Agriculture & Natural Resources Subcommittee

Tuesday, March 4, 2014
1:30 PM
Reed Hall (102 HOB)

MEETING PACKET

Will Weatherford
Speaker

Matthew H. "Matt" Caldwell
Chair

Committee Meeting Notice

HOUSE OF REPRESENTATIVES

(AMENDED 3/3/2014 11:30:06AM)

Amended(1)

Agriculture & Natural Resources Subcommittee

Start Date and Time:	Tuesday, March 04, 2014 01:30 pm
End Date and Time:	Tuesday, March 04, 2014 03:30 pm
Location:	Reed Hall (102 HOB)
Duration:	2.00 hrs

Consideration of the following proposed committee bill(s):

PCB ANRS 14-01 -- Department of Agriculture and Consumer Services

PCB ANRS 14-02 -- Restoration of Petroleum Contaminated Sites

Consideration of the following bill(s):

HB 575 Agriculture by Albritton, Raburn

HB 601 Reclaimed Water by Ray

Consideration of the following proposed committee substitute(s):

PCS for HB 703 -- Environmental Regulation

NOTICE FINALIZED on 03/03/2014 11:30 by Love.John

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 575 Agriculture
SPONSOR(S): Albritton and others
TIED BILLS: None **IDEN./SIM. BILLS:** CS/SB 312

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Agriculture & Natural Resources Subcommittee		Filaroski	Blalock
2) Finance & Tax Subcommittee			
3) State Affairs Committee			

SUMMARY ANALYSIS

The Florida Constitution authorizes land to be classified by law as "agricultural" and to be assessed "solely on the basis of its character and use" for ad valorem taxation purposes, as opposed to an assessment based on the "highest and best use," which is required for most property. To implement the Florida Constitution, current law provides that land may be classified as "agricultural" if it is used for "bona fide agricultural purposes." Additionally, the law allows land in a citrus quarantine or eradication program to continue to be classified as agricultural, and, in some cases, to be assessed at a de minimis value not to exceed $50 per acre.

Generally speaking, dispersed water storage programs are public-private partnerships between land owners and water management districts (or the Department of Environmental Protection) created to store water on private lands for use in times of drought and to help reduce nutrient pollution by preventing nutrient-rich excess water from flowing into natural waterbodies.

Under current law, Florida counties and municipalities are authorized to charge specifically enumerated discretionary sales surtaxes, also referred to as local option taxes, which provide potential revenue sources for county and municipal governments and school districts. The local discretionary sales surtaxes apply to all transactions that are subject to the state tax imposed on sales, use, services, rentals, admissions, and other authorized transactions. The bill amends current law to allow agricultural lands participating in a dispersed water storage program to continue to be classified as agricultural lands for ad valorem taxation purposes and requires these lands to be assessed at a de minimis value.

The bill revises current law to expand existing sales tax exemptions and create new exemptions for items used in agricultural production as follows:

- Expands the current tax exemption on the sale, rental, lease, use, or storage of power farm equipment used exclusively on a farm or in a forest in the agricultural production of crops or products to include the repair of and replacement parts and accessories for such equipment.
- Expands the current definition of "agricultural production" to include the storage of plants and animals useful to humans, the effect of which is to create a new tax exemption on the sale, rental, lease, use, storage, or repair of power farm equipment, including replacement parts and accessories, used exclusively on a farm or in a forest to store crops or products.
- Creates a new tax exemption on the sale, rental, lease, use, storage, or repair of irrigation equipment, including replacement parts and accessories, used exclusively on a farm or in a forest in the agricultural production of crops or products.
- Creates a new tax exemption on the sale, rental, lease, use, storage, or repair of trailers, including replacement parts and accessories, used in agricultural production and the transportation of farm products from the farm to the first point of sale.

The bill appears to have a negative fiscal impact on state and local government revenues resulting from the sales tax exemptions expanded or created in the bill, and may have a negative fiscal impact on local governments as a result of the requirement to continue an agricultural classification on lands participating in a dispersed water storage program. As a result of these revisions, the bill appears to have a positive fiscal impact on the private sector. However, the Revenue Estimating Conference has not determined the magnitude of the bill's fiscal impact on state, local governments, or the private sector.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Greenbelt Classification

The Florida Constitution states that all property must be given a just valuation for ad valorem taxation purposes, as prescribed by general law.[1] The Florida Constitution also requires ad valorem taxation to be at a uniform rate, but provides that property "may be [taxed] at different rates but shall never exceed two mills on the dollar of assessed value."[2] In addition, property owned by a municipality that is used for municipal or public purposes is exempt from ad valorem taxation.[3] In setting a just valuation on a piece of property for ad valorem taxation purposes, the property appraiser must consider the following:

- The present cash value of the property;
- The highest and best use to which the property can be expected to be put in the immediate future and the present use of the property;
- The location of the property;
- The quantity or size of the property;
- The cost of said property and the present replacement value of any improvements therein;
- The condition of the property;
- The income from the property; and
- The net proceeds of the sale of the property.[4]

However, the Florida Constitution also authorizes the Legislature to enact a "greenbelt classification" by law, which provides that "agricultural land . . . may be classified by general law and assessed solely on the basis of character or use."[5] Pursuant to this constitutional authority, the Florida Legislature enacted s. 193.461, F.S.,[6] which implements the constitutional provision and requires the local property appraiser, on an annual basis, to "classify for assessment purposes all lands within the county as either agricultural or nonagricultural."[7] Agricultural lands are to be "only those lands that are used primarily for bona fide agricultural purposes."[8] The term "bona fide agricultural purposes" means good faith commercial agricultural use of the land.[9] To determine whether the use of the land for agricultural purposes is bona fide, the following factors must be considered by the property appraiser:

- The length of time the land has been used for agricultural purposes;
- Whether the use has been continuous;
- The purchase price paid;
- Size (as it relates to agricultural use, though a minimum acreage may not be required);
- Whether an indicated effort has been made to care sufficiently and adequately for the land in accordance with accepted commercial agricultural practices;
- Whether the land is under lease; and

[1] Art. VII, s. 4, Florida Constitution.
[2] Art. VII, s. 2, Florida Constitution.
[3] Art. VII, s. 3(a), Florida Constitution.
[4] s. 193.011, F.S.
[5] Art. VII, s. 4(a), Florida Constitution.
[6] Originally s. 193.201, F.S. (1959), ch. 59-226, s. 1, L.O.F.
[7] s. 193.461(1), F.S.
[8] s. 193.461(3)(b), F.S.
[9] *Id.* "Agricultural purposes" include, but are not limited to, horticulture, floriculture, viticulture, forestry, dairy, livestock, poultry, bee, pisciculture, aquaculture, sod farming, and "all forms of farm products . . . and farm production." s. 193.461(5), F.S.

- Other factors that may become applicable.[10]

After property is classified as agricultural lands, the property's value is assessed based solely on its agricultural use.[11] This valuation is determined by the property appraiser using only the following factors:

- The quantity and size of the property;
- The condition of the property;
- The present market value of the property as agricultural land;
- The income produced by the property;
- The productivity of land in its present use;
- The economic merchantability of the agricultural product; and
- Such other agricultural factors that may be applicable.[12]

In 2000, the Legislature amended s. 193.461, F.S., to assist farmers whose lands were taken out of production by a state or federal citrus eradication or quarantine program.[13] The law was passed after the Department of Agriculture and Consumer Services (DACS) implemented an eradication and quarantine program in January 2000 to eliminate the citrus canker disease that was ravaging the Florida citrus crop.[14] The eradication policy mandated the removal of any infected trees and other citrus trees within a 1,900-foot radius of an infected tree in both residential areas and commercial groves.

Section 193.461, F.S., requires lands classified for assessment purposes as agricultural lands that are taken out of production by any state or federal eradication or quarantine program to continue to be classified as agricultural lands for the duration of such program or successor programs. Lands under these programs that are converted to fallow or otherwise non-income producing uses must continue to be classified as agricultural lands and be assessed at a de minimis value of no more than $50 per acre, on a single year assessment methodology, unless the land is converted to other income-producing agricultural uses. The eradication program ended in January 2006 following a statement by the United States Department of Agriculture (USDA) that eradication was infeasible, which was accompanied by a subsequent withdrawal of funding by the USDA.[15] The individual citrus canker quarantine programs have also been eliminated.[16]

Dispersed Water Storage Programs

In an effort to increase water supplies and improve water quality, some water management districts (WMDs) have established dispersed water storage programs. These programs are typically public-private partnerships between an agricultural landowner and a WMD where the private landowner allows agricultural land to be used by the WMD to store water during wet periods. A common reason for establishing one of these programs is to set up a water retention system.

Water retention systems typically serve to control stormwater runoff before it is discharged to surface waters and to minimize point source and non-point source pollution prior to entry into receiving water bodies.[17] An example of such a program is the Florida Ranchlands Environmental Services Project sponsored by the South Florida Water Management District (SFWMD), which ran from 2006 to 2011.[18] This

[10] s. 193.461(3)(b)1, F.S.
[11] s. 193.461(6)(a), F.S.
[12] *Id.*
[13] Ch. 00-308, s. 3, L.O.F.
[14] *See Eradication*, UF/IFAS EXTENSION, *available at* http://www.crec.ifas.ufl.edu/extension/canker/eradication.shtml.
[15] *Citrus Canker Fact Sheet*, FLORIDA DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES, *available at* http://www.freshfromflorida.com/Divisions-Offices/Plant-Industry/Pests-Diseases/Citrus-Health-Response-Program/Citrus-Canker/Citrus-Canker-FAQs.
[16] *Id.*
[17] Kevin Bouffard, *Pilot Program Helps Ranchers Build Water Retention Areas on Their Property*, THE LEDGER (Sept. 14, 2013), *available at* http://www.theledger.com/article/20130914/NEWS/130919452?template=printpicart.
[18] *Id.*

program, which involved the participation of eight ranchers, "paid ranchers to construct water retention areas on their properties that acted as natural phosphorous filters."[19]

In 2013, the SFWMD also invested $3 million in a water farming pilot project that will pay citrus growers to build systems to store excess water on fallow citrus land before it can flow into estuaries.[20] In total, the SFWMD (where such programs are concentrated) has implemented eighteen dispersed water management projects on private lands, which are listed in the following table:[21]

Project Name	Average Annual Retention/Storage (ac-ft/yr)	Project Area (acres)	Annual Payments to Landowner	Length of Agreement	Total Cost at End of Agreement
West Waterhole Pasture	5,000	2,370	$493,750	Year 8 of 8	$2,661,414
Rafter T Ranch	1,145	5,172	$92,490	Year 7 of 9	$986,464
Syfrett Ranch West (Non-Operational)	(140)	529	$41,000	3 Years	$183,500
Payne and Sons	932	432	$61,133	3 Years	$298,489
Williamson Cattle Company	150	242	$70,000	3 Years	$275,000
Alderman-Deloney Ranch	147	170	$25,000	Year 3 of 10	$253,272
Buck Island Ranch	1,573	1,048	$173,600	Year 3 of 10	$1,737,928
Dixie West	315	1,495	$51,500	Year 2 of 10	$522,228
Dixie Ranch	856	3,771	$146,500	Year 2 of 10	$1,482,015
Lost Oak Ranch	374	1,832	$55,000	Year 1 of 10	$611,030
Triple A Ranch (Under Construction)	397	106	$28,500	Year 1 of 10	$607,186
Willaway Cattle & Sod	229	69	$1,879	Year 1 of 10	$344,279
XL Ranch	887	3,227	$130,150	Year 3 of 10	$1,353,915
Caulkins Citrus (Under Construction)	6,780	413	$480,830	Year 1 of 3	$1,263,636
Nicodemus Slough (Under Construction)	34,000	15,906	$2,968,328	Year 1 of 8	$28,646,622
Harbour Ridge	667	178	$0	2 Years	$89,000
Indiantown Citrus Growers Phase I and II	3,550	492	$0	2 Years	$267,853
Basinger Grove (Non-Operational)	(7,500)	15,000	$0	3 Years	$0
TOTAL	57,002	52,452	$4,819,660		$41,583,831

Sales Tax Exemptions

Chapter 212, F.S., contains the statutory provisions authorizing the levy and collection of Florida's sales and use tax, as well as the exemptions and credits applicable to certain items or uses under specified circumstances. A 6 percent sales and use tax is levied on sales or rentals of most tangible personal property,[22] admissions,[23] storage,[24] rentals of transient accommodations,[25] rentals of commercial real estate,[26] and a limited number of services. Sales tax is added to the price of the taxable good or service

[19] *Id.*
[20] *Id.*
[21] Of these projects, two are non-operational due to agreements ending and no conversion to other programs and three are in construction and not yet operational. *See SFWMD Dispersed Water Management Projects on Private Lands*, on file with the State Affairs Committee.
[22] s. 212.05 F.S.
[23] s. 212.04, F.S.
[24] s. 212.06, F.S.
[25] s. 212.03, F.S.
[26] s. 212.031, F.S.

and collected from the purchaser at the time of sale.[27] The Florida Department of Revenue (DOR) is responsible for administering, collecting, and enforcing all sales and use taxes.

Section 212.055, F.S., authorizes Florida counties and municipalities to charge specifically enumerated discretionary sales surtaxes, also referred to as local option taxes, which provides potential revenue sources for county and municipal governments and school districts. The local discretionary sales surtaxes apply to all transactions that are subject to the state tax imposed on sales, use, services, rentals, admissions, and other transactions by Chapter 212, F.S., and communications services as defined for purposes of Chapter 202, F.S.[28] Discretionary sales surtaxes must be collected when the transaction occurs in, or delivery is into, a county that imposes the surtax, and the sale is subject to the state's sales and use tax.[29] For tangible personal property, the surtax only applies to the first $5,000 of any single taxable item.[30] The following eight different types of local discretionary sales surtaxes are currently authorized by law:[31]

- Charter County Transportation System;
- Emergency Fire Rescue Services;
- Local Government Infrastructure;
- Small County;
- Indigent Care and Trauma Center;
- County Public Hospital;
- School Capital Outlay; and
- Voter-Approved Indigent Care.

The local discretionary sales surtax rate varies from county to county, depending on the particular levies authorized in that jurisdiction.

Section 212.054, F.S., provides for the distribution of the proceeds from local discretionary sales surtaxes. DOR is charged with administering, collecting, and enforcing these surtaxes,[32] which must be enacted by an ordinance adopted by the governing body of the county levying the surtax.[33] No initial levy or rate increase or decrease may take effect on a date other than January 1, and no levy may terminate on a day other than December 31.[34]

The Legislature has authorized a number of exemptions to sales and use taxes throughout Chapter 212. One of these exemptions allows for a sales tax exemption on the "sale, rental, lease, use, consumption, or storage for use . . . of power farm equipment used exclusively on a farm or in a forest in the agricultural production of crops or products."[35] "Agricultural production" is defined as "the production of plants and animals useful to humans, including the preparation, planting, cultivating, or harvesting of these products."[36] Activities considered "agricultural production" under the statute include forestry, dairy production, and beekeeping.[37] Accordingly, all power farm equipment purchased to be used in these activities is currently exempt from the state sales tax, which also exempts this equipment from local discretionary sales surtaxes.

The law does not define the term "trailer" for purposes of sales taxes, nor does it provide a sales tax exemption for trailers. "Trailer" is defined twice in Title XXIII of the Florida Statutes (relating to motor

[27] s. 212.06(3)(a), F.S.
[28] s. 212.054(2)(a), F.S.
[29] 2013 Florida Tax Handbook, pg. 211.
[30] s. 212.054(2)(b)1., F.S.
[31] s. 212.055, F.S.
[32] s. 212.054(4)(a). F.S.
[33] s. 125.66(2)(a), F.S.
[34] s. 212.054(5), F.S.
[35] s. 212.08(3), F.S.
[36] s. 212.02(32), F.S.
[37] *Id.*

vehicles) as "[a]ny vehicle with or without motive power, other than a pole trailer, designed for carrying persons or property and for being drawn by a motor vehicle"[38] and as "any vehicle without motive power designed to be coupled to or drawn by a motor vehicle and constructed so that no part of its weight or that of its load rests upon the towing vehicle."[39] Additionally, Merriam-Webster's Dictionary defines "trailer" as "a long platform or box with wheels that is pulled behind a truck or car and used to transport things" and "a vehicle that can be pulled by a truck or car and that can be parked and used as an office, vacation home, etc."[40]

Effect of Proposed Changes

Greenbelt Classification

The bill requires lands already classified as agricultural that participate in a dispersed water storage program, pursuant to a contract with DEP or a WMD, to continue to be classified as agricultural for as long as the lands are included in such program or successor program. The bill also requires the lands to be assessed at a de minimis value for the single year assessment performed for ad valorem tax purposes. However, the bill does not specify a method property appraisers must use to calculate the de minimis value of such lands.

Sales Tax Exemptions

The bill amends ss. 212.02 and 212.08(3), F.S., to expand existing sales tax exemptions and create new exemptions for items used in agricultural production as follows:

1. Expands the current tax exemption on the sale, rental, lease, use, or storage of power farm equipment used exclusively on a farm or in a forest in the agricultural production of crops or products to include the repair of and replacement parts and accessories for such equipment.

2. Expands the current definition of "agricultural production" to include the storage of plants and animals useful to humans, the effect of which is to create a new tax exemption on the sale, rental, lease, use, storage, or repair of power farm equipment, including replacement parts and accessories, used exclusively on a farm or in a forest to store crops or products.

3. Creates a new tax exemption on the sale, rental, lease, use, storage, or repair of irrigation equipment, including replacement parts and accessories, used exclusively on a farm or in a forest in the agricultural production of crops or products.

4. Creates a new tax exemption on the sale, rental, lease, use, storage, or repair of trailers, including replacement parts and accessories, used in agricultural production and the transportation of farm products from the farm to the first point of sale.

By adding exemptions to the state sales tax, the bill has the effect of adding exemptions to the local discretionary sales surtaxes authorized by law.

B. SECTION DIRECTORY:

Section 1. Amends s. 193.461, F.S., relating to the classification of agricultural lands for ad valorem tax purposes.
Section 2. Amends s. 212.02, F.S., to include "storage" within the definition of "agricultural production."
Section 3. Amends s. 212.08, F.S., relating to sales tax exemptions for farm equipment used in agricultural production and transport.
Section 4. Provides an effective date of July 1, 2014.

[38] s. 316.003(58), F.S.
[39] s. 320.01(4), F.S.
[40] Merriam-Webster's Dictionary.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues: The bill appears to have an indeterminate negative fiscal impact on state government revenues resulting from the sales tax exemptions. However, the Revenue Estimating Conference has not determined the bill's fiscal impact on the state.

2. Expenditures: None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

By adding exemptions to the state sales tax, the bill has the effect of adding exemptions to local option county sales taxes. Therefore, the bill appears to have an indeterminate negative fiscal impact on local government revenues. However, the Revenue Estimating Conference has not determined the bill's fiscal impact on local governments.

The bill's revisions to the greenbelt statute may also result in a negative fiscal impact on local government revenues by requiring property appraisers to maintain the agricultural classification for lands participating in a dispersed water storage program and requiring property appraisers to assess such lands at a de minimis value. However, the Revenue Estimating Conference has not determined the bill's fiscal impact on local governments.

2. Expenditures: None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR: The bill appears to have a direct positive fiscal impact on the private sector by reducing the amount of sales tax that certain agricultural producers could be required to pay, and allowing certain property owners that participate in a dispersed water storage program to maintain their agricultural classification for property taxation purposes. However, the Revenue Estimating Conference has not determined the bill's fiscal impact on the private sector.

D. FISCAL COMMENTS: The Revenue Estimating Conference has not determined the bill's estimated fiscal impact on the state, local governments, or the private sector.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The county mandate provision of Art. VII, s. 18, of the Florida Constitution requiring a two-thirds vote of the membership of each house in order to enact a general law reducing the authority that municipalities and counties had on February 1, 1989, to raise revenues in the aggregate may apply because this bill adds exemptions to the state sales tax, and, thus, has the effect of adding corresponding exemptions to local option sales taxes. However, the bill may be exempt if its fiscal impact is insignificant. The Revenue Estimating Conference has not determined the magnitude of the bill's fiscal impact on local governments.

2. Other:

With respect to the classification of land as "agricultural" for taxation purposes under Art. VII, s. 4 of the Florida Constitution and s. 193.461, F.S., courts have found that "the provisions governing such a classification should be strictly construed."[41] Furthermore, in defining words or phrases that grant exemptions to taxation, "the authority [of the Legislature] is not unlimited and must be exercised in a reasonable manner."[42] The Florida Supreme Court has stated that "the Legislature [is] not empower[ed] . . . to depart from the normal and ordinary meaning of the words chosen by the framers and adopters of the constitution." Accordingly, providing in statute that agricultural lands participating in a water dispersal program must maintain their agricultural classification may implicate the provisions of Art. VII, s. 4 of the Florida Constitution. It is unclear whether a reviewing court would consider lands participating in a dispersed water storage program as "agricultural lands" if the lands are not otherwise being used for a bona fide agricultural purpose. However, Florida courts have not ruled on this specific question.

In addition, by requiring the property appraiser to assess agricultural lands participating in a dispersed water storage program at a de minimis value, courts may determine that these lands are no longer being assessed "solely on the basis of character or use," but rather according to a different standard not articulated in the Constitution. However, Florida courts have not ruled on this specific question.

Finally, the bill also may implicate the constitutional duties of the property appraiser. The Florida Supreme Court has held that the State cannot usurp the duties of property appraisers or materially interfere with their discretion in discharging their duties.[43] Since it is the duty of property appraisers "to determine the fair value of all properties within the county boundaries,"[44] the State, including the Legislature and the Department of Revenue, may only "establish standard measures of valuation" to be used by the property appraisers.[45] However, the bill requires that land participating in a dispersed water program be assessed at a de minimis value.[46] It is unclear whether a reviewing court would consider this requirement a prescribed valuation rather than a measure of valuation to be used by the property appraiser. However, Florida courts have not ruled on this specific question.

B. RULE-MAKING AUTHORITY: None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Section 1. The bill does not explicitly trigger a re-classification of property for land participating in a dispersed water storage program that is diverted to a nonagricultural use. The bill could be amended to address this issue by specifying that land diverted to nonagricultural uses must be assessed under s. 193.011, F.S. In addition, the bill does not provide a method property appraisers must use to calculate de minimis value of lands participating in a dispersed water storage program. Therefore, various property appraisers may use different methods of determining the taxable value of these lands. Both of these issues are expected to be addressed by amendment.

Section 3. The bill does not specifically define the term "trailer" for purposes of the sales tax exemption, so it may be unclear what type of equipment qualifies for the exemption. This issue is expected to be addressed by amendment.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

N/A

[41] St. Petersburg Kennel Club, Inc. v. Smith, 662 So. 2d 1270, 1271 (Fla. 2d DCA 1995).
[42] Department of Revenue v. Florida Boaters Association, Inc., 409 So. 2d 17, 19 (Fla. 1982).
[43] Burns v. Butscher, 187 So. 2d 594, 596 (Fla. 1966).
[44] Spooner v. Askew, 345 So. 2d 1055, 1058 (Fla. 1976).
[45] District School Bd. of Lee Co. v. Askew, 278 So. 2d 272, 275 (Fla. 1973).
[46] *But see* s. 193.461(7), F.S. ("[Lands in an eradication or quarantine program] shall be assessed at a de minimus value of no more than $50 per acre . . . .").

A bill to be entitled

An act relating to agriculture; amending s. 193.461, F.S.; providing that participation in certain dispersed water storage programs does not change a land's agricultural classification for assessment purposes; amending s. 212.02, F.S.; redefining the term "agricultural production" to include storage; amending s. 212.08, F.S.; expanding the exemption for certain farm equipment from the sales and use tax imposed under ch. 212, F.S., to include repairs of such equipment and trailers that are used for certain purposes; providing an effective date.

