



Agriculture & Natural Resources Subcommittee

**Tuesday, January 14, 2014
9:00 AM
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: Tuesday, January 14, 2014 09:00 am
End Date and Time: Tuesday, January 14, 2014 11:30 am
Location: Reed Hall (102 HOB)
Duration: 2.50 hrs

Consideration of the following bill(s):

HB 47 Crustaceans by Raschein
HB 71 Fracturing Chemical Usage Disclosure Act by Rodrigues, R.
HB 157 Pub. Rec./Fracturing Chemical Usage Disclosure Act by Rodrigues, R.

Presentation by the Florida Recycling Partnership and Keep Florida Beautiful on recycling efforts in Florida.

NOTICE FINALIZED on 01/07/2014 16:12 by Sims-Davis.Linda

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 47 Crustaceans
SPONSOR(S): Raschein and others
TIED BILLS: None **IDEN./SIM. BILLS:** SB 194

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

SUMMARY ANALYSIS

The spiny lobster and stone crab fisheries have brought in a dockside value of \$243.9 million over the past five years.¹ One hundred percent of spiny lobsters commercially harvested in the U.S. come from Florida, with approximately 90 percent harvested in the Florida Keys. The Florida commercial stone crab fishery provides 99 percent of all stone crab landings in the U.S.

Most of the fishing effort for spiny lobster and stone crab occurs in state waters and is managed by the Florida Fish and Wildlife Conservation Commission (FWC). Chapter 379, F.S., imposes regulations to ensure the long-term sustainability of the spiny lobster and stone crab, including minimum size limits, closed seasons and areas, gear restrictions, trap specifications, and a lobster trap certificate program.

In order to take spiny lobsters and stone crabs commercially, a fisherman must possess a valid Saltwater Products License and a valid Restricted Species endorsement, as well as a stone crab endorsement and either a spiny lobster endorsement or a lobster dive endorsement. Spiny lobsters and stone crabs may be harvested recreationally by anyone who has a valid recreational saltwater fishing license.

Currently, any person, firm, or corporation who violates any provision of chapter 379, F.S., or any rule of the FWC relating to the conservation of marine resources, is punished:

- Upon a first conviction, by imprisonment for not more than 60 days or by a fine of not less than \$100 or more than \$500, or by both such fine and imprisonment.
- On a second or subsequent conviction within 12 months, by imprisonment for not more than 6 months or by a fine of not less than \$250 or more than \$1,000, or by both such fine and imprisonment.

A person can also be assessed additional penalties against any commercial harvester convicted of major violations. For a violation involving more than 100 illegal blue crabs, spiny lobsters, or stone crabs, an additional penalty of \$10 for each illegal blue crab, spiny lobster, stone crab, or part thereof is imposed. In addition, the FWC has the discretion to constitute the illegal taking of spiny lobsters or stone crabs as a separate and distinct violation or as one violation no matter how many spiny lobsters or stone crabs have been taken.

The bill provides that each spiny lobster or stone crab taken in violation of chapter 379, F.S., or rules of FWC, constitutes a separate and distinct violation.

The bill appears to have a positive fiscal impact on the FWC due to an initial increase in fines assessed as a result of the change in the definition of what constitutes a violation. The bill does not appear to have a fiscal impact on local government. The bill has a potentially significant negative impact on commercial and recreational violators as each lobster or stone crab illegally taken will constitute a separate and distinct violation.

¹ FWC analysis on file with staff.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Background

The spiny lobster and stone crab fisheries have brought in a dockside value of \$243.9 million over the past five years. One hundred percent of spiny lobsters commercially harvested in the U.S. comes from Florida, with approximately 90 percent harvested in the Florida Keys. The Florida commercial stone crab fishery provides 99 percent of all stone crab landings in the U.S.

Most of the fishing effort for spiny lobster and stone crab occurs in state waters and is managed by the Florida Fish and Wildlife Conservation Commission (FWC). Chapter 379, F.S., imposes regulations to ensure the long-term sustainability of the spiny lobster and stone crab, including minimum size limits, closed seasons/areas, gear restrictions, trap specifications, and a lobster trap certificate program.

Spiny Lobster

Saltwater Products License (SPL)

The spiny lobster can be harvested both recreationally and commercially in Florida. Spiny lobsters may be harvested recreationally by anyone who has a valid recreational saltwater fishing license. The current recreational bag limit (the number of a species a person may legally harvest) for spiny lobster is six per person, per day during the regular recreational season, which runs from August 6 to March 31. The special spiny lobster sport season occurs annually on the last consecutive Wednesday and Thursday of July. Recreational fishermen may still only harvest six spiny lobsters per day in Monroe County or Biscayne National Park, but may harvest 12 spiny lobsters per day elsewhere. Recreational spiny lobster fishermen are not permitted to use traps to harvest spiny lobsters.² Recreational spiny lobster fishermen must possess a recreational saltwater fishing license and a spiny lobster permit. The license and permit fees are annual, unless otherwise specified. The fees (including a \$1.50 tax collector fee authorized by s. 379.352, F.S.) are as follows:³

Resident Saltwater Fishing Licenses	
Type of License	Fee
Annual Saltwater Fishing License	\$17.00
Youth Saltwater Fishing License (Optional for children under the age of 16 and valid until 17th birthday - a fishing license is not required until age 16)	\$17.00
5-Year Saltwater Fishing License	\$79.00
Saltwater/Freshwater Fishing License Combo	\$32.50
Saltwater/Freshwater Fishing/Hunting License Combo	\$48.00
Saltwater Shoreline License (Not valid from a vessel, from a shore reached by vessel, or if swimming or diving, and not required if you have any other valid resident saltwater fishing license listed here)	Free

² FWC 2014 analysis. On file with staff.

³ Section 379.354, F.S. A person who purchases any of these licenses from a general sales agent of the commission will also pay \$0.50 to the agent. Those purchasing online or by telephone pay a convenience fee of \$2.25 plus 2 ½ percent of the total purchase for online license purchases, and a fee of \$3.25 plus 2 ½ percent of the total purchase for telephone license purchases.

Gold Sportsman's License (Includes saltwater fishing, hunting, and freshwater fishing licenses; and snook, lobster, wildlife management area, archery, muzzleloading gun, crossbow, deer, turkey, and Florida waterfowl permits)	\$100.00
Youth Gold Sportsman's License (Optional for children under the age of 16 and valid until 17th birthday - a fishing license is not required until age 16; hunter safety certificate required; includes same licenses and permits as Gold Sportsman's License)	\$100.00
5-Year Gold Sportsman's License (Includes saltwater fishing, hunting, and freshwater fishing licenses; and snook, lobster, wildlife management area, archery, muzzleloading gun, crossbow, deer, turkey, and Florida waterfowl permits)	\$494.00
Military Gold Sportsman's License (includes saltwater fishing, hunting, and freshwater fishing licenses; and snook, lobster, wildlife management area, archery, muzzleloading gun, crossbow, deer, turkey, and Florida waterfowl permits; sold only at tax collector's office; not available as 5-year; only available to resident retired and resident active duty military)	\$20.00
Nonresident Saltwater Fishing Licenses	
Type of License	Fee
Annual License	\$47.00
3-Day License	\$17.00
7-Day License	\$30.00
Lobster Permit	
Type of Permit	Fee
Annual Permit (Available for residents and nonresidents)	\$5.00
5-Year Permit (Available for residents only)	\$25.00

The commercial spiny lobster fishing season runs from August 6 to March 31; however, there is no daily bag limit for commercial spiny lobster fishermen using traps.⁴ Commercial spiny lobster fishermen must possess a valid Saltwater Products License (SPL).⁵ A saltwater product is defined as any species of saltwater fish, marine plant, or echinoderm, except shells, and salted, cured, canned, or smoked seafood.⁶

There are three types of SPLs in Florida:

- Individual SPL – This license authorizes one person to engage in commercial fishing activities from the shore or a vessel, is issued in the individual's name, and is not tied to any one vessel.⁷
- Crew SPL – This license is the same as an individual SPL, but also authorizes each person who is fishing with the named individual aboard a vessel to engage in such activities. This allows the license holder to take a crew on any vessel and that crew is covered under the person's SPL.⁸
- Vessel SPL – This license is issued to a valid commercial vessel registration number and authorizes each person aboard that registered vessel to engage in commercial saltwater fishing activities. This is issued to a vessel, not a named individual.⁹

⁴ For those in the dive fishing industry using bully nets, the commercial daily bag limit is 250.

