



Agriculture & Natural Resources Subcommittee

Thursday, March 7, 2013

1:00 PM

Reed Hall (102 HOB)

**Will Weatherford
Speaker**

**Matthew H. "Matt" Caldwell
Chair**

Committee Meeting Notice

HOUSE OF REPRESENTATIVES

Agriculture & Natural Resources Subcommittee

Start Date and Time: Thursday, March 07, 2013 01:00 pm
End Date and Time: Thursday, March 07, 2013 03:00 pm
Location: Reed Hall (102 HOB)
Duration: 2.00 hrs

Consideration of the following bill(s):

HB 659 Fossil Fuel Combustion Products by Goodson
HB 707 Domestic Wastewater Discharged through Ocean Outfalls by Diaz, M.
HB 713 Water Quality Credit Trading by Pigman
HB 743 Fracturing Chemical Usage Disclosure Act by Rodrigues, R.
HB 745 Pub. Rec./Fracturing Chemical Usage Disclosure Act by Rodrigues, R.

Presentation by the Department of Agriculture and Consumer Services on their Legislative Package.

Presentation by students from Tianjin Foreign Studies University on importing Florida grapefruit into China.

NOTICE FINALIZED on 03/05/2013 16:24 by Sims-Davis.Linda

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 659 Fossil Fuel Combustion Products
SPONSOR(S): Goodson
TIED BILLS: None **IDEN./SIM. BILLS:** SB 682

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Agriculture & Natural Resources Subcommittee		Renner <i>TR</i>	Blalock <i>AKB</i>
2) Agriculture & Natural Resources Appropriations Subcommittee			
3) State Affairs Committee			

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 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," "pipe-bedding aggregate," and "structural fill."

The bill provides 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 provides 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 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. The provisions in the bill are not to be construed to limit or otherwise modify any FFCP beneficial use previously approved by DEP, 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, including blowdown, 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 government. The bill has a potentially positive fiscal impact on private and publicly-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 that generate FFCPs.

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

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.*

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

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 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 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:

- Encapsulation, including asphalt, concrete or cement products, flowable fill, and roller-compacted concrete.
- Structural fill, pavement aggregate, or pipe-bedding aggregate that meets the following requirements:
 - The FFCP is not in contact with groundwater, surface waterbodies, 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, pavement, or pipeline. Placement of the structure, pavement, or pipeline must be completed as soon as practical after placement of the fill materials.
- Substitute for roofing materials, blasting grit, or aggregate in products.
- Fertilizer products, including the use of flue-gas emission control materials, in accordance with requirements of the Department of Agriculture and Consumer Services.
- Wallboard products, plastics, paints, and insulation products.
- Metallurgical applications.
- Filter cloth precoat for sludge dewatering.
- Extraction or recovery materials and compounds contained within FFCPs.
- 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.

The bill defines "FFCPs" as fly ash; bottom ash; boiler slag; flue-gas emission control materials, including blowdown; 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," "pipe-bedding aggregate," and "structural fill."

The bill provides 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 provides 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, 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, including blowdown, 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:

See Fiscal Comments below.

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:

The DEP offered the following comments:

Section 2 includes the phrase "including blowdown", but does not define the type of blowdown. Since these types of blowdown are not currently exempted from regulation as hazardous waste there is some uncertainty about how this phrase will be interpreted.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.

1 A bill to be entitled
2 An act relating to fossil fuel combustion products;
3 creating s. 403.7047, F.S.; providing definitions;
4 providing standards for storage of certain fossil fuel
5 combustion products; providing an exemption for
6 beneficial use of fossil fuel combustion products from
7 certain rules; providing that the act does not
8 prohibit the Department of Environmental Protection
9 from taking appropriate action to regulate a
10 beneficial use in certain circumstances; providing
11 that the act does not limit other requirements
12 applicable to the beneficial use of fossil fuel
13 combustion products; providing that the act does not
14 limit the recovery of beneficial use products or the
15 authority of the department to approve the beneficial
16 use of materials other than fossil fuel combustion
17 products; clarifying that the act does not limit or
18 modify any fossil fuel combustion product beneficial
19 use previously approved by the department; amending s.
20 403.7222, F.S.; excluding certain types of facilities
21 from provisions on hazardous waste landfills;
22 providing an effective date.
23
24 WHEREAS, fossil fuel combustion products are currently used
25 in a variety of beneficial applications, and
26 WHEREAS, beneficial use of fossil fuel combustion products
27 allows certain industries and end users to avoid the mining and
28 processing of virgin materials through the substitution of

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

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

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

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

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

50

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

52

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

55 403.7047 Regulation of fossil fuel combustion products.—

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

- 57 (a) "Beneficial use" means the use of fossil fuel
 58 combustion products as substitutes for raw materials or
 59 products, or as necessary ingredients or additives in other
 60 products according to accepted industry practices. The term
 61 includes the following:
- 62 1. Encapsulation, including asphalt, concrete or cement
 63 products, flowable fill, and roller-compacted concrete.
- 64 2. Structural fill, pavement aggregate, or pipe-bedding
 65 aggregate that meets the following requirements:
- 66 a. The fossil fuel combustion product is not in contact
 67 with groundwater, surface water bodies, or wetlands and is not
 68 placed within 25 feet of a potable well that is being used or
 69 might be used for human or livestock water consumption; and
- 70 b. The placement of the fossil fuel combustion product
 71 does not extend more than 4 feet beyond the outside edge of the
 72 structure, pavement, or pipeline. Placement of the structure,
 73 pavement, or pipeline must be completed as soon as practical
 74 after placement of the fill materials.
- 75 3. Substitute for roofing materials, blasting grit, or
 76 aggregate in products.
- 77 4. Fertilizer products, including the use of flue-gas
 78 emission control materials, in accordance with applicable
 79 requirements of the Department of Agriculture and Consumer
 80 Services.
- 81 5. Wallboard products, plastics, paints, and insulation
 82 products.
- 83 6. Metallurgical applications.
- 84 7. Filter cloth precoat for sludge dewatering.

85 8. Extraction or recovery of materials and compounds
 86 contained within fossil fuel combustion products.

87 9. Waste stabilization or initial or intermediate cover
 88 material used for lined Class I, Class II, or Class III
 89 landfills, provided that the material meets applicable
 90 department rules for landfill cover or a landfill's permit
 91 conditions for cover.

92 10. Land application use for an agronomic value, land
 93 reclamation, or pilot demonstration project, or any other use
 94 that meets the criteria of s. 403.7045(1)(f) or can be
 95 demonstrated to have an equivalent or reduced potential for
 96 environmental impacts when compared to the raw products or
 97 materials other than the fossil fuel combustion products that
 98 are currently used for a similar purpose.

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

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

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

117 (e) "Pipe-bedding aggregate" means fossil fuel combustion
 118 products used as a substitute for conventional aggregate, raw
 119 material, or soil under, around, or immediately adjacent to a
 120 water, sewer, or other pipeline.

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

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

132 (3) The beneficial use of fossil fuel combustion products
 133 as provided in this section is exempt from regulation pursuant
 134 to this part and rules hereunder, but the department may take
 135 appropriate action if the beneficial use is demonstrated to be
 136 causing violations of applicable air or water quality standards
 137 or criteria in department rules, or if such beneficial use poses
 138 a significant risk to public health. This section does not limit
 139 any other requirements applicable to the beneficial use of
 140 fossil fuel combustion products established under this chapter

141 | or chapter 376 or under local or federal laws, including
 142 | requirements governing air pollution control permits, national
 143 | pollutant discharge elimination system permits, and water
 144 | quality certifications pursuant to s. 401 of the Clean Water
 145 | Act.

146 | (4) Nothing in this section shall be construed to limit
 147 | the department's authority to approve the beneficial use of
 148 | materials other than fossil fuel combustion products as defined
 149 | in this section pursuant to other provisions of this part. This
 150 | section may not be construed to limit or otherwise modify any
 151 | fossil fuel combustion product beneficial use previously
 152 | approved by the department, or the recovery of these products
 153 | for beneficial use from fossil fuel combustion product
 154 | landfills, impoundments, or storage areas.