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

Section 1. Subsection (7) of section 193.461, Florida Statutes, is amended to read:

193.461 Agricultural lands; classification and assessment; mandated eradication or quarantine program.—

(7)(a) Lands classified for assessment purposes as agricultural lands which are taken out of production by a ~~any~~ state or federal eradication or quarantine program shall continue to be classified as agricultural lands for the duration of such program or successor programs. Lands under these programs which are converted to fallow~~,~~ or otherwise nonincome-producing uses shall continue to be classified as agricultural

lands and shall be assessed at a de minimis value of up to ~~no more than~~ $50 per acre, on a single year assessment methodology; however, lands converted to other income-producing agricultural uses permissible under such programs shall be assessed pursuant to this section. Land under a mandated eradication or quarantine program which is diverted from an agricultural to a nonagricultural use shall be assessed under s. 193.011.

(b) Lands classified for assessment purposes as agricultural lands which participate in a dispersed water storage program pursuant to a contract with the Department of Environmental Protection or a water management district which requires flooding of land shall continue to be classified as agricultural lands for the duration of the inclusion of the lands in such program or successor programs and shall be assessed at a de minimis value, on a single year assessment methodology.

Section 2. Subsection (32) of section 212.02, Florida Statutes, is amended to read:

212.02 Definitions.—The following terms and phrases when used in this chapter have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

(32) "Agricultural production" means the production of plants and animals useful to humans, including the preparation, planting, cultivating, ~~or~~ harvesting, or storage of these products or any other practices necessary to accomplish

production through the harvest and storage phase, and includes aquaculture, horticulture, floriculture, viticulture, forestry, dairy, livestock, poultry, bees, and any and all forms of farm products and farm production.

Section 3. Subsection (3) of section 212.08, Florida Statutes, is amended to read:

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

(3) EXEMPTIONS; CERTAIN FARM EQUIPMENT.—There shall be no tax on the sale, rental, lease, use, consumption, repair, or storage for use in this state of power farm equipment and irrigation equipment, including replacement parts and accessories for such equipment, which are used exclusively on a farm or in a forest in the agricultural production of crops or products ~~as~~ produced by those agricultural industries included in s. 570.02(1), or for fire prevention and suppression work with respect to such crops or products. Trailers used in agricultural production and the transportation of farm products from the farm to the first point of sale are also exempt from such tax. Harvesting may not be construed to include processing activities. This exemption is not forfeited by moving farm equipment between farms or forests. However, this exemption may

~~shall~~ not be allowed unless the purchaser, renter, or lessee signs a certificate stating that the farm equipment is to be used exclusively on a farm or in a forest for agricultural production or for fire prevention and suppression, as required by this subsection. Possession by a seller, lessor, or other dealer of a written certification by the purchaser, renter, or lessee certifying the purchaser's, renter's, or lessee's entitlement to an exemption permitted by this subsection relieves the seller from the responsibility of collecting the tax on the nontaxable amounts, and the department shall look solely to the purchaser for recovery of such tax if it determines that the purchaser was not entitled to the exemption.

Section 4. This act shall take effect July 1, 2014.

Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

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

Committee/Subcommittee hearing bill: Agriculture & Natural Resources Subcommittee

Representative Albritton offered the following:

Amendment (with title amendment)

Remove everything after the enacting clause and insert:

Section 1. Subsection (3) and (7) of section 193.461, Florida Statutes, is amended to read:

193.461 Agricultural lands; classification and assessment; mandated eradication or quarantine program.—

(3)(a) No lands shall be classified as agricultural lands unless a return is filed on or before March 1 of each year. The property appraiser, before so classifying such lands, may require the taxpayer or the taxpayer's representative to furnish the property appraiser such information as may reasonably be required to establish that such lands were actually used for a bona fide agricultural purpose. Failure to make timely application by March 1 shall constitute a waiver for 1 year of

the privilege herein granted for agricultural assessment. However, an applicant who is qualified to receive an agricultural classification who fails to file an application by March 1, must ~~may~~ file an application for the classification with the property appraiser on or before the 25th day following the mailing by the property appraiser of the notices required under s. 194.011(1). Upon receipt of sufficient evidence, as determined by the property appraiser, demonstrating the applicant was unable to apply for the classification in a timely manner or otherwise demonstrating extenuating circumstances judged by the property appraiser to warrant granting the classification, the property appraiser may grant the classification. If the applicant fails to produce sufficient evidence demonstrating the applicant was unable to apply for the classification in a timely manner or otherwise demonstrating extenuating circumstances as judged by the property appraiser, the applicant ~~and~~ may file, pursuant to s. 194.011(3), a petition with the value adjustment board requesting that the classification be granted. The petition may be filed at any time during the taxable year on or before the 25th day following the mailing of the notice by the property appraiser as provided in s. 194.011(1). Notwithstanding the provisions of s. 194.013, the applicant must pay a nonrefundable fee of $15 upon filing the petition. Upon reviewing the petition, if the person is qualified to receive the classification and demonstrates particular extenuating circumstances judged by the ~~property appraiser or the~~ value adjustment board to warrant granting the classification, ~~the property appraiser or~~ the value adjustment

board may grant the classification for the current year. The owner of land that was classified agricultural in the previous year and whose ownership or use has not changed may reapply on a short form as provided by the department. The lessee of property may make original application or reapply using the short form if the lease, or an affidavit executed by the owner, provides that the lessee is empowered to make application for the agricultural classification on behalf of the owner and a copy of the lease or affidavit accompanies the application. A county may, at the request of the property appraiser and by a majority vote of its governing body, waive the requirement that an annual application or statement be made for classification of property within the county after an initial application is made and the classification granted by the property appraiser. Such waiver may be revoked by a majority vote of the governing body of the county.

(7)(a) Lands classified for assessment purposes as agricultural lands which are taken out of production by a ~~any~~ state or federal eradication or quarantine program shall continue to be classified as agricultural lands for the duration of such program or successor programs. Lands under these programs which are converted to fallow~~,~~ or otherwise nonincome-producing uses shall continue to be classified as agricultural lands and shall be assessed at a de minimis value of up to ~~no more than~~ $50 per acre, on a single year assessment methodology; however, lands converted to other income-producing agricultural uses permissible under such programs shall be assessed pursuant to this section. Land under a mandated eradication or quarantine

program which is diverted from an agricultural to a nonagricultural use shall be assessed under s. 193.011.

(b) Lands classified for assessment purposes as agricultural lands which participate in a dispersed water storage program pursuant to a contract with the Department of Environmental Protection or a water management district which requires flooding of land shall continue to be classified as agricultural lands for the duration of the inclusion of the lands in such program or successor programs and shall be assessed as nonproductive agricultural lands. Land under a dispersed water storage program which is diverted to a nonagricultural use shall be assessed under s. 193.011.

Section 2. Subsection (32) of section 212.02, Florida Statutes, is amended to read:

212.02 Definitions.—The following terms and phrases when used in this chapter have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

(32) "Agricultural production" means the production of plants and animals useful to humans, including the preparation, planting, cultivating, or harvesting of these products or any other practices necessary to accomplish production through the harvest phase, including storage of raw products on the farm. Agricultural production ~~and~~ includes aquaculture, horticulture, floriculture, viticulture, forestry, dairy, livestock, poultry, bees, and any and all forms of farm products and farm production.

Section 3. Subsection (3) and paragraph (a) of subsection

(5) of section 212.08, Florida Statutes, are amended to read:

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

(3) EXEMPTIONS; CERTAIN FARM EQUIPMENT.—

(a) There shall be no tax on the sale, rental, lease, use, consumption, repair, or storage for use in this state of power farm equipment and irrigation equipment, including replacement parts and accessories for power farm equipment and irrigation equipment, which are used exclusively on a farm or in a forest in the agricultural production of crops or products ~~as~~ produced by those agricultural industries included in s. 570.02(1), or for fire prevention and suppression work with respect to such crops or products. Harvesting may not be construed to include processing activities. This exemption is not forfeited by moving farm equipment between farms or forests.

(b) There shall be no tax on the sales price below $20,000 of a trailer weighing 12,000 pounds or less and purchased by a farmer for exclusive use in agricultural production or to transport farm products from his or her farm to the place where the farmer transfers ownership of the farm product to another. This exemption is not forfeited by using a trailer to transport the farmer's farm equipment. The exemption provided under this paragraph does not apply to the lease or rental of a trailer.

(c) ~~However, this exemption shall~~ The exemptions provided

in paragraphs (a) and (b) may not be allowed unless the purchaser, renter, or lessee signs a certificate stating that the farm equipment is to be used exclusively ~~on a farm or in a forest for agricultural production or for fire prevention and suppression,~~ as required by this subsection. Possession by a seller, lessor, or other dealer of a written certification by the purchaser, renter, or lessee certifying the purchaser's, renter's, or lessee's entitlement to an exemption permitted by this subsection relieves the seller from the responsibility of collecting the tax on the nontaxable amounts, and the department shall look solely to the purchaser for recovery of such tax if it determines that the purchaser was not entitled to the exemption.

(5) EXEMPTIONS; ACCOUNT OF USE.—

(a) *Items in agricultural use and certain nets.*—There are exempt from the tax imposed by this chapter nets designed and used exclusively by commercial fisheries; disinfectants, fertilizers, insecticides, pesticides, herbicides, fungicides, and weed killers used for application on crops or groves, including commercial nurseries and home vegetable gardens, used in dairy barns or on poultry farms for the purpose of protecting poultry or livestock, or used directly on poultry or livestock; portable containers or movable receptacles in which portable containers are placed, used for processing farm products; field and garden seeds, including flower seeds; nursery stock, seedlings, cuttings, or other propagative material purchased for growing stock; seeds, seedlings, cuttings, and plants used to produce food for human consumption; cloth, plastic, and other

similar materials used for shade, mulch, or protection from frost or insects on a farm; stakes used by a farmer to support plants during agricultural production; generators used on poultry farms; and liquefied petroleum gas or other fuel used to heat a structure in which started pullets or broilers are raised; however, such exemption shall not be allowed unless the purchaser or lessee signs a certificate stating that the item to be exempted is for the exclusive use designated herein. Also exempt are cellophane wrappers, glue for tin and glass (apiarists), mailing cases for honey, shipping cases, window cartons, and baling wire and twine used for baling hay, when used by a farmer to contain, produce, or process an agricultural commodity.

Section 4. Section 373.4591, Florida Statutes, is amended to read:

373.4591 Improvements on private agricultural lands.—The Legislature encourages public-private partnerships to accomplish water storage and water quality improvements on private agricultural lands. When an agreement is entered into between a water management district or the department and a private landowner to establish such a partnership, a baseline condition determining the extent of wetlands and other surface waters on the property shall be established and documented in the agreement before improvements are constructed. When the Florida Department of Agriculture and Consumer Services and a landowner agree to a plan to implement best management practices pursuant to s. 403.067(7)(c), a baseline condition determining the extent of wetlands and other surface waters on the property may be

established at the option and expense of the landowner and documented in the best management practice implementation agreement before improvements are constructed. The determination for the baseline condition shall be conducted using the methods set forth in the rules adopted pursuant to s. 373.421. The baseline condition documented in the agreement shall be considered the extent of wetlands and other surface waters on the property for the purpose of regulation under this chapter for the duration of the agreement and after its expiration.

Section 5. This act shall take effect July 1, 2014.

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

Remove everything before the enacting clause and insert:

A bill to be entitled

An act relating to agriculture; amending s. 193.461, F.S.; authorizing a property appraiser to grant an agricultural classification after the March 1 application deadline upon a showing of extenuating circumstances; providing that participation in certain dispersed water storage programs does not change a land's agricultural classification for assessment purposes; amending s. 212.02, F.S.; redefining the

term "agricultural production" to include storage of raw products on the farm; amending s. 212.08, F.S.; expanding the exemption for certain farm equipment from the sales and use tax imposed under ch. 212, F.S., to include repairs of such equipment and certain trailers; expanding the exemption for items in agricultural use from the sale and use tax imposed under ch. 212, F.S., to include stakes used to support plants during agricultural production; amending s. 373.4591, F.S.; authorizing agricultural landowners to establish baseline wetland and surface water conditions before implementing certain best management practice implementation agreements; providing an effective date.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 601 Reclaimed Water
SPONSOR(S): Ray
TIED BILLS: None **IDEN./SIM. BILLS:** SB 536

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

SUMMARY ANALYSIS

Reclaimed water is defined by law as water that has received at least secondary treatment and basic disinfection and is reused after flowing out of a domestic wastewater treatment facility. Extensive treatment and disinfection ensure that public health and environmental quality are protected. The use of reclaimed water can reduce the amount of groundwater and surface water that is required to meet non-potable supply needs such as agricultural or residential irrigation, power generation, or recreation (e.g., golf courses or waterparks). However, there are some uncertainties regarding expanding the use of reclaimed water in the state. Surface water is defined as water upon the surface of the earth, whether contained in bounds created naturally or artificially or diffused.

The bill directs the Department of Environmental Protection (DEP) and the Department of Agriculture and Consumer Services (DACS), in cooperation with the five water management districts (WMDs), to conduct a study and submit a report on expanding the beneficial use of reclaimed water, including stormwater and excess surface water, in the state. The bill requires the report to:

- Identify factors that prohibit or complicate the expansion of using reclaimed water and recommend how those factors can be mitigated or eliminated;
- Identify the environmental, engineering, public health, public perception, and fiscal constraints of an expansion, including utility rate structures for reclaimed water;
- Identify areas where traditional water supply sources are limited and the use of reclaimed water for irrigation or other uses is necessary;
- Recommend permit incentives; and
- Determine the feasibility, benefit, and cost estimate of the infrastructure needed to construct regional storage features on public or private lands for reclaimed water.

The bill requires DEP and DACS to hold a public meeting to gather input on the study design and provide an opportunity for public comment before submitting the report, which must be submitted to the President of the Senate, the Speaker of the House of Representatives, and the Governor by December 1, 2015.

The bill has an indeterminate, but likely insignificant negative fiscal impact on DEP and DACS for the cost of conducting the study and submitting the report (see Fiscal Analysis Section below).

The bill's effective date is July 1, 2014.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

For water uses other than private wells for domestic use, the Department of Environmental Protection (DEP) and the water management districts (WMDs) have the authority to require any person seeking to use "waters in the state"[1] to obtain a consumptive use permit (CUP). A CUP establishes the duration and type of allowed water use as well as the maximum amount that may be used. Pursuant to s. 373.219, F.S., each CUP must be consistent with the objectives of the WMD and may not be harmful to the water resources of the area. To obtain a CUP, an applicant must establish that the proposed use of water satisfies the statutory test, commonly referred to as "the three-prong test." Specifically, the proposed water use:

1. Must be a reasonable-beneficial use;[2]
2. May not interfere with any presently existing legal use of water; and
3. Must be consistent with the public interest.[3]

In an effort to conserve the State's potable surface water and groundwater resources, WMDs are authorized to restrict water use to the lowest quality water source appropriate for the specific use, and to adopt rules that identify preferred water supply sources for consumptive uses.[4] The WMD may consider all economically and technically feasible alternatives to the proposed water source, including alternative water sources, such as desalination, aquifer storage and recovery, and reuse of non-potable reclaimed water.[5] Of these enumerated alternative water sources, the Legislature expressly encourages the use of reclaimed water as an alternative water source "whenever practicable."[6]

Section 373.019(17), F.S., defines reclaimed water as "water that has received at least secondary treatment and basic disinfection and is reused after flowing out of a domestic wastewater treatment facility."[7] Section 403.866, F.S., defines a "domestic wastewater treatment facility" as any plant or other works used for the purpose of treating, stabilizing, or holding domestic wastes. Extensive treatment and disinfection of water from a domestic wastewater treatment facility ensures that public health and environmental quality are protected.[8]

Section 373.019(21), F.S., defines surface water to mean "water upon the surface of the earth, whether contained in bounds created naturally or artificially or diffused. Water from natural springs shall be classified as surface water when it exits from the spring onto the earth's surface."

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[1] Section 373.019(22), F.S., defines "water" or "waters in the state" to mean any and all water on or beneath the surface of the ground or in the atmosphere, including natural or artificial watercourses, lakes, ponds, or diffused surface water and water percolating, standing, or flowing beneath the surface of the ground, as well as all coastal waters within the jurisdiction of the state.

[2] Section 373.019(16), F.S., defines "reasonable-beneficial use" to mean the use of water in such quantity as is necessary for economic and efficient utilization for a purpose and in a manner that is both reasonable and consistent with the public interest.

[3] Section 373.223(1), F.S.

[4] *See* Section 373.2234, F.S.

[5] Section 373.223(3)(c), F.S.

[6] Section 373.016(4)(a), F.S.

[7] *See also* Florida DEP website on 'water reuse.' This information can be viewed at http://www.dep.state.fl.us/water/reuse/index.htm.

[8] *Id.*

Section 373.250, F.S., governs the reuse of reclaimed water in the state. A WMD is authorized to require the use of reclaimed water in lieu of surface water or groundwater when the use of uncommitted reclaimed water is:

- Available;
- Environmentally, economically, and technically feasible; and
- Of such quality and reliability as is necessary to the user.[9]

However, a WMD may neither specify any user to whom the reuse utility must provide reclaimed water, nor restrict the use of reclaimed water provided by a reuse utility to a customer in a permit or in a water shortage order or water shortage emergency order.[10] Reclaimed water is presumed to be available to a CUP applicant when a reclaimed water provider has uncommitted reclaimed water capacity, and there are distribution facilities provided by the utility to the site of the proposed use.[11] A WMD may not require a permit for the use of reclaimed water. However, when a use includes surface water or groundwater the permit for such sources may include conditions that govern the use of the permitted sources in relation to the feasibility or use of reclaimed water.[12]

As required in statute and implemented in DEP's Water Resource Implementation Rule,[13] WMDs must designate water resource caution areas[14] within which CUP permit holders are required to use a "reasonable" amount of reclaimed water, unless using it is not "economically, environmentally, or technically feasible." For areas outside of designated water resource caution areas, DEP encourages local governments to implement programs for the use of reclaimed water. Specifically, WMDs are encouraged to establish incentives, such as longer permit duration and cost-sharing, for local governments and other interested parties to implement programs for reclaimed water use.[15]

Reclaimed water is designated as an alternative water source in Florida and the use of reclaimed water can reduce the amount surface water and groundwater consumed in the state. The encouragement and promotion of water conservation and reuse of reclaimed water are state objectives and considered to be in the public interest.[16] The use of reclaimed water provided by domestic wastewater treatment plants permitted and operated under a reuse program approved by DEP is environmentally acceptable and not a threat to public health and safety.[17]

The use of reclaimed water saves water that would otherwise need to be withdrawn from surface water and groundwater sources to meet non-potable supply needs such as agricultural or residential irrigation, power generation, or recreation (e.g., golf courses or waterparks). Additionally, reclaiming wastewater reduces reliance on traditional wastewater disposal methods such as surface water discharges, ocean outfalls,[18] or deep injection wells.[19]

However, there are some uncertainties that exist pertaining to expanding the use of reclaimed water in the state. According to the Department of Agriculture and Consumer Services (DACS), one hindrance to increasing reliance on the use of reclaimed water is that there usually is too much of it available

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[9] Section 373.250(3)(c), F.S.
[10] *Id.*
[11] Section 373.250(3)(a), F.S.
[12] Section 373.250(3)(b), F.S.
[13] Section 373.036, F.S., and Rule 62-40, F.A.C.
[14] Pursuant to s. 373.0363, F.S., and Rule 62-40.416, F.A.C., water resource caution areas are designated where water supply problems currently exist or are expected to exist within the next 20 years.
[15] Rule 62-40.416(2), F.A.C.
[16] Section 373.250(1)(a), F.S.
[17] *Id.*
[18] "Ocean outfall" means the outlet or structure through which effluent is finally discharged to the marine environment which includes the territorial sea, contiguous zone and the ocean. Rule 62–600.200(55), F.A.C.
[19] "Injection well" means a well into which fluids are being or will be injected, by gravity flow or under pressure. Rule 62-528.200(39), F.A.C.

during periods of high rainfall and not enough available to meet demands during low rainfall periods. It is necessary to store excess reclaimed water for use during times of peak demand, using water reservoirs or storage tanks. In addition, reclamation facilities and reuse sites are not always located near one another, so reclaimed water must be transported. The transmission lines and facilities necessary to accomplish this can be disruptive or expensive to construct, particularly in older or built-out areas.[20]

Effect of Proposed Changes

The bill directs DEP and DACS, in cooperation with the five WMDs, to conduct a study and submit a report on the expansion of the beneficial use of reclaimed water, including stormwater and excess surface water, in the state. The bill requires the report to:

- Identify factors that prohibit or complicate the expansion of using reclaimed water and recommend how those factors can be mitigated or eliminated;
- Identify the environmental, engineering, public health, public perception, and fiscal constraints of expanding the use of reclaimed water, including utility rate structures for reclaimed water;
- Identify areas where traditional water supply sources are limited and the use of reclaimed water for irrigation or other uses is necessary;
- Recommend permit incentives, such as extending current authorizations for long-term CUPs for all entities that substitute reclaimed water for traditional water sources that become unavailable or otherwise cost prohibitive; and
- Determine the feasibility, benefit, and cost estimate of the infrastructure needed to construct regional storage features on public or private lands for reclaimed water, including the collection and delivery mechanisms for beneficial uses such as:
    - Agricultural irrigation;
    - Power generation;
    - Public water supply;
    - Wetland restoration;
    - Groundwater recharge; and
    - Waterbody base flow augmentation.

The bill requires DEP and DACS to hold a public meeting to gather input on the study design and provide an opportunity for public comment before submitting the report, which must be submitted to the President of the Senate, the Speaker of the House of Representatives, and the Governor by December 1, 2015.

B. SECTION DIRECTORY:

Section 1. Requires DACS and DEP, in cooperation with WMDS, to conduct a study on the expansion of the beneficial use of reclaimed water and submit a report to the Governor and the Legislature.

Section 2. Provides an effective date of July 1, 2014.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

[20] DACS bill analysis. On file with Agriculture & Natural Resources Subcommittee staff.

2. Expenditures:

The bill has an indeterminate, but likely insignificant negative fiscal impact on DEP and DACS for the cost of conducting the study and submitting the report. According to DEP, existing staff would assist in the report and study required by the bill and would be paid out of the Administrative Trust Fund and the Water Quality Assurance Trust Fund.

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

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

Not applicable.

A bill to be entitled

An act relating to reclaimed water; requiring the Department of Agriculture and Consumer Services and the Department of Environmental Protection to conduct a study in cooperation with the water management districts on the expansion of the beneficial use of reclaimed water and to submit a report based upon such study; providing requirements for the report; requiring the departments to provide the public an opportunity for input and for public comment; requiring that the report be submitted to the Governor and the Legislature by a specified date; providing an effective date.

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

Section 1. Reuse of reclaimed water.—

(1) The Department of Agriculture and Consumer Services and the Department of Environmental Protection, in cooperation with the five water management districts, shall conduct a comprehensive study and submit a report on the expansion of the beneficial use of reclaimed water, including stormwater and excess surface water, in this state.

(2) The report must:

(a) Identify factors that prohibit or complicate the expansion of the beneficial use of reclaimed water and recommend

how those factors can be mitigated or eliminated.

(b) Identify the environmental, engineering, public health, public perception, and fiscal constraints of such an expansion, including utility rate structures for reclaimed water.

