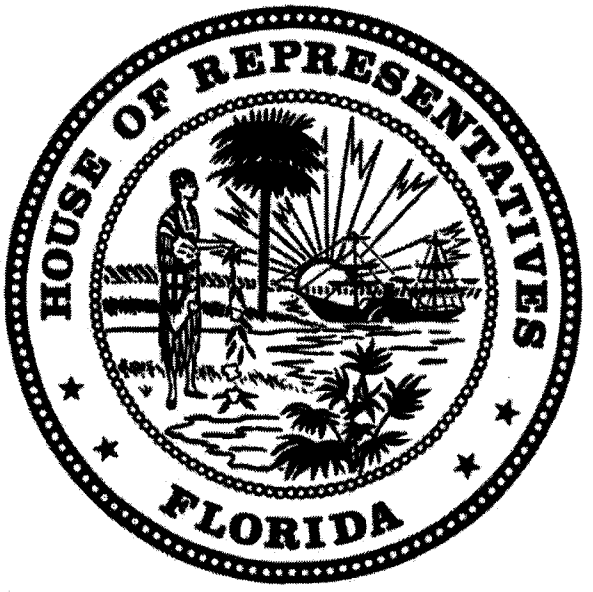

State Affairs Committee

Thursday, March 28, 2013
10:30 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:	Thursday, March 28, 2013 10:30 am
End Date and Time:	Thursday, March 28, 2013 12:30 pm
Location:	Morris Hall (17 HOB)
Duration:	2.00 hrs

Consideration of the following bill(s):

CS/CS/HB 247 Paper Reduction by Local & Federal Affairs Committee, Government Operations Subcommittee, Nelson
CS/HB 249 Public Records Exemption by Local & Federal Affairs Committee, Nelson
HB 323 Flag Etiquette by Moskowitz
CS/CS/HB 333 Fish and Wildlife Conservation Commission by Veteran & Military Affairs Subcommittee, Agriculture & Natural Resources Subcommittee, Steube
CS/CS/HB 659 Fossil Fuel Combustion Products by Agriculture & Natural Resources Appropriations Subcommittee, Agriculture & Natural Resources Subcommittee, Goodson
CS/CS/HB 707 Domestic Wastewater Discharged through Ocean Outfalls by Agriculture & Natural Resources Appropriations Subcommittee, Agriculture & Natural Resources Subcommittee, Diaz, M.
CS/HB 713 Water Quality Credit Trading by Agriculture & Natural Resources Subcommittee, Pigman
CS/HB 743 Fracturing Chemical Usage Disclosure Act by Agriculture & Natural Resources Appropriations Subcommittee, Rodrigues, R.
HB 949 Charlotte County by Roberson, K.
CS/HB 977 St. Lucie County Mosquito Control District, St. Lucie County by Local & Federal Affairs Committee, Harrell
CS/HB 1075 Public Records by Government Operations Subcommittee, Rangel
HB 1271 Central County Water Control District, Hendry County by Hudson
CS/HB 4007 Powers and Duties of Department of Environmental Protection by Agriculture & Natural Resources Subcommittee, Nelson
HB 4053 City of Pensacola, Escambia County by Ingram, Ford
HB 7085 Review Under Open Government Sunset Review Act by Government Operations Subcommittee, Raulerson
HB 7107 OGSR Paratransit Services by Government Operations Subcommittee, Fullwood

NOTICE FINALIZED on 03/26/2013 16:16 by Love.John

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 247 Paper Reduction
SPONSOR(S): Local and Federal Affairs Committee, Government Operations Subcommittee, Nelson
TIED BILLS: CS/HB 249 **IDEN./SIM. BILLS:** SB 1352

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Government Operations Subcommittee	13 Y, 0 N, As CS	Stramski	Williamson
2) Local & Federal Affairs Committee	15 Y, 0 N, As CS	Lukis	Rojas
3) State Affairs Committee	JS	Stramski	Camechis

SUMMARY ANALYSIS

It is a stated goal of the State of Florida to decrease the paperwork burden associated with the conduct of state business. This bill furthers that goal by permitting the use of an electronic medium to collect and disseminate information as required by law in selected settings. The bill:

- Requires the statewide voter registration application to elicit the voter registration applicant's e-mail address and an indication of whether the applicant wishes to receive sample ballots by e-mail.
- Authorizes the supervisor of elections to provide electronic sample ballots to electors if certain requirements are met.
- Requires the clerk of a board of county commissioners to electronically transmit to the Department of State enacted ordinances, amendments, and emergency ordinances, and requires the Department to electronically confirm by e-mail the receipt and the effective date of such filings with the clerk.
- Permits the clerk of a value adjustment board to electronically notify the taxpayer and property appraiser of the board's decision in certain hearings if electronic means is selected by the taxpayer.
- Authorizes (with certain conditions) the property appraiser to notify taxpayers of proposed property taxes by posting the notice of proposed taxes on his or her office website in lieu of first-class mail.
- Authorizes the property appraiser to notify taxpayers of proposed property taxes by e-mail when the notice of proposed property taxes and non-ad valorem assessments is available on the property appraiser's website.

The bill has an indeterminate fiscal impact on state and local governments.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

The Florida Legislature has on various occasions expressed that the reduction of the use of paper, where feasible, is the policy of the state.[1] This bill furthers the goal of lowering the use of paper by permitting the use of an electronic medium to collect and disseminate information as required by law in selected settings.

Voter Registration and Sample Ballots

Background

Current law requires the Department of State to prescribe by rule a uniform statewide voter registration application.[2] The application must elicit certain information from the voter applicant, such as the applicant's name, date of birth, and address of legal residence.[3] The application does not request a voter's e-mail address.

Current law also requires the supervisor of elections to publish a sample ballot in a newspaper of general circulation in the county, prior to the day of the election. If the county has an addressograph or similar system, the supervisor may mail a sample ballot to each registered elector in lieu of publication. The sample ballot must be mailed at least seven days prior to any election.[4]

Effect of the Bill

The bill requires the statewide voter registration application to include a field for an applicant's e-mail address and an indication of whether the applicant wishes to receive sample ballots by e-mail.

The bill permits a supervisor of elections to provide electronic sample ballots to electors who have provided e-mail addresses and opted into the electronic ballot delivery system. It allows a supervisor of elections to mail or e-mail sample ballots to registered electors in lieu of publishing such ballots in a newspaper of general circulation in the county.

Transmittal of Enacted Ordinances

Background

Current law provides requirements for counties to adhere to when exercising the ordinance-making powers conferred by the State Constitution.[5] It establishes the following regular enactment procedure:

> The board of county commissioners at any regular or special meeting may enact or amend any ordinance ... if notice of intent to consider such ordinance is given at least 10 days prior to said meeting by publication in a newspaper of general circulation in the county. A copy of such notice shall be kept available for public inspection during the regular business hours of the office of the clerk of the board of county commissioners. The notice of proposed enactment shall state the date, time, and place of the meeting; the title or titles of proposed ordinances; and the

[1] *See* sections 23.20-23.22, F.S. "The state must minimize the paperwork burden by evaluating its need for information, determining whether it already has access to the necessary information, and coordinating data collection initiatives at their source." Section 23.20(4), F.S. *See also* section 120.74(1)(e), F.S. "[E]ach agency shall perform a formal review of its rules every 2 years. In the review, each agency must [s]eek to improve efficiency, reduce paperwork, or decrease costs to government and the private sector."
[2] Section 97.052(1), F.S.
[3] Section 97.052(2), F.S.
[4] Section 101.20(2), F.S.
[5] Section 125.66(1), F.S.

place or places within the county where such proposed ordinances may be inspected by the public. The notice shall also advise that interested parties may appear at the meeting and be heard with respect to the proposed ordinance.[6]

Certified copies of ordinances or amendments thereto must be filed with the Department of State by the clerk of the board of county commissioners within 10 days after enactment by the board. The ordinances or amendments take effect upon filing with the Department of State, unless the ordinance prescribes a later effective date.[7]

Effect of the Bill
The bill requires a clerk of a board of county commissioners to electronically transmit to the Department of State enacted ordinances, amendments, and emergency ordinances. It requires the Department of State to electronically confirm by e-mail the receipt and the effective date of such filings with the clerk of the board of county commissioners.

Value Adjustment Boards

Background
Value adjustment boards are constituted in each county to conduct administrative hearings relating to assessments, complaints relating to homestead exemptions, appeals from tax exemptions denied, and appeals concerning ad valorem deferrals and classifications.[8] The value adjustment board must render a written decision within 20 calendar days after the last day the board is in session. The clerk must then provide notice of the board's decision by first-class mail.[9]

Effect of the Bill
The bill permits the clerk of a value adjustment board to electronically notify the taxpayer and property appraiser of the value adjustment board's decision in a hearing held pursuant to s. 194.034, F.S., if electronic means is selected by the taxpayer on the originally filed petition.

Property Appraisers

Background
Current law requires each property appraiser to provide notice of proposed property taxes and non-ad valorem assessments by first-class mail to each taxpayer listed on the current year's assessments. Elements that must be included on such notice are prescribed by statute.[10]

Effect of the Bill
The bill authorizes a property appraiser to notify taxpayers of proposed property taxes by posting the notice of proposed taxes on his or her office website in lieu of first-class mail. However, the property appraiser must first get approval to do so by county ordinance.

The bill further provides that an online notice from the appraiser must meet specified criteria, including, but not limited to, specifying all substantive elements required for such notice. The property appraiser may display the required substantive elements in a format different from that prescribed by the Department of Revenue only upon receiving prior written permission from the executive director of the Department. The format may contain additional substantive elements deemed important by the appraiser, in addition to the elements provided for by law.

[6] Section 125.66(2)(a), F.S.
[7] Section 125.66(2)(b), F.S.
[8] Section 194.032(1)(a), F.S.
[9] Section 194.034(2), F.S.
[10] Section 200.069, F.S.

If the property appraiser chooses to post proposed property taxes online, he or she must provide legal notice in a periodical that the notice of proposed property taxes and non-ad valorem assessments is so available.

Lastly, the bill authorizes the property appraiser to provide notification via e-mail to those who have registered a request with the property appraiser for such notification when the notice of proposed taxes and non-ad valorem assessments is available on the website.

B. SECTION DIRECTORY:

Section 1: Amends s. 97.052, F.S., requiring that the uniform statewide voter registration application be designed to elicit the e-mail address of an applicant and whether the applicant desires to receive sample ballots by e-mail.

Section 2: Amends s. 101.20, F.S., authorizing a supervisor of elections to send a sample ballot to a registered elector by e-mail under certain circumstances.

Section 3: Amends s. 125.66, F.S., requiring the clerk of a board of county commissioners to electronically transmit enacted ordinances, amendments, and emergency ordinances to the Department of State.

Section 4: Amends s. 194.034, F.S., permitting a value adjustment board to electronically provide the taxpayer and property appraiser with notice of the decision of the board.

Section 5: Amends s. 200.069, F.S., authorizing the property appraiser to notify taxpayers of proposed property taxes by posting the notice of proposed taxes on his or her office website in lieu of first-class mail if approved by county ordinance; authorizing the property appraiser to notify taxpayers of proposed property taxes by e-mail when the notice of proposed property taxes and non-ad valorem assessments is available on the property appraiser's website.

Section 6: Provides an effective date of October 1, 2013.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   See FISCAL COMMENTS.

2. Expenditures:

   See FISCAL COMMENTS.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   See FISCAL COMMENTS.

2. Expenditures:

   See FISCAL COMMENTS.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The Department of State does not anticipate any fiscal impact associated with modifying the uniform statewide voter application.[11]

There may be a fiscal impact on supervisors of elections associated with maintaining the e-mail address of voters and voter registration applicants, and with monitoring which registered voters wish to receive sample ballots electronically. Additionally, there may be costs to supervisors of elections related to establishing a system to send sample ballots electronically. However, it is anticipated that some, if not most, of these costs may be offset by savings resulting from the electronic provision of sample ballots.[12]

There may be an undetermined fiscal impact on property appraisers who seek to implement an electronic method of providing notice of proposed property taxes and non-ad valorem assessments. However, the modifications to s. 200.069, F.S. which provide for electronic notice of proposed property tax rates and non-ad valorem assessments are permissive, not mandatory. It is therefore expected that counties will adopt electronic methods of providing notice of proposed property taxes and non-ad valorem assessments when such methods will reduce expenditures. There will be undetermined costs associated with the requirement that a property appraiser prepare and make available on his or her office's website notice of proposed property taxes and non-ad valorem assessments for each taxpayer listed on the year's assessment roll.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to: require the counties or cities to spend funds or take an action requiring the expenditure of funds; reduce the authority that cities or counties have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with cities or counties. As noted above, any funds that a local government may have to expend as a result of this bill are likely to be offset by cost-savings attributed to the bill allowing for certain tasks to be performed electronically.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

This bill does not appear to create a need for additional rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Drafting Issues:
The Sponsor may consider revising Section 5 of the bill to make it clearer that a property appraiser must provide legal notice that he or she posts the notice of proposed property on his or her website *only if* he or she decided to post such notice online in the first place (emphasis added).

[11] Analysis of HB 247 (2013) by the Department of State, at 1 (January 29, 2013) (on file with the Government Operations Subcommittee).
[12] Discussion with representatives of the Florida State Association of Supervisors of Elections, Inc., on March 5, 2013.

Other Comments: Preclearance Requirement
The Department of State provided the following comments regarding preclearance:

> Under section 5 of the Voting Rights Act, new statewide legislation that implements a voting change, including but not limited to, a change in the manner of voting, change in registration, balloting, and the counting of votes, change in candidacy requirements and qualifications, change in the composition of the electorate that may vote for a candidate, or change affecting the creation or abolition of an elective office, is subject to preclearance by the U.S. Department of Justice or the federal District Court for the District of Columbia. The preclearance review is to determine if the change has a discriminatory purpose or effect that denies or abridges the right to vote on account of race, color or membership in a language minority group in a covered jurisdiction. Florida has five covered jurisdictions subject to preclearance: Collier, Hardee, Hendry, Hillsborough, and Monroe counties. Until precleared, the legislation is unenforceable in these five counties.[13]

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 6, 2013, the Government Operations Subcommittee heard a proposed committee substitute for House Bill 247 and reported the bill favorably with committee substitute.

The committee substitute removes from the bill the authorization to maintain a building's site plans in electronic form at the work site, and the requirement that such plans be open to inspection by the building official or a duly authorized representative. It also removes the authorization for an insurer to post certain insurance policies on its website in lieu of mailing or delivering a policy to the insureds.

In addition, the committee substitute:

- Requires the clerk of a board of county commissioners to electronically transmit enacted ordinances, amendments, and emergency ordinances to the Department of State;
- Permits a value adjustment board to electronically provide the taxpayer and property appraiser with notice of the decision of the board;
- Requires a licensed bail bond agent to provide notice of a change of e-mail address to specified entities;
- Requires a bail bond agent who executes or countersigns a transfer bond to indicate the agent's e-mail address;
- Provides that a bail bond agent's e-mail address is permissible print advertising in jails;
- Permits bonds to be posted electronically at the election of the receiving agency;
- Provides that every licensed surety shall have equal access to jails for the purpose of making bonds either in person or electronically;
  Requires a surety who submits an affidavit pertaining to any bond to file such affidavit in the same manner as the bond;
- Provides that notices from the clerk of court relating to bond forfeiture proceedings may be transmitted electronically;
- Permits a clerk of court to furnish certain required documents and notices relating to bond forfeitures by mail or electronic means; removing an outdated provision;
- Provides that a certificate of cancellation of an original bond may be furnished electronically; and
- Provides that traffic arrest bond certificates may be presented electronically.

[13] Analysis of HB 247 (2013) by the Department of State, at 2 (January 29, 2013) (on file with the Government Operations Subcommittee).

On March 14, 2013, the Local and Federal Affairs Committee passed a strike-all amendment to CS/HB 247. The strike-all changed the bill in the following three ways:

- The strike all amended the language in the bill relating to notification of proposed property taxes. In particular, the bill no longer allows a property appraiser to notify taxpayers of proposed property taxes by mailing them a postcard in lieu of first-class mail. It also amended requirements relating to how a property appraiser may notice taxpayers about proposed property taxes on his or her office's website.
- It removed all language relating to bail bonds (i.e., Sections 6-16).
- It changed the bills effective date.

The analysis has been updated to reflect this strike-all amendment.

A bill to be entitled

An act relating to paper reduction; amending s. 97.052, F.S.; providing that the uniform statewide voter registration application be designed to elicit the e-mail address of an applicant and whether the applicant desires to receive sample ballots by e-mail; amending s. 101.20, F.S.; authorizing a supervisor of elections to send a sample ballot to a registered elector by e-mail under certain circumstances; amending s. 125.66, F.S.; requiring the clerk of a board of county commissioners to electronically transmit enacted ordinances, amendments, and emergency ordinances to the Department of State; amending s. 194.034, F.S.; permitting a value adjustment board to electronically provide the taxpayer and property appraiser with notice of the decision of the board; amending s. 200.069, F.S.; authorizing the property appraiser to notify taxpayers of proposed property taxes by posting the notice on the appraiser's website in lieu of first-class mail when approved by the county governing board; providing notice format details; requiring publication of legal notice that notice of proposed taxes and assessments is available through the property appraiser's website; authorizing the property appraiser to provide e-mail notification when the proposed taxes and assessments are available on the appraiser's website; providing an effective date.

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

Section 1. Paragraphs (e) through (t) of subsection (2) of section 97.052, Florida Statutes, are redesignated as paragraphs (f) through (u), respectively, and a new paragraph (e) is added to that section, to read:

97.052 Uniform statewide voter registration application.—

(2) The uniform statewide voter registration application must be designed to elicit the following information from the applicant:

(e) E-mail address and whether the applicant wishes to receive sample ballots by e-mail.

The registration application must be in plain language and designed so that convicted felons whose civil rights have been restored and persons who have been adjudicated mentally incapacitated and have had their voting rights restored are not required to reveal their prior conviction or adjudication.

Section 2. Subsection (2) of section 101.20, Florida Statutes, is amended to read:

101.20 Publication of ballot form; sample ballots.—

(2) Upon completion of the list of qualified candidates, a sample ballot shall be published by the supervisor of elections in a newspaper of general circulation in the county, before ~~prior to~~ the day of election. In lieu of publication, a supervisor may send a sample ballot to each registered elector by e-mail at least 7 days before any election if an e-mail

address has been provided and the elector has opted to receive a sample ballot by electronic delivery. If an e-mail address has not been provided, or if the elector has not opted for electronic delivery, ~~If the county has an addressograph or equivalent system for mailing to registered electors,~~ a sample ballot may be mailed to each registered elector or to each household in which there is a registered elector, in lieu of publication, at least 7 days before ~~prior to~~ any election.

Section 3. Paragraph (b) of subsection (2) and subsection (3) of section 125.66, Florida Statutes, are amended to read:

125.66 Ordinances; enactment procedure; emergency ordinances; rezoning or change of land use ordinances or resolutions.—

(2)

(b) Certified copies of ordinances or amendments thereto enacted under this regular enactment procedure shall be filed with the Department of State by the clerk of the board of county commissioners within 10 days after enactment by said board and shall take effect upon filing with the Department of State. However, any ordinance may prescribe a later effective date. In lieu of delivery of the certified copies of the enacted ordinances or amendments by first-class mail, the clerk of the board of county commissioners shall transmit the enacted ordinances or amendments to the department by e-mail. The department shall confirm by e-mail the receipt and effective date of the ordinances or amendments with the clerk of the board of county commissioners.

(3) The emergency enactment procedure shall be as follows:

The board of county commissioners at any regular or special meeting may enact or amend any ordinance with a waiver of the notice requirements of subsection (2) by a four-fifths vote of the membership of such board, declaring that an emergency exists and that the immediate enactment of said ordinance is necessary. However, no emergency ordinance or resolution shall be enacted which establishes or amends the actual zoning map designation of a parcel or parcels of land or changes the actual list of permitted, conditional, or prohibited uses within a zoning category. Emergency enactment procedures for land use plans adopted pursuant to part II of chapter 163 shall be pursuant to that part. Certified copies of ordinances or amendments thereto enacted under this emergency enactment procedure by a county shall be filed with the Department of State by the clerk of the board of county commissioners as soon after enactment by said board as is practicable. An emergency ordinance enacted under this procedure shall be transmitted by the clerk of the board of county commissioners by e-mail to the Department of State. It shall be deemed to be filed and shall take effect when a copy has been accepted and confirmed by the department by e-mail ~~deemed to be filed and shall take effect when a copy has been accepted by the postal authorities of the Government of the United States for special delivery by certified mail to the Department of State~~.

Section 4. Subsection (2) of section 194.034, Florida Statutes, is amended to read:

194.034 Hearing procedures; rules.—

(2) In each case, except if the complaint is withdrawn by

the petitioner or if the complaint is acknowledged as correct by the property appraiser, the value adjustment board shall render a written decision. All such decisions shall be issued within 20 calendar days after the last day the board is in session under s. 194.032. The decision of the board must contain findings of fact and conclusions of law and must include reasons for upholding or overturning the determination of the property appraiser. If a special magistrate has been appointed, the recommendations of the special magistrate shall be considered by the board. The clerk, upon issuance of a decision, shall, on a form provided by the Department of Revenue, notify each taxpayer and the property appraiser of the decision of the board. This notification shall be by first-class mail or by electronic means if selected by the taxpayer on the originally filed petition ~~each taxpayer and the property appraiser of the decision of the board~~. If requested by the Department of Revenue, the clerk shall provide to the department a copy of the decision or information relating to the tax impact of the findings and results of the board as described in s. 194.037 in the manner and form requested.

Section 5. Section 200.069, Florida Statutes, is amended to read:

200.069 Notice of proposed property taxes and non-ad valorem assessments.—Pursuant to s. 200.065(2)(b), the property appraiser, in the name of the taxing authorities and local governing boards levying non-ad valorem assessments within his or her jurisdiction and at the expense of the county, shall prepare and deliver by first-class mail to each taxpayer to be

listed on the current year's assessment roll a notice of proposed property taxes, which notice shall contain the elements and use the format provided in the following form. Notwithstanding the provisions of s. 195.022, no county officer shall use a form other than that provided herein. The Department of Revenue may adjust the spacing and placement on the form of the elements listed in this section as it considers necessary based on changes in conditions necessitated by various taxing authorities. If the elements are in the order listed, the placement of the listed columns may be varied at the discretion and expense of the property appraiser, and the property appraiser may use printing technology and devices to complete the form, the spacing, and the placement of the information in the columns. A county officer may use a form other than that provided by the department for purposes of this part, but only if his or her office pays the related expenses and he or she obtains prior written permission from the executive director of the department; however, a county officer may not use a form the substantive content of which is at variance with the form prescribed by the department. The county officer may continue to use such an approved form until the law that specifies the form is amended or repealed or until the officer receives written disapproval from the executive director. In lieu of delivery of the notice of proposed property taxes by first-class mail, the property appraiser may prepare and make available for viewing and printing on his or her office website the notice of proposed property taxes for each taxpayer to be listed on the current year's assessment roll, but only if, following a recommendation

by the property appraiser, the county governing board of his or her jurisdiction approves the measure by ordinance. If approved by ordinance of the county governing board, the notice shall be a separate web page, web link, attachment, or document and shall contain all the substantive elements outlined in this section. The property appraiser may use a format for web display of all substantive elements as outlined in this section other than that provided by the department for purposes of this section, but only if his or her office obtains prior written permission from the executive director of the department. The format may contain substantive elements deemed important by the property appraiser, in addition to those outlined in this section. The property appraiser may continue to use the approved format until the law that specifies the form is amended or repealed or until the officer receives written disapproval from the executive director. The property appraiser shall provide legal notice in a periodical meeting the requirements of s. 50.011 that the notice of proposed property taxes and non-ad valorem assessments is available on the property appraiser website. The legal notice shall contain the property appraiser's website address. The property appraiser may also provide notification by e-mail to property owners or other interested parties who have registered a request with the property appraiser for e-mail notification when the notice of proposed property taxes and non-ad valorem assessments is available on the website.

(1) The first page of the notice shall read:

NOTICE OF PROPOSED PROPERTY TAXES

DO NOT PAY—THIS IS NOT A BILL

The taxing authorities which levy property taxes against your property will soon hold PUBLIC HEARINGS to adopt budgets and tax rates for the next year.

The purpose of these PUBLIC HEARINGS is to receive opinions from the general public and to answer questions on the proposed tax change and budget PRIOR TO TAKING FINAL ACTION.

Each taxing authority may AMEND OR ALTER its proposals at the hearing.

(2)(a) The notice shall include a brief legal description of the property, the name and mailing address of the owner of record, and the tax information applicable to the specific parcel in question. The information shall be in columnar form. There shall be seven column headings which shall read: "Taxing Authority," "Your Property Taxes Last Year," "Last Year's Adjusted Tax Rate (Millage)," "Your Taxes This Year IF NO Budget Change Is Adopted," "Tax Rate This Year IF PROPOSED Budget Is Adopted (Millage)," "Your Taxes This Year IF PROPOSED Budget Change Is Adopted," and "A Public Hearing on the Proposed Taxes and Budget Will Be Held:."

(b) As used in this section, the term "last year's adjusted tax rate" means the rolled-back rate calculated pursuant to s. 200.065(1).

(3) There shall be under each column heading an entry for the county; the school district levy required pursuant to s. 1011.60(6); other operating school levies; the municipality or municipal service taxing unit or units in which the parcel lies, if any; the water management district levying pursuant to s. 373.503; the independent special districts in which the parcel

lies, if any; and for all voted levies for debt service applicable to the parcel, if any.

(4) For each entry listed in subsection (3), there shall appear on the notice the following:

(a) In the first column, a brief, commonly used name for the taxing authority or its governing body. The entry in the first column for the levy required pursuant to s. 1011.60(6) shall be "By State Law." The entry for other operating school district levies shall be "By Local Board." Both school levy entries shall be indented and preceded by the notation "Public Schools:". For each voted levy for debt service, the entry shall be "Voter Approved Debt Payments."

(b) In the second column, the gross amount of ad valorem taxes levied against the parcel in the previous year. If the parcel did not exist in the previous year, the second column shall be blank.

(c) In the third column, last year's adjusted tax rate or, in the case of voted levies for debt service, the tax rate previously authorized by referendum.

(d) In the fourth column, the gross amount of ad valorem taxes which will apply to the parcel in the current year if each taxing authority levies last year's adjusted tax rate or, in the case of voted levies for debt service, the amount previously authorized by referendum.

(e) In the fifth column, the tax rate that each taxing authority must levy against the parcel to fund the proposed budget or, in the case of voted levies for debt service, the tax rate previously authorized by referendum.

(f) In the sixth column, the gross amount of ad valorem taxes that must be levied in the current year if the proposed budget is adopted.

(g) In the seventh column, the date, the time, and a brief description of the location of the public hearing required pursuant to s. 200.065(2)(c).

(5) Following the entries for each taxing authority, a final entry shall show: in the first column, the words "Total Property Taxes:" and in the second, fourth, and sixth columns, the sum of the entries for each of the individual taxing authorities. The second, fourth, and sixth columns shall, immediately below said entries, be labeled Column 1, Column 2, and Column 3, respectively. Below these labels shall appear, in boldfaced type, the statement: SEE REVERSE SIDE FOR EXPLANATION.

(6)(a) The second page of the notice shall state the parcel's market value and for each taxing authority that levies an ad valorem tax against the parcel:

1. The assessed value, value of exemptions, and taxable value for the previous year and the current year.

2. Each assessment reduction and exemption applicable to the property, including the value of the assessment reduction or exemption and tax levies to which they apply.

(b) The reverse side of the second page shall contain definitions and explanations for the values included on the front side.

(7) The following statement shall appear after the values listed on the front of the second page:

If you feel that the market value of your property is

inaccurate or does not reflect fair market value, or if you are entitled to an exemption or classification that is not reflected above, contact your county property appraiser at ...(phone number)... or ...(location)....

If the property appraiser's office is unable to resolve the matter as to market value, classification, or an exemption, you may file a petition for adjustment with the Value Adjustment Board. Petition forms are available from the county property appraiser and must be filed ON OR BEFORE ...(date)....

(8) The reverse side of the first page of the form shall read:

EXPLANATION

*COLUMN 1—"YOUR PROPERTY TAXES LAST YEAR"
This column shows the taxes that applied last year to your property. These amounts were based on budgets adopted last year and your property's previous taxable value.
*COLUMN 2—"YOUR TAXES IF NO BUDGET CHANGE IS ADOPTED"
This column shows what your taxes will be this year IF EACH TAXING AUTHORITY DOES NOT CHANGE ITS PROPERTY TAX LEVY. These amounts are based on last year's budgets and your current assessment.
*COLUMN 3—"YOUR TAXES IF PROPOSED BUDGET CHANGE IS ADOPTED"
This column shows what your taxes will be this year under the BUDGET ACTUALLY PROPOSED by each local taxing authority. The proposal is NOT final and may be amended at the public hearings shown on the front side of this notice. The difference between columns 2 and 3 is the tax change proposed by each local taxing authority and is NOT the result of higher assessments.

*Note: Amounts shown on this form do NOT reflect early payment discounts you may have received or may be eligible to receive. (Discounts are a maximum of 4 percent of the amounts shown on this form.)

(9) The bottom portion of the notice shall further read in bold, conspicuous print:

"Your final tax bill may contain non-ad valorem assessments which may not be reflected on this notice such as assessments for roads, fire, garbage, lighting, drainage, water, sewer, or other governmental services and facilities which may be levied by your county, city, or any special district."

(10)(a) If requested by the local governing board levying non-ad valorem assessments and agreed to by the property appraiser, the notice specified in this section may contain a notice of proposed or adopted non-ad valorem assessments. If so agreed, the notice shall be titled:

NOTICE OF PROPOSED PROPERTY TAXES
AND PROPOSED OR ADOPTED
NON-AD VALOREM ASSESSMENTS
DO NOT PAY—THIS IS NOT A BILL

There must be a clear partition between the notice of proposed property taxes and the notice of proposed or adopted non-ad valorem assessments. The partition must be a bold, horizontal line approximately 1/8-inch thick. By rule, the department shall provide a format for the form of the notice of proposed or adopted non-ad valorem assessments which meets the following minimum requirements:

1. There must be subheading for columns listing the

levying local governing board, with corresponding assessment rates expressed in dollars and cents per unit of assessment, and the associated assessment amount.

2. The purpose of each assessment must also be listed in the column listing the levying local governing board if the purpose is not clearly indicated by the name of the board.

3. Each non-ad valorem assessment for each levying local governing board must be listed separately.

4. If a county has too many municipal service benefit units or assessments to be listed separately, it shall combine them by function.

5. A brief statement outlining the responsibility of the tax collector and each levying local governing board as to any non-ad valorem assessment must be provided on the form, accompanied by directions as to which office to contact for particular questions or problems.

(b) If the notice includes all adopted non-ad valorem assessments, the provisions contained in subsection (9) shall not be placed on the notice.

Section 6. This act shall take effect July 1, 2013.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 249 Pub. Rec./E-mail Addresses of Voter Registration Applicants & Voters
SPONSOR(S): Local and Federal Affairs Committee, Nelson
TIED BILLS: CS/CS/HB 247 **IDEN./SIM. BILLS:** CS/SB 1260

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Government Operations Subcommittee	13 Y, 0 N	Stramski	Williamson
2) Local & Federal Affairs Committee	15 Y, 0 N, As CS	Lukis	Rojas
3) State Affairs Committee	JS	Stramski	Camechis

SUMMARY ANALYSIS

House Bill 247 requires the uniform statewide voter registration application to include a field for a voter registration applicant's e-mail address. Current law does not provide a public record exemption for the e-mail address of a voter or voter registration applicant.

This bill provides that the e-mail address of a voter registration applicant or a voter is confidential and exempt from public record requirements.

The bill provides for repeal of the exemption on October 2, 2018, unless reviewed and saved from repeal by the Legislature. It also provides a statement of public necessity as required by the State Constitution.

The bill provides that the exemption will take effect on the same date as House Bill 247 or similar legislation if such legislation is adopted in the same legislative session, or an extension thereof, and becomes law.