⁵ Section 379.361, F.S.

⁶ Section 379.101, F.S.

⁷ *Supra* at 3.

⁸ *Id.*

⁹ *Id.*

The annual fee for each type of SPL is dependent on whether the SPL is issued to a resident, a nonresident, or an alien. The fees are as follows:

Saltwater Products Licenses	Fee
Individual Resident	\$50
Individual Nonresident	\$200
Individual Alien	\$300
Crew Resident	\$150
Crew Nonresident	\$600
Crew Alien	\$900
Vessel Resident	\$100
Vessel Nonresident	\$400
Vessel Alien	\$600

A restricted species (RS) endorsement is required for those who possess an SPL and commercially harvest or sell the following species: Spanish mackerel, king mackerel, black drum, spotted sea trout, grouper, snapper, red pogy, gray triggerfish, banded rudderfish, almaco jack, golden tilefish, amberjack, sea bass/tropical/ornamental "marine life," black mullet, silver mullet, bluefish, hogfish, blue crab, stone crab, crawfish/spiny lobster, African pompano, Florida pompano, permit, sheepshead, tripletail, clams (Brevard County only), shrimp, flounder, cobia, wahoo, and dolphin.¹⁰

An RS endorsement is free; however, licensed commercial fishermen, firms, or corporations must qualify or show proof of landings reported under their SPL providing that a specified amount or percentage of their total annual income (\$5,000 or 25 percent) during one of the past three years is attributable to reported landings and sales of saltwater products to a Florida wholesale dealer.^{11,12}

A commercial spiny lobster fisherman must also possess one of the following endorsements to harvest lobster commercially:

- **Spiny lobster endorsement** – This endorsement allows fishermen to harvest lobsters with traps or bully nets. The use of traps requires trap certificates, which may be purchased or transferred from another harvester, and the purchase of current year trap tags from FWC. A current year trap tag must be permanently affixed to each trap that is used on or in state waters. There is no daily bag limit for lobsters harvested commercially with traps under this endorsement. A daily vessel limit of 250 spiny lobsters applies when lobsters are harvested using bully nets under this endorsement.¹³
- **Lobster dive endorsement** – This endorsement is required to harvest lobster in commercial quantities by diving, and can only be issued on a single vessel SPL. There is a 250 lobster per day vessel limit that is applied in Broward, Dade, Monroe, Collier, and Lee counties and adjoining federal waters when lobsters are harvested by diving under this endorsement. Trap certificates may not be held by a person with this endorsement. These endorsements are only issued to those who held a dive endorsement in 2004-2005.¹⁴

The cost of a spiny lobster endorsement for applicants who hold trap certificates is \$125. The cost is \$100 for applicants who do not hold trap certificates, which are those applicants harvesting lobsters with only a bully net or by diving pursuant to the lobster dive endorsement.

¹⁰ Rule 68B, F.A.C.

¹¹ Section 379.361, F.S. FWC 2014 analysis. On file with staff.

¹² Section 379.361(2)(b), F.S., provides certain exceptions from the income requirements.

¹³ FWC 2014 analysis. On file with staff.

¹⁴ *Id.*

Spiny Lobster Trap Certificate Program

In 1992, the Legislature created the Lobster Trap Certificate Program¹⁵ in response to concerns about the rapid growth of the lobster trap fishery, which had resulted in increased congestion and conflict on the water, excessive mortality of undersized lobsters, a declining yield per trap, and public concern over petroleum and debris pollution from existing traps. The goal of this program was to solve these and related problems by reducing the number of traps while stabilizing the fishery.

The Lobster Trap Certificate Program controls the number of traps in the lobster fishery using trap certificates that are issued to individual lobster fishermen by the FWC. Fishermen may use one lobster trap for each certificate they own. A tag comes with every certificate and must be attached to the respective trap. There is an annual \$1 fee per certificate.

The FWC is authorized to implement a trap retrieval program for the retrieval of spiny lobster and stone crab traps remaining in the water during the closed season for each species.¹⁶ Trap owners are charged a retrieval fee of \$10 per trap. Traps recovered under this program become the property of the FWC or its contract agent and must be destroyed or resold to the original owner. The revenue from retrieval fees is deposited into the Marine Resources Conservation Trust Fund and is used solely for operation of the trap retrieval program.

Payment of all assessed retrieval fees must be received by the FWC prior to renewal of the trap owner's SPL and stone crab or crawfish endorsements. Retrieval fees assessed under this program stand in lieu of other penalties imposed for such trap violations.

Stone Crabs

In the stone crab fishery, only the stone crab's claws are taken. The claws can be removed if they are both at least the legal size (2 ¾ inches).¹⁷ The stone crab will regenerate new claws within 18 months. Stone crabs must be returned to the water once the claws are removed.¹⁸ Taking whole stone crabs is prohibited under Florida law.¹⁹ Female crabs with eggs also may not be harvested.²⁰

Stone crab claws can be harvested commercially and recreationally during the open season, which begins on October 15 and ends on May 15 of the following year. In order to take stone crabs commercially, a fisherman must possess a valid SPL and a valid RS, discussed above. Commercial stone crab fishermen must also possess a stone crab endorsement, which costs \$125.

Like spiny lobsters, stone crabs are captured with traps and thus require trap certificates and the purchase of current year trap tags from FWC, as discussed above.

To harvest stone crab claws recreationally, a person must possess a recreational saltwater fishing license. There is no additional permit required. Recreational harvesters may use up to five stone crab traps to harvest stone crabs with the recreational fishing license.

¹⁵ See s. 379.3671, F.S.

¹⁶ Section 379.368, F.S.

¹⁷ Rule 68B-13.007(1), F.A.C.

¹⁸ Rule 68B-13.007(2), F.A.C.

¹⁹ *Id.*

²⁰ Rule 68B-13.007(4), F.A.C.

Penalties

Currently,²¹ any person, firm, or corporation who violates any provision of chapter 379, F.S., or any rule of the FWC relating to the conservation of marine resources is punished:

- Upon a first conviction, by imprisonment for not more than 60 days or by a fine of not less than \$100 or more than \$500, or by both such fine and imprisonment.
- Upon a second or subsequent conviction within 12 months, by imprisonment for not more than 6 months or by a fine of not less than \$250 or more than \$1,000, or by both such fine and imprisonment.

A person can also be assessed additional penalties against any commercial harvester convicted of major violations. For a violation involving more than 100 illegal blue crabs, spiny lobsters, or stone crabs, an additional penalty of \$10 for each illegal blue crab, spiny lobster, stone crab, or part thereof is imposed. In addition, the FWC has the discretion to constitute the illegal taking of spiny lobsters or stone crabs as a separate and distinct violation or as one violation no matter how many spiny lobsters or stone crabs have been taken.

Effect of Proposed Changes

The bill provides that each spiny lobster or stone crab taken in violation of chapter 379, F.S., or rules of FWC, constitutes a separate and distinct violation. This is true whether the violation is of a commercial or recreational law, and regardless of who commits the offense.

