execute the powers, duties, and functions vested in or assigned by statute to the department or other unit of government over which the agency head has responsibility.[22] This includes exercising any delegated authority "...to adopt rules pursuant and limited to the powers, duties, and functions transferred to the department."[23] Under the Constitution, the Legislature may provide by law for approval by the Senate or three members of the Cabinet before appointment to or removal from a statutorily-created office;[24] however, the members of a board authorized to grant and revoke licenses to engage in a regulated program must be appointed for fixed terms and may be removed only for cause.[25] While the appointment of a Secretary to head an agency is subject to Senate approval, no such condition has been generally imposed on the Governor's power to remove an appointed Secretary. [26]

b. Role of the Governor as Chief Executive

1) Historical Development of the Present Constitutional Text

The clear intent of the Constitution is for continuing oversight and responsibility for executive departments to remain under the elected constitutional officers. "Supreme executive power" is vested in the Governor,[27] the identical phrase used in the state's initial constitution and all versions since 1845.[28] In contrast, the provision authorizing executive branch organization was adopted only in 1968 and has never been amended.[29]

Section 6, Article IV of the Florida Constitution was part of the proposed Constitution approved by the Legislature in special session during June 24 – July 3, 1968.[30] The process of developing the language in this section began with the Constitution Revision Commission which was created by general law in 1965[31] to prepare proposed revisions for consideration by the Legislature.

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[18] Sections 20.03(2), 20.04(1), F.S.
[19] Section 20.03(11), F.S.
[20] Section 20.03(4), F.S.
[21] Section 20.03(5), F.S.
[22] Section 20.05(1)(a), F.S.
[23] Section 20.05(1)(e), F.S.
[24] Section 6(a), Art. IV, Fla. Const. This provision is generally implemented by statute. Section 20.05(2), F.S. Removal of officials appointed to an office created by the Legislature under Chapter 20, F.S., does not require such approval and is left to the discretion of the appointing authority.
[25] Section 6(b), Art. IV, Fla. Const.
[26] Section 6, Art. IV, Fla. Const.; Section 20.05(2), F.S.
[27] "The supreme executive power shall be vested in a governor, who shall be commander-in-chief of all military forces of the state not in active service of the United States. The governor shall take care that the laws be faithfully executed, commission all officers of the state and counties, and transact all necessary business with the officers of government. The governor may require information in writing from all executive or administrative state, county or municipal officers upon any subject relating to the duties of their respective offices. The governor shall be the chief administrative officer of the state responsible for the planning and budgeting for the state." Section 1(a), Art. IV, Fla. Const.
[28] "The supreme executive power" is the precise, identical phrase used since the drafting of the State's first constitution: s. 1, Art. III, Fla. Const. (1845) [this version is commonly known as the Constitution of 1838 for the year in which it was drafted]; s. 1, Art. III, Fla. Const. (1861) [this version incorporated the Ordinance of Secession]; s. 1, Art. III, Fla. Const. (1865) [proposed after the Civil War to repeal the Ordinance of Secession, this version never took effect]; s. 1, Art. V, Fla. Const. (1868); s. 1, Art. IV, Fla. Const. (1885); s. 1(a), Art. IV, Fla. Const. (1968).
[29] Section 6, Art. IV, Florida Constitution, and historical notes.
[30] The Journal of the Florida House of Representatives: Proceedings at Tallahassee of the Forty-First Legislature (under the Constitution of 1885) – Special Session June 24, 1968 – July 3, 1968, p. 536-574. The final form of the text for s. 6, Art. IV, is found on pages 554-555.
[31] Ch. 65-561, Laws of Florida. Florida Archives, Record Group 001006, Series 727, Carton 1, Folder 1.

During debate on the Executive Article, the Commission considered Amendment 12 which would have replaced the list of officers eligible to control executive agencies, as originally suggested in its first drafts of the new provision for organizing the executive branch, with the phrase "...as provided by law."[32] Considering this proposal, members of the Commission expressed concern that leaving the designation of those officers with final authority to direct and control agencies solely to the Legislature's discretion could result in laws placing all executive branch departments (not otherwise directed by the Constitution) under non-elected individuals without accountability to properly-elected constitutional officers.[33] Commission members C.W. Young and Robert Ervin stated they understood the new section on executive branch organization was to operate in concert with s. 1(a), Article IV, and that all administrative agencies ultimately must be under the controlling authority of an elected constitutional officer; which would necessarily be the Governor unless expressly delegated to one or more other constitutional officers or the Governor and Cabinet.[34] Commission member John E. Mathews, Jr., said the wording of the Florida Constitution supported this view. The U.S. Constitution provides only that "the executive power" was vested in the President, yet when Congress creates an agency within the executive branch it automatically comes under the control and direction of the President. Commissioner Mathews observed the Florida Constitution is much stronger, vesting "the supreme executive power" in the Governor. In his opinion, this phrase would be both a guide and a constraint on the Legislature to prevent allocating executive power outside the Governor or other elected Constitutional officers.[35] The Commission rejected proposed Amendment 12.[36]

The final draft submitted by the Commission to the Legislature included the following proposed limitation on executive power to control the reorganized executive branch:

> The governor and the cabinet shall exercise with respect to the policies of executive departments those powers provided by law.[37]

This language would have authorized limiting or reallocating executive powers by general law but was expressly rejected by the Legislature[38] before approving the present version adopted by the People in November, 1968.

2) *Governor's Authority to Supervise and Direct Executive Branch Agencies*

Just as the Legislature is presumed to understand the meaning and import of the language used in each law passed,[39] the Legislature in 1968 understood the meaning of the language approved in the version of the Constitution submitted to the People. In the Constitution's 1) omission of express language permitting legislated limitations on the authority of elected officials to supervise and direct executive agencies, and 2) inclusion of language which authorized only the allotting of executive *functions* among agencies the *administration* of which would be placed under the *supervision* of specified officers, the People and the Legislature both intended the administration of every executive agency to operate under the executive power vested in the Governor and the other elected executive constitutional officers.

The Legislature cannot disregard any word of the Constitution as mere surplusage but must follow the will of the People as stated in the document. When interpreting the Constitution the main purpose is to determine the

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[32] Proposed Amendment to Amendment 12 under consideration. *Debate of the Florida Constitution Revision Commission,* Vol. 28 (bound typewritten transcript) (herein *Debate of FCRC*), 1133-1134. [The bound version was organized by topic after completion of the transcript, resulting in some page numbers being out of sequence.]
[33] *Debate of FCRC,* 184-185, 187, 190-192.
[34] *Debate of FCRC,* 184-192.
[35] *Debate of FCRC*, 195.
[36] *Debate of FCRC, 195.*
[37] Section 4(a), Art. IV, final draft of proposed constitution revision, Florida Archives, Record Group 001006, Series 727, Carton 1, Folder 4. This relevant language in this section of the proposed Constitution would be renumbered as section 6 in the final version adopted by the Legislature.
[38] Amendment 700 filed by the House Liaison Committee, Rep. Pettigrew, striking s. 4(a) of proposed Art. IV, adopted on August 30, 1967. Florida Archives, Record Group 001006, Series 727, Carton 4, Folder 10.
[39] *Cason v. Dept. of Management Services*, 944 So. 2d 306, 315 (Fla. 2006).

intent of the framers and give effect to the objective the language was designed to accomplish.[40] This includes giving full effect to each part of the document[41] and giving words their ordinary and customary meaning absent expressed intent for a different interpretation.[42] Finally, the interpretation given must not lead to an unreasonable or absurd result.[43] Applying these principles shows the language of section 6, Article IV in the Constitution authorizes the Legislature to place the administration of an executive agency under the direct supervision of an individual appointed by and serving at the pleasure of the Governor, but that allotment of supervision appears to flow from and remains subject to the executive power vested in the Governor under s. 1, Article IV, unless the Constitution or statute expressly states otherwise.

An official appointed by the Governor to head an administrative agency is a state officer and exercises a portion of the state sovereign power to execute the particular laws assigned to that agency.[44] The understanding of the Legislature when revising Article IV in 1968 and subsequent decisions of the Florida Supreme Court[45] show the intent when restructuring the executive branch was for the duly elected state officers making the appointments to remain ultimately responsible for the actions of their appointees.

The phrase "supreme executive power" has not been expressly defined in Florida[46] but the construction given to similar phrasing by other states is instructive. The New Hampshire Constitution vests the executive power of the state in a "supreme executive magistrate, who shall be styled the Governor of the State of New Hampshire..."[47] The New Hampshire Supreme Court finds the phrase is not mere verbiage but provides "...such power as will secure an efficient execution of the laws..."[48] The Alabama Constitution vests executive power in a manner similar to Florida[49] and the Alabama Supreme Court interprets the phrase as providing such power as necessary for the Governor to perform all duties, including the faithful execution of the laws, as the Constitution requires of the state's highest executive authority.[50]

After the People adopted the constitutional reforms in 1968, the Legislature reorganized the executive branch into departments as authorized by new s. 6, Article IV.[51] Some departments are placed expressly under the direct supervision of an elected constitutional officer.[52] Most statutorily-created departments are placed under the direct supervision of a Secretary appointed by the Governor with the consent of the Senate but serving at the pleasure of the Governor.[53] In the context of ss. 1(a) and 6 of Article IV, these organizational statutes demonstrate the Legislature's understanding that the Constitution did not authorize creating administrative power in these appointees which would be unsupervised by any elected official. Defining "agency head" by statute[54] cannot alter the constitutional balance of authority as vested in Article IV of the Constitution.[55]

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[40] *Metropolitan Dade County v. City of Miami*, 396 So. 2d 144, 146 (Fla. 1980); *State ex rel. Dade County v. Dickinson*, 230 So. 2d 130 (Fla. 1969); *State ex rel. West v. Gray*, 74 So. 2d 114 (Fla. 1954).

[41] *Advisory Opinion to the Governor-1996 Amendment 5 (Everglades)*, 706 So. 2d 278, 281 (Fla. 1997); *Dept. of Environmental Protection v. Millender*, 666 So. 2d 882, 886 (Fla. 1996).

[42] *Benjamin v. Tandem Healthcare, Inc.*, 998 So. 2d 566, 570 (Fla. 2008).

[43] *City of St. Petersburg v. Briley, Wild & Associates,* 239 So. 2d 817, 822 (Fla. 1970).

[44] "'The term "office" implies a delegation of a portion of the sovereign power to, and possession of it by, the person filling the office; a public office being an agency for the state, and the person whose duty it is to perform the agency being a public officer.'" *State ex rel. Clyatt v. Hocker*, 22 So. 721, 723, 39 Fla. 477, 486 (Fla. 1897).

[45] *Jones v. Chiles*, 638 So. 2d 48, 50 (Fla. 1994).

[46] In *Whiley v. Scott*, --So. 3d--, 2011 WL 3568804, 2011 Lexis 1900, 36 Fla. L. Weekly S 451 (Fla. 2011), the majority of the Florida Supreme Court observed s. 1(a), Art. IV, Fla. Const., did not make the Governor all-powerful: "(t)he phrase 'supreme executive power' is not so expansive, however, and to grant such a reading ignores the fundamental principle that our state constitution is a limitation upon, rather than a grant of, power." The Court, however, does not articulate what power is *limited* by vesting supreme executive power in the Governor.

[47] Art. 41, New Hampshire Constitution, at http://www.nh.gov/constitution/governor.html (last accessed 12/14/2011).

[48] *Opinion of the Justices*, 27 A.3d 859, 866-867, 162 N.H. 160 (2011).

[49] "The supreme executive power of this state shall be vested in a chief magistrate, who shall be styled "The Governor of the State of Alabama." Section 113, Art. 5, Alabama Constitution.

[50] *Riley v. Cornerstone Community Outreach, Inc.,* 57 So. 3d 704, 719-720 (Ala. 2010), quoting with approval *State ex rel. Stubbs v. Dawson,* 86 Kan. 180, 187–88, 119 P. 360, 363 (1911).

[51] Ch. 69-106, Laws of Florida, codified as Ch. 20, F.S.

[52] Section 20.121(1), F.S. places the Department of Financial Services under the Chief Financial Officer.

[53] For example, the Department of Business and Professional Regulation. Section 20.165(1), F.S.

[54] Section 120.52(3), F.S.

[55] To do so raises issues under the separation of powers doctrine, s. 3, Art. II, Fla. Const.