Article I, s. 24(c) of the State Constitution, requires a two-thirds vote of the members present and voting for final passage of a newly created or expanded public record or public meeting exemption. The bill expands the current public record exemption for certain voter information; thus, it requires a two-thirds vote for final passage.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Public Records Law

Article I, s. 24(a) of the State Constitution sets forth the state's public policy regarding access to government records. This section guarantees every person a right to inspect or copy any public record of the legislative, executive, and judicial branches of government. The Legislature, however, may provide by general law for the exemption of records from the requirements of Article I, s. 24(a) of the State Constitution. The general law must state with specificity the public necessity justifying the exemption (public necessity statement) and must be no broader than necessary to accomplish its purpose.[1]

Public policy regarding access to government records is addressed further in the Florida Statutes. Section 119.07(1), F.S., guarantees every person a right to inspect and copy any state, county, or municipal record. Furthermore, the Open Government Sunset Review Act[2] provides that a public record or public meeting exemption may be created or maintained only if it serves an identifiable public purpose. In addition, it may be no broader than is necessary to meet one of the following purposes:

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

Voter Registration

Current law requires the Department of State to prescribe by rule a uniform statewide voter registration application.[3] The application must elicit certain information from the voter applicant, such as the applicant's name, date of birth, and address of legal residence.[4]

Public Record Exemption for Voter Registration Information

Current law also provides a public record exemption for certain information held by an agency[5] for purposes of voter registration.[6] Specifically, the following information is confidential and exempt[7] from

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[1] Art I., s. 24(c), Fla. Const.

[2] *See* s. 119.15, F.S.

[3] Section 97.052(1), F.S.

[4] Section 97.052(2), F.S.

[5] The exemption applies to information held by an agency as defined in s. 119.011, 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."

[6] Section 97.0585, F.S.

[7] 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).

public record requirements:

- All declinations to register to vote made pursuant to ss. 97.057 and 97.058, F.S.
- Information relating to the place where a person registered to vote or where a person updated a voter registration.
- The social security number, driver's license number, and Florida identification number of a voter registration applicant or voter.

In addition, the signature of a voter registration applicant or a voter is exempt from copying requirements.[8]

The public record exemption applies to information held by an agency before, on, or after the effective date of the exemption.[9]

House Bill 247

House Bill 247 requires the uniform statewide voter registration application to include a field for a voter registration applicant's e-mail address and an indication of whether the applicant wishes to receive sample ballots by e-mail.

Effect of Proposed Changes

This bill expands the current public record exemption for voter registration information. It provides that the e-mail address of a voter registration applicant or voter is confidential and exempt from public record requirements.

Current law provides for retroactive application of the public record exemption. As such, the exemption for e-mail addresses also will apply retroactively.

The bill provides for repeal of the exemption on October 2, 2018, unless reviewed and saved from repeal by the Legislature.

The bill provides a statement of public necessity as required by the State Constitution.

The bill provides that the exemption will take effect on the same date as House Bill 247 or similar legislation if such legislation is adopted in the same legislative session, or an extension thereof, and becomes law.

B. SECTION DIRECTORY:

Section 1: Amends s. 97.0585, F.S., providing an exemption from public records requirements for the e-mail addresses of voter registration applicants and voters; providing for future legislative review and repeal of the exemption under the Open Government Sunset Review Act.

Section 2: Provides a public necessity statement.

Section 3: Provides a contingent effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

[8] Section 97.0585(2), F.S.
[9] Section 97.0585(4), F.S.

2. Expenditures:

   See FISCAL COMMENTS.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   See FISCAL COMMENTS.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The bill likely could create a minimal fiscal impact on agencies, because staff responsible for complying with public record requests could require training related to expansion of the public record exemption. In addition, those agencies could incur costs associated with redacting the confidential and exempt information prior to releasing a record. The costs, however, would be absorbed, as they are part of the day-to-day responsibilities of the agency.

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:

   Vote Requirement
   Article I, s. 24(c) of the State Constitution requires a two-thirds vote of the members present and voting for final passage of a newly created or expanded public record or public meeting exemption. The bill expands the current public record exemption for voter information; thus, it requires a two-thirds vote for final passage.

   Public Necessity Statement
   Article I, s. 24(c) of the State Constitution requires a public necessity statement for a newly created or expanded public record or public meeting exemption. The bill expands the current public record exemption for voter information; thus, it includes a public necessity statement.

   Breadth of Exemption
   Article I, s. 24(c) of the State Constitution requires a newly created public record or public meeting exemption to be no broader than necessary to accomplish the stated purpose of the law. The bill creates a public record exemption limited to the e-mail address of a voter or voter registration applicant. The exemption does not appear to be in conflict with the constitutional requirement that the exemption be no broader than necessary to accomplish its purpose.

B. RULE-MAKING AUTHORITY:

Not applicable. This bill does not appear to create a need for rulemaking or rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 3, 2013, the Local and Federal Affairs Committee adopted one technical amendment to the bill.

This analysis was updated to reflect the bill as amended.

A bill to be entitled

An act relating to public records; amending s. 97.0585, F.S.; providing an exemption from public records requirements for the e-mail addresses of voter registration applicants and voters; providing for future legislative review and repeal of the exemption under the Open Government Sunset Review Act; providing a statement of public necessity; providing a contingent effective date.

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

Section 1. Section 97.0585, Florida Statutes, is amended to read:

97.0585 Public records exemption; information regarding voters and voter registration; confidentiality.—

(1) The following information held by an agency as defined in s. 119.011 is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution and may be used only for purposes of voter registration:

(a) All declinations to register to vote made pursuant to ss. 97.057 and 97.058.

(b) Information relating to the place where a person registered to vote or where a person updated a voter registration.

(c) The social security number, driver's license number, and Florida identification number of a voter registration applicant or voter.

(d) The e-mail address of a voter registration applicant or voter.

(2) The signature of a voter registration applicant or a voter is exempt from the copying requirements of s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

(3) The names, addresses, and telephone numbers of persons who are victims of stalking or aggravated stalking are exempt from s. 119.071(1) and s. 24(a), Art. I of the State Constitution in the same manner that the names, addresses, and telephone numbers of participants in the Address Confidentiality Program for Victims of Domestic Violence which are held by the Attorney General under s. 741.465 are exempt from disclosure, provided that the victim files a sworn statement of stalking with the Office of the Attorney General and otherwise complies with the procedures in ss. 741.401-741.409.

(4) This section applies to information held by an agency before, on, or after the effective date of this exemption.

(5)(a) Subsection (3) is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2015, unless reviewed and saved from repeal through reenactment by the Legislature.

(b) Paragraph (d) of subsection (1) is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2018, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 2. The Legislature finds that it is a public necessity that the e-mail address of a voter registration applicant or voter that is held by an agency be made

confidential and exempt from s. 119.07(1) and s. 24(a), Article I of the State Constitution. E-mail addresses are personal information that could be misused and could result in voter fraud if released. A voter may request an absentee ballot using an e-mail address. Public access to that e-mail address could make others aware of those voters intending to vote using an absentee ballot and could result in confiscation and misuse of a mailed absentee ballot by a person other than the registered voter before the registered voter receives the requested absentee ballot. In addition, collection of the e-mail address of a voter registration applicant or a registered voter would allow the supervisors of elections to send sample ballots electronically, thereby saving counties money. If a voter registration applicant or a registered voter knows that his or her e-mail address is subject to public disclosure, he or she may be less willing to provide the address to the supervisor of elections. Accordingly, the effective and efficient administration of a government program would be significantly impaired.

Section 3. This act shall take effect on the same date that HB 247 or similar legislation takes effect, if such legislation is adopted in the same legislative session or an extension thereof and becomes law.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 323 Flag Etiquette
SPONSOR(S): Moskowitz and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 230

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

SUMMARY ANALYSIS

While there are currently a number of statutes requiring display of the national flag, the state flag, and the POW-MIA flag, there do not appear to be any statutes requiring that a flag be flown at half-staff for particular persons or in particular circumstances. The Governor's Office has a written protocol relating to when and for whom flags may be flown at half-staff.

The bill requires the Governor to adopt a protocol on flag display that provides guidelines for the proper display of the state flag and for the lowering of the state flag to half-staff on appropriate occasions, such as on holidays and upon the death of high-ranking state officials, uniformed law enforcement and fire service personnel, and prominent citizens. The bill also authorizes the Governor to adopt, repeal, or modify any rule or custom as the Governor deems appropriate which pertains to the display of the state flag.

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

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Display of Flags

Current law provides requirements regarding the display of the national flag, the state flag, and the POW-MIA flag. For example, the national and state flags must be displayed at public schools,[1] and the national flag must be displayed at the state capitol and each county courthouse if weather permits.[2] Each state-owned building at which the national flag is displayed must display the POW-MIA flag if such flag is available free of charge to the agency that occupies the building.[3]

Current law does not provide any requirements for flying a flag at half-staff for particular persons or in particular circumstances.

Flag Protocol

The Governor's Office has a written protocol relating to when and for whom flags may be flown at half-staff.[4]

According to the Governor's protocol, by order of the President of the United States or the Governor, the national flag must be flown at half-staff upon the death of principal figures of the United States or state government as a mark of respect to their memory, pursuant to 4 U.S.C. Section (7)(m) and United States General Service Administration Flag Policy. The national flag is flown at half-staff at all federal buildings, all state-owned buildings, and, in most cases, all courthouses and city halls throughout Florida for specified periods on national occasions proclaimed by the President of the United States and after the death of the following persons:

- President or former President of the United States.
- Vice President or former Vice President of the United States.
- Chief Justice, former Chief Justice, or an Associate Justice of the United States Supreme Court.
- Speaker of the United States House of Representatives.
- Secretary of an executive or military department.
- President Pro Tempore of the United States Senate.
- Majority Leader or Minority Leader of the United States House of Representatives.
- Governor or former Governor of Florida.
- Member or former member of the Florida Cabinet.
- Justice or former Justice of the Florida Supreme Court.
- Member or former member of Congress from Florida.
- Member or former member of the Florida Legislature.
- State, county, district, or city official.
- Prominent citizens.

The protocol also provides that the Governor may order or proclaim that the state flag be flown at half-staff after the death of the above listed persons.

The protocol further states that the Governor may proclaim that the national and state flags be flown at half-staff in the event of the death of a member of the Armed Forces who dies while serving on active

[1] Sections 256.032 and 1000.06, F.S.
[2] Section 256.01, F.S.
[3] Section 256.12, F.S.
[4] *Flag Protocol,* Executive Office of the Governor. Available at http://www.flgov.com/wp-content/uploads/2012/09/EOG-Flag-Protocol-FINAL1.pdf (last visited March 11, 2013).

duty. The Governor, by proclamation, may have the flags flown at half-staff at the state Capitol and the county courthouse and city hall where the deceased servicemember resided.[5]

The protocol provides that, if timely requested, the Governor may approve flying the national and state flags at half-staff for a police officer or firefighter who dies in the line of duty and for a state employee. The flags are flown at half-staff at the city hall and courthouse where the deceased lived. The Governor may use his discretion as to whether he or she will grant any request for flying flags at half-staff at state buildings or facilities or other local buildings or facilities on a case-by-case basis. The Executive Assistant of the Governor's Legal Office notifies the requestor by e-mail if the request is granted and the requestor notifies the appropriate local officials. The flags are flown at half-staff one day only, from sunrise to sunset, giving deference to the family's day of preference.

Additionally, a constituent may request flags be flown at half-staff for any reason not addressed in the protocol. The Governor has the discretion whether to grant or deny the request.[6]

Effect of the Bill

The bill requires the Governor to adopt a protocol on flag display that provides guidelines for the proper display of the state flag and for the lowering of the state flag to half-staff on appropriate occasions, such as on holidays and upon the death of high-ranking state officials, uniformed law enforcement and fire service personnel, and prominent citizens. The bill also authorizes the Governor to adopt, repeal, or modify any rule or custom as the Governor deems appropriate which pertains to the display of the state flag.

It is unclear what the practical effect of the bill will be, as the Governor has adopted a protocol addressing the flying of the flag on the occasions specified in the bill.

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

B. SECTION DIRECTORY:

Section 1 creates s. 256.15, F.S., requiring that the Governor adopt a protocol on flag display.

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.

[5] 4 U.S.C. s. (7)(m).
[6] *Flag Protocol*, supra at fn. 1.

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:

See RULE-MAKING AUTHORITY.

B. RULE-MAKING AUTHORITY:

It is unclear if the protocol that is to be adopted pursuant to this bill is in the nature of an agency rule that comes under the ambit of the Administrative Procedure Act (APA).[7] The APA defines a rule in relevant part as an "agency statement of general applicability that implements, interprets, or prescribes law or policy or describes the procedure or practice requirements of an agency..."[8] The Governor is covered by this provision.[9]

If the Governor's flag protocol mandated by this bill would require compliance or otherwise have the consistent effect of law, the protocol would have to be promulgated in accordance with the rulemaking procedures of the APA.[10]

Additionally, if the requirement to adopt a protocol relating to the display of the state flag is a delegation of rulemaking authority, the bill would have to contain sufficient standards for the implementation of the protocol; the Legislature cannot delegate unrestricted discretion to enact or apply law.[11] In other words, some minimal standards and guidelines to be followed would have to be provided by the delegating legislation.[12] It is unclear whether the provision in the bill that permits the Governor to adopt, repeal, or modify any rule or custom as the Governor deems appropriate which pertains to the display of the state flag would meet the applicable standard for a proper delegation of power by the Legislature.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.

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[7] Chapter 120, F.S.
[8] Section 120.52(16), F.S.
[9] Section 120.52(1), F.S., in part defining "agency" as "[t]he Governor..."
[10] *Coventry First, LLC v. State, Office of Ins. Regulation*, 38 So.3d 200, 203 (Fla. 1st DCA, 2010) (internal citations omitted).
[11] *Bush v. Schiavo*, 885 So.2d 321 (Fla. 2004); Art. II, s. 3, Fla. Const.
[12] *Askew v. Cross Key Waterways*, 372 So.2d 913, 925 (Fla.1978)

A bill to be entitled

An act relating to flag etiquette; creating s. 256.015, F.S.; requiring that the Governor adopt a protocol on flag display; requiring the protocol to have guidelines for proper flag display and for lowering the state flag to half-staff on certain occasions; authorizing the Governor to adopt, repeal, or modify any rule or custom as the Governor deems appropriate which pertains to the display of the state flag; providing an effective date.

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

Section 1. Section 256.015, Florida Statutes, is created to read:

256.015 Display of flag.—

(1) The Governor shall adopt a protocol on flag display. The protocol must provide guidelines for the proper display of the state flag and for the lowering of the state flag to half-staff on appropriate occasions, such as on holidays and upon the death of high-ranking state officials, uniformed law enforcement and fire service personnel, and prominent citizens.

(2) The Governor may adopt, repeal, or modify any rule or custom as the Governor deems appropriate which pertains to the display of the state flag.

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

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 323 (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 Moskowitz offered the following:

Amendment

Remove line 22 and insert:

and fire service personnel, military servicemembers, and prominent citizens.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 333 Fish and Wildlife Conservation Commission
SPONSOR(S): Veteran & Military Affairs Subcommittee; Agriculture & Natural Resources Subcommittee; Steube & others
TIED BILLS: None **IDEN./SIM. BILLS:** CS/SB 448

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Agriculture & Natural Resources Subcommittee	12 Y, 0 N, As CS	Deslatte	Blalock
2) Veteran & Military Affairs Subcommittee	12 Y, 0 N, As CS	Thompson	De La Paz
3) Agriculture & Natural Resources Appropriations Subcommittee	11 Y, 0 N	Massengale	Massengale
4) State Affairs Committee		Renner	Camechis

SUMMARY ANALYSIS

CS/CS/HB 333 amends various statutes relating to certain programs under the authority of the Florida Fish and Wildlife Conservation Commission (FWC). The bill:

- Amends the definition of "navigation rules" in statute by removing an outdated reference to the U.S. Code and replacing it with the updated reference to the Code of Federal Regulations. This will ensure that the FWC will be able to adequately enforce navigation rules.
- Adjusts recreational hunting and fishing license residency requirements by eliminating the 6-month residency requirement to obtain a resident recreational hunting or fishing license. The bill also adjusts the saltwater commercial fishing license residency regulation by eliminating the 6-month county residency requirement. Commercial fishermen must still reside in Florida for 1 year before applying for a saltwater commercial fishing license. In addition, the bill specifies that a "resident of Florida," for the purposes of obtaining a recreational hunting or fishing license, is any person who has declared Florida as his or her only state of residence, as evidenced by a valid Florida driver license or identification card with both a Florida address and residency verified by the Department of Highway Safety and Motor Vehicles (DHSMV), or in the absence of such Florida driver license or ID card, by one of four specified documents. The bill also amends the definition of a "resident alien" by eliminating the requirement that they continuously reside in a county for 6 months. To be a "resident alien" a person must still continuously reside in the state for 1 year.
- Authorizes the FWC to issue a permit exempting certain persons from the requirement to possess a hunting or fishing license for an outdoor recreational event that is primarily for the purpose of rehabilitation or enjoyment of veterans certified to have a service-connected disability rating of zero percent or higher, active or reserve duty service members of any branch of the Armed Forces, Coast Guard, military reserves, Florida National Guard or Coast Guard Reserve. A permit issued under the bill exempts such veterans, service members, their immediate family members and one additional person designated to assist each veteran certified to be a disabled veteran, from having to possess a hunting, freshwater fishing, or saltwater fishing license for the duration of the permitted event.
- Authorizes the FWC to increase the total number of license-free recreational saltwater and freshwater fishing days from two to four annually.
- Provides assistance to certain veterans who wish to become commercial fishers by waiving the restricted species endorsement income requirement for 1 year.

The March 16, 2013 Revenue Estimating Impact Conference adopted a negative insignificant impact resulting from disabled veterans' and military recreational hunting and fishing license exemptions and additional free fishing days, and a positive insignificant impact resulting from veterans' exemption from commercial fishing license requirements. The bill does not appear to have a fiscal impact on local governments, but will have a positive fiscal impact on the private sector.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Section 1. Amends s. 327.02, F.S., Revising References to Federal Boating Laws

Present Situation

The International Navigation Rules were formalized in the Convention on the International Regulations for Preventing Collisions at Sea (COLREGS) and became effective on July 15, 1977.[1] These rules apply to all vessels upon the high seas and in all connected waters navigable by seagoing vessels.[2] The U.S. Inland Navigation Rules became effective in 1981.[3] These rules apply to all vessels upon the inland waters of the U.S., and to vessels of the U.S. on the Canadian waters of the Great Lakes to the extent that there is no conflict with Canadian law.[4] With a few exceptions, the International and Inland Rules are very similar in content and format.[5] Both cover vessel conduct when operating on federal waters and also cover lights, shapes, and the sound and light signals on vessels. The International Navigation Rules are applicable on waters outside of established lines of demarcation.[6] The demarcation lines delineate those waters upon which mariners must comply with the Inland and International rules.[7] The U.S. Coast Guard establishes the demarcation lines and they can be found on most navigational charts and are published in the Navigation Rules.[8]

These demarcation lines should not be confused with state coastal zones and federal waters. Florida's seaward boundary is 3 marine leagues off of the Gulf of Mexico coastline and 3 geographic miles off of the Atlantic coastline.[9] For example, a vessel on the seaward side of a demarcation line must adhere to International Navigation Rules; however, that vessel could still be in Florida waters if it is within 3 nautical miles of the Atlantic coastline or 9 nautical miles of the Gulf of Mexico coastline.

The Inland Navigation Rules were located in 33 U.S.C. 151 until May 17, 2010, when they were relocated to the Code of Federal Regulations (C.F.R.), specifically 33 C.F.R. Part 80. Florida adopted the Federal Navigation Rules in s. 327.02, F.S. in 1988 and applied them to state waters as well as waters extending out 3 geographic miles from the Atlantic coastline and 3 marine leagues from the Gulf of Mexico coastline. The Fish and Wildlife Conservation Commission (FWC) enforces both the Inland and International Navigation Rules and currently cites the outdated U.S. code provision when giving citations to boaters.

Effect of Proposed Changes

The bill amends the definition of "navigation rules" in s. 327.02, F.S., by removing the outdated reference to the U.S. code and replacing it with the proper reference to the Code of Federal regulations. This will ensure that the FWC will be able to adequately enforce the navigation rules.

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[1] U.S. Coast Guard "Navigation Rules, International-Inland", revised October 19, 2009.pg 5. On file with staff.
[2] Id. at pg. 3.
[3] Id. at v.
[4] Id. at 3
[5] Id. at v.
[6] Id.at iv.
[7] Id.
[8] FWC 2013 analysis. On file with staff.
[9] Article II, Section 1(a) of the Florida Constitution. Three marine leagues equal 10.35 statute miles.

Section 2. Amends s. 379.101, F.S., Defining Residency Requirements for Hunting/Fishing Licenses

Present Situation

The State of Florida requires residents and nonresidents to obtain licenses for both recreational fishing and hunting[10] and commercial fishing.[11] Section 379.101(30)(a), F.S., defines a resident, for the purpose of purchasing a saltwater commercial fishing license, as a citizen of the United States who has continuously resided in Florida for 1 year and has resided in a county for 6 months. Section 379.101(30)(b), F.S., defines a resident, for the purpose of purchasing a recreational hunting and fishing license, as any person who has continually resided in the state for 6 months or any member of the United States Armed Forces who is stationed in the state.

Section 379.101(30)(b), F.S., also applies this definition of a resident to certain non-recreational and commercial licenses and activities that require only a 6-month state residency instead of the 1-year state residency requirement. The specific statutes that fall under this definition of a resident are:

- Section 379.363, F.S.- Freshwater fish dealer's license
- Section 379.3635, F.S. - Haul Seine and Trawl Permits
- Section 379.364, F.S. - License Required for Fur and Hide Dealers
- Section 379.3711, F.S. - License Fee for Private Game Preserves and Farms
- Section 379.3712, F.S. - Private Hunting Preserve License Fees; exception;
- Section 379.372, F.S. - Capturing, keeping, possessing, transporting, or exhibiting venomous reptiles, reptiles of concern, conditional reptiles, or prohibited reptiles; license required
- Section 379.373, F.S. - License fee; renewal, revocation
- Section 379.374, F.S. - Bond required; amount
- Section 379.3751, F.S. - Taking and possession of alligators; trapping licenses; fees
- Section 379.3752, F.S. - Required tagging of alligators and hides; fees; revenues
- Section 379.3761, F.S. - Exhibition or sale of wildlife; fees; classifications
- Section 379.3762, F.S. - Personal Possession of Wildlife
- Section 379.377, F.S. - Tag fees for sale of Lake Okeechobee game fish

Federal Real ID Act

On January 1, 2010, the Florida Department of Highway Safety and Motor Vehicles (DHSMV) implemented the federal Real ID Act of 2005, which is a nationwide effort to improve the integrity and security of state-issued driver licenses and identification cards.[12] A current Florida license or ID card will continue to be valid as identification for federal purposes until December 1, 2014 for individuals born after December 1, 1964 or until December 1, 2017 for everyone else.[13] After these dates, federal agencies will no longer accept a driver license or ID card unless it is Real ID compliant.[14]

To receive a Real ID license or ID card, a U.S. citizen must provide the DHSMV with one of the following:[15]

- A valid, unexpired U.S. passport
- An original or certified copy of a birth certificate
- A consular report of birth abroad

[10] Section 379.352, F.S.
[11] Section 379.361, F.S.
[12] The Florida Department of Highway Safety & Motor Vehicles Real ID Act website, http://www.flhsmv.gov/RealID.htm
[13] Id.
[14] Id.
[15] Id.

- A certificate of naturalization
- A certificate of citizenship
- A court or marriage/divorce document that provides proof of a change in name that differs from the primary identity document

Non-citizens must provide one of the following:[16]

- A valid, unexpired permanent resident card-I-551 for lawful permanent residents
- A valid passport for non-immigrants except for asylum applicants and refugees
- Other government-issued documents showing the person's full name
- Department of Homeland Security documents showing proof of lawful presence
- Evidence that a name change has been applied for from the Department of Homeland Security in the case of marriage/divorce

Both citizens and non-citizens must also provide:[17]

- A Social Security card or evidence that a person is not eligible for one
- Other document with a Social Security Number on it
- Two documents that show principal residence[18]

Effect of Proposed Changes

The bill amends the definition of "resident" and "resident of Florida" in s. 379.101, F.S., to eliminate the 6-month residency requirement to obtain a resident recreational hunting or fishing license, and moves the non-recreational and commercial licensing statutes described above into the paragraph that pertains to other commercial licenses so that they maintain their 6-month state residency requirement. The bill provides that a "resident of Florida" for the purposes of obtaining a recreational hunting or fishing license is any person who has declared Florida as his or her only state of residence as evidenced by a valid Florida driver license or identification card with both a Florida address and residency verified by the DHSMV, or in the absence of such Florida driver license or ID card, one of the following:

- A current Florida Voter Information Card;
- A sworn statement manifesting and evidencing domicile in Florida in accordance with s. 222.17, F.S.;
- Proof of a current Florida homestead exemption; or
- For children under the age of 18, a student ID card from a Florida school or, when the child is accompanied by their parent at the time of purchase, their parent's proof of residency.

The bill also eliminates the requirement for a resident saltwater commercial fisherman to prove 6 months of residency in a Florida county to obtain a resident saltwater products license. The commercial fisherman must still prove 1-year residency in the state to obtain the resident license.

In addition, the bill also amends the definition of a "resident alien" by eliminating the requirement that they continuously reside in a county for 6 months. To be a "resident alien" a person must still continuously reside in the state for 1 year.

Lastly, the bill moves the list of statutory references relating to certain non-recreational and commercial licenses and activities that only require a 6-month state residency requirement, described above, to the

[16] Id.
[17] Id.
[18] Acceptable forms of proof of residency can be found on the DHSMV website, http://www.flhsmv.gov/RealID.htm

part of the "resident of Florida" definition that pertains to commercial fishing licenses in general. This is a technical revision that that cleans up the section of statute.

Section 3. Amends s. 379.353, F.S. Exempting Recreational Hunting/Fishing Licenses for Specified Veteran Events

Present Situation

Florida residents and nonresidents must purchase a recreational hunting or fishing license to take wild animal life, freshwater aquatic life, and marine life.[19] Section 379.353, F.S., provides exemptions from the requirement to buy a recreational hunting or fishing license for the following people:

- Any child under 16 years of age, except as otherwise provided in this part.
- Any person hunting or freshwater fishing on her or his homestead property, or on the homestead property of the person's spouse or minor child; or any minor child hunting or freshwater fishing on the homestead property of her or his parent.
- Any resident who is a member of the United States Armed Forces and not stationed in this state, when home on leave for 30 days or less, upon submission of orders.
- Any resident fishing for recreational purposes only, within her or his county of residence with live or natural bait, using poles or lines not equipped with a fishing line retrieval mechanism. This exemption does not apply to residents fishing in a legally established fish management area.
- Any person freshwater fishing in a fish pond of 20 acres or less that is located entirely within the private property of the fish pond owner.
- Any person freshwater fishing in a fish pond that is licensed in accordance with s. 379.356, F.S.
- Any person fishing who has been accepted as a client for developmental disabilities services by the Department of Children and Family Services, provided the department furnishes proof thereof.
- Any resident saltwater fishing from land or from a structure fixed to the land that has been determined eligible by the Department of Children and Family Services for the food assistance program, temporary cash assistance, or the Medicaid programs. A benefit issuance or program identification card issued by the Department of Children and Family Services or the Florida Medicaid program of the Agency for Health Care Administration shall serve as proof of program eligibility. The client must have in his or her possession the ID card and positive proof of identification when fishing.
- Any person saltwater fishing from a vessel licensed pursuant to s. 379.354(7), F.S.
- Any person saltwater fishing from a vessel the operator of which is licensed pursuant to s. 379.354(7), F.S.
- Any person saltwater fishing who holds a valid saltwater products license issued under s. 379.361(2), F.S.
- Any person saltwater fishing for recreational purposes from a pier licensed under s. 379.354, F.S.
- Any resident fishing for mullet in fresh water that has a valid Florida freshwater fishing license.
- Any resident 65 years of age or older who has in her or his possession proof of age and residency. A no-cost license under this paragraph may be obtained from any tax collector's office upon proof of age and residency and must be in the possession of the resident during hunting, freshwater fishing, and saltwater fishing activities.
- Any employee of the commission who takes freshwater fish, saltwater fish, or game as part of employment with the commission, or any other person authorized by commission permit to take freshwater fish, saltwater fish, or game for scientific or educational purposes.
- Any resident recreationally freshwater fishing who holds a valid commercial fishing license issued under s. 379.363(1)(a), F.S.

[19] Section 379.352, F.S. Current license fees for recreational hunting and fishing licenses can be found on FWC's website at http://myfwc.com/license/recreational.

As of June 30, 2012, there were roughly 59,000 active duty military personnel and 39,000 military reservists living in Florida.[20] The FWC routinely receives requests from various veteran organizations to waive the requirement that their participants purchase a recreational hunting or fishing license when those participants are recreating or rehabilitating military or disabled veterans. Currently, the FWC does not have the authority to waive the licensing requirement.

Effect of Proposed Changes

The bill amends s. 379.353, F.S., to specify that a recreational hunting, freshwater fishing, or saltwater fishing license or permit is not required for those persons exempted by an FWC permit issued under this section. Specifically, the bill authorizes the FWC to issue a permit for an outdoor recreational event for which the primary purpose is the rehabilitation or enjoyment of veterans certified by the United States Department of Veterans Affairs or its predecessor or by any branch of the United States Armed Forces to have any service-connected disability percentage rating of zero percent or higher, active duty or reserve duty service members of any branch of the United States Armed Forces, the United States Coast Guard, military reserves, the Florida National Guard, or the United States Coast Guard Reserve.

The bill specifies that a permit issued under this section exempts such veterans, service members, their immediate family members and one additional person designated to assist each veteran certified to be a disabled veteran, from having to possess a hunting, freshwater fishing, or saltwater fishing license for the duration of the event. For purposes of this exemption, immediate family members mean parents, spouses, and children.

The bill authorizes the FWC to adopt rules to implement this section. Factors for the FWC to consider in determining to issue such permits include, but are not limited to, hunting and fishing seasons, time frame or duration of the event, species concerns, and the number of such permits granted to the organizer of the event during the calendar year the permit is requested.

Section 4. Amends s. 379.354, F.S., Increasing Free Saltwater/Freshwater Fishing Days

Present Situation

Currently, the FWC may designate, by rule, two consecutive or nonconsecutive days per year as free freshwater fishing days and two consecutive or nonconsecutive days per year as free saltwater fishing days, during which a recreational fishing license requirement is waived. All other laws, rules, and regulations governing the holders of a fishing license remain in effect. The free fishing days are for residents and nonresidents.

The prices for recreational fishing licenses are as follows:[21]

- A Florida resident annual freshwater or saltwater license is $17.
- A nonresident freshwater annual license is $47, a 3-day license is $17, and a 7-day license is $30.
- A nonresident saltwater annual license is $47, a 3-day license is $17, and a 7-day license is $30.

Effect of Proposed Changes

The bill amends s. 379.354(15), F.S., to allow the FWC to increase the total number of license-free recreational saltwater fishing days from two to four and the total number of license-free recreational freshwater fishing days from two to four.

[20] FWC 2013 analysis. On file with staff.
[21] *Id.*

Section 5. Amends s. 379.361, F.S., Waiving Income Requirements for Commercial Fishing Licenses for Veterans

Present Situation

Section 379.361, F.S., specifies that any person, firm, or corporation that sells, offers for sale, barters, or exchanges for merchandise any saltwater products, or that harvests saltwater products with certain gear or equipment as specified by law, must have a valid saltwater products license (a commercial fishing license). A saltwater product is defined as any species of saltwater fish, marine plant, or echinoderm, except shells, and salted, cured, canned, or smoked seafood.[22] Commercial harvest is defined as 'harvest over the recreational bag limit, use of certain gear as authorized by law, or possession of more than 100 lbs. per person per day of species with no established bag limit. Possession of two or fewer fish with no established bag limit is not considered commercial harvest even if over 100 pounds."[23]

There are three types of saltwater products licenses (SPLs) in Florida:

- Individual SPL – This license authorizes one person to engage in commercial fishing activities from the shore or a vessel, is issued in the individual's name, and is not tied to any one vessel.[24]
- Crew SPL – This license is the same as an individual SPL, but also authorizes each person who is fishing with the named individual aboard a vessel to engage in such activities. This allows the license holder to take a crew on any vessel and that crew is covered under the person's SPL.[25]
- Vessel SPL – This license is issued to a valid commercial vessel registration number and authorizes each person aboard that registered vessel to engage in commercial saltwater fishing activities. This is issued to a vessel, not a named individual.[26]

The various costs for SPLs are as follows:

Saltwater Products Licenses	Cost
Individual resident	$50
Individual nonresident	$200
Individual alien	$300
Crew resident	$150
Crew nonresident	$600
Crew alien	$900
Vessel resident	$100
Vessel nonresident	$400
Vessel alien	$600

A restricted species (RS) endorsement is required for those who possess an SPL and commercially harvest or sell the following species: Spanish Mackerel, King Mackerel, Black Drum, Spotted Sea Trout, Grouper, Snapper, Red Porgy, Gray Triggerfish, Banded Rudderfish, Almaco Jack, Golden Tilefish, Amberjack, Sea Bass/Tropical/Ornamental "Marine Life," Black Mullet, Silver Mullet, Bluefish, Hogfish, Blue Crab, Stone Crab, Crawfish/Spiny Lobster, African Pompano, Florida Pompano, Permit, Sheepshead, Tripletail, Clams (Brevard County only), Shrimp, Flounder, Cobia, Wahoo, and Dolphin.[27]

[22] Section 379.101, F.S.
[23] FWC 2013 analysis. On file with staff
[24] *Id.*
[25] *Id.*
[26] *Id.*
[27] Rule 68B, F.A.C.