The bill may impact the following FWC rules, which generally relate to size limits, trap limits, or trap tags:

- Rule 68B-6.003, F.A.C. – Florida Keys National Marine Sanctuary: Prohibited Activities in Specified State Waters
- Rule 68B-4.019, F.A.C. – Prohibition of Trap Pullers on Recreational and Certain Commercial Vessels
- Rule 68B-4.020, F.A.C. – Saltwater Fish Traps
- Rule 68B.5.002, F.A.C. – John Pennekamp Coral Reef State Park: Prohibition on Harvest of Certain Species, Size Limit
- Rule 68B-11.003, F.A.C. – Molesting, Taking or Trapping Spiny Lobster in Sanctuary Prohibited Without Special Permit; Penalties for Violation
- Rule 68B-11.004, F.A.C. – Violation of Sanctuary Rules; Passage Through and Temporary Safe Refuge in Sanctuary with Spiny Lobster Aboard Allowed Under Certain Conditions
- Rule 68B-13.005, F.A.C. – Designation as Restricted Species; Season; Repeal of Special Act
- Rule 68B-13.006, F.A.C. – Licenses, Endorsements, and Permits
- Rule 68B-13.007, F.A.C. – Restrictions on Size and on Transport and Possession of Stone Crabs and Stone Crab Claws
- Rule 68B-13.008, F.A.C. – Gear, Trap Construction, Commercial Trap Marking Requirements, Trap Working Regulations, Trap Transfer
- Rule 68B-13.009, F.A.C. – Recreational Stone Crab Harvesting: Bag Limit, Trap Limit, Trap Marking Requirements, Trap Pulling
- Rule 68B-13.010, F.A.C. – Stone Crab Trap Limitation Program
- Rule 68B-13.011, F.A.C. – Prohibitions
- Rule 68E-18.004, F.A.C. – Spiny Lobster Trap Tags
- Rule 68B-24.003, F.A.C. – Minimum Size Limits
- Rule 68B-24.0035, F.A.C. – Special Recreational Crawfish (Spiny Lobster) License

²¹ Section 379.407, F.S.
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- Rule 68B-24.004, F.A.C. – Bag Limit
- Rule 68B-24.0045, F.A.C. – Importation of Spiny Lobster; Documentation and Other Requirements
- Rule 68B-24.005, F.A.C. – Seasons
- Rule 68B-24.0055, F.A.C. – Commercial Requirements; Appeals
- Rule 68B-24.006, F.A.C. – Gear: Trap, Buoys, Identification Requirements, Prohibited Devices
- Rule 68B-24.0065, F.A.C. – Special Provisions for John Pennekamp Coral Reef State Park in Monroe County: Closure During two-day Sport Season; Closure of Coral Formation Protection Zones
- Rule 68B-24.007, F.A.C. – Other Prohibitions
- Rule 68B-38.001, F.A.C. – Citrus-Hernando Shrimping and Trapping Closed Areas and Seasons

B. SECTION DIRECTORY:

Section 1. Amends s. 379.407, F.S., relating to spiny lobster and stone crab violations.

Section 2. Amends s. 379.2431, F.S., conforming a cross-reference.

Section 3. Provides an effective date of July 1, 2014.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

According to the FWC, the bill could create a positive fiscal impact due to an initial increase in fines assessed as a result of the change in the definition of what constitutes a violation.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill has a potentially significant negative impact on commercial and recreational violators as each lobster or stone crab illegally taken will constitute a separate and distinct violation.

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:

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

C. DRAFTING ISSUES OR OTHER COMMENTS:

Stone crabs are harvested for their claws only, and then released back into the water. The bill language does not specifically cover the harvest/take of stone crab claws.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.

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1 A bill to be entitled
 2 An act relating to crustaceans; amending s. 379.407,
 3 F.S.; providing that certain violations relating to
 4 spiny lobsters and stone crabs are separate and
 5 distinct offenses; amending s. 379.2431, F.S.;
 6 conforming a cross-reference; providing an effective
 7 date.

8
 9 Be It Enacted by the Legislature of the State of Florida:

10
 11 Section 1. Subsection (1) of section 379.407, Florida
 12 Statutes, is amended to read:

13 379.407 Administration; rules, publications, records;
 14 penalties; injunctions.—

15 (1) BASE PENALTIES.—Unless otherwise provided by law:—

16 (a) ~~A violation any person, firm, or corporation who~~
 17 ~~violates any provision~~ of this chapter, or the rules ~~any rule~~ of
 18 the ~~Fish and Wildlife Conservation~~ commission relating to the
 19 conservation of marine resources is punishable, ~~shall be~~
 20 punished:

21 1.(a) ~~Upon~~ a first conviction, by imprisonment for a
 22 ~~period of~~ not more than 60 days or by a fine of not less than
 23 \$100 or ~~not~~ more than \$500, or by both such fine and
 24 imprisonment.

25 2.(b) ~~Upon~~ ~~On~~ a second or subsequent conviction within 12
 26 months, by imprisonment for not more than 6 months or by a fine
 27 of not less than \$250 or ~~not~~ more than \$1,000, or by both such
 28 fine and imprisonment.

29 (b) Each spiny lobster or stone crab taken in violation of
 30 this chapter or the rules of the commission constitutes a
 31 separate and distinct violation.

32
 33 Upon final disposition of an ~~any~~ alleged offense for which a
 34 citation for a ~~any~~ violation of this chapter or the rules of the
 35 commission has been issued, the court shall, within 10 days,
 36 certify the disposition to the commission.

37 Section 2. Paragraph (s) of subsection (2) of section
 38 379.2431, Florida Statutes, is amended to read:

39 379.2431 Marine animals; regulation.—

40 (2) PROTECTION OF MANATEES OR SEA COWS.—

41 (s) Except as otherwise provided in this paragraph, a ~~any~~
 42 person violating the provisions of this subsection or a ~~any~~ rule
 43 or ordinance adopted pursuant to this subsection commits a
 44 misdemeanor, punishable as provided in s. 379.407(1)(a) ~~or (b)~~.

45 1. A ~~Any~~ person operating a vessel in excess of a posted
 46 speed limit commits ~~shall be guilty of~~ a civil infraction,
 47 punishable as provided in s. 327.73, except as provided in
 48 subparagraph 2.

49 2. This paragraph does not apply to a person ~~persons~~
 50 violating restrictions governing "No Entry" zones or "Motorboat
 51 Prohibited" zones, who, if convicted, commits ~~shall be guilty of~~
 52 a misdemeanor, punishable as provided in s. 379.407(1)(a) ~~or~~
 53 ~~(b)~~, or, if such violation demonstrates blatant or willful
 54 action, may be found guilty of harassment as described in
 55 paragraph (d).

56 3. A person may engage in an ~~any~~ activity otherwise

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57 | prohibited by this subsection or a ~~any~~ rule or ordinance adopted
 58 | pursuant to this subsection if the activity is reasonably
 59 | necessary in order to prevent the loss of human life or a vessel
 60 | in distress due to weather conditions or other reasonably
 61 | unforeseen circumstances, or in order to render emergency
 62 | assistance to a person ~~persons~~ or a vessel in distress.

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

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 Raschein offered the following:

Amendment (with title amendment)

Remove everything after the enacting clause and insert:

Section 1. Subsections (5) through (8) of section 379.407,
 Florida Statutes, are renumbered as subsections (6) through (9),
 respectively, and a new subsection (5) is added to that section
 to read:

379.407 Administration; rules, publications, records;
 penalties; injunctions.—

(5) PENALTIES FOR POSSESSION OF SPINY LOBSTER; CLOSED
 SEASON AND WRUNG TAILS.—It is a major violation under this
 section for any person, firm, or corporation to be in possession
 of spiny lobster during the closed season or, while on the
 water, to be in possession of spiny lobster tails that have been

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18 wrung or separated from the body, unless such possession is
19 allowed by commission rule. Any person, firm, or corporation
20 that violates this subsection is subject to penalties as
21 follows:

22 (a) A first violation is a misdemeanor of the second
23 degree, punishable as provided in s. 775.082 or s. 775.083. If
24 the violation involves 25 or more lobster, the violation is a
25 misdemeanor of the first degree, punishable as provided in s.
26 775.082 or s. 775.083.

27 (b) A second violation is a misdemeanor of the first
28 degree, punishable as provided in s. 775.082 or s. 775.083, and
29 such person is subject to a suspension of all license privileges
30 under this chapter for a period not to exceed 90 days.