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

157 | 403.7222 Prohibition of hazardous waste landfills.—

158 | (1) As used in this section, the term "hazardous waste
 159 | landfill" means a disposal facility or part of a facility at
 160 | which hazardous waste that has not undergone treatment is placed
 161 | in or on land, including an injection well, which is not a land
 162 | treatment facility. However, hazardous waste may not be disposed
 163 | of through an injection well or other subsurface method of
 164 | disposal, which is defined as a Class IV well in 40 C.F.R. s.
 165 | 144.6(d), except those Class I wells permitted for hazardous
 166 | waste disposal as of January 1, 1992. The department shall
 167 | annually review the operations of any such Class I well
 168 | permitted as of January 1, 1992, and prepare a report analyzing

169 any impact on groundwater systems. ~~Nothing in~~ This section may
 170 not shall be construed to refer to the products of membrane
 171 technology, including reverse osmosis, for the production of
 172 potable water where disposal is through a Class I well as
 173 defined in 40 C.F.R. s. 144.6(a), or to refer to remedial or
 174 corrective action activities conducted in accordance with 40
 175 C.F.R. s. 144.13.

176 (2) The Legislature declares that, due to the permeability
 177 of the soil and high water table in Florida, future hazardous
 178 waste landfills are prohibited. Therefore, the department may
 179 not issue a permit pursuant to s. 403.722 for a newly
 180 constructed hazardous waste landfill. However, if by executive
 181 order the Governor declares a hazardous waste management
 182 emergency, the department may issue a permit for a temporary
 183 hazardous waste landfill. Any such landfill shall be used only
 184 until such time as an appropriate alternative method of disposal
 185 can be derived and implemented. Such a permit may not be issued
 186 for a period exceeding 6 months without a further declaration of
 187 the Governor. A Class IV injection well, as defined in 40 C.F.R.
 188 s. 144.6(d), may not be permitted for construction or operation
 189 under this section.

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

194 (4) This section does not apply to a disposal facility or
 195 part of a facility that accepts fly ash, bottom ash, boiler
 196 slag, or flue-gas emission control materials, including

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197 blowdown, from the operation of a fossil fuel-fired electric or
198 steam generation facility, from a clean coal or other innovative
199 technology process at a fossil fuel-fired electric or steam
200 generation facility, or from any combination thereof.

201 Section 3. This act shall take effect July 1, 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	_____	

1 Committee/Subcommittee hearing bill: Agriculture & Natural
 2 Resources Subcommittee
 3 Representative Goodson offered the following:

Amendment

Remove lines 60-101 and insert:

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 two feet of soil. Placement of the structure, pavement, or soil must be

Amendment No. 1

21 completed as soon as practicable after placement of the fossil
22 fuel combustion product.

23 3. Roofing materials, blasting grit, or aggregate in
24 products.

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

29 5. Wallboard products, plastics, paints, and insulation
30 products.

31 6. Extraction or recovery of materials and compounds
32 contained within fossil fuel combustion products.

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

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

42 (b) "Fossil fuel combustion products" means fly ash;
43 bottom ash; boiler slag; and flue-gas emission control
44 materials; and other non-hazardous materials, such as
45

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 659 (2013)

Amendment No. 2

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	_____	

1 Committee/Subcommittee hearing bill: Agriculture & Natural
2 Resources Subcommittee
3 Representative Goodson offered the following:

4
5 **Amendment**

6 Remove lines 117-120
7

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 659 (2013)

Amendment No. 3

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	_____	

1 Committee/Subcommittee hearing bill: Agriculture & Natural
2 Resources Subcommittee
3 Representative Goodson offered the following:

Amendment

4
5
6 Remove lines 152-154 and insert:
7 approved by the department, use in the on-site construction of
8 surface impoundments, roads or similar works at fossil fuel-
9 fired electric or steam generation facilities, or the recovery
10 of these products for beneficial use from fossil fuel combustion
11 product landfills, impoundments or storage areas.
12

Amendment No. 4

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	_____	

1 Committee/Subcommittee hearing bill: Agriculture & Natural
2 Resources Subcommittee
3 Representative Goodson offered the following:

4
5 **Amendment**

6 Remove lines 196-197 and insert:
7 slag, or flue-gas emission control materials, from the operation
8 of a fossil fuel-fired electric or
9

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 707 Domestic Wastewater Discharged through Ocean Outfalls
SPONSOR(S): Diaz, Jr. and others
TIED BILLS: None **IDEN./SIM. BILLS:** SB 444

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Agriculture & Natural Resources Subcommittee		Renner <i>JR</i>	Blalock <i>MB</i>
2) Agriculture & Natural Resources Appropriations Subcommittee			
3) State Affairs Committee			

SUMMARY ANALYSIS

In 2008, SB 1302 was passed by the Legislature and signed by the governor in order 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 provides that each utility that had a permit for a domestic wastewater facility that discharged through an ocean outfall on July 1, 2008, must install, 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% 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 provides 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% 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 provides 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 appear to have a fiscal impact on state government. By providing additional flexibilities in meeting the 60% reuse requirement, along with the provision that would allow 5% of peak flows from the wastewater treatment facilities to continue to be discharged through the outfalls, there could be a potentially substantial reduction in the costs of wastewater investments necessary to make the transition from ocean outfalls to other practices like beneficial use. Thus, the bill appears to have a significant positive fiscal impact on local governments in the three affected counties.

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

STORAGE NAME: h0707.ANRS.DOCX

DATE: 3/5/2013

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 in order 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., provides 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., provides 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% 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% reuse of the diverted flows prior to December 31, 2025, are considered to contribute to meeting the 60% 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% of the sum of the total actual flows from the facilities, including flows diverted to other facilities for 100% reuse prior to December 31, 2025. In the event that treatment, in addition to the advanced wastewater treatment and management requirements, is needed in order to support a functioning reuse system, such treatment must be fully operational no later than December 31, 2025.

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.

Section 403.086(9)(d), F.S., provides 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., provides 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., provides that by December 31, 2009, and by December 31 every five 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., provides 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 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.

Section 403.086(9)(h), F.S., provides 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., provides 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., provides that an entity that diverts wastewater flow from a receiving facility that discharges domestic wastewater through an ocean outfall must meet the 60% 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 provide 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 provide 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% 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 provide 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 bill amends s. 403.086(9)(d), F.S., to provide 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 provides 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% 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.

Lastly, the bill amends s. 403.086(9)(j), F.S., to provide 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 in regards to the fiscal impact on local governments in the three affected Southeast Florida counties:

The bill's provisions providing additional flexibilities in meeting the 60% reuse requirement, along with a provision that would allow 5% 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.

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

² DEP 2013 staff analysis. On file with staff.
STORAGE NAME: h0707.ANRS.DOCX
DATE: 3/5/2013

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:

Currently, s. 403.086(9)(h), F.S., requires DEP to submit a report by Feb. 1, 2012, to the Governor and Legislature detailing the results and recommendations from phases 1 through 3 of its ongoing study on reclaimed water use. DEP has submitted this report. Therefore, this paragraph could be repealed.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.

1 A bill to be entitled
 2 An act relating to domestic wastewater discharged
 3 through ocean outfalls; amending s. 403.086, F.S.;
 4 revising the measurement standard for the wastewater
 5 flow; revising the requirements for installation of a
 6 functioning reuse system by a utility that had a
 7 permit for a domestic wastewater facility on a
 8 specified date to discharge through ocean outfall;
 9 revising the definition of the term "functioning reuse
 10 system"; changing the term "facility's actual flow on
 11 an annual basis" to "baseline flow"; revising plan
 12 requirements for the elimination of ocean outfalls;
 13 providing that certain utilities that shared a common
 14 ocean outfall on a specified date are individually
 15 responsible for meeting the reuse requirement;
 16 requiring that the Department of Environmental
 17 Protection approve certain apportionment of reuse if a
 18 facility contracts with another facility to install a
 19 functioning reuse system; revising provisions
 20 authorizing the backup discharge of domestic
 21 wastewater through ocean outfalls; requiring a holder
 22 of a department permit authorizing the discharge of
 23 domestic wastewater through an ocean outfall to submit
 24 certain information; requiring the Department of
 25 Environmental Protection, the South Florida Water
 26 Management District, and affected utilities to
 27 consider certain information for the purpose of
 28 adjusting reuse requirements; requiring the department

29 to submit a report to the Legislature; providing an
 30 effective date.