An RS endorsement is free; however, licensed commercial fishermen must qualify or show proof of landings reported under their SPL providing that a specified amount or percentage of their total annual income ($5,000 or 25 percent) during one of the past three years is attributable to reported landings and sales of saltwater products to a Florida wholesale dealer.[28] Exemptions from income requirements include the following:

- A permanent restricted species endorsement shall be available to those persons age 62 and older who have qualified for such endorsement for at least 3 of the last 5 years.
- Active military duty time shall be excluded from consideration of the time necessary to qualify and shall not be counted against the applicant for purposes of qualifying.
- Upon the sale of a used commercial fishing vessel owned by a person, firm, or corporation that possesses or is eligible for a restricted species endorsement, the purchaser of such vessel shall be exempted from the qualifying income requirement for the purpose of obtaining a restricted species endorsement for a period of 1 year after purchase of the vessel.
- Upon the death or permanent disablement of a person possessing a restricted species endorsement, an immediate family member wishing to carry on the fishing operation shall be exempted from the qualifying income requirement for the purpose of obtaining a restricted species endorsement for a period of 1 year after the death or disablement.
- A restricted species endorsement may be issued on an individual saltwater products license to a person age 62 or older who documents that at least $2,500 of his or her income is attributable to the sale of saltwater products.
- A permanent restricted species endorsement may also be issued on an individual saltwater products license to a person age 70 or older who has held a saltwater products license for at least 3 of the last 5 license years.
- Any resident who is certified to be totally and permanently disabled by the Railroad Retirement Board, by the United States Department of Veterans Affairs or its predecessor, or by any branch of the United States Armed Forces, or who holds a valid identification card issued by the Department of Veterans' Affairs pursuant to s. 295.17, F.S., upon proof of the same, or any resident certified to be disabled by the United States Social Security Administration or a licensed physician, upon proof of the same, shall be exempted from the income requirements if he or she also has held a saltwater products license for at least 3 of the last 5 license years prior to the date of the disability. A restricted species endorsement issued under this paragraph may be issued only on an individual saltwater products license.

During the 2011-2012 fiscal year, of the 12,752 SPLs issued in the state, 9,191 of them had an RS endorsement.

Small service-disabled veteran business enterprises

In 2008, HB 687 was approved by the Governor.[29] The bill created the Service Disabled Veterans-Owned Business Enterprise Opportunity Act. The Act created a certification program in the Department of Management Services (DMS) for small service-disabled veteran business enterprises (SDVBE). To qualify, a veteran must be a permanent resident of Florida who has a service-related disability of 10 percent or greater as determined by the U.S. Department of Veterans Affairs or the U.S. Department of Defense. To be certified as a SDVBE, the business enterprise must be independently owned and operated business that meets all of the following criteria:

- Employs 200 or fewer permanent full-time employees.
- Together with its affiliates has a net worth of $5 million or less including both personal and business investments.
- Is organized to engage in commercial transactions.
- Is domiciled in Florida.

[28] Section 379.361(b), F.S. FWC 2013 analysis. On file with staff
[29] 2008 HB 687 staff analysis.

- Is at least 51 percent owned by one or more service-disabled veterans.
- Is managed and controlled by one or more service-disabled veterans or, for a service-disabled veteran with a permanent and total disability, by the spouse or permanent caregiver of the veteran.[30]

The program requires state agencies receiving two or more bids, proposals, or replies for the procurement of commodities or contractual services, at least one of which is from a SDVBE, that are equal with respect to all relevant considerations including price, quality, and service, to award the contract to the SDVBE.[31]

Since the bill was approved in 2008, there are approximately 240 disabled veteran-owned businesses certified with DMS as SDVBEs. Of the 249,000 disabled Florida-resident veterans, approximately one-tenth of 1 percent has taken advantage of this Act.

Rule 68B-2.006, F.A.C.

On November 11, 2012, the FWC promulgated Rule 68B-2.006, F.A.C. The rule provides assistance to certain military veterans who wish to become commercial fishers and obtain the RS endorsement issued on an SPL by waiving the income requirement for one year.

The FWC was created by passage of Revision #5 to the Florida Constitution during the November 1998 General Election,[32] as implemented by the 1999 General Session of the Legislature. This was accomplished by merging the former Game & Fresh Water Fish Commission, the former Marine Fisheries Commission, and most of the former divisions of the marine Resources and Law Enforcement within the Department of Environmental Protection (DEP). As a constitutionally created agency, the FWC is free to exercise its constitutional responsibilities, and the Legislature may only enact laws in aid of the FWC that are not inconsistent with those constitutional responsibilities. The FWC is also exempt from chapter 120, F.S. (the Administrative Procedure Act) in the exercise of those responsibilities.

Prior to the adoption of the 1998 amendment, regulation of Florida's wild animal life, freshwater aquatic life, and marine life was performed primarily by three separate agencies: the Game and Fresh Water Fish Commission, the Marine Fisheries Commission, and DEP. The amendment abolished the Game and Fresh Water Fish Commission and the Marine Fisheries Commission. The amendment consolidated the functions performed by the Marine Fisheries Commission and the Game and Fresh Water Fish Commission into the FWC, and granted the FWC with the executive and regulatory powers of the state over wild animal life and freshwater aquatic life, and executive and regulatory powers over marine species. The amendment specifically granted the Legislature with the power to: (1) establish fees and penalties, (2) adopt laws in aide of the FWC, and (3) appropriate funds.[33]

Since the adoption of this constitutional amendment, there has been some uncertainty and debate over how far the FWC's constitutional authority reaches as it pertains to marine species. The Florida Supreme Court has provided some clarity, but it is unclear whether the FWC has the authority under the Florida Constitution to adopt a rule exempting the income requirement for certain veterans, or if the FWC needs the Legislature to grant it the authority in statute for the rule to be effective.

Effect of Proposed Changes

The bill amends s. 379.361, F.S., to specifically grant the FWC with the statutory authority to waive the $5,000 or 25 percent of annual income RS endorsement income requirement for certain veterans for one year. Specifically, the bill specifies that:

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[30] FWC 2013 analysis. On file with staff.
[31] *Id.*
[32] See Section 9 of Article IV of the Florida Constitution
[33] Section 379.1025, F.S. acknowledges the FWC's constitutional authority, as well as its statutory authority.

- An honorably discharged resident military veteran[34] certified to have a service-connected permanent disability rating of 10 percent or higher, upon providing proof of such disability rating, is not required to provide documentation for the income requirement with his or her initial application for an RS endorsement. Documentation for the income requirement is required beginning with the renewal of the RS endorsement after such veteran has possessed a valid RS endorsement for a complete license year. This exemption applies only to issuance of the endorsement on an individual SPL and is a one-time exemption. In order to renew the RS endorsement on an individual SPL, the veteran must document that at least $2,500 of his or her income is attributable to the sale of saltwater products.
- Beginning July 1, 2014, a resident military veteran who applies to the FWC within 48 months after receiving an honorable discharge from any branch of the U.S. Armed Forces, the U.S. Coast Guard, the military reserves, the Florida National Guard, or a member of the U.S. Coast Guard reserves is not required to provide documentation for the income requirement with his or her initial application for a RS endorsement. Documentation for the income requirement is required beginning with the renewal of the RS endorsement after such veteran has possessed a valid RS endorsement for a complete license year. This exemption applies only to issuance of the endorsement on an individual SPL and may only be applied one time per military enlistment.
- Until June 30, 2014, a resident military veteran who applies to the FWC and who received an honorable discharge from any branch of the U.S. Armed Forces, the United States Coast Guard, the military reserves, the Florida National Guard, or a member of the U.S. Coast Guard reserves between September 11, 2001, and June 30, 2014, is not required to provide documentation for the income requirement with his or her initial application for a RS endorsement. Documentation for the income requirement is required beginning with the renewal of the RS endorsement after such veteran has possessed a valid RS endorsement for a complete license year. This exemption applies only to issuance of the endorsement on an individual SPL.

The bill specifies that the term 'one year' means one complete license year as it pertains to the RS endorsement income requirement.

Section 6. Provides an Effective Date.

B. SECTION DIRECTORY:

Section 1. Amends s. 327.02, F.S., correcting a statutory reference to federal boating laws.

Section 2. Amends s. 379.101, F.S., defining residency requirements for hunting/fishing licenses.

Section 3. Amends s. 379.353, F.S., exempting recreational hunting/fishing licenses for specified veteran events.

Section 4. Amends s. 379.354, F.S., increasing free saltwater/freshwater fishing days.

Section 5. Amends s. 379.361, F.S., waiving income requirements for commercial fishing licenses for veterans.

Section 6. Provides an effective date.

[34] This includes any branch of the U.S. Armed Forces, the Reserves, the Florida National Guard, or the U.S. Coast Guard.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   See Fiscal Comments.

2. Expenditures:

   See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Section 2: According to the FWC's analysis, those wishing to purchase a resident recreational fishing or hunting license, but who are not eligible because they have not established their Florida residency for six months or more, will see a positive fiscal impact of the difference between the cost of a resident license and a nonresident license.

Section 3: According to the FWC's analysis, active duty military personnel, reservists, Florida National Guard, U.S. Coast Guard, and disabled veterans participating in FWC-permitted hunting and fishing events that promote outdoor recreation, together with all individuals assisting the disabled veterans in the event, will be exempted from having to purchase a license for that specified event.

Section 4: According to the FWC's analysis, both residents and non-residents can enjoy additional free saltwater and freshwater fishing days without having to purchase a license.

Section 5: According to the FWC's analysis, there could be a positive fiscal impact, in the form of income, on veterans who enter the commercial fishing industry; however, there is a potential for a negative fiscal impact to income on current commercial fishermen holding a restricted species endorsement as a result of increased competition this section may create.

D. FISCAL COMMENTS:

Section 2: According to the FWC's analysis, there could be a potentially negative fiscal impact on the FWC depending on how many people cannot currently purchase a resident hunting or fishing license due to residency requirements. If those people currently prohibited from purchasing a resident license would still purchase a nonresident license, the lost revenue would be equivalent to the difference between the cost of the resident license and the nonresident license, multiplied by the number of people who take advantage of the new residency requirements. The FWC has no data on how many people fit within the affected population annually or as to which license type persons are likely to buy. The March 16, 2013 Revenue Estimating Impact Conference adopted a negative insignificant impact.

Section 3: According to the FWC's analysis, there could be a potentially negative fiscal impact on the FWC due to a small loss of license sales revenue; however, there could be a potentially positive fiscal impact on the FWC in increased purchases of hunting and fishing licenses by individuals participating

in the license-exempted event who have not previously purchased a license. There is no data on how many events would be permitted, how many individuals would take advantage of the new exemption, or what license type from which they would be exempted. The March 16, 2013 Revenue Estimating Impact Conference adopted a negative insignificant impact.

Section 4: According to the FWC's analysis, the immediate fiscal impact to the FWC is unknown. There may be a positive long-term fiscal impact as a result of an increase in the number of anglers introduced to fishing who would later purchase a license. There is no data on how many individuals currently take advantage of free fishing days or how many more may take advantage of them if the number of days are increased. The March 16, 2013 Revenue Estimating Impact Conference adopted a negative insignificant impact.

Section 5: According to the FWC's analysis, there would be a small positive fiscal impact to the Marine Resources Conservation Trust Fun from the increased sale of saltwater product licenses to veterans who enter the fishery under the waiver. Using data from the November 11, 2012 through March 14, 2013 advance implementation of the waiver, the March 16, 2013 Revenue Estimating Impact Conference adopted a positive insignificant impact of $6,300 for the first year of implementation. This expected to increase annually: $7,800 in Fiscal Year 2014-15; $8,750 in Fiscal Year 2015-16; $10,100 in Fiscal Year 2016-17; and $11.450 in Fiscal Year 2017-18.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

The bill provides rulemaking authority for the FWC to issue a permit that would exempt certain persons from having to possess recreational hunting and fishing licenses.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On February 12, 2013, the Agriculture & Natural Resources Subcommittee adopted three amendments that made the following changes:

- Modifies the change to the residency requirement for recreational hunting and fishing license by making a Florida driver license or identification card the primary method of proof of residency; however, alternative methods of proof will be permitted if an applicant does not possess a Florida driver license or identification card.
- Specifies that the United States Coast Guard is part of the military groups exempted from purchasing a hunting or fishing license when participating in a recreational event designed for enjoyment or rehabilitation.
- Corrects drafting errors related to waiving income requirements for commercial fishing licenses for veterans.

On March 5, 2013, the Veteran & Military Affairs Subcommittee adopted one amendment and an amendment to the amendment that made the following changes:

- Narrows the types of persons who are exempted from having to possess recreational hunting and fishing licenses to include only veterans certified to have a service-connected disability, active duty service members of any branch of the United States Armed Forces, the Coast Guard, military reserves, the Florida National Guard, the Coast Guard Reserves, and their immediate family members and a person designated to assist a disabled veteran. Provides rule authority for the FWC to implement the provisions of the bill and provides guidelines in the granting of permits.
- Revises the type of service members who are exempted from having to possess recreational hunting and fishing licenses to also include reserve duty service members, as well as active duty service members.

A bill to be entitled

An act relating to the Fish and Wildlife Conservation Commission; amending s. 327.02, F.S.; revising the definition of the term "navigation rules" for purposes of provisions relating to vessels; amending s. 379.101, F.S.; revising the definition of the term "resident" or "resident of Florida" for purposes of provisions relating to recreational and nonrecreational activity licenses; providing for certain evidence of residence; revising the definition of the term "resident alien" to remove a county residency requirement; amending s. 379.353, F.S.; exempting specified persons participating in certain outdoor recreational events from requirements for hunting and fishing licenses and permits; amending s. 379.354, F.S.; revising the number of days the commission may designate as free fishing days each year; amending s. 379.361, F.S.; revising requirements for a restricted species endorsement on a saltwater products license; providing an effective date.

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

Section 1. Subsection (25) of section 327.02, Florida Statutes, is amended to read:

327.02 Definitions ~~of terms used in this chapter and in chapter 328~~.—As used in this chapter and in chapter 328, unless the context clearly requires a different meaning, the term:

(25) "Navigation rules" means:

(a) For vessels on waters outside of established navigational lines of demarcation as specified in 33 C.F.R. part 80, the International Navigational Rules Act of 1977, 33 U.S.C. ~~appendix following~~ s. 1602, as amended, including the appendix and annexes thereto, through October 1, 2012.

(b) For vessels on all waters not outside of such established ~~navigational~~ lines of demarcation, ~~as specified in 33 C.F.R. part 80 or~~ the Inland Navigational Rules Act of 1980, 33 C.F.R. parts 83-90, as amended, through October 1, 2012 ~~33 U.S.C. ss. 2001 et seq., as amended, including the annexes thereto, for vessels on all waters not outside of such lines of demarcation~~.

Section 2. Subsections (30) and (31) of section 379.101, Florida Statutes, are amended to read:

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

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

(a) For purposes of part VII ~~of this chapter, with the exception of ss. 379.363, 379.3635, 379.364, 379.3711, 379.3712, 379.372, 379.373, 379.374, 379.3751, 379.3752, 379.3761, 379.3762, and 379.377,~~ and for purposes of s. 379.355, citizens of the United States who have continuously resided in this state for 1 year before applying for a~~, next preceding the making of their application for~~ hunting, fishing, or other license~~, for the following period of time, to wit: For 1 year in the state and 6 months in the county when applied to all fish and game~~

~~laws not related to freshwater fish and game~~. However, for purposes of ss. 379.363, 379.3635, 379.364, 379.3711, 379.3712, 379.372, 379.373, 379.374, 379.3751, 379.3752, 379.3761, and 379.3762, the term "resident" or "resident of Florida" means a citizen of the United States who has continuously resided in this state for 6 months before applying for a hunting, fishing, or other license.

(b) For purposes of part VI ~~of this chapter~~, except ~~with the exception of~~ s. 379.355:~~, and for purposes of ss. 379.363, 379.3635, 379.364, 379.3711, 379.3712, 379.372, 379.373, 379.374, 379.3751, 379.3752, 379.3761, 379.3762, and 379.377, any person who has continually resided in the state for 6 months~~ ~~or~~

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

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

a. A current Florida voter information card;

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

c. Proof of a current Florida homestead exemption; or

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

of residency.

(31) "Resident alien" means ~~shall mean~~ those persons who have continuously resided in this state for at least 1 year ~~and 6 months in the county~~ and can provide documentation from the Bureau of Citizenship and Immigration Services evidencing permanent residency status in the United States. For the purposes of this chapter, a "resident alien" shall be considered a "resident."

Section 3. Paragraph (q) is added to subsection (2) of section 379.353, Florida Statutes, to read:

379.353 Recreational licenses and permits; exemptions from fees and requirements.—

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

(q) Any person exempted pursuant to this paragraph by commission permit for an outdoor recreational event the primary purpose of which is the rehabilitation or enjoyment of disabled veterans certified by the United States Department of Veterans Affairs or its predecessor or by any branch of the United States Armed Forces to have a service-connected disability percentage rating of zero or higher, active duty or reserve duty servicemembers of any branch of the United States Armed Forces, the United States Coast Guard, military reserves, the Florida National Guard, or the United States Coast Guard Reserve. A permit issued for an event under this paragraph shall exempt a disabled veteran, servicemember, immediate family of such a disabled veteran or servicemember, and one additional person designated to assist such a disabled veteran from possessing a

hunting, freshwater fishing, or saltwater fishing license or permit for the duration of the event. For purposes of this exemption, immediate family means a parent, spouse, or child. The commission shall adopt rules to implement this paragraph. The factors to be considered by the commission in determining whether to issue a permit for an event under this paragraph shall include, but are not limited to, hunting and fishing seasons, timeframe or duration of the event, species concerns, and the number of such permits granted to the organizer of the event during the calendar year for which the permit is requested.

Section 4. Subsection (15) of section 379.354, Florida Statutes, is amended to read:

379.354 Recreational licenses, permits, and authorization numbers; fees established.—

(15) FREE FISHING DAYS.—The commission may designate by rule no more than 4 ~~2~~ consecutive or nonconsecutive days in each year as free freshwater fishing days and no more than 4 ~~2~~ consecutive or nonconsecutive days in each year as free saltwater fishing days. Notwithstanding any other provision of this chapter, any person may take freshwater fish for noncommercial purposes on a free freshwater fishing day and may take saltwater fish for noncommercial purposes on a free saltwater fishing day, without obtaining or possessing a license or permit or paying a license or permit fee as prescribed in this section. A person who takes freshwater or saltwater fish on a free fishing day must comply with all laws, rules, and regulations governing the holders of a fishing license or permit

and all other conditions and limitations regulating the taking of freshwater or saltwater fish as are imposed by law or rule.

Section 5. Paragraph (b) of subsection (2) of section 379.361, Florida Statutes, is amended to read:

379.361 Licenses.—

(2) SALTWATER PRODUCTS LICENSE.—

(b)1. A restricted species endorsement on the saltwater products license is required to sell to a licensed wholesale dealer those species which the state, by law or rule, has designated as "restricted species." This endorsement may be issued only to a person who is at least 16 years of age, or to a firm certifying that over 25 percent of its income or $5,000 of its income, whichever is less, is attributable to the sale of saltwater products pursuant to a saltwater products license issued under this paragraph or a similar license from another state. This endorsement may also be issued to a for-profit corporation if it certifies that at least $5,000 of its income is attributable to the sale of saltwater products pursuant to a saltwater products license issued under this paragraph or a similar license from another state. However, if at least 50 percent of the annual income of a person, firm, or for-profit corporation is derived from charter fishing, the person, firm, or for-profit corporation must certify that at least $2,500 of the income of the person, firm, or corporation is attributable to the sale of saltwater products pursuant to a saltwater products license issued under this paragraph or a similar license from another state, in order to be issued the endorsement. Such income attribution must apply to at least 1 of

the last 3 years. For the purpose of this section, "income" means that income that is attributable to work, employment, entrepreneurship, pensions, retirement benefits, and social security benefits.

2. To renew an existing restricted species endorsement, a marine aquaculture producer possessing a valid saltwater products license with a restricted species endorsement may apply income from the sale of marine aquaculture products to licensed wholesale dealers.

3. The commission may ~~is authorized to~~ require verification of such income for all restricted species endorsements issued pursuant to this paragraph. Acceptable proof of income earned from the sale of saltwater products shall be:

a. Copies of trip ticket records generated pursuant to this subsection (marine fisheries information system), documenting qualifying sale of saltwater products;

b. Copies of sales records from locales other than Florida documenting qualifying sale of saltwater products;

c. A copy of the applicable federal income tax return, including Form 1099 attachments, verifying income earned from the sale of saltwater products;

d. Crew share statements verifying income earned from the sale of saltwater products; or

e. A certified public accountant's notarized statement attesting to qualifying source and amount of income.

4. Notwithstanding any other provision of law, any person who owns a retail seafood market or restaurant at a fixed location for at least 3 years, who has had an occupational

license for 3 years before ~~prior to~~ January 1, 1990, who harvests saltwater products to supply his or her retail store, and who has had a saltwater products license for 1 of the past 3 license years before ~~prior to~~ January 1, 1990, may provide proof of his or her verification of income and sales value at the person's retail seafood market or restaurant and in his or her saltwater products enterprise by affidavit and shall thereupon be issued a restricted species endorsement.

5.~~4.~~ Exceptions from income requirements shall be as follows:

a. A permanent restricted species endorsement shall be available to those persons age 62 and older who have qualified for such endorsement for at least 3 of the last 5 years.

b. Active military duty time shall be excluded from consideration of time necessary to qualify and shall not be counted against the applicant for purposes of qualifying.

c. Upon the sale of a used commercial fishing vessel owned by a person, firm, or corporation possessing or eligible for a restricted species endorsement, the purchaser of such vessel shall be exempted from the qualifying income requirement for the purpose of obtaining a restricted species endorsement for a complete license ~~period of 1~~ year after purchase of the vessel.

d. Upon the death or permanent disablement of a person possessing a restricted species endorsement, an immediate family member wishing to carry on the fishing operation shall be exempted from the qualifying income requirement for the purpose of obtaining a restricted species endorsement for a complete license ~~period of 1~~ year after the death or disablement.

e. A restricted species endorsement may be issued on an individual saltwater products license to a person age 62 or older who documents that at least $2,500 of such person's income is attributable to the sale of saltwater products.

f. A permanent restricted species endorsement may also be issued on an individual saltwater products license to a person age 70 or older who has held a saltwater products license for at least 3 of the last 5 license years.

g. Any resident who is certified to be totally and permanently disabled by the Railroad Retirement Board, by the United States Department of Veterans Affairs or its predecessor, or by any branch of the United States Armed Forces, or who holds a valid identification card issued by the Department of Veterans' Affairs pursuant to s. 295.17, upon proof of the same, or any resident certified to be disabled by the United States Social Security Administration or a licensed physician, upon proof of the same, shall be exempted from the income requirements if he or she also has held a saltwater products license for at least 3 of the last 5 license years before ~~prior to~~ the date of the disability. A restricted species endorsement issued under this paragraph may be issued only on an individual saltwater products license.

h. An honorably discharged, resident military veteran certified by the United States Department of Veterans Affairs or its predecessor or by any branch of the United States Armed Forces to have a service-connected permanent disability rating of 10 percent or higher, upon providing proof of such disability rating, is not required to provide documentation for the income

requirement with his or her initial application for a restricted species endorsement. Documentation for the income requirement is required beginning with the renewal of the restricted species endorsement after such veteran has possessed a valid restricted species endorsement for a complete license year. This exemption applies only to issuance of the endorsement on an individual saltwater products license and is a one-time exemption. In order to renew the restricted species endorsement on an individual saltwater products license, the veteran must document that at least $2,500 of his or her income is attributable to the sale of saltwater products.

i. Beginning July 1, 2014, a resident military veteran who applies to the commission within 48 months after receiving an honorable discharge from any branch of the United States Armed Forces, the United States Coast Guard, the military reserves, the Florida National Guard, or the United States Coast Guard Reserve is not required to provide documentation for the income requirement with his or her initial application for a restricted species endorsement. Documentation for the income requirement is required beginning with the renewal of the restricted species endorsement after such veteran has possessed a valid restricted species endorsement for a complete license year. This exemption applies only to issuance of the endorsement on an individual saltwater products license and may only be applied one time per military enlistment.

j. Until June 30, 2014, a resident military veteran who applies to the commission and who received an honorable discharge from any branch of the United States Armed Forces, the

United States Coast Guard, the military reserves, the Florida National Guard, or the United States Coast Guard Reserve between September 11, 2001, and June 30, 2014, is not required to provide documentation for the income requirement with his or her initial application for a restricted species endorsement. Documentation for the income requirement is required beginning with the renewal of the restricted species endorsement after such veteran has possessed a valid restricted species endorsement for a complete license year. This exemption applies only to issuance of the endorsement on an individual saltwater products license.

Section 6. This act shall take effect July 1, 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 Steube offered the following:

Amendment (with title amendment)

Remove everything after the enacting clause and insert:

Section 1. Subsection (25) of section 327.02, Florida Statutes, is amended to read:

327.02 Definitions ~~of terms used in this chapter and in chapter 328~~.~~—~~As used in this chapter and in chapter 328, unless the context clearly requires a different meaning, the term:

(25) "Navigation rules" means:

(a) For vessels on waters outside of established navigational lines of demarcation as specified in 33 C.F.R. part 80, the International Navigational Rules Act of 1977, 33 U.S.C. ~~appendix following~~ s. 1602, as amended, including the appendix and annexes thereto, through October 1, 2012.

(b) For vessels on all waters not outside of such established ~~navigational~~ lines of demarcation, ~~as specified in 33 C.F.R. part 80 or~~ the Inland Navigational Rules Act of 1980,

33 C.F.R. parts 83-90, as amended, through October 1, 2012 ~~33 U.S.C. ss. 2001 et seq., as amended, including the annexes thereto, for vessels on all waters not outside of such lines of demarcation~~.

Section 2. Subsection (1) of section 328.72, Florida Statutes, is amended to read:

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

(1) VESSEL REGISTRATION FEE.—

~~(a)~~ Vessels that are required to be registered shall be classified for registration purposes according to the following schedule, and the registration certificate fee shall be in the following amounts:

Class A-1—Less than 12 feet in length, and all canoes to which propulsion motors have been attached, regardless of length: $5.50 for each 12-month period registered.

Class A-2—12 feet or more and less than 16 feet in length: $16.25 for each 12-month period registered.
(To county): 2.85 for each 12-month period registered.

Class 1—16 feet or more and less than 26 feet in length: $28.75 for each 12-month period registered.
(To county): 8.85 for each 12-month period registered.

Class 2—26 feet or more and less than 40 feet in length: $78.25 for each 12-month period registered.
(To county): 32.85 for each 12-month period registered.

Class 3—40 feet or more and less than 65 feet in length: $127.75 for each 12-month period registered.
(To county): 56.85 for each 12-month period registered.

Class 4—65 feet or more and less than 110 feet in length: $152.75 for each 12-month period registered.

(To county): 68.85 for each 12-month period registered.

Class 5—110 feet or more in length: $189.75 for each 12-month period registered.

(To county): 86.85 for each 12-month period registered.

Dealer registration certificate: $25.50 for each 12-month period registered.

The county portion of the vessel registration fee is derived from recreational vessels only.

~~(b) In 2013 and every 5 years thereafter, vessel registration fees shall be adjusted by the percentage change in the Consumer Price Index for All Urban Consumers since the fees were last adjusted, unless otherwise provided by general law. By February 1 of each year in which an adjustment is scheduled to occur, the Fish and Wildlife Conservation Commission shall submit a report to the President of the Senate and the Speaker of the House of Representatives detailing how the increase in vessel registration fees will be used within the agency. The vessel registration fee increases shall take effect July 1 of each adjustment year.~~

Section 3. Subsections (30) and (31) of section 379.101, Florida Statutes, are amended to read:

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

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

(a) For purposes of part VII ~~of this chapter, with the~~

~~exception of ss. 379.363, 379.3635, 379.364, 379.3711, 379.3712, 379.372, 379.373, 379.374, 379.3751, 379.3752, 379.3761, 379.3762, and 379.377,~~ and for purposes of s. 379.355, a citizen ~~citizens~~ of the United States who has ~~have~~ continuously resided in this state for 1 year before applying for a~~, next preceding the making of their application for~~ hunting, fishing, or other license~~, for the following period of time, to wit: For 1 year in the state and 6 months in the county when applied to all fish and game laws not related to freshwater fish and game~~. However, for purposes of ss. 379.363, 379.3635, 379.364, 379.3711, 379.3712, 379.372, 379.373, 379.374, 379.3751, 379.3752, 379.3761, and 379.3762, the term "resident" or "resident of Florida" means a citizen of the United States who has continuously resided in this state for 6 months before applying for a hunting, fishing, or other license.

(b) For purposes of part VI ~~of this chapter~~, except ~~with the exception of~~ s. 379.355:~~, and for purposes of ss. 379.363, 379.3635, 379.364, 379.3711, 379.3712, 379.372, 379.373, 379.374, 379.3751, 379.3752, 379.3761, 379.3762, and 379.377, any person who has continually resided in the state for 6 months~~ ~~or~~

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

2. Any person who has declared Florida as his or her only state of residence as evidenced by a valid Florida driver license or identification card with both a Florida address and a Florida residency verified by the Department of Highway Safety

and Motor Vehicles, or, in the absence thereof, one of the following:

a. A current Florida voter information card;

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

c. Proof of a current Florida homestead exemption; or

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

(31) "Resident alien" means a person ~~shall mean those persons~~ who has ~~have~~ continuously resided in this state for at least 1 year ~~and 6 months in the county~~ and can provide documentation from the Bureau of Citizenship and Immigration Services evidencing permanent residency status in the United States. For the purposes of this chapter, a "resident alien" is ~~shall be~~ considered a "resident."

Section 4. Paragraph (q) is added to subsection (2) of section 379.353, Florida Statutes, to read:

379.353 Recreational licenses and permits; exemptions from fees and requirements.—

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

(q) Any person exempted pursuant to this paragraph by commission permit for an outdoor recreational event the primary purpose of which is the rehabilitation or enjoyment of disabled veterans certified by the United States Department of Veterans Affairs or its predecessor or by any branch of the United States

Armed Forces to have a service-connected disability percentage rating of zero or higher or active duty or reserve duty servicemembers of any branch of the United States Armed Forces, the United States Coast Guard, military reserves, the Florida National Guard, or the United States Coast Guard Reserve. A permit issued for an event pursuant to this paragraph shall exempt disabled veterans and active duty or reserve duty servicemembers, the immediate family of such disabled veterans and servicemembers, and one additional person designated to assist a disabled veteran, from possessing a hunting, freshwater fishing, or saltwater fishing license or permit for the duration of the event. For purposes of this exemption, "immediate family" means a parent, spouse, or child. The factors to be considered by the commission in determining whether to issue a permit for an event pursuant to this paragraph shall include, but are not limited to, hunting and fishing seasons, timeframe or duration of the event, species concerns, and the number of such permits granted to the organizer of the event during the calendar year for which the permit is requested. The commission shall adopt rules to implement this paragraph.

Section 5. Subsections (1) and (15) of section 379.354, Florida Statutes, are amended to read:

379.354 Recreational licenses, permits, and authorization numbers; fees established.—

(1) LICENSE, PERMIT, OR AUTHORIZATION NUMBER REQUIRED.—

~~(a)~~ Except as provided in s. 379.353, no person shall take game, freshwater or saltwater fish, or fur-bearing animals within this state without having first obtained a license,

permit, or authorization number and paid the fees set forth in this chapter. Such license, permit, or authorization number shall authorize the person to whom it is issued to take game, freshwater or saltwater fish, or fur-bearing animals, and participate in outdoor recreational activities in accordance with the laws of the state and rules of the commission.