31 (c) A third violation is a misdemeanor of the first
32 degree, punishable as provided in s. 775.082 or s. 775.083, with
33 a mandatory minimum term of imprisonment of 6 months, and such
34 person may be assessed a civil penalty of up to \$2,500 and is
35 subject to a suspension of all license privileges under this
36 chapter for a period not to exceed 6 months.

37 (d) A third violation within 1 year after a second
38 violation is a felony of the third degree, punishable as
39 provided in s. 775.082 or s. 775.083, with a mandatory minimum
40 term of imprisonment of 1 year, and such person shall be
41 assessed a civil penalty of \$5,000 and all license privileges
42 under this chapter shall be permanently revoked.

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43 (e) A fourth or subsequent violation is a felony of the
44 third degree, punishable as provided in s. 775.082 or s.
45 775.083, with a mandatory minimum term of imprisonment of 1
46 year, and such person shall be assessed a civil penalty of
47 \$5,000 and all license privileges under this chapter shall be
48 permanently revoked.

49 Section 2. Paragraph (a) of subsection (2) of section
50 379.401, Florida Statutes, is amended to read:

51 379.401 Penalties and violations; civil penalties for
52 noncriminal infractions; criminal penalties; suspension and
53 forfeiture of licenses and permits.—

54 (2)(a) LEVEL TWO VIOLATIONS.—A person commits a Level Two
55 violation if he or she violates any of the following provisions:

56 1. Rules or orders of the commission relating to seasons
57 or time periods for the taking of wildlife, freshwater fish, or
58 saltwater fish.

59 2. Rules or orders of the commission establishing bag,
60 possession, or size limits or restricting methods of taking
61 wildlife, freshwater fish, or saltwater fish.

62 3. Rules or orders of the commission prohibiting access or
63 otherwise relating to access to wildlife management areas or
64 other areas managed by the commission.

65 4. Rules or orders of the commission relating to the
66 feeding of wildlife, freshwater fish, or saltwater fish.

67 5. Rules or orders of the commission relating to landing
68 requirements for freshwater fish or saltwater fish.

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- 69 6. Rules or orders of the commission relating to
70 restricted hunting areas, critical wildlife areas, or bird
71 sanctuaries.
- 72 7. Rules or orders of the commission relating to tagging
73 requirements for wildlife and fur-bearing animals.
- 74 8. Rules or orders of the commission relating to the use
75 of dogs for the taking of wildlife.
- 76 9. Rules or orders of the commission which are not
77 otherwise classified.
- 78 10. Rules or orders of the commission prohibiting the
79 unlawful use of finfish traps.
- 80 11. All prohibitions in this chapter which are not
81 otherwise classified.
- 82 12. Section 379.33, prohibiting the violation of or
83 noncompliance with commission rules.
- 84 13. Section 379.407(7) ~~379.407(6)~~, prohibiting the sale,
85 purchase, harvest, or attempted harvest of any saltwater product
86 with intent to sell.
- 87 14. Section 379.2421, prohibiting the obstruction of
88 waterways with net gear.
- 89 15. Section 379.413, prohibiting the unlawful taking of
90 bonefish.
- 91 16. Section 379.365(2)(a) and (b), prohibiting the
92 possession or use of stone crab traps without trap tags and
93 theft of trap contents or gear.

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94 17. Section 379.366(4)(b), prohibiting the theft of blue
95 crab trap contents or trap gear.

96 18. Section 379.3671(2)(c), prohibiting the possession or
97 use of spiny lobster traps without trap tags or certificates and
98 theft of trap contents or trap gear.

99 19. Section 379.357, prohibiting the possession of tarpon
100 without purchasing a tarpon tag.

101 20. Rules or orders of the commission prohibiting the
102 feeding or enticement of alligators or crocodiles.

103 21. Section 379.105, prohibiting the intentional
104 harassment of hunters, fishers, or trappers.

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

106

107

108

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

109

Remove everything before the enacting clause and insert:

110

A bill to be entitled

111

An act relating to spiny lobster; amending s. 379.407,

112

F.S.; providing penalties for certain violations

113

relating to possession of spiny lobster; amending s.

114

379.401, F.S.; conforming a cross-reference; providing

115

an effective date.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 71 Fracturing Chemical Usage Disclosure Act

SPONSOR(S): Rodrigues

TIED BILLS: IDEN./SIM. BILLS:

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

SUMMARY ANALYSIS

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

The composition of hydraulic 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 hydraulic 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. 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 taking place; however, fracturing is not prohibited under Florida law.

The bill establishes the "Fracturing Chemical Usage Disclosure Act," (Act). The bill directs 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. DEP may designate FracFocus.org., a chemical disclosure registry, as the state's official registry, and must provide a link to the FracFocus.org website on the department's website. Any registry established by DEP pursuant to the Act 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, by a service provider or vendor, or by the well owner or operator if the owner or operator provides such chemical ingredients. Solely for the purpose of this Act, DEP may not require chemical ingredients to be identified by concentration or based on the additive in which they are found. If the chemical disclosure registry is unable to accept and make publicly available any information, the service provider, vendor, or well owner or operator must submit the information to DEP.

The bill also provides that the service provider, vendor, or owner or operator of a well on which hydraulic fracturing treatment is performed must report information within 60 days after the initiation of hydraulic fracturing operations for each well on which hydraulic fracturing treatment is performed; must update the Chemical Disclosure Registry; and must notify DEP of any chemical ingredients not previously reported that are intentionally included and used for the purpose of hydraulically fracturing a 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 DEP to adopt rules to administer the registry.

The bill appears to have a minimal fiscal impact on DEP for establishing a registry and rulemaking. 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 is the use of fluid and material to create or restore fractures in a formation to stimulate production from new and existing oil and gas wells. The pressurized mixture causes the rock layer to crack. The fissures are held open to allow natural gas to flow up the well. Hydraulic 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 hydraulic 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 hydraulic 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 hydraulic 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 (BLM), part of the Department of the Interior, published a proposed rule that would require disclosures about chemicals used in fracturing on federal and Indian lands.³ Due, in part, to receiving a high volume of comments, BLM does not have a target date for finishing the rule.⁴

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 hydraulic fracturing fluid must be disclosed, including how specifically parties must describe the chemical makeup of the hydraulic 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.⁵ A permit is required to drill the well necessary to explore oil and gas reserves. If oil is discovered, which only occurs 3 percent of the time according to DEP, the drilling permit covers 90 days for testing. Hydraulic fracturing could occur during this time as part of a work over request, pursuant to Rule 62C-25, F.A.C. If the well is successful, DEP issues an operating permit following testing. Currently, there is no hydraulic fracturing being done in Florida. The last hydraulic fracturing event in Florida occurred almost 10 years ago and was unsuccessful.⁶

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 Phone conversation between staff and the division chief of the Fluid Minerals Division of BLM on December 11, 2013.

⁵ Rules 62C-25, 62C-26, 62C-27, and 62C-28, F.A.C., promulgate these statutes.

⁶ DEP 2014 analysis. On file with staff.

Effects of Proposed Changes

The bill establishes the "Fracturing Chemical Usage Disclosure Act," (Act) and creates s. 377.45(1), F.S., directing DEP to establish and maintain an online hydraulic fracturing chemical registry for all wells on which hydraulic fracturing treatments are performed. DEP may designate FracFocus.org, a chemical disclosure registry, as the state's official registry, and must provide a link to the FracFocus.org website on the department's website. Any registry established by DEP pursuant to the Act 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)⁷, for each well on which hydraulic fracturing treatments are performed by a service provider or vendor, or by the well owner or operator if the owner or operator provides such chemical ingredients. Solely for the purpose of this Act, DEP may not require chemical ingredients to be identified by concentration or based on the additive in which they are found. If the chemical disclosure registry is unable to accept and make publicly available any information, the service provider, vendor, or well owner or operator must submit the information, required in this Act, to DEP.