31

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

33

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

36 403.086 Sewage disposal facilities; advanced and secondary
 37 waste treatment.-

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

49 (a) The construction of new ocean outfalls for domestic
 50 wastewater discharge and the expansion of existing ocean
 51 outfalls for this purpose, along with associated pumping and
 52 piping systems, are prohibited. Each domestic wastewater ocean
 53 outfall shall be limited to the discharge capacity specified in
 54 the department permit authorizing the outfall in effect on July
 55 1, 2008, which discharge capacity shall not be increased.
 56 Maintenance of existing, department-authorized domestic

57 wastewater ocean outfalls and associated pumping and piping
 58 systems is allowed, subject to the requirements of this section.
 59 The department is directed to work with the United States
 60 Environmental Protection Agency to ensure that the requirements
 61 of this subsection are implemented consistently for all domestic
 62 wastewater facilities in the state ~~Florida~~ which discharge
 63 through ocean outfalls.

64 (b) The discharge of domestic wastewater through ocean
 65 outfalls must ~~shall~~ meet advanced wastewater treatment and
 66 management requirements by ~~no later than~~ December 31, 2018. For
 67 purposes of this subsection, the term "advanced wastewater
 68 treatment and management requirements" means the advanced waste
 69 treatment requirements set forth in subsection (4), a reduction
 70 in outfall baseline loadings of total nitrogen and total
 71 phosphorus which is equivalent to that which would be achieved
 72 by the advanced waste treatment requirements in subsection (4),
 73 or a reduction in cumulative outfall loadings of total nitrogen
 74 and total phosphorus occurring between December 31, 2008, and
 75 December 31, 2025, which is equivalent to that which would be
 76 achieved if the advanced waste treatment requirements in
 77 subsection (4) were fully implemented beginning December 31,
 78 2018, and continued through December 31, 2025. The department
 79 shall establish the average baseline loadings of total nitrogen
 80 and total phosphorus for each outfall using monitoring data
 81 available for calendar years 2003 through 2007 and ~~shall~~
 82 establish required loading reductions based on this baseline.
 83 The baseline loadings and required loading reductions of total
 84 nitrogen and total phosphorus shall be expressed as an average

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

93 (c)1. Each utility that had a permit for a domestic
 94 wastewater facility that discharged ~~discharges~~ through an ocean
 95 outfall on July 1, 2008, must ~~shall~~ install, or cause to be
 96 installed, a functioning reuse system within the utility's
 97 service area or, by contract with another utility, within Miami-
 98 Dade, Broward, or Palm Beach Counties by ~~no later than~~ December
 99 31, 2025. For purposes of this subsection, a "functioning reuse
 100 system" means an environmentally, economically, and technically
 101 feasible system that provides a minimum of 60 percent of a ~~the~~
 102 facility's baseline ~~actual~~ flow on an annual basis for
 103 irrigation of public access areas, residential properties, or
 104 agricultural crops; aquifer recharge; groundwater recharge;
 105 industrial cooling; or other acceptable reuse purposes
 106 authorized by the department. For purposes of this subsection,
 107 the term "baseline flow" ~~"facility's actual flow on an annual~~
 108 ~~basis"~~ means the annual average flow of domestic wastewater
 109 discharging through the facility's ocean outfall, as determined
 110 by the department, using monitoring data available for calendar
 111 years 2003 through 2007.

112 2. Flows diverted from facilities to other facilities that

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

132 3. If a facility that discharges through an ocean outfall
 133 contracts with another utility to install a functioning reuse
 134 system, the department must approve any apportionment of the
 135 reuse generated from the new or expanded reuse system that is
 136 intended to satisfy all or a portion of the reuse requirements
 137 pursuant to subparagraph 1. If a contract is between two
 138 utilities that have reuse requirements pursuant to subparagraph
 139 1., the reuse apportioned to each utility's requirement may not
 140 exceed the total reuse generated by the new or expanded reuse

141 system.

142 (d) The discharge of domestic wastewater through ocean
 143 outfalls is prohibited after December 31, 2025, except as a
 144 backup discharge that is part of a functioning reuse system or
 145 other wastewater management system authorized by the department
 146 ~~as provided for in paragraph (c).~~ Except as otherwise provided
 147 in this subsection, a backup discharge may occur only during
 148 periods of reduced demand for reclaimed water in the reuse
 149 system, such as periods of wet weather, or as the result of peak
 150 flows from other wastewater management systems, and must shall
 151 comply with the advanced wastewater treatment and management
 152 requirements of paragraph (b). Peak flow backup discharges from
 153 other wastewater management systems may not cumulatively exceed
 154 5 percent of a facility's baseline flow, measured as a 5-year
 155 rolling average, and are subject to applicable secondary waste
 156 treatment and water-quality-based effluent limitations specified
 157 in department rules. If peak flow backup discharges are in
 158 compliance with the effluent limitations, the discharges are
 159 deemed to meet the advanced wastewater treatment and management
 160 requirements of this subsection.

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

165 1. A detailed plan to meet the requirements of this
 166 subsection, including the identification of the technical,
 167 environmental, and economic feasibility of various reuse
 168 options; the ~~an~~ identification of each ~~all~~ land acquisition and

169 facility ~~facilities~~ necessary to provide for reuse of the
 170 domestic wastewater; an analysis of the costs to meet the
 171 requirements, including the level of treatment necessary to
 172 satisfy state water quality requirements and local water quality
 173 considerations and a cost comparison of reuse using flows from
 174 ocean outfalls and flows from other domestic wastewater sources;
 175 and a financing plan for meeting the requirements, including
 176 identifying any actions necessary to implement the financing
 177 plan, such as bond issuance or other borrowing, assessments,
 178 rate increases, fees, other charges, or other financing
 179 mechanisms. The plan must evaluate reuse demand in the context
 180 of future regional water supply demands, the availability of
 181 traditional water supplies, the need for development of
 182 alternative water supplies, the degree to which various reuse
 183 options offset potable water supplies, and other factors
 184 considered in the Lower East Coast Regional Water Supply Plan of
 185 the South Florida Water Management District. The plan must ~~shall~~
 186 include a detailed schedule for the completion of all necessary
 187 actions and ~~shall~~ be accompanied by supporting data and other
 188 documentation. The plan must ~~shall~~ be submitted by ~~no later than~~
 189 July 1, 2013.

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

196 (f) By December 31, 2009, and by December 31 every 5 years

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2013

197 thereafter, the holder of a department permit authorizing the
198 discharge of domestic wastewater through an ocean outfall shall
199 submit to the secretary of the department a report summarizing
200 the actions accomplished to date and the actions remaining and
201 proposed to meet the requirements of this subsection, including
202 progress toward meeting the specific deadlines set forth in
203 paragraphs (b) through (e). The report shall include the
204 detailed schedule for and status of the evaluation of reuse and
205 disposal options, preparation of preliminary design reports,
206 preparation and submittal of permit applications, construction
207 initiation, construction progress milestones, construction
208 completion, initiation of operation, and continuing operation
209 and maintenance.

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

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

223 (i) The renewal of each permit that authorizes the
224 discharge of domestic wastewater through an ocean outfall as of

225 July 1, 2008, must ~~shall~~ be accompanied by an order in
 226 accordance with s. 403.088(2)(e) and (f) which establishes an
 227 enforceable compliance schedule consistent with the requirements
 228 of this subsection.

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

239

240 The department, the South Florida Water Management District, and
 241 the affected utilities must consider the information in the
 242 detailed plan in paragraph (e) for the purpose of adjusting, as
 243 necessary, the reuse requirements of this subsection. The
 244 department shall submit a report to the Legislature by February
 245 15, 2015, containing recommendations for any changes necessary
 246 to the requirements of this subsection.

247

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

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 707 (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	_____	

1 Committee/Subcommittee hearing bill: Agriculture & Natural
2 Resources Subcommittee
3 Representative Diaz, M. offered the following:

4
5 **Amendment**

6 Remove lines 219-222
7

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 713 Water Quality Credit Trading
SPONSOR(S): Pigman
TIED BILLS: None **IDEN./SIM. BILLS:** SB 754

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Agriculture & Natural Resources Subcommittee		Renner <i>JR</i>	Blalock <i>AB</i>
2) Agriculture & Natural Resources Appropriations Subcommittee			
3) State Affairs Committee			

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 provides that DEP may authorize water quality credit trading in adopted BMAPs, and 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 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 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.