~~(b) In 2013 and every 5 years thereafter, license and permit fees established in subsections (4) and (5) shall be adjusted by the percentage change in the Consumer Price Index for All Urban Consumers since the fees were last adjusted, unless otherwise provided by general law. By February 1 of each year in which an adjustment is scheduled to occur, the Fish and Wildlife Conservation Commission shall submit a report to the President of the Senate and the Speaker of the House of Representatives detailing how the increase in license and permit fees will be used within the agency. The license and permit fee increases shall take effect July 1 of each adjustment year.~~

(15) FREE FISHING DAYS.—The commission may designate by rule no more than 4 ~~2~~ consecutive or nonconsecutive days in each year as free freshwater fishing days and no more than 4 ~~2~~ consecutive or nonconsecutive days in each year as free saltwater fishing days. Notwithstanding any other provision of this chapter, any person may take freshwater fish for noncommercial purposes on a free freshwater fishing day and may take saltwater fish for noncommercial purposes on a free saltwater fishing day, without obtaining or possessing a license or permit or paying a license or permit fee as prescribed in this section. A person who takes freshwater or saltwater fish on

a free fishing day must comply with all laws, rules, and regulations governing the holders of a fishing license or permit and all other conditions and limitations regulating the taking of freshwater or saltwater fish as are imposed by law or rule.

Section 6. Paragraph (b) of subsection (2) of section 379.361, Florida Statutes, is amended to read:

379.361 Licenses.—

(2) SALTWATER PRODUCTS LICENSE.—

(b)1. A restricted species endorsement on the saltwater products license is required to sell to a licensed wholesale dealer those species which the state, by law or rule, has designated as "restricted species." This endorsement may be issued only to a person who is at least 16 years of age, or to a firm certifying that over 25 percent of its income or $5,000 of its income, whichever is less, is attributable to the sale of saltwater products pursuant to a saltwater products license issued under this paragraph or a similar license from another state. This endorsement may also be issued to a for-profit corporation if it certifies that at least $5,000 of its income is attributable to the sale of saltwater products pursuant to a saltwater products license issued under this paragraph or a similar license from another state. However, if at least 50 percent of the annual income of a person, firm, or for-profit corporation is derived from charter fishing, the person, firm, or for-profit corporation must certify that at least $2,500 of the income of the person, firm, or corporation is attributable to the sale of saltwater products pursuant to a saltwater products license issued under this paragraph or a similar

license from another state, in order to be issued the endorsement. Such income attribution must apply to at least 1 of the last 3 years. For the purpose of this section, "income" means that income that is attributable to work, employment, entrepreneurship, pensions, retirement benefits, and social security benefits.

2. To renew an existing restricted species endorsement, a marine aquaculture producer possessing a valid saltwater products license with a restricted species endorsement may apply income from the sale of marine aquaculture products to licensed wholesale dealers.

3. The commission may ~~is authorized to~~ require verification of such income for all restricted species endorsements issued pursuant to this paragraph. Acceptable proof of income earned from the sale of saltwater products shall be:

a. Copies of trip ticket records generated pursuant to this subsection (marine fisheries information system), documenting qualifying sale of saltwater products;

b. Copies of sales records from locales other than Florida documenting qualifying sale of saltwater products;

c. A copy of the applicable federal income tax return, including Form 1099 attachments, verifying income earned from the sale of saltwater products;

d. Crew share statements verifying income earned from the sale of saltwater products; or

e. A certified public accountant's notarized statement attesting to qualifying source and amount of income.

4. Notwithstanding any other provision of law, any person

who owns a retail seafood market or restaurant at a fixed location for at least 3 years, who has had an occupational license for 3 years before ~~prior to~~ January 1, 1990, who harvests saltwater products to supply his or her retail store, and who has had a saltwater products license for 1 of the past 3 license years before ~~prior to~~ January 1, 1990, may provide proof of his or her verification of income and sales value at the person's retail seafood market or restaurant and in his or her saltwater products enterprise by affidavit and shall thereupon be issued a restricted species endorsement.

5.~~4.~~ Exceptions from income requirements shall be as follows:

a. A permanent restricted species endorsement shall be available to those persons age 62 and older who have qualified for such endorsement for at least 3 of the last 5 years.

b. Active military duty time shall be excluded from consideration of time necessary to qualify and shall not be counted against the applicant for purposes of qualifying.

c. Upon the sale of a used commercial fishing vessel owned by a person, firm, or corporation possessing or eligible for a restricted species endorsement, the purchaser of such vessel shall be exempted from the qualifying income requirement for the purpose of obtaining a restricted species endorsement for a complete license ~~period of 1~~ year after purchase of the vessel.

d. Upon the death or permanent disablement of a person possessing a restricted species endorsement, an immediate family member wishing to carry on the fishing operation shall be exempted from the qualifying income requirement for the purpose

of obtaining a restricted species endorsement for a complete license ~~period of 1~~ year after the death or disablement.

e. A restricted species endorsement may be issued on an individual saltwater products license to a person age 62 or older who documents that at least $2,500 of such person's income is attributable to the sale of saltwater products.

f. A permanent restricted species endorsement may also be issued on an individual saltwater products license to a person age 70 or older who has held a saltwater products license for at least 3 of the last 5 license years.

g. Any resident who is certified to be totally and permanently disabled by the Railroad Retirement Board, by the United States Department of Veterans Affairs or its predecessor, or by any branch of the United States Armed Forces, or who holds a valid identification card issued by the Department of Veterans' Affairs pursuant to s. 295.17, upon proof of the same, or any resident certified to be disabled by the United States Social Security Administration or a licensed physician, upon proof of the same, shall be exempted from the income requirements if he or she also has held a saltwater products license for at least 3 of the last 5 license years before ~~prior to~~ the date of the disability. A restricted species endorsement issued under this paragraph may be issued only on an individual saltwater products license.

h. An honorably discharged, resident military veteran certified by the United States Department of Veterans Affairs or its predecessor or by any branch of the United States Armed Forces to have a service-connected permanent disability rating

of 10 percent or higher, upon providing proof of such disability rating, is not required to provide documentation for the income requirement with his or her initial application for a restricted species endorsement. Documentation for the income requirement is required beginning with the renewal of the restricted species endorsement after such veteran has possessed a valid restricted species endorsement for a complete license year. This exemption applies only to issuance of the endorsement on an individual saltwater products license and is a one-time exemption. In order to renew the restricted species endorsement on an individual saltwater products license, the veteran must document that at least $2,500 of his or her income is attributable to the sale of saltwater products.

i. Beginning July 1, 2014, a resident military veteran who applies to the commission within 48 months after receiving an honorable discharge from any branch of the United States Armed Forces, the United States Coast Guard, the military reserves, the Florida National Guard, or the United States Coast Guard Reserve is not required to provide documentation for the income requirement with his or her initial application for a restricted species endorsement. Documentation for the income requirement is required beginning with the renewal of the restricted species endorsement after such veteran has possessed a valid restricted species endorsement for a complete license year. This exemption applies only to issuance of the endorsement on an individual saltwater products license and may only be applied one time per military enlistment.

j. Until June 30, 2014, a resident military veteran who applies to the commission and who received an honorable discharge from any branch of the United States Armed Forces, the United States Coast Guard, the military reserves, the Florida National Guard, or the United States Coast Guard Reserve between September 11, 2001, and June 30, 2014, is not required to provide documentation for the income requirement with his or her initial application for a restricted species endorsement. Documentation for the income requirement is required beginning with the renewal of the restricted species endorsement after such veteran has possessed a valid restricted species endorsement for a complete license year. This exemption applies only to issuance of the endorsement on an individual saltwater products license.

Section 7. This act shall take effect July 1, 2013.

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

Remove everything before the enacting clause and insert:

A bill to be entitled

An act relating to the Fish and Wildlife Conservation Commission; amending s. 327.02, F.S.; revising the definition of the term "navigation rules" for purposes of provisions relating to vessels; amending s. 328.72, F.S.; deleting provisions for periodic adjustments of certain fees based on changes in the Consumer Price Index; amending s. 379.101, F.S.; revising the definition of the term "resident" or "resident of

Florida" for purposes of provisions relating to recreational and nonrecreational activity licenses; providing for certain evidence of residence; revising the definition of the term "resident alien" to remove a county residency requirement; amending s. 379.353, F.S.; exempting specified persons participating in certain outdoor recreational events from requirements for hunting and fishing licenses and permits; amending s. 379.354, F.S.; deleting provisions for periodic adjustments of certain fees based on changes in the Consumer Price Index; revising the number of days the commission may designate as free fishing days each year; amending s. 379.361, F.S.; revising requirements for a restricted species endorsement on a saltwater products license; providing an effective date.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 659 Fossil Fuel Combustion Products
SPONSOR(S): Agriculture & Natural Resources Appropriations Subcommittee; Agriculture & Natural Resources Subcommittee; Goodson
TIED BILLS: None **IDEN./SIM. BILLS:** SB 682

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Agriculture & Natural Resources Subcommittee	11 Y, 2 N, As CS	Renner	Blalock
2) Agriculture & Natural Resources Appropriations Subcommittee	10 Y, 2 N, As CS	Helpling	Massengale
3) State Affairs Committee		Renner	Camechis

SUMMARY ANALYSIS

The Federal Resource Conservation and Recovery Act (RCRA) directs the Environmental Protection Agency (EPA) to implement a solid and hazardous waste management and disposal program. The hazardous waste program, under RCRA Subtitle C, establishes a "cradle to grave" system for controlling hazardous waste from the time it is generated until its ultimate disposal, which includes the generation, transportation, treatment, storage, and disposal of hazardous waste.

On February 12, 1985, Florida received authorization from the EPA to administer its own hazardous waste management and disposal program under RCRA. Currently, the Department of Environmental Protection (DEP) implements Florida's Resource Recovery and Management Program pursuant to Part IV of chapter 403, F.S., which specifically provides that due to the permeability of the soil and high water table in Florida, hazardous waste landfills are prohibited in the state. Under RCRA and Florida's hazardous waste program, certain waste products are exempt, such as fossil fuel combustion (FFC) wastes. FFC wastes are produced from the burning of fossil fuels (coal, oil, natural gas) and include all ash, slag, and particulates removed from flue gas. These wastes are categorized by the EPA as "special wastes" and have been exempted from both the state and federal hazardous waste regulatory programs.

The bill creates a regulatory program in statute for the "beneficial use" of Fossil Fuel Combustion Products (FFCPs). The bill defines "beneficial use" as the use of FFCPs as building materials, substitutes for raw materials or products, or as necessary ingredients or additives in other products according to accepted industry practices. The bill provides definitions for "FFCPs," "fossil fuel-fired electric or steam generation facilities," "pavement aggregate," and "structural fill."

The bill specifies that the storage of FFCPs destined for beneficial use must comply with applicable DEP rules and be conducted in a manner that does not pose a significant risk to public health or violate applicable air or water quality standards. The bill also specifies that the beneficial use of FFCPs is exempt from regulation under part IV of chapter 403, F.S. DEP may take appropriate action if the beneficial use is demonstrated to be causing violations of applicable air or water quality standards or criteria in DEP rules, or if the beneficial use poses a significant risk to public health. The bill does not limit any other requirements applicable to the beneficial use of FFCPs established under chapters 403 or 376, F.S., or under local or federal laws, including requirements governing air pollution control permits, national pollutant discharge elimination system permits, and water quality certifications pursuant to section 401 of the Clean Water Act.

The bill also specifies that nothing is to be construed to limit DEP's authority to approve the beneficial use of materials other than FFCPs as defined above. The provisions in the bill are not to be construed to limit or otherwise modify any FFCP beneficial use previously approved by DEP, use in the on-site construction of surface impoundments, roads or similar works at fossil fuel-fired electric or steam generation facilities, or the recovery of these products for beneficial use from FFCP landfills, impoundments, or storage areas.

Lastly, the bill amends current law to exempt a disposal facility or part of a facility that accepts fly ash, bottom ash, boiler slag, or flue-gas emission control materials from the operation of a fossil fuel-fired electric or steam generation facility, from a clean coal or other innovative technology process at a fossil fuel-fired electric or steam generation facility, or from any combination thereof from the prohibition of hazardous waste landfills in Florida.

The bill does not appear to have a fiscal impact on state or local government. The bill has a potentially positive fiscal impact on private and publicly-owned electric utilities. See Fiscal Comments section.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Federal Regulation of FFCPs

The Federal Resource Conservation and Recovery Act (RCRA)[1] directs the Environmental Protection Agency (EPA) to implement a solid and hazardous waste management and disposal program. The hazardous waste program, under RCRA Subtitle C, establishes a "cradle to grave" system for controlling hazardous waste from the time it is generated until its ultimate disposal, which includes the generation, transportation, treatment, storage, and disposal of hazardous waste.[2] RCRA also sets forth a framework for the management of non-hazardous solid wastes.[3]

On February 12, 1985, Florida received authorization from the EPA to administer its own hazardous waste management and disposal program under RCRA. Currently, DEP implements Florida's Resource Recovery and Management Program pursuant to Part IV of chapter 403, F.S., which specifically provides that due to the permeability of the soil and high water table in Florida, hazardous waste landfills are prohibited in the state. Under RCRA and Florida's hazardous waste program, certain waste products are exempt from the hazardous waste disposal requirements, such as fossil fuel combustion product (FFCP) wastes. FFCP wastes are produced from the burning of fossil fuels (coal, oil, natural gas) and include all ash, slag, and particulates removed from flue gas. These wastes are categorized by the EPA as "special wastes" and have been exempted from both the state and federal hazardous waste regulatory programs.

FFCP wastes are divided into 2 categories:

- Large-volume coal combustion wastes generated at electric utility and independent power producing facilities that are managed separately.
- All remaining fossil fuel combustion wastes including:
    - Large-volume coal combustion waste generated at electric utility and independent power producing facilities that are co-managed with certain other coal combustion wastes.
    - Coal combustion wastes generated at non-utilities.
    - Coal combustion wastes generated at facilities with fluidized bed combustion technology.
    - Petroleum coke combustion wastes.
    - Waste from the combustion of mixtures of coal and other fuels.
    - Waste from the combustion of oil.
    - Waste from the combustion of natural gas.

FFCP Waste Disposal in Florida

As stated above, Florida has been granted the authority to administer its own solid and hazardous waste management and regulatory program, and has agreed to issue permits that conform to the regulatory requirements of the federal law, to inspect and monitor activities subject to regulation, to take

[1] 42 U.S.C. § 6901 et seq. (1976)
[2] EPA website on Laws and Regulations. *See* http://www.epa.gov/lawsregs/laws/rcra.html
[3] *Id.*

appropriate enforcement action against violators, and to do so in a manner that is no less stringent than the federal program.[4]

Section 403.703, F.S., defines hazardous waste as "solid waste, or a combination of solid wastes, which, because of its quantity, concentration, or physical, chemical, or infectious characteristics, may cause, or significantly contribute to, an increase in mortality or an increase in serious irreversible or incapacitating reversible illness or may pose a substantial present or potential hazard to human health or the environment when improperly transported, disposed of, stored, treated, or otherwise managed."

Section 403.7045(1)(f), F.S., provides that industrial byproducts (or FFCPs) are not regulated by chapter 403, F.S., if:

- A majority of the industrial byproducts are demonstrated to be sold, used, or reused within 1 year.
- The industrial byproducts are not discharged, deposited, injected, dumped, spilled, leaked, or placed upon any land or water so that such industrial byproducts, or any constituent thereof, may enter other lands or be emitted into the air or discharged into any waters, including groundwaters, or otherwise enter the environment such that a threat of contamination in excess of applicable department standards and criteria or a significant threat to public health is caused.
- The industrial byproducts are not hazardous wastes as defined under s. 403.703, F.S. and rules adopted under this section.

Section 403.7222, F.S., defines a hazardous waste landfill as "a disposal facility or part of a facility at which hazardous waste that has not undergone treatment is placed in or on land." Due to the permeability of the soil and high water table in Florida, hazardous waste landfills are prohibited in the state.

Beneficial Use of FFCP in Florida

FFCPs such as coal ash are currently being used beneficially in Florida. Coal ash can be reused in two forms — encapsulated (bound into a product) or unencapsulated. In 2010, 6.6 million tons of coal ash, including fly ash, was produced in Florida, according to DEP. Usually 30 to 50 percent of coal ash is used for cement production, road construction, wall board manufacturing, and for agricultural use as a gypsum soil amendment, and the rest is sent to landfills. Environmental benefits from these types of uses include greenhouse gas reduction, energy conservation, reduction in land disposal, and reduction in the need to mine/process virgin materials.

Kingston Fossil Plant Coal Fly Ash Slurry Spill

On December 22, 2008, a retention pond wall collapsed at the Tennessee Valley Authority's (TVA) Kingston plant in Harriman, Tennessee, releasing a combination of water and fly ash that flooded 12 homes, spilled into nearby Watts Bar Lake, contaminated the Emory River, and caused a train wreck. Officials said 4 to 6 feet of material escaped from the pond to cover an estimated 400 acres of adjacent land.

In response to the spill, the EPA is currently proposing to regulate for the first time coal ash to address the risks from the disposal of the wastes generated by electric utilities and independent power producers. The EPA is considering two possible options for the management of coal ash for public comment. Both options fall under RCRA. Under the first proposal, the EPA would list these residuals as special wastes subject to regulation under the Subtitle C hazardous waste program of RCRA, when destined for disposal in landfills or surface impoundments. Under the second proposal, the EPA would

[4] DEP website on Hazardous Waste Regulation Section. *See* http://www.dep.state.fl.us/waste/categories/hwRegulation/default.htm

regulate coal ash under Subtitle D of RCRA, the section for non-hazardous wastes. The proposed rule was published in the Federal Register on June 21, 2012, but rulemaking has been put on hold.

According to DEP, if the EPA changes course and requires FFCP waste to be regulated as a hazardous waste under RCRA, then the state would be forced to find ways of disposing of such wastes. Since hazardous waste landfills are prohibited in Florida, coal burning utilities would be forced to find disposal facilities outside the state willing to take the FFCPs.

Effect of Proposed Changes

The bill creates s. 403.7047, F.S., establishing a specific regulatory program in Florida for the beneficial use of FFCPs. The bill defines "beneficial use" as the use of FFCPs as building materials, substitutes for raw materials or products, or as necessary ingredients or additives in other products according to accepted industry practices. The definition includes the following:

- Asphalt, concrete or cement products, flowable fill, and roller-compacted concrete.
- Structural fill or pavement aggregate that meets the following requirements:
    - The FFCP is not in contact with groundwater, surface water bodies, or wetlands, and is not placed within 25 feet of a potable well that is being used for or might be used for human or livestock water consumption; and
    - The placement of the FFCP does not extend more than 4 feet beyond the outside edge of the structure or pavement, provided it is covered with two feet of soil. Placement of the structure, pavement, or soil must be completed as soon as practical after placement of the FFCP.
- Use of flue-gas emission control materials which meet the definition of gypsum and are used in accordance with applicable Florida Department of Agriculture and Consumer Services rules.
- Waste stabilization or initial or intermediate cover material used for lined Class I, II, or III landfills, provided that the material meets applicable DEP rules for landfill cover or a landfill's permit conditions for cover.
- Any other use that meets the criteria of s. 403.7045(1)(f), F.S., or that is approved by DEP prior to use as having an equivalent or reduced potential for environmental impacts, when used in equivalent quantities, compared to the substituted raw products or materials.

The bill defines "FFCPs" as fly ash, bottom ash, boiler slag, flue-gas emission control materials, and other nonhazardous materials, such as gasifier slag, fluidized-bed combustion system products, and similar combustion materials produced from the operation of a fossil fuel-fired electric or steam generation facility, from a clean coal or other innovative technology process at a fossil fuel-fired electric or steam generation facility, or from any combination thereof.

The bill also provides definitions for "fossil fuel-fired electric or steam generation facilities," "pavement aggregate," and "structural fill."

The bill specifies that the storage of FFCPs destined for beneficial use must comply with applicable DEP rules and be conducted in a manner that does not pose a significant risk to public health or violate applicable air or water quality standards.

The bill also specifies that the beneficial use of FFCPs is exempt from regulation under part IV of chapter 403, F.S. DEP may take appropriate action if the beneficial use is demonstrated to be causing violations of applicable air or water quality standards or criteria in DEP rules, or if the beneficial use poses a significant risk to public health. The bill does not limit any other requirements applicable to the beneficial use of FFCPs established under chapters 403 or 376, F.S., or under local or federal laws, including requirements governing air pollution control permits, national pollutant discharge elimination system permits, and water quality certifications pursuant to section 401 of the Clean Water Act.

In addition, the bill also provides that nothing is to be construed to limit DEP's authority to approve the beneficial use of materials other than FFCPs as defined above, pursuant to other provisions of this part. This section may not be construed to limit or otherwise modify any FFCP beneficial use previously approved by DEP, use in the on-site construction of surface impoundments, roads or similar works at fossil fuel-fired electric or steam generation facilities, or the recovery of these products for beneficial use from FFCP landfills, impoundments, or storage areas.

Lastly, the bill amends s. 403.7222, F.S., to exempt a disposal facility or part of a facility that accepts fly ash, bottom ash, boiler slag, or flue-gas emission control materials from the operation of a fossil fuel-fired electric or steam generation facility, from a clean coal or other innovative technology process at a fossil fuel-fired electric or steam generation facility, or from any combination thereof from the prohibition on hazardous waste landfills in Florida.

B. SECTION DIRECTORY:

Section 1. Creates s. 403.7047, F.S., providing standards for storage of certain fossil fuel combustion products; providing an exemption for beneficial use of fossil fuel combustion products from certain rules; providing that the act does not prohibit DEP from taking appropriate action to regulate a beneficial use in certain circumstances; providing that the act does not limit other requirements applicable to the beneficial use of fossil fuel combustion products; providing that the act does not limit the recovery of beneficial use products or the authority of DEP to approve the beneficial use of materials other than fossil fuel combustion products; clarifying that the act does not limit or modify any fossil fuel combustion product beneficial use previously approved by DEP.

Section 2. Amends s. 403.7222, F.S., excluding certain types of facilities from provisions on hazardous waste landfills.

Section 3. 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.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

See Fiscal Comments below.

D. FISCAL COMMENTS:

The bill has a potentially positive fiscal impact on private and publically-owned electric utilities that generate FFCPs due to the bill specifically authorizing some currently widespread uses of FFCPs and

other uses that may not be as common. This could result in a reduction in disposal costs for private and publicly-owned electric utilities.

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 March 7, 2013, the Agriculture & Natural Resources Subcommittee amended and reported HB 659 favorably as a committee substitute (CS). The CS makes the following changes:

- Reduces the number of identified beneficial uses by removing FFCPs for pipe bedding aggregate, fertilizers, metallurgical applications, filter cloth precoat for sludge dewatering, and blowdown. The CS clarifies that the beneficial use of FFCPs in agriculture is limited to the use of flue-gas emission control materials which meet the definition of gypsum in accordance with the DACS rules. The CS also provides an additional condition for the use of FFCPs that meets the criteria of s. 403.7045(1)(f), F.S., or that is approved by the DEP prior to use as having an equivalent or reduced potential for environmental impacts, when used in equivalent quantities, compared to the substituted raw products or materials.
- Deletes the definition of pipe bedding aggregate.
- Provides that the use of FFCPs for roads or similar works at fossil fuel-fired electric or steam generation facilities are not limited by the bill.
- Deletes the term blowdown from the list of certain FFCPs that a disposal facility accepts from the operation of a fossil fuel-fired electric or steam generation facility, clean coal or other technology process.

On March 18, 2013, The Agriculture and Natural Resources Appropriations Subcommittee amended and reported HBG 659 favorably as a committee substitute. The CS makes the following changes:

- Modifies the definition of "beneficial use" to include "building materials."
- Deletes specific uses of combustion products, including use in roofing material, blasting grit, aggregate in products, wallboard products, plastics, paints, and insulation products.
- Deletes specific use of combustion products used for extraction or recovery of materials and compounds contained within fossil fuel combustion products from being considered a beneficial use.

A bill to be entitled

An act relating to fossil fuel combustion products; creating s. 403.7047, F.S.; providing definitions; providing standards for storage of certain fossil fuel combustion products; providing an exemption for beneficial use of fossil fuel combustion products from certain rules; providing that the act does not prohibit the Department of Environmental Protection from taking appropriate action to regulate a beneficial use in certain circumstances; providing that the act does not limit other requirements applicable to the beneficial use of fossil fuel combustion products; providing that the act does not limit the recovery of beneficial use products or the authority of the department to approve the beneficial use of materials other than fossil fuel combustion products; clarifying that the act does not limit or modify any fossil fuel combustion product beneficial use previously approved by the department; amending s. 403.7222, F.S.; excluding certain types of facilities from provisions on hazardous waste landfills; providing an effective date.

WHEREAS, fossil fuel combustion products are currently used in a variety of beneficial applications, and

WHEREAS, beneficial use of fossil fuel combustion products allows certain industries and end users to avoid the mining and processing of virgin materials through the substitution of

fossil fuel combustion products for virgin materials, thereby preserving natural resources and minimizing environmental emissions, and

WHEREAS, beneficial use of fossil fuel combustion products reduces the volume of materials placed in disposal facilities and ultimately lowers overall energy consumption required for processing and disposing of fossil fuel combustion products, and

WHEREAS, beneficial use of fossil fuel combustion products promotes economic activity, and

WHEREAS, beneficial use of fossil fuel combustion products is consistent with the purpose of Florida's Resource Recovery and Management Act and furthers the purpose of the act by encouraging waste reduction and recycling as a means of managing solid waste and conserving resources, and

WHEREAS, after balancing all the competing needs of the state, the Legislature has determined that it is in the state's best interest to conserve natural resources, reduce overall energy consumption, reduce or eliminate the need to dispose of fossil fuel combustion products in disposal facilities, and facilitate the development of readily available markets for fossil fuel combustion products, NOW, THEREFORE,

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

Section 1. Section 403.7047, Florida Statutes, is created to read:

403.7047 Regulation of fossil fuel combustion products.—

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

(a) "Beneficial use" means the use of fossil fuel combustion products as building materials, substitutes for raw materials or products, or as necessary ingredients or additives in other products according to accepted industry practices, including the following:

1. Asphalt, concrete or cement products, flowable fill, and roller-compacted concrete.

2. Structural fill or pavement aggregate that meets the following requirements:

a. The fossil fuel combustion product is not in contact with groundwater, surface water bodies, or wetlands and is not placed within 25 feet of a potable well that is being used or might be used for human or livestock water consumption; and

b. The placement of the fossil fuel combustion product does not extend more than 4 feet beyond the outside edge of the structure or pavement, provided it is covered with 2 feet of soil. Placement of the structure, pavement, or soil must be completed as soon as practicable after placement of the fossil fuel combustion product.

3. Use of flue-gas emission control materials, which meet the definition of gypsum and are used in accordance with applicable Department of Agriculture and Consumer Services rules.

4. Waste stabilization, or initial or intermediate cover material used for lined Class I or Class III landfills, provided that the material meets applicable department rules for landfill cover or a landfill's permit conditions for cover.

5. Any other use that meets the criteria of s.

403.7045(1)(f) or that is approved by the department before use as having an equivalent or reduced potential for environmental impacts, when used in equivalent quantities, compared to the substituted raw products or materials.

(b) "Fossil fuel combustion products" means fly ash, bottom ash, boiler slag, flue-gas emission control materials, and other nonhazardous materials, such as gasifier slag, fluidized-bed combustion system products, and similar combustion materials produced from the operation of a fossil fuel-fired electric or steam generation facility, from a clean coal or other innovative technology process at a fossil fuel-fired electric or steam generation facility, or from any combination thereof.

(c) "Fossil fuel-fired electric or steam generation facility" means any electric or steam generation facility that is fueled with coal, alone or in combination with petroleum coke, oil, coal gas, natural gas, other fossil fuels, or alternative fuels.

(d) "Pavement aggregate" means fossil fuel combustion products used as sub-base material under or immediately adjacent to a paved road, sidewalk, walkway, or parking lot as a substitute for conventional aggregate, raw material, or soil.

(e) "Structural fill" means the use of a fossil fuel combustion product as a substitute for a conventional aggregate, raw material, or soil under or immediately adjacent to an industrial or commercial building or structure. Structural fill does not include uses of fossil fuel combustion products that involve general filling or grading operations or valley fills.

(2) The storage of fossil fuel combustion products destined for beneficial use must comply with applicable department rules and be conducted in a manner that does not pose a significant risk to public health or violate applicable air or water quality standards.

(3) The beneficial use of fossil fuel combustion products as provided in this section is exempt from regulation pursuant to this part and rules hereunder, but the department may take appropriate action if the beneficial use is demonstrated to be causing violations of applicable air or water quality standards or criteria in department rules, or if such beneficial use poses a significant risk to public health. This section does not limit any other requirements applicable to the beneficial use of fossil fuel combustion products established under this chapter or chapter 376 or under local or federal laws, including requirements governing air pollution control permits, national pollutant discharge elimination system permits, and water quality certifications pursuant to s. 401 of the Clean Water Act.

(4) Nothing in this section shall be construed to limit the department's authority to approve the beneficial use of materials other than fossil fuel combustion products as defined in this section pursuant to other provisions of this part. This section may not be construed to limit or otherwise modify any fossil fuel combustion product beneficial use previously approved by the department, use in the onsite construction of surface impoundments, roads, or similar works at fossil fuel-fired electric or steam generation facilities, or the recovery

of these products for beneficial use from fossil fuel combustion product landfills, impoundments, or storage areas.

Section 2. Section 403.7222, Florida Statutes, is amended to read:

403.7222 Prohibition of hazardous waste landfills.—

(1) As used in this section, the term "hazardous waste landfill" means a disposal facility or part of a facility at which hazardous waste that has not undergone treatment is placed in or on land, including an injection well, which is not a land treatment facility. However, hazardous waste may not be disposed of through an injection well or other subsurface method of disposal, which is defined as a Class IV well in 40 C.F.R. s. 144.6(d), except those Class I wells permitted for hazardous waste disposal as of January 1, 1992. The department shall annually review the operations of any such Class I well permitted as of January 1, 1992, and prepare a report analyzing any impact on groundwater systems. ~~Nothing in~~ This section may not ~~shall~~ be construed to refer to the products of membrane technology, including reverse osmosis, for the production of potable water where disposal is through a Class I well as defined in 40 C.F.R. s. 144.6(a), or to refer to remedial or corrective action activities conducted in accordance with 40 C.F.R. s. 144.13.

(2) The Legislature declares that, due to the permeability of the soil and high water table in Florida, future hazardous waste landfills are prohibited. Therefore, the department may not issue a permit pursuant to s. 403.722 for a newly constructed hazardous waste landfill. However, if by executive

order the Governor declares a hazardous waste management emergency, the department may issue a permit for a temporary hazardous waste landfill. Any such landfill shall be used only until such time as an appropriate alternative method of disposal can be derived and implemented. Such a permit may not be issued for a period exceeding 6 months without a further declaration of the Governor. A Class IV injection well, as defined in 40 C.F.R. s. 144.6(d), may not be permitted for construction or operation under this section.

(3) This section does not prohibit the department from banning the disposal of hazardous waste in other types of waste management units in a manner consistent with federal requirements, except as provided under s. 403.804(2).

(4) This section does not apply to a disposal facility or part of a facility that accepts fly ash, bottom ash, boiler slag, or flue-gas emission control materials from the operation of a fossil fuel-fired electric or steam generation facility, from a clean coal or other innovative technology process at a fossil fuel-fired electric or steam generation facility, or from any combination thereof.

Section 3. This act shall take effect July 1, 2013.

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. CS/CS/HB 659 (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 bill: State Affairs Committee

Representative Goodson offered the following:

Amendment

Remove lines 57-112 and insert:

(a) "Beneficial use" means the use of fossil fuel combustion products in building products, and as substitutes for raw materials, necessary ingredients, or additives in products, according to accepted industry practices, including the following:

1. Asphalt, concrete or cement products, flowable fill, and roller-compacted concrete.

2. Structural fill or pavement aggregate that meets the following requirements:

a. The fossil fuel combustion product is not in contact with groundwater, surface water bodies, or wetlands and is not placed within 100 feet of a potable well that is being used or might be used for human or livestock water consumption; and

b. The placement of the fossil fuel combustion product

does not extend beyond the outside edge of the structure or pavement. Placement of the structure or pavement must be completed as soon as practicable after placement of the fossil fuel combustion product.

3. Use of flue-gas emission control materials which meet the definition of gypsum and are used in accordance with applicable Florida Department of Agriculture and Consumer Services rules.

4. Waste stabilization, or initial or intermediate cover material used for lined Class I or III landfills, provided that the material meets applicable department rules for landfill cover or a landfill's permit conditions for cover.

