Agriculture & Natural Resources Subcommittee

Meeting Packet

Tuesday, January 17, 2012
12:30 pm
Reed Hall (102 HOB)

Dean Cannon
Speaker

Steve Crisafulli
Chair

Committee Meeting Notice

HOUSE OF REPRESENTATIVES

Agriculture & Natural Resources Subcommittee

Start Date and Time:	Tuesday, January 17, 2012 12:30 pm
End Date and Time:	Tuesday, January 17, 2012 03:00 pm
Location:	Reed Hall (102 HOB)
Duration:	2.50 hrs

Consideration of the following bill(s):

HB 115 Land Application of Septage by Drake
CS/HB 479 Animal Control by Health & Human Services Quality Subcommittee, O'Toole
HB 639 Reclaimed Water by Young
HB 989 Domestic Wastewater Discharged Through Ocean Outfalls by Gonzalez
HB 1103 Ordinary High-Water Mark for Navigable, Nontidal Waterbodies by Goodson
HB 1197 Agriculture by Horner
HB 1237 Department of Citrus by Albritton
HB 1239 Pub. Rec./Department of Citrus by Albritton
HB 4137 Basins by Pilon
HB 4171 Bonfires by Ray

NOTICE FINALIZED on 01/12/2012 16:15 by Love.John

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 115 Land Application of Septage
SPONSOR(S): Drake
TIED BILLS: None **IDEN./SIM. BILLS:** SB 558

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Agriculture & Natural Resources Subcommittee		Deslatte	Blalock
2) State Affairs Committee			

SUMMARY ANALYSIS

During the 2010 session, SB 550 was passed by the Legislature and signed into law by the Governor. The bill contained a number of provisions relating to onsite sewage treatment and disposal systems. The bill created a statewide septic tank evaluation program and required the Department of Health (DOH) to undertake rulemaking and implement the first phase of the evaluation program by January 1, 2011, with full statewide implementation by January 1, 2016. During the 2010 special session, the Legislature extended the implementation date to July 1, 2011. 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, the DOH must submit a plan for approval by the Legislative Budget Commission, which includes an estimate of agency workload and funding needs.

SB 550 also prohibited the land application of septage from onsite sewage treatment and disposal systems by January 1, 2016. In addition, the bill required that the DOH, in consultation with the Department of Environmental Protection (DEP), provide a report to the Governor, the President of the Senate, and the Speaker of the House of Representatives, recommending alternative methods to establish enhanced treatment levels for the land application of septage from onsite sewage and disposal systems by February 1, 2011.

The bill repeals the prohibition on the land application of septage from septic tank pumpouts that goes into effect on January 1, 2016, and the requirement that DOH provide a report recommending alternative methods to establish enhanced treatment levels for the land application of septage from onsite sewage and disposal systems by February 1, 2011.

The bill has a positive fiscal impact on the DOH. The DOH currently has 92 land application sites permitted, with an annual fee of $200 per site. Total revenue to the DOH for permitting these sites is $18,400. Repealing the ban on land application of septage would allow the DOH to continue its current permitting program for these sites. The bill does not have a fiscal impact on local governments.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

During the 2010 session, Senate Bill (SB) 550 was passed by the Legislature and signed into law by the Governor. The bill contained a number of provisions relating to onsite sewage treatment and disposal systems. The bill created a statewide septic tank evaluation program and required the Department of Health (DOH) to undertake rulemaking and implement the first phase of the evaluation program by January 1, 2011, with full statewide implementation by January 1, 2016. During the 2010 special session, the Legislature extended the implementation date to July 1, 2011. During the 2011 legislative session, SB 2002 (implementing bill to the general appropriations act) provided that before the implementation of the onsite sewage treatment and disposal system evaluation program, the DOH must submit a plan for approval by the Legislative Budget Commission, which includes an estimate of agency workload and funding needs.

SB 550 also prohibited the land application of septage from onsite sewage treatment and disposal systems by January 1, 2016. In addition, the bill required that the DOH, in consultation with the Department of Environmental Protection (DEP), provide a report to the Governor, the President of the Senate, and the Speaker of the House of Representatives, recommending alternative methods to establish enhanced treatment levels for the land application of septage from onsite sewage and disposal systems by February 1, 2011.

Effect of Proposed Changes

The bill repeals the prohibition on the land application of septage from septic tank pumpouts that goes into effect on January 1, 2016, and the requirement that DOH provide a report recommending alternative methods to establish enhanced treatment levels for the land application of septage from onsite sewage and disposal systems by February 1, 2011.

B. SECTION DIRECTORY:

Section 1. Amends s. 381.0065, F.S., repealing the prohibition on the land application of septage from septic tank pumpouts that goes into effect on January 1, 2016, and the requirement that DOH provide a report recommending alternative methods to establish enhanced treatment levels for the land application of septage from onsite sewage and disposal systems by February 1, 2011.

Section 2. Providing an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   The bill appears to have a positive fiscal impact on state government revenues (See Fiscal Comments Section).

2. Expenditures:

   None

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None

2. Expenditures:

None

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

According to the 2011 DOH analysis, land application of septage provides an additional alternative for disposal. With the termination of the ban on land application of septage, septic tank pumpers/septage haulers can continue business as usual. Without the termination of the ban on land application of septage, these businesses would, over the next five years, have to find approved municipal wastewater treatment plants or biosolids receiving facilities that accept septage at a typically higher cost than land application due to driving distance and fees for disposal. These costs would also result in higher pumpout costs to people that own septic tanks.

D. FISCAL COMMENTS:

According to the DOH analysis, repeal of the termination on land application of septage allows the DOH to continue its current permitting program for these sites. DOH currently has 92 land application sites permitted, with an annual fee of $200 per site. Total revenue to the DOH for permitting these sites is $18,400.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None

B. RULE-MAKING AUTHORITY:

None

C. DRAFTING ISSUES OR OTHER COMMENTS:

None

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.

A bill to be entitled

An act relating to the land application of septage; amending s. 381.0065, F.S.; terminating the future imposition of the prohibition of the land application of septage from onsite sewage treatment and disposal systems; providing an effective date.

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

Section 1. Subsection (7) of section 381.0065, Florida Statutes, is amended to read:

381.0065 Onsite sewage treatment and disposal systems; regulation.—

~~(7) LAND APPLICATION OF SEPTAGE PROHIBITED.—Effective January 1, 2016, the land application of septage from onsite sewage treatment and disposal systems is prohibited. By February 1, 2011, the department, in consultation with the Department of Environmental Protection, shall provide a report to the Governor, the President of the Senate, and the Speaker of the House of Representatives, recommending alternative methods to establish enhanced treatment levels for the land application of septage from onsite sewage and disposal systems. The report shall include, but is not limited to, a schedule for the reduction in land application, appropriate treatment levels, alternative methods for treatment and disposal, enhanced application site permitting requirements including any requirements for nutrient management plans, and the range of costs to local governments, affected businesses, and individuals~~

~~for alternative treatment and disposal methods. The report shall also include any recommendations for legislation or rule authority needed to reduce land application of septage.~~

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 479 Animal Control
SPONSOR(S): Health & Human Services Quality Subcommittee; O'Toole and others
TIED BILLS: None **IDEN./SIM. BILLS:** SB 654

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Health & Human Services Quality Subcommittee	13 Y, 0 N, As CS	Poche	Calamas
2) Agriculture & Natural Resources Subcommittee		Cunningham PC	Blalock AFB
3) Rulemaking & Regulation Subcommittee			
4) Health & Human Services Committee			

SUMMARY ANALYSIS

Animal control services in Florida are administered by county and municipal government agencies and by humane societies registered to do business with the Secretary of State. One of the services provided by the agencies and societies is euthanasia of sick, injured and abandoned animals. These facilities are required by law and rule to obtain a permit that allows the purchase, possession and use of euthanasia drugs. Currently, the only acceptable methods of euthanizing domestic animals in the state are injections of sodium pentobarbital or a sodium pentobarbital derivative, or adding sodium pentobarbital or a derivative in solution or powder form to food.

House Bill 479 expands the list of drugs that can be used to euthanize domestic animals and adds certain drugs that may be used to immobilize domestic animals. The bill allows agencies and societies to obtain drugs for the purpose of chemical immobilization using the same permit for obtaining drugs for euthanasia. The bill allows the Board of Pharmacy, at the request of the Board of Veterinary Medicine, to expand the list of drugs that may be used to euthanize or immobilize domestic animals in the future if findings support the addition of drugs to the list for humane and lawful treatment of animals. The bill limits the possession and use of these drugs to animal control officers and employees or agents of animal control agencies and humane societies while operating within the scope of their employment or official duties.

The bill clarifies that the Department of Health is responsible for issuing the permit, by removing an outdated reference to the Department of Business and Professional Regulation being responsible for issuing the permit. The bill provides the Department of Health and the Board of Pharmacy with the authority to deny a permit, or fine, place on probation, or otherwise discipline an applicant or permittee for failure to maintain certain standards or violation of statutes. The bill allows the Department of Health to immediately suspend a permit through emergency order upon a determination that a permittee poses a threat to public health, safety and welfare.

The bill eliminates food-based delivery of euthanasia drugs as an acceptable method of euthanization. The bill permits euthanasia by intracardial injection only upon a dog or cat which is unconscious and exhibits no corneal reflex.

Lastly, the bill requires an animal control officer, a wildlife officer, and an animal disease diagnostic laboratory to report to the Department of Health knowledge of any animal bite, diagnosis or suspicion of a group of animals having similar disease, or any symptom or syndrome that may pose a threat to humans.

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

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Animal Control in Florida

Animal control agencies operated by a humane society or by a city, county or other political subdivision are generally responsible for enforcing state, county and local animal control laws and regulations in Florida. Animal control officers employed or appointed by a county or municipality are authorized to investigate violations of animal control laws or regulations.[1] The governing body of a county or municipality is authorized to enact animal control ordinances.[2]

Euthanasia of Domestic Animals in Florida

Euthanasia is the act or practice of killing or permitting the death of sick or injured animals in a relatively painless way for reasons of mercy.[3] Approximately 5 million to 7 million companion animals enter animal shelters nationwide every year, and approximately 3 million to 4 million are euthanized.[4] There are various means of euthanasia employed throughout the United States, some of which are considered humane[5] and some of which are considered inhumane.[6] In Florida, the only approved drugs for use in euthanasia of domestic animals are sodium pentobarbital[7] or a sodium pentobarbital derivative. Euthanasia drugs are to be delivered by the following methods, in order of preference:

- Intravenous injection by hypodermic needle;
- Intraperitoneal injection by hypodermic needle;
- Intracardial injection by hypodermic needle; or
- Solution or powder added to food. [8]

County or municipal animal control agencies or humane agencies registered with the Secretary of State are regulated under county and municipal ordinances related to animal control and, in part, by chapter 828, F.S. In order for an animal control agency or humane agency to provide euthanasia services, the agency must obtain a permit from the Department of Health (DOH) to purchase, possess, and use the euthanasia drugs approved by statute. Current law states that the Department of Business and Professional Regulation (DBPR) is responsible for receiving the application for, and issuing, the permit.[9] The law was enacted at a time when health care professional boards were administratively housed under DPBR. However, due to reorganization of DBPR and the DOH, DOH and the Board of Pharmacy have primary responsibility for evaluating applications for the permit, issuing the permit, and taking disciplinary actions against holders of the permit for violations of law and rule.

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[1] S. 828.27, F.S.
[2] S. 828.27(2), F.S.
[3] *See* www.merriam-webster.com/dictionary/euthanasia (last viewed November 29, 2011).
[4] *See* American Society for the Prevention of Cruelty to Animals, *Pet Statistics*, at www.aspca.org/about-us/faq/pet-statistics.aspx (last viewed November 29, 2011).
[5] *See* American Veterinary Medical Association Guidelines on Euthanasia, June 2007, Appendix 2, pages 30-31(for example, use of barbiturate drugs, carbon dioxide, carbon monoxide, inhalant anesthetics, penetrating captive bolt, and potassium chloride).
[6] *See id.* at Appendix 4, pages 35-36 (for example, air embolism, burning, chloroform, cyanide, decompression, drowning, and exsanguinations).
[7] Sodium pentobarbital is a barbiturate that is used as a sedative, hypnotic and antispasmodic. When administered in high doses for purposes of euthanasia, sodium pentobarbital causes unconsciousness, followed rapidly by respiratory and cardiac arrest resulting in death.
[8] S. 828.058(1), F.S.
[9] S. 828.055(2), F.S.

The Board of Pharmacy, within the Department of Health, has adopted rules to govern the issuance of permits to county or municipal animal control agencies or humane agencies registered with the Secretary of State to purchase, possess, and use sodium pentobarbital and sodium pentobarbital with lidocaine to euthanize sick, injured or abandoned domestic animals.[10] Currently, there are 105 active animal control shelter permits with Board of Pharmacy.[11] The initial cost of the permit is $50.00 and is renewable biennially.[12] DBPR currently issues exemption letters to fewer than 20 entities which authorize the entities to possess immobilizers without violating s. 499.03, F.S., which imposes criminal sanctions for the unauthorized possession of habit-forming, toxic, harmful, or new drugs.[13] DBPR does not charge a fee for issuing the exemption letter.[14]

Euthanasia can only be performed by a licensed veterinarian or an employee or agent of an agency, animal shelter or other facility operated for the collection and care or stray, neglected, abandoned, or unwanted animals if the employee or agent has completed an euthanasia technician certification course.[15] However, any law enforcement officer, veterinarian, officer or agent of a municipal or county animal control unit, or officer or agent of any society or association for the prevention of cruelty to animals may destroy a sick or injured animal by shooting the animal or injecting it with a barbiturate drug if the officer or agent finds the animal so injured or sick as to appear useless and suffering, and the officer or agent reasonably believes the animal is imminently near death or cannot be cured, and a reasonable attempt is made to locate the owner of the animal or a veterinarian for consultation regarding destruction of the animal.[16]

Chemical Immobilization of Animals

Chemical immobilization is the anesthesia of wild, free-ranging, feral animals or animals that are fractious or unaccustomed to human contact.[17] Chemical immobilization can be given with restraint of the animal (intravenous, intraperitoneal or intracardial delivery of the drug) or without restraint of the animal (compressed air delivery systems, modified firearms, or blow darts). Chemical immobilization should be considered an action of last resort when all other means of restraining an animal are insufficient.[18] The danger posed to the animal and the community must outweigh the risk posed to the animal's life by the drugs used to immobilize it before it is used.[19]

Three major types of drugs used to immobilize animals are opioids, arylcyclohexamines, and neuroleptics. Opioids cause loss of consciousness and alleviate the perception of pain.[20] They are highly potent and effective in relatively small doses.[21] As a result, there is a wide margin of safety in using opioids because the effects can be immediately reversed.[22] Common opioids used in animal immobilization are carfentanil, etorphine, sufentanil, fentanyl, and butorphanol.[23] Arylcyclohexamines produce altered states of consciousness by dissociating mental state from stimulation created by the environment.[24] An animal under the influence of arylcyclohexamines cannot walk but retains many vital functions and reflexes, such

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[10] S. 828.055(1), F.S.; *see also* Chapter 64B16-29, F.A.C.
[11] HB 479 Bill Analysis, Economic Statement and Fiscal Note, Department of Health, at page 6, November 30, 2011 (on file with the Health and Human Services Quality subcommittee).
[12] Rule 64B16-29.002(1)(a) and (b), F.A.C.
[13] S. 499.03(1), F.S.
[14] 2012 Legislative Analysis Form for HB 479, Office of Legislative Affairs, Department of Business and Professional Regulation, dated December 2, 2011, page 4 (on file with the Health and Human Services Quality subcommittee).
[15] S. 828.058(4)(a), F.S.
[16] S. 828.05(3), F.S.
[17] *See* Chemical Immobilization presentation, Auburn University School of Forestry and Wildlife Services, slide 2 available at https://fp.auburn.edu/sfws/ditchkoff/Course%20Pages/6291/Chemical%20Immobilization.ppt (hard copy on file with Health and Human Services Quality subcommittee)
[18] *See id.* at slide 4.
[19] *See id.*
[20] *See id.* at slide 26.
[21] *See id.*
[22] *See id.*
[23] *See id.* at slide 27.
[24] *See id.* at slide 28.

as blinking, swallowing and motion other than walking.[25] Common arylcyclohexamines include ketamine[26], tiletamine[27], and phencyclidine.[28] It is important to note that the affect of arylcyclohexamines is not reversible and must be used in conjunction with neuroleptics to achieve sufficient and safe immobilization.[29] Neuroleptics are tranquilizers, producing calmness and relaxation.[30] Neuroleptics do not cause loss of consciousness or alleviate pain perception.[31] These drugs are used in conjunction with opioids and arylcyclohexamines.[32] Common neuroleptics include diazapam[33] and xylazine.[34]

Disease Reporting

Section 381.0031, F.S., requires certain medical providers, any hospital licensed under chapter 395, and any laboratory licensed under chapter 483 to report to the DOH the diagnosis or suspicion of a disease of public health importance.[35] The DOH is required to periodically issue a list of infectious and noninfectious diseases which it determines to be a threat to public health and therefore of public health importance.[36] The current list of diseases or conditions to be reported includes, but is not limited to,[37]:

Acquired Immune Deficiency Syndrome (AIDS)	Amebic Encephalitis
Botulism	Chlamydia
Cholera	Diptheria
Gonorrhea	Hepatitis A, B, C, D, E and G
Human Immunodeficiency Virus (HIV)	Influenza
Lyme disease	Meningitis
Mumps	Plague
Rabies	Smallpox
Syphilis	Tuberculosis
Typhoid fever	Viral hemorrhagic fevers
West Nile virus	Yellow fever

The diseases or conditions listed in the rule must be reported by telephone, facsimile, electronic data transfer, or other confidential means of communication to the County Health Department having jurisdiction for the area in which the disease or condition is found and within the time period specified by rule.[38] Additional rules provide for written reports to be issued by practitioners, laboratories, medical facilities, and other persons following the initial reporting of a disease or condition of public health significance.[39]

The following persons are required to report suspected rabies exposure to humans, as well as conditions that are diagnosed or suspected in animals, pursuant to subsection 64D-3.039(2), F.A.C.[40]:

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[25] *See id.*
[26] Also known by the street name "Special K".
[27] Also marketed under the brand name Telazol®.
[28] Also known as the street drug "PCP".
[29] *See supra* at FN 11, slide 29.
[30] *See id.* at slide 30.
[31] *See id.*
[32] *See id.*
[33] Marketed as Valium®; provides a calming effect with muscle relaxation.
[34] Marketed under the brand names Rompun® and Tolazine®; also called cervizine and anased; effects are immediately and completely reversible.
[35] S. 381.0031(1), F.S.
[36] S. 381.0031(2), F.S.
[37] The complete list of diseases or conditions to be reported is codified at Rule 64D-3.029(3), F.A.C.
[38] Rule 64D-3.029(1), F.A.C.; the time period for reporting varies according to the severity of the threat to public health posed by the identified disease or condition.
[39] Rule 64D-3.030, F.A.C. (notification by practitioners); Rule 64D-3.031, F.A.C. (notification by laboratories); Rule 64D-3.032, F.A.C. (notification by medical facilities); Rule 64D-3.033, F.A.C. (notification by others).
[40] The rule states "Any grouping or clustering of animals having similar disease, symptoms or syndromes that may indicate the presence of a threat to humans including those for biological agents associated with terrorism shall be reported."

- Animal control officers operating under s. 828.27, F.S.;
- Employees or agents of a public or private agency, animal shelter, or other facility that is operated for the collection and care of stray, neglected, abandoned, or unwanted animals;
- Animal disease laboratories licensed under s. 585.61, F.S.;
- Wildlife officers operating under s. 372.07, F.S.;
- Wildlife rehabilitators permitted by the Fish and Wildlife Conservation Commission; and
- Florida state park personnel operating under s. 258.007, F.S.[41]

Effect of Proposed Changes

The bill expands the list of controlled substances and legend drugs that can be used for the purpose of euthanasia or immobilization to include:

- Tiletamine hydrochloride, alone or in combination with zolazepam (Telazol®)- both drugs are schedule III drugs in Florida; non-narcotic, non-barbiturate injectable anesthetic
- Xylazine (Rompun®)- a sedative that provides pain relief and muscle relaxation; not a controlled substance in Florida
- Ketamine- schedule III drug in Florida; anesthetic
- Acepromazine maleate (Atravet®)- not a controlled substance in Florida; a tranquilizer used for dogs, cats, and horses, also helps control seizures
- Acetylpromazine (Acezine 2)- not a controlled substance in Florida; used as a chemical restraint to quiet and calm frightened and aggressive animals
- Etorphine (Immobilon®)- Schedule I drug in Florida; used for immobilizing animals; resembles morphine by causing analgesia and catatonia, blocking conditional reflexes, and providing an anti-diuretic effect
- Yohimbine hydrochloride- not a controlled substance in Florida; used to reverse the effects of xylazine in dogs
- Atipamezole (Antisedan®)- not a controlled substance in Florida; reverses the sedative and analgesic effects of certain drugs in dogs

The bill will eliminate the need for an animal control agency or humane agency to obtain an exemption letter from DBPR in order to purchase, possess and use drugs for euthanasia and chemical immobilization listed in the bill.

The bill clarifies that the DOH is responsible for issuing a permit to an animal control agency or humane agency for the purpose of purchasing, possessing and using euthanasia and immobilizing drugs, not DBPR. Current law requires agencies to submit an application for the permit to DBPR. This is assumed to be an inadvertent provision that was not changed when health care professional boards were moved from DBPR to the DOH. In practice, DOH has been issuing the permits since the Board of Pharmacy was first housed within the department. The bill changes the current law to reflect the current permitting process.

The bill provides the DOH and the Board of Pharmacy with the power and rulemaking authority to deny a permit, or suspend, fine, or otherwise discipline an applicant for a permit or a permittee for failure to maintain certain standards or violation of certain statutes. For example, use of prescription drugs listed in the bill for a purpose other than the purposes allowed in the bill, failure to take reasonable precautions against theft, loss or diversion of the drugs listed in the bill, and failure to notice or report to the DOH a significant loss, theft, or inventory shortage are grounds upon which denial of an application for the permit, suspension, revocation, or refusal to renew a permit may be based. The bill gives the DOH the power to immediately suspend a permit by emergency order upon a determination that a permittee poses a threat to the public health, safety, or welfare.

The bill further limits acceptable methods of administering drugs for euthanasia to animals. First, an injection into the heart of a dog or cat by hypodermic needle is appropriate only if the dog or cat is unconscious with no corneal reflex. The corneal reflex is tested by pressing on the eye of the animal. If

[41] Rule 64D-3.033(1), F.A.C.

the animal blinks or the eye moves, the animal is conscious and intracardial injection cannot be used. Second, the bill removes food-based delivery of euthanasia drugs as an acceptable method of euthanization.

Lastly, the bill requires an animal control officer, a wildlife officer, and an animal disease diagnostic laboratory to report knowledge of any animal bite, any diagnosis or suspicion of a grouping or clustering of animals having similar disease, or any symptom or syndrome that may indicate the presence of a threat to humans. This provision is consistent with Rule 64D-3.033, F.A.C., which currently requires animal control officers, animal disease laboratories, and wildlife officers to report suspected rabies exposure to humans and conditions that they diagnose or suspect in any grouping or clustering of animals having similar diseases, symptoms, or syndromes that may indicate the presence of a threat to humans, including those for biological agents associated with terrorism.

B. SECTION DIRECTORY:

Section 1: Amends s. 381.0031, F.S., relating to report of diseases of public health significance to department;
Section 2: Amends s. 828.055, F.S., relating to sodium pentobarbital; permits for use in euthanasia of domestic animals;
Section 3: Amends s. 828.058, F.S., relating to euthanasia of dogs and cats;
Section 4: Provides an effective date of July 1, 2012.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

An increase in the number of permits filed by facilities seeking to purchase, possess and use the drugs authorized by the bill for chemical immobilization and euthanasia will result in the collection of additional permit fees. At a minimum, the entities which currently obtain exemption letters from DBPR to possess and use immobilizers are likely to apply for a permit from DOH to purchase, possess and use these drugs. According to DBPR, it issues fewer than 20 exemption letters for this purpose. Assuming 20 entities apply for a permit, at a cost of $50 per permit, DOH will collect, at a minimum, $1,000 in permit fees. It is possible that additional animal control agencies and humane agencies will apply for the permit, which will increase revenue collected from permit fees.

2. Expenditures:

The increased number of permit applications will increase the workload of the Board of Pharmacy to review and certify applications. The increased number of permit applications will increase the workload of DOH to approve or deny permits. The Board of Pharmacy and DOH can handle the increased workload within existing resources. DOH also expects to incur non-recurring costs for rulemaking as required by the bill which current budget authority can absorb adequately.[42] DBPR expects an insignificant reduction in work load as a result of no longer issuing exemption letters to allow animal shelters to possess certain drugs without violating s. 499.03, F.S.[43]

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

[42] *See supra* at FN 9, at page 4.
[43] *See supra* at FN 41.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill will result in savings to certain animal control agencies. Without exemption letters allowing purchase and possession without the need to maintain a veterinarian on staff, animal control agencies were forced to contract with veterinarians in the community in order to obtain certain controlled substances for use in chemical immobilization.[44] Because private veterinarians were using their license to obtain the controlled substances for use by another party, the fees charged by private veterinarians were substantial, averaging between $10,000 and $30,000.[45] Smaller animal control agencies with smaller budgets could not afford to pay those fees. The bill allows all animal control agencies to use the same permit used to obtain drugs for euthanasia to obtain drugs for chemical immobilization without paying additional fees.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill provides appropriate rulemaking authority to the Board of Pharmacy to implement the provisions of the proposed legislation.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

[44] Veterinarians are authorized to prescribe, dispense, and administer drugs for animals within the practice of veterinary medicine under s. 474.202(9), F.S. In order to possess and distribute controlled substances, veterinarians are required to obtain a permit from the federal Drug Enforcement Administration using DEA Forms 224 or 224a, depending on whether it is an application for a new permit or renewal of an existing permit. Lastly, in order to possess controlled substances within the state, veterinarians must obtain a permit from the DBPR through the Drug, Device, and Cosmetics Division.
[45] Florida Animal Control Association, Scott Trebatoski, President, telephone conference with Health and Human Services Quality subcommittee staff, November 29, 2011.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On December 6, 2011, the Health and Human Services Quality Subcommittee adopted a strike-all amendment for House Bill 479. The strike-all amendment makes the following changes to the bill:

- Allows the Board of Pharmacy to add drugs to the list upon a formal, written recommendation from the Board of Veterinary Medicine, adopted at a public meeting, that the additional drugs are necessary for humane and lawful treatment of domestic animals.
- Clarifies that the DOH- not the DBPR –issues the permit for purchase, possession, and use of the euthanasia and immobilizing drugs listed in the bill.
- Allows the DOH or the Board of Pharmacy to deny a permit, or fine, place on probation or otherwise discipline an applicant or permittee upon a determination that the applicant or permittee has failed to abide by certain standards or violated statute.
- Provides the Board of Pharmacy with rulemaking authority to implement denial of a permit or other disciplinary action upon a finding that an applicant or permittee failed to abide by certain standards or violated statute.
- Provides the DOH with authority to issue an emergency order suspending a permit if there is a danger to the public health, safety and welfare.

The bill was reported favorably as a committee substitute. The analysis reflects the committee substitute.

A bill to be entitled

An act relating to animal control; amending s. 828.055, F.S.; requiring that the Board of Pharmacy adopt rules relating to the issuance of permits authorizing the purchase, possession, and use of certain controlled substances and legend drugs necessary for the euthanasia and chemical immobilization of animals; authorizing the Board of Pharmacy, at the request of the Board of Veterinary Medicine, to adopt a rule to increase the number of controlled substances and legend drugs available to euthanize injured, sick, or abandoned domestic animals or to chemically immobilize such animals; providing that only certain persons are authorized to possess and use such drugs while operating in the scope of their employment or official duties; amending s. 828.058, F.S.; restricting the use of intracardial injection to an unconscious animal; prohibiting the delivery of a lethal solution or powder by adding it to food; amending s. 381.0031, F.S.; requiring that an animal control officer, a wildlife officer, and an animal disease diagnostic laboratory report knowledge of any animal bite, any diagnosis or suspicion of a grouping or clustering of animals having similar disease, or any symptom or syndrome that may indicate the presence of a threat to humans; providing an effective date.

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

Section 1. Section 828.055, Florida Statutes, is amended to read:

828.055 Controlled substances and legend drugs ~~Sodium pentobarbital~~; permits for use in euthanasia of ~~domestic~~ animals.—

(1) The Board of Pharmacy shall adopt rules providing for the issuance of permits authorizing the purchase, possession, and use of controlled substances and legend drugs, including ~~of~~ sodium pentobarbital and sodium pentobarbital with lidocaine tiletamine hydrochloride, alone or combined with zolazepam (including Telazol), xylazine (including Rompun), ketamine, acepromazine maleate (also acetylpromazine, and including Atravet or Acezine 2), alone or combined with etorphine (including Imobilon), yohimbine hydrochloride, alone or combined with atipamezole (including Antisedan), by county or municipal animal control agencies or humane societies registered with the Secretary of State for the purpose of euthanizing injured, sick, or abandoned domestic animals that ~~which~~ are in their lawful possession or for the purpose of chemically immobilizing the animals. The rules shall set ~~forth~~ guidelines for the proper storage and handling of these drugs ~~sodium pentobarbital and sodium pentobarbital with lidocaine~~ and ~~such~~ other provisions as may be necessary to ensure that the drugs are used solely for the purpose set forth in this section. The rules shall also provide for an application fee not to exceed $50 and a biennial renewal fee not to exceed $50. At the request and recommendation

of the Board of Veterinary Medicine, the Board of Pharmacy may adopt a rule to increase the number of controlled substances and legend drugs available to euthanize injured, sick, or abandoned domestic animals or to chemically immobilize such animals upon a finding that such additions are necessary for the humane and lawful treatment of those animals.

(2) Any county or municipal animal control agency or any humane society registered with the Secretary of State may apply to the Department of Business and Professional Regulation for a permit to purchase, possess, and use these drugs ~~sodium pentobarbital or sodium pentobarbital with lidocaine~~ pursuant to subsection (1). Upon certification by the board that the applicant meets the qualifications set forth in the rules, the department shall issue the permit. The possession and use of these drugs is limited to those employees or agents of the permittee certified in accordance with s. 828.058 or s. 828.27 while operating in the scope of their employment or official duties with the permittee.

(3) The board may revoke or suspend the permit upon a determination that the permittee is using any of these drugs ~~sodium pentobarbital or sodium pentobarbital with lidocaine~~ for any purpose other than that set forth in this section or if the permittee fails to follow the rules of the board regarding proper storage and handling.

Section 2. Subsection (1) of section 828.058, Florida Statutes, is amended to read:

828.058 Euthanasia of dogs and cats.—

(1) Sodium pentobarbital, a sodium pentobarbital

derivative, or other agent that the Board of Veterinary Medicine may approve by rule shall be the only methods used for euthanasia of dogs and cats by public or private agencies, animal shelters, or other facilities that operate ~~which are operated~~ for the collection and care of stray, neglected, abandoned, or unwanted animals. A lethal solution shall be used in the following order of preference:

(a) Intravenous injection by hypodermic needle;

(b) Intraperitoneal injection by hypodermic needle; or

(c) If the dog or cat is unconscious with no corneal reflex, intracardial injection by hypodermic needle.~~; or~~

~~(d) Solution or powder added to food.~~

Section 3. Section 381.0031, Florida Statutes, is amended to read:

381.0031 Public health surveillance and investigation ~~Report of diseases of public health significance to department~~.—

(1) Any practitioner licensed in this state to practice medicine, osteopathic medicine, chiropractic medicine, naturopathy, or veterinary medicine; any hospital licensed under part I of chapter 395; or any laboratory licensed under chapter 483 which ~~that~~ diagnoses or suspects the existence of a disease of public health significance shall immediately report the fact to the Department of Health.

(2) Periodically the department shall issue a list of infectious or noninfectious diseases that the department determines ~~determined by it~~ to be a threat to public health and therefore of significance to public health and shall furnish a copy of the list to the practitioners listed in subsection (1).

(3) Reports required by this section must be in accordance with methods specified by rule of the department.

(4) Information submitted in reports required by this section is confidential, exempt from the provisions of s. 119.07(1), and is to be made public only when necessary to public health. A report so submitted is not a violation of the confidential relationship between practitioner and patient.

(5) The department may obtain and inspect copies of medical records, records of laboratory tests, and other medical-related information for reported cases of diseases of public health significance described in subsection (2). The department shall examine the records of a person who has a disease of public health significance only for purposes of preventing and eliminating outbreaks of disease and making epidemiological investigations of reported cases of diseases of public health significance, notwithstanding any other law to the contrary. Health care practitioners, licensed health care facilities, and laboratories shall allow the department to inspect and obtain copies of such medical records and medical-related information, notwithstanding any other law to the contrary. Release of medical records and medical-related information to the department by a health care practitioner, licensed health care facility, or laboratory, or by an authorized employee or agent thereof, does not constitute a violation of the confidentiality of patient records. A health care practitioner, health care facility, or laboratory, or any employee or agent thereof, may not be held liable in any manner for damages and is not subject to criminal penalties for providing patient records to the

department as authorized by this section.

(6) An animal control officer operating under s. 828.27, a wildlife officer operating under s. 379.3311, and an animal disease diagnostic laboratory operating under s. 585.61 shall report knowledge of any animal bite, any diagnosis or suspicion of a grouping or clustering of animals having similar disease, or any symptom or syndrome that may indicate the presence of a threat to humans.

(7) ~~(6)~~ The department may adopt rules related to reporting diseases of significance to public health, which must specify the information to be included in the report, who is required to report, the method and time period for reporting, requirements for enforcement, and required followup activities by the department which are necessary to protect public health.

This section does not affect s. 384.25.

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 639 Reclaimed Water
SPONSOR(S): Young and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 1086

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Select Committee on Water Policy	14 Y, 1 N	Smith	Camechis
2) Agriculture & Natural Resources Subcommittee		Smith TS	Blalock AFB
3) Rulemaking & Regulation Subcommittee			
4) State Affairs Committee			

SUMMARY ANALYSIS

Under current Florida law, "waters in the state" are considered basic public resources benefiting the entire state. The statutes define "water" or "waters in the state" as "all water on or beneath the surface of the ground or in the atmosphere, including natural or artificial watercourses, lakes, ponds, or diffused surface water and water percolating, standing, or flowing beneath the surface of the ground, as well as coastal waters within the jurisdiction of the state."

In the "Declaration of Policy" for Chapter 373, F.S., the Legislature acknowledges that, in the past, Florida's water resources were not adequately conserved or otherwise realized for their full beneficial use. In response, the Legislature delegated authority to the Department of Environmental Protection (DEP) and the Water Management Districts (WMD) to sustainably manage water resources and allocate these resources throughout the state to meet all reasonable-beneficial uses. Under Florida law, the public has a right to use waters in the state but may not assert a legally protected property interest to "own" the waters. That is, Florida presently recognizes only a right to "beneficial use" of water, but not a title to it. DEP and the WMDs regulate use of these waters through issuance of consumptive use permits (CUP) based upon statutory authority contained in Chapter 373, F.S., commonly known as the Florida Water Resources Act of 1972.

DEP defines reclaimed water by rule as water that has received at least secondary treatment and basic disinfection and is reused after flowing out of a domestic wastewater (i.e., sewage) treatment facility. While the statutory definition of "water" or "waters in the state" broadly encompasses "any and all water on or beneath the surface of the ground," it does not expressly include reclaimed water. Whether reclaimed water is a "water" or "waters in the state," and whether DEP and the WMDs have authority to require a CUP for the use of reclaimed water, are legal questions yet to be resolved by the Florida courts.

This bill resolves the debate over the extent of DEP's and the WMDs' statutory authority to regulate the use of reclaimed water through the CUP process by expressly excluding reclaimed water from the definition of "water" and "waters in the state" until it is discharged into "waters" as defined in § 403.031(13), F.S., and by prohibiting a WMD from requiring a permit for the use of reclaimed water. According to DEP, this definitional change removes the use of reclaimed water from regulation by the WMDs under the CUP permit program. However, DEP and the WMDs may continue to require the use of reclaimed water in lieu of all or a portion of a proposed use of surface water or groundwater when the use of reclaimed water is available; is environmentally, economically, and technically feasible; and is of such quality and reliability as is necessary to the user. The bill also prohibits WMDs from specifying any user to whom a reuse utility must provide reclaimed water or restricting the use of reclaimed water. However, a contract for state or district funding assistance for the development of reclaimed water may specify conditions for the project relating to metering of certain uses of reclaimed water, implementation of reclaimed water rate structures, education programs, and location data.

Additionally, the bill requires DEP to initiate rulemaking to adopt revisions to the Water Resource Implementation Rule to include criteria for the use of "impact offsets" and "substitution credits" related to using reclaimed water to replace the use of surface or groundwater. "Impact offset" is defined as "the use of reclaimed water to reduce or eliminate a harmful impact that has occurred or would otherwise occur as a result of other surface water or groundwater withdrawals." "Substitution credit" is defined as "the use of reclaimed water to replace all or a portion of an existing permitted use of resource-limited surface water or groundwater, allowing a different user or use to initiate a withdrawal or increase its withdrawal from the same resource-limited surface water or groundwater source."

This bill has a minimal negative fiscal impact on the DEP and WMDs due to anticipated costs of rulemaking, and no impact on local governments or the private sector.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

"Water" or "Waters in the State"

Under current Florida law, "waters in the state" are considered basic public resources benefiting the entire state.[1] The statutes define "water" or "waters in the state" as "all water on or beneath the surface of the ground or in the atmosphere, including natural or artificial watercourses, lakes, ponds, or diffused surface water and water percolating, standing, or flowing beneath the surface of the ground, as well as coastal waters within the jurisdiction of the state."[2]

In the "Declaration of Policy" for Chapter 373, F.S., the Legislature acknowledges that, in the past, Florida's water resources were not adequately conserved or otherwise realized for their full beneficial use. In response, the Legislature delegated authority to the Department of Environmental Protection (DEP) and the Water Management Districts (WMD) to sustainably manage water resources[3] and allocate these resources throughout the state to meet all reasonable-beneficial uses.[4] Under Florida law, the public has a right to use waters in the state but may not assert a legally protected property interest to "own" the waters.[5, 6] That is, Florida presently recognizes only a right to "beneficial use" of water, but not a title to it.[7] DEP and the WMDs regulate use of these waters through issuance of consumptive use permits (CUP) based upon statutory authority contained in Chapter 373, F.S., commonly known as the Florida Water Resources Act of 1972.

DEP defines reclaimed water by rule as water that has received at least secondary treatment and basic disinfection and is reused after flowing out of a domestic wastewater (i.e., sewage) treatment facility.[8] While the statutory definition of "water" or "waters in the state" broadly encompasses "any and all water on or beneath the surface of the ground," it does not expressly include reclaimed water. Whether reclaimed water is a "water" or "waters in the state," and whether DEP and the WMDs have authority to require a CUP for the use of reclaimed water, are legal questions yet to be resolved by the Florida courts.

An attempt by St. Johns River WMD (SJRWMD) in 2008 to adopt rules to regulate reclaimed water through the CUP process illustrates the unresolved question regarding the extent of DEP's and the WMDs' regulatory authority over reclaimed water. SJRWMD proposed rulemaking that, if adopted, would have included reclaimed water among water regulated by the WMD by general permit for purposes of landscape and agricultural irrigation, by address, time of day, and day of the week.[9] The Florida League of Cities contested SJRWMD's delegated legislative authority to promulgate these rules, and, two months after proposing the rulemaking, SJRWMD decided not to pursue adoption of the regulations.[10] Nevertheless, DEP asserts that, although they have not historically done so, the WMDs may require a CUP solely for the use of reclaimed water.[11]

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[1] Sections 373.016(1) and (4)(a), F.S. (2011).
[2] Section 373.019(20), F.S. (2011) (emphasis added).
[3] Section 373.016(2), F.S. (2011).
[4] Section 373.016(4)(a), F.S. (2011).
[5] William S. Bilenky, *An Alternative Strategy for Water Supply and Water Resource Development in Florida*, 25 J. Land Use & Envtl. Law 77 (2009).
[6] *See Village of Tequesta v. Jupiter Inlet Corp.*, 371 So. 2d 663, 667 (Fla. 1979) ("There is a right of use as [the water] passes, but there is no ownership in the absolute sense.").
[7] Section 373.223, F.S. (2011).
[8] Rule 62-610.200(48), F.A.C. (2007).
[9] *See* Letter from Suzanne G. Printy, Chief Staff Attorney, The Florida Legislature Joint Administrative Procedures Committee to Thomas M. Beason, General Counsel, Florida Department of Environmental Protection (Dec. 9, 2008).
[10] Letter from Rebecca A. O'Hara, Legislative Director, Florida League of Cities, Inc. to Suzanne Printy, Chief Staff Attorney, The Florida Legislature Joint Administrative Procedures Committee (Dec. 5, 2009).
[11] DEP Draft Bill Analysis for HB 639 (2012), relating to reclaimed water in the consumptive use permitting (p. 3).

Consumptive Use Permitting

For uses other than private wells for domestic use, DEP or the WMDs may require any person seeking to use "waters in the state" to obtain a CUP. A CUP establishes the duration and type of water use as well as the maximum amount that may be used. Pursuant to § 373.219, F.S., each CUP must be consistent with the objectives of the WMD and not harmful to the water resources of the area. To obtain a CUP, an applicant must establish that the proposed use of water satisfies the statutory test, commonly referred to as "the three-prong test." Specifically, the proposed water use: 1) must be a "reasonable-beneficial use" as defined in § 373.019, F.S.; 2) must not interfere with any presently existing legal use of water; and 3) must be consistent with the public interest.

1. Reasonable-Beneficial Use

"Reasonable-beneficial use," as defined in statute, is the use of water in such quantity as is necessary for economic and efficient utilization for a purpose and in a manner that is both reasonable and consistent with the public interest.[12] In the words of the drafters of *A Model Water Code*, from which the reasonable-use standard was taken, "[w]asteful use of water will not be permitted under the reasonable-beneficial use standard, regardless of whether or not there is sufficient water to meet the needs of other riparian owners."[13] Rather, the reasonable-beneficial use standard requires efficient economic use of water and consideration of the rights of the general public.[14]

To that end, DEP has promulgated the Water Resource Implementation Rule that incorporates interpretive criteria for implementing the reasonable-beneficial use standard based on common law and on water management needs.[15] These criteria include consideration of the quantity of water requested; the need, purpose, and value of the use; and the suitability of the use of the source. The criteria also consider the extent and amount of harm caused, whether that harm extends to other lands, and the practicality of mitigating that harm by adjusting the quantity or method of use. Particular consideration is given to the use or reuse of lower quality water, and the long-term ability of the source to supply water without sustaining harm to the surrounding environment and natural resources through such adverse impacts as salt water intrusion. Notwithstanding DEP's rather broad discretion when interpreting these criteria, the district court in *Florida Water Management District v. Charlotte County*[16] nonetheless upheld DEP's use of these criteria for implementing the reasonable-beneficial use standard.

2. Existing Legal Users

The second criterion of the three-prong test protects the rights of existing legal water users for the duration of their permits.[17] Essentially, new users cannot obtain a CUP to use water if the use conflicts with existing permits. But, when the permit is up for renewal, the competing use that the WMD determines best serves the public interest will be permitted, irrespective of which use was previously permitted.

This criterion only protects water users that actually withdraw water. Illustrative of this point, the court in *Harloff v. Sarasota*[18] held that a municipal wellfield was an existing legal use entitled to protection from interference by a new use. In contrast, a farmer who passively depended on the water table to maintain the soil moisture necessary for nonirrigated crops and the standing surface water bodies for watering cattle was denied protection as an "existing user."[19]

3. Public Interest

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[12] Section 373.019(16), F.S. (2011).
[13] Richard Hamann, *Consumptive Use Permitting Criteria*, 14.2-1, 14.2-2 (Fla. Env. & Land Use Law, 2001) (citing Frank E. Maloney, et al., *A Model Water Code*, 86-87 (Univ. of Fla. Press, 1972)).
[14] *Id.*
[15] Chapter 62-40,F.A.C. (2010).
[16] *Florida Water Management District v. Charlotte County,* 774 So. 2d 903, 911 (Fla. 2d DCA 2001).
[17] Section 373.223(1)(b), F.S. (2011).
[18] *Harloff v. Sarasota*, 575 So. 2d 1324 (Fla. 2d DCA 1991).
[19] *West Coast Regional Water Supply Authority v. Southwest Florida Water Management District*, 89 ER F.A.L.R. 166 (Final Order, August 30, 1989).

