



Agriculture & Natural Resources Appropriations Subcommittee

March 25, 2014
12:30 PM – 2:30 PM
Reed Hall



The Florida House of Representatives

Appropriations Committee

Agriculture & Natural Resources Appropriations Subcommittee

Will Weatherford
Speaker

Ben Albritton
Chair

AGENDA

March 24, 2014

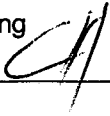

3:00 PM—6:00 PM

Reed Hall (102 HOB)

- I. Call to Order/ Roll Call
- II. HB 7093—Rehabilitation of Petroleum Contamination Sites by Rooney
- III. CS/HB 791—Coastal Management by Renuart
- IV. CS/HB 955—Fish & Wildlife Conservation Commission by Goodson
- V. HB 7091—Department of Agriculture & Consumer Services by Pigman
- VI. Closing Remarks and Adjournment

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 7093 **PCB ANRS 14-02** **Rehabilitation of Petroleum Contamination Sites**
SPONSOR(S): Agriculture & Natural Resources Subcommittee; Rooney, Jr.
TIED BILLS: **IDEN./SIM. BILLS:** SB 1582

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Agriculture & Natural Resources Subcommittee	12 Y, 0 N	Moore	Blalock
1) Agriculture & Natural Resources Appropriations Subcommittee		Helping 	Massengale 
2) State Affairs Committee			

SUMMARY ANALYSIS

Petroleum is stored in thousands of underground and aboveground storage tank systems throughout Florida. Releases of petroleum into the environment may occur as a result of accidental spills, storage tank system leaks, or poor maintenance practices. These discharges pose a significant threat to groundwater quality, and Florida relies on groundwater for 90 percent of its drinking water. The Department of Environmental Protection (Department or DEP) is responsible for regulating these storage tank systems.

In 1986, the Legislature enacted the State Underground Petroleum Environmental Response Act (SUPER Act) to address the pollution problems caused by leaking underground petroleum storage systems. The SUPER Act led to the creation of the Petroleum Restoration Program (Restoration Program), which establishes the requirements and procedures for cleaning up contaminated land, as well as the circumstances under which the state will pay for the cleanup. The SUPER Act gave site owners two options for having their sites rehabilitated through the Restoration Program: site owners could either conduct the rehabilitation themselves and receive reimbursement from the state or have the state conduct the cleanup in priority order.

In 1996, the Legislature made substantial revisions to the Restoration Program as a result of an Attorney General report documenting abuse, inefficiencies, and fraud within the program. This legislation phased out the reimbursement format of funding assistance and created the Preapproval Program, which requires all state-funded site rehabilitation to be preapproved by the Department and based on templated costs.

As of February 2014, there are approximately 17,300 sites eligible for state funding. Of these, approximately 7,300 have been rehabilitated and closed, approximately 3,100 are currently undergoing some phase of rehabilitation, and approximately 6,900 await rehabilitation.

The general procurement laws of the state regulate state agency competitive solicitation of commodities and services. Without an explicit exemption, the Department is required to comply with these laws when procuring contracts for petroleum rehabilitation tasks. In addition, the law directs the Department to adopt rules governing procurement for pollution response action contracts, which include petroleum site rehabilitation contracts.

The proposed committee bill (PCB) repeals the Preapproval Program and relocates certain provisions that continue to be necessary. Thus, the Department will no longer preapprove site rehabilitation work based on templated costs. Instead, the bill requires all site rehabilitation work to be competitively procured pursuant to chapter 287, F.S., or rules adopted by the Department. Although it appears the Department was already required to competitively bid rehabilitation projects, the bill emphasizes that all work must now be procured through a competitive process. The PCB requires the Department's rules to specify that only vendors who meet the minimum qualifications in current law may submit responses on a competitive solicitation or perform site rehabilitation work.

The bill also repeals the reimbursement program, which has been obsolete since 1996, and changes the name of the Preapproved Advanced Cleanup program to the Advanced Cleanup program.

The bill does not appear to have a direct fiscal impact on state government, local governments, or the private sector.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

STORAGE NAME: h7093.ANRAS.DOCX

DATE: 3/17/2014

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Petroleum Restoration Program

Petroleum is stored in thousands of underground and aboveground storage tank systems throughout Florida. Releases of petroleum into the environment may occur as a result of accidental spills, storage tank system leaks, or poor maintenance practices.¹ These discharges pose a significant threat to groundwater quality, and Florida relies on groundwater for 90 percent of its drinking water.² The identification and cleanup of petroleum contamination is particularly challenging due to Florida's diverse geology, diverse water systems, and the complex dynamics between contaminants and the environment.³

In 1983, Florida began enacting legislation to regulate underground and aboveground storage tank systems in an effort to protect Florida's groundwater from past and future petroleum releases.⁴ The Department of Environmental Protection (Department or DEP) is responsible for regulating these storage tank systems. In 1986, the Legislature enacted the State Underground Petroleum Environmental Response Act (SUPER Act) to address the pollution problems caused by leaking underground petroleum storage systems.⁵ The SUPER Act authorized the Department to establish criteria for the prioritization, assessment and cleanup, and reimbursement for cleanup of contaminated areas, which led to the creation of the Petroleum Restoration Program (Restoration Program). The Restoration Program establishes the requirements and procedures for cleaning up contaminated land as well as the circumstances under which the state will pay for the cleanup.

Site Rehabilitation

Florida law requires land contaminated by petroleum to be cleaned up, or rehabilitated, so that the concentration of each contaminant in the ground is below a certain level.⁶ These levels are known as Cleanup Target Levels (CTLs).⁷ Once the CTLs for a contaminated site⁸ have been attained, rehabilitation is complete and the site may be closed. When a site is closed, no further cleanup action is required unless the contaminant levels increase above the CTLs or another discharge occurs.⁹

State Funding Assistance for Rehabilitation

The average cost to rehabilitate a site is approximately \$300,000, but some sites may cost millions of dollars to rehabilitate.¹⁰ Under Florida law, an owner of contaminated land (site owner) is responsible for rehabilitating the land unless the site owner can show that the contamination resulted from the activities of a previous owner or other third party (responsible party), who is then responsible.¹¹ Over the years, different eligibility programs have been implemented to provide state financial assistance to

¹ DEP, GUIDE TO FLORIDA'S PETROLEUM CLEANUP PROGRAM 1 (2002).

² *Id.*

³ *Id.*

⁴ Chapter 83-310, L.O.F.

⁵ Chapter 86-159, L.O.F.

⁶ Section 376.3071(5)(b)3., F.S.

⁷ *Id.*

⁸ A "site" is any contiguous land, sediment, surface water, or groundwater area upon or into which a discharge of petroleum or petroleum products has occurred or for which evidence exists that such a discharge has occurred. The site is the full extent of the contamination, regardless of property boundaries. DEP BUREAU OF PETROLEUM STORAGE SYSTEMS, PETROLEUM CLEANUP PREAPPROVAL PROGRAM STANDARD OPERATING PROCEDURES 2 (2012).

⁹ DEP, GUIDE TO FLORIDA'S PETROLEUM CLEANUP PROGRAM 24 (2002).

¹⁰ DEP, GUIDE TO FLORIDA'S PETROLEUM CLEANUP PROGRAM 26 (2002).

¹¹ Section 376.308, F.S.

certain site owners and responsible parties for site rehabilitation. To receive rehabilitation funding assistance, a site must qualify under one of these programs, which are outlined in the following table:

TABLE 1: STATE-ASSISTED PETROLEUM CLEANUP ELIGIBILITY PROGRAMS		
PROGRAM NAME	PROGRAM DATES	PROGRAM DESCRIPTION
Early Detection Incentive Program (EDI) s. 376.3071(9), F.S.	Discharges must have been reported between July 1, 1986, and December 31, 1988, to be eligible	<ul style="list-style-type: none"> • First state-assisted cleanup program • 100 percent state funding for cleanup if site owners reported releases • Originally gave site owners the option of conducting cleanup themselves and receiving reimbursement from the state or having the state conduct the cleanup in priority order • Reimbursement option was phased out, so all cleanups are now conducted by the state
Petroleum Liability and Restoration Insurance Program (PLRIP) s. 376.3072, F.S.	Discharges must have been reported between January 1, 1989, and December 31, 1998, to be eligible	<ul style="list-style-type: none"> • Required facilities to purchase third party liability insurance to be eligible • Provides varying amounts of state-funded site restoration coverage¹²
Abandoned Tank Restoration Program (ATRP) s. 376.305(6), F.S.	Applications must have been submitted between June 1, 1990, and June 30, 1996 ¹³	Provides 100 percent state funding for cleanup, less deductible, at facilities that had out-of-service or abandoned tanks as of March 1990
Innocent Victim Petroleum Storage System Restoration Program s. 376.30715, F.S.	The application period began on July 1, 2005, and remains open	Provides 100 percent state funding for a site acquired before July 1, 1990, that ceased operating as a petroleum storage or retail business before January 1, 1985
Petroleum Cleanup Participation Program (PCPP) s. 376.3071(13), F.S.	PCPP began on July 1, 1996, and accepted applications until December 31, 1998	<ul style="list-style-type: none"> • Created to provide financial assistance for sites that had missed all previous opportunities • Only discharges that occurred before 1995 were eligible • Site owner or responsible party must pay 25 percent of cleanup costs¹⁴ • Originally had a \$300,000 cap on the amount of coverage, which was raised to \$400,000 beginning July 1, 2008

¹² The PLRIP initially provided \$1M worth of site restoration coverage to eligible sites. In 1994, the state began phasing out the Department's participation in the restoration insurance program by reducing the amount of restoration coverage provided. For discharges reported from January 1, 1994, to December 31, 1996, coverage was limited to \$300,000. For discharges reported from January 1, 1997, to December 31, 1998, coverage was limited to \$150,000. Section 376.3072(2)(d)2.c.-d., F.S. In 2008, the Legislature raised the coverage for all PLRIP sites as follows: sites with \$1M in coverage were raised to \$1.2M, sites with \$300,000 in coverage were raised to \$400,000, and sites with \$150,000 in coverage were raised to \$300,000. Chapter 2008-127, s. 3, at 6, L.O.F.

¹³ The ATRP originally had a one-year application period, but the deadline was extended. The deadline is now waived indefinitely for site owners who are financially unable to pay for the closure of abandoned tanks. Section 376.305(6)(b), F.S.

¹⁴ The 25 percent copay requirement can be reduced or eliminated if the site owner and all responsible parties demonstrate that they are financially unable to comply. Section 376.3071(13)(c), F.S.

TABLE 1: STATE-ASSISTED PETROLEUM CLEANUP ELIGIBILITY PROGRAMS		
PROGRAM NAME	PROGRAM DATES	PROGRAM DESCRIPTION
Consent Order (aka "Hardship" or "Indigent")	This program began in 1986 and remains open	<ul style="list-style-type: none"> • Created to provide financial assistance under certain circumstances for sites that the Department initiates an enforcement action to clean up • An agreement is formed whereby the Department conducts the cleanup and the site owner or responsible party pays for a portion of the costs

As of February 2014, there are approximately 17,300 sites eligible for state funding through one of the above programs. Of these, approximately 7,300 have been rehabilitated and closed, approximately 3,100 are currently undergoing some phase of rehabilitation, and approximately 6,900 await rehabilitation.

Inland Protection Trust Fund

To fund the cleanup of contaminated sites, the SUPER Act created the Inland Protection Trust Fund (IPTF).¹⁵ The IPTF is funded by an excise tax per barrel on petroleum and petroleum products in or imported into the state.¹⁶ The amount of the excise tax per barrel is determined by a formula, which is dependent upon the unobligated balance of the IPTF.¹⁷ Each year, approximately \$200 million is deposited into the IPTF, and about \$125 million is available for site rehabilitation.

Funding for rehabilitation of a site is based on a relative risk scoring system. Each funding-eligible site receives a numeric score based on the threat the site contamination poses to the environment or to human health, safety, or welfare.¹⁸ Sites currently in the Restoration Program range in score from five to 115 points, with a score of 115 representing a substantial threat and a score of five representing a very low threat. Sites are rehabilitated in priority order beginning with the highest score, with funding based on available budget.¹⁹ The Department sets the priority score funding threshold, which is the minimum score a site must be assigned to receive restoration funding at a particular point in time. The threshold is periodically raised or lowered depending on the Restoration Program's current budget, projected expenditures for the remainder of the fiscal year, and the next fiscal year's anticipated budget.²⁰ Currently, the threshold is set at 46 points.

Preapproval Program

When enacted in 1986, the SUPER Act gave site owners two options for having their sites rehabilitated through the Restoration Program: site owners could either conduct the rehabilitation themselves and receive reimbursement from the state or have the state conduct the cleanup in priority order.²¹ However, the reimbursement program proved to be costly and resulted in a backlog of unpaid claims amounting to \$551.5 million.²²

In 1996, the Legislature made substantial revisions to the Restoration Program as a result of an Attorney General report documenting abuse, inefficiencies, and fraud within the program. This legislation phased out the reimbursement format of funding assistance and created the current Preapproval Program, which requires all state-funded site rehabilitation to be conducted on a

¹⁵ Section 376.3071(3)-(4), F.S.

¹⁶ Sections 206.9935(3) and 376.3071(6), F.S.

¹⁷ The amount of the excise tax per barrel is based on the following formula: 30 cents if the unobligated balance is between \$100 million and \$150 million; 60 cents if the unobligated balance is between \$50 million and \$100 million; and 80 cents if the unobligated balance is \$50 million or less. Section 206.9935(3), F.S.

¹⁸ Chapter 62-771.100, F.A.C.

¹⁹ Chapter 62-771.300, F.A.C.

²⁰ DEP BUREAU OF PETROLEUM STORAGE SYSTEMS, PETROLEUM CLEANUP PREAPPROVAL PROGRAM STANDARD OPERATING PROCEDURES 19-20 (2012).

²¹ DEP, GUIDE TO FLORIDA'S PETROLEUM CLEANUP PROGRAM 2 (2002).

²² DEP BUREAU OF PETROLEUM STORAGE SYSTEMS, PETROLEUM CONTAMINATION CLEANUP AND DISCHARGE PREVENTION PROGRAMS 17 (2012).

preapproved basis.²³ Thus, contractors may only be paid for site rehabilitation tasks if the scope of work was approved in writing by the Department before the work was conducted.²⁴ The legislation also directed the Department to adopt uniform scopes of work with templated labor and equipment costs to establish the type of work and expenditures that are allowed for preapproved site rehabilitation tasks.²⁵

The Preapproval Program is not an eligibility program that allows a site to receive state funding for rehabilitation. Rather, it is the process the Department uses to conduct site rehabilitation. All sites in the Preapproval Program must qualify for state rehabilitation funding through one of the eligibility programs previously described in Table 1.

Contractor Selection

Under the Preapproval Program, a site owner or responsible party may select any contractor to conduct the rehabilitation of a site as long as the contractor:

- Meets all certification and license requirements imposed by law;
- Complies with applicable Occupational Safety and Health Administration regulations;
- Maintains workers' compensation insurance for all employees;
- Maintains comprehensive general and automobile liability insurance;
- Maintains professional liability insurance;
- Has submitted a sworn statement on public entity crimes; and
- Has the capacity to perform or supervise the majority of the work at a site.²⁶

If a site owner or responsible party does not select a contractor by filling out a Contractor Designation Form (CDF), the Department assigns a state contractor to conduct rehabilitation of the site.²⁷ A site owner or responsible party may submit a new CDF designating a new contractor at any time, but may not switch contractors more than twice in any 12-month period.²⁸

Determining Rehabilitation Costs

There are three existing methods for developing a cost estimate for rehabilitation tasks: 1) fixed-cost templates, 2) time and materials, and 3) performance-based cleanup.

Fixed-Cost Templates

Pursuant to the law, the Department developed fixed costs for many common petroleum rehabilitation expenses.²⁹ Maximum compensation schedules were established to set fixed prices for commonly used non-labor items, such as lab analyses and equipment rentals.³⁰ The Department also created fixed cost templates that outline the fixed prices for packaged equipment kits and defined scopes of work.³¹ These templated costs are based on fixed rates for labor and the maximum compensation schedules.³² The fixed template amounts are paid to the contractor regardless of the actual cost of the work as long as the specified item was provided or scope of work was completed.³³ If a contractor wishes to increase the scope of work after a work order has been executed, he or she must provide justification for the extra work.³⁴ The extra work must be approved by the Department before the

²³ Chapter 96-277, s. 5, L.O.F.

²⁴ *Id.*

²⁵ *Id.*

²⁶ Section 376.30711(2)(c), F.S.

²⁷ DEP BUREAU OF PETROLEUM STORAGE SYSTEMS, PETROLEUM CLEANUP PREAPPROVAL PROGRAM STANDARD OPERATING PROCEDURES 24 (2012).

²⁸ *Id.* at 25.

²⁹ Section 376.3071(2)(e), F.S.

³⁰ *Id.* at 50.

³¹ *Id.*

³² *Id.* at 69.

³³ *Id.* at 52.

³⁴ *Id.*

contractor commences work.³⁵ A reduction in the scope of work does not have to be preapproved and is instead handled when an invoice is submitted after completion of the work.³⁶

Time and Materials

Time and materials estimating is used only for scopes of work for which there are no fixed cost templates.³⁷ This method is commonly used for more complex rehabilitation work, such as remedial action constructions and deep well installations.³⁸ Under this method, costs for specific scopes of work are determined using the same standardized labor and equipment rates that the Department uses to determine the fixed cost templates.³⁹

Performance-Based Cleanup

Contractors who develop cost proposals using the fixed-cost template or time and materials approach are paid as long as the work outlined in the work order is completed, regardless of whether the work actually reduces the site's level of contamination.⁴⁰ In contrast, payment for work completed under the performance-based cleanup (PBC) approach is based upon measured progress toward reaching the rehabilitation goal.⁴¹ Under this method, a contractor guarantees complete rehabilitation of a site for a price agreed upon by the Department and the contractor.⁴² Contractors are not required to pursue rehabilitation using PBC, but are encouraged to do so for sites having certain factors that make them suitable for PBC.⁴³

Subcontractor Selection and Cost

Contractors may hire subcontractors to provide certain services or products for rehabilitation of a site, so long as the subcontractors meet the same requirements listed above for contractors under "Contractor Selection." For services or products that are not covered by the fixed-cost templates or the maximum compensation schedule, prices for subcontractor work must be provided by the contractor in the proposal.⁴⁴ If the subcontractor cost is equal to or greater than \$2,500, three written quotes are required.⁴⁵ The contractor must select the lowest bidder to complete the work unless there is good cause for not giving the work to that bidder, such as prior poor performance.⁴⁶ For costs less than \$2,500, only one written quote is required.⁴⁷ To account for the time and effort required to obtain a subcontractor, a contractor receives a fee, which is included in the total cost of the contract with the Department, that is equal to 10 percent of the subcontractor cost.⁴⁸

Expediting Site Rehabilitation

As described above, eligible contaminated sites typically receive state rehabilitation funding in priority order based on their numeric score. However, there are some programs that allow sites to receive funding for rehabilitation or site closure out of priority score order, as long as the sites are eligible under one of the programs in Table 1. Two of these programs are Preapproved Advanced Cleanup and Low Scored Site Initiative.

³⁵ *Id.*

³⁶ *Id.*

³⁷ *Id.* at 56.

³⁸ *Id.* at 57.

³⁹ *Id.* at 69.

⁴⁰ *Id.* at 59.

⁴¹ *Id.*

⁴² *Id.*

⁴³ *Id.* at 60.

⁴⁴ *Id.* at 75.

⁴⁵ *Id.* at 76.

⁴⁶ *Id.* at 78.

⁴⁷ *Id.* at 76.

⁴⁸ *Id.* at 53.

Preapproved Advanced Cleanup

Preapproved Advanced Cleanup (PAC) was created in 1996 to allow an eligible site to receive state rehabilitation funding even if the site's priority score does not fall within the threshold currently being funded.⁴⁹ The purpose of PAC was to facilitate property transactions or public works projects on contaminated sites.⁵⁰ To participate in PAC, a site must be eligible for state rehabilitation funding under the Early Detection Incentive Program (EDI), the Petroleum Liability and Restoration Insurance Program (PLRIP), the Abandoned Tank Restoration Program (ATRP), the Innocent Victim Petroleum Storage System Restoration Program (Innocent Victim), or the Petroleum Cleanup Participation Program (PCPP).⁵¹

To apply for PAC, a site owner or responsible party must bid a cost share of the total site rehabilitation.⁵² The cost share must be at least 25 percent of the total cost of rehabilitation.⁵³ For PCPP sites, the cost share must be at least 25 percent of the state's share of the rehabilitation, as the site owner or responsible party is already required to pay for 25 percent of the total cost of rehabilitation to be eligible for PCPP.⁵⁴ In years when the Department runs a bid cycle, bids may be accepted in two windows of May 1 through June 30 and November 1 through December 31.⁵⁵ Bids are awarded based solely on the proposed cost-share percentage and not the estimated dollar amount of that share.⁵⁶ The Department may enter into PAC contracts for a total of up to \$15 million per fiscal year,⁵⁷ and no more than \$5 million per fiscal year may be preapproved for rehabilitation work at an individual facility.⁵⁸

Low Scored Site Initiative

The Low Scored Site Initiative (LSSI) was created to expedite the assessment and closure of sites that contain minimal contamination and that are not a threat to human health or the environment. To participate in the program, a site owner or responsible party must demonstrate that the following criteria are met:

- Upon assessment, the site retains a priority ranking score of 29 points or less;
- No excessively contaminated soil exists onsite;
- A minimum of six months of groundwater monitoring indicates that the plume is shrinking or stable;
- The remaining contamination resulting from petroleum products does not adversely affect adjacent surface waters;
- The area of groundwater contamination is less than one-quarter acre and is confined to the source property boundary; and
- Soils onsite found between the land surface and two feet below the land surface must meet the soil cleanup target levels (SCTLs) established by the Department unless human exposure is limited by appropriate institutional or engineering controls.⁵⁹

An assessment is conducted to determine whether the above criteria are met.⁶⁰ The state pays the assessment costs for sites eligible for funding under EDI, ATRP, Innocent Victim, PLRIP, or PCPP.⁶¹

⁴⁹ Section 376.30713(1), F.S.

⁵⁰ *Id.*

⁵¹ For PCPP sites, PAC is only available if the 25 percent copay requirement of PCPP has not been reduced or eliminated. Section 376.30713(1)(d), F.S.

⁵² Section 376.30713(2)(a), F.S.

⁵³ *Id.*

⁵⁴ Section 376.30713(1)(d)-(2)(a), F.S.

⁵⁵ Section 376.30713(2)(a), F.S.; DEP BUREAU OF PETROLEUM STORAGE SYSTEMS, PETROLEUM CLEANUP PREAPPROVAL PROGRAM STANDARD OPERATING PROCEDURES 7 (2012).

⁵⁶ Section 376.30713(2)(b), F.S.; DEP BUREAU OF PETROLEUM STORAGE SYSTEMS, PETROLEUM CLEANUP PREAPPROVAL PROGRAM STANDARD OPERATING PROCEDURES 7 (2012).

⁵⁷ Section 376.30713(4), F.S.

⁵⁸ A "facility" includes, but is not limited to, "multiple site facilities such as airports, port facilities, and terminal facilities even though such enterprises may be treated as separate facilities for other purposes under this chapter." Section 376.30713(4), F.S.

⁵⁹ Section 376.3071(11)(b)1., F.S.

⁶⁰ DEP PETROLEUM RESTORATION PROGRAM, PROCEDURAL AND TECHNICAL GUIDANCE FOR THE LOW-SCORED SITE INITIATIVE 9 (2013).

⁶¹ *Id.* at 3.

Funding for LSSI is limited to \$10 million per fiscal year, which may only be used to fund site assessments.⁶² Each site has a funding cap of \$30,000, and each site owner or responsible party is limited to 10 eligible sites per fiscal year.⁶³ Funds are allocated on a first-come, first-served basis.⁶⁴ Sites not eligible for state rehabilitation funding may still qualify for closure under LSSI if an assessment reveals that the above criteria are met, but the state will not pay for the assessment.⁶⁵

If the assessment shows the above criteria are met, there are three options for site closure:

- If no contamination is detected during the assessment, the Department may issue a site rehabilitation completion order.⁶⁶
- If the assessment demonstrates that minimal contamination exists onsite, but the above criteria are met, the Department may issue an LSSI no further action administrative order. This determination acknowledges that the contamination is not a threat to human health or the environment.⁶⁷
- If soil between the land surface and two feet below the land surface exceeds SCTLs, but the above criteria are otherwise met, the Department may issue a site rehabilitation completion order with conditions. This determination requires that institutional and/or engineering controls be put in place to prevent human or environmental exposure to the contamination. The state is not authorized to fund such controls.⁶⁸

If at any time data collected during the assessment indicate that the above criteria for closure will not be met, assessment activities will be terminated.⁶⁹ LSSI funding will be discontinued if it is determined at any point that a closure cannot be accomplished within the \$30,000 funding limit, unless the site owner or responsible party is willing to contribute funds to the assessment work.⁷⁰ A site determined to be ineligible for LSSI funding retains its current program eligibility and will receive rehabilitation funding in priority order.

Procurement

Chapter 287, F.S., regulates state agency⁷¹ procurement of commodities and services. Without an explicit exemption, the Department is required to comply with this chapter when procuring contracts for petroleum rehabilitation tasks.

Depending on the cost and characteristics of the needed goods or services, agencies may use a variety of procurement methods, including:

- Single source contracts, which are used when an agency determines that only one vendor is available to provide a commodity or service at the time of purchase;
- Invitations to bid, which are used when an agency determines that standard services or goods will meet needs, wide competition is available, and the vendor's experience will not greatly influence the agency's results;
- Requests for proposal, which are used when the procurement requirements allow for consideration of various solutions and the agency believes more than two or three vendors exist who can provide the required goods or services; and

⁶² Section 376.3071(11)(b)3.c., F.S.

⁶³ *Id.*

⁶⁴ *Id.*

⁶⁵ *Id.* at 1-2.

⁶⁶ Section 376.3071(11)(b)2., F.S.

⁶⁷ *Id.*

⁶⁸ DEP PETROLEUM RESTORATION PROGRAM, PROCEDURAL AND TECHNICAL GUIDANCE FOR THE LOW-SCORED SITE INITIATIVE 3 (2013).

⁶⁹ *Id.* at 11.

⁷⁰ *Id.*

⁷¹ Section 287.012(1), F.S., defines agency as "any of the various state officers, departments, boards, commissions, divisions, bureaus, and councils and any other unit of organization, however designated, of the executive branch of state government. 'Agency' does not include the university and college boards of trustees or the state universities and colleges."

- Invitations to negotiate, which are used when negotiations are determined to be necessary to obtain the best value and involve a request for highly complex, customized, mission-critical services.⁷²

For contracts for commodities or services in excess of \$35,000, agencies must use a competitive solicitation process.⁷³ Competitive solicitation means “the process of requesting and receiving two or more sealed bids, proposals, or replies submitted by responsive vendors in accordance with the terms of a competitive process, regardless of the method of procurement.”⁷⁴ Certain contractual services and commodities are not subject to competitive solicitation requirements.⁷⁵

In addition, s. 287.0595, F.S., directs the Department to adopt rules governing procurement for pollution response action contracts. The term “response action” includes any activity performed to rehabilitate a petroleum-contaminated site.⁷⁶ In the rules, the Department must establish procedures for:

- Determining the qualifications of responsible potential vendors prior to advertisement for and receipt of bids, proposals, or replies for pollution response action contracts, including procedures for the rejection of unqualified vendors;
- Awarding such contracts to the lowest responsible and responsive vendor,⁷⁷ as well as procedures to be followed in cases in which the Department declares a valid emergency to exist that would necessitate the waiver of the rules governing the awarding of such contracts to the lowest responsible and responsive vendor;
- Payment of contracts;
- Negotiating contracts, modifying contract documents, and establishing terms and conditions of contracts.⁷⁸

Inspector General Review

In 2012, during a review of the Department’s divisions, districts, and programs, questions arose concerning the effectiveness and efficiency of the Restoration Program. As a result, Secretary Herschel T. Vinyard, Jr., requested that his Inspector General review the Restoration Program and identify areas needing improvement. In a memo to Secretary Vinyard, the Inspector General identified the current contractor selection process as one such area. Specifically, the Inspector General stated:

The structure of the current program allows for the site owner/responsible party to designate the remediation contractor for their site. As long as the Department funds costs for work that can be easily manipulated and changed by outside parties, program funds are exposed to risk of waste or elevated costs. If the Department controlled the process of bid solicitation and designation of contractors, the opportunity for contractor manipulation would be greatly reduced.

2013 Legislation

For the 2013-14 fiscal year, the Legislature appropriated \$125 million to the Restoration Program. Due in part to the concerns raised in the Inspector General’s memo, however, that appropriation was limited by Specific Appropriation 1668 of the Fiscal Year 2013-14 General Appropriations Act in Senate Bill 1500 (proviso) and Section 29 of Senate Bill 1502 (implementing bill). The proviso appropriated up to \$50 million, available immediately, to the Department to fund payments for preapproved task assignments, contracts, and work orders approved by the Department before June 30, 2013, or to

⁷² Section 287.057, F.S.

⁷³ Section 287.057(1), F.S., requires all projects that exceed the Category Two (\$35,000) threshold contained in s. 287.017, F.S., to be competitively bid.

⁷⁴ Section 287.012(6), F.S.

⁷⁵ Section 287.057(3)(f), F.S.

⁷⁶ See ss. 287.0595(1)(b) and 376.301(39), F.S.

⁷⁷ A “responsible vendor” is defined as “a vendor who has the capability in all respects to fully perform the contract requirements and the integrity and reliability that will assure good faith performance.” Section 287.012(24), F.S. A “responsive vendor” is defined as “a vendor that has submitted a bid, proposal, or reply that conforms in all material respects to the solicitation.” Section 287.012(26), F.S.

⁷⁸ Section 287.0595(1), F.S.

address an imminent environmental threat. The remaining \$75 million was placed in reserve until the Department submitted a plan to the Legislative Budget Commission (LBC) detailing how the Department would improve the effectiveness and efficiency of the Restoration Program. The plan was required to include a strategy for developing a competitive procurement process for selecting rehabilitation contractors pursuant to chapter 287, F.S. The implementing bill stipulated that after June 30, 2013, the Department could only enter into contracts that had been competitively procured. In addition, the proviso prohibited the funds in reserve from being released after January 1, 2014, unless the Department had adopted rules to implement the competitive procurement process.

On September 12, 2013, the Department presented its plan to improve the Restoration Program's effectiveness and efficiency to the LBC. In the plan, the Department indicated an intent to:

- Implement competitive procurement procedures by developing a pool of qualified contractors through an invitation to negotiate process consistent with ss. 287.056, 287.057, and 287.0595, F.S.;
- Create performance expectations for the contractors and procedures for evaluating their performance on an ongoing basis; and
- Reduce costs by ending its practice of purchasing rehabilitation equipment.

The LBC approved the plan unanimously.

To further comply with the proviso, the Department initiated rulemaking. On October 4, 2013, the Department filed a Notice of Proposed Rule in the Florida Administrative Register. The rules were filed for adoption with the Secretary of State on December 27, 2013. Some of the rules became effective on January 16, 2014, but two of the rules require ratification by the Legislature before they can become effective.⁷⁹

Effect of Proposed Changes

The proposed bill repeals s. 376.30711, F.S., which establishes the Preapproval Program, and relocates certain provisions that continue to be necessary. Thus, the Department will no longer preapprove site rehabilitation work based on templated costs. Instead, the bill requires all site rehabilitation work to be competitively procured pursuant to chapter 287, F.S., or rules adopted by the Department under s. 376.3071, F.S., or s. 287.0595, F.S. Although the Department was already required to competitively bid rehabilitation projects, the bill emphasizes that all work must now be procured through a competitive process.

The bill requires the Department's rules to specify that only vendors who meet the minimum qualifications in current law may submit responses on a competitive solicitation for site rehabilitation work. The rules must also include procedures for the rejection of vendors not meeting the minimum qualifications on the opening of a competitive solicitation, as well as requirements for a vendor to maintain its qualifications in order to enter contracts or perform rehabilitation work.

In addition, the bill repeals s. 376.3071(12), F.S., which establishes the reimbursement program. The reimbursement program has been obsolete since 1996.

Lastly, the bill changes the name of the Preapproved Advanced Cleanup program to the Advanced Cleanup program.

B. SECTION DIRECTORY:

Section 1 amends s. 376.301, F.S., conforming cross references.

Section 2 amends s. 376.302, F.S., conforming cross references.

⁷⁹ The two rules requiring legislative ratification are chapters 62-772.300 and 62-772.400, F.A.C.
STORAGE NAME: h7093.ANRAS.DOCX
DATE: 3/17/2014

Section 3 amends s. 376.305, F.S., conforming cross references.

Section 4 amends s. 376.3071, F.S., requiring petroleum site rehabilitation work to be competitively procured; repealing an obsolete reimbursement program.

Section 5 repeals s. 376.30711, F.S., relating to preapproved petroleum site rehabilitation.

Section 6 amends s. 376.30713, F.S., changing program name; conforming cross references.

Section 7 amends s. 376.30714, F.S., conforming cross references.

Section 8 amends s. 376.3072, F.S., conforming cross references.

Section 9 amends s. 376.3073, F.S., conforming cross references.

Section 10 amends s. 376.3075, F.S., conforming cross references.

Section 11 provides an effective date.

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:

The bill's modifications of the cleanup program will not impact Inland Protection Trust Fund revenues or how the Legislature appropriates those funds.

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.

27 (a) That significant quantities of petroleum and petroleum
 28 products are being stored in storage systems in this state,
 29 which is a hazardous undertaking.

30 (b) That spills, leaks, and other discharges from such
 31 storage systems have occurred, are occurring, and will continue
 32 to occur and that such discharges pose a significant threat to
 33 the quality of the groundwaters and inland surface waters of
 34 this state.

35 (c) That, where contamination of the ground or surface
 36 water has occurred, remedial measures have often been delayed
 37 for long periods while determinations as to liability and the
 38 extent of liability are made and that such delays result in the
 39 continuation and intensification of the threat to the public
 40 health, safety, and welfare; in greater damage to water
 41 resources and the environment; and in significantly higher costs
 42 to contain and remove the contamination.

43 (d) That adequate financial resources must be readily
 44 available to provide for the expeditious supply of safe and
 45 reliable alternative sources of potable water to affected
 46 persons and to provide a means for investigation and cleanup of
 47 contamination sites without delay.

48 (e) That it is necessary to fulfill the intent and
 49 purposes of ss. 376.30-376.317~~7~~ and ~~further it is hereby~~
 50 determined to be in the best interest of, and necessary for the
 51 protection of the public health, safety, and ~~general~~ welfare of
 52 the residents of this state, and therefore a paramount public

53 | purpose, to provide for the creation of a nonprofit public
 54 | benefit corporation as an instrumentality of the state to assist
 55 | in financing the functions provided in ss. 376.30-376.317 and to
 56 | authorize the department to enter into one or more service
 57 | contracts with such corporation for the purpose ~~provision~~ of
 58 | financing services related to such functions and to make
 59 | payments thereunder from the amount on deposit in the Inland
 60 | Protection Trust Fund, subject to annual appropriation by the
 61 | Legislature.

62 | (f) That to achieve the purposes established in paragraph
 63 | (e) and in order to facilitate the expeditious handling and
 64 | rehabilitation of contamination sites and remedial measures with
 65 | respect to contamination sites ~~provided hereby~~ without delay, it
 66 | is in the best interests of the residents of this state to
 67 | authorize such corporation to issue evidences of indebtedness
 68 | payable from amounts paid by the department under any such
 69 | service contract entered into between the department and such
 70 | corporation.

71 | (g) That the Petroleum Restoration Program must be
 72 | implemented in a manner that reduces costs and improves the
 73 | efficiency of rehabilitation activities to reduce the
 74 | significant backlog of contaminated sites eligible for state-
 75 | funded rehabilitation and the corresponding threat to the public
 76 | health, safety, and welfare, water resources, and the
 77 | environment.

78 | (2) INTENT AND PURPOSE.—

79 (a) It is the intent of the Legislature to establish the
 80 Inland Protection Trust Fund to serve as a repository for funds
 81 which will enable the department to respond without delay to
 82 incidents of inland contamination related to the storage of
 83 petroleum and petroleum products in order to protect the public
 84 health, safety, and welfare and to minimize environmental
 85 damage.

86 (b) It is the intent of the Legislature that the
 87 department implement rules and procedures to improve the
 88 efficiency of the Petroleum Restoration Program. The department
 89 is directed to implement rules and policies to eliminate and
 90 reduce duplication of site rehabilitation efforts, paperwork,
 91 and documentation, and micromanagement of site rehabilitation
 92 tasks.

93 (c) It is the intent of the Legislature that
 94 rehabilitation of contamination sites be conducted with emphasis
 95 on first addressing the sites that pose the greatest threat to
 96 the public health, safety, and welfare, water resources, and the
 97 environment, within the availability of funds in the Inland
 98 Protection Trust Fund, recognizing that source removal, wherever
 99 it is technologically feasible and cost-effective, will
 100 significantly reduce contamination or eliminate the spread of
 101 contamination and will protect the public health, safety, and
 102 welfare, water resources, and the environment.

103 (d) ~~(e)~~ The department is directed to adopt and implement
 104 uniform and standardized forms for ~~the requests for preapproval~~

105 site rehabilitation work and for the submittal of reports to
 106 ensure that information is submitted to the department in a
 107 concise, standardized uniform format seeking only information
 108 that is necessary.

109 (e) ~~(d)~~ The department is directed to implement
 110 computerized and electronic filing capabilities ~~of preapproval~~
 111 ~~requests~~ and submittal of reports in order to expedite submittal
 112 of the information and elimination of delay in paperwork. ~~The~~
 113 ~~computerized, electronic filing system shall be implemented no~~
 114 ~~later than January 1, 1997.~~

115 ~~(e) The department is directed to adopt uniform scopes of~~
 116 ~~work with templated labor and equipment costs to provide~~
 117 ~~definitive guidance as to the type of work and authorized~~
 118 ~~expenditures that will be allowed for preapproved site~~
 119 ~~rehabilitation tasks.~~

120 (f) The department is directed to establish guidelines for
 121 consideration and acceptance of new and innovative technologies
 122 for site rehabilitation work.

123 (3) CREATION.—There is ~~hereby~~ created the Inland
 124 Protection Trust Fund, hereinafter referred to as the "fund," to
 125 be administered by the department. This fund shall be used by
 126 the department as a nonlapsing revolving fund for carrying out
 127 the purposes of this section and s. 376.3073. To this fund shall
 128 be credited all penalties, judgments, recoveries,
 129 reimbursements, loans, and other fees and charges related to the
 130 implementation of this section and s. 376.3073 and the excise

131 tax revenues levied, collected, and credited pursuant to ss.
 132 206.9935(3) and 206.9945(1)(c). Charges against the fund shall
 133 be made pursuant to ~~in accordance with the provisions of~~ this
 134 section.

135 (4) USES.—Whenever, in its determination, incidents of
 136 inland contamination related to the storage of petroleum or
 137 petroleum products may pose a threat to ~~the environment or~~ the
 138 public health, safety, or welfare, water resources, or the
 139 environment, the department shall obligate moneys available in
 140 the fund to provide for:

141 (a) Prompt investigation and assessment of contamination
 142 sites.

143 (b) Expeditious restoration or replacement of potable
 144 water supplies as provided in s. 376.30(3)(c)1.

145 (c) Rehabilitation of contamination sites, which shall
 146 consist of cleanup of affected soil, groundwater, and inland
 147 surface waters, using the most cost-effective alternative that
 148 is technologically feasible and reliable and that provides
 149 adequate protection of the public health, safety, and welfare,
 150 and water resources, and that minimizes environmental damage,
 151 pursuant to ~~in accordance with~~ the site selection and cleanup
 152 criteria established by the department under subsection (5),
 153 except that this paragraph does not ~~nothing herein shall be~~
 154 ~~construed to~~ authorize the department to obligate funds for
 155 payment of costs which may be associated with, but are not
 156 integral to, site rehabilitation, such as the cost for

157 retrofitting or replacing petroleum storage systems.

158 (d) Maintenance and monitoring of contamination sites.

159 (e) Inspection and supervision of activities described in
160 this subsection.

161 (f) Payment of expenses incurred by the department in its
162 efforts to obtain from responsible parties the payment or
163 recovery of reasonable costs resulting from the activities
164 described in this subsection.

165 (g) Payment of any other reasonable costs of
166 administration, including those administrative costs incurred by
167 the Department of Health in providing field and laboratory
168 services, toxicological risk assessment, and other assistance to
169 the department in the investigation of drinking water
170 contamination complaints and costs associated with public
171 information and education activities.

172 (h) Establishment and implementation of the compliance
173 verification program as authorized in s. 376.303(1)(a),
174 including contracting with local governments or state agencies
175 to provide for the administration of such program through
176 locally administered programs, to minimize the potential for
177 further contamination sites.

178 (i) Funding of the provisions of ss. 376.305(6) and
179 376.3072.

180 (j) Activities related to removal and replacement of
181 petroleum storage systems, exclusive of costs of any tank,
182 piping, dispensing unit, or related hardware, if soil removal is

183 approved ~~preapproved~~ as a component of site rehabilitation and
 184 requires removal of the tank where remediation is conducted
 185 under this section ~~s. 376.30711~~ or if such activities were
 186 justified in an approved remedial action plan ~~performed pursuant~~
 187 ~~to subsection (12).~~

188 ~~(k) Activities related to reimbursement application~~
 189 ~~preparation and activities related to reimbursement application~~
 190 ~~examination by a certified public accountant pursuant to~~
 191 ~~subsection (12).~~

192 (l) ~~(1)~~ Reasonable costs of restoring property as nearly as
 193 practicable to the conditions which existed before ~~prior to~~
 194 activities associated with contamination assessment or remedial
 195 action taken under s. 376.303(4).

196 (1) ~~(m)~~ Repayment of loans to the fund.

197 (m) ~~(n)~~ Expenditure of sums from the fund to cover
 198 ineligible sites or costs as set forth in subsection (13), if
 199 the department in its discretion deems it necessary to do so. In
 200 such cases, the department may seek recovery and reimbursement
 201 of costs in the same manner and pursuant to ~~in accordance with~~
 202 the same procedures ~~as are~~ established for recovery and
 203 reimbursement of sums otherwise owed to or expended from the
 204 fund.

205 (n) ~~(o)~~ Payment of amounts payable under any service
 206 contract entered into by the department pursuant to s. 376.3075,
 207 subject to annual appropriation by the Legislature.

208 (o) ~~(p)~~ Petroleum remediation pursuant to this section ~~s.~~

209 | ~~376.30711~~ throughout a state fiscal year. The department shall
 210 | establish a process to uniformly encumber appropriated funds
 211 | throughout a state fiscal year and shall allow for emergencies
 212 | and imminent threats to public human health, safety, and
 213 | welfare, water resources, and the environment as provided in
 214 | paragraph (5)(a). This paragraph does not apply to
 215 | appropriations associated with the free product recovery
 216 | initiative provided in ~~of~~ paragraph (5)(c) or the ~~preapproved~~
 217 | advanced cleanup program provided in ~~of~~ s. 376.30713.

218 | (p) ~~(q)~~ Enforcement of this section and ss. 376.30-376.317
 219 | by the Fish and Wildlife Conservation Commission. The department
 220 | shall disburse moneys to the commission for such purpose.

221 |
 222 | The Inland Protection Trust Fund may only be used to fund the
 223 | activities in ss. 376.30-376.317 except ss. 376.3078 and
 224 | 376.3079. Amounts on deposit in the ~~Inland Protection Trust~~ fund
 225 | in each fiscal year shall first be applied or allocated for the
 226 | payment of amounts payable by the department pursuant to
 227 | paragraph (n) ~~(o)~~ under a service contract entered into by the
 228 | department pursuant to s. 376.3075 and appropriated in each year
 229 | by the Legislature before ~~prior to~~ making or providing for other
 230 | disbursements from the fund. ~~Nothing in~~ This subsection does not
 231 | ~~shall~~ authorize the use of the ~~Inland Protection Trust~~ fund for
 232 | cleanup of contamination caused primarily by a discharge of
 233 | solvents as defined in s. 206.9925(6), or polychlorinated
 234 | biphenyls when their presence causes them to be hazardous

235 wastes, except solvent contamination which is the result of
 236 chemical or physical breakdown of petroleum products and is
 237 otherwise eligible. Facilities used primarily for the storage of
 238 motor or diesel fuels as defined in ss. 206.01 and 206.86 are
 239 ~~shall be presumed not to be~~ excluded from eligibility pursuant
 240 to this section.

241 (5) SITE SELECTION AND CLEANUP CRITERIA.—

242 (a) The department shall adopt rules to establish
 243 priorities based upon a scoring system for state-conducted
 244 cleanup at petroleum contamination sites based upon factors that
 245 include, but need not be limited to:

246 1. The degree to which the public ~~human~~ health, safety, or
 247 welfare may be affected by exposure to the contamination;

248 2. The size of the population or area affected by the
 249 contamination;

250 3. The present and future uses of the affected aquifer or
 251 surface waters, with particular consideration as to the
 252 probability that the contamination is substantially affecting,
 253 or will migrate to and substantially affect, a known public or
 254 private source of potable water; and

255 4. The effect of the contamination on water resources and
 256 the environment.

257
 258 Moneys in the fund shall then be obligated for activities
 259 described in paragraphs (4)(a)-(e) at individual sites pursuant
 260 to ~~in accordance with~~ such established criteria. However,

261 ~~nothing in~~ this paragraph does not ~~shall be construed to~~
 262 restrict the department from modifying the priority status of a
 263 rehabilitation site where conditions warrant, taking into
 264 consideration the actual distance between the contamination site
 265 and groundwater or surface water receptors or other factors that
 266 affect the risk of exposure to petroleum products' chemicals of
 267 concern. The department may use the effective date of a
 268 department final order granting eligibility pursuant to
 269 subsections (10) ~~(9)~~ and (13) and ss. 376.305(6) and 376.3072 to
 270 establish a prioritization system within a particular priority
 271 scoring range.

272 (b) It is the intent of the Legislature to protect the
 273 health of all people under actual circumstances of exposure. The
 274 secretary shall establish criteria by rule for the purpose of
 275 determining, on a site-specific basis, the rehabilitation
 276 program tasks that comprise a site rehabilitation program and
 277 the level at which a rehabilitation program task and a site
 278 rehabilitation program are ~~may be deemed~~ completed. In
 279 establishing the rule, the department shall incorporate, to the
 280 maximum extent feasible, risk-based corrective action principles
 281 to achieve protection of the public ~~human~~ health, and safety,
 282 and welfare, water resources, and the environment in a cost-
 283 effective manner as provided in this subsection. Criteria for
 284 determining what constitutes a rehabilitation program task or
 285 completion of site rehabilitation program tasks and site
 286 rehabilitation programs shall be based upon the factors set

287 | forth in paragraph (a) and the following additional factors:

288 | 1. The current exposure and potential risk of exposure to
 289 | humans and the environment including multiple pathways of
 290 | exposure.

291 | 2. The appropriate point of compliance with cleanup target
 292 | levels for petroleum products' chemicals of concern. The point
 293 | of compliance shall be at the source of the petroleum
 294 | contamination. However, the department may ~~is authorized to~~
 295 | temporarily move the point of compliance to the boundary of the
 296 | property, or to the edge of the plume when the plume is within
 297 | the property boundary, while cleanup, including cleanup through
 298 | natural attenuation processes in conjunction with appropriate
 299 | monitoring, is proceeding. The department may also ~~is~~
 300 | ~~authorized~~, pursuant to criteria provided for in this paragraph,
 301 | ~~to~~ temporarily extend the point of compliance beyond the
 302 | property boundary with appropriate monitoring, if such extension
 303 | is needed to facilitate natural attenuation or to address the
 304 | current conditions of the plume, if the public ~~provided human~~
 305 | health, ~~public~~ safety, and welfare, water resources, and the
 306 | environment are adequately protected. Temporary extension of the
 307 | point of compliance beyond the property boundary, as provided in
 308 | this subparagraph, must ~~shall~~ include notice to local
 309 | governments and owners of any property into which the point of
 310 | compliance is allowed to extend.

311 | 3. The appropriate site-specific cleanup goal. The site-
 312 | specific cleanup goal shall be that all petroleum contamination

313 sites ultimately achieve the applicable cleanup target levels
 314 provided in this paragraph. However, the department may ~~is~~
 315 ~~authorized to~~ allow concentrations of the petroleum products'
 316 chemicals of concern to temporarily exceed the applicable
 317 cleanup target levels while cleanup, including cleanup through
 318 natural attenuation processes in conjunction with appropriate
 319 monitoring, is proceeding, if the public ~~provided human~~ health,
 320 ~~public~~ safety, and welfare, water resources, and the environment
 321 are adequately protected.

322 4. The appropriateness of using institutional or
 323 engineering controls. Site rehabilitation programs may include
 324 the use of institutional or engineering controls to eliminate
 325 the potential exposure to petroleum products' chemicals of
 326 concern to humans or the environment. Use of such controls must
 327 have prior department approval ~~be preapproved by the department,~~
 328 and may ~~institutional controls shall~~ not be acquired with moneys
 329 ~~funds~~ from the ~~Inland Protection Trust~~ fund. When institutional
 330 or engineering controls are implemented to control exposure, the
 331 removal of such controls must have prior department approval and
 332 must be accompanied immediately by the resumption of active
 333 cleanup₇ or other approved controls₇ unless cleanup target
 334 levels pursuant to this paragraph have been achieved.

335 5. The additive effects of the petroleum products'
 336 chemicals of concern. The synergistic effects of petroleum
 337 products' chemicals of concern must ~~shall~~ also be considered
 338 when the scientific data becomes available.

339 6. Individual site characteristics which must ~~shall~~
 340 include, but not be limited to, the current and projected use of
 341 the affected groundwater in the vicinity of the site, current
 342 and projected land uses of the area affected by the
 343 contamination, the exposed population, the degree and extent of
 344 contamination, the rate of contaminant migration, the apparent
 345 or potential rate of contaminant degradation through natural
 346 attenuation processes, the location of the plume, and the
 347 potential for further migration in relation to site property
 348 boundaries.

349 7. Applicable state water quality standards.

350 a. Cleanup target levels for petroleum products' chemicals
 351 of concern found in groundwater shall be the applicable state
 352 water quality standards. Where such standards do not exist, the
 353 cleanup target levels for groundwater shall be based on the
 354 minimum criteria specified in department rule. The department
 355 shall consider the following, as appropriate, in establishing
 356 the applicable minimum criteria: calculations using a lifetime
 357 cancer risk level of 1.0E-6; a hazard index of 1 or less; the
 358 best achievable detection limit; the naturally occurring
 359 background concentration; or nuisance, organoleptic, and
 360 aesthetic considerations.

361 b. Where surface waters are exposed to petroleum
 362 contaminated groundwater, the cleanup target levels for the
 363 petroleum products' chemicals of concern shall be based on the
 364 surface water standards as established by department rule. The

365 point of measuring compliance with the surface water standards
 366 shall be in the groundwater immediately adjacent to the surface
 367 water body.

368 8. Whether deviation from state water quality standards or
 369 from established criteria is appropriate. The department may
 370 issue a "No Further Action Order" based upon the degree to which
 371 the desired cleanup target level is achievable and can be
 372 reasonably and cost-effectively implemented within available
 373 technologies or engineering and institutional control
 374 strategies. Where a state water quality standard is applicable,
 375 a deviation may not result in the application of cleanup target
 376 levels more stringent than the ~~said~~ standard. In determining
 377 whether it is appropriate to establish alternate cleanup target
 378 levels at a site, the department may consider the effectiveness
 379 of source removal that has been completed at the site and the
 380 practical likelihood of+ the use of low yield or poor quality
 381 groundwater; the use of groundwater near marine surface water
 382 bodies; the current and projected use of the affected
 383 groundwater in the vicinity of the site; or the use of
 384 groundwater in the immediate vicinity of the storage tank area,
 385 where it has been demonstrated that the groundwater
 386 contamination is not migrating away from such localized source,
 387 if the public, ~~provided human~~ health, ~~public~~ safety, and
 388 welfare, water resources, and the environment are adequately
 389 protected.

390 9. Appropriate cleanup target levels for soils.

391 a. In establishing soil cleanup target levels for human
 392 exposure to petroleum products' chemicals of concern found in
 393 soils from the land surface to 2 feet below land surface, the
 394 department shall consider the following, as appropriate:
 395 calculations using a lifetime cancer risk level of 1.0E-6; a
 396 hazard index of 1 or less; the best achievable detection limit;
 397 or the naturally occurring background concentration.

398 b. Leachability-based soil target levels shall be based on
 399 protection of the groundwater cleanup target levels or the
 400 alternate cleanup target levels for groundwater established
 401 pursuant to this paragraph, as appropriate. Source removal and
 402 other cost-effective alternatives that are technologically
 403 feasible shall be considered in achieving the leachability soil
 404 target levels established by the department. The leachability
 405 goals do not apply ~~shall not be applicable~~ if the department
 406 determines, based upon individual site characteristics, that
 407 petroleum products' chemicals of concern will not leach into the
 408 groundwater at levels which pose a threat to public ~~human~~
 409 health, ~~and~~ safety, and welfare, water resources, or the
 410 environment.

411
 412 ~~However, nothing in~~ This paragraph does not ~~shall be construed~~
 413 ~~to~~ restrict the department from temporarily postponing
 414 completion of any site rehabilitation program for which funds
 415 are being expended whenever such postponement is ~~deemed~~
 416 necessary in order to make funds available for rehabilitation of

417 a contamination site with a higher priority status.

418 (c) The department shall require source removal, if
 419 warranted and cost-effective, at each site eligible for
 420 restoration funding from the ~~Inland Protection Trust~~ fund.

421 1. Funding for free product recovery may be provided in
 422 advance of the order established by the priority ranking system
 423 under paragraph (a) for site cleanup activities. However, a
 424 separate prioritization for free product recovery shall be
 425 established consistent with paragraph (a). No more than \$5
 426 million shall be encumbered from the ~~Inland Protection Trust~~
 427 fund in any fiscal year for free product recovery conducted in
 428 advance of the priority order under paragraph (a) established
 429 for site cleanup activities.

430 2. Once free product removal and other source removal
 431 identified in this paragraph are completed at a site, and
 432 notwithstanding the order established by the priority ranking
 433 system under paragraph (a) for site cleanup activities, the
 434 department may reevaluate the site to determine the degree of
 435 active cleanup needed to continue site rehabilitation. Further,
 436 the department shall determine whether ~~if~~ the reevaluated site
 437 qualifies for natural attenuation monitoring, long-term natural
 438 attenuation monitoring, or no further action. If additional site
 439 rehabilitation is necessary to reach no further action status,
 440 the site rehabilitation shall be conducted in the order
 441 established by the priority ranking system under paragraph (a).
 442 The department shall use ~~utilize~~ natural attenuation monitoring

443 strategies and, when cost-effective, transition sites eligible
 444 for restoration funding assistance to long-term natural
 445 attenuation monitoring where the plume is shrinking or stable
 446 and confined to the source property boundaries and the petroleum
 447 products' chemicals of concern meet the natural attenuation
 448 default concentrations, as defined by department rule. If the
 449 plume migrates beyond the source property boundaries, natural
 450 attenuation monitoring may be conducted pursuant to ~~in~~
 451 ~~accordance with~~ department rule, or if the site no longer
 452 qualifies for natural attenuation monitoring, active remediation
 453 may be resumed. For long-term natural attenuation monitoring, if
 454 the petroleum products' chemicals of concern increase or are not
 455 significantly reduced after 42 months of monitoring, or if the
 456 plume migrates beyond the property boundaries, active
 457 remediation shall be resumed as necessary. For sites undergoing
 458 active remediation, the department shall evaluate ~~template~~ the
 459 cost of natural attenuation monitoring ~~pursuant to s. 376.30711~~
 460 to ensure that site mobilizations are performed in a cost-
 461 effective manner. Sites that are not eligible for state
 462 restoration funding may transition to long-term natural
 463 attenuation monitoring using the criteria in this subparagraph.
 464 ~~Nothing in~~ This subparagraph does not preclude ~~precludes~~ a site
 465 from pursuing a "No Further Action" order with conditions.

466 3. The department shall evaluate whether higher natural
 467 attenuation default concentrations for natural attenuation
 468 monitoring or long-term natural attenuation monitoring are cost-

469 | effective and would adequately protect the public health,
 470 | safety, and welfare, water resources, and the environment. The
 471 | department shall also evaluate site-specific characteristics
 472 | that would allow for higher natural attenuation or long-term
 473 | natural attenuation concentration levels.