5. Any other use that meets the criteria of s. 403.7045(1)(f) or that is approved by the department prior to use as having an equivalent or reduced potential for environmental impacts, when used in equivalent quantities, compared to the substituted raw products or materials.

(b) "Fossil fuel combustion products" means fly ash, bottom ash, boiler slag, flue-gas emission control materials, and other non-hazardous materials, such as gasifier slag, fluidized-bed combustion system products, and similar combustion materials produced from the operation of a fossil fuel-fired electric or steam generation facility, from a clean coal or other innovative technology process at a fossil fuel-fired electric or steam generation facility, or from any combination thereof.

(c) "Fossil fuel-fired electric or steam generation facility" means any electric or steam generation facility that

is fueled with coal, alone or in combination with petroleum coke, oil, coal gas, natural gas, other fossil fuels, or alternative fuels.

(d) "Pavement aggregate" means fossil fuel combustion products used as sub-base material under a paved road, sidewalk, walkway, or parking lot as a substitute for conventional aggregate, raw material, or soil.

(e) "Structural fill" means the use of a fossil fuel combustion product as a substitute for a conventional aggregate, raw material, or soil under an industrial or commercial building or structure. Structural fill does not include uses of fossil fuel combustion products that involve general filling or grading operations or valley fills.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 707 Domestic Wastewater Discharged through Ocean Outfalls
SPONSOR(S): Agriculture & Natural Resources Appropriations Subcommittee; Agriculture & Natural Resources Subcommittee; Diaz, Jr. and others
TIED BILLS: None **IDEN./SIM. BILLS:** CS/SB 444

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Agriculture & Natural Resources Subcommittee	11 Y, 0 N, As CS	Renner	Blalock
2) Agriculture & Natural Resources Appropriations Subcommittee	12 Y, 0 N, As CS	Helpling	Massengale
3) State Affairs Committee		Renner	Camechis

SUMMARY ANALYSIS

In 2008, SB 1302 was passed by the Legislature and signed by the governor to protect Florida's coastal waters, including coral reefs, by decreasing the amount of wastewater discharged through ocean outfalls and into coastal waters.

The bill specifies that each utility that had a permit for a domestic wastewater facility that discharged through an ocean outfall on July 1, 2008, must install, or cause to be installed, a functioning reuse system within the utility's service area or, by contract with another utility, within Miami-Dade, Broward, or Palm Beach counties by December 31, 2025. For utilities operating more than one outfall, the reuse requirement may be apportioned between the facilities, including flows diverted to other facilities for 100 percent reuse before December 31, 2025. Utilities that shared a common ocean outfall for the discharge of domestic wastewater on July 1, 2008, regardless of which utility operates the ocean outfall, are individually responsible for meeting the reuse requirement and may enter into binding agreements to share or transfer such responsibility among the utilities.

The bill also specifies that a backup discharge can occur as the result of peak flows from other wastewater management systems. Peak flow backup discharges from other wastewater management systems cannot cumulatively exceed 5 percent of a facility's baseline flow, measured as a 5-year rolling average, and are subject to applicable secondary waste treatment and water-quality-based effluent limitations specified in Department of Environmental Protection (DEP) rules. If peak flow backup discharges are in compliance with the effluent limitations, the discharges are deemed to meet the advanced wastewater treatment and management requirements.

In addition, the bill expands what is required to be in the detailed plan to meet the outfalls and reuse requirements that facilities authorized to discharge domestic wastewater must submit under current law to include:

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

The plan must also evaluate reuse demand in the context of future regional water supply demands, the availability of traditional water supplies, the need for development of alternative water supplies, the degree to which various reuse options offset potable water supplies, and other factors considered in the Lower East Coast Regional Water Supply Plan of the South Florida Water Management District (WMD).

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

The bill does not have a fiscal impact on state government. The bill appears to have a significant positive fiscal impact on local governments in the three affected counties, as well as the private sector. See Fiscal Analysis and Economic Impact Statement Section.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

In 2008, SB 1302 was passed by the Legislature and signed by the governor to protect Florida's coastal waters, including coral reefs, by decreasing the amount of wastewater discharged through ocean outfalls and into coastal waters.

Section 403.086(9)(a), F.S., prohibits the construction of new ocean outfalls for domestic wastewater discharge and the expansion of existing ocean outfalls for this purpose. Each domestic wastewater ocean outfall must be limited to the discharge capacity specified in the permit authorizing the outfall in effect on July 1, 2008.

Section 403.086(9)(b), F.S., specifies that the discharge of domestic wastewater through ocean outfalls must meet advanced wastewater treatment and management requirements no later than December 31, 2018. The term "advanced wastewater treatment and management requirements" means:

- The advanced waste treatment requirements established in s. 403.086(4), F.S.;[1]
- A reduction in outfall baseline loadings of total nitrogen and total phosphorus that is, equivalent to advanced wastewater treatment requirements in s. 403.086 (4), F.S.; or
- A reduction in cumulative outfall loadings of total nitrogen and total phosphorus occurring between December 31, 2008, and December 31, 2025, that is equivalent to that which would be achieved if the requirements of s. 403.086 (4), F.S., were fully implemented December 31, 2018, and continued through December 31, 2025.

These advanced wastewater treatment and management requirements are deemed met for any domestic wastewater facility discharging through an ocean outfall on July 1, 2008, which has installed no later than December 31, 2018, a fully operational reuse system comprising 100 percent of the facility's annual average daily flow.

Section 403.086(9)(c), F.S., specifies that each domestic wastewater facility that discharges through an ocean outfall on July 1, 2008, must install a functioning reuse system no later than December 31, 2025. A "functioning reuse system" is defined as an environmentally, economically, and technically feasible system that provides a minimum of 60 percent of the facility's actual flow on an annual basis for irrigation of public access areas, residential properties, or agricultural crops; aquifer recharge; groundwater recharge; industrial cooling; or other acceptable reuse purposes authorized by the Department of Environmental Protection (DEP). A "facility's actual flow on an annual basis" is defined as the annual average flow of domestic wastewater discharging through the facility's ocean outfall using monitoring data available for calendar years 2003 through 2007. Flows diverted from facilities to other facilities that provide 100 percent reuse of the diverted flows prior to December 31, 2025, are considered to contribute to meeting the 60 percent reuse requirement. For utilities operating more than one outfall, the reuse requirement can be met if the combined actual reuse flows from facilities served by the outfalls is at least 60 percent of the sum of the total actual flows from the facilities, including flows diverted to other facilities for 100 percent reuse prior to December 31, 2025. In the event that treatment, in addition to the advanced wastewater treatment and management requirements, is needed

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

to support a functioning reuse system, such treatment must be fully operational no later than December 31, 2025.

Section 403.086(9)(d), F.S., specifies that the discharge of domestic wastewater through ocean outfalls is prohibited after December 31, 2025, except as a backup discharge that is part of a functioning reuse system. A backup discharge may occur only during periods of reduced demand for reclaimed water in the reuse system, such as periods of wet weather, and must comply with the advanced wastewater treatment and management requirements described above.

Section 403.086(9)(e), F.S., specifies that facilities that hold a DEP permit authorizing the discharge of domestic wastewater through ocean outfalls as of July 1, 2008, must submit to the Secretary of the DEP the following:

- A detailed plan to meet the wastewater treatment and management requirements discussed above, which includes:
    - Identification of all land acquisition needs to provide for reuse.
    - An analysis of the costs to meet the requirements of this act.
    - A financing plan to meet the requirements of this act.
    - A detailed schedule for the completion of all actions required under this act.
- By July 1, 2016, an update of the above required plan documenting any refinements or changes to the original plan or a written statement that the plan is current and accurate.

Section 403.086(9)(f), F.S., specifies that by December 31, 2009, and by December 31 every 5 years thereafter, the permittee authorized to discharge domestic wastewater through an ocean outfall must submit a report summarizing the actions accomplished to date and the actions remaining to meet the advanced wastewater treatment and management requirements outlined above. These reports must include:

- The detailed schedule for and status of the evaluation of the reuse and disposal options;
- The preparation of preliminary design reports;
- The preparation and submittal of permit applications;
- Construction initiation, progress, and completion milestones; and
- The initiation and continuation of operation and maintenance.

Section 403.086(9)(g), F.S., specifies that no later than July 1, 2010, and by July 1 every 5 years thereafter, DEP must submit a report to the Governor, the President of the Senate, and the Speaker of the House of Representatives on the implementation of the advanced wastewater treatment and management requirements described above. The report must summarize progress to date, including the increased amount of reclaimed water provided and potable water offsets achieved, and identify any obstacles to continued progress, including all instances of substantial noncompliance.

Section 403.086(9)(h), F.S., specifies that by February 1, 2012, DEP must submit a report to the Governor and Legislature detailing the results and recommendations from phases 1 through 3 of its ongoing study on reclaimed water use.

Section 403.086(9)(i), F.S., specifies that the renewal of each permit that authorizes the discharge of domestic wastewater through an ocean outfall as of July 1, 2008, shall be accompanied by an order in accordance with s. 403.988(2)(e) and (f), F.S., which establishes an enforceable compliance schedule consistent with the requirements of this section.

Section 403.086(9)(j), F.S., specifies that an entity that diverts wastewater flow from a receiving facility that discharges domestic wastewater through an ocean outfall must meet the 60 percent reuse requirements discussed above. Reuse by the diverting entity of the diverted flows must be credited to the diverting entity. The diverted flow must also be correspondingly deducted from the receiving

facility's actual flow on an annual basis from which the required reuse is calculated as discussed above, and the receiving facility's reuse requirement must be recalculated accordingly.

Effect of Proposed Changes

The bill amends s. 403.086(9)(c), F.S., to specify that each utility that had a permit for a domestic wastewater facility that discharged through an ocean outfall on July 1, 2008, must install, or cause to be installed, a functioning reuse system within the utility's service area or, by contract with another utility, within Miami-Dade, Broward, or Palm Beach counties by December 31, 2025.

The bill also amends s. 403.086(9)(c), F.S., to specify that for utilities operating more than one outfall, the reuse requirement may be apportioned between the facilities served by the outfalls, including flows diverted to other facilities for 100 percent reuse before December 31, 2025. Utilities that shared a common ocean outfall for the discharge of domestic wastewater on July 1, 2008, regardless of which utility operates the ocean outfall, are individually responsible for meeting the reuse requirement and may enter into binding agreements to share or transfer such responsibility among the utilities.

The bill creates s. 403.086(9)(c)3, F.S., to specify that if a facility that discharges through an ocean outfall contracts with another utility to install a functioning reuse system, the DEP must approve any apportionment of the reuse generated from the new or expanded reuse system that is intended to satisfy all or a portion of the reuse requirements. If a contract is between two utilities that have reuse requirements, the reuse apportioned to each utility's requirement cannot exceed the total reuse generated by the new or expanded reuse system. The DEP must be provided a copy of the contract reflecting such transaction between the utilities.

The bill amends s. 403.086(9)(d), F.S., to specify that the discharge of domestic wastewater through ocean outfalls can occur as a backup discharge that is part of a wastewater management system authorized by the DEP. The bill also specifies that a backup discharge can occur only as a result of peak flows from other wastewater management systems, in addition to the periods of reduced demand for reclaimed water in the reuse system that is allowed under current law. Peak flow backup discharges from other wastewater management systems cannot cumulatively exceed 5 percent of a facility's baseline flow, measured as a 5-year rolling average, and are subject to applicable secondary waste treatment and water-quality-based effluent limitations specified in DEP rules. If peak flow backup discharges are in compliance with the effluent limitations, the discharges are deemed to meet the advanced wastewater treatment and management requirements described above.

The bill also amends s. 403.086(9)(e), F.S., to revise what is required to be in the detailed plan that facilities authorized to discharge domestic wastewater must submit, to include:

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

The plan identified above must evaluate reuse demand in the context of future regional water supply demands, the availability of traditional water supplies, the need for development of alternative water supplies, the degree to which various reuse options offset potable water supplies, and other factors considered in the Lower East Coast Regional Water Supply Plan of the South Florida WMD.

The bill repeals s. 403.086(9)(h), F.S., because DEP has already submitted the required report discussed above.

Lastly, the bill amends s. 403.086(9)(j), F.S., to specify that DEP, the South Florida WMD, and the affected utilities must consider the information in the detailed plan discussed above for the purposes of

adjusting, as necessary, the reuse requirements. DEP must submit a report to the Legislature by February 15, 2015, containing recommendations for any changes necessary to the reuse and discharge requirements.

B. SECTION DIRECTORY:

Section 1. Amends s. 403.086, F.S., relating to the discharge of domestic wastewater through ocean outfalls.

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:

   See Fiscal Comments Section.

2. Expenditures:

   See Fiscal Comments Section

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

According to DEP,[2] affected local governments will see a significant negative fiscal impact for the treatment plant upgrades needed to comply with the advanced wastewater and reuse requirements. The costs for the utilities would likely be passed on to customers that are served by the utility and would be reflected in the rates and fees charged for such services. However, the allowance for peak flow discharges and greater flexibility in meeting reuse requirements would reduce the costs, which would also be passed on to customers served by the utilities.

The construction of treatment facilities and reuse systems to treat wastewater will generate private sector jobs.

D. FISCAL COMMENTS:

DEP provided the following comments regarding the fiscal impact on local governments in the three affected Southeast Florida counties:

The bill's provisions providing additional flexibilities in meeting the 60 percent reuse requirement, along with a provision that would allow 5 percent of peak flows from the wastewater treatment facilities to continue to be discharged through the outfalls, are expected to substantially reduce the costs of wastewater investments necessary to make the transition from ocean outfalls to more environmentally sound practices, including beneficial reuse.

[2] DEP 2013 staff analysis. On file with staff.

Facilities discharging through the ocean outfalls are located near the coastline and have aging sewer collection systems, which results in their wastewaters containing elevated levels of chlorides (salt water). These elevated levels of chlorides require more complex, expensive, and energy intensive treatment technologies, such as reverse osmosis, to make the wastewater suitable for most reuse practices. The bill would allow an ocean outfall utility to install, or have installed, new or expanded reuse systems anywhere within the utility's service area or by contract with another utility within Miami-Dade, Broward and Palm Beach counties. New or expanded reuse systems associated with wastewater treatment facilities located further inland would not have elevated chloride levels, and therefore, the costs to make this wastewater suitable for reuse would be substantially less.

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

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

Engineering cost curves used for estimating purposes show the majority of the costs savings for each of three county utilities occurs in the 1-3 percent peak flow range with significantly diminishing cost savings above 5 percent of peak flows, lending support for the 5 percent figure used in the bill.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 7, 2013, the Agriculture & Natural Resources Subcommittee amended and reported HB 707 favorably as a committee substitute (CS). The amendment deletes the requirement for the DEP to submit a report to the Governor and Legislature by February 1, 2012 , because the DEP has already submitted this report.

On March 18, 2013, the Agriculture and Natural Resources Appropriations Subcommittee amended and reported CS/HB 707 favorably as a committee substitute. The amendment requires facilities that contract with other facilities to build functioning reuse systems, provide the DEP a copy of contracts reflecting such transactions between the utilities.

A bill to be entitled

An act relating to domestic wastewater discharged through ocean outfalls; amending s. 403.086, F.S.; revising the measurement standard for the wastewater flow; revising the requirements for installation of a functioning reuse system by a utility that had a permit for a domestic wastewater facility on a specified date to discharge through ocean outfall; revising the definition of the term "functioning reuse system"; changing the term "facility's actual flow on an annual basis" to "baseline flow"; revising plan requirements for the elimination of ocean outfalls; providing that certain utilities that shared a common ocean outfall on a specified date are individually responsible for meeting the reuse requirement; requiring that the Department of Environmental Protection approve certain apportionment of reuse if a facility contracts with another facility to install a functioning reuse system; requiring a copy of such contract be provided to the department; revising provisions authorizing the backup discharge of domestic wastewater through ocean outfalls; requiring a holder of a department permit authorizing the discharge of domestic wastewater through an ocean outfall to submit certain information; requiring the Department of Environmental Protection, the South Florida Water Management District, and affected utilities to consider certain information for the

purpose of adjusting reuse requirements; deleting an obsolete provision; requiring the department to submit a report to the Legislature; providing an effective date.

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

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

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

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

(a) The construction of new ocean outfalls for domestic wastewater discharge and the expansion of existing ocean outfalls for this purpose, along with associated pumping and piping systems, are prohibited. Each domestic wastewater ocean outfall shall be limited to the discharge capacity specified in the department permit authorizing the outfall in effect on July

1, 2008, which discharge capacity shall not be increased. Maintenance of existing, department-authorized domestic wastewater ocean outfalls and associated pumping and piping systems is allowed, subject to the requirements of this section. The department is directed to work with the United States Environmental Protection Agency to ensure that the requirements of this subsection are implemented consistently for all domestic wastewater facilities in the state ~~Florida~~ which discharge through ocean outfalls.

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

The baseline loadings and required loading reductions of total nitrogen and total phosphorus shall be expressed as an average annual daily loading value. The advanced wastewater treatment and management requirements of this paragraph are ~~shall be~~ deemed ~~to be~~ met for any domestic wastewater facility discharging through an ocean outfall on July 1, 2008, which has installed by ~~no later than~~ December 31, 2018, a fully operational reuse system comprising 100 percent of the facility's baseline flow on an annual basis ~~average daily flow~~ for reuse activities authorized by the department.

(c)1. Each utility that had a permit for a domestic wastewater facility that discharged ~~discharges~~ through an ocean outfall on July 1, 2008, must ~~shall~~ install, or cause to be installed, a functioning reuse system within the utility's service area or, by contract with another utility, within Miami-Dade, Broward, or Palm Beach Counties by ~~no later than~~ December 31, 2025. For purposes of this subsection, a "functioning reuse system" means an environmentally, economically, and technically feasible system that provides a minimum of 60 percent of a ~~the~~ facility's baseline ~~actual~~ flow on an annual basis for irrigation of public access areas, residential properties, or agricultural crops; aquifer recharge; groundwater recharge; industrial cooling; or other acceptable reuse purposes authorized by the department. For purposes of this subsection, the term "baseline flow" ~~"facility's actual flow on an annual basis"~~ means the annual average flow of domestic wastewater discharging through the facility's ocean outfall, as determined by the department, using monitoring data available for calendar

years 2003 through 2007.

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

3. If a facility that discharges through an ocean outfall contracts with another utility to install a functioning reuse system, the department must approve any apportionment of the reuse generated from the new or expanded reuse system that is intended to satisfy all or a portion of the reuse requirements pursuant to subparagraph 1. If a contract is between two utilities that have reuse requirements pursuant to subparagraph

1., the reuse apportioned to each utility's requirement may not exceed the total reuse generated by the new or expanded reuse system. The department shall be provided with a copy of the contract reflecting such transactions between the utilities.

(d) The discharge of domestic wastewater through ocean outfalls is prohibited after December 31, 2025, except as a backup discharge that is part of a functioning reuse system or other wastewater management system authorized by the department ~~as provided for in paragraph (c)~~. Except as otherwise provided in this subsection, a backup discharge may occur only during periods of reduced demand for reclaimed water in the reuse system, such as periods of wet weather, or as the result of peak flows from other wastewater management systems, and must ~~shall~~ comply with the advanced wastewater treatment and management requirements of paragraph (b). Peak flow backup discharges from other wastewater management systems may not cumulatively exceed 5 percent of a facility's baseline flow, measured as a 5-year rolling average, and are subject to applicable secondary waste treatment and water-quality-based effluent limitations specified in department rules. If peak flow backup discharges are in compliance with the effluent limitations, the discharges are deemed to meet the advanced wastewater treatment and management requirements of this subsection.

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

1. A detailed plan to meet the requirements of this

subsection, including the identification of the technical, environmental, and economic feasibility of various reuse options; the ~~an~~ identification of each ~~all~~ land acquisition and facility ~~facilities~~ necessary to provide for reuse of the domestic wastewater; an analysis of the costs to meet the requirements, including the level of treatment necessary to satisfy state water quality requirements and local water quality considerations and a cost comparison of reuse using flows from ocean outfalls and flows from other domestic wastewater sources; and a financing plan for meeting the requirements, including identifying any actions necessary to implement the financing plan, such as bond issuance or other borrowing, assessments, rate increases, fees, other charges, or other financing mechanisms. The plan must evaluate reuse demand in the context of future regional water supply demands, the availability of traditional water supplies, the need for development of alternative water supplies, the degree to which various reuse options offset potable water supplies, and other factors considered in the Lower East Coast Regional Water Supply Plan of the South Florida Water Management District. The plan must ~~shall~~ include a detailed schedule for the completion of all necessary actions and ~~shall~~ be accompanied by supporting data and other documentation. The plan must ~~shall~~ be submitted by ~~no later than~~ July 1, 2013.

2. By ~~No later than~~ July 1, 2016, an update of the plan required in subparagraph 1. documenting any refinements or changes in the costs, actions, or financing necessary to eliminate the ocean outfall discharge in accordance with this

subsection or a written statement that the plan is current and accurate.

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

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

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

~~reclaimed water use.~~

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

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

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

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 713 Water Quality Credit Trading
SPONSOR(S): Agriculture & Natural Resources Subcommittee and Pigman
TIED BILLS: None **IDEN./SIM. BILLS:** CS/SB 754

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Agriculture & Natural Resources Subcommittee	11 Y, 0 N, As CS	Renner	Blalock
2) Agriculture & Natural Resources Appropriations Subcommittee	12 Y, 0 N	Helpling	Massengale
3) State Affairs Committee		Renner	Camechis

SUMMARY ANALYSIS

Water quality credit trading (WQCT) is a voluntary, market-based regulatory program aimed at reducing pollution to Florida's impaired rivers, lakes, streams, and estuaries in the most cost-effective manner possible. Trading is based on the economic principle that businesses, industries, wastewater treatment facilities, urban stormwater systems, and agricultural sites that discharge the same pollutants to a waterbody face substantially different costs to control those pollutants. Financial savings accrue to parties that buy trading credits (pollutant reductions) from others for less than the cost of implementing the reductions themselves. Those that sell credits will do so only if the value of the trade is equal to or higher than their investment in the facilities or activities necessary to achieve the pollutant reductions.

In 2008, the Florida Legislature passed HB 547 to create a pilot water quality trading program for the Lower St. Johns River Basin, and authorized the Department of Environmental Protection (DEP) to provide requirements for trading in the basin management action plan (BMAP) established for that waterbody to meet specific total maximum daily loads (TMDLs). The bill also directed the DEP to initiate rulemaking to:

- Establish the process for determining how credits are generated, quantified, and validated;
- Develop a publicly accessible trading registry to track credits, trading activities, and prices;
- Set limitations on the availability and use of credits, including a list of pollutants eligible for trading and adjustment factors to account for uncertainties and site-specific considerations;
- Establish the timing, duration and transferability of credits; and
- Provide mechanisms to assure compliance with trading procedures, including record-keeping, monitoring, reporting, and inspections.

The bill expands statewide the water quality credit trading program currently occurring only in the Lower St. Johns River Basin as a pilot project. The bill also specifies that DEP may authorize water quality credit trading in adopted BMAPs. Participation in water quality credit trading is entirely voluntary. Entities that participate in water quality credit trades must timely report to DEP the prices for credits, how the prices were determined, and any state funding received for the facilities or activities that generated the credits. DEP cannot participate in the establishment of credit prices.

The bill also allows water quality credit trading to not only occur in BMAPs, but to also occur in pollution control programs under local, state, or federal authority.

The bill deletes the obsolete provision directing DEP to submit a report to the Legislature on the status of the trading no later than 24 months after the adoption of the BMAP for the Lower St. Johns River Basin.

The bill also makes numerous stylistic and cross reference changes.

The bill appears to have an insignificant negative fiscal impact on DEP, which can be absorbed by using existing funds. The bill has a potentially positive fiscal impact on businesses, local government and investor-owned utilities, and agricultural operations that participate in a successful WQCT program by reducing the cost of meeting pollution limitations and selling acquired credits.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Regulation of Water Pollution

Under section 303 of the federal Clean Water Act (CWA), states are required to adopt water quality standards (WQSs) 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.[1]

States must submit their WQS to the Environmental Protection Agency (EPA) for review and approval.[2] If the EPA finds that a state's proposal for one or more criterion is inadequate, it must notify the state, which then has 90 days to revise its standards in response to the EPA's concerns.[3] If the state does not do so, then the EPA is required to "promptly" propose a federal standard that will apply to that state. Similarly, if the EPA, independent of any state proposal, determines that a state needs a new or revised standard, and the state fails to act, then the CWA directs the EPA to propose the new or revised standard for that state.[4] If the state proceeds to develop its own standard while the EPA is engaged in the rulemaking process, and the state standard is acceptable to the EPA, then the CWA allows the EPA to approve the state standard and abandon its own effort.[5] In most instances, Florida has adopted an approved WQS and has subsequently been granted the authority to enforce the provisions of the CWA.

The EPA and DEP enforce WQSs through the implementation and enforcement of the National Pollutant Discharge Elimination System (NPDES) permitting program. Every point source that discharges a pollutant into waters of the United States must obtain an NPDES permit establishing the amount of a particular pollutant that an individual point source can discharge into a specific waterbody. The amount of the pollutant that a point source can discharge under an NPDES permit is determined through the establishment of either a technology-based effluent limitation (TBEL) or, if a waterbody fails to meet the applicable WQS through the application of a TBEL, a water quality-based effluent limitation (WQBEL), which is a more stringent standard.

Waterbodies that do not meet the established WQSs are deemed impaired and, pursuant to the CWA, DEP must then establish a total maximum daily load (TMDL) for the waterbody or section of the waterbody that is impaired. In 1999, the Florida Legislature passed the Florida Watershed Restoration Act (WRA),[6] which codified the establishment of TMDLs for pollutants of water bodies as required by the federal CWA. TMDLs establish the amount of each pollutant a water body can receive without violating state WQSs. A TMDL for an impaired waterbody is defined as the sum of the individual waste load allocations for point sources and the load allocations for nonpoint sources and natural

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[1] 33 U.S.C. § 1313(c)(2)(A); 40 C.F.R. §§ 131.6, 131.10-12.1.
[2] 33 U.S.C. §1313(c)(2)(A).
[3] 33 U.S.C. §1313(c)(3).
[4] 33 U.S.C. §1313(c)(4).
[5] *Id.*
[6] Section 403.067, F.S.

background.[7] Waste load allocations are pollutant loads attributable to existing and future point sources, such as discharges from industry and sewage facilities. Load allocations are pollutant loads attributable to existing and future nonpoint sources such as the runoff from farms, forests, and urban areas.

DEP, in some instances, will also establish a basin management action plan (BMAP) as part of the development and implementation of a TMDL for a specific water body. First the BMAP must equitably allocate pollutant reductions to individual basins, as a whole to all basins, or to each identified point source or category of nonpoint sources.[8] Then the BMAP establishes the schedule for implementing projects and activities to meet the pollution reduction allocations, the basis for evaluating the plan's effectiveness and making adaptive changes, and funding strategies. The BMAP development process provides an opportunity for local stakeholders, including affected pollution sources, local government and community leaders, and the general public to collectively determine and share water quality clean-up responsibilities. DEP works with stakeholders to develop effective BMAPs, which then must be adopted by Secretarial order pursuant to s. 403.067(7), F.S.

BMAPs must include milestones for implementation and water quality improvement, and an associated water quality monitoring component sufficient to evaluate whether reasonable progress in pollutant load reductions is being achieved over time. An assessment of progress toward these milestones must be conducted every five years, and revisions to the plan must be made as appropriate.[9]

In some cases, local, state, and federal entities are able to establish their own effective pollution reduction requirements in lieu of a TMDL.[10] The 'pollution control programs' must demonstrate that they can restore the waterbody as effectively as a TMDL, pursuant to s. 403.067(4), F.S. Most pollution reduction requirements are established as TMDLs, although there are a few alternative pollution control programs that have been successfully established.[11]

A nonpoint pollutant source discharger included in a BMAP must demonstrate compliance with the established pollutant reductions by either implementing the appropriate best management practices (BMPs) or by conducting water quality monitoring. A nonpoint source discharger may be subject to enforcement action by DEP or a water management district based upon a failure to implement these responsibilities.[12]

Provisions of a BMAP must be included in subsequent NPDES permits. DEP is prohibited from imposing limits or conditions associated with an adopted TMDL in a NPDES permit until the permit expires, the discharge is modified, or the permit is reopened pursuant to an adopted BMAP.

NPDES permits issued between the time a TMDL is established and a BMAP is adopted contain a compliance schedule allowing time for the BMAP to be developed. Once the BMAP is developed, a permit will be reopened and individual allocations consistent with the BMAP will be established in the permit. The timeframe for this to occur cannot exceed 5 years. NPDES permittees may request an individual allocation during the interim and DEP may include an individual allocation in the permit.

DEP is the lead agency in coordinating the implementation of TMDLs and BMAPs through existing water quality protection programs. Such programs include:

- Permitting and other existing regulatory programs, including WQBELs;

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[7] Ch. 62-302, F.A.C. (Surface Water Quality Standards)
[8] Section 403.067(7)(a), F.S.
[9] *Id.*
[10] DEP 2013 analysis. On file with staff.
[11] *Id.*
[12] Section 403.067, F.S.

- Non-regulatory and incentive-based programs, including best management practices (BMPs) cost sharing, waste minimization, pollution prevention, agreements established pursuant to s. 403.061(21), F.S.,[13] and public education;
- Other water quality management and restoration activities;
- Public works including capital facilities; and
- Land acquisition.

For an individual point source, reducing pollutant loads established under the TMDL and WQBEL regulatory program can require costly technological upgrades that an individual regulated entity cannot afford.

Water Quality Credit Trading

A potentially less costly option for meeting the pollution limits established under a TMDL for an impaired waterbody is through the adoption of a water quality credit trading (WQCT) program, which is a voluntary, market-based approach for reducing pollution to Florida's impaired rivers, lakes, streams, and estuaries in the most cost-effective manner possible.

The underlying economic theory is that achieving pollution abatement at the lowest incremental cost at each additional increment reduced is the most cost-effective means to achieve abatement. Trading is based on the fact that businesses, industries, wastewater treatment facilities, urban stormwater systems, and agricultural sites that discharge the same pollutants to a waterbody (basin, watershed or other defined area) may face substantially different costs to control those pollutants. Trading allows pollutant reduction activities to be environmentally valued in the form of "credits" that can then be traded on a local "market" to promote cost-effective water quality improvements.[14] Financial savings accrue to parties that buy trading credits (pollutant reductions) from others for less than the cost of implementing the reductions themselves. Those that sell credits will do so only if the value of the trade is equal to or higher than their investment in the facilities or activities necessary to achieve the pollutant reductions.

WQCT can accelerate cleanup because potentially unaffordable costs for individual dischargers can be reduced and cooperative relationships built through trading agreements that foster shared responsibility and commitment. Trading can also accommodate new growth, including new pollutant loadings from urban stormwater and domestic and industrial wastewater discharges. It offers the possibility for the owners of potential new or increased discharges to purchase credits from existing dischargers, so that overall pollutant loadings to a watershed are not increased and water quality is preserved.[15] The advantages of WQCT in comparison with traditional command and control water pollution regulations can include:

- Allowing individual entities flexibility in choosing pollution-abatement technologies and practices (e.g., flexibility for the farmers to choose which BMPs to implement);
- Providing incentives to innovate within the pollution-abatement sphere; and
- Addressing future growth in the basin while meeting water quality goals.[16]

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[13] Section 403.061, F.S., grants the DEP 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. Furthermore, s. 403.061(21), F.S., grants the DEP to advise, consult, cooperate, and enter into agreements with other state agencies, the federal government, other states, interstate agencies, etc.

[14] DEP report, *The Pilot Water Quality Credit Trading Program for the Lower St. Johns River: A Report to the Governor and Legislature*, October 2010. On file with staff.

[15] *Id.*

[16] *Id.*

Current WQCT Program in Florida

In 2008, the Florida Legislature passed HB 547, amending s. 403.067, F.S., to create a pilot water quality trading program for the Lower St. Johns River Basin, and authorized DEP to provide requirements for trading in the BMAP established for that Basin.