(c) Identify areas in the state where traditional water supply sources are limited and the use of reclaimed water for irrigation or other uses is necessary.

(d) Recommend permit incentives, such as extending current authorizations for long-term consumptive use permits for all entities that substitute reclaimed water for traditional water sources that become unavailable or otherwise cost prohibitive.

(e) Determine the feasibility, benefit, and cost estimate of the infrastructure needed to construct regional storage features on public or private lands for reclaimed water, including the collection and delivery mechanisms for beneficial uses such as agricultural irrigation, power generation, public water supply, wetland restoration, groundwater recharge, and waterbody base flow augmentation.

(3) The departments shall:

(a) Hold a public meeting to gather input on the study design.

(b) Provide an opportunity for public comment before submitting the report.

(4) The report shall be submitted to the Governor, the President of the Senate, and the Speaker of the House of

Representatives no later than December 1, 2015.

Section 2. This act shall take effect July 1, 2014.

Amendment No. 1

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

Committee/Subcommittee hearing bill: Agriculture & Natural Resources Subcommittee

Representative Ray offered the following:

Amendment (with title amendment)

Remove everything after the enacting clause and insert:

Section 1. Use of reclaimed water, stormwater, and excess surface water.—

(1) The Department of Environmental Protection, in coordination with the Department of Agriculture and Consumer Services and the five water management districts, shall conduct a comprehensive study and submit a report on the expansion of the beneficial use of reclaimed water, stormwater, and excess surface water in this state.

(2) The report must:

(a) Identify factors that prohibit or complicate the expansion of the beneficial use of reclaimed water, stormwater,

and excess surface water and recommend how those factors can be mitigated or eliminated.

(b) Identify the environmental, engineering, public health, public perception, and fiscal constraints of such an expansion, including utility rate structures for reclaimed water.

(c) Identify areas in the state where traditional water supply sources are limited and the use of reclaimed water, stormwater, or excess surface water for irrigation or other uses is necessary.

(d) Recommend permit incentives, such as extending current authorizations for long-term consumptive use permits for all entities that substitute reclaimed water for traditional water sources that become unavailable or otherwise cost prohibitive.

(e) Determine the feasibility, benefit, and cost estimate of the infrastructure needed to construct regional storage features on public or private lands for reclaimed water, stormwater, and excess surface water, including the collection and delivery mechanisms for beneficial uses such as agricultural irrigation, power generation, public water supply, wetland restoration, groundwater recharge, and waterbody base flow augmentation.

(3) The departments shall:

(a) Hold a public meeting to gather input on the study design.

(b) Provide an opportunity for public comment before submitting the report.

(4) The report shall be submitted to the Governor, the President of the Senate, and the Speaker of the House of Representatives no later than December 1, 2015.

Section 2. This act shall take effect July 1, 2014.

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

Remove everything before the enacting clause and insert:

A bill to be entitled

An act relating to reclaimed water; requiring the Department of Environmental Protection to conduct a study in coordination with the Department of Agriculture and Consumer Services and water management districts on the expansion of the beneficial use of reclaimed water, stormwater, and excess surface water and to submit a report based upon such study; providing requirements for the report; requiring the department provide the public an opportunity for input and for public comment; requiring that the report be submitted to the Governor and the Legislature by a specified date; providing an effective date.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCS for HB 703 Environmental Regulation
SPONSOR(S): Patronis
TIED BILLS: None **IDEN./SIM. BILLS:** None

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Agriculture & Natural Resources Subcommittee		Renner	Blalock

SUMMARY ANALYSIS

This is a comprehensive bill that changes multiple areas of state law, including the following:

- Prevents counties from continuing to adopt duplicative wetlands, springs protection, and stormwater regulations for agricultural lands after July 1, 2003, by modifying, amending, or readopting regulations adopted prior to July 1, 2003.
- Reduces the voting requirement for approval of a local government's proposed comprehensive plan or plan amendment by requiring approval by a "simple majority" vote of the members of the governing body, rather requiring approval by "at least a simple majority."
- Prohibits a local government from rescinding a prior land use approval solely because the land continues to be used for bona fide agricultural purposes and qualifies for an agricultural classification.
- Exempts a lessee of sovereign submerged lands for a private residential multi-family dock from permit fees for a certain area of the dock.
- Prohibits local governments from requiring water control districts to meet additional regulatory requirements for certain structures included within a water control plan if an environmental resource permit or federal dredge and fill permit has been issued and the structures are incorporated in a plat of the county or city within which the water control district lies.
- Authorizes WMDs and DEP to issue a consumptive use permit (CUP) for up to 50 years to landowners who, individually or collectively, make available lands to enable the expeditious development of dispersed water storage projects that provide water resource benefits and alternative water supply development.
- Authorizes WMDs or DEP to issue a CUP for up to 30 years for an approved development of regional impact that is located in a rural area of critical economic concern.
- Requires certain local governments to follow well construction criteria and applicable standards adopted by DEP or a WMD and preempts additional local government well construction permitting regulations.
- Allows an applicant for a mitigation bank permit to satisfy the financial responsibility requirement by submitting proof of insurance in a form approved by DEP or a WMD.
- Requires regional water supply plans to incorporate the water needs, water sources, water resource development projects, and water supply development projects identified in an adopted long-term master plan or a master plan development order.
- Specifies that the provision of law authorizing the issuance of variances by DEP for discharges of waste into waters of the state or for hazardous waste management requirements does not prohibit the issuance of moderating provisions.
- Creates a solid waste landfill closure account within the Solid Waste Management Trust Fund to provide funding for the closing and long-term care of solid waste management facilities.
- Provides a two-year extension for certain state environmental permits and local government development permits.

The bill has a potentially negative fiscal impact on state government. The bill does not appear to have a fiscal impact on local governments. (See Fiscal Comments Section).

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Section 1. Agricultural Lands and Practices

Present Situation

Section 163.3162, F.S., prohibits governmental entities[1] from adopting or enforcing any duplicative ordinance, resolution, regulation, rule, or policy that limits activity of a bona fide farm or farm operation[2] on agricultural land if such activity is:

- Regulated through implemented best management practices (BMPs), interim measures, or regulations adopted as rules under Ch. 120, F.S., by the Department of Environmental Protection (DEP), the Department of Agriculture and Consumer Services (DACS), or a water management district (WMD) as part of a statewide or regional program; or
- Expressly regulated by the United States Department of Agriculture, the United States Army Corps of Engineers, or the United States Environmental Protection Agency.

However, s. 163.3162(3)(i), F.S., provides that the prohibition on governmental entities adopting or enforcing certain duplicative ordinances, resolutions, regulations, rules, or policies does not limit a county's power to enforce wetlands, springs protection, or stormwater ordinances, regulations, or rules adopted before July 1, 2003.

Effect of Proposed Changes

The bill amends s. 163.3162(3)(i), F.S., to prevent counties from continuing to adopt duplicative wetlands, springs protection, and stormwater regulations after July 1, 2003, by modifying, amending, or readopting regulations that were originally adopted prior to July 1, 2003.

Section 2. Process for Adoption of Comprehensive Plan or Plan Amendment

Present Situation

Section 163.3184, F.S., sets forth the state's review process for the adoption of local government comprehensive plans (plans) and plan amendments. Generally, plan amendments adopted by local governments follow the expedited review process.[3] However, plan amendments that are in an area of critical state concern, propose a rural land stewardship area, propose a development of regional impact, or are new plans for newly incorporated municipalities must follow the state coordinated review process.[4]

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[1] Section 163.3162(2)(d), F.S., defines a 'governmental entity' as municipalities, counties, school boards, special districts, and other local entities within the jurisdiction of one county created by general or special law or local ordinance. It does not include a WMD, a water control district established under ch. 298, F.S., or a special district created by special act for water management purposes.

[2] Bona fide farm or farm operation is defined in s. 193.461, F.S., as good faith commercial agricultural use of the land based on the length of time the land has been so used, whether the use has been continuous, indication that an effect has been made to care sufficiently and adequately for the land in accordance with accepted commercial agricultural practices, and size as it relates to the specific agricultural use, among other things.

[3] Section 163.3184(3), F.S.

[4] Section 163.3184(4), F.S.

Under the expedited and coordinated review process, each local governing body proposing a plan or plan amendment must transmit the proposed comprehensive plan or plan amendment to the reviewing agencies[5] within 10 working days after the first public hearing.

Section 163.3184(11), F.S., provides that the procedure for transmittal of a proposed plan or plan amendment must be by an affirmative vote of *not less than a majority* of the members of the governing body present at the hearing.

Effect of Proposed Changes

The bill amends s. 163.3184(11), F.S., reducing the voting requirement for the procedure for transmittal of a proposed plan or plan amendment by specifying that affirmative votes from only a "simple majority" of the members of the governing body present at the hearing are required, rather than "not less than a majority" of those members. Therefore, voting requirements adopted by a local government for proposed plans or plan amendments that are more stringent than a simple majority, such as a super majority vote, would be prohibited.

Section 3. Agricultural Lands Affected by a Comprehensive Plan

Present Situation

Local governments have the authority to establish land use designations for lands within their jurisdictional boundary. These land use designations generally include agricultural, residential, industrial, etc. Local governments can also amend the designated land uses to allow for more intensive or less intensive uses. In some instances, a landowner of agricultural land may request a local government to approve a land use change authorizing the land to be used for a more intensive purpose, such as for residential instead of agricultural. Many times a landowner may seek a more intensive land use authorization knowing that actual development of the land may not occur for some years in the future. There have been reports that certain local governments have approved more intensive land uses for lands classified as agricultural for ad valorem property tax purposes and then rescinded the land use changes when the agricultural property owner continued to use the land for a bona fide agricultural purpose qualifying for an agricultural classification.

Section 163.3194(5), F.S., provides that the agricultural classification of land for ad valorem property taxation purposes cannot be affected by any adopted comprehensive plan, but nothing prohibits a local government from rescinding a land use change where the land maintains its agricultural classification.

Effect of Proposed Changes

The bill amends s. 163.3194(5), F.S., to prohibit a local government from rescinding a prior land use approval solely because the land continues to be used for bona fide agricultural purposes and qualifies for an agricultural classification.

[5] Pursuant to s. 163.3184(1)(c), F.S., 'reviewing agencies' means: 1. The state land planning agency; 2. The appropriate regional planning council; 3. The appropriate WMD; 4. DEP; 5. The Department of State; 6. The Department of Transportation; 7. In the case of plan amendments relating to public schools, the Department of Education; 8. In the case of plans or plan amendments that affect a military installation, the commanding officer of the affected military installation; 9. In the case of county plans and plan amendments, the Fish and Wildlife Conservation Commission and the Department of Agriculture and Consumer Services; and 10. In the case of municipal plans and plan amendments, the county in which the municipality is located.

Section 4. Lease of Sovereignty Submerged Lands for Private Residential Docks and Piers

Present Situation

Upon statehood, Florida gained title to all sovereign submerged lands[6] within its boundaries, to be held in trust for the public.[7] The Board of Trustees of the Internal Improvement Trust Fund (BOT) is responsible for the acquisition, administration, management, control, supervision, conservation, protection, and disposition of such lands.[8] The Florida Constitution authorizes the sale of sovereign submerged lands, but only when in the public interest, and authorizes private use of portions of such lands, but only when not contrary to the public interest.[9]

Section 253.03(7), F.S., specifies that, when disposing of sovereign submerged lands, the BOT is required to "ensure maximum benefit and use." The BOT also has the authority to adopt regulations pertaining to anchoring, mooring, or otherwise attaching to the bottom and the establishment of anchorages on sovereign submerged lands.

Florida recognizes "riparian rights" for landowners with waterfront property bordering on navigable waters.[10] Section 253.141(1), F.S., specifies that these rights include ingress, egress, boating, bathing, fishing, and others as defined by law. Riparian landowners must obtain the BOT's authorization for installing and maintaining docks, piers, and boat ramps on sovereign submerged land.[11] Under the BOT's rules, "dock" generally means a fixed or floating structure, including moorings and access walkways, used for the purpose of mooring and accessing vessels.[12] Authorization may be in the form of consent by rule, letter of consent, or lease.[13] All leases authorizing activities on sovereign submerged lands must include provisions for lease fee adjustments and annual payments.[14]

Section 253.0347, F.S., establishes the sovereign submerged lands lease requirements for a private residential single-family and multi-family dock. Section 253.0347(2)(f), F.S., provides that a lessee of sovereign submerged lands for a private residential multi-family dock designed to moor boats up to the number of units within the multi-family development *is not required to pay lease fees* for a preempted area equal to or less than 10 times the riparian shoreline along sovereign submerged land on the affected waterbody times the number of units with docks in the private multi-family development.[15] For example, if a large condominium building owns 1,000 square feet of shoreline and has 100 units with docks, the condominium association would be exempt from paying lease fees on a preempted area of 1 million square feet of sovereign submerged lands (10 x 1000 sq ft of shoreline x 100 units = Preempted area of 1 million sq ft).

Under current law,[16] statewide environmental resource permits are required to construct private residential single-family and multi-family docks on sovereign submerged lands. DEP also requires that applicants for such permits pay a one-time permit fee. Multi-family docks that are less than 1,000 square feet are exempt and do not require a permit or permit fee.[17] A general permit is required for

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[6] In Florida, "submerged lands" are "publicly owned lands below the ordinary high-water mark of fresh waters and below the mean high-water line of salt waters extending seaward to the outer jurisdiction of the state." Section 253.03(8)(b), F.S.
[7] *Broward v. Marbry*, 50 So. 826, 829-30 (Fla. 1909).
[8] Section 253.03(1), F.S.
[9] Article X, Section 11 of the Florida Constitution.
[10] Section 253.141(1), F.S. These rights are appurtenant to and inseparable from the riparian land; the rights inure to the property owner, but the rights are not proprietary in nature. *Id.*
[11] Rule 18-21.005(1)(d), F.A.C.
[12] *See* Rule 18-20.003(19), F.A.C.; Rule 18-21.003(2), F.A.C.
[13] Rule 18.21.005(1), F.A.C.
[14] Rule 18-21.008(1)(b)(2), F.A.C.
[15] Section 253.0347, F.S.
[16] Section 373.4131(1)(a), F.S.
[17] Rule 62-330.051, F.A.C.

multi-family docks that do not exceed 2,000 square feet and the permit fee is $250.[18] Individual permits are required for all other multi-family docks that do not qualify as an exempt or general permit and the permit fee begins at $420 and can increase depending on the number of slips and size of the dock.[19]

Effect of Proposed Changes

The bill amends s. 253.0347(2)(f), F.S., to provide that a lessee of sovereign submerged lands for a private residential multi-family dock is not required to pay permit fees, as discussed above, for the preempted area.

Section 5. Water Control Plans

Present Situation

Water control districts have a long history in Florida. As early as the 1830s, the Legislature passed a special act authorizing landowners to construct drainage ditches across adjacent lands to discharge excess water. Following the passage of several special acts creating drainage districts, the Legislature passed the state's first general drainage law, the General Drainage Act of 1913 (now codified in Chapter 298, F.S.), to establish a single procedure for creating drainage districts and to provide general law provisions governing the operation of these districts. Between 1913 and 1972, the General Drainage Act remained virtually unchanged. In 1972 and 1979, the Legislature amended the act to change the name of these districts to water management districts and then to 'water control districts.'

Chapter 298, F.S., contains provisions governing the creation and operation of water control districts. Section 298.01, F.S., restricts the creation of new water control districts to special acts of the Legislature (independent water control districts) and under the provisions of s. 125.01, F.S. (dependent water control districts).

Effective October 1998, any plan of reclamation, water management plan, or plan of improvement developed and implemented by a water control district is considered a "water control plan."

A water control plan for a district must contain the following, if applicable:[20]

- Descriptions of the district's statutory authority;
- Maps delineating all boundaries of the district and subdistricts;
- Descriptions of all land and facility uses;
- Engineering descriptions for each facility's ability to store water;
- Descriptions of any environmental or water quality program that the water control district has implemented or plans to implement;
- Map of areas outside the district where the district provides service;
- Detailed descriptions of proposed facilities in the next 5 years; and
- Descriptions of the administrative structure of the district.

Before adopting a water control plan or plan amendment, the district's board of supervisors must submit the proposed plan or amendment to the jurisdictional water management district for review.[21]

Section 298.225(6), F.S., provides that the review or approval of the water control plan by the applicable WMD does not constitute the granting of any permit necessary for the construction or operation of any water control district work and cannot be relied upon as any future agency action on a

[18] Rule 62-300.427, F.A.C.
[19] Rule 62-300.054, F.A.C.
[20] Section 298.225(3), F.S.
[21] Section 298.225(5), F.S.

permit application. Water control district projects are not exempt from obtaining all applicable state and federal environmental permits.

Effect of Proposed Changes

The bill amends s. 298.225(6), F.S., to prohibit local governments from requiring additional authorizations or permits for certain structures, such as ditches, dikes, water control structures, canals, or pump stations included within a water control plan if an environmental resource permit or federal s. 404 dredge and fill permit has been issued, and such structures are incorporated in a plat of the county or city within which the water control district lies.

Section 6. Dispersed Water Storage

Present Situation

Consumptive Use Permitting

For water uses other than private wells for domestic use, DEP and the WMDs have the authority to require any person seeking to use 'waters in the state'[22] to obtain a consumptive use permit (CUP). A CUP establishes the duration and type of allowed water use as well as the maximum amount that may be used. Pursuant to s. 373.219, F.S., each CUP must be consistent with the objectives of the WMD and may not be harmful to the water resources of the area. To obtain a CUP, an applicant must establish that the proposed use of water satisfies the statutory test, commonly referred to as 'the three-prong test.' Specifically, the proposed water use:

1. Must be a reasonable-beneficial use.[23]
2. May not interfere with any presently existing legal use of water; and
3. Must be consistent with the public interest.[24]

Duration of Permits

Multiple sections of law allow for CUPs of varying durations to be issued depending on the circumstances, including:

- CUPs must be granted for a period of 20 years if requested by the applicant and there is sufficient data to provide reasonable assurance that the conditions for permit issuance will be met for the duration of the permit. If either of these requirements is not met, a CUP with a shorter duration may be issued to reflect the period for which reasonable assurances can be provided.[25]
- CUPs may be granted for up to 50 years in the case of a municipality or other governmental body or of a public works or public service corporation if a long-term permit is required to provide for the retirement of bonds for the construction of waterworks and waste disposal facilities.[26]
- CUPs approved for the development of alternative water supplies must have term of at least 20 years if there is sufficient data to provide reasonable assurance that the conditions for permit

[22] Section 373.019(22), F.S., defines 'water' or 'waters in the state' to mean any and all water on or beneath the surface of the ground or in the atmosphere, including natural or artificial watercourses, lakes, ponds, or diffused surface water and water percolating, standing, or flowing beneath the surface of the ground, as well as all coastal waters within the jurisdiction of the state.

[23] Section 373.019(16), F.S., defines 'reasonable-beneficial use' to mean the use of water in such quantity as is necessary for economic and efficient utilization for a purpose and in a manner that is both reasonable and consistent with the public interest.

[24] Section 373.223(1), F.S.

[25] Section 373.236(1), F.S.

[26] Section 373.236(3), F.S.

issuance will be met for the duration of the permit. However, if the permittee issues bonds for the construction of the project, upon request of the permittee before the expiration of the permit, the permit must be extended for such additional time as is required for the retirement of bonds, not including any refunding or refinancing of the bonds, if the governing board determines that the use will continue to meet the conditions for the issuance of the permit.[27]

- CUPs for alternative water supply projects for a period of 30 to 37 years, if certain criteria are met.[28]

In addition, s. 373.236(6), F.S., provides that where landowners make extraordinary contributions of lands or construction funding to enable the expeditious implementation of alternative water supply development projects, WMDs and DEP may grant CUPS for those projects for up to 50 years to municipalities, counties, special districts, regional water supply authorities, multijurisdictional water supply entities, and publicly or privately owned utilities.

Effect of Proposed Changes

The bill amends s. 373.236(6), F.S., to authorize WMDs and DEP to grant CUPs for up to 50 years to landowners, individually or collectively, who make available lands to enable the expeditious development of projects involving dispersed surface water storage and release or surface water storage and recharge that provide water resource benefits and alternative water supply development.

The bill also allows a CUP to authorize water uses by individual project participants to commence on different dates if the CUP is issued to landowners who make land available for dispersed water storage or to municipalities, counties, special districts, regional water supply authorities, multijurisdictional water supply entities, and publicly or privately owned utilities engaged in alternative water supply projects.

Section 6. 30-year Consumptive Use Permit for a Development of Regional Impact Located within a Rural Area of Critical Economic Concern

Present Situation

Section 380.06, F.S., defines the term "development of regional impact" (DRI) as any development that, because of its character, magnitude, or location, would have a substantial effect upon the health, safety, or welfare of citizens of more than one county. This section also sets statewide guidelines and standards to be used in determining whether particular developments will undergo development of regional impact review.

Section 288.0656, F.S., defines the term "rural area of critical economic concern" as a rural community, or a region composed of rural communities, designated by the Governor, that has been adversely affected by an extraordinary economic event, severe or chronic distress, or a natural disaster or that presents a unique economic development opportunity of regional impact.

Effect of Proposed Changes

The bill authorizes WMDs and DEP to grant a CUP for up to 30 years for an approved development of regional impact that is located in a rural area of critical economic concern.

[27] Section 373.236(5)(a), F.S.
[28] Section 373.236(5)(b), F.S.

Section 7. Implementation of Programs for Regulating Water Wells

Present Situation

Section 373.308, F.S., directs DEP to authorize the governing board of a WMD to implement a program for the issuance of permits for the location, construction, repair, and abandonment of water wells. Upon authorization from DEP, issuance of well permits is the sole responsibility of the WMD, delegated local government, or local county health department. The statute prohibits other local governmental entities from imposing additional or duplicate requirements or fees or establish a separate program for the permitting of the location, abandonment, boring, or other activities reasonably associated with the installation and abandonment of a groundwater well. DEP is authorized to prescribe minimum standards for the location, construction, repair, and abandonment of water wells throughout all or parts of the state.

Effect of Proposed Changes

The bill amends s. 373.308, F.S., to require a delegated local government to follow well construction criteria and applicable standards adopted by DEP or a WMD. In addition, the bill specifies that the DEP or WMD criteria and standards preempt additional local government well construction permitting regulations.

Section 8. Licensure of Water Well Contractors

Present Situation

Any person wishing to engage in business as a water well contractor must obtain a license from a WMD.[29] The WMD licensure is the only water well contractor license required for the location, construction, repair, or abandonment of water wells in the state or any political subdivision.

Each person seeking a license must apply to take the licensure examination. Applications must be made to the WMD where the applicant resides or where the principal business is located. In order to take the licensure examination, the applicant must:[30]

- Be at least 18 years of age;
- Have two years of experience in constructing, repairing, or abandoning water wells, which must be verified by providing:
    - Evidence of the length of time the applicant has been engaged in the business of the construction, repair, or abandonment of water wells as a major activity, as attested to by a letter from three of the following persons:
        - A water well contractor.
        - A water well driller.
        - A water well parts and equipment vendor.
        - A water well inspector employed by a governmental agency.
    - A list of at least 10 water wells that the applicant has constructed, repaired, or abandoned within the preceding five years. Of these wells, at least seven must have been constructed by the applicant.
- Have completed the application form and remitted a nonrefundable application fee.

Effects of Proposed Changes

The bill revises the requirements for licensure as a water well contractor by deleting a water well driller and a water well parts and equipment vendor from the list of persons who may attest to the length of

[29] Section 373.323, F.S.
[30] Section 373.323(3), F.S.

time an applicant has been engaged in the water well contractor business. Therefore, two letters will be required, one from a water well contractor and a water well inspector employed by a governmental agency.

