State Affairs Committee

Wednesday, March 20, 2013
8:00 AM
Morris Hall (17 HOB)

MEETING PACKET

Will Weatherford
Speaker

Steve Crisafulli
Chair

Committee Meeting Notice

HOUSE OF REPRESENTATIVES

State Affairs Committee

Start Date and Time:	Wednesday, March 20, 2013 08:00 am
End Date and Time:	Wednesday, March 20, 2013 11:00 am
Location:	Morris Hall (17 HOB)
Duration:	3.00 hrs

Consideration of the following bill(s):

CS/HB 137 Department of Citrus by Agriculture & Natural Resources Subcommittee, Raburn
CS/HB 423 Tax On Sales, Use & Other Transactions by Agriculture & Natural Resources Subcommittee, Adkins
HB 533 City of Tampa, Hillsborough County by Raulerson
HM 763 Congressional Term Limits by Caldwell
HB 4029 Governor's Private Secretary by Fitzenhagen
HB 4037 Broward County/Saltwater Fishing by Waldman
HB 4039 Broward County/Fishing by Waldman
HB 7079 Review Under Open Government Sunset Review Act by Government Operations Subcommittee, Ahern

Consideration of the following proposed committee bill(s):

PCB SAC 13-02 -- Numeric Nutrient Criteria

NOTICE FINALIZED on 03/18/2013 16:15 by Love.John

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 137 Department of Citrus
SPONSOR(S): Agriculture & Natural Resources Subcommittee; Raburn and others
TIED BILLS: None **IDEN./SIM. BILLS:** SB 298

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

SUMMARY ANALYSIS

In 1949, the Florida Citrus Code was established in chapter 601, Florida Statutes, to regulate and protect the citrus industry. Over the years, various sections of chapter 601, F.S., have been revised and new sections have been added. The Legislature amended chapter 601, F.S., in chapter 2012-182, Laws of Florida, to make substantive changes, as well as to correct various inconsistencies. In the course of amending chapter 601, F.S., certain references to the Department of Citrus (DOC) were incorrectly changed to the Department of Agriculture and Consumer Services (DACS), and an outdated reference to the DOC headquarters being located in Lakeland was inadvertently left in the statutes.

The bill makes the following revisions to chapter 601, F.S., correcting inadvertent references in chapter 2012-182, L.O.F.:

- Deletes the obsolete reference in s. 601.152(1)(d), F.S., to Lakeland since the DOC relocated operations to Bartow about three years ago;
- Amends s. 601.9918, F.S., to revert the reference from the Department of Agriculture and Consumer Services to the Department of Citrus regarding rules related to issuance and use of symbols; and
- Amends s. 601.992, F.S., to revert the reference from the Department of Agriculture and Consumer Services to the Department of Citrus regarding implementation of and rules related to regulation of certain nonprofit corporations that receive payments or dues from their members.

The bill also specifies that the revisions to ss. 601.998 and 601.992, F.S., in this act are remedial in nature and apply retroactively to the effective date of ss. 74 and 75 of chapter 2012-182, L.O.F., respectively.

Finally, the bill specifies that any rules that had been adopted by the DOC to implement ss. 601.9918 and 601.992, F.S., prior to chapter 601 rewrite, and inadvertently transferred to DACS, are returned to the DOC by a type two transfer and apply retroactively to the effective date of the chapter 601, F.S., rewrite.

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

The effective date of this legislation is upon becoming law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

In 1949, the Florida Citrus Code was established in chapter 601, Florida Statutes, to regulate and protect the citrus industry. Over the years, various sections of chapter 601, F.S., have been revised and new sections have been added. The Legislature amended chapter 601, F.S., in chapter 2012-182, Laws of Florida, to make substantive changes, as well as to correct various inconsistencies. In the course of amending chapter 601, F.S., certain references to the Department of Citrus (DOC) were incorrectly changed to the Department of Agriculture and Consumer Services (DACS), and an outdated reference to the DOC headquarters being located in Lakeland was inadvertently left in the statutes.

Section 1

Present Situation

Section 601.152 (1)(d), F.S., specifies that copies of proposed marketing orders must be made available to the public at the offices of the DOC at Lakeland at least 5 days before the public hearing.

Effect of Proposed Changes

The bill deletes from s. 601.152(1)(d), F.S., the obsolete reference to Lakeland. The DOC relocated their operations to Bartow approximately three years ago.

Section 2

Present Situation

Section 601.9918, F.S., states that, in rules related to the issuance and voluntary use of symbols, certification marks, service marks, or trademarks, the Florida Citrus Commission may make general references to national or state requirements that the license applicant would be compelled to meet regardless of the Department of Agriculture and Consumer Service's (DACS) issuance of the license applied for. Chapter 2012-182, L.O.F., amended the above statutory section and made incorrect changes to the section by referencing DACS instead of the DOC.

Effect of Proposed Changes

The bill amends section 601.9918, F.S., to revert the reference to the DOC to correct the incorrect reference to DACS.

Section 3

Present Situation

Section 601.992, F.S., authorizes the DOC or DACS, or their successors, to collect or compel the entities regulated by DACS to collect dues and other payments on behalf of any non-profit corporations located in the state that receive payments or dues from their members. These non-profit corporations must be engaged in market news and grower education solely for citrus growers, and must have at least 5,000 members who are engaged in growing citrus in the state for commercial sale. DACS has the authority to adopt rules to administer this section. The rules may establish indemnity requirements for the requesting corporation and for fees to be charged to the corporation that are sufficient to ensure that any direct costs incurred by DACS in implementing this section are borne by the requesting corporation and not by DACS. Chapter 2012-182, L.O.F., also incorrectly changed, from DOC to DACS, the agency that is responsible for implementing this section of law and adopting rules.

Effect of Proposed Changes

The bill amends section 601.992, F.S., to revert the references to the DOC to correct the incorrect references to DACS.

Section 4

Because chapter 2012-182, L.O.F., mistakenly made DACS, instead of the DOC, the agency responsible for implementing the statutory sections discussed above, the bill specifies that the amendments to s. 601.9918 and 601.992, F.S., are remedial in nature and apply retroactively to the effective date of ss. 74 and 75 of chapter 2012-182, Laws of Florida (LOF).

The bill also specifies that rules 20-109.005 and 20-112.003, F.A.C., adopted by DOC to implement s. 601.9918, F.S., and rules 20-7.001, 20-7.002, 20-7.003, 20-7.004, and 20-7.005, F.A.C., adopted by DOC to implement s. 601.992, F.S., all of which were in effect upon the effective date of ss. 74 and 75 of chapter 2012-182, L.O.F., if transferred to DACS, are transferred by a type two transfer, as defined in s. 20.06(2), F.S., to DOC and apply retroactively to the effective date of ss. 74 and 75 of chapter 2012-182, L.O.F. Since DACS did not adopt or amend rules to implement s. 601.9918 and 601.992, F.S., on or after the effective date of ss. 74 and 75 of chapter 2012-182, L.O.F., only the rules listed in this subsection are subject to transfer.

B. SECTION DIRECTORY:

Section 1. Amends s. 601.152, F.S.; deletes an obsolete reference.

Section 2. Amends s. 601.9918, F.S.; returns certain references to DOC that were changed to reference DACS by chapter 2012-182, Laws of Florida.

Section 3. Amends s. 601.992, F.S.; returns certain references to DOC that were changed to reference DACS by chapter 2012-182, Laws of Florida.

Section 4. Provides for retroactive application; provides for the transfer of certain rules of DACS to DOC; and provides for retroactive application of such rules.

Section 5. Provides an effective date of upon becoming law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

None

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On February 12, 2013, the Agriculture and Natural Resources Subcommittee adopted one amendment to HB 137. The amendment is a technical amendment ensuring that the rules that were in effect when the rewrite of chapter 601, F.S., took effect are the same rules that are restored to the Department of Citrus when CS/HB 137 takes effect.

A bill to be entitled

An act relating to the Department of Citrus; amending s. 601.152, F.S.; deleting an obsolete reference; amending ss. 601.9918 and 601.992, F.S.; reverting certain references to the Department of Citrus that were changed to references to the Department of Agriculture and Consumer Services by chapter 2012-182, Laws of Florida; providing for retroactive application; providing for the transfer of specified rules of the Department of Agriculture and Consumer Services to the Department of Citrus; providing for retroactive application of such rules; providing legislative intent with respect to the transfer of rules; providing an effective date.

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

Section 1. Paragraph (d) of subsection (1) of section 601.152, Florida Statutes, is amended to read:

601.152 Special marketing orders.—

(1)

(d) Copies of the proposed marketing order shall be made available to the public at the offices of the department ~~at Lakeland~~ at least 5 days before such hearing and shall be in sufficient detail to apprise all persons having an interest therein of the approximate amount of moneys proposed to be expended; the assessments to be levied thereunder; and the general details of the proposed marketing order for a special

marketing campaign of advertising or sales promotion or market or product research and development. Among the details so specified shall be the period of time during which the assessment imposed pursuant to subsection (8) will be levied upon the privilege so assessed, which period may not be greater than 2 years. The order may, however, provide that the expenditure of the funds received from the imposition of such assessments shall not be so confined but may be expended during such time or times as shall be specified in the proposed marketing order, which may be either during the shipping season immediately preceding the shipping seasons during which such assessments are imposed or during, or at any time subsequent to, the shipping seasons during which such assessments are imposed. This section does not prevent the imposition of a subsequent marketing order before, during, or after the expenditure of funds collected under a previously imposed marketing order, provided the aggregate of the assessments imposed may not exceed the maximum permitted under subsection (8).

Section 2. Section 601.9918, Florida Statutes, is amended to read:

601.9918 Rules related to issuance and use of symbols.—In rules related to the issuance and voluntary use of symbols, certification marks, service marks, or trademarks, the commission may make general references to national or state requirements that the license applicant would be compelled to meet regardless of the department's ~~Department of Agriculture's~~ issuance of the license applied for.

Section 3. Section 601.992, Florida Statutes, is amended

to read:

601.992 Collection of dues and other payments on behalf of certain nonprofit corporations engaged in market news and grower education.—The Department of Citrus or the Department of Agriculture or their successors may collect or compel the entities regulated by the Department of Citrus ~~Agriculture~~ to collect dues, contributions, or any other financial payment upon request by, and on behalf of, any not-for-profit corporation and its related not-for-profit corporations located in this state that receive payments or dues from their members. Such not-for-profit corporation must be engaged, to the exclusion of agricultural commodities other than citrus, in market news and grower education solely for citrus growers, and must have at least 5,000 members who are engaged in growing citrus in this state for commercial sale. The Department of Citrus ~~Agriculture~~ may adopt rules to administer this section. The rules may establish indemnity requirements for the requesting corporation and for fees to be charged to the corporation that are sufficient but do not exceed the amount necessary to ensure that any direct costs incurred by the Department of Citrus ~~Agriculture~~ in implementing this section are borne by the requesting corporation and not by the Department of Citrus ~~Agriculture~~.

Section 4. (1) The amendments made by this act to ss. 601.9918 and 601.992, Florida Statutes, are remedial in nature and apply retroactively to the effective date of ss. 74 and 75 of chapter 2012-182, Laws of Florida.

(2) Rules 20-109.005 and 20-112.003, Florida

Administrative Code, adopted by the Department of Citrus to implement s. 601.9918, Florida Statutes, and rules 20-7.001, 20-7.002, 20-7.003, 20-7.004, and 20-7.005, Florida Administrative Code, adopted by the Department of Citrus to implement s. 601.992, Florida Statutes, all of which were in effect upon the effective date of ss. 74 and 75 of chapter 2012-182, Laws of Florida, if transferred to the Department of Agriculture and Consumer Services are transferred by a type two transfer, as defined in s. 20.06(2), Florida Statutes, to the Department of Citrus and shall apply retroactively to the effective date of ss. 74 and 75 of chapter 2012-182, Laws of Florida. Since the Department of Agriculture and Consumer Services did not adopt or amend rules to implement s. 601.9918 or s. 601.992, Florida Statutes, on or after the effective date of ss. 74 and 75 of chapter 2012-182, Laws of Florida, only the rules listed in this subsection are subject to transfer.

Section 5. This act shall take effect upon becoming a law.

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. CS/HB 137 (2013)

Amendment No.

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

Committee/Subcommittee hearing bill: State Affairs Committee

Representative Albritton offered the following:

Amendment

Remove lines 82-100 and insert:

and apply retroactively to July 1, 2012.