Current law does not define precisely the phrase "serving at the pleasure" but a clear reading of the words shows the Governor has the power to terminate that service whenever the office holder no longer comports with the Governor's expectations and requirements for the position, or that form of action that the Governor finds "pleasing." Similar to an at-will employee, the appointee's tenure in office and continued compensation may be ended by the Governor at any time. As observed in the debate about the proposed power of Congress to alter the compensation of judges:

> "'In the general course of human nature, a power over a man's subsistence amounts to a power over his will...'"[56]

By operation of such basic assumptions, an appointee serving at the Governor's pleasure, who intends to retain that position, necessarily will attend to the Governor's directions for discharging those duties and should expect some degree of supervision if the Governor is to diligently exercise his prerogative to remain pleased by the appointee's service. If the constitutional vesting of supreme executive power and the appointment of non-elected officials to direct the administration of statutorily-created executive agencies is reasonably combined with such generally-accepted understanding of "serving at the pleasure," then the Constitution clearly presumes that the Governor may be expected to direct and supervise the appointees serving at the Governor's pleasure.

c. Rulemaking Under Florida's APA

Under the APA, the Legislature has authorized three separate means by which an administrative agency in the executive branch may issue a binding determination of the law placed under its jurisdiction. First is a final order rendered against specific parties after the opportunity for a hearing on notice; these are limited to the facts of the case and the parties named.[57] The second form is a declaratory statement, in which the agency grants a petition and renders an opinion on the applicability of a statute, rule, or order of the agency to the specific set of circumstances presented by a substantially-interested party.[58] The third is rulemaking.

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.[59] Rulemaking is the creation, development, establishment, or adoption of a rule.[60]

Rulemaking is a legislative function which may be delegated by the Legislature[61] by general law. To adopt a rule an agency must have an express grant of authority to implement a specific law by rulemaking.[62] The grant of rulemaking authority itself need not be detailed.[63] The specific statute being interpreted or implemented through rulemaking must provide specific standards and guidelines sufficient to preclude the administrative agency from exercising unbridled discretion in creating policy or applying the law.[64]

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[56] Alexander Hamilton, *The Federalist, No. 79*, in Michael Lloyd Chadwick (ed.), *The Federalist* (Global Affairs Publishing Company, Washington, D.C., 1987), 428. As observed by Chief Justice Ellis in his opinion concurring with the result in *State ex rel. Albritton v. Lee*: "'It would be in vain to declare that the different departments of government should be kept separate and distinct, while the legislature possessed a discretionary control over the salaries of the executive and judicial officers. This would be to disregard the voice of experience and the operation of invariable principles of human conduct. A control over a man's living is, in most cases, a control over his actions.'" *State ex rel. Albritton v. Lee,* 134 Fla. 59, 81, 183 So. 782, 790 (1938) (emphasis supplied).

[57] Sections 120.569(2)(l), 120.57, F.S.

[58] Section 120.565, F.S.

[59] 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).

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

[61] Section 1, Art. III, Fla. Const.; *Southwest Florida Water Management District v. Save the Manatee Club, Inc.,* 773 So. 2d 594 (Fla. 1st DCA 2000); *Dept. of Revenue v. Novoa*, 745 So. 2d 378, 380 (Fla. 1st DCA 1999).

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

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

[64] *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); *Askew v. Cross Key Waterways*, 372 So. 2d 913, 925 (Fla. 1979).

With certain constitutional exceptions limited to exclusive responsibilities, most of which relate to internal administration, executive officers and administrative agencies do not have inherent rulemaking authority.[65] Unless otherwise provided by law all agencies with delegated rulemaking authority must follow the process and procedure set out in the APA.

The APA provides specific procedures and processes which all agencies[66] must follow before adopting a rule or order or denying a petition to adopt a rule or render an order.[67] The substantive legal authority for an agency's action is contained in other statutes; the APA ensures a uniform procedure to protect the rights of the public when dealing with an agency, including the agency exercise of delegated rulemaking. The APA does not specify any process for internal policy determinations before statutory rulemaking is commenced.[68] With the exception of a general mandate to commence rulemaking within 180 days of the effective date of a new law requiring the promulgation of rules,[69] the APA does not control the initial process an executive agency follows to consider, review, reflect, research, or otherwise choose among alternative approaches to formulate a rule implementing law. In this conceptual phase, elected officers politically accountable to the People could (and do) participate in the policy direction and development by agencies that leads to the articulation of policy to be implemented by rulemaking.

Only after a decision is made to initiate rulemaking must the APA process and procedure be followed. Unless the proposal is to repeal an existing rule, the agency must publish a notice of rule development and may schedule workshops to allow public input.[70] The agency head may delegate responsibilities for rule development to a subordinate.[71] Once an internal decision is made and the agency head approves the adoption of a specific proposed rule, the agency must publish notice of intended rule adoption and the complete text of the proposal.[72] After completing public hearings (if requested),[73] resolving changes requested by the Joint Administrative Procedures Committee ("JAPC"),[74] providing a statement of estimated regulatory costs both to those who provided proposed lower cost alternatives to the rule and to the public,[75] or the entry of a final order on a petition challenging the proposed rule,[76] with the approval of the agency head the rule may be filed for adoption with the Department of State.[77] The rule then goes into effect after 20 days from filing, a later date if specified in the original notice of rulemaking, or upon ratification by the Legislature.[78]

d. Governors' Direction and Supervision of Rulemaking by Appointed Agency Heads

Florida's Governors historically have used executive orders to direct and supervise the policies implemented by their appointed agency heads pertaining to the exercise of statutorily-created rulemaking authority.

In 1989, Governor Martinez issued an executive order directing both the Department of Environmental Regulation ("DER") and the Department of Health and Rehabilitative Services ("HRS") to follow a specific policy approach in developing rules pertaining to biohazardous waste. The order further directed DER to adopt its specific rule no later than 4/1/1989.[79]

In 1995, Governor Chiles issued an order directing "agencies supervised by the Governor" to review all their specific rules and submit them for further review by the Governor's Office of Planning and Budget. The order

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[65] Section 120.54(1)(e), F.S.
[66] "Agency" is defined by s. 120.52(1), F.S.
[67] Defined as taking "agency action." Section 120.52(2), F.S.
[68] *Adam Smith Enterprises, Inc. v. Dept. of Environmental Regulation*, 553 So. 2d 1260, 1265, n. 4 (Fla. 1st DCA 1989).
[69] Section 120.54(1)(b), F.S.
[70] Section 120.54(2), F.S.
[71] Section 120.54(1)(k), F.S.
[72] Section 120.54(3)(a)1., F.S.
[73] Section 120.54(3)(c), F.S.
[74] Sections 120.54(3)(d), 120.545(3)(a), F.S.
[75] Section 120.541, F.S.
[76] Section 120.56, F.S.
[77] Section 120.54(3)(e), F.S.
[78] Section 120.54(3)(e)6., F.S.
[79] EO 89-1, s. 1.

also directed all such agencies immediately to begin repealing all rules defined in the order as obsolete.[80] This was followed by his order directing all agencies to implement the earlier order by commencing the repeal of rules, further directing all agency heads to begin to "overhaul, amend, or repeal" certain rules identified by the earlier reviews reported by their respective agencies.[81] Governor Chiles further created the "Rule of Flexibility" and ordered all agencies to apply the following principle when engaging in rulemaking:

> -This agency will make decisions in a manner that reasonably implements or interprets the policies established by the controlling legislation so that the results reached shall be fair, objective, and defensible without achieving legalistic, ridiculous conclusions.[82]

In 2007 Governor Crist entered an executive order entitled "Establishing Immediate Actions to Reduce Greenhouse Gas Emissions within Florida."[83] He ordered the Secretary of Environmental Protection to develop rules to set maximum allowable emission standards for electric utilities and to adopt statewide diesel engine idle reduction standards.[84] He also directed the Secretary of the Department of Consumer Affairs to initiate rulemaking to adopt specific Florida Energy Conservation Standards to increase the efficiency of certain consumer appliances by 15% from current standards and ordered such standards to be implemented by July 1, 2009.[85]

Each of these executive orders demonstrates an understanding of the Governor's authority common to those who held the office: the Governor has authority as the chief executive to direct and supervise non-elected appointees serving at the Governor's pleasure in the administration of their respective agencies. In Chapter 20, F.S., the Legislature has exercised constitutional authority to organize the executive branch by placing the administration of most statutorily-created departments under appointees serving at the pleasure of the Governor. The adoption of the APA established procedures for executive agencies to follow in exercising delegated legislative functions. The Constitution did not authorize the Legislature to create any additional executive power; accordingly, the Legislature could not create a class of non-elected officials exercising executive power independent from any direction or supervision by an elected officer. Consequently, the adoption of the APA neither altered the structure of the executive branch nor constrained the Governor or other elected officer in the exercise of their constitutionally-derived authority.

The Legislature knows how to limit the direction and control exerted by administrative superiors when that is its intention. For example, the statutes authorizing rulemaking by various licensing boards restrict oversight of that authority by the agency in which the boards are housed. The Department of Business and Professional Regulation ("DBPR") is expressly authorized to challenge rules proposed by its various boards but the authority does not extend to directing or controlling board rulemaking.[86] The State Surgeon General similarly is expressly limited to challenging rules of the boards under the Department of Health ("DOH").[87] In expressly limiting the rulemaking roles of these two agencies the Legislature understood the import of the language used.[88] However, when rulemaking power is delegated to a statutory office without such express insulation from superiors, the more reasonable implication is that the Legislature did not intend to separate the exercise of rulemaking authority from the ordinary administrative supervision and direction of the executive overseeing such officer.

2. Whiley v. Scott

On August 16, 2011, the Florida Supreme Court decided a petition challenging the Governor's authority to direct and supervise delegated rulemaking by appointed agency heads serving at his pleasure. A brief discussion of the case provides a useful context for PCB RRS 12-02.

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[80] EO 95-74, s. 1.
[81] EO 95-256, s. 1 & 3.
[82] EO 95-256, s. 4.
[83] EO 2007-127.
[84] EO 2007-127, s. 1.
[85] EO 2007-127, s. 2.
[86] Section 455.211, F.S..
[87] Section 456.012, F.S.
[88] *Cason v. Dept. of Management Services*, 944 So. 2d 306, 315 (Fla. 2006).

a. Executive Order 11-01 and OFARR

On January 4, 2011, the Governor issued Executive Order 11-01 addressing agency rulemaking. By its terms the order directed all agencies headed by a gubernatorial appointee to suspend rulemaking and submit pending rules for review by the Governor's office. The order created the Office of Fiscal Accountability and Regulatory Reform ("OFARR") within the Executive Office of the Governor with specific duties pertaining to agency rulemaking, including reviewing proposed rules under specific policy guidelines articulated in the order. With one exception,[89] the order did not purport to alter rulemaking requirements of the APA. The review function of OFARR was identical to that which could be exercised informally by the Governor prior to any initiation of rulemaking by the Governor's appointees; once rulemaking is commenced, however, oversight activity is limited by the statutory time requirements of the APA.

Since its creation OFARR has reviewed over 11,000 administrative rules.[90] The Office has coordinated with other agencies, including those not supervised directly by the Governor,[91] to identify existing rules which should be revised or repealed. OFARR prepared, published, and maintains a comprehensive online report compiling the results of the rule reviews conducted by the participating agencies and identified numerous statutes affecting agency rulemaking that may be appropriate for revision.[92] OFARR's work appears to be the most transparent gubernatorial review of rules and rulemaking carried out since the adoption of the APA.

b. The Petition and Arguments in *Whiley v. Scott*

On March 28, 2011, a petition was filed in the Supreme Court requesting a ruling that the Governor had no power to suspend, direct, supervise, or otherwise interfere with agency rulemaking.[93] The petition alleged the Legislature delegated rulemaking power only to heads of agencies and did not make their actions subject to supervision or direction by any separate elected official, arguing the APA conferred separate power to non-elected appointees independent from supervision and oversight of any elected officer.[94] Petitioners asserted that EO 11-01 transferred to OFARR the ultimate decision to propose and adopt rules[95] and that the Governor's actions intruded on the Legislature's exclusive authority to legislate on the process of exercising delegated rulemaking authority, thus violating the constitutional separation of powers[96]. The Governor filed a response on May 12, 2011, stating petitioner's position misconstrued the supervisory authority within the executive branch (an *intra*-branch matter) as a separation of powers issue (an *inter*-branch matter) and that EO 11-01 and its successor, EO 11-72,[97] appropriately directed initial rulemaking determinations by appointed agency heads who may be reasonably expected to comport with the Governor's desire for review of rulemaking decisions by OFARR. The response also articulated the historical and reasonable understanding exemplified by past governors that the Governor may exercise power to direct and supervise the rulemaking powers delegated to the administrative agencies headed by the Governor's appointees.