The third element of the three-prong test requires water use to be consistent with the "public interest." While the DEP's Water Resource Implementation Rule provides criteria for determining the "public interest",[20] determination of public interest is made on a case-by-case basis during the permitting process. For example, in *Friends of Fort George v. Fairfield Communities*,[21] the Division of Administrative Hearings considered the following factors in finding that water use was in the public interest: water conservation and reuse, total amount of water allocated, lack of salt water intrusion, reduction of estuarine pollution, and development of new water source. In a separate case, *Church of Jesus Christ of Latter Day Saints v. St. John's Water Management District*,[22] the St. John's WMD stated that the determination of whether a water use is in the public interest requires a determination of whether the use is "beneficial or detrimental to the overall collective well-being of the people or to the water resource in the area, the [WMD], and the State."

Reclaimed Water

In an effort to conserve the State's potable surface and groundwater resources, the statutes authorize the WMDs to restrict water use to the lowest quality water source appropriate for the specific use and to adopt rules that identify preferred water supply sources for consumptive uses.[23] The WMD may consider all economically and technically feasible alternatives to the proposed water source, including alternative water sources that include desalination, aquifer storage and recovery, and – most notably for the purposes of this proposed legislation – reuse of nonpotable reclaimed water.[24] Of these enumerated alternative water sources, the Legislature expressly encourages the use of reclaimed water as an alternative water source "whenever practicable."[25]

DEP defines reclaimed water as water that has received at least secondary treatment and basic disinfection and is reused after flowing out of a domestic wastewater treatment facility.[26] In essence, water reuse involves taking domestic wastewater (i.e., sewage), giving it a high degree of treatment, and using the resulting high-quality reclaimed water for a new, beneficial purpose. Extensive treatment and disinfection during this process ensure that public health and environmental quality are protected.[27]

Reclaimed water is an important alternative water source in Florida in light of mounting pressures on the State's fresh water resources, principally surface water and groundwater. Among its noteworthy benefits, the use of reclaimed water saves water that would otherwise need to be withdrawn from surface water and groundwater sources to meet non-potable supply needs such as agricultural or residential irrigation,[28] power generation, or recreation (e.g., golf courses or waterparks). Additionally, reclaiming waste water reduces reliance on traditional wastewater disposal methods such as surface water discharges, ocean outfall[29], or deep injection wells.[30] DEP asserts that "Florida is leading the nation – reusing 660 million gallons of reclaimed water each day to conserve freshwater supplies and replenish our rivers, streams, lakes and the aquifer."[31]

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[20] *See, e.g.*, Rule 62-40.422, F.A.C. (2010) (criteria to determine whether transport of water between districts is consistent with the public interest).
[21] *Friends of Fort George v. Fairfield Communities*, 24 Fla. Supp. 2d 192-223, DOAH Case No. 85-3537, 85-3596 (Final Order dated Oct. 6, 1986).
[22] *Church of Jesus Christ of Latter Day Saints v. St. John's Water Management District*, 92 ER. F.A.L.R. 34 (Final Order, Dec. 13, 1990).
[23] Section 373.2234, F.S. (2011).
[24] Section 373.223(3)(c), F.S. (2011).
[25] Section 373.016(4)(a), F.S. (2011).
[26] Florida DEP website http://www.dep.state.fl.us/legal/rules/wastewater/62-610.pdf (p. 12).
[27] Florida DEP website http://www.dep.state.fl.us/water/reuse/index.htm.
[28] In central Florida, for instance, studies have shown that irrigation accounted for 64% of the residential use volume for all monitored homes. (Florida Section of the American Water Works Association, *Florida's Water Survival Handbook for the Future* 60 (2009) (citing Journal of Irrigation and Drainage Engineering, Vol. 133, Issue 5, pp. 427-94 (2007)).)
[29] "Ocean outfall" means the outlet or structure through which effluent is finally discharged to the marine environment which includes the territorial sea, contiguous zone and the ocean. 62–600.200(55), F.A.C. (2010).
[30] "Injection well" means a well into which fluids are being or will be injected, by gravity flow or under pressure. 62-528.200(39), F.A.C. (2010).
[31] Florida DEP website http://www.dep.state.fl.us/water/reuse/index.htm.

Section 373.250(2)(c), F.S., authorizes a WMD to require the use of reclaimed water in lieu of surface water or groundwater when the use of uncommitted reclaimed water is available; is environmentally, economically, and technically feasible; and is of such quality and reliability as is necessary to the user. Reclaimed water is presumed to be available to a CUP applicant when a reclaimed water provider has "uncommitted" reclaimed water capacity, and there are distribution facilities provided by the utility to the site of the proposed use. Uncommitted reclaimed water is defined in statute as the average amount of reclaimed water produced during the lowest-flow months, less the amount of reclaimed water that a reclaimed water provider is contractually obligated to provide a customer or user.[32] However, by its express terms, this provision does not authorize a WMD to require a provider of reclaimed water to redirect reclaimed water from one user to another or to provide uncommitted water to a specific user if such water is anticipated to be used by the provider, or a different user selected by the provider, within a reasonable amount of time.

As required in statute and implemented in DEP's Water Resource Implementation Rule,[33] WMDs must designate water resource caution areas[34] within which CUP permit holders are required to use a "reasonable" amount of reclaimed water, unless using it is not "economically, environmentally or technically feasible." For example, the entire St. Johns River WMD has been designated a water resource conservation area, and WMD rules require reclaimed water to be used throughout the district if it is readily available and feasible.[35] In contrast, the Northwest Florida WMD has designated only two water resource caution areas – the coastal areas of Santa Rosa, Okaloosa, and Walton Counties and the Upper Telogia Creek Drainage Basin of Gadsden County. Applicants in those two areas who propose to withdraw water from the Floridan aquifer are required to use reclaimed water unless its use is not economically, environmentally, or technically feasible as determined by the WMD.[36]

Currently, WMD year-round irrigation restrictions do not apply to irrigation with reclaimed water. In recent years, discussions have been held in some WMDs regarding the possibility of imposing restrictions on the use of reclaimed water for irrigation purposes. However, reclaimed water utilities expressed concerns that such restrictions would create operational problems for the utilities, because wastewater flows do not vary according to weather conditions while the need for irrigation does vary. As a result, irrigation restrictions may cause a reuse utility to increase discharges of reclaimed water to surface waters, possibly in violation of the utility's National Pollutant Discharge Elimination System (NPDES) permit, or require the construction of expensive storage capacity for the utility's reclaimed water supply.[37]

For areas outside of designated water resource caution areas, DEP encourages local governments to implement programs for the use of reclaimed water. Specifically, WMDs are encouraged to establish incentives, such as longer permit duration and cost-sharing, for local governments and other interested parties to implement programs for reclaimed water use.[38] With respect to Florida's "Home Rule Power,"[39] the provisions of the Water Resource Implementation Rule provide that the rule itself may not preempt any local water reuse programs.[40]

Additionally, mandatory reuse zones established by local government ordinance may require person living within the area to connect when available with any alternative water supply system, including reclaimed water.[41] Mandatory reuse zones have been established in three districts – SFWMD, SRWMD, and

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[32] Section 373.250(2)(a)-(b), F.S. (2011).
[33] Chapter 62-40, F.A.C. (2010).
[34] Water resource caution areas are designated where water supply problems currently exist or are expected to exist within the next 20 years. Section 373.0363, F.S. (2011); Rule 62-40.416, F.A.C. (2010).
[35] Rule 40C-23.001, F.A.C. (2010).
[36] Rule 40A-2.802, F.A.C. (2010).
[37] DEP Draft Bill Analysis for HB 639 (2012) (p. 2-3).
[38] Rule 62-40.416(2), F.A.C. (2010).
[39] In Florida, "Home Rule Power" language was proposed in the 1968 Constitutional revision and was adopted by the people. After several legal challenges, the Florida Legislature adopted the Home Rule Powers Act in 1973, which ended challenges related to city and county powers. The Florida Constitution states in Art. VIII, § 2(b) for municipalities: "Municipalities shall have governmental, corporate and proprietary powers to enable them to conduct municipal government, perform municipal functions and render municipal services, and may exercise power for municipal purposes except as otherwise provided by law."
[40] Rule 62-40.416(2), F.A.C. (2010).
[41] Section 125.01(k)1., F.S. (2011), authorizes counties to: "[p]rovide and regulate waste and sewage collection and disposal, water and alternative water supplies, including, but not limited to, reclaimed water and water from aquifer storage and recovery and desalination

SJRWMD – mostly for irrigation. In SJRWMD, the conflict between the WMD's authority and the "Home Rule Power" of the local government was resolved by including language in local ordinances requiring reclaimed water use, unless the WMD required otherwise. This allowed the utility to use the most logical lowest quality source, which sometimes may be another source, such as stormwater.[42]

Alternative Water Supply Funding

Between fiscal years 2005-2006 and 2007-2008, the Legislature authorized the allocation of over $217 million among the five WMDs to develop alternative water supply projects. Reclaimed water development projects made up the bulk of project types that were funded over these four years, comprising 202 of the 324 funded projects. Over these four years, the funding waned significantly. In fiscal year 2005-2006, $100 million was allocated among the five WMDs, but by fiscal year 2007-2008, that figure dropped to $5.54 million. The Legislature has not provided any alternative water supply funding at the state level since fiscal year 2008-09.[43]

Environmental Considerations

The adverse environmental impacts of consumptive water use are essential considerations in the permitting process. Indeed, the Legislature expressly provided that the policy of the State Water Resource Plan is "to preserve natural resources, fish, and wildlife."[44] This statute is consistent with Article II, Section 7(a), of the Florida Constitution, which states that "[i]t shall be the policy of the state to conserve and protect its natural resources and scenic beauty. Adequate provision shall be made by law for the abatement of air and water pollution and excessive and unnecessary noise and for the conservation and protection of natural resources."

1. Water Needs of Natural Systems

Excessive use of ground or surface waters may trigger a cascade of adverse environmental impacts including: salt water intrusion that can degrade water quality; changes in salinity levels in estuaries that can kill off oyster and grass beds; "drying out" of wetlands and lakes that can lead to habitat loss; and reduced spring and river flows that can diminish recreational values like fishing or ecotourism, which rely on a robust and biologically diverse ecology. To avoid adverse environmental impacts, DEP and WMDs are statutorily mandated to establish minimum flow levels (MFLs) for surface and groundwaters, which set the threshold at which further withdrawals could significantly harm the water resources or ecology of the area.[45] To date, the five WMDs have collectively adopted over 300 MFLs for water bodies across the state.[46]

A WMD may deny a CUP because the desired uses are "undesirable because of the nature of the activity or the amount of water required."[47] For example, in *Osceola County v. St. Johns River Water Management District*,[48] the WMD denied a wellfield permit because of the potential adverse effects of a drawdown of the aquifer on wetlands. The hearing officer found that the predicted drawdown of 0.14 feet could significantly harm herbaceous wetlands, and the applicant was denied a permit because he failed to sufficiently assess those impacts or propose adequate mitigation efforts.[49]

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systems, and conservation programs."; Section 180.02, F.S., provides that cities that may " create a zone or area by ordinance and to prescribe reasonable regulations requiring all persons or corporations living or doing business within said area to connect, when available, with any ... alternative water supply system, including, ... reclaimed water ...."

[42] "Connecting Reuse and Water Use: A Report of the Reuse Stakeholders Meetings," Florida Department of Environmental Protection (Feb. 23, 2009), pp. D-5,6.

[43] Florida DEP website, http://www.dep.state.fl.us/water/waterprojectfunding/.

[44] Section 373.016(3)(g), F.S. (2011).

[45] Section 373.042(1)(a)-(b), F.S. (2011).

[46] Since 1992, the five WMDs have adopted 322 minimum flow levels or reservations. (SWFWMD: 167 MFLs; SJRWMD: 135 MFLs; SFWMD: 9 MFLs and 2 Reservations; SRWMD: 7 MFLs; and NWFWMD: 2 Reservations.)

[47] Section 373.036(4), F.S. (2011).

[48] *Osceola County v. St. Johns River Water Management District*, 92 ER F.A.L.R. 109 (Final Order, June 10, 1992).

[49] *See* Richard Hamman, *Consumptive Use Permitting Criteria*, Florida Environmental and Land Use Law. 14.2, 14.2-7 (August 2001).

2. Water Quality Standards

Water quality and pollution is primarily regulated through Florida's implementation of the federal Clean Water Act (CWA).[50] The CWA requires states or the U.S. Environmental Protection Agency (EPA) to establish water quality standards for surface waters and prohibits the discharge of any pollutant into navigable waters from a point source, such as a pipe, man-made ditch, or large animal feeding operation, without a National Pollutant Discharge Elimination System (NPDES) permit. Non-point sources, such as fertilizer and pesticide runoff, are not required to obtain an NPDES permit and are not directly regulated under the CWA. DEP sought and accepted authority from the EPA to implement water quality programs in Florida under state laws. As such, DEP adopts water quality standards subject to EPA approval and administers the federal pollutant discharge NPDES permit program.

Specifically, the CWA requires states to establish water quality standards and review those standards every three years. States must also identify impaired waters that are not meeting established water quality standards and establish total maximum daily loads (TMDLs) of pollutants for those waters. A TMDL is a value of the maximum amount of a pollutant that a body of water can receive and still meet water quality standards. To enforce TMDLs, DEP establishes water quality-based effluent limitations (WQBELs) and incorporates these limitations into NPDES permits.

TMDLs and WQBELs can be established for a broad range of pollutants – in Florida particular attention is paid to nutrient levels, principally the levels of nitrogen and phosphorus. While nitrogen and phosphorus are essential for aquatic organisms to live and grow, excessive levels of these nutrients may result in harmful algal blooms, nuisance aquatic weed proliferation, or an imbalance in the natural community of flora and fauna. Unnatural sources of nitrogen and phosphorus include sewage disposal systems (treatment works or septic systems), overflows of storm and sanitary sewers (untreated sewage), agricultural production and irrigation practices, and runoff from urban and agricultural areas.

In 2008, environmental advocacy groups filed suit against the EPA alleging that excessive nutrient levels were impairing Florida's surface waterbodies and that EPA was failing to comply with the CWA by not requiring Florida to adopt more stringent numeric nutrient criteria in lieu of the State's current EPA-approved narrative criteria. Following a determination by the EPA that numeric nutrient criteria were necessary to protect waters in the state and entry of a court-approved settlement agreement, in November, 2010, EPA issued a final rule adopting numeric nutrient criteria for Florida's lakes, springs, and inland flowing waters with the exception of south Florida canals (mostly south of Lake Okeechobee). These rules are scheduled to take effect in March 2012. In response to EPA's final rule, DEP recently proposed a rule containing numeric nutrient criteria and is proceeding through the rule adoption process. If adopted by DEP, ratified by the Legislature, and approved by the EPA, DEP's adopted numeric nutrient criteria will replace the criteria in the EPA's final rule.

Unless reclaimed water is extensively treated, it invariably contains nutrients (i.e., nitrogen and phosphorus). When reclaimed water is used for irrigation or discharged into other surface waters, it may eventually flow or seep into an impaired surface waterbody. Therefore, DEP's authority to regulate the effluent and nutrient levels in reclaimed water is an important component in maintaining chemical, physical, and biological integrity of surface waters. In light of this fact, wastewater treatment facilities that produce reclaimed water for land application must obtain wastewater permits and are subject to treatment standards (e.g., effluent limitations and pH standards), monitoring, and reporting requirements.[51] Specifically, DEP may require additional levels of treatment depending on the ultimate use (beyond the minimum) to protect the potential receiving surface waters from exceeding their established TMDLs.[52]

[50] 33 U.S.C. § 1251 *et seq.*
[51] Rule 62-600.530, F.A.C., Reuse of Reclaimed Water and Land Application.
[52] Rule 62-600.530(3)(b), F.A.C.

Reclaimed Water Working Group

The Reclaimed Water Working Group is a collective of several interested parties[53] that, over the past several years, has convened to discuss the role of reclaimed water in meeting Florida's projected water demands. The working group's express objective was "to optimize the use and continued development of reclaimed water as an alternative water supply to the extent environmentally, technically, and economically feasible in order to meet water supply demands."[54] According to DEP, portions of the bill reflect the recommendations of the working group.[55]

Effects of Proposed Changes

Declaration of Policy

The bill amends § 373.250(1), F.S., to add a legislative declaration that "the interest of the state to sustain water resources for the future through the use of reclaimed water must be balanced with the need for reuse utilities to operate and manage reclaimed water systems in accordance with a variety and range of circumstances, including regulatory and financial considerations, which influence the development and operation of reclaimed water systems across the state."

"Water" or "Waters in the State"

The bill amends the current statutory definition of "water" and "waters in the state" in § 373.019(20), F.S., to exclude reclaimed water until it has been discharged back into "waters," as defined in § 403.031(13), F.S.[56] That is, after wastewater treatment plants convert wastewater into reclaimed water, reclaimed water is not considered "water" or "waters in the state" until it has been reused and discharged into certain "waters" as defined elsewhere in statute. According to DEP, this definitional change removes the use of reclaimed water from regulation by the WMDs under the CUP program.[57]

Consumptive Use Permitting

The bill amends § 373.250(3), F.S., to prohibit WMDs from requiring a CUP for the use of reclaimed water. Provisions defining "uncommitted" reclaimed water capacity have been deleted, and the bill provides that the reuse utility will determine when uncommitted reclaimed water capacity exists.

If a CUP application includes at least some use of surface water or groundwater, the WMDs are authorized to include conditions that govern the use of the permitted sources in relation to the feasibility or use of reclaimed water. Additionally, this bill allows WMDs to continue requiring the use of reclaimed water in lieu of all or a portion of a proposed use of surface water or groundwater, provided that the use of reclaimed water is available; is environmentally, economically, and technically feasible; and is of such quality and reliability as is necessary to the user.

However, the bill stipulates that WMDs may neither specify any user to whom the reuse utility must provide reclaimed water nor restrict -- in a permit, water shortage order, or water shortage emergency order -- the use of reclaimed water provided by a reuse utility to a customer unless requested by the reuse facility. DEP asserts that "[t]hese changes are not expected to result in a significant change over existing practices, and should provide more operational and business flexibility to reuse utilities" and "[i]It is anticipated that this flexibility should promote expansion of reuse systems and increase the use of reclaimed water."[58]

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[53] The Reclaimed Water Working Group consisted of: DEP, the WMDs, Florida Water Environment Association- Utility Council, American Water Works Association, League of Cities, Association of Counties, and individual utilities. (DEP presentation by Dr. Ann Shortelle, Director of Office of Water Policy before Florida House Subcommittee on Agriculture and Natural Resources, Nov. 1, 2011.)
[54] *Id.*
[55] DEP Draft Bill Analysis for HB 639 (2012) (p. 3).
[56] Section 403.031(13), F.S. (2011). "Waters" include, but are not limited to, rivers, lakes, streams, springs, impoundments, wetlands, and all other waters or bodies of water, including fresh, brackish, saline, tidal, surface, or underground waters.
[57] DEP Draft Bill Analysis for HB 639 (2012) (p. 3).
[58] *Id.*

Funding

The bill creates § 373.250(2), F.S., providing that reclaimed water remains a statutorily defined "alternative water supply"[59] eligible for state and district alternative supply funding. This bill provides that a contract for state or WMD funding for the development of reclaimed water as an alternative water supply may include the following conditions:[60]

- Metering of reclaimed water use for irrigation uses (including residential, agricultural, landscape, irrigation as well as irrigation of golf courses and public access areas), industrial uses, commercial and institutional uses (e.g., toilet flushing), and transfers to other reclaimed water utilities;
- Implementation of reclaimed water rate structures based on actual use of reclaimed water for such irrigation uses, industrial uses, commercial and institutional uses, and transfers;
- Implementation of education programs to inform the public about water issues, water conservation, and the importance and proper use of reclaimed water; or
- Development of location data for key reuse facilities.

Impact Offsets and Substitution Credits

This bill creates § 373.250(5), F.S., requiring DEP to initiate rulemaking no later than October 1, 2012 to adopt revisions to the Water Resource Implementation Rule to include criteria for the use of proposed "impact offsets" and "substitution credits." Additionally, the WMDs must initiate rulemaking to incorporate DEP's revisions to the Water Resource Implementation Rule within 60 days of DEP's final adoption of the revisions. Two WMDs (the South Florida and Southwest Florida WMDs) have already adopted rules similar to "impact offsets" and "substitution credits," and other WMDs have separately evolved other permitting practices in their own regions using similar, but less detailed rules.[61]

1. Impact Offsets

First, the bill requires DEP to initiate rulemaking to adopt "[c]riteria for the use of a proposed impact offset derived from the use of reclaimed water when a water management district evaluates an application for a consumptive use permit." The bill defines "impact offset" as:

> The use of reclaimed water to reduce or eliminate a harmful impact *that has occurred or would otherwise occur* as a result of *other* surface water or groundwater withdrawals." (emphasis added)

The bill does not provide further legislative guidance regarding DEP's development of these rules. For example, the bill does not specifically address the manner in which impact offsets may be approved or applied by a WMD or the ultimate benefit a CUP applicant may derive from using an impact offset, nor does the bill provide guidelines or standards to address these issues or otherwise direct DEP's establishment of criteria for the use of impact offsets. For instance, the bill does not indicate whose or which harmful impacts may be offset by the applicant's use of reclaimed water other than to specify an impact "that has occurred or would otherwise occur as a result of other surface water or groundwater withdrawals." In addition, the bill does not require a geographical nexus between the use of reclaimed water and the applicant's withdrawal of surface or ground water. Therefore, it is unclear whether an impact offset will be available if reclaimed water will be used by the applicant to offset a harmful impact outside the hydrological area where the applicant proposes to withdraw surface or groundwater.

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[59] Section 373.019(1), F.S. (2011). "Alternative water supplies" mean salt water; brackish surface and groundwater; surface water captured predominately during wet-weather flows; sources mad available through the addition of new storage capacity for surface or groundwater, water that has been reclaimed after one or more public supply, municipal, industrial, commercial, or agricultural uses; the downstream augmentation of water bodies with reclaimed water; stormwater; and any other water supply source that is designated as nontraditional for a water supply planning region in the applicable regional water supply plan.

[60] Section 373.707(9)(a)-(d), F.S. (2011).

[61] "Purple Paper: Reclaimed Water, Credits, and Offsets," Prepared by: DEP, NWFWMD, SJRWMD, SFWMD, SWFWMD, SRWMD, and the Florida Water Environment Association Utility Council. (undated)

Examples of offset projects that may have a beneficial water resource effect include: the use of recharge systems to prevent saltwater intrusion; the use of reclaimed water to reduce or prevent wetland impacts or other surface and groundwater impacts; and the use of reclaimed water to replace surface or groundwater withdrawals, so that those withdrawals may be use to reduce or prevent adverse impacts. [62] According to DEP, the use of reclaimed water to rehydrate wetlands that would otherwise be adversely affected by a water withdrawal has already been allowed in some WMDs.[63]

2. Substitution Credits

Second, DEP must establish criteria for the use of "substitution credits" where a WMD has adopted rules establishing withdrawal limits from a specified water resource within a defined geographic area. The bill defines "substitution credits" as "the use of reclaimed water to replace all or a portion of an existing permitted use of resource-limited surface water or groundwater, allowing a different user or use to initiate a withdrawal or increase its withdrawal from the same resource-limited surface water or groundwater source provided that the withdrawal creates no net adverse impact on the limited water resource or creates a net positive impact if required by water management district rule as part of a strategy to protect or recover a water resource." The bill does not provide other restrictions on the use of credits or further legislative guidance regarding DEP's development of these rules.

Examples of resource-limited areas in which the concept of substitution credits has already been implemented are the Southern Water Use Caution Area in SWFWMD, as well as the Lower East Coast Everglades and Northern Palm Beach/Loxahatchee River Watershed regions, and the Lake Okeechobee Service Area in SFWMD.[64] According to DEP, these WMDs have "formalized mechanisms to allow reclaimed water to be provided as a substitution for groundwater withdrawals, thus allowing another entity to use new or additional groundwater without increasing the overall water withdrawals in a region."[65]

Water Quality Standards

According to DEP, this bill does not affect its existing statutory authority to regulate the water quality of reclaimed water as it leaves the reuse facility. Thus, DEP's continued regulation of wastewater treatment facilities will ensure that reclaimed water is in compliance with treatment requirements (i.e., effluent and nutrient limitations) before it is utilized or applied to the landscape.[66]

B. SECTION DIRECTORY:

Section 1. Amends § 373.019, F.S., to exclude reclaimed water from the definition of "water" or "waters in the state" until it has been discharged into "waters" as otherwise defined by law.

Section 2. Amends § 373.250, F.S., providing legislative intent for the use or reclaimed water; designating reclaimed water as an alternative water supply eligible for state alternative water supply funding; deleting the definition of "uncommitted" reclaimed water and providing that reclaimed water may be presumed available when a reuse utility has determined that is has uncommitted reclaimed water capacity; limiting the water management districts' (WMD) ability to require the use of reclaimed water; providing that the Department of Environmental Protection (DEP) must initiate rulemaking to adopt revisions to the water implementation rule that include criteria for the use of "impact offsets" and "substitution credits"; providing that each WMD must initiate rulemaking to incorporate these revisions; and providing that this section does not impair a WMD's ability to regulate the use of surface or groundwater to supplement a reclaimed water system.

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

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[62] *Id.*at p. 2; "Purple Paper: Reclaimed Water, Credits, and Offsets," Prepared by: DEP, NWFWMD, SJRWMD, SFWMD, SWFWMD, SRWMD, and the Florida Water Environment Association Utility Council (undated).
[63] DEP Draft Bill Analysis for HB 639 (2012) (p. 3).
[64] *Id.*
[65] DEP Draft Bill Analysis for HB 639 (2012) (pp. 2-3).
[66] *See generally*, Chapter 403, F.S. (2011), "Environmental Control"; *see also* § 62-600.530, F.A.C., "Reuse of Reclaimed Water and Land Application".

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The bill will result in a minimal negative fiscal impact on DEP related to the costs associated with promulgating rules.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

A. Delegated Authority to Adopt Rules

This bill creates s. 373.250(5), F.S., which requires DEP to initiate rulemaking to provide criteria for the use of "impact offsets" and "substitution credits." (Please see pp. 9-10 for additional discussion.)

With respect to "impact offsets," the bill does not provide specific legislative guidance regarding DEP's development of criteria for receiving or using an impact offset. For example, the bill does not specifically address the manner in which impact offsets may be approved or applied by a WMD or the ultimate benefit a CUP applicant may derive from using an impact offset, nor does the bill provide guidelines or standards to address these issues or otherwise direct DEP's establishment of criteria for the use of impact offsets. For instance, the bill does not indicate whose or which harmful impacts may be offset by the applicant's use of reclaimed water other than to specify an impact "that has occurred or would otherwise occur as a result of other surface water or groundwater withdrawals." In addition the bill does not require a geographical nexus between the use of reclaimed water and the applicant's withdrawal of surface or ground water. Therefore, it is unclear whether an impact offset is

available if reclaimed water will be used by the applicant to offset a harmful impact outside the hydrological area where the applicant proposes to withdraw surface or ground water. By not providing specific standards or guidelines to guide DEP in resolving these questions or otherwise developing criteria for the use of impact offsets, the issue of unlawful delegation of legislative authority or unlawful exercise of delegated legislative authority may arise if the enacted statute is challenged or DEP promulgates a comprehensive rule addressing the approval or use of impact offsets.

With respect to "substitution credits," the definition of "substitution credits" authorizes the use of a substitution credit if the withdrawal creates "no net adverse impact" on the limited water resource or creates a "net positive impact" if required by WMD rule as part of a strategy to protect or recover a water resource. However, the bill imposes no other limitations or conditions on obtaining or using substitution credits. Therefore, while DEP may arguably adopt rules to define "net adverse impact" and "net positive impact", it is unclear what other "criteria for the use of substitution credits" may be adopted by DEP without raising issues of unlawful exercise of delegated legislative authority by an executive branch agency.

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.[67] Rulemaking authority is delegated by the Legislature[68] through statute and authorizes an agency to "adopt, develop, establish, or otherwise create"[69] a rule. Agencies do not have discretion whether to engage in rulemaking.[70] To adopt a rule, an agency must have a general grant of authority to implement a specific law by rulemaking.[71] The grant of rulemaking authority itself need not be detailed.[72] However, 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.[73] According to the Florida Supreme Court, "[w]hen the statute is couched in vague and uncertain terms or is so broad in scope that no one can say with certainty, from the terms of the law itself, what would be deemed an infringement of the law, it must be held unconstitutional as attempting to grant to the administrative body the power to say what the law shall be."[74] Thus, "administration of legislative programs must be pursuant to some minimal standards and guidelines ascertainable by reference to the enactment establishing the program."[75] In essence, the Legislature may delegate confined rule-making authority to agencies, but the Legislature may not give agencies authority to determine what the law should be.[76]

B. Contract Impairment

DEP asserts that, although they have not historically done so, the WMDs may require a CUP solely for the use of reclaimed water.[77] Whether reclaimed water is a "water" or "waters in the state," and whether DEP and the WMDs have authority to require a CUP for the use of reclaimed water, are legal questions yet to be resolved by the Florida courts.

Today, if a reuse utility enters into a contract to provide reclaimed water to a user, and the Legislature subsequently amends the law in a manner that diminishes the rights of either party to the contract, the law may be subject to challenge as an invalid impairment of contract rights.

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[67] 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).
[68] *Southwest Florida Water Management District v. Save the Manatee Club, Inc.,* 773 So. 2d 594 (Fla. 1st DCA 2000).
[69] Section 120.52(17), F.S.
[70] Section 120.54(1)(a), F.S.
[71] Sections 120.52(8) and 120.536(1), F.S.
[72] *Save the Manatee Club, Inc.,* supra at 599.
[73] *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).
[74] *Conner v. Joe Hatton*, Inc., 216 So.2d 209 (Fla.1968).
[75] *Id.* at 925.
[76] *Sarasota Cnty. v. Barg*, 302 So.2d 737 (Fla. 1974).
[77] DEP Draft Bill Analysis for HB 639 (2012) (p. 3).

This bill explicitly excludes reclaimed water from the definition of "water" or "waters in the state" and prohibits WMDs from requiring a permit for the use of reclaimed water except. If the changes in this bill are enacted, and reuse utilities rely on the changed law to enter into financing agreements to fund infrastructure or enter into long-term contracts to provide reclaimed water to water users, it is unclear what effect, if any, these changes will have on the Legislature's ability to amend the law to regulate reclaimed water in the future. The actual effect, if any, will not be known unless addressed by the courts. It should be noted that this bill, alone, does not appear to impair existing contracts.

The Contract Clause in Article I, Section 10, of the U.S. Constitution prohibits states from passing laws which substantially impair contract rights.[78] Courts use a balancing test to determine whether a particular regulation violates the contract clause. The courts measure the severity of contractual impairment against the importance of the interest advanced by the regulation. Also, courts look at whether the regulation is a reasonable and narrowly tailored means of promoting the state's interest.[79] Generally, courts accord considerable deference to legislative determinations relating to the need for laws which impair private obligations.[80] However, courts scrutinize the impairment of public contracts in a stricter fashion, and exhibit less deference to findings of the Legislature because the Legislature may stand to gain from the outcome.[81]

Interpretations of Florida's Contract Clause[82] have generally mirrored the United States Supreme Court's interpretation of the federal Contract Clause. State statutes that impair contractual obligations are measured on a sliding scale of scrutiny. The degree of contractual impairment permitted is delineated by the importance of the governmental interests advanced.[83] In 1980, the Florida Supreme Court enumerated several factors it might weigh when making such determinations:

1. Whether the law was enacted to deal with a broad economic or social problem;
2. Whether the law operates in an area that was already subject to state regulation at the time the contract was entered into; and
3. Whether the effect on the contractual relationship is temporary; not severe, permanent, immediate, and retroactive.[84]

C. Vested Rights

DEP asserts that, although they have not historically done so, the WMDs may require a CUP solely for the use of reclaimed water.[85] Whether reclaimed water is a "water" or "waters in the state," and whether DEP and the WMDs have authority to require a CUP for the use of reclaimed water, are legal questions yet to be resolved by the Florida courts.

In addition to explicitly prohibiting WMDs from requiring a permit for the use of reclaimed water, the bill removes reclaimed water from the definition of "waters in the state," which are those waters considered to be public resources. If these changes are enacted, and reuse utilities rely on the law to make significant investments in infrastructure to develop reclaimed water, it is unclear whether the Legislature will be subject to additional limitations on its ability to enact regulations of reclaimed water in the future due to the potential for infringing upon vested rights other than vested contractual rights.

In addition to federal and state constitutional limitations on laws that impair contracts, government, through rule or legislation, cannot adversely affect substantive rights once such rights have vested.[86]

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[78] *Home Bldg. & Loan Ass'n. v. Blaisdell*, 290 U.S. 398 (1923).
[79] *Allied Structural Steel Co. v. Spannaus*, 438 U.S. 234 (1978).
[80] *East N.Y. Sav. Bank v. Hahn*, 326 U.S. 230 (1945).
[81] *United States Trust Co. v. New Jersey*, 431 U.S. 1 (1977); see generally, Leo Clark, The Contract Clause: A Basis for Limited Judicial Review of State Economic Regulation, 39 U. MIAMI L. REV. 183 (1985).
[82] Art. I, s. 10, Florida Constitution ("No . . . Law impairing the obligation of contracts shall be passed.")
[83] *Yellow Cab Co. of Dade Cnty. v. Dade Cnty.*, 412 So.2d 395 (Fla. 3d DCA 1982).
[84] *Pomponio v. Cladridge of Pompano Condo., Inc.*, 378 So.2d 774 (Fla. 1980).
[85] DEP Draft Bill Analysis for HB 639 (2012) (p. 3).
[86] *Bitterman v. Bitterman*, 714 So.2d 356 (Fla. 1998).

A "vested right" is "an immediate, fixed right of present or future enjoyment and also as an immediate right of present enjoyment, or a present, fixed right of future enjoyment."[87]

The existence of a "vested right" is determined by applying the principles of equitable estoppel or substantive due process under statutory or common law. The common law doctrine of equitable estoppel may be invoked against the government when a person, relying in good faith upon some act or omission of the government, has made such a substantial change in position or incurred such extensive obligations and expenses that it would be highly inequitable and unjust to destroy the rights the person has acquired.[88] The First District Court of Appeals analogized equitable estoppel to the government through an act or omission inviting a citizen "onto a welcome mat" and then "snatch[ing] the mat away to the detriment of the party induced or permitted to stand thereon."[89]

B. RULE-MAKING AUTHORITY:

See Constitutional Issues.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

Not applicable.

[87] *Promontory Enterprises, Inc. v. Southern Engineering & Contracting, Inc.*, 864 So.2d 479 (Fla. 5th DCA 2004).
[88] *Verizon Wireless Pers. Commc'ns L.P. v. Sanctuary at Wulfert Point Cmty. Ass'n*, 916 So.2d 850, 856 (Fla. 2nd DCA 2002).
[89] *Equity Res. Inc. v. County of Leon*, 643 So.2d 1112, 1120 (Fla. 1st DCA 1994) (quoting *Town of Largo v. Imperial Homes Corp.*, 309 So.2d 571, 573 (Fla. 2d DCA 1975).

A bill to be entitled

An act relating to reclaimed water; amending s. 373.019, F.S.; revising the definition of the term "water" or "waters in the state" to exclude reclaimed water; amending s. 373.250, F.S.; providing legislative findings relating to the use of reclaimed water; providing that reclaimed water is an alternative water supply and eligible for such funding; authorizing specified contract provisions for the development of reclaimed water as an alternative water supply; deleting a definition for the term "uncommitted"; providing for the determination of uncommitted reclaimed water capacity by certain utilities; prohibiting water management districts from requiring permits for the use of reclaimed water; authorizing permit conditions for certain surface water and groundwater sources; authorizing water management districts to require the use of reclaimed water under certain conditions; prohibiting water management districts from requiring or restricting services provided by reuse utilities; providing an exception; clarifying which permit applicants are required to submit certain information; requiring the Department of Environmental Protection and each water management district to initiate rulemaking to adopt specified revisions to the water resource implementation rule; revising applicability; providing an effective date.

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

Section 1. Subsection (20) of section 373.019, Florida Statutes, is amended to read:

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

(20) "Water" or "waters in the state" means any and all water on or beneath the surface of the ground or in the atmosphere, including natural or artificial watercourses, lakes, ponds, or diffused surface water and water percolating, standing, or flowing beneath the surface of the ground, as well as all coastal waters within the jurisdiction of the state. Reclaimed water, as defined by the department, is not water or waters in the state until it has been discharged into waters as defined in s. 403.031(13).

Section 2. Section 373.250, Florida Statutes, is amended to read:

373.250 Reuse of reclaimed water.—

(1)(a) The encouragement and promotion of water conservation and reuse of reclaimed water, as defined by the department and used in this chapter, are state objectives and considered to be in the public interest. The Legislature finds that the use of reclaimed water provided by domestic wastewater treatment plants permitted and operated under a reuse program approved by the department is environmentally acceptable and not a threat to public health and safety.

(b) The Legislature recognizes that the interest of the state to sustain water resources for the future through the use of reclaimed water must be balanced with the need of reuse utilities to operate and manage reclaimed water systems in accordance with a variety and range of circumstances, including regulatory and financial considerations, which influence the development and operation of reclaimed water systems across the state.

(2) Reclaimed water is an alternative water supply as defined in s. 373.019(1) and is eligible for alternative water supply funding. A contract for state or district funding assistance for the development of reclaimed water as an alternative water supply may include provisions listed under s. 373.707(9).

(3)~~(2)~~(a) ~~For purposes of this section, "uncommitted" means the average amount of reclaimed water produced during the three lowest-flow months minus the amount of reclaimed water that a reclaimed water provider is contractually obligated to provide to a customer or user~~.

~~(b)~~ Reclaimed water may be presumed available to a consumptive use permit applicant when a utility exists which provides reclaimed water, which has determined that it has uncommitted reclaimed water capacity, and which has distribution facilities, which are initially provided by the utility at its cost, to the site of the affected applicant's proposed use.

(b) A water management district may not require a permit for the use of reclaimed water. However, when a use includes surface water or groundwater, the permit for such sources may

include conditions that govern the use of the permitted sources in relation to the feasibility or use of reclaimed water.

(c) A water management district may require the use of reclaimed water in lieu of all or a portion of a proposed use of surface water or groundwater by an applicant when the use of ~~uncommitted~~ reclaimed water is available; is environmentally, economically, and technically feasible; and is of such quality and reliability as is necessary to the user. However, a water management district may neither specify any user to whom the reuse utility must provide reclaimed water nor restrict the use of reclaimed water provided by a reuse utility to a customer in a permit, water shortage order, or water shortage emergency order unless requested by the reuse utility ~~this paragraph does not authorize a water management district to require a provider of reclaimed water to redirect reclaimed water from one user to another or to provide uncommitted water to a specific user if such water is anticipated to be used by the provider, or a different user selected by the provider, within a reasonable amount of time~~.

(d) The South Florida Water Management District shall require the use of reclaimed water made available by the elimination of wastewater ocean outfall discharges as provided for in s. 403.086(9) in lieu of surface water or groundwater when the use of ~~uncommitted~~ reclaimed water is available; is environmentally, economically, and technically feasible; and is of such quality and reliability as is necessary to the user. Such reclaimed water may also be required in lieu of other alternative sources. In determining whether ~~or not~~ to require

such reclaimed water in lieu of other alternative sources, the water management district shall consider existing infrastructure investments in place or obligated to be constructed by an executed contract or similar binding agreement as of July 1, 2011, for the development of other alternative sources.

(4) ~~(3)~~ The water management district shall, in consultation with the department, adopt rules to implement this section. Such rules shall include, but not be limited to:

(a) Provisions to permit use of water from other sources in emergency situations or if reclaimed water becomes unavailable, for the duration of the emergency or the unavailability of reclaimed water. These provisions shall also specify the method for establishing the quantity of water to be set aside for use in emergencies or when reclaimed water becomes unavailable. The amount set aside is subject to periodic review and revision. The methodology shall take into account the risk that reclaimed water may not be available in the future, the risk that other sources may be fully allocated to other uses in the future, the nature of the uses served with reclaimed water, the extent to which the applicant intends to rely upon reclaimed water, and the extent of economic harm which may result if other sources are not available to replace the reclaimed water. It is the intent of this paragraph to ensure that users of reclaimed water have the same access to ground or surface water and will otherwise be treated in the same manner as other users of the same class not relying on reclaimed water.

~~(b) A water management district shall not adopt any rule which gives preference to users within any class of use~~

~~established under s. 373.246 who do not use reclaimed water over users within the same class who use reclaimed water.~~

(b) ~~(c)~~ Provisions to require permit applicants that are not reuse utilities to provide, as part of their reclaimed water feasibility evaluation for a nonpotable use, written documentation from a reuse utility addressing the availability of reclaimed water. This requirement shall apply when the applicant's proposed use is within an area that is or may be served with reclaimed water by a reuse utility within a 5-year horizon, as established by the reuse utility and provided to the district. If the applicable reuse utility fails to respond or does not provide the information required under paragraph (c) ~~(d)~~ within 30 days after receipt of the request, the applicant shall provide to the district a copy of the written request and a statement that the utility failed to provide the requested information. The district is not required to adopt, by rule, the area where written documentation from a reuse utility is required, but the district shall publish the area, and any updates thereto, on the district's website. This paragraph may not be construed to limit the ability of a district to require the use of reclaimed water or to limit a utility's ability to plan reclaimed water infrastructure.

(c) ~~(d)~~ Provisions specifying the content of the documentation required in paragraph (b) ~~(c)~~, including sufficient information regarding the availability and costs associated with the connection to and the use of reclaimed water, to facilitate the permit applicant's reclaimed water feasibility evaluation.

A water management district may not adopt any rule that gives preference to users within any class of use established under s. 373.246 who do not use reclaimed water over users within the same class who use reclaimed water.

(5)(a) No later than October 1, 2012, the department shall initiate rulemaking to adopt revisions to the water resource implementation rule, as defined in s. 373.019(23), which shall include:

1. Criteria for the use of a proposed impact offset derived from the use of reclaimed water when a water management district evaluates an application for a consumptive use permit. As used in this subparagraph, the term "impact offset" means the use of reclaimed water to reduce or eliminate a harmful impact that has occurred or would otherwise occur as a result of other surface water or groundwater withdrawals.

2. Criteria for the use of substitution credits where a water management district has adopted rules establishing withdrawal limits from a specified water resource within a defined geographic area. As used in this subparagraph, the term "substitution credit" means the use of reclaimed water to replace all or a portion of an existing permitted use of resource-limited surface water or groundwater, allowing a different user or use to initiate a withdrawal or increase its withdrawal from the same resource-limited surface water or groundwater source provided that the withdrawal creates no net adverse impact on the limited water resource or creates a net

positive impact if required by water management district rule as part of a strategy to protect or recover a water resource.

(b) Within 60 days after the final adoption by the department of the revisions to the water resource implementation rule required under paragraph (a), each water management district shall initiate rulemaking to incorporate those revisions by reference into the rules of the district.

(6) ~~(4)~~ Reuse utilities and the applicable water management district or districts are encouraged to periodically coordinate and share information concerning the status of reclaimed water distribution system construction, the availability of reclaimed water supplies, and existing consumptive use permits in areas served by the reuse utility.

(7) ~~(5)~~ ~~Nothing in~~ This section does not impair or limit the authority of ~~shall impair~~ a water management district ~~district's authority~~ to plan for and regulate consumptive uses of water under this chapter or regulate the use of surface water or groundwater to supplement a reclaimed water system.

(8) ~~(6)~~ This section applies to applications for new consumptive use permits and renewals and modifications of existing consumptive use permits.