474 | 4. A local government may not deny a building permit based
 475 | solely on the presence of petroleum contamination for any
 476 | construction, repairs, or renovations performed in conjunction
 477 | with tank upgrade activities to an existing retail fuel facility
 478 | if the facility was fully operational before the building permit
 479 | was requested and if the construction, repair, or renovation is
 480 | performed by a licensed contractor. All building permits and any
 481 | construction, repairs, or renovations performed in conjunction
 482 | with such permits must comply with the applicable provisions of
 483 | chapters 489 and 553.

484 | (6) CONTRACTING AND CONTRACTOR SELECTION REQUIREMENTS.-

485 | (a) Site rehabilitation work on sites which are eligible
 486 | for state-funded cleanup from the fund pursuant to this section
 487 | and ss. 376.305(6), 376.3072, and 376.3073 may only be funded
 488 | pursuant to this section. A facility operator shall abate the
 489 | source of discharge for a new release that occurred after March
 490 | 29, 1995. If free product is present, the operator shall notify
 491 | the department, and the department may direct the removal of the
 492 | free product. The department shall grant approval to continue
 493 | site rehabilitation pursuant to this section.

494 | (b) When contracting for site rehabilitation activities

495 performed under the Petroleum Restoration Program, the
 496 department shall comply with competitive procurement
 497 requirements provided in chapter 287 or rules adopted under this
 498 section or s. 287.0595. A competitive solicitation issued
 499 pursuant to this section is not subject to s. 287.055.

500 (c) Each contractor performing site assessment and
 501 remediation activities for state-funded sites under this section
 502 shall certify to the department that the contractor meets all
 503 certification and license requirements imposed by law. Each
 504 contractor shall certify to the department that the contractor
 505 meets the following minimum qualifications:

506 1. Complies with applicable Occupational Safety and Health
 507 Administration regulations.

508 2. Maintains workers' compensation insurance for employees
 509 as required by the Florida Workers' Compensation Law.

510 3. Maintains comprehensive general liability and
 511 comprehensive automobile liability insurance with minimum limits
 512 of at least \$1 million per occurrence and \$1 million annual
 513 aggregate to pay claims for damage for personal injury,
 514 including accidental death, as well as claims for property
 515 damage that may arise from performance of work under the
 516 program, which insurance designates the state as an additional
 517 insured party.

518 4. Maintains professional liability insurance of at least
 519 \$1 million per occurrence and \$1 million annual aggregate.

520 5. Has the capacity to perform or directly supervise the

521 majority of the rehabilitation work at a site pursuant to s.
 522 489.113(9).

523 (d) The department rules implementing this section must
 524 specify that only qualified vendors may submit responses on a
 525 competitive solicitation. The department rules must also include
 526 procedures for the rejection of vendors not meeting the minimum
 527 qualifications on the opening of a competitive solicitation and
 528 requirements for a vendor to maintain its qualifications in
 529 order to enter contracts or perform rehabilitation work.

530 (e) A contractor that performs services pursuant to this
 531 subsection may file invoices for payment with the department for
 532 the services described in the approved contract. The invoices
 533 for payment must be submitted to the department on forms
 534 provided by the department, together with evidence documenting
 535 that activities were conducted or completed pursuant to the
 536 approved contract. If there are sufficient unencumbered funds
 537 available in the fund which have been appropriated for
 538 expenditure by the Legislature, and if all of the terms of the
 539 approved contract have been met, invoices for payment must be
 540 paid pursuant to s. 215.422. After a contractor has submitted
 541 its invoices to the department, and before payment is made, the
 542 contractor may assign its right to payment to another person
 543 without recourse of the assignee or assignor to the state. In
 544 such cases, the assignee must be paid pursuant to s. 215.422.
 545 Prior notice of the assignment and assignment information must
 546 be made to the department and must be signed and notarized by

547 the assigning party.

548 (f) The contractor shall submit an invoice to the
 549 department within 30 days after the date of the department's
 550 written acceptance of each interim deliverable or written
 551 approval of the final deliverable specified in the approved
 552 contract.

553 (g) The department shall make payments based on the terms
 554 of an approved contract for site rehabilitation work. The
 555 department may, based on its experience and the past performance
 556 and concerns regarding a contractor, retain up to 25 percent of
 557 the contracted amount or use performance bonds to ensure
 558 performance. The amount of retainage and the amount of
 559 performance bonds, as well as the terms and conditions for such,
 560 must be included in the approved contract.

561 (h) The contractor or the person to which the contractor
 562 has assigned its right to payment pursuant to paragraph (e)
 563 shall make prompt payment to subcontractors and suppliers for
 564 their costs associated with an approved contract pursuant to s.
 565 287.0585(1).

566 (i) The exemption under s. 287.0585(2) does not apply to
 567 payments associated with an approved contract.

568 (j) The department may withhold payment if the validity or
 569 accuracy of a contractor's invoices or supporting documents is
 570 in question.

571 (k) This section does not authorize payment to a person
 572 for costs of contaminated soil treatment or disposal that does

573 not meet the applicable rules of this state for such treatment
 574 or disposal, including all general permitting, state air
 575 emission standards, monitoring, sampling, and reporting rules
 576 more specifically described in department rules.

577 (1) The department shall terminate or suspend a
 578 contractor's eligibility for participation in the program if the
 579 contractor fails to perform its contractual duties for site
 580 rehabilitation program tasks.

581 (m) A site owner or operator, or his or her designee, may
 582 not receive any remuneration, in cash or in kind, directly or
 583 indirectly, from a rehabilitation contractor performing site
 584 cleanup activities pursuant to this section.

585 (7) ~~(6)~~ FUNDING.—The Inland Protection Trust Fund shall be
 586 funded as follows:

587 (a) All excise taxes levied, collected, and credited to
 588 the fund in accordance with ~~the provisions of~~ ss. 206.9935(3)
 589 and 206.9945(1)(c).

590 (b) All penalties, judgments, recoveries, reimbursements,
 591 and other fees and charges credited to the fund pursuant to ~~in~~
 592 ~~accordance with the provisions of~~ subsection (3).

593 (8) ~~(7)~~ DEPARTMENTAL DUTY TO SEEK RECOVERY AND
 594 REIMBURSEMENT.—

595 (a) Except as provided in subsection (10) ~~(9)~~ and as
 596 otherwise provided by law, the department shall recover to the
 597 use of the fund from a person or persons at any time causing or
 598 having caused the discharge or from the Federal Government,

599 jointly and severally, all sums owed or expended from the fund~~7~~
 600 pursuant to s. 376.308, except that the department may decline
 601 to pursue such recovery if it finds the amount involved too
 602 small or the likelihood of recovery too uncertain. Sums
 603 recovered as a result of damage due to a discharge related to
 604 the storage of petroleum or petroleum products or other similar
 605 disaster shall be apportioned between the fund and the General
 606 Revenue Fund so as to repay the full costs to the General
 607 Revenue Fund of ~~any~~ sums disbursed therefrom as a result of such
 608 disaster. A ~~Any~~ request for reimbursement to the fund for such
 609 costs, if not paid within 30 days after ~~of~~ demand, shall be
 610 turned over to the department for collection.

611 (b) Except as provided in subsection (10) ~~(9)~~ and as
 612 otherwise provided by law, it is the duty of the department in
 613 administering the fund diligently to pursue the reimbursement to
 614 the fund of any sum expended from the fund for cleanup and
 615 abatement pursuant to ~~in accordance with the provisions of~~ this
 616 section or s. 376.3073, unless the department finds the amount
 617 involved too small or the likelihood of recovery too uncertain.
 618 For the purposes of s. 95.11, the limitation period within which
 619 to institute an action to recover such sums shall begin ~~commence~~
 620 on the last date on which ~~any~~ such sums were expended~~7~~ and not
 621 the date on which ~~that~~ the discharge occurred. The department's
 622 claim for recovery of payments or overpayments from the fund
 623 must be based on the law in existence at the time of the payment
 624 or overpayment.

625 (c) If the department initiates an enforcement action to
 626 clean up a contaminated site and determines that the responsible
 627 party cannot ~~is~~ financially ~~unable to~~ undertake complete
 628 restoration of the contaminated site, that the current property
 629 owner was not responsible for the discharge when the
 630 contamination first occurred, or that the state's interest can
 631 best be served by conducting cleanup, the department may enter
 632 into an agreement with the responsible party or property owner
 633 whereby the department agrees to conduct site rehabilitation and
 634 the responsible party or property owner agrees to pay for the
 635 portion of the cleanup costs that are within such party's or
 636 owner's financial capabilities as determined by the department,
 637 taking into consideration the party's or owner's net worth and
 638 the economic impact on the party or owner.

639 (9) ~~(8)~~ INVESTMENTS; INTEREST.—Moneys in the fund which are
 640 not needed currently to meet the obligations of the department
 641 in the exercise of its responsibilities under this section and
 642 s. 376.3073 shall be deposited with the Chief Financial Officer
 643 to the credit of the fund and may be invested in such manner as
 644 ~~is~~ provided ~~for~~ by law ~~statute~~. The interest received on such
 645 investment shall be credited to the fund. Any provisions of law
 646 to the contrary notwithstanding, such interest may be freely
 647 transferred between the ~~this~~ trust fund and the Water Quality
 648 Assurance Trust Fund, in the discretion of the department.

649 (10) ~~(9)~~ EARLY DETECTION INCENTIVE PROGRAM.—To encourage
 650 early detection, reporting, and cleanup of contamination from

651 | leaking petroleum storage systems, the department shall, within
 652 | the guidelines established in this subsection, conduct an
 653 | incentive program which provides ~~shall provide~~ for a 30-month
 654 | grace period ending on December 31, 1988. ~~Pursuant thereto:~~

655 | (a) The department shall establish reasonable requirements
 656 | for the written reporting of petroleum contamination incidents
 657 | and shall distribute forms to registrants under s. 376.303(1)(b)
 658 | and to other interested parties upon request to be used for such
 659 | purpose. Until such forms are available for distribution, the
 660 | department shall take reports of such incidents, however made,
 661 | but shall notify any person making such a report that a complete
 662 | written report of the incident will be required by the
 663 | department at a later time, the form for which will be provided
 664 | by the department.

665 | (b) When reporting forms become available for
 666 | distribution, all sites involving incidents of contamination
 667 | from petroleum storage systems initially reported to the
 668 | department at any time from midnight on June 30, 1986, to
 669 | midnight on December 31, 1988, shall be qualified sites if
 670 | ~~provided that such~~ a complete written report is filed with
 671 | respect thereto within a reasonable time. Subject to the delays
 672 | which may occur as a result of the prioritization of sites under
 673 | paragraph (5)(a) for any qualified site, costs for activities
 674 | described in paragraphs (4)(a)-(e) shall be absorbed at the
 675 | expense of the fund, without recourse to reimbursement or
 676 | recovery, with the following exceptions:

677 1. ~~The provisions of~~ This subsection does ~~shall~~ not apply
 678 to a ~~any~~ site where the department has been denied site access
 679 to implement ~~the provisions of~~ this section.

680 2. ~~The provisions of~~ This subsection does ~~shall~~ not be
 681 ~~construed to~~ authorize or require reimbursement from the fund
 682 for costs expended before ~~prior to~~ the beginning of the grace
 683 period, ~~except as provided in subsection (12).~~

684 3.a. Upon discovery by the department that the owner or
 685 operator of a petroleum storage system has been grossly
 686 negligent in the maintenance of such petroleum storage system;
 687 has, with willful intent to conceal the existence of a serious
 688 discharge, falsified inventory or reconciliation records
 689 maintained with respect to the site at which such system is
 690 located; or has intentionally damaged such petroleum storage
 691 system, the site at which such system is located shall be
 692 ineligible for participation in the incentive program and the
 693 owner shall be liable for all costs due to discharges from
 694 petroleum storage systems at that site, any other provisions of
 695 chapter 86-159, Laws of Florida, to the contrary
 696 notwithstanding. For the purposes of this paragraph, willful
 697 failure to maintain inventory and reconciliation records,
 698 willful failure to make monthly monitoring system checks where
 699 such systems are in place, and failure to meet monitoring and
 700 retrofitting requirements within the schedules established under
 701 chapter 62-761, Florida Administrative Code, or violation of
 702 similar rules adopted by the department under this chapter,

703 constitutes ~~shall be construed to be~~ gross negligence in the
 704 maintenance of a petroleum storage system.

705 b. The department shall redetermine the eligibility of
 706 petroleum storage systems for which a timely Early Detection
 707 Incentive Program ~~EDI~~ application was filed, but which were
 708 deemed ineligible by the department, under the following
 709 conditions:

710 (I) The owner or operator, on or before March 31, 1991,
 711 shall submit, in writing, notification that the storage system
 712 is now in compliance with department rules adopted pursuant to
 713 s. 376.303, and which requests the department to reevaluate the
 714 storage system eligibility; and

715 (II) The department verifies the storage system compliance
 716 based on a compliance inspection.

717
 718 ~~Provided, however, that~~ A site may be determined eligible by the
 719 department for good cause shown, including, but not limited to,
 720 demonstration by the owner or operator that to achieve
 721 compliance would cause an increase in the potential for the
 722 spread of the contamination.

723 c. Redetermination of eligibility pursuant to sub-
 724 subparagraph b. shall not be available to:

725 (I) Petroleum storage systems owned or operated by the
 726 Federal Government.

727 (II) Facilities that denied site access to the department.

728 (III) Facilities where a discharge was intentionally

729 | concealed.

730 | (IV) Facilities that were denied eligibility due to:

731 | (A) Absence of contamination, unless any such facility
732 | subsequently establishes that contamination did exist at that
733 | facility on or before December 31, 1988.

734 | (B) Contamination from substances that were not petroleum
735 | or a petroleum product.

736 | (C) Contamination that was not from a petroleum storage
737 | system.

738 | d. ~~EDI~~ Applicants who demonstrate compliance for a site
739 | pursuant to sub-subparagraph b. are eligible for the Early
740 | Detection Incentive Program and site rehabilitation funding
741 | pursuant to subsections ~~subsection~~ (5) and (6) ~~s. 376.30711~~.

742 |
743 | If, in order to avoid prolonged delay, the department in its
744 | discretion deems it necessary to expend sums from the fund to
745 | cover ineligible sites or costs as set forth in this paragraph,
746 | the department may do so and seek recovery and reimbursement
747 | therefor in the same manner and pursuant to ~~in accordance with~~
748 | the same procedures ~~as are~~ established for recovery and
749 | reimbursement of sums otherwise owed to or expended from the
750 | fund.

751 | (c) A ~~No~~ report of a discharge made to the department by a
752 | ~~any~~ person pursuant to ~~in accordance with~~ this subsection, or
753 | ~~any~~ rules adopted promulgated ~~pursuant to~~ this subsection may
754 | not hereto, ~~shall~~ be used directly as evidence of liability for

755 such discharge in any civil or criminal trial arising out of the
756 discharge.

757 (d) ~~The provisions of~~ This subsection does ~~shall~~ not apply
758 to petroleum storage systems owned or operated by the Federal
759 Government.

760 (11) ~~(10)~~ VIOLATIONS; PENALTY.—~~A It is unlawful for any~~
761 person may not ~~to~~:

762 (a) Falsify inventory or reconciliation records maintained
763 in compliance with chapters 62-761 and 62-762, Florida
764 Administrative Code, with willful intent to conceal the
765 existence of a serious leak; or

766 (b) Intentionally damage a petroleum storage system.

767
768 A ~~Any~~ person convicted of such a violation is ~~shall be~~ guilty of
769 a felony of the third degree, punishable as provided in s.
770 775.082, s. 775.083, or s. 775.084.

771 (12) ~~(11)~~ SITE CLEANUP.—

772 (a) Voluntary cleanup.—This section does not prohibit a
773 person from conducting site rehabilitation ~~either~~ through his or
774 her own personnel or through responsible response action
775 contractors or subcontractors when such person is not seeking
776 site rehabilitation funding from the fund. Such voluntary
777 cleanups must meet all applicable environmental standards.

778 (b) Low-scored site initiative.—Notwithstanding
779 subsections (5) and (6) ~~s. 376.30711~~, a ~~any~~ site with a priority
780 ranking score of 29 points or less may voluntarily participate

781 in the low-scored site initiative regardless of, whether ~~or not~~
 782 the site is eligible for state restoration funding.

783 1. To participate in the low-scored site initiative, the
 784 responsible party or property owner must affirmatively
 785 demonstrate that the following conditions are met:

786 a. Upon reassessment pursuant to department rule, the site
 787 retains a priority ranking score of 29 points or less.

788 b. ~~No~~ Excessively contaminated soil, as defined by
 789 department rule, does not exist ~~exists~~ onsite as a result of a
 790 release of petroleum products.

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

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

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

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

805 2. Upon affirmative demonstration of the conditions under
 806 subparagraph 1., the department shall issue a determination of

807 "No Further Action." Such determination acknowledges that
 808 minimal contamination exists onsite and that such contamination
 809 is not a threat to the public ~~human~~ health, safety, or welfare,
 810 water resources, or the environment. If no contamination is
 811 detected, the department may issue a site rehabilitation
 812 completion order.

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

816 a. A responsible party or property owner may submit an
 817 assessment plan designed to affirmatively demonstrate that the
 818 site meets the conditions under subparagraph 1. Notwithstanding
 819 the priority ranking score of the site, the department may
 820 approve ~~preapprove~~ the cost of the assessment ~~pursuant to s.~~
 821 ~~376.30711~~, including 6 months of groundwater monitoring, not to
 822 exceed \$30,000 for each site. The department may not pay the
 823 costs associated with the establishment of institutional or
 824 engineering controls.

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

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

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

836 ~~(12) REIMBURSEMENT FOR CLEANUP EXPENSES. Except as~~
 837 ~~provided in s. 2(3), chapter 95-2, Laws of Florida, this~~
 838 ~~subsection shall not apply to any site rehabilitation program~~
 839 ~~task initiated after March 29, 1995. Effective August 1, 1996,~~
 840 ~~no further site rehabilitation work on sites eligible for state-~~
 841 ~~funded cleanup from the Inland Protection Trust Fund shall be~~
 842 ~~eligible for reimbursement pursuant to this subsection. The~~
 843 ~~person responsible for conducting site rehabilitation may seek~~
 844 ~~reimbursement for site rehabilitation program task work~~
 845 ~~conducted after March 29, 1995, in accordance with s. 2(2) and~~
 846 ~~(3), chapter 95-2, Laws of Florida, regardless of whether the~~
 847 ~~site rehabilitation program task is completed. A site~~
 848 ~~rehabilitation program task shall be considered to be initiated~~
 849 ~~when actual onsite work or engineering design, pursuant to~~
 850 ~~chapter 62-770, Florida Administrative Code, which is integral~~
 851 ~~to performing a site rehabilitation program task has begun and~~
 852 ~~shall not include contract negotiation and execution, site~~
 853 ~~research, or project planning. All reimbursement applications~~
 854 ~~pursuant to this subsection must be submitted to the department~~
 855 ~~by January 3, 1997. The department shall not accept any~~
 856 ~~applications for reimbursement or pay any claims on applications~~
 857 ~~for reimbursement received after that date; provided, however if~~
 858 ~~an application filed on or prior to January 3, 1997, was~~

859 ~~returned by the department on the grounds of untimely filing, it~~
 860 ~~shall be refiled within 30 days after the effective date of this~~
 861 ~~act in order to be processed.~~

862 ~~(a) Legislative findings. The Legislature finds and~~
 863 ~~declares that rehabilitation of contamination sites should be~~
 864 ~~conducted in a manner and to a level of completion which will~~
 865 ~~protect the public health, safety, and welfare and will minimize~~
 866 ~~damage to the environment.~~

867 ~~(b) Conditions.~~

868 ~~1. The owner, operator, or his or her designee of a site~~
 869 ~~which is eligible for restoration funding assistance in the EDI,~~
 870 ~~PLRIP, or ATRP programs shall be reimbursed from the Inland~~
 871 ~~Protection Trust Fund of allowable costs at reasonable rates~~
 872 ~~incurred on or after January 1, 1985, for completed program~~
 873 ~~tasks as identified in the department rule promulgated pursuant~~
 874 ~~to paragraph (5)(b), or uncompleted program tasks pursuant to~~
 875 ~~chapter 95-2, Laws of Florida, subject to the conditions in this~~
 876 ~~section. It is unlawful for a site owner or operator, or his or~~
 877 ~~her designee, to receive any remuneration, in cash or in kind,~~
 878 ~~directly or indirectly from the rehabilitation contractor.~~

879 ~~2. Nothing in this subsection shall be construed to~~
 880 ~~authorize reimbursement to any person for costs of contaminated~~
 881 ~~soil treatment or disposal that does not meet the applicable~~
 882 ~~rules of this state for such treatment or disposal, including~~
 883 ~~all general permitting, state air emission standards,~~
 884 ~~monitoring, sampling, and reporting rules more specifically~~

885 ~~described in department rules.~~

886 ~~(c) Legislative intent. Due to the value of the potable~~
 887 ~~water of this state, it is the intent of the Legislature that~~
 888 ~~the department initiate and facilitate as many cleanups as~~
 889 ~~possible utilizing the resources of the state, local~~
 890 ~~governments, and the private sector, recognizing that source~~
 891 ~~removal, wherever it is technologically feasible and cost-~~
 892 ~~effective, shall be considered the primary initial response to~~
 893 ~~protect public health, safety, and the environment.~~

894 ~~(d) Amount of reimbursement. The department shall~~
 895 ~~reimburse actual and reasonable costs for site rehabilitation.~~
 896 ~~The department shall not reimburse interest on the amount of~~
 897 ~~reimbursable costs for any reimbursement application. However,~~
 898 ~~nothing herein shall affect the department's authority to pay~~
 899 ~~interest authorized under prior law.~~

900 ~~(e) Records. The person responsible for conducting site~~
 901 ~~rehabilitation, or his or her agent, shall keep and preserve~~
 902 ~~suitable records as follows:~~

903 ~~1. Hydrological and other site investigations and~~
 904 ~~assessments, site rehabilitation plans, contracts and contract~~
 905 ~~negotiations, and accounts, invoices, sales tickets, or other~~
 906 ~~payment records from purchases, sales, leases, or other~~
 907 ~~transactions involving costs actually incurred related to site~~
 908 ~~rehabilitation. Such records shall be made available upon~~
 909 ~~request to agents and employees of the department during regular~~
 910 ~~business hours and at other times upon written request of the~~

911 ~~department.~~

912 ~~2. In addition, the department may from time to time~~
 913 ~~request submission of such site specific information as it may~~
 914 ~~require, unless a waiver or variance from such department~~
 915 ~~request is granted pursuant to paragraph (k).~~

916 ~~3. All records of costs actually incurred for cleanup~~
 917 ~~shall be certified by affidavit to the department as being true~~
 918 ~~and correct.~~

919 ~~(f) Application for reimbursement. Any eligible person who~~
 920 ~~performs a site rehabilitation program or performs site~~
 921 ~~rehabilitation program tasks such as preparation of site~~
 922 ~~rehabilitation plans or assessments; product recovery; cleanup~~
 923 ~~of groundwater or inland surface water; soil treatment or~~
 924 ~~removal; or any other tasks identified by department rule~~
 925 ~~developed pursuant to subsection (5), may apply for~~
 926 ~~reimbursement. Such applications for reimbursement must be~~
 927 ~~submitted to the department on forms provided by the department,~~
 928 ~~together with evidence documenting that site rehabilitation~~
 929 ~~program tasks were conducted or completed in accordance with~~
 930 ~~department rule developed pursuant to subsection (5), and other~~
 931 ~~such records or information as the department requires. The~~
 932 ~~reimbursement application and supporting documentation shall be~~
 933 ~~examined by a certified public accountant in accordance with~~
 934 ~~standards established by the American Institute of Certified~~
 935 ~~Public Accountants. A copy of the accountant's report shall be~~
 936 ~~submitted with the reimbursement application. Applications for~~

937 ~~reimbursement shall not be approved for site rehabilitation~~
 938 ~~program tasks which have not been completed, except for the task~~
 939 ~~of remedial action and except for uncompleted program tasks~~
 940 ~~pursuant to chapter 95-2, Laws of Florida, and this subsection.~~
 941 ~~Applications for remedial action may be submitted semiannually~~
 942 ~~at the discretion of the person responsible for cleanup. After~~
 943 ~~an applicant has filed an application with the department and~~
 944 ~~before payment is made, the applicant may assign the right to~~
 945 ~~payment to any other person, without recourse of the assignee or~~
 946 ~~assignor to the state, without affecting the order in which~~
 947 ~~payment is made. Information necessary to process the~~
 948 ~~application shall be requested from and provided by the~~
 949 ~~assigning applicant. Proper notice of the assignment and~~
 950 ~~assignment information shall be made to the department which~~
 951 ~~notice shall be signed and notarized by the assigning applicant.~~

952 ~~(g) Review.~~

953 ~~1. Provided there are sufficient unencumbered funds~~
 954 ~~available in the Inland Protection Trust Fund, or to the extent~~
 955 ~~proceeds of debt obligations are available for the payment of~~
 956 ~~existing reimbursement obligations pursuant to s. 376.3075, the~~
 957 ~~department shall have 60 days to determine if the applicant has~~
 958 ~~provided sufficient information for processing the application~~
 959 ~~and shall request submission of any additional information that~~
 960 ~~the department may require within such 60-day period. If the~~
 961 ~~applicant believes any request for additional information is not~~
 962 ~~authorized, the applicant may request a hearing pursuant to ss.~~

963 ~~120.569 and 120.57. Once the department requests additional~~
 964 ~~information, the department may request only that information~~
 965 ~~needed to clarify such additional information or to answer new~~
 966 ~~questions raised by or directly related to such additional~~
 967 ~~information.~~

968 ~~2. The department shall deny or approve the application~~
 969 ~~for reimbursement within 90 days after receipt of the last item~~
 970 ~~of timely requested additional material, or, if no additional~~
 971 ~~material is requested, within 90 days of the close of the 60 day~~
 972 ~~period described in subparagraph 1., unless the total review~~
 973 ~~period is otherwise extended by written mutual agreement of the~~
 974 ~~applicant and the department.~~

975 ~~3. Final disposition of an application shall be provided~~
 976 ~~to the applicant in writing, accompanied by a written~~
 977 ~~explanation setting forth in detail the reason or reasons for~~
 978 ~~the approval or denial. If the department fails to make a~~
 979 ~~determination on an application within the time provided in~~
 980 ~~subparagraph 2., or denies an application, or if a dispute~~
 981 ~~otherwise arises with regard to reimbursement, the applicant may~~
 982 ~~request a hearing pursuant to ss. 120.569 and 120.57.~~

983 ~~(h) Reimbursement. Upon approval of an application for~~
 984 ~~reimbursement, reimbursement for reasonable expenditures of a~~
 985 ~~site rehabilitation program or site rehabilitation program tasks~~
 986 ~~documented therein shall be made in the order in which the~~
 987 ~~department receives completed applications. Effective January 1,~~
 988 ~~1997, all unpaid reimbursement applications are subject to~~

989 ~~payment on the following terms: The department shall develop a~~
 990 ~~schedule of the anticipated dates of reimbursement of~~
 991 ~~applications submitted to the department pursuant to this~~
 992 ~~subsection. The schedule shall specify the projected date of~~
 993 ~~payment based on equal monthly payments and projected annual~~
 994 ~~revenue of \$100 million. Based on the schedule, the department~~
 995 ~~shall notify all reimbursement applicants of the projected date~~
 996 ~~of payment of their applications. The department shall direct~~
 997 ~~the Inland Protection Financing Corporation to pay applicants~~
 998 ~~the present value of their applications as soon as practicable~~
 999 ~~after approval by the department, subject to the availability of~~
 1000 ~~funds within the Inland Protection Financing Corporation. The~~
 1001 ~~present value of an application shall be based on the date on~~
 1002 ~~which the department anticipates the Inland Protection Financing~~
 1003 ~~Corporation will settle the reimbursement application and the~~
 1004 ~~schedule's projected date of payment and shall use 3.5 percent~~
 1005 ~~as the annual discount rate. The determination of the amount of~~
 1006 ~~the claim and the projected date of payment shall be subject to~~
 1007 ~~s. 120.57.~~

1008 ~~(i) Liberal construction. With respect to site~~
 1009 ~~rehabilitation initiated prior to July 1, 1986, the provisions~~
 1010 ~~of this subsection shall be given such liberal construction by~~
 1011 ~~the department as will accomplish the purposes set forth in this~~
 1012 ~~subsection. With regard to the keeping of particular records or~~
 1013 ~~the giving of certain notice, the department may accept as~~
 1014 ~~compliance action by a person which meets the intent of the~~

1015 ~~requirements set forth in this subsection.~~

1016 ~~(j) Reimbursement review contracts. The department may~~
 1017 ~~contract with entities capable of processing or assisting in the~~
 1018 ~~review of reimbursement applications. Any purchase of such~~
 1019 ~~services shall not be subject to chapter 287.~~

1020 ~~(k) Audits.~~

1021 ~~1. The department is authorized to perform financial and~~
 1022 ~~technical audits in order to certify site restoration costs and~~
 1023 ~~ensure compliance with this chapter. The department shall seek~~
 1024 ~~recovery of any overpayments based on the findings of these~~
 1025 ~~audits. The department must commence any audit within 5 years~~
 1026 ~~after the date of reimbursement, except in cases where the~~
 1027 ~~department alleges specific facts indicating fraud.~~

1028 ~~2. Upon determination by the department that any portion~~
 1029 ~~of costs which have been reimbursed are disallowed, the~~
 1030 ~~department shall give written notice to the applicant setting~~
 1031 ~~forth with specificity the allegations of fact which justify the~~
 1032 ~~department's proposed action and ordering repayment of~~
 1033 ~~disallowed costs within 60 days of notification of the~~
 1034 ~~applicant.~~

1035 ~~3. In the event the applicant does not make payment to the~~
 1036 ~~department within 60 days of receipt of such notice, the~~
 1037 ~~department shall seek recovery in a court of competent~~
 1038 ~~jurisdiction to recover reimbursement overpayments made to the~~
 1039 ~~person responsible for conducting site rehabilitation, unless~~
 1040 ~~the department finds the amount involved too small or the~~

1041 ~~likelihood of recovery too uncertain.~~

1042 ~~4. In addition to the amount of any overpayment, the~~
 1043 ~~applicant shall be liable to the department for interest of 1~~
 1044 ~~percent per month or the prime rate, whichever is less, on the~~
 1045 ~~amount of overpayment, from the date of overpayment by the~~
 1046 ~~department until the applicant satisfies the department's~~
 1047 ~~request for repayment pursuant to this paragraph. The~~
 1048 ~~calculation of interest shall be tolled during the pendency of~~
 1049 ~~any litigation.~~

1050 ~~5. Financial and technical audits frequently are conducted~~
 1051 ~~under this section many years after the site rehabilitation~~
 1052 ~~activities were performed and the costs examined in the course~~
 1053 ~~of the audit were incurred by the person responsible for site~~
 1054 ~~rehabilitation. During the intervening span of years, the~~
 1055 ~~department's rule requirements and its related guidance and~~
 1056 ~~other nonrule policy directives may have changed significantly.~~
 1057 ~~The Legislature finds that it may be appropriate for the~~
 1058 ~~department to provide relief to persons subject to such~~
 1059 ~~requirements in financial and technical audits conducted~~
 1060 ~~pursuant to this section.~~

1061 ~~a. The department is authorized to grant variances and~~
 1062 ~~waivers from the documentation requirements of subparagraph~~
 1063 ~~(e)2. and from the requirements of rules applicable in technical~~
 1064 ~~and financial audits conducted under this section. Variances and~~
 1065 ~~waivers shall be granted when the person responsible for site~~
 1066 ~~rehabilitation demonstrates to the department that application~~

1067 ~~of a financial or technical auditing requirement would create a~~
 1068 ~~substantial hardship or would violate principles of fairness.~~
 1069 ~~For purposes of this subsection, "substantial hardship" means a~~
 1070 ~~demonstrated economic, technological, legal, or other type of~~
 1071 ~~hardship to the person requesting the variance or waiver. For~~
 1072 ~~purposes of this subsection, "principles of fairness" are~~
 1073 ~~violated when the application of a requirement affects a~~
 1074 ~~particular person in a manner significantly different from the~~
 1075 ~~way it affects other similarly situated persons who are affected~~
 1076 ~~by the requirement or when the requirement is being applied~~
 1077 ~~retroactively without due notice to the affected parties.~~

1078 ~~b. A person whose reimbursed costs are subject to a~~
 1079 ~~financial and technical audit under this section may file a~~
 1080 ~~written request to the department for grant of a variance or~~
 1081 ~~waiver. The request shall specify:~~

1082 ~~(I) The requirement from which a variance or waiver is~~
 1083 ~~requested.~~

1084 ~~(II) The type of action requested.~~

1085 ~~(III) The specific facts which would justify a waiver or~~
 1086 ~~variance.~~

1087 ~~(IV) The reason or reasons why the requested variance or~~
 1088 ~~waiver would serve the purposes of this section.~~

1089 ~~e. Within 90 days after receipt of a written request for~~
 1090 ~~variance or waiver under this subsection, the department shall~~
 1091 ~~grant or deny the request. If the request is not granted or~~
 1092 ~~denied within 90 days of receipt, the request shall be deemed~~

1093 ~~approved. An order granting or denying the request shall be in~~
 1094 ~~writing and shall contain a statement of the relevant facts and~~
 1095 ~~reasons supporting the department's action. The department's~~
 1096 ~~decision to grant or deny the petition shall be supported by~~
 1097 ~~competent substantial evidence and is subject to ss. 120.569 and~~
 1098 ~~120.57. Once adopted, model rules promulgated by the~~
 1099 ~~Administration Commission under s. 120.542 shall govern the~~
 1100 ~~processing of requests under this provision.~~

1101 ~~6. The Chief Financial Officer may audit the records of~~
 1102 ~~persons who receive or who have received payments pursuant to~~
 1103 ~~this chapter in order to verify site restoration costs, ensure~~
 1104 ~~compliance with this chapter, and verify the accuracy and~~
 1105 ~~completeness of audits performed by the department pursuant to~~
 1106 ~~this paragraph. The Chief Financial Officer may contract with~~
 1107 ~~entities or persons to perform audits pursuant to this~~
 1108 ~~subparagraph. The Chief Financial Officer shall commence any~~
 1109 ~~audit within 1 year after the department's completion of an~~
 1110 ~~audit conducted pursuant to this paragraph, except in cases~~
 1111 ~~where the department or the Chief Financial Officer alleges~~
 1112 ~~specific facts indicating fraud.~~

1113 (13) PETROLEUM CLEANUP PARTICIPATION PROGRAM.—To encourage
 1114 detection, reporting, and cleanup of contamination caused by
 1115 discharges of petroleum or petroleum products, the department
 1116 shall, within the guidelines established in this subsection,
 1117 implement a cost-sharing cleanup program to provide
 1118 rehabilitation funding assistance for all property contaminated

1119 by discharges of petroleum or petroleum products occurring
 1120 before January 1, 1995, subject to a copayment provided for in a
 1121 Petroleum Cleanup Participation Program ~~preapproved~~ site
 1122 rehabilitation agreement. Eligibility is ~~shall be~~ subject to an
 1123 annual appropriation from the ~~Inland Protection Trust~~ fund.
 1124 Additionally, funding for eligible sites is ~~shall be~~ contingent
 1125 upon annual appropriation in subsequent years. Such continued
 1126 state funding is ~~shall not be deemed~~ an entitlement or a vested
 1127 right under this subsection. Eligibility shall be determined in
 1128 the program, ~~shall be~~ notwithstanding any other provision of
 1129 law, consent order, order, judgment, or ordinance to the
 1130 contrary.

1131 (a)1. The department shall accept any discharge reporting
 1132 form received before ~~prior to~~ January 1, 1995, as an application
 1133 for this program, and the facility owner or operator need not
 1134 reapply.

1135 2. Owners or operators of property contaminated by
 1136 petroleum or petroleum products from a petroleum storage system
 1137 may apply for such program by filing a written report of the
 1138 contamination incident, including evidence that such incident
 1139 occurred before ~~prior to~~ January 1, 1995, with the department.
 1140 Incidents of petroleum contamination discovered after December
 1141 31, 1994, at sites which have not stored petroleum or petroleum
 1142 products for consumption, use, or sale after such date shall be
 1143 presumed to have occurred before ~~prior to~~ January 1, 1995. An
 1144 operator's filed report shall be ~~deemed~~ an application of the

1145 owner for all purposes. Sites reported to the department after
 1146 December 31, 1998, are ~~shall~~ not ~~be~~ eligible for the ~~this~~
 1147 program.

1148 (b) Subject to annual appropriation from the ~~Inland~~
 1149 ~~Protection Trust~~ fund, sites meeting the criteria of this
 1150 subsection are eligible for up to \$400,000 of site
 1151 rehabilitation funding assistance in priority order pursuant to
 1152 subsections ~~subsection~~ (5) and (6) ~~s. 376.30711~~. Sites meeting
 1153 the criteria of this subsection for which a site rehabilitation
 1154 completion order was issued before ~~prior to~~ June 1, 2008, do not
 1155 qualify for the 2008 increase in site rehabilitation funding
 1156 assistance and are bound by the pre-June 1, 2008, limits. Sites
 1157 meeting the criteria of this subsection for which a site
 1158 rehabilitation completion order was not issued before ~~prior to~~
 1159 June 1, 2008, regardless of whether ~~or not~~ they have previously
 1160 transitioned to nonstate-funded cleanup status, may continue
 1161 state-funded cleanup pursuant to this section ~~s. 376.30711~~ until
 1162 a site rehabilitation completion order is issued or the
 1163 increased site rehabilitation funding assistance limit is
 1164 reached, whichever occurs first. The department may not pay ~~At~~
 1165 ~~no time shall~~ expenses incurred beyond ~~outside~~ the scope of an
 1166 approved contract ~~preapproved site rehabilitation program under~~
 1167 ~~s. 376.30711 be reimbursable.~~

1168 (c) Upon notification by the department that
 1169 rehabilitation funding assistance is available for the site
 1170 pursuant to subsections ~~subsection~~ (5) and (6) ~~s. 376.30711~~, the

1171 owner, operator, or person otherwise responsible for site
 1172 rehabilitation shall provide the department with a limited
 1173 contamination assessment report and shall enter into a Petroleum
 1174 Cleanup Participation Program ~~preapproved~~ site rehabilitation
 1175 agreement with the department ~~and a contractor qualified under~~
 1176 ~~s. 376.30711(2)(b)~~. The agreement must ~~shall~~ provide for a 25-
 1177 percent copayment by the owner, operator, or person otherwise
 1178 responsible for conducting site rehabilitation. The owner,
 1179 operator, or person otherwise responsible for conducting site
 1180 rehabilitation shall adequately demonstrate the ability to meet
 1181 the copayment obligation. The limited contamination assessment
 1182 report and the copayment costs may be reduced or eliminated if
 1183 the owner and all operators responsible for restoration under s.
 1184 376.308 demonstrate that they cannot ~~are~~ financially ~~unable to~~
 1185 comply with the copayment and limited contamination assessment
 1186 report requirements. The department shall take into
 1187 consideration the owner's and operator's net worth in making the
 1188 determination of financial ability. In the event the department
 1189 and the owner, operator, or person otherwise responsible for
 1190 site rehabilitation cannot ~~are unable to~~ complete negotiation of
 1191 the cost-sharing agreement within 120 days after beginning
 1192 ~~commencing~~ negotiations, the department shall terminate
 1193 negotiations and the site shall be ~~deemed~~ ineligible for state
 1194 funding under this subsection and all liability protections
 1195 provided for in this subsection shall be revoked.
 1196 (d) A ~~No~~ report of a discharge made to the department by a

1197 ~~any~~ person pursuant to ~~in accordance with~~ this subsection, or
 1198 any rules adopted pursuant to this subsection may not ~~hereto~~,
 1199 ~~shall~~ be used directly as evidence of liability for such
 1200 discharge in any civil or criminal trial arising out of the
 1201 discharge.

1202 (e) ~~Nothing in~~ This subsection does not ~~shall be construed~~
 1203 ~~to~~ preclude the department from pursuing penalties under ~~in~~
 1204 ~~accordance with~~ s. 403.141 for violations of any law or any
 1205 rule, order, permit, registration, or certification adopted or
 1206 issued by the department pursuant to its lawful authority.

1207 (f) Upon the filing of a discharge reporting form under
 1208 paragraph (a), ~~neither~~ the department or ~~nor any~~ local
 1209 government may not ~~shall~~ pursue any judicial or enforcement
 1210 action to compel rehabilitation of the discharge. This paragraph
 1211 does ~~shall~~ not prevent any such action with respect to
 1212 discharges determined ineligible under this subsection or to
 1213 sites for which rehabilitation funding assistance is available
 1214 pursuant to subsections ~~in accordance with subsection~~ (5) and
 1215 (6) ~~s. 376.30711~~.

1216 (g) The following are ~~shall be~~ excluded from participation
 1217 in the program:

1218 1. Sites at which the department has been denied
 1219 reasonable site access to implement ~~the provisions of~~ this
 1220 section.

1221 2. Sites that were active facilities when owned or
 1222 operated by the Federal Government.

1223 3. Sites that are identified by the United States
 1224 Environmental Protection Agency to be on, or which qualify for
 1225 listing on, the National Priorities List under Superfund. This
 1226 exception does not apply to those sites for which eligibility
 1227 has been requested or granted as of the effective date of this
 1228 act under the Early Detection Incentive Program established
 1229 pursuant to s. 15, chapter 86-159, Laws of Florida.

1230 4. Sites for which ~~The~~ contamination is covered under the
 1231 Early Detection Incentive Program, the Abandoned Tank
 1232 Restoration Program, or the Petroleum Liability and Restoration
 1233 Insurance Program, in which case site rehabilitation funding
 1234 assistance shall continue under the respective program.

1235 (14) LEGISLATIVE APPROVAL AND AUTHORIZATION.—Before ~~Prior~~
 1236 ~~to~~ the department enters ~~entering~~ into a service contract with
 1237 the Inland Protection Financing Corporation which includes
 1238 payments by the department to support any existing or planned
 1239 note, bond, certificate of indebtedness, or other obligation or
 1240 evidence of indebtedness of the corporation pursuant to s.
 1241 376.3075, the Legislature, by law, must specifically authorize
 1242 the department to enter into such a contract. The corporation
 1243 may issue bonds in an amount not to exceed \$104 million, with a
 1244 term up to 15 years, and annual payments not in excess of \$10.4
 1245 million. The department may enter into a service contract in
 1246 conjunction with the issuance of such bonds which provides for
 1247 annual payments for debt service payments or other amounts
 1248 payable with respect to bonds, plus any administrative expenses

1249 of the corporation to finance the rehabilitation of petroleum
 1250 contamination sites pursuant to ss. 376.30-376.317.

1251 Section 2. Section 376.30711, Florida Statutes, is
 1252 repealed.

1253 Section 3. Subsections (4) and (30) of section 376.301,
 1254 Florida Statutes, are amended to read:

1255 376.301 Definitions of terms used in ss. 376.30-376.317,
 1256 376.70, and 376.75.—When used in ss. 376.30-376.317, 376.70, and
 1257 376.75, unless the context clearly requires otherwise, the term:

1258 ~~(4) "Backlog" means reimbursement obligations incurred~~
 1259 ~~pursuant to s. 376.3071(12), prior to March 29, 1995, or~~
 1260 ~~authorized for reimbursement under the provisions of s.~~
 1261 ~~376.3071(12), pursuant to chapter 95-2, Laws of Florida. Claims~~
 1262 ~~within the backlog are subject to adjustment, where appropriate.~~

1263 ~~(30) "Person responsible for conducting site~~
 1264 ~~rehabilitation" means the site owner, operator, or the person~~
 1265 ~~designated by the site owner or operator on the reimbursement~~
 1266 ~~application. Mortgage holders and trust holders may be eligible~~
 1267 ~~to participate in the reimbursement program pursuant to s.~~
 1268 ~~376.3071(12).~~

1269 Section 4. Subsection (5) of section 376.302, Florida
 1270 Statutes, is amended to read:

1271 376.302 Prohibited acts; penalties.—

1272 (5) A ~~Any~~ person who commits fraud in representing his or
 1273 her ~~their~~ qualifications as a contractor ~~for reimbursement~~ or in
 1274 submitting a payment invoice ~~reimbursement request~~ pursuant to

1275 s. 376.3071 ~~376.3071(12)~~ commits a felony of the third degree,
 1276 punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

1277 Section 5. Subsection (6) of section 376.305, Florida
 1278 Statutes, is amended to read:

1279 376.305 Removal of prohibited discharges.—

1280 (6) The Legislature created the Abandoned Tank Restoration
 1281 Program in response to the need to provide financial assistance
 1282 for cleanup of sites that have abandoned petroleum storage
 1283 systems. For purposes of this subsection, the term "abandoned
 1284 petroleum storage system" means a ~~shall mean any~~ petroleum
 1285 storage system that has not stored petroleum products for
 1286 consumption, use, or sale since March 1, 1990. The department
 1287 shall establish the Abandoned Tank Restoration Program to
 1288 facilitate the restoration of sites contaminated by abandoned
 1289 petroleum storage systems.

1290 (a) To be included in the program:

1291 1. An application must be submitted to the department by
 1292 June 30, 1996, certifying that the system has not stored
 1293 petroleum products for consumption, use, or sale at the facility
 1294 since March 1, 1990.

1295 2. The owner or operator of the petroleum storage system
 1296 when it was in service must have ceased conducting business
 1297 involving consumption, use, or sale of petroleum products at
 1298 that facility on or before March 1, 1990.

1299 3. The site is not otherwise eligible for the cleanup
 1300 programs pursuant to s. 376.3071 or s. 376.3072.

1301 (b) In order to be eligible for the program, petroleum
 1302 storage systems from which a discharge occurred must be closed
 1303 pursuant to ~~in accordance with~~ department rules before ~~prior to~~
 1304 an eligibility determination. However, if the department
 1305 determines that the owner of the facility cannot ~~is~~ financially
 1306 ~~unable to~~ comply with the department's petroleum storage system
 1307 closure requirements and all other eligibility requirements are
 1308 met, the petroleum storage system closure requirements shall be
 1309 waived. The department shall take into consideration the owner's
 1310 net worth and the economic impact on the owner in making the
 1311 determination of the owner's financial ability. The June 30,
 1312 1996, application deadline shall be waived for owners who cannot
 1313 ~~are~~ financially ~~unable to~~ comply.

1314 (c) Sites accepted in the program are ~~will be~~ eligible for
 1315 site rehabilitation funding as provided in s. 376.3071
 1316 ~~376.3071(12) or s. 376.30711, as appropriate.~~

1317 (d) The following sites are excluded from eligibility:
 1318 1. Sites on property of the Federal Government;
 1319 2. Sites contaminated by pollutants that are not petroleum
 1320 products;
 1321 3. Sites where the department has been denied site access;
 1322 or
 1323 4. Sites which are owned by a ~~any~~ person who had knowledge
 1324 of the polluting condition when title was acquired unless the
 1325 ~~that~~ person acquired title to the site after issuance of a
 1326 notice of site eligibility by the department.

HB 7093

2014

1327 (e) Participating sites are subject to a deductible as
 1328 determined by rule, not to exceed \$10,000.

1329

1330 ~~The provisions of~~ This subsection does ~~do~~ not relieve a ~~any~~
 1331 person who has acquired title after ~~subsequent to~~ July 1, 1992,
 1332 from the duty to establish by a preponderance of the evidence
 1333 that he or she undertook, at the time of acquisition, all
 1334 appropriate inquiry into the previous ownership and use of the
 1335 property consistent with good commercial or customary practice
 1336 in an effort to minimize liability, as required by s.
 1337 376.308(1)(c).

1338 Section 6. Section 376.30713, Florida Statutes, is amended
 1339 to read:

1340 376.30713 ~~Preapproved~~ Advanced cleanup.—

1341 (1) In addition to the legislative findings provided in s.
 1342 376.3071 ~~376.30711~~, the Legislature finds and declares:

1343 (a) That the inability to conduct site rehabilitation in
 1344 advance of a site's priority ranking pursuant to s.
 1345 376.3071(5)(a) may substantially impede or prohibit property
 1346 transactions or the proper completion of public works projects.

1347 (b) While the first priority of the state is to provide
 1348 for protection of the public health, safety, and welfare, ~~the~~
 1349 water resources ~~of the state, human health,~~ and the environment,
 1350 the viability of commerce is of equal importance to the state.

1351 (c) It is in the public interest and of substantial
 1352 economic benefit to the state to provide an opportunity for site

1353 rehabilitation to be conducted on a limited basis at
 1354 contaminated sites, in advance of the site's priority ranking,
 1355 to facilitate property transactions or public works projects.

1356 (d) It is appropriate for a person who is ~~persons~~
 1357 responsible for site rehabilitation to share the costs
 1358 associated with managing and conducting ~~preapproved~~ advanced
 1359 cleanup, to facilitate the opportunity for ~~preapproved~~ advanced
 1360 cleanup, and to mitigate the additional costs that will be
 1361 incurred by the state in conducting site rehabilitation in
 1362 advance of the site's priority ranking. Such cost sharing will
 1363 result in more contaminated sites being cleaned up and greater
 1364 environmental benefits to the state. ~~The provisions of~~ This
 1365 section ~~is shall~~ is only ~~be~~ available for sites eligible for
 1366 restoration funding under EDI, ATRP, or PLRIP ~~PLIRP~~. This
 1367 section is available for discharges eligible for restoration
 1368 funding under the petroleum cleanup participation program for
 1369 the state's cost share of site rehabilitation. Applications must
 1370 ~~shall~~ include a cost-sharing commitment for this section in
 1371 addition to the 25-percent-copayment requirement of the
 1372 petroleum cleanup participation program. This section is not
 1373 available for any discharge under a petroleum cleanup
 1374 participation program where the 25-percent-copayment requirement
 1375 of the petroleum cleanup participation program has been reduced
 1376 or eliminated pursuant to s. 376.3071(13)(c).

1377 (2) The department may ~~is authorized to~~ approve an
 1378 application for ~~preapproved~~ advanced cleanup at eligible sites,

1379 ~~before~~ prior to funding based on the site's priority ranking
 1380 established pursuant to s. 376.3071(5)(a), pursuant to ~~in~~
 1381 ~~accordance with the provisions of~~ this section. Only the
 1382 facility owner or operator or the person otherwise responsible
 1383 for site rehabilitation qualifies ~~Persons who qualify~~ as an
 1384 applicant under ~~the provisions of~~ this section ~~shall only~~
 1385 ~~include the facility owner or operator or the person otherwise~~
 1386 ~~responsible for site rehabilitation.~~

1387 (a) ~~Preapproved~~ Advanced cleanup applications may be
 1388 submitted between May 1 and June 30 and between November 1 and
 1389 December 31 of each fiscal year. Applications submitted between
 1390 May 1 and June 30 shall be for the fiscal year beginning July 1.
 1391 An application must ~~shall~~ consist of:

1392 1. A commitment to pay ~~no less than~~ 25 percent or more of
 1393 the total cleanup cost deemed recoverable under ~~the provisions~~
 1394 ~~of~~ this section along with proof of the ability to pay the cost
 1395 share.

1396 2. A nonrefundable review fee of \$250 to cover the
 1397 administrative costs associated with the department's review of
 1398 the application.

1399 3. A limited contamination assessment report.

1400 4. A proposed course of action.

1401

1402 The limited contamination assessment report must ~~shall~~ be
 1403 sufficient to support the proposed course of action and to
 1404 estimate the cost of the proposed course of action. ~~Any~~ Costs

1405 incurred related to conducting the limited contamination
 1406 assessment report are not refundable from the Inland Protection
 1407 Trust Fund. Site eligibility under this subsection, or any other
 1408 provision of this section is, ~~shall~~ not constitute an
 1409 entitlement to ~~preapproved~~ advanced cleanup or continued
 1410 restoration funding. The applicant shall certify to the
 1411 department that the applicant has the prerequisite authority to
 1412 enter into an ~~a preapproved~~ advanced cleanup contract with the
 1413 department. The ~~This~~ certification must ~~shall~~ be submitted with
 1414 the application.

1415 (b) The department shall rank the applications based on
 1416 the percentage of cost-sharing commitment proposed by the
 1417 applicant, with the highest ranking given to the applicant who
 1418 ~~that~~ proposes the highest percentage of cost sharing. If the
 1419 department receives applications that propose identical cost-
 1420 sharing commitments and that ~~which~~ exceed the funds available to
 1421 commit to all such proposals during the ~~preapproved~~ advanced
 1422 cleanup application period, the department shall proceed to
 1423 rerank those applicants. Those applicants submitting identical
 1424 cost-sharing proposals which exceed funding availability must
 1425 ~~shall~~ be so notified by the department and ~~shall be~~ offered the
 1426 opportunity to raise their individual cost-share commitments, in
 1427 a period ~~of time~~ specified in the notice. At the close of the
 1428 period, the department shall proceed to rerank the applications
 1429 pursuant to ~~in accordance with~~ this paragraph.

1430 (3) (a) Based on the ranking established under paragraph

1431 (2) (b) ~~and the funding limitations provided in subsection (4),~~
 1432 the department shall begin ~~commence~~ negotiation with such
 1433 applicants. If the department and the applicant agree on the
 1434 course of action, the department may enter into a contract with
 1435 the applicant. The department may ~~is authorized to~~ negotiate the
 1436 terms and conditions of the contract.

1437 (b) ~~Preapproved~~ Advanced cleanup must ~~shall~~ be conducted
 1438 pursuant to s. 376.3071(5) (b) and (6) and rules adopted under
 1439 ss. 287.0595 and 376.3071 ~~under the provisions of ss.~~
 1440 ~~376.3071(5) (b) and 376.30711.~~ If the terms of the ~~preapproved~~
 1441 advanced cleanup contract are not fulfilled, the applicant
 1442 forfeits any right to future payment for any site rehabilitation
 1443 work conducted under the contract.

1444 (c) The department's decision not to enter into an a
 1445 ~~preapproved~~ advanced cleanup contract with the applicant is
 1446 ~~shall~~ not be subject to ~~the provisions of~~ chapter 120. If the
 1447 department cannot ~~is not able to~~ complete negotiation of the
 1448 course of action and the terms of the contract within 60 days
 1449 after beginning ~~commencing~~ negotiations, the department shall
 1450 terminate negotiations with that applicant.

1451 (4) The department may ~~is authorized to~~ enter into
 1452 contracts for a total of up to \$15 million of ~~preapproved~~
 1453 advanced cleanup work in each fiscal year. However, a facility
 1454 may not be approved ~~preapproved~~ for more than \$5 million of
 1455 cleanup activity in each fiscal year. For the purposes of this
 1456 section, the term "facility" includes ~~shall include,~~ but is not

1457 ~~be~~ limited to, multiple site facilities such as airports, port
 1458 facilities, and terminal facilities even though such enterprises
 1459 may be treated as separate facilities for other purposes under
 1460 this chapter.

1461 (5) All funds collected by the department pursuant to this
 1462 section shall be deposited into the Inland Protection Trust Fund
 1463 to be used as provided in this section.

1464 Section 7. Paragraph (a) of subsection (1) and subsections
 1465 (3), (4), and (9) of section 376.30714, Florida Statutes, are
 1466 amended to read:

1467 376.30714 Site rehabilitation agreements.—

1468 (1) In addition to the legislative findings provided in s.
 1469 376.3071, the Legislature finds and declares:

1470 (a) The provisions of s. ~~ss.~~ 376.3071(5) (a) and ~~376.30711~~
 1471 have delayed cleanup of low-priority sites determined to be
 1472 eligible for state funding under that section and ss. 376.305,
 1473 ~~376.3071,~~ and 376.3072.

1474 (3) Free product attributable to a new discharge shall be
 1475 removed to the extent practicable and pursuant to ~~in accordance~~
 1476 ~~with~~ department rules adopted pursuant to s. 376.3071(5) at the
 1477 expense of the owner, operator, or other responsible party. Free
 1478 product attributable to existing contamination shall be removed
 1479 pursuant to ~~in accordance with~~ s. 376.3071(5) and (6), ~~or s.~~
 1480 ~~376.30711(1)(b),~~ and department rules adopted pursuant thereto.