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

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DATE: 3/5/2013

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

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;

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

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 provides that DEP can authorize water quality credit trading in adopted BMAPs, and 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 provides 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 has a potentially 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.

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 284 of the bill, as drafted, the word 'credit' has inadvertently been omitted.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.

1 A bill to be entitled
 2 An act relating to water quality credit trading;
 3 reenacting s. 373.4595(1)(n), F.S., relating to water
 4 quality credit trading, to incorporate the amendments
 5 made to s. 403.067, F.S., in a reference thereto;
 6 amending s. 403.067, F.S.; authorizing the department
 7 to implement water quality credit trading in adopted
 8 basin management action plans on an ongoing basis;
 9 deleting a requirement that voluntary trading of water
 10 credits be limited to the Lower St. Johns River Basin;
 11 authorizing additional water quality protection
 12 programs to participate in water quality credit
 13 trading; revising provisions relating to rulemaking
 14 for water quality credit trading programs; eliminating
 15 a requirement that water quality credit trading be
 16 limited to the Lower St. Johns River Basin as a pilot
 17 project; deleting a required report; making technical
 18 changes; reenacting s. 403.088(2)(e), F.S., relating
 19 to water pollution operation permits, to incorporate
 20 the amendments made to s. 403.067, F.S., in a
 21 reference thereto; providing an effective date.

22
 23 Be It Enacted by the Legislature of the State of Florida:
 24

25 Section 1. For the purpose of incorporating the amendment
 26 made by this act to section 403.067, Florida Statutes, in a
 27 reference thereto, paragraph (n) of subsection (1) of section
 28 373.4595, Florida Statutes, is reenacted to read:

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29 | 373.4595 Northern Everglades and Estuaries Protection
30 | Program.—

31 | (1) FINDINGS AND INTENT.—

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

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

43 | 403.067 Establishment and implementation of total maximum
44 | daily loads.—

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

47 | (a) *Basin management action plans.*—

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

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

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

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

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

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

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

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

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

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

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

143 (b) *Total maximum daily load implementation.*—

144 1. The department shall be the lead agency in coordinating
 145 the implementation of the total maximum daily loads through
 146 existing water quality protection programs. Application of a
 147 total maximum daily load by a water management district must be
 148 consistent with this section and does ~~shall~~ not require the
 149 issuance of an order or a separate action pursuant to s.
 150 120.536(1) or s. 120.54 for the adoption of the calculation and
 151 allocation previously established by the department. Such
 152 programs may include, but are not limited to:

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

155 b. Nonregulatory and incentive-based programs, including
 156 best management practices, cost sharing, waste minimization,
 157 pollution prevention, agreements established pursuant to s.
 158 403.061(21), and public education;

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

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

165 e. Public works including capital facilities; or

166 f. Land acquisition.

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

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

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

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

197 best management practices or other management measures.

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

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

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

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

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

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

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

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

245 (8) WATER QUALITY CREDIT TRADING.—

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

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

252 (c) The department shall establish the pollutant load

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253 reduction value of water quality credits and is ~~shall be~~
 254 responsible for authorizing their use.

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

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

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

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

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281 completing the actions. The invalidation of credits ~~does shall~~
 282 not, in and of itself, constitute a violation of the buyer's
 283 water discharge permit.

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

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

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

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

298 (c) Water quality credit trading among the pollutant
 299 sources to a water body or water body segment. ~~By September 1,~~
 300 ~~2008, rulemaking must be initiated which provides~~ The rules must
 301 provide for the following:

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

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

307 3. Limitations on the availability and use of water
 308 quality credits, including a list of eligible pollutants or

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309 parameters and minimum water quality requirements and, where
 310 appropriate, adjustments to reflect best management practice
 311 performance uncertainties and water-segment-specific location
 312 factors.

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

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

318

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

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

327 (e) Implementation of other specific provisions.

328 ~~(10) Water quality credit trading shall be limited to the~~
 329 ~~Lower St. Johns River Basin, as defined by the department, as a~~
 330 ~~pilot project. The department may authorize water quality credit~~
 331 ~~trading and establish specific requirements for trading in the~~
 332 ~~adopted basin management action plan for the Lower St. Johns~~
 333 ~~River Basin prior to the adoption of rules under paragraph~~
 334 ~~(9)(c) in order to effectively implement the pilot project.~~
 335 ~~Entities that participate in water quality credit trades shall~~
 336 ~~timely report to the department the prices for credits, how the~~

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

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

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

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

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

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

359 (10)~~(11)~~ APPLICATION.—The provisions of this section are
 360 intended to supplement existing law, and may not ~~nothing in this~~
 361 ~~section shall~~ be construed as altering any applicable state
 362 water quality standards or as restricting the authority
 363 otherwise granted to the department or a water management
 364 district under this chapter or chapter 373. The exclusive means

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365 of state implementation of s. 303(d) of the Clean Water Act,
 366 Pub. L. No. 92-500, 33 U.S.C. ss. 1251 et seq. shall be in
 367 accordance with the identification, assessment, calculation and
 368 allocation, and implementation provisions of this section.

369 (11)~~(12)~~ CONSTRUCTION.~~Nothing in This section does not~~
 370 limit shall be construed as limiting the applicability or
 371 consideration of any mixing zone, variance, exemption, site
 372 specific alternative criteria, or other moderating provision.

373 (12)~~(13)~~ IMPLEMENTATION OF ADDITIONAL PROGRAMS.-

374 (a) The department may ~~shall~~ not implement, without prior
 375 legislative approval, any additional regulatory authority
 376 pursuant to s. 303(d) of the Clean Water Act or 40 C.F.R. part
 377 130, if such implementation would result in water quality
 378 discharge regulation of activities not currently subject to
 379 regulation.

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

387 (13)~~(14)~~ RULE CHALLENGES.-In order to provide adequate due
 388 process while ensuring timely development of total maximum daily
 389 loads, proposed rules and orders authorized by this act are
 390 ~~shall be~~ ineffective pending resolution of a s. 120.54(3), s.
 391 120.56, s. 120.569, or s. 120.57 administrative proceeding.
 392 However, the department may go forward prior to resolution of

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393 such administrative proceedings with subsequent agency actions
 394 authorized by subsections (2)-(6) if, ~~provided that~~ the
 395 department can support and substantiate those actions using the
 396 underlying bases for the rules or orders without the benefit of
 397 any legal presumption favoring, or in deference to, the
 398 challenged rules or orders.

399 Section 3. For the purpose of incorporating the amendment
 400 made by this act to section 403.067, Florida Statutes, in a
 401 reference thereto, paragraph (e) of subsection (2) of section
 402 403.088, Florida Statutes, is reenacted to read:

403 403.088 Water pollution operation permits; conditions.-
 404 (2)

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

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

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

418 3. There is no present, reasonable, alternative means of
 419 disposing of the waste other than by discharging it into the
 420 waters of the state;

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

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

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

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

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. 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	_____	

1 Committee/Subcommittee hearing bill: Agriculture & Natural
2 Resources Subcommittee
3 Representative Edwards offered the following:

4

5 **Amendment**

6 Remove line 239 and insert:
7 implement additional management strategies, including water
8 quality credit trading, to reduce pollutant
9

Amendment No. 2

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	_____	

1 Committee/Subcommittee hearing bill: Agriculture & Natural
2 Resources Subcommittee
3 Representative Edwards offered the following:

4
5 **Amendment**

6 Remove line 285 and insert:
7 adopted basin management action plans. Participation in water
8 quality credit trading is entirely voluntary. Entities that
9 participate

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 743 Fracturing Chemical Usage Disclosure Act
SPONSOR(S): Rodrigues
TIED BILLS: HB 745 **IDEN./SIM. BILLS:** SB 1028

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Agriculture & Natural Resources Subcommittee		Renner <i>JR</i>	Blalock <i>AKB</i>
2) Agriculture & Natural Resources Appropriations Subcommittee			
3) State Affairs Committee			

SUMMARY ANALYSIS

Hydraulic fracturing (fracking) is the use of fluid and material to create or restore fractures in a formation in order 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 Bureau of Land Management 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 the Division of Resource Management (Division), under the Department of Environmental Protection (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. The Division 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 the Division's website.