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[89] EO 11-01, s. 1, directed the Department of State to suspend publishing rulemaking notices in the Florida Administrative Weekly. This conflicted with Section 120.55, F.S., which mandates that DOS publish rulemaking notices in the FAW.

[90] Information from website: http://www.floridahasarighttoknow.com/regulation_rulemaking.php (last accessed 12/12/2011).

[91] For example, the boards of the five separate Water Management Districts have separate rulemaking authority under s. 373.044, F.S. The Water Management Districts voluntarily participated in the rule review process and identified a total of 165 of their respective rules which could be repealed as duplicative, obsolete, or otherwise unnecessary for the effective operation of their programs. A complete listing of these rules is maintained by staff of the Rulemaking & Regulation Subcommittee.

[92] Information from website: https://www.myfloridalicense.com/rulereview/reaglist.aspx (last accessed 12/12/2011).

[93] Petition of Rosalie Whiley v. Hon. Richard Scott in his Official Capacity as Governor, Case No. SC11-592 (herein "Petition"). The request was framed as a petition for writ of *quo warranto*, an original action in the Court challenging whether an official had the power to take certain action. The petitioner alleged EO 11-01 improperly suspended rulemaking for the food stamp program which would have been of benefit to her, eschewing to participate in an existing administrative action challenging the very same rulemaking as well as other remedies available under the APA or through timely court action under the substantive statutes.

[94] Petitioner cited as authority for this position an Attorney General Opinion from 1981, AGO 81-49. In her amicus brief filed in support of the Governor's position the Attorney General pointed out this opinion was limited to its facts and by subsequent enactments and could not be relied upon as a conclusive statement of the constitutional principle. Amicus Brief of Attorney General in Case No. SC11-592, filed May 18, 2011, pages 15-17.

[95] Petition, p. 21.

[96] Section 3, Art. II, Fla. Const.

[97] Issued on April 4, 2011, EO 11-72 corrected certain issues in the first order, notably deleting the provision purporting to suspend publication of rulemaking notices by the Department of State, and superseded EO 11-01.

c. The Majority Decision

In an unsigned opinion in which 5 of 7 Justices concurred, the Supreme Court granted the petition but withheld issuing the requested writ or any relief beyond a declaration of the law.[98] Relying on AGO 81-49 the Court declared that the APA made an agency head responsible for rulemaking delegated to that agency, exclusive of any supervision and direction of the appointing authority, regardless of the nature of the appointment. Where the Legislature placed an agency under the direct supervision of a non-elected official appointed by and serving at the pleasure of the Governor but did not expressly empower the Governor to supervise or direct the actions of the agency head, the Court reasoned that Legislature intended the appointee to exercise rulemaking authority independent of the preferences of the Governor. The majority further declared the power of the Governor to remove an appointed agency head at any time had no bearing on whether the initial policy decisions of the appointee could be directed by the Governor: "the power to remove is not analogous to the power to control."[99] The court also relied on the provision in s. 6, Article IV, that "direct administration" of a department may be placed under such appointees.

d. The Positions in Dissent

In dissent, Chief Justice Canady[100] observed that Florida law imposes no restriction on the authority of the Governor to supervise and direct policy choices made by subordinate executive branch officials with respect to rulemaking. He further stated:

- "...(T)he majority's decision insulates discretionary executive policy decisions with respect to rulemaking from the constitutional structure of accountability established by the people of Florida."[101]
- "...(T)he rulemaking process involves certain discretionary policy choices by executive branch officers within the parameters established by the APA and other pertinent statutes."[102]
- "Supreme executive power" does not empower Governor to order subordinates to violate the law.[103]
- "...(I)f 'supreme executive power' means anything, it must mean that the Governor can supervise and control the policy-making choices—within the range of choices permitted by law—of the subordinate executive branch officers who serve at his pleasure."[104]

Writing separately in dissent, Justice Polston[105] found the petition raised only hypothetical scenarios and articulated no actual violation of the APA.[106] He observed that rulemaking under the APA is a complex but flexible process, allowing room for agency discretion and providing public participation; in this context, the Governor could implement EO 11-72 without violating the APA. Additionally, there was no attempt to suspend statutory time limits for rulemaking. He further stated:

- The Governor "...has the constitutional authority to act as this State's chief administrative officer as well as the constitutional duty to faithfully execute this State's laws and to manage and hold agencies under his charge accountable to State laws, including the APA. (The

[98] *Whiley v. Scott*, --So. 3d--, 2011 WL 3568804 (Fla. 2011). By reaching a conclusion but declining to issue any relief, the decision appears to be more in the nature of an advisory opinion under s. 1(c), Art. IV, Fla. Const.
[99] 2011 WL 3568804, at 7.
[100] With the concurrence of Justice Polston.
[101] 2011 WL 3568804, at 8.
[102] 2011 WL 3568804, at 8.
[103] 2011 WL 3568804, at 9.
[104] 2011 WL 3568804, at 9.
[105] With the concurrence of Chief Justice Canady.
[106] If Justice Polston read the factual pleadings accurately, then the Court's decision can be correctly characterized as an advisory opinion.

Supreme) Court has explained that '[t]he Governor is given broad authority to fulfill his duty in taking "care that the laws be faithfully executed."'"[107]

- "Florida law provides no specific process for carrying out the Governor's executive duties with respect to holding his executive agencies accountable in their rulemaking functions."[108]
- "Nothing in the APA prohibits the Governor from performing executive oversight to ensure that the rulemaking process at his agencies results in effective and efficient rules that accord with Florida law."[109]
- Most importantly: "...nothing in the APA prohibits an agency from receiving OFARR's approval before an agency head authorizes the publication of notices of rulemaking activity and the filing of rules for adoption."[110]

e. The Impact of the Opinion

Effectively, the majority opinion interpreted the constitutional provision for the Legislature to place the administration of executive departments under appointees serving at the pleasure of the Governor as authorizing the creation of a class of unelected gubernatorial appointees with legislatively-created executive branch power independent of the Governor for as long as they hold office. According to the majority, unless the Legislature expressly grants the Governor the power to participate in rulemaking decisions by appointed agency heads, these appointees must operate completely independent of any direction or supervision by the Governor or any other elected official accountable to the People. Unless the Legislature clarifies the intent of the relevant statutes, all Florida governors will lack any authority to direct and supervise the policy decisions of their appointees when engaged in agency rulemaking. The Governor acquiesced to the Court's legal conclusion by replacing the relevant Executive Orders with a new one, EO 11-211, making voluntary each appointed agency head's cooperation with OFARR's role in overseeing proposed rulemaking.

3. Administrative Authority: Unused Rulemaking Delegations

Flexibility by an administrative agency to implement a legislatively articulated policy is essential to meet complex issues arising under substantive law.[111] Delegating rulemaking authority to administrative agencies and officers supplies needed flexibility to address issues arising in the administration of a statute but in making such delegation the Legislature must provide specific standards and guidelines to preclude the administrative agency from exercising unbridled discretion in creating policy or applying the law.[112] If the standards and guidelines included in the statute provide sufficient detail for the agency to implement the statutory policy, additional authority to adopt rules for that program is not necessary. A number of provisions authorizing agency rulemaking have been in statute for more than five years but have never been used. These sections would appear to be unnecessary as the statutory programs have operated without reliance on such provisions.

Other provisions contain obsolete or potentially confusing language. The Legislature has sole authority revise the Florida Statutes to improve clarity.

In addition, there are a large number of provisions found in the Florida Statutes which authorize agency rulemaking for implementation or administration of a particular program or provision of the law. These are in addition to the affected agency's grant of authority to adopt rules as necessary to implement the entire section, part or chapter in which the limited grant is located. This situation typically appears when a new program or provision is added to an existing chapter (part or section); without simultaneous or subsequent reenactment, existing rulemaking authority could be interpreted as not applying to the newly-added program or provision.

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[107] 2011 WL 3568804, at 13. Together with the first point quoted herein from Chief Justice Canady's dissenting opinion this states in plain terms the basic principles underlying the executive power vested in the Governor by the Constitution and the logical authority to direct and supervise appointees who serve at the Governor's pleasure.
[108] 2011 WL 3568804, at 13.
[109] 2011 WL 3568804, at 13.
[110] 2011 WL 3568804, at 14.
[111] *Askew v. Cross Key Waterways*, 372 So. 2d 913, 924 (Fla. 1979).
[112] *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); *Askew v. Cross Key Waterways*, 372 So. 2d 913, 925 (Fla. 1979).

However, once the Florida Statutes are reenacted (ordinarily in the following year)[113] this concern ends because the grant for the entire chapter or section would clearly apply to the chapter or program as amended and codified in the revised statutes.

PCB RRS 12-02 repeals or amends a number of these provisions to improve clarity or strike provisions of rulemaking authority that either are unused, thus unnecessary, or redundant of the agency's existing authority.

4. Proposed Changes

a. Clarification of Authority to Supervise & Direct Agency Rulemaking (Sections 1 – 8)

The first eight sections of PCB RRS 12-02 take up the Supreme Court's invitation to clarify role of the Governor in supervising and directing unelected appointees serving at the pleasure of the Governor. The PCB does not directly reverse the majority conclusions in *Whiley*[114] but clarifies ultimate oversight, direction, and supervision of rulemaking power delegated by the Legislature remains within the authority of elected constitutional officers directly accountable to the people. This further clarifies that in organizing the executive branch and adopting the APA the Legislature did not intend to create a class of unelected appointees serving at the pleasure of the Governor but possessing independent, unsupervised, delegated powers. The Legislature did not create a "fourth branch of government" which could frustrate the policy direction of any Governor, present and future.

1) Section 1: Legislative Findings

The PCB contains a number of findings in section 1 that explain the basis for the bill's approach to gubernatorial direction and supervision of appointees. Leaving basic assumptions unstated can leave the judiciary groping in the dark for the implications that may be derived from silence. By not expressing or acknowledging the reasonable assumption that an appointee serving at the pleasure of the Governor will naturally submit herself to the direction and control of that elected official, existing law is open to an argument that a statutory delegation of power to the appointee intends to exclude the Governor's supervision of its exercise. The section finds and clarifies certain assumptions behind the existing statutes organizing and assigning powers to executive agencies as well as the historical and constitutional reasoning behind such assumptions. The section also finds that it is important that agency decision makers be directly accountable to elected officials in the execution of the law including the exercise of delegated rulemaking authority. In addition, the section finds that the APA is procedural and should not be read to implicitly regulate the relationship or accountability between and among executive officers. Finally, the section adopts relevant findings of the Governor contained in Executive Order 11-211.

The initial and largest portion of the findings address matters fully discussed in parts 1 and 2 above.

The PCB makes other findings affirming a principal aspect of the separation of powers that legislated definitions of "agency head" cannot alter the executive authority and responsibility vested in the office of the Governor and the cabinet officers. This authority and responsibility include the supervision and oversight by such elected officers of all powers assigned to executive agencies by the constitution or laws of the state. The PCB finds that the APA constitutes a procedural law ensuring public participation in agency rulemaking. As a conclusion, the bill finds that the delegation of rulemaking power to agencies and the adoption of the APA are intended to work in harmony with the constitutional distribution of executive authority and not as a general intrusion into the constitutional role and responsibilities of the elected officers.

The PCB also adopts and therefore ratifies certain findings contained in Executive Orders 11-01, 11-72 and 11-211. These findings address the Governor's role and responsibilities in ensuring the faithful execution of the laws and overseeing the administration of agencies headed by gubernatorial appointees. They emphasize

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[113] Section 11.2421, F.S.

[114] The Legislature cannot directly reverse a court's final decision in a particular case. *Bush v. Schiavo*, 885 So.2d 321, 337 (Fla. 2004). The same principle applies to Congress under the U.S. Constitution: "Having achieved finality, however, a judicial decision becomes the last word of the judicial department with regard to a particular case or controversy, and Congress may not declare by retroactive legislation that the law applicable *to that very case* was something other than what the courts said it was." *Plaut v. Spendthrift Farm, Inc.*, 514 U.S. 211, 227, 115 S. Ct. 1447, 1457 (1995) (emphasis in original).

fiscal accountability, agency expertise and accountability to the oversight of elected officials. They also restate other principles discussed above in part 1. The adopted findings set forth the rationale for and role of the governor's Office of Fiscal Accountability and Regulatory Reform. They also critique the Court's reasoning in the *Whiley* decision, particularly the uncertainties created by its conclusions and its failure to clearly address certain relevant constitutional principles and judicial and executive precedents.