1481 (4) Beginning January 1, 1999, the department may ~~is~~
 1482 ~~authorized to~~ negotiate and enter into site rehabilitation

1483 agreements with applicants at sites with eligible existing
 1484 contamination at which a new discharge occurs. The site
 1485 rehabilitation agreement must ~~shall~~ include, but is not ~~be~~
 1486 limited to, allocation of the funding responsibilities of the
 1487 department and the applicant for cleanup of the qualified site,
 1488 establishment of a mechanism to guarantee the applicant's
 1489 commitment to pay its agreed amount of site rehabilitation as
 1490 set forth in the agreement, and establishment of the priority in
 1491 which cleanup of the qualified site will occur. Under ~~any~~ such a
 1492 negotiated site rehabilitation agreement, the applicant may not
 1493 ~~shall~~ be responsible for ~~no~~ more than the cleanup costs that are
 1494 attributable to the new discharge. However, the payment of ~~any~~
 1495 applicable deductibles, copayments, or other program eligibility
 1496 requirements under ss. 376.305, 376.3071, and 376.3072 shall
 1497 continue to apply to the existing contamination and must be
 1498 accounted for in the negotiated site rehabilitation agreement.
 1499 The department may ~~is further authorized~~, pursuant to this
 1500 section, ~~to preapprove or~~ conduct additional assessment
 1501 activities at the site.

1502 (9) Site rehabilitation conducted at qualified sites shall
 1503 be conducted pursuant to ~~under the provisions of~~ ss.
 1504 376.3071(5)(b) and (6) ~~376.30711~~. If the terms of the agreement
 1505 are not fulfilled by the applicant, the applicant forfeits the
 1506 ~~any~~ right to continued funding for ~~any~~ site rehabilitation work
 1507 under the agreement and is ~~shall be~~ subject to enforcement
 1508 action by the department or local government to compel cleanup

1509 of the new discharge.

1510 Section 8. Subsection (2) of section 376.3072, Florida
 1511 Statutes, is amended to read:

1512 376.3072 Florida Petroleum Liability and Restoration
 1513 Insurance Program.—

1514 (2)(a) An ~~Any~~ owner or operator of a petroleum storage
 1515 system may become an insured in the restoration insurance
 1516 program at a facility if provided:

1517 1. A site at which an incident has occurred is ~~shall be~~
 1518 eligible for restoration if the insured is a participant in the
 1519 third-party liability insurance program or otherwise meets
 1520 applicable financial responsibility requirements. After July 1,
 1521 1993, the insured must also provide the required excess
 1522 insurance coverage or self-insurance for restoration to achieve
 1523 the financial responsibility requirements of 40 C.F.R. s.
 1524 280.97, subpart H, not covered by paragraph (d).

1525 2. A site which had a discharge reported before ~~prior to~~
 1526 January 1, 1989, for which notice was given pursuant to s.
 1527 376.3071(10) ~~376.3071(9) or (12)~~, and which is ineligible for
 1528 the third-party liability insurance program solely due to that
 1529 discharge is ~~shall be~~ eligible for participation in the
 1530 restoration program for an ~~any~~ incident occurring on or after
 1531 January 1, 1989, pursuant to ~~in accordance with~~ subsection (3).
 1532 Restoration funding for an eligible contaminated site will be
 1533 provided without participation in the third-party liability
 1534 insurance program until the site is restored as required by the

1535 department or until the department determines that the site does
 1536 not require restoration.

1537 3. Notwithstanding paragraph (b), a site where an
 1538 application is filed with the department before ~~prior to~~ January
 1539 1, 1995, where the owner is a small business under s.
 1540 288.703(6), a state community college with less than 2,500 FTE,
 1541 a religious institution as defined by s. 212.08(7)(m), a
 1542 charitable institution as defined by s. 212.08(7)(p), or a
 1543 county or municipality with a population of less than 50,000, is
 1544 ~~shall be~~ eligible for up to \$400,000 of eligible restoration
 1545 costs, less a deductible of \$10,000 for small businesses,
 1546 eligible community colleges, and religious or charitable
 1547 institutions, and \$30,000 for eligible counties and
 1548 municipalities, if ~~provided that~~:

1549 a. Except as provided in sub-subparagraph e., the facility
 1550 was in compliance with department rules at the time of the
 1551 discharge.

1552 b. The owner or operator has, upon discovery of a
 1553 discharge, promptly reported the discharge to the department,
 1554 and drained and removed the system from service, if necessary.

1555 c. The owner or operator has not intentionally caused or
 1556 concealed a discharge or disabled leak detection equipment.

1557 d. The owner or operator proceeds to complete initial
 1558 remedial action as specified in ~~defined by~~ department rules.

1559 e. The owner or operator, if required and if it has not
 1560 already done so, applies for third-party liability coverage for

1561 the facility within 30 days after ~~of~~ receipt of an eligibility
 1562 order issued by the department pursuant to this subparagraph
 1563 ~~provision~~.

1564
 1565 However, the department may consider in-kind services from
 1566 eligible counties and municipalities in lieu of the \$30,000
 1567 deductible. The cost of conducting initial remedial action as
 1568 defined by department rules is ~~shall be~~ an eligible restoration
 1569 cost pursuant to this subparagraph ~~provision~~.

1570 4.a. By January 1, 1997, facilities at sites with existing
 1571 contamination must ~~shall be required to~~ have methods of release
 1572 detection to be eligible for restoration insurance coverage for
 1573 new discharges subject to department rules for secondary
 1574 containment. Annual storage system testing, in conjunction with
 1575 inventory control, shall be considered to be a method of release
 1576 detection until the later of December 22, 1998, or 10 years
 1577 after the date of installation or the last upgrade. Other
 1578 methods of release detection for storage tanks which meet such
 1579 requirement are:

- 1580 (I) Interstitial monitoring of tank and integral piping
- 1581 secondary containment systems;
- 1582 (II) Automatic tank gauging systems; or
- 1583 (III) A statistical inventory reconciliation system with a
- 1584 tank test every 3 years.

1585 b. For pressurized integral piping systems, the owner or
 1586 operator must use:

1587 (I) An automatic in-line leak detector with flow
 1588 restriction meeting the requirements of department rules used in
 1589 conjunction with an annual tightness or pressure test; or

1590 (II) An automatic in-line leak detector with electronic
 1591 flow shut-off meeting the requirements of department rules.

1592 c. For suction integral piping systems, the owner or
 1593 operator must use:

1594 (I) A single check valve installed directly below the
 1595 suction pump ~~if, provided~~ there are no other valves between the
 1596 dispenser and the tank; or

1597 (II) An annual tightness test or other approved test.

1598 d. Owners of facilities with existing contamination that
 1599 install internal release detection systems pursuant to ~~in~~
 1600 ~~accordance with~~ sub-subparagraph a. shall permanently close
 1601 their external groundwater and vapor monitoring wells pursuant
 1602 to ~~in accordance with~~ department rules by December 31, 1998.

1603 Upon installation of the internal release detection system, such
 1604 ~~these wells must shall~~ be secured and taken out of service until
 1605 permanent closure.

1606 e. Facilities with vapor levels of contamination meeting
 1607 the requirements of or below the concentrations specified in the
 1608 performance standards for release detection methods specified in
 1609 department rules may continue to use vapor monitoring wells for
 1610 release detection.

1611 f. The department may approve other methods of release
 1612 detection for storage tanks and integral piping which have at

1613 | least the same capability to detect a new release as the methods
 1614 | specified in this subparagraph.

1615 | (b)1. To be eligible to be certified as an insured
 1616 | facility, for discharges reported after January 1, 1989, the
 1617 | owner or operator must ~~shall~~ file an affidavit upon enrollment
 1618 | in the program. The affidavit must ~~shall~~ state that the owner or
 1619 | operator has read and is familiar with this chapter and the
 1620 | rules relating to petroleum storage systems and petroleum
 1621 | contamination site cleanup adopted pursuant to ss. 376.303 and
 1622 | 376.3071 and that the facility is in compliance with this
 1623 | chapter and applicable rules adopted pursuant to s. 376.303.
 1624 | Thereafter, the facility's annual inspection report shall serve
 1625 | as evidence of the facility's compliance with department rules.
 1626 | The facility's certificate as an insured facility may be revoked
 1627 | only if the insured fails to correct a violation identified in
 1628 | an inspection report before a discharge occurs. The facility's
 1629 | certification may be restored when the violation is corrected as
 1630 | verified by a reinspection.

1631 | 2. Except as provided in paragraph (a), to be eligible to
 1632 | be certified as an insured facility, the applicant must
 1633 | demonstrate to the department that the applicant has financial
 1634 | responsibility for third-party claims and excess coverage, as
 1635 | required by this section and 40 C.F.R. s. 280.97(h), and that
 1636 | the applicant maintains such insurance during the applicant's
 1637 | participation as an insured facility.

1638 | 3. Should a reinspection of the facility be necessary to

1639 demonstrate compliance, the insured shall pay an inspection fee
 1640 not to exceed \$500 per facility to be deposited in the Inland
 1641 Protection Trust Fund.

1642 4. Upon report of a discharge, the department shall issue
 1643 an order stating that the site is eligible for restoration
 1644 coverage unless the insured has intentionally caused or
 1645 concealed a discharge or disabled leak detection equipment, has
 1646 misrepresented facts in the affidavit filed pursuant to
 1647 subparagraph 1., or cannot demonstrate that he or she has
 1648 obtained and maintained the financial responsibility for third-
 1649 party claims and excess coverage as required in subparagraph 2.

1650
 1651 This paragraph does not ~~Nothing contained herein shall~~ prevent
 1652 the department from assessing civil penalties for noncompliance
 1653 pursuant to this subsection ~~as provided herein.~~

1654 (c) A lender that has loaned money to a participant in the
 1655 Florida Petroleum Liability and Restoration Insurance Program
 1656 and has held a mortgage lien, security interest, or ~~any~~ lien
 1657 rights on the site primarily to protect the lender's right to
 1658 convert or liquidate the collateral in satisfaction of the debt
 1659 secured, or a financial institution which serves as a trustee
 1660 for an insured in the program for the purpose of site
 1661 rehabilitation, is ~~shall be~~ eligible for a state-funded cleanup
 1662 of the site, if the lender forecloses the lien or accepts a deed
 1663 in lieu of foreclosure on that property and acquires title, and
 1664 as long as the following has occurred, as applicable:

1665 1. The owner or operator provided the lender with proof
 1666 that the facility is eligible for the restoration insurance
 1667 program at the time of the loan or before the discharge
 1668 occurred.

1669 2. The financial institution or lender ~~completes site~~
 1670 ~~rehabilitation and seeks reimbursement pursuant to s.~~
 1671 ~~376.3071(12) or~~ conducts ~~preapproved~~ site rehabilitation
 1672 pursuant to s. 376.3071 ~~376.30711~~, as appropriate.

1673 3. The financial institution or lender did not engage in
 1674 management activities at the site before ~~prior to~~ foreclosure
 1675 and does not operate the site or otherwise engage in management
 1676 activities after foreclosure, except to comply with
 1677 environmental statutes or rules or to prevent, abate, or
 1678 remediate a discharge.

1679 (d)1. With respect to eligible incidents reported to the
 1680 department before ~~prior to~~ July 1, 1992, the restoration
 1681 insurance program shall provide up to \$1.2 million of
 1682 restoration for each incident and shall have an annual aggregate
 1683 limit of \$2 million of restoration per facility.

1684 2. For any site at which a discharge is reported on or
 1685 after July 1, 1992, and for which restoration coverage is
 1686 requested, the department shall pay for restoration in
 1687 accordance with the following schedule:

1688 a. For discharges reported to the department from July 1,
 1689 1992, to June 30, 1993, the department shall pay up to \$1.2
 1690 million of eligible restoration costs, less a \$1,000 deductible

1691 per incident.

1692 b. For discharges reported to the department from July 1,
 1693 1993, to December 31, 1993, the department shall pay up to \$1.2
 1694 million of eligible restoration costs, less a \$5,000 deductible
 1695 per incident. However, if, before ~~prior to~~ the date the
 1696 discharge is reported and by September 1, 1993, the owner or
 1697 operator can demonstrate financial responsibility in effect in
 1698 accordance with 40 C.F.R. s. 280.97, subpart H, for coverage
 1699 under sub-subparagraph c., the deductible will be \$500. The \$500
 1700 deductible shall apply for a period of 1 year from the effective
 1701 date of a policy or other form of financial responsibility
 1702 obtained and in effect by September 1, 1993.

1703 c. For discharges reported to the department from January
 1704 1, 1994, to December 31, 1996, the department shall pay up to
 1705 \$400,000 of eligible restoration costs, less a deductible of
 1706 \$10,000.

1707 d. For discharges reported to the department from January
 1708 1, 1997, to December 31, 1998, the department shall pay up to
 1709 \$300,000 of eligible restoration costs, less a deductible of
 1710 \$10,000.

1711 e. Beginning January 1, 1999, ~~no~~ restoration coverage may
 1712 not ~~shall~~ be provided.

1713 f. In addition, a supplemental deductible shall be added
 1714 as follows:

1715 (I) A supplemental deductible of \$5,000 if the owner or
 1716 operator fails to report a suspected release within 1 working

1717 day after discovery.

1718 (II) A supplemental deductible of \$10,000 if the owner or
 1719 operator, within 3 days after discovery of an actual new
 1720 discharge, fails to take steps to test or empty the storage
 1721 system and complete such activity within 7 days.

1722 (III) A supplemental deductible of \$25,000 if the owner or
 1723 operator, after testing or emptying the storage system, fails to
 1724 proceed within 24 hours thereafter to abate the known source of
 1725 the discharge or to begin free product removal relating to an
 1726 actual new discharge and fails to complete abatement within 72
 1727 hours, although free product recovery may be ongoing.

1728 (e) The following are not eligible to participate in the
 1729 Petroleum Liability and Restoration Insurance Program:

1730 1. Sites owned or operated by the Federal Government
 1731 during the time the facility was in operation.

1732 2. Sites where the owner or operator has denied the
 1733 department reasonable site access.

1734 3. Any third-party claims relating to damages caused by
 1735 discharges discovered before ~~prior to~~ January 1, 1989.

1736 4. Any incidents discovered before ~~prior to~~ January 1,
 1737 1989, ~~are not eligible to participate in the restoration~~
 1738 ~~insurance program~~. However, this exclusion does ~~shall~~ not ~~be~~
 1739 ~~construed to~~ prevent a new incident at the same location from
 1740 participation in the restoration insurance program if the owner
 1741 or operator is otherwise eligible. This exclusion does ~~shall~~ not
 1742 affect eligibility for participation in the Early Detection

1743 Incentive ~~EDI~~ Program.

1744

1745 Sites meeting the criteria of this subsection for which a site
 1746 rehabilitation completion order was issued before ~~prior to~~ June
 1747 1, 2008, do not qualify for the 2008 increase in site
 1748 rehabilitation funding assistance and are bound by the pre-June
 1749 1, 2008, limits. Sites meeting the criteria of this subsection
 1750 for which a site rehabilitation completion order was not issued
 1751 before ~~prior to~~ June 1, 2008, regardless of whether ~~or not~~ they
 1752 have previously transitioned to nonstate-funded cleanup status,
 1753 may continue state-funded cleanup pursuant to s. 376.3071(6)
 1754 ~~376.30711~~ until a site rehabilitation completion order is issued
 1755 or the increased site rehabilitation funding assistance limit is
 1756 reached, whichever occurs first. ~~At no time shall expenses~~
 1757 ~~incurred outside the preapproved site rehabilitation program~~
 1758 ~~under s. 376.30711 be reimbursable.~~

1759 Section 9. Subsections (1) and (4) of section 376.3073,
 1760 Florida Statutes, are amended to read:

1761 376.3073 Local programs and state agency programs for
 1762 control of contamination.—

1763 (1) The department shall, to the greatest extent possible
 1764 and cost-effective, contract with local governments to provide
 1765 for the administration of its departmental responsibilities
 1766 under ss. 376.305, 376.3071(4)(a)-(e), (h), (k), and (m) and (6)
 1767 ~~(l), (n), 376.30711~~, 376.3072, and 376.3077 through locally
 1768 administered programs. The department may also contract with

1769 state agencies to carry out the restoration activities
 1770 authorized pursuant to ss. 376.3071, 376.3072, and 376.305,~~and~~
 1771 ~~376.30711~~. However, ~~no~~ such a contract may not ~~shall~~ be entered
 1772 into unless the local government or state agency is deemed
 1773 capable of carrying out such responsibilities to the
 1774 department's satisfaction.

1775 (4) Under no circumstances shall the cleanup criteria
 1776 employed in locally administered programs or state agency
 1777 programs or pursuant to local ordinance be more stringent than
 1778 the criteria established by the department pursuant to s.
 1779 376.3071(5) or (6) ~~s. 376.30711~~.

1780 Section 10. Subsections (4) and (5) of section 376.3075,
 1781 Florida Statutes, are amended to read:

1782 376.3075 Inland Protection Financing Corporation.—

1783 (4) The corporation may enter into one or more service
 1784 contracts with the department to provide services to the
 1785 department in connection with financing the functions and
 1786 activities provided in ss. 376.30-376.317. The department may
 1787 enter into one or more such service contracts with the
 1788 corporation and provide for payments under such contracts
 1789 pursuant to s. 376.3071(4)(n) ~~376.3071(4)(e)~~, subject to annual
 1790 appropriation by the Legislature. The proceeds from such service
 1791 contracts may be used for the corporation's administrative costs
 1792 and expenses after payments as set forth in subsection (5). Each
 1793 service contract may have a term of up to 20 years. Amounts
 1794 annually appropriated and applied to make payments under such

1795 service contracts may not include any funds derived from
 1796 penalties or other payments received from any property owner or
 1797 private party, including payments received under s.
 1798 376.3071(7)(b) ~~376.3071(6)(b)~~. In compliance with s. 287.0641
 1799 and other applicable provisions of law, the obligations of the
 1800 department under such service contracts do not constitute a
 1801 general obligation of the state or a pledge of the faith and
 1802 credit or taxing power of the state and ~~nor may~~ such obligations
 1803 are not be construed in any manner as an obligation of the State
 1804 Board of Administration or entities for which it invests funds,
 1805 other than the department as provided in this section, but are
 1806 payable solely from amounts available in the Inland Protection
 1807 Trust Fund, subject to annual appropriation. In compliance with
 1808 this subsection and s. 287.0582, the service contract must
 1809 expressly include the following statement: "The State of
 1810 Florida's performance and obligation to pay under this contract
 1811 is contingent upon an annual appropriation by the Legislature."
 1812 (5) The corporation may issue and incur notes, bonds,
 1813 certificates of indebtedness, or other obligations or evidences
 1814 of indebtedness payable from and secured by amounts payable to
 1815 the corporation by the department under a service contract
 1816 entered into pursuant to subsection (4) for the purpose of
 1817 financing the rehabilitation of petroleum contamination sites
 1818 pursuant to ss. 376.30-376.317. The term of any such note, bond,
 1819 certificate of indebtedness, or other obligation or evidence of
 1820 indebtedness may not have a financing term that exceeds 15

HB 7093

2014

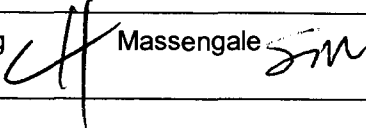
1821 | years. The corporation may select its financing team and issue
 1822 | its obligations through competitive bidding or negotiated
 1823 | contracts, whichever is most cost-effective. ~~Any~~ Indebtedness of
 1824 | the corporation does not constitute a debt or obligation of the
 1825 | state or a pledge of the faith and credit or taxing power of the
 1826 | state, but is payable from and secured by payments made by the
 1827 | department under the service contract pursuant to s.

1828 | 376.3071(4)(n) ~~376.3071(4)(e)~~.

1829 | Section 11. This act shall take effect July 1, 2014.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 791 Coastal Management
SPONSOR(S): Agriculture & Natural Resources Subcommittee and Renuart
TIED BILLS: None **IDEN./SIM. BILLS:** SB 956

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

SUMMARY ANALYSIS

A coastal construction control line (CCCL) is an upland jurisdictional line established on a county by county basis by the Department of Environmental Protection (DEP) to define the portion of the beach and dune system that is subject to severe fluctuations caused by a 100-year storm surge, storm waves, or other forces such as wind, wave, or water level changes. Unless exempted, applicants must receive a permit from DEP to construct a structure seaward of the CCCL. DEP is authorized to grant area-wide permits to local governments, other governmental agencies, and utility companies for special classes of activities in areas under their general jurisdiction if these activities, due to the type, size, or temporary nature of the activity, will not cause measurable interference with the natural functioning of the beach-dune system or with marine turtles or their nesting sites. DEP is also authorized to grant general permits for certain projects if the projects, due to type, size, or temporary nature, will not cause a measurable interference with the natural functioning of the beach-dune system or with marine turtles or their nesting sites.

The bill expands the activities that qualify for a DEP issued area-wide permit to include the construction of minor structures. The bill also adds dune restoration and on-grade walkovers for accessibility or use in compliance with the Americans with Disabilities Act to the list of specific activities or structures that are considered minor structures and special classes of activities. The bill requires DEP to adopt rules to establish criteria and guidelines for area-wide permit applicants. In addition, the bill authorizes DEP to grant a general permit for dune restoration, swimming pools associated with single-family habitable structures that do not advance the line of existing construction and satisfy all siting and design requirements, and for minor reconstruction for existing coastal armoring structures.

In 1975, Florida enacted the Aquatic Preserve Act with the intent that the state-owned submerged lands in areas that have exceptional biological, aesthetic, and scientific value be set aside forever as aquatic preserves or sanctuaries for the benefit of future generations. An aquatic preserve is defined as an exceptional area of submerged lands and its associated waters set aside for being maintained essentially in its natural or existing condition. The state restricts certain activities in aquatic preserves in order to conserve their unique biological, aesthetic and scientific value.

The bill requires DEP to promote the public use of aquatic preserves, and authorizes DEP to receive gifts and donations to carry out the purpose of the Florida Aquatic Preserves Act. DEP is authorized to grant a privilege or concession for the accommodation of visitors to aquatic preserves and their associated state-owned uplands if the privilege or concession does not deny or interfere with the public's access to the lands and is compatible with the aquatic preserve's management plan as approved by the Acquisition and Restoration Council. A privilege or concession can be granted without advertisement and without using a competitive bidding process and cannot be assigned or transferred without the consent of DEP.

The bill appears to have a potentially indeterminate positive fiscal impact on DEP if DEP receives fees for issuing a privilege or lease for the accommodation of visitors and use of aquatic preserves and their associated uplands. The bill appears to have a negative fiscal impact on DEP as a result of reduced permit fees due to some activities shifting to an area-wide or general permit. The bill also has an indeterminate positive fiscal impact on local governments seeking area-wide permits or general permits for minor structures that would have reduced permit fees. (See Fiscal Comments Section)

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Regulation of Coastal Construction

Present Situation

A coastal construction control line (CCCL) is an upland jurisdictional line established on a county-by-county basis by the Department of Environmental Protection (DEP) to define the portion of the beach and dune system that is subject to severe fluctuations caused by a 100-year storm surge, storm waves, or other forces such as wind, wave, or water level changes.¹

Section 161.053(1)(a), F.S., establishes the state CCCL permitting program. This is the principal program used by DEP to regulate construction activities on Florida's beach-dune system. The purpose of the CCCL permitting program is to preserve and protect beaches from imprudent construction that can jeopardize the stability of the beach-dune system, accelerate erosion, provide inadequate protection to upland structures, endanger adjacent properties, or interfere with public beach access.² Unless exempted,³ applicants must receive a permit from DEP to construct a structure seaward of the CCCL.

Local governments are authorized to adopt their own coastal construction zoning and building codes in lieu of the state permitting program. However, these codes must be approved by DEP as being adequate to preserve and protect the beaches and coastal barrier dunes adjacent to such beaches, which are under DEP's jurisdiction, from imprudent construction that will jeopardize the stability of the beach-dune system, accelerate erosion, provide inadequate protection to upland structures, endanger adjacent properties, or interfere with public beach access.⁴ Additionally, DEP can revoke the authority granted to the local government if DEP determines that the local administration of coastal zoning and building codes is inadequate.

DEP is authorized to grant the following CCCL permits:⁵

- **Administrative Permits** —These permits are required for any coastal construction or activity that is likely to have a material physical effect on the beach-dune system seaward of the CCCL line.⁶ Administrative permits are processed in Tallahassee, and once the CCCL application is deemed complete, final agency action (approval or denial) is issued within 90 days. Activities typically authorized by an administrative permit include:
 - Armoring (seawalls, revetments, geotextile tubs);
 - Large multi-family, commercial, and recreational projects (condominiums, beachfront resorts, shopping centers, restaurants, and park improvements);
 - Single-family projects (new homes, pools, additions, and remodeling);
 - Non-habitable major structures (construction of gazebos, large decks, spas, pools); and
 - Minor structures and activities (minor projects that cannot be approved via field permits and require permit manager review).
- **General Permits** —These permits offer a streamlined application and approval process for minor activities or structures that will not interfere with the natural functioning of the beach-dune

¹ Chapter 62B-33.005(1), F.A.C.

² Section 161.053(1)(a), F.S.

³ Generally, structures existing or under construction before the establishment of the CCCL are exempt from the provisions of s. 161.053, F.S. See also Chapter 62B-33.004, F.A.C. for other exemptions.

⁴ Section 161.053(3), F.S.

⁵ DEP's "Chapter 4-The CCCL Program and Covered Activities." This information is on file with Agriculture & Natural Resources Subcommittee staff.

⁶ Chapter 62B-33, F.A.C., outlines the specific permitting, application, and approval processes.

system or sea turtles or their nesting sites. Examples include dune walkovers, decks, fences, landscaping, sidewalks, driveways, pool resurfacing, minor pool repairs, and other non-habitable structures. A general permit may be issued for single-family homes that do not advance the “line of construction” or are located landward of an established General Permit Line (the line that defines the seaward limit where general permits can be issued). General permits cannot be used for home additions or multifamily habitable structures. A general permit requires the applicant to meet strict setbacks and dune protection rules and must be submitted as a complete application. Final agency action is issued within 30 days of the application submittal.⁷

- **Field Permits**—These permits are for certain minor structures and activities that have minor impacts and are typically issued by DEP field inspectors. However, permit managers in Tallahassee may also issue field permits.
- **After-the-Fact Permits**—These are administrative permits that authorize work that has already been completed. These are often subject to enforcement actions by DEP and are necessary to assure that the projects have been constructed in compliance with state law.
- **Emergency Permits**—As promulgated in chapter 62B-33.014, F.A.C., emergency permit procedures are used to alleviate conditions resulting from a shoreline emergency.

In addition to these permits, DEP is authorized to grant area-wide permits to local governments, other governmental agencies, and utility companies for special classes of activities in areas under their general jurisdiction if these activities, due to the type, size, or temporary nature of the activity, will not cause measurable interference with the natural functioning of the beach-dune system or with marine turtles or their nesting sites.⁸ Current law specifies that such activities include, but are not limited to:

- Road repairs (not including new construction);
- Utility repairs and replacements;
- Beach cleaning; and
- Emergency response.

Effect of Proposed Changes

The bill expands the activities that qualify for a DEP issued area-wide permit to include the construction of minor structures. The term “minor structure” is not defined in the bill or the Florida Statutes for purposes of CCCLs. However, DEP’s rules define a “structure” as the composite result of putting together or building related components in an ordered scheme,⁹ and defines a “minor structure” as a structure designed to:

- Be expendable,
- Minimize resistance to forces associated with high frequency storms,
- Break away when subjected to such forces, and
- Have a minor impact on the beach and dune system.¹⁰

The bill also adds to the list of specific activities or structures that are considered minor structures and special classes of activities to include dune restoration and on-grade walkovers for accessibility or use in compliance with the Americans with Disabilities Act.

The bill requires DEP to adopt rules to establish criteria and guidelines for area-wide permit applicants.

In addition, the bill authorizes DEP to grant a general permit for dune restoration, swimming pools associated with single-family habitable structures that do not advance the line of existing construction

⁷ Section 161.053(18), F.S., as promulgated in Chapter 62B-34, F.A.C.

⁸ Section 161.053(17), F.S.

⁹ Chapter 62B-33.002(60), F.A.C.

¹⁰ Chapters 62B-33.002(60)(b) and 62B-33.002(60), F.A.C.

and satisfy all siting and design requirements, and for minor reconstruction for existing coastal armoring structures.

Aquatic Preserves

Present Situation

The Florida Constitution provides that lands under navigable waters, including beaches below the mean high water line, are held by the state, by virtue of its sovereignty, in trust for all the people, and sale of these lands may be authorized by law, but only when in the public interest. Private use of portions of sovereign submerged lands can also be authorized by law, but only when not contrary to the public interest.

In 1975, Florida enacted the Aquatic Preserve Act¹¹ with the intent that the state-owned submerged lands in areas that have exceptional biological, aesthetic, and scientific value be set aside forever as aquatic preserves or sanctuaries for the benefit of future generations.¹² The Florida Statutes define an aquatic preserve as an exceptional area of submerged lands and its associated waters set aside for being maintained essentially in its natural or existing condition.¹³

DEP's Office of Coastal and Aquatic Managed Areas (CAMA) oversees the management of Florida's 41 aquatic preserves, three National Estuarine Research Reserves (NERR), National Marine Sanctuary and the Coral Reef Conservation Program. These protected areas encompass approximately 2.2 million acres.¹⁴

Section 258.41, F.S., authorizes the Board of Trustees of the Internal Improvement Trust Fund (BOT) to establish areas to be included in the aquatic preserve system, subject to confirmation by the Legislature, and provides that an aquatic preserve cannot be withdrawn from the state aquatic preserve system except by an act of the Legislature.

The Legislature has also designated by law certain areas to be included in the aquatic preserve system. These include the following:

- Cockroach Bay Aquatic Preserve.
- Gasparilla Sound-Charlotte Harbor Aquatic Preserve.
- Lemon Bay Aquatic Preserve.
- Terra Ceia Aquatic Preserve.
- Guana River Marsh Aquatic Preserve.
- Big Bend Seagrasses Aquatic Preserve.
- Boca Ciega Bay Aquatic Preserve.
- Biscayne Bay Aquatic Preserve.
- Oklawaha River Aquatic Preserve.

The state restricts certain activities such as the construction of utility cables and pipes and spoil disposal in aquatic preserves to conserve their unique biological, aesthetic and scientific value.¹⁵ Section 258.42, F.S., directs the BOT to maintain aquatic preserves subject to the following requirements:

- No further sale, lease, or transfer of sovereignty submerged lands shall be approved or consummated by the BOT except when such sale, lease, or transfer is in the public interest.¹⁶

¹¹ Sections 258.35 through 258.46, F.S.

¹² Section 258.036, F.S.

¹³ Section 258.37(1), F.S.

¹⁴ DEP website on Aquatic Preserves, available at <http://www.dep.state.fl.us/coastal/programs/aquatic.htm>

¹⁵ Chapter 18-20.004, F.A.C.

¹⁶ Section 258.42(1)(a), F.S.

- The BOT cannot approve the waterward relocation or setting of bulkhead lines waterward of the line of mean high water within the preserve except when public road and bridge construction projects have no reasonable alternative and it is shown to be not contrary to the public interest.¹⁷
- No further dredging or filling of submerged lands may be approved by the BOT except for certain activities that must be authorized pursuant to a permit.¹⁸

Furthermore, structures may not be erected within the aquatic preserve, except:

- Private residential docks may be approved for reasonable ingress or egress of riparian owners. Slips at private residential single-family docks that contain boat lifts or davits that do not float in the water when loaded may not, in whole or in part, be enclosed by walls, but may be roofed if the roof does not overhang more than one foot beyond the footprint of the lift and the boat stored at the lift. These roofs are not included in the square-footage calculation of a terminal platform.¹⁹
- Private residential multislip docks may be approved if located within a reasonable distance of a publicly maintained navigation channel, or a natural channel of adequate depth and width to allow operation of the watercraft for which the docking facility is designed without the craft having an adverse impact on marine resources. The distance must be determined in accordance with criteria established by the trustees by rule, based on the depth of the water, nature and condition of bottom, and presence of manatees.²⁰
- Commercial docking facilities shown to be consistent with the use or management criteria of the preserve may be approved if the facilities are located within a reasonable distance of a publicly maintained navigation channel, or a natural channel of adequate depth and width to allow operation of the watercraft for which the docking facility is designed without the craft having an adverse impact on marine resources. The distance must be determined in accordance with criteria established by the trustees by rule, based on the depth of the water, nature and condition of bottom, and presence of manatees.²¹
- Structures for shore protection, including restoration of seawalls at their previous location or upland of, or within 18 inches waterward of their previous location, approved navigational aids, or public utility crossings may be approved.²²

Section 258.43, F.S., grants the BOT with rulemaking authority to implement the provisions of the Florida Aquatic Preserves Act. DEP rules²³ provide that only minimal or maintenance dredging is permitted in a preserve, and any alteration of the preserves' physical conditions is restricted unless the alteration enhances the quality or utility of the preserve or the public health generally. Minerals may not be mined (with the exception of oyster shells), and oil and gas well drilling is prohibited. However, the state is not prohibited from leasing the oil and gas rights and permitting drilling from outside the preserve to explore for oil and gas if approved by the BOT. Docking facilities and even structures for shore protection are restricted as to size and location.

In determining whether to approve or deny any request for activities on sovereign submerged lands in aquatic preserves, BOT will evaluate each on a case-by-case basis and utilize a balancing test to determine whether the social, economic, and/or environmental benefits clearly exceed the costs.²⁴ BOT may authorize a lease, easement, or consent for the following activities:

- A public navigation project;

¹⁷ Section 258.42(2), F.S.

¹⁸ Section 258.42(3)(a), F.S.

¹⁹ Section 258.42(3)(e), F.S.

²⁰ *Id.*

²¹ *Id.*

²² *Id.*

²³ Administrative rules applicable to aquatic preserves generally may be found in Chapters 18-20, F.A.C., Management Policies, Standards and Criteria. However, every aquatic preserve in the state has specific restrictions and policies that are set out in the Florida Administrative Code.

²⁴ Chapter 18-20.004(1)((a) and (2), F.A.C.

- Maintenance of an existing navigational channel;
- Installation or maintenance approved navigational aids;
- Creation or maintenance of a commercial/industrial dock, pier or a marina;
- Creation or maintenance of private docking facilities for reasonable ingress and egress of riparian owners;
- Minimum dredging for navigation channels attendant to docking facilities;
- Creation or maintenance of a shore protection structure, except that restoration of a seawall or riprap at its previous location, upland of its previous location, or within one foot waterward of its previous location is exempted from any requirement to make application for consent of use;
- Installation or maintenance of oil and gas transportation facilities;
- Creation, maintenance, replacement or expansion of facilities required for the provision of public utilities; and
- Other activities that are a public necessity or that are necessary to enhance the quality or utility of the aquatic preserve.²⁵

For the activities listed above, the activity must be designed so that the structure or structures to be built in, on, or over sovereign submerged lands are limited to structures necessary to conduct water dependent activities. Other uses of the aquatic preserve, or human activity within the aquatic preserve, although not originally contemplated, may be approved by BOT, but only subsequent to a formal finding of compatibility with the provisions of ch. 258, F.S. or ch. 18-20, F.A.C.²⁶ Furthermore, all proposed activities in aquatic preserves having management plans adopted by the BOT must demonstrate that such activities are consistent with the management plan.²⁷

Effect of Proposed Changes

The bill requires DEP to promote the public use of aquatic preserves, and authorizes DEP to receive gifts and donations to carry out the purpose of the Florida Aquatic Preserve Act.²⁸ Moneys received by DEP in trust, or by gift, devise, appropriation, or otherwise must be deposited into the Land Acquisition Trust Fund and appropriated to DEP for the administration, development, improvement, promotion, and maintenance of aquatic preserves and their associated uplands for any future acquisition or development of aquatic preserves and their associated uplands.

The bill authorizes DEP to grant a privilege²⁹ or concession for the accommodation of visitors to aquatic preserves and their associated state-owned uplands if the privilege or concession:

- Does not deny or interfere with the public's access to the lands; and
- Is compatible with the aquatic preserve's management plan as approved by the Acquisition and Restoration Council (ARC).

A privilege or concession can be granted without advertisement and without using a competitive bidding process and cannot be assigned or transferred without the consent of DEP.³⁰

According to DEP, a competitive bidding process is not currently needed due to the fact that this is a new program and it is necessary to encourage small businesses, research untested markets, and preserve the trade secrets or intellectual property of others. The opportunity to advertise for competitive bids will be available to DEP when the untested program matures and is proven.

²⁵ Chapter 18-20.004(1)(e), F.A.C.

²⁶ Chapter 18-20.004(1)(f) and (l), F.A.C.

²⁷ Chapter 18-20.004(3), F.A.C.

²⁸ Part II of Ch. 258, F.S.

²⁹ A privilege is not defined in statute or rule. According to DEP's definition, a privilege is not a regulatory function. It is granting a request for public use of the natural resource that is in concert with the Acquisition and Restoration Council-approved management plan, but is a use which occurs only with special permission.

³⁰ According to DEP, the percentage of income DEP would receive from concessionaires will be outlined in the contract with each concessionaire.

B. SECTION DIRECTORY:

Section 1. Amends s. 161.053, F.S., relating to the regulation of coastal construction and excavation.

Section 2. Creates s. 258.435, F.S., requiring DEP to promote the public use of aquatic preserves.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

See Fiscal Comments Section.

2. Expenditures:

See Fiscal Comments Section.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

The bill has a potentially positive fiscal impact on local governments seeking general or areawide permits for minor structures that would otherwise require an administrative permit. See Fiscal Comments for discussion of permit fees.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill will have a positive fiscal impact on private parties who wish to provide goods or services, such as providing food or boat rentals, to visitors in aquatic preserves.

The bill has a potentially positive fiscal impact on private parties seeking general or area-wide permits for minor structures that would otherwise require an administrative permit. See Fiscal Comments for discussion of permit fees.

D. FISCAL COMMENTS:

The bill has a potentially negative fiscal impact on the Permit Fee Trust Fund as a result of the expansion of activities that qualify for DEP-issued area-wide and general permits. The department issues approximately 500 administrative permits per year. According to DEP, the fee for an administrative permit varies from \$300 for a dune walkover to \$1,000 for a swimming pool. The fee for a general permit varies from \$300 for a minor structure to \$500 for a major structure. A DEP-issued area-wide permit is \$500. DEP anticipates a negative fiscal impact of \$66,800 to the Permit Fee Trust Fund per year for permits that currently qualify for administrative permits or general permits and that will qualify for general permits or DEP-issued area-wide permits under the bill (see chart below).

Permitted Activity Type	Number of Permits Anticipated, single-year (based on CY 2013 data)	Number of anticipated permits eligible for GRS under proposed bill language	Fee Reduction Per Permit	TOTAL Anticipated Annual Fee Reduction for Activity Type
Swimming pools associated with single-family dwellings	169	84 (50%)	\$700	\$58,800
Coastal armoring repairs	14	14 (100%)	\$200	\$2,800
Dune walkovers/dune restoration	26	26 (100%)	\$200	\$5,200
ANNUAL ANTICIPATED TOTAL FEE REDUCTION (Permit Fee TF)				\$66,800

The cost for the rule requirements regarding areawide permit modifications can be absorbed by the agency.

Issuing a privilege or concession for the accommodation of visitors could have an indeterminate positive fiscal impact to the Land Acquisition Trust Fund. According to DEP, revenue in the pilot year will be limited by organizational needs. While the amount of potential revenue is unknown, DEP has provided an estimate for the first three years of the program.

EXAMPLE OF ACTIVITY TYPES & POTENTIAL REVENUES				
Year	Activity	Contractor Gross Revenue	% Compensation to State	State Revenue
Year 1	Guided Tour-PILOT	\$5,000	0	0
Year 2	Guided Tour	\$33,350	15%	\$5,000
	Guided Kayak - PILOT	\$5,000	0	0
Year 3	Guided Tour	\$33,350	15%	\$5,000
	Guided Kayak	\$100,000	15%	\$15,000
	All Inclusive Camping	\$300,000	10%	\$30,000
Total First 3 Years				\$55,000

The bill also authorizes DEP to receive certain gifts or donations, which are to be deposited into the Land Acquisition Trust Fund for the administration, development, improvement, promotion, and maintenance of aquatic preserves and their associated uplands and for any future acquisition or development of aquatic preserves and their associated uplands. The amounts of gifts or donations the department might receive for these purposes is indeterminate.

The bill requires DEP to promote aquatic preserves and their associated uplands, which DEP estimates will cost \$250,000 per year. The proposed Fiscal Year 2014-15 House General Appropriations Act

includes \$250,000 in recurring funds from the Land Acquisition Trust Fund for a marketing initiative for Florida's aquatic managed areas and coastal uplands.

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:

This bill may implicate the single subject provision in Art. III, s. 6 of the Florida Constitution, which provides that "every law enacted by the Legislature shall embrace but one subject matter and properly connected therewith ..." The Florida Supreme Court has described the purpose of the single subject rule as twofold. First, it attempts to avoid surprise and fraud by ensuring that both the public and the legislators involved receive fair and reasonable notice of the contents of a proposed act. Secondly, the limitation prevents hodgepodge, logrolling legislation. With regard to the test to be applied by a court in determining whether a particular provision violates the single subject rule, the fact that the scope of a legislative enactment is broad and comprehensive is not fatal so long as the matters included in the enactment have a natural or logical connection.³¹ The bill contains one section that pertains to coastal construction permits and another section that pertains to the use of aquatic preserves, which are not necessarily in coastal areas.

B. RULE-MAKING AUTHORITY:

The bill requires DEP to adopt rules to establish criteria and guidelines for areawide permit applicants.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Lines 27 and 32 of the bill provide for the expansion of areawide permits to include minor structures. Minor structures are defined in Rule 62B-33.002(60), F.A.C.; however, the bill does not provide a definition for a minor structure.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 11, 2013, the Agriculture & Natural Resources Subcommittee adopted one strike-all amendment and reported the bill favorably with a committee substitute. The amendment specifies that DEP issued area-wide permits are expanded to include the construction of minor structures. The amendment requires DEP to adopt rules to establish criteria and guidelines for areawide permit applicants. In addition, the amendment authorizes DEP to grant a general permit for dune restoration, swimming pools associated with single-family habitable structures, and for minor reconstruction for existing coastal armoring structures.

Furthermore, the amendment specifies that DEP is authorized to grant a privilege or concession, for the accommodation of visitors to aquatic preserves and their associated state-owned uplands. The amendment removes the authority to grant a lease or permit for this purpose. The amendment specifies that the privilege or concession must be compatible with the aquatic preserve's management plan as approved by the Acquisition and Restoration Council. Lastly, the amendment specifies that

DEP is authorized to receive gifts and donations to carry out the purpose of the Florida Aquatic Preserves Act.

27 (17) The department may grant areawide permits to local
 28 governments, other governmental agencies, and utility companies
 29 for special classes of activities in areas under their general
 30 jurisdiction or responsibility or for the construction of minor
 31 structures, if these activities or structures, due to the type,
 32 size, or temporary nature of the activity or structure, will not
 33 cause measurable interference with the natural functioning of
 34 the beach-dune system or with marine turtles or their nesting
 35 sites. Such activities or structures must comply with this
 36 section and may include, but are not limited to: road repairs,
 37 not including new construction; utility repairs and
 38 replacements, or other minor activities necessary to provide
 39 utility services; beach cleaning; dune restoration; on-grade
 40 walkovers for enhancing accessibility or use in compliance with
 41 the Americans with Disabilities Act; and emergency response. The
 42 department shall ~~may~~ adopt rules to establish criteria and
 43 guidelines for permit applicants. The department must require
 44 notice provisions appropriate to the type and nature of the
 45 activities for which the areawide permits are sought.

46 (18) (a) The department may grant general permits for
 47 projects, including dune restoration, dune walkovers, decks,
 48 fences, landscaping, sidewalks, driveways, pool resurfacing,
 49 minor pool repairs, and other nonhabitable structures, if the
 50 projects, due to type, size, or temporary nature, will not cause
 51 a measurable interference with the natural functioning of the
 52 beach-dune system or with marine turtles or their nesting sites.

53 Multifamily habitable structures do not qualify for general
 54 permits. However, single-family habitable structures and
 55 swimming pools associated with such single-family habitable
 56 structures that do not advance the line of existing construction
 57 and satisfy all siting and design requirements of this section,
 58 and minor reconstruction for existing coastal armoring
 59 structures, may be eligible for a general permit.

60 (b) The department may adopt rules to establish criteria
 61 and guidelines for permit applicants.

62 (c)~~(a)~~ Persons wishing to use the general permits must, at
 63 least 30 days before beginning any work, notify the department
 64 in writing on forms adopted by the department. The notice must
 65 include a description of the proposed project and supporting
 66 documents depicting the proposed project, its location, and
 67 other pertinent information as required by rule, to demonstrate
 68 that the proposed project qualifies for the requested general
 69 permit. Persons who undertake projects without proof of notice
 70 to the department, but whose projects would otherwise qualify
 71 for general permits, shall be considered to have undertaken a
 72 project without a permit and are subject to enforcement pursuant
 73 to s. 161.121.

74 (d)~~(b)~~ Persons wishing to use a general permit must
 75 provide notice as required by the applicable local building code
 76 where the project will be located. If a building code requires
 77 no notice, any person wishing to use a general permit must, at a
 78 minimum, post a sign describing the project on the property at

79 | least 5 days before commencing construction. The sign must be at
 80 | least 88 square inches, with letters no smaller than one-quarter
 81 | inch.

82 | Section 2. Section 258.435, Florida Statutes, is created
 83 | to read:

84 | 258.435 Use of aquatic preserves for the accommodation of
 85 | visitors.-

86 | (1) The Department of Environmental Protection shall
 87 | promote the public use of aquatic preserves and their associated
 88 | uplands. The department may receive gifts and donations to carry
 89 | out the purpose of part II of this chapter. Moneys received in
 90 | trust by the department by gift, devise, appropriation, or
 91 | otherwise, subject to the terms of such trust, shall be
 92 | deposited into the Land Acquisition Trust Fund and appropriated
 93 | to the department for the administration, development,
 94 | improvement, promotion, and maintenance of aquatic preserves and
 95 | their associated uplands and for any future acquisition or
 96 | development of aquatic preserves and their associated uplands.

97 | (2) The department may grant a privilege or concession for
 98 | the accommodation of visitors in and use of aquatic preserves
 99 | and their associated state-owned uplands if the privilege or
 100 | concession does not deny or interfere with the public's access
 101 | to such lands and is compatible with the aquatic preserve's
 102 | management plan as approved by the Acquisition and Restoration
 103 | Council. Such a privilege or concession may be granted without
 104 | advertisement and without using a competitive bidding process

CS/HB 791

2014

105 | and may not be assigned or transferred by the grantee without
106 | the consent of the department.

107 | Section 3. This act shall take effect July 1, 2014.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 955 Fish and Wildlife Conservation FWC
SPONSOR(S): Agriculture & Natural Resources Subcommittee and Goodson
TIED BILLS: None **IDEN./SIM. BILLS:** SB 1126

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Agriculture & Natural Resources Subcommittee	12 Y, 0 N, As CS	Renner	Blalock
2) Agriculture & Natural Resources Appropriations Subcommittee		Massengale	Massengale <i>SM</i>
3) State Affairs Committee			

SUMMARY ANALYSIS

The bill makes the following revisions related to various programs under the authority of the Florida Fish and Wildlife Conservation Commission (FWC):

- Allows a person who is required to take a boating safety course as a result of a boating violation to do so online; and specifies that people who must take the course because they were convicted of operating a vessel after consuming alcohol under the age of 21 must take the course at their own expense.
- Extends the pilot program for the mooring of vessels to July 1, 2017, and requires an updated report to be submitted to the Governor and Legislature on January 1, 2017.
- Allows counties to use their portion of vessel registration revenues for additional boating-related activities.
- Specifies that the annual military gold sportsman's license authorizes the same activities as the annual gold sportsman's license.
- Repeals the \$2 (under 18) and \$5 (18 and older) fee the FWC is authorized to charge for hunting on areas subject to cooperative agreements between the FWC and the U.S. Forest Service.
- Repeals the provision allowing any person that meets certain requirements to trawl for shrimp for personal food use in the St. Johns River, if noncommercial trawling is authorized by the FWC. Noncommercial trawling has not been authorized by FWC since 1996.
- Repeals the now outdated Special Recreational Spiny Lobster license.
- Repeals the \$50 fee associated with the statewide freshwater trawl seine gear license and the \$100 fee associated with the statewide haul seine gear license.
- Repeals the FWC's authority to issue haul seine and trawl permits used in Lake Okeechobee and collect fees.

The bill has a \$1,100 negative fiscal impact on the State Game Trust Fund in the FWC and a positive impact to the private sector from the repeal of the Okeechobee haul seine and trawl permit fees, and the statewide freshwater trawl and haul seine annual gear license fees. Although the bill does not increase county-retained vessel registration revenues, the bill allows for additional uses of the revenues. There may be an insignificant fiscal impact to the private sector as a result of authorizing online boater safety courses (see Fiscal Analysis and Economic Impact section for more details).

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Sections 1 and 3. Boater Safety Course Requirements

Present Situation

A person born on or after January 1, 1988, cannot operate a vessel powered by a motor of 10 horsepower or greater unless that person has in his or her possession aboard the vessel photographic identification and a boater safety identification card issued by the Florida Fish and Wildlife Conservation Commission (FWC) showing that he or she has:¹

- Completed a FWC-approved boater education course that meets the minimum 8-hour instruction requirement established by the National Association of State Boating Law Administrators;
- Passed a course equivalency examination approved by the FWC; or
- Passed a temporary certificate examination developed or approved by the FWC.

These courses can be taken in person, in a classroom setting, or can be completed online. Failure to comply with the boating safety education requirement is a noncriminal infraction and is punishable by a \$50 fine for a first offense.²

Section 327.355, F.S., provides that any person under the age of 21 who is convicted of being in control of a vessel with a breath-alcohol level of 0.02 or higher must enroll in, attend, and successfully complete a boating safety course that meets minimum standards established by the FWC by rule.³

Section 327.731, F.S., requires the following people to enroll in, attend, and successfully complete a boating safety course that meets minimum standards established by the FWC by rule:⁴

- A person convicted of a criminal violation of ch. 327, F.S., relating to vessel safety;⁵
- A person convicted of a noncriminal infraction under ch. 327, F.S., where the infraction resulted in a reportable boating accident;⁶ and
- A person convicted of two noncriminal infractions when the infractions occur within a 12-month period.⁷

¹ Section 327.395(1), F.S.

² Section 327.395(7), F.S.

³ Section 327.355(5)(c), F.S.

⁴ Section 327.731(1)(a), F.S.

⁵ Criminal violations of ch. 327, F.S., include, but are not limited to: unlawfully leaving the scene of a boating accident; reckless operation of a vessel or personal watercraft; boating under the influence of alcohol or drugs; operating a vessel while the privilege to operate is suspended; skiing while impaired or under the influence; allowing a person under the age of 14 to operate a personal watercraft; vessel title or registration fraud; and altering or removing a hull identification number.

⁶ A reportable boating accident occurs when the operator of a vessel is in any manner involved in an accident resulting in: personal injury requiring medical treatment beyond first aid; the death of a person; the disappearance of a person under circumstances that indicate the possibility of death or injury; or damage to a vessel or other property that totals \$2,000 or more.

⁷ Section 327.73(1)(h)-(k), (m), (o), (p), and (s)-(x), F.S., defines noncriminal infractions to include violations relating to the following: careless operation; water skiing, aquaplaning, parasailing, and similar activities; interference with navigation; boating-restricted areas and speed limits; required safety equipment, lights, and shapes; a violation of navigation rules that does not result in an accident or that results in an accident not causing serious bodily injury or death, for which there are certain penalties; personal watercraft; boater safety education; operation of overloaded or overpowered vessels; divers-down flags; requirement for an adequate muffler on an airboat; and carelessly causing seagrass scarring, for which there are certain civil penalties upon conviction.

These safety courses are considered Mandatory Education for Violators (MEV) and require a person to enroll in, attend, and successfully complete an in-person boating safety course.⁸ Currently, the requirement may not be completed through an online course.⁹ The FWC may waive, by rule, attendance requirements for violators of this section residing in areas where a classroom presentation of the course is not available.¹⁰ There are approximately 500 boat operators who are required to complete MEV requirements each year.¹¹

Effect of Proposed Changes

The bill amends ss. 327.355 and 327.731, F.S., to allow a person who is required to take the boating safety course as a result of violating certain boating laws to do so online.

The bill also specifies that a person who must take the boating safety course because he or she was convicted of operating a vessel after consuming alcohol under the age of 21 must take the boating safety course at his or her own expense.

In addition, the bill eliminates the FWC's authority to provide waivers of the attendance requirement for violators residing in areas where classroom presentation of the course is not available. This provision would no longer be necessary since the boating safety class would be offered online.

Section 2. Pilot Program for the Regulation of Mooring Vessels Outside of Public Mooring Fields

Present Situation

Under current law, local governments are prohibited from regulating the anchoring of vessels (other than live-aboard vessels) outside of legally permitted mooring fields.¹² According to FWC, the unregulated anchoring and mooring leads to various problems, including:

- The accumulation of anchored vessels in inappropriate locations;
- Unattended vessels;
- Vessels with no anchor watch (dragging anchor, no lights, bilge);
- Vessels that are not properly maintained;
- Vessels ignored by owners that tend to become derelict; and
- Confusion in the interpretation of statutes that provide jurisdictional guidance for local governments.

In 2009, s. 327.4105, F.S., was enacted, creating the Anchoring and Mooring Pilot Program (program). The program directed the FWC, in consultation with the Department of Environmental Protection (DEP), to establish a pilot program to explore potential options for regulating the anchoring and mooring of non-live-aboard vessels outside the marked boundaries of public mooring fields in five locations around the state.¹³ The goals of the program are to encourage the establishment of additional public mooring fields and to develop and test policies and regulations that:

- Promote the establishment and use of public mooring fields;
- Promote public access to the waters of this state;
- Enhance navigational safety;
- Protect maritime infrastructure;

⁸ FWC 2014 Legislative Bill Analysis, February 21, 2014. On file with Agriculture & Natural Resources Subcommittee staff.

⁹ *Id.*

¹⁰ Section 327.731, F.S.

¹¹ FWC 2014 analysis, *supra* at footnote 8.

¹² Section 327.60, F.S.

¹³ The five locations include the City of St. Augustine, the City of St. Petersburg, the City of Sarasota, and Monroe County in partnership with the cities of Marathon and Key West, and Marion County in partnership with the City of Stuart.

- Protect the marine environment; and
- Deter improperly stored, abandoned, or derelict vessels.

The program also required a report to be submitted to the Governor and the Legislature by January 1, 2014. The program and all ordinances adopted under the program will expire on July 1, 2014, unless reenacted by the Legislature.

According to the FWC, the process of developing, approving, and adopting the local government ordinances was a more lengthy process than originally anticipated. The FWC met with boating and local government stakeholders in October 2013 to discuss the program findings and challenges that have affected the progress of the program. FWC's recommendation was to extend the program for an additional three years to July 2017.

Effect of Proposed Changes

The bill extends the pilot program to July 1, 2017, and requires an updated report to be submitted to the Governor and Legislature on January 1, 2017.

Section 4. County Vessel Registration Revenues

Present Situation

Current law¹⁴ defines a vessel¹⁵ to include every description of watercraft, barge, and airboat, other than a seaplane on the water, used or capable of being used as a means of transportation on water. All vessels operated, used, or stored on state waters are required to be registered with the Florida Department of Highway Safety and Motor Vehicles as either commercial or recreational vehicles, with the following exceptions:¹⁶

- A vessel operated, used, and stored exclusively on private lakes and ponds;
- A vessel owned by the U.S. Government;
- A vessel used exclusively as a ship's lifeboat; or
- A non-motor-powered vessel less than 16 feet in length or a non-motor-powered canoe, kayak, racing shell, or rowing scull, regardless of length.

Vessel registration fees are based on the length of the vessel as follows:¹⁷

- **Class A-1** – Less than 12 feet in length, except all canoes to which propulsion motors have been attached are included regardless of length: \$5.50 for each 12-month period registered.
- **Class A-2** – 12 feet or more and less than 16 feet in length; \$16.25 for each 12-month period registered. (County Portion: \$2.85 for each 12-month period registered).
- **Class 1** – 16 feet or more and less than 26 feet in length: \$28.75 for each 12-month period registered (County Portion: \$8.85 for each 12-month period registered).
- **Class 2** – 26 feet or more and less than 40 feet in length: \$78.25 for each 12-month period registered (County Portion: \$32.85 for each 12-month period registered).
- **Class 3** – 40 feet or more and less than 65 feet in length: \$127.75 for each 12-month period registered (County Portion: \$56.85 for each 12-month period registered).
- **Class 4** – 65 feet or more and less than 110 feet in length: \$152.75 for each 12-month period registered (County Portion: \$68.85 for each 12-month period registered).
- **Class 5** – 110 feet or more in length: \$189.75 for each 12-month period registered (County Portion: \$86.85 for each 12-month period registered).