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 989 Domestic Wastewater Discharged Through Ocean Outfalls
SPONSOR(S): Gonzalez
TIED BILLS: None **IDEN./SIM. BILLS:** SB 724

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Agriculture & Natural Resources Subcommittee		Deslatte JD	Blalock AFB
2) State Affairs Committee			

SUMMARY ANALYSIS

In 2008, SB 1302 was passed by the Legislature and signed into law. The intent of the bill was to protect Florida's coastal waters, including coral reefs, by decreasing the amount of nutrients discharged into coastal waters. The bill required that by 2018, existing outfall discharges must meet advanced wastewater treatment and management requirements. By 2025, 60% of the facility flows were to be reused for beneficial purposes. The bill also authorized the Department of Environmental Protection (DEP) to establish enforceable compliance schedules for treatment upgrades and ultimate outfall elimination. In addition, the bill prohibited the new construction or expansion of wastewater ocean outfalls and limited the discharge of wastewater through ocean outfalls to the permitted capacity in effect on July 1, 2008. It required that discharge of domestic wastewater through ocean outfalls meet advanced wastewater treatment and management requirements no later than December 31, 2018.

The current bill postpones the date by which domestic wastewater facilities must meet advanced treatment and management requirements from December 31, 2018, to December 31, 2020. The bill provides that each utility that had a permit for a domestic wastewater facility that discharged through an ocean outfall on July 1, 2008, must install a functioning reuse system by December 31, 2025. The bill provides that a "functioning reuse system" means an environmentally, economically, and technically feasible system that provides a minimum of 60% of a facility's baseline flow or, for utilities operating more than one facility, 60% of the utility's entire wastewater system flow on an annual basis on December 31, 2025. The bill also defines "baseline flow" to mean the annual average flow of domestic wastewater discharging through the facility's ocean outfall, using monitoring data available from 2003 through 2007. The bill provides that for utilities operating more than one outfall, the reuse requirement may be apportioned between the facilities served by the outfalls. Utilities that shared a common ocean outfall on July 1, 2008, regardless of which utility operates the ocean outfall, are individually responsible for meeting the reuse requirement and can enter into binding agreements to share or transfer the responsibility among the utilities.

The discharge of wastewater through an oceans outfall is prohibited after December 31, 2025, except as a backup discharge that is part of a functioning reuse system or other wastewater management system. Unless otherwise provided in this statute, backup discharges can only occur during periods of reduced demand for reclaimed water in the reuse system, such as periods of wet weather, or as the result of peak flows from other wastewater management systems. The bill provides that peak flow discharges from other wastewater management systems cannot cumulatively exceed 5% of a facility's baseline flow, measured as a 5-year rolling average, and are subject to applicable secondary waste treatment and water-quality-based effluent limitations specified in DEP's rules. When in compliance with the effluent limitations, the peak flow backup discharges must be deemed to meet the advanced wastewater treatment requirements.

The bill revises current planning requirements to require permit holders to submit to the Secretary of the DEP by October 1, 2014, rather than July 1, 2013, a detailed plan to meet the outfalls and reuse requirements. The plan must include the identification of the technical, environmental, and economic feasibility of various reuse options; a cost analysis to meet the discharge and reuse requirements, which includes the level of treatment necessary to satisfy state water quality requirements and local water quality considerations; and a cost comparison of reuse using flows from ocean outfalls and flows from other domestic wastewater sources. An updated plan must be submitted by July 1, 2018, rather than July 1, 2016. The bill also requires the DEP, the South Florida Water Management District, and affected utilities to provide a report to the Legislature by February 15, 2015, containing recommendations for any changes necessary to the reuse and discharge requirements.

The bill does not appear to have a fiscal impact on state government. The bill does appear to have a significant positive fiscal impact on local governments by extending the deadline for implementation of upgrading treatment plants and developing alternative disposal options including reuse of reclaimed water. By revising the reuse requirements and extending the deadline for meeting these requirements, the bill also has a positive fiscal impact on facilities that would not treat or manage peak flows. See the Fiscal Comments Section for more detail.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

In 2008, SB 1302 was passed by the Legislature and signed by the governor. The intent of the bill was to protect Florida's coastal waters, including coral reefs, by decreasing the amount of nutrients discharged into coastal waters.

The bill directed the South Florida WMD to include water resource and water supply development projects that promote the elimination of wastewater ocean outfalls within its regional water supply plan. It also provided that such projects should be given first consideration for state or water management district (WMD) funding assistance. Subject to specified conditions, the South Florida WMD must require the use of reclaimed water made available by the elimination of the wastewater ocean outfalls as part of their consumptive use permitting process.

The bill prohibited the new construction or expansion of wastewater ocean outfalls and limits the discharge of wastewater through ocean outfalls to the permitted capacity in effect on July 1, 2008. It required that discharge of domestic wastewater through ocean outfalls meet advanced wastewater treatment and management requirements no later than December 31, 2018. Such requirements are defined to include:

- Meeting the standards in s. 403.086 (4), F.S.[1];or
- A reduction in baseline loadings of total nitrogen and total phosphorus, equivalent to advanced wastewater treatment requirements in s. 403.086 (4), F.S., or a reduction in cumulative outfall loadings of total nitrogen and total phosphorus occurring between December 31, 2008 and December 31, 2025 which is equivalent to that which would be achieved if the requirements of s. 403.086 (4), F.S., were fully implemented December 31, 2018 and continued through December 31, 2025, as determined by the Department of Environmental Protection (DEP) pursuant to specified criteria, by December 31, 2018.

Facilities that meet 100 percent reuse for domestic wastewater discharge by December 31, 2018 are exempt from the treatment standards.

The bill also required all facilities that discharge wastewater through ocean outfalls to achieve, at a minimum, 60 percent reuse of the facilities actual annual flow by December 31, 2025, and prohibited discharge through ocean outfalls beyond that date, unless as a backup to the functioning reuse system.

The bill created a reporting schedule for permit holders who discharge domestic wastewater through ocean outfalls. Permit holders are required to detail the plan to meet the requirements of the act and provide a summary of actions accomplished to date. The bill provided a reporting schedule for the DEP to summarize the progress to date, to be submitted to the Legislature.

Effect of Proposed Changes

The bill postpones the date by which domestic wastewater facilities must meet advanced treatment and management requirements from December 31, 2018, to December 31, 2020.

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[1] Section 403.086(4), F.S., sets the standards for the following concentrations:
1. Biochemical Oxygen Demand-5mg/l;
2. Suspended Solids-5 mg/l;
3. Total Nitrogen-3 mg/l;
4. Total Phosphorus-1 mg/l.

Each utility that had a permit for a domestic wastewater facility that discharged through an ocean outfall on July 1, 2008, must still install a functioning reuse system by December 31, 2025. The bill provides that a "functioning reuse system" means a system that provides a minimum of 60% of a facility's baseline flow or, for utilities operating more than one facility, 60% of the utility's entire wastewater system flow on an annual basis on December 31, 2025. The bill also defines "baseline flow" to mean the annual average flow of domestic wastewater discharging through the facility's ocean outfall, using monitoring data available from 2003 through 2007. For utilities operating more than one outfall, the reuse requirement can be apportioned between the facilities served by the outfalls. In addition, utilities that shared a common ocean outfall for the discharge of domestic wastewater on July 1, 2008, regardless of which utility operates the ocean outfall, are individually responsible for meeting the reuse requirement and may enter into binding agreements to share or transfer the responsibility among the utilities.

The discharge of wastewater through an oceans outfall continues to be prohibited after December 31, 2025, except as a backup discharge that is part of a functioning reuse system or other wastewater management system authorized by the DEP. Unless otherwise provided in this statute, backup discharges can only occur during periods of reduced demand for reclaimed water in the reuse system, such as periods of wet weather, or as the result of peak flows from other wastewater management systems. Peak flow backup discharges from other wastewater management systems cannot cumulatively exceed 5% of a facility's baseline flow, measured as a 5-year rolling average, and are subject to applicable secondary waste treatment and water-quality-based effluent limitations specified in DEP rules. When in compliance with the effluent limitations, the peak flow backup discharges must be deemed to meet the advanced wastewater treatment and management requires.

The bill revises current planning requirements to delay submission from July 1, 2013, to October 1, 2014, and to require each ocean outfalls discharge permit holder submit to the DEP a detailed plan to meet the outfalls and reuse requirements that includes:

- The identification of the technical, environmental, and economic feasibility of various reuse options; and
- A cost analysis to meet the discharge and reuse requirements, which includes the level of treatment necessary to satisfy state water quality requirements and local water quality considerations and a cost comparison of reuse using flows from ocean outfalls and flows from other domestic wastewater sources.

The plan must also evaluate reuse demand in the context of future regional water supply demands, the availability of traditional water supplies, the need for development of alternative water supplies, the degree to which various reuse options offset potable water supplies, and other factors considered in the South Florida Water Management District's Lower East Coast Regional Water Supply Plan. The plan must include a detailed schedule for the completion of all actions and must be submitted by October 1, 2014. An updated plan must be submitted by July 1, 2018, rather than July 1, 2016.

The DEP, South Florida WMD, and affected utilities must consider the information in the detailed plan for the purposes of adjusting, as necessary, the reuse requirements. The DEP must submit a report to the Legislature by February 15, 2015, containing recommendations for any changes necessary to the reuse and discharge requirements.

B. SECTION DIRECTORY:

Section 1. Amends s. 403.086, F.S., postponing the dates by which domestic wastewater facilities must meet more stringent treatment and management requirements; providing exceptions; revising the definition of the term "functioning reuse system"; changing the term "facility's actual flow on an annual basis" to "baseline flow"' revising plan requirements for the elimination of ocean outfalls; providing that certain utilities that shared a common ocean outfall on a specified date are individually responsible for meeting the reuse requirement; authorizing those utilities to enter into binding agreements to share or transfer responsibility for meeting reuse requirements; revising provisions authorizing the backup

discharge of domestic wastewater through ocean outfalls; requiring a holder of a DEP permit authorizing the discharge of domestic wastewater through an ocean outfall to submit certain information; requiring the DEP, the South Florida Water management District, and affected utilities to consider certain information for the purpose of adjusting reuse requirements; requiring the DEP to submit a report to the Legislature.

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

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None

2. Expenditures:

   None

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   See Fiscal Comments

2. Expenditures:

   See Fiscal Comments

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Direct Private Sector Costs:
The bill does appear to have a significant positive fiscal impact on local governments by extending the deadline for implementation of upgrading treatment plants and developing alternative disposal options including reuse of reclaimed water. By revising the reuse requirements and extending the deadline for meeting these requirements, the bill also has a positive fiscal impact on facilities that would not treat or manage peak flows. The cost savings would also benefit utility ratepayers.

Private Section Benefits:
According to the DEP, the bill would delay certain treatment upgrades, allow for construction of smaller sized facilities that would not treat or manage peak flows, and provide additional flexibility in meeting reuse requirements. Expected cost savings from these new provisions would be passed on to individuals or businesses served by the utilities through their utility rates.

D. FISCAL COMMENTS:

DEP provided the following fiscal comments on local governments:

Non-recurring Effects:
The bill includes two provisions with fiscal impacts: A two year delay in meeting the 2018 advanced wastewater management and treatment, outfall elimination and reuse requirements, along with a provision that would allow five percent of peak flows from the wastewater treatment facilities to continue to be discharged through the outfalls.

There are significant local government costs for the treatment plant upgrades needed to comply with the advanced wastewater management and treatment requirements. To account for these costs, utilities will have to increase their utility rates. A two-year deferral of these upgrades would allow the affected local governments to take advantage of interest earnings on funds already reserved for the

upgrades and implement more gradual rate increases to reduce customer impact. The risk to the local governments is the potential that increases in the future costs of materials, labor, fuels, etc., from inflation or other factors would exceed the value the accrued savings.

Another potential benefit of the two-year delay is that the economic circumstances of the affected local governments and the overall cost of the bonding may be more favorable as economic conditions improve. Whether the potential for higher bond yields in a better economy, and thus more expensive borrowing, outweighs the overall benefits of an improved economy is another risk.

The allowance for the discharging limited peak flows after 2025 would allow the construction of smaller, less expensive wastewater management facilities:

- Hollywood estimates the cost savings at $174 million in capital costs for peak flows of 10 percent of annual flows, $162 million for peak flows of 5 percent, and $142 million for peak flows of 3 percent.
- Broward County estimates cost savings of $620 million in capital costs for peak flows of 10 percent of annual flows, $600 million for peak flows of 5 percent, and $560 million for peak flows of 3 percent.
- Miami Dade estimates cost savings for their central, north, and south wastewater treatment plans of $867 million in capital costs for peak flows of 5 percent of annual flows.

The cost curves for the three county utilities shows the majority of the costs savings occur in the 1-3 percent peak flow range with significantly diminishing cost savings above 5 percent of peak flows, lending support for the 5 percent figures used in the bill.

Recurring Effects:
Any reduction in size of wastewater treatment plant upgrades associated with the peak flow allowance would also decrease long-term operation and maintenance costs of the associated wastewater treatment systems. These savings would likely be passed on to utility customers.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.

A bill to be entitled

An act relating to domestic wastewater discharged through ocean outfalls; amending s. 403.086, F.S.; postponing the dates by which domestic wastewater facilities must meet more stringent treatment and management requirements; providing exceptions; revising the definition of the term "functioning reuse system"; changing the term "facility's actual flow on an annual basis" to "baseline flow"; revising plan requirements for the elimination of ocean outfalls; providing that certain utilities that shared a common ocean outfall on a specified date are individually responsible for meeting the reuse requirement; authorizing those utilities to enter into binding agreements to share or transfer responsibility for meeting reuse requirements; revising provisions authorizing the backup discharge of domestic wastewater through ocean outfalls; requiring a holder of a department permit authorizing the discharge of domestic wastewater through an ocean outfall to submit certain information; requiring the Department of Environmental Protection, the South Florida Water Management District, and affected utilities to consider certain information for the purpose of adjusting reuse requirements; requiring the department to submit a report to the Legislature; providing an effective date.

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

Section 1. Subsection (9) of section 403.086, Florida Statutes, is amended to read:

403.086 Sewage disposal facilities; advanced and secondary waste treatment.—

(9) The Legislature finds that the discharge of domestic wastewater through ocean outfalls wastes valuable water supplies that should be reclaimed for beneficial purposes to meet public and natural systems demands. The Legislature also finds that discharge of domestic wastewater through ocean outfalls compromises the coastal environment, quality of life, and local economies that depend on those resources. The Legislature declares that more stringent treatment and management requirements for such domestic wastewater and the subsequent, timely elimination of ocean outfalls as a primary means of domestic wastewater discharge are in the public interest.

(a) The construction of new ocean outfalls for domestic wastewater discharge and the expansion of existing ocean outfalls for this purpose, along with associated pumping and piping systems, are prohibited. Each domestic wastewater ocean outfall shall be limited to the discharge capacity specified in the department permit authorizing the outfall in effect on July 1, 2008, which discharge capacity shall not be increased. Maintenance of existing, department-authorized domestic wastewater ocean outfalls and associated pumping and piping systems is allowed, subject to the requirements of this section. The department is directed to work with the United States

Environmental Protection Agency to ensure that the requirements of this subsection are implemented consistently for all domestic wastewater facilities in Florida which discharge through ocean outfalls.

(b) The discharge of domestic wastewater through ocean outfalls must ~~shall~~ meet advanced wastewater treatment and management requirements by December 31, 2020 ~~no later than December 31, 2018~~. For purposes of this subsection, the term "advanced wastewater treatment and management requirements" means the advanced waste treatment requirements set forth in subsection (4), a reduction in outfall baseline loadings of total nitrogen and total phosphorus which is equivalent to that which would be achieved by the advanced waste treatment requirements in subsection (4), or a reduction in cumulative outfall loadings of total nitrogen and total phosphorus occurring between December 31, 2008, and December 31, 2025, which is equivalent to that which would be achieved if the advanced waste treatment requirements in subsection (4) were fully implemented beginning December 31, 2020 ~~2018~~, and continued through December 31, 2025. The department shall establish the average baseline loadings of total nitrogen and total phosphorus for each outfall using monitoring data available for calendar years 2003 through 2007 and ~~shall~~ establish required loading reductions based on this baseline. The baseline loadings and required loading reductions of total nitrogen and total phosphorus shall be expressed as an average annual daily loading value. The advanced wastewater treatment and management requirements of this paragraph are ~~shall be~~

deemed ~~to be~~ met for any domestic wastewater facility discharging through an ocean outfall on July 1, 2008, which has installed by ~~no later than~~ December 31, 2018, a fully operational reuse system comprising 100 percent of the facility's annual average daily flow for reuse activities authorized by the department.

(c)1. Each utility that had a permit for a domestic wastewater facility that discharged ~~discharges~~ through an ocean outfall on July 1, 2008, must ~~shall~~ install a functioning reuse system by ~~no later than~~ December 31, 2025. For purposes of this subsection, a "functioning reuse system" means an environmentally, economically, and technically feasible system that provides a minimum of 60 percent of a ~~the~~ facility's baseline ~~actual~~ flow or, for utilities operating more than one facility, 60 percent of the utility's entire wastewater system flow on an annual basis on December 31, 2025. Reuse may be ~~on an annual basis~~ for irrigation of public access areas, residential properties, or agricultural crops; aquifer recharge; groundwater recharge; industrial cooling; or other acceptable reuse purposes authorized by the department. For purposes of this subsection, the term "baseline flow" ~~"facility's actual flow on an annual basis"~~ means the annual average flow of domestic wastewater discharging through the facility's ocean outfall, as determined by the department, using monitoring data available for calendar years 2003 through 2007.

2. Flows diverted from facilities to other facilities that provide 100 percent reuse of the diverted flows before ~~prior to~~ December 31, 2025, are ~~shall be~~ considered to contribute to

meeting the ~~60 percent~~ reuse requirement. For utilities operating more than one outfall, the reuse requirement may ~~can~~ be apportioned between the ~~met if the combined actual reuse flows from~~ facilities served by the outfalls ~~is at least 60 percent of the sum of the total actual flows from the facilities~~, including flows diverted to other facilities for 100 percent reuse before ~~prior to~~ December 31, 2025. Utilities that shared a common ocean outfall for the discharge of domestic wastewater on July 1, 2008, regardless of which utility operates the ocean outfall, are individually responsible for meeting the reuse requirement and may enter into binding agreements to share or transfer such responsibility among the utilities. If ~~In the event~~ treatment in addition to the advanced wastewater treatment and management requirements described in paragraph (b) is needed ~~in order~~ to support a functioning reuse system, the ~~such~~ treatment must ~~shall~~ be fully operational by ~~no later than~~ December 31, 2025.

(d) The discharge of domestic wastewater through ocean outfalls is prohibited after December 31, 2025, except as a backup discharge that is part of a functioning reuse system or other wastewater management system authorized by the department ~~as provided for in paragraph (c)~~. Except as otherwise provided in this subsection, a backup discharge may occur only during periods of reduced demand for reclaimed water in the reuse system, such as periods of wet weather, or as the result of peak flows from other wastewater management systems, and must ~~shall~~ comply with the advanced wastewater treatment and management requirements of paragraph (b). Peak flow backup discharges from

other wastewater management systems may not cumulatively exceed 5 percent of a facility's baseline flow, measured as a 5-year rolling average, and are subject to applicable secondary waste treatment and water-quality-based effluent limitations specified in department rules. When in compliance with the effluent limitations, the peak flow backup discharges shall be deemed to meet the advanced wastewater treatment and management requirements of this subsection.

(e) The holder of a department permit authorizing the discharge of domestic wastewater through an ocean outfall as of July 1, 2008, shall submit the following to the secretary of the department ~~the following~~:

1. A detailed plan to meet the requirements of this subsection, including the identification of the technical, environmental, and economic feasibility of various reuse options; the ~~an~~ identification of all land acquisition and facilities necessary to provide for reuse of the domestic wastewater; an analysis of the costs to meet the requirements, including the level of treatment necessary to satisfy state water quality requirements and local water quality considerations and a cost comparison of reuse using flows from ocean outfalls and flows from other domestic wastewater sources; and a financing plan for meeting the requirements, including identifying any actions necessary to implement the financing plan, such as bond issuance or other borrowing, assessments, rate increases, fees, other charges, or other financing mechanisms. The plan must evaluate reuse demand in the context of future regional water supply demands, the availability of

traditional water supplies, the need for development of alternative water supplies, the degree to which various reuse options offset potable water supplies, and other factors considered in the South Florida Water Management District's Lower East Coast Regional Water Supply Plan. The plan must ~~shall~~ include a detailed schedule for the completion of all necessary actions and ~~shall~~ be accompanied by supporting data and other documentation. The plan must ~~shall~~ be submitted by October 1, 2014 ~~no later than July 1, 2013~~.

2. By July 1, 2018 ~~No later than July 1, 2016~~, an update of the plan required in subparagraph 1. documenting any refinements or changes in the costs, actions, or financing necessary to eliminate the ocean outfall discharge in accordance with this subsection or a written statement that the plan is current and accurate.

(f) By December 31, 2009, and by December 31 every 5 years thereafter, the holder of a department permit authorizing the discharge of domestic wastewater through an ocean outfall shall submit to the secretary of the department a report summarizing the actions accomplished to date and the actions remaining and proposed to meet the requirements of this subsection, including progress toward meeting the specific deadlines set forth in paragraphs (b) through (e). The report shall include the detailed schedule for and status of the evaluation of reuse and disposal options, preparation of preliminary design reports, preparation and submittal of permit applications, construction initiation, construction progress milestones, construction completion, initiation of operation, and continuing operation

and maintenance.

(g) No later than July 1, 2010, and by July 1 every 5 years thereafter, the department shall submit a report to the Governor, the President of the Senate, and the Speaker of the House of Representatives on the implementation of this subsection. The report shall summarize progress to date, including the increased amount of reclaimed water provided and potable water offsets achieved, and identify any obstacles to continued progress, including all instances of substantial noncompliance.

(h) By February 1, 2012, the department shall submit a report to the Governor and Legislature detailing the results and recommendations from phases 1 through 3 of its ongoing study on reclaimed water use.

(i) The renewal of each permit that authorizes the discharge of domestic wastewater through an ocean outfall as of July 1, 2008, shall be accompanied by an order in accordance with s. 403.088(2)(e) and (f) which establishes an enforceable compliance schedule consistent with the requirements of this subsection.

(j) An entity that diverts wastewater flow from a receiving facility that discharges domestic wastewater through an ocean outfall must meet the ~~60 percent~~ reuse requirement of paragraph (c). Reuse by the diverting entity of the diverted flows shall be credited to the diverting entity. The diverted flow shall also be correspondingly deducted from the receiving facility's baseline ~~actual~~ flow ~~on an annual basis~~ from which the required reuse is calculated pursuant to paragraph (c), and

the receiving facility's reuse requirement shall be recalculated accordingly.

The department, the South Florida Water Management District, and the affected utilities must consider the information in the detailed plan under paragraph (e) for the purpose of adjusting, as necessary, the reuse requirements of this subsection. The department shall submit a report to the Legislature by February 15, 2015, containing recommendations for any changes necessary to the requirements of this subsection.

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1103 Ordinary High-Water Mark for Navigable, Nontidal Waterbodies
SPONSOR(S): Goodson
TIED BILLS: None **IDEN./SIM. BILLS:** SB 1362

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Agriculture & Natural Resources Subcommittee		Kaiser DK	Blalock AFB
2) Civil Justice Subcommittee			
3) State Affairs Committee			

SUMMARY ANALYSIS

In 1845, when Florida gained statehood, the federal government conveyed to Florida ownership of all lands lying beneath the navigable waters in the state, up to the ordinary high water line (OHWL).[1] The state Constitution provides that navigable waters in the state must be held in public trust for the people of Florida.[2] Florida statutes currently do not define the OHWL, nor do they provide any guidance for how the location of the OHWL should be determined.

However, the Florida Supreme Court established criteria for determining the location of the OHWL for navigable, nontidal lakes and rivers in two Florida Supreme Court cases: *Tilden v. Smith*[3] and *Martin v. Busch*[4].

In the *Tilden* case, the court recognized Florida's varying topography and differentiated between water bodies with steep banks versus those with flat banks. Flat banked rivers and lakes are common in Florida and these types of water bodies are where the difficulty arises in determining where the lakes or rivers end and private uplands begin. The court in *Tilden* stated that on low, flat-banked water bodies there is usually no clear mark on the ground, and the boundary is located where the presence of the water prevents the cultivation of ordinary agricultural crops. In the *Martin* case, the court explained that ordinary high water on flat banked water bodies with shallow, vegetated shorelines can also be determined by utilizing the best methods available, and that marks upon the ground or upon local objects that are more or less permanent can be considered in connection with competent testimony and other evidence in determining the line of ordinary high water mark. On steep banked water bodies, the court stated that the boundary is located by an observable physical mark on the ground where the presence and action of the water has wrested the bank of vegetation.

The bill codifies the Florida Supreme Court's decisions in *Tilden* and *Martin* by establishing criteria that must be applied when determining the location of the ordinary high water mark for navigable, nontidal water bodies, and defines the ordinary high water mark as the "highest reach of a navigable, nontidal water body as it usually exists when in its ordinary condition and is not the highest reach of such water body during the high water season or in times of freshets." The bill also provides definitions for "ordinary agricultural crop" and "freshet".

Lastly, the bill states that the criteria established for determining the ordinary high water mark for navigable, nontidal waterbodies do not alter the public's right to use navigable waters and sovereignty submerged lands for common law public trust purposes up to the ordinary high water mark, nor do they affect the ownership by the public of sovereignty submerged lands lying below that mark.

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

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[1] The terms "ordinary high water line" and "ordinary high water mark" are used interchangeably.
[2] Article X, Section 11. Sovereignty lands.
[3] 94 Fla. 502.113 So. 708 (1927)
[4] 93 Fla. 535, 112 So.274 (1927)

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Dating back to the Roman times, navigable waters were public highways allowing goods and people to move freely throughout the land. Recognizing the intrinsic quality of these waterways, the navigable waterways were protected by public law.

Upon attaining statehood in 1845, "the state of Florida by virtue of its sovereignty assumed title to and sovereignty over the navigable waters in the state and lands thereunder."[5] The title to lands under navigable waters passed from the United States to the state through operation of the federal "equal footing" doctrine,[6] and included the submerged bed up to the "ordinary high water mark" of navigable freshwater rivers and lakes.[7] By adopting the "ordinary high water mark" as the boundary,[8] Florida extended its sovereignty title to the limits of what federal law regarded as having passed to the state under the "equal footing" doctrine. Under the common law Public Trust Doctrine, navigable rivers, lakes, and tidelands are held in a public trust which imposes a legal duty upon the state to preserve and control them for public navigation, fishing, swimming, and other lawful uses.[9] Because the essential feature of the doctrine is that lands beneath navigable water bodies are not held for the purpose of sale or conversion into private ownership, strict limitations are imposed on the state's ability to transfer the water bodies into private hands.[10] This common law Public Trust Doctrine has also been incorporated into the Florida Constitution,[11] and the Florida Supreme Court has stated that this constitutional provision represents a codification of prior case law.[12] Florida statutes currently do not define the OHWL, nor do they provide any guidance for how the location of the OHWL should be determined.

However, the Florida Supreme Court established criteria for determining the location of the OHWL for navigable, nontidal lakes and rivers in two Florida Supreme Court cases: *Tilden v. Smith*[13] and *Martin v. Busch*[14]. In the *Tilden* case, the Supreme Court defined the boundary of freshwater lakes and rivers using a quote from a Minnesota Supreme Court opinion:[15]

> *In the case of fresh water rivers and lakes—in which there is no ebb and flow of the tide but which are subject to irregular and occasional changes of height without fixed quantity or time except that they are periodical, recurring with the wet or dry seasons of the year—high water mark as a line between a riparian owner and the public, is to be determined by examining the bed and the banks and ascertaining where the presence and action of the water are so common and usual and so long continued in all ordinary years as to mark upon the soil of the bed a character distinct from that of the banks in respect to vegetation, as well as to the nature of the soil itself. High water mark means what its language imports,-a water mark. It is co-ordinate with the limit of the bed of the water, and that only is to be considered the bed which the water occupies sufficiently long and continuously to wrest it from vegetation and to destroy its value for agricultural purposes. Ordinarily the slope of the bank and the character of its soil are such that the*

[5] Merrill-Stevens Co. v. Durkee, 62 Fla. 549, 57 So. 428,, 432 (1912)
[6] Pollard v. Hagan, 44 U.S. 212 (1845)
[7] Coastal Petroleum Co. v. American Cyanamid Co., 492 So. 2d 339, 342 (Fla 1986)
[8] State ex rel. Ellis v. Gerbing, 56 Fla 603 (1908)
[9] Coastal Petroleum Co. v. American Cyanamid Co., 492 So. 2d 339, 342 (Fla 1986); State ex rel. Ellis v. Gerbing, 56 Fla 603 (1908)
[10] Broward v. Mabry, 58 Fla. 398 (1909)
[11] Article X, Section 11, Florida Constitution
[12] American Cyanamid, 492 So. 2d 339 (1986)
[13] Tilden v. Smith, 94 Fla. 502 (1927)
[14] Martin v. Busch, 93 Fla. 535 (1927)
[15] "The Ordinary High Water Boundary on Freshwater Lakes and Streams: Origin, Theory, and Constitutional Restrictions"

water impresses a distinct character upon the soil as well as upon the vegetation. In some places, however, where the banks are low and flat, the water does not impress on the soil any well defined marks of demarcation between the bed and the banks. In such case the effect of the water upon vegetation must be the principal test of determining the location of high water mark as a line between the riparian owner and the public. It is the point at which the presence and action of the water is so continuous as to destroy the value of the land for agricultural purposes by preventing the growth of vegetation, constituting what may be termed an ordinary agricultural crop.

In the *Martin v. Busch* case, the court discussed methods for locating the OHWL on low, flat-banked water bodies with swamped vegetated margins:

In flat territory or because of peculiar conditions, there may be little if any shore to navigable waters, or the elevation may be slight and the water at the outer edges may be shallow and affected by vegetable growth or other conditions, and the line of ordinary high water mark may be difficult of accurate ascertainment; but, when the duty of determining the high water mark is imposed or assumed, the best evidence attainable and the best methods available should be utilized in determining and establishing the line of true ordinary high water mark, whether it is done by general or special meandering or by particular surveys of adjacent land. Marks upon the ground or upon local objects that are more or less permanent may be considered in connection with competent testimony and other evidence in determining the true line of ordinary high water mark.

The court in *Tilden* recognized Florida's varying topography and differentiated between water bodies with steep banks versus those with flat banks. Flat banked rivers and lakes are common in Florida and these types of water bodies are where the difficulty arises in determining where the lakes or rivers end and private uplands begin. The court in *Tilden* stated that on law, flat-banked water bodies there is usually no clear mark on the ground, and the boundary is located where the presence of the water prevents the cultivation of ordinary agricultural crops. The court in *Martin* explained that ordinary high water on flat banked water bodies with shallow, vegetated shorelines can also be determined by utilizing the best methods available, and that marks upon the ground or upon local objects, such as trees and dock pilings, that are more or less permanent can be considered in connection with competent testimony and other evidence in determining the line of ordinary high water mark. On steep banked water bodies, the boundary is located by an observable physical mark on the ground where the presence and action of the water has wrested the bank of vegetation.

Effect of Proposed Changes

The bill creates s. 253.024, F.S., providing definitions for "ordinary high-water mark", "ordinary agricultural crop", and "freshet," as well as criteria for determining the location of the ordinary high-water mark for navigable, nontidal water bodies.

The bill defines the term "ordinary high-water mark" to mean "the highest reach of a navigable, nontidal water body as it usually exists when in its ordinary condition and is not the highest reach of such water body during the high water season or in times of freshets." The term ordinary high-water mark also includes the terms "ordinary high-water line" and "line of ordinary high water". "Ordinary agricultural crop" is defined as "any terrestrial plant or vegetation from a farm, nursery, grove, orchard, vineyard, or garden, but does not include cypress trees". "Freshet" is defined as "a flood or overflowing of a river by means of rain, melted snow, or an inundation of water".

The bill provides that, when determining the location of the ordinary high-water mark for navigable, nontidal water bodies, the following provisions apply and must be considered in their entirety:

- The ordinary high-water mark is an ambulatory boundary, shifting in response to long-term changes, and is to be determined by examining the bed and banks to ascertain where the presence and action of the water are so common and usual, and so long continued in all

ordinary years, as to mark upon the soil of the bed a character distinct from that of the banks, in respect to vegetation and the nature of the soil itself.

- The ordinary high-water mark is coordinate with the limit of the bed the water occupies sufficiently long and continuously to wrest it from vegetation and destroy its value for agricultural purposes. The bed does not take in swamp or overflowed lands, and the ordinary high-water mark is to be found between such lands and the area occupied by the water for the greater portion of each average year. At this level a definite escarpment in the soil is generally traceable, at the top of which is the position for the boundary. Escarpments resulting from the action of a storm, a flood, or rises in water levels of a water body during the annual high water season do not signify the ordinary high-water mark.
- In some places where the banks are low and flat and the water does not impress on the soil any well-defined line of demarcation between the bed and the banks, the effect of the water upon vegetation must be the principal test in determining the location of the ordinary high-water mark. In such an instance, the ordinary high-water mark is the point up to which the presence and action of the water is so continuous as to destroy the value of the land for agricultural purposes by preventing the growth of vegetation constituting what may be termed an ordinary agricultural crop.
- Marks upon the ground or upon local objects that are more or less permanent may be considered, in connection with competent testimony and other evidence, in determining the ordinary high-water mark.

The bill provides that this section of law does not alter the public's right to use navigable waters and sovereignty submerged lands for common law public trust purposes up to the ordinary high-water mark nor does this section of law affect the ownership by the public of sovereignty submerged lands lying below that mark.

B. SECTION DIRECTORY:

Section 1: Creates s. 253.024, F.S.; providing definitions for "ordinary agricultural crop", "freshet" and, "ordinary high-water mark"; providing criteria for determining the location of the ordinary high-water mark; and, confirming public's ownership and right to use navigable waters and sovereignty submerged lands up to the ordinary high-water mark.

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

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   See fiscal comments.

2. Expenditures:

   See fiscal comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

See fiscal comments.

D. FISCAL COMMENTS:

It is unknown what effect this bill, if enacted into law, would have on established boundaries between sovereign submerged lands and uplands. To the extent existing boundaries are altered, the property rights associated with ownership would be affected.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.

A bill to be entitled

An act relating to the ordinary high-water mark for navigable, nontidal waterbodies; creating s. 253.024, F.S.; providing definitions; providing criteria for determining the location of the ordinary high-water mark for navigable, nontidal waterbodies; providing construction; providing an effective date.

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

Section 1. Section 253.024, Florida Statutes, is created to read:

253.024 Determining location of ordinary high-water mark for navigable, nontidal waterbodies.—

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

(a) "Ordinary agricultural crop" means any terrestrial plant or vegetation from a farm, nursery, grove, orchard, vineyard, or garden, but does not include cypress trees.

(b) "Freshet" means a flood or overflowing of a river by means of rain, melted snow, or an inundation of water.

(c) "Ordinary high-water mark" means the highest reach of a navigable, nontidal waterbody as it usually exists when in its ordinary condition and is not the highest reach of such waterbody during the high water season or in times of freshets. The term also includes the terms "ordinary high-water line" and "line of ordinary high water".

(2) When determining the location of the ordinary high-water mark for navigable, nontidal waterbodies, this subsection

shall be considered in its entirety and each of the following provisions shall apply:

(a) The ordinary high-water mark is an ambulatory boundary, shifting in response to long-term changes, and is to be determined by examining the bed and banks to ascertain where the presence and action of the water are so common and usual, and so long continued in all ordinary years, as to mark upon the soil of the bed a character distinct from that of the banks, in respect to vegetation and the nature of the soil itself.

(b) The ordinary high-water mark is coordinate with the limit of the bed the water occupies sufficiently long and continuously to wrest it from vegetation and destroy its value for agricultural purposes. The bed does not take in swamp or overflowed lands, and the ordinary high-water mark is to be found between such lands and the area occupied by the water for the greater portion of each average year. At this level a definite escarpment in the soil is generally traceable, at the top of which is the position for the boundary. Escarpments resulting from the action of a storm, a flood, or rises in water levels of a waterbody during the annual high water season do not signify the ordinary high-water mark.

(c) In some places where the banks are low and flat and the water does not impress on the soil any well-defined line of demarcation between the bed and the banks, the effect of the water upon vegetation must be the principal test in determining the location of the ordinary high-water mark. In such an instance, the ordinary high-water mark is the point up to which the presence and action of the water is so continuous as to

destroy the value of the land for agricultural purposes by preventing the growth of vegetation constituting what may be termed an ordinary agricultural crop.

(d) Marks upon the ground or upon local objects that are more or less permanent may be considered, in connection with competent testimony and other evidence, in determining the ordinary high-water mark.

(3) This section does not alter the public's right to use navigable waters and sovereignty submerged lands for common law public trust purposes up to the ordinary high-water mark as defined in this section, nor does this section affect the ownership by the public of sovereignty submerged lands lying below that mark.

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

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

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Agriculture & Natural Resources Subcommittee		Cunningham RC	Blalock MFB
2) Community & Military Affairs Subcommittee			
3) Agriculture & Natural Resources Appropriations Subcommittee			
4) State Affairs Committee			

SUMMARY ANALYSIS

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

- Florida apiary inspectors certify movement of honey bee colonies throughout the state and nation. These colonies are monitored for diseases, honey bee pests and unwanted species. The Department of Agriculture and Consumer Services (department) has a comprehensive state program (e.g., numbers of inspectors and traps) to prevent the accidental introduction of the unwanted Africanized honey bee. Current law provides the department specific powers to oversee apiaries, honeybee operations, and honeybee products. The bill provides the department with the exclusive authority to regulate beekeeping, apiaries, and apiary locations. It also provides that an apiary may be located on land classified as agricultural land or on land that is integral to a beekeeping operation.
- Any nonresidential farm building or farm fence is exempt from the Florida Building Code and any county or municipal code or fee, except for code provisions implementing local, state, or federal floodplain management regulations. The bill exempts farm signs from the Florida Building Code and any county or municipal code or fee. The bill also defines "farm sign" as "a sign erected, used, or maintained on a farm by the owner or lessee of the farm which displays a message exclusively relating to farm produce, merchandise, services, or entertainment sold, produced, manufactured, or furnished on the farm".
- Under the Florida Right to Farm Act (act), the Legislature has stated that agricultural activities conducted on farm land in urbanizing areas are potentially subject to lawsuits based on the theory of nuisance and that these suits encourage and even force the premature removal of the farm land from agricultural use. The purpose of the act is to protect reasonable agricultural activities conducted on farm land from nuisance suits. The act also provides that a local government cannot adopt any ordinance, regulation, rule, or policy to prohibit, restrict, regulate, or otherwise limit an activity of a bona fide farm operation on land classified as agricultural land where such activity is regulated through implemented best management practices or interim measures developed by the department, the Department of Environmental Protection, or the water management districts and adopted under chapter 120, F.S., as part of a statewide or regional program. The bill amends the definition of "farm", "farm operation", and "farm product" to include land and buildings used in the production of honeybee products, the placement and operation of an apiary, and insects that are useful to humans within the purview of the act.

There is a potential impact on local governments for a decrease in revenue as the bill exempts farm signs from the Florida Building Code and any county or municipal code or fee. The bill provides relief to agricultural producers who are paying fees for farm signs assessed by certain governmental entities.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Section 1 – Beekeeping, Apiaries, and Apiary Locations

Present Situation

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

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

Seventeen million pounds of honey are produced in Florida each year.[1]

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

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

[1] http://www.freshfromflorida.com/onestop/plt/apiaryinsp.html

- Refuse the certification of any honeybees, honeybee products, or beekeeping equipment when it is determined that an unwanted race of honeybees, honeybee products, or beekeeping equipment, or that the condition of the apiary inhibits a thorough and efficient inspection by the department;
- Conduct, supervise, or cause the fumigation, destruction, or treatment of honeybees, including unwanted races of honeybees, honeybee products, and used beekeeping equipment or other articles infested or infected by honeybee pests or unwanted races of honeybees or so exposed to infection or infestation could exist; and
- May require the removal from this state of any honeybees or beekeeping equipment brought into the state in violation of this chapter.[2]

Effect of Proposed Changes

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

Section 2 - Nonresidential Farm Buildings

Present Situation

Section 604.50, F.S., provides that any nonresidential farm building or farm fence is exempt from the Florida Building Code and any county or municipal code or fee, except for code provisions implementing local, state, or federal floodplain management regulations.[3] "Farm" means the land, buildings, support facilities, machinery, and other appurtenances used in the production of farm or aquaculture products.[4] "Nonresidential farm building" means any temporary or permanent building or support structure that is classified as a nonresidential farm building on a farm under s. 553.73(9)(c), F.S.,[5] or that is used primarily for agricultural purposes, is located on land that is an integral part of a farm operation or is classified as agricultural land under s. 193.461, F.S., and is not intended to be used as a residential dwelling. The term may include, but is not limited to, a barn, greenhouse, shade house, farm office, storage building, or poultry house.

Effect of Proposed Changes

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

Section 3 - Florida Right to Farm Act

Present Situation

The Florida Right to Farm Act (act)[6] provides that the Legislature finds that agricultural production is a major contributor to the economy of the state and agricultural lands constitute unique and irreplaceable resources of statewide importance. The Legislature also finds that agricultural activities conducted on

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[2] Section 586.10, F.S.
[3] Section 604.50, F.S.
[4] Section 823.14, F.S.
[5] The Florida Fire Prevention Code and the Life Safety Code shall be referenced in the Florida Building Code, but shall be adopted, modified, revised, or amended, interpreted, and maintained by the Department of Financial Services by rule adopted pursuant to ss. 120.536(1) and 120.54. The Florida Building Commission may not adopt a fire prevention or life safety code, and nothing in the Florida Building Code shall affect the statutory powers, duties, and responsibilities of any fire official or the Department of Financial Services.
[6] Section 823.14, F.S.

farm land in urbanizing areas are potentially subject to lawsuits based on the theory of nuisance and that these suits encourage and even force the premature removal of the farm land from agricultural use. The purpose of this act is to protect reasonable agricultural activities conducted on farm land from nuisance suits. The act, in general, states that no farm operation which has been in operation for 1 year or more since its established date of operation and which was not a nuisance at the time of its established date of operation shall be a public or private nuisance if the farm operation conforms to generally accepted agricultural and management practices.

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

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

Effect of Proposed Changes

The bill makes revisions to the Right to Farm Act by amending the definition of "farm" to include land, buildings, support facilities, machinery, and other appurtenances used in the production of honeybee products. The bill also amends the definition of "farm operation" to include all conditions or activities by the owner, lessee, agent, independent contractor, and supplier which occur on a farm in connection with the production of honeybee products, which may include the placement and operation of an apiary. The definition of "farm product" is amended to include any insect useful to humans. These definitional changes brings land and buildings used in the production of honeybee products, the placement and operation of an apiary, and insects that are useful to humans within the purview of the Right to Farm Act.

B. SECTION DIRECTORY:

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

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

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

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

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

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   There is potential for a decrease in revenue as the bill exempts farm signs from the Florida Building Code and any county or municipal code or fee.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill provides relief to agricultural producers who are paying fees for farm signs assessed by certain governmental entities.

The bill could reduce the number of lawsuits for agricultural nuisances as the bill amends the Florida Right to Farm Act to include honeybee products, the production of honeybee products, and insects that are useful to humans.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.