The owner or operator of a well on which hydraulic fracturing treatment is performed must report information as required by the Division. The well owner or operator must notify the Division 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 the DEP to adopt rules to administer the registry.

The bill appears to have an insignificant fiscal impact on state government. 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 in order 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 additives¹ 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 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% of the time according to the 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, the 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.

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 the Division of Resource Management (Division), under the 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. The Division 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 the Division’s website.

The owner or operator of a well on which hydraulic fracturing treatment is performed must report information as required by the Division. The well owner or operator must notify the Division 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 the 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 the 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 the 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 fiscal impact on DEP by requiring DEP to establish and maintain the registry described above. However, according to DEP these costs can be absorbed 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 indeterminate 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 the DEP to adopt rules to establish an online hydraulic fracturing chemical registry.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.

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1 A bill to be entitled
 2 An act relating to the Fracturing Chemical Usage
 3 Disclosure Act; creating such act and providing a
 4 short title; creating s. 377.45, F.S.; directing the
 5 Division of Resource Management of the Department of
 6 Environmental Protection to establish an online
 7 hydraulic fracturing chemical registry; requiring
 8 owners and operators of wells on which a hydraulic
 9 fracturing treatment is performed to disclose certain
 10 information; requiring certain service companies and
 11 suppliers to disclose certain information; providing
 12 exceptions; authorizing the division to adopt rules;
 13 providing an effective date.

14
 15 Be It Enacted by the Legislature of the State of Florida:
 16

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

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

21 377.45 Hydraulic fracturing chemical registry.-

22 (1)(a) The division shall establish and maintain an online
 23 hydraulic fracturing chemical registry for all wells on which
 24 hydraulic fracturing treatments are performed.

25 (b) The registry shall include, at a minimum, the total
 26 volume of water used in the hydraulic fracturing treatment and
 27 each chemical ingredient that is subject to 29 C.F.R. s.
 28 1910.1200(g)(2), for each well on which hydraulic fracturing

29 treatments are performed, as provided by a service company or
 30 chemical supplier, or by the well owner or operator if the owner
 31 or operator provides such chemical ingredients. The division may
 32 not require chemical ingredients to be identified by
 33 concentration or based on the additive in which they are found.

34 (c) The registry and the information provided pursuant to
 35 this subsection must be accessible to the public through the
 36 division's website.

37 (2)(a) The owner or operator of a well on which a
 38 hydraulic fracturing treatment is performed shall report
 39 information as required by the division. The well owner or
 40 operator must notify the division of any chemical ingredients
 41 not previously reported that are intentionally included and used
 42 for the purpose of creating a hydraulic fracturing treatment for
 43 the well.

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

49 (3) This section does not apply to ingredients that:

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

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

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

56 (4) The division may adopt rules to administer this

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57 | section.

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 745 Pub. Rec./Fracturing Chemical Usage Disclosure Act
SPONSOR(S): Rodrigues
TIED BILLS: HB 743 IDEN./SIM. BILLS:

Table with 4 columns: REFERENCE, ACTION, ANALYST, STAFF DIRECTOR or BUDGET/POLICY CHIEF. Row 1: 1) Agriculture & Natural Resources Subcommittee, Renner JR, Blalock MB. Row 2: 2) Government Operations Subcommittee. Row 3: 3) State Affairs Committee.

SUMMARY ANALYSIS

Article I, s. 24(a) of the State Constitution 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.

Hydraulic fracturing (fracking) is the use of fluid and material to create or restore fractures in a formation in order 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 to keep the fractures open such as sand, and a small percentage of chemical additives.

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 published a proposed rule that would require disclosure of the content of fracturing fluids used on lands managed by the agency.

The bill provides a public records exemption for information obtained relating to the hydraulic fracturing chemical reporting and disclosure requirements if persons who provided the information also provide suitable proof to the Division of Resource Management (Division) within the Department of Environmental Protection (DEP) that such information contains trade secrets as defined by Florida law.

The bill provides that such trade secrets are confidential and exempt from public records requirements. The person submitting the trade secret information to the Division must request it be kept confidential and exempt and provide a basis to the Division for the claim of trade secret.

The bill provides that such trade secrets may be disclosed to authorized representatives of the Division or, pursuant to request, other governmental entities in order for them to properly perform their duties, or when relevant, in any proceeding relating to hydraulic fracturing treatments.

The bill provides that this public records exemption is subject to the Open Government Sunset Review Act and will stand repealed on October 2, 2018, unless reviewed and saved from repeal through reenactment by the Legislature.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Public Records Law

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

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 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.

Hydraulic Fracturing Chemical Registry

HB 743 instructs the Division of Resource Management (Division) within the Department of Environmental Protection 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),¹ 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 Division 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 the Division's website. The owner or operator of a well on which a hydraulic fracturing treatment is performed must report information as required by the Division and notify the Division 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.

Service companies that perform hydraulic fracturing treatments 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.

¹ 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.

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.

Effect of Proposed Changes

The bill provides a public records exemption for information obtained relating to the hydraulic fracturing chemical reporting and disclosure requirements if persons who provided the information also provides suitable proof to the Division of Resource Management (Division) within the Department of Environmental Protection (DEP) that such information contains trade secrets as defined by Florida law.

The bill provides that such trade secrets are confidential and exempt from public records requirements. The person submitting the trade secret information to the Division must request it be kept confidential and exempt and provide a basis to the Division for the claim of trade secret. The Division must determine the validity of the claim of the information being a trade secret.

The bill provides that such trade secrets may be disclosed to authorized representatives of the Division or, pursuant to request, other governmental entities in order for them to properly perform their duties, or when relevant in any proceeding relating to hydraulic fracturing treatments. Authorized representatives and other governmental entities receiving such trade secrets must maintain the confidentiality of such information. This includes those involved in any proceeding relating to hydraulic fracturing treatments, including an administrative law judge, a hearing officer, or a judge or justice.

The bill provides that this public records exemption is subject to the Open Government Sunset Review Act and will stand repealed on October 2, 2018, unless reviewed and saved from repeal through reenactment by the Legislature. The bill also provides a statement of public necessity as required by the State Constitution.

B. SECTION DIRECTORY:

Section 1: Amends s. 377.45, F.S., providing an exemption from the public records requirement for trade secrets contained within information relating to hydraulic fracturing treatments obtained by the Division of Resource Management of the Department of Environmental Protection in connection with the Division's online hydraulic fracturing chemical registry; providing procedures and requirements with respect to the granting of confidential and exempt status; providing for disclosure under specified circumstances; and, providing for future legislative review and repeal of the exemption under the Open Government Sunset Review Act.

Section 2: Providing a statement of public necessity.

Section 3: Providing a contingent effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None

2. Expenditures:

None

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None

2. Expenditures:

None

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None

D. FISCAL COMMENTS:

None

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

Vote Requirement

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

Public Necessity Statement

Article I, s. 24(c) of the State Constitution, requires a public necessity statement for a newly created or expanded public record or public meeting exemption. The bill creates a public records exemption; thus, it includes a public necessity statement.

B. RULE-MAKING AUTHORITY:

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

C. DRAFTING ISSUES OR OTHER COMMENTS:

Other Comments: Retroactive Application

The Supreme Court of Florida rules that a public record exemption is not to be applied retroactively unless the legislation clearly expresses intent that such exemption is to be applied retroactively.² The bill does not contain a provision requiring retroactive application. As such, the public record exemption would apply prospectively.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None

² *Memorial Hospital-West Volusia, Inc. v. News-Journal Corporation*, 729 So.2d. 373 (Fla. 2001)

1 A bill to be entitled
 2 An act relating to public records; amending s. 377.45,
 3 F.S.; providing an exemption from public records
 4 requirements for trade secrets contained within
 5 information relating to hydraulic fracturing
 6 treatments obtained by the Division of Resource
 7 Management of the Department of Environmental
 8 Protection in connection with the division's online
 9 hydraulic fracturing chemical registry; providing
 10 procedures and requirements with respect to the
 11 granting of confidential and exempt status; providing
 12 for disclosure under specified circumstances;
 13 providing for future legislative review and repeal of
 14 the exemption under the Open Government Sunset Review
 15 Act; providing a statement of public necessity;
 16 providing a contingent effective date.