¹⁴ Section 327.02(39), F.S.

¹⁵ A vessel is synonymous with a boat, as referenced in Article VII, s. 1(b), of the Florida Constitution.

¹⁶ Section 328.48(2), F.S.

¹⁷ Section 328.72(1), F.S.

The county portion of the vessel registration fee is part of the total fee (not in addition to) and is derived from recreational vessels only.

Section 328.72(15), F.S., specifies how vessel registration fees are distributed. The portion of vessel registration fees retained by the counties can only be used to provide:

- Recreational channel marking and other uniform waterway markers,
- Public boat ramps, lifts, and hoists;
- Marine railways; and
- Other public launching facilities, derelict vessel removal, and removal of vessels and floating structures deemed a hazard to public safety and health.

In 2006, HB 7175 was signed into law by the Governor¹⁸ and provided, in part, that counties must report annually, by November 1, to the FWC how all county-retained vessel registration revenues are spent, and if the report is not submitted by January 1, the county portion of the vessel registration fee revenues must be deposited into the Marine Resources Conservation Trust Fund. The FWC must return those fees to the county if the county complies with the reporting requirement within the calendar year. According to the FWC,¹⁹ all counties have complied with this reporting requirement, and no county portions of vessel registration fees have been deposited into the Marine Resources Conservation Trust Fund.

Effect of Proposed Changes

The bill amends s. 328.72, F.S., to allow counties to use their portion of vessel registration revenues for the following additional boating-related activities:

- Providing boat piers, docks, and mooring buoys;
- Maintaining or operating recreational channel marking and other uniform waterway markers; public boat ramps, lifts, and hoists; marine railways; boat piers; docks; mooring buoys; and other public launching facilities; and
- Removing derelict vessels and debris that specifically impede boat access (not including the dredging of channels).

Section 5. Fees to Hunt on Areas Subject to Cooperative Agreements between the FWC and the U.S. Forest Service

Present Situation

Pursuant to s. 379.2257(1), F.S., the Florida Legislature authorizes the FWC to enter into cooperative agreements with the U.S. Forest Service to manage species in designated national forests and to further better hunting on these lands. In addition, s. 379.2257(3), F.S., authorizes the FWC to charge, in addition to hunting license fees,²⁰ up to an additional \$5 for every person 18 years of age or older, and up to an additional \$2 for every person under the age of 18 for hunting on lands covered by the cooperative agreements. However, the FWC has not charged these fees since 1978.

The FWC also issues a management area permit for residents or nonresidents to hunt on lands owned, leased, or managed by the FWC.²¹ This permit is required to hunt on the lands covered by cooperative agreements between the U.S. Forest Service and the FWC that have been established as wildlife management areas. Revenue from these permits is used for the lease, management, and protection of

¹⁸ Ch. 2006-305, L.O.F.

¹⁹ FWC 2014 analysis, *supra* at note 8.

²⁰ Section 379.354, F.S., provides the various fees for hunting licenses.

²¹ Section 379.354(8)(g), F.S.

lands for public hunting and other outdoor recreation. As a result, the permissible fees for hunting on areas covered by cooperative agreements between the U.S. Forest Service and the FWC are duplicative and obsolete.

Effect of Proposed Changes

The bill repeals s. 379.2257(3), F.S., which authorizes the FWC to charge the \$2 (under 18) and \$5 (18 and older) fees for hunting on areas subject to cooperative agreements between the FWC and the U.S. Forest Service discussed above. Because the FWC issues management area permits to hunt on these lands, the fees are duplicative and obsolete.

Section 6. Regulation of Shrimp Fishing

Present Situation

Section 379.247(5), F.S., authorizes any person to trawl for shrimp in the St. Johns River for his or her own food, if noncommercial trawling is authorized by the FWC, under the following conditions:

- Each person who desires to trawl for shrimp for use as food must obtain a noncommercial trawling permit from the local office of the FWC upon filling out an application on a form prescribed by the FWC and upon paying a \$50 fee for the permit.
- All trawling must be restricted to the confines of the St. Johns River proper in the area north of the Acosta Bridge in Jacksonville and at least 100 yards from the nearest shoreline.
- No shrimp caught by a person licensed under the provisions of this subsection may be sold or offered for sale.

In January 1996, the Marine Fisheries Commission (predecessor to the FWC) adopted a rule prohibiting the use of trawls in the recreational shrimp fishery.²² Trawls are only allowed for commercial harvest of shrimp, not for recreational harvest. As a result, noncommercial trawling permits have not been issued since the activity was prohibited in 1996.

Effect of Proposed Changes

The bill repeals s. 379.247(5), F.S., which establishes the permit requirement and \$50 fee for noncommercial shrimp trawling for personal food use in the St. Johns River. The activity has been prohibited since 1996 so the requirement is obsolete.

Section 7. Recreational Hunting and Fishing License Exemptions

Present Situation

A person who wants to recreationally hunt or fish in Florida must obtain a recreational license, permit, or authorization number and pay the appropriate fee.²³

Section 379.353(2), F.S., exempts specified individuals from having to possess a recreational license while hunting or fishing. Section 379.353(2)(g), F.S., provides an exemption for any person fishing who has been accepted as a client for developmental disabilities services by the Department of Children and Family Services (DCF), provided DCF furnishes proof.

In 2004, HB 1823 was signed into law by the Governor,²⁴ creating the Agency for Persons with Disabilities (APD) as an entity separate from DCF. The APD was subsequently tasked with serving the

²² Chapter 68B-31.007, F.A.C.

²³ Section 379.354, F.S.

²⁴ Ch. 2004-267, L.O.F.

need of Floridians with developmental disabilities. Consequently, s. 379.353(2)(g), F.S., has an incorrect statutory reference.

Effect of Proposed Changes

The bill amends s. 379.353(2)(g), F.S., to fix the incorrect reference by changing DCF to APD.

The bill also conforms a related cross-reference.

Section 8. Resident Hunting and Fishing Licenses

Present Situation

Pursuant to s. 379.354(4), F.S., an annual gold sportsman's license authorizes the person to whom it is issued to take freshwater fish, saltwater fish, and game, subject to the state and federal laws, rules, and regulations, including rules of the FWC, in effect at the time of taking. Other authorized activities include activities authorized by a management area permit, a muzzle-loading gun season permit, a crossbow season permit, a turkey permit, a Florida waterfowl permit, a deer permit, an archery season permit, a snook permit, or a spiny lobster permit.

An annual military gold sportsman's license is the same as an annual gold sportsman's license, except that the cost is \$18.50 compared to \$98.50 for the regular annual gold sportsman's license. However, only a resident who is an active or retired member of the United States Armed Forces, the United States Armed Forces Reserve, the National Guard, the United States Coast Guard, or the United States Coast Guard Reserve is eligible to purchase the military gold sportsman's license upon submission of a current military identification card.

Effect of Proposed Changes

The bill amends s. 379.354(4), F.S., to specify that the annual military gold sportsman's license authorizes the same activities as the annual gold sportsman's license.

Section 9. Special Recreational Spiny Lobster License

Present Situation

The spiny lobster can be harvested both recreationally and commercially in Florida. Spiny lobsters and stone crabs may be harvested recreationally by anyone who has a valid recreational saltwater fishing license.²⁵ The current recreational bag limit (the number of a species a person may legally harvest) for spiny lobster is six per person, per day during the regular recreational season, which runs from August 6 to March 31.²⁶ The special spiny lobster sport season occurs annually on the last consecutive Wednesday and Thursday of July.²⁷ Recreational fishermen may still only harvest six spiny lobsters per day in Monroe County or Biscayne National Park, but may harvest 12 spiny lobsters per day elsewhere. Recreational spiny lobster fishermen must possess a recreational saltwater fishing license and a lobster permit.

The commercial spiny lobster fishing season also runs from August 6 to March 31.²⁸ However, there is no daily bag limit for commercial spiny lobster fishermen using traps.²⁹ Commercial spiny lobster fishermen must possess a valid saltwater products license (SPL).³⁰ A saltwater product is defined as

²⁵ See s. 379.354, F.S.

²⁶ Chapter 68B-24.005(1), F.A.C.

²⁷ Chapter 68B.005(2), F.A.C.

²⁸ Chapter 68B-24.005(1), F.A.C.

²⁹ For those in the dive fishing industry using bully nets, the commercial daily bag limit is 250.

³⁰ Section 379.361, F.S.

any species of saltwater fish, marine plant, or echinoderm, except shells, and salted, cured, canned, or smoked seafood.³¹

There are three types of SPLs in Florida:

- Individual SPL – This license authorizes one person to engage in commercial fishing activities from the shore or a vessel, is issued in the individual’s name, and is not tied to any one vessel.³²
- Crew SPL – This license is the same as an individual SPL, but also authorizes each person who is fishing with the named individual aboard a vessel to engage in such activities. This allows the license holder to take a crew on any vessel and that crew is covered under the person’s SPL.³³
- Vessel SPL – This license is issued to a valid commercial vessel registration number and authorizes each person aboard that registered vessel to engage in commercial saltwater fishing activities. This is issued to a vessel, not a named individual.³⁴

A restricted species (RS) endorsement is required for those who possess an SPL and commercially harvest or sell the following species: Spanish mackerel, king mackerel, black drum, spotted sea trout, grouper, snapper, red porgy, gray triggerfish, banded rudderfish, almaco jack, golden tilefish, amberjack, sea bass/tropical/ornamental “marine life,” black mullet, silver mullet, bluefish, hogfish, blue crab, stone crab, crawfish/spiny lobster, African pompano, Florida pompano, permit, sheepshead, tripletail, clams (Brevard County only), shrimp, flounder, cobia, wahoo, and dolphin.³⁵

A RS endorsement is free; however, licensed commercial fishermen, firms, or corporations must qualify or show proof of landings reported under their SPL providing that a specified amount or percentage of their total annual income (\$5,000 or 25 percent) during one of the past three years is attributable to reported landings and sales of saltwater products to a Florida wholesale dealer.³⁶

In 1994, the spiny lobster was designated a RS.³⁷ That same year the Florida Legislature created the “special recreational crawfish license,” which is now known as the “special recreational spiny lobster license” (SRL).³⁸ The license, which costs \$100, was created to allow individuals who possessed an SPL and a crawfish endorsement on their SPL (and who were legally able to harvest and sell lobster commercially) to exceed the recreational bag limit for personal use. To be eligible, a person must have held both an SPL and a crawfish endorsement during the 1993-1994 license year, and only those initially qualified to purchase the license were allowed to receive the license.

After the creation of the SRL, a new recreational spiny lobster rule was implemented, which³⁹ established a daily bag limit beginning with 50 during the 2003-2004 season to phase out the SRL. The SRL was only given to certain commercial fishermen so that their bag limit could exceed the recreational bag limit for personal use. Each subsequent year’s daily bag limit for the SRL was reduced by five, and by the 2012-2013 license year, the SRL bag limit was less than the daily recreational bag limit, which is currently six. Consequently, this eliminated any reason for a person to obtain an SRL and no SRLs were issued for the 2012-2013 season.

³¹ Section 379.101, F.S.

³² Section 379.354, F.S.

³³ *Id.*

³⁴ *Id.*

³⁵ Chapter 68B, F.A.C.

³⁶ Section 379.361(b), F.S.

³⁷ Chapter 68B-24.001(4), F.A.C.

³⁸ Section 379.355, F.S.

³⁹ Chapter 68B-24.0035, F.A.C.

Effect of Proposed Changes

The bill repeals s. 379.355, F.S., relating to the now outdated and unnecessary Special Recreational Spiny Lobster license.

Section 10. Annual Gear License Fee

Present Situation

Under current law, all commercial fishing operators permitted to fish in freshwaters with trawl seine nets (bag-like nets that are pulled behind a boat to harvest fish)⁴⁰ are required to pay a \$50 annual gear license fee.⁴¹ All commercial fishing operators permitted to fish in freshwaters with haul seines (long nets pulled by boats to harvest fish)⁴² must pay a \$100 annual gear license fee.⁴³ Both fees have been unchanged since 1978.

The FWC issues five statewide freshwater haul seine annual gear licenses each year, which are currently limited to use in Polk and Hillsborough Counties. An FWC rule dictates the number of statewide freshwater haul seines and the locations. The FWC has not issued a statewide trawl seine license in more than 25 years.

Effect of Proposed Changes

The bill amends s. 379.363, F.S., to repeal the \$50 fee associated with the statewide freshwater trawl seine gear license and the \$100 fee associated with the statewide haul seine gear license.

Section 11. Haul Seine and Trawl Permits Used in Lake Okeechobee.

Present Situation

The FWC is authorized to issue permits for the commercial use of haul or trawl seines on Lake Okeechobee.⁴⁴ Fees for the three types of permits, which have not changed since 1976, are as follows:

- Resident trawl seine permit - \$50
- Resident haul seine permit - \$100
- Nonresident trawl or haul seine permit - \$500

Currently, the FWC issues six resident haul seine permits for commercial activity on Lake Okeechobee. Permits for resident trawl seines for commercial activity have not been issued in more than 30 years and a nonresident trawl or haul seine permit has never been issued.⁴⁵

For commercial fishers on Lake Okeechobee, the haul and trawl seine permit fees are required in addition to purchasing a freshwater commercial fishing license and a fish dealer's license (see above for license fees and numbers issued).

⁴⁰ FWC 2014 analysis, *supra* at footnote 8.

⁴¹ Section 379.363(1)(h), F.S.

⁴² FWC 2014 analysis, *supra* at footnote 8.

⁴³ Section 379.363(1)(i), F.S.

⁴⁴ Section 379.3635, F.S.

⁴⁵ *Supra* at footnote 8.

Effect of Proposed Changes

The bill repeals s. 379.3635, F.S., relating to haul seine and trawl permits and fees used in Lake Okeechobee. Pursuant to their constitutional authority, the FWC currently requires permits to use a trawl and haul seine on Lake Okeechobee. Therefore, the bill will only eliminate the fees, not the permitting requirements.

Sections 12, 13, and 14 Conform Cross-References

Section 15 Provides an Effective Date of July 1, 2014

B. SECTION DIRECTORY:

Section 1. Amends s. 327.355, F.S., relating to the operation of vessels by persons under 21 years of age who have consumed alcoholic beverages.

Section 2. Amends s. 327.4105, F.S., relating to the pilot program for the regulation of mooring vessels outside of public mooring fields.

Section 3. Amends s. 327.731, F.S., relating to mandatory education for violators.

Section 4. Amends s. 328.72, F.S., relating to classification, registration, fees and charges, surcharges, disposition of fees, fines, and marine turtle stickers.

Section 5. Repeals s. 379.2257, F.S., relating to a charge to be applied to areas covered by the cooperative agreements with the U.S. Forest Service.

Section 6. Amends s. 379.247, F.S., relating to the regulation of shrimp fishing.

Section 7. Amends s. 379.353, F.S., relating to the recreational hunting and fishing license exemption.

Section 8. Amends s. 379.354, F.S., relating to Resident Hunting and Fishing Licenses.

Section 9. Repeals s. 379.355, F.S., relating to the Special Recreational Spiny Lobster license.

Section 10. Repeals s. 379.363, F.S., relating to the annual gear license fee.

Section 11. Repeals s. 379.3635, F.S., relating to haul seine and trawl permits used in Lake Okeechobee.

Section 12. Amends s. 379.101, F.S., conforming cross-references.

Section 13. Amends s. 379.208, F.S., conforming cross-references.

Section 14. Amends s. 379.401, F.S., conforming cross-references.

Section 15. Provides an effective date of July 1, 2014.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

FWC offered the following:

Fees to hunt on areas subject to cooperative agreements between FWC and the US Forest Service—The FWC has not charged these fees since 1978 so there would be no fiscal impact as a result of repealing the fee requirement.

Noncommercial shrimp fishing in the St. Johns River permit fees—This activity has been prohibited since 1996 so there would be no fiscal impact as a result of repealing the fee requirement.

Special recreational spiny lobster license fee—Because the special license has not been issued since the 2011-2012 season, there is no fiscal impact as a result of repealing the license fee.

Statewide freshwater trawl and haul seine annual gear license fees—The bill has a potentially insignificant negative fiscal impact on the FWC as a result of repealing the statewide trawl and haul seine annual gear license fees. Five licenses are issued each year, resulting in a \$500 annual loss of revenue to the State Game Trust Fund for the FWC.

Haul seine and trawl permits used in Lake Okeechobee—The bill appears to have an insignificant negative fiscal impact on the FWC as a result of repealing the Okeechobee haul seine and trawl permit fees. Six licenses are issued annually and each license is \$100 per year, resulting in a \$600 annual loss of revenue to the State Game Trust Fund for the FWC.

2. Expenditures:

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

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

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

2. Expenditures:

Although the bill does not increase county-retained vessel registration revenues, the bill allows for additional uses of the revenues.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR

The FWC offered the following:

Boater safety course requirements—There may be a small negative fiscal impact on organizations that offer only classroom, in-person courses, but these entities will have the option of making the course available online. It is anticipated that any fiscal impact to these organizations will be minimal. Students taking courses to meet mandatory education requirements make up a small part of the organizations' student load.

Those individuals who will be subject to MEV requirements may experience a small positive fiscal impact since the cost to the student for an MEV classroom course ranges from \$30 to \$50 and the cost to a student for online courses ranges from free to \$30. For some of these violators, the positive fiscal impact may be even larger since, under current law, they may be required to travel longer distances to find a classroom course to comply with the statute.

Statewide freshwater trawl and haul seine annual gear license fees—Eliminating these fees would result in a \$100 annual positive fiscal impact for commercial fishermen.

Okeechobee haul seine and trawl permit fees—Eliminating these fees would result in a \$100 annual positive fiscal impact for commercial fishermen.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

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

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 11, 2014, the Agriculture & Natural Resources Subcommittee adopted one amendment and reported the bill favorably with a committee substitute. The amendment removes all language pertaining to the requirement to obtain a hunting license for the taking of wildlife on public lands, such as wild hogs. The amendment reverts the definition of "game" back to current language that specifies a person is not required to have a hunting license to hunt those species that have not been designated as "game" by FWC, such as wild hogs. The amendment also removes the definition of "wildlife."

27 the Department of Children and Families to the Agency
 28 for Persons with Disabilities; amending s. 379.354,
 29 F.S.; clarifying the activities authorized under an
 30 annual military gold sportsman's license; repealing s.
 31 379.355, F.S., relating to special recreational spiny
 32 lobster licenses; repealing s. 379.363(1)(h) and (i),
 33 F.S., relating to the annual gear license fee;
 34 repealing s. 379.3635, F.S., relating to haul seine
 35 and trawl permits to be used in Lake Okeechobee;
 36 amending ss. 379.101, 379.208, and 379.401, F.S.;
 37 conforming cross-references; providing an effective
 38 date.

39
 40 Be It Enacted by the Legislature of the State of Florida:

41
 42 Section 1. Subsection (5) of section 327.355, Florida
 43 Statutes, is amended to read:

44 327.355 Operation of vessels by persons under 21 years of
 45 age who have consumed alcoholic beverages.—

46 (5) A ~~Any~~ person ~~who is~~ convicted of a violation of
 47 subsection (1) shall be ordered by the court to ~~be punished as~~
 48 ~~follows:~~

49 (a) ~~The court shall order the defendant to~~ Participate in
 50 public service or a community work project for a minimum of 50
 51 hours;

52 (b) ~~The court shall order the defendant to~~ Refrain from

53 | operating any vessel until the 50 hours of public service or
 54 | community work has been performed; and

55 | (c) Enroll in, attend, and successfully complete, at his
 56 | or her own expense, a classroom or online boating safety course
 57 | that meets minimum standards established by commission ~~the~~
 58 | ~~department~~ ~~by~~ rule.

59 | Section 2. Subsections (5) and (6) of section 327.4105,
 60 | Florida Statutes, are amended to read:

61 | 327.4105 Pilot program for regulation of mooring vessels
 62 | outside of public mooring fields.—The Fish and Wildlife
 63 | Conservation Commission, in consultation with the Department of
 64 | Environmental Protection, is directed to establish a pilot
 65 | program to explore potential options for regulating the
 66 | anchoring or mooring of non-live-aboard vessels outside the
 67 | marked boundaries of public mooring fields.

68 | (5) The commission shall submit a report of its findings
 69 | and recommendations to the Governor, the President of the
 70 | Senate, and the Speaker of the House of Representatives by
 71 | January 1, 2014, and shall submit an updated report by January
 72 | 1, 2017.

73 | (6) The pilot program shall expire on July 1, 2017 ~~2014~~,
 74 | unless reenacted by the Legislature. All ordinances enacted
 75 | under this section shall expire concurrently with the expiration
 76 | of the pilot program and shall be inoperative and unenforceable
 77 | thereafter.

78 | Section 3. Subsection (1) of section 327.731, Florida

79 Statutes, is amended to read:

80 327.731 Mandatory education for violators.-

81 (1) A ~~Every~~ person convicted of a criminal violation under
 82 ~~of~~ this chapter, ~~every person~~ convicted of a noncriminal
 83 infraction under this chapter if the infraction resulted in a
 84 reportable boating accident, or ~~and every person~~ convicted of
 85 two noncriminal infractions as specified ~~defined~~ in s.

86 327.73(1)(h)-(k), (m), (o), (p), and (s)-(x), said infractions
 87 occurring within a 12-month period, must:

88 (a) Enroll in, attend, and successfully complete, at his
 89 or her own expense, a classroom or online boating safety course
 90 that is approved by and meets the minimum standards established
 91 by ~~the~~ commission by rule; ~~however, the commission may provide~~
 92 ~~by rule pursuant to chapter 120 for waivers of the attendance~~
 93 ~~requirement for violators residing in areas where classroom~~
 94 ~~presentation of the course is not available;~~

95 (b) File with the commission within 90 days proof of
 96 successful completion of the course; and

97 (c) Refrain from operating a vessel until he or she has
 98 filed ~~the~~ proof of successful completion of the course with the
 99 commission.

100

101 ~~Any person who has successfully completed an approved boating~~
 102 ~~course shall be exempt from these provisions upon showing proof~~
 103 ~~to the commission as specified in paragraph (b).~~

104 Section 4. Subsection (15) of section 328.72, Florida

105 Statutes, is amended to read:

106 328.72 Classification; registration; fees and charges;
 107 surcharge; disposition of fees; fines; marine turtle stickers.—

108 (15) DISTRIBUTION OF FEES.—Except for the first \$2, \$1 of
 109 which shall be remitted to the state for deposit into the Save
 110 the Manatee Trust Fund created within the Fish and Wildlife
 111 Conservation Commission and \$1 of which shall be remitted to the
 112 state for deposit into the Marine Resources Conservation Trust
 113 Fund to fund a grant program for public launching facilities,
 114 pursuant to s. 206.606, giving priority consideration to
 115 counties with more than 35,000 registered vessels, moneys
 116 designated for the use of the counties, as specified in
 117 subsection (1), shall be distributed by the tax collector to the
 118 board of county commissioners for use only as provided in this
 119 section. Such moneys to be returned to the counties are for the
 120 sole purposes of providing, maintaining, or operating
 121 recreational channel marking and other uniform waterway markers,
 122 public boat ramps, lifts, and hoists, marine railways, boat
 123 piers, docks, mooring buoys, and other public launching
 124 facilities; and removing derelict vessels, debris that
 125 specifically impede boat access, not including the dredging of
 126 channels ~~vessel removal, and removal of~~ vessels and floating
 127 structures deemed a hazard to public safety and health for
 128 failure to comply with s. 327.53. Counties shall demonstrate
 129 through an annual detailed accounting report of vessel
 130 registration revenues that the registration fees were spent as

131 provided in this subsection. This report shall be provided to
 132 the Fish and Wildlife Conservation Commission no later than
 133 November 1 of each year. If, before ~~prior to~~ January 1 of each
 134 calendar year, the ~~annual detailed~~ accounting report meeting the
 135 prescribed criteria has still not been provided to the
 136 commission, the tax collector of that county may ~~shall~~ not
 137 distribute the moneys designated for the use of counties, as
 138 specified in subsection (1), to the board of county
 139 commissioners but shall, ~~instead,~~ for the next calendar year,
 140 remit such moneys to the state for deposit into the Marine
 141 Resources Conservation Trust Fund. The commission shall return
 142 those moneys to the county if the county fully complies with
 143 this section within that calendar year. If the county does not
 144 fully comply with this section within that calendar year, the
 145 moneys shall remain within the Marine Resources Trust Fund and
 146 may be appropriated for the purposes specified in this
 147 subsection.

148 Section 5. Subsection (3) of section 379.2257, Florida
 149 Statutes, is repealed.

150 Section 6. Paragraph (d) of subsection (4) and subsection
 151 (5) of section 379.247, Florida Statutes, are amended to read:

152 379.247 Regulation of shrimp fishing; Clay, Duval, Nassau,
 153 Putnam, Flagler, and St. Johns Counties.—

154 (4) DEAD SHRIMP PRODUCTION.—Any person may operate as a
 155 commercial dead shrimp producer provided that:

156 (d) ~~No person holding a dead shrimp production permit~~

157 ~~issued pursuant to this subsection shall simultaneously hold a~~
 158 ~~permit for noncommercial trawling under the provisions of~~
 159 ~~subsection (5).~~ The number of permits issued by the commission
 160 for commercial trawling or dead shrimp production in any one
 161 year shall be limited to those active in the base year, 1976,
 162 and renewed annually since 1976. All permits for dead shrimp
 163 production issued pursuant to this section shall be inheritable
 164 or transferable to an immediate family member and annually
 165 renewable by the holder thereof. Such inheritance or transfer
 166 shall be valid upon being registered with the commission. Each
 167 permit not renewed shall expire and shall not be renewed under
 168 any circumstances.

169 ~~(5) NONCOMMERCIAL TRAWLING. If noncommercial trawling is~~
 170 ~~authorized by the Fish and Wildlife Conservation Commission, any~~
 171 ~~person may trawl for shrimp in the St. Johns River for his or~~
 172 ~~her own use as food under the following conditions:~~

173 ~~(a) Each person who desires to trawl for shrimp for use as~~
 174 ~~food shall obtain a noncommercial trawling permit from the local~~
 175 ~~office of the Fish and Wildlife Conservation Commission upon~~
 176 ~~filling out an application on a form prescribed by the~~
 177 ~~commission and upon paying a fee for the permit, which shall~~
 178 ~~cost \$50.~~

179 ~~(b) All trawling shall be restricted to the confines of~~
 180 ~~the St. Johns River proper in the area north of the Acosta~~
 181 ~~Bridge in Jacksonville and at least 100 yards from the nearest~~
 182 ~~shoreline.~~

183 ~~(c) No shrimp caught by a person licensed under the~~
 184 ~~provisions of this subsection may be sold or offered for sale.~~

185 Section 7. Paragraph (g) of subsection (2) of section
 186 379.353, Florida Statutes, is amended to read:

187 379.353 Recreational licenses and permits; exemptions from
 188 fees and requirements.-

189 (2) A hunting, freshwater fishing, or saltwater fishing
 190 license or permit is not required for:

191 (g) Any person fishing who has been accepted as a client
 192 for developmental disabilities services by the Agency for
 193 Persons with Disabilities if ~~Department of Children and Family~~
 194 ~~Services, provided~~ the agency ~~department~~ furnishes proof
 195 thereof.

196 Section 8. Paragraph (j) of subsection (4) of section
 197 379.354, Florida Statutes, is amended to read:

198 379.354 Recreational licenses, permits, and authorization
 199 numbers; fees established.-

200 (4) RESIDENT HUNTING AND FISHING LICENSES.-The licenses
 201 and fees for residents participating in hunting and fishing
 202 activities in this state are as follows:

203 (j) Annual military gold sportsman's license, \$18.50. A
 204 ~~The gold sportsman's license authorizes the person to whom it is~~
 205 ~~issued to take freshwater fish, saltwater fish, and game,~~
 206 ~~subject to the state and federal laws, rules, and regulations,~~
 207 ~~including rules of the commission, in effect at the time of~~
 208 ~~taking. Other authorized activities include activities~~

209 ~~authorized by a management area permit, a muzzle-loading gun~~
 210 ~~season permit, a crossbow season permit, a turkey permit, a~~
 211 ~~Florida waterfowl permit, a deer permit, an archery season~~
 212 ~~permit, a snook permit, and a spiny lobster permit. Any resident~~
 213 who is an active or retired member of the United States Armed
 214 Forces, the United States Armed Forces Reserve, the National
 215 Guard, the United States Coast Guard, or the United States Coast
 216 Guard Reserve may ~~is eligible to~~ purchase the military gold
 217 sportsman's license upon submission of a current military
 218 identification card. The annual military gold sportsman's
 219 license authorizes the same activities as the annual gold
 220 sportsman's license.

221 Section 9. Section 379.355, Florida Statutes, is repealed.

222 Section 10. Paragraphs (h) and (i) of subsection (1) of
 223 section 379.363, Florida Statutes, are repealed.

224 Section 11. Section 379.3635, Florida Statutes, is
 225 repealed.

226 Section 12. Subsection (30) of section 379.101, Florida
 227 Statutes, is amended, to read:

228 379.101 Definitions.—In construing these statutes, where
 229 the context does not clearly indicate otherwise, the word,
 230 phrase, or term:

231 (30) "Resident" or "resident of Florida" means:

232 (a) For purposes of part VII ~~and for purposes of s.~~
 233 ~~379.355,~~ a citizen of the United States who has continuously
 234 resided in this state for 1 year before applying for a hunting,

235 fishing, or other license. However, for purposes of ss. 379.363,
 236 ~~379.3635~~, 379.364, 379.3711, 379.3712, 379.372, 379.373,
 237 379.374, 379.3751, 379.3752, 379.3761, and 379.3762, the term
 238 "~~resident~~" or "~~resident of Florida~~" means a citizen of the
 239 United States who has continuously resided in this state for 6
 240 months before applying for a hunting, fishing, or other license.

241 (b) For purposes of part VI, ~~except s. 379.355~~:

242 1. A ~~Any~~ member of the United States Armed Forces who is
 243 stationed in the state and his or her family members residing
 244 with such member; or

245 2. A ~~Any~~ person who has declared Florida as his or her
 246 only state of residence as evidenced by a valid Florida driver
 247 license or identification card that has ~~with~~ both a Florida
 248 address and a Florida residency verified by the Department of
 249 Highway Safety and Motor Vehicles, or, in the absence thereof,
 250 one of the following:

251 a. A current Florida voter information card;

252 b. A sworn statement manifesting and evidencing domicile
 253 in Florida in accordance with s. 222.17;

254 c. Proof of a current Florida homestead exemption; or

255 d. For a child younger than 18 years of age, a student
 256 identification card from a Florida school or, if ~~when~~
 257 accompanied by his or her parent at the time of purchase, the
 258 parent's proof of residency.

259 Section 13. Paragraph (c) of subsection (2) of section
 260 379.208, Florida Statutes, is amended to read:

261 | 379.208 Marine Resources Conservation Trust Fund;
 262 | purposes.-

263 | (2) The Marine Resources Conservation Trust Fund shall
 264 | receive the proceeds from:

265 | (c) All fees collected under ss. 379.2424, ~~379.355,~~
 266 | 379.357, 379.365, 379.366, and 379.3671.

267 | Section 14. Paragraph (a) of subsection (1) and paragraph
 268 | (a) of subsection (3) of section 379.401, Florida Statutes, are
 269 | amended to read:

270 | 379.401 Penalties and violations; civil penalties for
 271 | noncriminal infractions; criminal penalties; suspension and
 272 | forfeiture of licenses and permits.-

273 | (1)(a) LEVEL ONE VIOLATIONS.-A person commits a Level One
 274 | violation if he or she violates any of the following provisions:

275 | 1. Rules or orders of the commission relating to the
 276 | filing of reports or other documents required to be filed by
 277 | persons who hold recreational licenses and permits issued by the
 278 | commission.

279 | 2. Rules or orders of the commission relating to quota
 280 | hunt permits, daily use permits, hunting zone assignments,
 281 | camping, alcoholic beverages, vehicles, and check stations
 282 | within wildlife management areas or other areas managed by the
 283 | commission.

284 | 3. Rules or orders of the commission relating to daily use
 285 | permits, alcoholic beverages, swimming, possession of firearms,
 286 | operation of vehicles, and watercraft speed within fish

287 management areas managed by the commission.
 288 4. Rules or orders of the commission relating to vessel
 289 size or specifying motor restrictions on specified water bodies.
 290 ~~5. Section 379.355, providing for special recreational~~
 291 ~~spiny lobster licenses.~~
 292 5.6. Section 379.354(1)-(15), providing for recreational
 293 licenses to hunt, fish, and trap.
 294 ~~6.7.~~ Section 379.3581, providing hunter safety course
 295 requirements.
 296 ~~7.8.~~ Section 379.3003, prohibiting deer hunting unless
 297 required clothing is worn.
 298 (3) (a) LEVEL THREE VIOLATIONS.—A person commits a Level
 299 Three violation if he or she violates any of the following
 300 provisions:
 301 1. Rules or orders of the commission prohibiting the sale
 302 of saltwater fish.
 303 2. Rules or orders of the commission prohibiting the
 304 illegal importation or possession of exotic marine plants or
 305 animals.
 306 3. Section 379.407(2), establishing major violations.
 307 4. Section 379.407(4), prohibiting the possession of
 308 certain finfish in excess of recreational daily bag limits.
 309 5. Section 379.28, prohibiting the importation of
 310 freshwater fish.
 311 6. Section 379.354(17), prohibiting the taking of game,
 312 freshwater fish, or saltwater fish while a required license is

313 suspended or revoked.

314 7. Section 379.3014, prohibiting the illegal sale or
315 possession of alligators.



316 8. Section 379.404(1), (3), and (5) ~~(6)~~, prohibiting the
317 illegal taking and possession of deer and wild turkey.

318 9. Section 379.406, prohibiting the possession and
319 transportation of commercial quantities of freshwater game fish.

320 Section 15. This act shall take effect July 1, 2014.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 7091 PCB ANRS 14-01 Department of Agriculture and Consumer Services
SPONSOR(S): Agriculture & Natural Resources Subcommittee; Pigman
TIED BILLS: **IDEN./SIM. BILLS:** SB 1630

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Agriculture & Natural Resources Subcommittee	12 Y, 0 N	Kaiser	Blalock
1) Agriculture & Natural Resources Appropriations Subcommittee		Lolley 	Massengale 
2) State Affairs Committee			

SUMMARY ANALYSIS

The bill addresses a number of issues relating to the powers and duties of the Department of Agriculture and Consumer Services. The bill primarily reorganizes the department's general authorizing statute, chapter 570, F.S., into five separate "parts," creating a new part V that consolidates all of the provisions establishing fines enforced by the department that are currently spread throughout several different chapters. The bill does not increase, and in some cases decreases, fines currently in law.

The bill also:

- Adds a representative of the department to the Joint Task Force on State Agency Law Enforcement Communications.
- Expands the authority of the Florida Forest Service, under certain conditions, to grant leases, permits, privileges, and concessions for the use of state forest lands to include *any lands* leased by or assigned to the Florida Forest Service for management purposes.
- Extends limited liability protection to those who lease or sub-lease state forest land that is open to the public for recreational purposes while explicitly exempting deliberate, willful, or malicious acts from the limitation on liability, which is consistent with other statutory provisions.
- Revises the criteria for what constitutes a minor food outlet, which is not required to obtain a food permit, to specify that the outlet may only sell food that is not potentially hazardous and that is not time or temperature controlled for safety.
- Exempts manually operated vending stands serviced by the Division of Blind Services from permitting requirements.
- Authorizes the department to close a food facility if the department finds it poses an immediate danger or threat to public health, safety, and welfare, and provides that it is a second degree misdemeanor for a person to deface or remove a "closed for operation" sign put up by the department.
- Authorizes the department to issue a stop-use, removal, or hold order if the department has probable cause to believe that a food processing area or food storage area is in violation of current laws so as to be dangerous or unsanitary.
- Authorizes the department to inspect aquaculture facilities and analyze food samples from these facilities.
- Removes the requirement that a fertilizer company post a surety bond to ensure payment of certain required fees. The department has authority elsewhere to enforce and collect these fees.
- Revises current law related to feed to make state law consistent with national standards.
- Adds additional criteria to determine whether commercial feed is adulterated.
- Repeals a pilot program related to use of Australian pine trees and authorizes use of the trees statewide as a windbreak for citrus groves with a valid permit.
- Establishes new criteria for qualifying as a "non-dealer" in dressed poultry. To be a "dealer" under current law, one must offer for sale more than 100 pounds of dressed poultry in a week. The bill revises this number to 384 dressed birds per week. This brings the state criteria more in line with what the federal government considers a small farm.
- Specifies that businesses must have a food permit and pay fees prior to opening for business, and that food permits are not transferable to a different location or owner.

The bill appears to have an insignificant fiscal impact on state government and may have an indeterminate, negative jail bed impact on local government (see Fiscal Analysis and Economic Impact sections).

The bill appears to have a positive impact on the private sector by increasing the number of dressed birds a small farm can sell weekly, eliminating bond requirements for agricultural fertilizers, lowering registration fees for small amounts of seed, simplifying the regulatory process for using Australian pines for windbreaks, and providing on-line registration.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

STORAGE NAME: h7091.ANRAS.DOCX

DATE: 3/17/2014

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Reorganization of Chapter 570, F.S.

Present Situation

Chapter 570, F.S., is the primary authorizing chapter for the Department of Agriculture and Consumer Services (department). This chapter establishes the department, as well as the Commissioner of Agriculture (commissioner); establishes the functions, powers, and duties of the department; creates the various divisions and offices within the department; and establishes the functions and duties of those divisions and offices.

Over the years, chapter 570, F.S., also has become a general "catch-all" for statutory language that does not fall within another statutory chapter's specific subject area under the department's jurisdiction.

Effect of Proposed Changes

The bill reorganizes chapter 570, F.S., by separating the chapter into five parts, reorganizing the existing sections into a more logical sequence and, in some cases, transferring language from chapter 570, F.S., to other chapters that are better suited for the existing language.

Part I is entitled General Provisions and contains ss. 570.01-570.232, F.S.; part II is entitled Program Services and contains ss. 570.30-570.693, F.S.; part III is entitled Agricultural Development and contains ss. 570.70-570.89, F.S.; part IV is entitled Agricultural Water Policy and contains ss. 570.916-570.94, F.S.; and part V is entitled Penalties and contains s. 570.971, F.S.

The following sections of chapter 570, F.S., are simply being renumbered and do not include any substantive changes:

- Section 570.0705, F.S., relating to advisory committees, is renumbered as s. 570.232, F.S.
- Section 570.0725, F.S., relating to food recovery, is renumbered as s. 595.420, F.S.
- Section 570.073, F.S., relating to the department's law enforcement officers, is renumbered as s. 570.065, F.S.
- Section 570.0741, F.S., relating to the energy efficiency and conservation clearinghouse, is renumbered as s. 377.805, F.S.
- Section 570.075, F.S., relating to water supply agreements, is renumbered as s. 570.916, F.S.
- Section 570.076, F.S., relating to the Environmental Stewardship Certification Program, is renumbered as s. 570.921, F.S.
- Section 570.085, F.S., relating to agricultural water conservation and supply planning, is renumbered as s. 570.93, F.S.
- Section 570.087, F.S., relating to best management practices for wildlife, is renumbered as s. 570.94, F.S.
- Section 570.16, F.S., relating to the interference with department employees in the performance of duties, is renumbered as s. 570.051, F.S.
- Section 570.17, F.S., relating to the division of work between the department and experiment station and extension service, is renumbered as s. 570.081, F.S.
- Section 570.18, F.S., relating to organization of departmental work, is renumbered as s. 570.041, F.S.
- Section 570.241, F.S., relating to a short title, is renumbered as s. 570.73, F.S.
- Section 570.242, F.S., relating to definitions of the Agricultural Economic Development Act, is renumbered as s. 570.74, F.S.

- Section 570.243, F.S., relating to legislative intent of the Agricultural Economic Development Act, is renumbered as s. 570.75, F.S.
- Section 570.244, F.S., relating to powers and duties of the department, is renumbered as s. 570.76, F.S.
- Section 570.245, F.S., relating to interaction of other economic development agencies and groups, is renumbered as s. 570.77, F.S.
- Section 570.246, F.S., relating to agricultural economic development funding, is renumbered as s. 570.78, F.S.
- Section 570.247, F.S., relating to promulgation of rules, is renumbered as s. 570.79, F.S.
- Section 570.248, F.S., relating to powers and duties of the Agricultural Economic Development Project Review Committee, is renumbered as s. 570.81, F.S.
- Section 570.249, F.S., relating to Agricultural Economic Development Program disaster and loans, is renumbered as s. 570.82, F.S.
- Section 570.38, F.S., relating to the Animal Industry Technical Council, is renumbered as s. 585.008, F.S.
- Section 570.42, F.S., relating to the Dairy Industry Technical Council, is renumbered as s. 502.301, F.S.
- Section 570.481, F.S., relating to fruit and vegetable inspection fees, is renumbered as s. 603.011, F.S.
- Section 570.531, F.S., relating to Market Improvement Working Capital Trust Fund, is renumbered as s. 570.209, F.S.
- Section 570.545, F.S., relating to unsolicited goods, is renumbered as s. 501.0113, F.S.
- Section 570.55, F.S., relating to identification of sellers or handlers of tropical or subtropical fruit and vegetables, is renumbered as s. 603.211, F.S.
- Section 570.901, F.S., relating to the Florida Agricultural Museum, is renumbered as s. 570.692, F.S.
- Section 570.902, F.S., relating to definitions, is renumbered as s. 570.69, F.S.
- Section 570.903, F.S., relating to direct support organizations, is renumbered as s. 570.691, F.S.
- Section 570.91, F.S., relating to Florida agriculture in the classroom, is renumbered as s. 570.693, F.S.
- Section 570.9135, F.S., relating to the Beef Market Development Act, is renumbered as s. 570.83, F.S.
- Section 570.951, F.S., relating to legislative findings for the Florida Agriculture Center and Horse Park, is renumbered as s. 570.681, F.S.
- Section 570.952, F.S., relating to the Florida Agriculture Center and Horse Park Authority, is renumbered as s. 570.685, F.S.
- Section 570.953, F.S., relating to confidentiality of the Florida Agriculture Center and Horse Park Authority donors, is renumbered as s. 570.686, F.S.
- Section 570.954, F.S., relating to the farm-to-fuel initiative, is renumbered as s. 570.841, F.S.
- Section 570.96, F.S., relating to agritourism, is renumbered as s. 570.85, F.S.
- Section 570.961, F.S., relating to definitions, is renumbered as s. 570.86, F.S.
- Section 570.962, F.S., relating to agritourism participation impact on land classification, is renumbered as s. 570.87, F.S.
- Section 570.963, F.S., relating to liability, is renumbered as s. 570.88, F.S.
- Section 570.964, F.S., relating to posting and notification, is renumbered as s. 570.89, F.S.

The bill also makes technical, non-substantive, conforming revisions to ss. 193.461, 288.1175, 320.08058, 373.621, 373.709, 381.0072, 482.243, 509.032, 570.07, 377.805, 570.921, 570.23, 570.242, 570.74, 570.79, 570.36, 585.008, 502.301, 570.44, 570.45, 570.451, 570.51, 570.543, 570.69, 570.83, 570.685, 570.86, 570.88, 570.89, 571.28, 581.186, 582.06, 586.161, 595.701, and 599.002, F.S.

Penalty Provision

Present Situation

Currently, each provision containing a penalty enforced by the department is located within the specific statutory section containing the regulation being enforced. For example, fines dealing with noncompliance related to certification for nurserymen, stock dealers, and plant brokers are located in s. 581.141, F.S., which establishes the certificate of registration requirements.

In an effort to be more consistent, as well as consumer friendly, the department has recommended consolidating its fines and penalties into one part of the statute and placing cross-references within the specific subject matter statutes to identify what the penalties are for noncompliance.

Effect of Proposed Changes

The bill creates section 570.971, F.S., in the new part V of chapter 570, F.S., to establish a central fine authority and fine structure for the department. The bill authorizes the department or enforcing authority to impose the following fine amounts for the class category specified in the chapter or section of law violated:

- Class I. For each violation in the Class I category, a fine not to exceed \$1,000 may be imposed.
- Class II. For each violation in the Class II category, a fine not to exceed \$5,000 may be imposed.
- Class III. For each violation in the Class III category, a fine not to exceed \$10,000 may be imposed.
- Class IV. For each violation in the Class IV category, a fine of \$10,000 or more may be imposed.

The bill does not increase, and in some cases decreases, fines currently in law. The bill simply provides a cross reference in each chapter or section to the fine schedule in s. 570.971, F.S.

The bill specifies that these penalties are in addition to any other remedy provided by law. The bill also specifies that if the chapter, section of law, or rule violated provides for a cap on the total fine that can be imposed, the amended fine structure does not supersede that cap. These class categories must also apply to any penalties provided by rule. In addition, a person who violates the provisions of chapter 570, F.S., or any rules adopted thereunder, is subject to an administrative or civil fine in the Class II category in addition to any other penalty provided by law.

The bill authorizes the department to refuse to issue or renew any license, permit, authorization, certificate, or registration to a person who has not satisfied a penalty imposed by the department. The bill also authorizes the department to adopt rules to implement the revised penalty structure provisions and any sections that reference the provisions.

The sections affected by the new fine schedule include:

- Section 253.74, F.S.
- Sections 472.0351 and 472.036, F.S.
- Sections 482.161 and 482.165, F.S.
- Sections 487.091 and 487.175, F.S.
- Sections 493.6118 and 493.6120, F.S.
- Section 496.420, F.S.
- Sections 500.121, 500.165, and 500.70, F.S.
- Sections 501.019, 501.059, 501.612, 501.619, and 501.922, F.S.
- Section 502.231, F.S.

- Sections 507.09 and 507.10, F.S.
- Section 525.16, F.S.
- Sections 526.311 and 526.55, F.S.
- Section 527.13, F.S.
- Section 531.50, F.S.
- Section 534.52, F.S.
- Section 539.001, F.S.
- Sections 559.921, 559.9355, and 559.936, F.S.
- Sections 571.11 and 571.29, F.S.
- Section 576.061, F.S.
- Section 578.181, F.S.
- Section 580.121, F.S.
- Sections 581.141 and 581.211, F.S.
- Section 585.007, F.S.
- Section 586.15, F.S.
- Section 590.14, F.S.
- Sections 597.0041 and 597.020, F.S.
- Section 601.67, F.S.
- Section 604.22 and 604.30, F.S., and
- Section 616.242, F.S.

While most of the fines and penalties will remain the same, a few will decrease as indicated in the following chart:

Penalty Provision Changes			
Chapter	Section	Current Fine Amount Maximum per Violation	Proposed Fine Amount Maximum per Violation
Food Safety	s. 500.121(2)	\$10,000	\$5,000
Food Safety	s. 500.165(3)	\$50,000	\$10,000
Antifreeze	s. 501.922(1)(a)	\$1,000 for first offense; \$5,000 for repeat offenses	\$5,000 for any offense
Milk	s. 502.231(1)(b)1.	\$10,000	\$5,000
Gasoline	s. 525.16(1)(a)2.	\$1,000 for first offense; willful intent up to \$5,000 for repeat offenses	\$5,000
Weights and Measures	s. 531.50(1)(b)	\$1,000 for first offense; \$2,500 for second; \$5,000 for third	\$5,000 for any offense
Sellers of Travel	s. 559.9355(1)(c)	\$10,000	\$0

Agricultural Water Policy

Present Situation

Section 570.074, F.S., specifies that the commissioner may create an Office of Agricultural Water Policy under the supervision of a senior manager. The commissioner may designate the bureaus and positions in the various organizational divisions of the department that report to this office relating to water policy affecting agriculture, application of such policies, and coordination of such matters with state and federal agencies.

Effect of Proposed Changes

The bill renumbers s. 570.074, F.S., as s. 570.66, F.S. The bill also requires the Office of Agricultural Water Policy to enforce and implement the provisions of chapter 582, F.S.¹ This duty is currently performed by the Division of Agricultural Environmental Services.

Seal of the Department

Present Situation

Section 570.14, F.S., directs the department to have an official seal, which must be used for the authentication of the orders and proceedings of the department and for other purposes as the department may prescribe.

Effect of Proposed Changes

The bill renumbers s. 570.14, F.S., as s. 570.031, F.S., and states that the use of the seal or any likeness requires written approval of the department.

Division of Food Safety

Present Situation

Section 570.50(2), F.S., authorizes the department to conduct general inspection activities relating to food and food products being processed, held, or offered for sale in the state and enforcing the provisions of chapters 500, 501, 502, 531, 583, 585, 586, and 601, F.S. These chapters include food products, consumer protection, milk, milk products, frozen desserts, weights, measures, standards, eggs, poultry, animal industry, honey, honeybees, and citrus.

Section 570.50(3), F.S., authorizes the department to analyze samples of food offered for sale in the state as required under chapters 500, 501, 502, 585, 586, and 601, which include food products, consumer services, milk, milk products, frozen desserts, animal industry, honey, honey bees, and citrus.

Effect of Proposed

The bill amends ss. 570.50(2) and (3), F.S., to include chapter 597, F.S., authorizing the division to inspect aquaculture facilities and analyze food samples from these facilities.

Office of Energy

Present Situation

During the 2011 Session, the Office of Energy (Energy Office) was transferred from the Governor's Office to the department. However, the Energy Office was never specifically established in the department's authorizing statute, chapter 570, F.S.

Effect of Proposed Changes

The bill creates s. 570.67, F.S., establishing the Energy Office within the department, and requires the Energy Office to be under the supervision of a senior manager appointed by the commissioner. The

¹ Chapter 582, F.S., establishes soil and water conservation districts, which are governmental subdivisions of the state that coordinate with federal, state, regional, and other local partners to develop and implement soil and water conservation practices on private lands.

duties of the Energy Office include administering and enforcing ch. 377, F.S., which deals with energy resources, regulation of oil and gas resources, and renewable energy and green government programs.

Pest Control Compact

Present Situation

In 2009, the Legislature established the Pest Control Compact (compact) in statute. Section 570.345, F.S., establishes the compact between Florida and other member states² for the purpose of curtailing depredation by pests throughout the various member states. The compact also establishes the Pest Control Insurance Fund to finance certain pest control operations performed by the states pursuant to the compact.

Effect of Proposed Changes

The bill repeals s. 570.345, F.S., which establishes the compact. According to the department, the compact was dissolved in 2012 at the request of the National Plant Board. Therefore, it is no longer necessary to retain this language in statute.

Florida Consumer Services Act

Present Situation

Section 570.542, F.S., specifies that the title of the section is the "Florida Consumer Services Act." There are no other statutory provisions contained in this section due to various revisions and reorganizations of the statute.

Effect of Proposed Changes

The bill repeals s. 570.542, F.S. Because there are no provisions contained in this section except for the short title, there is no longer a need for the section.

Conservation Easements and Agreements

Present Situation

Section 570.71(12), F.S., authorizes the department to use funds from the following sources to implement certain conservation easements and agreements:

- State funds;
- Federal funds;
- Other governmental entities;
- Nongovernmental organizations; and
- Private individuals.

Effect of Proposed Changes

The bill amends s. 570.71(12), F.S., to specify that the funds described above can be used for administrative and operating expenses related to appraisals, mapping, title process, personnel, and other real estate expenses.

² See list of member states at [http://pestcompact.org/membership.htm#Current Members](http://pestcompact.org/membership.htm#Current%20Members).

Definition of Department

Present Situation

Section 570.72, F.S., provides that as used in ss. 570.70 and 570.71, F.S., the term "department" refers to the Department of Agriculture and Consumer Services.

Effect of Proposed Changes

The bill repeals s. 570.72, F.S. This section is duplicative and not necessary.

Equestrian Educational Sports Program

Present Situation

Section 570.92, F.S., directs the department to establish an equestrian educational sports program with one or more accredited four-year state universities that is designed to give student riders the opportunity to learn, compete, and succeed at the collegiate level while at the same time promoting the state's multibillion dollar equine industry.

Effect of Proposed Changes

The bill repeals s. 570.92, F.S. According to the department, this program was never fully implemented. Therefore, the statute is unnecessary.

Pesticide Regulation

Present Situation

Section 487.041(3)(d), F.S., authorizes the department to require a pesticide registrant who discontinues the distribution of a brand of pesticide in the state to continue the registration of the brand for a minimum of two years or until no more pesticide remains on retailers' shelves.

Section 487.046(1), F.S., specifies that an application for a certified applicator license must be made in writing to the department on a form furnished by the department. Each application must contain information regarding the applicant's qualifications, proposed operations, and license classification or subclassifications, as prescribed by rule.

Section 487.047(3), F.S., provides that any person who holds a valid applicator's license or who holds a valid purchase authorization card issued by the department or by a licensee can purchase restricted-use pesticides. A nonlicensed person may apply restricted-use pesticides under the direct supervision of a licensed applicator. Application for the license must be made on a form prescribed by the department.

Section 487.048(1), F.S., provides that each person holding or offering for sale, selling, or distributing restricted-use pesticides must obtain a dealer's license from the department. Application for the license must be made on a form prescribed by the department.

Section 487.159(1), F.S., specifies that a person claiming damage or injury to property, animals, or human beings from application of a pesticide must file with the department a written statement claiming damages, on a form prescribed by the department, within 48 hours after the damage or injury becomes apparent.

Section 487.160, F.S., requires that licensed private applicators supervising 15 or more unlicensed applicators or mixer loaders and licensed public applicators and licensed commercial applicators to

maintain certain records with respect to the application of restricted pesticides, including the type and quantity of pesticide, method of application, crop treated, and dates and location of application. Other licensed private applicators supervising less than 15 unlicensed applicators or mixer loaders must maintain records with respect to the date, type, and quantity of restricted-use pesticides used. Licensees must keep records for a period of two years from the date of the application of the pesticide, and must furnish to the department a copy of the records upon written request by the department.

Section 487.172, F.S., requires the department to develop a program to educate and inform antifouling paint³ applicators, vessel owners, and interstate and intrastate paint manufacturers and distributors in the state about the characteristics and hazards associated with organotin⁴ compounds in antifouling paints and the state laws restricting their use.

Section 487.2031(7), F.S., defines "material safety data sheet" to mean written, electronic, or printed material concerning an agricultural pesticide that sets forth the following information:

- The chemical name and the common name of the agricultural pesticide.
- The hazards or other risks in the use of the agricultural pesticide, including:
 - The potential for fire, explosions, corrosivity, and reactivity.
 - The known acute health effects and chronic health effects of exposure to the agricultural pesticide, including those medical conditions that are generally recognized as being aggravated by exposure to the agricultural pesticide.
 - The primary routes of entry and symptoms of overexposure.
- The proper handling practices, necessary personal protective equipment, and other proper or necessary safety precautions in circumstances that involve the use of or exposure to the agricultural pesticide, including appropriate emergency treatment in case of overexposure.
- The emergency procedures for spills, fire, disposal, and first aid.
- A description of the known specific potential health risks posed by the agricultural pesticide, which is written in lay terms and is intended to alert any person who reads the information.
- The year and month, if available, that the information was compiled and the name, address, and emergency telephone number of the manufacturer responsible for preparing the information.

Effect of Proposed Changes

The bill amends s. 487.041(3)(d), F.S., to provide that if the department receives written notice from a pesticide registrant that the registrant is discontinuing the distribution of a brand of pesticide and the registrant maintains the registration of that brand for at least two years, then the registrant is not required to continue the registration of a pesticide for as long as it remains for sale in Florida. The discontinued brand may remain on the retailers' shelves without further registration provided that the brand of pesticide is not distributed by the registrant in Florida during or after the minimum two-year period.

The bill amends s. 487.046(1), F.S., to allow an application for a certified applicator license to be submitted using the department's website.

The bill amends s. 487.047(3), F.S., to remove the reference to a form supplied by the department for the issuance of an applicator's license. This provides the option for applicants to apply for the license on the department's website.

The bill amends s. 487.048(1), F.S., to allow persons applying for a dealer's license from the department to do so by using the department's website.

³ "Antifouling paint" means a coating, paint, or treatment that is intended for use as a pesticide, as defined in Chapter 487, F.S., to control freshwater or marine fouling organisms (barnacles, mussels, algae, bacteria, etc.).

⁴ "Organotin compound" means any compound of tin used as a biocide in an antifouling paint.

The bill repeals s. 487.159(1), F.S., requiring that a person claiming damages or injuries from a pesticide application must file a written statement with the department claiming damages or injuries within 48 hours after the damage or injury becomes apparent. According to the department, crop damage is investigated as part of routine pesticide complaint investigations regardless of the timing; therefore, the 48-hour provision is not needed.

The bill amends s. 487.160, F.S., to provide that all licensed private applicators, licensed public applicators, and licensed commercial applicators must maintain certain records as described in the present situation above. This change removes the differentiation of recordkeeping requirements between those licensed private applicators who supervise 15 or more persons and those who supervise fewer than 15.