(2)(a) Rules 20-109.005 and 20-112.003, Florida Administrative Code, adopted by the Department of Citrus to implement s. 601.9918, Florida Statutes, and rules 20-7.001, 20-7.002, 20-7.003, 20-7.004, and 20-7.005, Florida Administrative Code, adopted by the Department of Citrus to implement s. 601.992, Florida Statutes, all of which were in effect on July 1, 2012, shall remain in effect until modified pursuant to s. 120.54, Florida Statutes. This paragraph applies retroactively to July 1, 2012.

(b) Rules adopted by the Department of Agriculture and Consumer Services to implement s. 601.9918, Florida Statutes, or s. 601.992, Florida Statutes, between July 1, 2012, and the effective date of this act are repealed.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 423 Tax On Sales, Use, & Other Transactions
SPONSOR(S): Adkins
TIED BILLS: None **IDEN./SIM. BILLS:** SB 960

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Agriculture & Natural Resources Subcommittee	12 Y, 0 N, As CS	Kaiser	Blalock
2) Finance & Tax Subcommittee	16 Y, 0 N	Flieger	Langston
3) State Affairs Committee		Kaiser	Camechis

SUMMARY ANALYSIS

Under current law, a 6 percent sales and use tax is levied pursuant to ch. 212, F.S., on the sales price of dyed diesel fuel purchased for use in a vessel.

Dyed diesel fuel is used in equipment for construction and agriculture that are not intended for use on roads and highways. The fuel is dyed red so the U.S. Department of Transportation can easily tell the difference to ensure that vehicles on the highway are not using the dyed fuel. Dyed diesel is exempt from the fuel taxes imposed by ch. 206, F.S.

The bill provides an exemption from the sales and use tax on dyed diesel fuel that is used for commercial fishing and aquacultural purposes.

The Revenue Estimating Conference estimates that the provisions of this legislation will result in a negative revenue impact of $1.9 million to state government in FY 2013-2014 (-$2 million recurring). That impact will exclusively affect the State Transportation Trust Fund.

The bill has an effective date of July 1, 2013.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Section 212.05(1)(k), F.S., provides that the sales and use tax rate of 6 percent is to be levied on the sales price of dyed diesel fuel that is purchased for use in a vessel.

Dyed diesel fuel is generally used in equipment for construction and agriculture that are not intended for use on roads and highways. The fuel is typically dyed red so the U.S. Department of Transportation can easily tell the difference to ensure that vehicles on the highway are not using the dyed fuel. Diesel fuel that is not dyed is subject to the fuel tax imposed under ch. 206, F.S., however as discussed above dyed diesel is still subject to the sales and use tax unless specifically exempted.

Section 206.41(4)(c)3, F.S., provides that "commercial fishing and aquacultural purposes" means motor fuel used in the operation of boats, vessels, or equipment used exclusively for the taking of fish, crayfish, oysters, shrimp, or sponges from salt or fresh waters under the jurisdiction of the state for resale to the public, and no part of which fuel is used in any vehicle or equipment driven or operated upon the highways of this state; however, the term may in no way be construed to include fuel used for sport or pleasure fishing.

Effect of Proposed Changes

The bill amends ss. 212.05, 212.0501, and 212.08, F.S., to provide a sales tax exemption for dyed diesel fuel used for commercial fishing and aquacultural purposes as defined in s. 206.41(4)(c)3., F.S.

B. SECTION DIRECTORY:

Section 1: Amends s. 212.05, F.S.; providing an exemption from sales and use tax for dyed diesel fuel used in vessels used for commercial fishing and aquacultural purposes.

Section 2: Amends s. 212.0501, F.S., providing an exemption from sales and use tax on dyed diesel fuel for dyed diesel fuel used for commercial fishing and aquacultural purposes.

Section 3: Amends s. 212.08, F.S.; providing an exemption from sales and use tax for dyed diesel fuel used for commercial fishing and aquacultural purposes.

Section 4: Provides an effective date of July 1, 2013.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   The Revenue Estimating Conference estimates that the provisions of this legislation will result in a negative revenue impact of $1.9 million to state government in FY 2013-2014 (-$2 million recurring). That impact will exclusively affect the State Transportation Trust Fund.

2. Expenditures:

   None

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None

2. Expenditures:

None

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Commercial fishermen and aquaculturists will benefit from the sales tax exemption on dyed diesel fuel used to operate their commercial fishing vessels.

D. FISCAL COMMENTS:

The negative impact to the state will exclusively affect the State Transportation Trust Fund.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None

B. RULE-MAKING AUTHORITY:

None

C. DRAFTING ISSUES OR OTHER COMMENTS:

None

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On February 20, 2013, the Agriculture and Natural Resources Subcommittee adopted a strike-all amendment to HB 423. The strike-all amendment extends the sales tax exemption for dyed diesel fuel to vessels used for commercial fishing and aquacultural purposes as well as vessels used for the taking of shrimp.

A bill to be entitled

An act relating to the tax on sales, use, and other transactions; amending s. 212.05, F.S.; providing an exception to sales tax for dyed diesel fuel used in vessels for commercial fishing and aquacultural purposes; amending s. 212.0501, F.S.; providing an exception from sales tax collected by a licensed sales tax dealer for dyed diesel fuel used in vessels for commercial fishing and aquacultural purposes; amending s. 212.08, F.S.; providing a sales tax exemption for dyed diesel fuel used in vessels for commercial fishing and aquacultural purposes; providing an effective date.

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

Section 1. Paragraph (k) of subsection (1) of section 212.05, Florida Statutes, is amended to read:

212.05 Sales, storage, use tax.—It is hereby declared to be the legislative intent that every person is exercising a taxable privilege who engages in the business of selling tangible personal property at retail in this state, including the business of making mail order sales, or who rents or furnishes any of the things or services taxable under this chapter, or who stores for use or consumption in this state any item or article of tangible personal property as defined herein and who leases or rents such property within the state.

(1) For the exercise of such privilege, a tax is levied on

each taxable transaction or incident, which tax is due and payable as follows:

(k) At the rate of 6 percent of the sales price of each gallon of diesel fuel not taxed under chapter 206 purchased for use in a vessel, except dyed diesel fuel that is exempt pursuant to s. 212.08(4)(a)4.

Section 2. Subsection (4) of section 212.0501, Florida Statutes, is amended to read:

212.0501 Tax on diesel fuel for business purposes; purchase, storage, and use.—

(4) Except as otherwise provided in s. 212.05(1)(k), a licensed sales tax dealer may elect to collect such tax pursuant to this chapter on all sales to each person who purchases diesel fuel, except dyed diesel fuel used for commercial fishing and aquacultural purposes listed in s. 206.41(4)(c)3., for consumption, use, or storage by a trade or business. When the licensed sales tax dealer has not elected to collect such tax on all such sales, the purchaser or ultimate consumer shall be liable for the payment of tax directly to the state.

Section 3. Paragraph (a) of subsection (4) of section 212.08, Florida Statutes, is amended to read:

212.08 Sales, rental, use, consumption, distribution, and storage tax; specified exemptions.—The sale at retail, the rental, the use, the consumption, the distribution, and the storage to be used or consumed in this state of the following are hereby specifically exempt from the tax imposed by this chapter.

(4) EXEMPTIONS; ITEMS BEARING OTHER EXCISE TAXES, ETC.—

(a) Also exempt are:

1. Water delivered to the purchaser through pipes or conduits or delivered for irrigation purposes. The sale of drinking water in bottles, cans, or other containers, including water that contains minerals or carbonation in its natural state or water to which minerals have been added at a water treatment facility regulated by the Department of Environmental Protection or the Department of Health, is exempt. This exemption does not apply to the sale of drinking water in bottles, cans, or other containers if carbonation or flavorings, except those added at a water treatment facility, have been added. Water that has been enhanced by the addition of minerals and that does not contain any added carbonation or flavorings is also exempt.

2. All fuels used by a public or private utility, including any municipal corporation or rural electric cooperative association, in the generation of electric power or energy for sale. Fuel other than motor fuel and diesel fuel is taxable as provided in this chapter with the exception of fuel expressly exempt herein. Motor fuels and diesel fuels are taxable as provided in chapter 206, with the exception of those motor fuels and diesel fuels used by railroad locomotives or vessels to transport persons or property in interstate or foreign commerce, which are taxable under this chapter only to the extent provided herein. The basis of the tax shall be the ratio of intrastate mileage to interstate or foreign mileage traveled by the carrier's railroad locomotives or vessels that were used in interstate or foreign commerce and that had at least some Florida mileage during the previous fiscal year of

the carrier, such ratio to be determined at the close of the fiscal year of the carrier. However, during the fiscal year in which the carrier begins its initial operations in this state, the carrier's mileage apportionment factor may be determined on the basis of an estimated ratio of anticipated miles in this state to anticipated total miles for that year, and subsequently, additional tax shall be paid on the motor fuel and diesel fuels, or a refund may be applied for, on the basis of the actual ratio of the carrier's railroad locomotives' or vessels' miles in this state to its total miles for that year. This ratio shall be applied each month to the total Florida purchases made in this state of motor and diesel fuels to establish that portion of the total used and consumed in intrastate movement and subject to tax under this chapter. The basis for imposition of any discretionary surtax shall be set forth in s. 212.054. Fuels used exclusively in intrastate commerce do not qualify for the proration of tax.

3. The transmission or wheeling of electricity.

4. Dyed diesel fuel placed into the storage tank of a vessel used exclusively for the commercial fishing and aquacultural purposes listed in s. 206.41(4)(c)3.

Section 4. This act shall take effect July 1, 2013.

HOUSE OF REPRESENTATIVES LOCAL BILL STAFF ANALYSIS

BILL #: HB 533 City of Tampa, Hillsborough County
SPONSOR(S): Raulerson
TIED BILLS: **IDEN./SIM. BILLS:** SB 586

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Local & Federal Affairs Committee	17 Y, 0 N	Lukis	Rojas
2) State Affairs Committee		Harrington	Camechis

SUMMARY ANALYSIS

A retirement plan sponsor may seek a periodic determination from the Internal Revenue Service (IRS) that its plan is a "qualified plan" under s. 401(a) of the Internal Revenue Code. A qualified plan is entitled to favorable tax treatment. Contributions to a qualified plan are generally deductible and qualified plan earnings may accumulate tax free.

In response to the City of Tampa's request, the IRS reviewed the City of Tampa's General Employees' Pension Plan (Plan) and found that in order to remain a "qualified plan," the City of Tampa needed to amend its Plan to provide for full vesting of funded benefits if the Plan is terminated or discontinued. Currently, the Plan does not make any reference to mandatory vesting in such situations—if the Plan terminates, participants are at risk of losing accrued pension benefits.

HB 533 seeks to amend the Plan accordingly and specifies that "an Employee's Pension Credit shall become nonforfeitable to the extent such Pension Credit is funded if the Plan is fully terminated or has a partial termination applicable to such Employee." The IRS reviewed the bill and agreed that the proposed language would sufficiently render the Plan a "qualified plan."

The economic impact statement form accompanying the local bill does not reflect any economic impact to the Plan or City of Tampa.

The bill would take effect upon becoming law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

A retirement plan sponsor may seek a periodic determination in the form of a "favorable determination letter" from the Internal Revenue Service (IRS) to ensure that its plan is in accordance with the Internal Revenue Code and thereby avoid the possibility of future audit. More specifically, a favorable determination letter indicates that, in the opinion of the IRS, a retirement plan is a "qualified plan" under s. 401(a) of the Internal Revenue Code. In response to the City of Tampa's request, the IRS reviewed the City of Tampa's General Employees' Pension Plan (Plan) and determined that the Plan must be amended to remain a "qualified plan" under s. 401(a) of the Internal Revenue Code.[1]

Section 401(a) details many requirements for a qualified plan, including but not limited to the following:

1) that it be impossible for any part of the corpus or income of the plan to be used for purposes other than for the exclusive benefit of plan participants;[2]
2) that the plan does not discriminate between employees;[3] and
3) that it provides minimum vesting requirements.[4]

A qualified plan under s. 401(a) of the Internal Revenue Code benefits employers and employees alike as such plans are entitled to favorable tax treatment. Contributions to a qualified plan are generally deductible and qualified plan earnings may accumulate tax free.[5] Employee retirement plans that fail to satisfy the requirements under s. 401(a) of the Internal Revenue Code are not entitled to this type of favorable tax treatment.