A bill to be entitled

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

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

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

586.10 Powers and duties of department.—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

823.14 Florida Right to Farm Act.—

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

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

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

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

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1237 Department of Citrus
SPONSOR(S): Albritton
TIED BILLS: HB 1239 **IDEN./SIM. BILLS:** SB 1648

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Agriculture & Natural Resources Subcommittee		Kaiser DK	Blalock AFB
2) Rulemaking & Regulation Subcommittee			
3) Agriculture & Natural Resources Appropriations Subcommittee			
4) State Affairs Committee			

SUMMARY ANALYSIS

Citrus has played a large role in Florida's history, and is an important part of the state's economy. Not only is citrus a symbol of Florida, it provides an economic impact of nearly $9 billion to the state annually. In 1949, the Florida Citrus Code was established in Chapter 601, F.S., to regulate and protect the citrus industry. Over the years various sections of ch. 601, F.S., have been revised and new sections have been added resulting in inconsistencies throughout the chapter. In addition to correcting these inconsistencies, the bill:

- Revises the qualifications and terms of members of the Florida Citrus Commission (commission) and provides for staggered 3-year terms.
- Shortens the terms of current members to create staggered terms.
- Requires the commission to review the citrus districts every 5 years and, upon certain findings, make recommendations to the Legislature for redistricting of the districts.
- Requires the Department of Citrus (department) to be staffed 5 days per week, 40 hours per week.
- Authorizes the department to adopt rules to accomplish certain tasks. (see "Rule-Making Authority" under the "Comments" section for specifics)
- Authorizes the department to conduct, or arrange to be conducted, research related to disease and crop efficiency that advances the purposes of the Florida citrus industry and commercialization related to advancing such research.
- Substitutes the term "assessment" for "excise tax" and sets the maximum assessments for grapefruit, oranges, tangerines, and citrus hybrids entering the primary channel of trade in the fresh and/or processed form.
- Provides that persons liable for the periodic payments of assessments must submit a letter of credit from an issuing bank located in the United States to guarantee payment.
- Changes the majority of voting members of the commission from nine to seven.
- Specifies dimensions for standard shipping and field boxes for fresh fruit and revises circumstances relating to use of such boxes.
- Requires the approval of a majority of the commission for any salary adjustment of a department employee who earns $100,000 or more.
- Repeals ss. 601.16, 601.17, 601.18, 601.19, 601.20, 601.21, 601.22, 601.87, 901.90, 601.901, 601.981, 601.9905, 601.9906, 601.9907, 601.9909, 601.9913, 601.9914, and 601.9916, F.S., effective January 1, 2013.[1]

The bill does not appear to have a fiscal impact on state or local governments. Except as otherwise provided in Section 77, the bill takes effect July 1, 2012.

[1] For an explanation of the sections being repealed, please refer to the "Present Situation" of Section 77 in this analysis.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Citrus plays an important role in Florida's economy. It provides an economic impact of nearly $9 billion to the state annually. In addition, the citrus industry employs more than 76,000 Floridians and generates close to $1 billion in tax revenues[2]. In 1949, the Florida Citrus Code was established in Chapter 601, F.S., to regulate and protect the citrus industry. Over the years various sections of ch. 601, F.S., have been revised and new sections have been added resulting in inconsistencies throughout the chapter. The bill rewrites ch. 601, F.S., to correct the inconsistencies, remove obsolete and out-dated language, and make other substantive changes.

Section 1

Present Situation

Section 20.29, F.S., provides that the State Citrus Commission, created in ch. 601, F.S., is continued and renamed as the Department of Citrus (department). The head of the department is the board, also known as the Florida Citrus Commission. All of the powers, duties, and functions of the Florida Citrus Commission are continued in the board, as head of the department. The board derives all of its powers, duties, and function from ch. 601, F.S. All of the personnel, records, property, and unexpended balances of appropriations and other funds are continued with the department as presently held.

Effect of Proposed Changes

The bill amends s. 20.29, F.S., to provide that the executive director of the department be appointed by a majority vote of, and serves at the pleasure of, the Florida Citrus Commission (commission). The commission fixes the executive director's compensation and, in addition to any powers and duties assigned to the executive director by law, assigns the executive director's powers and duties.

Section 2

The bill amends s. 570.55, F.S., to correct a cross-reference to s. 601.03, F.S.

Section 3

The bill amends s. 600.041, F.S., to correct a cross-reference to s. 601.03, F.S.

Section 4

Present Situation

Section 601.01, F.S., provides that the short title for chapter 601, F.S., is "The Florida Citrus Code of 1949."

Effect of Proposed Changes

The bill amends s. 601.01, F.S., to change the short title for chapter 601, F.S., to the "Florida Citrus Code."

[2] http://www.floridajuice.com/history_of_citrus.php (Last viewed on 1/13/12)

Section 5

Present Situation

Currently, section 601.03, F.S., which provides definitions for terms used in chapter 603, F.S., provides no definition for "department." There is an inconsistent use throughout the chapter of "department" and "Department of Citrus."

Effect of Proposed Changes

The bill amends s. 601.03, F.S., to provide a definition for "department," which means the "Department of Citrus." The definitions of "canned products," "citrus fruit," and "commission" are also amended to reflect the new definition of "department." The definition for "primary channel of trade" is also amended to include the routes through which citrus fruit is marketed. Various other definitions are amended but the changes are non-substantive, technical revisions that do not change the statutory meaning.

Section 6

Present Situation

Section 601.04, F.S., creates the Florida Citrus Commission (commission) and establishes the membership of the commission. The commission is composed of nine practical citrus fruit persons who are residents of the state and each of whom is and has been actively engaged in growing, growing and shipping, or growing and processing of citrus fruit in the state for at least 5 years immediately prior to appointment to the commission. Additionally, during the 5 years immediately prior to appointment, each member must have derived a major portion of his/her income from activities listed above or been the owner of, member of, officer of, or paid employee of a corporation, firm, or partnership which has derived the major portion of its income from the growing, growing and shipping, or growing and processing of citrus fruit.

Current law provides for six members of the commission to be designated as grower members, who are primarily engaged in the growing of citrus fruit as an individual owner; as the owner of, or as stockholder of, a corporation; or as a member of a firm of partnership primarily engaged in citrus growing. Grower members cannot receive compensation from any licensed fruit dealer or handler as defined in chapter 601, F.S., other than gift fruit shippers. However, a grower member cannot be disqualified as a member of the commission if, individually, or as the owner of, a member of, an officer of, or a stockholder of a corporation, firm, or partnership primarily engaged in citrus growing which processes, packs, and, markets its own fruit and whose business is not primarily purchasing and handling the fruit grown by others.

Three of the members of the commission are designated as grower-handler members, who are engaged as owners, or as paid officers or employees, of a corporation, firm, partnership, or other business unit engaged in the handling of citrus fruit. One of the three grower-handler members must be primarily engaged in the fresh fruit business, with the other two grower-handler members primarily engaged in the processing of citrus fruits.

Members must meet the qualifications and classification described above throughout the respective term of their office. If a member fails to meet the qualifications or classification possessed at the time of appointment, such member must resign or be removed and will be replaced with a member possessing the proper qualifications and classification.

The commission is composed of three members from each of the three citrus districts. Each of the members must reside in the district from which he/she was appointed. For purposes of s. 601.04, F.S., the residence refers to the actual physical and permanent residence of the member.

Members of the commission are appointed by the governor for three year terms. Appointments are made by February 1 preceding the commencement of the term and must be confirmed by the Senate in the following legislative session. Four members are appointed each year. Members serve until their respective successors are appointed and qualified. The regular terms begin on June 1 and ends on May 31 of the third year after appointment. Effective July 1, 2011, the terms of all members of the commission appointed on or before May 1, 2011, were terminated and the Governor appointed members in accordance with the provisions of chapter 601, F.S.

When appointments are made, the Governor publicly announces the actual classification and district that each appointee represents. A majority of the members of the commission constitutes a quorum for the transaction of business and carrying out the duties of the commission. Prior to beginning their duties as members of the commission, each member must take and subscribe to the oath of office as prescribed in s. 5, Art. 11 of the State Constitution.

The commission must elect a chair and vice chair and such other officers as it deems necessary. The chair, with the concurrence of the commission, may appoint such advisory committees or councils composed of industry representatives as he/she deems appropriate. In appointing such committees or councils, the chair must set forth areas of committee or council concern that are consistent with the statutory powers and duties of the commission and the department.

Current law provides legislative intent that the commission be redistricted every five years. Redistricting is based on the total boxes produced from each of the three districts during that five-year period.

Effect of Proposed Changes

The bill amends s. 601.04, F.S., to provide that three commission members must be appointed from each of the three citrus districts. Members appointed from the same citrus district serve staggered terms so that the term of one of the district's three members expires each year. In order to create the staggered terms, the terms of members appointed before July 1, 2012, are shortened as follows:

- The term of one member from each citrus district expires June 30, 2012, and her or his successor will be appointed to a term beginning July 1, 2012, and expiring May 31, 2015.
- The term of one member from each citrus district expires June 30, 2013, and her or his successor will be appointed to a term beginning July 1, 2013, and expiring May 31, 2016.
- The term of one member from each citrus district expires June 30, 2014, and her or his successor will be appointed to a term beginning July 1, 2014, and expiring May 31, 2017.
- Subsequent appointments are made in accordance with this section.

The bill requires the Governor to announce the term, as well as the district and classification, when making appointments to the commission. The commission must elect a chair and a secretary and may elect a vice chair and such other officers as the commission deems advisable.

The bill also makes non-substantive, technical revisions that do not change the statutory meaning.

Sections 7, 8, 9, 10 and 11

The changes made by the bill to sections 601.045, 601.05, 601.06, 601.07, and 601.08, F.S., are non-substantive, technical revisions that do not change the statutory meaning.

Section 12

Present Situation

Section 601.09, F.S., establishes three separate citrus districts composed of:

- Citrus District One: Levy, Alachua, Brevard, Putnam, St. Johns, St. Lucie, Flagler, Indian River, Marion, Seminole, Orange, Okeechobee, Polk, Volusia, and Osceola Counties.
- Citrus District Two: Hardee, Desoto, Highlands, and Glades Counties.
- Citrus District Three: Charlotte, Citrus, Collier, Hernando, Hendry, Hillsborough, Lake, Lee, Manatee, Monroe, Martin, Pasco, Palm Beach, Pinellas, Sarasota, Sumter, Broward, and Miami-Dade Counties.

Effect of Proposed Changes

The bill amends s. 601.09, F.S., to provide Legislative intent that the citrus districts be reviewed and, if necessary to maintain substantially equal volumes of citrus production within each district, redistricted every 5 years. The commission may, once every 5 years, review the citrus districts based on the total boxes produced within each district during the preceding 5 years and, based on the commission's findings, submit recommendations to the Legislature for redistricting.

Section 13

Present Situation

Section 601.10, F.S., provides the department with various powers. The department has the power to employ and, at its pleasure, discharge an executive director as it deems necessary. The executive director of the department is appointed by a majority vote of the commission for a term of 4 years, with confirmation by the Senate in the legislative session following appointment. The initial term of the executive director ends June 30, 2011, and each subsequent 4-year term begins July 1, and is filled in the same manner as the original appointment.

Current law requires employees of the department to work a 5 day, 40-hour week. Unless on approved leave, an employee's salary can be decreased by 20 percent for each day not worked during the 5-day work week if the employee chooses to regularly work less than a 5-day work week.

The department also has the power to establish minimum maturity and quality standards for citrus fruits not consistent with existing laws. When, in the opinion of the department, the tax revenues collected pursuant to chapter 601, F.S., are not immediately needed for the purpose for which they were allocated, the Chief Financial Officer is authorized to, upon the request and approval of the department or its general manager, if he or she has been given such authority, invest and reinvest the funds designated and for the period of time specified in such request.

Effect of Proposed Changes

The bill amends s. 601.10, F.S., to remove the language relating to the appointment of an executive director. This language has been relocated to s. 20.29, F.S. Regarding the working hours of the department employees, the bill deletes the language requiring a 20% reduction for each day an employee does not work during the 5-day work week if the employee chooses to regularly work less than a 5-day work week, and provides that, subject to all applicable requirements of Florida's Department of Management Services, the department must be staffed 5 days per week, 40-hours per week to accommodate industry inquiries. However, with commission approval, the executive director has the authority to set alternative schedules for individual department employees to ensure maximum efficiencies.

The bill empowers the department to repeal under ch. 120, F.S., rules that establish minimum maturity and quality standards for citrus fruits. The bill also makes some technical changes to the statutes such as replacing "tax" with "assessment," "general manager" with "executive director," and "Department of Citrus" with "department."

Section 14

The changes made by the bill to section 601.101, F.S., are non-substantive, technical revisions that do not change the statutory meaning.

Section 15

Present Situation

Section 601.11, F.S., provides the department with the authority to establish state grades and minimum maturity and quality standards not inconsistent with existing laws for citrus fruits and food products.

Effect of Proposed Changes

The bill amends s. 601.11, F.S., to allow the department to adopt rules pursuant to ch. 120, F.S., to establish state grades and minimum maturity and quality standards for citrus fruits and food products. These standards must be designed to increase the acceptance and consumption by the consuming public of such regulated citrus fruits and food products of citrus and may include, but are not limited to, standards for:

- Color break, predominant color, total soluble solids, juice content, and ratio of soluble solids of the juice to anhydrous citric acid of oranges, grapefruit, and tangerines.
- Total soluble solids, juice content, and ratio of soluble solids of the juice to anhydrous citric acid of citrus fruit grown in the state for export to foreign countries other than Canada and Mexico.
- Canned orange juice or frozen concentrated orange juice that is sold, offered for sale, shipped, or offered for shipment, including, but not limited to, standards for total soluble solids, ratio of soluble solids of juice to anhydrous citric acid, amount of anhydrous citric acid, amount of recoverable oil, color, taste, flavor, and absence of additives or defects, and labeling requirements for substandard juice. These standards may establish separate density, compositional, labeling, and inspection requirements for high-density frozen concentrated orange juice that is sold, offered for sale, shipped, or offered for shipment in retail, institutional, or bulk size containers.
- The processing, shipping, and sale of frozen concentrated orange juice and concentrated orange juice for manufacturing to which nutritive sweetening ingredients are added, including, but not limited to, total soluble solids of orange juice exclusive of the added nutritive sweetening ingredients; labeling requirements; and requirements for the inspection and reinspection of such concentrated orange juice before and after nutritive sweetening ingredients are added.
- Grapefruit juice products, including, but not limited to, standards for the ratio of soluble solids of juice to anhydrous citric acid and any other standards designed to increase the acceptance and consumption by the consuming public of such regulated grapefruit juice products.
- Canned blends of orange juice and grapefruit juice that are sold, offered for sale, shipped, or offered for shipment, including, but not limited to, standards for total soluble solids, ratio of soluble solids of juice to anhydrous citric acid, amount of anhydrous citric acid, amount of recoverable oil, color, taste, flavor, absence of defects, and labeling requirements for substandard juice blends.

In addition, the department is authorized to adopt rules that:

- Authorize the department to issue permits for the export to foreign countries other than Canada and Mexico of citrus fruit grown in the state.
- Authorize the commission to issue and renew permits for processors of frozen concentrated orange juice and concentrated orange juice for manufacturing to which nutritive sweetening ingredients are added and, in addition to disciplinary action that may be taken by the Department of Agriculture and Consumer Services (DACS) against a citrus fruit dealer for violations of ch. 601, F.S., to suspend or revoke the permit of any processor that does not comply with rules relating to the processing, shipping, and sale

of frozen concentrated orange juice, labeling requirements, and inspection requirements as described above.

- Authorize the commission to determine whether freezing temperatures have caused damage or freeze-related injury to citrus fruit and, if the commission determines that such damage has been caused, issue emergency quality assurance orders that:
  - Temporarily prohibit the preparation for market, sale, offer for sale, or shipment of any citrus fruit showing freeze damage or freeze-related injury.
  - Establish the degree of freeze damage or freeze-related injury that is temporarily permitted in citrus fruit used in frozen concentrate products, including concentrate for manufacturing purposes.
- Establish standards limiting any increase of spacing between stacked field boxes caused by the placement of cleats or other devices on the field boxes.

The bill also provides that in accordance with the Administrative Procedure Act, rules adopted under this section must be adopted, amended, or repealed pursuant to ch. 120, F.S. The bill makes other non-substantive, technical revisions to s. 601.11, F.S., which do not change the statutory meaning.

Section 16

Present Situation

Section 601.111, F.S., provides legislative findings that climatic conditions can cause abnormal conditions to the Florida citrus industry that require the department to lower the maturity standards established by law for any variety of citrus fruit, not including oranges except as specified in s. 601.111(2), F.S. The lowering of the maturity standards must comply with the limitations, conditions, restrictions, provisions, and standards prescribed and established in chapter 601, F.S. In the event of an emergency, the department, in addition to the authority and power currently granted or delegated by the Legislature, has the additional power to issue rules and regulations to:

- Lower by not more than 10 percent the existing minimum requirement as to the total soluble solids of the juice of citrus fruit or any variety, except oranges, or size thereof;
- Lower by not more than 10 percent the existing ratio of total soluble solids of the juice of citrus fruit or any variety thereof, except for oranges, to the anhydrous citric acid;
- Lower by not more than 10 percent the existing minimum requirement for juice content of citrus fruit or any variety or size thereof; and
- Lower by not more than 10 percent the existing minimum requirement for the content of anhydrous citric acid for oranges.

Before any of the above actions can be taken, at least 9 members of the commission must consent. Additionally, any regulation adopted regarding the above actions must be by the affirmative vote of at least nine members of the commission, and every such regulation must contain an expiration date of no later than 1 year from its effective date. The act of lowering maturity standards does not repeal any other section or part of chapter 601, F.S., but is supplemental and additional to the power vested in the department, subject only to the limitations, restrictions, conditions, provisions, and standards set forth in s. 601.111, F.S.

Effect of Proposed Changes

The bill amends s. 601.111, F.S., to remove the criteria currently in statute to lower maturity standards in the event of an emergency for citrus fruit varietals and allows the department to alter maturity standards by rule-making. The bill provides that an emergency rule adopted under this section cannot take effect without the affirmative vote of at least 7 members of the commission and must contain an expiration date of no later than 1 year from its effective date.

Other changes made to s. 601.111, F.S., are non-substantive, technical revisions that do not change the statutory meaning.

Section 17

Present Situation

Section 601.13, F.S., provides for citrus research to be administered by the department. The department has the authority to conduct, or arrange to be conducted, studies of citrus fruit and juices. The studies are to be conducted with respect to the quality and maturity of the fruit and juices, including proper effort to assemble data and arrive at a proper standard of quality, grade, and maturity with reference to its texture, stability, and general marketability and to reduce such findings to specific and easily understood chemical, mathematical, or descriptive terms. The studies must also explore the nutritional and other values of citrus fruit and juices. The studies and research conducted must be sufficient to provide all information and data required to be disseminated pursuant to chapter 601, F.S. The department must provide suitable laboratory facilities and equipment as necessary, as well as making use of the laboratory facilities and equipment of the University of Florida when practicable, for conducting studies and research to determine all possible new and further uses for citrus fruit and juices and their by-products. The studies and research may also be used to determine and develop new and profitable methods and instruments of distribution for citrus fruit and juices. Suitable experiments may be conducted to prove the commercial value of citrus fruit and juices and to determine and develop new and other uses for the fruit and juices or their by-products. Suitable experiments may also be conducted to prove the commercial value of any new profitable methods and instruments of distribution of citrus fruit and juices and their by-products. The department may conduct, or arrange to be conducted, an economic and marketing research program relating to citrus fruits, products and by-products.

The department has the authority to enter into any mutual contracts or agreements with any person, firm, institution, corporation, or business unit, as well as any state or federal agency, which the department deems necessary to carry out the provisions of chapter 601, F.S. The department may also incur and pay such expenses and obligations that are necessary in carrying out the provisions of chapter 601, F.S. Section 601.13 (3), F.S., provides an appropriation for defraying the expenses of administering this section of law. This appropriation comes from the advertising excise taxes levied on citrus fruit in such amounts as the department may deem necessary within the percentage limitations imposed by s. 601.15, F.S.

Effect of Proposed Changes

The bill amends s. 601.13, F.S., to require the department to conduct, or cause to be conducted, any research related to disease and crop efficiency that would advance the purposes of Florida's citrus industry and commercialization related to advancing such research.

Other changes made to s. 601.13, F.S., are non-substantive, technical revisions that do not change the statutory meaning.

Section 18

Present Situation

Section 601.15, F.S., provides for an excise tax to be levied and imposed on each standard-packed box of citrus fruit grown and placed into the primary channel of trade in the state. The tax is computed at the maximum annual rates for each citrus season as determined from the tables presented in s. 601.15(3)(a), F.S., and based on the previous season's actual statewide production as reported in the United States Department of Agriculture Citrus Crop Production Forecast as of June 1. The rates may be set at a higher or lower rate in any year upon an affirmative vote of a majority of the members of the commission and by an order entered by the commission prior to November 1 of any year; however, the rate may not exceed the maximum rate. The rate applies only to the citrus season which began on August 1 of the same calendar year. The tax rate may be applied by variety and on the basis of whether the fruit enters the primary channel of trade for use in fresh or processed form. If the

commission cannot agree on a box tax rate, the tax rate for the previous year will remain in effect until the commission approves a new rate.

Whenever citrus fruit is purchased, acquired, or handled on a weight basis, the following weights are deemed the equivalent of one standard-packed box for tax purposes: grapefruit, 85 pounds; oranges, 90 pounds; tangerines, 95 pounds; and citrus hybrids, 90 pounds. The excise taxes do not apply to citrus used for noncommercial domestic consumption on the premises where produced. For purposes of assessing an excise tax, a citrus season begins on August 1 of a year and ends on July 31 of the following year.

Taxes levied and imposed pursuant to s. 601.15, F.S., are due at the time the citrus fruit is first handled in the primary channels of trade. The taxes are paid to the department by the person first handling the fruit in the primary channel of trade, except that payment of taxes on fruit delivered or sold for processing in this state must be paid by the person processing the fruit. In accordance with department rules, periodic payment of taxes on citrus fruit is permitted. Periodic payments must be guaranteed by the posting of a good and sufficient cash bond, an appropriate certificate of deposit, or an approved surety bond in an amount and manner as prescribed by rule of the department. Evidence of guarantee of payment must be made on the grade certificate in a manner and form established by the department.

Effect of Proposed Changes

The bill amends s. 601.15, F.S., substituting the term "assessment" for "excise tax." The bill also sets the maximum assessment for grapefruit entering the primary channel of trade for use in fresh or processed form at 36 cents per box. The maximum assessment for oranges entering the primary channel of trade in the fresh form is 7 cents per box and 25 cents per box in the processed form. The bill provides that the actual assessment levied each year on tangerines and citrus hybrids regulated by the department that enter the primary channel of trade for use in processed form cannot exceed 25 cents per box or 16 cents per box in the fresh form. The bill provides that persons liable for the periodic payments of assessments must also submit a letter of credit from an issuing bank located in the United States to guarantee payment.

Other changes made to s. 601.15, F.S., are non-substantive, technical revisions that do not change the statutory meaning.

Section 19

Other than changing the majority of voting members of the commission from nine to seven, the changes made to s. 601.152, F.S., are non-substantive, technical revisions that do not change the statutory meaning.

Section 20

Present Situation

Section 601.155, F.S., provides that equalizing excise taxes are due and payable within 61 days after the first of the taxable privileges is exercised in the state. Periodic payment of the taxes are permitted only in accordance with department rules and must be guaranteed by the posting of an appropriate certificate of deposit, approved surety bond, or cash deposit in an amount and manner determined by the department.

Effect of Proposed Changes

The bill amends s. 601.155, F.S., substituting the term "assessment" for "excise tax." The bill provides that persons liable for the periodic payment of assessments must submit a letter of credit from an issuing bank located in the United States to guarantee payment.

Other changes made to s. 601.15, F.S., are non-substantive, technical revisions that do not change the statutory meaning.

Sections 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, and 47

The changes made by the bill to sections 601.24, 601.25, 601.28, 601.31, 601.32, 601.33, 601.34, 601.35, 601.37, 601.38, 601.40, 601.43, 601.44, 601.45, 601.46, 601.49, 601.50, 601.501, 601.51, 601.52, 601.54, 601.55, 601.56, 601.57, 601.58, 601.60, and 601.601, F.S., are non-substantive, technical revisions that do not change the statutory meaning.

Section 48

Present Situation

Section 601.61, F.S., establishes bond requirements for citrus fruit dealers. Prior to the approval of a citrus fruit dealer's license, the applicant must provide the Department of Agriculture and Consumer Services (DACS) with a good and sufficient cash bond, appropriate certificate of deposit (CD), or a surety bond executed by the applicant as principal and by a surety company qualified to do business in the state as surety, in an amount determined by the department. The amount of the bond or the CD is determined by taking into consideration any one or more of the following factors:

- The number of standard packed boxes of citrus fruit, or the equivalent thereof, which the applicant intends to handle during the term of the license as set forth in the application;
- The total volume of fruit handled by the dealer the previous season;
- The highest month's volume handled the previous season;
- The anticipated increase in the total citrus crop during the season for which the application for license is made; and
- Other relevant factors based on the following schedule:
    - $1,000 up to 2,000 boxes;
    - $2,000 up to 5,000 boxes;
    - $3,750 up to 7,500 boxes;
    - $5,000 up to 10,000 boxes;
    - $10,000 up to 20,000 boxes;
    - 1,000 for each additional 20,000 boxes or fraction thereof in excess of 20,000 boxes, with a maximum bond of $100,000.

If, during the term of her or his license, a citrus fruit dealer finds that she or he has handled, or can reasonably expect to handle a volume of fruit greater than that covered by a posted bond or CD, the dealer has the affirmative duty of immediately notifying DACS and initiating an increase in such bond or CD to an amount that will meet the requirement set forth in this section.

The department or DACS, or any officer or employee designated by the department or DACS, has the right to inspect such accounts and records of any citrus fruit dealer as may be deemed necessary to determine whether a bond which has been delivered to DACS is in the amount required by this section or whether a previously licensed nonbonded dealer should be required to furnish bond. If any such citrus fruit dealer refuses to permit such inspection, DACS may publish the facts and circumstances and by order suspend the license of the offender until permission to make such inspection is given. Upon a finding by DACS that any citrus fruit dealer has dealt or probably will deal with more fruit during the season than shown by the application, DACS may order such bond increased to such an amount as will meet the requirements as set forth in the bond schedule. Upon failure to file such increased bond within the time fixed by DACS, DACS may publish the facts and circumstances and by order suspend the license of such citrus fruit dealer until the said bond is increased as ordered.

Section 601.61, F.S., provides that if any of the provisions of this act are held unconstitutional or invalid for any reason by any court of competent jurisdiction or if such court finds or declares that no applicant is required to furnish the bond required by this act, this entire act is ineffective for any and all purposes

and the laws in effect on July 31, 1965, that are amended by this act, are not deemed to be amended or repealed by this act but shall remain in full force and effect it being the intention of the Legislature that in such event this entire act is ineffective for any and all purposes and the laws in effect on July 31, 1965, that are amended and repealed by this act shall not be amended or repealed but shall remain in full force and effect.

Effect of Proposed Changes

The bill amends s. 601.61, F.S., to allow the department to promulgate rules pursuant to chapter 120, F.S., to determine the bond requirements for citrus fruit dealers. The bill deletes the schedule relating to a dollar amount per standard packed boxes of citrus as part of the criteria for the department to consider when determining the bond requirements, as discussed above.

The bill also deletes s. 601.61(6), F.S., relating to the constitutionality of any of the provisions of this section discussed above.

Sections 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, and 61

The changes made by the bill to sections 601.64, 601.66, 601.67, 601.69, 601.70, 601.701, 601.731, 601.74, 601.75, 601.76, 601.77, 601.78, and 601.80, F.S., are non-substantive, technical revisions that do not change the statutory meaning.

Section 62

Present Situation

Section 601.85, F.S., provides that the specifications for the standard legal shipping box, crate, or container to be used in shipping fresh citrus fruits must be as established by the department; but provided that the unit of standard-packed box, commonly called 1 3/5 bushels, must contain an inside cubical measurement of 3,456 cubic inches.

Effect of Proposed Changes

The bill amends s. 601.85, F.S., to provide that the specifications for the standard shipping box, when used as a unit of trade or for reporting purposes, must be established by the department, but the unit of a standard-packed box, commonly called 1 3/5 bushels, must contain an inside cubical measurement of 3,456 cubic inches.

Section 63

Present Situation

Section 601.86, F.S., provides that all field boxes used in the purchase, sale, or handling of citrus fruit from or for the grower by a citrus fruit dealer in the state must be of the uniform standard size of 31½ inches long, 13 inches high, and 12 inches wide, inside measurements, and shall be divided into two compartments by a center partition of at least three-fourths inch thickness; and each of these compartments thus created must have a cubical capacity of not more than 2,400 cubic inches.

Effect of Proposed Changes

The bill amends s. 601.86, F.S., to provide that the standard field box or its equivalent, when used as a unit of trade or for reporting purposes, must be of the uniform standard size of 31½ inches long, 13 inches high, and 12 inches wide, inside measurements, and shall be divided into two compartments by a center partition of at least three-fourths inch thickness; and each of these compartments thus created must have a cubical capacity that does not exceed 2,400 cubic inches.

Sections 64, 65, 66, 67, and 68

The changes made by the bill to sections 601.91, 601.9901, 601.9902, 601.9903, and 601.99035, F.S., are non-substantive, technical revisions that do not change the statutory meaning.

Section 69

Present Situation

Section 601.99036, F.S., provides that any change in the salary of an employee of the department that is at or above $100,000 annually must be approved by the full membership of the commission at the commission meeting in July 2003, or at the first subsequent meeting, and before any subsequent salary adjustment is made.

Effect of Proposed Changes

The bill amends s. 601.99036, F.S., to provide that any changes in the annual salary of a department employee who earns $100,000 or more must be approved by a majority of the commission before the salary adjustment is made.

Sections 70 and 71

The changes made by the bill to sections 601.9904 and 601.9908, F.S., are non-substantive, technical revisions that do not change the statutory meaning.

Section 72

Present Situation

Section 601.9910, F.S., provides legislative findings regarding maturity standards for citrus. The legislative findings include:

- The shipment of raw immature citrus fruit, generally designated as "green fruit," from the state to consuming markets has caused the loss of millions of dollars to the citrus growers of Florida; also has resulted in the lowering of the standard of living of many of its citizens; adversely affected the economic conditions of the entire state; reduced the receipts in the collection of ad valorem taxes, hereby reducing revenue needed by counties and cities; caused financial loss to the growers and shippers and processors who did not engage in the shipment of green fruit; and that such practice each year hurts the good name and reputation of all Florida citrus.
- After extensive hearings conducted annually, and after many hearings attended by citrus committees at various citrus industry meetings throughout the citrus area; and after having had the advice and counsel of the best qualified and most expert technical advisers in the Florida citrus industry, and after having had the benefit of the advice of some of the most expert and best informed growers, shippers, and processors, and after having made a careful study of the reaction of all citrus fruits by reason of changes in climatic conditions, and having found that regardless of the color of an orange or the color of a grapefruit or regardless of the juice content of such fruits, finds such fruit may be immature and unfit for human consumption. It is also recognized by experts that there are certain factors entering into the maturity of fruit that are not now measurable by chemical tests. There is a change brought about by time and nature in the blending of solids and acids into juice that characterizes maturity but not in a manner susceptible to chemical determination. Because of this, it is scientifically sound that the minimum requirements for solids and the ratio of solids to anhydrous citric acid in determining maturity be relaxed as the season progresses and the raw, immature flavor characteristic of fruit early in the season has disappeared through the workings of time and nature. Therefore, the Legislature hereby finds and determines and so declares that, until nature has completed its process of removing the raw, immature flavor, such citrus fruit will still be immature and unfit for human consumption and, when marketed, will result in dissatisfied consumers who will cease

purchasing Florida citrus for some time and will classify that fruit that they had purchased as "Florida green fruit."

- There is no better method of determining when such raw and immature flavor leaves Florida citrus than by the standards set forth in ch. 601, F.S.; and that experience has demonstrated over a period of many years, by the best available records and under various climatic conditions and various seasonal changes, that generally speaking prior to November 1 of each season oranges that do not have a total soluble solids of 9 percent with a minimum ratio of total soluble solids, as set in s. 601.20, F.S., still have a raw, immature flavor; and that, beginning on or about November 1 of each season, such raw, immature fruit flavor gradually disappears from the orange and by November 15 the same orange may have a still lower soluble solids percentage and not be immature; and after November 15 can still have a further lower soluble solids percentage and not be immature; and by December 1 nature has completed its process of removing the raw, immature flavor that might have existed prior to that time, provided such fruit meets the other minimum maturity requirements set forth in ch. 601, F.S. On December 1 oranges meeting the requirements of s. 601.19(4), F.S., while not being sufficiently mature to ship in fresh form, may be safely used in some processed products without the finished product having a raw, immature flavor. On December 1 grapefruit meeting the requirements of s. 601.14(4), F.S., while not being sufficiently mature to ship in fresh form, may be safely used in some processed products without the finished product having a raw, immature flavor.
- The enforcement of the maturity standards, as set forth in ch. 601, F.S., will not result in preventing any grower from marketing his or her fruit at some time during the marketing season, whenever nature has removed the raw, immature flavor; and, if there is a delay in such marketing, it will result in higher prices for the entire season, bringing additional millions of dollars to the growers of Florida and resulting in benefit to all growers, including the grower or growers who were delayed a short time in the shipment of their fruit.

Effect of Proposed Changes

The bill amends s. 601.9910, F.S., to correct cross-references to statutory cites that have been repealed. The bill provides for the factors affecting the maturity levels of citrus fruit to be established by the department through the rule-making process.

Sections 73, 74, and 75

The changes made by the bill to sections 601.9911, 601.9918, and 601.992, F.S., are non-substantive, technical revisions that do not change the statutory meaning.

Section 76

The bill amends s. 603.161, F.S., to correct a cross-reference to s. 601.03, F.S.

Section 77

Present Situation

Section 601.16, F.S., establishes the grapefruit maturity standards for fresh and processed fruit. The statutes lay out specific standards for seedless grapefruit for fresh use, seeded grapefruit for fresh use, grapefruit to be processed into juices and juice products, and grapefruit for processing into grapefruit sections and salads. Current law also allows the commission to adopt rules, for the period of April 15 through July 31, to adjust any minimum total soluble solids requirement for grapefruit processing purposes. Any such rule automatically expires on July 31 following its adoption.

Section 601.17, F.S., establishes minimum ratios of solids to acids for grapefruit. The statutes provide specific ratios between the soluble solids of the juice to the anhydrous citric acid.

Section 601.18, F.S., establishes the minimum juice content for grapefruit. Current law provides specific requirements for the cubic centimeters of juice that grapefruit must contain during the various growing seasons.

Section 601.19, F.S., establishes the maturity standards for oranges. The statutes lay out specific maturity standards for oranges during the various harvesting seasons.

Section 601.20, F.S., establishes the minimum ratios of solids to acid for oranges. The statutes provide specific ratios between the soluble solids of the juice to the anhydrous citric acid.

Section 601.21, F.S., establishes maturity standards for tangerines. The statutes lay out specific maturity standards for tangerines during the various harvesting seasons.

Section 601.22, F.S., establishes the minimum ratios of solids to acid for tangerines. The statutes provide specific ratios between the soluble solids of the juice to the anhydrous citric acid.

Section 601.87, F.S., provides that the height of the end heads and the center partition of field boxes cannot be increased more than 1¼ inches by the addition of cleats or any similar addition to the height so that the total height of the boxes from the inside bottom to the top of the cleats do not exceed 14¼ inches. It is unlawful to place cleats or any other device or thing on the bottom or top, other than herein provided, of any standard citrus field box whereby the space between the field boxes when stacked will be greater than the space that exists between such standard field boxes as herein defined.

Section 601.90, F.S., provides that when freezing temperatures of sufficient degree to cause serious damage to citrus fruit occur in all major citrus-producing areas of the state, the commission, upon call of the chair and with such notice as may be appropriate under the circumstances, must meet within 96 hours of the last occurrence of such freezing temperatures to determine whether or not such temperatures have caused damage to citrus fruit and, if so, the degree of such damage.

If, at such meeting, the commission determines that serious damage, as defined by statute, has occurred to such citrus fruit, it may, upon majority vote, enter an emergency quality assurance order providing for one or more of the following:

- Prohibiting the preparation for market, sale, offering for sale, or shipment of citrus fruit for a period not to exceed 10 days after commencement of the order period.
- Prohibiting the sale, offering for sale, or shipment of any citrus fruit showing "damage," as defined by statute, for a subsequent period not to exceed 14 additional days.
- Prohibiting the sale, offering for sale, or shipment in offshore export trade channels, of citrus fruit showing any degree of internal freeze-related injury, as defined by statute, for a period not to exceed 30 days from commencement of the order period.

Any emergency order entered pursuant to this section becomes effective upon adoption by the commission, the provisions of ch. 120, F.S., to the contrary notwithstanding, and have the full force and effect of the law. The order period commences at a time established by the commission in its order, but not sooner than 36 hours following adoption of the order.

Emergency quality assurance orders are not applicable to any citrus fruit sold or transported to a citrus processing plant for processing purposes or to any citrus fruit inspected, packed, and certified for shipment prior to commencement of the order period. However, any such citrus fruit not shipped within 48 hours of commencement of the order period must be reinspected, on a random basis, and recertified as damage-free. An order may provide for reasonably extended packinghouse inspection hours prior to commencement of the order period.

Section 601.901, F.S., provides that at any time subsequent to a commission determination, pursuant to s. 601.90, F.S., if serious damage has resulted to citrus fruit from freezing temperatures, the commission may, at a regular or special meeting, establish by order the maximum degree of freeze damage or freeze-related injury to be permitted in citrus fruit used in preparation of any frozen

concentrated products, including concentrate for manufacturing purposes, for the purpose of protecting the quality of such processed products.

Notwithstanding the provisions of ch. 120, F.S., any order adopted by the commission pursuant to this section becomes effective at a time fixed by the commission, but not less than 24 hours from the time of adoption, and expires at a time fixed by the commission, but in no instance later than the end of the current shipping season.

This section does not repeal any other authority now or hereafter delegated to the department, but is deemed as additional and supplemental authority vested in the department, and should any part of this section be held to be unconstitutional or unenforceable by any court of competent jurisdiction, the decision of such court does not affect the remaining portions of this section. It is the intention of the Legislature that this section would have been adopted had such unconstitutional or such unenforceable provision not been included herein.

Section 601.981, F.S., provides that during each shipping season the department is authorized and empowered to issue permits allowing citrus fruit grown in Florida, whether color-added or otherwise, to be exported to all foreign countries, other than Canada and Mexico, when the total soluble solids of the juice thereof and the minimum ratio of the total soluble solids of the juice thereof to the anhydrous citric acid and the juice content thereof is within a tolerance not exceeding 10 percent of the standards established by law, provided such citrus fruit is loaded on chartered vessels at a Florida port. The department can promulgate such rules and regulations as it deems necessary or required to control such permits. Section 601.9905, F.S., provides that canned orange juice cannot be sold or offered for sale or shipped or offered for shipment that:

- Is prepared from raw juice containing before the addition of any additive less than 8.5 percent total soluble solids;
- When canned, contains less than 10 percent total soluble solids;
- Has a ratio of total soluble solids to anhydrous citric acid of less than 9 to 1;
- Contains less than 0.55 percent or more than 1.60 percent anhydrous citric acid;
- Contains more than 0.050 percent recoverable oil; or
- Does not meet requirements to be established by the department regarding color, absence of defects, taste, and flavor; unless the immediate container thereof is labeled in accordance with regulations of the department and there appears on the label the word "substandard" in bold type not less than ¼ inch high printed or stamped diagonally thereon.

Section 601.9906, F.S., applies to canned grapefruit juice, chilled grapefruit juice, frozen concentrated grapefruit juice, concentrated grapefruit juice for manufacturing, and such other grapefruit juice products as the commission may by rule prescribe that may be consumed as juice or used to produce other grapefruit juice products that may be consumed as juice.

This section does not apply to any grapefruit juice products to which have been added ready detectable quantities of one or more readily detectable ingredients, that the commission can specify by rule, which ingredients are impermissible in the grapefruit juice products described above but are appropriate for use in one or more other products that are not consumed as juice, such as diluted fruit juice beverages or beverage bases used to produce diluted fruit juice beverages.

No grapefruit juice products can be sold or offered for sale or shipped or offered for shipment that have a minimum ration of total soluble solids to anhydrous citric acid of less than seven and one-half to one, or such higher ratio as the commission may prescribe by rule.

The commission can prescribe by rule quality standards for grapefruit juice products. Such standards must be designed to further the acceptance and consumption of grapefruit juice products so regulated.

Section 601.9907, F.S., provides that no canned blend of orange and grapefruit juice can be sold or offered for sale or shipped or offered for shipment that:

- Is prepared from mixed raw juice of oranges and grapefruit containing before the addition of any additive less than 8 percent total soluble solids;
- When canned, contains less than 9.5 percent total soluble solids;
- Has a ratio of total soluble solids to anhydrous citric acid of less than 8 to 1;
- Contains less than 0.65 percent or more than 1.80 percent anhydrous citric acid;
- Contains more than 0.040 percent recoverable oil; or
- Contains when mixed and before canning more or less than the percentage of orange juice determined by rule or regulation of the department required to be contained therein and does not meet requirements to be established by the department regarding color, absence of defects, taste and flavor; unless the immediate container thereof is labeled in accordance with regulations of the department, and there appears on the label the word "substandard" in bold type not less than ¼ inch high printed or stamped diagonally thereon.

Section 601.9909, F.S., provides that, subject to the provisions of ss. 601.9913 and 601.9914, F.S., frozen concentrated orange juice cannot be sold, offered for sale, shipped or offered for shipment if:

- It is concentrated to less than 41.8 or more than 47 degrees Brix. The Brix reading, if determined refractometrically, must include corrections for citric acid.
- It has a lower ratio of total soluble solids to anhydrous citric acid of less than 12 to 1 or a higher ratio of total soluble solids to anhydrous citric acid than 19.5 to 1.
- It contains more than 0.120 milliliters of recoverable oil per 100 grams of concentrate.
- It contains any additives of any kind.
- It does not taste essentially the same as freshly expressed orange juice of similar quality and is not completely free of all fermented, cooked, terpeny, or other off-flavors; or it does not meet all requirements of the rules of the department regarding color, absence of defects, taste, and flavor; unless the immediate container thereof is labeled in accordance with rules of the department and there appears on the label the word "substandard" in bold type not less than ¼ inch high printed or stamped diagonally thereon.

Section 601.9913, F.S., provides that "high-density frozen concentrated orange juice" is frozen concentrated to a density greater than 47 degrees Brix. All high-density frozen concentrated orange juice sold or shipped, or offered for sale or shipment, in retail or institutional size containers must comply with all requirements applicable to frozen concentrated orange juice in retail or institutional containers, except as to the density of the concentrated food. The percent by weight of orange juice soluble solids contained in the reconstituted food made from high-density frozen concentrated orange juice when the label directions for dilution are followed are the same as is prescribed by the department for frozen concentrated orange juice in retail or institutional size containers.

The name of high-density frozen concentrated orange juice, when sold in retail or institutional size containers, is "frozen concentrated orange juice, _____ plus 1," the blank being filled in with the whole number showing the dilution ratio in conspicuous type consistent with the size of the container and in conjunction with the product name. Where the label bears directions for making one quart or multiples of a quart, the blank may be filled in with a number that includes a fraction. The term "dilution ratio" means the number of volumes of water per volume of high-density frozen concentrated orange juice prescribed by the label for reconstituting the food. The nomenclature requirements of this subsection do not apply to containers for postmix dispenser use, or to retail containers designed solely for use in foreign countries, provided the labeling thereof contains mixing instructions adequate to inform the institution or the consumer of the correct dilution ratio.

The name of high-density frozen concentrated orange juice, when sold in bulk size containers, is the name provided in subsection (3), or "frozen concentrated orange juice, _____ Brix," the blank being filled in with the number that expresses the percent by weight of orange juice soluble solids contained in the food, in conspicuous size and in conjunction with the product name.

The compositional requirements applicable to high-density frozen concentrated orange juice sold in bulk size containers are prescribed by the department by rule. The definition of retail, institutional, and

bulk size containers for high-density frozen concentrated orange juice are prescribed by the department by rule.

All high-density frozen concentrated orange juice sold or shipped or offered for sale or shipment must be inspected as provided by law or rule for the inspection of frozen concentrated orange juice, and all fees and taxes must be paid in the manner as provided by law or rule.

Section 601.9914, F.S., provides that the commission may modify by rule, within the limitations specified, the requirements of ss. 601.9905-601.9905, F.S., if the commission first, upon the affirmative vote of nine members, determines that the adoption of such rule is likely to further increase the acceptance and consumption by a substantial segment of the consuming public of the citrus product or products regulated by such proposed rule and that such increase in acceptance and consumption will be of substantial benefit to handlers and producers of citrus fruit. This section also provides that the requirements of ss. 601.9905-601.9909, F.S., may be modified by rule within the following limitations:

- The existing requirements with respect to minimum or maximum Brix or the existing requirements with respect to minimum percent of total soluble solids may be raised;
- The existing requirements with respect to minimum ratio of total soluble solids to anhydrous citric acid may be raised, and the requirements with respect to maximum ratio of total soluble solids to anhydrous citric acid may be raised or lowered;
- The existing requirements with respect to the minimum or maximum amount of percentage of recoverable oil may be raised or lowered; and
- The existing requirements with respect to the minimum or maximum percentage of anhydrous citric acid may be raised or lowered.