The bill repeals s. 487.172, F.S., relating to antifouling paint education programs. According to the department, these programs are now provided by pesticide registrants and the department no longer maintains a program.

The bill amends s. 487.2031(7), F.S., to remove the word "material" from the term "material safety data sheet" defined above. According to the department, "safety data sheet" is the term most commonly used in the pesticide industry.

The bill amends s. 487.2051(2), (3), and (4), F.S., to conform to the revision made to the term "safety data sheet" described above.

Food Safety

Present Situation

Section 500.03(1)(p), F.S., defines "food establishment" as a factory, food outlet, or other facility manufacturing, processing, packing, holding, or preparing food or selling food at wholesale or retail. The term does not include a business or activity that is regulated under s. 500.80, F.S., chapter 590, F.S., or chapter 601, F.S.⁵ The term includes tomato packinghouses and re-packers, but does not include any other establishment that packs fruits and vegetables in their raw or natural state.

Currently, certain vending stands operated by a blind person under the supervision of the Division of Blind Services must obtain a license from the department. The Division of Blind Services conducts a periodic survey of all state properties and, where feasible, establishes vending facilities to be operated by blind licensees. These licensees are given the first opportunity to participate in the operation of vending stands on all state properties acquired after July 1, 1979.

Section 500.12(1), F.S., specifies that a food permit from the department is required of any person who operates a food establishment or retail food store, except persons operating minor food outlets, including, but not limited to, video stores, that sell commercially prepackaged, non-potentially hazardous candy, chewing gum, soda, or popcorn, provided the shelf space for those items does not exceed 12 linear feet and no other food is sold by the minor food outlet.

An application for a food permit from the department must be accompanied by a fee in an amount determined by department rule, which generally cannot exceed \$650 and may be used solely for the recovery of costs for the services provided. Food permits must be renewed annually on or before January 1.

Section 500.12(8), F.S., provides that any person who, after October 1, 2000, applies for or renews a local occupational license to engage in business as a food establishment must exhibit a current food

⁵ The exemption applies to cottage food operations, lodging and food service establishments, and citrus facilities.

permit or an active letter of exemption from the department before the local occupational license may be issued or renewed.

Section 500.121, F.S., pertains to disciplinary actions the department may take against retail food stores, food establishments, or cottage food operations that violate provisions of chapter 500, F.S.

Section 500.121(3), F.S., provides that any administrative order made and entered by the department imposing a fine must specify the amount of the fine and the time limit for payment, not exceeding 15 days, and, upon failure of the permit holder to pay the fine within that time, the permit is subject to suspension.

Section 500.147(1), F.S., provides that the department or its duly authorized agent must have free access at all reasonable hours to any food establishment or any vehicle being used to transport or hold food in commerce for the purpose of:

- Inspecting such establishment or vehicle to determine if any provision of chapter 500, F.S., or any rule adopted under chapter 500, F.S., is being violated;
- Securing a sample or a specimen of any food after paying or offering to pay for such sample;
- Seeing that all sanitary rules adopted by the department are complied with; or
- Enforcing the special-occupancy provisions of the Florida Building Code that apply to food establishments.

Subsections (1)-(3) of s. 500.172, F.S., provide that when the department finds or has probable cause to believe that any food or food-processing equipment is in violation of the food safety laws so as to be dangerous, unwholesome, fraudulent, or unsanitary, an agent of the department can issue and enforce a stop-sale, stop-use, removal, or hold order. This order gives notice that the article or equipment is, or is suspected of being, in violation and has been detained or embargoed, and warns all persons not to remove, use, or dispose of the article or equipment by sale or otherwise until permission for removal, use, or disposal is given by the department or the court. It is unlawful for any person to remove, use, or dispose of the detained or embargoed article or equipment without permission. If an article or equipment detained or embargoed under this section has been found by the department to be in violation of law or rule, the department may, within a reasonable period of time after the issuance of such notice, petition the circuit court, in the jurisdiction of which the article or equipment is detained or embargoed, for an order for condemnation of the article or equipment. When the department has found that an article or equipment so detained or embargoed is not in violation, the department must rescind the stop-sale, stop-use, removal, or hold order.

Sections 500.301-500.306, F.S., govern the standards of enrichment for grain products. Section 500.301, F.S., provides definitions relating to the standards of enrichment for grain products. Section 500.302, F.S., prohibits the sale at retail of any grain product that does not conform to state standards of enrichment. Section 500.303, F.S., requires the department to establish by rule a state standard for each grain product defined in s. 500.301, F.S., which standard must conform so far as practicable with, and must not be inconsistent with, the federal standard of enrichment for the same product. State standards must, from time to time, be amended to conform similarly to the federal standard of enrichment. Section 500.304, F.S., provides that the department is charged with the duty of enforcing ss. 500.301-500.306, F.S., and is authorized and directed to adopt, amend, or rescind rules and orders for the efficient enforcement of such sections.

Section 500.305, F.S., provides that for the purposes of ss. 500.301-500.306, F.S., the department is authorized to:

- Take samples for analysis.
- Conduct examinations and investigations.
- Enter at reasonable times any factory, mill, bakery, warehouse, shop, or establishment where any wheat flour, cornmeal, corn grits, or rice, or any food containing any of these products, is

manufactured, processed, packed, sold, or held, or any vehicle being used for the transportation thereof.

- Inspect any such place or vehicle; any such wheat flour, cornmeal, corn grits, rice, or food therein; and any and all pertinent equipment, materials, containers, and labeling.

Section 500.306, F.S., specifies that any person who violates any provision of ss. 500.301-500.305, F.S., is guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082, F.S., or s. 775.083, F.S.⁶

Section 500.601, F.S., provides that, as used in the section, certain terms relating to the sale of meat are given the following meanings:

- “Cutting loss” means the weight of meat, fat, and bone removed from the carcass, side, quarter, or primal source during standard or custom cutting procedures.
- “Gross or hanging weight” means the weight of any single carcass, side, quarter, or primal source of meat prior to cutting or trimming such meat into any constituent part.
- “Primal source” means the following cuts of meat:
 - The round, flank, loin, rib, plate, brisket, chuck, and shank of beef.
 - The leg, flank, loin, rack (rib), and shoulder of veal, lamb, or mutton.
 - The belly, loin, ham spareribs, shoulder, and jowl of pork.
- “Seller” means any person, partnership, corporation, or association, however organized, that is engaged in the retail sale of meat.

This section does not apply to any seller whose total annual retail sales are less than \$10,000, or to any retail food business that sells multiple items, including meat, produce, dairy products, baked goods, and food staples, the primary business of which is not the retail sale of meat or meat cutting. A seller of a single carcass, side, quarter, or primal source of meat may sell such meat based on gross or hanging weight if the meat is derived from a single carcass, side, quarter, or primal source of meat. With respect to any other retail sale of meat, the seller must disclose in writing to the buyer the net weight, the selling price per pound, and the total selling price of each cut.

A seller of a single carcass, side, quarter, or primal source of meat that sells such meat based on gross or hanging weight must provide to the buyer, in writing, the following information at the times indicated:

- Prior to sale:
 - The name and address of the seller.
 - The estimated gross or hanging weight of the order.
 - The U.S.D.A. quality grade of the meat to be supplied, if so graded.
 - The estimated total price of the order.
 - The estimated cutting loss on the order.
 - A list, by name and estimated count, of each cut to be derived from each primal source.
 - The price per pound of the carcass, side, quarter, or primal source before cutting and wrapping.
 - Additional costs of cutting, wrapping, and freezing, if any.
 - A statement that the buyer may keep the cutting loss.
- At the time of delivery:
 - The name and address of the seller.
 - The total delivered weight of the meat.
 - The cutting loss.
 - A list, by name and count, of each cut derived from each primal source.

⁶ A term of imprisonment not exceeding one year or a fine not to exceed \$1,000.

Effect of Proposed Changes

The bill amends s. 500.03(1)(p), F.S., to exempt vending stands operated by the Division of Blind Services from the definition of "food establishment." According to the department, the Division of Blind Services has a strict program inspection and oversight along with an active food manager training for all vendors. Therefore, it is not necessary for these facilities to be inspected by the department.

The bill amends s. 500.12(1), F.S., to revise the criteria for the minor food outlet permit exemption to specify that the outlet may only sell food that is not potentially hazardous and that is not time or temperature controlled for safety, if the shelf space for those items does not exceed 12 total linear feet. The bill also removes from statute the examples of the types of food that are considered nonhazardous and the specific reference to video stores being minor food outlets.

The bill also provides that each food establishment and retail food store regulated under chapter 500, F.S., must apply for and receive a food permit before operation begins. The bill requires the department to adopt rules establishing a fee schedule paid by each food establishment and retail food store as a prerequisite to issuance or renewal of a food permit. The bill further states that food permits are not transferrable from one location or individual to another.

In addition, the bill amends s. 500.12(8), F.S., to remove an expired date, and changes the term "occupational licenses" to "business tax certificates," which, according to the department, is the terminology currently used.

The bill amends s. 500.121(3), F.S., providing that permitholders have 21 days rather than 15 days to pay a fine. The bill also provides that failure to pay the fine within 21 days could result in revocation of the food permit, not just a suspension.

The bill also creates a new subsection (7) in s. 500.121, F.S., authorizing the department to determine that a food establishment regulated under chapter 500, F.S., requires immediate closure when the food establishment fails to comply with the chapter, or rules adopted under the chapter, and, because of such failure, presents an imminent threat to the public health, safety, and welfare. The bill also authorizes the department to accept inspection results from other state and local building officials and other regulatory agencies as justification for such actions. The department must, upon determination, issue an immediate final order to close a food establishment in the following manner:

- The division director or designee must determine that the continued operation of a food establishment presents an immediate danger to the public health, safety, and welfare.
- Upon such determination, the department must issue an immediate final order⁷ directing the owner or operator to cease operation and close the food establishment. The department may attach a closed-for-operation sign to the food establishment while the order remains in place.
- The department must inspect the food establishment within 24 hours after the issuance of the order. Once the department determines that the food establishment meets the applicable requirements to resume operations, a release must be served on the owner, operator or agent of the food establishment by the department.
- A food establishment ordered by the department to cease operation and close must remain closed until released by the department or by a judicial order to reopen.
- It is a misdemeanor of the second degree, punishable as provided in s. 775.082, F.S., or s. 775.083, F.S.,⁸ for any person to deface or remove a closed-for-operation sign placed on a food establishment by the department or for an owner or operator of a food establishment to resist the closure of a food establishment by the department. The department may impose administrative sanctions for violations.

⁷ The order must be served upon the owner, operator or agent of the food establishment by the department.

⁸ *Id.*

The bill authorizes the department to adopt rules to administer this section of law.

The bill amends s. 500.147, F.S., to provide that the department must have free access to any food records, in addition to the food establishment and any vehicles already required by current law, to facilitate the trace back or trace forward of food products in the event of a food borne illness outbreak or identification of an adulterated or misbranded food item.

The bill amends subsections (1)-(3) of s. 500.172, F.S., to add "food processing areas" and "food storage areas" to the areas in a food establishment that may come under a stop-sale, stop-use, removal, or hold order by the department if these areas are found to be in noncompliance with food safety regulations so as to be dangerous, unwholesome, fraudulent, or unsanitary.

The bill repeals ss. 500.301, 500.302, 500.303, 500.304, 500.305, and 500.306, F.S., which regulate the enrichment of grain. According to the department, the federal government establishes standards of enrichment for grain products, which the department then adopts by reference. The specific provisions in Florida statutes are unnecessary and not being implemented.

The bill repeals s. 500.601, F.S., which pertains to the retail sale of meat. According to the department, these functions are covered by United States Department of Agriculture and the current statute is unnecessary.

Agricultural Fertilizers, Feed, and Seed

Present Situation

Section 576.021, F.S., provides that a person whose name appears on a label and who guarantees a fertilizer may not distribute that fertilizer to a nonlicensee until a license to distribute has been obtained by that person from the department upon payment of a \$100 fee. All licenses expire on June 30 of each year.

A person may not distribute a specialty fertilizer in Florida until it is registered with the department by the licensee whose name appears on the label. An application for registration of each grade of specialty fertilizer must be made on a form furnished by the department and must be accompanied by an annual fee of \$100 for each specialty fertilizer that is registered. All specialty fertilizer registrations expire on June 30 of each year.

Section 576.031(2), F.S., provides that if fertilizer is distributed in bulk, five labels containing specified information must accompany the delivery of the fertilizer and be supplied to the purchaser at the time of delivery with the delivery ticket, which must show the certified net weight.

Section 576.041, F.S., provides that any fertilizer licensee who fails to timely pay a "tonnage fee" will be assessed a penalty of 1.5 percent for each month or part of a month that the fee or portion of the fee is not paid.

Section 576.041(4), F.S., provides that if the report is not filed and the inspection fee is not paid on the date due or if the report of tonnage is false, then the amount of inspection fee due is subject to a penalty of 10 percent or \$25, whichever is greater. The penalty will be added to the inspection fee due and constitutes a debt, which becomes a claim and lien against the surety bond or certificate of deposit.

Section 576.041(6), F.S., requires an applicant for a fertilizer license to post with the department a surety bond, or assign a certificate of deposit, in an amount required by department rule to cover fees for any reporting period. The amount cannot be less than \$1,000. The surety bond must be executed by a corporate surety company authorized to do business in the state. The certificate of deposit must be issued by any recognized financial institution doing business in the United States. The department must establish, by rule, whether an annual or continuous surety bond or certificate of deposit will be

required and must approve each surety bond or certificate of deposit before acceptance. The department must examine and approve the sufficiency of all such bonds and certificates of deposit before acceptance. When the licensee ceases operation, said bond or certificate of deposit must be returned, provided there are no outstanding fees due and payable.

Current law directs the department to sample, test, inspect, and make analyses of fertilizer sold or offered for sale within the state.⁹ Section 576.051(3), F.S., provides that the official analysis¹⁰ of fertilizer must be made from the official sample. The department, before making the official analysis, must take a sufficient portion from the official sample for check analysis and place that portion in a bottle sealed and identified by number, date, and the preparer's initials. The official check sample must be kept until the analysis of the official sample is completed. However, the licensee may obtain upon request a portion of the official check sample. Upon completion of the analysis of the official sample, a true copy of the fertilizer analysis report must be mailed to the licensee of the fertilizer from whom the official sample was taken and to the dealer or agent, if any, and purchaser, if known. This fertilizer analysis report must show all determinations of plant nutrient and pesticides. If the official analysis conforms to the law, the official check sample may be destroyed. If the official analysis does not conform to the law, the official check sample must be retained for a period of 90 days from the date of the fertilizer analysis report of the official sample.

Section 576.061(4), F.S., provides that when it is determined by the department that a fertilizer has been distributed without being licensed or registered, or without labeling, the department must require the licensee to pay a penalty in the amount of \$100.

Under current law,¹¹ a commercial fertilizer is deemed deficient in plant food if the analysis of any nutrient is below the guarantee by an amount exceeding the investigational allowances. Section 576.071, F.S., provides that the commercial value used in assessing penalties for any deficiency must be determined by using annualized plant nutrient values contained in one or more generally recognized journals.

Section 576.087, F.S., directs the department to establish specific requirements for anti-siphon devices for an irrigation system used for the application of fertilizer. Any governmental agency that requires antisiphon devices on irrigation systems used for the application of fertilizer must use the specific antisiphon device requirements adopted by the department.

Section 576.101(2), F.S., authorizes the department to place any licensee on a probationary status when the deficiency levels of samples taken from that licensee do not meet minimum performance levels established by statute.

Section 578.08, F.S., requires that every person prior to selling, distributing for sale, offering for sale, exposing for sale, handling for sale, or soliciting orders for the purchase of any agricultural, vegetable, flower, or forest tree seed or mixture thereof, must first register with the department as a seed dealer. The application for registration includes the name and location of each place of business at which the seed is sold, distributed for sale, offered for sale, exposed for sale, or handled for sale. The application for registration must be accompanied by an annual registration fee for each such place of business based on the gross receipts from the sale of the seed for the last preceding license year as follows:

- Receipts less than \$2,500.01, fee of.....\$100
- Receipts more than \$2,500 and less than \$5,000.01, fee of.....\$200
- Receipts more than \$5,000 and less than \$10,000.01, fee of.....\$350
- Receipts more than \$10,000 and less than \$20,000.01, fee of.....\$800

⁹ Section 576.051(1), F.S.

¹⁰ As per section 576.051(2), F.S., the department is directed to sample, test, inspect, and make analyses of fertilizer sold or offered for sale within the state.

¹¹ Section 576.061, F.S.,

- Receipts more than \$20,000 and less than \$40,000.01, fee of.....\$1,000
- Receipts more than \$40,000 and less than \$70,000.01, fee of.....\$1,200
- Receipts more than \$70,000 and less than \$150,000.01, fee of.....\$1,600
- Receipts more than \$150,000 and less than \$400,000.01, fee of.....\$2,400
- Receipts more than \$400,000, fee of.....\$4,600

Section 580.036, F.S., establishes the powers and duties of the department as it pertains to commercial feed and feedstuff,¹² and grants the department with rulemaking authority to enforce the provisions of chapter 580, F.S.¹³ The rules adopted by the department must be consistent with the rules and standards of the United States Food and Drug Administration and the United States Department of Agriculture, when applicable. The rules must also include standards for the sale, use, and distribution of commercial feed or feedstuff to ensure usage that is consistent with animal safety and well-being and that ensures beef and poultry products are safe for human consumption.

Section 580.041, F.S., provides that each distributor of commercial feed must annually obtain a master registration before her or his brands are distributed in the state. The department must furnish the registration forms requiring the distributor to state that he or she will comply with all provisions of chapter 580, F.S., and applicable rules. The registration form must identify the manufacturer's or guarantor's name and place of business and the location of each manufacturing facility in the state and must be signed by the owner; by a partner, if a partnership; or by an authorized officer or agent, if a corporation. All registrations expire on June 30 of each year.

Section 580.071(1), F.S., provides that a commercial feed or feedstuff is deemed to be adulterated in the following instances:

- If it bears or contains any poisonous, deleterious, or nonnutritive substance that may render it injurious to animal or human health. However, if the substance is not an additive, the feed is not considered adulterated if the quantity of the substance does not ordinarily render it injurious to animal or human health;
- If it bears or contains any food additive or added poisonous, deleterious, or nonnutritive substance that is unsafe within the meaning of s. 406 of the Federal Food, Drug, and Cosmetic Act, other than a pesticide chemical in or on a raw agricultural commodity;
- If it is, or it bears or contains, any food additive or color additive that is unsafe within the meaning of s. 409 or s. 512 of the Federal Food, Drug, and Cosmetic Act, respectively;
- If it is a raw agricultural commodity and it bears or contains a pesticide chemical that is unsafe within the meaning of s. 408(a) of the Federal Food, Drug, and Cosmetic Act; however, where a pesticide chemical has been used in or on a raw agricultural commodity in conformity with an exemption granted or a tolerance prescribed under s. 408 of the Federal Food, Drug, and Cosmetic Act and that raw agricultural commodity has been subjected to processing such as canning, cooking, freezing, dehydrating, or milling, the processed feed will result, or is likely to result, in pesticide residue in the edible product of the animal which is unsafe within the meaning of s. 408(a) of the Federal Food, Drug, and Cosmetic Act; or
- If it is, or it bears or contains, any new animal drug that is unsafe within the meaning of s. 512 of the Federal Food, Drug, and Cosmetic Act.

Effect of Proposed Changes

The bill amends s. 576.021, F.S., to tie the registration of fertilizer to a company rather than a person. The bill also requires each brand of fertilizer to be registered, and requires the application for registration for each brand and grade of fertilizer to be submitted either on a form prescribed by department rule or using the department's website.

¹² Section 580.031(10), F.S., defines feedstuff as edible materials, other than commercial feed, that are distributed for animal consumption and that contribute energy or nutrients, or both, to an animal diet.

¹³ Chapter 580, F.S., pertains to the regulation of commercial feed and feedstuff.

The bill amends s. 576.031(2), F.S., to reduce the number of delivery labels required when distributing fertilizer in bulk from five to two. According to the department, two labels are adequate for regulatory purposes.

The bill amends s. 576.041(3), F.S., to change the term “tonnage” fee to “inspection” fee. According to the department, the fee pertains to the inspection. The amount of the fee is just based on the tonnage sold.

The bill amends s. 576.041(4), F.S., to remove the provision stating that not paying the inspection fee or giving a false tonnage report constitutes a debt and can become a claim and lien against the surety bond or certificate of deposit. According to the department, current law provides sufficient authority¹⁴ to impose fines or revoke licensure for licensees who are not in compliance.

The bill repeals s. 576.041(6), F.S., requiring an applicant for a fertilizer license to post with the department a surety bond, or assign a certificate of deposit, to cover fees for any reporting period. According to the department, other statutory provisions provide them with sufficient authority¹⁵ to impose fines or revoke licensure for licensees who are not in compliance.

The bill amends s. 576.051(3), F.S., to reduce from 90 to 60 the number of days that the official check sample must be retained if it does not conform to the requirements of chapter 576, F.S. According to the department, this change removes a statutory conflict between the amount of time a company has to challenge the department’s findings and the amount of time the company has to reimburse the consumer.

The bill repeals s. 576.061(4), F.S., which requires licensees to pay a penalty if it is determined that a fertilizer has been distributed without being licensed or registered. The department has other statutory authority¹⁶ to cover violations of this nature.

The bill amends s. 576.071, F.S., to require the department to survey the state’s fertilizer industry using annualized plant nutrient values contained in one or more generally recognized journals.

The bill repeals ss. 576.087(3) and (4), F.S., relating to requirements for antisiphon devices. According to the department, new technology developed by the industry is already beyond what the department has the expertise to recommend, and as a result, this program has become outdated.

The bill repeals s. 576.101(2), F.S., relating to placing licensees on probationary status for inadequate deficiency levels. According to the department, the deficiency levels are subject to fluctuations when not taken in ideal conditions, such as at the plant. This can result in licensees being placed on probationary status erroneously.

The bill amends s. 578.08, F.S., to require an application for registration to be filed using a form prescribed by department rule or using the department’s website. The bill also reduces the registration fee for seed dealers that distribute small amounts of seed by adding the following two new categories for the annual registration fee:

- For receipts of less than \$500.00, the fee is \$10; and
- For receipts of \$500 but less than \$1,000.00, the fee is \$25.

The bill amends s. 580.036, F.S., to require the commercial feed standards described above to be developed in consultation with the Agricultural Feed, Seed, and Fertilizer Advisory Council.

¹⁴ Section 576.061(5), F.S.

¹⁵ *Ibid*

¹⁶ Sections 576.061(5) and 576.111, F.S.

The bill amends s. 580.041, F.S., to require an application for registration to be filed using a form prescribed by the department or using the department's website. According to the department, this provides the option for applicants to apply for the license on the department's website.

The bill amends s. 580.071, F.S., to expand the criteria requiring a determination that a commercial feed or feedstuff is adulterated to include the following:

- If it consists in whole or in part of any filthy, putrid, or decomposed substance, or if it is otherwise unfit for feed;
- If it is prepared, packaged, or held under unsanitary conditions whereby it may have become contaminated with filth or rendered injurious to health; or
- If it is, in whole or in part, the product of a diseased animal or of an animal that has died by a means other than slaughter that is deemed unsafe as defined under the Federal Food, Drug, and Cosmetic Act.

Plant Industry

Present Situation

In 2008, the Legislature established a five-year pilot program within the department to permit the planting of *Casuarina cunninghamiana* (Australian pine trees) as a windbreak for commercial citrus groves growing fresh fruit in specified areas¹⁷ of the state.¹⁸ The purpose of the pilot program was to determine if the use of the trees as an agricultural pest and disease windbreak poses any adverse environmental consequences. At the end of the five-year pilot program,¹⁹ if the department's Noxious Weed and Invasive Plant Review Committee (committee), in consultation with the Department of Environmental Protection (DEP), and a citrus industry representative who has a *Casuarina cunninghamiana* windbreak (industry representative), determine that the potential is low for adverse environmental impacts from planting the trees as windbreaks, the department was authorized to develop rules to allow the use of the trees as windbreaks for commercial citrus groves in other areas of the state.

Under the pilot program, each application for a special permit must be accompanied by a fee in an amount determined by the department, by rule, not to exceed \$500. A special permit is required for each noncontiguous commercial citrus grove and must be renewed every five years. The property owner is responsible for maintaining and producing for inspection the original nursery invoice with certification documentation. If ownership of the property is transferred, the seller must notify the department and provide the buyer with a copy of the special permit and copies of all invoices and certification documentation prior to the closing of the sale.²⁰

Each application must also include a baseline survey of all lands within 500 feet of the proposed tree windbreak showing the location and identification of species of all existing *Casuarina cunninghamiana*. Nurseries authorized to produce the trees must obtain a special permit from the department certifying that the plants have been vegetatively propagated from sexually mature male source trees currently grown in the state. The importation of the trees from any area outside the state to be used as a propagation source tree is prohibited. Each male source tree must be registered by the department as being a horticulturally true-to-type male plant and must be labeled with a source tree registration number. Each nursery application for a special permit must be accompanied by a fee in an amount determined by the department, by rule, not to exceed \$200. Special permits must be renewed annually. The department must, by rule, set the amount of an annual fee, not to exceed \$50, for each

¹⁷ Indian River, St Lucie, and Martin Counties.

¹⁸ Section 581.091(5), F.S.

¹⁹ The five-year pilot program ended in 2013.

²⁰ Section 581.091(c), F.S.

tree registered as a source tree. Nurseries may only sell the trees to a person with a special permit as specified in statute. The source tree registration numbers of the parent plants must be documented on each invoice or other certification documentation provided to the buyer.²¹

All of the trees must be destroyed by the property owner within six months after:²²

- The property owner takes permanent action to no longer use the site for commercial citrus production;
- The site has not been used for commercial citrus production for a period of five years; or
- The department determines that the trees on the site have become invasive. This determination must be based on, but not limited to, the recommendation of the committee and DEP, and in consultation with an industry representative.

If the owner or person in charge refuses or neglects to comply, the director or her or his authorized representative may, under authority of the department, proceed to destroy the plants. The expense of the destruction must be assessed, collected, and enforced against the owner by the department. If the owner does not pay the assessed cost, the department may record a lien against the property.²³

The use of the trees for windbreaks does not preclude the department from issuing permits for the research or release of biological control agents to control *Casuarina* species in accordance with current law. The use of the trees for windbreaks must not restrict or interfere with any other agency or local government effort to manage or control noxious weeds or invasive plants, including *Casuarina cunninghamiana*, nor may any other agency or local government remove any of the trees planted as a windbreak under special permit issued by the department.²⁴

The department is required to develop and implement a monitoring protocol to determine invasiveness of the trees. The monitoring protocol must, at a minimum, require:²⁵

- Inspection of the planting site by department inspectors within 30 days following initial planting or any subsequent planting of the trees to ensure the criteria of the special permit have been met.
- Annual site inspections of planting sites and all lands within 500 feet of the planted windbreak by department inspectors who have been trained to identify the trees and to make determinations of whether the trees have spread beyond the permitted windbreak location.
- Any new seedlings found within 500 feet of the planted windbreak to be removed, identified to the species level, and evaluated to determine if hybridization has occurred.
- The department to submit an annual report and a final five-year evaluation identifying any adverse effects resulting from the planting of the trees for windbreaks and documenting all inspections and the results of those inspections to the committee, DEP, and an industry representative.

If the department determines that female flowers or cones have been produced on any of the trees that have been planted under a special permit issued by the department, the property owner is responsible for destroying the trees. The department must notify the property owner of the timeframe and method of destruction.²⁶

If at any time the department determines that hybridization has occurred during the pilot program between the trees planted as a windbreak and other *Casuarina* species, the department must

²¹ Section 581.091(d) and (e), F.S.

²² Section 581.091(f), F.S.

²³ *Id*

²⁴ Section 581.091(h), F.S.

²⁵ Section 581.091(i), F.S.

²⁶ Section 581.091(j), F.S.

expeditiously initiate research to determine the invasiveness of the hybrid. The information obtained from this research must be evaluated by the committee, DEP, and an industry representative. If the department determines that the hybrids have a high potential to become invasive, based on, but not limited to, the recommendation of the committee, DEP, and an industry representative, the pilot program must be permanently suspended.²⁷

Each application for a special permit must be accompanied by a fee as prescribed in statute and an agreement that the property owner will abide by all permit conditions including the removal of the trees if invasive populations or other adverse environmental factors are determined to be present by the department as a result of the use of the trees as windbreaks. The application must include, on a form provided by the department:²⁸

- The name of the applicant and the applicant's address or the address of the applicant's principal place of business;
- A statement of the estimated cost of removing and destroying the trees that are the subject of the special permit; and
- The basis for calculating or determining that estimate.

If the applicant is a corporation, partnership, or other business entity, the applicant must also provide in the application the name and address of each officer, partner, or managing agent. The applicant must notify the department within 30 business days of any change of address or change in the principal place of business. The department must mail all notices to the applicant's last known address.²⁹

Upon obtaining a permit, the permitholder must annually maintain the trees authorized by a special permit as required in the permit. If the permitholder ceases to maintain the trees as required by the special permit, if the permit expires, or if the permitholder ceases to abide by the conditions of the special permit, the permitholder must remove and destroy the trees in a timely manner as specified in the permit.³⁰

If the department determines that the permitholder is no longer maintaining the trees subject to the special permit and has not removed and destroyed the trees authorized by the special permit; determines that the continued use of the trees as a windbreak presents an imminent danger to public health, safety, or welfare; or determines that the permitholder has exceeded the conditions of the authorized special permit, the department may issue an immediate final order. A copy of the immediate final order must be mailed to the permitholder.³¹

If, upon issuance by the department of an immediate final order to the permitholder, the permitholder fails to remove and destroy the trees subject to the special permit within 60 days after issuance of the order, or such shorter period as is designated in the order as public health, safety, or welfare requires, the department may remove and destroy the trees that are the subject of the special permit. If the permitholder makes a written request to the department for an extension of time to remove and destroy the trees that demonstrates specific facts showing why the trees could not reasonably be removed and destroyed in the applicable timeframe, the department may extend the time for removing and destroying the trees subject to a special permit.³²

Section 581.131(8), F.S., requires the department to provide to a registered nurseryman written notice and renewal forms 60 days prior to the annual renewal date informing the person of their certificate of registration renewal date and applicable fees.

²⁷ Section 581.091(k), F.S.

²⁸ Section 581.091(l), F.S.

²⁹ *Id*

³⁰ *Id*

³¹ *Id*

³² *Id*

Effect of Proposed Changes

The bill amends s. 581.091(5), F.S., to eliminate the Australian pine permitting pilot program so that permits for the planting of Australian pine trees as a windbreak for commercial citrus groves growing fresh fruit are not limited to certain counties, but are available statewide. In addition, the bill streamlines the permitting requirements, as persons seeking to grow the trees as windbreaks for citrus groves are still required to be permitted by the department. The bill also eliminates the requirement that the department maintain a monitoring protocol to determine the invasiveness of the trees. In addition, the bill removes the provision that nurseries can only sell Australian pine trees to a person with a special permit that was established under the pilot program.

The bill amends section 581.131, F.S., to change the notice period for renewal of certificate of registration and applicable fees from 60 days to 30 days.

Florida Forest Service

Present Situation

Section 589.011(1), F.S., authorizes the Florida Forest Service (FFS) to grant privileges, permits, leases, and concessions for the use of state forest lands, timber, and forest products for certain purposes.

Section 589.011(3), F.S., authorizes FFS to set and charge reasonable fees or rent for the use or operation of facilities on state forests or any lands leased by or otherwise assigned to FFS for management purposes.

Section 589.20, F.S., provides that FFS may cooperate with other state agencies, who are custodians of lands that are suitable for forestry purposes, in the designation and dedication of such lands for forestry purposes. Upon the designation and dedication of said lands for these purposes by the agencies concerned, the lands must be administered by the FFS.

Section 590.02(7), F.S., authorizes FFS to organize, staff, equip, and operate the Florida Forest Training Center. The center serves as a site where fire and forest resource managers can obtain current knowledge, techniques, skills, and theory as they relate to their respective disciplines.

Effect of Proposed Changes

The bill amends s. 589.011(1), F.S., to authorize FFS to grant privileges, permits, leases, and concessions for the use of any lands leased by or otherwise assigned to FFS for management purposes, if such use is authorized by an approved land management plan or by an interim assignment letter that identifies the interim management activities issued by DEP.

The bill also provides that lessees of FFS land and property that are open to the public for recreational purposes, where the lease recognizes that the state is responsible for personal injury, loss, or damage resulting from the public use of the area under the lease, have no duty to keep the area safe for entry or use by others or to give warning of any hazardous conditions, structures, or activities. This grant of limited liability applies to all persons going on the leased area, including invitees, licensees, and trespassers. However, the limited liability does not apply to deliberate, willful, or malicious injury to persons or property by a lessee.

The bill amends s. 589.011(3), F.S., to authorize FFS to set and charge reasonable rentals or charges for the use or operation of facilities on state forests or any lands leased by or assigned to FFS for management purposes, as well as reasonable fees, rentals, or charges for the use or operation of concessions in state forests. The bill also provides that fees, rentals, or charges for the use of facilities

and concessions must be based upon the cost and extent of recreational facilities and services, geographic location, seasonal public demand, fees charged by other governmental and private entities for comparable services and activities, and market value and demand for forest products.

The bill amends s. 589.20, F.S., to specify that FFS is authorized to cooperate with water management districts, municipalities, and other government entities in the designation and dedication of lands that are suitable for forestry purposes.

The bill amends s. 590.02(7), F.S., to rename the Florida Forest Training Center to the Withlacoochee Training Center.

Goethe and Withlacoochee State Forests

Present Situation

Section 589.081, F.S., provides that FFS must pay 15 percent of the gross receipts from Withlacoochee State Forest and the Goethe State Forest to each fiscally constrained county, as described in s. 218.67(1), F.S., in which a portion of the respective forest is located in proportion to the forest acreage located in such county. The funds must be equally divided between the board of county commissioners and the school board of each fiscally constrained county.

Effect of Proposed Changes

The bill repeals s. 589.081, F.S., and transfers to s. 589.08, F.S., the language requiring FFS to pay 15 percent of the gross receipts from Goethe State Forest to each fiscally constrained county in which a portion of the respective forest is located in such county. According to the department, the Withlacoochee State Forest is not located in any fiscally constrained counties. Therefore, the reference to this state forest is unnecessary.

Wildfire Prevention and Prescribed Burns

Present Situation

Section 590.091, F.S., provides that FFS may annually designate, on or before October 1, those railroad rights-of-way in the state that are known wildfire hazard areas. It is the duty of all railroad companies operating in the state to maintain their rights-of-way designated as provided in Florida law, as known wildfire hazard areas, in an approved condition as prescribed by rule of FFS and to provide adequate firebreaks, where needed, to prevent fire from igniting or spreading from rights-of-way to adjacent property.

Section 590.125(2), F.S., provides that, for noncertified burning, persons may be authorized to broadcast burn or pile burn in accordance with Florida law if:

- There is specific consent of the landowner or his or her designee;
- Authorization has been obtained from FFS or its designated agent before starting the burn;
- There are adequate firebreaks at the burn site and sufficient personnel and firefighting equipment for the containment of the fire;
- The fire remains within the boundary of the authorized area;
- The person named responsible in the burn authorization or a designee is present at the burn site until the fire is completed;
- FFS does not cancel the authorization; and
- FFS determines that air quality and fire danger are favorable for safe burning.

Current law also provides that a person who broadcast burns or pile burns in a manner that violates any requirement of s. 590.125(2), F.S., commits a misdemeanor of the second degree, punishable by a term of imprisonment not exceeding 60 days or a fine not to exceed \$500.

Effect of Proposed Changes

The bill repeals s. 590.091, F.S. According to the department, the practice of designating railroad rights-of-way as known wildfire hazard areas is no longer necessary due to the advent of underground utilities.

The bill amends s. 590.125, F.S., to provide that, for noncertified burns, a new authorization is not required for smoldering that occurs within the authorized burn area unless the person named responsible in the burn authorization or a designee conducts new ignitions. The bill also provides that monitoring the smoldering activity of a burn does not require an additional authorization even if flames begin to spread within the authorized burn area due to ongoing smoldering. According to the department, this creates consistency in how certified and noncertified burns are considered a public threat and when they are considered "managed."

Miscellaneous

Joint Task Force on State Agency Law Enforcement Communications

Present Situation

Section 282.709(2), F.S., creates the Joint Task Force on State Agency Law Enforcement Communications (task force) to advise the Department of Management Services (DMS) of member-agency needs relating to the planning, designing, and establishment of the statewide communication system. The task force consists of the following members:

- A representative of the Division of Alcoholic Beverages and Tobacco of the Department of Business and Professional Regulation appointed by the secretary of that department.
- A representative of the Division of Florida Highway Patrol of the Department of Highway Safety and Motor Vehicles appointed by the executive director of that department.
- A representative of the Department of Law Enforcement appointed by the executive director of that department.
- A representative of the Fish and Wildlife Conservation Commission appointed by the executive director of the commission.
- A representative of the Department of Corrections appointed by the secretary of that department.
- A representative of the Division of State Fire Marshal of the Department of Financial Services appointed by the State Fire Marshal.
- A representative of the Department of Transportation appointed by the secretary of that department.

Effect of Proposed Changes

The bill amends s. 282.709(2), F.S., to include a representative from the department who is appointed by the commissioner.

Florida Coordinating Council on Mosquito Control

Present Situation

Section 388.46 (2)(c)4., F.S., requires the Florida Coordinating Council on Mosquito Control to prepare and disseminate reports, as needed, on arthropod control activities in the state to the Pesticide Review Council and other governmental organizations, as appropriate.

Effect of Proposed Changes

The bill amends s. 388.46(2)(c)4., F.S., to remove the reference to the Pesticide Review Council. This council was repealed from the statute during the 2013 legislative session. Therefore, the reference to the council is no longer relevant.

Classification and Sale of Eggs and Poultry

Present Situation

Section 583.01, F.S., provides that the term "dealer" means any person, firm, or corporation, including a producer, processor, retailer, or wholesaler, that sells, offers for sale, or holds for the purpose of sale in this state 30 dozen or more eggs or its equivalent in any one week, or in excess of 100 pounds of dressed poultry in any one week. Egg and poultry dealers are regulated under ch. 583, F.S., and are required to possess a valid food permit under s. 583.09, F.S.

Effect of Proposed Changes

The bill amends the definition of "dealer" in s. 583.01, F.S., as it relates to a poultry dealer to provide that the threshold for what constitutes a poultry dealer is any person that offers for sale, or holds for the purpose of sale, more than 384 dressed birds in any one week. The threshold for egg dealers remains the same. According to the department, this change will benefit operators of small poultry farms by correcting a long-standing discrepancy between state law and federal law regarding what constitutes a "dealer."

Agricultural Dealers

Present Situation

Section 604.22, F.S., provides that any person, partnership, corporation, or other business entity, except a person described in s. 604.16(1), F.S.,³³ who possesses and offers for sale agricultural products is required to possess and display a written document showing the date of sale, the name and address of the seller, and the kind and quantity of products for all such agricultural products. Persons who violate this provision are guilty of a misdemeanor of the second degree, punishable by a term of imprisonment not exceeding 60 days or a fine not to exceed \$500.

Effect of Proposed Changes

The bill amends s. 604.22, F.S., to replace the term of imprisonment and penalty currently provided in law with the penalties found in s. 604.30(2) and (3), F.S. Section 604.30(2), F.S., authorizes the department to issue and deliver a notice to cease and desist from a violation. Section 604.30(3)(a), F.S., authorizes the department to impose an administrative fine in the Class II category³⁴ not to exceed \$2,500. A violation of s. 604.22, F.S., will no longer be a criminal violation.

³³ Farmers or groups of farmers in the sale of agricultural products grown by themselves.

³⁴ A fine not to exceed \$5,000 per violation.

Telephone Solicitation

Present Situation

Section 501.059, F.S., provides that any telephone solicitor who makes an unsolicited telephonic sales call to a residential, mobile, or telephonic paging device telephone number must identify himself or herself by his or her true first and last names and the business on whose behalf he or she is soliciting immediately upon making contact by telephone with the person who is the object of the telephone solicitation. If any residential, mobile, or telephonic paging device telephone subscriber notifies the department of his or her desire to be placed on a "no sales solicitation calls" listing indicating that the subscriber does not wish to receive unsolicited telephonic sales calls, the department must place the subscriber on that listing for five years. No telephone solicitor can make or cause to be made any unsolicited telephonic sales call to any residential, mobile, or telephonic paging device telephone number if the number for that telephone appears in the then-current quarterly listing published by the department. The department is required to investigate any complaints received concerning violations.

Effect of Proposed Changes

The bill amends s. 501.059, F.S., to authorize the department to adopt rules pursuant to ss. 120.536(1) and 120.54, F.S., to implement the telephone solicitation law and the "no sales solicitation calls" listing.

B. SECTION DIRECTORY:

Section 1. Designates Parts I-V of Chapter 570, F.S., relating to the Department of Agriculture and Consumer Services (department).

Section 2. Amends s. 193.461, F.S., correcting a cross reference.

Section 3. Amends s. 253.74, F.S., providing a cross reference for penalties.

Section 4. Amends s. 282.709, F.S., adding a representative of the department to the Joint Task Force on State Agency Law Enforcement Communications.

Sections 5-9. Amend ss. 288.1175, 320.08058, 373.621, 373.70, and 381.0072, F.S., correcting a cross reference.

Section 10. Amends s. 388.46, F.S., removing an obsolete reference.

Sections 11-14. Amend ss. 472.0351, 472.036, 482.161, and 482.165, F.S., providing a cross reference for penalties.

Section 15. Amends s. 482.243, F.S., correcting a cross reference.

Section 16. Amends s. 487.041, F.S., revising requirements for registration and distribution of discontinued pesticides.

Section 17. Amends s. 487.046, F.S., revising provisions for filing pesticide applicator license applications.

Sections 18-19. Amend ss. 487.047 and 487.048, F.S., revising provisions for issuance of pesticide applicator licenses.

Section 20. Amends s. 487.091, F.S., providing a cross reference for penalties.

- Section 21.** Amends s. 487.159, F.S., deleting requirements for filing statements claiming damages and injuries from pesticide applications.
- Section 22.** Amends s. 487.160, F.S., revising recordkeeping requirements for licensed private applicators.
- Section 23.** Repeals s. 487.172, F.S., relating to the pesticide education program.
- Section 24.** Amends s. 487.175, F.S., providing a cross reference for penalties.
- Section 25.** Amends s. 487.2031, F.S., revising the term “material safety data sheet.”
- Section 26.** Amends s. 487.2051, F.S., revising requirements for pesticide fact sheets and safety data sheets.
- Sections 27-29.** Amend ss. 493.6118, 493.6120, and 496.420, F.S., providing a cross reference for penalties.
- Section 30.** Amends s. 500.03, F.S., correcting a cross reference.
- Section 31.** Amends s. 500.12, F.S., relating to food permit exemptions.
- Section 32.** Amends s. 500.121, F.S., relating to disciplinary procedures for violating the Florida Food Safety Act.
- Section 33.** Amends s. 500.147, F.S., providing for the inspection of food records for certain purposes.
- Section 34.** Amends s. 500.165, F.S., providing a cross reference for penalties.
- Section 35.** Amends s. 500.172, F.S., providing for embargoing, detaining, or destroying food processing and food storage areas.
- Section 36.** Repeals ss. 500.301, 500.302, 500.303, 500.304, 500.305, 500.306, and 500.601, F.S., relating to the standards for the enrichment of grain and the retail sale of meat.
- Sections 37-38.** Amend ss. 500.70 and 501.019, F.S., providing a cross reference for penalties.
- Section 39.** Amends s. 501.059, F.S., providing a cross reference for penalties and authorizing the department to adopt rules.
- Sections 40-45.** Amend ss. 501.612, 501.619, 501.922, 502.231, 507.09, and 507.10, F.S., providing a cross reference for penalties.
- Section 46.** Amends s. 509.032, F.S., correcting a cross reference.
- Sections 47-56.** Amend ss. 525.16, 526.311, 526.55, 531.50, 534.52, 539.001, 559.921, 559.9355, and 559.936, F.S., providing a cross reference for penalties.
- Section 57.** Amends 570.07, F.S., correcting a cross reference.
- Section 58.** Renumbers s. 570.0705, F.S., as s. 570.232, F.S.
- Section 59.** Renumbers s. 570.0725, F.S., as s. 595.420, F.S.
- Section 60.** Renumbers s. 570.073, F.S., as s. 570.65, F.S.

Section 61. Renumbers s. 570.074, F.S., as s. 570.66, F.S.; and amends the duties of the Office of Agricultural Water Policy.

Section 62. Renumbers s. 570.0741, F.S., as s. 377.805; and makes technical revisions.

Section 63. Renumbers s. 570.075, F.S., as s. 570.916, F.S.

Section 64. Amends s. 570.076, F.S., correcting a cross reference.

Section 65. Renumbers s. 570.085, F.S., as s. 570.93, F.S.

Section 66. Renumbers s. 570.087, F.S., as s. 570.94, F.S.

Section 67. Renumbers s. 570.14, F.S., as s. 570.031, F.S.; and amends provisions relating to the seal of the department.

Section 68. Renumbers s. 570.16, F.S., as s. 570.051, F.S.

Section 69. Renumbers s. 570.17, F.S., as s. 570.081, F.S.

Section 70. Renumbers s. 570.18, F.S., as s. 570.041, F.S.

Section 71. Amends s. 570.23, F.S., correcting a cross reference.

Section 72. Renumbers s. 570.241, F.S., as s. 570.73, F.S.

Section 73. Renumbers s. 570.242, F.S., as s. 570.74, F.S.; and makes technical revisions.

Section 74. Renumbers s. 570.243, F.S., as s. 570.75, F.S.

Section 75. Renumbers s. 570.244, F.S., as s. 570.76, F.S.

Section 76. Renumbers s. 570.245, F.S., as s. 570.77, F.S.

Section 77. Renumbers s. 570.246, F.S., as s. 570.78, F.S.

Section 78. Renumbers s. 570.247, F.S., as s. 570.79, F.S.; and makes technical revisions.

Section 79. Renumbers s. 570.248, F.S., as s. 570.81, F.S.

Section 80. Renumbers s. 570.249, F.S., as s. 570.82, F.S.

Section 81. Repeals s. 570.345, F.S., relating to the Pest Control Compact.

Section 82. Amends s. 570.36, F.S., making technical revisions.

Section 83. Renumbers s. 570.38, F.S., as s. 585.008, F.S.; and corrects a cross reference.

Section 84. Renumbers s. 570.42, F.S., as s. 502.301, F.S.; and makes technical revisions.

Section 85. Amends s. 570.44, F.S., removing a reference to an obsolete council, and making technical revisions.

Sections 86-87. Amend ss. 570.45 and 570.451, F.S., correcting a cross reference.

- Section 88.** Renumbers s. 570.481, F.S., as s. 603.011, F.S.
- Section 89.** Amends s. 570.50, F.S., authorizing the Division of Food Safety to inspect aquaculture facilities.
- Section 90.** Amends ss. 570.50 and 570.51, F.S., correcting a cross reference.
- Section 91.** Renumbers s. 570.531, F.S., as s. 570.209, F.S.
- Section 92.** Repeals s. 570.542, relating to the short title for the Florida Consumer's Council.
- Section 93.** Amends s. 570.543, F.S., correcting a cross reference.
- Section 94.** Renumbers s. 570.545, F.S., as s. 501.0113, F.S.
- Section 95.** Renumbers s. 570.55, F.S., as s. 603.211, F.S.
- Section 96.** Creates s. 570.67, F.S., establishing the Office of Energy; and providing for the supervision and duties of the office.
- Section 97.** Amends s. 570.71, F.S., making technical revisions.
- Section 98.** Repeals s. 570.72, F.S., relating to the definition of the department.
- Section 99.** Renumbers s. 570.901, F.S., as s. 570.692, F.S.
- Section 100.** Renumbers s. 570.902, F.S., as s. 570.69, F.S., and corrects a cross reference.
- Section 101.** Renumbers s. 570.903, F.S., as s. 570.691, F.S.
- Section 102.** Renumbers s. 570.91, F.S., as s. 570.693, F.S.
- Section 103.** Renumbers s. 570.9135, F.S., as s. 570.83, F.S., and corrects a cross reference.
- Section 104.** Repeals s. 570.92, F.S., relating to equestrian educational sports programs.
- Section 105.** Renumbers s. 570.951, F.S., as s. 570.681, F.S.
- Section 106.** Renumbers s. 570.952, F.S., as s. 570.685, F.S.; and corrects a cross reference.
- Section 107.** Renumbers s. 570.953, F.S., as s. 570.686, F.S.
- Section 108.** Renumbers s. 570.954, F.S., as s. 570.841, F.S.
- Section 109.** Renumbers s. 570.96, F.S., as s. 570.85, F.S.
- Section 110.** Renumbers s. 570.961, F.S., as s. 570.86, F.S.; and corrects a cross reference.
- Section 111.** Renumbers s. 570.962, F.S., as s. 570.87, F.S.
- Section 112.** Renumbers s. 570.963, F.S., as s. 570.88, F.S.; and corrects a cross reference.
- Section 113.** Renumbers s. 570.964, F.S., as s. 570.89, F.S.; and makes technical revisions.

- Section 114.** Creates s. 570.971, F.S., establishing administrative and civil penalties for certain violations; providing applicability; and authorizing the department to adopt rules.
- Section 115.** Amends s. 571.11, F.S., providing a cross reference for penalties.
- Section 116.** Amends s. 571.28, F.S., correcting a cross reference.
- Section 117.** Amends s. 571.29, F.S., providing a cross reference for penalties.
- Section 118.** Amends s. 576.021, F.S., revising provisions for filing applications to distribute fertilizer.
- Section 119.** Amends s. 576.031, F.S., revising labeling requirements for the distribution of fertilizer.
- Section 120.** Amends s. 576.041, F.S., removing surety bond and certificate of deposit requirement for fertilizer license applicants.
- Section 121.** Amends s. 576.051, F.S., revising the period of time a fertilizer sample must be retained.
- Section 122.** Amends s. 576.061, F.S., providing a cross reference for penalties.
- Section 123.** Amends s. 576.071, F.S., revising the criteria for determining the commercial value of certain penalties.
- Section 124.** Amends s. 576.087, F.S., revising antisiphon requirements for irrigation systems.
- Section 125.** Amends s. 576.101, F.S., removing provisions relating to the probationary status of a licensee.
- Section 126.** Amends s. 578.08, F.S., revising application requirements and registration requirements for the sale of seed.
- Section 127.** Amends s. 578.181, F.S., providing a cross reference for penalties.
- Section 128.** Amends s. 580.036, F.S., revising standards for the sale, use, and distribution of commercial feed or feedstuff.
- Section 129.** Amends s. 580.041, F.S., revising application requirements for master registration for commercial feed.
- Section 130.** Amends s. 580.071, F.S., revising criteria for adulteration of commercial feed and feedstuff.
- Section 131.** Amends s. 580.121, F.S., providing a cross reference for penalties.
- Section 132.** Amends s. 581.091, F.S., deleting pilot program for Australian pines used as windbreaks in citrus groves.
- Section 133.** Amends s. 581.131, F.S., revising the timeframe in which the department must provide certain certificate renewal forms.
- Section 134.** Amends s. 581.141, F.S., providing a cross reference for penalties.
- Section 135.** Amends s. 581.186, F.S., correcting a cross reference.
- Section 136.** Amends s. 581.211, F.S., providing a cross reference for penalties.

Section 137. Amends s. 582.06, F.S., correcting a cross reference.

Section 138. Amends s. 583.01, F.S., amending the definition of "dealer."

Sections 139-140. Amend ss. 585.007 and 586.15, F.S., providing a cross reference for penalties.

Section 141. Amends s. 586.161, F.S., correcting a cross reference.

Section 142. Amends s. 589.08, F.S., directing the Florida Forest Service (FFS) to distribute certain funds to fiscally constrained counties.

Section 143. Repeals s. 589.081, F.S., relating to the payment of gross receipts to Withlacoochee and Goethe State Forests.

Section 144. Amends s. 589.011, F.S., relating to the use of state forest lands.

Section 145. Amends s. 589.20, F.S., authorizing FFS to cooperate with water management districts, municipalities, and other governmental entities in the designation and dedication of certain lands.

Section 146. Amends s. 590.02, F.S., renaming the Center for Wildfire and Forest Resources Management Training as the Withlacoochee Training Center.

Section 147. Repeals s. 590.091, F.S., relating to the designation of railroad rights-of-way as wildfire hazard areas.

Section 148. Amends s. 590.125, F.S., revising provisions for noncertified burning.

Section 149. Amends s. 590.14, F.S., providing a cross reference for penalties.

Section 150. Amends s. 595.701, F.S., correcting a cross reference.

Sections 151-152. Amend ss. 597.0041 and 597.020, F.S., providing a cross reference for penalties.

Section 153. Amends s. 599.002, F.S., correcting a cross reference.

Sections 154-157. Amend ss. 601.67, 604.22, 604.30, and 616.242, F.S., providing a cross reference for penalties.

Section 158. Provides an effective date of July 1, 2014.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

	FY 14-15	FY15-16
General Inspection Trust Fund		
Registration fees for seed distributors	\$ (13,725)	\$ (13,725)

2. Expenditures:

None

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None

2. Expenditures:

The bill imposes minimum mandatory terms of imprisonment for certain offenses relating to ch. 500, F.S., which could have an indeterminate, negative jail bed impact.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Sections 487.046, 487.047, 487.048, and 576.021, F.S., provide the public the opportunity to register for licensure on-line; thus, creating the potential for savings in the form of postage.

Section 576.041, F.S., no longer requires licensees for agricultural fertilizers to post with the department a surety bond or sign a certificate of deposit.

Section 578.08, F.S., establishes two new lower registration fees for distributors of small amounts of seed (\$10/year for annual sales under \$500 and \$25/year for annual sales under \$1,000). This will reduce the fees these small distributors will have to pay, resulting in lower costs. The department estimates that a savings will be recognized by approximately 200 seed dealers.

Section 581.091, F.S., simplifies the regulatory process for using Australian pines for windbreaks in commercial citrus groves. Nurseries wanting to obtain a permit to propagate Australian pines will continue the current process of submitting an application accompanied by a fee of \$200, adhering to permit requirements, and renewing the application and fee annually. Growers wanting to plant Australian pines for windbreaks must continue to submit an application accompanied by a fee not to exceed \$500 to receive a special permit valid for five years.

Section 583.01, F.S., increases the number of dressed birds that a small farm may sell per week, potentially increasing revenues for the farm.

D. FISCAL COMMENTS:

Sections 500.12(2); 500.165(3); 502.231(1)(b); 501.922(1)(a); 525.16(1)2.; 531.50(1)(b); 559.9355(1)(c) – Because fines in the Division of Food Safety and the Division of Consumer Services are being reduced to what the department actually collects, there is no fiscal impact.

Section 581.091, F.S. – Because the bill terminates the pilot program, which may increase the area where Australian pines can be planted, there is a potential indeterminate increase in revenues resulting from the potential increase in permit fees collected by the department. Currently, one citrus grower has a special permit for planting Australian pines and two nurseries have special permits to propagate Australian pines.

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:

Section 500.12, F.S., provides the Department of Agriculture and Consumer Services (department) with rulemaking authority related to adopting a schedule of fees for the issuance and renewal of food permits

Section 500.121, F.S., provides the department with rulemaking authority related to the closure of a food establishment that poses an immediate danger to the public health, safety, and welfare.