At issue here is the Tampa Plan's vesting requirements. After reviewing Tampa's Plan, the IRS determined that to maintain qualified status, the City of Tampa's Plan must provide for full vesting of funded benefits if the Plan is terminated or discontinued. The IRS relies on ss. 401(a)(4) and (7) of the Internal Revenue Code as it existed when the Employee Retirement Income Security Act of 1974 (ERISA) was enacted.[6]

The 1974 code denies qualified status to any "trust" that does not fully vest at termination "to the extent that [such benefits are] then funded."[7] Based upon certain language in the Tampa Plan, the IRS examiner concluded that the Plan created the intention to hold funded benefits in a trust, and applied the 1974 Code requirement that the funded benefits in such trust fully vest at the Plan's termination.[8]

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[1] The IRS issued a favorable determination letter that the Plan is qualified, contingent upon the adoption of the proposed amendment. *See* Correspondence from James H. Culbreth, Esq. and Salvatore Territo, Esq. (Chief Assistant City Attorney for the City of Tampa), dated February 12, 2013. For more information on Favorable Determination Letters, visit: http://www.irs.gov/Retirement-Plans/EP-Determination-Letter-Resource-Guide---What-is-a-Favorable-Determination-Letter%3F (last visited on March 18, 2013).

[2] Section 401(a)(2), IRC (2012).

[3] Section 401(a)(4), IRC (2012).

[4] Section 401(a)(7), IRC (2012).

[5] Publication 794 (Rev. 1-2013), Catalog Number 20630M, Department of Treasury, Internal Revenue Service, www.irs.gov

[6] Although ERISA exempts governmental plans, the IRS takes the position that the vesting requirements enumerated in the 1974 code apply to governmental plans.

[7] *See* Correspondence from James H. Culbreth, Esq. and Salvatore Territo, Esq. (Chief Assistant City Attorney for the City of Tampa), dated February 12, 2013 (quoting language from the IRS examiner) (quoting IRS examiner). *See also* s. 411 (d)(3)(B), IRC (2012).

[8] *See* Correspondence from James H. Culbreth, Esq. and Salvatore Territo, Esq. (Chief Assistant City Attorney for the City of Tampa), dated February 12, 2013.

Currently, the Plan does not reference vesting in such situations.[9] It only states that a plan participant must work for six continuous years for his or her plan to vest (i.e., a plan participant must work for six continuous years in order to receive benefits once he or she retires). Therefore, without such amendment:

1) Plan participants are at risk of losing their accrued benefits if the Plan is either fully or partially terminated; and
2) the Plan will lose its qualified status and accompanying favorable tax treatment.

Effect of Proposed Changes

In response to the IRS determination, HB 533 seeks to amend Tampa's Plan to both protect participants' accrued pension benefits from loss in the case of partial or full termination and to maintain favorable tax treatment. The City of Tampa also believes that the amendment will assist in the City's ability to attract and retain employees.[10]

The proposed change is for administrative and compliance purposes and will not result in additional costs to the Plan or the City of Tampa.[11] In addition, the IRS reviewed the bill and issued a favorable determination letter to the City of Tampa that its Plan is qualified, contingent upon the adoption of the proposed amendment.[12]

The bill would take effect upon becoming law.

B. SECTION DIRECTORY:

Section 1: Amends subsection (K) of section 4 of ch. 23559, L.O.F., 1945, as amended by ch. 2004-431, L.O.F.

Section 2: Provides an effective date.

II. NOTICE/REFERENDUM AND OTHER REQUIREMENTS

A. NOTICE PUBLISHED? Yes [X] No []

IF YES, WHEN? December 19, 2012

WHERE? The *Tampa Tribune*, a daily newspaper published in Hillsborough County, Florida

B. REFERENDUM(S) REQUIRED? Yes [] No [X]

IF YES, WHEN?

C. LOCAL BILL CERTIFICATION FILED? Yes, attached [X] No []

D. ECONOMIC IMPACT STATEMENT FILED? Yes, attached [X] No []

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[9] The Plan only states that in order to vest, a plan participant has to work for six consecutive years. Ch. 2004-431, L.O.F.

[10] *See* 2013 Economic Impact Statement, completed by Lee Huffstutler, Chief Accountant for the City of Tampa.

[11] *See* Correspondence from John A. Lessl, ASA, EA, MAAA (General Employee Pension Board's Actuary) to Lee Huffstutler, CPA, CIA, CGFO, PMP (City of Tampa, Chief Accountant), dated December 6, 2012.

[12] *See* Favorable Determination Letter from the Internal Revenue Service to the City of Tampa, dated June 18 2012. *See* also correspondence from James H. Culbreth, Esq. and Salvatore Territo, Esq. (Chief Assistant City Attorney for the City of Tampa), dated February 12, 2013.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.

A bill to be entitled

An act relating to the City of Tampa, Hillsborough County; amending chapter 23559, Laws of Florida, 1945, as amended; revising the General Employees' Pension Plan for the City of Tampa; revising the definition of the term "Pension Credit"; providing an effective date.

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

Section 1. Subsection (K) of section 4 of chapter 23559, Laws of Florida, 1945, as amended by chapter 2004-431, Laws of Florida, is amended to read:

Section 4. Definitions.

(K) Pension Credit. Pension Credit shall refer to the minimum number of years necessary to have a vested pension. For the purposes of this Act, an Employee shall work 6 continuous years to earn Pension Credit, except that an Employee's Pension Credit shall become nonforfeitable to the extent such Pension Credit is funded if the Plan is fully terminated or has a partial termination applicable to such Employee.

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HM 763 Congressional Term Limits
SPONSOR(S): Caldwell
TIED BILLS: **IDEN./SIM. BILLS:** SM 970

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Local & Federal Affairs Committee	13 Y, 3 N	Lukis	Rojas
2) State Affairs Committee		Moore AM	Camechis

SUMMARY ANALYSIS

HM 763 urges the United States Congress to propose an amendment to the U.S. Constitution to limit the number of consecutive terms that a member of Congress may serve in the same office. Currently, there is no limit on the number of terms a U.S. Senator or Representative can serve. As a result, congressional members are able to stay in office for long periods of time, which supporters of term limits contend negatively impacts their roles as representatives. This memorial does not specify a particular term limit—it advocates for *some limit*, which it states would allow for better service of this nation's interests.

Support for congressional term limits gained measurable traction around the early 1990s when 23 states, including Florida, passed laws imposing term limits on their respective federal legislators. The states' efforts were soon rendered void, however, in 1995 when the U.S. Supreme Court held that states could not impose term limits on federal legislators and that such limitation could only be accomplished by amending the U.S. Constitution. Accordingly, since that case supporters for term limits have focused their lobbying efforts on amending the Constitution.

To amend the U.S. Constitution each house of Congress must approve a proposal for an amendment by a two-thirds majority. Then, three-fourths (38) of the states have to ratify that proposal. Since 1995, congressional members have filed about 70 bills proposing an amendment to limit their terms, but none have been successful.

A similar memorial, HM 83, passed the Florida House of Representative on February 29, 2012 and the Florida Senate on March 1, 2012. That HM was filed with the Secretary of State on March 23, 2012.

Legislative memorials are not subject to the Governor's veto power and are not presented to the Governor for review. Memorials have no force of law—they are mechanisms for formally petitioning the U.S. Congress to act on a particular subject. This memorial does not have a fiscal impact.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

The United States Constitution governs congressional membership.[1] It specifies that members of the U.S. House of Representatives serve two-year terms and members of the U.S. Senate serve six-year terms.[2] The Constitution does not limit the number of terms or years a member of Congress may serve.[3] The only check or limit on the length of congressional membership is the possibility of not being reelected.[4]

Supporters of congressional term limits find this check inadequate. They argue that given the ease at which incumbents are often reelected, members of Congress can become too insulated and isolated from the interests of their constituents.[5] In particular, these supporters claim that so called "career politicians" tend to become too consumed with the perks of their jobs and too indebted to lobbyists and special interests that they lose sight of their duty as representatives.[6]

Conversely, opponents to congressional term limits argue that the ability to vote members of Congress out of office is a sufficient check on their performance as lawmakers.[7] Opponents argue further that term limits would produce a more novice congressional membership and would not reduce the power of lobbyists and special interests.[8] Some even argue that term limits would increase the power of special interests.[9]

Background on the Term Limit Debate

This debate stems back to the late 18th Century;[10] however, it took many years for it to develop into its present form. Until the 1900s, support for term limits was essentially deemed irrelevant because it was uncommon for members of Congress to serve for more than a few terms.[11] As time progressed through the 20th Century and reelection rates for congressional incumbents began to increase,[12] the push for term limits also grew but never with much success.[13] Proponents of term limits did not gain any significant or measurable support until the early 1990s when 23 states, including Florida, passed laws imposing term limits on their respective federal legislators.[14] These efforts were eventually

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[1] U.S. Const. art. I, § 2, cl. 2; U.S. Const. art. I, § 3, cl. 3.
[2] *Id.*
[3] *Id.*
[4] *See, id.*
[5] http://www.termlimits.com/; http://termlimits.org/; http://www.cnn.com/2010/POLITICS/07/19/term.limits/index.html
[6] *Id.*
[7] http://www.cnn.com/2010/POLITICS/07/19/term.limits/index.html; *See also* http://www.cleveland.com/opinion/index.ssf/2012/07/the_case_against_legislative_t.html
[8] *Id.*
[9] *Id.*
[10] The Framers debated the issue before drafting the final version of the U.S. Constitution as there were term limits for delegates to the Continental Congress under the Articles of Confederation.
[11] H0083z.FAS.DOCX March 15, 2012, citing Tiffanie Kovacevich, *Constitutionality of Term Limits: Can States Limit the Terms of Members of Congress?*, 23 Pac. L.J. 1677, 1680 (1992).
[12] *See,* the following source for data on re-election rates since 1964: http://www.opensecrets.org/bigpicture/reelect.php.
[13] For example, discussion of congressional term limits came about during the debate before the 1951 ratification of the 22nd amendment, which imposed a two-term limit on the office of the President. Former Senator O'Daniel, a Democrat from Texas, sought a proposal for congressional term limits, but he only received one vote.
[14] U.S. Congressional Research Service. Term Limits for Members of Congress: State Activity (No. 96-152 GOV; Nov. 22, 1996), by Sula P. Rishardson. Text at: http://digital.library.unt.edu/ark:/67531/metacrs582/m1/; Accessed: February 25, 2013. (States that

rendered void, however, with the 1995 Supreme Court case *U.S. Term Limits, Inc. v. Thornton.*[15] In that case, the Supreme Court held the following:

1) state-imposed candidacy limitations on federal legislative office violate the U.S. Constitution's "qualifications clauses"; and
2) term limits on federal legislators may only be imposed by amendment to the Constitution.[16]

Accordingly, since the *Thornton* decision, proponents for term limits have focused their lobbying efforts on amending the Constitution. To successfully amend the U.S. Constitution each side of Congress must approve a proposal for amendment by a two-thirds majority.[17] Then, three-fourths (38) of the states must ratify the proposal.[18] Since 1995, congressional members have filed about 70 bills proposing an amendment to limit their terms, but none have been successful.[19]

Effect of Proposed Changes

HM 763 urges Congress to propose an amendment to the U.S. Constitution to limit the number of consecutive terms that a member of Congress may serve in the same office. The memorial does not advocate for a permanent ban from service of congressional members once their term limits expire. Under the memorial's approach, a member could be reelected to the same position as long as there is a break between periods of service. In addition, HM 763 does not specify a particular term limit—it advocates for *some limit*, which it states would allow for better service of this nation's interests.

A similar memorial, HM 83, passed the Florida House of Representatives on February 29, 2012 and the Florida Senate on March 1, 2012. That HM was filed with the Secretary of State on March 23, 2012.

Legislative memorials are not subject to the Governor's veto power and are not presented to the Governor for review. Memorials have no force of law—they are mechanisms for formally petitioning the U.S. Congress to act on a particular subject. This memorial does not have a fiscal impact.

B. SECTION DIRECTORY:

Not applicable.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None.

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passed some form of congressional term limits include the following: AK, AR, AZ, CA, CO, FL, ID, ME, MA, MI, MO, MT, NE, NH, NV, ND, OH, OK, OR, SD, UT, WA, WY.)

[15] *U.S. Term Limits, Inc. v. Thornton*, 514 U.S. 779, 881 (1995).

[16] *Id.*

[17] U.S. Const., art V.

[18] *Id.*

[19] This information was discovered though searches on www.thomas.gov, the online library of Congress.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.

House Memorial

A memorial to the Congress of the United States, urging Congress to propose to the states an amendment to the Constitution of the United States that would limit the consecutive terms of office which a member of the United States Senate or the United States House of Representatives may serve.