Sections 9 and 10. Mitigation Bank Permits

Present Situation

Section 373.4135, F.S., directs DEP and the WMDs to participate in and encourage the establishment of private and public mitigation banks and offsite regional mitigation. Mitigation banking is a practice in which an environmental enhancement and preservation project is conducted by a public agency or private entity (banker) to provide mitigation for unavoidable wetland impacts within a defined region (mitigation service area). The bank is the site itself, and the currency sold by the banker to the impact permittee is a credit, which represents the wetland ecological value equivalent to the complete restoration of one acre.[31] The number of potential credits permitted for the bank and the credit debits required for impact permits are determined by DEP or a WMD.

Section 373.4136(1), F.S., and Rule 62-342, F.A.C., provide the framework for the establishment and operation of mitigation banks. A mitigation bank permit constitutes authorization to construct, alter, operate, maintain, abandon, or remove any surface water management system necessary to establish and operate the mitigation bank. To obtain a mitigation bank permit, the applicant must, among other things, provide reasonable assurance that the applicant can meet the financial responsibility requirements prescribed for mitigation banks. Financial responsibility may be established by surety bonds, performance bonds, irrevocable letters of credit, or trust funds.[32] If a bond or an irrevocable letter of credit is used as the financial mechanism, a standby trust fund must be established, in which all payments under the bonds or irrevocable letter of credit must be directly deposited.[33]

Effect of Proposed Changes

The bill amends s. 373.4136(1), F.S., to allow an applicant for a mitigation bank permit to show that he or she can meet the financial responsibility requirements prescribed for mitigation banks by submitting proof of insurance in a form approved by DEP or a WMD. The bill also directs DEP and each WMD to adopt rules by January 1, 2015, to implement this provision.

Section 11. Regional Water Supply Planning

Present Situation

Regional Water Supply Planning

Section 373.709(1), F.S., requires the governing board of each WMD to conduct water supply planning for a water supply planning region within the district where it determines that existing sources of water are not adequate to:

- Supply water for all existing and future reasonable-beneficial uses; and
- Sustain the water resources and related natural systems for the planning period.

The planning must be conducted in an open public process and in coordination and cooperation with local governments, regional water supply authorities, government-owned and privately owned water and wastewater utilities, multijurisdictional water supply entities, self-suppliers, reuse utilities, DEP,

[31] *See* DEP website on 'Mitigation and Mitigation Banking.' This information may be viewed at http://www.dep.state.fl.us/water/wetlands/mitigation/mitigation_banking.htm.
[32] Rule R62-342.700, F.A.C.
[33] *Id.*

DACS, and other affected and interested parties. A determination by the WMD governing board that initiation of a regional water supply plan for a specific planning region is not needed must be reevaluated by the board at least once every five years and the board must initiate a regional water supply plan, if needed.

Section 373.709(2), F.S., provides that each regional water supply plan must be based on at least a 20-year planning period, and must include:

- A water supply development component;
- A water resource development component;
- A recovery and prevention strategy;
- A funding strategy for water resource development projects;
- The impacts on the public interest, costs, natural resources, etc.;
- Technical data and information;
- Any minimum flows and levels (MFLs) established for the planning area;
- Reservations of water adopted by rule within each planning region;
- Identification of the water resources for which future MFLs are scheduled to be developed; and
- An analysis of areas where variances may be used to create water supply development or water resource development projects.

The regional water supply plans typically list water resource development and water supply development options that can meet the projected reasonable-beneficial use needs of the water supply region. The plans normally include a mix of traditional and alternative water supply options.[34] Traditional water supplies come from surface water sources, such as lakes and rivers, and from groundwater withdrawals. Alternative water supplies include activities such as treating wastewater for agricultural use, desalination of saltwater or brackish water to produce drinking water, and surface and rain water storage. Water consumers either purchase or self-supply water. Self-supplied water often comes from on-site wells or through surface water retention, among other methods.

Long-term Master Plan

Section 163.3245, F.S., authorizes local governments, or combinations of local governments, to adopt a sector plan[35] into their comprehensive plans. Sector plans must encompass a long-term master plan for the entire planning area as part of the comprehensive plan and adoption by local development order of two or more detailed specific area plans that implement the long-term master plan.

Long-term master plans must include maps, illustrations, and text supported by data and analysis to address the following which includes, but is not limited to, land uses, water supply and conservation measures, and regionally significant natural resources and policies setting forth the procedures for protection or conservation.

Once a long-term master plan becomes legally effective, the water needs, water sources and water resource development, and water supply development projects must be incorporated into the applicable district and regional water supply plans.[36] A WMD may also issue CUPs for durations commensurate with the long-term master plan or detailed specific area plan while considering the

[34] *See* the DEP website on "Regional Water Supply Planning." This information may be viewed at http://www.dep.state.fl.us/water/waterpolicy/rwsp.htm

[35] Sector plans are defined in s. 163.3164, F.S., as the process in which one or more local governments engage in long-term planning for a large area and address regional issues through adoption of detailed specific area plans within the planning area as a means of fostering innovative planning and development strategies, reducing overlapping data and analysis requirements, protecting regionally significant resources and facilities, and addressing extrajurisdictional impacts.

[36] Section 163.3245(4)(b), F.S.

ability of the master plan area to contribute to regional water supply availability and the need to maximize reasonable-beneficial use of the water resource.[37]

Master Plan Development Order

A development of regional impact (DRI) is defined as any development which, because of its character, magnitude, or location, would have a substantial effect upon the health, safety, or welfare of citizens of more than one county.[38] Section 380.06(2), F.S., provides for both state and regional review of local land use decisions involving DRIs. Regional Planning Councils coordinate the review process with local, regional, state and federal agencies and recommend conditions of approval or denial to local governments. DRIs are also reviewed by the Department of Economic Opportunity as the state land planning agency, for compliance with state law and to identify the regional and state impacts of large-scale developments.

If a development project includes two or more DRIs, a developer may file a comprehensive DRI application.[39] If a proposed development is planned for development over an extended period of time, the developer may file an application for master development approval of the project and agree to present subsequent increments of the development for preconstruction review. This agreement must be entered into by the developer, the regional planning agency, and the appropriate local government having jurisdiction.[40]

Prior to adoption of the master plan development order, the developer, the landowner, the appropriate regional planning agency, and the local government having jurisdiction must review the draft of the development order to ensure that anticipated regional impacts have been adequately addressed and that information requirements for subsequent incremental application review are clearly defined. The development order for a master application must specify the information which must be submitted with an incremental application and must identify those issues which can result in the denial of an incremental application.

The review of subsequent incremental applications must be limited to that information specifically required and those issues specifically raised by the master development order, unless substantial changes in the conditions underlying the approval of the master plan development order are demonstrated or the master development order is shown to have been based on substantially inaccurate information.

Effect of Proposed Changes

The bill amends s. 373.709, F.S., to require regional water supply plans to incorporate the water needs, water sources, water resource development projects, and water supply development projects identified in an adopted long-term master plan or a master plan development order, and these projects are exempt from the analyses required in s. 373.709(2), F.S., described above.

Section 12. Variances

Present Situation

Section 403.201, F.S., authorizes DEP to grant a variance from the provisions of the Florida Air and Water Pollution Control Act[41] or the rules and regulations adopted pursuant to the act.

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[37] *Id.*
[38] Section 380.06(1), F.S.
[39] Section 380.06(21)(a), F.S.
[40] Section 380.0621(b), F.S.
[41] Chapter 403, F.S.

DEP may grant a variance or a renewal of a variance for any of the following reasons:

- There is no practicable means known or available for the adequate control of the pollution involved.
- Compliance with the particular requirement or requirements from which a variance is sought will necessitate the taking of measures which, because of their extent or cost, must be spread over a considerable period of time.
- To relieve or prevent another kind of hardship. Variances and renewals granted under this provision must be limited to a period of 24 months, except that variances granted for electrical power plant and transmission line siting may extend for the life of the permit certification.

Variances will not be granted from any provision or requirement concerning discharges of waste into waters of the state or hazardous waste management that would result in the provision or requirement being less stringent than a comparable federal provision or requirement, except for research, development, and demonstration permits under s. 403.70715, F.S.

Examples of moderating provisions include, but are not limited to, allowing certain exemptions, establishing mixing zones, using best available technology standards for meeting water quality standards under certain circumstances, etc.

Effects of Proposed Changes

The bill amends s. 403.201, F.S., to specify that nothing in the section prohibits the issuance of moderating provisions under state law.

Section 13. Solid Waste Management Trust Fund

Present Situation

A solid waste management facility may not be operated, maintained, constructed, expanded, modified, or closed without an appropriate and currently valid permit issued by DEP.[42]

Section 403.709, F.S., creates the Solid Waste Management Trust Fund (SWMTF) to fund solid waste management activities. Annual revenues from waste tire fees and license and permit fees deposited into the SWMTF are allocated for certain activities in the following manner:

- Up to 40 percent for funding solid waste activities of DEP and other state agencies.
- Up to 4.5 percent for funding research and training programs relating to solid waste management through the Center for Solid and Hazardous Waste Management.
- Up to 11 percent to DACS for mosquito control.
- Up to 4.5 percent for funding to the Department of Transportation for litter prevention and control programs through a certified Keep America Beautiful Affiliate at the local level.
- A minimum of 40 percent for funding a solid waste management grant program pursuant to s. 403.7095, F.S., for activities relating to recycling and waste reduction, including waste tires requiring final disposal.

[42] *See* s. 403.707(1), F.S.

Pursuant to s. 403.704(9), F.S., DEP must develop rules to require closure of solid waste management facilities under certain circumstances. The rules currently require that all disposal facilities close within six months after they cease receiving waste by properly sloping the sides; covering the waste with two feet of dirt and, in some cases, a barrier layer; vegetating the dirt; and establishing a stormwater system.[43] The rules also require disposal facilities to perform long-term care for between five and 30 years, which includes monitoring ground water and gas, maintaining the final cover, and maintaining the stormwater system.[44]

Section 403.7125, F.S., requires owners or operators of landfills to provide financial assurance that they can cover closure costs. Section 403.707(9)(c), F.S., applies this requirement to construction and demolition debris disposal facilities. Both sections allow DEP to specify allowable financial mechanisms, but neither specifically requires that insurance be allowed. In Rule 62-701.630, F.A.C, DEP authorizes owners and operators to offer closure insurance as proof of financial assurance.

DEP has identified eight facilities that that have been abandoned or were ordered closed, and pose or are expected to pose an environmental threat if closure is not completed. All eight used insurance to provide financial assurance. In all of these cases, the owner/operator was a limited liability company financially unable to pay for closure costs. DEP does not have a mechanism to access the insurance money to pay third party contractors to perform closure and long-term care activities.

Effect of Proposed Changes

The bill amends s. 403.709, F.S., to create a solid waste landfill closure account within the SWMTF to provide funding for the closing and long-term care of solid waste management facilities. DEP may use funds from the account to contract with a third party for the closing and long-term care of a solid waste management facility if:

- The facility has or had a DEP permit to operate the facility;
- The permittee provided proof of financial assurance for closure in the form of an insurance certificate;
- The facility is deemed to be abandoned or has been ordered to close by DEP;
- Closure is accomplished in substantial accordance with a closure plan approved by DEP; and
- DEP has written documentation that the insurance company issuing the closure insurance policy will provide or reimburse the funds required to complete closing and long-term care of the facility.

Funds received by DEP as reimbursement from the insurance company for the costs of closing or long-term care of the facility must be deposited into the solid waste landfill closure account.

Section 14. Providing a 2-year Permit Extension.

Present Situation

In 2009,[45] the Legislature provided a 2-year extension and renewal for the following permits that at the time had an expiration date of September 1, 2008, through January 1, 2012:

- Any environmental resource permit issued by DEP or a WMD;
- Any local government-issued development order or building permit; and

The two-year extension also applied to certain build out dates.

[43] Rule 62-701.600, F.A.C.
[44] Rule 62-701.620, F.A.C.
[45] s. 14, ch. 2009-96, L.O.F.

Those with valid permits or other authorization that were eligible for the 2-year extension were required to notify the authorizing agency in writing no later than December 1, 2009, identifying the specific authorization for which the holder intended to use the extension and the anticipated timeframe for acting on the authorization.

The 2-year extensions did not apply to a permit or authorization:

- Under any programmatic or regional general permit issued by the Army Corps of Engineers;
- Held by an owner or operator determined to be in significant noncompliance with the conditions of the permit; and
- That would delay or prevent compliance with a court order if extended.

Extended permits continued to be governed by the rules in effect at the time the permit was issued, except when it could be demonstrated that the rules in effect at the time would create an immediate threat to public safety or health.

This applied to any modification of the plans, terms, and conditions of the permit that lessens the environmental impact, except that any such modification could not extend the time limit beyond two additional years.

The Legislature in 2010[46] reauthorized the 2-year extensions granted in 2009 because the underlying law was being challenged in court.[47]

In 2010,[48] the Legislature also provided another 2-year extension and renewal from the date of expiration for permits that at the time had an expiration date of September 1, 2008, through January 1, 2012. The types of permits eligible for the extension were identical to the types eligible in 2009. The 2-year extension granted in 2010 was in addition to the 2-year extension granted in 2009. Those with valid permits or other authorization that were eligible for the 2-year extension were required to notify the authorizing agency in writing by December 31, 2010, identifying the specific authorization for which the holder intended to use the extension and the anticipated timeframe for acting on the authorization.

Because the 2-year extensions granted in 2009 and 2010 only applied to those permits and authorizations that had expiration dates of September 1, 2008 through January 1, 2012, there were certain permits and authorizations that were extended beyond the September 1, 2008, to January 1, 2012, window by the 2009 2-year extension, and therefore were unable to take advantage of the 2010 2-year extension.

In 2011, the Legislature[49] again extended and renewed permits previously extended in 2009 and 2010 for a period of two additional years from their previously scheduled expiration date. The holder of a valid permit or authorization eligible for this 2-year extension was required to notify the authorizing agency in writing by December 31, 2011, identifying the specific authorization for which the holder intended to use the extension and the anticipated timeframe for acting on the authorization. Permits that were extended by a total of 4 years pursuant 2009 and 2010 extensions were not eligible for this extension.

The bill also, in recognition of the 2011 real estate market conditions, extended and renewed for a period of 2 more years with conditions, any building permit, and any environmental resource permit issued by DEP or by a WMD, which had an expiration date from January 1, 2012, through January 1,

[46] s. 47, ch. 2010-147, L.O.F.
[47] Because ch. 2009-96, L.O.F., was involved in pending litigation, see *City of Weston v. Crist*, Case No. 09-CA-2639 (Fla. 2d Cir. Ct. 2010), the Legislature in 2010 reauthorized the permit extensions granted in ch. 2009-96, L.O.F. in order to protect those who had relied on the extensions.
[48] s. 46, ch. 2010-147, L.O.F.
[49] s. 79, ch. 2011-139, L.O.F.

2014. This extension included any local government-issued development order or building permit including certificates of levels-of-service and is in addition to any existing permit extension. Development of Regional Impact development order extensions were not eligible for this extension and any permit that has received a cumulative extension of 4 years pursuant to the 2009 and 2010 extensions were not eligible for this 2-year extension.

In 2012, the Legislature enacted a law[50] providing that any building permit, and any environmental resource permit issued by DEP or a WMD, which had an expiration date from January 1, 2012, through January 1, 2014, was extended and renewed for two years after its previously scheduled date of expiration. This extension included any local government-issued development order or building permit including certificates of levels of service. This did not prohibit conversion from the construction phase to the operation phase upon completion of construction. Under HB 503, any permit extensions that were granted pursuant to this bill and the previous extensions in 2009, 2010, and 2011, could not exceed 4 years in total.

Effect of Proposed Changes

The bill renews the extension from previous years by providing that any building permit, and any environmental resource permit issued by DEP or a WMD, that has an expiration date from January 1, 2012, through January 1, 2015, is extended and renewed for two years after its previously scheduled date of expiration. This extension includes any local government-issued development order or building permit, including certificates of levels of service. This does not prohibit conversion from the construction phase to the operation phase upon completion of construction. This extension is in addition to any existing permit extension, however, permit extensions granted pursuant to this bill and the 2009, 2010, and 2011 extensions cannot exceed five years in total.

The dates for commencement and completion for any required mitigation associated with a phased construction project are also extended so that mitigation takes place in the same timeframe relative to the phase as originally permitted.

The extension does not apply to the following:

- A permit or other authorization under any programmatic or regional general permit issued by the Army Corps of Engineers.
- A permit or other authorization held by an owner or operator determined to be in significant noncompliance with the conditions of the permit or authorization as established through the issuance of a warning letter or notice of violation, the initiation of formal enforcement, or other equivalent action by the authorizing agency.
- A permit or other authorization, if granted an extension that would delay or prevent compliance with a court order.

Permits extended under this section of the bill will continue to be governed by the rules in effect at the time the permit was issued, unless it is demonstrated that the rules in effect at the time the permit was issued would create an immediate threat to public safety or health. This provision applies to any modification of the plans, terms, and conditions of the permit that lessens the environmental impact, except that any such modification does not extend the time limit beyond two additional years.

The provisions in this section of the bill do not impair the authority of a county or municipality to require the owner of a property that has notified the county or municipality of the owner's intent to receive the extension of time granted to maintain and secure the property in a safe and sanitary condition in compliance with applicable laws and ordinances.

[50] s. 24, ch. 2012-205, L.O.F.

B. SECTION DIRECTORY:

Section 1. Amends s. 163.3162, F.S., relating to agricultural lands and practices.

Section 2. Amends s. 163.3184, F.S., relating to the process for adoption of comprehensive plans or plan amendments.

Section 3. Amends s. 163.3194, F.S., relating to the legal status of comprehensive plans.

Section 4. Amends s. 253.0347, F.S., relating to the lease of sovereignty submerged lands for private residential docks and piers.

Section 5. Amends s. 298.225, F.S., relating to water control plans.

Section 6. Amends s. 373.236, F.S., relating to the duration of permits for alternative water supply development projects.

Section 7. Amends s. 373.308, F.S., relating to the implementation of programs for regulating water wells.

Section 8. Amends s. 373.323, F.S., relating to the licensure of water well contractors.

Section 9. Amends s. 373.4136, F.S., relating to the establishment and operation of mitigation banks.

Section 10. Directs DEP and the WMDs to adopt rules relating to the use of insurance as a mechanism for providing financial responsibility.

Section 11. Amends s. 373.709, F.S., relating to regional water supply planning.

Section 12. Amends s. 403.201, F.S., relating to variances.

Section 13. Amends s. 403.709, F.S., relating to the Solid Waste Management Trust Fund.

Section 14. Providing a two-year extension for certain permits.

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

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   The bill has a potentially negative fiscal impact on DEP due to the loss of revenue generated from issuing permits for a private residential multifamily dock on sovereign submerged lands.

2. Expenditures:

   See Fiscal Comments section.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

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

2. Expenditures:

The bill has a potentially positive fiscal impact on water control districts that do not need additional local government authorizations or permits if they have been issued certain permits.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill has a potentially positive fiscal impact on a lessee of sovereignty submerged lands for a private residential multifamily dock who do not have to pay permit fees for a certain preempted area.

The bill has a potentially positive fiscal impact on landowners who receive 50 year CUP permits for alternative water supply development projects.

The bill has a potentially positive fiscal impact for applicants for a mitigation bank permit that can satisfy the financial responsibility requirement by submitting proof of insurance in a form approved by DEP or a WMD.

The bill has a potentially positive fiscal impact on those that have certain permits that are being extended and renewed for two years.

D. FISCAL COMMENTS:

The bill has a potentially negative fiscal impact on DEP and the WMDs for issuing 50-year permits. This provision may result in DEP and the WMDs issuing fewer CUP permits and, thus, receiving fewer permit fees.

The bill has a potentially negative fiscal impact on DEP resulting from rule development for implementing the insurance provisions within the mitigation bank program.

This bill has a potentially negative fiscal impact on DEP for the loss of permit fees for private residential multi-family docks on sovereign submerged lands.

DEP may use funds from the solid waste landfill closure account within the Solid Waste Management Trust Fund (SWMTF) to pay third party contractors to perform closure and long-term care activities, if necessary. DEP expects that the insurance company insuring landfill closure will either pay the third party directly (in which case no state money would actually be used) or under the bill will be required to reimburse DEP for any payments DEP makes to the third party. Where DEP is required to pay contractors directly for closure activities and then be reimbursed by the insurance company, DEP will be required to expend funds from the SWMTF.

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:

The bill may implicate the single subject requirement in Art. III, s. 6 of the Florida Constitution, which requires that "every law shall embrace but one subject and matter properly connected therewith." However, with regard to the test to be applied by the court in determining whether a particular provision violates the single subject rule, the fact that the scope of a legislative enactment is broad

and comprehensive is not fatal so long as the matters included in the enactment have a natural or logical connection.[51] It is unclear whether a court would find that any of the provisions in the bill violates the single subject constitutional provision.

B. RULE-MAKING AUTHORITY:

The bill directs DEP and each WMD to adopt rules by January 1, 2015, to implement the provision allowing applicants to satisfy the financial responsibility requirement for a mitigation bank permit by submitting proof of insurance.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

Not applicable.

[51] *Franklin vs. State*, 887 So. 2d 1063 (Fla. 2004).

A bill to be entitled

An act relating to environmental regulation; amending s. 163.3162, F.S.; specifying the authority of counties to enforce certain wetlands, springs protection, and stormwater ordinances, regulations, and rules; amending s. 163.3184, F.S.; providing vote requirements for adoption of certain elements of local government comprehensive plans and plan amendments; amending s. 163.3194, F.S.; prohibiting local governments from rescinding certain comprehensive plan amendments; amending s. 253.0347, F.S.; providing exemptions from lease or permit fees for certain lessees; amending s. 298.225, F.S.; exempting certain facilities, structures or improvements from additional local government authorizations or permits; amending s. 373.236, F.S.; authorizing consumptive use permit durations for certain projects and developments; authorizing multiple commencement dates for certain consumptive use permits; amending s. 373.308, F.S.; requiring delegated local governments to follow certain criteria and standards for well construction; preempting certain well construction permitting regulations; amending s. 373.323, F.S.; revising requirements for licensure as a water well contractor; amending s. 373.4136, F.S.; providing that proof of

insurance meets a certain mitigation bank permit requirement; directing the Department of Environmental Protection and water management districts to adopt specified rules; amending s. 373.709, F.S.; requiring certain criteria to be incorporated into regional water supply plans; amending s. 403.201, F.S.; revising provisions relating to variances for discharges of waste into waters of the state or hazardous waste management; amending s. 403.709, F.S.; establishing a solid waste landfill closure account within the Solid Waste Management Trust Fund for specified purposes; providing for the deposit of certain funds into the account; providing a 2-year permit extension; providing an effective date.

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

Section 1. Paragraph (i) of subsection (3) of section 163.3162, Florida Statutes, is amended to read:

163.3162 Agricultural Lands and Practices.—

(3) DUPLICATION OF REGULATION.—Except as otherwise provided in this section and s. 487.051(2), and notwithstanding any other law, including any provision of chapter 125 or this chapter:

(i) This subsection does not limit a county's powers to:

1. Enforce wetlands, springs protection, or stormwater

ordinances, regulations, or rules adopted before July 1, 2003, excluding any modification, readoption, or amendment approved on or after July 1, 2003.

2. Enforce wetlands, springs protection, or stormwater ordinances, regulations, or rules pertaining to the Wekiva River Protection Area.

3. Enforce ordinances, regulations, or rules as directed by law or implemented consistent with the requirements of a program operated under a delegation agreement from a state agency or water management district.