Section 601.9916, F.S., authorizes the department, upon the affirmative vote of not less than nine members of the commission, to issue permits for the processing, shipping, and sale of frozen concentrated orange juice or concentrated orange juice for manufacturing to which has been added any of the following optional nutritive sweetening ingredients: sugar, sugar syrup, and invert sugar syrup.

Each permitted processor must comply with the rules established by the department that provide:

- Such product must be inspected immediately prior to the addition of the optional sweetening ingredient and must be reinspected promptly after the addition of the optional sweetening ingredient.
- If such product is to be stored, sold, or shipped in retail or institutional size containers of less than 1 gallon, it must, when reconstituted according to label directions, contain not less than 12.8 percent by weight of orange juice soluble solids, exclusive of the weight of any added optional nutritive sweetening ingredient, and must, each time it is inspected, fully conform to the rules and standards of the department applicable to frozen concentrated orange juice in retail or institutional size containers.
- If such product is to be stored, sold, or shipped in bulk containers of 1 gallon or larger, it must contain not less than 47 percent by weight of orange juice soluble solids, exclusive of the solids of any added optional sweetening ingredient, and must, when reconstituted according to label directions, contain not less than 11.8 percent by weight of orange juice soluble solids, exclusive of any added optional nutritive sweetening ingredient, and must, each time it is inspected, fully conform to the rules and standards of the department applicable to concentrated orange juice for manufacturing.
- If any such product has been filled into bulk containers of 1 gallon or larger, it cannot later be filled into retail or institutional size containers unless it fully conforms to the requirements of s. 601.9916 (2)(b), F.S.
- The product must conform to such labeling requirements as the department prescribes by rule.

The privilege of processing any such product under a permit issued by this section expires at the end of the shipping season for which such processing was authorized by such permit but may be renewed annually upon the affirmative vote of not less than nine members of the commission.

In addition to the disciplinary action that may be taken by DACS against a citrus fruit dealer for violations of ch. 601, F.S., the commission may temporarily suspend and revoke any permit issued for any violation of the provisions of this section or of the rules promulgated under this section.

Effect of Proposed Changes

Effective January 1, 2013, the bill repeals ss. 601.16, 601.17, 601.18, 601.19, 601.20, 601.21, 601.22, 601.87, 901.90, 601.901, 601.981, 601.9905, 601.9906, 601.9907, 601.9909, 601.9913, 601.9914, and 601.9916, F.S.

B. SECTION DIRECTORY:

Section 1: Amends s. 20.29, F.S.; providing for the appointment, compensation, and powers and duties of the department's executive director.

Section 2: Amends s. 570.55, F.S.; correcting cross-references.

Section 3: Amends s. 600.041, F.S.; correcting cross-references.

Section 4: Amends s. 601.01, F.S.; revising a short title.

Section 5: Amends s. 601.03, F.S.; amending definitions; and, providing a definition for "department."

Section 6: Amends s. 601.04, F.S.; revising the qualifications and terms of members of the commission; providing for staggered terms of members appointed from each district; providing for shortened terms for current members; providing for reappointment of members; deleting obsolete provisions; requiring commission to elect a chair and a secretary; and, deleting legislative intent regarding redistricting of the commission.

Sections 7-11: Amends ss. 601.045, 601.05, 601.06, 601.07, and 601.08, F.S.; providing conforming provisions.

Section 12: Amends s. 601.09, F.S.; providing legislative intent; and, authorizing the commission to provide recommendations to the Legislature for redistricting of the state's citrus districts.

Section 13: Amends s. 601.10, F.S.; revising the department's powers; deleting provisions relating to the department's executive director; establishing staffing requirements for the department; deleting provisions relating to the days, hours, and other conditions of employment for department employees; and, providing conforming provisions.

Section 14: Amends s. 601.101, F.S.; providing conforming provisions.

Section 15: Amends s. 601.11, F.S.; revising the powers and duties of the department to adopt maturity and quality standards for citrus fruit and citrus fruit products; authorizing the department to issue permits for the export of citrus fruit grown in the state to certain foreign countries; authorizing the department to issue permits for processors of concentrated orange juice into which nutritive sweetening ingredients are added and to suspend or revoke the permits of processors that violate certain rules; authorizing the department to issue emergency quality assurance orders upon determining that freezing temperatures have caused damage or freeze-related injury to citrus fruit; authorizing the department to limit increases in spacing between stacked field boxes caused by the placement of cleats or other devices on the field boxes; and, requiring the department to adopt rules.

Section 16: Amends s. 601.111, F.S.; revising the department's authority to modify maturity standards for citrus fruit and the number of commission members required to approve such modifications; revising legislative intent; and, authorizing the department to adopt emergency rules under certain circumstances.

Section 17: Amends s. 601.13, F.S.; revising the department's powers and duties for citrus research; providing for research related to disease and crop efficiency; and providing conforming provisions.

Section 18: Amends s. 601.15, F.S.; redesignating the advertising excise tax on citrus fruit as an assessment; revising the maximum rates of such assessments; revising the guarantee requirements for assessment payments; and providing conforming provisions.

Section 19: Amends s. 601.152, F.S.; revising the number of commission members required to issue marketing orders for special marketing campaigns and impose assessments upon citrus handlers to defray the expenses of such campaigns; and providing conforming provisions.

Section 20: Amends s. 601.155, F.S.; redesignating the equalizing excise tax on processed orange and grapefruit products as an assessment; revising the guarantee requirements for assessment payments; and, providing conforming provisions.

Sections 21-47: Amends ss. 601.24, 601.25, 601.28, 601.31, 601.32, 601.33, 601.34, 601.35, 601.37, 601.38, 601.40, 601.43, 601.44, 601.45, 601.46, 601.49, 601.50, 601.501, 601.51, 601.52, 601.54, 601.55, 601.56, 601.57, 601.58, 601.60, and 601.601, F.S.; providing conforming provisions and cross-references.

Section 48: Amends s. 601.61, F.S.; specifying that the amount of bonds or certificates of deposit that must be furnished by citrus fruit dealer licensees must be determined by the department pursuant to department rules; and, deleting obsolete provisions relating to the applicability and effect of certain provisions if such provisions had been determined invalid.

Sections 49-61: Amends ss. 601.64, 601.66, 601.67, 601.69, 601.70, 601.701, 601.731, 601.74, 601.75, 601.76, 601.77, 601.78, and 601.80, F.S.; providing conforming provisions.

Sections 62-63: Amends ss. 601.85 and 601.86, F.S.; specifying dimensions for standard shipping boxes and standard field boxes for fresh citrus fruit; and, revising circumstances under which standard boxes must be used.

Sections 64-68: Amends ss. 601.91, 601.9901, 601.9902, 601.9903, and 601.99035, F.S.; providing conforming provisions.

Section 69: Amends s. 601.99036, F.S.; revising requirements for the commission's approval of changes in the salaries of certain employees.

Section 70-75: Amends ss. 601.9904, 601.9908, 601.9910, 601.9911, 601.9918, and 601.992, F.S.; providing conforming provisions.

Section 76: Amends s. 603.161, F.S.; conforming a cross-reference.

Section 77: Effective January 1, 2013, repeals ss. 601.16, 601.17, 601.18, 601.19, 601.20, 601.21, 601.22, 601.87, 601.90, 601.901, 601.981, 601.9905, 601.9906, 601.9907, 601.9909, 901.9913, 601.9914, and 601.9916, F.S.; relating to maturity and quality standards for grapefruit, oranges, and tangerines; limits on increased spacing between stacked field boxes caused by the placement of cleats or other devices on the field boxes; issuance of emergency quality assurance orders following freezing temperatures that cause damage or freeze-related injury to citrus fruit and the use of such freeze-damaged citrus fruit in frozen concentrated products; permits for the export to certain foreign countries of citrus fruit grown in the state and quality standards for such exported fruit; quality standards and labeling requirements for canned orange juice; quality standards for certain grapefruit juice products; quality standards and labeling requirements for canned blends of orange juice and grapefruit juice, frozen concentrated orange juice, and high-density frozen concentrated orange juice sold in retail, institutional, or bulk size containers; authority of commission to adopt rules modifying citrus juice quality standards for specified purposes; issuance of permits for the processing, shipping, and sale of frozen

concentrated orange juice or concentrated orange juice for manufacturing into which certain nutritive sweetening ingredients are added; inspection of processors of concentrated orange juice; and, quality standards and labeling requirements for such concentrated orange juice.

Section 78: Provides an effective date of July 1, 2012, except as otherwise expressly provided.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None

2. Expenditures:

   None

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None

2. Expenditures:

   None

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None

D. FISCAL COMMENTS:

None

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

   None

B. RULE-MAKING AUTHORITY:

The bill grants the Department of Citrus (department) rule-making authority to:

- Establish state grades and minimum maturity and quality standards for citrus fruit and food products. (Section 15)
- Issue permits for the export to foreign countries, other than Canada and Mexico, of citrus grown in the state that complies with rules adopted under s. 601.11(1)(a), F.S. This grant of rule-making authority appears to give the department discretion as to whether to require companies exporting citrus to foreign countries to be permitted. (Section 15)
- Issue and renew permits for processors of frozen concentrated orange juice and concentrated orange juice for manufacturing to which nutritive sweetening ingredients are added and, in addition to disciplinary action that may be taken by the Department of Agriculture and Consumer Services (DACS) against a citrus fruit dealer for violations of ch.

601, F.S., to suspend or revoke the permit of any processor that does not comply with rules adopted under s. 601.11(1)(a), F.S. (Section 15)

- Determine whether freezing temperatures have caused damage or freeze-related injury as described in s. 601.89, F.S., to citrus fruit and, if the commission determines that such damage has been caused, issue emergency quality assurance orders. (Section 15)
- Establish standards limiting any increase in spacing between stacked field boxes caused by the placement of cleats or other devices on the field boxes. (Section 15)
- Conduct, or arrange to be conducted, research related to disease and crop efficiency that would advance the purposes of the Florida citrus industry and commercialization related to advancing such research. (Section 17)
- Determine bond requirements for citrus fruit dealers. (Section 48)

The bill also provides that in accordance with the Administrative Procedure Act, any rules adopted must be adopted, amended, and/or repealed pursuant to ch. 120, F.S.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None

A bill to be entitled

An act relating to the Department of Citrus; amending s. 20.29, F.S.; providing for the appointment, compensation, and powers and duties of the department's executive director; deleting and conforming obsolete provisions relating to the Florida Citrus Commission; amending ss. 570.55 and 600.041, F.S.; conforming cross-references; amending s. 601.01, F.S.; revising a short title; amending s. 601.03, F.S.; defining the term "department" and conforming definitions for purposes of the Florida Citrus Code; amending s. 601.04, F.S.; revising the qualifications and terms of members of the Florida Citrus Commission; providing for staggered terms of members appointed from each citrus district; providing for shortened terms of current members; specifying that members are eligible for reappointment; deleting obsolete provisions; requiring the commission to elect a chair and secretary; deleting legislative intent relating to redistricting of the commission; amending ss. 601.045, 601.05, 601.06, 601.07, and 601.08, F.S.; conforming provisions; amending s. 601.09, F.S.; providing legislative intent; authorizing the commission to submit recommendations to the Legislature for redistricting of the state's citrus districts; amending s. 601.10, F.S.; revising the department's powers; deleting provisions relating to the appointment, discharge, compensation, and powers and

duties of the department's executive director; establishing staffing requirements for the department; deleting requirements relating to the days, hours, and other conditions of employment for department employees; conforming provisions; amending s. 601.101, F.S.; conforming provisions; amending s. 601.11, F.S.; revising the powers and duties of the department to adopt maturity and quality standards for citrus fruit and food products thereof; authorizing the department to issue permits for the export of citrus fruit grown in the state to certain foreign countries; authorizing the department to issue permits for processors of concentrated orange juice into which nutritive sweetening ingredients are added and to suspend or revoke the permits of processors that violate certain rules; authorizing the department to issue emergency quality assurance orders upon determining that freezing temperatures have caused damage or freeze-related injury to citrus fruit; authorizing the department to limit increases in spacing between stacked field boxes caused by the placement of cleats or other devices on the field boxes; requiring the department to adopt rules; amending s. 601.111, F.S.; revising the department's authority to modify maturity standards for citrus fruit and the number of commission members required to approve such modifications; revising legislative intent; authorizing the department to adopt emergency rules

under certain conditions; amending s. 601.13, F.S.; revising the department's powers and duties for citrus research; providing for research related to disease and crop efficiency; conforming provisions; amending s. 601.15, F.S.; redesignating the advertising excise tax on citrus fruit as an assessment; revising the maximum rates of such assessments; revising the guarantee requirements for assessment payments; conforming provisions; amending s. 601.152, F.S.; revising the number of commission members required to issue marketing orders for special marketing campaigns and impose assessments upon citrus handlers to defray the expenses of such campaigns; conforming provisions; amending s. 601.155, F.S.; redesignating the equalizing excise tax on processed orange and grapefruit products as an assessment; revising the guarantee requirements for assessment payments; conforming provisions; amending ss. 601.24, 601.25, 601.28, 601.31, 601.32, 601.33, 601.34, 601.35, 601.37, 601.38, 601.40, 601.43, 601.44, 601.45, 601.46, 601.49, 601.50, 601.501, 601.51, 601.52, 601.54, 601.55, 601.56, 601.57, 601.58, 601.60, and 601.601, F.S.; conforming provisions and cross-references; amending s. 601.61, F.S.; specifying that the amount of bonds or certificates of deposit that must be furnished by citrus fruit dealer licensees shall be determined by the department pursuant to department rules; deleting obsolete provisions

relating to the applicability and effect of certain provisions if such provisions had been determined invalid; amending ss. 601.64, 601.66, 601.67, 601.69, 601.70, 601.701, 601.731, 601.74, 601.75, 601.76, 601.77, 601.78, and 601.80, F.S.; conforming provisions; amending ss. 601.85 and 601.86, F.S.; specifying dimensions for standard shipping boxes and standard field boxes for fresh citrus fruit; revising circumstances under which such standard boxes must be used; amending ss. 601.91, 601.9901, 601.9902, 601.9903, and 601.99035, F.S.; conforming provisions; amending s. 601.99036, F.S.; revising requirements for the commission's approval of changes in the salaries of certain employees; amending ss. 601.9904, 601.9908, 601.9910, 601.9911, 601.9918, and 601.992, F.S.; conforming provisions; amending s. 603.161, F.S.; conforming a cross-reference; repealing ss. 601.16, 601.17, 601.18, 601.19, 601.20, 601.21, and 601.22, F.S., relating to maturity and quality standards for grapefruit, oranges, and tangerines; repealing s. 601.87, F.S., relating to limits on increased spacing between stacked field boxes caused by the placement of cleats or other devices on the field boxes; repealing ss. 601.90 and 601.901, F.S., relating to the issuance of emergency quality assurance orders following freezing temperatures that cause damage or freeze-related injury to citrus fruit and the use of such freeze-damaged citrus fruit in frozen concentrated

products; repealing s. 601.981, F.S., relating to permits for the export to certain foreign countries of citrus fruit grown in the state and quality standards for such exported fruit; repealing s. 601.9905, F.S., relating to quality standards and labeling requirements for canned orange juice; repealing s. 601.9906, F.S., relating to quality standards for certain grapefruit juice products; repealing ss. 601.9907, 601.9909, and 601.9913, F.S., relating to quality standards and labeling requirements for canned blends of orange juice and grapefruit juice, frozen concentrated orange juice, and high-density frozen concentrated orange juice sold in retail, institutional, or bulk size containers; repealing s. 601.9914, F.S., relating to authority of the commission to adopt rules modifying citrus juice quality standards for specified purposes; repealing s. 601.9916, F.S., relating to the issuance of permits for the processing, shipping, and sale of frozen concentrated orange juice or concentrated orange juice for manufacturing into which certain nutritive sweetening ingredients are added, the inspection of such processors, and quality standards and labeling requirements for such concentrated orange juice; providing effective dates.

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

Section 1. Section 20.29, Florida Statutes, is amended to read:

(Substantial rewording of section. See s. 20.29, F.S., for present text.)

20.29 Department of Citrus; Florida Citrus Commission; executive director.—

(1) The head of the Department of Citrus is the Florida Citrus Commission created under s. 601.04.

(2) The executive director of the Department of Citrus shall be appointed by a majority vote of, and serves at the pleasure of, the Florida Citrus Commission. The Florida Citrus Commission shall fix the executive director's compensation and, in addition to any powers and duties assigned to the executive director by law, shall assign the executive director's powers and duties.

Section 2. Paragraph (h) of subsection (3) of section 570.55, Florida Statutes, is amended to read:

570.55 Identification of sellers or handlers of tropical or subtropical fruit and vegetables; containers specified; penalties.—

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

(h) "Tropical or subtropical fruit" means avocados, bananas, calamondins, carambolas, guavas, kumquats, limes, longans, loquats, lychees, mameys, mangoes, papayas, passion fruit, sapodillas, and fruit that must be grown in tropical or semitropical regions, except citrus fruit as defined in s. 601.03~~(7)~~.

Section 3. Subsection (11) of section 600.041, Florida Statutes, is amended to read:

600.041 Definitions.—As used in this act, the following terms have the following meanings:

(11) "Standard-packed box" has the same meaning ~~means a unit of measure~~ as provided ~~defined~~ in s. 601.03~~(33)~~.

Section 4. Section 601.01, Florida Statutes, is amended to read:

601.01 Short title.—This chapter may be ~~known and~~ cited as the "Florida ~~"The Florida~~ Citrus Code ~~of 1949~~."

Section 5. Section 601.03, Florida Statutes, is amended to read:

601.03 Definitions.—As used in ~~construing~~ this chapter, ~~where~~ the ~~context permits the word, phrase, or~~ term:

(1) "Additive" means any foreign substance which, when added to any citrus fruit juice, will change the amount of total soluble solids or anhydrous citric acid therein, or the color or taste thereof, or act as an artificial preservative thereof.~~;~~

(2) "Agent" means any person who, on behalf of any citrus fruit dealer, negotiates the consignment, purchase, or sale of citrus fruit, or weighs citrus fruit so that the weight thereof may be used in computing the amount to be paid therefor.~~;~~

(3) "Broker" means any person engaged in the business of negotiating the sale or purchase of citrus fruit for others.~~;~~

(4) "Canned products" means juices, segments, or sections of citrus fruits sealed in hermetically sealed containers at a concentration that does ~~of~~ not exceed ~~exceeding~~ 20 degrees Brix and sufficiently processed by heat to ensure preservation of the

product, and when regulated by the department ~~of Citrus~~, these same products packed in any other manner or in any other type container.~~;~~

(5) "Canning plant" means any building, structure, or place where citrus fruit or the juice thereof is canned or prepared for canning at a concentration that does ~~of~~ not exceed ~~exceeding~~ 20 degrees Brix for market or shipment.~~;~~

(6) "Cash buyer" means any person who purchases citrus fruit in this state from the producer for the purpose of resale.~~;~~

(7) "Citrus fruit" means all varieties and regulated hybrids of citrus fruit and also means processed citrus products containing 20 percent or more citrus fruit or citrus fruit juice. The term does not, ~~but,~~ for ~~the~~ purposes of this chapter, ~~shall not~~ mean limes, lemons, marmalade, jellies, preserves, candies, or citrus hybrids for which ~~no~~ specific standards have not been established by the department. ~~of Citrus;~~

(8) "Citrus fruit dealer" means any consignor, commission merchant, consignment shipper, cash buyer, broker, association, cooperative association, express or gift fruit shipper, or person who in any manner makes or attempts to make money or other thing of value on citrus fruit in any manner whatsoever, other than of growing or producing citrus fruit.~~, but~~ The term does ~~shall~~ not include retail establishments whose sales are direct to consumers and not for resale or persons or firms trading solely in citrus futures contracts on a regulated commodity exchange.~~;~~

(9)~~(37)~~ "Citrus hybrids" includes, ~~means~~ but is ~~shall~~ not

~~be~~ limited to, hybrids between or among sour orange (C. aurantium), pummelo (C. grandis), lemon (C. limon), lime (C. aurantifolia), citron (C. medica), grapefruit (C. paradisi), tangerine or mandarin orange (C. reticulata), sweet orange (C. sinensis), tangelo (C. reticulata x C. paradisi or C. grandis), tangor (C. reticulata x C. sinensis), kumquat (Fortunella, species), trifoliate orange (Poncirus trifoliata), and varieties of these species.~~;~~

(10)~~(9)~~ "Citrus producing area" means that part or parts of the state in which citrus fruit is grown or produced.~~;~~

(11)~~(10)~~ "Color-add" or "color-added" means the application or use of any coloring matter to any citrus fruit.~~;~~

(12)~~(11)~~ "Coloring matter" means any dye, or any liquid or concentrate or material containing a dye or materials that ~~which~~ react to form a dye, used or intended to be used for the purpose of enhancing the color of citrus fruit by the addition of artificial color to the peel thereof. The~~; provided that said~~ term does ~~shall~~ not include any process or treatment of fruit that ~~which~~ merely brings out or accelerates the natural color of the fruit.~~;~~

(13) "Commission" means the Florida Citrus Commission as head of the department. ~~of Citrus;~~

(14)~~(15)~~ "Commission merchant" means any person engaged in the business of receiving any citrus fruit for sale on commission for or on behalf of another.~~;~~

(15)~~(16)~~ "Concentrated products" means:

(a) Frozen citrus fruit juice frozen that has ~~at~~ a concentration that exceeds ~~of exceeding~~ 20 degrees Brix and is

kept at a sufficiently freezing temperature to ensure preservation of the product; or ~~and~~

(b) Citrus fruit juice that is sealed in hermetically sealed containers at a concentration that exceeds ~~of exceeding~~ 20 degrees Brix and is sufficiently processed by heat to ensure preservation of the product.~~;~~

(16)~~(17)~~ "Concentrating plant" means any building, structure, or place where citrus fruit is canned, frozen, or prepared for canning or freezing at a concentration that exceeds ~~of more than~~ 20 degrees Brix for market or shipment.~~;~~

(17)~~(18)~~ "Consignment shipper" means any person who contracts with the producer of citrus fruit for the marketing thereof for the sole account and risk of such producer and who agrees to pay such producer the net proceeds derived from such sale.~~;~~

(18)~~(19)~~ "Consignor" means any person, other than a producer, who ships or delivers to any commission merchant or dealer any citrus fruit for handling, sale, or resale.~~;~~

(19)~~(12)~~ "Degreening ~~Coloring~~ room" means any room or place where citrus fruit is placed, with or without the use of heat or any gas, for the purpose of bringing out the natural color of the fruit.~~;~~

(20) "Department" means the Department of Citrus.

(21)~~(14)~~ "Department of Agriculture" means the Department of Agriculture and Consumer Services. ~~of the State of Florida;~~

(22)~~(20)~~ "Express or gift fruit shipper" means any person having an established place of business who ships or delivers for transportation in any manner~~,~~ citrus fruit to a consumer and

not for the purpose of resale.~~;~~

(23)~~(21)~~ "Fresh fruit juice distributor" means any person extracting and preparing for market or shipment any citrus fruit juice in fresh form.~~;~~

(24)~~(22)~~ "Grapefruit" means the fruit Citrus paradisi Macf., commonly called grapefruit. The term includes the ~~and shall include~~ white, red, and pink meated varieties of grapefruit.~~;~~

(25)~~(23)~~ "Handler" means any person engaged within this state in the business of distributing citrus fruit in the primary channel of trade or any person engaged as a processor in the business of processing citrus fruit.~~;~~

(26)~~(35)~~ "Lemons" or "rough lemons" ~~including "rough" lemons~~ means the acid lemons of Citrus limon, including the varieties eureka, genoa, wheatley, amerfo, belair, and villafranca of the Eureka group; varieties bonnie brae, kennedy, lisbon, messer, messina, and sicily of the Lisbon group; varieties meyer, cuban, ponderosa, and rough of the Anomalous group; varieties dorshapo and millsweet of the Sweet Lemon group;~~,~~ and other varieties not included in this subsection, ~~above~~ such as everbearing, palestine sweet, perrine, and spheriola.~~;~~

(27)~~(24)~~ "Manufacturer" means any person who manufactures ~~shall manufacture~~, sells ~~sell~~ or offers ~~offer~~ for sale, or licenses ~~license~~ or offers ~~offer~~ for license for use any coloring matter, or any soaps, oils, waxes, gases, gas-forming material, or other similar compositions, or the component parts thereof on or in the processing of citrus fruits.~~;~~

(28)~~(25)~~ "Oranges" means the fruit Citrus sinensis Osbeck, commonly called sweet oranges.~~,~~

(29)~~(26)~~ "Packinghouse" means any building, structure, or place where citrus fruit is packed or otherwise prepared for market or shipment in fresh form.~~,~~

(30)~~(27)~~ "Person" means any natural person, partnership, association, corporation, trust, estate, or other legal entity.~~,~~

(31)~~(28)~~ "Primary channel of trade" means the routes through which citrus fruit is marketed. Citrus ~~that~~ fruit is ~~shall be~~ deemed to be ~~have been~~ delivered into the primary channel of trade when it is sold or delivered for shipment in fresh form~~,~~ or when it is received and accepted at a canning, concentrating, or processing plant for canning, concentrating, or processing.~~,~~

(32)~~(38)~~ "Processor" means any person engaged within this state in the business of canning, concentrating, or otherwise processing citrus fruit for market other than for shipment in fresh fruit form.

(33)~~(29)~~ "Producer" means any person growing or producing citrus in this state for market.~~,~~

(34)~~(30)~~ "Ship" or "shipping" means to move, or cause to be moved, citrus fruit or the canned or concentrated products thereof ~~to be moved~~ in intrastate, interstate, or foreign commerce by rail, truck, boat, ~~or~~ airplane, or any other means.~~,~~

(35)~~(31)~~ "Shipper" means any person engaged in shipping, or causing to be shipped, citrus fruit or the canned or concentrated products thereof in intrastate, interstate, or foreign commerce, whether as owner, agent, or otherwise.~~,~~

(36)~~(32)~~ "Shipping season" means that period ~~of time~~ beginning August 1 of one year and ending July 31 of the following year.~~;~~

(37)~~(36)~~ "Sour or bitter oranges"~~—"sour" or "bitter" oranges~~ means the fruit of Citrus aurantium L. and contains several subspecies. Among the most important are varieties african, brazilian, rubidoux, and standard of the Normal group; varieties daidai, goleta, and bouquet of the Aberrant group; variety chinooto of the Myrtifolia group; and varieties bittersweet and paraguay of the Bittersweet group.~~;~~

(38)~~(33)~~ "Standard packed box" means 1 3/5 bushels of citrus fruit, whether in bulk or containers.~~;~~

(39)~~(34)~~ "Tangerines" means the fruit Citrus reticulata Blanco, commonly called tangerines.~~;~~

Section 6. Section 601.04, Florida Statutes, is amended to read:

601.04 Florida Citrus Commission; creation and membership.—

(1)(a) There is created ~~and established~~ within the department ~~of Citrus a board to be known and designated as~~ the ~~"~~Florida Citrus Commission,~~"~~ which shall ~~to~~ be composed of nine members appointed by the Governor. Each member must be a ~~practical citrus fruit persons who are~~ resident citizen ~~citizens~~ of the state who~~, each of whom~~ is and has been actively engaged in the growing, growing and shipping, or growing and processing of citrus fruit in the state for ~~a period of~~ at least 5 years immediately before ~~prior to~~ appointment to the ~~said~~ commission and has, during that 5-year ~~said~~ period:~~;~~

1. Derived a major portion of her or his income from such growing, growing and shipping, or growing and processing of citrus fruit; ~~therefrom~~ or~~, during said time, has~~

2. Been the owner of, member of, officer of, or paid employee of a corporation, firm, or partnership that ~~which~~ has, during that 5-year period ~~said time~~, derived the major portion of its income from such ~~the~~ growing, growing and shipping, or growing and processing of citrus fruit.

(b)1. Six members of the commission shall be classified ~~designated~~ as grower members and shall be primarily engaged in the growing of citrus fruit as an individual owner; as the owner of, or as stockholder of, a corporation; or as a member of a firm or partnership primarily engaged in citrus growing. ~~None of~~ Such members may not ~~shall~~ receive any compensation from any licensed citrus fruit dealer or handler, as defined in s. 601.03, other than gift fruit shippers, but any of the grower members shall not be disqualified as a member if, individually, or as the owner of, a member of, an officer of, or a stockholder of a corporation, firm, or partnership primarily engaged in citrus growing which processes, packs, and markets its own fruit and whose business is primarily not purchasing and handling fruit grown by others.

2. Three members of the commission shall be classified ~~designated~~ as grower-handler members and shall be engaged as owners, or as paid officers or employees, of a corporation, firm, partnership, or other business unit engaged in handling citrus fruit. One ~~of~~ such member ~~three grower-handler members~~ shall be primarily engaged in the fresh fruit business, and two

~~of~~ such ~~three grower-handler~~ members shall be primarily engaged in the processing of citrus fruits.

(2)(a) ~~(c) There shall be~~ Three commission members shall be appointed ~~of the commission~~ from each of the three citrus districts designated in s. 601.09. Members appointed from the same citrus district shall serve staggered terms, such that the term of one of the district's three members expires each year. Each member must reside in the district from which she or he was appointed. For the purposes of this section, a member's ~~the~~ residence is her or his ~~of a member shall be the~~ actual physical and permanent residence ~~of the member~~.

(b) ~~(2)(a) The~~ Members ~~of such commission shall possess the qualifications herein provided and~~ shall be appointed to ~~by the Governor for~~ terms of 3 years each, except that, to establish staggered terms of members from each citrus district, the terms of members appointed before July 1, 2012, shall be shortened as follows:

1. The term of one member from each citrus district shall expire June 30, 2012, and her or his successor shall be appointed to a term beginning July 1, 2012, and expiring May 31, 2015.

2. The term of one member from each citrus district shall expire June 30, 2013, and her or his successor shall be appointed to a term beginning July 1, 2013, and expiring May 31, 2016.

3. The term of one member from each citrus district shall expire June 30, 2014, and her or his successor shall be appointed to a term beginning July 1, 2014, and ending May 31,

2017.

4. Subsequent appointments shall be made in accordance with this section.

Appointments shall be made by February 1 preceding the commencement of the term and are ~~shall be~~ subject to confirmation by the Senate in the following legislative session. Each member is eligible for reappointment and ~~Four members shall be appointed each year. Such members~~ shall serve until her or his successor is ~~their respective successors are~~ appointed and qualified. The regular terms ~~shall~~ begin on June 1 and expire ~~shall end~~ on May 31 of the third year after such appointment. ~~Effective July 1, 2011, the terms of all members of the commission appointed on or before May 1, 2011, are terminated and the Governor shall appoint the members of the commission in accordance with the provisions of this act.~~

(c) ~~(b)~~ When appointments are made, the Governor shall publicly announce the actual classification and district that each appointee represents. A majority of the members of the commission shall constitute a quorum for the transaction of all business and the carrying out of the duties of the commission. Before entering upon the discharge of their duties as members of the commission, each member shall take and subscribe to the oath of office prescribed in s. 5, Art. II of the State Constitution. The qualifications and classification required ~~qualification~~ of each member by this section continue to be ~~as herein~~ required ~~shall continue~~ throughout the respective term of office, and if ~~in the event~~ a member ~~should~~, after appointment, fails ~~fail~~ to

meet the qualifications or classification that ~~which~~ she or he possessed at the time of appointment ~~as above set forth~~, the ~~such~~ member must ~~shall~~ resign or be removed and be replaced with a member possessing the proper qualifications and classification.

(d) ~~(c)~~ When making an appointment to the commission, the Governor shall announce the district, ~~and~~ classification, and term of the person appointed.

(3)(a) The commission shall ~~is authorized to~~ elect a chair and secretary and may elect a vice chair and such other officers as the commission deems ~~it may deem~~ advisable.

(b) The chair, subject to commission concurrence, may appoint such advisory committees or councils composed of industry representatives as the chair deems appropriate, setting forth the ~~areas of~~ committee or council concerns that ~~concern~~ ~~which~~ are consistent with the statutory powers and duties of the commission and the department ~~of Citrus~~.

~~(4) It is the intent of the Legislature that the commission be redistricted every 5 years. Redistricting shall be based on the total boxes produced from each of the three districts during that 5-year period.~~

Section 7. Section 601.045, Florida Statutes, is amended to read:

601.045 ~~Department auditor's report;~~ Commission meetings; report of department's internal auditor ~~meeting agenda item~~.—The ~~Florida Citrus~~ commission shall include as an agenda item at each regularly scheduled meeting a report by the department's internal auditor ~~of the department of Citrus~~.

Section 8. Section 601.05, Florida Statutes, is amended to read:

601.05 Department of Citrus a body corporate.—The department ~~of Citrus~~ shall be a body corporate, shall have power to contract and be contracted with, and shall have and possess all the powers of a body corporate for all purposes necessary for fully carrying out the provisions and requirements of this chapter. The department ~~of Citrus~~ shall adopt a corporate seal with which it shall authenticate its proceedings.

Section 9. Section 601.06, Florida Statutes, is amended to read:

601.06 Compensation and expenses of commission members.—Each member of the commission shall receive the sum of $25 per day for each day or fraction thereof spent while en route to or from, or in actual attendance at, regular or special meetings of the commission or meetings of committees of the commission, or in transacting other business authorized by the department ~~of Citrus~~ in addition to per diem and reimbursement of expenses as authorized by law.

Section 10. Section 601.07, Florida Statutes, is amended to read:

601.07 Location of executive offices.—The department's executive offices ~~of the Department of Citrus~~ shall be established and maintained at Bartow.

Section 11. Section 601.08, Florida Statutes, is amended to read:

601.08 Authenticated copies of commission records as evidence.—Copies of the proceedings, records, and acts of the

commission and certificates purporting to relate the facts concerning such proceedings, records, and acts signed by the chair of the commission and authenticated by the department's seal ~~of the Department of Citrus~~ shall be prima facie evidence thereof in all the courts of the state.

Section 12. Section 601.09, Florida Statutes, is amended to read:

601.09 Citrus districts.—

(1) For purposes of this chapter, the state is divided into three districts composed of:

(a) ~~(1)~~ Citrus District One: Levy, Alachua, Brevard, Putnam, St. Johns, St. Lucie, Flagler, Indian River, Marion, Seminole, Orange, Okeechobee, Polk, Volusia, and Osceola Counties.

(b) ~~(2)~~ Citrus District Two: Hardee, DeSoto, Highlands, and Glades Counties.

(c) ~~(3)~~ Citrus District Three: Charlotte, Citrus, Collier, Hernando, Hendry, Hillsborough, Lake, Lee, Manatee, Monroe, Martin, Pasco, Palm Beach, Pinellas, Sarasota, Sumter, Broward, and Miami-Dade Counties.

(2) The Legislature intends that the citrus districts be reviewed and, if necessary to maintain substantially equal volumes of citrus production within each district, redistricted every 5 years. The commission may, once every 5 years, review the citrus districts based on the total boxes produced within each district during the preceding 5 years and, based on the commission's findings, submit recommendations to the Legislature for redistricting in accordance with this subsection.

Section 13. Section 601.10, Florida Statutes, is amended to read:

601.10 Powers of the Department of Citrus.—The department ~~of Citrus~~ shall have and shall exercise such general and specific powers as are delegated to it by this chapter and other statutes of the state, which powers shall include, but are ~~shall~~ not limited ~~be confined~~ to, the following:

(1) To adopt and periodically~~, from time to time,~~ alter, rescind, modify, or amend all proper and necessary rules~~,~~ ~~regulations,~~ and orders for the exercise of its powers and the performance of its duties under this chapter and other statutes of the state, which rules and orders ~~regulations~~ shall have the force and effect of law when not inconsistent therewith.

(2) To act as the general supervisory authority over the administration and enforcement of this chapter and to exercise such other powers and perform such other duties as may be imposed upon it by other laws of the state.

~~(3) To employ and, at its pleasure, discharge an executive director as it deems necessary and to outline his or her powers and duties and fix his or her compensation.~~

~~(a) The executive director of the department shall be appointed by a majority vote of the commission for a term of 4 years, except for the initial term, and the executive director shall be subject to confirmation by the Senate in the legislative session following appointment.~~

~~1. The initial term of the executive director ends June 30, 2011, and each subsequent 4-year term begins July 1, and shall be filled in the same manner as the original appointment.~~

~~2. A vacancy for the executive director shall be filled for the unexpired portion of the term in the same manner as the original appointment.~~

(a)~~(b)~~ To ~~The department of Citrus may~~ pay, or participate in the payment of, premiums for health, accident, and life insurance for its full-time employees, pursuant to such rules ~~or regulations~~ as the department ~~it~~ may adopt,~~; and such payments are~~ in addition to the regular salaries of such full-time employees. The payment of such or similar benefits to its employees in foreign countries, including, but not limited to, social security, retirement, and other similar fringe benefit costs, may be in accordance with laws in effect in the country of employment, except that no benefits will be payable to employees not authorized for other state employees, as provided in the Career Service System.

(b) Subject to all applicable rules adopted by the Department of Management Services, the department shall be staffed 5 days per week, 40 hours per week, as necessary to accommodate industry inquiries. However, the executive director, with the commission's approval, may establish alternative schedules for individual department employees to ensure maximum efficiencies.

~~(c) Employees of the department shall work a 5-day, 40-hour week. Unless an employee is on approved leave, an employee's salary shall be decreased by 20 percent for each day not worked during the 5-day work week if the employee chooses to regularly work less than a 5-day work week.~~

(4) To purchase or authorize the purchase of all office

equipment and supplies and to incur all necessary expenses in connection with and required for the proper administration ~~carrying out~~ of ~~the provisions of~~ this chapter and other applicable laws.

(5) To investigate violations of ~~the provisions of~~ this chapter and other laws conferring powers and duties upon the department ~~of Citrus,~~ and to report its findings or recommendations in connection therewith to the Department of Agriculture ~~and Consumer Services~~.

(6) To incur such reasonable obligations and expenses as may be necessary and proper for the discharge of its powers and duties under this or other laws~~,~~ and to have such obligations and expenses paid out of the funds authorized by law to be collected and expended. The department's executive director ~~of the Department of Citrus~~, or such other person specifically designated by the commission to act in the event the executive director is either unable or not available to act, is authorized to execute, on behalf of the department, contracts and agreements previously approved by the commission during a regular or special meeting, ~~on behalf of the Department of Citrus,~~ and the secretary or assistant secretary of the commission is authorized to attest to the signature of the executive director or other designated person.

(7) To adopt, repeal ~~promulgate, alter, rescind, modify~~, and amend under chapter 120, and to enforce, rules that ~~and regulations and~~ establish minimum maturity and quality standards for citrus fruits not inconsistent with existing laws or that~~,~~ ~~to~~ regulate and control methods and practices followed or used

in harvesting, grading, packing, extracting, canning, concentrating, sectionizing, or otherwise processing citrus fruits or citrus juices or the products thereof for human consumption, including the addition or prohibition of any and all additives, and including application to or use of coloring matter thereon and coloring of fruit by placing in a degreening ~~coloring~~ room with or without use of heat or any form of gas in such process, to the end that such methods and practices as affect the eating and keeping qualities and depreciate the value of citrus fruits or the juices or other food products thereof in any form may be minimized to the greatest extent possible, if not altogether eliminated.

(8) To prepare and disseminate information of importance to citrus growers, handlers, shippers, processors, and industry-related and interested persons and organizations~~,~~ relating to department ~~of Citrus~~ activities and the production, handling, shipping, processing, and marketing of citrus fruit and processed citrus products. Any information that constitutes ~~which consists of~~ a trade secret as defined in s. 812.081(1)(c) is confidential and exempt from ~~the provisions of~~ s. 119.07(1)~~,~~ and shall not be disclosed. For referendum and other notice and informational purposes, the department ~~of Citrus~~ may prepare and maintain, from the best available sources, a citrus grower mailing list. Such list shall be a public record available as other public records, but it shall not be subject to the purging provisions of s. 283.55.

(9) When, in the opinion of the department ~~of Citrus~~, ~~the tax~~ revenues collected pursuant to assessments levied under this

chapter, whether allocated for research, advertising or promotion, reserve funds, advertising incentive plans, or other purposes, are not immediately needed for the purpose for which such funds are provided, the Chief Financial Officer is authorized and shall, upon the request and approval of the department ~~of Citrus~~, or its executive director ~~general manager~~ if she or he has been given such authority, invest and reinvest the funds designated and for the period of time specified in such request. In the investment of such funds, the Chief Financial Officer has ~~shall have~~ the powers and is ~~be~~ subject to the limitations provided for in s. 17.61.

(10) Subject to the concurrence of the Chief Financial Officer, whenever the department contracts with a foreign entity for performance of services or the purchase of materials~~,~~ and such contract requires payment in equivalent foreign currency, the department may, for payment of such contract obligation, deposit sufficient state funds in a foreign bank, or purchase foreign currency at the current market rate, up to an amount not in excess of the contract obligation. All payments from these funds must have prior audit approval from the office of the Chief Financial Officer.

(11) To conduct an annual merchandising and management meeting in this state for department field personnel and to make direct payment, by means of vendor contracts approved by the commission, for all necessary lodging, meals, facilities, and training expenses for department employees attending such annual meeting, in lieu of payment of individual employee per diem allowances as established by s. 112.061.

(12) Notwithstanding ~~the provisions of~~ part I of chapter 287, to adopt ~~promulgate~~ rules for the purpose of entering into contracts that ~~which~~ are primarily for promotional and advertising services and promotional events, which may include commodities involving a service. Such rules shall include the authority to negotiate costs with the offerors of such services and commodities who have been determined to be qualified on the basis of technical merit, creative ability, and professional competency. Contracts pursuant to this subsection may provide for advance payments when the department determines that such provision is essential to acquiring the service.

(13) To investigate or address the transportation problems affecting the citrus industry.

(14) To investigate or research the mechanical harvesting of citrus fruit grown in the state ~~Florida~~.

(15) To provide by rule a list of forms used in conducting its business. The adoption of such rule constitutes sufficient notice to the public of the existence of the forms and negates the need to place specific citation to such list throughout the related chapters of the Florida Administrative Code.

Section 14. Section 601.101, Florida Statutes, is amended to read:

601.101 Ownership of rights under patent and trademark laws developed or acquired under ~~pursuant to the authorities of~~ this chapter.~~—~~Notwithstanding ~~any provision of~~ chapter 286, the legal title and every right, interest, claim, or demand of any kind in and to any patent, trademark, copyright, certification mark, or other right acquired under the patent and trademark

laws of the United States, ~~or~~ this state, or any foreign country, or the application therefor ~~for the same~~, ~~now, heretofore,~~ or that is or ~~as~~ may subsequently be ~~hereafter~~ owned or held, acquired, or developed by the department ~~of Citrus,~~ under ~~the authority and directions given it by~~ this chapter, is vested in the department ~~of Citrus~~ for the use, benefit, and purposes provided in this chapter. The department ~~of Citrus~~ is ~~hereby~~ vested with and may ~~is authorized to~~ exercise any ~~and all~~ of the normal incidents of such ownership, including the receipt and disposition of royalties. Any sums received as royalties from any such rights are ~~hereby~~ appropriated to the department ~~of Citrus~~ for ~~any and all of~~ the purposes and uses provided in this chapter.

Section 15. Section 601.11, Florida Statutes, is amended to read:

601.11 ~~Power of~~ Department of Citrus; power to establish standards; rulemaking authority.—

(1) The department ~~of Citrus shall have full and plenary power to, and~~ may adopt rules that:~~,~~

(a) Establish state grades and minimum maturity and quality standards not inconsistent with existing laws for citrus fruits and food products thereof containing 20 percent or more citrus or citrus juice, whether canned, ~~or~~ concentrated, or otherwise processed, including standards for frozen concentrate for manufacturing purposes, and for containers therefor. These standards must be designed to increase the acceptance and consumption by the consuming public of such regulated citrus fruits and food products thereof and may include, but are not

limited to, standards for:

1. Color break, predominant color, total soluble solids, juice content, and ratio of soluble solids of the juice to anhydrous citric acid of oranges, grapefruit, and tangerines.