The PCB's final findings address additional aspects of the *Whiley* opinion. The bill finds that the dissenting opinions constituted persuasive arguments informing a correct interpretation of the State Constitution. The findings note that no writ was issued in *Whiley* but that its declaration of law is to be afforded the deference due to an advisory opinion of the Court.

The findings in section 1 provide the rationale behind the clarifications of law contained in sections 2 through 8.

2) *Section 2:* Affirms EO 11-72 and EO 11-211 are consistent with law and public policy.

3) *Section 3: Statement of Legislative Intent*

This section expresses what all Governors previously assumed: that placing an agency under the direct supervision of a non-elected agency head appointed by and serving at the pleasure of the Governor is not intended to limit in any way the Governor's constitutionally-protected authority to direct and supervise the implementation of executive policy by these appointees. The section expressly rejects the concept that non-elected appointees have any authority implicitly independent from the Governor's direction and supervision except as may be stated expressly by law. The purpose of the section is to reject the concept that the legislative creation of an agency head serving at the pleasure of the Governor enabled such officers to act independently from the Governor's directive and supervisory authority.

4) *Section 4: Declaration of Policy*

This section creates a new s. 20.02(3), F.S., to clarify an agency head appointed by and serving at the pleasure of the Governor remains under the oversight, direction, and supervisory authority of the Governor unless statute expressly states otherwise.

5) *Section 5: Clarifying Definitions for Chapter 20, F.S.*

This section clarifies the definition of "agency head" in s. 20.03(4), F.S., by stating those agency heads appointed by and serving at the pleasure of the Governor remain under the Governor's supervision and direction. The definition of "Secretary" in s. 20.03(5), F.S., is amended by changing "constitution" to "State Constitution" to better conform with the language used elsewhere in the statute.

The section also creates a new definition in s. 20.03(13) to expressly define the phrase "to serve at the pleasure." In addition to stating the tenure in office is subject to removal by the appointing authority, the definition clarifies that such appointees do not automatically require prior approval from the appointing authority for each exercise of their delegated authority; this prevents any collateral attack on the appointee's actions in the performance of the assigned duties.

6) *Section 6: Clarifying the Powers and Duties of Agency Heads*

This section amends s. 20.05(1), F.S., by making the exercise of authority by any agency head subject to the allotment of executive power by the Legislature under Article IV of the Constitution. This clarifies that each agency head performs their authority in the context of the legislative intent established above in sections 3, 4, and 5 of the PCB.

7) *Section 7: Creation of s. 120.515 – Declaration of Policy*

This section directly clarifies two policies governing the APA. First, the APA is a procedural statute and does not alter the substantive authority of state officers over decisions by their appointees. Second, the language coordinates with the amendments to Chapter 20 to clarify the APA does not divest any authority to direct or

supervise appointed agency heads and that by adhering to the direction and supervision of the appointing authority the appointee does not delegate or transfer any statutory authority.

8) Section 8: Confirms the Actions Taken by An Appointed Agency Head Are Official Acts

This section of the PCB amends s. 120.52(3), F.S., and confirms that all actions taken by such agency heads under the APA are official acts and not subject to collateral attack because the appointing authority did not expressly approve an action.

b. Statutory Revision

Section 9 amends s. 11.242(5) to direct the Office of Statutory Revision to include duplicative, redundant or unused rulemaking authority among its recommended repeals in revisers bill recommendations. Revisers bills are drafted by the Office and enacted by the Legislature as part of Florida's ongoing process of statutory revision. The Office is already tasked with recommending the deletion of all laws which have expired, become obsolete, and/or had their effect or served their purpose.[115] Duplicative, redundant and unused rulemaking authority provisions similarly populate the Florida Statutes with unnecessary law that can be omitted. Sections 10 through 49 exemplify provisions that would appear in revisers bills drafted under this new directive.

c. Repeal of Unused Rulemaking Authority

Sections 10 through 60 repeal or revise particular provisions of Florida Statutes relating to rulemaking authority. Each provision appears to be redundant, unenforceable, unnecessary or potentially confusing. The particular provisions are explained in the Section Directory below.

B. SECTION DIRECTORY:

Section 1 makes specific findings clarifying the Legislature's intent that non-elected agency heads appointed by and serving at the pleasure of the Governor remain subject to the Governor's direction and supervision because executive branch agencies should operate under the ultimate authority of an elected official who is directly accountable to the People of Florida.

Section 2 affirms that the Governor's Executive Orders 11-72 and 11-211 are consistent with law and public policy.

Section 3 expressly clarifies the Legislature's intent that by placing an agency under the direct supervision of a non-elected agency head appointed by and serving at the pleasure of the Governor the Legislature does not intend to limit in any way the Governor's constitutionally-vested authority to direct and supervise the implementation of executive policy by these appointees unless expressly stated otherwise in law.

Section 4 creates a new s. 20.02(3), F.S., clarifying that an agency head appointed by and serving at the pleasure of the Governor remains under the oversight, direction, and supervisory authority of the Governor unless statute expressly states otherwise.

Section 5 amends the definition of "agency head" in s. 20.03(4), F.S., by stating those agency heads appointed by and serving at the pleasure of the Governor remain under the Governor's supervision and direction. Amends the definition of "Secretary" in s. 20.03(5), F.S., by changing "constitution" to "State Constitution." Creates new s. 20.03(13) to expressly define the phrase "to serve at the pleasure."

Section 6 amends s. 20.05(1), F.S., by making the exercise of authority by any agency head subject to the allotment of executive power by the Legislature under Article IV of the Constitution.

Section 7 creates new s. 120.515, F.S., clarifying that the APA is a procedural statute and does not alter the substantive authority of elected officials over their appointees. Also clarifies that the APA does not divest any

[115] Section 11.242(5)(i).

authority to direct or supervise appointed agency heads and that by adhering to the direction and supervision of the appointing authority the appointee does not delegate or transfer any statutory authority.

Section 8 amends s. 120.52(3), F.S., confirming that all actions taken by appointed agency heads under the APA are official acts.

Section 9 amends s. 11.242(5) to direct the Office of Statutory Revision to include duplicative, redundant or unused rulemaking authority among its recommended repeals in revisers bill recommendations.

Section 10 repeals rulemaking power from s. 14.34, F.S., which provides for the Governor to present a Medal of Merit. The power was created in 2004 and appears to have never been used.

Section 11 strikes rulemaking authority from s. 15.16(7), F.S., which relates to certain international processes for validating and verifying documents. The Department of State has not found it necessary to adopt rules for implementing the provision and has expressed no objection to the rulemaking repeal.

Section 12 repeals s. 15.18(7), F.S., which authorizes rulemaking by the Secretary of State in support of cultural activities described in s. 15.18, particularly respecting contracts for professional services and events funded by donations. The Secretary has never adopted rules under this provision which was last amended in 2002. The Department of State has expressed no objection to the rulemaking repeal.

Section 13 strikes rulemaking authority from s. 16.60(3)(a), F.S., relating to a mediation program in the Office of Attorney General that resolves public records disputes. The Office has never adopted rules under the provision which was last amended in 2000. The Office has expressed no objection to the repeal of rulemaking authority from this section.

Section 14 repeals s. 17.0416(2), F.S., authorizing the Department of Financial Services to adopt rules to implement the section authorizing the Department to provide services on a fee basis to other public bodies and officers. The Department has not adopted rules under this provision which was created in 2004. The Department does not object to the repeal of this rulemaking authority.

Section 15 repeals s. 17.59(3), F.S., authorizing the Chief Financial Officer to adopt rules for the management of safekeeping services authorized by the section. The CFO has not adopted rules under the provision which was last amended in 2004. The CFO has expressed no objection to the repeal of this rulemaking provision.

Section 16 repeals s. 25.371, F.S. This section provides that court rules override laws. Under Article V of the constitution, the Supreme Court has ruled that its rulemaking power supersedes general law on matters of practice and procedure in the courts. There is no reason to reduce any other law to such judicial pre-emption. Litigants have the right to assert their substantive rights in each case and argue for enforcement of those rights in the application of court rules. The repeal of this section will allow every Floridian to more fully enforce their substantive rights. A pending repealer bill including this provision has been approved by the House Civil Justice Subcommittee.

Section 17 repeals s. 28.43, F.S. The provision authorizes both the Department of Revenue and the Department of Financial Services to adopt rules relating to the funding and budgeting for Court Clerks. Neither Department has adopted rules under this provision and neither has expressed an objection to repeal of the rulemaking authority.

Section 18 repeals s. 35.07, F.S., relating to the administration of the District Courts of Appeals. Article V provides comprehensive administrative authority to the Chief Justice and the Chief Judge of each court which courts also have inherent authority to each direct its own administration. As a consequence, a delegation of rulemaking power over administration of the courts is unnecessary. The separation of powers does not appear to allow the Legislature to direct by general law the administrative powers possessed by the courts, making the provision problematic under the constitution.

Section 19 strikes rulemaking authority from s. 39.001, F.S., relating to purposes and intent of proceedings relating to children and no rules have been adopted in reliance on the provision. The rulemaking power is

unnecessary because it is duplicative of s. 39.012 authorizing the Department of Children and Family Services to make rules to implement the entire chapter.

Section 20 strikes rulemaking authority from s. 39.0137(2), F.S. The section relates to state application of the federal Indian Child Welfare Act. The section was created in 2006 and no rules have been adopted in reliance on the provision. The rulemaking power is unnecessary because it is duplicative of s. 39.012 authorizing the Department of Children and Family Services to make rules to implement the entire chapter.

Section 21 repeals s. 39.824(1), F.S., a 1989 request to the Supreme Court to adopt rules of procedure implementing certain statutory provisions. The Legislature cannot direct the rulemaking power of the Supreme Court and the request has long since fulfilled its purpose in comity.

Section 22 strikes rulemaking authority from s. 63.167(3), F.S., relating to the state adoption information center. The provision was last amended in 2003 and no rules appear to have been adopted by the Department of Children and Family Services in reliance on the provision.

Section 23 repeals s. 88.9051, F.S. relating to the Uniform Interstate Family Support Act. The section appears to be a vestige of the 1997 version of the Act. Presently, chapter 88 does not contain a definition identifying the department empowered by the section. No rule appears to be in effect that relies on the section.

Section 24 strikes rulemaking authority from s. 97.026, F.S., relating to the availability of elections related forms in alternate formats and via the internet. The Secretary of State has sufficient rulemaking authority under s. 97.012 to implement s. 97.026. No rule appears to have been promulgated in reliance on the language to be stricken. The Department of State has expressed that it does not object to the repeal.

Section 25 strikes rulemaking authority from s. 97.055, F.S., relating to late voter registration by uniformed servicepersons and their accompanying family members. The Secretary of State has sufficient rulemaking authority under s. 97.012 to implement s. 97.055. No rule appears to have been promulgated in reliance on the language to be stricken. The Department of State has expressed that it does not object to the repeal.

Section 26 strikes rulemaking authority from s. 97.061(1), F.S., relating to procedures for registering persons requiring assistance. The Secretary of State has sufficient rulemaking authority under s. 97.012 to implement s. 97.061. No rule appears to have been promulgated in reliance on the language to be stricken. The Department of State has expressed that it does not object to the repeal.

Section 27 repeals s. 101.56062, F.S. The section relates to standards for accessible voting system. The Secretary of State has sufficient rulemaking authority under s. 97.012 to implement s. 101.56062. No rule appears to have been promulgated in reliance on the language to be repealed. The Department of State has expressed that it does not object to the repeal.

Section 28 strikes rulemaking authority from s. 103.101, F.S., providing for the presidential preference primary. No rule appears to have been adopted in reliance on the provision. The Department of State has expressed that it does not intend to adopt rules under this section and does not object to the repeal.

Section 29 strikes rulemaking authority from s. 106.165, F.S., relating to use of closed captioning in electioneering broadcasts. The Division of Elections has sufficient rulemaking authority under s. 106.22(9) to implement s. 106.165. No rule appears to have been promulgated by the Department of State in reliance on the language to be stricken. The Department of State has expressed that it does not object to the repeal.