The bill also provides that the service provider, vendor, or owner or operator of a well on which hydraulic fracturing treatment is performed must:

- Report information, as required above, within 60 days after the initiation of hydraulic fracturing operations for each well on which hydraulic fracturing treatment is performed;
- Update the Chemical Disclosure Registry; and
- Notify DEP of any chemical ingredients not previously reported that are intentionally included and used for the purpose of hydraulically fracturing a 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.

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

B. SECTION DIRECTORY:

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

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

Section 3. Provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

⁷ 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:
See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:
None.
2. Expenditures:
None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill requires a service provider, vendor, or owner or operator to report certain information, as described above, which could result in an insignificant negative fiscal impact.

D. FISCAL COMMENTS:

The bill could create a minimal fiscal impact on DEP if the department chooses to establish and maintain its own Chemical Disclosure Registry. According to DEP, there would be an insignificant fiscal impact on the department resulting from rule development; however, the cost can be absorbed within its existing budget.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:
None.

B. RULE-MAKING AUTHORITY:

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

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.

HB 71

2014

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 Department of Environmental Protection to establish an
 6 online hydraulic fracturing chemical registry;
 7 requiring service providers, vendors, and owners or
 8 operators of wells on which a hydraulic fracturing
 9 treatment is performed to disclose certain
 10 information; providing for applicability; authorizing
 11 the department to adopt rules; providing an effective
 12 date.

13
 14 Be It Enacted by the Legislature of the State of Florida:

15
 16 Section 1. This act may be cited as the "Fracturing
 17 Chemical Usage Disclosure Act."

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

20 377.45 Hydraulic fracturing chemical registry.-

21 (1) As used in this section, the term "department" means
 22 the Department of Environmental Protection.

23 (2)(a) The department shall establish and maintain an
 24 online hydraulic fracturing chemical registry for all wells on
 25 which hydraulic fracturing treatments are performed. The
 26 department may designate the Chemical Disclosure Registry, known
 27 as FracFocus.org and developed by the Groundwater Protection
 28 Council and the Interstate Oil and Gas Compact Commission, as

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2014

29 the state's official registry. The department shall provide a
 30 link to the national hydraulic fracturing chemical registry
 31 website, FracFocus.org, through the department's website.

32 (b) The registry shall include, at a minimum, the total
 33 volume of water used in the hydraulic fracturing treatment and
 34 each chemical ingredient that is subject to 29 C.F.R. s.
 35 1910.1200(g) (2) for each well on which hydraulic fracturing
 36 treatments are performed by a service provider or vendor or by
 37 the well owner or operator if the owner or operator provides
 38 such chemical ingredients. The department may not, solely for
 39 purposes of this subsection, require chemical ingredients to be
 40 identified by concentration or based on the additive in which
 41 they are found.

42 (c) If the Chemical Disclosure Registry is unable to
 43 accept and make publicly available any information specified in
 44 this section, the service provider, vendor, or well owner or
 45 operator shall submit the information to the department.

46 (3) A service provider, vendor, or well owner or operator
 47 shall:

48 (a) Report information as required under subsection (2)
 49 within 60 days after initiation of hydraulic fracturing
 50 operations for each well on which a hydraulic fracturing
 51 treatment is performed.

52 (b) Update the Chemical Disclosure Registry.

53 (c) Notify the department of any chemical ingredients not
 54 previously reported that are intentionally included and used for
 55 the purpose of hydraulically fracturing a well.

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

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

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

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

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

Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	<u> </u>	(Y/N)
ADOPTED AS AMENDED	<u> </u>	(Y/N)
ADOPTED W/O OBJECTION	<u> </u>	(Y/N)
FAILED TO ADOPT	<u> </u>	(Y/N)
WITHDRAWN	<u> </u>	(Y/N)
OTHER	<u> </u>	

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

4

5 **Amendment**

6 Remove line 23 and insert:

7 (2)(a) The department shall designate or establish an

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Amendment No. 2

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	<u> </u>	(Y/N)
ADOPTED AS AMENDED	<u> </u>	(Y/N)
ADOPTED W/O OBJECTION	<u> </u>	(Y/N)
FAILED TO ADOPT	<u> </u>	(Y/N)
WITHDRAWN	<u> </u>	(Y/N)
OTHER	<u> </u>	

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

4
5 **Amendment**

6 Remove line 29 and insert:
7 the state's official registry. If the department designates
8 FracFocus.org as the state's official registry, the department
9 shall provide a

10

Amendment No. 3

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	<u> </u>	(Y/N)
ADOPTED AS AMENDED	<u> </u>	(Y/N)
ADOPTED W/O OBJECTION	<u> </u>	(Y/N)
FAILED TO ADOPT	<u> </u>	(Y/N)
WITHDRAWN	<u> </u>	(Y/N)
OTHER	<u> </u>	

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

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5 **Amendment**

6 Remove line 32 and insert:

7 (b) Any registry established by the department shall
8 include, at a minimum, the total

9

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 157 Pub. Rec./Fracturing Chemical Usage Disclosure Act

SPONSOR(S): Rodrigues

TIED BILLS: HB 71 **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Agriculture & Natural Resources Subcommittee		Renner <i>AR</i>	Blalock <i>AFB</i>
2) Government Operations Subcommittee			
3) State Affairs Committee			

SUMMARY ANALYSIS

HB 71 directs 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. DEP may designate FracFocus.org, a chemical disclosure registry, as the state's official registry, and must provide a link to the FracFocus.org website on the department's website. Any registry established by DEP pursuant to the "Fracturing Chemical Usage Disclosure Act" (Act) must include, at a minimum, the total volume of water used in the hydraulic fracturing treatment and each chemical ingredient for each well on which hydraulic fracturing treatments are performed by a service provider or vendor, or by the well owner or operator if the owner or operator provides such chemical ingredients. Solely for the purpose of this Act, DEP may not require chemical ingredients to be identified by concentration or based on the additive in which they are found. If the chemical disclosure registry is unable to accept and make publicly available any information, the service provider, vendor, or well owner or operator must submit the information, required in this Act, to DEP.

This bill, which is linked to the passage of HB 71 or similar legislation, creates a public records exemption for trade secrets relating to hydraulic fracturing treatments held by DEP in connection with the online hydraulic fracturing chemical registry.

The person submitting trade secret information to DEP who wishes to maintain confidentiality of that information must request that the information be kept confidential and exempt, provide a basis to DEP for the claim of trade secret, and clearly mark each portion of a document containing information claimed to be a trade secret as "trade secret." If DEP receives a public records request for information claimed as a trade secret under this bill, DEP must promptly notify the person who submitted the information. That person then has 30 days to file a court action to seek an order barring disclosure of the information. DEP may not release the information if any such action is pending. Failure to file an action within 30 days constitutes a waiver of any claim to confidentiality.

Confidential and exempt trade secrets may be disclosed to another governmental entity in order for such entity to properly perform its statutory duties and responsibilities. In addition, such trade secrets may be disclosed, when relevant, in any proceeding relating to hydraulic fracturing treatments.

The bill provides that the public records exemption is subject to the Open Government Sunset Review Act and will stand repealed on October 2, 2019, unless reviewed and saved from repeal through reenactment by the Legislature. It also provides a statement of public necessity as required by the State Constitution.

Article I, s. 24(c) of the State Constitution, requires a two-thirds vote of the members present and voting for final passage of a newly created or expanded public record of public meeting exemption. The bill 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. This section guarantees every person a right to inspect or copy any public record of the legislative, executive, and judicial branches of government. The Legislature, however, may provide by general law for the exemption of records from the requirements of Article I, s. 24(a) of the State Constitution. The general law must state with specificity the public necessity justifying the exemption (public necessity statement) and must be no broader than necessary to accomplish its purpose.¹

Public policy regarding access to government records is addressed further in the Florida Statutes. Section 119.07(1), F.S., guarantees every person a right to inspect and copy any state, county, or municipal record. Furthermore, the Open Government Sunset Review Act² 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.