Section 403.067(8), F.S., provides the following statutory requirements for establishing a WQCT program in Florida:

- Water quality credit trading must be consistent with federal law and regulation.
- Water quality credit trading must be implemented through permits, including water quality credit trading permits, other authorizations, or other legally binding agreements as established by DEP rule.
- DEP must establish the pollutant load reduction value of water quality credits and is responsible for authorizing their use.
- A person who acquires water quality credits ("buyer") must timely submit to DEP an affidavit, signed by the buyer and the credit generator ("seller"), disclosing the term of acquisition, number of credits, unit credit price paid, and any state funding received for the facilities or activities that generate the credits. DEP cannot participate in the establishment of credit prices.
- Sellers of water quality credits are responsible for achieving the load reductions on which the credits are based and complying with the terms of the DEP authorization and any trading agreements into which they may have entered.
- Buyers of water quality credits are responsible for complying with the terms of the DEP water discharge permit.
- DEP must take appropriate action to address the failure of a credit seller to fulfill its obligations, including, as necessary, deeming the seller's credits invalid if the seller cannot achieve the load reductions on which the credits were based in a reasonable time. If DEP determines duly acquired water quality credits to be invalid, in whole or in part, thereby causing the credit buyer to be unable to timely meet its pollutant reduction obligations, then DEP must issue an order establishing the actions required of the buyer to meet its obligations by alternative means and a reasonable schedule for completing the actions. The invalidation of credits shall not itself constitute a violation of the buyer's water discharge permit.

Section 403.067(9), F.S., directs DEP to establish WQCT rules that provide for the following:

- The process for determining how credits are generated, quantified, and validated;
- A publicly accessible trading registry to track credits, trading activities, and prices;
- Limitations on the availability and use of credits, including a list of pollutants eligible for trading and adjustment factors to account for uncertainties and site-specific considerations;
- The timing, duration, and transferability of credits; and
- Mechanisms to assure compliance with trading procedures, including record-keeping, monitoring, reporting, and inspections.

The pilot program established by DEP pursuant to s. 403.067, F.S., and promulgated in Rule 62-306, F.A.C., contains the following elements:

1. Credits are only generated when a source's pollutant load is reduced below the baseline established for the entity. For a trade involving credits generated by a "nonpoint" source (typically related to stormwater), the pollutant loading must be less than that expected following the implementation of BMPs and any other reductions required in the BMAP.
2. For trades where the seller and buyer discharge to different locations, the amount of credits proposed for trading must be adjusted by location factors to provide reasonable assurance that the trade will not result in localized adverse impacts to the waterbody or water segment.

3. Credits generated by a point source, such as a wastewater facility, must be confirmed by effluent monitoring throughout the life of the trade for the pollutant in question.
4. For trades involving estimated credits generated by nonpoint sources, uncertainty factors are applied and the applicant must provide reasonable assurance that the estimate is scientifically defensible.
5. Credits must be used in the same calendar year in which they are generated.
6. Credits generated cannot be used to offset violations of a discharge permit or to comply with technology-based effluent limits.
7. Water quality credit trades cannot result in an increased nutrient load above the Lower St. Johns River TMDLs.[17]

Section 403.067(10), F.S., directed DEP to submit a report to the Legislature on the status of the trading no later than 24 months after the adoption of the BMAP for the Lower St. Johns River. The report was issued in October 2010 and made certain conclusions and recommendations.

DEP concluded that there was little formal trading done under the pilot program mainly because pre-BMAP trades of pollutant load allocations were incorporated into the BMAP when it was adopted. Another factor was that the EPA's proposed numeric nutrient criteria raised uncertainty about nutrient limits that facilities would have to meet. DEP recommended extending the pilot program for another two years to allow for further evaluation of the EPA's numeric nutrient criteria for fresh and estuarine waters.

Since the report was submitted to the Legislature in 2010, only one trade has occurred within the Lower St. Johns River Basin. According to DEP,[18] the lack of interest in trading is due mainly to an uncertainty in clearly defining credits for trading between the nonpoint and point sources. In addition, because the program only encompassed the Lower St. Johns River, the number of regulated entities, the number of available credits, and thus, the potential to trade was very limited. However, now that some of the regulatory uncertainty surrounding the adoption of numeric nutrient criteria in Florida is beginning to fade, these hindrances to trading under the pilot program may not apply to a statewide WQCT program, especially as it pertains to meeting the new numeric nutrient criteria.

Effect of Proposed Changes

The bill amends s. 403.067, F.S., expanding statewide the water quality credit trading pilot program that currently occurs only in the Lower St. Johns River Basin. The bill specifies that DEP can authorize water quality credit trading in adopted BMAPs. Participation in water quality credit trading is entirely voluntary. Entities that participate in water quality credit trades must timely report to DEP the prices for credits, how the prices were determined, and any state funding received for the facilities or activities that generated the credits. The bill also specifies that DEP may not participate in the establishment of credit prices.

The bill allows water quality credit trading to not only occur in BMAPs, but to also occur in pollution control programs under local, state, or federal authority, as provided in s. 403.067(4), F.S.

The bill deletes the provision directing DEP to submit a report to the Legislature on the status of the trading no later than 24 months after the adoption of the BMAP for the Lower St. Johns River Basin.

The bill makes numerous stylistic and cross reference changes.

B. SECTION DIRECTORY:

Section 1. Reenacts s. 373.4595(1)(n), F.S., relating to water quality credit trading, to incorporate the amendments made to s. 403.067, F.S., in a reference thereto.

[17] *Id.*
[18] DEP 2013 agency analysis.

Section 2. Amends s. 403.067, F.S., authorizing DEP to implement water quality credit trading in adopted BMAPs on an ongoing basis; authorizing additional water quality protection programs to participate in water quality credit trading; revising provisions related to rulemaking; eliminating a requirement that water quality credit trading be limited to the Lower St. Johns River Basin as a pilot project; deleting a required report.

Section 3. Reenacts s. 403.088(2)(e), F.S., relating to water pollution operation permits, to incorporate the amendments made to s. 403.067, F.S., in a reference thereto.

Section 4. 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:

   The bill appears to have an insignificant negative fiscal impact on DEP, as a result of amending Rule 62-306, F.A.C., to reflect a statewide water quality credit trading program; establishing an expanded trading registry; and an increase in operation costs relative to the number of proposals received and the work involved in reviewing and tracking them. The fiscal impact can be absorbed by using existing funds.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   The bill has a potentially positive fiscal impact on local governments that participate in successful water quality credit trading programs.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill has a potentially positive fiscal impact on utilities if the cost of meeting WQSs is reduced due to water quality credit trading. The private sector may also benefit from the development and implementation of pollution reduction control technologies that could result due to the incentives that a water quality credit trading can provide. Some agricultural operations in particular may be able to acquire and sell credits for establishing BMPs that reduce agricultural runoff and thus the amount of nutrients that enter a particular waterbody.

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:

DEP will have to amend Rule 62-306, F.A.C. to implement water quality credit trading statewide, as opposed to just the Lower St. Johns River Basin as part of a pilot project.

C. DRAFTING ISSUES OR OTHER COMMENTS:

On line 285 of the bill, as drafted, the word 'credit' has inadvertently been omitted.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 7, 2013, the Agriculture & Natural Resources Subcommittee amended and reported HB 713 favorably as a committee substitute (CS). The CS:

- Specifies that dischargers cannot be required to implement water quality credit trading in order to meet required pollutant reduction.
- Specifies that participation in water quality credit trading is voluntary.

A bill to be entitled

An act relating to water quality credit trading; reenacting s. 373.4595(1)(n), F.S., relating to water quality credit trading, to incorporate the amendments made to s. 403.067, F.S., in a reference thereto; amending s. 403.067, F.S.; authorizing the department to implement water quality credit trading in adopted basin management action plans on an ongoing basis; deleting a requirement that voluntary trading of water credits be limited to the Lower St. Johns River Basin; authorizing additional water quality protection programs to participate in water quality credit trading; revising provisions relating to rulemaking for water quality credit trading programs; eliminating a requirement that water quality credit trading be limited to the Lower St. Johns River Basin as a pilot project; deleting a required report; making technical changes; reenacting s. 403.088(2)(e), F.S., relating to water pollution operation permits, to incorporate the amendments made to s. 403.067, F.S., in a reference thereto; providing an effective date.

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

Section 1. For the purpose of incorporating the amendment made by this act to section 403.067, Florida Statutes, in a reference thereto, paragraph (n) of subsection (1) of section 373.4595, Florida Statutes, is reenacted to read:

373.4595 Northern Everglades and Estuaries Protection Program.—

(1) FINDINGS AND INTENT.—

(n) It is the intent of the Legislature that the coordinating agencies encourage and support the development of creative public-private partnerships and programs, including opportunities for water storage and quality improvement on private lands and water quality credit trading, to facilitate or further the restoration of the surface water resources of the Lake Okeechobee watershed, the Caloosahatchee River watershed, and the St. Lucie River watershed, consistent with s. 403.067.

Section 2. Paragraphs (a) and (b) of subsection (7) and subsections (8) through (14) of section 403.067, Florida Statutes, are amended to read:

403.067 Establishment and implementation of total maximum daily loads.—

(7) DEVELOPMENT OF BASIN MANAGEMENT PLANS AND IMPLEMENTATION OF TOTAL MAXIMUM DAILY LOADS.—

(a) Basin management action plans.—

1. In developing and implementing the total maximum daily load for a water body, the department, or the department in conjunction with a water management district, may develop a basin management action plan that addresses some or all of the watersheds and basins tributary to the water body. Such ~~a~~ plan must integrate the appropriate management strategies available to the state through existing water quality protection programs to achieve the total maximum daily loads and may provide for phased implementation of these management strategies to promote

timely, cost-effective actions as provided for in s. 403.151. The plan must establish a schedule ~~for~~ implementing the management strategies, establish a basis for evaluating the plan's effectiveness, and identify feasible funding strategies for implementing the plan's management strategies. The management strategies may include regional treatment systems or other public works, where appropriate, and~~, in the basin listed in subsection (10) for which a basin management action plan has been adopted,~~ voluntary trading of water quality credits to achieve the needed pollutant load reductions.

2. A basin management action plan must equitably allocate, pursuant to paragraph (6)(b), pollutant reductions to individual basins, as a whole to all basins, or to each identified point source or category of nonpoint sources, as appropriate. For nonpoint sources for which best management practices have been adopted, the initial requirement specified by the plan must be those practices developed pursuant to paragraph (c). Where appropriate, the plan may take into account the benefits of pollutant load reduction achieved by point or nonpoint sources that have implemented management strategies to reduce pollutant loads, including best management practices, before ~~prior to~~ the development of the basin management action plan. The plan must also identify the mechanisms that will address potential future increases in pollutant loading.

3. The basin management action planning process is intended to involve the broadest possible range of interested parties, with the objective of encouraging the greatest amount of cooperation and consensus possible. In developing a basin

management action plan, the department shall assure that key stakeholders, including, but not limited to, applicable local governments, water management districts, the Department of Agriculture and Consumer Services, other appropriate state agencies, local soil and water conservation districts, environmental groups, regulated interests, and affected pollution sources, are invited to participate in the process. The department shall hold at least one public meeting in the vicinity of the watershed or basin to discuss and receive comments during the planning process and shall otherwise encourage public participation to the greatest practicable extent. Notice of the public meeting must be published in a newspaper of general circulation in each county in which the watershed or basin lies not less than 5 days nor more than 15 days before the public meeting. A basin management action plan does ~~shall~~ not supplant or otherwise alter any assessment made under subsection (3) or subsection (4) or any calculation or initial allocation.

4. The department shall adopt all or any part of a basin management action plan and any amendment to such plan by secretarial order pursuant to chapter 120 to implement the provisions of this section.

5. The basin management action plan must include milestones for implementation and water quality improvement, and an associated water quality monitoring component sufficient to evaluate whether reasonable progress in pollutant load reductions is being achieved over time. An assessment of progress toward these milestones shall be conducted every 5

years, and revisions to the plan shall be made as appropriate. Revisions to the basin management action plan shall be made by the department in cooperation with basin stakeholders. Revisions to the management strategies required for nonpoint sources must follow the procedures set forth in subparagraph (c)4. Revised basin management action plans must be adopted pursuant to subparagraph 4.

6. In accordance with procedures adopted by rule under paragraph (9)(c), basin management action plans, and other pollution control programs under local, state, or federal authority as provided in subsection (4), may allow point or nonpoint sources that will achieve greater pollutant reductions than required by an adopted total maximum load or wasteload allocation to generate, register, and trade water quality credits for the excess reductions to enable other sources to achieve their allocation; however, the generation of water quality credits does not remove the obligation of a source or activity to meet applicable technology requirements or adopted best management practices. Such plans must allow trading between NPDES permittees, and trading that may or may not involve NPDES permittees, where the generation or use of the credits involve an entity or activity not subject to department water discharge permits whose owner voluntarily elects to obtain department authorization for the generation and sale of credits.

7. The provisions of the department's rule relating to the equitable abatement of pollutants into surface waters do not apply ~~shall not be applied~~ to water bodies or water body segments for which a basin management plan that takes into

account future new or expanded activities or discharges has been adopted under this section.

(b) Total maximum daily load implementation.—

1. The department shall be the lead agency in coordinating the implementation of the total maximum daily loads through existing water quality protection programs. Application of a total maximum daily load by a water management district must be consistent with this section and does ~~shall~~ not require the issuance of an order or a separate action pursuant to s. 120.536(1) or s. 120.54 for the adoption of the calculation and allocation previously established by the department. Such programs may include, but are not limited to:

a. Permitting and other existing regulatory programs, including water-quality-based effluent limitations;

b. Nonregulatory and incentive-based programs, including best management practices, cost sharing, waste minimization, pollution prevention, agreements established pursuant to s. 403.061(21), and public education;

c. Other water quality management and restoration activities, for example surface water improvement and management plans approved by water management districts or basin management action plans developed pursuant to this subsection;

d. Trading of water quality credits or other equitable economically based agreements;

e. Public works including capital facilities; or

f. Land acquisition.

2. For a basin management action plan adopted pursuant to paragraph (a), any management strategies and pollutant reduction

requirements associated with a pollutant of concern for which a total maximum daily load has been developed, including effluent limits set forth for a discharger subject to NPDES permitting, if any, must be included in a timely manner in subsequent NPDES permits or permit modifications for that discharger. The department may ~~shall~~ not impose limits or conditions implementing an adopted total maximum daily load in an NPDES permit until the permit expires, the discharge is modified, or the permit is reopened pursuant to an adopted basin management action plan.

a. Absent a detailed allocation, total maximum daily loads must ~~shall~~ be implemented through NPDES permit conditions that provide for a compliance schedule. In such instances, a facility's NPDES permit must allow time for the issuance of an order adopting the basin management action plan. The time allowed for the issuance of an order adopting the plan may ~~shall~~ not exceed 5 years. Upon issuance of an order adopting the plan, the permit must be reopened or renewed, as necessary, and permit conditions consistent with the plan must be established. Notwithstanding the other provisions of this subparagraph, upon request by an NPDES permittee, the department as part of a permit issuance, renewal, or modification may establish individual allocations before ~~prior to~~ the adoption of a basin management action plan.

b. For holders of NPDES municipal separate storm sewer system permits and other stormwater sources, implementation of a total maximum daily load or basin management action plan must be achieved, to the maximum extent practicable, through the use of

best management practices or other management measures.

c. The basin management action plan does not relieve the discharger from any requirement to obtain, renew, or modify an NPDES permit or to abide by other requirements of the permit.

d. Management strategies set forth in a basin management action plan to be implemented by a discharger subject to permitting by the department must be completed pursuant to the schedule set forth in the basin management action plan. This implementation schedule may extend beyond the 5-year term of an NPDES permit.

e. Management strategies and pollution reduction requirements set forth in a basin management action plan for a specific pollutant of concern are ~~shall~~ not ~~be~~ subject to challenge under chapter 120 at the time they are incorporated, in an identical form, into a subsequent NPDES permit or permit modification.

f. For nonagricultural pollutant sources not subject to NPDES permitting but permitted pursuant to other state, regional, or local water quality programs, the pollutant reduction actions adopted in a basin management action plan must ~~shall~~ be implemented to the maximum extent practicable as part of those permitting programs.

g. A nonpoint source discharger included in a basin management action plan must demonstrate compliance with the pollutant reductions established under subsection (6) by ~~either~~ implementing the appropriate best management practices established pursuant to paragraph (c) or conducting water quality monitoring prescribed by the department or a water

management district. A nonpoint source discharger may, in accordance with department rules, supplement the implementation of best management practices with water quality credit trades in order to demonstrate compliance with the pollutant reductions established under subsection (6).

h. A nonpoint source discharger included in a basin management action plan may be subject to enforcement action by the department or a water management district based upon a failure to implement the responsibilities set forth in sub-subparagraph g.

i. A landowner, discharger, or other responsible person who is implementing applicable management strategies specified in an adopted basin management action plan may ~~shall~~ not be required by permit, enforcement action, or otherwise to implement additional management strategies, including water quality credit trading, to reduce pollutant loads to attain the pollutant reductions established pursuant to subsection (6) and shall be deemed to be in compliance with this section. This subparagraph does not limit the authority of the department to amend a basin management action plan as specified in subparagraph (a)5.

(8) WATER QUALITY CREDIT TRADING.—

(a) Water quality credit trading must be consistent with federal law and regulation.

(b) Water quality credit trading must be implemented through permits, including water quality credit trading permits, other authorizations, or other legally binding agreements as established by department rule.

(c) The department shall establish the pollutant load reduction value of water quality credits and is ~~shall be~~ responsible for authorizing their use.

(d) A person who ~~that~~ acquires water quality credits ("buyer") shall timely submit to the department an affidavit, signed by the buyer and the credit generator ("seller"), disclosing the term of acquisition, number of credits, unit credit price paid, and any state funding received for the facilities or activities that generate the credits. The department may ~~shall~~ not participate in the establishment of credit prices.

(e) Sellers of water quality credits are responsible for achieving the load reductions on which the credits are based and complying with the terms of the department authorization and any trading agreements into which they may have entered.

(f) Buyers of water quality credits are responsible for complying with the terms of the department water discharge permit.

(g) The department shall take appropriate action to address the failure of a credit seller to fulfill its obligations, including, as necessary, deeming the seller's credits invalid if the seller cannot achieve the load reductions on which the credits were based in a reasonable time. If the department determines duly acquired water quality credits to be invalid, in whole or in part, thereby causing the credit buyer to be unable to timely meet its pollutant reduction obligations under this section, the department shall issue an order establishing the actions required of the buyer to meet its

obligations by alternative means and a reasonable schedule for completing the actions. The invalidation of credits does ~~shall~~ not, in and of itself, constitute a violation of the buyer's water discharge permit.

(h) The department may authorize water quality trading in adopted basin management action plans. Participation in water quality credit trading is entirely voluntary. Entities that participate in water quality credit trades shall timely report to the department the prices for credits, how the prices were determined, and any state funding received for the facilities or activities that generated the credits. The department may not participate in the establishment of credit prices.

(9) RULES.—The department may ~~is authorized to~~ adopt rules ~~pursuant to ss. 120.536(1) and 120.54~~ for:

(a) Delisting water bodies or water body segments from the list developed under subsection (4) pursuant to the guidance under subsection (5).

(b) Administering of funds to implement the total maximum daily load and basin management action planning programs.

(c) Water quality credit trading among the pollutant sources to a water body or water body segment. ~~By September 1, 2008, rulemaking must be initiated which provides~~ The rules must provide for the following:

1. The process to be used to determine how credits are generated, quantified, and validated.

2. A publicly accessible water quality credit trading registry that tracks water quality credits, trading activities, and prices paid for credits.

3. Limitations on the availability and use of water quality credits, including a list of eligible pollutants or parameters and minimum water quality requirements and, where appropriate, adjustments to reflect best management practice performance uncertainties and water-segment-specific location factors.

4. The timing and duration of credits and allowance for credit transferability.

5. Mechanisms for determining and ensuring compliance with trading procedures, including recordkeeping, monitoring, reporting, and inspections.

At the time of publication of the draft rules on water quality credit trading, the department shall submit a copy to the United States Environmental Protection Agency for review.

(d) The total maximum daily load calculation in accordance with paragraph (6)(a) immediately upon the effective date of this act, for those eight water segments within Lake Okeechobee proper as submitted to the United States Environmental Protection Agency pursuant to subsection (2).

(e) Implementation of other specific provisions.

~~(10) Water quality credit trading shall be limited to the Lower St. Johns River Basin, as defined by the department, as a pilot project. The department may authorize water quality credit trading and establish specific requirements for trading in the adopted basin management action plan for the Lower St. Johns River Basin prior to the adoption of rules under paragraph (9)(c) in order to effectively implement the pilot project.~~

~~Entities that participate in water quality credit trades shall timely report to the department the prices for credits, how the prices were determined, and any state funding received for the facilities or activities that generated the credits. The department shall not participate in the establishment of credit prices. No later than 24 months after adoption of the basin management action plan for the Lower St. Johns River, the department shall submit a report to the Governor, the President of the Senate, and the Speaker of the House of Representatives on the effectiveness of the pilot project, including the following information:~~

~~(a) A summary of how water quality credit trading was implemented, including the number of pounds of pollutants traded.~~

~~(b) A description of the individual trades and estimated pollutant load reductions that are expected to result from each trade.~~

~~(c) A description of any conditions placed on trades.~~

~~(d) Prices associated with the trades, as reported by the traders.~~

~~(e) A recommendation as to whether other areas of the state would benefit from water quality credit trading and, if so, an identification of the statutory changes necessary to expand the scope of trading.~~

(10)~~(11)~~ APPLICATION.—The provisions of this section are intended to supplement existing law, and may not ~~nothing in this section shall~~ be construed as altering any applicable state water quality standards or as restricting the authority

otherwise granted to the department or a water management district under this chapter or chapter 373. The exclusive means of state implementation of s. 303(d) of the Clean Water Act, Pub. L. No. 92-500, 33 U.S.C. ss. 1251 et seq. shall be in accordance with the identification, assessment, calculation and allocation, and implementation provisions of this section.

(11) ~~(12)~~ CONSTRUCTION.~~—Nothing in~~ This section does not limit ~~shall be construed as limiting~~ the applicability or consideration of any mixing zone, variance, exemption, site specific alternative criteria, or other moderating provision.

(12) ~~(13)~~ IMPLEMENTATION OF ADDITIONAL PROGRAMS.—

(a) The department may ~~shall~~ not implement, without prior legislative approval, any additional regulatory authority pursuant to s. 303(d) of the Clean Water Act or 40 C.F.R. part 130, if such implementation would result in water quality discharge regulation of activities not currently subject to regulation.

(b) Interim measures, best management practices, or other measures may be developed and voluntarily implemented pursuant to paragraph (7)(c) for any water body or segment for which a total maximum daily load or allocation has not been established. The implementation of such pollution control programs may be considered by the department in the determination made pursuant to subsection (4).

(13) ~~(14)~~ RULE CHALLENGES.—In order to provide adequate due process while ensuring timely development of total maximum daily loads, proposed rules and orders authorized by this act are ~~shall be~~ ineffective pending resolution of a s. 120.54(3), s.

120.56, s. 120.569, or s. 120.57 administrative proceeding. However, the department may go forward prior to resolution of such administrative proceedings with subsequent agency actions authorized by subsections (2)-(6) if~~, provided that~~ the department can support and substantiate those actions using the underlying bases for the rules or orders without the benefit of any legal presumption favoring, or in deference to, the challenged rules or orders.

Section 3. For the purpose of incorporating the amendment made by this act to section 403.067, Florida Statutes, in a reference thereto, paragraph (e) of subsection (2) of section 403.088, Florida Statutes, is reenacted to read:

403.088 Water pollution operation permits; conditions.—

(2)

(e) However, if the discharge will not meet permit conditions or applicable statutes and rules, the department may issue, renew, revise, or reissue the operation permit if:

1. The applicant is constructing, installing, or placing into operation, or has submitted plans and a reasonable schedule for constructing, installing, or placing into operation, an approved pollution abatement facility or alternative waste disposal system;

2. The applicant needs permission to pollute the waters within the state for a period of time necessary to complete research, planning, construction, installation, or operation of an approved and acceptable pollution abatement facility or alternative waste disposal system;

3. There is no present, reasonable, alternative means of

disposing of the waste other than by discharging it into the waters of the state;

4. The granting of an operation permit will be in the public interest;

5. The discharge will not be unreasonably destructive to the quality of the receiving waters; or

6. A water quality credit trade that meets the requirements of s. 403.067.

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

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. CS/HB 713 (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 bill: State Affairs Committee

Representative Pigman offered the following:

Amendment

Remove line 285 and insert:

(h) The department may authorize water quality credit trading in

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 743 Fracturing Chemical Usage Disclosure Act
SPONSOR(S): Agriculture & Natural Resources Appropriations Subcommittee; Rodrigues
TIED BILLS: HB 745 **IDEN./SIM. BILLS:** SB 1028

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Agriculture & Natural Resources Subcommittee	11 Y, 0 N	Renner	Blalock
2) Agriculture & Natural Resources Appropriations Subcommittee	9 Y, 3 N, As CS	Helpling	Massengale
3) State Affairs Committee		Renner	Camechis

SUMMARY ANALYSIS

Hydraulic fracturing (fracking) is the use of fluid and material to create or restore fractures in a formation to stimulate production from new and existing oil and gas wells.

The composition of a fracturing fluid varies with the nature of the formation, but typically contains mostly water, a proppant that keeps the fractures open such as sand, and a small percentage of chemical additives. The number of chemical additives used in a typical fracture treatment varies depending on the conditions of the specific well.

Currently, there is no federal law or regulation that requires the disclosure of the chemicals added to the fluid used in hydraulic fracturing. In May 2012, the Department of Environmental Protection (DEP) published a proposed rule that would require disclosure of the content of fracturing fluids used on lands managed by the agency. Of the states that produce oil, natural gas, or both, at least 15 require some disclosure of information about the chemicals added to the hydraulic fracturing fluid used to stimulate a particular well. Currently in Florida, there is no hydraulic fracturing being done.

The bill creates the "Fracturing Chemical Usage Disclosure Act." The bill directs DEP to establish and maintain an online hydraulic fracturing chemical registry for all wells on which hydraulic fracturing treatments are performed.

The registry must include, at a minimum, the total volume of water used in the hydraulic fracturing treatment and specific chemical ingredients for each well on which hydraulic fracturing treatments are performed, as provided by a service company or chemical supplier, or by the well owner or operator if the owner or operator provides such chemical ingredients. DEP may not require chemical ingredients to be identified by concentration or based on the additive in which they are found. The registry and information provided must be accessible to the public through DEP's website, including an internet link to FracFocus—the national registry website.

The owner or operator of a well on which hydraulic fracturing treatment is performed must report information as required by DEP. The well owner or operator must notify DEP of any chemical ingredients not previously reported that are intentionally included and used for the purpose of creating a hydraulic fracturing treatment for the well.

A service company that performs a hydraulic fracturing treatment on a well or a supplier of an additive used in a hydraulic fracturing treatment on a well must disclose the chemical ingredients used to perform the treatment to the owner or operator of the well. The reporting and disclosure requirements in the bill do not apply to certain ingredients that were not purposefully added or occur incidentally.

The bill authorizes te DEP to adopt rules to administer the registry.

The bill appears to have an insignificant negative fiscal impact on state government and the private sector. Fiscal impacts to DEP could be absorbed by using existing funds. The bill does not appear to have a fiscal impact on local government.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Hydraulic fracturing (fracking) is the use of fluid and material to create or restore fractures in a formation to stimulate production from new and existing oil and gas wells. The pressurized mixture causes the rock layer to crack. The fissures are held open to allow natural gas to flow up the well. Fracturing allows for extended production in older oil and natural gas fields. It also allows for the recovery of oil and natural gas from formations that are very hard to produce, such as shale.

The composition of a fracturing fluid varies with the nature of the formation, but typically contains mostly water, a proppant to keep the fractures open such as sand, and a small percentage of chemical additives. The number of chemical additives[1] used in a typical fracture treatment varies depending on the conditions of the specific oil and gas well. Some chemical additives may be harmless, while others may be hazardous to health and the environment. A typical fracture treatment will use very low concentrations of between 3 and 12 additive chemicals depending on the characteristics of the water and the shale formation being fractured. Each component serves a specific, engineered purpose.[2]

Currently, there is no federal law or regulation that requires the disclosure of the chemicals added to the fluid used in hydraulic fracturing. In May 2012, the Bureau of Land Management in DEP published a proposed rule that would require disclosure of the content of fracturing fluids used on lands managed by the agency.[3]

Of the states that produce oil, natural gas, or both, at least 15 require some disclosure of information about the chemicals added to the hydraulic fracturing fluid used to stimulate a particular well. State requirements vary widely. Generally, they fall into four overlapping categories: (1) which parties must disclose information about chemical additives and whether these disclosures must be made to the public or a state agency; (2) what information about chemicals added to a fracturing fluid must be disclosed, including how specifically parties must describe the chemical makeup of the fracturing fluid and the additives that are combined with it; (3) what protections, if any, will be given to trade secrets; and (4) at what time disclosure must be made in relation to when fracturing takes place.

In Florida, ss. 377.01-377.43, F.S., regulate oil and gas resources.[4] A permit is required to drill the well necessary to explore oil and gas reserves. If oil is discovered, which only occurs 3 percent of the time according to DEP, the drilling permit covers 90 days for testing. Hydraulic fracturing could occur during this time as part of a workover request, pursuant to rule 62C-25, F.A.C. If the well is successful, DEP issues an operating permit following testing. Currently, there is no hydraulic fracturing being done in Florida. One reason is the existing reservoirs are carbonate rock, which is naturally brittle and responds better to acid injection.

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[1] A list of the most often used chemicals can be found at http://fracfocus.org/chemical-use/what-chemicals-are-used

[2] Department of Energy, Modern Shale Gas Development in the United States: A Primer, ES-4 (2009), *available at* http://www.netl.doe.gov/technologies/oil-gas/publications/epreports/shale_gas_primer_2009.pdf.

[3] CRS Report for Congress on 'Hydraulic Fracturing: Chemical Disclosure Requirements" (June 19, 2012). On file with staff.

[4] Rules 62C-25, 62C-26, 62C-27, and 62C-28 promulgate these statutes.

Effects of Proposed Changes

The bill creates the "Fracturing Chemical Usage Disclosure Act." The bill directs DEP to establish and maintain an online hydraulic fracturing chemical registry for all wells on which hydraulic fracturing treatments are performed.

The registry must include, at a minimum, the total volume of water used in the hydraulic fracturing treatment and each chemical ingredient that is subject to 29 C.F.R. s. 1910.1200(g)(2)[5], for each well on which hydraulic fracturing treatments are performed, as provided by a service company or chemical supplier, or by the well owner or operator if the owner or operator provides such chemical ingredients. DEP may not require chemical ingredients to be identified by concentration or based on the additive in which they are found. The registry and the information provided must be accessible to the public through DEP's website including an internet link to FracFocus, the national hydraulic fracturing chemical registry website.

The owner or operator of a well on which hydraulic fracturing treatment is performed must report information as required by DEP. The well owner or operator must notify DEP of any chemical ingredients not previously reported that are intentionally included and used for the purpose of creating a hydraulic fracturing treatment for the well.

A service company that performs a hydraulic fracturing treatment on a well or a supplier of an additive used in a hydraulic fracturing treatment on a well must disclose the chemical ingredients used to perform the treatment to the owner or operator of the well.

The reporting and disclosure requirements in the bill do not apply to ingredients that:

- Were not purposefully added to the hydraulic fracturing treatment.
- Occur incidentally or are otherwise unintentionally present in the treatment.
- Are not disclosed to the well owner or operator by a service company or supplier.

The bill authorizes DEP to adopt rules to administer this section.

B. SECTION DIRECTORY:

Section 1. Creates the "Fracturing Chemical Usage Disclosure Act."

Section 2. Creates s. 377.45, F.S., directing DEP to establish an online hydraulic fracturing chemical registry; requiring owners and operators of wells on which a hydraulic fracturing treatment is performed to disclose certain information; requiring certain service companies and suppliers to disclose certain information; authorizing DEP to adopt rules.

Section 3. Provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

[5] 29 C.F.R. s. 1910.1200(g)(2) provides that material safety data sheets are required for each hazardous chemical in the workplace and that the sheets be in English and contain specific information.

2. Expenditures:

The bill appears to have an insignificant negative fiscal impact on DEP by requiring DEP to establish and maintain the registry described above. However, according to DEP, these costs can be absorbed using existing funds and additional funding is not required.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill requires well operators to report certain information, as described above, which could result in an insignificant negative fiscal impact.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill authorizes DEP to adopt rules to establish an online hydraulic fracturing chemical registry.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 18, 2013, the Agriculture & Natural Resources Appropriations Subcommittee amended and reported HB 743 favorably as a committee substitute (CS). The amendment deletes the Division of Resource Management and directs instead the DEP to execute appropriate provisions of the bill. The amendment also requires that DEP include an internet link to FracFocus, the national hydraulic fracturing chemical registry website, along with the registry on DEP's website.