Section 30 amends s. 110.1055, F.S., to update and clarify the language. The amendment strikes obsolete and archaic language that my create confusion about the authority of the Department of Management Services to make rules to implement amendments to provisions in chapter 110 that have been enacted since 2002. The amended language will serve as general rulemaking authority to effectuate all of chapter 110.

Section 31 repeals s. 110.1099(5), F.S., relating to education and training opportunities for state employees. The Department of Management Services has sufficient rulemaking authority under s. 110.1055 to implement s. 110.1099(5).

Section 32 repeals s. 110.1228(7), F.S., relating to participation of small political subdivisions in the state group health plan. The Department of Management Services has sufficient rulemaking authority under s. 110.1055 to implement s. 110.1228(7).

Section 33 strikes rulemaking authority from s. 110.12301(2), F.S., relating to postpayment claims review and dependent eligibility. The Department of Management Services has sufficient rulemaking authority under s. 110.1055 to implement s. 110.12301(2).

Section 34 repeals s. 112.1915(4), F.S., authorizing the State Board of Education to adopt rules to implement s. 112.1915, providing a special death benefit for teachers and school administrators. The Board does not appear to have adopted rules under the provision which has not been amended since 2004. The provision, therefore, does not appear to be necessary.

Section 35 strikes language from s. 118.12, F.S. relating to certification of civil-law notaries and apostilles. The Department of State has not used the rulemaking authority for implementation of the section and does not object to its repeal.

Section 36 repeals s. 121.085(1), F.S., which authorizes rules establishing procedures establishing claims of creditable service under the retirement system. No rule appears to have been adopted under this 2000 provision. The Department of Management Services appears to have sufficient authority under s. 121.031(1) to administer all provisions of law relating to creditable service as defined in s. 121.021(17).

Section 37 repeals s. 121.1001(4)(b), F.S., a 1999 provision to protect pension benefits that may exceed federal benefit limitations. The rulemaking authority paragraph (4)(a) does not appear to have been used by the Division of Retirement. The Department of Management Services appears to have sufficient authority under s. 121.031(1) to administer all provisions of law relating to compliance with federal law affecting pension benefits.

Section 38 repeals s. 121.4503(3), F.S., relating to the Florida Retirement System Contributions Clearing Trust Fund. The Department of Management Services does not appear to have utilized the particular provision of rulemaking authority since its enactment in 2002. The State Board of Administration and the Department appear to have sufficient rulemaking authority under s. 121.4501(8) and s. 121.031(1) to administer the Contributions Clearing Trust Fund.

Section 39 strikes a rulemaking provision in s. 121.5911, F.S., related to the disability retirement program. The Department of Management Services does not appear to have utilized the particular provision of rulemaking authority since its enactment in 2002. The Department appears to have sufficient rulemaking authority under s. 121.031(1) to implement legislative intent expressed in s. 121.5911.

Section 40 repeals s. 125.902(4), F.S., directing the Department of Children and Family Services to establish rules to implement the section enacted in 2000. The Department does not appear to have adopted rules, indicating that the rulemaking authority is unnecessary.

Section 41 repeals s. 154.503(4), F.S., authorizing the Department of Health to adopt rules to implement the Primary Care for Children and Families Challenge Grant Act, adopted in 1997. The Department does not appear to have adopted rules pursuant to the provision, indicating that the rulemaking authority is unnecessary.

Section 42 strikes language from s. 159.8081(2)(a), F. S., authorizing the Department of Economic Opportunity to adopt rules concerning the allocation of bonding authority to finance manufacturing facility projects. No rule appears to have been adopted under this provision which has been in existence more than 14 years.

Section 43 strikes language from s. 159.8083, F. S., authorizing the Department of Economic Opportunity to adopt rules concerning the allocation of bonding authority to finance Florida First Business projects. No rule appears to have been adopted under this provision which has been in existence more than 11 years.

Section 44 strikes language from s. 159.825, F. S., authorizing the State Board of Administration to adopt rules to administer s. 159.825 governing the terms of certain governmental bonds paying interest that is subject to federal income taxes. No rule appears to have been adopted under this provision which ahs been in existence more than 13 years.

Section 45 repeals s. 161.75, F. S., authorizing rules to implement the Oceans and Coastal Resources Act (part IV of ch. 161). No rules appear to have been adopted implementing this part which is over 6 years old.

Section 46 repeals s. 163.462, F. S., authorizing the Department of Community Affairs to adopt rules to implement the Community-Based Development Organization Act (ss. 163.455-163.462). No rules have been adopted since the 2000 effective date of the Act. HB 4027 (2012) proposed repeal of the entire Act.

Section 47 repeals s. 163.517(6), F. S., authorizing the Department of Legal Affairs to adopt rules to implement the section relating to the Safe Neighborhoods Program of matching planning grants and technical assistance. HB 191 (2012) and CS/SB 582 (2012) both recommend repeal of s. 163.517. The section has not been amended in 18 years and no rules have been adopted to implement it.

Section 48 repeals s. 175.341(2) authorizing the Division of Retirement to adopt rules to implement chapter 175. The Department does not utilize rulemaking in administering either chapter 175 or 185 and does not object to repeal of this provision.

Section 49 repeals s. 177.504(2)(e) authorizing the Department of Environmental Protection to adopt rules to administer ss. 177.501-177.510, the Florida Public Lands Survey Restoration and Perpetuation Act. No rules have been adopted under this provision which is over 13 years old.

Section 50 repeals s. 185.23(2), F. S., authorizing the Division of Retirement to adopt rules to implement chapter 185. The Department does not utilize rulemaking in administering either chapter 175 or 185 and does not object to repeal of this provision.

Section 51 strikes rulemaking authority from s. 255.25001, F.S., relating to the state entering into lease-purchase agreements for state-owned office buildings. The Department of Management Services has never adopted rules under this statute and appears to have adequate authority to address lease-purchase agreements under s. 255.25, F.S.

Section 52 strikes rulemaking authority from s. 257.34, F.S., pertaining to the Florida International Archive and Repository. The Department of State is able to fully implement the statute without rules and agrees this specific rulemaking authority is unnecessary.

Section 53 strikes rulemaking authority in s. 364.0135, F.S., pertaining to the promotion of adopting broadband services. The Department of Management Services has adopted no rules under this statute and sees no need for this authority other than possible contingent changes in public policy.

Section 54 strikes rulemaking authority from s. 366.85, F.S., pertaining to the duties of the Department of Agriculture and Consumer Services for consumer conciliation conferences and preparing lists of energy conservation products or services. The statute provides sufficient guidance and the Department has determined this grant of authority is not necessary.

Section 55 repeals s. 409.5092, F.S., pertaining to obtaining permission before "weatherizing" a residence. The Department of Economic Opportunity determined this authority is unnecessary as federal rules apply to this issue.

Section 56 restricts the rulemaking authority granted in s. 411.01(4)(d) and (e), F.S., pertaining to the adoption of certain system support services, criteria for expending funds, and implementation of duties conferred on the Office of Early Learning. The authority to adopt rules on awarding incentives to early learning coalitions was first granted in 1999 but no rules were ever adopted to implement this provision. The authority to adopt rules on the other topics specified in this statute was first granted in 2010 but has never been used to adopt rules. Rules necessary to implement new statutory provisions must be drafted and proposed within 180 days of the

effective date of the act, unless the act provides otherwise.[116] As the act expanding the specific areas for rulemaking had an effective date of July 1, 2010,[117] and no rules have since been adopted to implement these specific provisions, the rulemaking authority appears to be unnecessary for the operation of the program.

Section 57 strikes rulemaking authority from s. 411.01013, F.S., pertaining to the collection, calculation of distribution, and publication of a schedule of "market rates" for child care services. This rulemaking authority was first created under former s. 411.3051, F.S., in 1991. The Office of Early Learning has never used the provision to adopt rules and it appears unnecessary for the operation of the program.

Section 58 strikes rulemaking authority from s. 411.0103, F.S., pertaining to the Teacher Education and Compensation Helps scholarship program. This rulemaking authority was first created under former s. 402.3017, F.S., in 2000. The Office of Early Learning has never used the provision to adopt rules and it appears unnecessary for the operation of the program.

Section 59 strikes rulemaking authority from s. 411.0104, F.S., pertaining to the award of Head Start collaboration grants. This rulemaking authority was first created under former s. 402.3016, F.S., in 1999. The Office of Early Learning has never used the provision to adopt rules and it appears unnecessary for the operation of the program.

Section 60 strikes rulemaking authority from s. 501.142, F.S., pertaining to the regulation of refunds in retail sales establishments. This rulemaking authority was first created in 2006, has never been used to adopt rules, and appears unnecessary for the operation of the program.

Section 61 provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues: None anticipated.
2. Expenditures: None anticipated.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues: None anticipated.
2. Expenditures: None anticipated.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR: None anticipated.

D. FISCAL COMMENTS: None

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision: N/A

2. Other:

The PCB addresses issues raised by the Florida Supreme Court in *Whiley v. Scott* pertaining to the organization of the executive branch and allotting the direct supervision of administrative agencies to non-elected officers or boards appointed by and serving at the pleasure of the Governor. While the Court discussed and interpreted sections 1 and 6 of Article IV, the fundamental declaration of the Court was that the rulemaking authority delegated by the Legislature to agency heads and regulated by the APA is not subject to the supervision and direction of the Governor as appointing authority even when the agency

[116] Section 120.54(1)(b), F.S.
[117] Section 35, chapter 2010-210, Laws of Florida.

head serves at the Governor's pleasure. The Court held that the constitution did not protect the supervisory power of the Governor, but implied that the Legislature has full authority to clarify the role of the Governor in rulemaking delegations. In other words, the Court held that under 2011 law, the Governor does not have authority to direct rulemaking by appointees, but did not hold or imply that the State Constitution forbids the Governor from exercising such authority.

Given that the Court's holding was that the Legislature's delegation to an agency head implicitly excluded direction and supervision of the Governor, there is no reason to believe that the constitution limits the Legislature's authority to expressly provide that such direction and supervision are authorized with respect to delegated rulemaking authority.

Not addressed in the case law is the degree to which the Article IV limitations on the distribution of executive power might regulate the delegation of legislative power through rulemaking statutes. Must rulemaking authority be delegated within the confines of that executive distribution? May a department head serving at the pleasure of the Governor supervise and direct rulemaking delegated to a subordinate division or officer? Might legislative authority delegated to a Governor's agency be made subject to cabinet approval, and might cabinet agency rulemaking be subjected to gubernatorial approval? This bill does not implicate these questions but expressly authorizes the authority structure defined in Article IV to apply to delegated rulemaking by agencies created by statute.

B. RULEMAKING AUTHORITY: The purpose of the PCB is to clarify administrative authority, particularly the scope of direction and supervision in the exercise of administrative rulemaking authority by officers in the executive branch and to initiate the ongoing removal and revision of unnecessary or confusing delegations of rulemaking authority in the statutes. No additional delegations of rulemaking authority are necessary to achieve the purposes of the PCB.