17
 18 Be It Enacted by the Legislature of the State of Florida:

19
 20 Section 1. Subsection (4) of section 377.45, Florida
 21 Statutes, as created by HB 743, 2013 Regular Session, is
 22 renumbered as subsection (5), and a new subsection (4) is added
 23 to that section, to read:

24 377.45 Hydraulic fracturing chemical registry.—

25 (4)(a) Information obtained from any person under this
 26 section, except as otherwise provided by law, shall be available
 27 to the public, except upon a showing satisfactory to the
 28 division by the person from whom the information is obtained

29 that such information, or a particular part thereof, contains
30 trade secrets as defined in s. 812.081(1)(c).

31 (b)1. Trade secrets, as defined in s. 812.081(1)(c),
32 contained within information relating to hydraulic fracturing
33 treatments obtained by the division in connection with the
34 online hydraulic fracturing chemical registry are confidential
35 and exempt from s. 119.07(1) and s. 24(a), Art. I of the State
36 Constitution.

37 2. The person submitting such trade secret information to
38 the division must request that it be kept confidential and
39 exempt and must inform the division of the basis for the claim
40 of trade secret. The department shall, subject to notice and
41 opportunity for hearing, determine whether the information, or
42 any portion thereof, claimed to be a trade secret is or is not a
43 trade secret.

44 3. Such trade secrets may be disclosed to authorized
45 representatives of the division or, pursuant to request, to
46 other governmental entities in order for them to properly
47 perform their duties, or when relevant in any proceeding under
48 this part. Authorized representatives and other governmental
49 entities receiving such trade secret information shall maintain
50 the confidentiality of such information. Those involved in any
51 proceeding under this section, including an administrative law
52 judge, a hearing officer, or a judge or justice, shall maintain
53 the confidentiality of any trade secret information revealed at
54 such proceeding.

55 4. This paragraph is subject to the Open Government Sunset
56 Review Act in accordance with s. 119.15 and shall stand repealed

57 on October 2, 2018, unless reviewed and saved from repeal
 58 through reenactment by the Legislature.

59 Section 2. The Legislature finds that it is a public
 60 necessity that trade secrets contained within information
 61 relating to hydraulic fracturing treatments obtained by the
 62 Division of Resource Management of the Department of
 63 Environmental Protection in connection with the division's
 64 online hydraulic fracturing chemical registry be made
 65 confidential and exempt from public records requirements. Trade
 66 secrets must be held confidential and exempt from public records
 67 requirements because the disclosure of such information would
 68 create an unfair competitive advantage for persons receiving
 69 such information, which would adversely impact the service
 70 company, chemical supplier, or well owner or operator that
 71 provides chemical ingredients for a well or wells on which
 72 hydraulic fracturing treatments are performed. If such
 73 confidential and exempt information regarding trade secrets were
 74 released pursuant to a public records request, others would be
 75 allowed to take the benefit of the trade secrets without
 76 compensation or reimbursement to the service company or chemical
 77 supplier or well owner or operator.

78 Section 3. This act shall take effect on the same date
 79 that HB 743 or similar legislation takes effect, if such
 80 legislation is adopted in the same legislative session or an
 81 extension thereof and becomes law.



DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES

House Agriculture and Natural Resources Subcommittee
Rep. Matt Caldwell, Chair

Department Priorities Overview
March 7, 2013

ADAM H. PUTNAM, COMMISSIONER

Grace Lovett, Director
Office of Legislative Affairs





Florida Department of Agriculture and Consumer Services

Mission

Safeguard the Public and Support Florida Agriculture

Goals

- Increase production and sale of Florida's agricultural products
- Ensure the safety and wholesomeness of food and other consumer products
- Conserve and steward the state's agricultural and natural resources
- Protect consumers from potential health and financial risks and unfair and deceptive trade practices



Animal Industry

- Directs FDACS to close one of its two animal disease diagnostic laboratories
 - Any remaining state testing will be done at the remaining lab
 - USDA is reducing its Brucellosis surveillance nationwide
 - Saves the State approximately \$400,000 annually
- Eliminates all permitting requirements for livestock haulers and the requirement for the FDACS to issue a metal tag/plate to every permitted livestock hauler.
- Eliminates the Arabian horse statutes. No other laws are present in the statutes for any other breed of horse, and the last Arabian horse race in Florida was in the 1980s.



Agricultural Environmental Services

- Provides that the FDACS create in rule a formula to distribute funds appropriated by the Legislature to the mosquito control districts based on the size of the programs in those districts
- Makes changes to Florida's Commercial Fertilizer Law
 - Moves the numeric criteria used for comparing different laboratory results for deficient fertilizer sample analysis from statute to rule
 - Moves the numeric allowance for differences inherent in laboratory analysis of fertilizer samples from statute to rule
- Eliminates the Triennial Pesticide Report
- Eliminates the Pesticide Review Council



Florida Forest Service

- Reaffirms the Legislature's intent that prescribed burning is an essential land management tool that benefits the safety of the public, the environment, and the economy of the state.
- Refines the Operation Outdoor Freedom program to better define wounded veterans and encourage private landowners to participate, giving certain liability protection for doing so.
- Requires that FDACS hold a public hearing to discuss a proposed 10-year Resource Management Plan for any given state forest.
- Revised job titles to more accurately reflect how the Florida Forest Service field units are organized.
- Removes the requirement that the Florida Forestry Council annual meeting be held in October and allows them to call a meeting at anytime.



Food, Nutrition and Wellness

- Creates a new chapter in FDACS' statutes dedicated to the Division of Food, Nutrition and Wellness. Provides for the appointment of a director—his/her powers and duties.



Plant Industry

- Allows FDACS apiary inspectors to participate within the beekeeping industry which will improve recruitment and retention of well qualified personnel to help maintain a healthy and progressive Florida Apiary Industry.
 - Inspectors will not have any oversight of apiary businesses with which they have a personal stake.



Miscellaneous

- Repeals the Gertrude Maxwell Save a Pet Direct Support Organization. The balance of the donation given to the FDACS (\$59,239) will be donated to the Florida Animal Friends, Inc.
- Allows FDACS to enter into agreements or terminate those agreements with Direct Support Organizations at will





QUESTIONS?

**DEPARTMENT OF AGRICULTURE
AND CONSUMER SERVICES**
ADAM H. PUTNAM, COMMISSIONER

Grace Lovett, Director
Office of Legislative Affairs
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**Tianjin Foreign Studies
Presentation**

Business Course & Business Plans Development



Tianjin Foreign Studies University & TCC

Florida Department of Agriculture

The Program

- **130 Chinese Students**
- **Four sections (Red, Green, Yellow, Pink)**
- **Five teams per section**
- **1/2 Grapefruit / 1/2 Emerald Coast**

<u>Topic</u>	<u>Points</u>	<u>Percent</u>
mybizlab participation	20	20%
Business Plan 1st Draft	20	20%
Business Plan Revision	20	20%
Oral Presentation	20	20%
<u>Trade Display</u>	<u>20</u>	<u>20%</u>
TOTAL	100	100%

Outline

- **Tianjin**
- **Green Orchard Business Plan**
- **Summary**





Green Orchard Inc.

Juice YoGo[®]

Grapefruit Great for You!

Contents

Description of Business

Product Uniqueness

Management Team

Business Operation

Market Strategy

Financial: 5 Year Summary

Sources and Uses of funds

Investor Benefits

Exit strategy

Conclusions

Description of Business



What do we do?

- Conduct a B2B business.
- Provide healthy and nutritious grapefruit juice.
- Advocate a healthy lifestyle.



Uniqueness

- Why choose Florida grapefruit ?
- Why choose Juice YoGo[®] ?



Target Customers

The Juice Yogo[®] is targeted at pregnant women in upper to middle income households.