As used in this paragraph, the term "wetlands" has the same meaning as defined in s. 373.019.

Section 2. Paragraph (a) of subsection (11) of section 163.3184, Florida Statutes, is amended to read:

163.3184 Process for adoption of comprehensive plan or plan amendment.—

(11) PUBLIC HEARINGS.—

(a) The procedure for transmittal of a complete proposed comprehensive plan or plan amendment pursuant to subparagraph (3)(b)1. and paragraph (4)(b) and for adoption of a comprehensive plan or plan amendment pursuant to subparagraphs (3)(c)1. and (4)(e)1. shall be by affirmative vote requiring ~~of not less than~~ a simple majority of the members of the governing body present at the hearing. The adoption of a comprehensive plan or plan amendment shall be by ordinance. For the purposes

of transmitting or adopting a comprehensive plan or plan amendment, the notice requirements in chapters 125 and 166 are superseded by this subsection, except as provided in this part.

Section 3. Subsection (5) of section 163.3194, Florida Statutes, is amended to read:

163.3194 Legal status of comprehensive plan.—

(5)(a) The tax-exempt status of lands classified as agricultural under s. 193.461 shall not be affected by any comprehensive plan adopted under this act as long as the land meets the criteria set forth in s. 193.461.

(b) A local government may not rescind a prior land use approval solely because the underlying land continues to be used for bona fide agricultural purposes in a manner which qualifies for an agricultural classification under s. 193.461.

Section 4. Paragraph (f) of subsection (2) of section 253.0347, Florida Statutes, is amended to read:

253.0347 Lease of sovereignty submerged lands for private residential docks and piers.—

(2)

(f) A lessee of sovereignty submerged lands for a private residential multifamily dock designed to moor boats up to the number of units within the multifamily development is not required to pay lease or permit fees for a preempted area equal to or less than 10 times the riparian shoreline along sovereignty submerged land on the affected waterbody times the number of units with docks in the private multifamily

development.

Section 5. Subsection (6) of section 298.225, Florida Statutes, is amended to read:

298.225 Water control plan; plan development and amendment.—

(6) The review or approval of the water control plan by the applicable water management district shall not constitute the granting of any permit necessary for the construction or operation of any water control district work and cannot be relied upon as any future agency action on a permit application. Notwithstanding any other provision of law, if any of the facilities, structures, or improvements including but not limited to ditches, dikes, water control structures, canals, or pump stations included within a water control plan have been issued an environmental resource permit pursuant to Part IV, chapter 373, or a permit has been issued pursuant to s. 404 of the Federal Clean Water Act, 33 USC 1344, and such structures are incorporated in a plat of the county or city within which the water control district lies, no additional local government authorizations or permits shall be required to implement, construct, or maintain the permitted facilities, structures, or improvements.

Section 6. Subsection (6) of section 373.236, Florida Statutes, is amended to read:

373.236 Duration of permits; compliance reports.—

(6)(a) The Legislature finds that the need for alternative

water supply development projects to meet anticipated public water supply demands of the state is so important that it is essential to encourage participation in and contribution to these projects by private-rural-land owners who characteristically have relatively modest near-term water demands but substantially increasing demands after the 20-year planning period in s. 373.709.

1. ~~Therefore,~~ W~~w~~here such landowners make extraordinary contributions of lands or construction funding to enable the expeditious implementation of such projects, water management districts and the department may grant permits for such projects for a period of up to 50 years to municipalities, counties, special districts, regional water supply authorities, multijurisdictional water supply entities, and publicly or privately owned utilities, with the exception of any publicly or privately owned utilities created for or by a private landowner after April 1, 2008, which have entered into an agreement with the private landowner for the purpose of more efficiently pursuing alternative public water supply development projects identified in a district's regional water supply plan and meeting water demands of both the applicant and the landowner.

2. Where landowners, individually or collectively, make available lands to enable the expeditious development of projects involving dispersed surface water storage and release or surface water storage and recharge which provide water resource benefits and alternative water supply development, the

water management districts and the department may grant permits for such projects for a period of up to 50 years.

(b) A permit under paragraph (a):

1. May authorize the uses of the individual project participants to begin on different dates.

2. May be granted only for that period for which there is sufficient data to provide reasonable assurance that the conditions for permit issuance will be met.

3. ~~Such a permit~~ Shall require a compliance report by the permittee every 5 years during the term of the permit. The report shall contain sufficient data to maintain reasonable assurance that the conditions for permit issuance applicable at the time of district review of the compliance report are met. After review of the ~~this~~ report, the governing board or the department may modify the permit to ensure that the use meets the conditions for issuance.

(c) This subsection does not limit the existing authority of the department or the governing board to modify or revoke a consumptive use permit.

(8) Water management districts and the department may grant a permit for a period of up to 30 years for a development of regional impact that is approved pursuant to s. 380.06 and located in a rural area of critical economic concern as defined in s. 288.0656.

Section 7. Subsection (5) is added to section 373.308, Florida Statutes, to read:

373.308 Implementation of programs for regulating water wells.—

(5) Delegated local governments must follow well construction criteria and applicable standards adopted by the department or water management district, and such criteria and standards shall preempt additional local government well construction permitting regulations.

Section 8. Paragraph (b) of subsection (3) of section 373.323, Florida Statutes, is amended to read:

373.323 Licensure of water well contractors; application, qualifications, and examinations; equipment identification.—

(3) An applicant who meets the following requirements shall be entitled to take the water well contractor licensure examination:

(a) Is at least 18 years of age.

(b) Has at least 2 years of experience in constructing, repairing, or abandoning water wells. Satisfactory proof of such experience shall be demonstrated by providing:

1. Evidence of the length of time the applicant has been engaged in the business of the construction, repair, or abandonment of water wells as a major activity, as attested to by a letter from ~~three of~~ the following persons:

a. A water well contractor.

~~b. A water well driller.~~

~~c. A water well parts and equipment vendor.~~

b.~~d.~~ A water well inspector employed by a governmental

agency.

2. A list of at least 10 water wells that the applicant has constructed, repaired, or abandoned within the preceding 5 years. Of these wells, at least seven must have been constructed, as defined in s. 373.303(2), by the applicant. The list shall also include:

a. The name and address of the owner or owners of each well.

b. The location, primary use, and approximate depth and diameter of each well that the applicant has constructed, repaired, or abandoned.

c. The approximate date the construction, repair, or abandonment of each well was completed.

Section 9. Paragraph (i) of subsection (1) of section 373.4136, Florida Statutes, is amended to read:

373.4136 Establishment and operation of mitigation banks.—

(1) MITIGATION BANK PERMITS.—The department and the water management districts may require permits to authorize the establishment and use of mitigation banks. A mitigation bank permit shall also constitute authorization to construct, alter, operate, maintain, abandon, or remove any surface water management system necessary to establish and operate the mitigation bank. To obtain a mitigation bank permit, the applicant must provide reasonable assurance that:

(i) It can meet the financial responsibility requirements prescribed for mitigation banks. <u>One of the ways an applicant</u>

may satisfy this condition is by submitting proof of insurance in a form approved by the department or water management district.

Section 10. By January 1, 2015, the Department of Environmental Protection and each water management district shall adopt rules to implement the amendment to s. 373.4136(1)(i).

Section 11. Subsection (9) of section 373.709, Florida Statutes, is renumbered as subsection (10), and a new subsection (9) is added to that section to read:

373.709 Regional water supply planning.—

(9) The water needs, water sources, water resource development projects, and water supply development projects identified in a long-term master plan adopted pursuant to s. 163.3245 or a master plan development order issued under s. 380.06(21) shall be incorporated into a regional water supply plan adopted pursuant to this section and are exempt from the analyses required under subsection (2).

Section 12. Subsection (2) of section 403.201, Florida Statutes, is amended to read:

403.201 Variances.—

(2) No variance shall be granted from any provision or requirement concerning discharges of waste into waters of the state or hazardous waste management which would result in the provision or requirement being less stringent than a comparable federal provision or requirement, except as provided in s.

403.70715. However, nothing herein prohibits the issuance of moderating provisions under state law.

Section 13. Subsection (5) is added to section 403.709, Florida Statutes, to read:

403.709 Solid Waste Management Trust Fund; use of waste tire fees.—There is created the Solid Waste Management Trust Fund, to be administered by the department.

(5) (a) Notwithstanding subsection (1), a solid waste landfill closure account is established within the Solid Waste Management Trust Fund to provide funding for the closing and long-term care of solid waste management facilities. The department may use funds from the account to contract with a third party for the closing and long-term care of a solid waste management facility if:

1. The facility has or had a department permit to operate the facility.

2. The permittee provided proof of financial assurance for closure in the form of an insurance certificate.

3. The facility is deemed to be abandoned or was ordered to close by the department.

4. Closure is accomplished in substantial accordance with a closure plan approved by the department.

5. The department has written documentation that the insurance company issuing the closure insurance policy will provide or reimburse the funds required to complete closing and long-term care of the facility.

(b) The department shall deposit the funds received from the insurance company as reimbursement for the costs of closing or long-term care of the facility into the solid waste landfill closure account.

Section 14. (1) Any building permit, and any permit issued by the Department of Environmental Protection or by a water management district pursuant to part IV of chapter 373, Florida Statutes, which has an expiration date from January 1, 2012, through January 1, 2015, is extended and renewed for a period of 2 years after its previously scheduled date of expiration. This extension includes any local government-issued development order or building permit including certificates of levels of service. This section does not prohibit conversion from the construction phase to the operation phase upon completion of construction. This extension is in addition to any existing permit extension, including extensions provided by operation of s. 252.363, resulting from a declaration of a state of emergency by the Governor. Extensions granted pursuant to this section; section 14 of chapter 2009-96, Laws of Florida, as reauthorized by section 47 of chapter 2010-147, Laws of Florida; section 46 of chapter 2010-147, Laws of Florida; or section 74 or section 79 of chapter 2011-139, Laws of Florida, shall be limited to a total of 5 years. Further, specific development order extensions granted pursuant to s. 380.06(19)(c)2., Florida Statutes, cannot be further extended by this section.

(2) The commencement and completion dates for any required

mitigation associated with a phased construction project are extended so that mitigation takes place in the same timeframe relative to the phase as originally permitted.

(3) The extension provided for in subsection (1) does not apply to:

(a) A permit or other authorization under any programmatic or regional general permit issued by the Army Corps of Engineers.

(b) A permit or other authorization held by an owner or operator determined to be in significant noncompliance with the conditions of the permit or authorization as established through the issuance of a warning letter or notice of violation, the initiation of formal enforcement, or other equivalent action by the authorizing agency.

(c) A permit or other authorization, if granted an extension that would delay or prevent compliance with a court order.

(4) Permits extended under this section shall continue to be governed by the rules in effect at the time the permit was issued, except if it is demonstrated that the rules in effect at the time the permit was issued would create an immediate threat to public safety or health. This provision applies to any modification of the plans, terms, and conditions of the permit which lessens the environmental impact, except that any such modification does not extend the time limit beyond 2 additional years.

(5) This section does not impair the authority of a county or municipality to require the owner of a property that has notified the county or municipality of the owner's intent to receive the extension of time granted pursuant to this section to maintain and secure the property in a safe and sanitary condition in compliance with applicable laws and ordinances.

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

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

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Agriculture & Natural Resources Subcommittee		Kaiser	Blalock

SUMMARY ANALYSIS

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

The bill also:

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

The bill appears to have an insignificant fiscal impact on state government and no fiscal impact on local government (see Fiscal Analysis section below).

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Reorganization of Chapter 570, F.S.

Present Situation

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

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

Effect of Proposed Changes

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

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

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

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

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

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

Penalty Provision

Present Situation

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

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

Effect of Proposed Changes

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

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

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

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

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

The sections affected by the new fine schedule include:

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

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

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

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

Agricultural Water Policy

Present Situation

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

Effect of Proposed Changes

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

Seal of the Department

Present Situation

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

Effect of Proposed Changes

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

Division of Food Safety

Present Situation

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

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

Effect of Proposed

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

Office of Energy

Present Situation

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

Effect of Proposed Changes

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

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

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

Pest Control Compact

Present Situation

In 2009, the legislature established the Pest Control Compact (compact) in statute. Section 570.345, F.S., establishes the compact between Florida and other member states[2] for the purpose of curtailing depredation by pests throughout the various member states. The compact also establishes the Pest Control Insurance Fund to finance certain pest control operations performed by the states pursuant to the compact.

Effect of Proposed Changes

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

Florida Consumer Services Act

Present Situation

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

Effect of Proposed Changes

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

Conservation Easements and Agreements

Present Situation

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

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

Effect of Proposed Changes

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

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

Definition of Department

Present Situation

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

Effect of Proposed Changes

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

Equestrian Educational Sports Program

Present Situation

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

Effect of Proposed Changes

The bill repeals s. 570.92, F.S. According to the department, this program was never fully implemented and was deemed unnecessary soon after being adopted.

Pesticide Regulation

Present Situation

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

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

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

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

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

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

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

Section 487.172, F.S., requires the department to develop a program to educate and inform antifouling paint[3] applicators, vessel owners, and interstate and intrastate paint manufacturers and distributors in the state about the characteristics and hazards associated with organotin[4] compounds in antifouling paints and the state laws restricting their use.

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

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

Effect of Proposed Changes

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

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

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

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

[3] "Antifouling paint" means a coating, paint, or treatment that is intended for use as a pesticide, as defined in Chapter 487, F.S., to control freshwater or marine fouling organisms (barnacles, mussels, algae, bacteria, etc.).
[4] "Organotin compound" means any compound of tin used as a biocide in an antifouling paint.

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

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

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

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

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

Food Safety

Present Situation

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

manufactured, processed, packed, sold, or held, or any vehicle being used for the transportation thereof.
- Inspect any such place or vehicle; any such wheat flour, cornmeal, corn grits, rice, or food therein; and any and all pertinent equipment, materials, containers, and labeling.

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

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

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

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

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

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

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

Effect of Proposed Changes

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

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

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

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

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

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

- The division director or designee must determine that the continued operation of a food establishment presents an immediate danger to the public health, safety, and welfare.
- Upon such determination, the department must issue an immediate final order[7] directing the owner or operator to cease operation and close the food establishment. The department may attach a closed-for-operation sign to the food establishment while the order remains in place.
- The department must inspect the food establishment within 24 hours after the issuance of the order. Once the department determines that the food establishment meets the applicable requirements to resume operations, a release must be served on the owner, operator or agent of the food establishment by the department.
- A food establishment ordered by the department to cease operation and close must remain closed until released by the department or by a judicial order to reopen.
- It is a misdemeanor of the second degree, punishable as provided in s. 775.082, F.S., or s. 775.083, F.S.,[8] for any person to deface or remove a closed-for-operation sign placed on a food establishment by the department or for an owner or operator of a food establishment to resist the closure of a food establishment by the department. The department may impose administrative sanctions for violations.

[7] The order must be served upon the owner, operator or agent of the food establishment by the department.
[8] *Id.*

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

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

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

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

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

Agricultural Fertilizers, Feed, and Seed

Present Situation

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

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

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

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

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

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

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

Current law directs the department to sample, test, inspect, and make analyses of fertilizer sold or offered for sale within the state.[9] Section 576.051(3), F.S., provides that the official analysis[10] of fertilizer must be made from the official sample. The department, before making the official analysis, must take a sufficient portion from the official sample for check analysis and place that portion in a bottle sealed and identified by number, date, and the preparer's initials. The official check sample must be kept until the analysis of the official sample is completed. However, the licensee may obtain upon request a portion of the official check sample. Upon completion of the analysis of the official sample, a true copy of the fertilizer analysis report must be mailed to the licensee of the fertilizer from whom the official sample was taken and to the dealer or agent, if any, and purchaser, if known. This fertilizer analysis report must show all determinations of plant nutrient and pesticides. If the official analysis conforms to the law, the official check sample may be destroyed. If the official analysis does not conform to the law, the official check sample must be retained for a period of 90 days from the date of the fertilizer analysis report of the official sample.

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

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

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

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

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

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

[9] Section 576.051(1), F.S.

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

[11] Section 576.061, F.S.,

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

Section 580.036, F.S., establishes the powers and duties of the department as it pertains to commercial feed and feedstuff,[12] and grants the department with rulemaking authority to enforce the provisions of Chapter 580, F.S.[13] The rules adopted by the department must be consistent with the rules and standards of the United States Food and Drug Administration and the United States Department of Agriculture, when applicable. The rules must also include standards for the sale, use, and distribution of commercial feed or feedstuff to ensure usage that is consistent with animal safety and well-being and that ensures beef and poultry products are safe for human consumption.

Section 580.041, F.S., provides that each distributor of commercial feed must annually obtain a master registration before her or his brands are distributed in the state. The department must furnish the registration forms requiring the distributor to state that he or she will comply with all provisions of Chapter 580, F.S., and applicable rules. The registration form must identify the manufacturer's or guarantor's name and place of business and the location of each manufacturing facility in the state and must be signed by the owner; by a partner, if a partnership; or by an authorized officer or agent, if a corporation. All registrations expire on June 30 of each year.

Section 580.071(1), F.S., provides that a commercial feed or feedstuff is deemed to be adulterated in the following instances:

- If it bears or contains any poisonous, deleterious, or nonnutritive substance that may render it injurious to animal or human health. However, if the substance is not an additive, the feed is not considered adulterated if the quantity of the substance does not ordinarily render it injurious to animal or human health;
- If it bears or contains any food additive or added poisonous, deleterious, or nonnutritive substance that is unsafe within the meaning of s. 406 of the Federal Food, Drug, and Cosmetic Act, other than a pesticide chemical in or on a raw agricultural commodity;
- If it is, or it bears or contains, any food additive or color additive that is unsafe within the meaning of s. 409 or s. 512 of the Federal Food, Drug, and Cosmetic Act, respectively;
- If it is a raw agricultural commodity and it bears or contains a pesticide chemical that is unsafe within the meaning of s. 408(a) of the Federal Food, Drug, and Cosmetic Act; however, where a pesticide chemical has been used in or on a raw agricultural commodity in conformity with an exemption granted or a tolerance prescribed under s. 408 of the Federal Food, Drug, and Cosmetic Act and that raw agricultural commodity has been subjected to processing such as canning, cooking, freezing, dehydrating, or milling, the processed feed will result, or is likely to result, in pesticide residue in the edible product of the animal which is unsafe within the meaning of s. 408(a) of the Federal Food, Drug, and Cosmetic Act; or
- If it is, or it bears or contains, any new animal drug that is unsafe within the meaning of s. 512 of the Federal Food, Drug, and Cosmetic Act.

Effect of Proposed Changes

The bill amends s. 576.021, F.S., to tie the registration of fertilizer to a company rather than a person. The bill also requires each brand of fertilizer to be registered, and requires the application for registration for each brand and grade of fertilizer to be submitted either on a form prescribed by department rule or using the department's website.

[12] Section 580.031(10), F.S., defines feedstuff as edible materials, other than commercial feed, that are distributed for animal consumption and that contribute energy or nutrients, or both, to an animal diet.
[13] Chapter 580, F.S., pertains to the regulation of commercial feed and feedstuff.

The bill amends s. 576.031(2), F.S., to reduce the number of delivery labels required when distributing fertilizer in bulk from five to two. According to the department, two labels are adequate for regulatory purposes.

The bill amends s. 576.041(3), F.S., to change the term "tonnage" fee to "inspection" fee. According to the department, the fee pertains to the inspection. The amount of the fee is just based on the tonnage sold.

The bill amends s. 576.041(4), F.S., to remove the provision stating that not paying the inspection fee or giving a false tonnage report constitutes a debt and can become a claim and lien against the surety bond or certificate of deposit. According to the department, current law provides sufficient authority[14] to impose fines or revoke licensure for licensees who are not in compliance.

The bill repeals s. 576.041(6), F.S., requiring an applicant for a fertilizer license to post with the department a surety bond, or assign a certificate of deposit, to cover fees for any reporting period. According to the department, other statutory provisions provide them with sufficient authority[15] to impose fines or revoke licensure for licensees who are not in compliance.

The bill amends s. 576.051(3), F.S., to reduce from 90 to 60 the number of days that the official check sample must be retained if it does not conform to the requirements of Chapter 576, F.S. According to the department, this change removes a statutory conflict between the amount of time a company has to challenge the department's findings and the amount of time the company has to reimburse the consumer.

The bill repeals s. 576.061(4), F.S., which requires licensees to pay a penalty if it is determined that a fertilizer has been distributed without being licensed or registered. The department has other statutory authority[16] to cover violations of this nature.

The bill amends s. 576.071, F.S., to require the department to survey the state's fertilizer industry using annualized plant nutrient values contained in one or more generally recognized journals.

The bill repeals ss. 576.087(3) and (4), F.S., relating to requirements for antisiphon devices. According to the department, new technology developed by the industry is already beyond what the department has the expertise to recommend, and as a result, this program has become outdated.

The bill repeals s. 576.101(2), F.S., relating to placing licensees on probationary status for inadequate deficiency levels. According to the department, the deficiency levels are subject to fluctuations when not taken in ideal conditions, such as at the plant. This can result in licensees being placed on probationary status erroneously.

The bill amends s. 578.08, F.S., to require an application for registration to be filed using a form prescribed by department rule or using the department's website. The bill also reduces the registration fee for seed dealers that distribute small amounts of seed by adding the following two new categories for the annual registration fee:

- For receipts of less than $500.00, the fee is $10; and
- For receipts of $500 but less than $1,000.00, the fee is 25.

The bill amends s. 580.036, F.S., to require the commercial feed standards described above to be developed in consultation with the Agricultural Feed, Seed, and Fertilizer Advisory Council.

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[14] Section 576.061(5), F.S.
[15] *Ibid*
[16] Sections 576.061(5) and 576.111, F.S.

The bill amends s. 580.041, F.S., to require an application for registration to be filed using a form prescribed by the department or using the department's website. According to the department, this provides the option for applicants to apply for the license on the department's website.

The bill amends s. 580.071, F.S., to expand the criteria requiring a determination that a commercial feed or feedstuff is adulterated to include the following:

- If it consists in whole or in part of any filthy, putrid, or decomposed substance, or if it is otherwise unfit for feed;
- If it is prepared, packaged, or held under unsanitary conditions whereby it may have become contaminated with filth or rendered injurious to health; or
- If it is, in whole or in part, the product of a diseased animal or of an animal that has died by a means other than slaughter that is deemed unsafe as defined under the Federal Food, Drug, and Cosmetic Act.

Plant Industry

Present Situation

In 2008, the Legislature established a five-year pilot program within the department to permit the planting of *Casuarina cunninghamiana* (Australian pine trees) as a windbreak for commercial citrus groves growing fresh fruit in specified areas[17] of the state.[18] The purpose of the pilot program was to determine if the use of the trees as an agricultural pest and disease windbreak poses any adverse environmental consequences. At the end of the five-year pilot program,[19] if the department's Noxious Weed and Invasive Plant Review Committee (committee), in consultation with the Department of Environmental Protection (DEP), and a citrus industry representative who has a *Casuarina cunninghamiana* windbreak (industry representative), determine that the potential is low for adverse environmental impacts from planting the trees as windbreaks, the department was authorized to develop rules to allow the use of the trees as windbreaks for commercial citrus groves in other areas of the state.