C. DRAFTING ISSUES OR OTHER COMMENTS: None

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to administrative authority; making findings; providing legislative intent; amending s. 20.02, F.S., clarifying the authority of the governor; amending s. 20.03, F.S., clarifying supervisory powers of appointing authority; amending s. 20.05, F.S., incorporating constitutional allocation of executive authority; creating s. 120.515, F.S., declaring policy regarding executive authority; amending s. 120.52, F.S., clarifying supervisory powers of appointing authority; amending s. 11.242, F.S., requiring revisers bills on rulemaking authority; repealing s. 14.34(3), F.S., relating to Governor's Medal of Merit, repealing rulemaking authority; amending s. 15.16, F.S., repealing rulemaking authority; repealing s. 15.18(7), F.S., relating to International and cultural relations, repealing rulemaking authority; amending s. 16.60, F.S., repealing rulemaking authority; repealing s. 17.0416(2), F.S., relating to Authority to provide services on a fee basis, repealing rulemaking authority; repealing s. 17.59(3), F.S., relating to Safekeeping services, repealing rulemaking authority; repealing s. 25.371, F.S., relating to Effect of rules; repealing s. 28.43(1) and (2), F.S., relating to Adoption of rules relating to ss. 28.35, 28.36, and 28.37; repealing s. 35.07, F.S., relating to power to make rules and regulations; repealing s. 39.001(11) , F.S., relating to rulemaking authority of Executive

Office of the Governor; amending s. 39.0137, F.S., repealing rulemaking authority; repealing s. 39.824(1), F.S., relating to Procedures and jurisdiction, repealing rulemaking request; amending s. 63.167, F.S., repealing rulemaking authority; repealing s. 88.9051, F.S., relating to Authority to adopt rules; amending s. 97.026, F.S., repealing rulemaking authority; amending s. 97.0555, F.S., repealing rulemaking authority; amending s. 97.061, F.S., repealing rulemaking authority; repealing s. 101.56062(3), F.S., relating to Standards for accessible voting systems; amending s. 103.101, F.S., repealing rulemaking authority; amending s. 106.165, F.S., repealing rulemaking authority; amending s. 110.1055, F.S., revising to remove obsolete language; repealing s. 110.1099(5), F.S., relating to Education and training opportunities for state employees; repealing s. 110.1228(7), F.S., relating to Participation by small counties, small municipalities, and district school boards located in small counties; amending s. 110.12301, F.S., repealing rulemaking authority; repealing s. 112.1915(4), F.S., relating to Teachers and school administrators; death benefits; amending s. 118.12, F.S., repealing rulemaking authority; repealing s. 121.085(1), F.S., relating to Creditable service, deleting rulemaking authority; repealing s. 121.1001(4)(b), F.S., relating to Florida Retirement System Preservation of Benefits Plan.,

deleting rulemaking authority; repealing s. 121.4503(3), F.S., relating to Florida Retirement System Contributions Clearing Trust Fund., deleting rulemaking authority; amending s. 121.5911, F.S., deleting rulemaking authority; repealing s. 125.902(4), F.S., relating to Children's services council or juvenile welfare board incentive grants, repealing rulemaking authority; repealing s. 154.503(4), F.S., relating to Primary Care for Children and Families Challenge Grant Program; creation; administration, repealing rulemaking authority; amending s. 159.8081(2)(a), F.S., relating to Manufacturing facility bond pool, repealing rulemaking authority; amending s. 159.8083, F.S., relating to Florida First Business allocation pool, repealing rulemaking authority; repealing s. 159.825(3), F.S., relating to Terms of bonds, repealing rulemaking authority; repealing s. 161.75, F.S., relating to Rulemaking authority; repealing s. 163.462, F.S., relating to Rulemaking authority; repealing s. 175.341, F.S., relating to Duties of Division of Retirement, repealing rulemaking authority; repealing s. 177.504(2)(e), F.S., relating to Powers and duties of the department, repealing rulemaking authority; repealing s. 185.23(2), F.S., relating to Duties of Division of Retirement, repealing rulemaking authority; repealing s. 255.25001(2), F.S., relating to Suspension or delay of

specified functions, repealing rulemaking authority; repealing s. 257.34(7), F.S., relating to Florida International Archive and Repository, repealing rulemaking authority; repealing s. 364.0135(6), F.S., relating to Promotion of broadband adoption, repealing rulemaking authority; amending s. 366.85, F.S., relating to Responsibilities of Division of Consumer Services, repealing rulemaking authority; repealing s. 409.5092(1) and (2) , F.S., relating to Permission for weatherization, repealing rulemaking authority; amending s. 411.01, F.S., relating to School readiness programs and early learning coalitions, limiting rulemaking authority of the Office of Early Learning; repealing s. 411.01013(7), F.S., relating to Prevailing market rate schedule, repealing rulemaking authority; repealing s. 411.0103(3), F.S., relating to Teacher Education and Compensation Helps (TEACH) scholarship program, repealing rulemaking authority; repealing s. 411.0104(3) , F.S., relating to Early Head Start collaboration grants, repealing rulemaking authority; amending s. 501.142, F.S., relating to Retail sales establishments, repealing rulemaking authority and authority to sanction violations of rules; providing an effective date.

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

Section 1. The Legislature finds:

For the preservation of liberty and the protection of individual rights, the People of Florida adopted a republican form of government delegating and limiting sovereign power to be exercised by their representatives in three separate, but equal, branches: the Legislative, the Executive, and the Judicial.

By Article IV of the State Constitution the People vested supreme executive power in the Governor and apportioned specific substantive powers among the other elected officers designated in that Article, including the Lieutenant Governor, the Attorney General, the Chief Financial Officer, and the Commissioner of Agriculture.

As noted by Alexander Hamilton: "Energy in the executive is a leading character in the definition of good government…. A feeble executive implies a feeble execution of the government. A feeble execution is but another phrase for a bad execution: And a government ill executed, whatever it may be in theory, must be in practice a bad government."

Since the framing of Florida's first Constitution in 1838, the People have adhered to the principles expressed by Mr. Hamilton in the vesting of supreme executive power directly in the Governor but choosing to vest other specific executive powers directly in other denominated officials or entities.

In uninterrupted consistency with their longstanding vesting of the supreme executive power in the Governor, the

People in 1968 adopted Article IV, section 6 of the State Constitution, generally directing and limiting the Legislature to allot the functions of the Executive Branch among not more than twenty-five departments and to place the administration of each department under the direct supervision of the governor, the lieutenant governor, the governor and cabinet, a cabinet member, or an officer or board appointed by and serving at the pleasure of the governor.

Each officer of state government is obligated to construe the language of the Constitution consistent with its express and clearly implied intent, must give words their ordinary and customary meaning unless the context indicates otherwise, must construe all parts together to give them their full effect, and must not construe the terms of the Constitution to yield an absurd result.

Under the authority of Article IV, section 6, of the State Constitution, the Legislature adopted and the Governor signed into law Chapter 69-106, Laws of Florida, which restructured the Executive Branch into not more than twenty-five departments and designated their direct administration.

At the time of adopting Chapter 69-106, Laws of Florida, the Legislature was informed by the debate in the Forty-First Legislature (under the Constitution of 1885) about the text for Article IV, section 6, for the proposed Constitution, that the Forty-First Legislature expressly considered and expressly

rejected alternative proposals which would have required general law to provide supervisory authority to elected constitutional officers over the policies of executive departments, and that in submitting the 1968 Constitution to the People their Legislature intended the proposal to ensure that the administration and policies of each Executive Branch department would be under the final authority and control either of the Governor or one or more elected constitutional officers.

Construing together Article IV, sections 1(a) and 6 of the State Constitution, the Legislature at all times understood these sections create a general legal presumption against the creation of a class of unelected, subordinate officers exercising executive power independent of the direction and supervision of the Governor or one or more specified elected constitutional officers.

Article IV, section 6 of the State Constitution has not been amended since its ratification by the People on November 5, 1968.

An officer appointed by and serving at the pleasure of the Governor to administer a department exercises a portion of the sovereign power assigned under the State Constitution to the Executive Branch. Such appointees remain subject to the direction and supervision of one or more elected constitutional officers who have the ultimate accountability to the People for the faithful discharge of such responsibility.

Regarding the Governor's accountability for the supervision and direction of those appointed officers serving at the pleasure of the Governor, the Legislature is informed by the following analysis:

> As opined by Justice Polston: "(T)he Governor has the constitutional authority to act as this State's chief administrative officer as well as the constitutional duty to faithfully execute this State's laws and to manage and hold agencies under his charge accountable to State laws, including the APA. (The Supreme) Court has explained that '[t]he Governor is given broad authority to fulfill his duty in taking "care that the laws be faithfully executed."'"
>
> As opined by Chief Justice Canady: "(I)f 'supreme executive power' means anything, it must mean that the Governor can supervise and direct the policy-making choices—within the range of choices permitted by law—of the subordinate executive branch officers who serve at his pleasure."

The Legislature has not expressly insulated discretionary executive policy decisions from the constitutional structure of accountability to elected officials established in Article IV.

Pertaining to the exercise of delegated rulemaking

authority, the Legislature is informed by the following:

> The exercise of delegated quasi-legislative power within the parameters of Florida's Administrative Procedure Act and related statutes involves certain discretionary policy choices by executive branch officers. In authorizing the exercise of this power the Legislature has imposed no restriction on the authority of the Governor or any other constitutional officer or collegial body to supervise and direct such policy choices made by subordinate executive branch officials in rulemaking.
>
> Florida law provides no specific process for carrying out the Governor's executive duties with respect to holding his executive agencies accountable in their rulemaking functions.
>
> As correctly opined by Chief Justice Canady: "Given the constitutional structure establishing the power and responsibilities of the Governor, it is unjustified to conclude … that by assigning rulemaking power to agency heads, the Legislature implicitly divested the Governor of the supervisory power with respect to executive officials who serve at his pleasure."
>
> A Governor's actions are presumed to be in accord with the duties of that office.

A statutory definition of "agency head" is neither intended nor effective to change the fundamental general principles of Article IV of the State Constitution: 1) that executive branch power may only be exercised under the direct or indirect supervision of one or more elected constitutional officers; and 2) that the supervision of any executive agency not expressly allocated to one or more particular constitutional officers remains under the governor's supreme executive power.

The Administrative Procedure Act is a uniform procedural statute ensuring full public access and participation in any exercise of delegated legislative authority by Executive Branch entities.

The delegation of rulemaking authority by substantive statute and establishment of uniform procedures under the Administrative Procedure Act were intended and made by the Legislature to conform and comply with the separation of power required under Article II, section 3 of the State Constitution, with no general intrusion into the role and authority of the elected Executive Branch officers as established in Article IV of the State Constitution.

Continual review and assessment of existing and proposed regulations is reasonably necessary to ensure that the laws of the State are faithfully executed without unduly burdening the State's economy and imposing needless costs and requirements on citizens, businesses, and local governments.

Fiscal accountability by all agencies is reasonably necessary to ensure integrity in State government.

While agency heads and personnel bring expertise to a particular subject matter, they are not directly accountable to the electorate and do not necessarily have an incentive to take a systemic approach to regulatory problems, to budget constraints, or to the overall regulatory burden imposed by the State on citizens and businesses.

The elected Constitutional officers have a democratic mandate, are directly answerable to the people, and have the duty and power to assess the overall legality, efficiency, and operation of government within their constitutional and statutory jurisdictions.

Review and oversight of agency rulemaking is encompassed by the Governor's powers and duties under the Constitution of the State of Florida to "take care that the laws be faithfully executed" and to serve as "the chief administrative officer of the state responsible for the planning and budgeting for the state."

The Constitution of the State of Florida and the Florida Statutes establish that many agencies of State government are administered by an officer "appointed by and serving at the pleasure of the governor," and in order to determine whether an

officer shall continue to serve at the Governor's pleasure, it is necessary for the Governor to set expectations and standards for that officer, and to measure agency performance against those expectations and standards.

Executive Orders 11-01 and 11-72 established the Office of Fiscal Accountability and Regulatory Reform (OFARR) to ensure that agency rules (proposed and existing) are efficient, are not overly burdensome, and faithfully adhere to statutes as enacted by the Legislature.

Upon establishment of OFARR, all agencies under the direction of the Governor were required to obtain OFARR review and approval before developing new rules or amending or repealing existing rules.

OFARR's review process has facilitated the Governor's exercise of the power and duty to serve as the chief executive and administrative officer of the State.

OFARR's review process has facilitated the Governor's planning and budgeting for the State.

OFARR has reviewed thousands of rules and regulations and helped agencies identify over one thousand unnecessary and unauthorized rules and regulations for repeal.

Since January 4, 2011, OFARR has reviewed hundreds of

proposed agency rulemaking actions.

OFARR's review process has thus far been successful in helping to ensure efficient and effective performance by State government.

The Supreme Court of Florida, in the case of *Whiley v. Scott,* No. SC11-592, issued an unsigned opinion joined by five Justices, which held that Executive Orders 11-01 and 11-72 "impermissibly suspended agency rulemaking to the extent that [they] included a requirement that [OFARR] must first permit an agency to engage in the rulemaking which has been delegated by the Florida Legislature."