House Bill 71, Hydraulic Fracturing Chemical Registry

HB 71 directs DEP to establish and maintain an online hydraulic fracturing chemical registry for all wells on which hydraulic fracturing treatments are performed.

DEP may designate FracFocus.org, a chemical disclosure registry, as the state's official registry, and must provide a link to the FracFocus.org website on the department's website. Any registry established by DEP pursuant to the Act must include, at a minimum, the total volume of water used in the hydraulic fracturing treatment and each chemical ingredient for each well on which hydraulic fracturing treatments are performed by a service provider or vendor, or by the well owner or operator if the owner or operator provides such chemical ingredients. Solely for the purpose of this Act, DEP may not require chemical ingredients to be identified by concentration or based on the additive in which they are found. If the chemical disclosure registry is unable to accept and make publicly available any information, the service provider, vendor, or well owner or operator must submit the information, required in this Act, to DEP.

The service provider, vendor, or owner or operator of a well on which a hydraulic fracturing treatment is performed must report information as required by s. 377.45(2), F.S.; update the Chemical Disclosure Registry; and notify DEP of any chemical ingredients not previously reported that are intentionally included and used for the purpose of creating a hydraulic fracturing treatment for the well.

¹ Section 24(c), Art. I of the State Constitution.

² See s. 119.15, F.S.

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.

Effect of Proposed Changes

The bill, which is linked to the passage of HB 71 or similar legislation, creates a public records exemption for trade secrets³ relating to hydraulic fracturing treatments held by DEP in connection with the online hydraulic fracturing chemical registry. The bill provides that such trade secrets are confidential and exempt⁴ from public records requirements.

A person submitting trade secret information to DEP who wishes to maintain confidentiality of such information must request that it be kept confidential and exempt, provide a basis to DEP for the claim of trade secret, and clearly mark each portion of a document containing information claimed to be a trade secret as "trade secret." If DEP receives a public records request for a document that is marked trade secret, DEP must promptly notify the person who submitted the information as a trade secret. The notice must inform such person that the person has 30 days following receipt of the notice to file an action in circuit court seeking a determination whether the information in question contains trade secrets and an order barring public disclosure of the information. If the person files an action within 30 days after receipt of the notice, DEP may not release the documents pending the outcome of the legal action. Failure to file an action within 30 days constitutes a waiver of any claim of confidentiality, and DEP must release the document as requested.

Confidential and exempt trade secrets may be disclosed to another governmental entity in order for such entity to properly perform its statutory duties and responsibilities. In addition, such trade secrets may be disclosed, when relevant, in any proceeding relating to hydraulic fracturing treatments. Those involved in any proceeding relating to hydraulic fracturing treatments, including an administrative law judge, a hearing officer, or a judge or justice, must maintain the confidentiality of any trade secret information released at such proceeding.

³ The bill provides that the public records exemption applies to trade secrets as defined in s. 812.081(1)(c), F.S. That paragraph defines the term "trade secret" to mean the whole or any portion or phase of any formula, pattern, device, combination of devices, or compilation of information which is for use, or is used, in the operation of a business and which provides the business an advantage, or an opportunity to obtain an advantage, over those who do not know or use it. "Trade secret" includes any scientific, technical, or commercial information, including any design, process, procedure, list of suppliers, list of customers, business code, or improvement thereof. Irrespective of novelty, invention, patentability, the state of the prior art, and the level of skill in the business, art, or field to which the subject matter pertains, a trade secret is considered to be:

1. Secret;
2. Of value;
3. For use or in use by the business; and
4. Of advantage to the business, or providing an opportunity to obtain an advantage, over those who do not know or use it

When the owner thereof takes measures to prevent it from becoming available to persons other than those selected by the owner to have access thereto for limited purposes.

⁴ There is a difference between records the Legislature designates as exempt from public record requirements and those the Legislature deems confidential and exempt. A record classified as exempt from public disclosure may be disclosed under certain circumstances. See *WFTV, Inc. v. The School Board of Seminole*, 874 So.2d 48, 53 (Fla. 5th DCA 2004), review denied 892 So.2d 1015 (Fla. 2004); *City of Riviera Beach v. Barfield*, 642 So.2d 1135 (Fla. 4th DCA 1994); *Williams v. City of Minneola*, 575 So.2d 687 (Fla. 5th DCA 1991). If the Legislature designates a record as confidential and exempt from public disclosure, such record may not be released, by the custodian of public records, to anyone other than the persons or entities specifically designated in the statutory exemption. See Attorney General Opinion 85-62 (August 1, 1985).

The bill also provides that the public records exemption is subject to the Open Government Sunset Review Act and will stand repealed on October 2, 2019, unless reviewed and saved from repeal through reenactment by the Legislature. It 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 public records requirements for trade secrets relating to hydraulic fracturing treatments held by DEP in connection with the department's online hydraulic fracturing chemical registry; providing procedures and requirements with respect to maintaining the confidentiality of trade secrets; 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: Provides a statement of public necessity.

Section 3: Provides a contingent effective date to match the effective date of HB 71 or similar legislation, if such legislation is adopted in the same legislative session and becomes law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

See FISCAL COMMENTS.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

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

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

Vote Requirement

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

Breadth of Exemption

Article I, s. 24(c) of the State Constitution requires a newly created public record or public meeting exemption to be no broader than necessary to accomplish the stated purpose of the law. The bill creates a public record exemption limited to information submitted to DEP that is a trade secret. The exemption does not appear to be in conflict with the constitutional requirement that the exemption be no broader than necessary to accomplish its purpose.

B. RULE-MAKING AUTHORITY:

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 ruled that a public record exemption is not to be applied retroactively unless the legislation clearly expresses intent that such exemption is to be applied as such.⁵ The bill does not contain a provision requiring retroactive application. As such, the public records exemption would apply prospectively.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.

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A bill to be entitled
 An act relating to public records; amending s. 377.45,
 F.S.; providing an exemption from public records
 requirements for trade secrets relating to hydraulic
 fracturing treatments held by the Department of
 Environmental Protection in connection with the
 department's online hydraulic fracturing chemical
 registry; providing procedures and requirements with
 respect to maintaining the confidentiality of such
 trade secrets; providing for disclosure under
 specified circumstances; providing for future
 legislative review and repeal of the exemption under
 the Open Government Sunset Review Act; providing a
 statement of public necessity; providing a contingent
 effective date.

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

Section 1. Subsection (5) of section 377.45, Florida
 Statutes, as created by HB 71, 2014 Regular Session, is
 renumbered as subsection (6), and a new subsection (5) is added
 to that section, to read:

377.45 Hydraulic fracturing chemical registry.—

(5) (a) Trade secrets, as defined in s. 812.081(1)(c),
 relating to hydraulic fracturing treatments held by the
 department in connection with the online hydraulic fracturing

27 | chemical registry, are confidential and exempt from s. 119.07(1)
 28 | and s. 24(a), Art. I of the State Constitution if the person
 29 | submitting such trade secret to the department:

30 | 1. Requests that the trade secret be kept confidential and
 31 | exempt;

32 | 2. Informs the department of the basis for the claim of
 33 | the trade secret; and

34 | 3. Clearly marks each page of a document or specific
 35 | portion of a document containing information claimed to be a
 36 | trade secret as "trade secret."

37 | (b) If the department receives a public records request
 38 | for a document that is marked trade secret under this section,
 39 | the department must promptly notify the person who submitted the
 40 | information as a trade secret. The notice must inform such
 41 | person that the person has 30 days following receipt of such
 42 | notice to file an action in circuit court seeking a
 43 | determination whether the document in question contains trade
 44 | secrets and an order barring public disclosure of the document.
 45 | If the person files an action within 30 days after receipt of
 46 | notice of the public records request, the department may not
 47 | release the documents pending the outcome of the legal action.
 48 | The failure to file an action within 30 days constitutes a
 49 | waiver of any claim of confidentiality, and the department shall
 50 | release the document as requested.