A bill to be entitled

An act relating to the Fracturing Chemical Usage Disclosure Act; creating such act and providing a short title; creating s. 377.45, F.S.; directing the Department of Environmental Protection to establish an online hydraulic fracturing chemical registry; requiring owners and operators of wells on which a hydraulic fracturing treatment is performed to disclose certain information; requiring certain service companies and suppliers to disclose certain information; providing exceptions; authorizing the department to adopt rules; providing an effective date.

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

Section 1. This act may be cited as the "Fracturing Chemical Usage Disclosure Act."

Section 2. Section 377.45, Florida Statutes, is created to read:

377.45 Hydraulic fracturing chemical registry.—

(1) For the purposes of this section, "department" means the Department of Environmental Protection.

(2)(a) The department shall establish and maintain an online hydraulic fracturing chemical registry for all wells on which hydraulic fracturing treatments are performed.

(b) The registry shall include, at a minimum, the total volume of water used in the hydraulic fracturing treatment and

each chemical ingredient that is subject to 29 C.F.R. s. 1910.1200(g)(2), for each well on which hydraulic fracturing treatments are performed, as provided by a service company or chemical supplier, or by the well owner or operator if the owner or operator provides such chemical ingredients. The department may not require chemical ingredients to be identified by concentration or based on the additive in which they are found.

(c) The registry and the information provided pursuant to this subsection must be accessible to the public through the department's website, including an Internet link to FracFocus, the national hydraulic fracturing chemical registry website.

(3)(a) The owner or operator of a well on which a hydraulic fracturing treatment is performed shall report information as required by the department. The well owner or operator must notify the department of any chemical ingredients not previously reported that are intentionally included and used for the purpose of creating a hydraulic fracturing treatment for the well.

(b) A service company that performs a hydraulic fracturing treatment on a well or a supplier of an additive used in a hydraulic fracturing treatment on a well must disclose the chemical ingredients used to perform the treatment to the owner or operator of the well pursuant to this section.

(4) This section does not apply to ingredients that:

(a) Were not purposefully added to the hydraulic fracturing treatment.

(b) Occur incidentally or are otherwise unintentionally present in the treatment.

(c) Are not disclosed to the well owner or operator by a service company or supplier.

(5) The department may adopt rules to administer this section.

Section 3. This act shall take effect July 1, 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 Rodrigues, R. offered the following:

Amendment

Remove lines 33-58 and insert:

or operator provides such chemical ingredients. Solely for purposes of this subsection, the department may not require chemical ingredients to be identified by concentration or based on the additive in which they are found.

(c) The department must provide a link through the department's website to FracFocus.org, the national hydraulic fracturing chemical registry website operated by the Ground Water Protection Council and the Interstate Oil and Gas Compact Commission.

(d) If the Chemical Disclosure Registry is unable to accept and make publicly available any information specified in this section, the operator shall submit the information to the department.

(3) The owner, vendor, service provider, or operator of a well shall report information as required by the department with

respect to wells on which a hydraulic fracturing treatment is performed. The well owner, vendor, service provider, or operator must notify the department of any chemical ingredients not previously reported that are intentionally included and used for the purpose of hydraulically fracturing a well.

(4) This section does not apply to ingredients that:

(a) Were not purposefully added to the hydraulic fracturing treatment.

(b) Occur incidentally or are otherwise unintentionally present in the treatment.

HOUSE OF REPRESENTATIVES LOCAL BILL STAFF ANALYSIS

BILL #: HB 949 Charlotte County
SPONSOR(S): Roberson
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Local & Federal Affairs Committee	15 Y, 2 N	Baker	Rojas
2) State Affairs Committee		Moore	Camechis

SUMMARY ANALYSIS

The bill changes the election procedures for the Charlotte County Airport Authority (Authority). Specifically, the bill requires the members of the Authority to be elected in the same manner as county officials, including partisan affiliation.

The bill also provides for residency requirements for candidates as well as terms and titles for the members.

The bill repeals the local law that created the Authority's predecessor known as the Charlotte County Development Commission.

The bill takes effect upon becoming law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

The Charlotte County Airport Authority

The Charlotte County Airport Authority (Authority) was created by the Florida Legislature in 1998.[1] The Authority is an independent special district pursuant to ch. 189, F.S.[2] The Authority is a single-county special district whose purpose is to operate, plan, and develop the Authority's airports, facilities, commerce parks, and real estate.[3]

The Authority is the sole provider of aviation fuel on its property, the sales of which are one of the Authority's revenue sources.[4] Other sources of revenue are rents from the property and concessions.

Among its other powers, the Authority may borrow funds and issue bonds to further the purposes of the Authority, except no general obligation bonds may be issued without satisfying the State Constitution and all other applicable laws.[5]

In 1991, the Legislature enacted ch. 91-361, L.O.F., which granted the Charlotte County Board of Commissioners the option to abolish the Authority's predecessor, the Charlotte County Development Commission (Predecessor). If the county commissioners chose to abolish the Predecessor, that 1991 chapter law required the county commissioners to assume the obligations of the Predecessor by a certain date. The county commissioners chose to let the option expire, and the Predecessor continued to exist until the Legislature changed its name to the Authority in 1998.

The Authority's election procedure

The Authority is composed of five members, one from each Charlotte County commission district. Section 4 of ch. 98-508, L.O.F., as amended, states members are "elected as prescribed in this section." That same section states "[e]lection of members of the authority shall be prescribed by the general election laws of Florida."[6]

Florida's general law, in s. 189.405(2)(c), F.S., provides that elections for the governing board members of a single-county special district "shall be *nonpartisan*, except when partisan elections are specified by a district's charter."[7] The chapter laws creating the Authority do not otherwise address whether its elections may be conducted according to partisan affiliation.[8]

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[1] ch. 98-508, L.O.F.
[2] ch. 2011-263, L.O.F., amending ch. 2004-405, L.O.F., amending ch. 98-508, L.O.F.
[3] *Id.*
[4] Charlotte County Airport and Punta Gorda Army Airfield, General Aviation, *available at* http://www.flypgd.com/about-punta-gorda-airport/ (last visited Mar. 9, 2013).
[5] ch. 2011-263, L.O.F., amending ch. 2004-405, L.O.F., amending ch. 98-508, L.O.F.
[6] *Id.*
[7] Emphasis added.
[8] *See* ch. 2011-263, L.O.F.; *contra* ch. 63-1207, L.O.F., that stated the Authority's predecessor shall elect members "consistent with the manner of election of other County Officials, and shall be subject to the General Elections laws."

Since 1963, at least some, if not all, of the members of the Authority and its Predecessor have been chosen by partisan elections.[9]

As to the question of whether ch. 189, F.S., is the proper "general election law" to apply, statutory interpretation usually applies the more specific provision of law instead of the more general. The Florida election code, codified at chapters 97-107, F.S., is entitled "Electors and Elections." Chapter 189, F.S. is entitled "Special Districts: General Provisions." The proper "general election law" to apply is likely the more specific ch. 189, F.S., which addresses the elections of special districts, and specifically the elections of single-county special districts. Further, the 2011 changes to the Authority's enacting law inserted the phrase "pursuant to section 189" after stating that the Authority is an independent special district.[10]

Effect of Proposed Changes

County election procedure required

The bill changes the Authority's election procedure by revising ch. 98-508, L.O.F., as amended. The bill conforms the law to the customary practice of the Authority. Instead of statutorily-required nonpartisan elections for Authority members, the bill requires those elections to be held "in the same manner as county officials, including partisan affiliation."

Miscellaneous revisions

The bill gives the additional name of "commissioner" to Authority members.

The bill adds that commissioners will be elected every four years, beginning in 2014 for the commissioners from even-numbered county commission districts, and in 2016 for the commissioners from odd-numbered county commission districts.

The bill inserts a candidate qualification. A person seeking to run for a seat on the Authority must have resided in the district from which he or she seeks election for at least six months immediately before the time of qualifying to run for that seat.

Repeal of initial creation law

The bill repeals ch. 63-1207, L.O.F., the chapter law that created the Predecessor. That law is obsolete since ch. 98-508, L.O.F., created the Authority in its present form. When creating the current Authority via ch. 98-508, L.O.F., the Legislature codified, reenacted, amended, and repealed all the chapter laws that concerned the Authority except for ch. 63-1207, L.O.F. The omission of ch. 63-1207, L.O.F. from the repeal that occurred in 1998 may have been a technical error.

Effective Date

The bill would take effect upon becoming law.

B. SECTION DIRECTORY:

Section 1: Revises ch. 98-508, L.O.F., as amended by chs. 2004-405, L.O.F., and 2011-263, L.O.F., relating to the election procedures of the Charlotte County Airport Authority.

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[9] ch. 63-1207, L.O.F.; *see* "Botched election? Airport authority may need special vote," Wink News, Jun. 19, 2012, *available at* http://www.winknews.com/Campaign-Central/2012-06-19/Botched-election-Airport-Authority-may-need-special-vote (last visited Mar. 9, 2013).

[10] ch. 2011-263, L.O.F., amending ch. 2004-405, L.O.F., amending ch. 98-508, L.O.F.

Section 2: Provides an effective date upon becoming law.

II. NOTICE/REFERENDUM AND OTHER REQUIREMENTS

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

IF YES, WHEN? January 22, 2013

WHERE? *Charlotte Sun*, a daily newspaper published in Charlotte County.

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:

Drafting Comments

The bill's language may cause unintended results. A court may interpret the language "in the same manner as county officials, including partisan affiliation" to necessarily tie the Authority's election procedure to that of Florida's counties. Thus, if the Legislature changed the general law on county elections to require nonpartisan elections, or if a court interpreted general law so as to prevent counties from holding partisan elections, then the bill may prevent the Authority from holding partisan elections.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

N/A

A bill to be entitled

An act relating to Charlotte County; amending chapter 98-508, Laws of Florida, as amended; revising provisions for the election of members of the Charlotte County Airport Authority; providing for the members to be known as commissioners; repealing s. 2 of chapter 63-1207, Laws of Florida, relating to obsolete provisions for the election of members of the Charlotte County Development Commission; providing an effective date.

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

Section 1. Section 4 of chapter 98-508, Laws of Florida, as amended by chapter 2011-263, Laws of Florida, is amended to read:

Section 4. Membership, ~~appointment~~ term of office.—The authority shall be composed of five members, also known as commissioners, one from each Charlotte County commission district, who are elected in the same manner as county officials, including partisan affiliation. Elections shall take place according to the following schedule:

(1) Commissioners in odd-numbered districts shall be elected every 4 years, beginning with the 2016 general election.

(2) Commissioners in even-numbered districts shall be elected every 4 years, beginning with the 2014 general election.

Elected commissioners shall take office at the first meeting of the commission after the general election. Each candidate for the office of commissioner of the authority must reside in the district from which such candidate seeks election for at least 6 months immediately before the time of qualifying to run for that office ~~as prescribed in this section. At each general election, the members of the authority shall be elected for a term of 4 years, and shall take office immediately upon election. Election of members of the authority shall be as prescribed by the general election laws of Florida~~.

Section 2. Section 2 of chapter 63-1207, Laws of Florida, is repealed.

Section 3. This act shall take effect upon becoming a law.

HOUSE OF REPRESENTATIVES LOCAL BILL STAFF ANALYSIS

BILL #: CS/HB 977 St. Lucie County Mosquito Control District, St. Lucie County
SPONSOR(S): Local and Federal Affairs Committee, Harrell
TIED BILLS: **IDEN./SIM. BILLS:**

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

SUMMARY ANALYSIS

HB 977 seeks to revise the boundaries of the St. Lucie County Mosquito Control District (District) in three ways.

First, the bill revises the District's boundaries to reflect a previous change in boundary to St. Lucie County. The District is wholly located within and has the same governing board as St. Lucie County. Therefore, the District boundaries cannot surpass those of the County.

During the 2012 regular legislative session, the Florida Legislature passed CS/SB 800 that will transfer a 129-acre area known as Beau Rivage, from St. Lucie County to Martin County. As Beau Rivage is located within the boundaries of the District, the land transfer will leave the District boundaries extending beyond St. Lucie County's boundaries—an area outside of the board's jurisdiction.

The 2012 land transfer of Beau Rivage becomes final on July 1, 2013. On that date, the District will cease to provide mosquito control services to Beau Rivage and those responsibilities will transfer to Martin County. HB 977 is a technical fix to revise and realign the District's boundaries with those of St. Lucie County to reflect the transfer of Beau Rivage.

Second, HB 977 revises the District's boundaries to reflect the inclusion of the Aero Acres Subdivision. Aero Acres' residents voted by referendum on November 8, 1996, to include themselves within the District. However, Aero Acres was inadvertently excluded from the District's legal boundary description during the codification of the District in 2003.

Third, the bill revises the District's boundaries to include land that is singly owned by the Riverland/Kennedy DRI project, which voluntarily requested Mosquito Control Services.

The District's boundaries may only be amended by special act of the Legislature.

This bill takes effect on July 1, 2013.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background on St. Lucie County Mosquito Control District

The St. Lucie County Mosquito Control District (District) is a special taxing district that the Florida Legislature created by special act on May 19, 1953.[1] Some pertinent characteristics about the District include the following:

1) The District is wholly located within and has the same governing board as the St. Lucie Board of County Commissioners. Therefore, it is a *dependent* special district.[2]
2) The District receives its funding through ad valorem taxation.[3]
3) The District boundaries currently cover 301 square miles.[4]
4) The District provides the following services:
   - spraying adult mosquitos with pesticide;
   - reducing mosquito breeding habitats;
   - controlling mosquito larvae where possible;
   - monitoring mosquitos and viruses they may carry;
   - measuring and analyzing environmental information;
   - providing environmental education; and
   - overseeing public use of impounded wetland parks.[5]

Present Situation

Three situations indicate that a revision of the District's boundaries is necessary.

The first situation deals with a boundary change to St. Lucie County. During the 2012 legislative session, the Florida Legislature passed CS/SB 800, which among other things, will transfer a 129-acre piece of property known as Beau Rivage from St. Lucie County to Martin County, effective July 1, 2013.[6] CS/SB 800 did not address the District's boundaries—it only addressed the St. Lucie County boundaries and Martin County boundaries. Therefore, once the Beau Rivage land transfer becomes effective on July 1,[7] the District's boundaries will extend further than the St. Lucie County boundaries.

Consequently, after that date Beau Rivage will be outside of the District's jurisdiction. As noted above, the District's board is the same as the St. Lucie County Board of County Commissioners and only has jurisdiction within St. Lucie County.[8]

Thus, on July 1, 2013, the 550-plus Beau Rivage residents will no longer receive mosquito services from the District and will begin to receive mosquito services from Martin County mosquito control.[9] The Beau Rivage residents will cease paying the District for those services and will instead pay Martin County.[10] The bill is a technical fix to reflect this upcoming change.

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[1] Ch. 2003-365, L.O.F.
[2] Section 189.403(2)(a), F.S.
[3] This information was obtained from the Department of Economic Opportunity's website: http://dca.deo.myflorida.com/fhcd/sdip/OfficialListdeo/report.cfm
[4] This information was received from the St. Lucie County website: http://www.stlucieco.gov/mosquito/index.htm
[5] *Id.*
[6] Ch. 2012-45, L.O.F.
[7] *Id.*
[8] Ch. 2003-365, L.O.F.
[9] Phone conversation with St. Lucie County Mosquito District director, James David, on 3/8/13.
[10] *Id.*

The second situation deals with the addition to the District of an area known as Aero Acres. Aero Acres' residents voted by referendum on November 8, 1996 to include themselves within the District;[11] however, Aero Acres was inadvertently excluded from the District's legal boundary description during the District's codification in 2003.[12]

Aero Acres is a residential airpark comprised of 68 lots ranging in size from 1.23 acres to 2.66 acres.[13] Aero Acres is not directly attached to the current district boundaries; however, its unique status as a residential airpark surrounded by agricultural land removes cause for concern that neighboring communities are not receiving similar services. Aero Acres residents have been paying for and receiving mosquito services from the District since the 1996 referendum. Therefore, the bill's proposed boundary change is a technical fix to reflect the District's current practice.

The third situation involves a voluntary request by the Riverland/Kennedy DRI property owner to add land that it owns to the District. Riverland/Kennedy is the sole owner of the parcel, which was annexed into the City of Port St. Lucie in 2004.[14]

Effect of Changes

HB 977 revises the District's boundaries to reflect the situations described above. In sum, the bill does the following:

1) Removes Beau Rivage, and therefore keeps the boundaries correct and consistent with the St. Lucie County boundaries;
2) Formally includes the Aero Acres subdivision, which voters added to the District in 1996; and
3) Adds land owned by the Riverland/Kennedy DRI to the District.

The bill does not serve any other purpose.

The District's boundaries may only be amended by special act of the Legislature.[15]

This bill takes effect on July 1, 2013.

B. SECTION DIRECTORY:

Section 1: Amends ch. 2003-365, L.O.F., to revise the St. Lucie County Mosquito Control District's boundaries.

Section 2: Provides an effective date.

II. NOTICE/REFERENDUM AND OTHER REQUIREMENTS

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

IF YES, WHEN? January 23, 2013

WHERE? The *St. Lucie News-Tribune*, a daily newspaper of general circulation, published in St. Lucie County, Florida.

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[11] *See*, 1996 Aero Acres Referendum. (Copy filed with Local and Federal Affairs Committee)
[12] Ch. 2003-365, L.O.F.
[13] *See,* Aero Acres website: http://misco.net/.
[14] Copy of Ordinance 04-67 filed in Local and Federal Affairs Committee
[15] Ch. 2003-365, L.O.F.

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

On March 3, 2013, the Local and Federal Affairs Committee adopted an amendment that changed the bill's effective date to July 1, 2013.

This analysis has been updated to reflect the bill as amended.

A bill to be entitled

An act relating to St. Lucie County Mosquito Control District, St. Lucie County; amending chapter 2003-365, Laws of Florida; revising the boundaries of the district; providing an effective date.

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

Section 1. Section 1 of section 3 of chapter 2003-365, Laws of Florida, is amended to read:

Section 1. District boundaries.—A special taxing district, lying wholly in St. Lucie County, to be known as the St. Lucie County Mosquito Control District, is described as follows:

Beginning at the Northeast corner of Section 3, Township 34 South, Range 40 East; thence West to the Northwest corner of Section 3, Township 34 South, Range 38 East; thence South to the Southwest corner of Section 34, Township 34 South, Range 38 East; thence East to the Southwest corner of Section 36, Township 34 South, Range 38 East; thence South to the Southeast corner of Northeast 1/4 of Section 11, Township 36 South, Range 38 East; thence West to the Northwest corner of the Southeast 1/4 of Section 11, Township 36 South, Range 38 East; thence South to the Southwest corner of the Southeast 1/4 of Section 11, Township 36 South, Range 38 East; thence East to the Southwest corner of Section 10, Township 36 South, Range 39

East; thence South to the Southwest corner of Section 34, Township 37 South, Range 39 East; thence East to the Southeast corner of Section 36, Township 37 South, Range 40 East; thence North on the east line of said Section 36 and Section 25, Township 37 South, Range 40 East, 6,459 feet to a point lying within the water body of the North Fork of the St. Lucie River; thence departing said line within the North Fork of the St. Lucie River a bearing direction (State Plane Coordinate System, Florida East Zone) of N 41° 04' W, a distance of 6,155 feet, more or less, to a point lying within the water body of the North Fork of the St. Lucie River; thence departing said point a bearing direction (State Plane Coordinate System, Florida East Zone) N 45° 16' East, a distance of 2,355 feet, more or less, to a point intersecting with the north shore of the North Fork of the St. Lucie River and the west edge of the Howard Creek as concurrent with the City of Port St. Lucie municipal boundary limits; thence departing said intersecting shore and edge lines following along the City of Port St. Lucie municipal boundary line north along the west edge of Howard Creek to the south line of the northeast quarter of Section 24, Township 37 South, Range 40 East; thence East along said south line of the northeast quarter to the intersection of the east 924.15 feet of Section 24, Township 37 South, Range 40 East; thence North along said east 924.15-foot line of Section 24,

Township 37 South, Range 40 East, to the intersection of the north line of the south 508.15 feet of the northeast quarter of Section 24, Township 37 South, Range 40 East; thence East along said south 508.15-foot line of the northeast quarter of said Section 24, Township 37 South, Range forty East, to an intersection with the East line of Township thirty-seven South, Range 40 East; thence North along the east line of Sections 24 and 13, Township 37 South, Range 41 East to the southwest corner of Section 7, Township 37 South, Range 41 East; thence East following the Section lines to the water's edge of the Atlantic Ocean; thence meandering said water's edge Northwesterly to the point of beginning.

AND

Aero Acres Subdivision as recorded in Plat Book 27 at pages 14 thru 14D of the public records of St. Lucie County, Florida.

~~thence North to the Southwest corner of Section 7, Township 37 South, Range 41 East; thence East following the Section lines to the water's edge of the Atlantic Ocean; thence meandering said water's edge Northwesterly to the point of beginning~~.

AND

A parcel of land of land lying in Sections 4, 5, 8, 9, 10, 16 and 17, Township 37 South, Range 39 East, and Section 33, Township 36 South, Range 39 East, St. Lucie County, Florida, said parcel being more particularly described as follows:

Begin at the intersection of the centerline of Gatlin Boulevard (also being the north line of Section 15) and the westerly limits of Gatlin Boulevard Right-of-Way and the westerly limits of those lands described in an Order of Taking dated July 24, 1979 and recorded in Official Record Book 311 at Pages 2946 through 2952, inclusive, Public Records of St. Lucie County, Florida, and as shown on the Florida Department of Transportation Right-of-Way maps for State Road #9. (I-95), Section 94001-2412, dated 6/2/77, with last revision of 9/11/79; thence South 89 degrees 57 minutes 05 seconds West, a distance of 7702.12 feet; thence South 00 degrees 05 minutes 46 seconds West, a distance of 757.53 feet; thence South 89 degrees 57 minutes 43 seconds West, a distance of 1159.20 feet; thence North 00 degrees 40 minutes 03 seconds East, a distance of 152.60 feet; thence North 54 degrees 52 minutes 19 seconds East, a distance of 153.89 feet; thence North 11 degrees 24 minutes 07 seconds East, a distance of 156.51 feet; thence North 14 degrees 02 minutes 38 seconds West, a distance of 439.20 feet; to

the beginning of a curve concave southerly, having a radius of 200.00 feet and a central angle of 130 degrees 29 minutes 58 seconds, thence northerly, westerly and finally southerly along the arc of said curve to the left, a distance of 455.53 feet to the curves end; thence South 35 degrees 27 minutes 24 seconds West, a distance of 161.00 feet; thence South 89 degrees 57 minutes 05 seconds West, a distance of 1118.66 feet; thence North 43 degrees 15 minutes 34 seconds West, a distance of 1.86 feet; thence North 09 degrees 54 minutes 33 seconds East, a distance of 528.17 feet; thence North 62 degrees 56 minutes 57 seconds East, a distance of 710.69 feet; thence North 39 degrees 35 minutes 38 seconds West, a distance of 373.81 feet; thence South 80 degrees 50 minutes 18 seconds West, a distance of 92.33 feet; thence North 00 degrees 09 minutes 21 seconds East, A distance of 4587.82 feet; to the southeasterly line of Grove No. 3, as recorded in O.R. Book 383, at Page 1059, St. Lucie County Public Records (Special Warranty Deed from A. Duda & Sons, Inc. to D & M Indian River Groves) thence along said southerly and easterly line of Grove No. 3 the following courses and distances: North 74 degrees 07 minutes 42 seconds East, a distance of 3624.15 feet; thence North 02 degrees 40 minutes 30 seconds West; a distance of 853.63 feet; thence North 03 degrees 34 minutes 36 seconds East, a distance of 264.67 feet; thence North 11 degrees 39

minutes 14 seconds East, a distance of 299.59 feet; thence North 05 degrees 52 minutes 55 seconds East, a distance of 655.21 feet; thence North 13 degrees 31 minutes 07 seconds East, a distance of 422.94 feet; thence departing said Grove No. 3, continue North 13 degrees 31 minutes 07 seconds East, a distance of 51.88 feet; thence North 74 degrees 14 minutes 30 seconds East; a distance of 2525.46 feet; thence North 76 degrees 04 minutes 00 seconds East, a distance of 1244.50 feet; thence North 65 degrees 11 minutes 40 seconds East, a distance of 178.59 feet; thence North 59 degrees 06 minutes 39 seconds East, a distance of 424.13 feet; thence North 73 degrees 43 minutes 15 seconds East, a distance of 14.12 feet; thence South 50 degrees 55 minutes 52 seconds East, a distance of 7.43 feet; thence North 56 degrees 01 minutes 38 seconds East, a distance of 31.64 feet; thence North 33 degrees 56 minutes 01 seconds East, a distance of 30.15 feet; thence North 54 degrees 34 minutes 18 seconds East, a distance of 298.73 feet; thence North 85 degrees 53 minutes 58 seconds East, a distance of 132.02 feet; thence North 70 degrees 54 minutes 26 seconds East, a distance of 143.67 feet; thence North 56 degrees 25 minutes 29 seconds East, a distance of 121.35 feet; thence North 66 degrees 21 minutes 07 seconds East, a distance of 557.84 feet; thence South 00 degrees 35 minutes 12 seconds West along the northerly prolongation of the East line of the

northeast quarter of said Section 4, a distance of 271.44 feet to the northeast corner of Section 4; thence continue South 00 degrees 35 minutes 12 seconds West, along the East line of said Section 4, a distance of 2833.04 feet to the East quarter corner of said Section 4; thence South 00 degrees 36 minutes 27 seconds West, a distance of 2651.97 feet to the northwest corner of Section 10; thence North 89 degrees 54 minutes 10 seconds East along the North line of said Section 10, a distance of 1793.84 feet; to a point of intersection with the westerly Right-of-Way line of said I-95 and the said westerly line of the lands described in the Order of Taking dated July 24, 1979 and recorded in Official Record Book 311 at Pages 2946 through 2952, inclusive, and with a non-tangent curve, concave easterly, having a radius of 5983.58 feet and central angle of 23 degrees 41 minutes 41 seconds, thence along the westerly line of said I-95 Right-of-Way and along the said westerly line of the lands described in the Order of Taking, dated July 24, 1979, the following courses and distance: thence southerly along the arc of said curve to the left, a distance of 2474.52 feet, said arc subtended by a chord which bears South 06 degrees 56 minutes 28 seconds East, a distance of 2456.92 feet to the curves end; thence South 18 degrees 47 minutes 19 seconds East, a distance of 714.03 feet; thence South 14 degrees 47 minutes 19 seconds East, a distance of

510.88 feet; thence South 07 degrees 32 minutes 07 seconds East, a distance of 374.37 feet; thence South 06 degrees 58 minutes 16 seconds West, a distance of 373.49 feet; thence South 15 degrees 33 minutes 28 seconds West, a distance of 491.49 feet; thence South 34 degrees 39 minutes 50 seconds West, a distance of 207.78 feet; thence South 70 degrees 02 minutes 50 seconds West, a distance of 289.50 feet; thence South 00 degrees 01 minutes 45 seconds West, a distance of 64.09 feet; thence South 82 degrees 24 minutes 53 seconds West, a distance of 317.56 feet; thence North 89 degrees 58 minutes 15 seconds West, a distance of 372.63 feet; thence North 89 degrees 58 minutes 15 seconds West, a distance of 262.61 feet; thence South 00 degrees 01 minutes 45 seconds West, a distance of 100.00 feet, to the Point of Beginning.

AND

A parcel of land of land lying in Section 16, 20, 21, 28, 29 and 33, Township 36 South, Range 39 East, St. Lucie County, Florida, said parcel being more particularly described as follows:

Begin at the intersection of the Southeasterly right of way line of the FEC Railroad and the Northeasterly right of way line of the SFWMD Canal C-24; thence Southeasterly along said Northeasterly right of way

line of the C-24 to the intersection of the East Line of Section 33, Township 36 South, Range 39 East; thence North along the East line of Sections 33, 28, 21 AND 16, Township 36 South, Range 39 East to the intersection of the Southeasterly right of way line of the FEC Railroad; thence Southwesterly along said Southeasterly right of way line to the Point of Beginning.

AND

Sections 19, 20, 21, 28 and 33, Township 37 south, Range 39 East.

AND

All that part of Sections 16, 17, and 18, Township 37 South, Range 39 East lying 23 feet south of the North line of lands described in Orb 477, Page 560 of the Public Records of St. Lucie County, Florida.

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1075 Public Records
SPONSOR(S): Government Operations Subcommittee, Rangel
TIED BILLS: **IDEN./SIM. BILLS:** SB 1318

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Government Operations Subcommittee	13 Y, 0 N, As CS	Stramski	Williamson
2) State Affairs Committee	JS	Stramski	Camechis

SUMMARY ANALYSIS

While state law provides limited exemptions from public record requirements for information relating to complaints alleging misconduct and ensuing investigations carried out by agencies in certain contexts, there is no general exemption for information obtained pursuant to an investigation following a complaint of misconduct filed against a public employee.

This bill creates a public record exemption for a complaint of misconduct filed with an agency against an agency employee, and all information obtained pursuant to the investigation by the agency of the complaint of misconduct. The information is confidential and exempt from public record requirements until the investigation ceases to be active, or until the agency provides written notice to the employee who is the subject of the complaint that the agency concluded the investigation and either will or will not proceed with disciplinary action or file charges.

The bill provides for repeal of the exemption on October 2, 2018, unless reviewed and saved from repeal by the Legislature. In addition, the bill provides a statement of public necessity as required by the State Constitution.

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

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

Article I, s. 24(c) of the State Constitution, requires a two-thirds vote of the members present and voting for final passage of a newly created or expanded public record or public meeting exemption. The bill creates a public record exemption; thus, it requires a two-thirds vote for final passage.

FULL ANALYSIS
I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Public Records

Article I, s. 24(a) of the State Constitution sets forth the state's public policy regarding access to government records. This section guarantees every person a right to inspect or copy any public record of the legislative, executive, and judicial branches of government. The Legislature, however, may provide by general law for the exemption of records from the requirements of Article I, s. 24(a) of the State Constitution. The general law must state with specificity the public necessity justifying the exemption (public necessity statement) and must be no broader than necessary to accomplish its purpose.[1]

Public policy regarding access to government records is addressed further in the Florida Statutes. Section 119.07(1), F.S., guarantees every person a right to inspect and copy any state, county, or municipal record. Furthermore, the Open Government Sunset Review Act[2] provides that a public record or public meeting exemption may be created or maintained only if it serves an identifiable public purpose. In addition, it may be no broader than is necessary to meet one of the following purposes:

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

Public Record Exemptions

State law provides limited exemptions from public record requirements for information relating to complaints of misconduct and investigations carried out by agencies in certain contexts. For example, a complaint filed against a law enforcement officer, and all information obtained pursuant to the investigation of the complaint by the agency, is confidential and exempt from s. 119.07(1), F.S., until the investigation ceases to be active or until the agency head or designee informs the subject of the complaint that the agency will or will not proceed with disciplinary action or the filing of charges.[3] Similarly, a complaint filed against an individual certified by the Department of Education, and all information obtained pursuant to the investigation of the complaint by the agency, is confidential and exempt from s. 119.07(1), F.S., until the conclusion of the preliminary investigation of the complaint, until such time as the preliminary investigation ceases to be active, or until such time as otherwise provided by s. 1012.798(6), F.S.[4] However, there is no general exemption for information obtained pursuant to an investigation following a complaint of misconduct filed against a public employee.

Effect of the Bill

This bill creates a public record exemption for certain information pertaining to a complaint of misconduct filed against an agency employee. Specifically, the complaint and all information obtained

[1] Section 24(c), Art. I of the State Constitution.
[2] *See* s. 119.15, F.S.
[3] Section 112.533(2), F.S.
[4] Section 1012.796(4), F.S. Section 1012.798(6), F.S. does not provide any additional limit on the duration of the exemption.

pursuant to the investigation of the complaint by the agency[5] is confidential and exempt[6] from public record requirements until the:

- Investigation ceases to be active;
- Agency provides written notice to the employee who is the subject of the complaint that the agency concluded the investigation with a finding not to proceed with disciplinary action or file charges; or
- Agency provides written notice to the employee who is the subject of the complaint that the agency concluded the investigation with a finding to proceed with disciplinary action or file charges.

The bill provides for repeal of the exemption on October 2, 2018, unless reviewed and saved from repeal by the Legislature.

In addition, the bill provides a statement of public necessity as required by the State Constitution.

B. SECTION DIRECTORY:

Section 1 amends s. 119.071, F.S., creating an exemption from public record requirements for a complaint of misconduct filed with an agency against an agency employee and all information obtained pursuant to the investigation of such a complaint.

Section 2 provides a statement of public necessity.

Section 3 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:

   See FISCAL COMMENTS.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   See FISCAL COMMENTS.

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[5] Section 119.011(2), F.S., defines the term "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 chapter 119, F.S., 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.