The majority opinion in *Whiley*:

> Failed to address and apply the plain meaning of the first and sixth sections of Article IV of the Constitution of the State of Florida, and thereby may be read to restrain the power of the Governor under general law with respect to the supervision of agency heads;
>
> Failed to address the implications of the Court's precedent in *Jones v. Chiles*, 638 So. 2d 48 (Fla. 1994), which recognized the proper scope of executive power under the Constitution of the State of Florida;

Failed to address the precedent set by dozens of executive orders issued by prior governors of Florida;

Failed to address the Court's holding that "[t]he principles underlying the governmental separation of powers antedate our Florida Constitution and were collectively adopted by the union of states in our federal constitution," *Chiles v. Children A, B, C, D, E, & F*, 589 So. 2d 260, 263 (Fla. 1991), and in light of that precedent, failed to consider that Executive Orders 11-01 and 11-72 cannot be meaningfully distinguished from similar executive orders issued by the last four presidents of the United States and the governors of a least twenty-nine other states; and

Unreasonably relied on a 1983 Opinion of the Attorney General Opinion, which the Attorney General distinguished and limited to its facts in an *amicus* brief in *Whiley*.

The dissenting opinions of two justices in the *Whiley* case state the correct interpretation of the Constitution of the State of Florida and present persuasive reasoning and arguments in support of that interpretation.

The Supreme Court withheld the Writ sought by *Whiley*.

Notwithstanding the above the majority opinion in *Whiley* is

to be afforded the deference due an advisory opinion of the Supreme Court of the State of Florida because no writ or other final order was entered beyond a mere declaration of law.

Section 2. Executive Orders 11-72 and 11-211 are affirmed to be consistent with state law and the public policy of the state.

Section 3. The Legislature intends that the amendments to ss. 20.02, 20.03, and 20.05, Florida Statutes, made by this act which apply to the organizational structure of the executive branch, and that the creation of s. 120.515, Florida Statutes, and the amendment to s. 120.52, Florida Statutes, made by this act which apply to administrative procedure, are to clarify that the placement of an executive department under the direct administration of an officer or board appointed by and serving at the pleasure of the Governor does not implicitly limit or restrict the Governor's prerogative, legal authority and constitutional responsibility to direct and supervise the execution of the law and the exercise of lawful discretion and are intended to abolish any implication that unelected agency heads have statutory authority independent from the direction and supervision of the Governor, except as may be clearly, expressly and specifically provided by general law.

Section 4. Subsections (3), (4), (5), (6), and (7) of section 20.02, Florida Statutes, are amended to read:

20.02 Declaration of policy.—

(3) Unless otherwise expressly provided in this chapter, the administration of any executive branch department or entity

placed under the direct supervision of an officer or board appointed by and serving at the pleasure of the governor shall remain at all times under the constitutional executive authority of the governor, in accordance with Article IV, sections 1(a) and 6, of the State Constitution, and, except as may be expressly and specifically provided by law, such officer or board is subject to oversight, direction and supervision by the Governor.

(4) Structural reorganization must be a continuing process through careful executive and legislative appraisal of the placement of proposed new programs and the coordination of existing programs in response to public needs.

~~(4)~~ (5) The responsibility within the executive branch of government for the implementation of programs and policies must be clearly fixed and ascertainable.

~~(5)~~ (6) Departments must be organized along functional or program lines.

~~(6)~~ (7) The management and coordination of state services must be improved and overlapping activities eliminated.

~~(7)~~ (8) When a reorganization of state government abolishes positions, the individuals affected, when otherwise qualified, must be given priority consideration for any new positions created by reorganization or for other vacant positions in state government.

Section 5. Subsections (4) and (5) of section 20.03, Florida Statutes, are amended, and subsection (13) is created to read:

20.03 Definitions.—To provide uniform nomenclature

throughout the structure of the executive branch, the following definitions apply:

(4) "Head of the department" means the individual under whom, or the board under which, ~~in charge~~ direct administration of the department is placed by statute. Where direct administration of a department is placed under an officer or board appointed by and serving at the pleasure of the Governor, that officer or board remains subject to the Governor's supervision and direction.

(5) "Secretary" means an individual who is appointed by the Governor to head a department and who is not otherwise named in the State Constitution~~constitution~~.

(13) "To serve at the pleasure" means the appointee serves in the office until removed by the appointing authority. Consistent with the allotment of executive authority under Article IV, ss. 1 and 6 of the State Constitution, an appointee serving at the pleasure of the appointing authority remains subject to the direction and supervision of the appointing authority and does not exercise any executive power independent therefrom, except as is clearly, expressly and specifically provided by law. Unless otherwise expressly provided by law, the exercise of statutory authority by such appointee does not require the approval of the appointing authority and may not be invalidated by a contrary directive from the appointing authority.

Section 6. Paragraph (a) of subsection (1) of section 20.05, Florida Statutes, is amended to read:

20.05 Heads of departments; powers and duties.—

(1) Each head of a department, subject to the allotment of executive power under Article IV of the State Constitution, and except as otherwise provided by law, must:

(a) Plan, direct, coordinate, and execute the powers, duties, and functions vested in that department or vested in a division, bureau, or section of that department; powers and duties assigned or transferred to a division, bureau, or section of the department must not be construed to limit this authority and this responsibility;

Section 7. Section 120.515, Florida Statutes, is created to read:

120.515 — Declaration of Policy. - This chapter provides uniform procedures for the exercise of specified authority. Nothing in this chapter limits or impinges upon the assignment of executive power under Article IV of the State Constitution or the legal authority of an appointing authority to direct and supervise those appointees serving at the pleasure of the appointing authority. For purposes of this chapter, adherence to the direction and supervision of an appointing authority shall not be construed to constitute delegation or transfer of statutory authority assigned to the appointee.

Section 8. Subsection (3) of section 120.52, Florida Statutes, is amended to read:

120.52 Definitions.—As used in this act:

(3) "Agency head" means the person or collegial body in a department or other governmental unit statutorily responsible for final agency action. While an agency head appointed by and serving at the pleasure of an appointing authority remains

subject to the direction and supervision of the appointing authority, actions taken by the agency head as authorized by statute are official acts.

Section 9. Paragraphs (j), and (k) of subsection (5) of section 11.242, Florida Statutes, are amended to read:

11.242 Powers, duties, and functions as to statutory revision.—The powers, duties, and functions of the Office of Legislative Services in the operation and maintenance of a statutory revision program shall be as follows:

(5) In carrying on the work of statutory revision and in preparing the Florida Statutes for publication:

(j) All statutes and laws, or parts thereof, which grant duplicative, redundant or unused rulemaking authority, shall be omitted through the process of reviser's bills duly enacted by the Legislature. Rulemaking authority shall be deemed unused if the provision has been in effect for more than five years and no rule has been promulgated in reliance thereon.

(k) All statutes and laws general in form but of such local or limited application as to make their inclusion in the Florida Statutes or any revision or supplement thereof impracticable, undesirable, or unnecessary shall be omitted therefrom, without effecting a repeal thereof.

~~(k)~~ (l) All things relating to form, position, order, or arrangement of the revision, not inconsistent with the Florida Statutes system, which may be found desirable or necessary for the improvement, betterment, or perfection of same, may be done.

Section 10. Subsection (3) of section 14.34, Florida Statutes, is repealed.

Section 11. Subsection (7) of section 15.16, Florida Statutes, is amended to read:

15.16 Reproduction of records; admissibility in evidence; electronic receipt and transmission of records; certification; acknowledgment.—

(7) The Secretary of State may issue apostilles conforming to the requirements of the international treaty known as the Hague Convention of 1961 and may charge a fee for the issuance of apostilles not to exceed $10 per apostille. The Secretary of State has the sole authority in this state to establish, in accordance with the laws of the United States, the requirements and procedures for the issuance of apostilles. ~~The Department of State may adopt rules to implement this subsection.~~

Section 12. Subsection (7) of section 15.18, Florida Statutes, is repealed.

Section 13. Paragraph (a) of subsection (3) of section 16.60, Florida Statutes, is amended to read:

16.60 Public records mediation program within the Office of the Attorney General; creation; duties.—

(3) The Office of the Attorney General shall:

(a) Employ one or more mediators to mediate disputes involving access to public records. A person may not be employed by the department as a mediator unless that person is a member in good standing of The Florida Bar. ~~The Office of the Attorney General may adopt rules of procedure to govern its mediation proceedings.~~

Section 14. Subsection (2) of section 17.0416, Florida Statutes, is repealed.

Section 15. Subsection (3) of section 17.59, Florida Statutes, is repealed.

Section 16. Section 25.371, Florida Statutes, is repealed.

Section 17. Section 28.43, Florida Statutes, is repealed.

Section 18. Section 35.07, Florida Statutes, is repealed.

Section 19. Subsection (11) of section 39.001, Florida Statutes, is repealed.

Section 20. Subsection (2) of section 39.0137, Florida Statutes, is amended to read:

39.0137 Federal law; rulemaking authority.—

(2) ~~The department shall adopt rules no later than July 1, 2007, to ensure that the provisions of these federal laws are enforced in this state.~~ The department is encouraged to enter into agreements with recognized American Indian tribes in order to facilitate the implementation of the Indian Child Welfare Act.

Section 21. Subsection (1) of section 39.824, Florida Statutes, is repealed.

Section 22. Subsection (3) of section 63.167, Florida Statutes, is amended to read:

63.167 State adoption information center.—

(3) The department shall ensure equitable distribution of referrals to licensed child-placing agencies~~, and may promulgate rules as necessary for the establishment and operation of the state adoption information center~~.

Section 23. Section 88.9051, Florida Statutes, is repealed.

Section 24. Section 97.026, Florida Statutes, is amended

to read:

97.026 Forms to be available in alternative formats and via the Internet.—It is the intent of the Legislature that all forms required to be used in chapters 97-106 shall be made available upon request, in alternative formats. Such forms shall include absentee ballots as alternative formats for such ballots become available and the Division of Elections is able to certify systems that provide them. ~~The department may, pursuant to ss. 120.536(1) and 120.54, adopt rules to administer this section.~~ Whenever possible, such forms, with the exception of absentee ballots, shall be made available by the Department of State via the Internet. Sections that contain such forms include, but are not limited to, ss. 97.051, 97.052, 97.053, 97.057, 97.058, 97.0583, 97.071, 97.073, 97.1031, 98.075, 99.021, 100.361, 100.371, 101.045, 101.171, 101.20, 101.6103, 101.62, 101.64, 101.65, 101.657, 105.031, 106.023, and 106.087.

Section 25. Section 97.0555, Florida Statutes, is amended to read:

97.0555 Late registration.—An individual or accompanying family member who has been discharged or separated from the uniformed services or the Merchant Marine, or from employment outside the territorial limits of the United States, after the book-closing date for an election pursuant to s. 97.055 and who is otherwise qualified may register to vote in such election until 5 p.m. on the Friday before that election in the office of the supervisor of elections. Such persons must produce sufficient documentation showing evidence of qualifying for late registration pursuant to this section. ~~The Department of State~~

~~shall adopt rules specifying documentation that is sufficient to determine eligibility.~~

Section 26. Subsection (1) of section 97.061, Florida Statutes, is amended to read:

97.061 Special registration for electors requiring assistance.—

(1) Any person who is eligible to register and who is unable to read or write or who, because of some disability, needs assistance in voting shall upon that person's request be registered under the procedure prescribed by this section and shall be entitled to receive assistance at the polls under the conditions prescribed by this section. ~~The department may adopt rules to administer this section.~~

Section 27. Subsection (3) of section 101.56062, Florida Statutes, is repealed.

Section 28. Subsection (5) of section 103.101, Florida Statutes, is amended to read:

103.101 Presidential preference primary.—

(5) The state executive committee of each party, by rule adopted at least 60 days prior to the presidential preference primary election, shall determine the number, and establish procedures to be followed in the selection, of delegates and delegate alternates from among each candidate's supporters. A copy of any rule adopted by the executive committee shall be filed with the Department of State within 7 days after its adoption and shall become a public record. The Department of State shall review the procedures and shall notify the state executive committee of each political party of any ballot

limitations. ~~The Department of State may promulgate rules for the orderly conduct of the presidential preference primary ballot.~~

Section 29. Section 106.165, Florida Statutes, is amended to read:

106.165 Use of closed captioning and descriptive narrative in all television broadcasts.—Each candidate, political party, affiliated party committee, and political committee must use closed captioning and descriptive narrative in all television broadcasts regulated by the Federal Communications Commission that are on behalf of, or sponsored by, a candidate, political party, affiliated party committee, or political committee or must file a written statement with the qualifying officer setting forth the reasons for not doing so. Failure to file this statement with the appropriate qualifying officer constitutes a violation of the Florida Election Code and is under the jurisdiction of the Florida Elections Commission. ~~The Department of State may adopt rules in accordance with s. 120.54 which are necessary to administer this section.~~

Section 30. Section 110.1055, Florida Statutes, is amended to read:

110.1055 Rules and rulemaking authority.—The Department of Management Services shall <u>have authority to</u> adopt rules as necessary to effectuate the provisions of this chapter~~, as amended by this act, and in accordance with the authority granted to the department in this chapter. All existing rules relating to this chapter are statutorily repealed January 1, 2002, unless otherwise readopted~~.