WHEREAS, Article V of the Constitution of the United States authorizes Congress to propose amendments to the Constitution which shall become valid when ratified by the states, and

WHEREAS, a continuous and growing concern has been expressed that the best interests of this nation will be served by limiting the terms of members of Congress, a concern expressed by the Founding Fathers and incorporated into the Articles of Confederation, and

WHEREAS, the voters of the State of Florida, by the gathering of petition signatures, placed on the general election ballot of 1992 a measure to limit the consecutive years of service for several offices, including the offices of United States Senator and United States Representative, and

WHEREAS, the voters of Florida incorporated this limitation into the State Constitution as Section 4, Article VI, by an approval vote that exceeded 76 percent in the general election of 1992, and

WHEREAS, in 1995, the United States Supreme Court ruled in *U.S. Term Limits, Inc., et al., v. Thornton, et al.*, 514 U.S. 779 (1995), a five-to-four decision, that the individual states

did not possess the requisite authority to establish term limits, or additional qualifications, for persons elected to the United States Senate or United States House of Representatives, and

WHEREAS, upon reflecting on the intent of the voters of this state and their overwhelming support of congressional term limits, the Legislature, in its 114th Regular Session since Statehood in 1845, did express through a memorial to Congress the desire to receive an amendment to the Constitution of the United States to limit the number of consecutive terms that a person may serve in the United States Senate or the United States House of Representatives, and

WHEREAS, the Legislature, in its 115th Regular Session since Statehood in 1845, does again express the same desire to receive such an amendment, NOW, THEREFORE,

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

That the Florida Legislature respectfully petitions the Congress of the United States to propose to the states an amendment to the Constitution of the United States to limit the number of consecutive terms which a person may serve in the United States Senate or the United States House of Representatives.

BE IT FURTHER RESOLVED that copies of this memorial be dispatched to the President of the United States, to the President of the United States Senate, to the Speaker of the United States House of Representatives, to each member of the

Florida delegation to the United States Congress, and to the presiding officer of each house of the legislature of each state.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 4029 Governor's Private Secretary
SPONSOR(S): Fitzenhagen
TIED BILLS: **IDEN./SIM. BILLS:** SB 1100

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Government Operations Subcommittee	11 Y, 0 N	Stramski	Williamson
2) State Affairs Committee		Stramski	Camechis

SUMMARY ANALYSIS

Current law allows the Governor to appoint and commission a person to hold the office of private secretary for the Governor; however, the staff of the Executive Office of the Governor is under the state personnel system with state-approved titles. It is unclear when this provision might have been used.

The bill repeals this provision.

The bill has no fiscal impact.

The bill takes effect July 1, 2013.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Enacted in 1845, s. 14.03, F.S., allows the Governor to appoint and commission a person to hold the office of private secretary for the Governor. This person is to serve at the pleasure of the Governor in that capacity and as "clerk for the executive department." The person is to work daily at the capitol during office hours and is to perform other duties as directed by the Governor. In order to qualify for the position, the person "must be fit and proper to hold office."

The staff of the Executive Office of the Governor are under the state personnel system with state approved titles. The Executive Office of the Governor is under what is known as Pay Plans 07, 08, 09, and 15. Employees of the Executive Office of the Governor are exempt from the career service system and serve at the pleasure of the Governor.[1]

Administrative services, personnel staff of the Executive Office of the Governor, and state personnel system staff of the Department of Management Services were not aware of when the provisions of s. 14.03, F.S., relating to the private secretary of the Governor, might have been used last.[2]

Effect of the Bill

The bill repeals s. 14.03, F.S., relating to the private secretary of the Governor, as it is not used in the state personnel system governing the Executive Office of the Governor.

B. SECTION DIRECTORY:

Section 1 repeals s. 14.03, F.S., relating to the Governor's appointment and commission of a person to be his or her private secretary and to serve as clerk for the executive department.

Section 2 provides an effective date of July 1, 2013.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

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[1] Section 110.205(2)(l), F.S.

[2] The statute refers to the private secretary serving as "clerk for the executive department." In 2012, when identical HB 4091 was under consideration, the Workforce Design and Compensation Manager of the Department of Management Services, Division of Human Resource Management, informed staff that in the 31 years that the manager had been involved with the state personnel system, he was not aware of it having ever been used. House of Representatives Staff Analysis for HB 4091, fn. 4 (January 12, 2012).

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.

A bill to be entitled

An act relating to the Governor's private secretary; repealing s. 14.03, F.S., relating to the Governor's authority to appoint and commission a private secretary; providing an effective date.

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

Section 1. Section 14.03, Florida Statutes, is repealed.

Section 2. This act shall take effect July 1, 2013.

HOUSE OF REPRESENTATIVES LOCAL BILL STAFF ANALYSIS

BILL #: HB 4037 Broward County/Saltwater Fishing
SPONSOR(S): Waldman
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Local & Federal Affairs Committee	17 Y, 0 N	Dougherty	Rojas
2) State Affairs Committee		Renner JR	Camechis

SUMMARY ANALYSIS

This bill repeals ch. 12554, L.O.F., establishing a minimum landing size for mullet caught in Broward County, Florida, as the Florida Fish and Wildlife Conservation Commission now regulates landing size state-wide.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

This bill repeals ch. 12554, L.O.F., which sets the minimum landing size for mullet caught in Broward County at 10½ inches. This provision is obsolete and duplicative as the Florida Fish and Wildlife Conservation Commission now regulates mullet landing size. Chapter 68B-39.003, F.A.C., prohibits harvesting or possessing a quantity of mullet smaller than 11 inches that exceeds 10 percent of the total weight of all mullet possessed at any time.

B. SECTION DIRECTORY:

Section 1: Repeals ch. 12554, L.O.F., relating to saltwater fishing in Broward County, Florida.

Section 2: Provides an effective date of upon becoming law.

II. NOTICE/REFERENDUM AND OTHER REQUIREMENTS

A. NOTICE PUBLISHED? Yes [X] No []

IF YES, WHEN? January 23, 2013

WHERE? The *Sun-Sentinel*, a daily newspaper published in Broward County, Florida.

B. REFERENDUM(S) REQUIRED? Yes [] No [X]

IF YES, WHEN?

C. LOCAL BILL CERTIFICATION FILED? Yes, attached [X] No []

D. ECONOMIC IMPACT STATEMENT FILED? Yes, attached [X] No []

III. COMMENTS

A. CONSTITUTIONAL ISSUES: None.

B. RULE-MAKING AUTHORITY: None.

C. DRAFTING ISSUES OR OTHER COMMENTS: None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

N/A

A bill to be entitled

An act relating to Broward County; repealing chapter 12554 (1927), Laws of Florida, relating to saltwater fishing; providing an effective date.

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

Section 1. Chapter 12554 (1927), Laws of Florida, is repealed.

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

HOUSE OF REPRESENTATIVES LOCAL BILL STAFF ANALYSIS

BILL #: HB 4039 Broward County/Fishing
SPONSOR(S): Waldman
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Local & Federal Affairs Committee	17 Y, 0 N	Dougherty	Rojas
2) State Affairs Committee		Renner JR	Camechis

SUMMARY ANALYSIS

This bill repeals ch. 8636, L.O.F., which regulates fishing gear, prohibits use of explosives or harmful materials as a fishing method, and sets black bass landing sizes and daily bag limits in Broward County, Florida. This law is obsolete and duplicative as the Florida Fish and Wildlife Conservation Commission now regulates these areas state-wide.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

This bill repeals ch. 8636, L.O.F., which applies to Broward County and requires all fishing use only hook and line or size-restricted cast net; prohibits the use of any explosive or deleterious materials that may injure fish; sets black bass minimum landing size at 10 inches and daily bag limit at 15 per person; categorizes any action violative of these sections as a misdemeanor.

This provision is obsolete and duplicative as now the Florida Fish and Wildlife Conservation Commission's rules apply to all Florida freshwater fish, which includes black bass. Chapter 68A-23, F.A.C., provides permissible freshwater fishing methods, gear, and minimum landing sizes based on geographic area within the state. Both ch. 68A-23, F.A.C., and ch. 379, F.S., prohibit use of explosives or deleterious materials while fishing. Chapter 68B-14.0036, F.A.C., sets the state-wide daily bag limit at 15 per person.

B. SECTION DIRECTORY:

Section 1: Repeals ch. 8636, L.O.F., relating to fishing in Broward County, Florida.

Section 2: Provides an effective date of upon becoming law.

II. NOTICE/REFERENDUM AND OTHER REQUIREMENTS

A. NOTICE PUBLISHED? Yes [X] No []

IF YES, WHEN? January 23, 2013

WHERE? The *Sun-Sentinel*, a daily newspaper published in Broward County, Florida.

B. REFERENDUM(S) REQUIRED? Yes [] No [X]

IF YES, WHEN?

C. LOCAL BILL CERTIFICATION FILED? Yes, attached [X] No []

D. ECONOMIC IMPACT STATEMENT FILED? Yes, attached [X] No []

III. COMMENTS

A. CONSTITUTIONAL ISSUES: N/A

B. RULE-MAKING AUTHORITY: N/A

C. DRAFTING ISSUES OR OTHER COMMENTS: N/A

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

N/A

A bill to be entitled

An act relating to Broward County; repealing chapter 8636 (1921), Laws of Florida, relating to fishing; providing an effective date.

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

Section 1. Chapter 8636 (1921), Laws of Florida, is repealed.

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 7079 PCB GVOPS 13-02 Review Under Open Government Sunset Review Act
SPONSOR(S): Government Operations Subcommittee, Ahern
TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 304

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Government Operations Subcommittee	11 Y, 0 N	Williamson	Williamson
1) State Affairs Committee		Williamson	Camechis

SUMMARY ANALYSIS

The Open Government Sunset Review Act requires the Legislature to review each public record and each public meeting exemption five years after enactment. If the Legislature does not reenact the exemption, it automatically repeals on October 2nd of the fifth year after enactment.

Current law requires an employer to permit an employee to request and take up to three workings days of leave from work in any 12-month period if the employee, or a family or household member of an employee, is the victim of domestic or sexual violence. This applies to public or private employers with 50 or more employees and to employees who have been employed by an employer for at least three months. An employee must provide sufficient documentation of the act of domestic violence or sexual violence as well as advance notice of the leave, except in cases of imminent danger to the employee or the employee's family.

Current law provides a public record exemption for certain information documenting an act of domestic violence or sexual violence submitted to an agency by an agency employee. Specifically, personal identifying information that is contained in records documenting an act of domestic or sexual violence and that is submitted to an agency by an agency employee is confidential and exempt from public record requirements. In addition, a written request for leave that is submitted by an agency employee, and any agency timesheet that reflects such request, are confidential and exempt until one year after the leave has been taken.

The bill reenacts this public record exemption, which will repeal on October 2, 2013, if this bill does not become law.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Open Government Sunset Review Act

The Open Government Sunset Review Act[1] sets forth a legislative review process for newly created or substantially amended public record or public meeting exemptions. It requires an automatic repeal of the exemption on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.

The Act provides that a public record or public meeting exemption may be created or maintained only if it serves an identifiable public purpose. In addition, it may be no broader than is necessary to meet one of the following purposes:

- Allows the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption.
- Protects sensitive personal information that, if released, would be defamatory or would jeopardize an individual's safety; however, only the identity of an individual may be exempted under this provision.
- Protects trade or business secrets.

If, and only if, in reenacting an exemption that will repeal, the exemption is expanded (essentially creating a new exemption), then a public necessity statement and a two-thirds vote for passage are required.[2] If the exemption is reenacted with grammatical or stylistic changes that do not expand the exemption, if the exemption is narrowed, or if an exception to the exemption is created[3] then a public necessity statement and a two-thirds vote for passage are not required.

Employee Leave for Domestic Violence or Sexual Violence

Current law requires an employer to permit an employee to request and take up to three workings days of leave from work in any 12-month period if the employee, or a family or household member of an employee, is the victim of domestic or sexual violence.[4] This applies to public or private employers with 50 or more employees and to employees who have been employed by an employer for at least three months.[5]

An employee may use the leave from work to:

- Seek an injunction for protection against domestic violence or an injunction for protection in cases of repeat violence, dating violence, or sexual violence;
- Obtain medical care or mental health counseling, or both, for the employee or a family or household member to address physical or psychological injuries resulting from the act of domestic violence or sexual violence;
- Obtain services from a victim services organization, including, but not limited to, a domestic violence shelter or program or a rape crisis center as a result of the act of domestic or sexual violence;
- Make the employee's home secure from the perpetrator of such violence or seek new housing to escape the perpetrator; or

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[1] Section 119.15, F.S.

[2] Section 24(c), Art. I of the State Constitution

[3] An example of an exception to a public record exemption would be allowing another agency access to confidential or exempt records.

[4] The leave may be with or without pay, at the discretion of the employer. Section 741.313(2)(a), F.S.

[5] Section 741.313(3), F.S.