2. Total soluble solids, juice content, and ratio of soluble solids of the juice to anhydrous citric acid of citrus fruit grown in the state for export to foreign countries other than Canada and Mexico.

3. Canned orange juice or frozen concentrated orange juice that is sold, offered for sale, shipped, or offered for shipment, including, but not limited to, standards for total soluble solids, ratio of soluble solids of juice to anhydrous citric acid, amount of anhydrous citric acid, amount of recoverable oil, color, taste, flavor, and absence of additives or defects, and labeling requirements for substandard juice. These standards may establish separate density, compositional, labeling, and inspection requirements for high-density frozen concentrated orange juice that is sold, offered for sale, shipped, or offered for shipment in retail, institutional, or bulk size containers.

4. The processing, shipping, and sale of frozen concentrated orange juice and concentrated orange juice for manufacturing to which nutritive sweetening ingredients are added, including, but not limited to, total soluble solids of orange juice exclusive of the added nutritive sweetening ingredients; labeling requirements; and requirements for the inspection and reinspection of such concentrated orange juice before and after nutritive sweetening ingredients are added.

5. Grapefruit juice products, including, but not limited to, standards for the ratio of soluble solids of juice to anhydrous citric acid and any other standards designed to increase the acceptance and consumption by the consuming public of such regulated grapefruit juice products.

6. Canned blends of orange juice and grapefruit juice that are sold, offered for sale, shipped, or offered for shipment, including, but not limited to, standards for total soluble solids, ratio of soluble solids of juice to anhydrous citric acid, amount of anhydrous citric acid, amount of recoverable oil, color, taste, flavor, absence of defects, and labeling requirements for substandard juice blends.

(b) Authorize the department to issue permits for the export to foreign countries other than Canada and Mexico of citrus fruit grown in the state that complies with rules adopted under subparagraph (a)2.

(c) Authorize the commission to issue and renew permits for processors of frozen concentrated orange juice and concentrated orange juice for manufacturing to which nutritive sweetening ingredients are added and, in addition to disciplinary action that may be taken by the Department of Agriculture against a citrus fruit dealer for violations of this chapter, to suspend or revoke the permit of any processor that does not comply with rules adopted under subparagraph (a)4.

(d) Authorize the commission to determine whether freezing temperatures have caused damage or freeze-related injury as described in s. 601.89 to citrus fruit and, if the commission determines that such damage has been caused, issue emergency

quality assurance orders that:

1. Temporarily prohibit the preparation for market, sale, offer for sale, or shipment of any citrus fruit showing freeze damage or freeze-related injury.

2. Establish the degree of freeze damage or freeze-related injury that is temporarily permitted in citrus fruit used in frozen concentrated products, including concentrate for manufacturing purposes.

(e) Establish standards limiting any increase of spacing between stacked field boxes caused by the placement of cleats or other devices on the field boxes.

(2) The department shall adopt ~~prescribe~~ rules ~~or regulations~~ governing:

(a) The marking, branding, labeling, tagging, or stamping of citrus fruit, or products thereof, whether canned, ~~or~~ concentrated, or otherwise processed, and upon containers therefor for the purpose of showing the name and address of the person marketing such citrus fruit or products thereof, whether canned, ~~or~~ concentrated, or otherwise processed.~~;~~

(b) The grade, quality, variety, type, or size of citrus fruit;~~,~~ the grade, quality, variety, type, and amount of the products thereof, whether canned, ~~or~~ concentrated, or otherwise processed;~~,~~ and the quality, type, size, dimensions, and shape of containers therefor.~~,~~

(c) The regulation ~~and to regulate~~ or prohibition of ~~prohibit~~ the use of containers that ~~which have been~~ previously have been used for the sale, transportation, or shipment of citrus fruit or the products thereof, whether canned, ~~or~~

concentrated, or otherwise processed, or any other commodity.~~:~~ ~~provided,~~ However, the department may not prohibit ~~that~~ the use of secondhand containers for the sale or ~~and~~ delivery of citrus fruit for retail consumption within the state. ~~shall not be prohibited;~~

(3) The department may not adopt any ~~provided, however, that no~~ standard, ~~regulation,~~ rule, or order under this section that ~~which~~ is inconsistent with ~~repugnant to~~ any requirement of ~~made mandatory under~~ federal law or regulations that applies ~~shall apply~~ to citrus fruit, or the products thereof, whether canned, ~~or~~ concentrated, or otherwise processed, or to containers therefor, that ~~which~~ are being shipped from this state in interstate commerce.

(4)(a) All citrus fruit and the products thereof, whether canned, ~~or~~ concentrated, or otherwise processed, sold, ~~or~~ offered for sale, or offered for shipment within or without the state shall be graded and marked as required by this section. ~~and~~

(b) The ~~regulations,~~ rules~~,~~ and orders adopted ~~and made~~ under ~~authority of~~ this section, to the extent that they are ~~which regulations, rules, and orders shall, when~~ not inconsistent with state or federal law, shall have the force and effect of law.

(5) In accordance with the Administrative Procedure Act, rules adopted under this section must be adopted, amended, or repealed pursuant to chapter 120.

Section 16. Section 601.111, Florida Statutes, is amended to read:

601.111 ~~Department of Citrus authorized to lower~~ Maturity standards; modification by emergency rule.—

(1) The Legislature ~~of the state~~ finds ~~and declares~~ that emergencies creating abnormal conditions in the state's ~~Florida~~ citrus industry, which may include, but are not limited to, ~~such as~~ unusual climatic conditions that produce unusual growing conditions of citrus fruit, freezes and hurricanes, or other acts of God that may affect a substantial part of the citrus industry, require that the department have ~~of Citrus be given~~ the power and authority to modify ~~lower~~ the maturity standards established by rule ~~law~~ for citrus fruit or any variety thereof~~,~~ ~~not including oranges except as specified in subsection (2),~~ ~~under and subject to the limitations, conditions, restrictions, and provisions and within the standards hereinafter prescribed and established~~.

(2)(a) Upon the determination by the department that ~~In the event of~~ an emergency exists that creates abnormal conditions in the state's citrus industry ~~such as is mentioned in subsection (1)~~, the ~~said~~ department ~~of Citrus~~, in addition to all other powers and authority provided by law, may adopt emergency ~~which it now possesses, which have heretofore been granted or delegated to it by the Legislature shall have the additional power to issue~~ rules pursuant to s. 120.54(4) that temporarily modify the maturity standards previously adopted by rule ~~and regulations to:~~

~~(a) Lower by not more than 10 percent the existing minimum requirement as to the total soluble solids of the juice of citrus fruit or any variety, except oranges, or size thereof;~~

~~(b) Lower by not more than 10 percent the existing ratio of total soluble solids of the juice of citrus fruit or any variety thereof, except oranges, to the anhydrous citric acid;~~

~~(c) Lower by not more than 10 percent the existing minimum requirement for juice content of citrus fruit or any variety or size thereof; and~~

~~(d) Lower by not more than 10 percent the existing minimum requirement for the content of anhydrous citric acid for oranges~~.

(b) An emergency rule adopted ~~Any action~~ under this subsection does ~~shall~~ not take effect unless the emergency rule is ~~be taken without the consent of at least nine members of the Florida Citrus Commission. Any regulation~~ adopted ~~pursuant to this section shall be~~ by the affirmative vote of at least seven ~~nine~~ members of the ~~said Florida Citrus~~ commission, and each ~~every~~ such emergency rule must ~~regulation shall~~ contain an expiration date of not later than 1 year after ~~from~~ its effective date.

(3) This section does ~~act shall~~ not repeal any other section or part of this chapter and~~, but~~ shall be deemed as supplemental and additional to the express power vested in the department ~~of Citrus~~, subject only to the limitations, restrictions, conditions, provisions, and standards provided in this section ~~herein set forth~~.

Section 17. Section 601.13, Florida Statutes, is amended to read:

601.13 Citrus research; administration by Department of Citrus; appropriation.—

(1) The department shall administer ~~administration of~~ this section and ~~shall be vested in the department of Citrus which shall~~ prescribe suitable and reasonable rules to properly implement this section ~~and regulations for the proper carrying out of the provisions hereof~~.

(2) ~~It shall be the duty of~~ The department shall ~~of Citrus, and it is empowered~~:

(a)1. ~~To~~ Conduct or cause to be conducted a thorough and comprehensive study of citrus fruit and the juices thereof:

a.~~1.~~ With respect to the quality and maturity of such ~~said~~ fruit and the juices thereof, including proper effort to assemble data and arrive at a proper standard of quality, grade, and maturity with reference to its texture, stability, and general marketability and so far as possible reduce such findings to specific and readily understood chemical, mathematical, or descriptive terms;~~,~~ and

b.~~2.~~ With respect to the nutritional and other value or values of such fruit and the juices thereof.

2. ~~and to~~ Provide suitable facilities and equipment of every kind whatsoever proper and necessary in connection with all such work.

(b) ~~To~~ Conduct or cause to be conducted such study and research as is necessary to provide all the information and data required to be disseminated pursuant to ~~the provisions of~~ this section.

(c) ~~To~~ Provide suitable and sufficient laboratory facilities and equipment, making use of the laboratory facilities and equipment of the University of Florida, insofar

as it is practicable for the purpose of conducting thorough and comprehensive study and research to determine all possible new and further uses for citrus fruit and citrus fruit juices and the products and byproducts into which the same can be converted or manufactured, as well as to determine and develop new and profitable methods and instruments of distribution thereof.

(d) ~~To~~ Carry on, or cause to be carried on, suitable experiments in an effort to prove the commercial value of each, and determine and develop new and further use for citrus fruit and citrus fruit juices or the products and byproducts into which the same can be converted or manufactured.

(e) ~~To~~ Carry on or cause to be carried on suitable experiments in an effort to prove the commercial value of any and all new profitable methods and instruments of distribution of citrus fruit and citrus fruit juices and the products and byproducts into which the same can be converted or manufactured.

(f) ~~To~~ Carry on or cause to be carried on an economic and marketing research program relating to citrus fruits and~~,~~ products or byproducts thereof.

(g) ~~To~~ Enter into any mutually satisfactory contracts or agreements with any person, firm, institution, corporation, or business unit, as well as any state or federal agency, that ~~which~~ the department ~~of Citrus~~ deems wise, necessary, and expedient in the administration ~~carrying out~~ of ~~any of the provisions of~~ this chapter.

(h) ~~To~~ Incur and pay such expenses and obligations as are necessary in connection with and required for the proper administration ~~carrying out~~ of ~~the provisions of~~ this chapter.

(i) Conduct or cause to be conducted any research related to disease and crop efficiency that would advance the purposes of the state's citrus industry and commercialization related to advancing such research.

(3) There is ~~hereby~~ appropriated and made available for defraying the expenses of the administration of this section from the moneys derived from advertising assessments ~~excise taxes~~ levied on citrus fruit such amounts as the department ~~of Citrus~~ may deem necessary within the percentage limitations imposed by s. 601.15.

Section 18. Section 601.15, Florida Statutes, is amended to read:

601.15 Advertising campaign; methods of conducting; assessments ~~excise tax~~; emergency reserve fund; citrus research.—

(1) The department shall administer ~~administration of~~ this section ~~shall be vested in the Department of Citrus~~, ~~which shall~~ prescribe suitable and reasonable rules ~~and regulations~~ for the enforcement of this section ~~hereof~~, and ~~the Department of Citrus shall~~ administer the assessments ~~taxes~~ levied and imposed under this section ~~hereby~~. All funds collected under this section and the interest accrued on such funds are consideration for a social contract between the state and the citrus growers of the state whereby the state must hold such funds in trust and inviolate and use them only for the purposes prescribed in this chapter. The department may ~~of Citrus shall have power to~~ cause its duly authorized agent or representative to enter upon the premises of any handler of citrus fruits and to examine or cause

to be examined any books, papers, records, or memoranda bearing on the amount of assessments ~~taxes~~ payable and to secure other information directly or indirectly concerned in the enforcement of this section ~~hereof~~. Any person who is required to pay the assessments ~~taxes~~ levied and imposed and who by any practice or evasion makes it difficult to enforce this section ~~the provisions hereof~~ by inspection, or any person who, after demand by the department ~~of Citrus~~ or any agent or representative designated by it for that purpose, refuses to allow full inspection of the premises or any part thereof or any books, records, documents, or other instruments in any manner relating to the liability of the person or entity liable ~~taxpayer~~ for the assessment ~~tax~~ imposed or hinders, ~~or in anywise~~ delays, or prevents such inspection, commits ~~is guilty of~~ a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(2) The department ~~of Citrus~~ shall plan and conduct campaigns for commodity advertising, publicity, and sales promotion, and may conduct campaigns to encourage noncommodity advertising, to increase the consumption of citrus fruits and may contract for any such advertising, publicity, and sales promotion service. To accomplish such purpose, the department ~~of Citrus~~ shall ~~have power, and it shall be its duty~~:

(a) ~~To~~ Disseminate information relating to:

1. Citrus fruits and the importance thereof in preserving the public health, the economy thereof in the diet of the people, and the importance thereof in the nutrition of children.~~;~~

2. The manner, method, and means used and employed in the production and marketing of citrus fruits and information relating to laws of the state regulating and safeguarding such production and marketing.~~;~~

3. The added cost to the producer and dealer in producing and handling citrus fruits to meet the high standards imposed by the state that ensure a pure and wholesome product.~~;~~

4. The effect upon the public health that ~~which~~ would result from a breakdown of the state's ~~Florida~~ citrus industry or any part thereof.~~;~~

5. The reasons that ~~why~~ producers and dealers should receive a reasonable return on their labor and investment.~~;~~

6. The problem of furnishing the consumer at all times with an abundant supply of fine quality citrus fruits at reasonable prices.~~;~~

7. Factors of instability peculiar to the citrus fruit industry, such as unbalanced production, the effect of the weather, the influence of consumer purchasing power, and price relative to the cost of other items of food in the normal diet of people, all to the end that an intelligent and increasing consumer demand may be created.~~;~~

8. The possibilities with particular reference to increased consumption of citrus fruits.~~; and~~

9. Such ~~other, further, and~~ additional information that ~~which~~ tends to promote increased consumption of citrus fruits and that ~~which~~ fosters a better understanding and more efficient cooperation among producers, dealers, and the consuming public.~~;~~ ~~and~~

(b) ~~To~~ Decide upon some distinctive and suggestive trade name and to promote its use in all ways to advertise Florida citrus fruit.

(3)(a) There is ~~hereby~~ levied and imposed upon each standard-packed box of citrus fruit grown and placed into the primary channel of trade in this state an assessment ~~excise tax~~ at maximum annual rates for each citrus season as provided ~~determined from the tables~~ in this paragraph ~~and based upon the previous season's actual statewide production as reported in the United States Department of Agriculture Citrus Crop Production Forecast as of June 1~~. The rates may be set at any lower rate in any year pursuant to paragraph (e).

1. The ~~following~~ maximum assessment for ~~tax rates, expressed in cents per box, shall apply to~~ grapefruit that ~~which~~ enters the primary channel of trade for use in fresh form may not exceed 36 cents per box.~~:~~

~~Previous season crop size (millions of boxes)~~	~~1995-1996~~	~~1996-1997~~	~~1997-1998~~	~~1998-1999~~	~~1999-2000 and thereafter~~
~~80 and greater~~	~~33~~	~~34~~	~~35~~	~~36~~	~~37~~

~~75-79.99~~	~~35~~	~~36~~	~~37~~	~~38~~	~~39~~
~~70-74.99~~	~~37~~	~~38~~	~~39~~	~~41~~	~~42~~
~~65-69.99~~	~~40~~	~~41~~	~~42~~	~~44~~	~~45~~
~~60-64.99~~	~~43~~	~~44~~	~~46~~	~~47~~	~~49~~
~~55-59.99~~	~~47~~	~~48~~	~~50~~	~~51~~	~~53~~
~~50-54.99~~	~~51~~	~~53~~	~~55~~	~~56~~	~~58~~
~~45-49.99~~	~~57~~	~~59~~	~~60~~	~~62~~	~~64~~
~~40-44.99~~	~~63~~	~~65~~	~~67~~	~~69~~	~~71~~
~~Less than 40~~	~~72~~	~~74~~	~~76~~	~~79~~	~~81~~

~~However, effective July 1, 2011, the tax rate per box on grapefruit that enters the primary channel of trade for use in fresh form may not exceed the tax rate per box in effect on May 1, 2011.~~

2. The ~~following~~ maximum assessment for ~~tax rates, expressed in cents per box, shall apply to~~ grapefruit that ~~which~~ enters the primary channel of trade for use in processed form may not exceed 36 cents per box. ~~forms:~~

~~Previous season crop size (millions of boxes)~~	~~1995-1996~~	~~1996-1997~~	~~1997-1998~~	~~1998-1999~~	~~1999-2000 and thereafter~~
~~80 and greater~~	~~23~~	~~24~~	~~25~~	~~25~~	~~26~~
~~75-79.99~~	~~25~~	~~25~~	~~26~~	~~27~~	~~28~~
~~70-74.99~~	~~26~~	~~27~~	~~28~~	~~29~~	~~30~~
~~65-69.99~~	~~28~~	~~29~~	~~30~~	~~31~~	~~32~~
~~60-64.99~~	~~31~~	~~32~~	~~32~~	~~33~~	~~34~~
~~55-59.99~~	~~33~~	~~34~~	~~35~~	~~36~~	~~37~~
~~50-54.99~~	~~36~~	~~38~~	~~39~~	~~40~~	~~41~~
~~45-49.99~~	~~40~~	~~41~~	~~43~~	~~44~~	~~45~~
~~40-44.99~~	~~45~~	~~46~~	~~48~~	~~49~~	~~51~~

~~Less than 40~~	~~51~~	~~53~~	~~54~~	~~56~~	~~57~~

~~However, effective July 1, 2011, the tax rate per box on grapefruit that enters the primary channel of trade for use in processed forms may not exceed the tax rate per box in effect on May 1, 2011.~~

3. The ~~following~~ maximum assessment for ~~tax rates, expressed in cents per box, shall apply to~~ oranges that ~~which~~ enter the primary channel of trade for use in fresh form may not exceed 7 cents per box.~~:~~

~~Previous season crop size (millions of boxes)~~	~~1995-1996~~	~~1996-1997~~	~~1997-1998~~	~~1998-1999~~	~~1999-2000 and thereafter~~
~~255 and greater~~	~~23~~	~~24~~	~~25~~	~~26~~	~~26~~
~~245-254.9~~	~~24~~	~~25~~	~~26~~	~~27~~	~~27~~
~~235-244.9~~	~~25~~	~~26~~	~~27~~	~~28~~	~~28~~

~~225-234.9~~	~~26~~	~~27~~	~~28~~	~~29~~	~~30~~
~~215-224.9~~	~~28~~	~~28~~	~~29~~	~~30~~	~~31~~
~~205-214.9~~	~~29~~	~~30~~	~~31~~	~~32~~	~~33~~
~~195-204.9~~	~~30~~	~~31~~	~~32~~	~~33~~	~~34~~
~~185-194.9~~	~~32~~	~~33~~	~~34~~	~~35~~	~~36~~
~~175-184.9~~	~~34~~	~~35~~	~~36~~	~~37~~	~~38~~
~~165-174.9~~	~~36~~	~~37~~	~~38~~	~~39~~	~~40~~
~~155-164.9~~	~~38~~	~~39~~	~~40~~	~~41~~	~~43~~
~~Less than 155~~	~~41~~	~~42~~	~~43~~	~~44~~	~~46~~

~~However, effective July 1, 2011, the tax rate per box on oranges that enter the primary channel of trade for use in fresh form may not exceed the tax rate per box in effect on May 1, 2011.~~

4. The ~~following~~ maximum assessment for ~~tax rates, expressed in cents per box, shall apply to~~ oranges that ~~which~~ enter the primary channel of trade for use in processed form may not exceed 25 cents per box.~~:~~

~~Previous season crop size (millions of boxes)~~	~~1995-1996~~	~~1996-1997~~	~~1997-1998~~	~~1998-1999~~	~~1999-2000 and thereafter~~
~~255 and greater~~	~~15~~	~~16~~	~~16~~	~~17~~	~~17~~
~~245-254.9~~	~~16~~	~~16~~	~~17~~	~~17~~	~~18~~
~~235-244.9~~	~~17~~	~~17~~	~~18~~	~~18~~	~~19~~
~~225-234.9~~	~~17~~	~~18~~	~~18~~	~~19~~	~~19~~
~~215-224.9~~	~~18~~	~~19~~	~~19~~	~~20~~	~~20~~
~~205-214.9~~	~~19~~	~~20~~	~~20~~	~~21~~	~~21~~
~~195-204.9~~	~~20~~	~~21~~	~~21~~	~~22~~	~~22~~
~~185-194.9~~	~~21~~	~~22~~	~~22~~	~~23~~	~~24~~
~~175-184.9~~	~~22~~	~~23~~	~~23~~	~~24~~	~~25~~

~~165-174.9~~	~~23~~	~~24~~	~~25~~	~~26~~	~~26~~
~~155-164.9~~	~~25~~	~~26~~	~~26~~	~~27~~	~~28~~
~~Less than 155~~	~~27~~	~~27~~	~~28~~	~~29~~	~~30~~

~~However, effective July 1, 2011, the tax rate per box on oranges that enter the primary channel of trade for use in processed form may not exceed 25 cents per box.~~

5. The actual assessment ~~tax rate~~ levied each year upon ~~oranges which enter the primary channel of trade for use in processed form, pursuant to this paragraph, paragraph (c), and subsection (4), shall also apply in that year to~~ tangerines and citrus hybrids regulated by the department that ~~of Citrus which~~ enter the primary channel of trade for use in processed form may not exceed 25 cents per box.

6. The ~~following~~ maximum assessment for ~~tax rates, expressed in cents per box, shall apply to~~ tangerines and citrus hybrids regulated by the department that ~~of Citrus which~~ enter the primary channel of trade for use in fresh form may not exceed 16 cents per box.~~:~~

~~Previous season crop size (millions of~~	~~1995-1996~~	~~1996-1997~~	~~1997-1998~~	~~1998-1999~~	~~1999-2000 and thereafter~~

~~boxes)~~

~~13 and greater~~	~~24~~	~~24~~	~~25~~	~~26~~	~~27~~
~~12 - 12.99~~	~~26~~	~~26~~	~~27~~	~~28~~	~~29~~
~~11 - 11.99~~	~~28~~	~~29~~	~~30~~	~~30~~	~~31~~
~~10 - 10.99~~	~~31~~	~~31~~	~~32~~	~~33~~	~~34~~
~~9 - 9.99~~	~~34~~	~~35~~	~~36~~	~~37~~	~~38~~
~~8 - 8.99~~	~~38~~	~~39~~	~~40~~	~~41~~	~~42~~
~~7 - 7.99~~	~~43~~	~~44~~	~~45~~	~~47~~	~~48~~
~~Less than 7~~	~~49~~	~~51~~	~~52~~	~~54~~	~~56~~

~~However, effective July 1, 2011, the tax rate per box on tangerines and citrus hybrids regulated by the Department of Citrus which enter the primary channel of trade for use in fresh form may not exceed the tax rate per box in effect on May 1, 2011.~~

(b) Whenever citrus fruit is purchased, acquired, or

handled on a weight basis, the following weights are ~~shall be~~ deemed the equivalent of one standard-packed box for assessment ~~tax~~ purposes under this section:

1. Grapefruit, 85 pounds.

2. Oranges, 90 pounds.

3. Tangerines, 95 pounds.

4. Citrus hybrids, 90 pounds.

(c) The assessments ~~excise taxes~~ imposed by this section do not apply to citrus fruit used for noncommercial domestic consumption on the premises where produced.

(d) For purposes of this subsection, a citrus season begins on August 1 of a year and ends on July 31 of the following year.

(e) The commission, upon an affirmative vote of a majority of its members and by an order entered by it before ~~prior to~~ November 1 of any year, may set the assessments ~~tax rates~~ up to the maximum rates specified in this subsection. The assessment ~~tax rate~~ shall apply only to the citrus season that ~~which~~ began on August 1 of the same calendar year. Such assessment ~~tax rate~~ may be applied by variety and on the basis of whether the fruit enters the primary channel of trade for use in fresh or processed form. If the commission cannot agree on a box assessment ~~tax rate~~, the assessment ~~tax rate~~ for the previous year shall remain in effect until the commission approves a new assessment ~~rate~~.

(4) Every handler shall keep a complete and accurate record of all citrus fruit handled by her or him. Such record shall be in such form and contain such other information as the

department ~~of Citrus~~ shall by rule ~~or regulation~~ prescribe. Such records shall be preserved by such handlers for a period of 1 year and shall be offered for inspection at any time upon oral or written demand by the department ~~of Citrus~~ or its duly authorized agents or representatives.

(5) Every handler shall, at such times and in such manner as the department ~~of Citrus~~ may by rule require, file with the department ~~of Citrus~~ a return certified as true and correct, on forms furnished by the department ~~of Citrus~~, stating, in addition to other information, the number of standard-packed boxes of each kind of citrus fruit handled by such handler in the primary channel of trade during the period of time covered by the return. Full payment of all assessments ~~excise taxes~~ due for the period reported shall accompany each handler's return.

(6)(a) All assessments ~~excise taxes~~ levied and imposed pursuant to ~~the provisions of~~ this section are ~~shall be~~ due and payable and shall be paid, or the amount thereof guaranteed as ~~hereinafter~~ provided in this subsection, at the time the citrus fruit is first handled in the primary channels of trade. All such assessments ~~taxes~~ shall be paid, or the payment thereof shall be guaranteed, to the department ~~of Citrus~~ by the person first handling the fruit in the primary channel of trade, except that payment of assessments ~~taxes~~ on fruit delivered or sold for processing in this state shall be paid, or payment thereof shall be guaranteed in accordance with department ~~of Citrus~~ rules, by the person processing such fruit.

(b) Periodic payment of assessments ~~excise taxes~~ upon citrus fruit by the person liable for such payment is ~~shall be~~

permitted only in accordance with department ~~of Citrus~~ rules~~,~~ and the payment thereof shall be guaranteed by the posting of a good and sufficient letter of credit from an issuing bank located in the United States, a cash bond, an appropriate certificate of deposit, or an approved surety bond in an amount and manner as prescribed by department ~~of Citrus~~ rule. Evidence of such guarantee of payment of assessments must ~~excise taxes shall~~ be made on the grade certificate in such manner and form as may be prescribed by department ~~of Citrus~~ rule.

(c) All assessments ~~taxes~~ collected by the department ~~of Citrus~~ shall be delivered to the State Treasury for payment into the proper advertising fund.

(7) All assessments ~~excise taxes~~ levied and collected under ~~the provisions of~~ this chapter shall be paid into the State Treasury on or before the 15th day of each month.~~;~~ Such moneys shall be accounted for in a special fund to be designated as the Florida Citrus Advertising Trust Fund, and all moneys in such fund are ~~hereby~~ appropriated to the department ~~of Citrus~~ for the following purposes:

(a) Four percent of all income of a revenue nature deposited in this fund, including transfers from any subsidiary accounts thereof and any interest income, shall be deposited in the General Revenue Fund pursuant to chapter 215.

(b) Moneys in the Florida Citrus Advertising Trust Fund shall be expended for the activities authorized by s. 601.13 and for the cost of those general overhead, research and development, maintenance, salaries, professional fees, enforcement costs, and other such expenses that ~~which~~ are not

related to advertising, merchandising, public relations, trade luncheons, publicity, and other associated activities. The cost of general overhead, maintenance, salaries, professional fees, enforcement costs, and other such expenses that ~~which~~ are related to advertising, merchandising, public relations, trade luncheons, publicity, and associated activities shall be paid from the balance of the Florida Citrus Advertising Trust Fund.

(c) Moneys in the Florida Citrus Advertising Trust Fund shall also be used by the department ~~of Citrus~~ for defraying those expenses not included in paragraph (b). After payment of such expenses, the money levied and collected under ~~the provisions of~~ subsection (3) shall be used exclusively for commodity and noncommodity advertising, merchandising, publicity, or sales promotion of citrus products in both fresh form and processed form, including citrus cattle feed and all other products of citrus fruits, produced in the state, in such equitable manner and proration as the department ~~of Citrus~~ may determine, but funds expended for commodity advertising thereunder shall be expended through an established advertising agency. A proration of moneys between commodity programs and noncommodity programs~~,~~ and among types of citrus products~~,~~ shall be made on or before November 1 of each shipping season and may not thereafter be modified for that shipping season unless the department finds such action necessary to preserve the economic welfare of the citrus industry.

(d) The pro rata portion of moneys allocated to each type of citrus product in noncommodity programs shall be used by the department to encourage substantial increases in the

effectiveness, frequency, and volume of noncommodity advertising, merchandising, publicity, and sales promotion of such citrus products through rebates and incentive payments to handlers and trade customers for these activities. The department shall ~~of Citrus is authorized and directed to~~ adopt rules providing for the use of such moneys. The rules shall establish alternate incentive programs, including at least one incentive program for product sold under advertised brands, one incentive program for product sold under private label brands, and one incentive program for product sold in bulk. For each incentive program, the rules shall establish eligibility and performance requirements and shall provide appropriate limitations on amounts payable to a handler or trade customer for a particular season. Such limitations may relate to the amount of citrus assessments ~~excise taxes~~ levied and collected on the citrus product handled by such handler or trade customer during a 12-month representative period. The department may require from participants in noncommodity advertising and promotional programs commercial information necessary to determine eligibility for and performance in such programs. Any information so required that ~~which~~ constitutes a "trade secret" as defined in s. 812.081 is confidential and exempt from ~~the provisions of~~ s. 119.07(1).

(8)(a) On certification by any employee of the department ~~of Citrus~~ that her or his actual and necessary expenses on any particular day while traveling outside the state exceeded the per diem provided by law, such employee shall show such excess on her or his regular expense voucher and support the same by

the proof required pursuant to rules adopted ~~and regulations to be promulgated~~ by the department ~~of Citrus~~.

(b) The department ~~of Citrus~~ is authorized to spend such amount as it deems advisable for guests involved in promotional activities in the sale of Florida citrus fruits and products.

(c) All obligations, expenses, and costs incurred under ~~the provisions of~~ this section shall be paid out of the Citrus Advertising Fund upon warrant of the Chief Financial Officer when vouchers thereof, approved by the department ~~of Citrus~~, are exhibited.

(9)(a) Any handler who fails to file a return or to pay any assessment ~~tax~~ within the time required shall thereby forfeit to the department ~~of Citrus~~ a penalty of 5 percent of the amount of assessment ~~tax~~ determined to be due, ~~;~~ but the department ~~of Citrus~~, if satisfied that the delay was excusable, may remit all or any part of such penalty. Such penalty shall be paid to the department ~~of Citrus~~ and disposed of as provided with respect to moneys derived from the assessments ~~taxes~~ levied and imposed by subsection (3).

(b) The department ~~of Citrus~~ may collect any assessments ~~taxes~~ levied and assessed by this chapter in any or all of the following methods:

1. By the voluntary payment by the person liable therefor.

2. By a suit at law.

3. By a suit in equity to enjoin and restrain any handler, citrus fruit dealer, or other person owing such assessments ~~taxes~~ from operating her or his business or engaging in business as a citrus fruit dealer until the delinquent assessments ~~taxes~~

are paid. Such action may include an accounting to determine the amount of assessments ~~taxes~~ plus delinquencies due. In any such proceeding, it is not necessary to allege or prove that an adequate remedy at law does not exist.

(10) The powers and duties of the department ~~of Citrus~~ include the following:

(a) To adopt and periodically ~~from time to time~~ alter, rescind, modify, and amend all proper and necessary rules~~,~~ ~~regulations,~~ and orders for the exercise of its powers and the performance of its duties under this chapter.

(b) To employ and at its pleasure discharge an advertising manager, agents, advertising agencies, and such clerical and other help as it deems necessary and to outline their powers and duties and fix their compensation.

(c) To make in the name of the department ~~of Citrus~~ such advertising contracts and other agreements as may be necessary.

(d) To keep books, records, and accounts of all of its activities, which books, records, and accounts shall be open to inspection, audit, and examination by the Auditor General and the Office of Program Policy Analysis and Government Accountability.

(e) To purchase or authorize the purchase of all office equipment and supplies and to incur all other reasonable and necessary expenses and obligations in connection with and required for the proper administration ~~carrying out~~ of ~~the provisions of~~ this chapter.

(f) To conduct, and pay out of the Florida Citrus Advertising Trust Fund, premium and prize promotions designed to

increase the use of citrus in any form.

(g) To advertise citrus cattle feed and promote its use.

(h) To conduct marketing activities in foreign countries and other programs designed to develop and protect domestic and international markets.

Section 19. Paragraphs (a), (b), and (d) of subsection (1), subsection (4), paragraph (a) of subsection (5), and subsections (8) through (11) of section 601.152, Florida Statutes, are amended to read:

601.152 Special marketing orders.—

(1)(a) Whenever, upon its own motion or upon petition of any handler or producer or group or association of handlers or producers of citrus fruit, the commission, upon affirmative vote of <u>seven</u> ~~nine~~ of its members, determines:

1. That the conduct of a special advertising and promotional marketing campaign or the conduct of market and product research and development, in addition to the advertising campaign being conducted pursuant to s. 601.15 and the research being conducted pursuant to the other provisions of the Florida Citrus Code, may substantially further increase the consumer acceptance and consumption of, and strengthen the market for, any type, variety, or form of citrus fruit or processed citrus product by further increasing the number of families buying such citrus fruit or such processed citrus product or by further increasing the quantity of such citrus fruit or processed citrus product purchased by buying families; and

2. That such substantial further increase and strengthening may be of substantial benefit to handlers thereof,

producers thereof, and to the economy and well-being of the state,

the commission shall direct that a proposed marketing order be formulated for a special marketing campaign of advertising and sales promotion, including, but not limited to, brand advertising rebate promotions or the conduct of market and product research and development for such type, variety, or form of citrus fruit or processed citrus product, and shall designate a public hearing to consider adoption and implementation of such proposed marketing order.

(b) Notice of the time, place, and purpose of such public hearing shall be:

1. Mailed, at least ~~not less than~~ 10 days before ~~prior to~~ such hearing, to each handler who, during the 12 months immediately before ~~preceding~~ such mailing, has first handled in the primary channel of trade in the state ~~Florida~~ the type, variety, and form of citrus fruit or citrus product specified in the proposed marketing order, and to each handler who the department ~~of Citrus~~ has good cause to believe will, during the period of time covered by the proposed marketing order, first handle in the primary channel of trade in the state ~~Florida~~ the type, variety, and form of citrus fruit or processed citrus product specified in such proposed marketing order.

2. Published in the Florida Administrative Weekly at least ~~not less than~~ 10 days before ~~prior to~~ such hearing.

(d) Copies of the proposed marketing order shall be made available to the public at the offices of the department ~~of~~

~~Citrus~~ at Lakeland at least 5 days before ~~prior to~~ such hearing and shall be in sufficient detail to apprise all persons having an interest therein of the approximate amount of moneys proposed to be expended; the assessments to be levied thereunder; and the general details of the proposed marketing order for a special marketing campaign of advertising or sales promotion or market or product research and development. Among the details so specified shall be the period of time during which the assessment imposed pursuant to subsection (8) will be levied upon the privilege so assessed, which period may not be greater than 2 years. The order may, however, provide that the expenditure of the funds received from the imposition of such assessments shall not be so confined~~,~~ but may be expended during such time or times as shall be specified in the proposed marketing order, which may be either during the shipping season immediately preceding the shipping seasons during which such assessments are imposed or during, or at any time subsequent to, the shipping seasons during which such assessments are imposed. This section does not ~~Nothing herein shall be construed to~~ prevent the imposition of a subsequent marketing order ~~either~~ before, during, or after the expenditure of funds collected under ~~pursuant to~~ a previously imposed marketing order, provided the aggregate of the assessments imposed may not exceed the maximum permitted under subsection (8).

(4) The department may ~~of Citrus is authorized to~~ prescribe such procedures as it deems necessary properly to conduct a referendum among handlers covered by the marketing order to determine whether such marketing order has been so

assented to.

(5)(a) Any marketing order adopted under ~~pursuant to~~ this section and subsequently approved by referendum as provided in this section ~~herein~~ shall take effect ~~become effective~~ 15 days after referendum approval is officially determined by the commission. Chapter 120 does not apply to this section. Any such marketing order is ~~shall be~~ reviewable by any person adversely affected, by certiorari to the district courts of appeal in the manner prescribed by the Florida Rules of Appellate Procedure. The venue of the proceeding for such review shall be the appellate district that ~~which~~ includes the county in which the hearings were conducted or, if the venue cannot be ~~thus~~ determined, the appellate district in which ~~wherein~~ the department's ~~Department of Citrus~~ executive offices are located.

(8)(a) Each person who, during the period ~~of time~~ specified in any marketing order implemented under ~~pursuant to~~ this section, first handles in the primary channel of trade in the state ~~Florida~~ any citrus fruit or processed citrus product of the type, variety, and form specified in such marketing order shall, for the privilege of so handling such citrus fruit or such citrus product, pay to the department ~~of Citrus~~ such assessments as are levied and imposed thereon by such marketing order, which funds shall be used by the department ~~of Citrus~~ to defray the necessary expenses incurred in the formation, issuance, administration, and enforcement of such marketing order and in the conduct of the special marketing campaign or market and product research and development provided for in such marketing order. However, such assessments levied and imposed

under this section may ~~pursuant hereto shall be at a rate~~ not ~~to~~ exceed 8 cents per standard-packed box on citrus fruits in fresh form, 1.3 cents per gallon on single strength citrus juices or sections, or 1.3 cents per pound of soluble citrus solids on concentrated citrus juices.

(b) The department ~~of Citrus~~ shall prescribe procedures for the assessment and collection of such funds to defray the necessary expenses incurred, or expected to be incurred, by the department ~~of Citrus~~ in the formation, issuance, administration, and enforcement of any marketing order implemented under ~~pursuant to the provisions of~~ this section.

(c) Every handler shall, at such times as the department may require, file with the department ~~of Citrus~~ a return, not under oath, on forms to be prescribed and furnished by the department ~~of Citrus~~, certified as true and correct, stating the quantity of the type, variety, and form of citrus fruit or citrus product specified in the marketing order first handled in the primary channels of trade in the state ~~Florida~~ by such handler during the period of time specified in the marketing order. Such returns shall contain any further information deemed by the department ~~of Citrus~~ to be reasonably necessary to properly administer or enforce ~~the provisions of~~ this section or any marketing order implemented under this section ~~hereunder~~. Information that, if disclosed, would reveal a trade secret, as defined in s. 812.081, of any person subject to a marketing order is confidential and exempt from ~~the provisions of~~ s. 119.07(1).

(d) All assessments imposed under ~~and pursuant to the~~

~~provisions of~~ this section are ~~shall be~~ due and payable and shall be paid by such handlers at such times and in such installments as the commission prescribes ~~shall prescribe~~ in such marketing order, or the amount thereof shall be provided for and guaranteed by giving a surety bond or cash deposit or as the department ~~of Citrus may~~ otherwise prescribes ~~prescribe~~.

(9)(a) All moneys collected by the department ~~of Citrus~~ under this section shall be set aside in the Florida Citrus Advertising Trust Fund as a special fund to be known as the "Citrus Special Marketing Order Fund." All moneys in such fund, after deducting the service charge provided in s. 601.15(7), are ~~hereby~~ appropriated to the department ~~of Citrus~~ for the actual expenses incurred by the department for ~~of Citrus with respect to~~ the formulation, issuance, administration, and enforcement of any marketing order so implemented and in the conduct of the special marketing campaign or market and product research and development to be carried out pursuant to any such marketing order so implemented. Upon the completion of the special marketing campaign or market and product research and development provided for pursuant to any marketing order so implemented ~~hereunder~~, any and all moneys remaining and not required by the department ~~of Citrus~~ to defray the expenses of such marketing order shall be deposited to and made a part of the Florida Citrus Advertising Trust Fund created by s. 601.15.

(b) If the department ~~of Citrus~~ finds it necessary ~~to do so~~, the department ~~it~~ may transfer to the Citrus Special Marketing Order Fund from any other portion of the Florida Citrus Advertising Trust Fund, including the Emergency Reserve

Fund and any other special or reserve fund, such sum of money as the department ~~of Citrus~~ determines is initially required to formulate, issue, administer, and enforce any such marketing order and conduct the special marketing campaign or market and product research and development to be carried out pursuant to such marketing order until moneys in the Citrus Special Marketing Order Fund derived from assessments imposed and collected pursuant to this section are sufficient for such purposes~~,~~ and thereafter repay such advance out of the Citrus Special Marketing Order Fund.

(10)(a) Any handler who fails to file a return or to pay any assessment within the time required shall thereby forfeit to the department ~~of Citrus~~ a penalty of 5 percent of the amount of assessment then due~~,~~ but the department ~~of Citrus~~, upon good cause shown, may waive all or any part of such penalty. Such penalty shall be paid to the department ~~of Citrus~~ and disposed of as provided with respect to moneys derived from the assessments imposed under ~~pursuant to~~ this section.

(b) The department ~~of Citrus~~ may collect the assessments imposed under ~~pursuant to~~ this section by any ~~in either or all~~ of the following methods:

1. The voluntary payment by the handler liable therefor.~~;~~

2. By a suit at law.~~;~~

3. By a suit in equity to enjoin and restrain any handler owing such assessments from operating his or her business or engaging in business as a citrus fruit dealer until the delinquent assessments are paid. Such action may include an accounting to determine the amount of assessments plus

delinquencies due. In any such proceeding, it shall not be necessary to allege or prove that an adequate remedy at law does not exist.

(11) This section shall be liberally construed to effectuate the purposes set forth and as additional and supplemental powers vested in the department ~~of Citrus~~ under the police power of this state.

Section 20. Section 601.155, Florida Statutes, is amended to read:

601.155 Equalizing assessment ~~excise tax~~; credit; exemption.—

(1) The first person who exercises in this state the privilege of processing, reprocessing, blending, or mixing processed orange products or processed grapefruit products or the privilege of packaging or repackaging processed orange products or processed grapefruit products into retail or institutional size containers or, except as provided in subsection (9) or except if an assessment ~~a tax~~ is levied and collected on the exercise of one of the foregoing privileges, the first person having title to or possession of any processed orange product or any processed grapefruit product who exercises the privilege in this state of storing such product or removing any portion of such product from the original container in which it arrived in this state for purposes other than official inspection or direct consumption by the consumer and not for resale shall be assessed and shall pay an assessment ~~excise tax~~ upon the exercise of such privilege at the rate described in subsection (2).

(2) Upon the exercise of any privilege described in subsection (1), the assessment ~~excise tax~~ levied by this section shall be at the same rate per box of oranges or grapefruit utilized in the initial production of the processed citrus products so handled as that imposed, at the time of exercise of the assessable ~~taxable~~ privilege, by s. 601.15 per box of oranges.

(3) For the purposes of this section, the number of boxes of oranges or grapefruit utilized in the initial production of processed citrus products subject to the assessable ~~taxable~~ privilege shall be:

(a) The actual number of boxes so utilized, if known and verified in accordance with department ~~of Citrus~~ rules; or

(b) An equivalent number established by department ~~of Citrus~~ rule which, on the basis of existing data, reasonably equates to the quantity of citrus contained in the product, when the actual number of boxes so utilized is not known or properly verified.

(4) For purposes of this section:

(a) "Processed orange products" means products for human consumption consisting of 20 percent or more single strength equivalent orange juice; orange sections, segments, or edible components; or whole peeled fruit.

(b) "Processed grapefruit products" means products for human consumption consisting of 20 percent or more single strength equivalent grapefruit juice; grapefruit sections, segments, or edible components; or whole peeled fruit.

(c) "Original container" includes any vessel, tanker or

tank car, or other transport vehicle.

(d) "Retail or institutional container" means a container having a capacity of 10 gallons or less.

(5) Products made in whole or in part from citrus fruit on which an equivalent assessment ~~tax~~ is levied pursuant to s. 601.15 are exempt from the assessment ~~tax~~ imposed by this section. In the case of products made in part from citrus fruit exempt from the assessment ~~tax~~ imposed by this section, it shall be the burden of the persons liable for the assessment ~~excise tax~~ to show the department ~~of Citrus~~, through competent evidence, proof of that part which is not subject to an assessable ~~a taxable~~ privilege.