Under the pilot program, each application for a special permit must be accompanied by a fee in an amount determined by the department, by rule, not to exceed $500. A special permit is required for each noncontiguous commercial citrus grove and must be renewed every five years. The property owner is responsible for maintaining and producing for inspection the original nursery invoice with certification documentation. If ownership of the property is transferred, the seller must notify the department and provide the buyer with a copy of the special permit and copies of all invoices and certification documentation prior to the closing of the sale.[20]

Each application must also include a baseline survey of all lands within 500 feet of the proposed tree windbreak showing the location and identification of species of all existing *Casuarina cunninghamiana.* Nurseries authorized to produce the trees must obtain a special permit from the department certifying that the plants have been vegetatively propagated from sexually mature male source trees currently grown in the state. The importation of the trees from any area outside the state to be used as a propagation source tree is prohibited. Each male source tree must be registered by the department as being a horticulturally true-to-type male plant and must be labeled with a source tree registration number. Each nursery application for a special permit must be accompanied by a fee in an amount determined by the department, by rule, not to exceed $200. Special permits must be renewed annually. The department must, by rule, set the amount of an annual fee, not to exceed $50, for each

[17] Indian River, St Lucie, and Martin Counties.
[18] Section 581.091(5), F.S.
[19] The five-year pilot program ended in 2013.
[20] Section 581.091(c), F.S.

tree registered as a source tree. Nurseries may only sell the trees to a person with a special permit as specified in statute. The source tree registration numbers of the parent plants must be documented on each invoice or other certification documentation provided to the buyer.[21]

All of the trees must be destroyed by the property owner within six months after:[22]

- The property owner takes permanent action to no longer use the site for commercial citrus production;
- The site has not been used for commercial citrus production for a period of five years; or
- The department determines that the trees on the site have become invasive. This determination must be based on, but not limited to, the recommendation of the committee and DEP, and in consultation with an industry representative.

If the owner or person in charge refuses or neglects to comply, the director or her or his authorized representative may, under authority of the department, proceed to destroy the plants. The expense of the destruction must be assessed, collected, and enforced against the owner by the department. If the owner does not pay the assessed cost, the department may record a lien against the property.[23]

The use of the trees for windbreaks does not preclude the department from issuing permits for the research or release of biological control agents to control *Casuarina* species in accordance with current law. The use of the trees for windbreaks must not restrict or interfere with any other agency or local government effort to manage or control noxious weeds or invasive plants, including *Casuarina cunninghamiana*, nor may any other agency or local government remove any of the trees planted as a windbreak under special permit issued by the department.[24]

The department is required to develop and implement a monitoring protocol to determine invasiveness of the trees. The monitoring protocol must, at a minimum, require:[25]

- Inspection of the planting site by department inspectors within 30 days following initial planting or any subsequent planting of the trees to ensure the criteria of the special permit have been met.
- Annual site inspections of planting sites and all lands within 500 feet of the planted windbreak by department inspectors who have been trained to identify the trees and to make determinations of whether the trees have spread beyond the permitted windbreak location.
- Any new seedlings found within 500 feet of the planted windbreak to be removed, identified to the species level, and evaluated to determine if hybridization has occurred.
- The department to submit an annual report and a final five-year evaluation identifying any adverse effects resulting from the planting of the trees for windbreaks and documenting all inspections and the results of those inspections to the committee, DEP, and an industry representative.

If the department determines that female flowers or cones have been produced on any of the trees that have been planted under a special permit issued by the department, the property owner is responsible for destroying the trees. The department must notify the property owner of the timeframe and method of destruction.[26]

If at any time the department determines that hybridization has occurred during the pilot program between the trees planted as a windbreak and other *Casuarina* species, the department must

[21] Section 581.091(d) and (e), F.S.
[22] Section 581.091(f), F.S.
[23] *Id*
[24] Section 581.091(h), F.S.
[25] Section 581.091(i), F.S.
[26] Section 581.091(j), F.S.

expeditiously initiate research to determine the invasiveness of the hybrid. The information obtained from this research must be evaluated by the committee, DEP, and an industry representative. If the department determines that the hybrids have a high potential to become invasive, based on, but not limited to, the recommendation of the committee, DEP, and an industry representative, the pilot program must be permanently suspended.[27]

Each application for a special permit must be accompanied by a fee as prescribed in statute and an agreement that the property owner will abide by all permit conditions including the removal of the trees if invasive populations or other adverse environmental factors are determined to be present by the department as a result of the use of the trees as windbreaks. The application must include, on a form provided by the department:[28]

- The name of the applicant and the applicant's address or the address of the applicant's principal place of business;
- A statement of the estimated cost of removing and destroying the trees that are the subject of the special permit; and
- The basis for calculating or determining that estimate.

If the applicant is a corporation, partnership, or other business entity, the applicant must also provide in the application the name and address of each officer, partner, or managing agent. The applicant must notify the department within 30 business days of any change of address or change in the principal place of business. The department must mail all notices to the applicant's last known address.[29]

Upon obtaining a permit, the permitholder must annually maintain the trees authorized by a special permit as required in the permit. If the permitholder ceases to maintain the trees as required by the special permit, if the permit expires, or if the permitholder ceases to abide by the conditions of the special permit, the permitholder must remove and destroy the trees in a timely manner as specified in the permit.[30]

If the department determines that the permitholder is no longer maintaining the trees subject to the special permit and has not removed and destroyed the trees authorized by the special permit; determines that the continued use of the trees as a windbreak presents an imminent danger to public health, safety, or welfare; or determines that the permitholder has exceeded the conditions of the authorized special permit, the department may issue an immediate final order. A copy of the immediate final order must be mailed to the permitholder.[31]

If, upon issuance by the department of an immediate final order to the permitholder, the permitholder fails to remove and destroy the trees subject to the special permit within 60 days after issuance of the order, or such shorter period as is designated in the order as public health, safety, or welfare requires, the department may remove and destroy the trees that are the subject of the special permit. If the permitholder makes a written request to the department for an extension of time to remove and destroy the trees that demonstrates specific facts showing why the trees could not reasonably be removed and destroyed in the applicable timeframe, the department may extend the time for removing and destroying the trees subject to a special permit.[32]

Section 581.131(8), F.S., requires the department to provide to a registered nurseryman written notice and renewal forms 60 days prior to the annual renewal date informing the person of their certificate of registration renewal date and applicable fees.

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[27] Section 581.091(k), F.S.
[28] Section 581.091(l), F.S.
[29] *Id*
[30] *Id*
[31] *Id*
[32] *Id*

Effect of Proposed Changes

The bill amends s. 581.091(5), F.S., to eliminate the Australian pine permitting pilot program so that permits for the planting of Australian pine trees as a windbreak for commercial citrus groves growing fresh fruit are not limited to certain counties, but are available statewide. In addition, the bill streamlines the permitting requirements, as persons seeking to grow the trees as windbreaks for citrus groves are still required to be permitted by the department. The bill also eliminates the requirement that the department maintain a monitoring protocol to determine the invasiveness of the trees. In addition, the bill removes the provision that nurseries can only sell Australian pine trees to a person with a special permit that was established under the pilot program.

The bill amends section 581.131, F.S., to change the notice period for renewal of certificate of registration and applicable fees from 60 days to 30 days.

Florida Forest Service

Present Situation

Section 589.011(1), F.S., authorizes the Florida Forest Service (FFS) to grant privileges, permits, leases, and concessions for the use of state forest lands, timber, and forest products for certain purposes.

Section 589.011(3), F.S., authorizes FFS to set and charge reasonable fees or rent for the use or operation of facilities on state forests or any lands leased by or otherwise assigned to FFS for management purposes.

Section 589.20, F.S., provides that FFS may cooperate with other state agencies, who are custodians of lands that are suitable for forestry purposes, in the designation and dedication of such lands for forestry purposes. Upon the designation and dedication of said lands for these purposes by the agencies concerned, the lands must be administered by the FFS.

Section 590.02(7), F.S., authorizes FFS to organize, staff, equip, and operate the Florida Forest Training Center. The center serves as a site where fire and forest resource managers can obtain current knowledge, techniques, skills, and theory as they relate to their respective disciplines.

Effect of Proposed Changes

The bill amends s. 589.011(1), F.S., to authorize FFS to grant privileges, permits, leases, and concessions for the use of any lands leased by or otherwise assigned to FFS for management purposes, if such use is authorized by an approved land management plan or by an interim assignment letter that identifies the interim management activities issued by DEP.

The bill also provides that lessees of FFS land and property that are open to the public for recreational purposes, where the lease recognizes that the state is responsible for personal injury, loss, or damage resulting from the public use of the area under the lease, have no duty to keep the area safe for entry or use by others or to give warning of any hazardous conditions, structures, or activities. This grant of limited liability applies to all persons going on the leased area, including invitees, licensees, and trespassers. However, the limited liability does not apply to deliberate, willful, or malicious injury to persons or property by a lessee.

The bill amends s. 589.011(3), F.S., to authorize FFS to set and charge reasonable rentals or charges for the use or operation of facilities on state forests or any lands leased by or assigned to FFS for management purposes, as well as reasonable fees, rentals, or charges for the use or operation of concessions in state forests. The bill also provides that fees, rentals, or charges for the use of facilities

and concessions must be based upon the cost and extent of recreational facilities and services, geographic location, seasonal public demand, fees charged by other governmental and private entities for comparable services and activities, and market value and demand for forest products.

The bill amends s. 589.20, F.S., to specify that FFS is authorized to cooperate with water management districts, municipalities, and other government entities in the designation and dedication of lands that are suitable for forestry purposes.

The bill amends s. 590.02(7), F.S., to rename the Florida Forest Training Center to the Withlacoochee Training Center.

Goethe and Withlacoochee State Forests

Present Situation

Section 589.081, F.S., provides that FFS must pay 15 percent of the gross receipts from Withlacoochee State Forest and the Goethe State Forest to each fiscally-constrained county, as described in s. 218.67(1), F.S., in which a portion of the respective forest is located in proportion to the forest acreage located in such county. The funds must be equally divided between the board of county commissioners and the school board of each fiscally-constrained county.

Effect of Proposed Changes

The bill repeals s. 589.081, F.S., and transfers to s. 589.08, F.S., the language requiring FFS to pay 15 percent of the gross receipts from Goethe State Forest to each fiscally constrained county in which a portion of the respective forest is located in such county. According to the department, the Withlacoochee State Forest is not located in any fiscally constrained counties. Therefore, the reference to this state forest is unnecessary.

Wildfire Prevention and Prescribed Burns

Present Situation

Section 590.091, F.S., provides that FFS may annually designate, on or before October 1, those railroad rights-of-way in the state that are known wildfire hazard areas. It is the duty of all railroad companies operating in the state to maintain their rights-of-way designated as provided in Florida law, as known wildfire hazard areas, in an approved condition as prescribed by rule of FFS and to provide adequate firebreaks, where needed, to prevent fire from igniting or spreading from rights-of-way to adjacent property.

Section 590.125(2), F.S., provides that, for noncertified burning, persons may be authorized to broadcast burn or pile burn in accordance with Florida law if:

- There is specific consent of the landowner or his or her designee;
- Authorization has been obtained from FFS or its designated agent before starting the burn;
- There are adequate firebreaks at the burn site and sufficient personnel and firefighting equipment for the containment of the fire;
- The fire remains within the boundary of the authorized area;
- The person named responsible in the burn authorization or a designee is present at the burn site until the fire is completed;
- FFS does not cancel the authorization; and
- FFS determines that air quality and fire danger are favorable for safe burning.

Current law also provides that a person who broadcast burns or pile burns in a manner that violates any requirement of s. 590.125(2), F.S., commits a misdemeanor of the second degree, punishable by a term of imprisonment not exceeding 60 days or a fine not to exceed $500.

Effect of Proposed Changes

The bill repeals s. 590.091, F.S. According to the department, the practice of designating railroad rights-of-way as known wildfire hazard areas is no longer necessary due to the advent of underground utilities.

The bill amends s. 590.125, F.S., to provide that, for noncertified burns, a new authorization is not required for smoldering that occurs within the authorized burn area unless the person named responsible in the burn authorization or a designee conducts new ignitions. The bill also provides that monitoring the smoldering activity of a burn does not require an additional authorization even if flames begin to spread within the authorized burn area due to ongoing smoldering. According to the department, this creates consistency in how certified and noncertified burns are considered a public threat and when they are considered "managed."

Miscellaneous

Joint Task Force on State Agency Law Enforcement Communications

Present Situation

Section 282.709(2), F.S., creates the Joint Task Force on State Agency Law Enforcement Communications (task force) to advise the Department of Management Services (DMS) of member-agency needs relating to the planning, designing, and establishment of the statewide communication system. The task force consists of the following members:

- A representative of the Division of Alcoholic Beverages and Tobacco of the Department of Business and Professional regulation appointed by the secretary of that department.
- A representative of the Division of Florida Highway Patrol of the Department of Highway Safety and Motor Vehicles appointed by the executive director of that department.
- A representative of the Department of Law Enforcement appointed by the executive director of that department.
- A representative of the Fish and Wildlife Conservation Commission appointed by the executive director of the commission.
- A representative of the Department of Corrections appointed by the secretary of that department.
- A representative of the Division of State Fire Marshal of the Department of Financial Services appointed by the State Fire Marshal.
- A representative of the Department of Transportation appointed by the secretary of that department.

Effect of Proposed Changes

The bill amends s. 282.709(2), F.S., to include a representative from the department who is appointed by the commissioner.

Florida Coordinating Council on Mosquito Control

Present Situation

Section 388.46 (2)(c)4., F.S., requires the Florida Coordinating Council on Mosquito Control to prepare and disseminate reports, as needed, on arthropod control activities in the state to the Pesticide Review Council and other governmental organizations, as appropriate.

Effect of Proposed Changes

The bill amends s. 388.46(2)(c)4., F.S., to remove the reference to the Pesticide Review Council. This council was repealed from the statute during the 2013 legislative session. Therefore, the reference to the council is no longer relevant.

Classification and Sale of Eggs and Poultry

Present Situation

Section 583.01, F.S., provides that the term "dealer" means any person, firm, or corporation, including a producer, processor, retailer, or wholesaler, that sells, offers for sale, or holds for the purpose of sale in this state 30 dozen or more eggs or its equivalent in any one week, or in excess of 100 pounds of dressed poultry in any one week. Egg and poultry dealers are regulated under ch. 583, F.S., and are required to possess a valid food permit under s. 583.09, F.S.

Effect of Proposed Changes

The bill amends the definition of "dealer" in s. 583.01, F.S., as it relates to a poultry dealer to provide that the threshold for what constitutes a poultry dealer is any person that offers for sale, or holds for the purpose of sale, more than 384 dressed birds in any one week. The threshold for egg dealers remains the same. According to the department, this change will benefit operators of small poultry farms by correcting a long-standing discrepancy between state law and federal law regarding what constitutes a "dealer."

Agricultural Dealers

Present Situation

Section 604.22, F.S., provides that any person, partnership, corporation, or other business entity, except a person described in s. 604.16(1), F.S.,[33] who possesses and offers for sale agricultural products is required to possess and display a written document showing the date of sale, the name and address of the seller, and the kind and quantity of products for all such agricultural products. Persons who violate this provision are guilty of a misdemeanor of the second degree, punishable by a term of imprisonment not exceeding 60 days or a fine not to exceed $500.

Effect of Proposed Changes

The bill amends s. 604.22, F.S., to replace the term of imprisonment and penalty currently provided in law with the penalties found in s. 604.30(2) and (3), F.S. Section 604.30(2), F.S., authorizes the department to issue and deliver a notice to cease and desist from a violation. Section 604.30(3)(a), F.S., authorizes the department to impose an administrative fine in the Class II category[34] not to exceed $2,500. A violation of s. 604.22, F.S., will no longer be a criminal violation.

[33] Farmers or groups of farmers in the sale of agricultural products grown by themselves.
[34] A fine not to exceed $5,000 per violation.

Telephone Solicitation

Present Situation

Section 501.059, F.S., provides that any telephone solicitor who makes an unsolicited telephonic sales call to a residential, mobile, or telephonic paging device telephone number must identify himself or herself by his or her true first and last names and the business on whose behalf he or she is soliciting immediately upon making contact by telephone with the person who is the object of the telephone solicitation. If any residential, mobile, or telephonic paging device telephone subscriber notifies the department of his or her desire to be placed on a "no sales solicitation calls" listing indicating that the subscriber does not wish to receive unsolicited telephonic sales calls, the department must place the subscriber on that listing for five years. No telephone solicitor can make or cause to be made any unsolicited telephonic sales call to any residential, mobile, or telephonic paging device telephone number if the number for that telephone appears in the then-current quarterly listing published by the department. The department is required to investigate any complaints received concerning violations.

Effect of Proposed Changes

The bill amends s. 501.059, F.S., to authorize the department to adopt rules pursuant to ss. 120.536(1) and 120.54, F.S., to implement the telephone solicitation law and the "no sales solicitation calls" listing.

B. SECTION DIRECTORY:

Section 1: Designates Parts I-V of Chapter 570, F.S., relating to the Department of Agriculture and Consumer Services (department).

Section 2: Amends s. 193.461, F.S., correcting a cross reference.

Section 3: Amends s. 253.74, F.S., providing a cross reference for penalties.

Section 4: Amends s. 282.709, F.S., adding a representative of the department to the Joint Task Force on State Agency Law Enforcement Communications.

Sections 5-9: Amend ss. 288.1175, 320.08058, 373.621, 373.70, and 381.0072, F.S., correcting a cross reference.

Section 10: Amends s. 388.46, F.S., removing an obsolete reference.

Sections 11-14: Amend ss. 472.0351, 472.036, 482.161, and 482.165, F.S., providing a cross reference for penalties.

Section 15: Amends s. 482.243, F.S., correcting a cross reference.

Section 16: Amends s. 487.041, F.S., revising requirements for registration and distribution of discontinued pesticides.

Section 17: Amends s. 487.046, F.S., revising provisions for filing pesticide applicator license applications.

Sections 18-19: Amend ss. 487.047 and 487.048, F.S., revising provisions for issuance of pesticide applicator licenses.

Section 20: Amends s. 487.091, F.S., providing a cross reference for penalties.

Section 21: Amends s. 487.159, F.S., deleting requirements for filing statements claiming damages and injuries from pesticide applications.

Section 22: Amends s. 487.160, F.S., revising recordkeeping requirements for licensed private applicators.

Section 23: Repeals s. 487.172, F.S., relating to the pesticide education program.

Section 24: Amends s. 487.175, F.S., providing a cross reference for penalties.

Section 25: Amends s. 487.2031, F.S., revising the term "material safety data sheet."

Section 26: Amends s. 487.2051, F.S., revising requirements for pesticide fact sheets and safety data sheets.

Sections 27-29: Amend ss. 493.6118, 493.6120, and 496.420, F.S., providing a cross reference for penalties.

Section 30: Amends s. 500.03, F.S., correcting a cross reference.

Section 31: Amends s. 500.12, F.S., relating to food permit exemptions.

Section 32: Amends s. 500.121, F.S., relating to disciplinary procedures for violating the Florida Food Safety Act.

Section 33: Amends s. 500.147, F.S., providing for the inspection of food records for certain purposes.

Section 34: Amends s. 500.165, F.S., providing a cross reference for penalties.

Section 35: Amends s. 500.172, F.S., providing for embargoing, detaining, or destroying food processing and food storage areas.

Section 36: Repeals ss. 500.301, 500.302, 500.303, 500.304, 500.305, 500.306, and 500.601, F.S., relating to the standards for the enrichment of grain and the retail sale of meat.

Sections 37-38: Amend ss. 500.70 and 501.019, F.S., providing a cross reference for penalties.

Section 39: Amends s. 501.059, F.S., providing a cross reference for penalties and authorizing the department to adopt rules.

Sections 40-45: Amend ss. 501.612, 501.619, 501.922, 502.231, 507.09, and 507.10, F.S., providing a cross reference for penalties.

Section 46: Amends s. 509.032, F.S., correcting a cross reference.

Sections 47-56: Amend ss. 525.16, 526.311, 526.55, 531.50, 534.52, 539.001, 559.921, 559.9355, and 559.936, F.S., providing a cross reference for penalties.

Section 57: Amends 570.07, F.S., correcting a cross reference.

Section 58: Renumbers s. 570.0705, F.S., as s. 570.232, F.S.

Section 59: Renumbers s. 570.0725, F.S., as s. 595.420, F.S.

Section 60: Renumbers s. 570.073, F.S., as s. 570.65, F.S.

Section 61: Renumbers s. 570.074, F.S., as s. 570.66, F.S.; and amends the duties of the Office of Agricultural Water Policy.

Section 62: Renumbers s. 570.0741, F.S., as s. 377.805; and makes technical revisions.

Section 63: Renumbers s. 570.075, F.S., as s. 570.916, F.S.

Section 64: Amends s. 570.076, F.S., correcting a cross reference.

Section 65: Renumbers s. 570.085, F.S., as s. 570.93, F.S.

Section 66: Renumbers s. 570.087, F.S., as s. 570.94, F.S.

Section 67: Renumbers s. 570.14, F.S., as s. 570.031, F.S.; and amends provisions relating to the seal of the department.

Section 68: Renumbers s. 570.16, F.S., as s. 570.051, F.S.

Section 69: Renumbers s. 570.17, F.S., as s. 570.081, F.S.

Section 70: Renumbers s. 570.18, F.S., as s. 570.041, F.S.

Section 71: Amends s. 570.23, F.S., correcting a cross reference.

Section 72: Renumbers s. 570.241, F.S., as s. 570.73, F.S.

Section 73: Renumbers s. 570.242, F.S., as s. 570.74, F.S.; and makes technical revisions.

Section 74: Renumbers s. 570.243, F.S., as s. 570.75, F.S.

Section 75: Renumbers s. 570.244, F.S., as s. 570.76, F.S.

Section 76: Renumbers s. 570.245, F.S., as s. 570.77, F.S.

Section 77: Renumbers s. 570.246, F.S., as s. 570.78, F.S.

Section 78: Renumbers s. 570.247, F.S., as s. 570.79, F.S.; and makes technical revisions.

Section 79: Renumbers s. 570.248, F.S., as s. 570.81, F.S.

Section 80: Renumbers s. 570.249, F.S., as s. 570.82, F.S.

Section 81: Repeals s. 570.345, F.S., relating to the Pest Control Compact.

Section 82: Amends s. 570.36, F.S., making technical revisions.

Section 83: Renumbers s. 570.38, F.S., as s. 585.008, F.S.; and corrects a cross reference.

Section 84: Renumbers s. 570.42, F.S., as s. 502.301, F.S.; and makes technical revisions.

Section 85: Amends s. 570.44, F.S., removing a reference to an obsolete council, and making technical revisions.

Sections 86-87: Amend ss. 570.45 and 570.451, F.S., correcting a cross reference.

Section 88: Renumbers s. 570.481, F.S., as s. 603.011, F.S.

Section 89: Amends s. 570.50, F.S., authorizing the Division of Food Safety to inspect aquaculture facilities.

Section 90: Amends ss. 570.50 and 570.51, F.S., correcting a cross reference.

Section 91: Renumbers s. 570.531, F.S., as s. 570.209, F.S.

Section 92: Repeals s. 570.542, relating to the short title for the Florida Consumer's Council.

Section 93: Amends s. 570.543, F.S., correcting a cross reference.

Section 94: Renumbers s. 570.545, F.S., as s. 501.0113, F.S.

Section 95: Renumbers s. 570.55, F.S., as s. 603.211, F.S.

Section 96: Creates s. 570.67, F.S., establishing the Office of Energy; and providing for the supervision and duties of the office.

Section 97: Amends s. 570.71, F.S., making technical revisions.

Section 98: Repeals s. 570.72, F.S., relating to the definition of the department.

Section 99: Renumbers s. 570.901, F.S., as s. 570.692, F.S.

Section 100: Renumbers s. 570.902, F.S., as s. 570.69, F.S., and corrects a cross reference.

Section 101: Renumbers s. 570.903, F.S., as s. 570.691, F.S.