Total Market

Est. women aged 25-39 in China
•325,000,000

Total Available Market

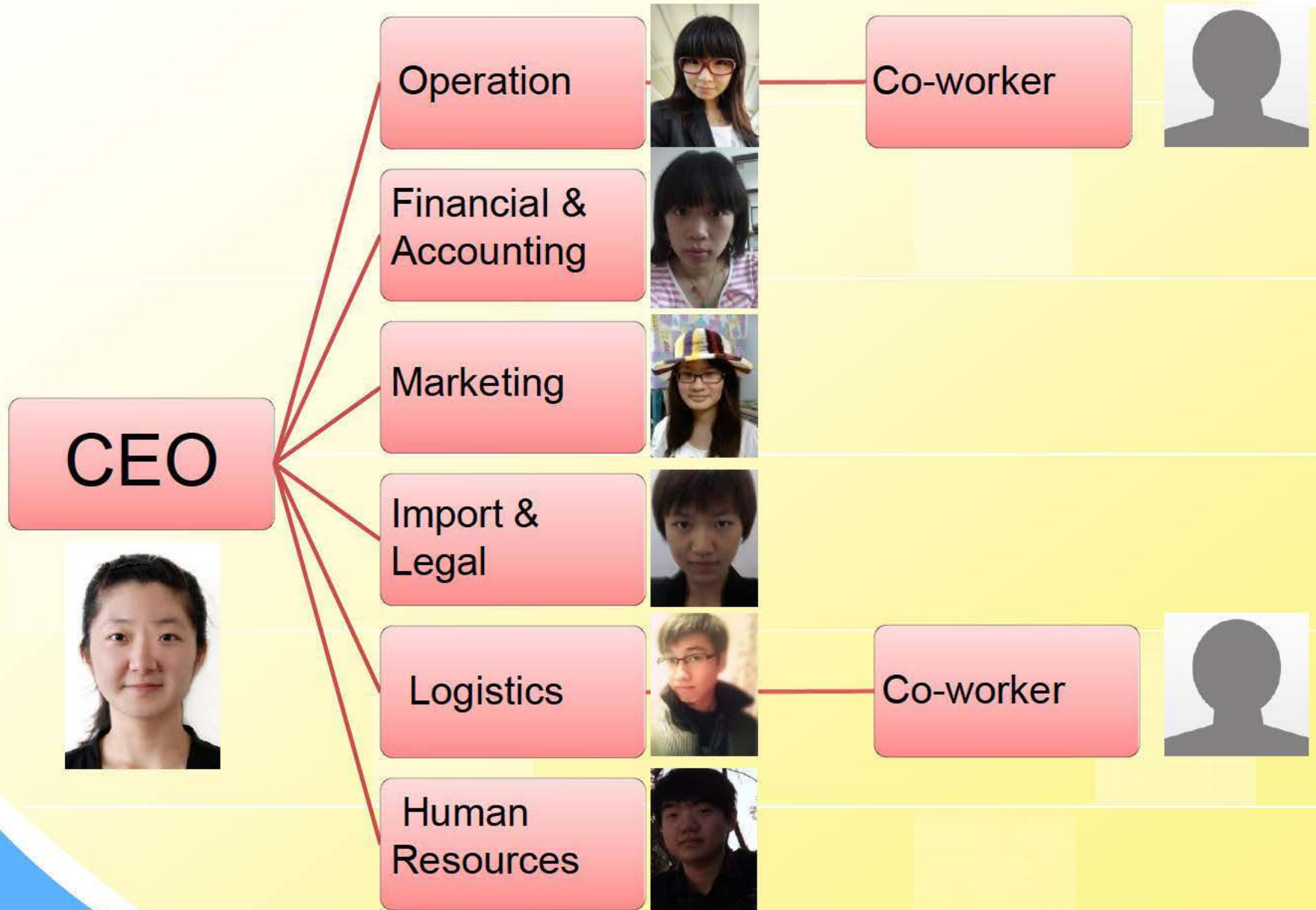
Est. 3% pregnant
10,000,000
10% customers
= 1,000,000

Maximum sales

$9 \times 4 = 36$
36,000,000 bottles
per year



Management Team



Business Operation



Jan.
To
Mar.

Preparatory stage

- Start the company Green Orchard Inc.
- Establish cooperative relations



Begins
From
Jun.

Production stage

- Research and development
- Production and sales promotion

Market Strategy



Advertising

A variety of media.



Test Market Strategy

The location of five partner maternal and infant supplies stores.



Distribution Strategy

- A. No. 55 in Tianbao Road, **Nankai** District
- B. No. 9 in Lianyuan Road, **Hongqiao** District
- D. No. 60 in Youyibei Road, **Hexi** District
- E. No. 200 in Shizilin Street, **Hebei** District
- F. No. 160 in Wandong Road, **Hedong** District

Test Market Strategy

Distribution Strategy

The location of five partners hospital convenience stores.

hospital	location
Heping Maternity Hospital	No.73 in Chifeng Road, Heping District
Hexi Maternity Hospital	No.12 in Ningbo Road, Hexi District
Hebei Maternity Hospital	No.15 in Gexin Road, Hebei District
Tianjin Central Maternity Hospital	No.156 in Sanma Road, Nankai District
Tianjin Hospital	No. 406 in Jiefangnan Road, Hexi District