- Seek legal assistance in addressing issues arising from the act of domestic violence or sexual violence or to attend and prepare for court-related proceedings arising from the act of domestic violence or sexual violence.[6]

An employee must provide sufficient documentation of the act of domestic or sexual violence as well as advance notice of the leave, except in cases of imminent danger to the employee or the employee's family.[7] Additionally, the employee must use all available annual or vacation leave, personal leave, and sick leave, unless this requirement is waived by the employer.[8]

Public Record Exemption under Review

In 2007, the Legislature created a public record exemption for certain information documenting an act of domestic violence submitted to an agency[9] by an agency employee.[10] Specifically, personal identifying information that is contained in records documenting an act of domestic violence and that is submitted to an agency by an agency employee is confidential and exempt[11] from public record requirements.[12] In addition, a written request for leave that is submitted by an agency employee, and any agency timesheet that reflects such request, are confidential and exempt until one year after the leave has been taken.[13]

In 2008, the public record exemption was amended to include victims of sexual violence.[14]

Pursuant to the Open Government Sunset Review Act, the public record exemption will repeal on October 2, 2013, unless reenacted by the Legislature.

During the 2012 interim, subcommittee staff sent questionnaires to state and local government agencies as part of the Open Government Sunset Review process. In addition, those organizations representing victims of domestic violence or sexual violence were contacted for input regarding the public record exemption under review. Those contacted indicated that there is a public necessity to continue to protect the confidential and exempt information, and recommended reenactment of the public record exemption under review.

Effect of the Bill

The bill removes the repeal date, thereby reenacting the public record exemption for personal identifying information contained in agency records documenting an act of domestic violence or sexual violence, and reenacting the public record exemption for a written request for leave and any agency time sheet reflecting such a request. The bill also makes editorial changes.

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[6] Section 741.313(2)(b), F.S.
[7] Section 741.313(4)(a), F.S.
[8] Section 741.313(4)(b), F.S.
[9] For purposes of the public record exemption, "agency" means an agency as defined in chapter 119, F.S. Section 119.011(2), F.S., defines "agency" to mean "any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency."
[10] Chapter 2007-108, L.O.F.; codified as s. 741.313(7), F.S.
[11] There is a difference between records the Legislature designates as exempt from public record requirements and those the Legislature deems confidential and exempt. A record classified as exempt from public disclosure may be disclosed under certain circumstances. *See WFTV, Inc. v. The School Board of Seminole*, 874 So.2d 48, 53 (Fla. 5th DCA 2004), review denied 892 So.2d 1015 (Fla. 2004); *City of Riviera Beach v. Barfield*, 642 So.2d 1135 (Fla. 4th DCA 1994); *Williams v. City of Minneola*, 575 So.2d 687 (Fla. 5th DCA 1991). If the Legislature designates a record as confidential and exempt from public disclosure, such record may not be released, by the custodian of public records, to anyone other than the persons or entities specifically designated in the statutory exemption. *See* Attorney General Opinion 85-62 (August 1, 1985).
[12] Section 741.313(7)(a), F.S.
[13] Section 741.313(7)(b), F.S.
[14] Chapter 2008-254, L.O.F.

B. SECTION DIRECTORY:

Section 1 amends s. 741.313, F.S., to save from repeal the public record exemption for certain information submitted to an agency by an agency employee that documents an act of domestic violence or sexual violence.

Section 2 provides an effective date of October 1, 2013.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.

A bill to be entitled

An act relating to a review under the Open Government Sunset Review Act; amending s. 741.313, F.S., relating to an exemption from public records requirements for certain information contained in records documenting an act of domestic violence or sexual violence which are submitted to an agency by an agency employee; removing the scheduled repeal of the exemption; providing an effective date.

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

Section 1. Subsection (7) of section 741.313, Florida Statutes, is amended to read:

741.313 Unlawful action against employees seeking protection.—

(7)(a) Personal identifying information that is contained in records documenting an act of domestic violence or sexual violence ~~and that is~~ submitted by an agency employee to an agency, as defined in chapter 119, ~~by an agency employee~~ under the requirements of this section is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

(b) A written request for leave that is submitted by an agency employee under the requirements of this section and any agency time sheet that reflects such a request are confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution until 1 year after the leave has been taken.

~~(c) This subsection is subject to the Open Government~~

~~Sunset Review Act in accordance with s. 119.15, and shall stand repealed on October 2, 2013, unless reviewed and saved from repeal through reenactment by the Legislature.~~

Section 2. This act shall take effect October 1, 2013.

DEP NNC
Presentation

Florida Department of Environmental Protection

Florida's Water Quality

House State Affairs Committee

Representative Crisafulli, Chair

March 2013

Drew Bartlett, Director
Division of Environmental Assessment & Restoration



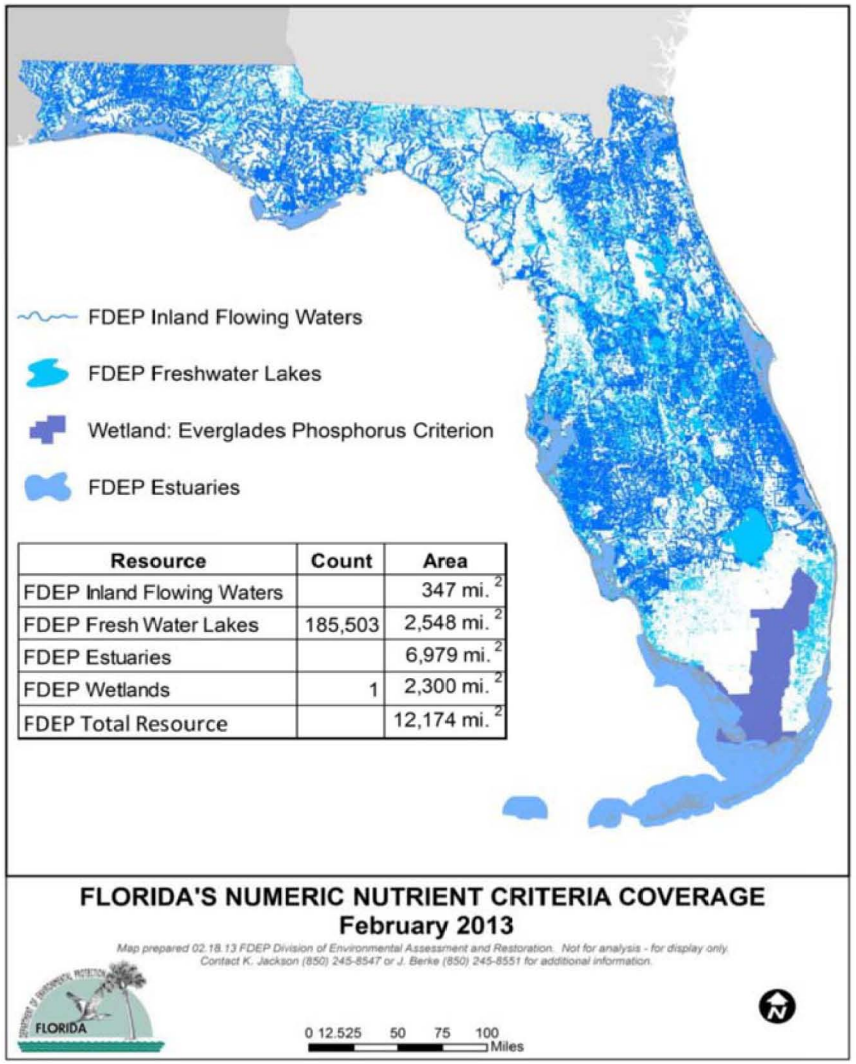


Numeric Nutrient Criteria Timeline

1998	*EPA National Strategy for Development of Regional Nutrient Criteria*
2003	Florida convenes NNC Technical Advisory Committee
2004 – 2009	DEP gathers data, develops biological tools and derives NNC approaches
2009	EPA settles federal lawsuit and enters consent decree
2011	ERC approves DEP rules for rivers, streams, lakes, springs and South Florida estuaries
2012	EPA approves DEP rules and proposes more federal rules
March 2013	DEP and EPA enter Agreement in Principle and Path Forward
Sept. 2013	EPA deadline

Numeric Nutrient Criteria in Florida I

State-adopted criteria – Rivers, streams, lakes, and springs, and estuaries from Clearwater Harbor to Biscayne Bay.



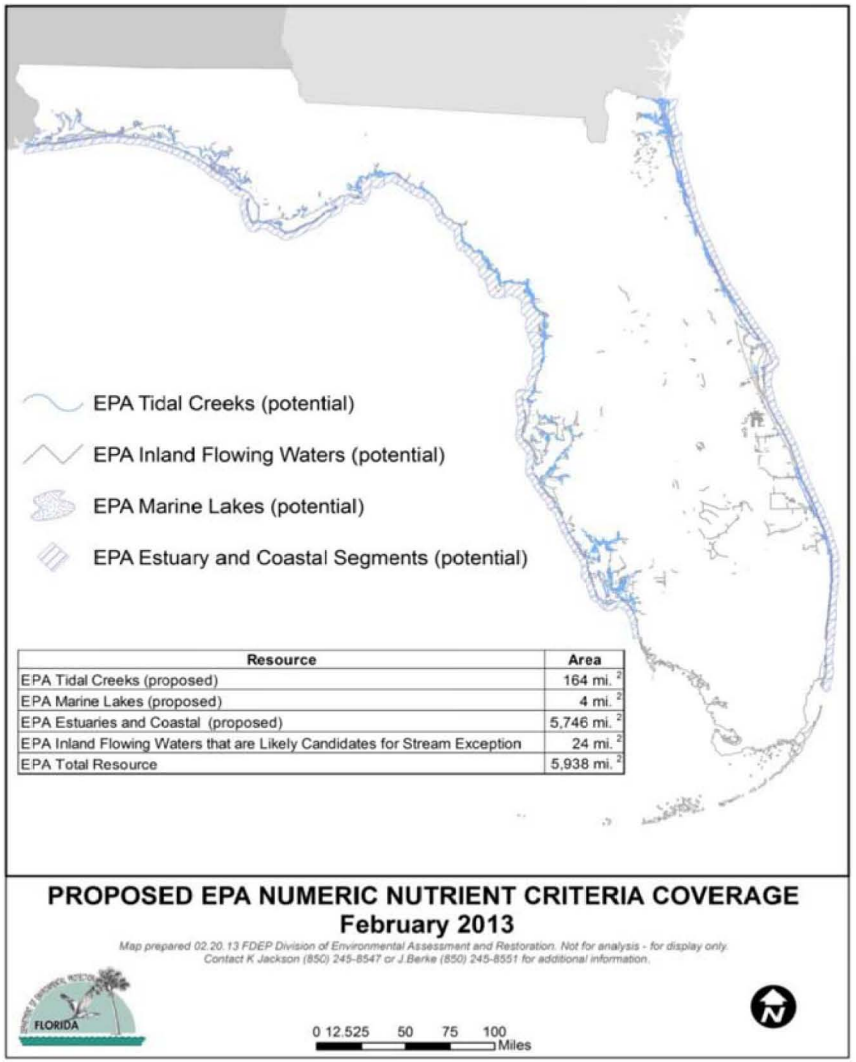
Resource	Count	Area
FDEP Inland Flowing Waters		347 mi.^{2}
FDEP Fresh Water Lakes	185,503	2,548 mi.^{2}
FDEP Estuaries		6,979 mi.^{2}
FDEP Wetlands	1	2,300 mi.^{2}
FDEP Total Resource		12,174 mi.^{2}

FLORIDA'S NUMERIC NUTRIENT CRITERIA COVERAGE
February 2013

Map prepared 02.18.13 FDEP Division of Environmental Assessment and Restoration. Not for analysis - for display only. Contact K. Jackson (850) 245-8547 or J. Berke (850) 245-8551 for additional information.

0 12.525 50 75 100 Miles

EPA proposed criteria – Additional coverage that Florida would achieve upon adoption of state criteria for remaining estuaries and coastal waters.