(6) Every person liable for the assessment ~~excise tax~~ imposed by this section shall keep a complete and accurate record of the receipt, storage, handling, exercise of any assessable ~~taxable~~ privilege under this section, and shipment of all products subject to the assessment ~~tax~~ imposed by this section. Such record shall be preserved for a period of 1 year and shall be offered for inspection upon oral or written request by the department ~~of Citrus~~ or its duly authorized agent.

(7) Every person liable for the assessment ~~excise tax~~ imposed by this section shall, at such times and in such manner as the department ~~of Citrus~~ may by rule require, file with the department ~~of Citrus~~ a return, certified as true and correct, on forms to be prescribed and furnished by the department ~~of Citrus~~, stating, in addition to other information reasonably required by the department ~~of Citrus~~, the number of units of processed orange or grapefruit products subject to this section

upon which any assessable ~~taxable~~ privilege under this section was exercised during the period of time covered by the return. Full payment of assessments ~~excise taxes~~ due for the period reported shall accompany each return.

(8) All assessments ~~taxes~~ levied and imposed by this section shall be due and payable within 61 days after the first of the assessable ~~taxable~~ privileges is exercised in this state. Periodic payment of the assessments ~~excise taxes~~ imposed by this section by the person first exercising the assessable ~~taxable~~ privileges and liable for such payment shall be permitted only in accordance with department ~~of Citrus~~ rules, and the payment thereof shall be guaranteed by the posting of an appropriate certificate of deposit, approved surety bond, letter of credit from an issuing bank located in the United States, or cash deposit in an amount and manner as prescribed by the department ~~of Citrus~~.

(9) When any processed orange or grapefruit product is stored or removed from its original container as provided in subsection (1), the equalizing assessment ~~excise tax~~ is levied on such storage or removal, and such product is subsequently shipped out of the state in a vessel, tanker or tank car, or container having a capacity greater than 10 gallons, the person who is liable for the assessment ~~tax~~ shall be entitled to an assessment ~~a tax~~ refund, if such assessment ~~tax~~ has been paid, or to an assessment ~~a tax~~ credit, provided she or he can provide satisfactory proof that such product has been shipped out of the state and that no privilege assessable ~~taxable~~ under subsection (1) other than storage or removal from the original container

was exercised before ~~prior to~~ such shipment out of the state.

(10) Notwithstanding any ~~other~~ provision of law, the department ~~of Citrus~~ shall develop a process by which any person liable for the assessment ~~excise tax~~ imposed under this section may annually object to payment of the assessment ~~tax~~. Any such objection must be allowed without discretion as to the validity thereof, and that person shall be granted the immediate right to elect not to pay two-thirds of the applicable assessment ~~tax rate~~. The department ~~of Citrus~~ may not expend any of the remaining one-third of the applicable assessment ~~tax rate~~ on any advertising, marketing, or public relations activities to which any person liable for the assessment ~~excise tax~~ imposed under this section objects; however, such funds may be used for research, administrative, and regulatory activities. Effective July 1, 2004, upon any necessary legislative appropriation of moneys due under the settlement agreement of Consolidated Case No. 2002-CA-4686 in the Circuit Court of the Tenth Judicial Circuit in Polk County, the plaintiffs shall agree to the dismissal of their claim under the foreign commerce clause with prejudice.

(11) All assessments ~~excise taxes~~ levied and collected under ~~the provisions of~~ this section, including penalties, shall be paid into the State Treasury to be made a part of the Florida Citrus Advertising Trust Fund in the same manner, for the same purposes, and in the same proportions as set forth in s. 601.15(7). Any person failing to file a return or pay any assessment within the time required shall thereby forfeit to the department ~~of Citrus~~ a penalty of 5 percent of the amount of

assessment then due, ~~,~~ but the department ~~of Citrus~~, on good cause shown, may waive all or any part of such penalty.

(12) This section shall be liberally construed to effectuate the purposes set forth and as additional and supplemental powers vested in the department ~~of Citrus~~ under the police power of this state.

Section 21. Section 601.24, Florida Statutes, is amended to read:

601.24 Department of Citrus to prescribe methods of testing and grading.—The department ~~of Citrus~~ shall adopt rules providing ~~by rule or regulation provide~~ the manner and method to be used in drawing samples and the quantity to be used in testing and grading of citrus fruit and the canned and concentrated products thereof and shall provide specifications and methods for use of juice extractors to be used in extracting juice for such tests and grading purposes.

Section 22. Section 601.25, Florida Statutes, is amended to read:

601.25 Determination of soluble solids and acid.—The department ~~of Citrus by rule or regulation~~ shall adopt rules determining ~~determine~~ the method by which juice is tested for percentage of total soluble solids, the method by which juice is tested for acidity, and the method for testing fruit for juice content. Until ~~such time as~~ the department determines ~~of Citrus may see fit to determine~~ such method by rule ~~or regulation~~, the Brix hydrometer shall be used and the reading of the hydrometer corrected for temperature shall be considered as the percent of the total soluble solids, ~~,~~ and anhydrous citric acid shall be

determined by titration of the juice using standard alkali and phenolphthalein as indicator, the total acidity being calculated as anhydrous citric acid.

Section 23. Subsections (5) and (7) of section 601.28, Florida Statutes, are amended to read:

601.28 Inspection fees.—

(5) The Department of Agriculture may ~~shall have the power to~~ adopt rules providing for the imposition of special fees for inspections conducted during hours not contemplated by regular state work hours. The ~~Such~~ rules shall prescribe circumstances under which the fees levied pursuant to paragraphs (1)(a) and (b) would not apply and the fees imposed pursuant to such rules would apply. The rules shall require ~~provide~~ that such ~~said~~ fees ~~shall~~ be levied when specifically actuated by contract between the Department of Agriculture and persons liable for the fees created by this subsection. The rules may ~~shall~~ not authorize ~~allow~~ fees that exceed ~~to be charged which are in excess of~~ the Department of Agriculture's ~~department's~~ actual cost of the inspection to be made, nor may ~~shall~~ such fees be less than those imposed by paragraphs (1)(a) and (b).

(7) The duties of the Department of Agriculture ~~and Consumer Services~~ shall include the duty to conduct hearings, through a hearing officer who shall be an attorney authorized to practice law within this state, on violations of this section and rules adopted ~~promulgated~~ thereunder. The ~~Said~~ hearing officer shall be selected by the Commissioner of Agriculture and shall be in addition to her or his regular legal staff authorized by law. The ~~Said~~ hearing officer shall, in addition

to conducting such hearings, be available to the Division of Fruit and Vegetables for other legal services on matters pertaining to violations of this chapter and rules adopted ~~promulgated~~ thereunder.

Section 24. Section 601.31, Florida Statutes, is amended to read:

601.31 Citrus inspectors; employment.—The Department of Agriculture may in each year employ as many citrus fruit inspectors for such period or periods, not exceeding 1 year, as the ~~said~~ Department of Agriculture shall deem necessary for the effective enforcement of the citrus fruit laws of this state. All persons authorized to inspect and certify to the maturity and grade of citrus fruit shall be governed in the discharge of their duties as such inspectors by the provisions of law and by the rules adopted ~~and regulations prescribed~~ by the Department of Citrus and the Department of Agriculture and shall perform their duties under the direction and supervision of the Department of Agriculture. All citrus inspectors appointed for the enforcement of this chapter shall be persons who are duly licensed or certified by the United States Department of Agriculture as citrus fruit inspectors.

Section 25. Section 601.32, Florida Statutes, is amended to read:

601.32 Compensation of inspectors.—The salaries of the chief citrus inspector, the chief laboratory inspector, the district supervising inspectors, the junior and senior inspectors, and all other necessary inspectors shall be in the amount as determined and fixed by the Department of Agriculture,

and~~,~~ in addition thereto, each such inspector ~~of said inspectors~~ shall be reimbursed for travel expenses as provided in s. 112.061, which shall be paid upon approval of accounts therefor by the Department of Agriculture. The Department of Agriculture may employ such additional field and other agents and clerical assistance at such times and for such periods and incur and pay any other expenses, including travel expenses, as provided in s. 112.061, of the Department of Agriculture during the citrus fruit season, as may be necessary for the effective enforcement of the citrus fruit laws of this state and of the rules ~~regulations~~ of the Department of Citrus and ensure ~~assure~~ the payments of the inspection fees imposed or that may be imposed under the authority of law.

Section 26. Section 601.33, Florida Statutes, is amended to read:

601.33 Interference with inspectors.—A ~~It is unlawful for any~~ person may not ~~to~~ obstruct, hinder, resist, interfere with, or attempt to obstruct, hinder, resist, or interfere with any authorized inspector in the discharge of any duty imposed upon or required of her or him by the provisions of law or by any rule adopted ~~or regulation prescribed~~ by the Department of Citrus or the Department of Agriculture, or ~~to~~ change or attempt to change any instrument, substance, article, or fluid used by such inspector or emergency inspector in making tests of citrus fruit or the canned or concentrated products thereof.

Section 27. Section 601.34, Florida Statutes, is amended to read:

601.34 Duties of law enforcement officers.—Each state or

county law enforcement officer shall make arrests for violations of the citrus fruit laws of this state or of any rule~~,~~ ~~regulation,~~ or order of ~~promulgated by~~ the commission or the Department of Agriculture ~~and Consumer Services~~ under authority of law when notified of such violation by the Department of Agriculture or its duly authorized agent or representative.

Section 28. Section 601.35, Florida Statutes, is amended to read:

601.35 Disputes as to quality, etc.; procedure.—When any dispute as to quality, grade, or condition of citrus fruit or the canned or concentrated products thereof arises, the shipper or any financially interested person may call in at his, her, or its expense an inspector licensed or certified only by the United States Department of Agriculture to inspect such citrus fruit or its canned or concentrated products. Such inspector shall issue a regular official certificate to the applicant showing the quality, grade, and condition thereof, and~~,~~ in all cases, such certificate shall be prima facie evidence. If such certificate shows that the citrus fruit or the canned or concentrated products thereof conforms ~~therein mentioned and described to conform~~ to the requirements ~~provisions~~ of this chapter and the rules~~, regulations,~~ or orders of the Department of Citrus and of the Department of Agriculture, such shipper or such financially interested person may present the original certificate to the person or representative of the person having charge of the vehicle of transportation by which such citrus fruit or the canned or concentrated products thereof are ~~is~~ to be transported, which person or representative shall then accept

such citrus fruit or the canned or concentrated products thereof for shipment provided that all other provisions of this chapter and of the rules~~, regulations,~~ and orders of the Department of Citrus and of the Department of Agriculture have been met and complied with.

Section 29. Section 601.37, Florida Statutes, is amended to read:

601.37 Unlawful acts of inspectors.—An ~~It is unlawful for any~~ authorized inspector may not ~~to~~ make or deliver a certificate of inspection and maturity and quality of any citrus fruit or the canned or concentrated products thereof upon which the inspection fees and advertising assessments ~~taxes~~ have not been paid or the payment thereof guaranteed, or ~~to~~ make or issue any false certificate as to inspection, maturity, quality, or payment of inspection fees.

Section 30. Section 601.38, Florida Statutes, is amended to read:

601.38 Citrus inspectors; authority.—For the purpose of enforcing ~~the provisions of~~ the citrus fruit laws of this state, as well as rules ~~the regulations~~ of the department ~~of Citrus~~, citrus fruit inspectors may enter into any packinghouse, ~~or~~ canning plant, or concentrating plant at any hour of day or night and have and demand access and admission to any enclosed portion of such ~~said~~ packinghouse, canning plant, or concentrating plant. Such ~~Said~~ citrus fruit inspectors may also inspect all packinghouse or canning plant records pertaining to receipts from groves and to details of receiving, handling, running, processing, packing, or canning citrus fruit.

Section 31. Section 601.40, Florida Statutes, is amended to read:

601.40 Registration of citrus packinghouses, processing plants with Department of Agriculture.—The owner, manager, or operator of each packinghouse, canning plant, or concentrating plant~~,~~ at which it is intended to pack, can, concentrate, or prepare citrus fruit for market or transportation during the then-present or the next ensuing citrus fruit shipping season~~,~~ shall register such packinghouse, canning plant, or concentrating plant and its location, shipping point, and post office with the Department of Agriculture at least ~~not less than~~ 10 days before packing, canning, concentrating, or otherwise preparing any citrus fruit or the canned or concentrated products thereof for sale or transportation in or at such packinghouse, canning plant, or concentrating plant,~~;~~ and she or he shall, in addition to such registration, give the ~~said~~ Department of Agriculture at least ~~not less than~~ 7 days' written notice of the date on which packing, canning, concentrating, or other preparation for sale or transportation of citrus fruit of the then-current or the next ensuing season's crop will begin ~~be begun~~. The Department of Agriculture shall issue a certificate of registration to each such packinghouse, canning plant, or concentrating plant registering.~~; provided,~~ However, ~~that no~~ such certificate of registration may not ~~shall~~ be issued to any packinghouse, canning plant, or concentrating plant unless the operator thereof has ~~shall have first~~ applied for and received her or his license as a citrus fruit dealer and furnished a bond as such citrus fruit dealer in accordance with law.

Section 32. Section 601.43, Florida Statutes, is amended to read:

601.43 Immature and unfit citrus fruit; individual sampling.—Any oranges, grapefruit, ~~and~~ tangerines, ~~not conforming to the minimum maturity requirements set forth in this chapter~~ and ~~any~~ citrus hybrids not conforming to the minimum maturity requirements set forth in department rules ~~of Citrus regulations shall be~~ deemed and held to be immature and unfit for human consumption. In the testing of fruit to determine whether the same conforms to such requirements, any inspector has ~~shall have~~ the right and authority to test the individual fruit in any given sample of fruit drawn in the number and by the manner as prescribed by ~~regulations of the~~ department rules ~~of Citrus~~. If, upon ~~the~~ testing ~~of~~ the juice of ~~said~~ individual fruit in any sample, more than 10 percent of such ~~said~~ individual fruit ~~shall~~ fail by more than one-half percentage point to meet the minimum ratio of total soluble solids to anhydrous citric acid that ~~which~~ is required for such fruit, ~~then~~ all of the fruit in the lot from which the ~~said~~ sample was drawn is ~~shall be~~ deemed and shall be held to be immature and unfit for human consumption.

Section 33. Section 601.44, Florida Statutes, is amended to read:

601.44 Destruction of immature fruit.—All citrus fruit or processed citrus products prepared for sale or transportation, that are ~~which is~~ being prepared for such purpose, or that have ~~which has~~ been or are ~~is~~ being delivered for sale or transportation that may be found immature or otherwise unfit for

human consumption upon inspection and testing shall be seized and destroyed by a citrus fruit inspector or the sheriff of the county where found as may be provided by ~~regulations prescribed by the~~ department rules ~~of Citrus~~. Such ~~Said~~ determination of immaturity or unfitness for human consumption may be made by a citrus fruit inspector at any place where such citrus fruit may be found after severance from the tree, and such seizure and destruction may likewise occur at any such place. However, in the event of seizure of citrus fruit upon the grounds that such citrus fruit fails to show a break in color required by this chapter or department rules ~~of Citrus regulations~~ for that particular variety of citrus fruit, the owner or person in charge of such citrus fruit shall be allowed to separate and retain for subsequent use, in accordance with ~~the provisions of~~ this chapter or department rules ~~of Citrus regulations~~, that portion of such citrus fruit which shows a break in color required by this chapter or department rules ~~of Citrus regulations~~ for that particular variety, and~~,~~ in such case, only that portion thereof which fails to show a break in color for such variety, as required by this chapter or department rules ~~of Citrus regulations~~, shall be destroyed by a citrus fruit inspector or the sheriff of the county, as may be prescribed by ~~regulations of the~~ department rules ~~of Citrus~~.

Section 34. Section 601.45, Florida Statutes, is amended to read:

601.45 Grading of fresh citrus fruit.—

(1) All citrus fruit, except as provided in s. 601.50, sold or shipped, or offered for sale or shipment, for

consumption in fresh form shall be graded in a registered packinghouse in this state according to standards established by the department ~~of Citrus~~, and the grade of such fruit shall be indicated as ~~hereinafter~~ provided in this section.

(2) Fresh citrus fruit being transported in bulk form shall have stamped upon such fruit, subject to department rules:

(a) The actual grade thereof; or

(b) Brands or trademarks properly registered with the department to represent state or U.S. grades, as provided in subsection (4).

(3) For fresh citrus fruit being transported when packed in a closed container approved or otherwise authorized by the department ~~of Citrus~~, it shall be sufficient if the closed container has the grade indicated thereon, in accordance with department rules, by:

(a) Stamping the grade of the fruit on the container; or

(b) Use of labels, brands, or trademarks properly registered with the department to represent state or U.S. grades, as provided in subsection (4).

(4) In accordance with such rules as the department ~~of Citrus~~ may prescribe, licensed citrus fruit dealers in this state are ~~shall be~~ entitled to register labels, brands, or trademarks for grade identification purposes. The department shall maintain a record of all labels, brands, or trademarks registered for grade identification purposes, which record may be purged as necessary.

Section 35. Subsection (1) of section 601.46, Florida Statutes, is amended to read:

601.46 Condition precedent to sale of citrus fruit.—

(1) It is unlawful, except as provided in s. 601.50, for any person to sell or offer for sale, ~~to~~ transport, prepare, receive, or deliver for transportation or market any citrus fruit in fresh form unless such fruit has matured in accordance with the maturity standards and is accompanied by a certificate of inspection and maturity thereof issued by a duly authorized citrus fruit inspector of the Department of Agriculture ~~and Consumer Services~~. However, the Department of Citrus may adopt rules providing ~~by regulation provide~~ that, in lieu of the accompaniment of such shipment by a certificate of inspection and maturity, the fact of such inspection may be shown by appropriate means on the manifest or bill of lading covering such shipment.

Section 36. Section 601.49, Florida Statutes, is amended to read:

601.49 Condition precedent to selling processed citrus products.—A ~~It is unlawful for any~~ person, except as provided in s. 601.50, may not ~~to~~ sell or offer for sale, ~~to~~ transport, receive, or deliver for transportation~~,~~ or market any canned or concentrated products of citrus fruits unless such products have ~~the same has~~ been inspected and are ~~is~~ accompanied by a certificate of inspection issued by a duly authorized inspector of the Department of Agriculture.~~, provided,~~ However, ~~that the Department of Citrus shall by regulation provide that~~ in lieu of ~~the accompaniment of such shipment by~~ a certificate of inspection, proof ~~the fact~~ of such inspection may be shown, pursuant to rules adopted by the Department of Citrus, by

appropriate means on the manifest or bill of lading covering such shipment.

Section 37. Section 601.50, Florida Statutes, is amended to read:

601.50 Exemptions; sale or shipment of citrus or citrus products for certain purposes.—

(1) Notwithstanding ~~Irrespective of the provisions of~~ ss. 601.45, 601.46, 601.48, 601.49, 601.51, and 601.52, the department may adopt ~~of Citrus under~~ such precautionary rules that ~~and regulations as~~ it deems ~~may deem~~ expedient to ~~may~~ permit the sale or shipment of citrus fruit or the canned or concentrated products thereof without the issuance of and filing of an inspection certificate and without the grade being shown on the container thereof, of:

(a) ~~(1)~~ Intrastate shipments of fresh citrus fruit for consumption or use within the state.~~;~~

(b) ~~(2)~~ Shipments to be used for charitable or unemployment relief purposes.~~;~~

(c) ~~(3)~~ Shipments to the United States Government or any of its agencies and interstate shipments to any packinghouse, canning plant, or concentrate plant for commercial processing, as may be defined by the department, ~~of Citrus;~~ or to fresh fruit juice distributors outside the state.~~;~~

(d) ~~(4)~~ Shipments by any method of transportation by "gift fruit shippers," as defined by the department ~~of Citrus~~, but such shipments shall not be for the purpose of resale by the consignee thereof.~~; but, provided~~

(2) However ~~that~~, any ~~no~~ such rule adopted under this

section may not ~~or regulation issued hereunder shall~~ permit or allow the sale or shipment of citrus fruit deemed by this section to be immature and unfit for human consumption or ~~nor~~ of canned or concentrated products thereof prepared or made from citrus fruit deemed by this law to be immature and unfit for human consumption. In addition~~; but~~, ~~provided further, that~~ shipments under paragraphs (1)(a) and (d) must ~~subsections (1) and (4) shall~~ meet such minimum grade standards as may periodically~~, from time to time,~~ be established by the department, ~~of Citrus;~~ and~~,~~ ~~provided further that~~ such rules must ~~and regulations shall~~ provide for the due collection of any advertising assessments ~~taxes~~ and inspection fees that may be due thereon.

Section 38. Section 601.501, Florida Statutes, is amended to read:

601.501 Charitable shipments exempt from assessments ~~tax-exempt~~.—Shipments of citrus fruit when permitted under s. 601.50 for charitable purposes are ~~shall be~~ exempt from all advertising assessments ~~taxes~~.

Section 39. Section 601.51, Florida Statutes, is amended to read:

601.51 Certification required for shipment of citrus fruit or products.—

(1) A person, including a ~~No~~ common carrier or other carrier, may not: ~~or person,~~

(a) Except as provided in s. 601.50, ~~shall~~ accept for shipment, ship, or transport any citrus fruit or the canned or concentrated products thereof until a grade certificate is

issued showing the grade thereof, which certificate or a duplicate thereof must ~~shall~~ be filed with the carrier at the point of shipment.~~, nor shall any common carrier or other carrier or person~~

(b) Accept for shipment or ship any citrus fruit or the canned or concentrated products thereof where written notice has been given to such person, common carrier, or other carrier ~~or person~~, or her or his representative or agent, by the Department of Agriculture or its authorized agent, employee, or inspector that such ~~said~~ citrus fruit or the canned or concentrated products thereof do ~~does~~ not comply with the provisions of law or ~~the~~ rules adopted ~~and regulations promulgated~~ by the Department of Citrus or the Department of Agriculture.~~;~~

(2)(a) A ~~provided that the~~ shipper or handler of such citrus fruit or the canned or concentrated products thereof has ~~shall have~~ the privilege of repacking or remarking, and ~~that,~~ if or when such citrus fruit or the canned or concentrated products thereof are ~~the same shall have been~~ repacked or remarked to conform to the provisions of law or ~~said~~ rules~~, regulations,~~ or orders of ~~promulgated by~~ the Department of Citrus or the Department of Agriculture, the Department of Agriculture or its authorized inspector or agent shall notify such person, ~~said~~ common carrier, or other carrier ~~or person~~, or her or his agent, that such citrus fruit or the canned or concentrated products thereof may be accepted for shipment, and such shipper or handler is ~~shall~~ not ~~be~~ considered as having violated this chapter or such ~~said~~ rules~~, regulations,~~ or orders.~~, but provided further that this section shall be deemed to have been~~

~~complied with~~

(b) If a ~~the~~ shipper conforms ~~shall have conformed~~ to the rules adopted ~~regulations issued~~ by the Department of Citrus under ~~the provisions of~~ s. 601.49, the shipper is deemed to have complied with this section.

Section 40. Section 601.52, Florida Statutes, is amended to read:

601.52 Carriers not to accept fruit without ~~unless same bears~~ evidence of payment of assessments and fees ~~excise taxes~~.— A ~~No~~ common carrier or other carrier or person, except as provided in s. 601.50, may not ~~shall~~ accept for shipment, ship, or transport any citrus fruit or processed citrus products unless the grade certificate, manifest, or bill of lading covering such ~~said~~ citrus fruit or processed citrus products bears evidence of the payment, as provided by law, of the ~~taxes,~~ assessments~~,~~ and fees imposed by this chapter.

Section 41. Subsection (1) of section 601.54, Florida Statutes, is amended to read:

601.54 Seizure of unwholesome fruit by Department of Agriculture's agents.—

(1) The Department of Agriculture or its duly authorized inspectors shall seize and destroy all citrus fruit found by the ~~said~~ Department of Agriculture or inspectors to be unwholesome or decomposed so that it is unfit for canning or concentrating purposes as defined by law or by any rule adopted by ~~regulation of~~ the Department of Citrus under ~~pursuant to authority given in~~ this chapter, and~~,~~ in the event any inspector finds ~~shall find~~ that any canner or concentrator is canning or concentrating

fruit prohibited to be used, she or he may seize and destroy not only such fresh fruit found in the canning or concentrating plant but also citrus fruit or juice in the process of being canned or concentrated or that ~~which~~ has been canned or concentrated from the same lot or shipment wherein the fresh fruit is found by such ~~said~~ inspector to be subject to seizure under ~~the provisions of~~ this section.

Section 42. Subsection (3) of section 601.55, Florida Statutes, is amended to read:

601.55 Citrus fruit dealer; license required.—

(3) An applicant is ~~shall be~~ limited to the filing of one application for each citrus shipping season, which application may be amended if necessary to comply with the requirements of this chapter and ~~regulations of the~~ department rules ~~of Citrus~~.

Section 43. Section 601.56, Florida Statutes, is amended to read:

601.56 Application for dealers' licenses; requirements.—Any person desiring to engage in the business of a citrus fruit dealer in the state must apply ~~shall make application~~ to the department ~~of Citrus~~ for a license. The department ~~of Citrus~~ shall adopt rules prescribing ~~by regulation prescribe~~ the information to be contained in such application.

(1) All such applications, in addition to other information that ~~which~~ may be prescribed by the department ~~of Citrus~~, must contain the following information:

(a) Name and address of the individual, firm, partnership, association, corporation, or other business unit applying for a license.~~;~~

(b) Names and addresses of the principal stockholders, officers, partners, or other individuals belonging to or connected with the applicant if the applicant for a license is a firm, partnership, association, corporation, or other business unit, whether it be for profit or otherwise.~~;~~

(c) The length of time the applicant has been engaged in the citrus fruit business in the state ~~Florida~~ in any manner whatsoever.~~;~~

(d) A statement of delinquent accounts, if any, growing out of the ordinary course of business with producers.~~, if any there be;~~

(e) A financial statement of the applicant, if required by the department ~~of Citrus~~, showing such information as the department ~~of Citrus~~ may prescribe regarding the financial conditions of the applicant.~~;~~

(f) Whether or not the applicant or any of its officers, directors, or stockholders have previously been licensed as a citrus fruit dealer~~,~~ or connected with a licensed citrus fruit dealer in the state and, if so, the date all such licenses were obtained.~~; and~~

(g) The number of boxes of citrus fruit, measured in terms of standard-packed boxes, that ~~which~~ the applicant intends to deal with during the current or ensuing shipping season.

(2) If the applicant is an individual and is shown to be a nonresident of the state~~,~~ or is a copartnership and each member is shown to be a nonresident of the state, ~~in either event,~~ the ~~said~~ applicant shall designate some bona fide resident of the state as such applicant's resident agent upon whom process may

be served. The service of process of any of the courts of this state upon such resident agent shall be as effectual and binding upon such ~~said~~ applicant as if personally served upon such ~~said~~ applicant.

(3) If the applicant is a corporation, ~~then~~ such corporation must be one organized and existing under the laws of this state or having an unrevoked permit authorizing it to transact business in this state.

(4) When a license application is submitted for a person or business entity that ~~which~~ has an unpaid balance due and owing the department ~~of Citrus~~ for any citrus assessments ~~excise taxes~~ or delinquency fees levied and imposed under the authority of this chapter, the applicant shall be notified immediately by the department, ~~;~~ and such application may ~~shall~~ not be further processed or presented to the commission for action until such assessments ~~taxes~~ and fees are paid in full. However, any applicant whose assessments ~~taxes~~ are under review by the department ~~of Citrus~~ or are contested in the appropriate administrative agency or court shall not have its application denied solely on the basis of owed assessments ~~taxes~~ or fees~~,~~ until the matter is determined by the department, agency, or court.

Section 44. Subsections (1), (6), and (7) of section 601.57, Florida Statutes, are amended to read:

601.57 Examination of application; approval of dealers' licenses.—

(1) The department ~~of Citrus~~ shall, within a reasonable time, examine the application and consider the information

submitted therewith, including the applicant's financial statement and the reputation of the applicant as shown by applicant's past and current history and activities, including applicant's method and manner of doing business. The department ~~of Citrus~~ shall also consider the past history of any applicant, either individually or in connection with any individual, copartnership, corporation, association, or other business unit with whom any applicant has ~~shall have~~ been connected in any capacity, and may in proper cases impute to any individual, corporation, copartnership, association, or other business unit liability for any wrong or unlawful act previously done or performed by such individual, corporation, copartnership, association, or other business unit.

(6) The department ~~of Citrus~~ shall designate not more than three employees directly involved in the processing of citrus fruit dealer license applications, who shall be a part of, and shall have access to, the criminal justice information system described in chapter 943, for purposes of investigating license applicants.

(7) The department may adopt rules establishing ~~of Citrus is authorized to establish by rule~~ the procedure and guidelines for granting interim conditional staff approval for issuance of a conditional citrus fruit dealer's license, which license shall at all times be subject to final approval or other action by the commission at its next regular meeting. Any license so issued shall clearly and conspicuously indicate thereon the conditional nature of the approval and pendency of final action.

Section 45. Subsection (1) of section 601.58, Florida Statutes, is amended to read:

601.58 Application approval or disapproval.—

(1) Each citrus fruit dealer's license application that ~~which~~ is approved, or approved subject to conditions, shall be forwarded immediately to the Department of Agriculture ~~and Consumer Services~~, which shall, upon satisfaction of the stated conditions, if any are endorsed thereon, issue to the applicant an appropriate license as prescribed in s. 601.60.

Section 46. Section 601.60, Florida Statutes, is amended to read:

601.60 Issuance of dealers' licenses.—

(1) Whenever an application bears the approved endorsement of the Department of Citrus and satisfactions of conditions of approval, if any, and the applicant has paid the prescribed fee, the Department of Agriculture ~~and Consumer Services~~ shall issue to such applicant a license, as approved by the Department of Citrus, which shall entitle the licensee to do business as a citrus fruit dealer during the effective term of such license in accordance with s. 601.55 or, if applicable, until such license is ~~may be~~ suspended or revoked by the Department of Agriculture ~~and Consumer Services~~ in accordance with ~~the provisions of~~ law. The Department of Agriculture ~~and Consumer Services~~ may issue a provisional license for a period of no longer than 1 year to an applicant who is under investigation for an action that would constitute a violation of this chapter or has pending against such applicant an administrative or civil proceeding that ~~which~~ alleges an action that would constitute a violation of this

chapter. The department shall establish by rule requirements for renewal of a provisional license. When the investigation is complete or the pending proceeding has been disposed of, the Department of Agriculture may issue a regular license under this section.

(2) If, during the effective term of such license, there is any change in the ownership, officers, managership, or stockholders of any copartnership, association, corporation, or other business unit to which a license has been issued, the licensee shall immediately notify the Department of Citrus in writing specifying the change in detail. The Department of Citrus may ~~shall be entitled to~~ receive, and the licensee must ~~shall be required to~~ promptly furnish, such additional information as if the licensee were applying for a new license. If, after investigating the facts and applying the standards prescribed for the issuance of new licenses, the commission finds that the licensee is not entitled to a citrus fruit dealer's license, the commission shall recommend to the Department of Agriculture ~~and Consumer Services~~ that such existing license be suspended or revoked, and~~,~~ upon such recommendation, the Department of Agriculture ~~and Consumer Services~~ shall immediately take necessary steps to suspend or revoke such existing license.

Section 47. Section 601.601, Florida Statutes, is amended to read:

601.601 Registration of dealers' agents.—Each ~~Every~~ licensed citrus fruit dealer shall:

(1) Register with the Department of Agriculture each ~~and~~

~~every~~ agent~~,~~ as defined in s. 601.03~~(2),~~ who is authorized to represent such dealer; apply ~~make application~~ for registration of such agent or agents on a form approved by the Department of Agriculture and filed with the Department of Agriculture at least ~~not less than~~ 5 days before ~~prior to~~ the active participation of the agent or agents on behalf of such dealer in any transaction described in s. 601.03~~(2)~~; and be held fully liable for and legally bound by all contracts and agreements, verbal or written, involving the consignment, purchase, or sale of citrus fruit executed by a duly registered agent on the dealer's behalf during the entire period of valid registration of such agent the same as though such contracts or agreements were executed by the dealer. Registration of each agent shall be for the entire shipping season for which the applying dealer's license is issued; however, a licensed dealer may cancel the registration of any agent registered by her or him by returning the agent's identification card to the Department of Agriculture and giving formal written notice to the Department of Agriculture of at least ~~not less than~~ 10 days. In addition, such dealer shall make every effort to alert the public to the fact that the agent is no longer authorized to represent her or him. An agent may be registered by more than one licensed dealer for the same shipping season, provided that each licensed dealer applies ~~shall apply~~ individually for registration of the agent and further provided that written consent is given by each and every dealer under whose license the agent has valid prior registration.

(2) When the ~~above~~ requirements of subsection (1) and such

additional requirements ~~as may be~~ set forth by rules ~~regulations~~ adopted by the Department of Citrus for registration of an agent are ~~have been~~ met and the fee required by s. 601.59(2) is ~~has been~~ paid, the Department of Agriculture shall duly register the agent and issue an identification card certifying such registration. The identification card, among other things, shall show in a prominent manner:

(a) The name and address of the agent.~~;~~

(b) The authorizing dealer's name, address, and license number.~~;~~

(c) The effective date and season for which registration is made.~~;~~

(d)1. A space for signature of the agent.~~;~~

2. A space to be countersigned by the licensed dealer.~~;~~

3. A statement providing that the card is not valid unless so signed and countersigned.

The department ~~of Citrus~~ may periodically~~, from time to time,~~ adopt, as necessary, additional requirements or conditions relating to the registration of agents ~~as may be necessary~~.

Section 48. Section 601.61, Florida Statutes, is amended to read:

601.61 Bond requirements of citrus fruit dealers.—

(1)(a) Except as ~~hereinafter~~ provided in this section, before ~~prior to~~ the approval of a citrus fruit dealer's license, the applicant ~~therefor~~ must deliver to the Department of Agriculture ~~and Consumer Services~~ a good and sufficient cash bond, an appropriate certificate of deposit, or a surety bond

executed by the applicant as principal and by a surety company qualified to do business in this state as surety, in an amount ~~as~~ determined by the Department of Citrus pursuant to rules adopted by the department under chapter 120. The rules shall allow the department to consider any of following factors for determining the amount of such bonds or certificates of deposit ~~amount of such bond or certificate of deposit shall be determined by taking into consideration any one or more of the following~~: the number of standard packed boxes of citrus fruit, or the equivalent thereof, that ~~which~~ the applicant intends to handle during the term of the license as set forth in the application; the total volume of fruit handled by the dealer the previous season; the highest month's volume handled the previous season; the anticipated increase in the total citrus crop during the season for which the application for license is made; or ~~and~~ other relevant factors ~~based on the following schedule:~~

~~(a) $1,000 up to 2,000 boxes;~~

~~(b) $2,000 up to 5,000 boxes;~~

~~(c) $3,750 up to 7,500 boxes;~~

~~(d) $5,000 up to 10,000 boxes;~~

~~(e) $10,000 up to 20,000 boxes;~~

~~(f) $1,000 for each additional 20,000 boxes or fraction thereof in excess of 20,000 boxes, with a maximum bond of $100,000~~.

(b) If a citrus fruit dealer during the term of her or his license finds that she or he has handled, or can reasonably expect to handle, a volume of fruit greater than that covered by a posted bond or certificate of deposit, the dealer has ~~shall~~

~~have~~ the affirmative duty to ~~of~~ immediately notify ~~notifying~~ the Department of Agriculture ~~and Consumer Services~~ and initiate a review by the Department of Citrus to determine any ~~initiating an~~ increase required in the amount of such bond or certificate of deposit to comply with the department's rules for determining the ~~an~~ amount of such bonds or certificates of deposit ~~that will meet the requirements set forth above~~.

(2) Such ~~Said~~ bond shall be in the form approved by the Department of Agriculture ~~and Consumer Services~~ and shall be conditioned as provided in s. 601.66(9)~~;, and also~~ to fully comply with the terms and conditions of all contracts, verbal or written, made by the citrus fruit dealer with producers or with other citrus fruit dealers~~,~~ relative to the purchasing, handling, sale, and accounting of purchases and sales of citrus fruit~~;, and~~ upon the dealer's ~~dealer~~ accounting for the proceeds from, and paying for, any citrus fruit purchased or contracted for~~,~~ in accordance with the terms of the contracts with producers~~;,~~ and upon the dealer's ~~dealer~~ accounting for any advance payments or deposits made, and delivering all citrus fruit contracted for, in accordance with the terms of the contracts with other citrus fruit dealers. The commission may prescribe by rule that such a producer contract contain information that it considers necessary to protect the producer from deceptive practices. For purposes of this chapter, every such contract shall be conclusively deemed to have been made and entered into during the shipping season in which the delivery of fruit into the primary channel of trade is made.

(3) Such ~~Said~~ bond shall be to the Department of

Agriculture~~,~~ for the use and benefit of every producer and of every citrus fruit dealer with whom the dealer deals in the purchase, handling, sale, and accounting of purchases and sales of citrus fruit. The aggregate accumulative liability under any bond may ~~shall~~ not exceed the amount of the bond ~~named therein~~. Such ~~Said~~ bond shall provide that the surety company executing the bond is ~~thereon shall~~ not ~~be~~ liable to any citrus fruit dealer claiming to be injured or damaged by such ~~the said~~ dealer if the aggregate of the amounts found to be due to producers pursuant to ~~the provisions of~~ this chapter equals or exceeds the amount of the bond, unless such citrus fruit dealer is also a producer and is acting in the capacity of a producer and not in the capacity of a citrus fruit dealer in the transaction wherein she or he claims to have been injured or damaged by applicant; however, ~~but~~ if the aggregate of such amounts is less than the amount of the bond, ~~then~~ the surety may be held liable to such citrus fruit dealers, but not in excess of the sum by which the amount of the bond exceeds the aggregate of the amounts found to be due to producers pursuant to ~~the provisions of~~ this chapter.

(4) The Department of Citrus or the Department of Agriculture, or any officer or employee designated by the Department of Citrus or the Department of Agriculture, is authorized ~~shall have the right to~~ inspect such accounts and records of any citrus fruit dealer as may be deemed necessary to determine whether a bond that ~~which~~ has been delivered to the Department of Agriculture is in the amount required by this section or whether a previously licensed nonbonded dealer should be required to furnish bond. If any such citrus fruit dealer

refuses to permit such inspection, the Department of Agriculture may publish the facts and circumstances and by order suspend the license of the offender until permission to make such inspection is given. Upon a finding by the Department of Agriculture that any citrus fruit dealer has dealt or probably will deal with more fruit during the season than shown by the application, the Department of Agriculture may order such bond increased to such an amount as will meet the requirements ~~as~~ set forth in the rules adopted by the Department of Citrus for determining the amount ~~bond schedule~~ of such bonds ~~subsection (1)~~. Upon failure to file such increased bond within the time fixed by the Department of Agriculture, the Department of Agriculture may publish the facts and circumstances and by order suspend the license of such citrus fruit dealer until such ~~the said~~ bond is increased as ordered.

(5)(a) The following citrus fruit, subject to such rules as may be prescribed by the Department of Citrus, is ~~shall~~ not ~~be~~ considered ~~as~~ fruit with which the applicant intends to deal for the purpose of determining the amount of the bond required under subsection (1):~~.~~

1. Citrus fruit that ~~which~~ the applicant produces.

2. Citrus fruit that ~~which~~ is handled for its members by a cooperative marketing association organized and existing under ~~the provisions of either~~ chapter 618 or chapter 619.

3. Fresh citrus fruit handled by the applicant that~~, which~~ has been prepared and packaged by a registered packinghouse other than the applicant and has been inspected and certified for shipment.

4. Citrus fruit handled by the applicant from citrus groves for which the applicant provides complete grove management services under direct contract with the owner or producer.

5. Citrus fruit handled by a corporate or partnership applicant that is from citrus groves owned by officers or stockholders of the corporation or from citrus groves owned by the partnership, the parent corporation, or a wholly owned subsidiary corporation or its corporate officers or stockholders, or any partner of a partnership, if~~; provided that~~ appropriate waivers of right to any claim against the bond required to be posted by this section are ~~be~~ attached to and made a part of the license application ~~for license~~.

6. Processed citrus fruit handled by the applicant that ~~which~~ has been processed and packaged by a registered citrus processing plant other than the applicant and has been inspected and certified for shipment.

(b) If the applicant does not intend to deal with any citrus fruit other than that described in paragraph (a) ~~which comes within the foregoing classifications~~, the Department of Agriculture ~~and Consumer Services~~ shall issue a license without the posting of a bond. Such a license shall bear a descriptive statement to the effect that the licensee is not a bonded citrus fruit dealer.

(c) A claim against any citrus fruit dealer's bond required to be posted by this section shall not be accepted with respect to any damages in connection with fruit handled under ~~the provisions of~~ subparagraphs (a)1.-6. ~~of paragraph (a)~~ if

such claim is filed against the bond of the dealer who was granted bond exempt status for such ~~said~~ fruit.

~~(6) If any of the provisions of this act shall be held to be unconstitutional or invalid for any reason by any court of competent jurisdiction or if such court shall find or declare that no applicant shall be required to furnish the bond required by this act, then and in that event this entire act shall be ineffective for any and all purposes and the laws in effect on July 31, 1965, which are amended by this act, shall not be deemed to be amended or repealed by this act but shall instead remain in full force and effect it being the intention of the Legislature that in such event this entire act shall be ineffective for any and all purposes and the laws in effect on July 31, 1965, which are amended or repealed by this act shall instead not be deemed to be amended or repealed by this act but shall remain in full force and effect.~~

Section 49. Subsection (7) of section 601.64, Florida Statutes, is amended to read:

601.64 Citrus fruit dealers; unlawful acts.—It is unlawful in, or in connection with, any transaction relative to the purchase, handling, sale, and accounting of sales of citrus fruit:

(7) For any citrus fruit dealer to violate or aid or abet in the violation of any rule adopted ~~or regulation duly promulgated~~ by the department ~~of Citrus~~.

Section 50. Subsections (1), (6), (7), and (8) of section 601.66, Florida Statutes, are amended to read:

601.66 Complaints of violations by citrus fruit dealers;

procedure; bond distribution; court action on bond.—

(1) Any person may complain of any violation of ~~any of the provisions of~~ this chapter by any citrus fruit dealer during any shipping season~~,~~ by filing of a written complaint with the Department of Agriculture ~~and Consumer Services~~ at any time before ~~prior to~~ May 1 of the year immediately after ~~following~~ the end of such shipping season. Such ~~Said~~ complaint shall briefly state the facts, and the Department of Agriculture ~~and Consumer Services~~ shall thereupon, if the facts alleged prima facie warrant such action, forward true copies of such ~~said~~ complaint to the dealer in question and also to the surety company on the dealer's bond. The dealer at such time shall be called upon, within a reasonable time to be prescribed by the Department of Agriculture ~~and Consumer Services~~, either to satisfy the complaint or to answer the complaint in writing, either admitting or denying the liability.

(6) Upon failure by a dealer to comply with an order of the Department of Agriculture ~~and Consumer Services~~ directing payment, the Department of Agriculture ~~and Consumer Services~~ shall call upon the surety company to pay over to the Department of Agriculture ~~and Consumer Services~~, out of the bond theretofore posted by the surety for such dealer, the amount of damages sustained but not exceeding the amount of the bond. The proceeds to the Department of Agriculture ~~and Consumer Services~~ by the surety company shall, in the discretion of the Department of Agriculture ~~and Consumer Services~~, be ~~either~~ paid to the original complainant or held by the Department of Agriculture ~~and Consumer Services~~ for later disbursement, depending upon the

time during the shipping season when the complaint was made, when liability was admitted by the dealer, when the proceeds were so paid by the surety company to the Department of Agriculture ~~and Consumer Services~~, the amount of other claims then pending against the same dealer, the amount of other claims already adjudicated against the dealer, and such other pertinent facts as the Department of Agriculture ~~and Consumer Services~~ in its discretion may consider material. The Department of Agriculture ~~and Consumer Services~~, if it decides to pay the proceeds to the original complainant, may ~~has authority to~~ order an increase in the original bond of the dealer to such higher sum as ~~to~~ the Department of Agriculture ~~and Consumer Services~~ would be justified under all the circumstances so as to protect other possible claimants and to exercise all powers otherwise confided to it under this chapter to enforce the posting of such increased bond. The Department of Agriculture ~~and Consumer Services~~ also, in its discretion as the facts and circumstances might appear to it, may hold the amount of such proceeds until such later time, up to the time when all claims have been filed during the allotted period after the closing of the shipping season and such claims adjudicated, and may ~~then~~ disburse the total proceeds in its possession paid over to it by the surety company on the dealer's bond as such claims were adjudicated to the various claimants, paying first to the producers the amount of their claims in full, if such proceeds are sufficient for such purpose, and if not, then in pro rata shares to such producer claimants. The balance of any~~; and if there then exist~~ additional proceeds in the hands of the Department of

Agriculture ~~and Consumer Services~~, after all claims of producers have been paid in full, ~~the balance of such proceeds~~ shall be paid to claimants who are citrus fruit dealers, either in whole or in pro rata portion, as the aggregate of their claims may bear to the amount of such additional proceeds.