51 | (c) Confidential and exempt trade secrets may be
 52 | disclosed:

53 1. To another governmental entity in order for such entity
 54 to properly perform its statutory duties and responsibilities;
 55 or

56 2. When relevant in any proceeding under this part. Those
 57 involved in any proceeding under this section, including, but
 58 not limited to, an administrative law judge, a hearing officer,
 59 or a judge or justice, must maintain the confidentiality of any
 60 trade secret information revealed at such proceeding.

61 (d) This paragraph is subject to the Open Government
 62 Sunset Review Act in accordance with s. 119.15 and shall stand
 63 repealed on October 2, 2019, unless reviewed and saved from
 64 repeal through reenactment by the Legislature.

65 Section 2. The Legislature finds that it is a public
 66 necessity that trade secrets, as defined in s. 812.081(1)(c),
 67 Florida Statutes, relating to hydraulic fracturing treatments
 68 held by the Department of Environmental Protection in connection
 69 with the online hydraulic fracturing chemical registry be made
 70 confidential and exempt from s. 119.07(1), Florida Statutes, and
 71 s. 24(a), Article I of the State Constitution. Trade secrets
 72 must be held confidential and exempt from public records
 73 requirements because the disclosure of such information would
 74 create an unfair competitive advantage for persons receiving
 75 such information, which would adversely impact the service
 76 company, chemical supplier, or well owner or operator that
 77 provides chemical ingredients for a well or wells on which
 78 hydraulic fracturing treatments are performed. If such

HB 157

2014

79 | confidential and exempt information regarding trade secrets were
80 | released pursuant to a public records request, others would be
81 | allowed to take the benefit of the trade secrets without
82 | compensation or reimbursement to the service company or chemical
83 | supplier or well owner or operator.

84 | Section 3. This act shall take effect on the same date
85 | that HB 71 or similar legislation takes effect, if such
86 | legislation is adopted in the same legislative session or an
87 | extension thereof and becomes law.



**FLORIDA
RECYCLING**
PARTNERSHIP

Keyna Cory
Executive Director

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**FLORIDA
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**Office
DEPOT.**

About us ...

- Florida Recycling Partnership is a coalition of businesses and associations dedicated to improving Florida's recycling rates. Our members are proactively implementing initiatives in their organizations and companies to reduce the waste they produce, and increase recycled materials. Additionally our companies are working to create greater recycling opportunities for consumers. They believe in the symbols ... reduce, reuse and recycle!
- Florida Recycling Partnership mission is to educate policy makers and the general public on the benefits of recycling. Our members believe developing and adopting sustainable business practices will promote recycling, reduce waste, and increase the reuse of materials whenever possible.
- Outreach initiatives will be designed to educate and encourage Florida businesses and individuals to maximize existing recycling programs. When economically and technologically feasible expand outreach programs to include other materials

Florida Recycles Day

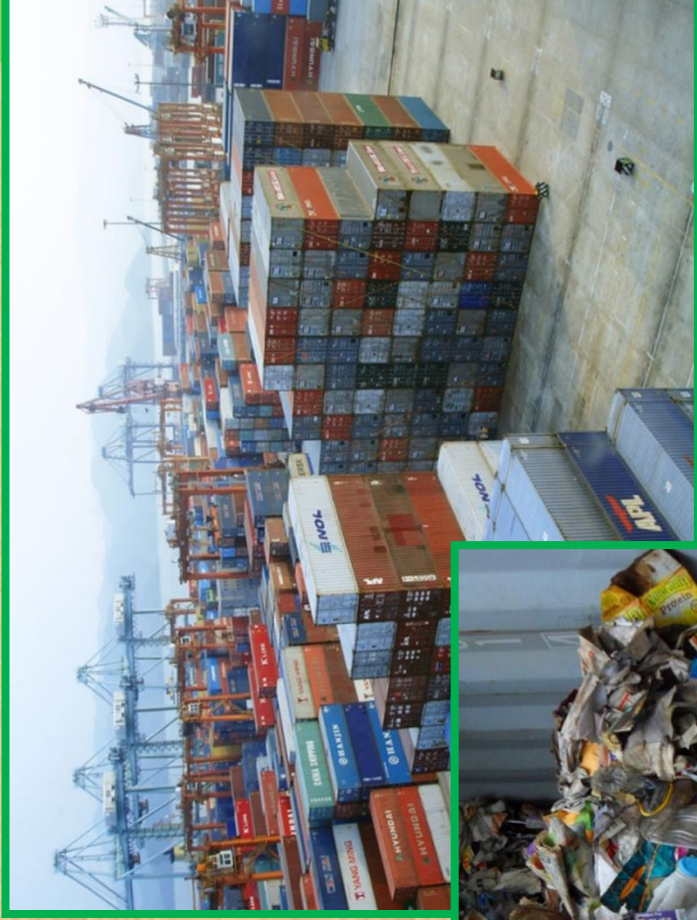


**Florida Legislature Established
statewide recycling goal of 75%
by 2020**

**Commercial Municipal Solid
Waste - 55%**

China's Green Fence

“Operation Green Fence” began February 2013





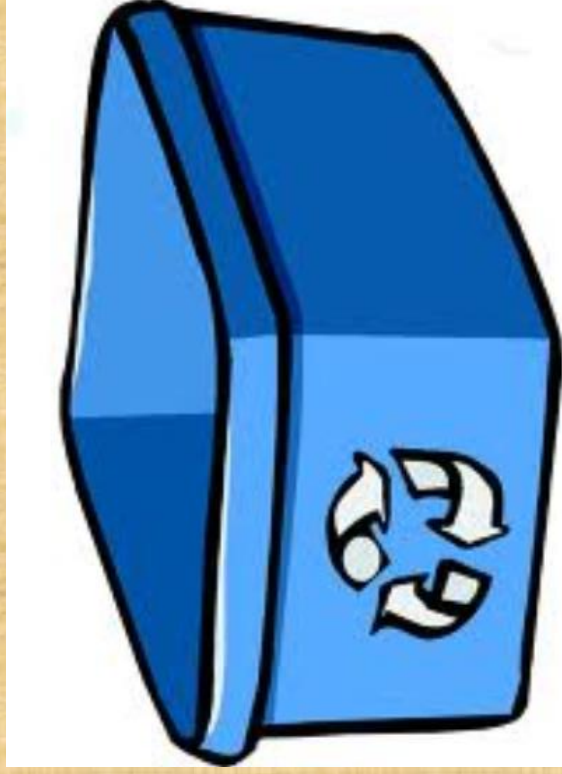
- Chuck Dees
 - Vice President of Governmental Affairs Waste Management of Florida Inc.
<http://www.youtube.com/watch?v=DfhOLtE4R5A>



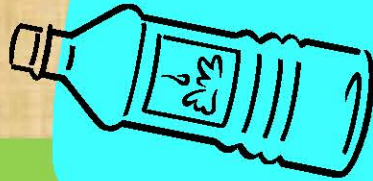
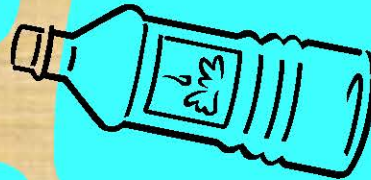
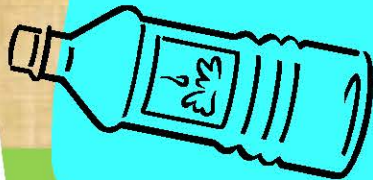
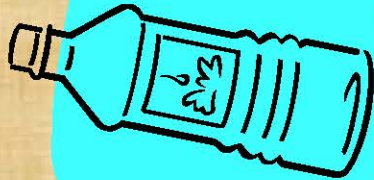
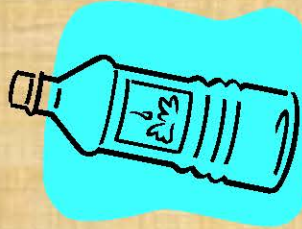
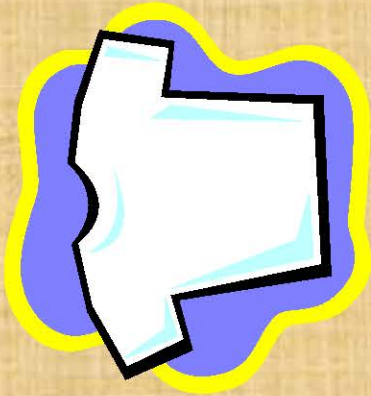
National Waste & Recycling Association

Collect. Recycle. Innovate.