Section 102: Renumbers s. 570.91, F.S., as s. 570.693, F.S.

Section 103: Renumbers s. 570.9135, F.S., as s. 570.83, F.S., and corrects a cross reference.

Section 104: Repeals s. 570.92, F.S., relating to equestrian educational sports programs.

Section 105: Renumbers s. 570.951, F.S., as s. 570.681, F.S.

Section 106: Renumbers s. 570.952, F.S., as s. 570.685, F.S.; and corrects a cross reference.

Section 107: Renumbers s. 570.953, F.S., as s. 570.686, F.S.

Section 108: Renumbers s. 570.954, F.S., as s. 570.841, F.S.

Section 109: Renumbers s. 570.96, F.S., as s. 570.85, F.S.

Section 110: Renumbers s. 570.961, F.S., as s. 570.86, F.S.; and corrects a cross reference.

Section 111: Renumbers s. 570.962, F.S., as s. 570.87, F.S.

Section 112: Renumbers s. 570.963, F.S., as s. 570.88, F.S.; and corrects a cross reference.

Section 113: Renumbers s. 570.964, F.S., as s. 570.89, F.S.; and makes technical revisions.

Section 114: Creates s. 570.971, F.S., establishing administrative and civil penalties for certain violations; providing applicability; and authorizing the department to adopt rules.

Section 115: Amends s. 571.11, F.S., providing a cross reference for penalties.

Section 116: Amends s. 571.28, F.S., correcting a cross reference.

Section 117: Amends s. 571.29, F.S., providing a cross reference for penalties.

Section 118: Amends s. 576.021, F.S., revising provisions for filing applications to distribute fertilizer.

Section 119: Amends s. 576.031, F.S., revising labeling requirements for the distribution of fertilizer.

Section 120: Amends s. 576.041, F.S., removing surety bond and certificate of deposit requirement for fertilizer license applicants.

Section 121: Amends s. 576.051, F.S., revising the period of time a fertilizer sample must be retained.

Section 122: Amends s. 576.061, F.S., providing a cross reference for penalties.

Section 123: Amends s. 576.071, F.S., revising the criteria for determining the commercial value of certain penalties.

Section 124: Amends s. 576.087, F.S., revising antisiphon requirements for irrigation systems.

Section 125: Amends s. 576.101, F.S., removing provisions relating to the probationary status of a licensee.

Section 126: Amends s. 578.08, F.S., revising application requirements and registration requirements for the sale of seed.

Section 127: Amends s. 578.181, F.S., providing a cross reference for penalties.

Section 128: Amends s. 580.036, F.S., revising standards for the sale, use, and distribution of commercial feed or feedstuff.

Section 129: Amends s. 580.041, F.S., revising application requirements for master registration for commercial feed.

Section 130: Amends s. 580.071, F.S., revising criteria for adulteration of commercial feed and feedstuff.

Section 131: Amends s. 580.121, F.S., providing a cross reference for penalties.

Section 132: Amends s. 581.091, F.S., deleting pilot program for Australian pines used as windbreaks in citrus groves.

Section 133: Amends s. 581.131, F.S., revising the timeframe in which the department must provide certain certificate renewal forms.

Section 134: Amends s. 581.141, F.S., providing a cross reference for penalties.

Section 135: Amends s. 581.186, F.S., correcting a cross reference.

Section 136: Amends s. 581.211, F.S., providing a cross reference for penalties.

Section 137: Amends s. 582.06, F.S., correcting a cross reference.

Section 138: Amends s. 583.01, F.S., amending the definition of "dealer."

Sections 139-140: Amend ss. 585.007 and 586.15, F.S., providing a cross reference for penalties.

Section 141: Amends s. 586.161, F.S., correcting a cross reference.

Section 142: Amends s. 589.08, F.S., directing the Florida Forest Service (FFS) to distribute certain funds to fiscally constrained counties.

Section 143: Repeals s. 589.081, F.S., relating to the payment of gross receipts to Withlacoochee and Goethe State Forests.

Section 144: Amends s. 589.011, F.S., relating to the use of state forest lands.

Section 145: Amends s. 589.20, F.S., authorizing FFS to cooperate with water management districts, municipalities, and other governmental entities in the designation and dedication of certain lands.

Section 146: Amends s. 590.02, F.S., renaming the Center for Wildfire and Forest Resources Management Training as the Withlacoochee Training Center.

Section 147: Repeals s. 590.091, F.S., relating to the designation of railroad rights-of-way as wildfire hazard areas.

Section 148: Amends s. 590.125, F.S., revising provisions for noncertified burning.

Section 149: Amends s. 590.14, F.S., providing a cross reference for penalties.

Section 150: Amends s. 595.701, F.S., correcting a cross reference.

Sections 151-152: Amend ss. 597.0041 and 597.020, F.S., providing a cross reference for penalties.

Section 153: Amends s. 599.002, F.S., correcting a cross reference.

Sections 154-157: Amend ss. 601.67, 604.22, 604.30, and 616.242, F.S., providing a cross reference for penalties.

Section 158: Provides an effective date of July 1, 2014.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

	FY 14-15	FY15-16
General Inspection Trust Fund		
Registration fees for seed distributors	$ (13,725)	$ (13,725)

2. Expenditures:

None

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None

2. Expenditures:

None

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Sections 487.046, 487.047, 487.048, and 576.021, F.S., provide the public the opportunity to register for licensure on-line; thus creating the potential for savings in the form of postage.

Section 500.12, F.S., provides that persons who operate a minor food outlet selling non-potentially hazardous food whose shelf space does not exceed 20 linear feet are no longer required to obtain a food permit.

Section 576.041, F.S., no longer requires licensees for agricultural fertilizers to post with the department a surety bond or sign a certificate of deposit.

Section 578.08, F.S., establishes two new lower registration fees for distributors of small amounts of seed ($10/year for annual sales under $500 and $25/year for annual sales under $1,000). This will reduce the fees these small distributors will have to pay, resulting in lower costs. The department estimates that a savings will be recognized by approximately 200 seed dealers.

Section 581.091, F.S., simplifies the regulatory process for using Australian pines for windbreaks in commercial citrus groves. Nurseries wanting to obtain a permit to propagate Australian pines will continue the current process of submitting an application accompanied by a fee of $200, adhering to permit requirements, and renewing the application and fee annually. Growers wanting to plant Australian pines for windbreaks must continue to submit an application accompanied by a fee not to exceed $500 to receive a special permit valid for five years.

Section 583.01, F.S., allows small farmers to be permitted as limited poultry and egg farm operations under department rule, resulting in a savings in reduced regulation and lower permit fees.

D. FISCAL COMMENTS:

Sections 500.12(2); 500.165(3); 502.231(1)(b); 501.922(1)(a); 525.16(1)2.; 531.50(1)(b); 559.9355(1)(c) – Because fines in the Division of Food Safety and the Division of Consumer Services are being reduced to what the department actually collects, there is no fiscal impact.

Section 581.091, F.S. – Because the bill terminates the pilot program, which may increase the area where Australian pines can be planted, there is a potential indeterminate increase in revenues resulting from the potential increase in permit fees collected by the department. Currently, one citrus grower has a special permit for planting Australian pines and two nurseries have special permits to propagate Australian pines.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None

B. RULE-MAKING AUTHORITY:

Section 500.12, F.S., provides the Department of Agriculture and Consumer Services (department) with rulemaking authority related to adopting a schedule of fees for the issuance and renewal of food permits

Section 500.121, F.S., provides the department with rulemaking authority related to the closure of a food establishment that poses an immediate danger to the public health, safety, and welfare.

Section 501.059, F.S., provides the department with rulemaking authority related to telephone solicitation and the "no sales solicitation calls" listing.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

N/A

A bill to be entitled

An act relating to the Department of Agriculture and Consumer Services; designating parts I-V of ch. 570, F.S., relating to the Department of Agriculture and Consumer Services; amending s. 282.709, F.S.; providing for appointment of a department representative to the Joint Task Force on State Agency Law Enforcement Communications; amending s. 487.041, F.S.; revising requirements for registration and distribution of discontinued pesticides; amending s. 487.046, F.S.; revising provisions for filing pesticide applicator license applications; amending s. 487.047, F.S.; revising provisions for issuance of pesticide applicator licenses; amending s. 487.048, F.S.; revising provisions for filing pesticide dealer license applications; amending s. 487.159, F.S.; deleting requirements for filing statements claiming damages and injuries from pesticide application; amending s. 487.160, F.S.; revising recordkeeping requirements for licensed private applicators; repealing s. 487.172, F.S., relating to an antifouling paint educational program; amending s. 487.2031, F.S.; revising the term "material safety data sheet"; amending s. 487.2051, F.S.; revising requirements for pesticide fact sheets and safety data sheets; amending s. 493.6120, F.S.; authorizing the department to

impose certain civil penalties for violations relating to private security, investigative, and repossession services; amending s. 500.03, F.S.; revising the definition of the term "food establishment"; amending s. 500.12, F.S.; revising criteria for certain food permit exemptions; requiring the department to adopt a permit fee schedule; requiring food permits as a condition of operating a food establishment; providing that such permits are not transferable; amending s. 500.121, F.S.; conforming provisions to changes made by the act; revising the time limit for payment of fines; providing for permit revocation for failure to pay a fine; authorizing the department to immediately close certain food establishments; providing requirements and procedures for such closure; providing penalties for violations; authorizing the department to adopt rules; amending s. 500.147, F.S.; providing for the inspection of food records for certain purposes; amending s. 500.172, F.S.; providing for embargoing, detaining, or destroying food processing and storage areas; repealing ss. 500.301, 500.302, 500.303, 500.304, 500.305, and 500.306, F.S., relating to standards of enrichment, sales, enforcement, and inspection of certain grain products; repealing s. 500.601, F.S., relating to retail sale of meat; amending s. 501.059, F.S.; authorizing the

department to adopt rules; amending s. 570.074, F.S.; providing for the duties of the Office of Agricultural Water Policy; amending s. 570.14, F.S.; requiring written approval for use of the department seal; amending s. 570.247, F.S.; clarifying provisions directing the department to adopt certain rules; repealing s. 570.345, F.S., relating to the Pest Control Compact; amending s. 570.36, F.S.; clarifying provisions relating to the duties of the Division of Animal Industry; repealing s. 570.542, F.S., relating to the Florida Consumer Services Act; creating s. 570.67, F.S.; establishing the Office of Energy within the department; providing for supervision and duties; amending s. 570.71, F.S.; authorizing specified uses of funds from the Conservation and Recreation Lands Program Trust Fund; repealing s. 570.72, F.S., relating to a definition; repealing s. 570.92, F.S., relating to an equestrian educational sports program; amending s. 570.952, F.S.; deleting an obsolete provision relating to membership terms for the Florida Agriculture Center and Horse Park Authority; conforming cross-references; amending s. 570.964, F.S.; clarifying compliance required for privileges of immunity; creating s. 570.971, F.S.; establishing administrative and civil penalties for certain violations; providing applicability; authorizing the

department to adopt rules; amending s. 576.021, F.S.; revising provisions for filing applications to distribute fertilizer; amending s. 576.031, F.S.; revising labeling requirements for distribution of fertilizer in bulk; amending s. 576.041, F.S.; removing surety bond and certificate of deposit requirements for fertilizer license applicants; amending s. 576.051, F.S.; revising the period for which a fertilizer sample must be retained for analysis; amending s. 576.071, F.S.; revising criteria for determining the commercial value of certain penalties; amending s. 576.087, F.S.; revising antisiphon requirements for irrigation systems; amending s. 576.101, F.S.; removing provisions relating to probationary status of a fertilizer licensee; amending s. 578.08, F.S.; revising application requirements and registration fees for the sale of seed; amending s. 580.036, F.S.; directing the department to consult with the Agricultural Feed, Seed, and Fertilizer Advisory Council when developing certain standards; amending s. 580.041, F.S.; revising application requirements for master registration of commercial feed; amending s. 580.071, F.S.; revising criteria for adulterated commercial feed and feedstuff; amending s. 581.091, F.S.; deleting provisions relating to noxious weed and invasive plant

pilot and monitoring programs; amending s. 581.131, F.S.; revising the time in which the department must provide certain certificate renewal forms; amending s. 583.01, F.S.; revising the definition of the term "dealer"; amending s. 589.08, F.S.; directing the Florida Forest Service to distribute certain funds to fiscally constrained counties; repealing s. 589.081, F.S., relating to payment of certain gross receipts from the Withlacoochee State Forest and Goethe State Forest; amending s. 589.011, F.S.; providing conditions under which the Florida Forest Service is authorized to grant use of certain lands; limiting liability for lessees of specified lands; providing criteria by which the Florida Forest Service determines certain fees, rentals, and charges; amending s. 589.20, F.S.; authorizing the Florida Forest Service to cooperate with water management districts, municipalities, and other government entities in the designation and dedication of certain lands; repealing s. 590.091, F.S., relating to designation of railroad rights-of-way as wildfire hazard areas; amending s. 590.125, F.S.; revising requirements for noncertified burning; amending ss. 253.74, 388.46, 472.0351, 472.036, 482.161, 482.165, 482.243, 487.091, 487.175, 493.6118, 496.420, 500.165, 500.70, 501.019, 501.612, 501.619, 501.922, 502.231,

507.09, 507.10, 526.311, 526.55, 527.13, 531.50, 534.52, 539.001, 559.921, 559.9355, 559.936, 570.0741, 570.23, 570.242, 570.38, 570.42, 570.44, 570.45, 570.451, 570.50, 570.51, 570.543, 571.11, 571.28, 571.29, 576.061, 578.181, 580.121, 581.141, 581.186, 581.211, 582.06, 585.007, 586.15, 586.161, 590.02, 590.14, 595.701, 597.0041, 597.020, 599.002, 601.67, 604.22, 604.30, and 616.242, F.S.; conforming provisions to changes made by the act; amending ss. 193.461, 288.1175, 320.08058, 373.621, 373.709, 381.0072, 509.032, 525.16, 570.07, 570.076, 570.902, 570.9135, 570.961, and 570.963, F.S.; conforming cross-references; providing an effective date.

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

Section 1. Chapter 570, Florida Statutes, as amended by this act, shall be divided into the following parts:

(1) Part I, consisting of sections 570.01 through 570.232, Florida Statutes, entitled "General Provisions";

(2) Part II, consisting of sections 570.30 through 570.693, Florida Statutes, entitled "Program Services";

(3) Part III, consisting of sections 570.70 through 570.89, Florida Statutes, entitled "Agricultural Development";

(4) Part IV, consisting of sections 570.916 through 570.94, Florida Statutes, entitled "Agricultural Water Policy";

and

(5) Part V, consisting of section 570.971, Florida Statutes, entitled "Penalties."

Section 2. Paragraph (c) of subsection (6) of section 193.461, Florida Statutes, is amended to read:

193.461 Agricultural lands; classification and assessment; mandated eradication or quarantine program.—

(6)

(c)1. For purposes of the income methodology approach to assessment of property used for agricultural purposes, irrigation systems, including pumps and motors, physically attached to the land shall be considered a part of the average yields per acre and shall have no separately assessable contributory value.

2. Litter containment structures located on producing poultry farms and animal waste nutrient containment structures located on producing dairy farms shall be assessed by the methodology described in subparagraph 1.

3. Structures or improvements used in horticultural production for frost or freeze protection, which ~~structures or improvements~~ are consistent with the interim measures or best management practices adopted by the Department of Agriculture and Consumer Services ~~Services' interim measures or best management practices adopted~~ pursuant to s. 570.93 ~~570.085~~ or s. 403.067(7)(c), shall be assessed by the methodology described in subparagraph 1.

Section 3. Subsection (1) of section 253.74, Florida Statutes, is amended to read:

253.74 Penalties.—

(1) A ~~Any~~ person who conducts aquaculture activities in excess of those authorized by the board or who conducts such activities on state-owned submerged lands without having previously obtained an authorization from the board commits a misdemeanor of the second degree, punishable as provided in s. 775.082, is subject to a civil fine in the Class I category pursuant to s. 570.971 ~~and shall be subject to imprisonment for not more than 6 months or fine of not more than $1,000~~, or both. In addition to such fine and imprisonment, all works, improvements, and animal and plant life involved in the project~~,~~ may be forfeited to the state.

Section 4. Paragraph (a) of subsection (2) of section 282.709, Florida Statutes, is amended to read:

282.709 State agency law enforcement radio system and interoperability network.—

(2) The Joint Task Force on State Agency Law Enforcement Communications is created adjunct to the department to advise the department of member-agency needs relating to the planning, designing, and establishment of the statewide communication system.

(a) The Joint Task Force on State Agency Law Enforcement Communications shall consist of the following members:

1. A representative of the Division of Alcoholic Beverages

and Tobacco of the Department of Business and Professional Regulation who shall be appointed by the secretary of the department.

2. A representative of the Division of Florida Highway Patrol of the Department of Highway Safety and Motor Vehicles who shall be appointed by the executive director of the department.

3. A representative of the Department of Law Enforcement who shall be appointed by the executive director of the department.

4. A representative of the Fish and Wildlife Conservation Commission who shall be appointed by the executive director of the commission.

5. A representative of the Department of Corrections who shall be appointed by the secretary of the department.

6. A representative of the Division of State Fire Marshal of the Department of Financial Services who shall be appointed by the State Fire Marshal.

7. A representative of the Department of Transportation who shall be appointed by the secretary of the department.

8. A representative of the Department of Agriculture and Consumer Services who shall be appointed by the Commissioner of Agriculture.

Section 5. Paragraph (c) of subsection (5) of section 288.1175, Florida Statutes, is amended to read:

288.1175 Agriculture education and promotion facility.—

(5) The Department of Agriculture and Consumer Services shall competitively evaluate applications for funding of an agriculture education and promotion facility. If the number of applicants exceeds three, the Department of Agriculture and Consumer Services shall rank the applications based upon criteria developed by the Department of Agriculture and Consumer Services, with priority given in descending order to the following items:

(c) The location of the facility in a brownfield site as defined in s. 376.79(3), a rural enterprise zone as defined in s. 290.004, an agriculturally depressed area as defined in s. 570.74 ~~570.242(1)~~, or a county that has lost its agricultural land to environmental restoration projects.

Section 6. Paragraph (b) of subsection (14) and paragraph (b) of subsection (77) of section 320.08058, Florida Statutes, are amended to read:

320.08058 Specialty license plates.—

(14) FLORIDA AGRICULTURAL LICENSE PLATES.—

(b) The proceeds of the Florida Agricultural license plate annual use fee must be forwarded to the direct-support organization created pursuant to ~~in~~ s. 570.691 ~~570.903~~. The funds must be used for the sole purpose of funding and promoting the Florida agriculture in the classroom program established within the Department of Agriculture and Consumer Services pursuant to s. 570.693 ~~570.91~~.

(77) FLORIDA HORSE PARK LICENSE PLATES.—

(b) The annual use fees shall be distributed to the Florida Agriculture Center and Horse Park Authority created by s. 570.685 ~~570.952~~, which shall retain all proceeds until all startup costs for developing and establishing the plate have been recovered. Thereafter, the proceeds shall be used as follows:

1. A maximum of 5 percent of the proceeds from the annual use fees may be used for the administration of the Florida Horse Park license plate program.

2. A maximum of 5 percent of the proceeds may be used to promote and market the license plate.

3. The remaining proceeds shall be used by the authority to promote the Florida Agriculture Center and Horse Park located in Marion County; to support continued development of the park, including the construction of additional educational facilities, barns, and other structures; to provide improvements to the existing infrastructure at the park; and to provide for operational expenses of the Florida Agriculture Center and Horse Park.

Section 7. Section 373.621, Florida Statutes, is amended to read:

373.621 Water conservation.—The Legislature recognizes the significant value of water conservation in the protection and efficient use of water resources. Accordingly, consideration in the administration of ss. 373.223, 373.233, and 373.236 shall be given to applicants who implement water conservation practices

pursuant to s. 570.93 ~~570.085~~ or other applicable water conservation measures as determined by the department or a water management district.

Section 8. Paragraph (a) of subsection (2) of section 373.709, Florida Statutes, is amended to read:

373.709 Regional water supply planning.—

(2) Each regional water supply plan must be based on at least a 20-year planning period and must include, but need not be limited to:

(a) A water supply development component for each water supply planning region identified by the district which includes:

1. A quantification of the water supply needs for all existing and future reasonable-beneficial uses within the planning horizon. The level-of-certainty planning goal associated with identifying the water supply needs of existing and future reasonable-beneficial uses must be based upon meeting those needs for a 1-in-10-year drought event.

a. Population projections used for determining public water supply needs must be based upon the best available data. In determining the best available data, the district shall consider the University of Florida's Bureau of Economic and Business Research (BEBR) medium population projections and population projection data and analysis submitted by a local government pursuant to the public workshop described in subsection (1) if the data and analysis support the local

government's comprehensive plan. Any adjustment of or deviation from the BEBR projections must be fully described, and the original BEBR data must be presented along with the adjusted data.

b. Agricultural demand projections used for determining the needs of agricultural self-suppliers must be based upon the best available data. In determining the best available data for agricultural self-supplied water needs, the district shall consider the data indicative of future water supply demands provided by the Department of Agriculture and Consumer Services pursuant to s. 570.93 ~~570.085~~ and agricultural demand projection data and analysis submitted by a local government pursuant to the public workshop described in subsection (1), if the data and analysis support the local government's comprehensive plan. Any adjustment of or deviation from the data provided by the Department of Agriculture and Consumer Services must be fully described, and the original data must be presented along with the adjusted data.

2. A list of water supply development project options, including traditional and alternative water supply project options, from which local government, government-owned and privately owned utilities, regional water supply authorities, multijurisdictional water supply entities, self-suppliers, and others may choose for water supply development. In addition to projects listed by the district, such users may propose specific projects for inclusion in the list of alternative water supply

projects. If such users propose a project to be listed as an alternative water supply project, the district shall determine whether it meets the goals of the plan, and, if so, it shall be included in the list. The total capacity of the projects included in the plan must exceed the needs identified in subparagraph 1. and take into account water conservation and other demand management measures, as well as water resources constraints, including adopted minimum flows and levels and water reservations. Where the district determines it is appropriate, the plan should specifically identify the need for multijurisdictional approaches to project options that, based on planning level analysis, are appropriate to supply the intended uses and that, based on such analysis, appear to be permittable and financially and technically feasible. The list of water supply development options must contain provisions that recognize that alternative water supply options for agricultural self-suppliers are limited.

3. For each project option identified in subparagraph 2., the following must be provided:

a. An estimate of the amount of water to become available through the project.

b. The timeframe in which the project option should be implemented and the estimated planning-level costs for capital investment and operating and maintaining the project.

c. An analysis of funding needs and sources of possible funding options. For alternative water supply projects, the

water management districts shall provide funding assistance pursuant to ~~in accordance with~~ s. 373.707(8).

d. Identification of the entity that should implement each project option and the current status of project implementation.

Section 9. Paragraph (d) of subsection (2) of section 381.0072, Florida Statutes, is amended to read:

381.0072 Food service protection.—It shall be the duty of the Department of Health to adopt and enforce sanitation rules consistent with law to ensure the protection of the public from food-borne illness. These rules shall provide the standards and requirements for the storage, preparation, serving, or display of food in food service establishments as defined in this section and which are not permitted or licensed under chapter 500 or chapter 509.

(2) DUTIES.—

(d) The department shall inspect each food service establishment as often as necessary to ensure compliance with applicable laws and rules. The department shall have the right of entry and access to these food service establishments at any reasonable time. In inspecting food service establishments ~~as provided~~ under this section, the department shall provide each inspected establishment with the food recovery brochure developed under s. 595.420 ~~570.0725~~.