Resource	Area
EPA Tidal Creeks (proposed)	164 mi.^{2}
EPA Marine Lakes (proposed)	4 mi.^{2}
EPA Estuaries and Coastal (proposed)	5,746 mi.^{2}
EPA Inland Flowing Waters that are Likely Candidates for Stream Exception	24 mi.^{2}
EPA Total Resource	5,938 mi.^{2}

PROPOSED EPA NUMERIC NUTRIENT CRITERIA COVERAGE
February 2013

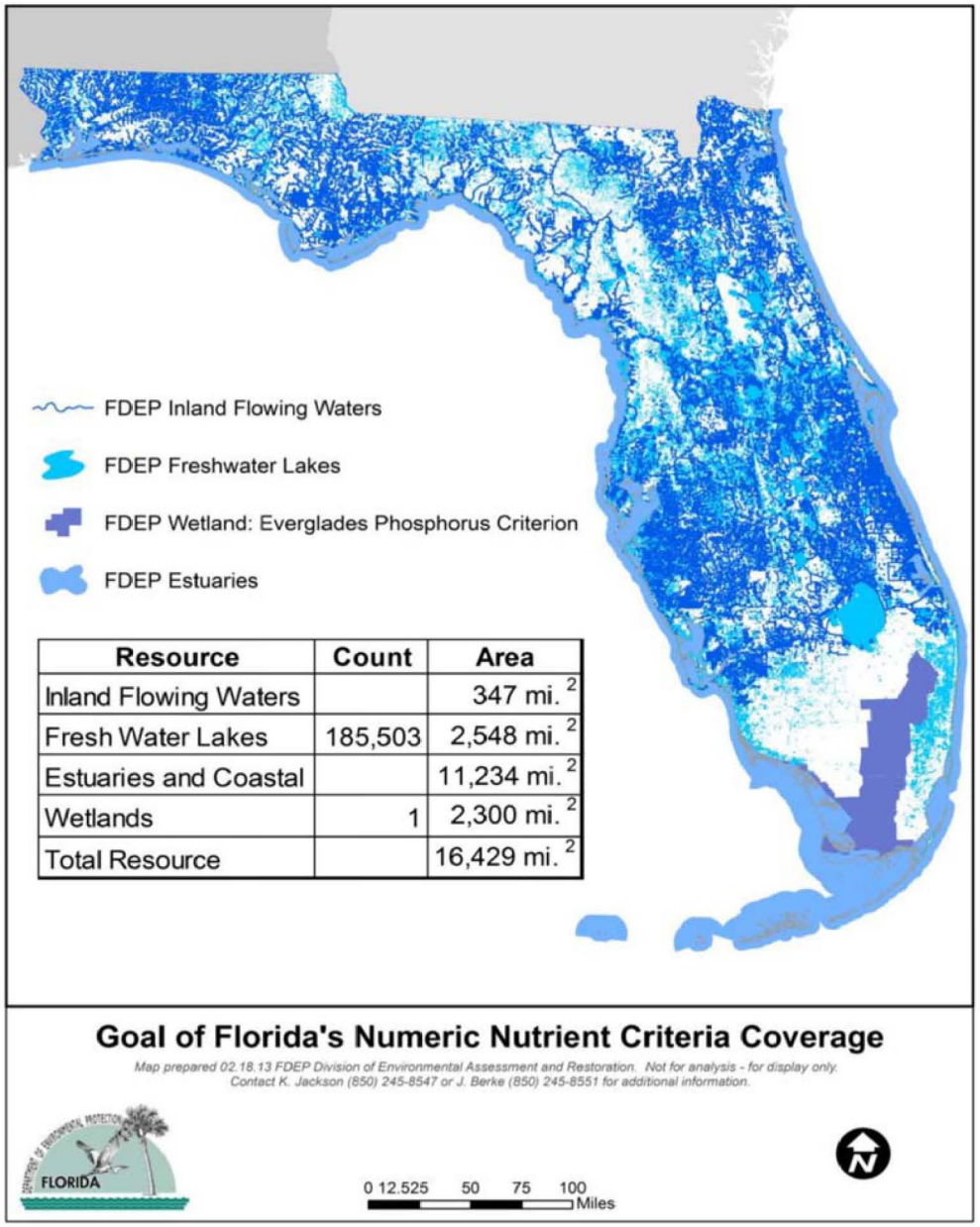
Map prepared 02.20.13 FDEP Division of Environmental Assessment and Restoration. Not for analysis - for display only. Contact K Jackson (850) 245-8547 or J.Berke (850) 245-8551 for additional information.

0 12.525 50 75 100 Miles

Numeric Nutrient Criteria in Florida II

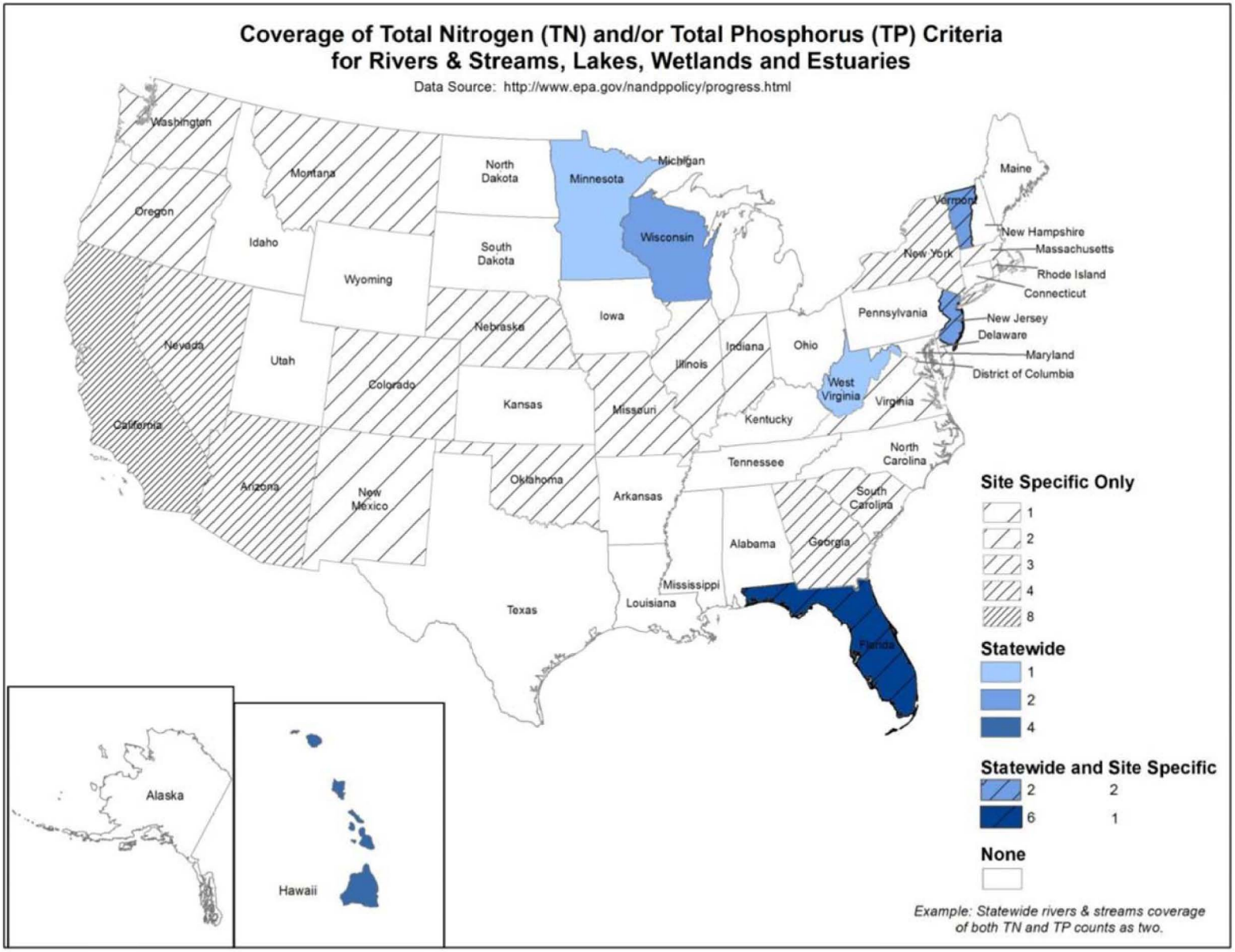
Comprehensive State-Adopted NNC

Upon fulfillment of the Agreement in Principle and Path Forward, Florida will have state-established numeric nutrient criteria for all lakes, springs, estuaries and coastal waters, and the vast majority of flowing waters



Resource	Count	Area
Inland Flowing Waters		347 mi. ^{2}
Fresh Water Lakes	185,503	2,548 mi. ^{2}
Estuaries and Coastal		11,234 mi. ^{2}
Wetlands	1	2,300 mi. ^{2}
Total Resource		16,429 mi. ^{2}

Numeric Nutrient Criteria Nationally
– After Execution of Agreement



Contact

Drew Bartlett, Director

Division of Environmental Assessment & Restoration

Drew.Bartlett@dep.state.fl.us

850.245.8446

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB SAC 13-02 Numeric Nutrient Criteria
SPONSOR(S): State Affairs Committee
TIED BILLS: None **IDEN./SIM. BILLS:** None

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: State Affairs Committee		Blalock AFB	Camechis

SUMMARY ANALYSIS

Nutrient pollution (excessive nitrogen and phosphorous) causes harmful algae blooms that produce toxins harmful to humans, deplete oxygen needed for fish and shellfish survival, smother vegetation, and discolor water. The Clean Water Act (CWA) employs a cooperative federalism approach to regulating nutrient pollution. Specifically, the CWA requires states to set water quality standards (WQS) for each waterbody within their jurisdiction. These WQS must include the following three parts:

- The designation of a waterbody's beneficial uses, such as water supply, recreation, fish propagation, or navigation;
- The water quality criteria that defines the amounts of pollutants, in either numeric or narrative form, that the waterbody can contain without impairment of the designated beneficial uses; and
- The anti-degradation requirements.

Under the CWA, a WQS can include either a narrative or numeric criteria for any pollutant regulated under the act. For any state that refuses to set appropriate WQS, the CWA requires the Environmental Protection Agency (EPA) to set their own federal standards. In addition, where EPA has adopted a federal standard for a specific state, that state can then adopt its own rule, and, if approved by EPA, the state rule will replace EPA's federal rule.

In August 2009, in response to a lawsuit brought by several environmental groups, EPA entered into a consent decree requiring it to adopt federal numeric nutrient criteria for Florida's lakes, flowing waters, estuaries, and coastal waters. In December 2010, EPA adopted a final numeric nutrient criteria rule for all lakes and springs in the state and flowing waters outside of the southern Florida region in accordance with the consent decree and subsequent revisions. In response to EPA adopting federal numeric nutrient criteria, the Florida Department of Environmental Protection (DEP) entered into rulemaking and adopted its own numeric nutrient criteria, which it then submitted to EPA for approval. On November 30, 2012, EPA approved DEP's numeric nutrient criteria for streams, rivers, lakes, and south Florida estuaries. On the same day EPA proposed criteria for coastal waters and the remaining estuaries, and re-proposed criteria for certain rivers and streams that could potentially be exempt from Florida's numeric nutrient criteria rule. As a result, the DEP rule has not been implemented because a specific provision (Rule 62-302.531(9), F.A.C.) in DEP's rule expressly states that "these rules shall be effective only if EPA approves these rules in their entirety, concludes rulemaking that removes federal numeric nutrient criteria in response to the approval, and determines that these rules sufficiently address EPA's January 14, 2009 determination."

The PCB amends current law to direct DEP to establish numeric nutrient criteria for remaining waterbodies in the state that were not covered under the rules approved by EPA on November 30, 2012. The PCB also specifies that once EPA removes federal numeric nutrient criteria and ceases future numeric nutrient criteria rulemaking in the state, Rule 62-302.531(9), F.A.C., described above, will be removed from the Florida Administrative Code. In addition, the PCB exempts from legislative ratification any additional estuary criteria adopted by DEP during 2013. Lastly, the PCB directs DEP to establish specific numeric nutrient criteria for unimpaired waters (including DEP's calculation of the current conditions of those waters) and for those estuaries and non-estuarine coastal waters without numeric nutrient criteria established by rule or final order as of the date of the report, and directs DEP to send a report to the Legislature and Governor conveying the status of establishing numeric nutrient criteria.

The bill appears to have an insignificant fiscal impact on state government by requiring DEP to submit a report to the Legislature and the Governor conveying the status of establishing numeric nutrient criteria. The bill has an indeterminate fiscal impact on local governments (See Fiscal Comments).

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Nutrient Pollution Generally

Nitrogen and phosphorus ("nutrients") are natural components of aquatic ecosystems. However, what is considered a healthy and safe level of nutrients varies greatly throughout the state depending on the site-specific characteristics of a given water body. The problems associated with excess nutrients arise when nutrients occur over large areas of a water body for extended periods of time at levels that exceed what is "natural" for the particular system.

Excessive amounts of nitrogen and phosphorus (also known as "nutrient pollution") is a significant contributor to water quality problems. Nutrient pollution originates from stormwater runoff, wastewater treatment, industrial discharges, fertilization of crops, and livestock manure. Nitrogen also forms from the burning of fossil fuels, like gasoline.