- www.beginwiththebin.com

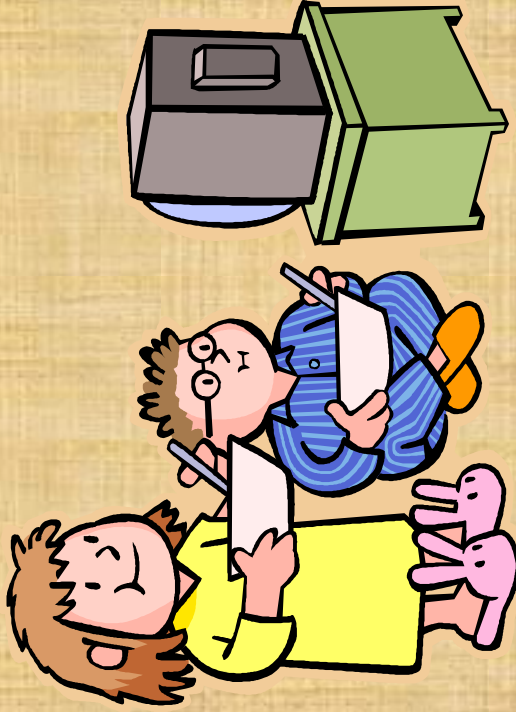


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Recycling: Innovate. Activate. Motivate.

- **Innovate:** Committed to using 100 percent recyclable containers, and will continue to innovate with package engineering
- **Activate:** Researching and supporting community programs that make recycling more convenient for consumers to increase recycling rates across the country
- **Motivate:** Using sophisticated marketing capabilities to encourage consumers to recycle



Public Space Recycling Pilot Project in Palm Beach County





689 Properties Designated

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Kim Brunson

Recycle & SW Manager

get into a
greenroutine[™]
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Click on Corporate Sustainability

Recycling = Jobs

State Recycling and Reuse Business

- Employs 32,000 people**
- Annual Payroll \$765 Million**
- Annual Revenue \$4.4 Billion**

Below are some of the suggestions from Florida Recycling Partnership ...

- Lead by example by incorporating recycling programs within businesses
- Use recyclable or reusable packaging whenever feasible
- Design packaging for recyclability
- Design packaging that requires less material in order to conserve natural resources
- Educate businesses and individuals on how to use their bins so not to contaminate materials
- To provide leadership and collaboration with organizations to expand recycling markets and improve recycling quality

Education and Public Awareness

DEP Recycling Recognition Award Program



So Remember...



Reduce, Reuse, Recycle



**For membership information,
please contact:**

Keyna Cory
Keyna@firecycling.org
(850) 728-1054

Post Office Box 10683 – Tallahassee, FL 32302

FLORIDA
KEYS



Beautiful



Keep Florida Beautiful is the state affiliate of Keep America Beautiful, (KAB) the nation's largest volunteer based community action and education organization

Snapshot of 2013 Keep Florida Beautiful

41 certified affiliates with a total of 300,000 volunteers which are critical to Florida's beautification, litter reduction and recycling efforts

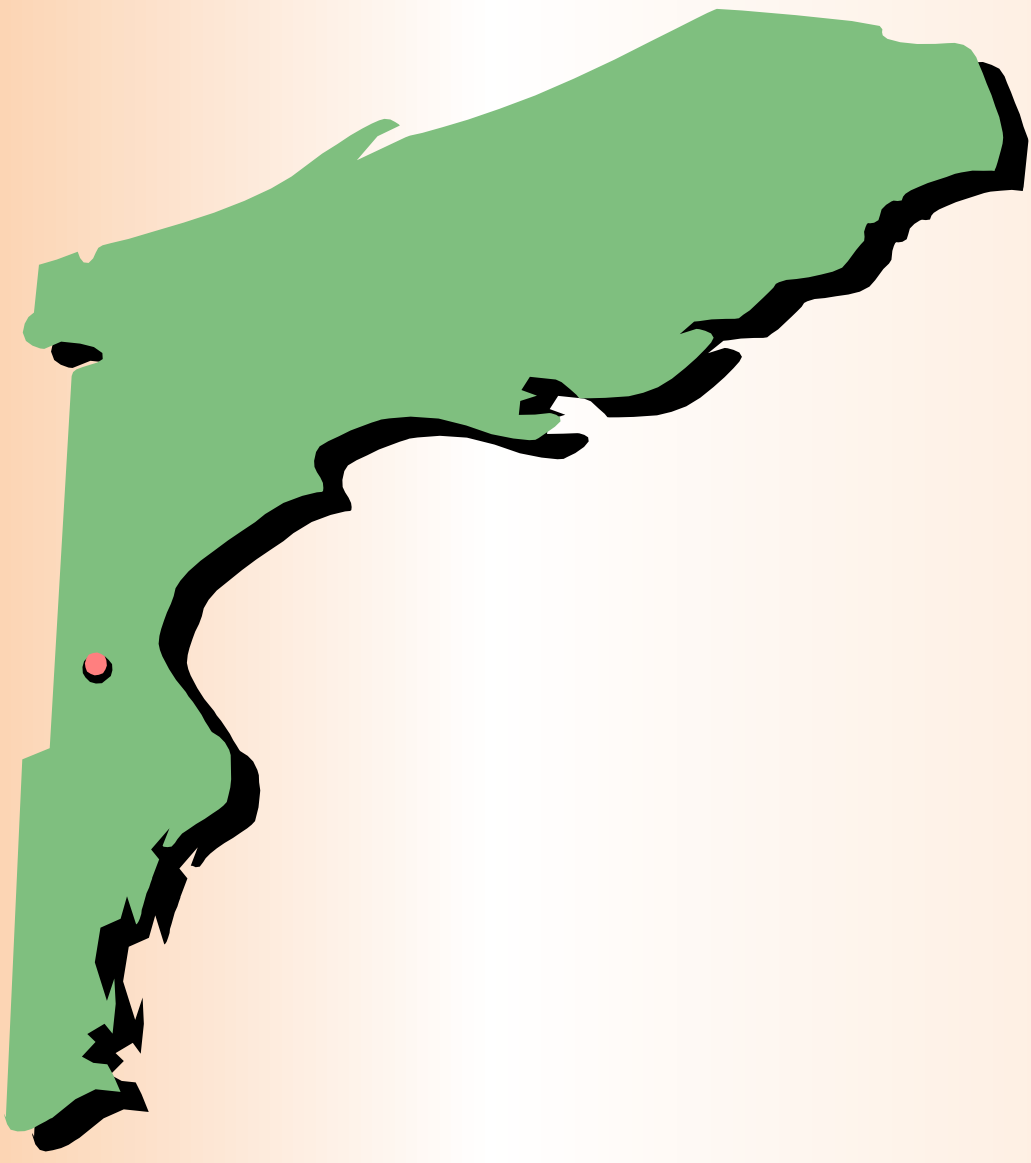


During an average year, KFB and our affiliates conduct over 7,000 litter cleanup events, remove over 5 million pounds of litter, plant 30,000 trees and plants and conduct over 600 Recycling/Litter Reduction workshops.



Examples of KFB activities:

- Tallahassee
- Orlando
- Miami
- Jacksonville
- Tampa



Litter clean ups

2007 – 1,930

2012 – 7,672

Increase of almost 400%

Average annual pounds of litter removed

3,390,155



2012 Volunteers Hours

562,388

Affiliates Down

2000 – 50

Today - 41





**For more information:
Larry Weber, President
Keep Florida Beautiful**

(321) 543-4582

larryweber08@yahoo.com