(7) Upon failure of a surety company to comply with a demand for payment of the proceeds of a citrus fruit dealer's bond pursuant to administrative orders entered by the Department of Agriculture fixing amounts due claimants, the Department of Agriculture shall within a reasonable time file in the Circuit Court in and for Polk County~~,~~ an original petition or complaint setting forth the administrative proceedings before the Department of Agriculture and ask for final order of the court directing the surety company to pay the proceeds of the ~~said~~ bond to the Department of Agriculture for distribution to the claimants.

(8) In any court proceeding filed under subsection (7), the findings of facts and orders of the Department of Agriculture shall be prima facie evidence of the facts therein stated, and if in such suit the Department of Agriculture is successful and the court affirms the Department of Agriculture's ~~department's~~ demand for payment from the surety company, the Department of Agriculture shall be allowed all court costs incurred therein and also ~~a~~ reasonable attorney fees ~~attorney's fee~~ to be fixed and collected as a part of the costs of the suit.

Section 51. Section 601.67, Florida Statutes, is amended to read:

601.67 Disciplinary action by Department of Agriculture ~~and Consumer Services~~ against citrus fruit dealers.—

(1) The Department of Agriculture ~~and Consumer Services~~ may impose a fine not exceeding $50,000 per violation against any licensed citrus fruit dealer for violation of any provision of this chapter and, in lieu of, or in addition to, such fine, may revoke or suspend the license of any such dealer when it has been satisfactorily shown that such dealer, in her or his activities as a citrus fruit dealer, has:

(a) Obtained a license by means of fraud, misrepresentation, or concealment;

(b) Violated or aided or abetted in the violation of any law of this state governing or applicable to citrus fruit dealers or any lawful rules of the Department of Citrus;

(c) Been guilty of a crime against the laws of this or any other state or government involving moral turpitude or dishonest dealing~~,~~ or has become legally incompetent to contract or be contracted with;

(d) Made, printed, published, distributed, or caused, authorized, or knowingly permitted the making, printing, publication, or distribution of false statements, descriptions, or promises of such a character as to reasonably induce any person to act to her or his damage or injury, if such citrus fruit dealer then knew, or~~,~~ by the exercise of reasonable care and inquiry~~,~~ could have known, of the falsity of such statements, descriptions, or promises;

(e) Knowingly committed or been a party to any material fraud, misrepresentation, concealment, conspiracy, collusion,

trick, scheme, or device whereby any other person lawfully relying upon the word, representation, or conduct of the citrus fruit dealer has acted to her or his injury or damage;

(f) Committed any act or conduct of the same or different character of that hereinabove enumerated which constitutes fraudulent or dishonest dealing; or

(g) Violated any of the provisions of ss. 506.19-506.28, both sections inclusive.

(2) The Department of Agriculture may impose a fine not exceeding $100,000 per violation against any person who operates as a citrus fruit dealer without a current citrus fruit dealer license issued by the Department of Agriculture pursuant to s. 601.60. In addition, the Department of Agriculture may order such person to cease and desist operating as a citrus fruit dealer without a license. An administrative order entered by the Department of Agriculture under this subsection may be enforced pursuant to s. 601.73.

(3) The Department of Agriculture shall impose a fine of not less than $10,000 nor more than $100,000 per violation against any licensed citrus fruit dealer and shall suspend, for 60 days during the first available period between September 1 and May 31, the license of any citrus fruit dealer who:

(a) Falsely labels or otherwise misrepresents that a fresh citrus fruit was grown in a specific production area specified in s. 601.091; or

(b) Knowingly, falsely labels or otherwise misrepresents that a processed citrus fruit product was prepared solely with citrus fruit grown in a specific production area specified in s.

601.091.

(4) Any fine imposed pursuant to subsection (1), subsection (2), or subsection (3), when paid, shall be deposited by the Department of Agriculture ~~and Consumer Services~~ into its General Inspection Trust Fund.

(5) Whenever any administrative order has been made and entered by the Department of Agriculture that ~~and Consumer Services which~~ imposes a fine pursuant to this section, such order shall specify a time limit for payment of the fine, not exceeding 15 days. The failure of the dealer involved to pay the fine within that time shall result in the immediate suspension of such citrus fruit dealer's current license, or any subsequently issued license, until such time as the order has been fully satisfied. Any order suspending a citrus fruit dealer's license shall include a provision that such suspension shall be for a specified period of time not to exceed 60 days, and such period of suspension may commence at any designated date within the current license period or subsequent license period. Whenever an order has been entered that ~~which~~ suspends a citrus fruit dealer's license for a definite period of time and that license, by law, expires during the period of suspension, the suspension order shall continue automatically and shall be effective against any subsequent citrus fruit dealer's license issued to such dealer until such time as the entire period of suspension has elapsed. Whenever any such administrative order of the Department of Agriculture ~~and Consumer Services~~ is sought to be reviewed by the offending dealer involved in a court of competent jurisdiction, if such court proceedings should finally

terminate in such administrative order being upheld or not quashed, such order shall thereupon, upon the filing with the Department of Agriculture ~~and Consumer Services~~ of a certified copy of the mandate or other order of the last court having to do with the matter in the judicial process, become immediately effective and shall then be carried out and enforced notwithstanding such time will be during a new and subsequent shipping season from that during which the administrative order was first originally entered by the Department of Agriculture ~~and Consumer Services~~.

Section 52. Subsection (9) of section 601.69, Florida Statutes, is amended to read:

601.69 Records to be kept by citrus fruit dealers.—Every citrus fruit dealer shall make and keep a correct record showing in detail the following with reference to the purchase, handling, sale, and accounting of sale of citrus fruit handled by her or him, namely:

(9) Any other record or account required to be kept and maintained by such dealer by rule adopted by ~~or regulation of~~ the department ~~of Citrus duly promulgated~~.

Section 53. Section 601.70, Florida Statutes, is amended to read:

601.70 Inspection of records by Department of Agriculture ~~and Consumer Services~~.—The Department of Agriculture ~~and Consumer Services,~~ or its duly authorized agents~~, shall~~ have the right to inspect all accounts, records, and memoranda of any citrus fruit dealer required to be kept under ~~pursuant to the provisions of~~ this chapter. If any such citrus fruit dealer

refuses to permit such inspection, the Department of Agriculture may publish the facts and circumstances and by order suspend the license of the offender until permission to make such inspection is given.

Section 54. Subsection (1) of section 601.701, Florida Statutes, is amended to read:

601.701 Penalty for failure to keep records.—

(1) It is ~~shall be~~ unlawful to fail to keep any records required to be kept under ~~the provisions of~~ the Florida Citrus Code ~~of 1949, or any amendments thereto,~~ or required to be kept by any other law or by any rule adopted by ~~authorized regulation of~~ the Department of Agriculture or the Department of Citrus, or to falsify or cause the falsification of any such records or to keep false records.

Section 55. Paragraph (a) of subsection (1) and subsection (2) of section 601.731, Florida Statutes, are amended to read:

601.731 Transporting citrus on highways; name and dealer designation on vehicles; load identification; penalty.—

(1)(a) It is unlawful to operate any truck, tractor, trailer, or other motor vehicle hauling citrus fruit in bulk or in unclosed containers for commercial purposes on the highways of this state unless such truck, tractor, trailer, or other motor vehicle is:

1. Designated by a number assigned or permitted for use in the way and manner and to the extent prescribed by ~~regulation of the~~ department rule ~~of Citrus~~.

2. Identified by lettering plainly showing the name of the person owning same, or the name of any lessee or other person

operating same. The lettering shall not be less than 3 inches in height on both sides of the vehicle or on the front end and the rear end of the vehicle, except that lettering on flatbed semitrailers shall not be less than 1 1/2 inches in height on the rear end of the trailer.

(2) Any person driving any truck, tractor, trailer, or other motor vehicle hauling citrus fruit in bulk or in unclosed containers for commercial purposes on the highways of the state must ~~shall~~ have on her or his person while ~~when~~ driving such vehicle a certificate or other paper showing the approximate amount of fruit being hauled; the name of the owner and the grove or other origin of such fruit; the number painted or affixed by decal, as well as the number of the motor vehicle license tag, on the vehicle in which such fruit is being hauled; and such other information and data as may be prescribed by ~~regulation of the~~ department rule ~~of Citrus~~, and it is unlawful to drive any such vehicle on the highways of this state without having such certificate or other paper. The failure of any such person to have such certificate or other paper on her or his person while ~~when~~ driving such vehicle~~, as aforesaid,~~ is prima facie evidence of intent to violate and of the violation of this section ~~act~~.

Section 56. Section 601.74, Florida Statutes, is amended to read:

601.74 Adoption of rules; fees for licensing and analysis of processing materials.—The Department of Agriculture ~~and Consumer Services~~ may adopt rules and set fees with respect to the licensing and analysis of materials and composition used on

or in the packing of citrus fruits. Such rules may include fees for permitting dyes and coloring matter. Fees shall be not less than ~~the amount of~~ $30 nor more than $100 for each manufacturer applying ~~making application~~ to the Department of Agriculture. All such license fees collected under this section ~~hereunder~~ shall be paid monthly by the Department of Agriculture ~~and Consumer Services~~ into the State Treasury to the credit of the General Inspection Trust Fund and shall be appropriated and made available for defraying the expenses incurred in the administration of this law.

Section 57. Section 601.75, Florida Statutes, is amended to read:

601.75 Dyes and coloring matter for citrus fruit to be certified prior to use.—The Department of Agriculture ~~and Consumer Services~~ may adopt rules with respect to the permitting and certification of dyes and coloring matter for citrus fruit prior to use on any citrus fruit.

Section 58. Section 601.76, Florida Statutes, is amended to read:

601.76 Manufacturer to furnish formula and other information.—The Department of Agriculture ~~and Consumer Services~~ may adopt rules with respect to requirements for information that ~~which~~ must be furnished by manufacturers of coloring matter for use on citrus fruit. Such information may include product formulas. Any formula required to be filed with the Department of Agriculture ~~and Consumer Services~~ shall be deemed a trade secret as defined in s. 812.081, is confidential and exempt from ~~the provisions of~~ s. 119.07(1), and shall only be divulged to

the Department of Agriculture ~~and Consumer Services~~ or to its duly authorized representatives or upon orders of a court of competent jurisdiction when necessary in the enforcement of this law. A person who receives such a formula from the Department of Agriculture under this section shall maintain the confidentiality of the formula.

Section 59. Section 601.77, Florida Statutes, is amended to read:

601.77 Subsequent analysis of coloring matter; inspection of packinghouses for application.—The Department of Agriculture ~~and Consumer Services~~ may, by rule, provide for subsequent analysis of coloring matter, for inspection of packinghouses or other places where coloring matter is applied to citrus fruit, and for grounds for revocation of a license to use coloring matter on fruit.

Section 60. Section 601.78, Florida Statutes, is amended to read:

601.78 Manufacturer to post bond.—The Department of Agriculture ~~and Consumer Services~~ may, by rule, require cash or surety bonds to be posted by manufacturers of coloring matter used on citrus fruit. The Department of Agriculture ~~and Consumer Services~~ shall adopt rules prescribing the amount and form of such bonds and the grounds and procedures for forfeiture of same. The amount of the bond may ~~shall~~ not exceed $5,000.

Section 61. Section 601.80, Florida Statutes, is amended to read:

601.80 Unlawful to use uncertified coloring matter.—It is unlawful for any person to use on oranges or citrus hybrids any

coloring matter which has not first received the approval of the Department of Agriculture ~~and Consumer Services~~ as provided by rule adopted under ~~pursuant to~~ s. 601.76.

Section 62. Section 601.85, Florida Statutes, is amended to read:

601.85 Standard shipping box for fresh fruit.—The specifications for the standard ~~legal~~ shipping box, when ~~crate, or container to be~~ used as a unit of trade or for reporting purposes, ~~in shipping fresh citrus fruits~~ shall be as established by the department, ~~of Citrus;~~ but ~~provided that~~ the unit of a standard-packed box, commonly called 1 3/5 bushels, shall contain an inside cubical measurement of 3,456 cubic inches.

Section 63. Section 601.86, Florida Statutes, is amended to read:

601.86 Standard field boxes for fresh citrus fruit.—The standard field box or its equivalent, when used as a unit of trade or for reporting purposes, ~~All field boxes used in the purchase, sale, or handling of citrus fruit from or for the grower by a citrus fruit dealer in the state~~ shall be of the uniform standard size of 31 1/2 inches long, 13 inches high, and 12 inches wide, inside measurements, and shall be divided into two compartments by a center partition of at least three-fourths inch thickness, ~~,~~ and each of these compartments thus created shall have a cubical capacity that does ~~of~~ not ~~to~~ exceed 2,400 cubic inches.

Section 64. Subsection (3) of section 601.91, Florida Statutes, is amended to read:

601.91 Unlawful to sell, transport, prepare, receive, or deliver freeze-damaged citrus.—

(3) The manner and method of drawing samples and conducting tests under this section shall be prescribed by rules ~~and regulations~~ of the Department of Citrus. The inspection in the state of all citrus fruits seriously damaged by freezing and the enforcement of this section and of rules~~, regulations,~~ and orders of ~~made by~~ the department ~~of Citrus~~ pursuant to and under authority of this section shall be under the direction, supervision, and control of the Department of Agriculture and its duly authorized agents and inspectors who are qualified under existing laws to inspect for grade and maturity~~,~~ and all citrus fruits that may be found to be seriously damaged by freezing, as defined by s. 601.89, upon inspection and testing shall be seized and may be confiscated and destroyed under the supervision of the citrus fruit inspector at the expense of the owner unless previous disposition is made by the owner or other person who offered the same for inspection, all the provisions of this section being subject to such reasonable rules ~~and regulations~~ as may be adopted ~~promulgated~~ by the Department of Citrus.

Section 65. Section 601.9901, Florida Statutes, is amended to read:

601.9901 Certificates of inspection; form.—All certificates of inspection prescribed by this chapter shall be of such number, form, size, and character as the department ~~of Citrus~~ may by rule ~~and regulation~~ prescribe and shall be used in such manner as to identify the fruit or the canned or

concentrated products thereof to which they relate.

Section 66. Section 601.9902, Florida Statutes, is amended to read:

601.9902 Payment of salaries and expenses; Department of Citrus.—All salaries, costs, and expenses incurred by the department ~~of Citrus~~ in the administration and ~~the~~ enforcement of this chapter and in the performance of the department's ~~its~~ duties and the exercise of its powers under the laws of this state shall be proratably paid from the moneys derived from the citrus advertising assessments ~~taxes~~ imposed on the various types of citrus fruit in such proportion as the department ~~of Citrus~~ may find each respective type ~~is~~ affected by such expenditures.

Section 67. Section 601.9903, Florida Statutes, is amended to read:

601.9903 Annual report of Department of Citrus.—The department ~~of Citrus~~ shall submit ~~make~~ an annual report to the Governor concerning ~~upon~~ the work of the department ~~of Citrus~~. The department ~~It~~ shall also submit ~~make~~ such special reports concerning ~~upon~~ any phase of the department's work ~~of the Department of Citrus~~ as may be requested ~~called for~~ by the Governor or the Legislature or either house thereof.

Section 68. Section 601.99035, Florida Statutes, is amended to read:

601.99035 Annual travel report of Department of Citrus.—The department ~~of Citrus~~ shall, at the end of each fiscal year, publish an annual travel report that states, for each department staff member ~~of the Department of Citrus~~ and each commission

member ~~of the Florida Citrus Commission~~ who has traveled during that year, the name of the person, the person's position title, the date on which a claim for reimbursement was submitted, the dates of travel, the destinations, the purpose of the travel, and all expenditures that resulted from the travel.

Section 69. Section 601.99036, Florida Statutes, is amended to read:

601.99036 Approval of specified salary changes.—Any change in the annual salary of an employee of the department who earns ~~of Citrus which is at or above~~ $100,000 or more ~~annually~~ must be approved by a majority ~~the full membership~~ of the ~~Florida Citrus~~ commission ~~at the meeting of the commission in July 2003, or at the first subsequent meeting, and~~ before the ~~any subsequent~~ salary adjustment is made.

Section 70. Section 601.9904, Florida Statutes, is amended to read:

601.9904 ~~Rules and regulations;~~ Frozen citrus juices; rules of Department of Citrus.—The department shall adopt ~~of Citrus is hereby authorized and required to promulgate~~ and enforce rules ~~and regulations~~ concerning the contents, preparation, concentrating, other processing, and keeping or storing of frozen concentrated fresh citrus juices, and such rules ~~and regulations~~ may govern, ~~cover~~ but are not limited to, the sanitary conditions under which such product is prepared, the type of equipment and machinery used therein, ~~and~~ the manner and method of storage within this state, and the manner and method of shipment.

Section 71. Subsection (6) of section 601.9908, Florida Statutes, is amended to read:

601.9908 Canned tangerine juice; standards; labeling.—No canned tangerine juice shall be sold or offered for sale or shipped or offered for shipment which:

(6) Does not meet requirements to be established by the department ~~of Citrus~~ regarding color, absence of defects, taste, and flavor; unless the immediate container thereof shall be labeled in accordance with regulations of the department ~~of Citrus~~ and there shall appear on such label the word "substandard" in bold type not less than 1/4 inch high printed or stamped diagonally thereon.

Section 72. Paragraphs (c) and (d) of subsection (1) and subsections (2) and (3) of section 601.9910, Florida Statutes, are amended to read:

601.9910 Legislative findings of fact; strict enforcement of maturity standard in public interest.—

(1) FINDINGS.—

(c) The Legislature finds and determines and so declares that there is no better method of determining when such raw and immature flavor leaves Florida citrus than by the standards authorized by ~~set forth in~~ this chapter and set forth in department rule; ~~and~~ that experience has demonstrated over a period of many years, by the best available records and under various climatic conditions and various seasonal changes, that generally speaking, before ~~prior to~~ November 1 of each season, oranges that ~~which~~ do not have a total soluble solids of 9 percent with a minimum ratio of total soluble solids, as set

forth in department rule ~~s. 601.20~~, still have a raw, immature flavor; ~~and~~ that~~,~~ beginning on or about November 1 of each season, such raw, immature fruit flavor gradually disappears from the orange, and by November 15 the same orange may have a still lower soluble solids percentage and not be immature; that ~~and~~ after November 15 the same orange can still have a further lower soluble solids percentage without being immature; and that by December 1 nature has completed its process of removing the raw, immature flavor that ~~which~~ might have existed before ~~prior to~~ that time, provided such fruit meets the other minimum maturity requirements authorized by ~~set forth in~~ this chapter and set forth in department rule. On December 1 oranges meeting the requirements set forth in department rule ~~of s. 601.19(4)~~, while not being sufficiently mature to ship in fresh form, may be safely used in some processed products without the finished product having a raw, immature flavor. On December 1 grapefruit meeting the requirements set forth in department rule ~~of s. 601.16(4)~~, while not being sufficiently mature to ship in fresh form, may be safely used in some processed products without the finished product having a raw, immature flavor.

(d) The Legislature finds and determines and so declares that the enforcement of the maturity standards, authorized by ~~as set forth in~~ this chapter and set forth in department rule, will not result in preventing any grower from marketing her or his fruit at some time during the marketing season, whenever nature has removed the raw, immature flavor,~~;~~ and~~,~~ if there is a delay in such marketing, it will result in higher prices for the entire season, bringing additional millions of dollars to the

state's growers of ~~Florida~~ and resulting in benefit to all growers, including the grower or growers who were delayed a short time in the shipment of their fruit.

(2) DECLARATION.—Therefore, the Legislature declares that the strict enforcement of the maturity standards authorized by~~,~~ ~~as set forth in~~ this chapter and set forth in department rule~~,~~ is definitely in the public's interest and for the public's welfare~~,~~ and that no citrus that ~~should be shipped from Florida and sold in the consuming markets which~~ has a raw, immature flavor~~,~~ and that ~~which~~ could be classed by the consuming public as "Florida green fruit~~.~~" should be shipped from the state and sold in consuming markets.

(3) RULES SETTING FORTH ~~REGULATIONS REGARDING~~ MATURITY STANDARDS FOR HYBRIDS.—The Legislature finds and determines that the classifications of and maturity standards for citrus hybrids should be established by rules adopted ~~regulations promulgated~~ by the department ~~of Citrus~~ pursuant to this chapter.

Section 73. Section 601.9911, Florida Statutes, is amended to read:

601.9911 Fruit may be sold or transported direct from producer.—Any citrus producer may transport her or his own citrus fruit or any citrus fruit may be sold or purchased and transported in interstate or intrastate commerce in truckload lots direct from a producer, and any such fruit so sold, purchased, or transported need not be processed, handled by any packinghouse, washed, polished, graded, stamped, labeled, branded, placed in containers, or otherwise prepared for market as ~~may be~~ provided in this chapter ~~herein~~. Such fruit shall be

certified at the time of inspection as tree run grade of fruit~~,~~ but shall otherwise remain subject to the maturity standards and all other conditions, restrictions, emergency quality assurance orders, and other requirements of this chapter and shall be inspected for such compliance as all other fruit is inspected at such convenient locations as may be determined by the Department of Agriculture. Any such fruit violating any provision of ~~the provisions of~~ this chapter, or any rule adopted by ~~or regulation of~~ the department under ~~of Citrus made pursuant to~~ this chapter, but not inconsistent with this section, may be seized, condemned, and destroyed as provided in this chapter ~~herein~~. At the time of such inspection, all fees and~~,~~ assessments~~, and excise taxes~~ provided in this chapter shall be paid and collected at the same rate as paid by all other fresh fruit growers or shippers.

Section 74. Section 601.9918, Florida Statutes, is amended to read:

601.9918 Rules related to issuance and use of symbols.—In rules related to the issuance and voluntary use of symbols, certification marks, service marks, or trademarks, the commission may make general references to national or state requirements that the license applicant would be compelled to meet regardless of the Department of Agriculture's ~~department's~~ issuance of the license applied for.

Section 75. Section 601.992, Florida Statutes, is amended to read:

601.992 Collection of dues and other payments on behalf of certain nonprofit corporations engaged in market news and grower

education.—The ~~Florida~~ Department of Citrus or the Department of Agriculture ~~and Consumer Services~~ or their successors may collect or compel the entities regulated by the Department of Agriculture to collect dues, contributions, or any other financial payment upon request by, and on behalf of, any not-for-profit corporation~~,~~ and its related not-for-profit corporations~~,~~ located in this state that receive ~~which receives~~ payments or dues from their ~~its~~ members. Such not-for-profit corporation must be engaged, to the exclusion of agricultural commodities other than citrus, in market news and grower education solely for citrus growers, and must have at least 5,000 members who are engaged in growing citrus in this state for commercial sale. The Department of Agriculture may adopt rules under chapter 120 ~~pursuant to ss. 120.536(1) and 120.54~~ to administer ~~implement~~ this section. The rules may establish indemnity requirements for the requesting corporation and for fees to be charged to the corporation that ~~which~~ are sufficient but do not exceed the amount necessary to ensure that any direct costs incurred by the Department of Agriculture in implementing this section are borne by the requesting corporation and not by the Department of Agriculture.

Section 76. Subsection (1) of section 603.161, Florida Statutes, is amended to read:

603.161 Sales certificates, work orders to accompany certain fruit.—

(1) This section applies to tropical or subtropical fruit. "Tropical or subtropical fruit" means avocados, bananas, calamondins, carambolas, guavas, kumquats, limes, longans,

loquats, lychees, mameys, mangoes, papayas, passion fruit, sapodillas, and fruit that must be grown in tropical or semitropical regions, except citrus fruit as defined in s. 601.03~~(7)~~.

Section 77. Effective January 1, 2013, sections 601.16, 601.17, 601.18, 601.19, 601.20, 601.21, 601.22, 601.87, 601.90, 601.901, 601.981, 601.9905, 601.9906, 601.9907, 601.9909, 601.9913, 601.9914, and 601.9916, Florida Statutes, are repealed.

Section 78. Except as otherwise expressly provided in this act, this act shall take effect July 1, 2012.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1239 Pub. Rec./Department of Citrus
SPONSOR(S): Albritton and others
TIED BILLS: HB 1237 **IDEN./SIM. BILLS:** SB 1650

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Agriculture & Natural Resources Subcommittee		Kaiser DK	Blalock AHB
2) Government Operations Subcommittee			
3) State Affairs Committee			

SUMMARY ANALYSIS

Current law provides that the Department of Citrus (department) has the power to prepare and disseminate information important to citrus growers, handlers, shippers, processors and industry-related and interested persons and organizations relating to department activities and the production, handling, shipping, processing, and marketing of citrus fruit and processed citrus products. Any such information described above that constitutes a trade secret is confidential and exempt from the public records requirements in current law.

The bill expands the public records exemption described above to include any non-published reports or data related to studies or research conducted, caused to be conducted, or funded by the department under s. 601.13, F.S.

The bill provides that this public records exemption is subject to the Open Government Sunset Review Act and will stand repealed on October 2, 2017, unless reviewed and saved from repeal through reenactment by the Legislature. The bill also provides a statement of public necessity as required by the State Constitution.

Article I, s. 24(c) of the State Constitution, requires a two-thirds vote of the members present and voting for final passage of a newly created or expanded public record of public meeting exemption. The bill expands a current public records exemption; thus, it requires a two-thirds vote for final passage.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Public Records Law

Article I, s. 24(a) of the State Constitution sets forth the state's public policy regarding access to government records. The section guarantees every person a right to inspect or copy any public record of the legislative, executive, and judicial branches of government. The Legislature, however, may provide by general law for the exemption of records from the requirements of Article I, s. 24(a) of the State Constitution. The general law must state with specificity the public necessity justifying the exemption (public necessity statement) and must be no broader than necessary to accomplish its purpose.[1]

Public policy regarding access to government records is addressed further in the Florida Statutes. Section 119.07(1), F.S., guarantees every person a right to inspect and copy any state, county, or municipal record. Furthermore, the Open Government Sunset Review Act[2] provides that a public record or public meeting exemption may be created or maintained only if it serves an identifiable public purpose. In addition, it may be no broader than is necessary to meet one of the following purposes:

- Allows the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption.
- Protects sensitive personal information that, if released, would be defamatory or would jeopardize an individual's safety; however, only the identity of an individual may be exempted under this provision.
- Protects trade or business secrets.

Powers of the Department of Citrus (department)

Section 601.10, F.S., addresses the powers of the department. Those powers include the preparation and dissemination of important information to citrus growers, handlers, shippers, processors and industry-related and interested persons and organizations relating to department activities and the production, handling, shipping, processing, and marketing of citrus fruit and processed citrus products. Section 601.10, F.S., also provides that any such information described above that constitutes a trade secret as defined in s. 812.081(1)(c), F.S.,[3] is confidential and exempt from the public records requirements in s. 119.07(1), F.S., and may not be disclosed.

Citrus Research

Section 601.13, F.S., provides that it is the duty of the department to:

- Conduct or cause to be conducted a thorough and comprehensive study of citrus fruit and citrus fruit juices.
- Provide suitable and sufficient laboratory facilities and equipment, making use of the laboratory facilities and equipment of the University of Florida, for the purpose of conducting thorough and comprehensive study and research to determine all possible new and further uses for citrus fruit and citrus fruit juices and the products and byproducts into which the same can be converted or

[1] Section 24(c), Article I of the State Constitution.
[2] Section 119.15, F.S.
[3] "Trade secret" means the whole or any portion or phase of any formula, pattern, device, combination of devices, or compilation of information which is for use, or is used, in the operation of a business and which provides the business an advantage, or an opportunity to obtain an advantage, over those who do not know or use it.

manufactured, as well as to determine and develop new and profitable methods and instruments of distribution.

- Carry on, or cause to be carried on, suitable experiments in an effort to prove the commercial value of each, and determine and develop new and further use for citrus fruit and citrus fruit juices or the products and byproducts into which the same can be converted or manufactured.
- Carry on or cause to be carried on suitable experiments in an effort to prove the commercial value of any and all new profitable methods and instruments of distribution of citrus fruit and citrus fruit juices and the products and byproducts into which the same can be converted or manufactured.
- Carry on or cause to be carried on an economic and marketing research program relating to citrus fruits, products or byproducts

Effect of Proposed Changes

The bill amends s. 601.10, F.S., to provide that any non-published reports or data related to studies or research conducted, caused to be conducted, or funded by the department under s. 601.13, F.S., is confidential and exempt from the public records requirements in s. 119.07(1), F.S.

The bill provides that this public records exemption is subject to the Open Government Sunset Review Act and will stand repealed on October 2, 2017, unless reviewed and saved from repeal through reenactment by the Legislature. The bill also provides a statement of public necessity as required by the State Constitution.

B. SECTION DIRECTORY:

Section 1: Amends s. 601.10, F.S., providing a public records exemption for certain unpublished reports and data; and, providing for future legislative review and repeal of the exemption under the Open Government Sunset Review Act.

Section 2: Provides a public necessity statement.

Section 3: Provides that the public records exemption takes effect on the same date that HB 1237 takes effect, if such legislation is adopted in the same legislative session or an extension thereof and becomes law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None

2. Expenditures:

   None

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None

2. Expenditures:

   None

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None

D. FISCAL COMMENTS:

None

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

Vote Requirement

Article I, s. 24(c) of the State Constitution, requires a two-thirds vote of the members present and voting for final passage of a newly created or expanded public record or public meeting exemption. The bill expands a current public records exemption; thus, it requires a two-thirds vote for final passage.

Public Necessity Statement

Article I, s. 24(c) of the State Constitution, requires a public necessity statement for a newly created or expanded public record or public meeting exemption. The bill expands a current public records exemption; thus, it includes a public necessity statement.

B. RULE-MAKING AUTHORITY:

None

C. DRAFTING ISSUES OR OTHER COMMENTS:

None

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None

A bill to be entitled

An act relating to public records; amending s. 601.10, F.S.; providing an exemption from public records requirements for nonpublished reports or data related to certain studies or research related to citrus fruit, citrus fruit juices, and the products and byproducts thereof that is conducted, caused to be conducted, or funded by the Department of Citrus; providing for future legislative review and repeal of the exemption under the Open Government Sunset Review Act; providing a statement of public necessity; providing a contingent effective date.

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

Section 1. Subsection (8) of section 601.10, Florida Statutes, is amended to read:

601.10 Powers of the Department of Citrus.—The Department of Citrus shall have and shall exercise such general and specific powers as are delegated to it by this chapter and other statutes of the state, which powers shall include, but shall not be confined to, the following:

(8)(a) To prepare and disseminate information of importance to citrus growers, handlers, shippers, processors, and industry-related and interested persons and organizations~~,~~ relating to department ~~of Citrus~~ activities and the production, handling, shipping, processing, and marketing of citrus fruit and processed citrus products. Any information that constitutes

~~which consists of~~ a trade secret as defined in s. 812.081(1)(c) is confidential and exempt from ~~the provisions of~~ s. 119.07(1)~~,~~ and shall not be disclosed. For referendum and other notice and informational purposes, the department ~~of Citrus~~ may prepare and maintain, from the best available sources, a citrus grower mailing list. Such list shall be a public record available as other public records, but it shall not be subject to the purging provisions of s. 283.55.

(b) Any nonpublished reports or data related to studies or research conducted, caused to be conducted, or funded by the department under s. 601.13 is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. This paragraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2017, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 2. The Legislature finds that it is a public necessity that any nonpublished reports or data related to studies or research conducted under s. 601.13, Florida Statutes, be made confidential and exempt from the requirements of s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution. In order to conduct or cause to be conducted studies or research related to citrus fruit, citrus fruit juices, and the products and byproducts thereof, the Department of Citrus must achieve the cooperation of the citrus industry in the state to obtain access to samples of such citrus fruit, citrus fruit juices, and the products and byproducts thereof, trade secrets, and proprietary business information. Unless the

Department of Citrus can assure the citrus industry that any nonpublished reports or data related to such studies or research will not be disclosed until the analysis of such data and until the reports of such studies or research are complete and approved for publication, a chilling effect will arise that reduces access by the Department of Citrus to the necessary samples and information provided by the citrus industry, thereby undermining the validity and value of such studies and research. Thus, the Legislature declares that it is a public necessity that any nonpublished reports or data related to studies or research conducted under s. 601.13, Florida Statutes, be made confidential and exempt from the requirements of s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution.

Section 3. This act shall take effect on the same date that HB 1237 or similar legislation takes effect, if such legislation is adopted in the same legislative session or an extension thereof and becomes law.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 4137 Basins
SPONSOR(S): Pilon
TIED BILLS: None **IDEN./SIM. BILLS:** None

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Agriculture & Natural Resources Subcommittee		Deslatte JD	Blalock AFB
2) State Affairs Committee			

SUMMARY ANALYSIS

The Department of Environmental Protection (DEP) manages the quality and quantity of water in Florida through its relationship with the state's water management districts (WMDs), which are tasked with the preservation and management of Florida's water resources. The WMDs include the Northwest Florida Water Management District, Suwannee River Water Management District, St. Johns River Water Management District, South Florida Water Management District, and the Southwest Florida Water Management District[1].

Any areas within a WMD may be designated by the WMD governing board as subdistricts or basins by resolution, with the exception of basins within the St. Johns River Water Management District (SJRWMD), which are approved by the Legislature. Each basin has a board composed of not less than three members, but must include one representative from each of the counties included in the basin. Members serve for a period of 3 years or until a successor is appointed, but usually not more than 180 days after the end of the term. Each basin board chooses a vice chair and a secretary to serve for a period of 1 year. The basin board chair is typically a member of the WMD governing board of the district residing in the basin. If no member resides in the basin, a member of the governing board is designated as chair by the chair of the WMD board. Members of basin boards are appointed by the Governor and subject to confirmation by the Senate. Refusal or failure of the Senate to confirm an appointment creates a vacancy in the office.

Current law provides that at 11:59 p.m. on December 31, 1976, the Manasota Watershed Basin, is to be formed into a subdistrict or basin of the Southwest Florida Water Management District (SWFWMD), and states that two members from Manatee County and two members from Sarasota County shall serve on the Board. The statute also provides that at 11:59 p.m. on June 30, 1988, the Oklawaha River Basin and Greater St. Johns River Basin will cease to be a subdistrict or basin in the St. Johns River WMD.

The bill repeals these provisions in current law, which includes repealing the Manasota Basin and board.

This bill does not appear to have a fiscal impact on state government. The bill appears to have a potentially positive fiscal impact on the SWFWMD due to not having to operate the basin boards; however, the SWFWMD currently has not appointed any members to the board.

[1] The Water Resources Act of 1972 (Chapter 373, Florida Statutes) mandated that five WMDs be created to manage the water resources of the state. After a process which took several years, the WMDs' boundaries were drawn based on natural, hydrologic basins rather than political or county limits to allow for effective and efficient planning and management. These boundaries are generally as they exist today.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

The DEP manages the quality and quantity of water in Florida through its relationship with the state's WMDs, which are tasked with the preservation and management of Florida's water resources. The WMDs include the Northwest Florida Water Management District, Suwannee River Water Management District, St. Johns River Water Management District, South Florida Water Management District and the Southwest Florida Water Management District.

Chapter 373, F.S., charges the WMDs with managing regional water supplies, water quality, flood protection, and the protection of natural systems. The Legislature has directed the WMDs to engage in plan development and implementation, regulation, land acquisition, financial and technical assistance, water resource restoration, water resource development, and other activities to achieve the statutory water management objectives. By statute, each WMD is overseen by a governing board appointed by the Governor and confirmed by the Senate.

Basin Boards

Florida has 52 large watersheds. In order to make environmental management easier, more effective and more uniform across programs, the DEP has grouped these watersheds into 29 groups of basins.

Section 373.0693, F.S., provides that any areas within a WMD may be designated by the WMD governing board as subdistricts or basins by resolution, with the exception of basins within the SJRWMD, which are approved by the Legislature. Each basin has a board composed of not less than three members, but must include one representative from each of the counties included in the basin. Members serve for a period of 3 years or until a successor is appointed, but usually not more than 180 days after the end of the term. Each basin board chooses a vice chair and a secretary to serve for a period of 1 year. The basin board chair is typically a member of the WMD governing board of the district residing in the basin. If no member resides in the basin, a member of the governing board is designated as chair by the chair of the WMD board. Members of basin boards are appointed by the Governor and subject to confirmation by the Senate. Refusal or failure of the Senate to confirm an appointment creates a vacancy in the office.

Statutory duties of basin boards, pursuant to section 373.0695, F.S., include:

- The preparation of engineering plans for development of the water resources of the basin and the conduct of public hearings on such plans.
- The development and preparation of an overall basin plan of secondary water control facilities for the guidance of subdrainage districts and private land owners in the development of their respective systems of water control, which will be connected to the primary works of the basin to complement the engineering plan of primary works for the basin.
- The preparation of the annual budget for the basin and the submission of such budget to the WMD governing board for inclusion in the WMD budget.
- The consideration and prior approval of final construction plans of the WMD for works to be constructed in the basin.
- The administration of the affairs of the basin.
- Planning for and, upon request by a county, municipality, private utility, or regional water supply authority, providing water supply and transmission facilities for the purpose of assisting such counties, municipalities, private utilities, or regional water supply authorities within or serving the basin.

Section 373.0693(7), F.S., provides that at 11:59 p.m. on December 31, 1976, the Manasota Watershed Basin of the Ridge and Lower Gulf Coast WMD, which is annexed to the SWFWMD by

change of its boundaries pursuant to chapter 76-243, Laws of Florida, must be formed into a subdistrict or basin of the SWFWMD, subject to the same provisions as the other basins in the WMD. This subdistrict is designated as the Manasota Basin. Beginning on July 1, 2001, the basin board must be comprised of two members from Manatee County and two members from Sarasota County.

Section 373.0693(8)(a), F.S., provides that at 11:59 p.m. on June 30, 1988, the Oklawaha River Basin will cease to be a subdistrict or basin in the St. Johns River WMD. However, this area will continue to be part of the SJRWMD.

Section 373.0693(8)(b), F.S., provides that the area of the St. Johns River Water Management District known as the Greater St. Johns River Basin and the Greater St. Johns River Basin will cease to be a subdistrict or basin of the SJRWMD known as the and this basin will cease to exist. However, this area will continue to be part of the SJRWMD.

Section 373.0693(8)(c), F.S., provides that as of 11:59 p.m. on June 30, 1988, assets and liabilities of the former Oklawaha River and Greater St. Johns River Basins will be assets and liabilities of the SJRWMD. Any contracts, plans, orders, or agreements will continue to be in effect, but may be modified or repealed by the SJRWMD in accordance with law.

Effect of Proposed Changes

The bill repeals subsections (7) and (8) of s. 373.0693, F.S., detailed above, which includes repealing the Manasota Basin and board.

B. SECTION DIRECTORY:

Section 1. Amends s. 373.0693, F.S., repealing provisions relating to the formation and designation of the Manasota Basin; repealing provisions relating to the termination of the Oklawaha River Basin and the Greater St. Johns River Basin.

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

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   The bill has a potentially positive fiscal impact on the SWFWMD due to not having to operate the two basin boards; however, the SWFWMD currently has not appointed any members to the board.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.

A bill to be entitled

An act relating to basins; amending s. 373.0693, F.S.; repealing provisions relating to the formation and designation of the Manasota Basin; repealing provisions relating to the termination of the Oklawaha River Basin and the Greater St. Johns River Basin; providing an effective date.

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

Section 1. Subsections (9) and (10) of section 373.0693, Florida Statutes, are renumbered as subsections (7) and (8), respectively, and present subsections (7) and (8) of that section are amended to read:

373.0693 Basins; basin boards.—

~~(7) At 11:59 p.m. on December 31, 1976, the Manasota Watershed Basin of the Ridge and Lower Gulf Coast Water Management District, which is annexed to the Southwest Florida Water Management District by change of its boundaries pursuant to chapter 76-243, Laws of Florida, shall be formed into a subdistrict or basin of the Southwest Florida Water Management District, subject to the same provisions as the other basins in such district. Such subdistrict shall be designated initially as the Manasota Basin. The members of the governing board of the Manasota Watershed Basin of the Ridge and Lower Gulf Coast Water Management District shall become members of the governing board of the Manasota Basin of the Southwest Florida Water Management District. Notwithstanding other provisions in this section,~~

~~beginning on July 1, 2001, the membership of the Manasota Basin Board shall be comprised of two members from Manatee County and two members from Sarasota County. Matters relating to tie votes shall be resolved pursuant to subsection (6) by the chair designated by the governing board to vote in case of a tie vote.~~

~~(8)(a) At 11:59 p.m. on June 30, 1988, the area transferred from the Southwest Florida Water Management District to the St. Johns River Water Management District by change of boundaries pursuant to chapter 76-243, Laws of Florida, shall cease to be a subdistrict or basin of the St. Johns River Water Management District known as the Oklawaha River Basin and said Oklawaha River Basin shall cease to exist. However, any recognition of an Oklawaha River Basin or an Oklawaha River Hydrologic Basin for regulatory purposes shall be unaffected. The area formerly known as the Oklawaha River Basin shall continue to be part of the St. Johns River Water Management District.~~

~~(b) Also, the entire area of the St. Johns River Water Management District, less those areas formerly in the Oklawaha Basin, shall cease to be a subdistrict or basin of the St. Johns River Water Management District known as the Greater St. Johns River Basin and said Greater St. Johns River Basin shall cease to exist. The area formerly known as the Greater St. Johns River Basin shall continue to be part of the St. Johns River Water Management District.~~

~~(c) As of 11:59 p.m. on June 30, 1988, assets and liabilities of the former Oklawaha River and Greater St. Johns River Basins shall be assets and liabilities of the St. Johns~~

~~River Water Management District. Any contracts, plans, orders, or agreements of such basins shall continue to be in effect, but may be modified or repealed by the St. Johns River Water Management District in accordance with law. For all purposes for assessing and levying the millage rate authorized under s. 373.503, subsequent to December 31, 1987, including the purposes of certifying the millage rate for fiscal year 1988-1989, pursuant to chapter 200, said millage rate shall be levied retroactive to January 1, 1988.~~

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 4171 Bonfires
SPONSOR(S): Ray
TIED BILLS: None **IDEN./SIM. BILLS:** None

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Agriculture & Natural Resources Subcommittee		Cunningham RC	Blalock AFB
2) State Affairs Committee			

SUMMARY ANALYSIS

Current law provides that anyone concerned in causing or making a bonfire within 10 rods[1] of any house or building shall be guilty of a misdemeanor of the second degree punishable by a term of imprisonment not to exceed 60 days imprisonment or a fine not to exceed $500.

Presently, bonfires are typically regulated by local ordinances. The statute is antiquated and not necessary.

The bill repeals this section.

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

[1] A rod is a unit of land measurement. One rod is equal to 16.5 feet.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Current law provides that anyone concerned in causing or making a bonfire within 10 rods of any house or building shall be guilty of a misdemeanor of the second degree punishable by a term of imprisonment not to exceed 60 days imprisonment or a fine not to exceed $500.[2]

Presently, bonfires are regulated by local ordinances. The statute is antiquated and not necessary.

Effect of Proposed Changes

The bill repeals s. 823.02, F.S.

B. SECTION DIRECTORY:

Section 1: Repeals s. 823.02, F.S.

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

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

[2] S. 775.082 and s. 775.083, F.S.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.

A bill to be entitled

An act relating to bonfires; repealing s. 823.02, F.S., relating to a prohibition on building bonfires within 10 rods of any house or building; providing an effective date.

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

Section 1. Section 823.02, Florida Statutes, is repealed.

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