[6] 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).

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The bill likely could create a minimal fiscal impact on agencies, because staff responsible for complying with public record requests could require training related to expansion of the public record exemption. In addition, those agencies could incur costs associated with redacting the confidential and exempt information prior to releasing a record. The costs, however, would be absorbed, as they are part of the day-to-day responsibilities of the agencies.

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:

Vote Requirement

Article I, s. 24(c) of the State Constitution requires a two-thirds vote of the members present and voting for final passage of a newly created or expanded public record or public meeting exemption. The bill creates a public record exemption; thus, it requires a two-thirds vote for final passage.

Public Necessity Statement

Article I, s. 24(c) of the State Constitution requires a public necessity statement for a newly created or expanded public record or public meeting exemption. The bill creates a public record exemption; thus, it includes a public necessity statement.

Breadth of Exemption

Article I, s. 24(c) of the State Constitution requires a newly created public record or public meeting exemption to be no broader than necessary to accomplish the stated purpose of the law. The bill creates a public record exemption of limited duration for a complaint of misconduct filed with an agency against an agency employee, and all information obtained pursuant to the investigation of the complaint by the agency. The purpose of the exemption is to facilitate the investigation of such complaints, and the exemption does not extend past the duration of such an investigation. The exemption does not appear to be in conflict with the constitutional requirement that the exemption be no broader than necessary to accomplish its purpose.

B. RULE-MAKING AUTHORITY:

This bill does not appear to create a need for rulemaking or rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 18, 2013, the Government Operations Subcommittee adopted a strike-all amendment to House Bill 1075 and reported the bill favorably with committee substitute.

The strike-all amendment:

- Replaces the phrase "state agency or a political subdivision of the state" with the term "agency," which is defined in chapter 119, F.S., to include state agencies and political subdivisions of the state.
- Provides that the exemption is scheduled to be repealed on October 2, 2018, instead of July 1, 2018.

A bill to be entitled

An act relating to public records; amending s. 119.071, F.S.; providing an exemption from public record requirements for a complaint of misconduct filed with an agency against an agency employee and all information obtained pursuant to an investigation of the complaint by the agency; providing for limited duration of the exemption; providing for future review and repeal of the exemption under the Open Government Sunset Review Act; providing a statement of public necessity; providing an effective date.

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

Section 1. Paragraph (k) is added to subsection (2) of section 119.071, Florida Statutes, to read:

119.071 General exemptions from inspection or copying of public records.—

(2) AGENCY INVESTIGATIONS.—

(k)1. A complaint of misconduct filed with an agency against an agency employee and all information obtained pursuant to an investigation by the agency of the complaint of misconduct is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution until the investigation ceases to be active, or until the agency provides written notice to the employee who is the subject of the complaint, either personally or by mail, that the agency has either:

a. Concluded the investigation with a finding not to proceed with disciplinary action or file charges; or

b. Concluded the investigation with a finding to proceed with disciplinary action or file charges.

2. Subparagraph 1. is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2018, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 2. The Legislature finds that it is a public necessity that a complaint of misconduct filed with an agency against an agency employee and all information obtained pursuant to an investigation by the agency of the complaint of misconduct be made confidential and exempt from the requirements of s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution. The disclosure of information, such as the nature of the complaint against an agency employee and testimony and evidence given in the investigation of the complaint, could injure an individual and deter that person from providing information pertaining to internal investigations, thus impairing the ability of an agency to conduct an investigation that is fair and reasonable. In the performance of its lawful duties and responsibilities, an agency may need to obtain information for the purpose of determining an administrative action. Without an exemption from public record requirements to protect information of a sensitive personal nature provided to an agency in the course of an internal investigation, such information becomes a public record when received and must be divulged upon request. Disclosure of information obtained during

an internal investigation conducted by an agency inhibits voluntary participation of individuals during internal investigations and makes it difficult if not impossible to determine the truth. Therefore, the Legislature declares that it is a public necessity that a complaint of misconduct filed with an agency against an agency employee and all information obtained pursuant to an investigation by the agency of the complaint of misconduct be held confidential and exempt from public record requirements.

Section 3. This act shall take effect July 1, 2013.

HOUSE OF REPRESENTATIVES LOCAL BILL STAFF ANALYSIS

BILL #: HB 1271 Central County Water Control District, Hendry County
SPONSOR(S): Hudson
TIED BILLS: None **IDEN./SIM. BILLS:** SB 1178

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Local & Federal Affairs Committee	14 Y, 0 N	Dougherty	Rojas
2) State Affairs Committee		Renner	Camechis

SUMMARY ANALYSIS

This bill amends the legal boundary description of the Central County Water Control District in Hendry County, Florida to include the Woodland Subdivision. This area was inadvertently omitted from the description in the enabling act and codification. Both the residents of the subdivision and the District intended for this area to be included in the District. The residents pay for and receive District services.

This bill is effective upon becoming law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

The Central County Water Control District ("District") serves an approximately 17.125 square mile area, known as Montura Ranch Estates, in Hendry County, Florida. The District was created by special act in 1970, which was codified with all other related special laws in 2000. Both the enabling act and the codification contained the legal boundaries of the District. A small area known as the Woodland Subdivision[1] borders the northeast section of the District but is not included in the boundary description. The Woodland Subdivision residents and the District intended for this area to be included in the District's service area. The residents pay for and receive District services.

Effect of Proposed Changes

This bill amends the codified description of the District's boundaries to include the Woodland Subdivision. This corrects the scrivener's error made in the enabling and subsequent acts.

B. SECTION DIRECTORY:

Section 1: Amends ch. 2000-415, L.O.F., as amended, to include an area inadvertently omitted from the codified boundary description of the Central County Water Control District in Hendry County, Florida.

Section 2: Provides that the Act takes effect upon becoming a law.

II. NOTICE/REFERENDUM AND OTHER REQUIREMENTS

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

IF YES, WHEN? January 31, 2013

WHERE? *The News-Press*, a daily and Sunday newspaper published in Fort Myers, 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.

[1] As recorded in Plat Book 4, Page 1 of the Public Records of Hendry County, Florida.

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 the Central County Water Control District, Hendry County; amending chapter 2000-415, Laws of Florida; revising the legal description of the boundaries of the district; providing an effective date.

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

Section 1. Subsection (a) of section 1 of section 3 of chapter 2000-415, Laws of Florida, is amended to read:

Section 1. District created; boundaries; validation.—

(a) For the purpose of reclamation, drainage, irrigation, water control, and development of lands hereinafter described and to protect said lands from the effects of water by means of the construction and maintenance of canals, ditches, levees, dikes, pumping plants, and other drainage, irrigation, and water control works and improvements, and to make the lands within said district available and habitable for settlement and agriculture, and for the public convenience, welfare, utility and benefit, and for the other purposes stated in this act a drainage district is hereby created and established in Hendry County to be known as the Central County Water Control District, the territorial boundaries of which shall be as follows:

Sections 13, 14, 15, the West 1/2 of Section 18, Sections 22, 23, 24, 25, 26 and 27, the North 1/2 of Section 34 except the SE 1/4 of the NE 1/4 of said Section 34 and all of Sections 35 and

36 in Township 44 South, Range 32 East; and all of Sections 19, 29, 30, 31, 32, and a portion of Section 7 described as that portion of the Woodland Subdivision recorded in Plat Book 4, Page 1 of the Public Records of Hendry County, Florida, in Township 44 South, Range 33 East in Hendry County, Florida.

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 4007 Powers and Duties of Department of Environmental Protection
SPONSOR(S): Agriculture & Natural Resources Subcommittee, Nelson
TIED BILLS: None **IDEN./SIM. BILLS:** SB 326

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Agriculture & Natural Resources Subcommittee	12 Y, 0 N, As CS	Renner	Blalock
2) Appropriations Committee	22 Y, 0 N	Helpling	Leznoff
3) State Affairs Committee		Renner	Camechis

SUMMARY ANALYSIS

The Cross Florida Barge Canal Project began in 1933. Thousands of acres of land were acquired to create a commercial shipping channel across the Florida peninsula connecting the Atlantic Ocean to the Gulf of Mexico. There were two major efforts to construct the canal, first from 1933 to 1935, and then from 1964 to 1990. The canal was never completed due to insufficient funds and concerns over potential environmental impacts. Congress officially de-authorized the project in 1990 and all federal canal lands and structures were transferred to the state to be managed as a conservation and recreation area. The canal land was officially named the Marjorie Harris Carr Cross Florida Greenway (CFG) and is now managed by the Office of Greenways and Trails. The CFG is a multi-use area and provides natural resource-based recreation, including fishing, camping, hunting, boating, bicycling, and horseback riding.

CFG lands are subject to the following specific surplus procedures that were created to generate funds needed to refund counties the ad valorem taxes that the counties paid to the Cross Florida Canal Navigation District:

- The county where the surplus land is located has the first right of refusal to acquire the land at current appraised value by buying it or subtracting the value from its reimbursement;
- The original owner of the land or the original owner's heirs have second right of refusal to acquire the land at current appraised value;
- Any person having a leasehold interest in the land has the third right of refusal to acquire the land at current appraised value;
- Surplus land that is not acquired as stated above is offered in a public sale to the highest bidder. The minimum acceptable bid is the current appraised value;
- Proceeds from the sale of CFG land are refunded to the counties for ad valorem taxes paid by the counties to the Cross Florida Canal Navigation District;
- Interest refunded to the counties is compounded annually at rates specified in s. 253.783(2)(f), F.S.; and
- Any excess funds from the sale of surplus lands *may* be used for the maintenance of the greenway corridor.

The bill repeals the specific CFG surplus and exchange procedures, which will allow the Department of Environmental Protection's (DEP) Office of Greenways and Trails to follow current DEP Division of State Lands procedures for the surplus and exchange of conservation lands.

The bill appears to have an indeterminate positive fiscal impact on DEP by not having a separate procedure for surplussing CFG lands. The bill does not have a fiscal impact on local governments or the private sector.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Cross Florida Greenway

The Cross Florida Barge Canal Project began in 1933. Thousands of acres of land were acquired to create a commercial shipping channel across the Florida peninsula connecting the Atlantic Ocean to the Gulf of Mexico. There were two major efforts to construct the canal, first from 1933 to 1935, and then from 1964 to 1990. The canal was never completed due to insufficient funds and concerns over potential environmental impacts. Congress officially de-authorized the project in 1990, and all federal canal lands and structures were transferred to the state to be managed as a conservation and recreation area. The canal land was officially named the Marjorie Harris Carr Cross Florida Greenway (CFG) and is now managed by the Office of Greenways and Trails. The CFG is a multi-use area and provides natural resource-based recreation including fishing, camping, hunting, boating, bicycling, and horseback riding.[1]

The CFG extends through portions of Marion County, requiring that Marion County receive right-of-way access across portions of the CFG. Section 253.7827(3), F.S., provides that Marion County may purchase right-of-way access at fair market value, or that the value of the right-of-way be subtracted from the amount of reimbursement due to the county, pursuant to s. 253.783, F.S.

Water Resource Development Act of 1990

Section 402 of the Water Resources Development Act of 1990 (Act) amended sec. 1114(b)(5) of the Water Resources Development Act of 1986.[2] In addition to de-authorizing the project, the Act transferred all federal lands, interests, and facilities to the state without consideration, provided the state:

- Holds the federal government harmless for claims arising from operation of federal lands and facilities;
- Maintains the corridor as a public greenway for compatible recreation purposes, including specified areas;
- Agrees to preserve, enhance, interpret, and manage the natural and cultural resources contained in specified areas;
- Pays Citrus, Clay, Duval, Levy, Marion, and Putnam Counties a minimum aggregate sum of $32 million, or at the option of the counties, payment by conveyance of surplus barge canal lands selected by the state at current appraised values;
- Uses any remaining funds generated from the sale of surplus CFG lands to acquire fee title or easements to other lands along the project route. Any remaining funds generated from the sale of surplus CFG lands *must* be used for the improvement and management of the greenway corridor. It does not dictate the procedures the state must use to surplus CFG lands, only how the funds from the sale of surplus land are to be managed.

The Act provides for certain legal remedies if the state fails to comply with the above requirements.[3]

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[1] DEP, *Marjorie Harris Carr Cross Florida Greenway Management Plan*, (June 15, 2007), http://www.dep.state.fl.us/gwt/cfg/Plan_PDF/CFG_LMP_Final.pdf.

[2] U.S. Fish & Wildlife Service, *Water Resource Development Acts*, http://www.fws.gov/habitatconservation/Omnibus/WRDA1990.pdf.

[3] *See* Sec. 1114(d) of the Water Resource Development Act of 1986 as amended by Sec. 402 of the Water Resource Development Act of 1990, *available at* http://www.fws.gov/habitatconservation/Omnibus/WRDA1990.pdf.

Cross Florida Greenway Surplus Procedures

CFG lands are subject to specific surplus procedures that were created to generate funds needed to refund counties the ad valorem taxes that the counties paid to the Cross Florida Canal Navigation District. Section 253.783(2), F.S., provides the following CFG-specific surplus procedures:[4]

- The county where the surplus land is located has the first right of refusal to acquire the land at current appraised value by buying it or subtracting the value from its reimbursement;
- The original owner of the land or the original owner's heirs have second right of refusal to acquire the land at current appraised value;
- Any person having a leasehold interest in the land has the third right of refusal to acquire the land at current appraised value;
- Surplus land that is not acquired as stated above is offered in a public sale to the highest bidder. The minimum acceptable bid is the current appraised value;
- Proceeds from the sale of CFG land are refunded to the counties for ad valorem taxes paid by the counties to the Cross Florida Canal Navigation District;
- Interest refunded to the counties is compounded annually at rates specified in s. 253.783(2)(f), F.S.; and
- Any excess funds from the sale of surplus lands *may* be used for the maintenance of the greenway corridor.

The last bulleted provision is in conflict with the requirements of the Act.

Conservation Land Surplus Procedures

The Board of Trustees of the Internal Improvement Trust Fund (Board of Trustees) has the authority to surplus conservation land if it is determined that the land is no longer needed for conservation purposes. Section 253.034(6), F.S., outlines the surplus procedures for conservation lands as follows:[5]

- The Acquisition and Restoration Council must first confirm that the request to surplus conservation land is consistent with the resource values and management objectives of the land;
- The Board of Trustees approves the surplus by a vote of at least three members;
- State agencies, colleges, and universities are given priority to lease the surplus land;
- State, county, or local governments are offered second right of refusal to purchase the surplus land;
- If government agencies, colleges, and universities opt out of purchasing surplus land, then the land is available for sale on the private market;
- The sale price is negotiated or competitively bid (determined by market value) pursuant to s. 253.034(6)(g), F.S., and Rule 18-2.020, F.A.C.; and
- Proceeds from the sale of surplus land are deposited into the fund from which the lands were acquired. If the trust fund from which the lands were acquired no longer exists, the funds are deposited into an appropriate account to be used for land management.

Effect of Proposed Changes

The bill amends s. 253.7827, F.S., conforming cross-references.

The bill repeals s. 253.783(2), F.S., which will allow the surplussing of the CFG lands to occur under the Board of Trustees land surplus procedures described above. This provides for better management

[4] *See* s. 253.783, F.S.
[5] *See* s. 253.034, F.S.

of CFG lands and will close ownership gaps within the CFG boundary. The repeal will also provide consistency between the federal requirements for funds acquired from the surplus of CFG lands and the manner in which the state manages funds.

B. SECTION DIRECTORY:

Section 1. Amends s. 253.7827, F.S., conforming cross-references.

Section 2. Repeals s. 253.783(2), F.S., relating to the powers and duties of DEP to dispose of surplus lands acquired for the construction, operation, or promotion of a canal across the peninsula of the state and refund payments to counties.

Section 3. Provides an effective date of July 1, 2013.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   See Fiscal Comments.

2. Expenditures:

   See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

There may be an indeterminate positive fiscal impact on DEP by not having a separate procedure for surplussing CFG lands.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On February 20, 2013, the Agriculture & Natural Resources Subcommittee amended and reported HB 4007 favorably as a committee substitute (CS). The CS repeals subsection (2) of s. 253.783, F.S., instead of the entire section, to conform the bill to SB 326.

A bill to be entitled

An act relating to the powers and duties of the Department of Environmental Protection; amending s. 253.7827, F.S.; removing an obsolete reference for purposes of calculating the reimbursement for transportation and utility crossings of greenways lands in Marion County; repealing s. 253.783(2), F.S., relating to additional powers and duties of the department to dispose of surplus lands that were for the construction, operation, or promotion of a canal across the peninsula of the state and refund payments to counties; providing an effective date.

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

Section 1. Subsection (3) of section 253.7827, Florida Statutes, is amended to read:

253.7827 Transportation and utility crossings of greenways lands.—

(3) Furthermore, the Legislature recognizes the needs expressed by Marion County to provide for the southerly extension of Sixtieth Avenue between State Road 200 and Interstate 75 and for the extension to cross the greenways lands to allow for the orderly growth and development of Marion County. Right-of-way for this extension across greenways lands shall be designed to mitigate the impacts to the extent practical, and the value of such lands shall be paid based on fair market value ~~or, at the option of Marion County, the value~~

~~can be subtracted from the amount of reimbursement due the county pursuant to s. 253.783~~.

Section 2. Subsection (2) of section 253.783, Florida Statutes, is repealed.

Section 3. This act shall take effect July 1, 2013.

HOUSE OF REPRESENTATIVES LOCAL BILL STAFF ANALYSIS

BILL #: HB 4053 City of Pensacola, Escambia County
SPONSOR(S): Ford
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Local & Federal Affairs Committee	14 Y, 0 N	Dougherty	Rojas
2) State Affairs Committee		JS Stramski	Camechis

SUMMARY ANALYSIS

This bill repeals the Civil Service Act of the City of Pensacola. This Civil Service Act was codified by the Legislature in 1984, but a 2009 referendum replaced many of its provisions with a new charter and strong mayor. Today, collective bargaining agreements have replaced most contracts and issues previously encompassed by the Civil Service Act. Over 80 percent of Pensacola's city employees do not rely on any facet of the Civil Service Act. For those employees still reliant on the Civil Service Act, the city intends to adopt a new policy that largely mirrors this Act but also reflects the changes made in the city's form of government. This replacement policy also gives broader rights to the employees, including an administrative appeal process for non-disciplinary complaints, mediation before disciplinary appeals, merit-based employment and promotions, the prohibition of nepotism, and an outlined method for lay-offs.

This bill shall take effect upon becoming law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

The Pensacola Civil Service Act

The Pensacola Civil Service Act (Civil Service Act or Act) originated in the 1931 city charter, which was codified as a special act in 1984. In 2009, the electors repealed by referendum the 1931 charter and replaced it with the current charter. The current charter reformed the local government by adopting a "strong mayor" format. The mayor has also implemented an updated structure that is intended to supersede many of the anachronistic provisions in the Civil Service Act.

The Civil Service Board

The Civil Service Board was codified in the 1984 act and is still in service today. This board consists of three members each serving two year terms. The first member is elected by the city council; the second, by the classified service employees; the third, by the other two members. The board approves minimum qualification changes, handles employee appeals for disciplinary actions, and executes the provisions in the Civil Service Act not repealed by the 2009 charter.

Employee Reliance on the Civil Service Act

Currently, 125 of 728 (approximately 17 percent) filled positions of Pensacola city employees are still covered by the Civil Service Act. The other 83 percent removed themselves from the Civil Service Act's coverage by collectively bargaining separate, exclusive procedures into their contracts. These unions – the Fraternal Order of the Police, the International Association of Firefighters, and the American Federation of State, County and Municipal Employees – do not rely on the Civil Service Board or any provision of the Civil Service Act.

Effect of Proposed Changes

Repeal of the Civil Service Act

This bill repeals chs. 84-510, 86-447, 86-450, 88-537, and 90-437, L.O.F., collectively known as the Civil Service Act of the City of Pensacola. Many provisions therein were repealed by a local referendum and are now duplicative of the systems used by the new strong mayor. This bill would eliminate all provisions of the Civil Service Act, both used and unused, and remove Pensacola civil service rules from the purview of the Legislature.

Independent Personnel Board

Upon repeal of the Civil Service Act, the City of Pensacola's human resources office intends to create an Independent Personnel Board (Personnel Board). Like the current Civil Service Board, this board would:

(1) handle minimum qualification changes,
(2) hear disciplinary appeals from city employees not otherwise protected by collective bargaining contracts, and
(3) be provided an attorney.

The Personnel Board would be composed of three members: one selected by the mayor, one selected by the employees, and one selected by the first two. Each would serve two year terms. The existing

Civil Service Board would assume the role of the new Personnel Board, where the members would finish their current terms and then hold elections according the policies governing the Personnel Board.

Personnel Administration Policy

Upon repeal of the Civil Service Act, the City of Pensacola's human resources office intends to implement a replacement policy known as the Personnel Administration Policy (Policy).[1] This Policy, a merit-based personnel system, would apply to all city employees not otherwise covered by a collective bargaining agreement. This Policy was written to largely mirror the currently used provisions of the Civil Service Act, with a few changes that give employees more employment-based rights. These include an administrative appeal process to resolve non-disciplinary complaints, mediation before hearing disciplinary appeals, merit-based employment and promotions, the prohibition of nepotism, and an outlined method for lay-offs.

The Policy also varies from the Civil Service Act in that it reflects the governmental structure change from the council-manager form to the strong mayor-council form. For example, the Policy states that all city employees are at will and the mayor is the official responsible for all employment. Therefore, the mayor may alter the Policy or the terms of any city employee's employment. All employees currently covered by the Civil Service Act would continue their employment under this Policy at the time of its adoption unless discharged for cause or by a lay-off.

B. SECTION DIRECTORY:

Section 1: Repeals ch. 84-510, L.O.F., as amended, known as the Pensacola Civil Service Act.

Section 2: Provides that the Act takes effect upon becoming a law.

II. NOTICE/REFERENDUM AND OTHER REQUIREMENTS

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

IF YES, WHEN? February 2, 2013

WHERE? *Pensacola News Journal*, a daily newspaper published in Escambia 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:

[1] On March 27, 2013, Jacek Stramski, the House State Affairs Committee attorney assigned to this bill, interviewed Sherrer Kuchera, Human Resources Administrator, and Suzanne Humphrey, Assessment and Development Manager with the City of Pensacola, Human Resources Division, and was informed that the Personnel Administration Policy will be implemented by Executive Order of the Mayor upon repeal of the Act. A copy of the policy is on file with the House State Affairs Committee.

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 Pensacola, Escambia County; repealing chapters 84-510, 86-447, 86-450, 88-537, and 90-473, Laws of Florida; repealing the Civil Service System for city employees; providing an effective date.

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

Section 1. Chapters 84-510, 86-447, 86-450, 88-537, and 90-473, Laws of Florida, are repealed.

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 7085 PCB GVOPS 13-03 Review Under Open Government Sunset Review Act
SPONSOR(S): Government Operations Subcommittee, Raulerson
TIED BILLS: **IDEN./SIM. BILLS:** SB 452

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 establishes the Joshua Abbott Organ and Tissue Registry (donor registry), which is an interactive web-based organ and tissue donor registry that allows for online organ donor registration. Donate Life Florida runs the donor registry and maintains donor records on behalf of the state.

Current law provides a public record exemption for certain information held in the donor registry. Specifically, information that identifies a donor is confidential and exempt from public record requirements. Such information may be disclosed to procurement organizations that have been certified by the agency for purposes of ascertaining or effectuating the existence of a gift, and to persons engaged in bona fide research who agree to certain requirements.

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.

Organ Donations

Organ recovery and allocation is regulated by the Centers for Medicare and Medicaid Services, a division of the United States Department of Health and Human Services. Florida has four federally designated, non-profit organ procurement organizations that are exclusively responsible for facilitating the process.[4] Each organization serves a different region of the state.[5] In addition to federal certification by the United States Centers for Medicare and Medicaid Services, the Agency for Health Care Administration also certifies the organizations.[6]

Joshua Abbott Organ and Tissue Registry[7]

In 2008, the Legislature found that there was a shortage of organ and tissue donors in Florida, and found that there was a need to encourage the various minority populations of Florida to donate organs and tissue. As such, the Legislature directed the Agency for Health Care Administration (agency) and the Department of Highway Safety and Motor Vehicles (department) to competitively procure and jointly

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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] FAQs About Donation, Donate Life Florida, available at: http://www.donatelifeflorida.org/content/about/facts/faq/#faq_47 (last visited March 3, 2013).

[5] LifeLink of Florida serves west Florida, LifeQuest Organ Recovery Services serves north Florida, TransLife Organ and Tissue Donation Services serves eat Florida, and LifeAlliance Organ Recovery Services serves south Florida. Available at: http://organdonor.gov/materialsresources/materialsopolist.html (last visited March 3, 2013).

[6] *See* s. 765.541, F.S.

[7] Section 765.5155(5), F.S., designates the donor registry as the Joshua Abbott Organ and Tissue Registry.

contract for the operation of a donor registry and education program.[8] The agency and department selected Donate Life Florida to run the donor registry and maintain donor records. Donate Life Florida is responsible, in part, for maintaining an interactive web-based organ and tissue donor registry that allows for online organ donor registration.[9]

Public Record Exemption under Review

In 2008, the Legislature created a public record exemption for certain information held in the donor registry.[10] Specifically, information that identifies a donor is confidential and exempt[11] from public record requirements.[12] Such information may be disclosed to procurement organizations that have been certified by the agency for purposes of ascertaining or effectuating the existence of a gift, and to persons engaged in bona fide research who agree to certain requirements[13].[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 the agency, department, and four organ and tissue procurement agencies as part of the Open Government Sunset Review process. Those responding to the questionnaire 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 information that identifies a donor and that is held in the donor registry.

B. SECTION DIRECTORY:

Section 1 amends s. 765.51551, F.S., to save from repeal the public record exemption for certain information held in the donor registry.

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

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

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[8] Section 765.5155(2), F.S.

[9] Section 765.5155(3), F.S.

[10] Chapter 2008-222, L.O.F.; codified as s. 765.51551, 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 765.51551(1), F.S.

[13] Persons engaged in bona fide research must agree to:

- Submit a research plan to the agency that specifies the exact nature of the information requested and the intended use of the information;
- Maintain the confidentiality of the records or information if personal identifying information is made available to the researcher;
- Destroy any confidential records or information obtained after the research is concluded; and
- Not directly or indirectly contact any donor or done.

[14] Section 765.51551(2), F.S.

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 government.

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. 765.51551, F.S., which provides an exemption from public record requirements for information held in the statewide organ and tissue donor registry that identifies a donor to the registry; 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 (3) of section 765.51551, Florida Statutes, is amended to read:

765.51551 Donor registry; public records exemption.—

~~(3) This section 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.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 7107 PCB GVOPS 13-05 OGSR Paratransit Services
SPONSOR(S): Government Operations Subcommittee, Fullwood
TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 1768

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Government Operations Subcommittee	13 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.

The Americans with Disabilities Act of 1990 requires public entities operating non-commuter fixed route transportation services to provide paratransit and other special transportation services to individuals who are unable to use the fixed route system. The United States Department of Transportation has issued regulations specifying circumstances under which such services should be provided, including requirements on state and local entities to administer a process for determining eligibility.

Current law provides that personal identifying information of an applicant for or a recipient of paratransit services, held by an agency, is confidential and exempt from public record requirements. The confidential and exempt information must be disclosed in certain circumstances.

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.

Paratransit Services

The Americans with Disabilities Act of 1990 (ADA) requires public entities operating non-commuter fixed route transportation services to provide paratransit[4] and other special transportation services to individuals who are unable to use the fixed route system.[5] The United States Department of Transportation has issued regulations specifying circumstances under which such services should be provided, including requirements on state and local entities to administer a process for determining eligibility. Eligible recipients for such services include:

- Individuals unable to get on or off public transit without assistance;
- Individuals who use a wheelchair lift on public transportation but such transportation is not available when needed; and
- Disabled individuals with a specific impairment that prevents travel to a point of departure or travel from a disembarking location.[6]

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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] Federal law defines "paratransit" to mean "comparable transportation service required by the ADA for individuals with disabilities who are unable to use fixed route transportation systems." (49 CFR. 37.3) Florida law defines "paratransit" to mean "those elements of public transit which provide service between specific origins and destinations selected by the individual user with such service being provided at a time that is agreed upon by the user and provider of the service. Paratransit service is provided by taxis, limousines, 'dial-a-ride,' buses, and other demand-responsive operations that are characterized by their nonscheduled, nonfixed route nature." (Section 427.011(9), F.S.)

[5] 49 CFR 37, Subpart F.

[6] 49 CFR 37.123.

Federal law also requires that each state plan to provide Medicaid services indicate that the Medicaid agency "will ensure necessary transportation for recipients to and from providers; and describe the methods that the agency will use to meet this requirement."[7] The Medicaid agency in Florida is the Agency for Health Care Administration (AHCA).

Florida law requires each agency that purchases transportation services for the transportation disadvantaged, including AHCA, to pay the rates established in the service plan or negotiated statewide contract, unless a more cost-effective method exists or if the community transportation coordinator (CTC) does not coordinate such services.[8] These services are referred to as Medicaid Non-Emergency Transportation Services.

The Commission for the Transportation Disadvantaged[9] (commission) manages such services.[10] The commission contracts with a CTC and a planning agency in each county to provide transportation services.[11] The local coordinating board[12] develops applicant-qualifying criteria. The CTC uses the qualifying criteria to determine eligibility for services.[13] Applicants must submit an application that requires the disclosure of medical and disability information, among other information.

Public Record Exemption under Review

Current law provides that personal identifying information of an applicant for or a recipient of paratransit services, held by an agency,[14] is confidential and exempt[15] from public record requirements.[16] The confidential and exempt information must be disclosed:

- With the express written consent of the applicant or recipient, or the legally authorized representative of such applicant or recipient;
- In a medical emergency, but only to the extent that is necessary to protect the health or life of the applicant or recipient;
- By court order upon a showing of good cause; or
- To another agency in the performance of its duties and responsibilities.[17]

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[7] 42 CFR 431.53

[8] *See* s. 427.0135, F.S.

[9] Part I of chapter 427, F.S., establishes the Commission for the Transportation Disadvantaged (commission) with a purpose of coordinating transportation services provided to the transportation disadvantaged and a goal of providing cost-effective transportation by qualified community transportation coordinators or operators. The commission is housed within the Department of Transportation and consists of seven members appointed by the Governor. In addition, a technical working group advises the commission on issues of importance to the state. Section 427.012, F.S.

[10] The commission has been providing transportation for AHCA under a fixed fee basis since 2004. The current multi-year contract between AHCA and the commission was executed in December 2008. *2012 Annual Performance Report Florida Commission for the Transportation Disadvantaged*, at 13 (January 1, 2013). The report is available at: http://www.dot.state.fl.us/ctd/programinfo/commissioninformation/commissioninformattion.htm (last visited March 10, 2013).

[11] *See* ss. 427.013 and 427.0155, F.S.

[12] The local coordinating board is appointed and staffed by the metropolitan planning organization or designated official planning agency, and oversees and annually evaluates the CTC.

[13] *See* ss. 427.0155 and 427.0157, F.S.

[14] 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."

[15] 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).

[16] Section 119.071(5)(h)1., F.S.

[17] Section 119.071(5)(h)3., F.S.

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. Those agencies responding to the questionnaire 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 of an applicant for or a recipient of paratransit services, which is held by an agency. The bill also makes clarifying changes.

B. SECTION DIRECTORY:

Section 1 amends s. 119.071, F.S., to save from repeal the public record exemption for personal identifying information of an applicant for or recipient of paratransit services.

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. 119.071, F.S., relating to an exemption from public records requirements for personal identifying information of an applicant for or recipient of paratransit services; clarifying provisions; removing the scheduled repeal of the exemption; providing an effective date.

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

Section 1. Paragraph (h) of subsection (5) of section 119.071, Florida Statutes, is amended to read:

119.071 General exemptions from inspection or copying of public records.—

(5) OTHER PERSONAL INFORMATION.—

(h)1. Personal identifying information of an applicant for or a recipient of paratransit services which is held by an agency is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

2. This exemption applies to personal identifying information of an applicant for or a recipient of paratransit services which is held by an agency before, on, or after the effective date of this exemption.

3. Confidential and exempt personal identifying information shall be disclosed:

a. With the express written consent of the applicant or recipient, ~~individual~~ or the ~~individual's~~ legally authorized

representative of the applicant or recipient;

b. In a medical emergency, but only to the extent that is necessary to protect the health or life of the applicant or recipient ~~individual~~;

c. By court order upon a showing of good cause; or

d. To another agency in the performance of its duties and responsibilities.

~~4. This paragraph 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 July 1, 2013.