Nutrient pollution causes harmful algae blooms that produce toxins harmful to humans, deplete oxygen needed for fish and shellfish survival, smother vegetation, and discolor water.

Federal Law – The Clean Water Act

Under the federal structure established in the U.S. Constitution, states may not be compelled by the Federal Government to enact legislation or take executive action to implement federal regulatory programs.[1] Thus, where Congress has the authority to regulate private activity under the Commerce Clause, the Federal Government may regulate that activity directly, but it may not require the states to do so. However, Congress can *encourage* a state to regulate in a particular way by offering "incentives" -- often in the form of federal funds. Congress may also create a "potential preemption" structure in which states must regulate the activity under state law according to federally approved standards or have state regulation pre-empted by federal regulation. The Clean Water Act (CWA), codified at 33 U.S.C. Sec. 1251 et. seq., utilizes both of these techniques.

The CWA was enacted in 1972 in order to "restore and maintain the chemical, physical, and biological integrity of the Nation's waters."[2] One of the pillars of the CWA is section 303, which requires states to adopt water quality standards (WQS) for their navigable waters, and to review and update those standards at least every three years. These standards must include:

- Designation of a waterbody's beneficial uses, such as water supply, recreation, fish propagation, or navigation;
- Water quality criteria that defines the amounts of pollutants, in either numeric or narrative form, that the waterbody can contain without impairment of the designated beneficial uses; and
- Anti-degradation requirements.[3]

Although the CWA gives states the primary authority to set WQS, they are reviewable by the Environmental Protection Agency (EPA).[4] If at any time EPA determines that a revised or new standard is necessary to meet the requirements of the CWA, the EPA Administrator is authorized to

[1] *Printz v. United States,* 521 U.S. 898, 925 (1997); *New York v. United States,* 505 U.S. 144, 188 (1992).
[2] CWA s. 101(a).
[3] CWA s. 303(c)(2)(A).
[4] CWA s. 303(a).

adopt revised WQS.[5] Moreover, the CWA requires EPA to set WQS for any waterbody where a state fails to do so.[6] The CWA also provides that water quality criteria can be established as either narrative or numeric criteria for any pollutant regulated under the act. Currently, Florida employs narrative criteria for nutrient pollution.

The CWA is focused primarily on point sources of water pollution. Point source pollution can be defined generally as any human-controlled "discernible, confined, and discrete" conveyance into jurisdictional waters.[7] The CWA directly regulates point source pollution via the National Pollution Discharge Elimination System (NPDES) permitting process.[8] The NPDES process prohibits the discharge of pollutants from a point source into navigable waters except as provided for in an NPDES permit.[9] In practice, the NPDES method of regulation can be best visualized as "end-of-the-pipe" controls that clean up waste water before it is discharged into a waterbody. The primary focus of the NPDES permitting program is municipal (Publicly Owned Treatment Works) and non-municipal (industrial) direct dischargers, and the primary mechanism for controlling discharges of pollutants to receiving waters is establishing effluent limitations. NPDES permits require a point source to meet established effluent limits, which are based on applicable technology-based and water quality-based standards. The intent of technology-based effluent limits in NPDES permits is to require a minimum level of treatment of pollutants for point source discharges based on the best available control technologies while allowing the discharger to use any available control technique to meet the limits.

However, for some waterbodies, the technology-based effluent limits may not be sufficient to ensure that established water quality standards will be attained in the receiving water. These waterbodies are designated as "impaired." For a waterbody or segment designated as impaired, the CWA requires that EPA or the state set a total maximum daily load (TMDL),[10] which establishes the maximum amount of a given pollutant the waterbody can accept while still meeting water quality standards associated with its designated use.[11] The purpose of a TMDL "is to provide a basis for allocating acceptable loads among all of the known pollutant sources in a watershed so that appropriate control measures can be implemented and water quality standards achieved."[12] A TMDL thus takes into account both point source and nonpoint source pollution. Once a TMDL is established, it can affect the NPDES permit limitations for point sources discharging into the waterbody or segment. In such cases, the CWA requires that more stringent, water quality-based effluent limits be established in an NPDES permit to ensure that water quality standards are met.

Nonpoint source pollution encompasses all forms of water pollution not classified as point source, such as stormwater runoff. Regulation of nonpoint source pollution typically relies on controls -- such as best management practices -- that directly impact how the land itself is used. Except in limitation situations, nonpoint sources are not regulated by the CWA, but states do require nonpoint sources to reduce their pollution, especially when a waterbody is impaired. For example, Florida requires nonpoint sources to implement best management practices in order for an impaired waterbody to achieve the requisite WQS pursuant to a Basin Management Action Plan.

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[5] CWA s. 1313(c)(4)(B).
[6] CWA s. 303(c).
[7] CWA s. 502(14). Courts have held that human beings themselves are not point sources under the CWA. *See U.S. v. Plaza Health Labs*, 3 F.3d 643 (2d. Cir. 1993). The CWA also established exceptions whereby certain agricultural activities are not considered point source.
[8] CWA s. 402.
[9] *Id.*
[10] *Id.*
[11] *Id.*
[12] Florida Dept. of Environmental Protection, *Total Maximum Daily Load for Iron for Hatchet Creek, Alachua County, Florida*, Pg. 6.

Current Nutrient Regulation In Florida

United States Environmental Protection Agency Numeric Nutrient Criteria Rulemaking

In July 2008, the Florida Wildlife Federation and other environmental groups sued EPA in an attempt to compel EPA to adopt numeric nutrient criteria for Florida's waterbodies. In January 2009, EPA determined that numeric nutrient water quality criteria for Florida's waterbodies are necessary to meet the requirements of the CWA. EPA determined that Florida's narrative nutrient criteria alone was insufficient to ensure protection of applicable designated uses, but also recognized the ongoing efforts by DEP in developing a numeric nutrient criteria for Florida's waterbodies. EPA noted that, "in the event that Florida adopts and EPA approves new or revised water quality standards that sufficiently address this determination before EPA promulgates federal water quality standards, EPA would no longer be obligated to promulgate federal water quality standards."

In August 2009, EPA settled the lawsuit and entered into a consent decree that required EPA to adopt numeric nutrient criteria for Florida's lakes, flowing waters, estuaries, and coastal waters. DEP suspended its rulemaking proceedings while EPA developed its rules to impose numeric nutrient criteria in Florida. In December 2010, EPA adopted final numeric nutrient criteria rules for all lakes and springs in the state and flowing waters outside of the southern Florida region in accordance with the consent decree and subsequent revisions.

Also in December 2010, the State of Florida filed a lawsuit in federal district court against EPA over the agency's intrusion into Florida's previously approved clean water program.[13] The lawsuit alleged that EPA's action was inconsistent with the intent of Congress when it based the CWA on the idea of cooperative federalism whereby the states would be responsible for the control of water quality with oversight by EPA. Control of nutrient loading from predominantly nonpoint sources involves traditional states' rights and responsibilities for water and land resource management which Congress expressly intended to preserve in the Clean Water Act. The lawsuit specifically alleged that the EPA rules and EPA's January 2009 necessity determination for promulgating numeric nutrient criteria for Florida's waters are arbitrary, capricious, and an abuse of discretion, and requested the court to enjoin EPA Administrator from implementing its numeric nutrient criteria rules in Florida.

On February 18, 2012, the United Stated District Court for the Northern District of Florida found against the state, holding that EPA's determination that Florida's narrative nutrient criteria are inadequate and that numeric criteria are necessary was not arbitrary and capricious.[14] The court also held, however, that EPA's rule setting numeric nutrient criteria for Florida was not arbitrary and capricious save for two exceptions: EPA's stream criteria were found to be arbitrary and capricious (at least without further explanation, according to the court), as were the default downstream protection values for unimpaired lakes. In accordance with the court's ruling, the 2009 consent decree was to remain in effect, with the modification that EPA was required to remedy the numeric nutrient criteria for streams and downstream protection values by May 21, 2012.

DEP Numeric Nutrient Criteria Rulemaking

In response to EPA promulgating rules to establish federal numeric nutrient criteria for Florida's waterways, DEP began rulemaking and adopted state numeric nutrient criteria for streams, rivers, lakes, and south Florida estuaries, which it then submitted to EPA for approval pursuant to the CWA.

In December of 2011, several environmental groups filed a petition with the Division of Administrative Hearings challenging DEP's rules. An Administrative Law Judge upheld the rules in June of 2012,

[13] *State of Florida v. Jackson,* Case 3:10-cv-00503-RV-MD (N.D. Fla. 2010).
[14] *State of Florida v. Jackson,* 853 F.Supp.2d 1138 (N.D. Fla 2012).

finding that DEP acted within its authority in promulgating numeric nutrient criteria for the state. The decision was recently affirmed by the First District Court of Appeal in February of 2013.[15]

On November 30, 2012, EPA approved DEP's numeric nutrient criteria applicable to all of Florida's rivers, streams, and lakes, and to estuaries from Tampa Bay to Biscayne Bay, including the Florida Keys.[16] Simultaneously, EPA proposed draft federal numeric nutrient criteria for waters not yet covered by state rules which included:

- Remaining estuaries;
- Open ocean waters;
- The location where South Florida canals enter estuaries; and
- Scientifically challenging areas like tidal creeks, headwaters that are dry for portions of the year (excluding drought conditions), and managed water conveyances.

As part of the November 30 action, EPA also amended its previous January 2009 determination and concluded that DEP's rules provided sufficient quantitative procedures upstream to ensure the protection of water quality standards in downstream waters as required by the Clean Water Act. As a result, the DEP rule has not been implemented because a specific provision in DEP's rule (Rule 62-302.531(9), F.A.C.) expressly states that "these rules shall be effective only if EPA approves these rules in their entirety, concludes rulemaking that removes federal numeric nutrient criteria in response to the approval, and determines that these rules sufficiently address EPA's January 14, 2009 determination.

EPA wishes to assemble a package that can be presented to the federal court in a motion for dismissal from the 2009 consent decree that requires EPA to set additional numeric nutrient criteria in September 2013. In effect, this will begin the process of turning over the task of promulgating numeric nutrient criteria entirely to DEP. EPA needs the package to be completed by August 1, 2013 in order to provide sufficient time to prepare a motion to the court.

Legislative Rule Ratification Requirement

As part of the administrative rulemaking process, s. 120.541, F.S., requires that the Division of Environmental Assessment and Restoration (DEAR) conduct an assessment of whether a Statement of Estimated Regulatory Cost (SERC) must be prepared in conjunction with the promulgation of an administrative rule, such as the establishment of numeric nutrient criteria for Florida waterbodies.[17] If a SERC is required, staff within the Bureau of Watershed Restoration then conducts a multi-step economic analysis of the regulatory costs that are anticipated to be incurred were the rule to be adopted.

Section 120.541(1)(b), F.S., requires the preparation of a SERC if the proposed rule will have an adverse impact on small business or if the proposed rule is likely to directly or indirectly increase regulatory costs in excess of $200,000 within one year of implementation of the rule. Alternatively, preparation of a SERC is triggered when a substantially affected person submits a good faith written proposal for a lower cost regulatory alternative which substantially accomplishes the objectives of the law being implemented.[18]

If there are no NPDES municipal separate storm sewer system permit holders and no NPDES industrial or domestic wastewater facilities within the area affected by the rule, there is no expectation that small businesses will be adversely affected or that regulatory costs will be increased by $200,000 in the first

[15] *Florida Wildlife Federation, et. al. v. Department of Environmental Protection,* Case No. ID12-320 (Feb. 2013).
[16] EPA Factsheet, *Multiple EPA Actions Related to Nutrient Pollution in Florida Waterways* (Nov. 2012), *available at* http://water.epa.gov/lawsregs/rulesregs/florida_index.cfm.
[17] Sec. 120.541, F.S.
[18] Sec. 120.541(1)(a), F.S.

year of TMDL implementation. As such, a SERC is not prepared in these instances (absent the submission of a lower cost regulatory alternative by a substantially affected person). However, the SERC development checklist provided by the Office of Fiscal Accountability and Regulatory Reform (OFARR) still will be completed and must be approved (signed/dated) by the Secretary of the Department, indicating that no SERC was necessary for that rule. If a SERC is prepared, the SERC checklist will acknowledge that a SERC is needed and the Secretary of the DEP will approve (sign/date) the checklist to indicate such.