Section 501.059, F.S., provides the department with rulemaking authority related to telephone solicitation and the "no sales solicitation calls" listing.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

N/A

27 | impose certain civil penalties for violations relating
 28 | to private security, investigative, and repossession
 29 | services; amending s. 500.03, F.S.; revising the
 30 | definition of the term "food establishment"; amending
 31 | s. 500.12, F.S.; revising criteria for certain food
 32 | permit exemptions; requiring the department to adopt a
 33 | permit fee schedule; requiring food permits as a
 34 | condition of operating a food establishment; providing
 35 | that such permits are not transferable; amending s.
 36 | 500.121, F.S.; conforming provisions to changes made
 37 | by the act; revising the time limit for payment of
 38 | fines; providing for permit revocation for failure to
 39 | pay a fine; authorizing the department to immediately
 40 | close certain food establishments; providing
 41 | requirements and procedures for such closure;
 42 | providing penalties for violations; authorizing the
 43 | department to adopt rules; amending s. 500.147, F.S.;
 44 | providing for the inspection of food records for
 45 | certain purposes; amending s. 500.172, F.S.; providing
 46 | for embargoing, detaining, or destroying food
 47 | processing and storage areas; repealing ss. 500.301,
 48 | 500.302, 500.303, 500.304, 500.305, and 500.306, F.S.,
 49 | relating to standards of enrichment, sales,
 50 | enforcement, and inspection of certain grain products;
 51 | repealing s. 500.601, F.S., relating to retail sale of
 52 | meat; amending s. 501.059, F.S.; authorizing the

53 department to adopt rules; amending s. 570.074, F.S.;

54 providing for the duties of the Office of Agricultural

55 Water Policy; amending s. 570.14, F.S.; requiring

56 written approval for use of the department seal;

57 amending s. 570.247, F.S.; clarifying provisions

58 directing the department to adopt certain rules;

59 repealing s. 570.345, F.S., relating to the Pest

60 Control Compact; amending s. 570.36, F.S.; clarifying

61 provisions relating to the duties of the Division of

62 Animal Industry; repealing s. 570.542, F.S., relating

63 to the Florida Consumer Services Act; creating s.

64 570.67, F.S.; establishing the Office of Energy within

65 the department; providing for supervision and duties;

66 amending s. 570.71, F.S.; authorizing specified uses

67 of funds from the Conservation and Recreation Lands

68 Program Trust Fund; repealing s. 570.72, F.S.,

69 relating to a definition; repealing s. 570.92, F.S.,

70 relating to an equestrian educational sports program;

71 amending s. 570.952, F.S.; deleting an obsolete

72 provision relating to membership terms for the Florida

73 Agriculture Center and Horse Park Authority;

74 conforming cross-references; amending s. 570.964,

75 F.S.; clarifying compliance required for privileges of

76 immunity; creating s. 570.971, F.S.; establishing

77 administrative and civil penalties for certain

78 violations; providing applicability; authorizing the

79 department to adopt rules; amending s. 576.021, F.S.;

80 revising provisions for filing applications to

81 distribute fertilizer; amending s. 576.031, F.S.;

82 revising labeling requirements for distribution of

83 fertilizer in bulk; amending s. 576.041, F.S.;

84 removing surety bond and certificate of deposit

85 requirements for fertilizer license applicants;

86 amending s. 576.051, F.S.; revising the period for

87 which a fertilizer sample must be retained for

88 analysis; amending s. 576.071, F.S.; revising criteria

89 for determining the commercial value of certain

90 penalties; amending s. 576.087, F.S.; revising

91 antisiphon requirements for irrigation systems;

92 amending s. 576.101, F.S.; removing provisions

93 relating to probationary status of a fertilizer

94 licensee; amending s. 578.08, F.S.; revising

95 application requirements and registration fees for the

96 sale of seed; amending s. 580.036, F.S.; directing the

97 department to consult with the Agricultural Feed,

98 Seed, and Fertilizer Advisory Council when developing

99 certain standards; amending s. 580.041, F.S.; revising

100 application requirements for master registration of

101 commercial feed; amending s. 580.071, F.S.; revising

102 criteria for adulterated commercial feed and

103 feedstuff; amending s. 581.091, F.S.; deleting

104 provisions relating to noxious weed and invasive plant

105 pilot and monitoring programs; amending s. 581.131,
 106 F.S.; revising the time in which the department must
 107 provide certain certificate renewal forms; amending s.
 108 583.01, F.S.; revising the definition of the term
 109 "dealer"; amending s. 589.08, F.S.; directing the
 110 Florida Forest Service to distribute certain funds to
 111 fiscally constrained counties; repealing s. 589.081,
 112 F.S., relating to payment of certain gross receipts
 113 from the Withlacoochee State Forest and Goethe State
 114 Forest; amending s. 589.011, F.S.; providing
 115 conditions under which the Florida Forest Service is
 116 authorized to grant use of certain lands; limiting
 117 liability for lessees of specified lands; providing
 118 criteria by which the Florida Forest Service
 119 determines certain fees, rentals, and charges;
 120 amending s. 589.20, F.S.; authorizing the Florida
 121 Forest Service to cooperate with water management
 122 districts, municipalities, and other government
 123 entities in the designation and dedication of certain
 124 lands; repealing s. 590.091, F.S., relating to
 125 designation of railroad rights-of-way as wildfire
 126 hazard areas; amending s. 590.125, F.S.; revising
 127 requirements for noncertified burning; amending ss.
 128 253.74, 388.46, 472.0351, 472.036, 482.161, 482.165,
 129 482.243, 487.091, 487.175, 493.6118, 496.420, 500.165,
 130 500.70, 501.019, 501.612, 501.619, 501.922, 502.231,

131 507.09, 507.10, 526.311, 526.55, 527.13, 531.50,
 132 534.52, 539.001, 559.921, 559.9355, 559.936, 570.0741,
 133 570.23, 570.242, 570.38, 570.42, 570.44, 570.45,
 134 570.451, 570.50, 570.51, 570.543, 571.11, 571.28,
 135 571.29, 576.061, 578.181, 580.121, 581.141, 581.186,
 136 581.211, 582.06, 585.007, 586.15, 586.161, 590.02,
 137 590.14, 595.701, 597.0041, 597.020, 599.002, 601.67,
 138 604.22, 604.30, and 616.242, F.S.; conforming
 139 provisions to changes made by the act; amending ss.
 140 193.461, 288.1175, 320.08058, 373.621, 373.709,
 141 381.0072, 509.032, 525.16, 570.07, 570.076, 570.902,
 142 570.9135, 570.961, and 570.963, F.S.; conforming
 143 cross-references; providing an effective date.
 144

145 Be It Enacted by the Legislature of the State of Florida:
 146

147 Section 1. Chapter 570, Florida Statutes, as amended by
 148 this act, shall be divided into the following parts:

149 (1) Part I, consisting of sections 570.01 through 570.232,
 150 Florida Statutes, entitled "General Provisions";

151 (2) Part II, consisting of sections 570.30 through
 152 570.693, Florida Statutes, entitled "Program Services";

153 (3) Part III, consisting of sections 570.70 through
 154 570.89, Florida Statutes, entitled "Agricultural Development";

155 (4) Part IV, consisting of sections 570.916 through
 156 570.94, Florida Statutes, entitled "Agricultural Water Policy";

157 | and

158 | (5) Part V, consisting of section 570.971, Florida
 159 | Statutes, entitled "Penalties."

160 | Section 2. Paragraph (c) of subsection (6) of section
 161 | 193.461, Florida Statutes, is amended to read:

162 | 193.461 Agricultural lands; classification and assessment;
 163 | mandated eradication or quarantine program.—

164 | (6)

165 | (c)1. For purposes of the income methodology approach to
 166 | assessment of property used for agricultural purposes,
 167 | irrigation systems, including pumps and motors, physically
 168 | attached to the land shall be considered a part of the average
 169 | yields per acre and shall have no separately assessable
 170 | contributory value.

171 | 2. Litter containment structures located on producing
 172 | poultry farms and animal waste nutrient containment structures
 173 | located on producing dairy farms shall be assessed by the
 174 | methodology described in subparagraph 1.

175 | 3. Structures or improvements used in horticultural
 176 | production for frost or freeze protection, which ~~structures or~~
 177 | ~~improvements~~ are consistent with the interim measures or best
 178 | management practices adopted by the Department of Agriculture
 179 | and Consumer Services ~~Services' interim measures or best~~
 180 | ~~management practices adopted~~ pursuant to s. 570.93 ~~570.085~~ or s.
 181 | 403.067(7)(c), shall be assessed by the methodology described in
 182 | subparagraph 1.

HB 7091

2014

183 Section 3. Subsection (1) of section 253.74, Florida
 184 Statutes, is amended to read:

185 253.74 Penalties.—

186 (1) A ~~Any~~ person who conducts aquaculture activities in
 187 excess of those authorized by the board or who conducts such
 188 activities on state-owned submerged lands without having
 189 previously obtained an authorization from the board commits a
 190 misdemeanor of the second degree, punishable as provided in s.
 191 775.082, is subject to a civil fine in the Class I category
 192 pursuant to s. 570.971 ~~and shall be subject to imprisonment for~~
 193 ~~not more than 6 months or fine of not more than \$1,000, or both.~~
 194 In addition to such fine and imprisonment, all works,
 195 improvements, and animal and plant life involved in the project,
 196 may be forfeited to the state.

197 Section 4. Paragraph (a) of subsection (2) of section
 198 282.709, Florida Statutes, is amended to read:

199 282.709 State agency law enforcement radio system and
 200 interoperability network.—

201 (2) The Joint Task Force on State Agency Law Enforcement
 202 Communications is created adjunct to the department to advise
 203 the department of member-agency needs relating to the planning,
 204 designing, and establishment of the statewide communication
 205 system.

206 (a) The Joint Task Force on State Agency Law Enforcement
 207 Communications shall consist of the following members:

208 1. A representative of the Division of Alcoholic Beverages

209 and Tobacco of the Department of Business and Professional
 210 Regulation who shall be appointed by the secretary of the
 211 department.

212 2. A representative of the Division of Florida Highway
 213 Patrol of the Department of Highway Safety and Motor Vehicles
 214 who shall be appointed by the executive director of the
 215 department.

216 3. A representative of the Department of Law Enforcement
 217 who shall be appointed by the executive director of the
 218 department.

219 4. A representative of the Fish and Wildlife Conservation
 220 Commission who shall be appointed by the executive director of
 221 the commission.

222 5. A representative of the Department of Corrections who
 223 shall be appointed by the secretary of the department.

224 6. A representative of the Division of State Fire Marshal
 225 of the Department of Financial Services who shall be appointed
 226 by the State Fire Marshal.

227 7. A representative of the Department of Transportation
 228 who shall be appointed by the secretary of the department.

229 8. A representative of the Department of Agriculture and
 230 Consumer Services who shall be appointed by the Commissioner of
 231 Agriculture.

232 Section 5. Paragraph (c) of subsection (5) of section
 233 288.1175, Florida Statutes, is amended to read:

234 288.1175 Agriculture education and promotion facility.—

235 (5) The Department of Agriculture and Consumer Services
 236 shall competitively evaluate applications for funding of an
 237 agriculture education and promotion facility. If the number of
 238 applicants exceeds three, the Department of Agriculture and
 239 Consumer Services shall rank the applications based upon
 240 criteria developed by the Department of Agriculture and Consumer
 241 Services, with priority given in descending order to the
 242 following items:

243 (c) The location of the facility in a brownfield site as
 244 defined in s. 376.79(3), a rural enterprise zone as defined in
 245 s. 290.004, an agriculturally depressed area as defined in s.
 246 570.74 ~~570.242(1)~~, or a county that has lost its agricultural
 247 land to environmental restoration projects.

248 Section 6. Paragraph (b) of subsection (14) and paragraph
 249 (b) of subsection (77) of section 320.08058, Florida Statutes,
 250 are amended to read:

251 320.08058 Specialty license plates.—

252 (14) FLORIDA AGRICULTURAL LICENSE PLATES.—

253 (b) The proceeds of the Florida Agricultural license plate
 254 annual use fee must be forwarded to the direct-support
 255 organization created pursuant to ~~in~~ s. 570.691 ~~570.903~~. The
 256 funds must be used for the sole purpose of funding and promoting
 257 the Florida agriculture in the classroom program established
 258 within the Department of Agriculture and Consumer Services
 259 pursuant to s. 570.693 ~~570.91~~.

260 (77) FLORIDA HORSE PARK LICENSE PLATES.—

261 (b) The annual use fees shall be distributed to the
 262 Florida Agriculture Center and Horse Park Authority created by
 263 s. 570.685 ~~570.952~~, which shall retain all proceeds until all
 264 startup costs for developing and establishing the plate have
 265 been recovered. Thereafter, the proceeds shall be used as
 266 follows:

267 1. A maximum of 5 percent of the proceeds from the annual
 268 use fees may be used for the administration of the Florida Horse
 269 Park license plate program.

270 2. A maximum of 5 percent of the proceeds may be used to
 271 promote and market the license plate.

272 3. The remaining proceeds shall be used by the authority
 273 to promote the Florida Agriculture Center and Horse Park located
 274 in Marion County; to support continued development of the park,
 275 including the construction of additional educational facilities,
 276 barns, and other structures; to provide improvements to the
 277 existing infrastructure at the park; and to provide for
 278 operational expenses of the Florida Agriculture Center and Horse
 279 Park.

280 Section 7. Section 373.621, Florida Statutes, is amended
 281 to read:

282 373.621 Water conservation.—The Legislature recognizes the
 283 significant value of water conservation in the protection and
 284 efficient use of water resources. Accordingly, consideration in
 285 the administration of ss. 373.223, 373.233, and 373.236 shall be
 286 given to applicants who implement water conservation practices

287 | pursuant to s. 570.93 ~~570.085~~ or other applicable water
 288 | conservation measures as determined by the department or a water
 289 | management district.

290 | Section 8. Paragraph (a) of subsection (2) of section
 291 | 373.709, Florida Statutes, is amended to read:

292 | 373.709 Regional water supply planning.—

293 | (2) Each regional water supply plan must be based on at
 294 | least a 20-year planning period and must include, but need not
 295 | be limited to:

296 | (a) A water supply development component for each water
 297 | supply planning region identified by the district which
 298 | includes:

299 | 1. A quantification of the water supply needs for all
 300 | existing and future reasonable-beneficial uses within the
 301 | planning horizon. The level-of-certainty planning goal
 302 | associated with identifying the water supply needs of existing
 303 | and future reasonable-beneficial uses must be based upon meeting
 304 | those needs for a 1-in-10-year drought event.

305 | a. Population projections used for determining public
 306 | water supply needs must be based upon the best available data.
 307 | In determining the best available data, the district shall
 308 | consider the University of Florida's Bureau of Economic and
 309 | Business Research (BEBR) medium population projections and
 310 | population projection data and analysis submitted by a local
 311 | government pursuant to the public workshop described in
 312 | subsection (1) if the data and analysis support the local

313 government's comprehensive plan. Any adjustment of or deviation
 314 from the BEBR projections must be fully described, and the
 315 original BEBR data must be presented along with the adjusted
 316 data.

317 b. Agricultural demand projections used for determining
 318 the needs of agricultural self-suppliers must be based upon the
 319 best available data. In determining the best available data for
 320 agricultural self-supplied water needs, the district shall
 321 consider the data indicative of future water supply demands
 322 provided by the Department of Agriculture and Consumer Services
 323 pursuant to s. 570.93 ~~570.085~~ and agricultural demand projection
 324 data and analysis submitted by a local government pursuant to
 325 the public workshop described in subsection (1), if the data and
 326 analysis support the local government's comprehensive plan. Any
 327 adjustment of or deviation from the data provided by the
 328 Department of Agriculture and Consumer Services must be fully
 329 described, and the original data must be presented along with
 330 the adjusted data.

331 2. A list of water supply development project options,
 332 including traditional and alternative water supply project
 333 options, from which local government, government-owned and
 334 privately owned utilities, regional water supply authorities,
 335 multijurisdictional water supply entities, self-suppliers, and
 336 others may choose for water supply development. In addition to
 337 projects listed by the district, such users may propose specific
 338 projects for inclusion in the list of alternative water supply

339 projects. If such users propose a project to be listed as an
 340 alternative water supply project, the district shall determine
 341 whether it meets the goals of the plan, and, if so, it shall be
 342 included in the list. The total capacity of the projects
 343 included in the plan must exceed the needs identified in
 344 subparagraph 1. and take into account water conservation and
 345 other demand management measures, as well as water resources
 346 constraints, including adopted minimum flows and levels and
 347 water reservations. Where the district determines it is
 348 appropriate, the plan should specifically identify the need for
 349 multijurisdictional approaches to project options that, based on
 350 planning level analysis, are appropriate to supply the intended
 351 uses and that, based on such analysis, appear to be permittable
 352 and financially and technically feasible. The list of water
 353 supply development options must contain provisions that
 354 recognize that alternative water supply options for agricultural
 355 self-suppliers are limited.

356 3. For each project option identified in subparagraph 2.,
 357 the following must be provided:

358 a. An estimate of the amount of water to become available
 359 through the project.

360 b. The timeframe in which the project option should be
 361 implemented and the estimated planning-level costs for capital
 362 investment and operating and maintaining the project.

363 c. An analysis of funding needs and sources of possible
 364 funding options. For alternative water supply projects, the

365 water management districts shall provide funding assistance
 366 pursuant to ~~in accordance with~~ s. 373.707(8).

367 d. Identification of the entity that should implement each
 368 project option and the current status of project implementation.

369 Section 9. Paragraph (d) of subsection (2) of section
 370 381.0072, Florida Statutes, is amended to read:

371 381.0072 Food service protection.—It shall be the duty of
 372 the Department of Health to adopt and enforce sanitation rules
 373 consistent with law to ensure the protection of the public from
 374 food-borne illness. These rules shall provide the standards and
 375 requirements for the storage, preparation, serving, or display
 376 of food in food service establishments as defined in this
 377 section and which are not permitted or licensed under chapter
 378 500 or chapter 509.

379 (2) DUTIES.—

380 (d) The department shall inspect each food service
 381 establishment as often as necessary to ensure compliance with
 382 applicable laws and rules. The department shall have the right
 383 of entry and access to these food service establishments at any
 384 reasonable time. In inspecting food service establishments ~~as~~
 385 ~~provided~~ under this section, the department shall provide each
 386 inspected establishment with the food recovery brochure
 387 developed under s. 595.420 ~~570.0725~~.

388 Section 10. Paragraph (c) of subsection (2) of section
 389 388.46, Florida Statutes, is amended to read:

390 388.46 Florida Coordinating Council on Mosquito Control;

391 establishment; membership; organization; responsibilities.—

392 (2) MEMBERSHIP, ORGANIZATION, AND RESPONSIBILITIES.—

393 (c) Responsibilities.—The council shall:

394 1. Develop and implement guidelines to assist the
395 department in resolving disputes arising over the control of
396 arthropods on publicly owned lands.

397 2. Develop and recommend to the department a request for
398 proposal process for arthropod control research.

399 3. Identify potential funding sources for research or
400 implementation projects and evaluate and prioritize proposals
401 upon request by the funding source.

402 4. Prepare and present reports, as needed, on arthropod
403 control activities in the state to ~~the Pesticide Review Council~~
404 ~~and~~ other governmental organizations, as appropriate.

405 Section 11. Paragraph (c) of subsection (2) of section
406 472.0351, Florida Statutes, is amended to read:

407 472.0351 Grounds for discipline; penalties; enforcement.—

408 (2) If the board finds a surveyor or mapper guilty of any
409 of the grounds set forth in subsection (1) or a violation of
410 this chapter which occurred before obtaining a license, the
411 board may enter an order imposing one or more of the following
412 penalties:

413 (c) Imposition of an administrative fine in the Class I
414 category pursuant to s. 570.971 ~~not to exceed \$1,000~~ for each
415 count or separate offense.

416 Section 12. Subsections (1) and (2) and paragraph (a) of

417 subsection (3) of section 472.036, Florida Statutes, are amended
 418 to read:

419 472.036 Unlicensed practice of professional surveying and
 420 mapping; cease and desist notice; civil penalty; enforcement;
 421 citations; allocation of moneys collected.-

422 (1) When the department has probable cause to believe that
 423 a ~~any~~ person not licensed by the department or the board has
 424 violated ~~any provision of~~ this chapter, or any rule adopted
 425 pursuant to this chapter, the department may issue and deliver
 426 to such person a notice to cease and desist from such violation.
 427 In addition, the department may issue and deliver a notice to
 428 cease and desist to a ~~any~~ person who aids and abets the
 429 unlicensed practice of surveying and mapping by employing such
 430 unlicensed person. The issuance of a notice to cease and desist
 431 does ~~shall~~ not constitute agency action for which a hearing
 432 under ss. 120.569 and 120.57 may be sought. For the purpose of
 433 enforcing a cease and desist order, the department may file a
 434 proceeding in the name of the state seeking issuance of an
 435 injunction or a writ of mandamus against a ~~any~~ person who
 436 violates ~~any provisions of~~ such order. In addition to the
 437 foregoing remedies, the department may impose an administrative
 438 fine in the Class II category pursuant to s. 570.971 for each
 439 ~~penalty not to exceed \$5,000 per~~ incident pursuant to ~~the~~
 440 ~~provisions of~~ chapter 120 or may issue a citation pursuant ~~to~~
 441 ~~the provisions of~~ subsection (3). If the department is required
 442 to seek enforcement of the order for a penalty pursuant to s.

443 120.569, it shall be entitled to collect its attorney ~~attorney's~~
 444 fees and costs, together with any cost of collection.

445 (2) In addition to or in lieu of any remedy provided in
 446 subsection (1), the department may seek the imposition of a
 447 civil penalty through the circuit court for any violation for
 448 which the department may issue a notice to cease and desist
 449 under subsection (1). The civil penalty shall be a fine in the
 450 Class II category pursuant to s. 570.971 ~~no less than \$500 and~~
 451 ~~no more than \$5,000~~ for each offense. The court may also award
 452 to the prevailing party court costs and reasonable attorney fees
 453 and, in the event the department prevails, may also award
 454 reasonable costs of investigation.

455 (3)(a) Notwithstanding ~~the provisions of~~ s. 472.033, the
 456 department shall adopt rules for ~~to permit~~ the issuance of
 457 citations for unlicensed practice of a profession. The citation
 458 shall be issued to the subject and shall contain the subject's
 459 name and any other information the department determines to be
 460 necessary to identify the subject, a brief factual statement,
 461 the sections of the law allegedly violated, and the penalty
 462 imposed. The citation must clearly state that the subject may
 463 choose, in lieu of accepting the citation, to follow the
 464 procedure under s. 472.033. If the subject disputes the matter
 465 in the citation, the procedures set forth in s. 472.033 must be
 466 followed. However, if the subject does not dispute the matter in
 467 the citation with the department within 30 days after the
 468 citation is served, the citation shall become a final order of

469 the department upon filing with the agency clerk. The penalty
 470 shall be a fine in the Class II category pursuant to s. 570.971
 471 ~~of not less than \$500 or more than \$5,000~~ or other conditions as
 472 established by rule.

473 Section 13. Subsection (7) of section 482.161, Florida
 474 Statutes, is amended to read:

475 482.161 Disciplinary grounds and actions; reinstatement.-

476 (7) The department, pursuant to chapter 120, in addition
 477 to or in lieu of any other remedy provided by state or local
 478 law, may impose an administrative fine in the Class II category
 479 pursuant to s. 570.971, ~~in an amount not exceeding \$5,000,~~ for a
 480 ~~the violation of any of the provisions of~~ this chapter or of the
 481 rules adopted pursuant to this chapter. In determining the
 482 amount of fine to be levied for a violation, the following
 483 factors shall be considered:

484 (a) The severity of the violation, including the
 485 probability that the death, or serious harm to the health or
 486 safety, of any person will result or has resulted; the severity
 487 of the actual or potential harm; and the extent to which ~~the~~
 488 ~~provisions of~~ this chapter or of the rules adopted pursuant to
 489 this chapter were violated;

490 (b) Any actions taken by the licensee or certified
 491 operator in charge, or limited certificateholder, to correct the
 492 violation or to remedy complaints;

493 (c) Any previous violations of this chapter or of the
 494 rules adopted pursuant to this chapter; and

495 (d) The cost to the department of investigating the
 496 violation.

497 Section 14. Subsections (3) and (5) of section 482.165,
 498 Florida Statutes, are amended to read:

499 482.165 Unlicensed practice of pest control; cease and
 500 desist order; injunction; civil suit and penalty.—

501 (3) In addition to or in lieu of any remedy provided under
 502 subsection (2), the department may institute a civil suit in
 503 circuit court to recover a civil penalty for any violation for
 504 which the department may issue a notice to cease and desist
 505 under subsection (2). The civil penalty shall be in the Class II
 506 category pursuant to s. 570.971 ~~may not be less than \$500 or~~
 507 ~~more than \$5,000~~ for each offense. The court may also award to
 508 the prevailing party court costs and reasonable attorney
 509 ~~attorney's~~ fees.

510 (5) In addition to or in lieu of any remedy provided under
 511 subsections (2) and (3), the department may, even in the case of
 512 a first offense, impose a fine not less than twice the cost of a
 513 pest control business license, but not more than a fine in the
 514 Class II category pursuant to s. 570.971 ~~\$5,000~~, upon a
 515 determination by the department that a person is in violation of
 516 subsection (1). For the purposes of this subsection, the lapse
 517 of a previously issued license for a period of less than 1 year
 518 is ~~shall~~ not ~~be~~ considered a violation.

519 Section 15. Subsection (6) of section 482.243, Florida
 520 Statutes, is amended to read:

521 482.243 Pest Control Enforcement Advisory Council.—
 522 (6) The meetings, powers and duties, procedures, and
 523 recordkeeping of the council shall be pursuant to ~~in accordance~~
 524 ~~with the provisions of s. 570.232 570.0705 relating to advisory~~
 525 ~~committees established within the department.~~

526 Section 16. Paragraph (d) of subsection (3) of section
 527 487.041, Florida Statutes, is amended to read:

528 487.041 Registration.—

529 (3) The department, in addition to its other duties under
 530 this section, has the power to:

531 (d) Require a registrant to continue the registration of a
 532 brand of pesticide that remains on retailer's shelves in the
 533 state unless the department receives the registrant's written
 534 notification that it is discontinuing the distribution of a
 535 brand of pesticide and the registrant then maintains the
 536 registration of that brand for a minimum of 2 years. The
 537 discontinued brand of pesticide may remain on retailer's shelves
 538 without further registration if the brand of pesticide is not
 539 distributed by the registrant in the state during or after the
 540 minimum 2-year period ~~who discontinues the distribution of a~~
 541 ~~brand of pesticide in this state to continue the registration of~~
 542 ~~the brand of the pesticide for a minimum of 2 years or until no~~
 543 ~~more remains on retailers' shelves if such continued~~
 544 ~~registration or sale is not specifically prohibited by the~~
 545 ~~department or the United States Environmental Protection Agency.~~

546 Section 17. Subsection (1) of section 487.046, Florida

547 Statutes, is amended to read:

548 487.046 Application; licensure.—

549 (1) Application for license shall be filed with ~~made in~~
 550 ~~writing to~~ the department by using ~~on~~ a form prescribed
 551 ~~furnished~~ by the department or by using the department's
 552 website. Each application shall contain information regarding
 553 the applicant's qualifications, proposed operations, and license
 554 classification or subclassifications, as prescribed by rule.

555 Section 18. Subsection (3) of section 487.047, Florida
 556 Statutes, is amended to read:

557 487.047 Nonresident license; reciprocal agreement;
 558 authorized purchase.—

559 (3) Restricted-use pesticides may be purchased by a ~~any~~
 560 person who holds a valid applicator's license or who holds a
 561 valid purchase authorization card issued by the department or by
 562 a licensee under chapter 388 or chapter 482. A nonlicensed
 563 person may apply restricted-use pesticides under the direct
 564 supervision of a licensed applicator. An applicator's license
 565 shall be issued by the department pursuant to ~~on a form supplied~~
 566 ~~by it in accordance with the requirements of~~ this part.

567 Section 19. Subsection (1) of section 487.048, Florida
 568 Statutes, is amended to read:

569 487.048 Dealer's license; records.—

570 (1) Each person holding or offering for sale, selling, or
 571 distributing restricted-use pesticides must ~~shall~~ obtain a
 572 dealer's license from the department. Application for the

573 license shall be filed with the department by using ~~made on~~ a
 574 form prescribed by the department or by using the department's
 575 website. The license must be obtained before entering into
 576 business or transferring ownership of a business. The department
 577 may require examination or other proof of competency of
 578 individuals to whom licenses are issued or of individuals
 579 employed by persons to whom licenses are issued. Demonstration
 580 of continued competency may be required for license renewal, as
 581 set by rule. The license shall be renewed annually as provided
 582 by rule. An annual license fee not exceeding \$250 shall be
 583 established by rule. However, a user of a restricted-use
 584 pesticide may distribute unopened containers of a properly
 585 labeled pesticide to another user who is legally entitled to use
 586 that restricted-use pesticide without obtaining a pesticide
 587 dealer ~~dealer's~~ license. The exclusive purpose of distribution
 588 of the restricted-use pesticide is to keep it from becoming a
 589 hazardous waste as defined in s. 403.703(13).

590 Section 20. Subsections (2) and (3) of section 487.091,
 591 Florida Statutes, are amended to read:

592 487.091 Tolerances, deficiencies, and penalties.—

593 (2) If a pesticide is found by analysis to be deficient in
 594 an active ingredient beyond the tolerance as provided in this
 595 part, the registrant is subject to a penalty for the deficiency
 596 in the Class III category pursuant to s. 570.971, not to exceed
 597 ~~\$10,000~~ per violation. However, no penalty shall be assessed
 598 when the official sample was taken from a pesticide that was in

599 the possession of a consumer for more than 45 days after ~~from~~
 600 the date of purchase by that consumer, or when the product label
 601 specifies that the product should be used by an expiration date
 602 that has passed. Procedures for assessing penalties shall be
 603 established by rule, based on the degree of the deficiency.
 604 Penalties assessed shall be paid to the consumer or, in the
 605 absence of a known consumer, the department. If the penalty is
 606 not paid within the prescribed period ~~of time~~ as established by
 607 rule, the department may deny, suspend, or revoke the
 608 registration of any pesticide.

609 (3) If a pesticide is found to be ineffective, it shall be
 610 deemed to be misbranded and subject to a penalty in the Class
 611 III category pursuant to s. 570.971 for each ~~as established by~~
 612 ~~rule, not to exceed \$10,000 per violation.~~

613 Section 21. Section 487.159, Florida Statutes, is amended
 614 to read:

615 487.159 Damage or injury to property, animal, or person;
 616 mandatory report of damage or injury, ~~time for filing; failure~~
 617 ~~to file.-~~

618 ~~(1) The person claiming damage or injury to property,~~
 619 ~~animal, or human beings from application of a pesticide shall~~
 620 ~~file with the department a written statement claiming damages,~~
 621 ~~on a form prescribed by the department, within 48 hours after~~
 622 ~~the damage or injury becomes apparent. The statement shall~~
 623 ~~contain, but shall not be limited to, the name of the person~~
 624 ~~responsible for the application of the pesticide, the name of~~

625 ~~the owner or lessee of the land on which the crop is grown and~~
 626 ~~for which the damages are claimed, and the date on which it is~~
 627 ~~alleged that the damages occurred. The department shall~~
 628 ~~investigate the alleged damages and notify all concerned parties~~
 629 ~~of its findings. If the findings reveal a violation of the~~
 630 ~~provisions of this part, the department shall determine an~~
 631 ~~appropriate penalty, as provided in this part. The filing of a~~
 632 ~~statement or the failure to file such a statement need not be~~
 633 ~~alleged in any complaint which might be filed in a court of law,~~
 634 ~~and the failure to file the statement shall not be considered~~
 635 ~~any bar to the maintenance of any criminal or civil action.~~

636 ~~(1)(2)~~ A ~~It is the duty of any licensee shall~~ to report
 637 unreasonable adverse effects on the environment or damage ~~to~~
 638 ~~property~~ or injury to human beings, animals, plants, or other
 639 property ~~a person~~ as the result of the application of a
 640 restricted-use pesticide by the licensee or by an applicator or
 641 mixer-loader under the licensee's direct supervision, if and
 642 when the licensee has knowledge of such damage or injury. ~~It is~~
 643 ~~also the express intent of this section to require all~~
 644 Physicians shall ~~to~~ report all pesticide-related illnesses or
 645 injuries to the nearest county health department, which shall
 646 ~~will~~ notify the department so that the department may establish
 647 a pesticide incident monitoring system within the Division of
 648 Agricultural Environmental Services.

649 ~~(2)(3)~~ When damage or injury to human beings, animals,
 650 plants, or other property as the result of the application of a

651 restricted-use pesticide is alleged to have been done, the
 652 person claiming such damage or injury ~~claimant~~ shall allow
 653 ~~permit~~ the licensee and the licensee's representatives to
 654 observe within reasonable hours the alleged damage or injury in
 655 order that the damage or injury may be examined. The failure of
 656 the person claiming such damage or injury ~~claimant~~ to allow
 657 ~~permit~~ observation and examination of the alleged damage or
 658 injury shall automatically bar the claim against the licensee.

659 Section 22. Section 487.160, Florida Statutes, is amended
 660 to read:

661 487.160 Records.—Licensed private applicators, supervising
 662 ~~15 or more unlicensed applicators or mixer loaders and~~ licensed
 663 public applicators, and licensed commercial applicators shall
 664 maintain records as the department may determine by rule with
 665 respect to the application of restricted pesticides, including,
 666 but not limited to, the type and quantity of pesticide, method
 667 of application, crop treated, and dates and location of
 668 application. ~~Other licensed private applicators shall maintain~~
 669 ~~records as the department may determine by rule with respect to~~
 670 ~~the date, type, and quantity of restricted-use pesticides used.~~
 671 Licensees shall keep records for ~~a period of~~ 2 years from the
 672 date of the application of the pesticide to which the records
 673 refer, ~~and~~ shall furnish to the department a copy of the records
 674 upon written request by the department.

675 Section 23. Section 487.172, Florida Statutes, is
 676 repealed.

677 Section 24. Paragraph (e) of subsection (1) of section
 678 487.175, Florida Statutes, is amended to read:

679 487.175 Penalties; administrative fine; injunction.—

680 (1) In addition to any other penalty provided in this
 681 part, when the department finds any person, applicant, or
 682 licensee has violated any provision of this part or rule adopted
 683 under this part, it may enter an order imposing any one or more
 684 of the following penalties:

685 (e) Imposition of an administrative fine in the Class III
 686 category pursuant to s. 570.971 ~~not to exceed \$10,000~~ for each
 687 violation. When imposing a any fine under this paragraph, the
 688 department shall consider the degree and extent of harm caused
 689 by the violation, the cost of rectifying the damage, the amount
 690 of money the violator benefited from by noncompliance, whether
 691 the violation was committed willfully, and the compliance record
 692 of the violator.

693 Section 25. Subsection (8) of section 487.2031, Florida
 694 Statutes, is renumbered as subsection (7), and present
 695 subsection (7) of that section is amended to read:

696 487.2031 Definitions.—For the purposes of this part, the
 697 term:

698 (8) ~~(7)~~ "~~Material~~ Safety data sheet" means written,
 699 electronic, or printed material concerning an agricultural
 700 pesticide that sets forth the following information:

701 (a) The chemical name and the common name of the
 702 agricultural pesticide.

703 (b) The hazards or other risks in the use of the
 704 agricultural pesticide, including:

705 1. The potential for fire, explosions, corrosivity, and
 706 reactivity.

707 2. The known acute health effects and chronic health
 708 effects of exposure to the agricultural pesticide, including
 709 those medical conditions that are generally recognized as being
 710 aggravated by exposure to the agricultural pesticide.

711 3. The primary routes of entry and symptoms of
 712 overexposure.

713 (c) The proper handling practices, necessary personal
 714 protective equipment, and other proper or necessary safety
 715 precautions in circumstances that involve the use of or exposure
 716 to the agricultural pesticide, including appropriate emergency
 717 treatment in case of overexposure.

718 (d) The emergency procedures for spills, fire, disposal,
 719 and first aid.

720 (e) A description of the known specific potential health
 721 risks posed by the agricultural pesticide, which is written in
 722 lay terms and is intended to alert a ~~any~~ person who reads the
 723 information.

724 (f) The year and month, if available, that the information
 725 was compiled and the name, address, and emergency telephone
 726 number of the manufacturer responsible for preparing the
 727 information.

728 Section 26. Section 487.2051, Florida Statutes, is amended

729 to read:

730 487.2051 Availability of agricultural pesticide
 731 information to workers and medical personnel.-

732 (1) An agricultural employer shall make available
 733 agricultural pesticide information concerning any agricultural
 734 pesticide to a ~~any~~ worker:

735 (a) Who enters an agricultural-pesticide-treated area on
 736 an agricultural establishment where:

737 1. An agricultural pesticide has been applied within 30
 738 days of that entry; or

739 2. A restricted-entry interval has been in effect; or

740 (b) Who may be exposed to the agricultural pesticide
 741 during normal conditions of use or in a foreseeable emergency.

742 (2) The agricultural pesticide information provided
 743 pursuant to subsection (1) must be in the form of a fact sheet
 744 or ~~a material~~ safety data sheet. The agricultural employer shall
 745 provide a written copy of the information provided pursuant to
 746 subsection (1) within 2 working days after a request for the
 747 information by a worker or a designated representative. In the
 748 case of a pesticide-related medical emergency, the agricultural
 749 employer shall provide a written copy of the information
 750 promptly upon the request of the worker, the designated
 751 representative, or medical personnel treating the worker.

752 (3) Upon the initial purchase of a product and with the
 753 first purchase after the fact sheet or ~~material~~ safety data
 754 sheet is updated, the distributor, manufacturer, or importer of

755 agricultural pesticides shall obtain or develop and provide each
 756 direct purchaser of an agricultural pesticide with a fact sheet
 757 or material safety data sheet. If the fact sheet or material
 758 safety data sheet ~~or fact sheet~~ for the agricultural pesticide
 759 is not available when the agricultural pesticide is purchased,
 760 the agricultural employer shall take appropriate and timely
 761 steps to obtain the fact sheet or material safety data sheet ~~or~~
 762 ~~fact sheet~~ from the distributor, the manufacturer, the
 763 department, a federal agency, or another distribution source.

764 (4) The department shall produce and make available to a
 765 trainer a one-page general agricultural pesticide safety sheet.
 766 The pesticide safety sheet must be in a language understandable
 767 to the worker and must include, but need not be limited to,
 768 illustrated instructions on preventing agricultural pesticide
 769 exposure and toll-free telephone numbers to the Florida Poison
 770 Control Centers. The trainer shall provide the pesticide safety
 771 sheet to the worker pursuant to the United States Environmental
 772 Protection Agency Worker Protection Standard, 40 C.F.R. s.
 773 170.130.

774 Section 27. Paragraph (c) of subsection (2) of section
 775 493.6118, Florida Statutes, is amended to read:

776 493.6118 Grounds for disciplinary action.—

777 (2) When the department finds any violation of subsection
 778 (1), it may do one or more of the following:

779 (c) Impose an administrative fine in the Class I category
 780 pursuant to s. 570.971 ~~not to exceed \$1,000~~ for every count or

781 separate offense.

782 Section 28. Subsections (3) and (5) of section 493.6120,
783 Florida Statutes, are amended to read:

784 493.6120 Violations; penalty.—

785 (3) Except as otherwise provided in this chapter, a person
786 who violates any provision of this chapter except subsection (7)
787 commits a misdemeanor of the first degree, punishable as
788 provided in s. 775.082 or s. 775.083. The department may also
789 seek the imposition of a civil penalty in the Class II category
790 pursuant to s. 570.971 upon a withhold of adjudication of guilt
791 or an adjudication of guilt in a criminal case.

792 (5) A person who violates or disregards a cease and desist
793 order issued by the department commits a misdemeanor of the
794 first degree, punishable as provided in s. 775.082 or s.
795 775.083. In addition, the department may seek the imposition of
796 a civil penalty in the Class II category pursuant to s. 570.971
797 ~~not to exceed \$5,000.~~

798 Section 29. Subsection (1) of section 496.420, Florida
799 Statutes, is amended to read:

800 496.420 Civil remedies and enforcement.—

801 (1) In addition to other remedies authorized by law, the
802 department may bring a civil action in circuit court to enforce
803 ss. 496.401-496.424 or s. 496.426. Upon a finding that a ~~any~~
804 person has violated any of these sections, a court may make any
805 necessary order or enter a judgment including, but not limited
806 to, a temporary or permanent injunction, a declaratory judgment,

HB 7091

2014

807 the appointment of a general or special magistrate or receiver,
 808 the sequestration of assets, the reimbursement of persons from
 809 whom contributions have been unlawfully solicited, the
 810 distribution of contributions pursuant to ~~in accordance with~~ the
 811 charitable or sponsor purpose expressed in the registration
 812 statement or pursuant to ~~in accordance with~~ the representations
 813 made to the person solicited, the reimbursement of the
 814 department for investigative costs and attorney, ~~attorney's~~ fees
 815 and costs, and any other equitable relief the court finds
 816 appropriate. Upon a finding that a any person has violated any
 817 provision of ss. 496.401-496.424 or s. 496.426 with actual
 818 knowledge or knowledge fairly implied on the basis of objective
 819 circumstances, a court may enter an order imposing a civil fine
 820 in the Class III category pursuant to s. 570.971 for each
 821 ~~penalty in an amount not to exceed \$10,000 per~~ violation.

822 Section 30. Paragraph (p) of subsection (1) of section
 823 500.03, Florida Statutes, is amended to read:

824 500.03 Definitions; construction; applicability.-

825 (1) For the purpose of this chapter, the term:

826 (p) "Food establishment" means a a ~~any~~ factory, food outlet,
 827 or ~~any~~ other facility manufacturing, processing, packing,
 828 holding, or preparing food or selling food at wholesale or
 829 retail. The term does not include a a ~~any~~ business or activity
 830 that is regulated under s. 413.051, s. 500.80, chapter 509, or
 831 chapter 601. The term includes tomato packinghouses and
 832 repackers but does not include any other establishments that

833 pack fruits and vegetables in their raw or natural states,
 834 including those fruits or vegetables that are washed, colored,
 835 or otherwise treated in their unpeeled, natural form before they
 836 are marketed.

837 Section 31. Paragraphs (a) and (b) of subsection (1) and
 838 subsection (8) of section 500.12, Florida Statutes, are amended
 839 to read:

840 500.12 Food permits; building permits.—

841 (1)(a) A food permit from the department is required of
 842 any person who operates a food establishment or retail food
 843 store, except:

844 1. Persons operating minor food outlets, ~~including, but~~
 845 ~~not limited to, video stores,~~ that sell food that is
 846 commercially prepackaged, not potentially hazardous, and not
 847 time or temperature controlled for safety, if nonpotentially
 848 ~~hazardous candy, chewing gum, soda, or popcorn,~~ provided the
 849 shelf space for those items does not exceed 12 total linear feet
 850 and no other food is sold by the minor food outlet.

851 2. Persons subject to continuous, onsite federal or state
 852 inspection.

853 3. Persons selling only legumes in the shell, either
 854 parched, roasted, or boiled.

855 4. Persons selling sugar cane or sorghum syrup that has
 856 been boiled and bottled on a premise located within the state.
 857 Such bottles must contain a label listing the producer's name
 858 and street address, all added ingredients, the net weight or

859 volume of the product, and a statement that reads, "This product
 860 has not been produced in a facility permitted by the Florida
 861 Department of Agriculture and Consumer Services."

862 (b) Each food establishment and retail food store
 863 regulated under this chapter must apply for and receive a food
 864 permit before operation begins. An application for a food permit
 865 from the department must be accompanied by a fee in an amount
 866 determined by department rule. The department shall adopt by
 867 rule a schedule of fees to be paid by each food establishment
 868 and retail food store as a condition of issuance or renewal of a
 869 food permit. Such fees, ~~which~~ may not exceed \$650 and shall be
 870 used solely for the recovery of costs for the services provided,
 871 except that the fee accompanying an application for a food
 872 permit for operating a bottled water plant may not exceed \$1,000
 873 and the fee accompanying an application for a food permit for
 874 operating a packaged ice plant may not exceed \$250. The fee for
 875 operating a bottled water plant or a packaged ice plant shall be
 876 set by rule of the department. Food permits are not transferable
 877 from one person or physical location to another. Food permits
 878 must be renewed annually on or before January 1. If an
 879 application for renewal of a food permit is not received by the
 880 department within 30 days after its due date, a late fee, ~~in an~~
 881 ~~amount~~ not exceeding \$100, ~~must~~ be paid in addition to the food
 882 permit fee before the department may issue the food permit. The
 883 moneys collected shall be deposited in the General Inspection
 884 Trust Fund.

885 (8) A ~~Any~~ person who, ~~after October 1, 2000,~~ applies for
 886 or renews a local business tax certificate ~~occupational license~~
 887 to engage in business as a food establishment or retail food
 888 store must exhibit a current food permit or an active letter of
 889 exemption from the department before the local business tax
 890 certificate ~~occupational license~~ may be issued or renewed.

891 Section 32. Subsections (1), (2), and (3) of section
 892 500.121, Florida Statutes, are amended, and subsection (7) is
 893 added to that section, to read:

894 500.121 Disciplinary procedures.—

895 (1) In addition to the suspension procedures provided in
 896 s. 500.12, if applicable, the department may impose an
 897 administrative fine in the Class II category pursuant to s.
 898 570.971 ~~a fine not to exceed \$5,000~~ against any retail food
 899 store, food establishment, or cottage food operation that
 900 violates this chapter, which fine, when imposed and paid, shall
 901 be deposited by the department into the General Inspection Trust
 902 Fund. The department may revoke or suspend the permit of any
 903 such retail food store or food establishment if it is satisfied
 904 that the retail food store or food establishment has:

- 905 (a) ~~Violated any of the provisions of~~ this chapter.
- 906 (b) Violated or aided or abetted in the violation of any
 907 law of this state governing or applicable to retail food stores
 908 or food establishments or any lawful rules of the department.
- 909 (c) Knowingly committed, or been a party to, any material
 910 fraud, misrepresentation, conspiracy, collusion, trick, scheme,

911 or device whereby another ~~any other~~ person, lawfully relying
 912 upon the word, representation, or conduct of a retail food store
 913 or food establishment, acts to her or his injury or damage.

914 (d) Committed any act or conduct of the same or different
 915 character than that enumerated which constitutes fraudulent or
 916 dishonest dealing.

917 (2) A ~~Any~~ manufacturer, processor, packer, or distributor
 918 who misrepresents or mislabels the country of origin of any food
 919 may, in addition to any penalty provided in this chapter, be
 920 subject to an additional administrative fine in the Class II
 921 category pursuant to s. 570.971 for each ~~of up to \$10,000 per~~
 922 violation.

923 (3) Any administrative order made and entered by the
 924 department imposing a fine pursuant to this section shall
 925 specify the amount of the fine and the time limit for payment
 926 thereof, not exceeding 21 ~~45~~ days, and, upon failure of the
 927 permit holder to pay the fine within that time, the permit is
 928 subject to suspension or revocation.

929 (7) The department may determine that a food establishment
 930 regulated under this chapter requires immediate closure when the
 931 food establishment fails to comply with this chapter or rules
 932 adopted under this chapter and presents an imminent threat to
 933 the public health, safety, and welfare. The department may
 934 accept inspection results from other state and local building
 935 officials and other regulatory agencies as justification for
 936 such action. The department shall, upon such a determination,

937 issue an immediate final order to close a food establishment as
 938 follows:

939 (a) The division director or designee shall determine that
 940 the continued operation of a food establishment presents an
 941 immediate danger to the public health, safety, and welfare.

942 (b) Upon such determination, the department shall issue an
 943 immediate final order directing the owner or operator of the
 944 food establishment to cease operation and close the food
 945 establishment. The department shall serve the order upon the
 946 owner, operator, or agent thereof of the food establishment. The
 947 department may attach a closed-for-operation sign to the food
 948 establishment while the order remains in place.

949 (c) The department shall inspect the food establishment
 950 within 24 hours after the issuance of the order. Upon a
 951 determination that the food establishment has met the applicable
 952 requirements to resume operations, the department shall serve a
 953 release upon the owner, operator, or agent thereof of the food
 954 establishment.

955 (d) A food establishment ordered by the department to
 956 cease operation and close under this section shall remain closed
 957 until released by the department or by a judicial order to
 958 reopen.

959 (e) It is a misdemeanor of the second degree, punishable
 960 as provided in s. 775.082 or s. 775.083, for a person to deface
 961 or remove a closed-for-operation sign placed on a food
 962 establishment by the department or for the owner or operator of

963 | a food establishment to resist closure of the establishment by
 964 | the department. The department may impose administrative
 965 | sanctions for violations of this paragraph.

966 | (f) The department may adopt rules to administer this
 967 | subsection.

968 | Section 33. Subsection (1) of section 500.147, Florida
 969 | Statutes, is amended to read:

970 | 500.147 Inspection of food establishments, food records,
 971 | and vehicles.—

972 | (1) The department or its duly authorized agent shall have
 973 | free access at all reasonable hours to any food establishment,
 974 | any food records, or any vehicle being used to transport or hold
 975 | food in commerce for the purpose of inspecting such
 976 | establishment, records, or vehicle to determine whether ~~if any~~
 977 | ~~provision of~~ this chapter or any rule adopted under this ~~the~~
 978 | chapter is being violated; to secure a sample or a specimen of
 979 | any food after paying or offering to pay for such sample; to see
 980 | that all sanitary rules adopted by the department are complied
 981 | with; to facilitate tracing of food products in the event of a
 982 | food-borne illness outbreak or identification of an adulterated
 983 | or misbranded food item; or to enforce the special-occupancy
 984 | provisions of the Florida Building Code which apply to food
 985 | establishments.

986 | Section 34. Subsection (3) of section 500.165, Florida
 987 | Statutes, is amended to read:

988 | 500.165 Transporting shipments of food items; rules;

989 penalty.-

990 (3) A ~~Any~~ person who violates subsection (1) or the rules
 991 adopted under subsection (2) is subject to an administrative
 992 fine in the Class III category pursuant to s. 570.971 for each
 993 ~~not to exceed \$50,000 per~~ violation. In addition, a ~~any~~ person
 994 who violates subsection (1) commits ~~is guilty of~~ a misdemeanor
 995 of the first degree, punishable as provided in s. 775.082 or s.
 996 775.083.

997 Section 35. Section 500.172, Florida Statutes, is amended
 998 to read:

999 500.172 Embargoing, detaining, destroying of food, ~~or~~
 1000 food-processing equipment, or areas that are ~~is~~ in violation.-

1001 (1) When the department or its duly authorized agent
 1002 finds, or has probable cause to believe, that any food, ~~or~~ food-
 1003 processing equipment, food-processing area, or food storage area
 1004 is in violation of this chapter or any rule adopted under this
 1005 chapter so as to be dangerous, unwholesome, fraudulent, or
 1006 insanitary within the meaning of this chapter, an agent of the
 1007 department may issue and enforce a stop-sale, stop-use, removal,
 1008 or hold order, which order gives notice that such article, ~~or~~
 1009 processing equipment, processing area, or storage area is, or is
 1010 suspected of being, in violation and has been detained or
 1011 embargoed and which order warns all persons not to remove, use,
 1012 or dispose of such article, ~~or~~ processing equipment, processing
 1013 area, or storage area by sale or otherwise until permission for
 1014 removal, use, or disposal is given by the department or the

1015 court. A person may not ~~It is unlawful for any person to~~ remove,
 1016 use, or dispose of such detained or embargoed article, ~~or~~
 1017 processing equipment, processing area, or storage area by sale
 1018 or otherwise without such permission.

1019 (2) If an article, ~~or~~ processing equipment, a processing
 1020 area, or a storage area detained or embargoed under subsection
 1021 (1) has been found by the department to be in violation of law
 1022 or rule, the department may, within a reasonable period ~~of time~~
 1023 after the issuance of such notice, petition the circuit court,
 1024 in the jurisdiction of which the article, ~~or~~ processing
 1025 equipment, processing area, or storage area is detained or
 1026 embargoed, for an order for condemnation of such article, ~~or~~
 1027 processing equipment, processing area, or storage area. When the
 1028 department has found that an article, ~~or~~ processing equipment,
 1029 a processing area, or a storage area so detained or embargoed is
 1030 not in violation, the department shall rescind the stop-sale,
 1031 stop-use, removal, or hold order.

1032 (3) If the court finds that the detained or embargoed
 1033 article, ~~or~~ processing equipment, processing area, or storage
 1034 area is in violation, such article, ~~or~~ processing equipment,
 1035 processing area, or storage area shall, after entry of the
 1036 decree, be destroyed or made sanitary at the expense of the
 1037 claimant thereof under the supervision of the department, ~~and~~
 1038 all court costs, fees, and storage and other proper expenses
 1039 shall be taxed against the claimant of such article, ~~or~~
 1040 processing equipment, processing area, or storage area or her or

1041 his agent. However, if the violation can be corrected by proper
 1042 labeling of the article or sanitizing of the processing
 1043 equipment, processing area, or storage area, and after such
 1044 costs, fees, and expenses have been paid and a good and
 1045 sufficient bond, conditioned that such article be so labeled or
 1046 processed or such processing equipment, processing area, or
 1047 storage area so sanitized, has been executed, the court may by
 1048 order direct that such article, ~~or~~ processing equipment,
 1049 processing area, or storage area be made available ~~delivered~~ to
 1050 the claimant thereof for such labeling, processing, or
 1051 sanitizing under the supervision of the department. The expense
 1052 of such supervision shall be paid by the claimant. Such bond
 1053 shall be returned to the claimant of the article, ~~or~~ processing
 1054 equipment, processing area, or storage area on representation to
 1055 the court by the department that the article, ~~or~~ processing
 1056 equipment, processing area, or storage area is no longer in
 1057 violation of this chapter and that the expenses of such
 1058 supervision have been paid.

1059 (4) When the department or any of its authorized agents
 1060 finds in any room, building, vehicle, or other structure any
 1061 meat, seafood, poultry, vegetable, fruit, or other perishable
 1062 articles which are unsound or contain any filthy, decomposed, or
 1063 putrid substances, or which may be poisonous or deleterious to
 1064 health or otherwise unsafe, the same is ~~being hereby~~ declared to
 1065 be a nuisance, and the department, ~~or~~ its authorized agent, ~~or~~
 1066 shall ~~forthwith~~ condemn or destroy the same, ~~or~~ in any other

1067 manner render the same unsalable as human food.

1068 Section 36. Sections 500.301, 500.302, 500.303, 500.304,
 1069 500.305, 500.306, and 500.601, Florida Statutes, are repealed.

1070 Section 37. Paragraph (b) of subsection (3) of section
 1071 500.70, Florida Statutes, is amended to read:

1072 500.70 Tomato food safety standards; inspections;
 1073 penalties; tomato good agricultural practices; tomato best
 1074 management practices.-

1075 (3)

1076 (b) The department may impose an administrative fine in
 1077 the Class II category pursuant to s. 570.971 for each ~~not to~~
 1078 ~~exceed \$5,000 per~~ violation, or issue a written notice or
 1079 warning under s. 500.179, against a person who violates any
 1080 applicable provision of this section or any rule adopted under
 1081 this section.

1082 Section 38. Subsection (3) and paragraph (b) of subsection
 1083 (4) of section 501.019, Florida Statutes, are amended to read:

1084 501.019 Health studios; penalties.-

1085 (3) The department may institute proceedings in the
 1086 appropriate circuit court to recover any penalties or damages
 1087 allowed in this section and for injunctive relief to enforce
 1088 compliance with ss. 501.012-501.019 or any rule or order of the
 1089 department. The department may seek a civil penalty in the Class
 1090 II category pursuant to s. 570.971 ~~of up to \$5,000~~ for each
 1091 violation of this section.

1092 (4)

1093 (b) Upon a finding as set forth in paragraph (a), the
 1094 department may enter an order doing one or more of the
 1095 following:

1096 1. Issuing a notice of noncompliance pursuant to s.
 1097 120.695.

1098 2. For a violation of s. 501.015 or s. 501.016, imposing
 1099 an administrative fine in the Class II category pursuant to s.
 1100 570.971 for each ~~not to exceed \$5,000 per~~ violation.

1101 ~~3. For a violation of s. 501.013, s. 501.017, or s.~~
 1102 ~~501.018, imposing an administrative fine not to exceed \$500 per~~
 1103 ~~violation.~~

1104 ~~3.4.~~ Directing that the health studio cease and desist
 1105 specified activities.

1106 ~~4.5.~~ Refusing to register or revoking or suspending a
 1107 registration.

1108 ~~5.6.~~ Placing the registrant on probation for a period of 5
 1109 years, subject to such conditions as the department may specify
 1110 by rule.

1111 Section 39. Subsection (9) of section 501.059, Florida
 1112 Statutes, is amended, and subsection (12) is added to that
 1113 section, to read:

1114 501.059 Telephone solicitation.—

1115 (9)(a) The department shall investigate any complaints
 1116 received concerning violations of this section. If, after
 1117 investigating a ~~any~~ complaint, the department finds that there
 1118 has been a violation of this section, the department or the

1119 Department of Legal Affairs may bring an action to impose a
 1120 civil penalty and to seek other relief, including injunctive
 1121 relief, as the court deems appropriate against the telephone
 1122 solicitor. The civil penalty shall be in the Class III category
 1123 pursuant to s. 570.971 for each ~~may not exceed \$10,000 per~~
 1124 violation and shall be deposited in the General Inspection Trust
 1125 Fund if the action or proceeding was brought by the department,
 1126 or the Legal Affairs Revolving Trust Fund if the action or
 1127 proceeding was brought by the Department of Legal Affairs. This
 1128 civil penalty may be recovered in any action brought under this
 1129 part by the department, or the department may terminate any
 1130 investigation or action upon agreement by the person to pay a
 1131 stipulated civil penalty. The department or the court may waive
 1132 any civil penalty if the person has previously made full
 1133 restitution or reimbursement or has paid actual damages to the
 1134 consumers who have been injured by the violation.