Section 31. Subsection (5) of section 110.1099, Florida Statutes, is repealed.

Section 32. Subsection (7) of section 110.1228, Florida Statutes, is repealed.

Section 33. Subsection (2) of section 110.12301, Florida Statutes, is amended to read:

110.12301 Competitive procurement of postpayment claims review services.—

The Division of State Group Insurance is directed to competitively procure:

(2) A contingency-based contract for dependent eligibility verification services for the state group insurance program; however, compensation under the contract may not exceed historical claim costs for the prior 12 months for the dependent populations disenrolled as a result of the vendor's services. The division may establish a 3-month grace period and hold subscribers harmless for past claims of ineligible dependents. The Department of Management Services shall submit budget amendments pursuant to chapter 216 in order to obtain budget authority necessary to expend funds from the State Employees' Group Health Self-Insurance Trust Fund for payments to the vendor as provided in the contract. ~~The Department of Management Services shall adopt rules providing a process for verifying dependent eligibility.~~

Section 34. Subsection (4) of section 112.1915, Florida Statutes, is repealed.

Section 35. Section 118.12, Florida Statutes, is amended to read:

118.12 Certification of civil-law notary's authority; apostilles.—If certification of a civil-law notary's authority is necessary for a particular document or transaction, it must be obtained from the Secretary of State. Upon the receipt of a written request from a civil-law notary and the fee prescribed by the Secretary of State, the Secretary of State shall issue a certification of the civil-law notary's authority, in a form prescribed by the Secretary of State, which shall include a statement explaining the legal qualifications and authority of a civil-law notary in this state. The fee prescribed for the issuance of the certification under this section or an apostille under s. 15.16 may not exceed $10 per document~~. The Department of State may adopt rules to implement this section.~~

Section 36. Subsection (1) of section 121.085, Florida Statutes, is repealed.

Section 37. Paragraph (b) of subsection (4) of section 121.1001, Florida Statutes, is repealed.

Section 38. Subsection (3) of section 121.4503, Florida Statutes, is repealed.

Section 39. Section 121.5911, Florida Statutes, is amended to read:

121.5911 Disability retirement program; qualified status; rulemaking authority.—It is the intent of the Legislature that the disability retirement program for members of the Florida Retirement System Investment Plan meet all applicable requirements of federal law for a qualified plan. The department shall seek a private letter ruling from the Internal Revenue Service on the disability retirement program. ~~Consistent with~~

~~the private letter ruling, the department shall adopt rules necessary to maintain the qualified status of the disability retirement program and the Florida Retirement System Pension Plan.~~

Section 40. Subsection (4) of section 125.902, Florida Statutes, is repealed.

Section 41. Subsection (4) of section 154.503, Florida Statutes, is repealed.

Section 42. Paragraph (a) of subsection (2) of section 159.8081, Florida Statutes, is amended to read:

159.8081 Manufacturing facility bond pool.—

(2)(a) The first 75 percent of this pool shall be available on a first come, first served basis, except that 15 percent of the state volume limitation allocated to this pool shall be available as provided in paragraph (b). Before issuing any written confirmations for the remaining 25 percent of this pool, the executive director shall forward all notices of intent to issue which are received by the division for manufacturing facility projects to the Department of Economic Opportunity. The Department of Economic Opportunity shall decide, after receipt of the notices of intent to issue, which notices will receive written confirmations. Such decision shall be communicated in writing by the Department of Economic Opportunity to the executive director within 10 days of receipt of such notices of intent to issue. ~~The Department of Economic Opportunity may develop rules to ensure that allocation of the remaining 25 percent is consistent with the state's economic development policy.~~

Section 43. Section 159.8083, Florida Statutes, is amended to read:

159.8083 Florida First Business allocation pool.—The Florida First Business allocation pool is hereby established. The Florida First Business allocation pool shall be available solely to provide written confirmation for private activity bonds to finance Florida First Business projects certified by the Department of Economic Opportunity as eligible to receive a written confirmation. Allocations from such pool shall be awarded statewide pursuant to procedures specified in s. 159.805, except that the provisions of s. 159.805(2), (3), and (6) do not apply. Florida First Business projects that are eligible for a carryforward do not lose their allocation pursuant to s. 159.809(3) on October 1, or pursuant to s. 159.809(4) on November 16, if they have applied for and have been granted a carryforward by the division pursuant to s. 159.81(1). In issuing written confirmations of allocations for Florida First Business projects, the division shall use the Florida First Business allocation pool. If allocation is not available from the Florida First Business allocation pool, the division shall issue written confirmations of allocations for Florida First Business projects pursuant to s. 159.806 or s. 159.807, in such order. For the purpose of determining priority within a regional allocation pool or the state allocation pool, notices of intent to issue bonds for Florida First Business projects to be issued from a regional allocation pool or the state allocation pool shall be considered to have been received by the division at the time it is determined by the division

that the Florida First Business allocation pool is unavailable to issue confirmation for such Florida First Business project. If the total amount requested in notices of intent to issue private activity bonds for Florida First Business projects exceeds the total amount of the Florida First Business allocation pool, the director shall forward all timely notices of intent to issue, which are received by the division for such projects, to the Department of Economic Opportunity, which shall render a decision as to which notices of intent to issue are to receive written confirmations. ~~The Department of Economic Opportunity, in consultation with the division, shall develop rules to ensure that the allocation provided in such pool is available solely to provide written confirmations for private activity bonds to finance Florida First Business projects and that such projects are feasible and financially solvent.~~

Section 44. Subsection (3) of section 159.825, Florida Statutes, is repealed.

Section 45. Section 161.75, Florida Statutes, is repealed.

Section 46. Section 163.462, Florida Statutes, is repealed.

Section 47. Subsection (6) of section 163.517, Florida Statutes, is repealed.

Section 48. Subsection (2) of section 175.341, Florida Statutes, is repealed.

Section 49. Paragraph (e) of subsection (2) of section 177.504, Florida Statutes, is repealed.

Section 50. Subsection (2) of section 185.23, Florida Statutes, is repealed.

Section 51. Subsection (2) of section 255.25001, Florida Statutes, is repealed.

Section 52. Subsection (7) of section 257.34, Florida Statutes, is repealed.

Section 53. Subsection (6) of section 364.0135, Florida Statutes, is repealed.

Section 54. Section 366.85, Florida Statutes, is amended to read:

366.85 Responsibilities of Division of Consumer Services.—The Division of Consumer Services of the Department of Agriculture and Consumer Services shall be the agency responsible for consumer conciliatory conferences, if such conferences are required pursuant to federal law. The division shall also be the agency responsible for preparing lists of sources for energy conservation products or services and of financial institutions offering energy conservation loans, if such lists are required pursuant to federal law. Notwithstanding any provision of federal law to the contrary, the division shall not require any manufacturer's warranty exceeding 1 year in order for a source of conservation products or services to be included on the appropriate list. The lists shall be prepared for the service area of each utility and shall be furnished to each utility for distribution to its customers. The division shall update the lists on a systematic basis and shall remove from any list any person who has been disciplined by any state agency or who has otherwise exhibited a pattern of unsatisfactory work and any person who requests removal from such lists. ~~The division is authorized to adopt rules to~~

~~implement the provisions of this section.~~

Section 55. Section 409.5092, Florida Statutes, is repealed.

Section 56. Paragraphs (d) and (e) of subsection (4) of section 411.01, Florida Statutes, are amended to read:

411.01 School readiness programs; early learning coalitions.—

(4) OFFICE OF EARLY LEARNING OF THE DEPARTMENT OF EDUCATION.—

(d) The Office of Early Learning shall:

1. Be responsible for the prudent use of all public and private funds in accordance with all legal and contractual requirements.

2. Provide final approval and every 2 years review early learning coalitions and school readiness plans.

3. Establish a unified approach to the state's efforts toward enhancement of school readiness. In support of this effort, the Office of Early Learning shall adopt specific system support services that address the state's school readiness programs. An early learning coalition shall amend its school readiness plan to conform to the specific system support services adopted by the Office of Early Learning. System support services shall include~~, but are not limited to~~:

a. Child care resource and referral services;

b. Warm-Line services;

c. Eligibility determinations;

d. ~~Child performance standards;~~

~~e. Child screening and assessment;~~

~~f. Developmentally appropriate curricula;~~

~~g.~~ Health and safety requirements requiring compliance with applicable licensure requirements of the Department of Children and Families; and

~~h.~~ e. Statewide data system requirements~~; and~~

~~i. Rating and improvement systems~~.

4. Safeguard the effective use of federal, state, local, and private resources to achieve the highest possible level of school readiness for the children in this state.

5. Adopt a rule establishing criteria for the expenditure of funds designated for the purpose of funding activities to improve the quality of child care within the state but only as necessary to comply~~in accordance~~ with s. 658G of the federal Child Care and Development Block Grant Act.

6. Provide technical assistance to early learning coalitions in a manner determined by the Office of Early Learning based upon information obtained by the office from various sources, including, but not limited to, public input, government reports, private interest group reports, office monitoring visits, and coalition requests for service.

7. In cooperation with the early learning coalitions, coordinate with the Child Care Services Program Office of the Department of Children and Family Services to minimize duplicating interagency activities, health and safety monitoring, and acquiring and composing data pertaining to child care training and credentialing.

8. Develop and adopt performance standards and outcome measures for school readiness programs. The performance

standards must address the age-appropriate progress of children in the development of school readiness skills. The performance standards for children from birth to 5 years of age in school readiness programs must be integrated with the performance standards adopted by the Department of Education for children in the Voluntary Prekindergarten Education Program under s. 1002.67.

9. Adopt a standard contract that must be used by the coalitions when contracting with school readiness providers.

(e) The Office of Early Learning may adopt rules under ss. 120.536(1) and 120.54 to administer the provisions of law conferring duties upon the office, including, but not limited to, rules governing the administration of system support services of school readiness programs, the collection of data, the approval of early learning coalitions and school readiness plans, the provision of a method whereby an early learning coalition may serve two or more counties, ~~the award of incentives to early learning coalitions, child performance standards, child outcome measures,~~ the issuance of waivers, and the implementation of the state's Child Care and Development Fund Plan as approved by the federal Administration for Children and Families.

Section 57. Subsection (7) of section 411.01013, Florida Statutes, is repealed.

Section 58. Subsection (3) of section 411.0103, Florida Statutes, is repealed.

Section 59. Subsection (3) of section 411.0104, Florida Statutes, is repealed.

Section 60. Subsections (1) and (3) of section 501.142, Florida Statutes, are amended to read:

501.142 Retail sales establishments; preemption; notice of refund policy; exceptions; penalty.—

(1) The regulation of refunds is preempted to the Department of Agriculture and Consumer Services notwithstanding any other law or local ordinance to the contrary. Every retail sales establishment offering goods for sale to the general public that offers no cash refund, credit refund, or exchange of merchandise must post a sign so stating at the point of sale. Failure of a retail sales establishment to exhibit a "no refund" sign under such circumstances at the point of sale shall mean that a refund or exchange policy exists, and the policy shall be presented in writing to the consumer upon request. Any retail establishment failing to comply with the provisions of this section shall grant to the consumer, upon request and proof of purchase, a refund on the merchandise, within 7 days of the date of purchase, provided the merchandise is unused and in the original carton, if one was furnished. Nothing herein shall prohibit a retail sales establishment from having a refund policy which exceeds the number of days specified herein. ~~The department may adopt rules pursuant to ss. 120.536(1) and 120.54 to enforce the provisions of this section.~~ However, this subsection does not prohibit a local government from enforcing the provisions established by this section ~~or department rule~~.

(3) The department may enter an order doing one or more of the following if the department finds that a person has violated or is operating in violation of any of the provisions of this

section or the ~~rules or~~ orders issued under this section:

~~(a) Issue a notice of noncompliance pursuant to s. 120.695.~~

(a) ~~(b)~~ Impose an administrative fine not to exceed $100 for each violation.

(b) ~~(c)~~ Direct the person to cease and desist specified activities.

Section 61. This act shall take effect July 1, 2012.