In all cases where DEAR staff prepares a SERC, the economic analysis is designed to determine whether the impact of the rule will result in regulatory costs exceeding one million dollars over a five year period.[19] The DEAR staff must also include in its SERC estimates of: the number of individuals and entities likely to be required to comply with the rule; the cost to the agency of enforcing the proposed rule; its effect on local revenues; and transactional costs associated with the rule.[20] In the event that the estimated regulatory cost exceeds the one million dollar threshold, s. 120.541(3), F.S. requires that the rule be ratified by the Florida Legislature before taking effect. The rule must be submitted to the President of the Senate and the Speaker of the House of Representatives no less than 30 days prior to the beginning of the next regular legislative session.[21] The proposed rule will not become effective until it is ratified by the legislature.[22]

Effect of Proposed Changes

The PCB amends s. 403.061, F.S., to direct DEP to establish numeric nutrient criteria for remaining waterbodies in the State that were not covered under the rules approved by EPA on November 30, 2012. Specifically, the bill directs DEP to implement permitting and other pollution control measures consistent with the attainment of:

- Narrative criteria for nutrients and in-stream numeric interpretation of the narrative water criteria for nutrients in streams, canals, and other conveyances; and
- Nutrient water quality standards applicable to downstream waters.

The PCB also declares that the loading of nutrients to downstream waters from a stream, canal, or other conveyance must be limited to provide for the attainment and maintenance of nutrient water quality standards in downstream waters. In the event that the downstream water does not have a TMDL adopted under s. 403.067, F.S., and has not been verified as impaired by nutrient loadings, DEP must implement its authority in a manner that prevents impairment of the downstream water due to loadings from the upstream water. Where the downstream water does not have a TMDL, but has been verified as impaired by nutrient loadings, DEP must adopt a TMDL for that waterbody under s. 403.067, F.S. If the downstream water does have a TMDL that interprets narrative water quality criteria for nutrients, then allocations must be set for upstream waterbodies.

In addition, the PCB states that compliance with an allocation calculated under s. 403.067(6), F.S., (providing for the calculation and allocation of TMDLs) or if applicable, the basin management action plan established under s. 403.067(7), F.S., for the downstream water constitutes reasonable assurance that a discharge does not cause or contribute to the violation of downstream nutrient WQS.

The PCB also grants DEP the authority to implement its own nutrient standards for streams, springs, lakes, and estuaries consistent with the document entitled "Implementation of Florida's Numeric Nutrient Standards," which was submitted to EPA in support of the DEP's adopted nutrient standards. EPA relied upon this document when it issued its approval of Florida's numeric nutrient criteria on November 30, 2012. The PCB states that the document, which explicitly states how DEP will apply

[19] Sec. 120.541(2), F.S.
[20] Sec. 120.541(2)(a)(1)-(3), Fla. Stat.
[21] Sec. 120.541(2)(g)(3), Fla. Stat.
[22] *Id.*

nutrient standards to water management conveyances, is subject to the provisions of s. 62-302.531(9), F.A.C., (providing that the numeric nutrient rules shall be effective only if EPA approves these rules in their entirety, concludes rulemaking that removes federal numeric nutrient criteria in response to the approval, and determines, in accordance with 33 U.S.C. § 1313(c)(3), that these rules sufficiently address EPA's January 14, 2009, determination) and is also exempt from the legislative ratification requirement of s. 120.541(3), F.S.

Furthermore, the PCB provides that once EPA approves DEP's remaining numeric nutrient criteria, subsequently withdraws all of its own numeric nutrient criteria rules from the state, and otherwise ceases all federal nutrient rulemaking in Florida, Rule 62-302.531(9), F.A.C, must be removed from the Florida Administrative Code, thus allowing DEP to fully implement state numeric nutrient criteria. Thereafter, should DEP choose to promulgate a new numeric nutrient WQS – such as for lakes, streams, estuaries, etc. – it must be submitted to EPA in accordance with the CWA.[23] However, if EPA invalidates the newly proposed standard, the remainder of DEP's numeric nutrient standards already established for other waterbodies will remain in effect.

The PCB additionally provides that any nutrient criteria rules for estuaries adopted by DEP in 2013 are subject to the EPA approval requirements found in Rule 62-302.531(9), F.A.C., and are also exempt from the legislative ratification requirement of s. 120.541(3), F.S.

The bill also directs DEP to adopt numeric nutrient criteria for total nitrogen, total phosphorous, and chlorophyll *a* for any remaining estuaries not already subject to DEP numeric nutrient criteria. DEP is also directed to establish chlorophyll *a* interpretations of the narrative nutrient criteria for non-estuarine, coastal waters by December 1, 2014. In the meantime, the bill establishes that the criteria for those waterbodies are the current unimpaired condition of those waters.

Finally, the bill directs DEP to send a report to the Governor and Legislature by August 1, 2013, conveying the status of establishing numeric nutrient criteria for unimpaired waters (including DEP's calculation of the current conditions of those waters) and for those estuaries and non-estuarine coastal waters without numeric nutrient criteria established by rule or final order as of the date of the report.

B. SECTION DIRECTORY:

Section 1. Amends s. 403.061, F.S., related DEP's duty to control and prohibit nutrient pollution.

Section 2. Authorizes DEP to implement its adopted nutrient standards for streams, springs, lakes, and estuaries consistent with the document entitled "Implementation of Florida's Numeric Nutrient Standards."

Section 3. Provides that a specific DEP rule will expire when EPA withdraws all federal numeric nutrient criteria rules in the State of Florida.

Section 4. Provides that any nutrient criteria rules for estuaries adopted by DEP in 2013 are subject to the EPA approval requirements found in s. 62-302.531(9), F.A.C., and also exempt from the legislative ratification requirement.

Section 5. Directs DEP to adopt numeric nutrient criteria for remaining estuaries and coastal waters by December 1, 2014, and directs DEP to submit a report.

Section 6. Provides an effective date.

[23] CWA Sec. 303(2)(A).

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   The bill requires DEP to submit a report to the Governor and Legislature containing the current calculations of unimpaired conditions for nutrients for certain estuaries and coastal waters. According to DEP, the department will also incur certain costs associated with rulemaking to implement the provisions in the bill. However, DEP has also stated that they will be able to absorb these costs within existing resources.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   See Fiscal Comments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

See Fiscal Comments.

D. FISCAL COMMENTS:

DEP provided the following fiscal comments:

> While there are costs associated with implementing Florida's comprehensive NNC—the need to restore polluted waters inevitably comes at a cost—the Legislature acknowledged in chapter 2012-3, Laws of Florida (House Bill 7051 from the 2012 legislative session) that the costs to implement DEP's adopted and proposed NNC are significantly less than the costs to implement NNC rules adopted by the EPA. This is largely because DEP's NNC account for unique site-specific conditions and the critical underlying biology of these disparate ecosystems. And implementing comprehensive NNC will serve to protect currently unimpaired waters from becoming polluted, saving local governments millions if not billions of dollars in restoration costs in the future.
>
> Furthermore, the NNC for remaining estuaries and coastal waters that are the immediate subject of this legislation are set in the interim at the current conditions of unimpaired waters. Those unimpaired conditions suggest, on the whole, that significant pollution reduction investments will not be necessary for these remaining waters. Conditions are generally similar to those present in the Panhandle estuaries, for which the ERC approved NNC in November 2012 and for which it was determined that implementation costs overall would be less than any of the thresholds established by the Legislature for a Statement of Estimated Regulatory Costs pursuant to chapter 120, F.S.
>
> It is essential to recognize that if DEP does not set comprehensive NNC for Florida, EPA will do so. If that occurs, the significant additional costs the Legislature acknowledged in chapter 2012-3, Laws of Florida, will come to pass.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

None.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill exempts certain DEP rules from the legislative ratification requirement in chapter 120, F.S.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

N/A

A bill to be entitled

An act relating to numeric nutrient criteria; amending s. 403.061, F.S.; authorizing the Department of Environmental Protection to implement ss. 403.088 and 403.067, F.S., to control nutrient load in state waters; authorizing the department to implement its adopted nutrient standards; directing the department to remove rule 62-302.531(9), Florida Administrative Code, when the United States Environmental Protection Agency withdraws all federal numeric nutrient criteria rules in the state; subjecting any numeric nutrient rules for estuaries adopted in 2013 to the provisions of rule 62-302.531(9), Florida Administrative Code, and exempting them from ratification under s. 120.541(3), F.S.; directing the department to establish estuary specific numeric interpretations of the narrative nutrient criterion for total nitrogen, total phosphorus, and chlorophyll a for any estuary not already subject to department numeric nutrient criteria; directing the department to send a report to the Governor, the Speaker of the House of Representatives, and the President of the Senate by August 1, 2013, concerning the status of establishing numeric nutrient criteria in the state; providing an effective date.

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

Section 1. Subsection (43) is added to section 403.061, Florida Statutes, to read:

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

(43)(a) Implement ss. 403.088 and 403.067 in flowing waters consistent with the attainment and maintenance of:

1. The narrative criterion for nutrients and any in-stream numeric interpretation of the narrative water quality criterion for nutrients adopted by the department in streams, canals, and other conveyances; and

2. Nutrient water quality standards applicable to downstream waters.

(b) The loading of nutrients to downstream waters from a stream, canal, or other conveyance shall be limited to provide for the attainment and maintenance of nutrient water quality standards in the downstream waters.

1. If the downstream water does not have a total maximum daily load adopted under s. 403.067 and has not been verified as impaired by nutrient loadings, then the department shall implement its authority in a manner that prevents impairment of the downstream water due to loadings from the upstream water.

2. If the downstream water does not have a total maximum daily load adopted under s. 403.067 but has been verified as impaired by nutrient loadings, then the department shall adopt a

total maximum daily load under s. 403.067.

3. If the downstream water has a total maximum daily load adopted under s. 403.067 that interprets the narrative water quality criterion for nutrients, then allocations shall be set for upstream water bodies in accordance with s. 403.067(6), and if applicable, the basin management action plan established under s. 403.067(7).

(c) Compliance with an allocation calculated under s. 403.067(6), or if applicable, the basin management action plan established under s. 403.067(7) for the downstream water shall constitute reasonable assurance that a discharge does not cause or contribute to the violation of the downstream nutrient water quality standards.

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

Section 2. The Department of Environmental Protection is authorized to implement its adopted nutrient standards for streams, springs, lakes, and estuaries consistent with the document entitled "Implementation of Florida's Numeric Nutrient Standards," which was proposed for adoption by the department in the Florida Administrative Register, Vol. xx, No. xx, pages xxx-xxx. This document shall be subject to the provisions of rule 62-302.531(9), Florida Administrative Code, and exempt from ratification under s. 120.541(3), Florida Statutes.

Section 3. When the United States Environmental Protection

Agency withdraws all federal numeric nutrient criteria rules in the State of Florida, and otherwise ceases all federal nutrient rulemaking in the State of Florida, then rule 62-302.531(9), Florida Administrative Code, shall expire and the Department of Environmental Protection shall remove it from the Florida Administrative Code pursuant to the provisions of chapter 120, Florida Statutes.

Section 4. Any nutrient criteria rules for estuaries adopted by the Department of Environmental Protection in 2013 are subject to the provisions of rule 62-302.531(9), Florida Administrative Code, and exempt from ratification under s. 120.541(3), Florida Statutes.

Section 5. The Department of Environmental Protection shall establish by rule or final order the estuary specific numeric interpretations of the narrative nutrient criterion for total nitrogen, total phosphorus, and chlorophyll a for any estuaries not already subject to the department's numeric nutrient criteria, and establish chlorophyll a interpretations of the narrative nutrient criterion for non-estuarine coastal waters by December 1, 2014, subject to the provisions of chapter 120, Florida Statutes. The water quality standard pursuant to s. 403.061(11), Florida Statutes, for total nitrogen, total phosphorus, and chlorophyll a in estuaries, and chlorophyll a in non-estuarine coastal waters, shall be the current conditions of those unimpaired waters, accounting for climactic and hydrologic cycles, until such time as a numeric interpretation of the narrative water quality criterion for nutrients is established by rule or final order. The Department of Environmental

Protection shall send a report to the Governor, the Speaker of the House of Representatives, and the President of the Senate by August 1, 2013, conveying the status of establishing numeric interpretations of the narrative nutrient criterion pursuant to this section and including the department's calculation of the numeric values that represent the current conditions of those unimpaired waters as stated herein for those estuaries and non-estuarine coastal waters without numeric interpretations of the narrative nutrient criterion established by rule or final order as of the date of the report.

Section 6. This act shall take effect upon becoming a law.

COMMITTEE/SUBCOMMITTEE AMENDMENT

PCB Name: PCB SAC 13-02 (2013)

Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

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

Committee/Subcommittee hearing PCB: State Affairs Committee

Representative Raburn offered the following:

Amendment

Remove lines 80-81 and insert:

the Florida Administrative Register, Vol. 39, No. 54, pages 1397-1398. This document shall be subject to the provisions of rule