1135 (b) The department may, as an alternative to the civil
 1136 penalties provided in paragraph (a), impose an administrative
 1137 fine in the Class I category pursuant to s. 570.971 ~~not to~~
 1138 ~~exceed \$1,000~~ for each act or omission that constitutes a
 1139 violation of this section. An administrative proceeding that
 1140 could result in the entry of an order imposing an administrative
 1141 penalty must be conducted pursuant to ~~in accordance with~~ chapter
 1142 120.

1143 (12) The department may adopt rules to implement this
 1144 section.

1145 Section 40. Paragraph (b) of subsection (2) of section
 1146 501.612, Florida Statutes, is amended to read:

1147 501.612 Grounds for departmental action against licensure
 1148 applicants or licensees.—

1149 (2) Upon a finding as set forth in subsection (1), the
 1150 department may enter an order:

1151 (b) Imposing an administrative fine in the Class III
 1152 category pursuant to s. 570.971 ~~not to exceed \$10,000~~ for each
 1153 act or omission which constitutes a violation under this part.

1154 Section 41. Section 501.619, Florida Statutes, is amended
 1155 to read:

1156 501.619 Civil penalties.—A ~~Any~~ person who engages in any
 1157 act or practice declared in this part to be unlawful is liable
 1158 for a civil penalty in the Class III category pursuant to s.
 1159 570.971 ~~of not more than \$10,000~~ for each such violation. This
 1160 civil penalty may be recovered in any action brought under this
 1161 part by the department, or the department may terminate any
 1162 investigation or action upon agreement by the person to pay a
 1163 stipulated civil penalty. The department or the court may waive
 1164 any such civil penalty or other fines or costs if the person has
 1165 previously made full restitution or reimbursement or has paid
 1166 actual damages to the purchasers who have been injured by the
 1167 unlawful act or practice.

1168 Section 42. Paragraph (a) of subsection (1) of section
 1169 501.922, Florida Statutes, is amended to read:

1170 501.922 Violation.—

1171 (1) The department may enter an order imposing one or more
 1172 of the following penalties against any person who violates ss.
 1173 501.91-501.923 or who impedes, obstructs, or hinders the
 1174 department in performing its duties under those sections:

1175 (a) Imposition of an administrative fine in the Class II
 1176 category pursuant to s. 570.971 for each ~~of not more than \$1,000~~
 1177 ~~per violation for a first time offender. For a second time or~~
 1178 ~~repeat offender, or any person who willfully and intentionally~~
 1179 ~~violates ss. 501.91 501.923, the administrative fine may not~~
 1180 ~~exceed \$5,000 per violation.~~

1181 Section 43. Paragraph (b) of subsection (1) of section
 1182 502.231, Florida Statutes, is amended to read:

1183 502.231 Penalty and injunction.-

1184 (1) The department may enter an order imposing one or more
 1185 of the following penalties against any person who violates any
 1186 provision of this chapter:

1187 (b) Imposition of an administrative fine ~~not to exceed:~~

1188 1. In the Class II category pursuant to s. 570.971 for
 1189 each ~~Ten thousand dollars per~~ violation in the case of a frozen
 1190 dessert licensee;

1191 2. Ten percent of the license fee or \$100, whichever is
 1192 greater, for failure to report the information described in s.
 1193 502.053(3)(d); or

1194 3. In the Class I category pursuant to s. 570.971 for each
 1195 ~~One thousand dollars per~~ occurrence for any other violation.

1196

1197 When imposing a fine under this paragraph, the department must
 1198 consider the degree and extent of harm caused by the violation,
 1199 the cost of rectifying the damage, the benefit to the violator,
 1200 whether the violation was committed willfully, and the
 1201 violator's compliance record.

1202 Section 44. Subsection (1) of section 507.09, Florida
 1203 Statutes, is amended to read:

1204 507.09 Administrative remedies; penalties.—

1205 (1) The department may enter an order doing one or more of
 1206 the following if the department finds that a mover or moving
 1207 broker, or a person employed or contracted by a mover or broker,
 1208 has violated or is operating in violation of this chapter or the
 1209 rules or orders issued pursuant to ~~in accordance with~~ this
 1210 chapter:

1211 (a) Issuing a notice of noncompliance under s. 120.695.

1212 (b) Imposing an administrative fine in the Class II
 1213 category pursuant to s. 570.971 ~~not to exceed \$5,000~~ for each
 1214 act or omission.

1215 (c) Directing that the person cease and desist specified
 1216 activities.

1217 (d) Refusing to register or revoking or suspending a
 1218 registration.

1219 (e) Placing the registrant on probation ~~for a period of~~
 1220 ~~time~~, subject to the conditions specified by the department.

1221 Section 45. Subsection (2) of section 507.10, Florida
 1222 Statutes, is amended to read:

1223 507.10 Civil penalties; remedies.—

1224 (2) The department may seek a civil penalty in the Class
 1225 II category pursuant to s. 570.971 ~~of up to \$5,000~~ for each
 1226 violation of this chapter.

1227 Section 46. Paragraph (g) of subsection (2) and paragraph
 1228 (c) of subsection (3) of section 509.032, Florida Statutes, are
 1229 amended to read:

1230 509.032 Duties.—

1231 (2) INSPECTION OF PREMISES.—

1232 (g) In inspecting public food service establishments, the
 1233 department shall provide each inspected establishment with the
 1234 food-recovery brochure developed under s. 595.420 ~~570.0725~~.

1235 (3) SANITARY STANDARDS; EMERGENCIES; TEMPORARY FOOD
 1236 SERVICE EVENTS.—The division shall:

1237 (c) Administer a public notification process for temporary
 1238 food service events and distribute educational materials that
 1239 address safe food storage, preparation, and service procedures.

1240 1. Sponsors of temporary food service events shall notify
 1241 the division not less than 3 days before ~~prior to~~ the scheduled
 1242 event of the type of food service proposed, the time and
 1243 location of the event, a complete list of food service vendors
 1244 participating in the event, the number of individual food
 1245 service facilities each vendor will operate at the event, and
 1246 the identification number of each food service vendor's current
 1247 license as a public food service establishment or temporary food
 1248 service event licensee. Notification may be completed orally, by

1249 telephone, in person, or in writing. A public food service
 1250 establishment or food service vendor may not use this
 1251 notification process to circumvent the license requirements of
 1252 this chapter.

1253 2. The division shall keep a record of all notifications
 1254 received for proposed temporary food service events and shall
 1255 provide appropriate educational materials to the event sponsors,
 1256 including the food-recovery brochure developed under s. 595.420
 1257 ~~570.0725~~.

1258 3.a. A public food service establishment or other food
 1259 service vendor must obtain one of the following classes of
 1260 license from the division: an individual license, for a fee of
 1261 no more than \$105, for each temporary food service event in
 1262 which it participates; or an annual license, for a fee of no
 1263 more than \$1,000, that entitles the licensee to participate in
 1264 an unlimited number of food service events during the license
 1265 period. The division shall establish license fees, by rule, and
 1266 may limit the number of food service facilities a licensee may
 1267 operate at a particular temporary food service event under a
 1268 single license.

1269 b. Public food service establishments holding current
 1270 licenses from the division may operate under the regulations of
 1271 such a license at temporary food service events of 3 days or
 1272 less in duration.

1273 Section 47. Paragraph (a) of subsection (1) of section
 1274 525.16, Florida Statutes, is amended to read:

1275 525.16 Administrative fine; penalties; prosecution of
 1276 cases by state attorney.-

1277 (1)(a) The department may enter an order imposing one or
 1278 more of the following penalties against a ~~any~~ person who
 1279 violates ~~any of the provisions of~~ this chapter or the rules
 1280 adopted under this chapter or impedes, obstructs, or hinders the
 1281 department in the performance of its duty in connection with ~~the~~
 1282 ~~provisions of~~ this chapter:

- 1283 1. Issuance of a warning letter.
- 1284 2. Imposition of an administrative fine in the Class II
 1285 category pursuant to s. 570.971 for each ~~of not more than \$1,000~~
 1286 ~~per violation for a first time offender. For a second time or~~
 1287 ~~repeat offender, or any person who is shown to have willfully~~
 1288 ~~and intentionally violated any provision of this chapter, the~~
 1289 ~~administrative fine shall not exceed \$5,000 per violation. When~~
 1290 imposing any fine under this section, the department shall
 1291 consider the degree and extent of harm caused by the violation,
 1292 the cost of rectifying the damage, the amount of money the
 1293 violator benefited from by noncompliance, whether the violation
 1294 was committed willfully, and the compliance record of the
 1295 violator.

1296 3. Revocation or suspension of any registration issued by
 1297 the department.

1298 Section 48. Subsection (1) of section 526.311, Florida
 1299 Statutes, is amended to read:

1300 526.311 Enforcement; civil penalties; injunctive relief.-

1301 (1) A ~~Any~~ person who knowingly violates this act shall be
 1302 subject to a civil penalty in the Class III category pursuant to
 1303 s. 570.971 for each ~~not to exceed \$10,000 per~~ violation. Each
 1304 day that a violation of this act occurs shall be considered a
 1305 separate violation, but the ~~no~~ civil penalty may not ~~shall~~
 1306 exceed \$250,000. ~~Any~~ Such a person shall also be liable for
 1307 attorney ~~attorney's~~ fees and shall be subject to an action for
 1308 injunctive relief.

1309 Section 49. Paragraph (b) of subsection (2) of section
 1310 526.55, Florida Statutes, is amended to read:

1311 526.55 Violation and penalties.—

1312 (2) If the department finds that a person has violated or
 1313 is operating in violation of ss. 526.50-526.56 or the rules or
 1314 orders adopted thereunder, the department may, by order:

1315 (b) Impose an administrative fine in the Class II category
 1316 pursuant to s. 570.971 ~~not to exceed \$5,000~~ for each violation;

1317 Section 50. Subsection (1) of section 527.13, Florida
 1318 Statutes, is amended to read:

1319 527.13 Administrative fines and warning letters.—

1320 (1) If a ~~any~~ person violates ~~any provision of~~ this chapter
 1321 or any rule adopted under this chapter ~~pursuant thereto~~ or a
 1322 cease and desist order, the department may impose civil or
 1323 administrative penalties in the Class II category pursuant to s.
 1324 570.971 not to exceed \$3,000 for each offense, suspend or revoke
 1325 the license or qualification issued to such person, or any of
 1326 the foregoing. The cost of the proceedings to enforce this

HB 7091

2014

1327 chapter may be added to any penalty imposed. The department may
 1328 allow the licensee a reasonable period, not to exceed 90 days,
 1329 within which to pay to the department the amount of the penalty
 1330 so imposed. If the licensee fails to pay the penalty in its
 1331 entirety to the department at its office at Tallahassee within
 1332 the period so allowed, the licenses of the licensee shall stand
 1333 revoked upon expiration of such period.

1334 Section 51. Subsection (1) of section 531.50, Florida
 1335 Statutes, is amended to read:

1336 531.50 Administrative fine, penalties, and offenses.—

1337 (1) The department may enter an order imposing one or more
 1338 of the following penalties against a ~~any~~ person who violates ~~any~~
 1339 ~~provision of~~ this chapter or any rule adopted under this chapter
 1340 or impedes, obstructs, or hinders the department in performing
 1341 ~~the performance of~~ its duties under ~~in connection with the~~
 1342 ~~provisions of~~ this chapter:

1343 (a) Issuance of a warning letter or notice.

1344 (b) Imposition of an administrative fine in the Class II
 1345 category pursuant to s. 570.971 for each of:

1346 ~~1. Up to \$1,000 for a first violation;~~

1347 ~~2. Up to \$2,500 for a second violation within 2 years~~
 1348 ~~after the first violation; or~~

1349 ~~3. Up to \$5,000 for a third violation within 2 years after~~
 1350 ~~the first violation.~~

1351

1352 When imposing any fine under this section, the department shall

1353 consider the degree and extent of potential harm caused by the
 1354 violation, the amount of money by which the violator benefited
 1355 from noncompliance, whether the violation was committed
 1356 willfully, and the compliance record of the violator. All fines,
 1357 monetary penalties, and costs received by the department shall
 1358 be deposited in the General Inspection Trust Fund for the
 1359 purpose of administering ~~the provisions of~~ this chapter.

1360 Section 52. Subsection (2) of section 534.52, Florida
 1361 Statutes, is amended to read:

1362 534.52 Violations; refusal, suspension, revocation;
 1363 penalties.—

1364 (2) In addition, or as an alternative to refusing,
 1365 suspending, or revoking a license in cases involving violations,
 1366 the department may impose an administrative a fine in the Class
 1367 I category pursuant to s. 570.971 not to exceed \$500 for the
 1368 first offense and not to exceed \$1,000 for the second or
 1369 subsequent violations. When imposed and paid, such fines shall
 1370 be deposited in the General Inspection Trust Fund.

1371 Section 53. Paragraphs (b) and (d) of subsection (7) of
 1372 section 539.001, Florida Statutes, are amended to read:

1373 539.001 The Florida Pawnbroking Act.—

1374 (7) ORDERS IMPOSING PENALTIES.—

1375 (b) Upon a finding as set forth in paragraph (a), the
 1376 agency may enter an order doing one or more of the following:

1377 1. Issuing a notice of noncompliance pursuant to s.
 1378 120.695.

1379 2. Imposing an administrative fine in the Class II
 1380 category pursuant to s. 570.971 ~~not to exceed \$5,000~~ for each
 1381 act which constitutes a violation of this section or a rule or
 1382 an order.

1383 3. Directing that the pawnbroker cease and desist
 1384 specified activities.

1385 4. Refusing to license or revoking or suspending a
 1386 license.

1387 5. Placing the licensee on probation ~~for a period of time,~~
 1388 subject to such conditions as the agency may specify.

1389 (d)1. When the agency, if a violation of this section
 1390 occurs, has reasonable cause to believe that a person is
 1391 operating in violation of this section, the agency may bring a
 1392 civil action in the appropriate court for temporary or permanent
 1393 injunctive relief and may seek other appropriate civil relief,
 1394 including a civil penalty in the Class II category pursuant to
 1395 s. 570.971 ~~not to exceed \$5,000~~ for each violation, restitution
 1396 and damages for injured customers, court costs, and reasonable
 1397 attorney ~~attorney's~~ fees.

1398 2. The agency may terminate any investigation or action
 1399 upon agreement by the offender to pay a stipulated civil
 1400 penalty, to make restitution or pay damages to customers, or to
 1401 satisfy any other relief authorized herein and requested by the
 1402 agency.

1403 Section 54. Paragraph (b) of subsection (4) and paragraph
 1404 (a) of subsection (5) of section 559.921, Florida Statutes, are

1405 amended to read:

1406 559.921 Remedies.—

1407 (4)

1408 (b) Upon a finding as set forth in paragraph (a), the
 1409 department may enter an order doing one or more of the
 1410 following:

1411 1. Issuing a notice of noncompliance pursuant to s.
 1412 120.695.

1413 2. Imposing an administrative fine in the Class I category
 1414 pursuant to s. 570.971 for each ~~not to exceed \$1,000 per~~
 1415 violation for each act which constitutes a violation of this
 1416 part or a rule or order.

1417 3. Directing that the motor vehicle repair shop cease and
 1418 desist specified activities.

1419 4. Refusing to register or revoking or suspending a
 1420 registration.

1421 5. Placing the registrant on probation ~~for a period of~~
 1422 ~~time~~, subject to such conditions as the department may specify.

1423 (5)(a) The department or the state attorney, if a
 1424 violation of this part occurs in his or her judicial circuit,
 1425 shall be the enforcing authority for purposes of this part and
 1426 may bring a civil action in circuit court for temporary or
 1427 permanent injunctive relief and may seek other appropriate civil
 1428 relief, including a civil penalty in the Class I category
 1429 pursuant to s. 570.971 ~~not to exceed \$1,000~~ for each violation,
 1430 restitution and damages for injured customers, court costs, and

1431 reasonable attorney ~~attorney's~~ fees.

1432 Section 55. Subsection (1) of section 559.9355, Florida
 1433 Statutes, is amended to read:

1434 559.9355 Administrative remedies; penalties.—

1435 (1) The department may enter an order doing one or more of
 1436 the following if the department finds that a person has violated
 1437 or is operating in violation of ~~any of the provisions of this~~
 1438 part or the rules or orders issued thereunder:

1439 (a) Issuing a notice of noncompliance pursuant to s.
 1440 120.695.

1441 (b) Imposing an administrative fine in the Class II
 1442 category pursuant to s. 570.971 ~~not to exceed \$5,000~~ for each
 1443 act or omission.

1444 ~~(c) Imposing an administrative fine not to exceed \$10,000~~
 1445 ~~for each act or omission in violation of s. 559.9335(22) or~~
 1446 ~~(23).~~

1447 (c) ~~(d)~~ Directing that the person cease and desist
 1448 specified activities.

1449 (d) ~~(e)~~ Refusing to register or canceling or suspending a
 1450 registration.

1451 (e) ~~(f)~~ Placing the registrant on probation ~~for a period of~~
 1452 ~~time~~, subject to such conditions as the department may specify.

1453 (f) ~~(g)~~ Canceling an exemption granted under s. 559.935.

1454 Section 56. Subsections (2) and (3) of section 559.936,
 1455 Florida Statutes, are amended to read:

1456 559.936 Civil penalties; remedies.—

1457 (2) The department may seek a civil penalty in the Class
 1458 II category pursuant to s. 570.971 ~~of up to \$5,000~~ for each
 1459 violation of this part.

1460 (3) The department may seek a civil penalty in the Class
 1461 III category pursuant to s. 570.971 ~~of up to \$10,000~~ for each
 1462 act or omission in violation of s. 559.9335(22) or (23).

1463 Section 57. Subsection (33) of section 570.07, Florida
 1464 Statutes, is amended to read:

1465 570.07 Department of Agriculture and Consumer Services;
 1466 functions, powers, and duties.—The department shall have and
 1467 exercise the following functions, powers, and duties:

1468 (33) To assist local volunteer and nonprofit organizations
 1469 in soliciting, collecting, packaging, or delivering surplus
 1470 fresh fruit and vegetables for distribution pursuant to ~~in~~
 1471 ~~accordance with~~ s. 595.420 ~~570.0725~~. The department also may
 1472 coordinate the development of food recovery programs in the
 1473 production areas of the state using local volunteer and
 1474 nonprofit organizations.

1475 Section 58. Section 570.0705, Florida Statutes, is
 1476 renumbered as section 570.232, Florida Statutes.

1477 Section 59. Section 570.0725, Florida Statutes, is
 1478 transferred and renumbered as section 595.420, Florida Statutes.

1479 Section 60. Section 570.073, Florida Statutes, is
 1480 renumbered as section 570.65, Florida Statutes.

1481 Section 61. Section 570.074, Florida Statutes, is
 1482 renumbered as section 570.66, Florida Statutes, and amended to

1483 read:
 1484 570.66 ~~570.074~~ Department of Agriculture and Consumer
 1485 Services; water policy.—The commissioner may create an Office of
 1486 Agricultural Water Policy under the supervision of a senior
 1487 manager exempt under s. 110.205 in the Senior Management
 1488 Service. The commissioner may designate the bureaus and
 1489 positions in the various organizational divisions of the
 1490 department that report to the ~~this~~ office relating to any matter
 1491 over which the department has jurisdiction in matters relating
 1492 to water policy affecting agriculture, application of such
 1493 policies, and coordination of such matters with state and
 1494 federal agencies. The office shall enforce and implement the
 1495 provisions of chapter 582 and rules relating to soil and water
 1496 conservation.

1497 Section 62. Section 570.0741, Florida Statutes, is
 1498 transferred, renumbered as section 377.805, Florida Statutes,
 1499 and amended to read:

1500 377.805 ~~570.0741~~ Energy efficiency and conservation
 1501 clearinghouse.—The Office of Energy within the Department of
 1502 Agriculture and Consumer Services, in consultation with the
 1503 Public Service Commission, the Florida Building Commission, and
 1504 the Florida Energy Systems Consortium, shall develop a
 1505 clearinghouse of information regarding cost savings associated
 1506 with various energy efficiency and conservation measures. The
 1507 Department of Agriculture and Consumer Services shall post the
 1508 information on its website ~~by July 1, 2013.~~

1509 Section 63. Section 570.075, Florida Statutes, is
 1510 renumbered as section 570.916, Florida Statutes.

1511 Section 64. Section 570.076, Florida Statutes, is
 1512 renumbered as section 570.921, Florida Statutes, and paragraph
 1513 (c) of subsection (2) of that section is amended to read:

1514 570.921 ~~570.076~~ Environmental Stewardship Certification
 1515 Program.—The department may, by rule, establish the
 1516 Environmental Stewardship Certification Program consistent with
 1517 this section. A rule adopted under this section must be
 1518 developed in consultation with state universities, agricultural
 1519 organizations, and other interested parties.

1520 (2) The department shall provide an agricultural
 1521 certification under this program for implementation of one or
 1522 more of the following criteria:

1523 (c) Best management practices adopted by rule pursuant to
 1524 s. 403.067(7)(c) or s. 570.93(1)(b) ~~570.085(1)(b)~~.

1525 Section 65. Section 570.085, Florida Statutes, is
 1526 renumbered as section 570.93, Florida Statutes.

1527 Section 66. Section 570.087, Florida Statutes, is
 1528 renumbered as section 570.94, Florida Statutes.

1529 Section 67. Section 570.14, Florida Statutes, is
 1530 renumbered as section 570.031, Florida Statutes, and amended to
 1531 read:

1532 570.031 ~~570.14~~ Seal of department.—The department shall
 1533 have an official seal which shall be used for the authentication
 1534 of the orders and proceedings of the department and for such

1535 | other purposes as the department may prescribe. Use of the seal
 1536 | or any likeness thereof requires written approval of the
 1537 | department.

1538 | Section 68. Section 570.16, Florida Statutes, is
 1539 | renumbered as section 570.051, Florida Statutes.

1540 | Section 69. Section 570.17, Florida Statutes, is
 1541 | renumbered as section 570.081, Florida Statutes.

1542 | Section 70. Section 570.18, Florida Statutes, is
 1543 | renumbered as section 570.041, Florida Statutes.

1544 | Section 71. Paragraph (d) of subsection (1) and subsection
 1545 | (2) of section 570.23, Florida Statutes, are amended to read:

1546 | 570.23 State Agricultural Advisory Council.—

1547 | (1) COMPOSITION.—The State Agricultural Advisory Council
 1548 | is hereby created in the department.

1549 | (d) ~~On or after January 15, 1988,~~ Alternates shall be
 1550 | appointed for each member and shall serve as alternates for the
 1551 | remainder of the corresponding members' terms. As terms of
 1552 | current members expire, members and their alternates shall be
 1553 | appointed for 4-year terms and shall serve until their
 1554 | successors are duly qualified and appointed. A vacancy shall be
 1555 | filled for the remainder of an unexpired term in the same manner
 1556 | as an initial appointment.

1557 | (2) POWERS AND DUTIES; MEETINGS; PROCEDURES; RECORDS.—The
 1558 | meetings, powers and duties, procedures, and recordkeeping of
 1559 | the State Agricultural Advisory Council shall be pursuant to
 1560 | ~~governed by the provisions of s. 570.232 570.0705 relating to~~

1561 ~~advisory committees established within the department.~~

1562 Section 72. Section 570.241, Florida Statutes, is
 1563 renumbered as section 570.73, Florida Statutes.

1564 Section 73. Section 570.242, Florida Statutes, is
 1565 renumbered as section 570.74, Florida Statutes, and amended to
 1566 read:

1567 570.74 ~~570.242~~ Definitions relating to Agricultural
 1568 Economic Development Act.—For purposes of this act, the term
 1569 ~~following terms shall have the following meanings:~~

1570 (1) "Agriculturally depressed area" means a rural area
 1571 that ~~which~~ has declining profitability from agricultural
 1572 enterprises and one or more of the following characteristics:

- 1573 (a) A stable or declining population.
- 1574 (b) A stable or declining real per capita income.
- 1575 (c) A traditional economy based on agriculture or
 1576 extraction of solid minerals.
- 1577 (d) A low ad valorem tax base.
- 1578 (e) A need for agribusiness and leadership training.
- 1579 (f) Crop losses or economic depression resulting from a
 1580 natural disaster or socioeconomic conditions or events that
 1581 ~~which~~ negatively impact a crop.

1582 (2) "Assistance" means financial or nonfinancial
 1583 assistance issued pursuant to ~~the provisions of~~ this act.

1584 ~~(3) "Commissioner" means the Commissioner of Agriculture.~~

1585 ~~(4) "Department" means the Department of Agriculture and~~
 1586 ~~Consumer Services.~~

1587 (3)~~(5)~~ "Financial assistance" means the providing of funds
 1588 to an agribusiness.

1589 (4)~~(6)~~ "Nonfinancial assistance" means the providing of
 1590 personnel to work with an agribusiness to establish an
 1591 infrastructure, including, but not limited to, the development
 1592 of an accounting system, management procedures, and a marketing
 1593 plan. Nonfinancial assistance ~~shall~~ also includes ~~include~~ the
 1594 providing of equipment.

1595 Section 74. Section 570.243, Florida Statutes, is
 1596 renumbered as section 570.75, Florida Statutes.

1597 Section 75. Section 570.244, Florida Statutes, is
 1598 renumbered as section 570.76, Florida Statutes.

1599 Section 76. Section 570.245, Florida Statutes, is
 1600 renumbered as section 570.77, Florida Statutes.

1601 Section 77. Section 570.246, Florida Statutes, is
 1602 renumbered as section 570.78, Florida Statutes.

1603 Section 78. Section 570.247, Florida Statutes, is
 1604 renumbered as section 570.79, Florida Statutes, and amended to
 1605 read:

1606 570.79 ~~570.247~~ Adoption ~~Promulgation~~ of rules. ~~In~~
 1607 ~~conjunction with funds specifically appropriated for the~~
 1608 ~~purposes specified in this act,~~ The department shall adopt ~~shall~~
 1609 ~~begin to promulgate~~ rules ~~no later than January 1, 1992,~~
 1610 ~~pursuant to s. 120.54,~~ pertaining to:

1611 (1) Formal notification procedures for the availability of
 1612 assistance, including publication in the Florida Administrative

1613 Register pursuant to s. 120.55.

1614 (2) Written evaluation criteria for selecting project
 1615 proposals to receive assistance. The criteria for eligibility of
 1616 assistance shall include a written business plan delineating the
 1617 economic viability of the proposed project, including the
 1618 financial commitment by project participants and a schedule for
 1619 repayment of agricultural economic development funds.

1620 (3) Procedures for repayment of financial assistance by an
 1621 assisted agribusiness into the General Inspection Trust Fund
 1622 within the department. Repayment of financial assistance shall
 1623 be based upon a percentage of future profits until repayment is
 1624 complete.

1625 (4) Funding procedures for projects eligible for
 1626 assistance. These procedures shall include the amount of
 1627 funding, the limits and requirements for the objects of
 1628 expenditure, and the duration of assistance.

1629 (5) Other subject matter pertaining to the implementation
 1630 of this act.

1631 Section 79. Section 570.248, Florida Statutes, is
 1632 renumbered as section 570.81, Florida Statutes.

1633 Section 80. Section 570.249, Florida Statutes, is
 1634 renumbered as section 570.82, Florida Statutes.

1635 Section 81. Section 570.345, Florida Statutes, is
 1636 repealed.

1637 Section 82. Subsection (5) of section 570.36, Florida
 1638 Statutes, is amended to read:

1639 570.36 Division of Animal Industry; powers and duties.—The
 1640 duties of the Division of Animal Industry include, but are not
 1641 limited to:

1642 (5) Operating and managing the animal disease diagnostic
 1643 laboratory ~~laboratories~~ provided for in chapter 585.

1644 Section 83. Section 570.38, Florida Statutes, is
 1645 transferred, renumbered as section 585.008, Florida Statutes,
 1646 and amended to read:

1647 585.008 ~~570.38~~ Animal Industry Technical Council.—

1648 (1) COMPOSITION.—The Animal Industry Technical Council is
 1649 hereby created in the department and shall be composed of 14
 1650 members as follows:

1651 (a) The beef cattle, swine, dairy, horse, independent
 1652 agricultural market ~~markets~~, meat processing and packing
 1653 establishment ~~establishments~~, veterinary medicine, and poultry
 1654 representatives who serve on the State Agricultural Advisory
 1655 Council and three additional representatives from the beef
 1656 cattle industry, as well as three at-large members representing
 1657 other animal industries in the state, who shall be appointed by
 1658 the commissioner for 4-year terms or until their successors are
 1659 duly qualified and appointed.

1660 (b) Each additional beef cattle representative shall be
 1661 appointed subject to the qualifications and by the procedure as
 1662 prescribed in s. 570.23 for membership to the council by the
 1663 beef cattle representative. If a vacancy occurs in these three
 1664 positions, it shall be filled for the remainder of the term in

1665 the same manner as an initial appointment.

1666 (2) POWERS AND DUTIES; MEETINGS; PROCEDURES; RECORDS.—The
 1667 meetings, powers and duties, procedures, and recordkeeping of
 1668 the Animal Industry Technical Council shall be pursuant to
 1669 ~~governed by the provisions of s. 570.232 570.0705 relating to~~
 1670 ~~advisory committees established within the department.~~

1671 Section 84. Section 570.42, Florida Statutes, is
 1672 transferred, renumbered as section 502.301, Florida Statutes,
 1673 and amended to read:

1674 502.301 ~~570.42~~ Dairy Industry Technical Council.—

1675 (1) COMPOSITION.—The Dairy Industry Technical Council is
 1676 ~~hereby~~ created within ~~in~~ the department and shall be composed of
 1677 seven members as follows:

1678 (a) Two citizens of the state, one of whom shall be
 1679 associated with the Agricultural Extension Service of the
 1680 University of Florida and the other with the College of
 1681 Agricultural and Life Science ~~Agriculture~~ of the University of
 1682 Florida.

1683 (b) An employee of the Department of Health.

1684 (c) Two dairy farmers who are actively engaged in the
 1685 production of milk in this state and who earn a major portion of
 1686 their income from the production of milk. The commissioner shall
 1687 appoint the two members ~~provided for in this paragraph~~ from no
 1688 fewer than four nor more than six nominees submitted by the
 1689 recognized statewide organizations representing this group. In
 1690 the absence of nominations, the commissioner shall appoint other

1691 persons qualified under ~~the provisions of~~ this paragraph.

1692 (d) Two distributors of milk. "Distributor" means a ~~any~~
 1693 milk dealer who operates a milk gathering station or processing
 1694 plant where milk is collected and bottled or otherwise processed
 1695 and prepared for sale. The commissioner shall appoint the two
 1696 members ~~provided for in this paragraph~~ from no fewer than four
 1697 nor more than six nominees submitted by the recognized statewide
 1698 organizations representing this group. In the absence of
 1699 nominations, the commissioner shall appoint other persons
 1700 qualified under ~~the provisions of~~ this paragraph.

1701 (e) All members shall serve 4-year terms or until their
 1702 successors are duly qualified and appointed. If a vacancy
 1703 occurs, it shall be filled for the remainder of the term in the
 1704 manner of an initial appointment.

1705 (2) POWERS AND DUTIES; MEETINGS; PROCEDURES; RECORDS.—The
 1706 meetings, powers and duties, procedures, and recordkeeping of
 1707 the Dairy Industry Technical Council shall be pursuant to
 1708 ~~governed by the provisions of s. 570.232 570.0705 relating to~~
 1709 ~~advisory committees established within the department.~~

1710 Section 85. Subsections (5) through (9) of section 570.44,
 1711 Florida Statutes, are renumbered as subsections (4) through (8),
 1712 respectively, and subsections (3) and (4) of that section are
 1713 amended to read:

1714 570.44 Division of Agricultural Environmental Services;
 1715 powers and duties.—The duties of the Division of Agricultural
 1716 Environmental Services include, but are not limited to:

1717 (3) ~~Supporting the Pesticide Review Council and~~ Reviewing
 1718 and evaluating technical and scientific data associated with the
 1719 production, manufacture, storage, transportation, sale, or use
 1720 of any article or product with respect to any statutory
 1721 authority ~~which is~~ conferred on the department. The department
 1722 may ~~is authorized to~~ establish positions within the division for
 1723 the employment of experts in the fields of toxicology,
 1724 hydrology, and biology to conduct such reviews and evaluations
 1725 and may. ~~The department is also authorized to~~ establish
 1726 appropriate clerical support positions to implement the duties
 1727 and responsibilities of the division.

1728 ~~(4) Enforcing and implementing the responsibilities of~~
 1729 ~~chapter 582, and the rules relating to soil and water~~
 1730 ~~conservation.~~

1731 Section 86. Subsection (2) of section 570.45, Florida
 1732 Statutes, is amended to read:

1733 570.45 Director; duties.—

1734 (2) The director shall supervise, direct, and coordinate
 1735 the activities of the division and enforce ~~the provisions of~~
 1736 chapters 388, 482, 487, 501, 504, 531, 570, 576, 578, and 580
 1737 ~~and 582~~ and any other chapter necessary to carry out the
 1738 responsibilities of the division.

1739 Section 87. Paragraph (d) of subsection (3) of section
 1740 570.451, Florida Statutes, is amended to read:

1741 570.451 Agricultural Feed, Seed, and Fertilizer Advisory
 1742 Council.—

1743 (3)
 1744 (d) The meetings, powers and duties, procedures, and
 1745 recordkeeping of the council shall be pursuant to ~~in accordance~~
 1746 ~~with the provisions of s. 570.232 570.0705 relating to advisory~~
 1747 ~~committees established within the department.~~

1748 Section 88. Section 570.481, Florida Statutes, is
 1749 transferred and renumbered as section 603.011, Florida Statutes.

1750 Section 89. Subsections (2) and (3) of section 570.50,
 1751 Florida Statutes, are amended to read:

1752 570.50 Division of Food Safety; powers and duties.—The
 1753 duties of the Division of Food Safety include, but are not
 1754 limited to:

1755 (2) Conducting those general inspection activities
 1756 relating to food and food products being processed, held, or
 1757 offered for sale in this state and enforcing those provisions of
 1758 chapters 500, 501, 502, 531, 583, 585, 586, 597, and 601
 1759 relating to foods as authorized by the department.

1760 (3) Analyzing samples of foods offered for sale in this
 1761 state as required under chapters 500, 501, 502, 585, 586, 597,
 1762 and 601.

1763 Section 90. Subsection (2) of section 570.51, Florida
 1764 Statutes, is amended to read:

1765 570.51 Director; qualifications; duties.—

1766 (2) The director shall supervise, direct, and coordinate
 1767 the activities of the division and enforce the provisions of
 1768 chapters 500, 501, 502, 531, 583, 585, 597, and 601 and any

1769 other chapter necessary to carry out the responsibilities of the
 1770 division.

1771 Section 91. Section 570.531, Florida Statutes, is
 1772 renumbered as section 570.209, Florida Statutes.

1773 Section 92. Section 570.542, Florida Statutes, is
 1774 repealed.

1775 Section 93. Subsection (2) of section 570.543, Florida
 1776 Statutes, is amended to read:

1777 570.543. Florida Consumers' Council.—The Florida Consumers'
 1778 Council in the department is created to advise and assist the
 1779 department in carrying out its duties.

1780 (2) POWERS AND DUTIES; MEETINGS; PROCEDURES; RECORDS.—The
 1781 meetings, powers and duties, procedures, and recordkeeping of
 1782 the Florida Consumers' Council shall be pursuant to ~~governed by~~
 1783 ~~the provisions of s. 570.232 570.0705 relating to advisory~~
 1784 ~~committees established within the department.~~ The council
 1785 members or chair may call no more than two meetings.

1786 Section 94. Section 570.545, Florida Statutes, is
 1787 transferred and renumbered as section 501.0113, Florida
 1788 Statutes.

1789 Section 95. Section 570.55, Florida Statutes, is
 1790 transferred and renumbered as section 603.211, Florida Statutes.

1791 Section 96. Section 570.67, Florida Statutes, is created
 1792 to read:

1793 570.67 Office of Energy.—The Office of Energy is created
 1794 within the department. The office shall be under the supervision

1795 of a senior manager exempt under s. 110.205 in the Senior
 1796 Management Service appointed by the commissioner. The duties of
 1797 the office shall include, but are not limited to, administering
 1798 and enforcing chapter 377, the rules adopted under that chapter,
 1799 and any other duties authorized by the commissioner.

1800 Section 97. Subsections (2) and (12) of section 570.71,
 1801 Florida Statutes, are amended to read:

1802 570.71 Conservation easements and agreements.—

1803 (2) To achieve the purposes of this section ~~act~~, ~~beginning~~
 1804 ~~no sooner than July 1, 2002, and every year thereafter~~, the
 1805 department may accept applications for project proposals that:

1806 (a) Purchase conservation easements, as defined in s.
 1807 704.06.

1808 (b) Purchase rural-lands-protection easements pursuant to
 1809 this section ~~act~~.

1810 (c) Fund resource conservation agreements pursuant to this
 1811 section ~~act~~.

1812 (d) Fund agricultural protection agreements pursuant to
 1813 this section ~~act~~.

1814 (12) The department may ~~is authorized to~~ use funds from
 1815 the following sources to implement this section ~~act~~:

1816 (a) State funds;

1817 (b) Federal funds;

1818 (c) Other governmental entities;

1819 (d) Nongovernmental organizations; or

1820 (e) Private individuals.

1821
 1822 Any such funds provided shall be deposited into the Conservation
 1823 and Recreation Lands Program Trust Fund within the Department of
 1824 Agriculture and Consumer Services and used for the purposes of
 1825 this section, including administrative and operating expenses
 1826 related to appraisals, mapping, title process, personnel, and
 1827 other real estate expenses ~~act~~.

1828 Section 98. Section 570.72, Florida Statutes, is repealed.

1829 Section 99. Section 570.901, Florida Statutes, is
 1830 renumbered as section 570.692, Florida Statutes.

1831 Section 100. Section 570.902, Florida Statutes, is
 1832 renumbered as section 570.69, Florida Statutes, and amended to
 1833 read:

1834 570.69 ~~570.902~~ Definitions; ss. 570.69 and 570.691 ~~570.902~~
 1835 ~~and 570.903~~.—For the purpose of this section and s. 570.691
 1836 ~~570.903~~:

1837 (1) "Designated program" means the departmental program
 1838 which a direct-support organization has been created to support.

1839 (2) "Direct-support organization" or "organization" means
 1840 an organization which is a Florida corporation not for profit
 1841 incorporated under ~~the provisions of~~ chapter 617 and approved by
 1842 the department to operate for the benefit of a museum or a
 1843 designated program.

1844 (3) "Museum" means the Florida Agricultural Museum, which
 1845 is designated as the museum for agriculture and rural history of
 1846 the State of Florida.

1847 Section 101. Section 570.903, Florida Statutes, is
 1848 renumbered as section 570.691, Florida Statutes.

1849 Section 102. Section 570.91, Florida statutes, is
 1850 renumbered as section 570.693, Florida Statutes.

1851 Section 103. Section 570.9135, Florida Statutes, is
 1852 renumbered as section 570.83, Florida Statutes, and subsection
 1853 (6) of that section is amended to read:

1854 570.83 ~~570.9135~~ Beef Market Development Act; definitions;
 1855 Florida Beef Council, Inc., creation, purposes, governing board,
 1856 powers, and duties; referendum on assessments imposed on gross
 1857 receipts from cattle sales; payments to organizations for
 1858 services; collecting and refunding assessments; vote on
 1859 continuing the act; council bylaws.-

1860 (6) REFERENDUM ON ASSESSMENTS.-All producers in this state
 1861 shall have the opportunity to vote in a referendum to determine
 1862 whether the council shall be authorized to impose an assessment
 1863 of not more than \$1 per head on cattle sold in the state. The
 1864 referendum shall pose the question: "Do you approve of an
 1865 assessment program, up to \$1 per head of cattle pursuant to
 1866 section 570.83 ~~570.9135~~, Florida Statutes, to be funded through
 1867 specific contributions that are mandatory and refundable upon
 1868 request?"

1869 (a) A referendum held under this section must be conducted
 1870 by secret ballot at extension offices of the Institute of Food
 1871 and Agricultural Sciences of the University of Florida or at
 1872 offices of the United States Department of Agriculture with the

1873 cooperation of the department.

1874 (b) Notice of a referendum to be held under this act must
 1875 be given at least once in trade publications, the public press,
 1876 and statewide newspapers at least 30 days before the referendum
 1877 is held.

1878 (c) Additional referenda may be held to authorize the
 1879 council to increase the assessment to more than \$1 per head of
 1880 cattle. Such referendum shall pose the question: "Do you approve
 1881 of granting the Florida Beef Council, Inc., authority to
 1882 increase the per-head-of-cattle assessment pursuant to section
 1883 570.83 ~~570.9135~~, Florida Statutes, from ...(present rate)... to
 1884 up to a maximum of ...(proposed rate)... per head?" Referenda
 1885 may not be held more often than once every 3 years.

1886 (d) Each cattle producer is entitled to only one vote in a
 1887 referendum held under this section ~~act~~. Proof of identification
 1888 and cattle ownership must be presented before voting.

1889 (e) A simple majority of those casting ballots shall
 1890 determine any issue that requires a referendum under this
 1891 section ~~act~~.

1892 Section 104. Section 570.92, Florida Statutes, is
 1893 repealed.

1894 Section 105. Section 570.951, Florida Statutes, is
 1895 renumbered as section 570.681, Florida Statutes.

1896 Section 106. Section 570.952, Florida Statutes, is
 1897 renumbered as section 570.685, Florida Statutes, and amended to
 1898 read:

1899 | 570.685 ~~570.952~~ Florida Agriculture Center and Horse Park
 1900 | Authority.-

1901 | (1) There is created within the Department of Agriculture
 1902 | and Consumer Services the Florida Agriculture Center and Horse
 1903 | Park Authority which shall be governed by this section and s.
 1904 | 570.232 ~~570.903~~.

1905 | (2) The authority shall be composed of 21 members
 1906 | appointed by the commissioner.

1907 | (a) Initially, the commissioner shall appoint 11 members
 1908 | for 4-year terms and 10 members for 2-year terms. Thereafter,
 1909 | each member shall be appointed for a term of 4 years from the
 1910 | date of appointment, except that a vacancy shall be filled by
 1911 | appointment for the remainder of the term.

1912 | (b) A ~~Any~~ member of the authority who fails to attend
 1913 | three consecutive authority meetings without good cause shall be
 1914 | deemed to have resigned from the authority.

1915 | ~~(c) Terms for members appointed prior to July 1, 2005,~~
 1916 | ~~shall expire on July 1, 2005.~~

1917 | (3) The Florida Agriculture Center and Horse Park
 1918 | Authority shall ~~have the power and duty to:~~

1919 | (a) Appoint, with approval from the commissioner, an
 1920 | executive director for the Florida Agriculture Center and Horse
 1921 | Park.

1922 | (b) Establish rules of procedure for conducting its
 1923 | meetings and approving matters before the authority pursuant to
 1924 | ~~that are consistent with s. 570.232 570.903.~~

1925 (c) Develop, document, and implement strategies for the
 1926 planning, construction, and operation of the Florida Agriculture
 1927 Center and Horse Park.

1928 (d) Advise and consult with the commissioner on matters
 1929 related to the Florida Agriculture Center and Horse Park.

1930 (e) Consider all matters submitted to the authority by the
 1931 commissioner.

1932 (4) The authority shall meet at least semiannually and
 1933 elect a chair ~~chairperson~~, a vice chair ~~chairperson~~, and a
 1934 secretary for 1-year terms.

1935 (a) The authority shall meet at the call of its chair
 1936 ~~chairperson~~, at the request of a majority of its membership, at
 1937 the request of the commissioner, or at such times as may be
 1938 prescribed by its rules of procedure.

1939 (b) The department shall be responsible for providing
 1940 administrative and staff support services relating to the
 1941 meetings of the authority and shall provide suitable space in
 1942 the offices of the department for the meetings and the storage
 1943 of records of the authority.

1944 (c) In conducting its meetings, the authority shall use
 1945 accepted rules of procedure. The secretary shall keep a complete
 1946 record of the proceedings of each meeting, which record shall
 1947 show the names of the members present and the actions taken.
 1948 These records shall be kept on file with the department, and
 1949 such records and other documents regarding matters within the
 1950 jurisdiction of the authority shall be subject to inspection by

1951 members of the authority.

1952 Section 107. Section 570.953, Florida Statutes, is
 1953 renumbered as section 570.686, Florida Statutes.

1954 Section 108. Section 570.954, Florida Statutes, is
 1955 renumbered as section 570.841, Florida Statutes.

1956 Section 109. Section 570.96, Florida Statutes, is
 1957 renumbered as section 570.85, Florida Statutes.

1958 Section 110. Section 570.961, Florida Statutes, is
 1959 renumbered as section 570.86, Florida Statutes, and amended to
 1960 read:

1961 570.86 ~~570.961~~ Definitions.—As used in ss. 570.85-570.89
 1962 ~~570.96-570.964~~, the term:

1963 (1) "Agritourism activity" means any agricultural related
 1964 activity consistent with a bona fide farm or ranch or in a
 1965 working forest which allows members of the general public, for
 1966 recreational, entertainment, or educational purposes, to view or
 1967 enjoy activities, including farming, ranching, historical,
 1968 cultural, or harvest-your-own activities and attractions. An
 1969 agritourism activity does not include the construction of new or
 1970 additional structures or facilities intended primarily to house,
 1971 shelter, transport, or otherwise accommodate members of the
 1972 general public. An activity is an agritourism activity
 1973 regardless of whether ~~or not~~ the participant paid to participate
 1974 in the activity.

1975 (2) "Agritourism operator" means a ~~any~~ person who is
 1976 engaged in the business of providing one or more agritourism

1977 | activities, whether for compensation or not for compensation.

1978 | (3) "Farm" means the land, buildings, support facilities,
1979 | machinery, and other appurtenances used in the production of
1980 | farm or aquaculture products, including land used to display
1981 | plants, animals, farm products, or farm equipment to the public.

1982 | (4) "Farm operation" has the same meaning as ~~defined~~ in s.
1983 | 823.14.

1984 | (5) "Inherent risks of agritourism activity" means those
1985 | dangers or conditions that are an integral part of an
1986 | agritourism activity including certain hazards, such as surface
1987 | and subsurface conditions; natural conditions of land,
1988 | vegetation, and waters; the behavior of wild or domestic
1989 | animals; and the ordinary dangers of structures or equipment
1990 | ordinarily used in farming and ranching operations. The term
1991 | also includes the potential of a participant to act in a
1992 | negligent manner that may contribute to the injury of the
1993 | participant or others, including failing to follow the
1994 | instructions given by the agritourism operator or failing to
1995 | exercise reasonable caution while engaging in the agritourism
1996 | activity.

1997 | Section 111. Section 570.962, Florida Statutes, is
1998 | renumbered as section 570.87, Florida Statutes.

1999 | Section 112. Section 570.963, Florida Statutes, is
2000 | renumbered as section 570.88, Florida Statutes, and subsection
2001 | (1) of that section is amended to read:

2002 | 570.88 ~~570.963~~ Liability.—

2003 (1) Except as provided in subsection (2), an agritourism
 2004 operator, his or her employer or employee, or the owner of the
 2005 underlying land on which the agritourism occurs is not liable
 2006 for injury or death of, or damage or loss to, a participant
 2007 resulting from the inherent risks of agritourism activities if
 2008 the notice of risk required under s. 570.89 ~~570.964~~ is posted as
 2009 required. Except as provided in subsection (2), a participant,
 2010 or a participant's representative, may not maintain an action
 2011 against or recover from an agritourism operator, his or her
 2012 employer or employee, or the owner of the underlying land on
 2013 which the agritourism occurs for the injury or death of, or
 2014 damage or loss to, an agritourism participant resulting
 2015 exclusively from any of the inherent risks of agritourism
 2016 activities.

2017 Section 113. Section 570.964, Florida Statutes, is
 2018 renumbered as section 570.89, Florida Statutes, and subsection
 2019 (3) of that section is amended to read:

2020 570.89 ~~570.964~~ Posting and notification.—

2021 (3) Failure to comply with ~~the requirements of this~~
 2022 section subsection prevents an agritourism operator, his or her
 2023 employer or employee, or the owner of the underlying land on
 2024 which the agritourism occurs from invoking the privileges of
 2025 immunity provided by this section.

2026 Section 114. Section 570.971, Florida Statutes, is created
 2027 to read:

2028 570.971 Penalties; administrative and civil.—

2029 | (1) The department or enforcing authority may impose the
 2030 | following fine amount for the class category specified in the
 2031 | chapter or section of law violated:

2032 | (a) Class I.—For each violation in the Class I category, a
 2033 | fine not to exceed \$1,000 may be imposed.

2034 | (b) Class II.—For each violation in the Class II category,
 2035 | a fine not to exceed \$5,000 may be imposed.

2036 | (c) Class III.—For each violation in the Class III
 2037 | category, a fine not to exceed \$10,000 may be imposed.

2038 | (d) Class IV.—For each violation in the Class IV category,
 2039 | a fine of \$10,000 or more may be imposed.

2040 | (2) (a) This section does not supersede a chapter or
 2041 | section of law or rule that limits the total fine amount that
 2042 | may be imposed for a violation.

2043 | (b) The class categories under this section also apply to
 2044 | penalties provided by rule.

2045 | (c) The penalties under this section are in addition to
 2046 | any other remedy provided by law.

2047 | (3) A person who violates this chapter or any rule adopted
 2048 | under this chapter is subject to an administrative or civil fine
 2049 | in the Class II category in addition to any other penalty
 2050 | provided by law.

2051 | (4) The department may refuse to issue or renew any
 2052 | license, permit, authorization, certificate, or registration to
 2053 | a person who has not satisfied a penalty imposed by the
 2054 | department.

2055 (5) The department may adopt rules to implement this
 2056 section or any section that references this section.

2057 Section 115. Subsection (1) of section 571.11, Florida
 2058 Statutes, is amended to read:

2059 571.11 Eggs and poultry; seal of quality violations;
 2060 administrative penalties.—

2061 (1) The Department of Agriculture and Consumer Services
 2062 may impose an administrative a fine in the Class II category
 2063 pursuant to s. 570.971 ~~not exceeding \$5,000~~ against any dealer,
 2064 as defined in ~~under~~ s. 583.01(4), in violation of the guidelines
 2065 for the Florida seal of quality for eggs or poultry programs.
 2066 All fines, when imposed and paid, shall be deposited by the
 2067 department into the General Inspection Trust Fund.

2068 Section 116. Subsection (2) of section 571.28, Florida
 2069 Statutes, is amended to read:

2070 571.28 Florida Agricultural Promotional Campaign Advisory
 2071 Council.—

2072 (2) MEETINGS; POWERS AND DUTIES; PROCEDURES; RECORDS.—The
 2073 meetings, powers and duties, procedures, and recordkeeping of
 2074 the Florida Agricultural Promotional Campaign Advisory Council
 2075 shall be pursuant to ~~governed by the provisions of s. 570.232~~
 2076 ~~570.0705 relating to advisory committees established within the~~
 2077 ~~department.~~

2078 Section 117. Paragraph (b) of subsection (3) of section
 2079 571.29, Florida Statutes, is amended to read:

2080 571.29 Unlawful acts; administrative remedies; criminal

HB 7091

2014

2081 penalties.-

2082 (3) The department may enter an order imposing one or more
 2083 of the following penalties against any person who violates any
 2084 of the provisions of this part or any rules adopted under this
 2085 part:

2086 (b) Imposition of an administrative fine in the Class I
 2087 category pursuant to s. 570.971 for each ~~of not more than \$1,000~~
 2088 ~~per~~ violation for a first-time ~~first-time~~ offender. For a
 2089 second-time ~~second-time~~ offender, or a any ~~any~~ person who is shown
 2090 to have willfully and intentionally violated ~~any provision of~~
 2091 this part or any rules adopted under this part, the
 2092 administrative fine shall be in the Class II category pursuant
 2093 to s. 570.971 for each ~~may not exceed \$5,000 per~~ violation. The
 2094 term "each per violation" means each incident in which a logo of
 2095 the Florida Agricultural Promotional Campaign has been used,
 2096 reproduced, or distributed in any manner inconsistent with ~~the~~
 2097 ~~provisions of~~ this part or the rules adopted under this part.

2098
 2099 The administrative proceedings that could result in the entry of
 2100 an order imposing any of the penalties specified in paragraphs
 2101 (a)-(c) shall be conducted pursuant to ~~in accordance with~~
 2102 chapter 120.

2103 Section 118. Subsection (1) and paragraph (a) of
 2104 subsection (2) of section 576.021, Florida Statutes, are amended
 2105 to read:

2106 576.021 Registration and licensing.-

2107 (1) A company ~~the person whose~~ name and address of which
 2108 appears upon a label and that ~~who~~ guarantees a fertilizer may
 2109 not distribute that fertilizer to a nonlicensee until a license
 2110 to distribute has been obtained by the company ~~that person~~ from
 2111 the department upon payment of a \$100 fee. All licenses shall
 2112 expire on June 30 each year. An application for license shall
 2113 include the following information:

2114 (a) The name and address of the applicant.

2115 (b) The name and address of the distribution point. The
 2116 name and address shown on the license shall be shown on all
 2117 labels, pertinent invoices, and storage facilities for
 2118 fertilizer distributed by the licensee in this state.

2119 (2)(a) A company the name and address of which appears
 2120 upon a label and that guarantees a fertilizer ~~person~~ may not
 2121 distribute a specialty fertilizer in this state until it is
 2122 registered with the department ~~by the licensee whose name~~
 2123 ~~appears on the label~~. An application for registration of each
 2124 brand and grade of specialty fertilizer shall be filed with the
 2125 department by using a form prescribed by the department or by
 2126 using the department's website ~~made on a form furnished by the~~
 2127 ~~department~~ and shall be accompanied by an annual fee of \$100 for
 2128 each specialty fertilizer that is registered. All specialty
 2129 fertilizer registrations expire June 30 each year. All licensing
 2130 and registration fees paid to the department under this section
 2131 shall be deposited into the State Treasury to be placed in the
 2132 General Inspection Trust Fund to be used for the sole purpose of

2133 funding the fertilizer inspection program.

2134 Section 119. Subsection (2) of section 576.031, Florida
 2135 Statutes, is amended to read:

2136 576.031 Labeling.—

2137 (2) If distributed in bulk, two ~~five~~ labels containing the
 2138 information required in paragraphs (1)(a)-(f) shall accompany
 2139 delivery and be supplied to the purchaser at time of delivery
 2140 with the delivery ticket, which shall show the certified net
 2141 weight.

2142 Section 120. Subsections (3), (4), (6), and (7) of section
 2143 576.041, Florida Statutes, are amended to read:

2144 576.041 Inspection fees; records, ~~bond~~.—

2145 (3) In addition to any other penalty provided by this
 2146 chapter, a ~~any~~ licensee who fails to timely pay the inspection
 2147 ~~tonnage~~ fee shall be assessed a penalty of 1.5 percent for each
 2148 month or part of a month that the fee or portion of the fee is
 2149 not paid.

2150 (4) If the report is not filed and the inspection fee is
 2151 not paid on the date due, or if the report of tonnage is false,
 2152 the amount of the inspection fee due is subject to a penalty of
 2153 10 percent or \$25, whichever is greater. ~~The penalty shall be~~
 2154 ~~added to the inspection fee due and constitutes a debt and~~
 2155 ~~becomes a claim and lien against the surety bond or certificate~~
 2156 ~~of deposit required by this chapter.~~

2157 ~~(6) In order to guarantee faithful performance of the~~
 2158 ~~provisions of subsection (2), the applicant for license shall~~

2159 ~~post with the department a surety bond, or assign a certificate~~
 2160 ~~of deposit, in an amount required by rule of the department to~~
 2161 ~~cover fees for any reporting period. The amount shall not be~~
 2162 ~~less than \$1,000. The surety bond shall be executed by a~~
 2163 ~~corporate surety company authorized to do business in this~~
 2164 ~~state. The certificate of deposit shall be issued by any~~
 2165 ~~recognized financial institution doing business in the United~~
 2166 ~~States. The department shall establish, by rule, whether an~~
 2167 ~~annual or continuous surety bond or certificate of deposit will~~
 2168 ~~be required and shall approve each surety bond or certificate of~~
 2169 ~~deposit before acceptance. The department shall examine and~~
 2170 ~~approve as to sufficiency all such bonds and certificates of~~
 2171 ~~deposit before acceptance. When the licensee ceases operation,~~
 2172 ~~said bond or certificate of deposit shall be returned, provided~~
 2173 ~~there are no outstanding fees due and payable.~~

2174 (6)~~(7)~~ In order to obtain information that will facilitate
 2175 the collection of inspection fees and serve other useful
 2176 purposes relating to fertilizer, the department may, by rule,
 2177 require licensees, manufacturers, registrants, and dealers to
 2178 report movements of fertilizer.