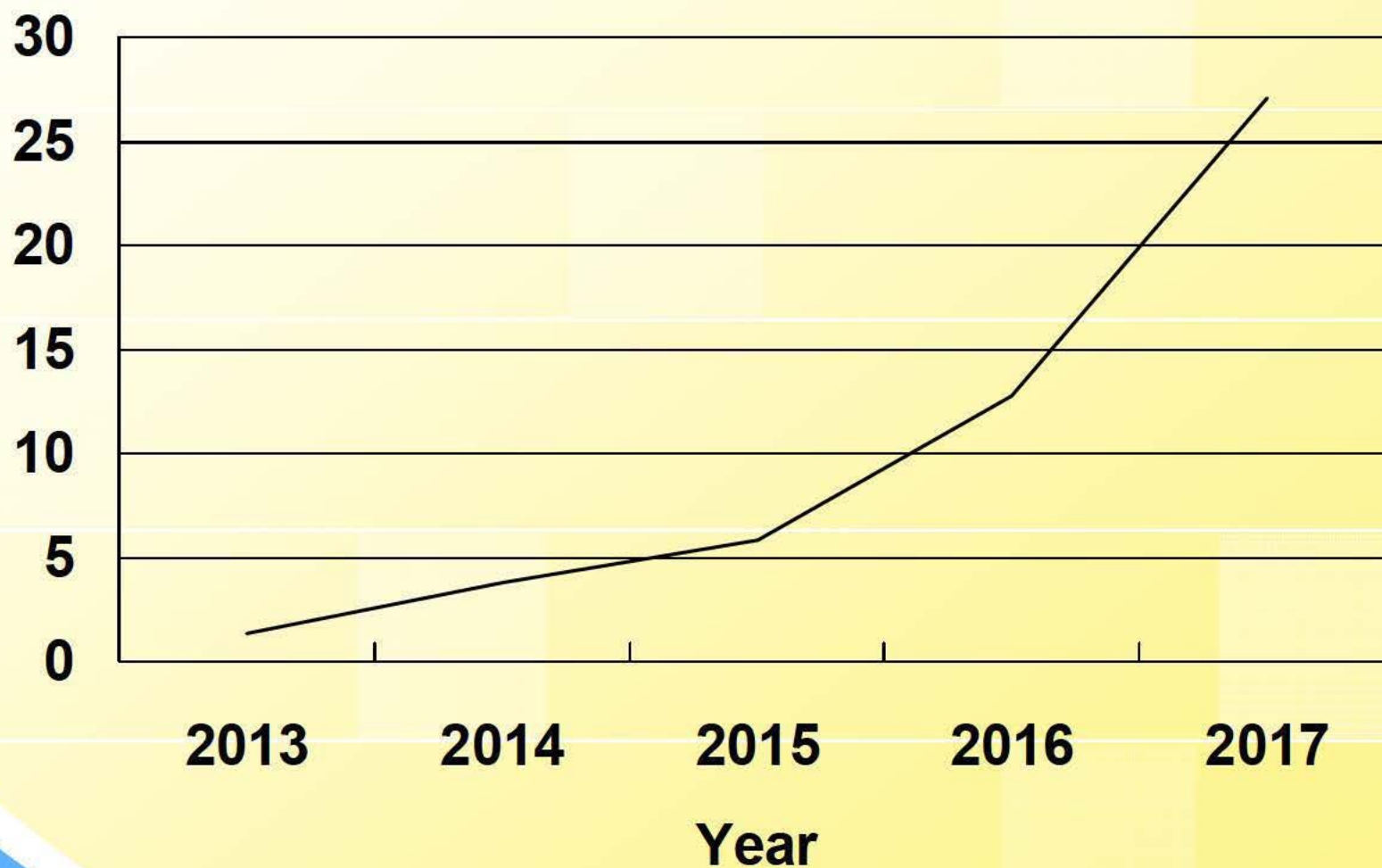
Financial Projection for Test Market

- The volume and the revenues
- Net Income
- Ending cash balance

Net Income

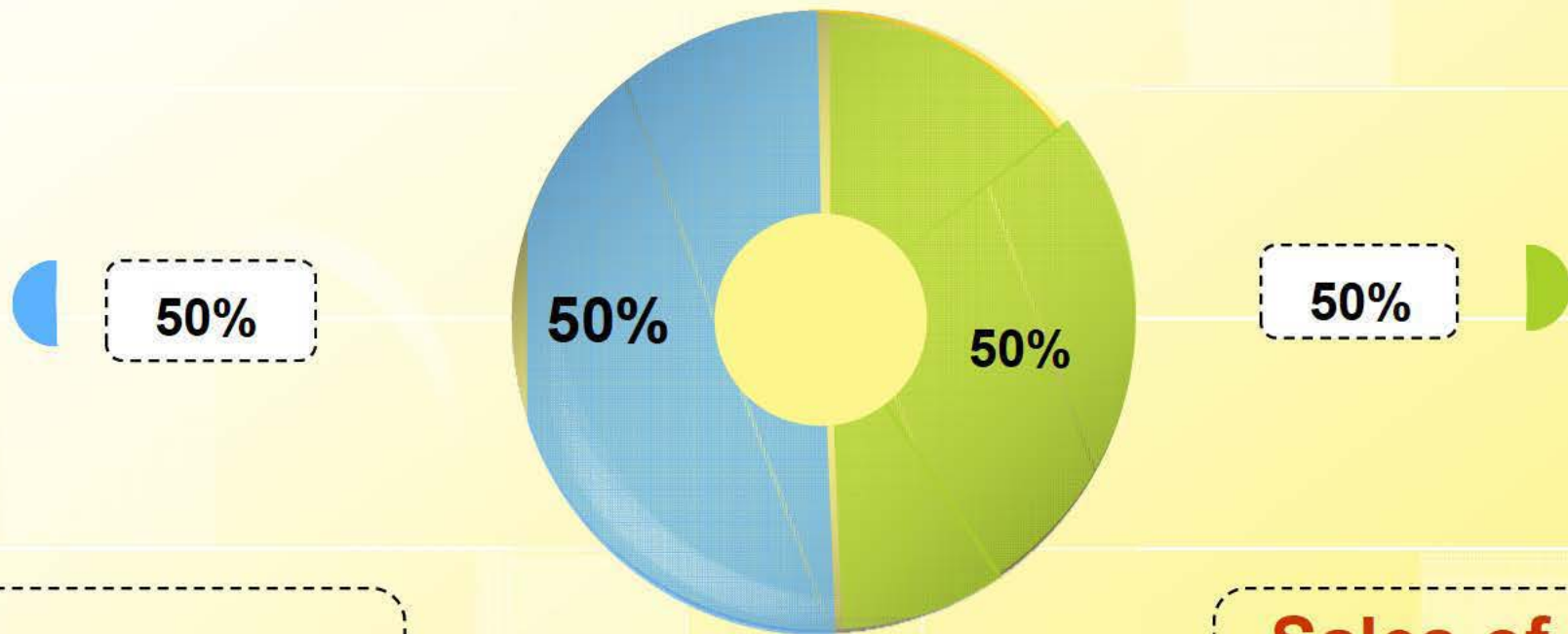
RMB
(million)

Net Income



Start-up Capital

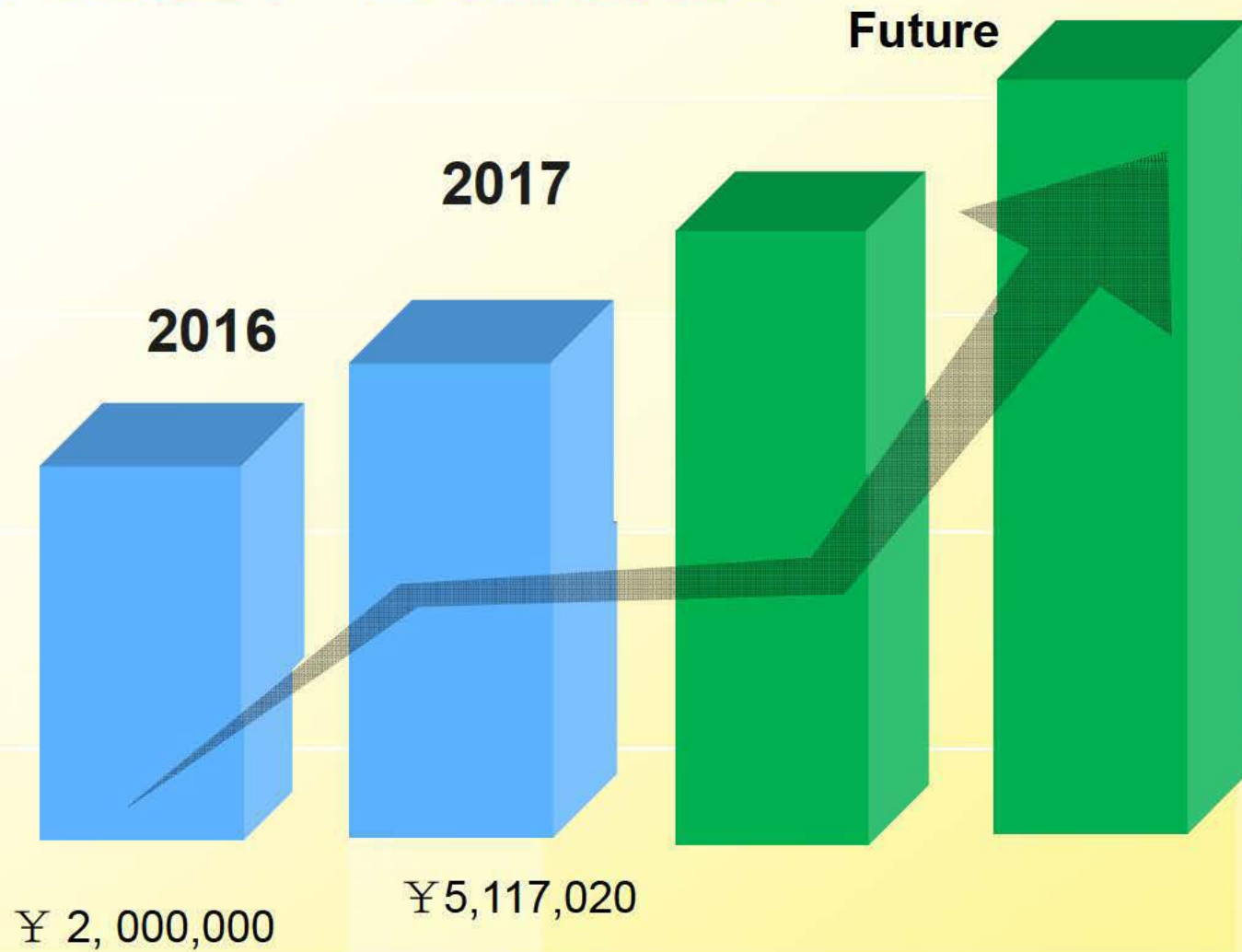
Our start-up capital is \$1,600,000.



Borrowing

**Sales of
Stock**

Investor Benefits



Investors will get returns from the forth year.

Exit Strategy

Earning Times	Earning Value ¥	Investor	Ratio %
4X	284,680,800	28,468,080	5.69
5X	355,851,000	35,585,100	7.12
6X	427,021,200	42,702,120	8.54
7X	498,191,400	49,819,140	9.96
8X	569,361,600	56,936,160	11.39
9X	640,531,800	64,053,180	12.81
10X	711,702,000	71,170,200	14.23

Total net income of \$11,861,700 will be achievable over the five year period.
After 5 years, investors will receive 10% of business yields.

Conclusion

For investors

For consumers

For society

**Juice YoGo® is your best buy !
Your Baby deserves YoGo !**



Thank You!

Green Orchard Inc.
11 Jun. 2012