2179 Section 121. Subsection (3) of section 576.051, Florida
 2180 Statutes, is amended to read:

2181 576.051 Inspection, sampling, analysis.-

2182 (3) The official analysis shall be made from the official
 2183 sample. The department, before making the official analysis,
 2184 shall take a sufficient portion from the official sample for

2185 | check analysis and place that portion in a bottle sealed and
 2186 | identified by number, date, and the preparer's initials. The
 2187 | official check sample shall be kept until the analysis of the
 2188 | official sample is completed. However, the licensee may obtain
 2189 | upon request a portion of the official check sample. Upon
 2190 | completion of the analysis of the official sample, a true copy
 2191 | of the fertilizer analysis report shall be mailed to the
 2192 | licensee of the fertilizer from whom the official sample was
 2193 | taken and to the dealer or agent, if any, and purchaser, if
 2194 | known. This fertilizer analysis report shall show all
 2195 | determinations of plant nutrient and pesticides. If the official
 2196 | analysis conforms with ~~the provisions of~~ this section law, the
 2197 | official check sample may be destroyed. If the official analysis
 2198 | does not conform with ~~the provisions of~~ this section law, the
 2199 | official check sample shall be retained for 60 ~~a period of 90~~
 2200 | days from the date of the fertilizer analysis report of the
 2201 | official sample. If within that time the licensee of the
 2202 | fertilizer from whom the official sample was taken, upon receipt
 2203 | of the fertilizer analysis report, makes written demand for
 2204 | analysis of the official check sample by a referee chemist, a
 2205 | portion of the official check sample sufficient for analysis
 2206 | shall be sent to a referee chemist who is mutually acceptable to
 2207 | the department and the licensee for analysis at the expense of
 2208 | the licensee. The referee chemist, upon completion of the
 2209 | analysis, shall forward to the department and to the licensee a
 2210 | fertilizer analysis report bearing a proper identification mark

2211 or number, ~~+~~ and the fertilizer analysis report shall be verified
 2212 by an affidavit of the person making the analysis. If the
 2213 results reported on the fertilizer analysis report agree within
 2214 the matching criteria defined in department rule with the
 2215 department's analysis on each element for which analysis was
 2216 made, the mean average of the two analyses shall be accepted as
 2217 final and binding on all concerned. However, if the referee's
 2218 fertilizer analysis report results do not agree within the
 2219 matching criteria defined in department rule with the
 2220 department's analysis in any one or more elements for which an
 2221 analysis was made, upon demand of either the department or the
 2222 licensee from whom the official sample was taken, a portion of
 2223 the official check sample sufficient for analysis shall be
 2224 submitted to a second referee chemist who is mutually acceptable
 2225 to the department and to the licensee from whom the official
 2226 sample was taken, at the expense of the party or parties
 2227 requesting the referee analysis. If no demand is made for an
 2228 analysis by a second referee chemist, the department's
 2229 fertilizer analysis report shall be accepted as final and
 2230 binding on all concerned. The second referee chemist, upon
 2231 completion of the analysis, shall make a fertilizer analysis
 2232 report as provided in this subsection for the first referee
 2233 chemist. The mean average of the two analyses nearest in
 2234 conformity to each other shall be accepted as final and binding
 2235 on all concerned.

2236 Section 122. Subsections (4) and (5) of section 576.061,

2237 Florida Statutes, are amended to read:

2238 576.061 Plant nutrient investigational allowances,
 2239 deficiencies, and penalties.-

2240 ~~(4) When it is determined by the department that a~~
 2241 ~~fertilizer has been distributed without being licensed or~~
 2242 ~~registered, or without labeling, the department shall require~~
 2243 ~~the licensee to pay a penalty in the amount of \$100. The~~
 2244 ~~proceeds from any penalty payments shall be deposited by the~~
 2245 ~~department in the General Inspection Trust Fund to be used for~~
 2246 ~~the sole purpose of funding the fertilizer inspection program.~~

2247 (4) ~~(5)~~ The department may enter an order imposing one or
 2248 more of the following penalties against a ~~any~~ person who
 2249 violates ~~any of the provisions of~~ this chapter or the rules
 2250 adopted under this chapter hereunder or who impedes, obstructs,
 2251 or hinders ~~shall impede, obstruct, hinder, or otherwise prevent~~
 2252 ~~or attempt to prevent~~ the department in performing the
 2253 ~~performance of its duties under~~ duty in connection with the
 2254 ~~provisions of~~ this chapter:

2255 (a) Issuance of a warning letter.

2256 (b) Imposition of an administrative fine in the Class I
 2257 category pursuant to s. 570.971 for each ~~of not more than \$1,000~~
 2258 ~~per~~ occurrence after the issuance of a warning letter.

2259 (c) Cancellation, revocation, or suspension of any license
 2260 issued by the department.

2261 Section 123. Section 576.071, Florida Statutes, is amended
 2262 to read:

2263 576.071 Commercial value.—The commercial value used in
 2264 assessing penalties for any deficiency shall be determined by
 2265 surveying the fertilizer industry in the state using annualized
 2266 plant nutrient values contained in one or more generally
 2267 recognized journals.

2268 Section 124. Subsections (3) and (4) of section 576.087,
 2269 Florida Statutes, are amended to read:

2270 576.087 Antisiphon requirements for irrigation systems.—

2271 ~~(3) The department shall establish specific requirements~~
 2272 ~~for antisiphon devices.~~

2273 ~~(4) Any governmental agency which requires antisiphon~~
 2274 ~~devices on irrigation systems used for the application of~~
 2275 ~~fertilizer shall use the specific antisiphon device requirements~~
 2276 ~~adopted by the department.~~

2277 Section 125. Section 576.101, Florida Statutes, is amended
 2278 to read:

2279 576.101 Cancellation, revocation, and suspension~~+~~
 2280 ~~probationary status.—~~

2281 ~~(1)~~ The department may deny, suspend, or revoke any
 2282 license issued by the department for any violation of ~~the~~
 2283 ~~provisions of this chapter, the rules adopted~~ under this chapter
 2284 ~~thereunder, or any lawful order of the department.~~

2285 ~~(2) The department may place any licensee on a~~
 2286 ~~probationary status when the deficiency levels of samples taken~~
 2287 ~~from that licensee do not meet minimum performance levels~~
 2288 ~~established by statute within the investigational allowances~~

2289 ~~provided in s. 576.061.~~

2290 Section 126. Subsection (1) of section 578.08, Florida
 2291 Statutes, is amended to read:

2292 578.08 Registrations.—

2293 (1) Every person, except as provided in subsection (4) and
 2294 s. 578.14, before selling, distributing for sale, offering for
 2295 sale, exposing for sale, handling for sale, or soliciting orders
 2296 for the purchase of any agricultural, vegetable, flower, or
 2297 forest tree seed or mixture thereof, shall first register with
 2298 the department as a seed dealer. ~~The application for~~
 2299 ~~registration shall include the name and location of each place~~
 2300 ~~of business at which the seed is sold, distributed for sale,~~
 2301 ~~offered for sale, exposed for sale, or handled for sale.~~ The
 2302 application for registration shall be filed with department by
 2303 using a form prescribed by the department or by using the
 2304 department's website and shall be accompanied by an annual
 2305 registration fee for each such place of business based on the
 2306 gross receipts from the sale of such seed for the last preceding
 2307 license year as follows:

2308 (a) 1. Receipts of less than \$500, a fee of \$10.

2309 2. Receipts of \$500 or more but less than \$1,000, a fee of
 2310 \$25.

2311 3.1. Receipts of \$1,000 or more but less than \$2,500
 2312 ~~\$2,500.01~~, a fee
 2313 of \$100.

2314 4.2. Receipts of ~~more than~~ \$2,500 or more but ~~and~~ less

2315 than \$5,000 ~~\$5,000.01~~, a fee of \$200.

2316 5.3. Receipts of more than \$5,000 or more but and less
 2317 than \$10,000 ~~\$10,000.01~~, a fee of \$350.

2318 6.4. Receipts of more than \$10,000 or more but and less
 2319 than \$20,000 ~~\$20,000.01~~, a fee of \$800.

2320 7.5. Receipts of more than \$20,000 or more but and less
 2321 than \$40,000 ~~\$40,000.01~~, a fee of \$1,000.

2322 8.6. Receipts of more than \$40,000 or more but and less
 2323 than \$70,000 ~~\$70,000.01~~, a fee of \$1,200.

2324 9.7. Receipts of more than \$70,000 or more but and less
 2325 than \$150,000 ~~\$150,000.01~~, a fee of \$1,600.

2326 10.8. Receipts of more than \$150,000 or more but and less
 2327 than \$400,000 ~~\$400,000.01~~, a fee of \$2,400.

2328 11.9. Receipts of more than \$400,000 or more, a fee
 2329 of \$4,600.

2330 (b) For places of business not previously in operation,
 2331 the fee shall be based on anticipated receipts for the first
 2332 license year.

2333 Section 127. Subsection (1) of section 578.181, Florida
 2334 Statutes, is amended to read:

2335 578.181 Penalties; administrative fine.—

2336 (1) The department may enter an order imposing one or more
 2337 of the following penalties against a any person who violates any
 2338 ~~of the provisions of~~ this chapter or the rules adopted under
 2339 this chapter promulgated hereunder or who impedes, obstructs, or
 2340 ~~hinders, or otherwise prevents or attempts to prevent the~~

2341 department in performing ~~the performance of~~ its duties under
 2342 ~~duty in connection with the provisions of~~ this chapter:

- 2343 (a) Issuance of a warning letter.
- 2344 (b) Imposition of an administrative fine in the Class I
 2345 category pursuant to s. 570.971 for each ~~of not more than \$1,000~~
 2346 ~~per~~ occurrence after the issuance of a warning letter.
- 2347 (c) Revocation or suspension of the registration as a seed
 2348 dealer.

2349 Section 128. Paragraph (g) of subsection (2) of section
 2350 580.036, Florida Statutes, is amended to read:

2351 580.036 Powers and duties.—

2352 (2) The department is authorized to adopt rules pursuant
 2353 to ss. 120.536(1) and 120.54 to enforce the provisions of this
 2354 chapter. These rules shall be consistent with the rules and
 2355 standards of the United States Food and Drug Administration and
 2356 the United States Department of Agriculture, when applicable,
 2357 and shall include:

- 2358 (g) Establishing standards for the sale, use, and
 2359 distribution of commercial feed or feedstuff to ensure usage
 2360 that is consistent with animal safety and well-being and, to the
 2361 extent that meat, poultry, and other animal products for human
 2362 consumption may be affected by commercial feed or feedstuff, to
 2363 ensure that these products are safe for human consumption. Such
 2364 standards, if adopted, must be developed in consultation with
 2365 the Agricultural Feed, Seed, and Fertilizer Advisory Council
 2366 under s. 570.451.

HB 7091

2014

2367 Section 129. Paragraphs (a), (b), and (d) of subsection
 2368 (1) of section 580.041, Florida Statutes, are amended to read:
 2369 580.041 Master registration; fee; refusal or cancellation
 2370 of registration; reporting.—

2371 (1)(a) Each distributor of commercial feed must annually
 2372 obtain a master registration before her or his brands are
 2373 distributed in this state. Upon initial registration, ~~The~~
 2374 ~~department shall furnish the registration forms requiring the~~
 2375 ~~distributor to state that the distributor shall agree to will~~
 2376 comply with all provisions of this chapter and applicable rules.
 2377 ~~The registration form shall identify the manufacturer's or~~
 2378 ~~guarantor's name and place of business and the location of each~~
 2379 ~~manufacturing facility in the state and shall be signed by the~~
 2380 ~~owner, by a partner, if a partnership, or by an authorized~~
 2381 ~~officer or agent, if a corporation.~~ All registrations expire on
 2382 June 30 of each year.

2383 (b) The application for registration form shall be filed
 2384 with department by using a form prescribed by the department or
 2385 by using the department's website and shall be accompanied by a
 2386 fee ~~that shall be~~ based on tons of feed distributed in this
 2387 state during the previous year. If a distributor has been in
 2388 business less than 1 year, the tonnage shall be estimated by the
 2389 distributor for the first year and based on actual tonnage
 2390 thereafter. These fees shall be as follows:

2391	SALES IN TONS	FEE
2392	Zero, up to and including 25.....	\$40

2393	More than 25, up to and including 50.....	\$75
2394	More than 50, up to and including 100.....	\$150
2395	More than 100, up to and including 300.....	\$375
2396	More than 300, up to and including 600.....	\$600
2397	More than 600, up to and including 1,000.....	\$900
2398	More than 1,000, up to and including	
2399	2,000.....	\$1,250
2400	More than 2,000, up to and including	
2401	5,000.....	\$2,000
2402	More than 5,000.....	\$3,500

2403 (d) The department shall provide ~~mail~~ a copy of the master
 2404 registration to the registrant to signify that administrative
 2405 requirements have been met.

2406 Section 130. Paragraphs (d) and (e) of subsection (1) of
 2407 section 580.071, Florida Statutes, are amended, and paragraphs
 2408 (f), (g), and (h) are added to that subsection, to read:

2409 580.071 Adulteration.—No person shall distribute an
 2410 adulterated commercial feed or feedstuff. A commercial feed or
 2411 feedstuff shall be deemed to be adulterated:

2412 (1)

2413 (d) If it is a raw agricultural commodity and it bears or
 2414 contains a pesticide chemical that is unsafe within the meaning
 2415 of s. 408(a) of the Federal Food, Drug, and Cosmetic Act;
 2416 however, where a pesticide chemical has been used in or on a raw
 2417 agricultural commodity in conformity with an exemption granted
 2418 or a tolerance prescribed under s. 408 of the Federal Food,

HB 7091

2014

2419 Drug, and Cosmetic Act and that raw agricultural commodity has
 2420 been subjected to processing such as canning, cooking, freezing,
 2421 dehydrating, or milling, the processed feed will result, or is
 2422 likely to result, in pesticide residue in the edible product of
 2423 the animal which is unsafe within the meaning of s. 408(a) of
 2424 the Federal Food, Drug, and Cosmetic Act; ~~or~~

2425 (e) If it is, or it bears or contains, any new animal drug
 2426 that is unsafe within the meaning of s. 512 of the Federal Food,
 2427 Drug, and Cosmetic Act;

2428 (f) If it consists in whole or in part of any filthy,
 2429 putrid, or decomposed substance or is otherwise unfit for feed;

2430 (g) If it is prepared, packaged, or held under unsanitary
 2431 conditions in which it may have become contaminated with filth
 2432 or rendered injurious to health; or

2433 (h) If it is, in whole or in part, the product of a
 2434 diseased animal or of an animal that has died by a means other
 2435 than slaughter which is unsafe within the meaning of s.
 2436 402(a)(1) or (2) of the Federal Food, Drug, and Cosmetic Act.

2437 Section 131. Paragraph (b) of subsection (1) of section
 2438 580.121, Florida Statutes, is amended to read:

2439 580.121 Penalties; duties of law enforcement officers;
 2440 injunctive relief.-

2441 (1) The department may impose one or more of the following
 2442 penalties against any person who violates any provision of this
 2443 chapter:

2444 (b) Imposition of an administrative fine in the Class I

HB 7091

2014

2445 category pursuant to s. 570.971 for each, ~~by the department, of~~
 2446 ~~not more than \$1,000 per~~ occurrence.

2447

2448 However, the severity of the penalty imposed shall be
 2449 commensurate with the degree of risk to human or animal safety
 2450 or the level of financial harm to the consumer that is created
 2451 by the violation.

2452 Section 132. Subsection (5) of section 581.091, Florida
 2453 Statutes, is amended to read:

2454 581.091 Noxious weeds and infected plants or regulated
 2455 articles; sale or distribution; receipt; information to
 2456 department; withholding information.-

2457 (5) (a) Notwithstanding any other ~~provision of state~~ law or
 2458 rule, a person may obtain a special permit from the department
 2459 to plant Casuarina cunninghamiana as a windbreak for a
 2460 commercial citrus grove if provided the plants are produced in
 2461 an authorized registered nursery and certified by the department
 2462 as being vegetatively propagated from male plants. ~~A "commercial~~
 2463 ~~citrus grove" means a contiguous planting of 100 or more citrus~~
 2464 ~~trees where citrus fruit is produced for sale.~~

2465 ~~(b) For a 5-year period, special permits authorizing a~~
 2466 ~~person to plant Casuarina cunninghamiana shall be issued only as~~
 2467 ~~part of a pilot program for fresh fruit groves in areas of~~
 2468 ~~Indian River, St. Lucie, and Martin Counties where citrus canker~~
 2469 ~~is determined by the department to be widespread. The pilot~~
 2470 ~~program shall be reevaluated annually, and a comprehensive~~

2471 ~~review shall be conducted in 2013. The purpose of the annual and~~
 2472 ~~5-year reviews is to determine if the use of Casuarina~~
 2473 ~~cunninghamiana as an agricultural pest and disease windbreak~~
 2474 ~~poses any adverse environmental consequences. At the end of the~~
 2475 ~~5-year pilot program, if the Noxious Weed and Invasive Plant~~
 2476 ~~Review Committee, created by the department, and the Department~~
 2477 ~~of Environmental Protection, in consultation with a~~
 2478 ~~representative of the citrus industry who has a Casuarina~~
 2479 ~~cunninghamiana windbreak, determine that the potential is low~~
 2480 ~~for adverse environmental impacts from planting Casuarina~~
 2481 ~~cunninghamiana as windbreaks, the department may, by rule, allow~~
 2482 ~~the use of Casuarina cunninghamiana windbreaks for commercial~~
 2483 ~~citrus groves in other areas of the state. If it is determined~~
 2484 ~~at the end of the 5-year pilot program that additional time is~~
 2485 ~~needed to further evaluate Casuarina cunninghamiana, the~~
 2486 ~~department will remain the lead agency.~~

2487 (b) ~~(e)~~ Each application for a special permit shall be
 2488 accompanied by a fee in an amount determined by the department,
 2489 by rule, not to exceed \$500. A special permit shall be required
 2490 for each noncontiguous commercial citrus grove and shall be
 2491 renewed every 5 years. The property owner is responsible for
 2492 maintaining and producing for inspection the original nursery
 2493 invoice with certification documentation. If ownership of the
 2494 property is transferred, the seller must notify the department
 2495 and provide the buyer with a copy of the special permit and
 2496 copies of all invoices and certification documentation before

2497 ~~prior to~~ the closing of the sale.

2498 (c) ~~(d)~~ Each application shall include a baseline survey of
 2499 all lands within 500 feet of the proposed Casuarina
 2500 cunninghamiana windbreak showing the location and identification
 2501 to species of all existing Casuarina spp.

2502 (d) ~~(e)~~ Nurseries authorized to produce Casuarina
 2503 cunninghamiana must obtain a special permit from the department
 2504 certifying that the plants have been vegetatively propagated
 2505 from sexually mature male source trees currently grown in the
 2506 state. The importation of Casuarina cunninghamiana from any area
 2507 outside the state to be used as a propagation source tree is
 2508 prohibited. Each male source tree must be registered by the
 2509 department as being a horticulturally true-to-type male plant
 2510 and be labeled with a source tree registration number. Each
 2511 nursery application for a special permit shall be accompanied by
 2512 a fee in an amount determined by the department, by rule, not to
 2513 exceed \$200. Special permits shall be renewed annually. The
 2514 department shall, by rule, set the amount of an annual fee, not
 2515 to exceed \$50, for each Casuarina cunninghamiana registered as a
 2516 source tree. ~~Nurseries may only sell Casuarina cunninghamiana to~~
 2517 ~~a person with a special permit as specified in paragraphs (a)~~
 2518 ~~and (b).~~ The source tree registration numbers of the parent
 2519 plants must be documented on each invoice or other certification
 2520 documentation provided to the buyer.

2521 (e) ~~(f)~~ All Casuarina cunninghamiana must be destroyed by
 2522 the property owner within 6 months after:

2523 1. The property owner takes permanent action to no longer
 2524 use the site for commercial citrus production;

2525 2. The site has not been used for commercial citrus
 2526 production for a period of 5 years; or

2527 3. The department determines that the Casuarina
 2528 cunninghamiana on the site has become invasive. This
 2529 determination shall be based on, but not limited to, the
 2530 recommendation of the Noxious Weed and Invasive Plant Review
 2531 Committee and the Department of Environmental Protection and in
 2532 consultation with a representative of the citrus industry who
 2533 has a Casuarina cunninghamiana windbreak.

2534
 2535 If the owner or person in charge refuses or neglects to comply,
 2536 the director or her or his authorized representative may, under
 2537 authority of the department, proceed to destroy the plants. The
 2538 expense of the destruction shall be assessed, collected, and
 2539 enforced against the owner by the department. If the owner does
 2540 not pay the assessed cost, the department may record a lien
 2541 against the property.

2542 (f) ~~(g)~~ The use of Casuarina cunninghamiana for windbreaks
 2543 does shall not preclude the department from issuing permits for
 2544 the research or release of biological control agents to control
 2545 Casuarina spp. pursuant to ~~in accordance with~~ s. 581.083.

2546 (g) ~~(h)~~ The use of Casuarina cunninghamiana for windbreaks
 2547 may shall not restrict or interfere with any other agency or
 2548 local government effort to manage or control noxious weeds or

2549 | invasive plants, including *Casuarina cunninghamiana*. An, ~~nor~~
 2550 | ~~shall any other~~ agency or local government may not remove any
 2551 | *Casuarina cunninghamiana* planted as a windbreak under special
 2552 | permit issued by the department.

2553 | ~~(i) The department shall develop and implement a~~
 2554 | ~~monitoring protocol to determine invasiveness of *Casuarina*~~
 2555 | ~~*cunninghamiana*. The monitoring protocol shall, at a minimum,~~
 2556 | ~~require:~~

2557 | ~~1. Inspection of the planting site by department~~
 2558 | ~~inspectors within 30 days following initial planting or any~~
 2559 | ~~subsequent planting of *Casuarina cunninghamiana* to ensure the~~
 2560 | ~~criteria of the special permit have been met.~~

2561 | ~~2. Annual site inspections of planting sites and all lands~~
 2562 | ~~within 500 feet of the planted windbreak by department~~
 2563 | ~~inspectors who have been trained to identify *Casuarina* spp. and~~
 2564 | ~~to make determinations of whether *Casuarina cunninghamiana* has~~
 2565 | ~~spread beyond the permitted windbreak location.~~

2566 | ~~3. Any new seedlings found within 500 feet of the planted~~
 2567 | ~~windbreak to be removed, identified to the species level, and~~
 2568 | ~~evaluated to determine if hybridization has occurred.~~

2569 | ~~4. The department to submit an annual report and a final~~
 2570 | ~~5-year evaluation identifying any adverse effects resulting from~~
 2571 | ~~the planting of *Casuarina cunninghamiana* for windbreaks and~~
 2572 | ~~documenting all inspections and the results of those inspections~~
 2573 | ~~to the Noxious Weed and Invasive Plant Review Committee, the~~
 2574 | ~~Department of Environmental Protection, and a designated~~

2575 ~~representative of the citrus industry who has a Casuarina~~
 2576 ~~cunninghamiana windbreak.~~

2577 ~~(j) If the department determines that female flowers or~~
 2578 ~~cones have been produced on any Casuarina cunninghamiana that~~
 2579 ~~have been planted under a special permit issued by the~~
 2580 ~~department, the property owner shall be responsible for~~
 2581 ~~destroying the trees. The department shall notify the property~~
 2582 ~~owner of the timeframe and method of destruction.~~

2583 ~~(k) If at any time the department determines that~~
 2584 ~~hybridization has occurred during the pilot program between~~
 2585 ~~Casuarina cunninghamiana planted as a windbreak and other~~
 2586 ~~Casuarina spp., the department shall expeditiously initiate~~
 2587 ~~research to determine the invasiveness of the hybrid. The~~
 2588 ~~information obtained from this research shall be evaluated by~~
 2589 ~~the Noxious Weed and Invasive Plant Review Committee, the~~
 2590 ~~Department of Environmental Protection, and a designated~~
 2591 ~~representative of the citrus industry who has a Casuarina~~
 2592 ~~cunninghamiana windbreak. If the department determines that the~~
 2593 ~~hybrids have a high potential to become invasive, based on, but~~
 2594 ~~not limited to, the recommendation of the Noxious Weed and~~
 2595 ~~Invasive Plant Review Committee, the Department of Environmental~~
 2596 ~~Protection, and a designated representative of the citrus~~
 2597 ~~industry who has a Casuarina cunninghamiana windbreak, this~~
 2598 ~~pilot program shall be permanently suspended.~~

2599 ~~(l) Each application for a special permit must be~~
 2600 ~~accompanied by a fee as described in paragraph (c) and an~~

2601 ~~agreement that the property owner will abide by all permit~~
 2602 ~~conditions including the removal of Casuarina cunninghamiana if~~
 2603 ~~invasive populations or other adverse environmental factors are~~
 2604 ~~determined to be present by the department as a result of the~~
 2605 ~~use of Casuarina cunninghamiana as windbreaks. The application~~
 2606 ~~must include, on a form provided by the department, the name of~~
 2607 ~~the applicant and the applicant's address or the address of the~~
 2608 ~~applicant's principal place of business; a statement of the~~
 2609 ~~estimated cost of removing and destroying the Casuarina~~
 2610 ~~cunninghamiana that is the subject of the special permit; and~~
 2611 ~~the basis for calculating or determining that estimate. If the~~
 2612 ~~applicant is a corporation, partnership, or other business~~
 2613 ~~entity, the applicant must also provide in the application the~~
 2614 ~~name and address of each officer, partner, or managing agent.~~
 2615 ~~The applicant shall notify the department within 30 business~~
 2616 ~~days of any change of address or change in the principal place~~
 2617 ~~of business. The department shall mail all notices to the~~
 2618 ~~applicant's last known address.~~

2619 1. Upon obtaining a permit, the permitholder must annually
 2620 maintain the Casuarina cunninghamiana authorized by a special
 2621 permit as required in the permit. If the permitholder ceases to
 2622 maintain the Casuarina cunninghamiana as required by the special
 2623 permit, if the permit expires, or if the permitholder ceases to
 2624 abide by the conditions of the special permit, the permitholder
 2625 must ~~shall~~ remove and destroy the Casuarina cunninghamiana in a
 2626 timely manner as specified in the permit.

2627 2. If the department:

2628 a. Determines that the permitholder is no longer

2629 maintaining the Casuarina cunninghamiana subject to the special

2630 permit and has not removed and destroyed the Casuarina

2631 cunninghamiana authorized by the special permit;

2632 b. Determines that the continued use of Casuarina

2633 cunninghamiana as windbreaks presents an imminent danger to

2634 public health, safety, or welfare; or

2635 c. Determines that the permitholder has exceeded the

2636 conditions of the authorized special permit,+

2637

2638 the department may issue an immediate final order, which shall

2639 be immediately appealable or enjoinable pursuant to ~~as provided~~

2640 ~~by~~ chapter 120, directing the permitholder to immediately remove

2641 and destroy the Casuarina cunninghamiana authorized to be

2642 planted under the special permit. A copy of the immediate final

2643 order shall be mailed to the permitholder.

2644 3. If, upon issuance by the department of an immediate

2645 final order to the permitholder, the permitholder fails to

2646 remove and destroy the Casuarina cunninghamiana subject to the

2647 special permit within 60 days after issuance of the order, or

2648 such shorter period as is designated in the order as public

2649 health, safety, or welfare requires, the department may remove

2650 and destroy the Casuarina cunninghamiana that are the subject of

2651 the special permit. If the permitholder makes a written request

2652 to the department for an extension of time to remove and destroy

2653 the Casuarina cunninghamiana that demonstrates specific facts
 2654 showing why the Casuarina cunninghamiana could not reasonably be
 2655 removed and destroyed in the applicable timeframe, the
 2656 department may extend the time for removing and destroying
 2657 Casuarina cunninghamiana subject to a special permit. The
 2658 reasonable costs and expenses incurred by the department for
 2659 removing and destroying Casuarina cunninghamiana subject to a
 2660 special permit shall be paid out of the Citrus Inspection Trust
 2661 Fund and shall be reimbursed by the party to which the immediate
 2662 final order is issued. If the party to which the immediate final
 2663 order has been issued fails to reimburse the state within 60
 2664 days, the department may record a lien on the property. The lien
 2665 shall be enforced by the department.

2666 4. In order to carry out the purposes of this paragraph,
 2667 the department or its agents may require a permitholder to
 2668 provide verified statements of the planted acreage subject to
 2669 the special permit and may review the permitholder's business or
 2670 planting records at her or his place of business during normal
 2671 business hours in order to determine the acreage planted. The
 2672 failure of a permitholder to furnish such statement or to make
 2673 such records available is cause for suspension of the special
 2674 permit. If the department finds such failure to be willful, the
 2675 special permit may be revoked.

2676 Section 133. Subsection (8) of section 581.131, Florida
 2677 Statutes, is amended to read:

2678 581.131 Certificate of registration.-

HB 7091

2014

2679 (8) The department shall provide to each person subject to
 2680 this section written notice and renewal forms 30 ~~60~~ days before
 2681 ~~prior to~~ the annual renewal date informing the person of the
 2682 certificate of registration renewal date and the applicable fee.

2683 Section 134. Paragraph (a) of subsection (2) of section
 2684 581.141, Florida Statutes, is amended to read:

2685 581.141 Certificate of registration or of inspection;
 2686 revocation and suspension; fines.—

2687 (2) FINES; PROBATION.—

2688 (a)1. The department may, after notice and hearing, impose
 2689 an administrative a fine in the Class II category pursuant to s.
 2690 570.971 ~~not exceeding \$5,000~~ or probation not exceeding 12
 2691 months, or both, for a ~~the~~ violation of ~~any of the provisions of~~
 2692 this chapter or the rules adopted under this chapter upon a ~~any~~
 2693 person, nurseryman, stock dealer, agent, or plant broker. The
 2694 fine, when paid, shall be deposited in the Plant Industry Trust
 2695 Fund.

2696 2. The imposition of a fine or probation pursuant to this
 2697 subsection may be in addition to or in lieu of the suspension or
 2698 revocation of a certificate of registration or certificate of
 2699 inspection.

2700 Section 135. Section 581.186, Florida Statutes, is amended
 2701 to read:

2702 581.186 Endangered Plant Advisory Council; organization;
 2703 meetings; powers and duties.—

2704 (2) POWERS AND DUTIES; MEETINGS; PROCEDURES; RECORDS.—The

2705 meetings, powers and duties, procedures, and recordkeeping of
 2706 the Endangered Plant Advisory Council shall be pursuant to
 2707 ~~governed by the provisions of s. 570.232 570.0705 relating to~~
 2708 ~~advisory committees established within the department.~~

2709 Section 136. Paragraph (a) of subsection (3) of section
 2710 581.211, Florida Statutes, is amended to read:

2711 581.211 Penalties for violations.—

2712 (3)(a)1. In addition to any other provision of law, the
 2713 department may, after notice and hearing, impose an
 2714 administrative fine pursuant to s. 570.971 in the Class II
 2715 category ~~not exceeding \$5,000~~ for each violation of this
 2716 chapter, upon a ~~any~~ person, nurseryman, stock dealer, agent, or
 2717 plant broker. The fine, when paid, shall be deposited in the
 2718 Plant Industry Trust Fund. In addition, the department may place
 2719 the violator on probation for up to 1 year, with conditions.

2720 2. The imposition of a fine or probation pursuant to this
 2721 subsection may be in addition to or in lieu of the suspension or
 2722 revocation of a certificate of registration or certificate of
 2723 inspection.

2724 Section 137. Subsection (2) of section 582.06, Florida
 2725 Statutes, is amended to read:

2726 582.06 Soil and Water Conservation Council; powers and
 2727 duties.—

2728 (2) POWERS AND DUTIES; MEETINGS; PROCEDURES; RECORDS.—The
 2729 meetings, powers and duties, procedures, and recordkeeping of
 2730 the Soil and Water Conservation Council shall be pursuant to

2731 ~~governed by the provisions of s. 570.232 570.0705 relating to~~
 2732 ~~advisory committees established within the department.~~

2733 Section 138. Subsection (4) of section 583.01, Florida
 2734 Statutes, is amended to read:

2735 583.01 Definitions.—For the purpose of this chapter,
 2736 unless elsewhere indicated, the term:

2737 (4) "Dealer" means a ~~any~~ person, firm, or corporation,
 2738 including a producer, processor, retailer, or wholesaler, that
 2739 sells, offers for sale, or holds for the purpose of sale in this
 2740 state 30 dozen or more eggs or its equivalent in any one week,
 2741 or more than 384 ~~in excess of 100 pounds of dressed birds~~
 2742 ~~poultry~~ in any one week.

2743 Section 139. Subsection (1) of section 585.007, Florida
 2744 Statutes, is amended to read:

2745 585.007 Violation of rules; violation of chapter.—

2746 (1) A ~~Any~~ person who violates ~~the provisions of~~ this
 2747 chapter or any rule of the department shall be subject to the
 2748 imposition of an administrative fine in the Class III category
 2749 pursuant to s. 570.971 ~~of up to \$10,000~~ for each offense. Upon
 2750 repeated violation, the department may seek enforcement pursuant
 2751 to s. 120.69.

2752 Section 140. Paragraph (a) of subsection (2) of section
 2753 586.15, Florida Statutes, is amended to read:

2754 586.15 Penalty for violation.—

2755 (2)(a) The department may, after notice and hearing,
 2756 impose an administrative ~~a~~ fine in the Class II category

2757 pursuant to s. 570.971 ~~not exceeding \$5,000~~ for a the violation
 2758 ~~of any of the provisions~~ of this chapter or the rules adopted
 2759 under this chapter upon any person. The fine, when paid, shall
 2760 be deposited in the Plant Industry Trust Fund. The imposition of
 2761 a fine pursuant to this subsection may be in addition to or in
 2762 lieu of the suspension or revocation of a permit or a
 2763 certificate of inspection or registration.

2764 Section 141. Subsection (3) of section 586.161, Florida
 2765 Statutes, is amended to read:

2766 586.161 Honeybee Technical Council.—

2767 (3) MEETINGS; POWERS AND DUTIES; PROCEDURES; RECORDS.—The
 2768 meetings, powers and duties, procedures, and recordkeeping of
 2769 the Honeybee Technical Council shall be pursuant to ~~governed by~~
 2770 ~~the provisions of s. 570.232 570.0705 relating to advisory~~
 2771 ~~committees established within the department.~~

2772 Section 142. Subsection (3) is added to section 589.08,
 2773 Florida Statutes, to read:

2774 589.08 Land acquisition restrictions.—

2775 (3) The Florida Forest Service shall pay 15 percent of the
 2776 gross receipts from the Goethe State Forest to each fiscally
 2777 constrained county, as described in s. 218.67(1), in which a
 2778 portion of the respective forest is located in proportion to the
 2779 forest acreage located in such county. The funds must be equally
 2780 divided between the board of county commissioners and the school
 2781 board of each fiscally constrained county.

2782 Section 143. Section 589.081, Florida Statutes, is

2783 repealed.

2784 Section 144. Subsections (1) and (3) of section 589.011,
 2785 Florida Statutes, are amended to read:

2786 589.011 Use of state forest lands; fees; rules.—

2787 (1) (a) If authorized by a land management plan approved
 2788 pursuant to chapter 253 or by an interim assignment letter which
 2789 identifies the interim management activities issued by the
 2790 Department of Environmental Protection pursuant to chapter 259,
 2791 the Florida Forest Service of the Department of Agriculture and
 2792 Consumer Services may grant privileges, permits, leases, and
 2793 concessions for the use of state forest lands or any lands
 2794 leased by or otherwise assigned to the Florida Forest Service
 2795 for management purposes, timber, and forest products pursuant to
 2796 ~~for purposes not inconsistent with the provisions of this~~
 2797 chapter.

2798 (b) Lessees of such lands that are open to the public for
 2799 recreational purposes, where such lease or agreement recognizes
 2800 that the state is responsible for personal injury, loss, or
 2801 damage resulting in whole or in part from public use of the area
 2802 under the terms of the lease or agreement, subject to the
 2803 limitations and conditions specified in s. 768.28, owe no duty
 2804 of care to keep the area safe for entry or use by others or to
 2805 give warning to persons entering or going into the area of any
 2806 hazardous conditions, structures, or activities thereon.

2807 (c) Lessees who lease property from the Florida Forest
 2808 Service that is open to the public for recreational purposes:

2809 1. Are not presumed to extend any assurance that the
 2810 leased area is safe for any purpose.

2811 2. Do not incur any duty of care toward a person who goes
 2812 into the area that is subject to the lease or agreement.

2813 3. Are not liable or responsible for any injury to persons
 2814 or property caused by the act or omission of a person who goes
 2815 into the area that is subject to the lease or agreement.

2816 (d) This subsection:

2817 1. Applies to all persons going into the leased area,
 2818 including invitees, licensees, and trespassers.

2819 2. Does not relieve a person of liability that would
 2820 otherwise exist for deliberate, willful, or malicious injury to
 2821 persons or property.

2822 3. Does not create or increase liability of a person.

2823 (3) The Florida Forest Service may ~~shall have the power to~~
 2824 set and charge reasonable fees, rentals, or charges ~~rent~~ for the
 2825 use or operation of facilities and concessions on state forests
 2826 or any lands leased by or otherwise assigned to the Florida
 2827 Forest Service for management purposes based on factors such as
 2828 the cost and extent of recreational facilities and services,
 2829 geographic location, seasonal public demand, fees charged by
 2830 other governmental and private entities for comparable services
 2831 and activities, and market value and demand for forest products.
 2832 Moneys collected from such fees, rentals, and charges ~~rent~~ shall
 2833 be deposited into the Incidental Trust Fund of the Florida
 2834 Forest Service.

2835 Section 145. Section 589.20, Florida Statutes, is amended
 2836 to read:

2837 589.20 Cooperation by Florida Forest Service.—The Florida
 2838 Forest Service may cooperate with other state agencies, water
 2839 management districts, municipalities, and other government
 2840 entities ~~who are custodians of lands which are suitable for~~
 2841 ~~forestry purposes,~~ in the designation and dedication of ~~such~~
 2842 lands that are suitable for forestry purposes ~~when in the~~
 2843 ~~opinion of the state agencies concerned such lands are suitable~~
 2844 ~~for these purposes and can be so administered.~~ Lands designated
 2845 and dedicated by a state agency, water management district,
 2846 municipality, or other government entity ~~Upon the designation~~
 2847 ~~and dedication of said lands for forestry these purposes by the~~
 2848 ~~agencies concerned, said lands~~ shall be administered by the
 2849 Florida Forest Service.

2850 Section 146. Subsection (7) of section 590.02, Florida
 2851 Statutes, is amended to read:

2852 590.02 Florida Forest Service; powers, authority, and
 2853 duties; liability; building structures; Withlacoochee Training
 2854 ~~Florida Center for Wildfire and Forest Resources Management~~
 2855 ~~Training.~~—

2856 (7) The Florida Forest Service may organize, staff, equip,
 2857 and operate the Withlacoochee ~~Florida Forest~~ Training Center.
 2858 The center shall serve as a site where fire and forest resource
 2859 managers can obtain current knowledge, techniques, skills, and
 2860 theory as they relate to their respective disciplines.

2861 (a) The center may establish cooperative efforts involving
 2862 federal, state, and local entities; hire appropriate personnel;
 2863 and engage others by contract or agreement with or without
 2864 compensation to assist in carrying out the training and
 2865 operations of the center.

2866 (b) The center shall provide wildfire suppression training
 2867 opportunities for rural fire departments, volunteer fire
 2868 departments, and other local fire response units.

2869 (c) The center shall ~~will~~ focus on curriculum related to,
 2870 but not limited to, fuel reduction, an incident management
 2871 system, prescribed burning certification, multiple-use land
 2872 management, water quality, forest health, environmental
 2873 education, and wildfire suppression training for structural
 2874 firefighters.

2875 (d) The center may assess appropriate fees for food,
 2876 lodging, travel, course materials, and supplies in order to meet
 2877 its operational costs and may grant free meals, room, and
 2878 scholarships to persons and other entities in exchange for
 2879 instructional assistance.

2880 Section 147. Section 590.091, Florida Statutes, is
 2881 repealed.

2882 Section 148. Subsection (2) of section 590.125, Florida
 2883 Statutes, is amended to read:

2884 590.125 Open burning authorized by the Florida Forest
 2885 Service.—

2886 (2) NONCERTIFIED BURNING.—

2887 (a) Persons may be authorized to broadcast burn or pile
 2888 burn pursuant to ~~in accordance with~~ this subsection if:
 2889 1. There is specific consent of the landowner or his or
 2890 her designee;
 2891 2. Authorization has been obtained from the Florida Forest
 2892 Service or its designated agent before starting the burn;
 2893 3. There are adequate firebreaks at the burn site and
 2894 sufficient personnel and firefighting equipment for the
 2895 containment of the fire;
 2896 4. The fire remains within the boundary of the authorized
 2897 area;
 2898 5. The person named responsible in the burn authorization
 2899 or a designee is present at the burn site until the fire is
 2900 completed;
 2901 6. The Florida Forest Service does not cancel the
 2902 authorization; and
 2903 7. The Florida Forest Service determines that air quality
 2904 and fire danger are favorable for safe burning.
 2905 (b) A new authorization is not required for smoldering
 2906 that occurs within the authorized burn area unless new ignitions
 2907 are conducted by the person named responsible in the burn
 2908 authorization or a designee.
 2909 (c) Monitoring the smoldering activity of a burn does not
 2910 require an additional authorization even if flames begin to
 2911 spread within the authorized burn area due to ongoing
 2912 smoldering.

HB 7091

2014

2913 (d)~~(b)~~ A person who broadcast burns or pile burns in a
 2914 manner that violates ~~any requirement of~~ this subsection commits
 2915 a misdemeanor of the second degree, punishable as provided in s.
 2916 775.082 or s. 775.083.

2917 Section 149. Subsection (3) of section 590.14, Florida
 2918 Statutes, is amended to read:

2919 590.14 Notice of violation; penalties; legislative
 2920 intent.-

2921 (3) The department may also impose an administrative fine
 2922 in the Class I category pursuant to s. 570.971 for each,~~not to~~
 2923 ~~exceed \$1,000 per violation of any section of~~ chapter 589 or
 2924 this chapter or violation of any rule adopted by the Florida
 2925 Forest Service to administer ~~provisions of~~ law conferring duties
 2926 upon the Florida Forest Service. The fine shall be based upon
 2927 the degree of damage, the prior violation record of the person,
 2928 and whether the person knowingly provided false information to
 2929 obtain an authorization. The fines shall be deposited in the
 2930 Incidental Trust Fund of the Florida Forest Service.

2931 Section 150. Subsection (2) of section 595.701, Florida
 2932 Statutes, is amended to read:

2933 595.701 Healthy Schools for Healthy Lives Council.-

2934 (2) The meetings, powers, duties, procedures, and
 2935 recordkeeping of the Healthy Schools for Healthy Lives Council
 2936 shall be pursuant to ~~governed by~~ s. 570.232 ~~570.0705,~~ relating
 2937 ~~to advisory committees established within the department.~~

2938 Section 151. Subsection (2) of section 597.0041, Florida

HB 7091

2014

2939 Statutes, is amended to read:

2940 597.0041 Prohibited acts; penalties.-

2941 (2)(a) A ~~Any~~ person who violates ~~any provision of~~ this
 2942 chapter or any rule adopted under this chapter ~~promulgated~~
 2943 ~~hereunder~~ is subject to a suspension or revocation of his or her
 2944 certificate of registration or license under this chapter. The
 2945 department may, in lieu of~~r~~ or in addition to the suspension or
 2946 revocation, impose on the violator an administrative fine in the
 2947 Class I category pursuant to s. 570.971 for each violation, for
 2948 each day the violation exists ~~in an amount not to exceed \$1,000~~
 2949 ~~per violation per day.~~

2950 (b) Except as provided in subsection (4), a ~~any~~ person who
 2951 violates ~~any provision of~~ this chapter~~r~~, or any rule adopted
 2952 under this chapter ~~hereunder~~, commits a misdemeanor of the first
 2953 degree, punishable as provided in s. 775.082 or s. 775.083.

2954 Section 152. Subsection (1) of section 597.020, Florida
 2955 Statutes, is amended to read:

2956 597.020 Shellfish processors; regulation.-

2957 (1) The department may:

2958 (a) ~~is authorized to~~ Adopt by rule regulations,
 2959 specifications, and codes relating to sanitary practices for
 2960 catching, cultivating, handling, processing, packaging,
 2961 preserving, canning, smoking, and storing ~~of~~ oysters, clams,
 2962 mussels, scallops, and crabs.

2963 (b) ~~The department is also authorized to~~ License shellfish
 2964 processors who handle oysters, clams, mussels, scallops, and

2965 crabs when such activities relate to quality control, sanitary,
 2966 and public health practices pursuant to this section and chapter
 2967 500.

2968 (c) ~~The department is also authorized to~~ License or
 2969 certify, for a fee determined by rule, facilities used for
 2970 processing oysters, clams, mussels, scallops, and crabs, to levy
 2971 an administrative fine in the Class I category pursuant to s.
 2972 570.971 for each violation for each day the violation exists ~~of~~
 2973 ~~up to \$1,000 per violation per day~~ or to suspend or revoke such
 2974 licenses or certificates upon satisfactory evidence of a ~~any~~
 2975 violation of rules adopted pursuant to this section, and to
 2976 seize and destroy any adulterated or misbranded shellfish
 2977 products as defined by rule.

2978 Section 153. Subsection (2) of section 599.002, Florida
 2979 Statutes, is amended to read:

2980 599.002 Viticulture Advisory Council.-

2981 (2) The meetings, powers and duties, procedures, and
 2982 recordkeeping of the Viticulture Advisory Council shall be
 2983 pursuant to ~~governed by the provisions of s. 570.232 570.0705~~
 2984 ~~relating to advisory committees established within the~~
 2985 ~~department.~~

2986 Section 154. Section 601.67, Florida Statutes, is amended
 2987 to read:

2988 601.67 Disciplinary action by Department of Agriculture
 2989 against citrus fruit dealers.-

2990 (1) The Department of Agriculture may impose an

2991 administrative a fine in the Class IV category pursuant to s.
 2992 570.971 not to exceed ~~exceeding~~ \$50,000 for each ~~per~~ violation
 2993 against a ~~any~~ licensed citrus fruit dealer who violates ~~for~~
 2994 ~~violation of any provision of~~ this chapter and, in lieu of~~7~~ or
 2995 in addition to~~7~~ such fine, may revoke or suspend the license of
 2996 ~~any~~ such a dealer when it has been satisfactorily shown that
 2997 such dealer, in her or his activities as a citrus fruit dealer,
 2998 has:

2999 (a) Obtained a license by means of fraud,
 3000 misrepresentation, or concealment;

3001 (b) Violated or aided or abetted in the violation of any
 3002 law of this state governing or applicable to citrus fruit
 3003 dealers or any lawful rules of the Department of Citrus;

3004 (c) Been guilty of a crime against the laws of this or any
 3005 other state or government involving moral turpitude or dishonest
 3006 dealing or has become legally incompetent to contract or be
 3007 contracted with;

3008 (d) Made, printed, published, distributed, or caused,
 3009 authorized, or knowingly permitted the making, printing,
 3010 publication, or distribution of false statements, descriptions,
 3011 or promises of such a character as to reasonably induce a ~~any~~
 3012 person to act to her or his damage or injury, if such citrus
 3013 fruit dealer then knew, or by the exercise of reasonable care
 3014 and inquiry could have known, of the falsity of such statements,
 3015 descriptions, or promises;

3016 (e) Knowingly committed or been a party to any material

3017 fraud, misrepresentation, concealment, conspiracy, collusion,
 3018 trick, scheme, or device whereby another ~~any other~~ person
 3019 lawfully relying upon the word, representation, or conduct of
 3020 the citrus fruit dealer has acted to her or his injury or
 3021 damage;

3022 (f) Committed any act or conduct of the same or different
 3023 character than ~~of~~ that ~~hereinabove~~ enumerated which constitutes
 3024 fraudulent or dishonest dealing; or

3025 (g) Violated ~~any of the provisions of~~ ss. 506.19-506.28,
 3026 ~~both sections inclusive.~~

3027 (2) The Department of Agriculture may impose an
 3028 administrative a fine in the Class IV category pursuant to s.
 3029 570.971 not to exceed ~~exceeding~~ \$100,000 for each ~~per~~ violation
 3030 against a ~~any~~ person who operates as a citrus fruit dealer
 3031 without a current citrus fruit dealer license issued by the
 3032 Department of Agriculture pursuant to s. 601.60. In addition,
 3033 the Department of Agriculture may order such person to cease and
 3034 desist operating as a citrus fruit dealer without a license. An
 3035 administrative order entered by the Department of Agriculture
 3036 under this subsection may be enforced pursuant to s. 601.73.

3037 (3) The Department of Agriculture shall impose an
 3038 administrative a fine in the Class IV category pursuant to s.
 3039 570.971 not exceed ~~of not less than \$10,000 nor more than~~
 3040 \$100,000 for each ~~per~~ violation against a ~~any~~ licensed citrus
 3041 fruit dealer and shall suspend, for 60 days during the first
 3042 available period between September 1 and May 31, the license of

3043 | a ~~any~~ citrus fruit dealer who:

3044 | (a) Falsely labels or otherwise misrepresents that a fresh
3045 | citrus fruit was grown in a specific production area specified
3046 | in s. 601.091; or

3047 | (b) Knowingly, falsely labels or otherwise misrepresents
3048 | that a processed citrus fruit product was prepared solely with
3049 | citrus fruit grown in a specific production area specified in s.
3050 | 601.091.

3051 | (4) A ~~Any~~ fine imposed pursuant to subsection (1),
3052 | subsection (2), or subsection (3), when paid, shall be deposited
3053 | by the Department of Agriculture into its General Inspection
3054 | Trust Fund.

3055 | (5) Whenever an ~~any~~ administrative order has been made and
3056 | entered by the Department of Agriculture that imposes a fine
3057 | pursuant to this section, such order shall specify a time limit
3058 | for payment of the fine, not exceeding 15 days. The failure of
3059 | the citrus fruit dealer ~~involved~~ to pay the fine within that
3060 | time shall result in the immediate suspension of such citrus
3061 | fruit dealer's current license, or any subsequently issued
3062 | license, until ~~such time as~~ the order has been fully satisfied.

3063 | An ~~Any~~ order suspending a citrus fruit dealer's license shall
3064 | include a provision that the ~~such~~ suspension shall be for a
3065 | specified period ~~of time~~ not to exceed 60 days, and such period
3066 | of suspension may begin ~~commence~~ at any designated date within
3067 | the current license period or subsequent license period.

3068 | Whenever an order has been entered that suspends a citrus fruit

3069 dealer's license for a definite period ~~of time~~ and that license,
 3070 by law, expires during the period of suspension, the suspension
 3071 order shall continue automatically and shall be effective
 3072 against any subsequent citrus fruit dealer ~~dealer's~~ license
 3073 issued to such dealer until ~~such time as~~ the entire period of
 3074 suspension has elapsed. Whenever any such administrative order
 3075 of the Department of Agriculture is sought to be reviewed by the
 3076 offending dealer involved in a court of competent jurisdiction,
 3077 if such court proceedings should finally terminate in such
 3078 administrative order being upheld or not quashed, such order
 3079 shall ~~thereupon~~, upon the filing with the Department of
 3080 Agriculture of a certified copy of the mandate or other order of
 3081 the last court having to do with the matter in the judicial
 3082 process, become immediately effective and shall then be carried
 3083 out and enforced notwithstanding such time will be during a new
 3084 and subsequent shipping season from that during which the
 3085 administrative order was first originally entered by the
 3086 Department of Agriculture.

3087 Section 155. Section 604.22, Florida Statutes, is amended
 3088 to read:

3089 604.22 Dealers to keep records; contents.—

3090 (1) (a) Each licensee, while acting as agent for a
 3091 producer, shall make and preserve for at least 1 year a record
 3092 of each transaction, specifying the name and address of the
 3093 producer for whom she or he acts as agent; the date of receipt;
 3094 the kind, quality, and quantity of agricultural products

3095 received; the name and address of the purchaser of each package
 3096 of agricultural products; the price for which each package was
 3097 sold; the amount of any additional charges necessary to
 3098 effectuate the sale; the amount and explanation of any
 3099 adjustments given; and the net amount due from each purchaser.

3100 (b) An account of sales shall be furnished to each
 3101 producer within 48 hours after the sale of such agricultural
 3102 products unless otherwise agreed to in a written contract or
 3103 verifiable oral agreement. Such account of sales shall clearly
 3104 show the sale price of each lot of agricultural products sold;
 3105 all adjustments to the original price, along with an explanation
 3106 of such adjustments; and an itemized showing of all marketing
 3107 costs deducted by the licensee, along with the net amount due
 3108 the producer.

3109 (c) The licensee shall make the payment to the producer
 3110 within 5 days after ~~of~~ the licensee's receipt of payment unless
 3111 otherwise agreed to in a written contract or verifiable oral
 3112 agreement.

3113 (2) (a) Notwithstanding ~~The provisions of~~ s. 604.16(2),
 3114 (3), and (4) ~~notwithstanding~~, a ~~any~~ person, partnership,
 3115 corporation, or other business entity, except a person described
 3116 in s. 604.16(1), who possesses and offers for sale agricultural
 3117 products is required to possess and display, upon the request of
 3118 a ~~any~~ department representative or state, county, or local law
 3119 enforcement officer, an invoice, bill of sale, manifest, or
 3120 other written document showing the date of sale, the name and

3121 address of the seller, and the kind and quantity of products for
 3122 all such agricultural products.

3123 (b) A ~~Any~~ person who violates ~~the provisions of this~~
 3124 section is subject to s. 604.30(2) and (3) ~~subsection is guilty~~
 3125 ~~of a misdemeanor of the second degree, punishable as provided in~~
 3126 ~~s. 775.082 or s. 775.083.~~

3127 Section 156. Paragraph (a) of subsection (3) of section
 3128 604.30, Florida Statutes, is amended to read:

3129 604.30 Penalties; injunctive relief; administrative
 3130 fines.-

3131 (3) (a) In addition to the penalties provided in this
 3132 section, the department may, after notice and hearing, impose an
 3133 administrative ~~a~~ fine in the Class II category pursuant to s.
 3134 570.971 not to exceed ~~exceeding~~ \$2,500 for a ~~the~~ violation of
 3135 ~~any of the provisions of~~ ss. 604.15-604.34 or the rules adopted
 3136 thereunder against a ~~any~~ dealer in agricultural products. ~~+~~ Such
 3137 fine, when imposed and paid, shall be deposited by the
 3138 department into the General Inspection Trust Fund.

3139 Section 157. Paragraph (a) of subsection (19) of section
 3140 616.242, Florida Statutes, is amended to read:

3141 616.242 Safety standards for amusement rides.-

3142 (19) ENFORCEMENT AND PENALTIES.-

3143 (a) The department may deny, suspend for a period not to
 3144 exceed 1 year, or revoke any permit or inspection certificate.
 3145 In addition to denial, suspension, or revocation, the department
 3146 may impose an administrative fine in the Class II category

HB 7091

2014

3147 | pursuant to s. 570.971 not to exceed ~~of up to~~ \$2,500 for each
 3148 | ~~per~~ violation, for each day the violation exists ~~per day~~,
 3149 | against the owner of the amusement ride if it finds that:
 3150 | 1. An amusement ride has operated or is operating:
 3151 | a. With a mechanical, structural, or electrical defect
 3152 | that affects patron safety, of which the owner or manager has
 3153 | knowledge, or, through the exercise of reasonable diligence,
 3154 | should have knowledge;
 3155 | b. In a manner or circumstance that presents a risk of
 3156 | serious injury to patrons;
 3157 | c. At a speed in excess of its maximum safe operating
 3158 | speed;
 3159 | d. In violation of this section or any rule adopted under
 3160 | this section; or
 3161 | e. In violation of an ~~any~~ order of the department or order
 3162 | of any court; ~~or~~
 3163 | 2. A ~~Any~~ manager in the course of his or her duties is
 3164 | under the influence of drugs or alcohol.
 3165 | Section 158. This act shall take effect July 1, 2014.