Section 10. Paragraph (c) of subsection (2) of section 388.46, Florida Statutes, is amended to read:

388.46 Florida Coordinating Council on Mosquito Control;

establishment; membership; organization; responsibilities.—

(2) MEMBERSHIP, ORGANIZATION, AND RESPONSIBILITIES.—

(c) Responsibilities.—The council shall:

1. Develop and implement guidelines to assist the department in resolving disputes arising over the control of arthropods on publicly owned lands.

2. Develop and recommend to the department a request for proposal process for arthropod control research.

3. Identify potential funding sources for research or implementation projects and evaluate and prioritize proposals upon request by the funding source.

4. Prepare and present reports, as needed, on arthropod control activities in the state to ~~the Pesticide Review Council and~~ other governmental organizations, as appropriate.

Section 11. Paragraph (c) of subsection (2) of section 472.0351, Florida Statutes, is amended to read:

472.0351 Grounds for discipline; penalties; enforcement.—

(2) If the board finds a surveyor or mapper guilty of any of the grounds set forth in subsection (1) or a violation of this chapter which occurred before obtaining a license, the board may enter an order imposing one or more of the following penalties:

(c) Imposition of an administrative fine in the Class I category pursuant to s. 570.971 ~~not to exceed $1,000~~ for each count or separate offense.

Section 12. Subsections (1) and (2) and paragraph (a) of

subsection (3) of section 472.036, Florida Statutes, are amended to read:

472.036 Unlicensed practice of professional surveying and mapping; cease and desist notice; civil penalty; enforcement; citations; allocation of moneys collected.—

(1) When the department has probable cause to believe that a ~~any~~ person not licensed by the department or the board has violated ~~any provision of~~ this chapter~~,~~ or any rule adopted pursuant to this chapter, the department may issue and deliver to such person a notice to cease and desist from such violation. In addition, the department may issue and deliver a notice to cease and desist to a ~~any~~ person who aids and abets the unlicensed practice of surveying and mapping by employing such unlicensed person. The issuance of a notice to cease and desist does ~~shall~~ not constitute agency action for which a hearing under ss. 120.569 and 120.57 may be sought. For the purpose of enforcing a cease and desist order, the department may file a proceeding in the name of the state seeking issuance of an injunction or a writ of mandamus against a ~~any~~ person who violates ~~any provisions of~~ such order. In addition to the foregoing remedies, the department may impose an administrative fine in the Class II category pursuant to s. 570.971 for each ~~penalty not to exceed $5,000 per~~ incident pursuant to ~~the provisions of~~ chapter 120 or may issue a citation pursuant ~~to the provisions of~~ subsection (3). If the department is required to seek enforcement of the order for a penalty pursuant to s.

120.569, it shall be entitled to collect its attorney ~~attorney's~~ fees and costs, together with any cost of collection.

(2) In addition to or in lieu of any remedy provided in subsection (1), the department may seek the imposition of a civil penalty through the circuit court for any violation for which the department may issue a notice to cease and desist under subsection (1). The civil penalty shall be a fine in the Class II category pursuant to s. 570.971 ~~no less than $500 and no more than $5,000~~ for each offense. The court may also award to the prevailing party court costs and reasonable attorney fees and, in the event the department prevails, may also award reasonable costs of investigation.

(3)(a) Notwithstanding ~~the provisions of~~ s. 472.033, the department shall adopt rules for ~~to permit~~ the issuance of citations for unlicensed practice of a profession. The citation shall be issued to the subject and shall contain the subject's name and any other information the department determines to be necessary to identify the subject, a brief factual statement, the sections of the law allegedly violated, and the penalty imposed. The citation must clearly state that the subject may choose, in lieu of accepting the citation, to follow the procedure under s. 472.033. If the subject disputes the matter in the citation, the procedures set forth in s. 472.033 must be followed. However, if the subject does not dispute the matter in the citation with the department within 30 days after the citation is served, the citation shall become a final order of

the department upon filing with the agency clerk. The penalty shall be a fine in the Class II category pursuant to s. 570.971 ~~of not less than $500 or more than $5,000~~ or other conditions as established by rule.

Section 13. Subsection (7) of section 482.161, Florida Statutes, is amended to read:

482.161 Disciplinary grounds and actions; reinstatement.—

(7) The department, pursuant to chapter 120, in addition to or in lieu of any other remedy provided by state or local law, may impose an administrative fine in the Class II category pursuant to s. 570.971~~, in an amount not exceeding $5,000,~~ for a ~~the~~ violation of ~~any of the provisions of~~ this chapter or of the rules adopted pursuant to this chapter. In determining the amount of fine to be levied for a violation, the following factors shall be considered:

(a) The severity of the violation, including the probability that the death, or serious harm to the health or safety, of any person will result or has resulted; the severity of the actual or potential harm; and the extent to which ~~the provisions of~~ this chapter or of the rules adopted pursuant to this chapter were violated;

(b) Any actions taken by the licensee or certified operator in charge, or limited certificateholder, to correct the violation or to remedy complaints;

(c) Any previous violations of this chapter or of the rules adopted pursuant to this chapter; and

(d) The cost to the department of investigating the violation.

Section 14. Subsections (3) and (5) of section 482.165, Florida Statutes, are amended to read:

482.165 Unlicensed practice of pest control; cease and desist order; injunction; civil suit and penalty.—

(3) In addition to or in lieu of any remedy provided under subsection (2), the department may institute a civil suit in circuit court to recover a civil penalty for any violation for which the department may issue a notice to cease and desist under subsection (2). The civil penalty shall be in the Class II category pursuant to s. 570.971 ~~may not be less than $500 or more than $5,000~~ for each offense. The court may also award to the prevailing party court costs and reasonable attorney ~~attorney's~~ fees.

(5) In addition to or in lieu of any remedy provided under subsections (2) and (3), the department may, even in the case of a first offense, impose a fine not less than twice the cost of a pest control business license, but not more than a fine in the Class II category pursuant to s. 570.971 ~~$5,000~~, upon a determination by the department that a person is in violation of subsection (1). For the purposes of this subsection, the lapse of a previously issued license for a period of less than 1 year is ~~shall~~ not ~~be~~ considered a violation.

Section 15. Subsection (6) of section 482.243, Florida Statutes, is amended to read:

482.243 Pest Control Enforcement Advisory Council.—

(6) The meetings, powers and duties, procedures, and recordkeeping of the council shall be pursuant to ~~in accordance with the provisions of~~ s. 570.232 ~~570.0705 relating to advisory committees established within the department~~.

Section 16. Paragraph (d) of subsection (3) of section 487.041, Florida Statutes, is amended to read:

487.041 Registration.—

(3) The department, in addition to its other duties under this section, has the power to:

(d) Require a registrant to continue the registration of a brand of pesticide that remains on retailer's shelves in the state unless the department receives the registrant's written notification that it is discontinuing the distribution of a brand of pesticide and the registrant then maintains the registration of that brand for a minimum of 2 years. The discontinued brand of pesticide may remain on retailer's shelves without further registration if the brand of pesticide is not distributed by the registrant in the state during or after the minimum 2-year period ~~who discontinues the distribution of a brand of pesticide in this state to continue the registration of the brand of the pesticide for a minimum of 2 years or until no more remains on retailers' shelves if such continued registration or sale is not specifically prohibited by the department or the United States Environmental Protection Agency~~.

Section 17. Subsection (1) of section 487.046, Florida

Statutes, is amended to read:

487.046 Application; licensure.—

(1) Application for license shall be filed with ~~made in writing to~~ the department by using ~~on~~ a form prescribed ~~furnished~~ by the department or by using the department's website. Each application shall contain information regarding the applicant's qualifications, proposed operations, and license classification or subclassifications, as prescribed by rule.

Section 18. Subsection (3) of section 487.047, Florida Statutes, is amended to read:

487.047 Nonresident license; reciprocal agreement; authorized purchase.—

(3) Restricted-use pesticides may be purchased by a ~~any~~ person who holds a valid applicator's license or who holds a valid purchase authorization card issued by the department or by a licensee under chapter 388 or chapter 482. A nonlicensed person may apply restricted-use pesticides under the direct supervision of a licensed applicator. An applicator's license shall be issued by the department pursuant to ~~on a form supplied by it in accordance with the requirements of~~ this part.

Section 19. Subsection (1) of section 487.048, Florida Statutes, is amended to read:

487.048 Dealer's license; records.—

(1) Each person holding or offering for sale, selling, or distributing restricted-use pesticides must ~~shall~~ obtain a dealer's license from the department. Application for the

license shall be filed with the department by using ~~made on~~ a form prescribed by the department or by using the department's website. The license must be obtained before entering into business or transferring ownership of a business. The department may require examination or other proof of competency of individuals to whom licenses are issued or of individuals employed by persons to whom licenses are issued. Demonstration of continued competency may be required for license renewal, as set by rule. The license shall be renewed annually as provided by rule. An annual license fee not exceeding $250 shall be established by rule. However, a user of a restricted-use pesticide may distribute unopened containers of a properly labeled pesticide to another user who is legally entitled to use that restricted-use pesticide without obtaining a pesticide dealer ~~dealer's~~ license. The exclusive purpose of distribution of the restricted-use pesticide is to keep it from becoming a hazardous waste as defined in s. 403.703(13).

Section 20. Subsections (2) and (3) of section 487.091, Florida Statutes, are amended to read:

487.091 Tolerances, deficiencies, and penalties.—

(2) If a pesticide is found by analysis to be deficient in an active ingredient beyond the tolerance as provided in this part, the registrant is subject to a penalty for the deficiency in the Class III category pursuant to s. 570.971~~, not to exceed $10,000~~ per violation. However, no penalty shall be assessed when the official sample was taken from a pesticide that was in

the possession of a consumer for more than 45 days after ~~from~~ the date of purchase by that consumer~~,~~ or when the product label specifies that the product should be used by an expiration date that has passed. Procedures for assessing penalties shall be established by rule, based on the degree of the deficiency. Penalties assessed shall be paid to the consumer or, in the absence of a known consumer, the department. If the penalty is not paid within the prescribed period ~~of time~~ as established by rule, the department may deny, suspend, or revoke the registration of any pesticide.

(3) If a pesticide is found to be ineffective, it shall be deemed to be misbranded and subject to a penalty in the Class III category pursuant to s. 570.971 for each ~~as established by rule, not to exceed $10,000 per~~ violation.

Section 21. Section 487.159, Florida Statutes, is amended to read:

487.159 Damage or injury to property, animal, or person; mandatory report of damage or injury~~; time for filing; failure to file~~.—

~~(1) The person claiming damage or injury to property, animal, or human beings from application of a pesticide shall file with the department a written statement claiming damages, on a form prescribed by the department, within 48 hours after the damage or injury becomes apparent. The statement shall contain, but shall not be limited to, the name of the person responsible for the application of the pesticide, the name of~~

~~the owner or lessee of the land on which the crop is grown and for which the damages are claimed, and the date on which it is alleged that the damages occurred. The department shall investigate the alleged damages and notify all concerned parties of its findings. If the findings reveal a violation of the provisions of this part, the department shall determine an appropriate penalty, as provided in this part. The filing of a statement or the failure to file such a statement need not be alleged in any complaint which might be filed in a court of law, and the failure to file the statement shall not be considered any bar to the maintenance of any criminal or civil action.~~

(1) ~~(2)~~ A ~~It is the duty of any~~ licensee shall ~~to~~ report unreasonable adverse effects on the environment or damage ~~to property~~ or injury to human beings, animals, plants, or other property ~~a person~~ as the result of the application of a restricted-use pesticide by the licensee or by an applicator or mixer-loader under the licensee's direct supervision, if and when the licensee has knowledge of such damage or injury. ~~It is also the express intent of this section to require all~~ Physicians shall ~~to~~ report all pesticide-related illnesses or injuries to the nearest county health department, which shall ~~will~~ notify the department so that the department may establish a pesticide incident monitoring system within the Division of Agricultural Environmental Services.

(2) ~~(3)~~ When damage or injury to human beings, animals, plants, or other property as the result of the application of a

restricted-use pesticide is alleged to have been done, the person claiming such damage or injury ~~claimant~~ shall allow ~~permit~~ the licensee and the licensee's representatives to observe within reasonable hours the alleged damage or injury in order that the damage or injury may be examined. The failure of the person claiming such damage or injury ~~claimant~~ to allow ~~permit~~ observation and examination of the alleged damage or injury shall automatically bar the claim against the licensee.

Section 22. Section 487.160, Florida Statutes, is amended to read:

487.160 Records.—Licensed private applicators, ~~supervising 15 or more unlicensed applicators or mixer-loaders and~~ licensed public applicators, and licensed commercial applicators shall maintain records as the department may determine by rule with respect to the application of restricted pesticides, including, but not limited to, the type and quantity of pesticide, method of application, crop treated, and dates and location of application. ~~Other licensed private applicators shall maintain records as the department may determine by rule with respect to the date, type, and quantity of restricted-use pesticides used.~~ Licensees shall keep records for ~~a period of~~ 2 years from the date of the application of the pesticide to which the records refer~~,~~ and shall furnish to the department a copy of the records upon written request by the department.

Section 23. Section 487.172, Florida Statutes, is repealed.

Section 24. Paragraph (e) of subsection (1) of section 487.175, Florida Statutes, is amended to read:

487.175 Penalties; administrative fine; injunction.—

(1) In addition to any other penalty provided in this part, when the department finds any person, applicant, or licensee has violated any provision of this part or rule adopted under this part, it may enter an order imposing any one or more of the following penalties:

(e) Imposition of an administrative fine in the Class III category pursuant to s. 570.971 ~~not to exceed $10,000~~ for each violation. When imposing a ~~any~~ fine under this paragraph, the department shall consider the degree and extent of harm caused by the violation, the cost of rectifying the damage, the amount of money the violator benefited from by noncompliance, whether the violation was committed willfully, and the compliance record of the violator.

Section 25. Subsection (8) of section 487.2031, Florida Statutes, is renumbered as subsection (7), and present subsection (7) of that section is amended to read:

487.2031 Definitions.—For the purposes of this part, the term:

(8)~~(7)~~ "~~Material~~ Safety data sheet" means written, electronic, or printed material concerning an agricultural pesticide that sets forth the following information:

(a) The chemical name and the common name of the agricultural pesticide.

(b) The hazards or other risks in the use of the agricultural pesticide, including:

1. The potential for fire, explosions, corrosivity, and reactivity.

2. The known acute health effects and chronic health effects of exposure to the agricultural pesticide, including those medical conditions that are generally recognized as being aggravated by exposure to the agricultural pesticide.

3. The primary routes of entry and symptoms of overexposure.

(c) The proper handling practices, necessary personal protective equipment, and other proper or necessary safety precautions in circumstances that involve the use of or exposure to the agricultural pesticide, including appropriate emergency treatment in case of overexposure.

(d) The emergency procedures for spills, fire, disposal, and first aid.

(e) A description of the known specific potential health risks posed by the agricultural pesticide, which is written in lay terms and is intended to alert a ~~any~~ person who reads the information.

(f) The year and month, if available, that the information was compiled and the name, address, and emergency telephone number of the manufacturer responsible for preparing the information.

Section 26. Section 487.2051, Florida Statutes, is amended

to read:

487.2051 Availability of agricultural pesticide information to workers and medical personnel.—

(1) An agricultural employer shall make available agricultural pesticide information concerning any agricultural pesticide to a ~~any~~ worker:

(a) Who enters an agricultural-pesticide-treated area on an agricultural establishment where:

1. An agricultural pesticide has been applied within 30 days of that entry; or

2. A restricted-entry interval has been in effect; or

(b) Who may be exposed to the agricultural pesticide during normal conditions of use or in a foreseeable emergency.

(2) The agricultural pesticide information provided pursuant to subsection (1) must be in the form of a fact sheet or ~~a material~~ safety data sheet. The agricultural employer shall provide a written copy of the information provided pursuant to subsection (1) within 2 working days after a request for the information by a worker or a designated representative. In the case of a pesticide-related medical emergency, the agricultural employer shall provide a written copy of the information promptly upon the request of the worker, the designated representative, or medical personnel treating the worker.

(3) Upon the initial purchase of a product and with the first purchase after the fact sheet or ~~material~~ safety data sheet is updated, the distributor, manufacturer, or importer of

agricultural pesticides shall obtain or develop and provide each direct purchaser of an agricultural pesticide with a fact sheet or ~~material~~ safety data sheet. If the fact sheet or ~~material~~ safety data sheet ~~or fact sheet~~ for the agricultural pesticide is not available when the agricultural pesticide is purchased, the agricultural employer shall take appropriate and timely steps to obtain the fact sheet or ~~material~~ safety data sheet ~~or fact sheet~~ from the distributor, the manufacturer, the department, a federal agency, or another distribution source.

(4) The department shall produce and make available to a trainer a one-page general agricultural pesticide safety sheet. The pesticide safety sheet must be in a language understandable to the worker and must include, but need not be limited to, illustrated instructions on preventing agricultural pesticide exposure and toll-free telephone numbers to the Florida Poison Control Centers. The trainer shall provide the pesticide safety sheet to the worker pursuant to the United States Environmental Protection Agency Worker Protection Standard, 40 C.F.R. s. 170.130.

Section 27. Paragraph (c) of subsection (2) of section 493.6118, Florida Statutes, is amended to read:

493.6118 Grounds for disciplinary action.—

(2) When the department finds any violation of subsection (1), it may do one or more of the following:

(c) Impose an administrative fine in the Class I category pursuant to s. 570.971 ~~not to exceed $1,000~~ for every count or

separate offense.

Section 28. Subsections (3) and (5) of section 493.6120, Florida Statutes, are amended to read:

493.6120 Violations; penalty.—

(3) Except as otherwise provided in this chapter, a person who violates any provision of this chapter except subsection (7) commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083. The department may also seek the imposition of a civil penalty in the Class II category pursuant to s. 570.971 upon a withhold of adjudication of guilt or an adjudication of guilt in a criminal case.

(5) A person who violates or disregards a cease and desist order issued by the department commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083. In addition, the department may seek the imposition of a civil penalty in the Class II category pursuant to s. 570.971 ~~not to exceed $5,000~~.

Section 29. Subsection (1) of section 496.420, Florida Statutes, is amended to read:

496.420 Civil remedies and enforcement.—

(1) In addition to other remedies authorized by law, the department may bring a civil action in circuit court to enforce ss. 496.401-496.424 or s. 496.426. Upon a finding that a ~~any~~ person has violated any of these sections, a court may make any necessary order or enter a judgment including, but not limited to, a temporary or permanent injunction, a declaratory judgment,

the appointment of a general or special magistrate or receiver, the sequestration of assets, the reimbursement of persons from whom contributions have been unlawfully solicited, the distribution of contributions pursuant to ~~in accordance with~~ the charitable or sponsor purpose expressed in the registration statement or pursuant to ~~in accordance with~~ the representations made to the person solicited, the reimbursement of the department for investigative costs and attorney~~, attorney's~~ fees and costs, and any other equitable relief the court finds appropriate. Upon a finding that a ~~any~~ person has violated any provision of ss. 496.401-496.424 or s. 496.426 with actual knowledge or knowledge fairly implied on the basis of objective circumstances, a court may enter an order imposing a civil fine in the Class III category pursuant to s. 570.971 for each ~~penalty in an amount not to exceed $10,000 per~~ violation.

Section 30. Paragraph (p) of subsection (1) of section 500.03, Florida Statutes, is amended to read:

500.03 Definitions; construction; applicability.—

(1) For the purpose of this chapter, the term:

(p) "Food establishment" means a ~~any~~ factory, food outlet, or ~~any~~ other facility manufacturing, processing, packing, holding, or preparing food or selling food at wholesale or retail. The term does not include a ~~any~~ business or activity that is regulated under s. 413.051, s. 500.80, chapter 509, or chapter 601. The term includes tomato packinghouses and repackers but does not include any other establishments that

pack fruits and vegetables in their raw or natural states, including those fruits or vegetables that are washed, colored, or otherwise treated in their unpeeled, natural form before they are marketed.

Section 31. Paragraphs (a) and (b) of subsection (1) and subsection (8) of section 500.12, Florida Statutes, are amended to read:

500.12 Food permits; building permits.—

(1)(a) A food permit from the department is required of any person who operates a food establishment or retail food store, except:

1. Persons operating minor food outlets~~, including, but not limited to, video stores,~~ that sell food that is commercially prepackaged, not potentially hazardous, and not time or temperature controlled for safety, if ~~nonpotentially hazardous candy, chewing gum, soda, or popcorn, provided~~ the shelf space for those items does not exceed 12 total linear feet and no other food is sold by the minor food outlet.

2. Persons subject to continuous, onsite federal or state inspection.

3. Persons selling only legumes in the shell, either parched, roasted, or boiled.

4. Persons selling sugar cane or sorghum syrup that has been boiled and bottled on a premise located within the state. Such bottles must contain a label listing the producer's name and street address, all added ingredients, the net weight or

volume of the product, and a statement that reads, "This product has not been produced in a facility permitted by the Florida Department of Agriculture and Consumer Services."

(b) Each food establishment and retail food store regulated under this chapter must apply for and receive a food permit before operation begins. An application for a food permit from the department must be accompanied by a fee in an amount determined by department rule. The department shall adopt by rule a schedule of fees to be paid by each food establishment and retail food store as a condition of issuance or renewal of a food permit. Such fees~~, which~~ may not exceed $650 and shall be used solely for the recovery of costs for the services provided, except that the fee accompanying an application for a food permit for operating a bottled water plant may not exceed $1,000 and the fee accompanying an application for a food permit for operating a packaged ice plant may not exceed $250. The fee for operating a bottled water plant or a packaged ice plant shall be set by rule of the department. Food permits are not transferable from one person or physical location to another. Food permits must be renewed annually on or before January 1. If an application for renewal of a food permit is not received by the department within 30 days after its due date, a late fee~~, in an amount~~ not exceeding $100~~,~~ must be paid in addition to the food permit fee before the department may issue the food permit. The moneys collected shall be deposited in the General Inspection Trust Fund.

(8) A ~~Any~~ person who~~, after October 1, 2000,~~ applies for or renews a local business tax certificate ~~occupational license~~ to engage in business as a food establishment or retail food store must exhibit a current food permit or an active letter of exemption from the department before the local business tax certificate ~~occupational license~~ may be issued or renewed.

Section 32. Subsections (1), (2), and (3) of section 500.121, Florida Statutes, are amended, and subsection (7) is added to that section, to read:

500.121 Disciplinary procedures.—

(1) In addition to the suspension procedures provided in s. 500.12, if applicable, the department may impose an administrative fine in the Class II category pursuant to s. 570.971 ~~a fine not to exceed $5,000~~ against any retail food store, food establishment, or cottage food operation that violates this chapter, which fine, when imposed and paid, shall be deposited by the department into the General Inspection Trust Fund. The department may revoke or suspend the permit of any such retail food store or food establishment if it is satisfied that the retail food store or food establishment has:

(a) Violated ~~any of the provisions of~~ this chapter.

(b) Violated or aided or abetted in the violation of any law of this state governing or applicable to retail food stores or food establishments or any lawful rules of the department.

(c) Knowingly committed, or been a party to, any material fraud, misrepresentation, conspiracy, collusion, trick, scheme,

or device whereby another ~~any other~~ person, lawfully relying upon the word, representation, or conduct of a retail food store or food establishment, acts to her or his injury or damage.

(d) Committed any act or conduct of the same or different character than that enumerated which constitutes fraudulent or dishonest dealing.

(2) A ~~Any~~ manufacturer, processor, packer, or distributor who misrepresents or mislabels the country of origin of any food may, in addition to any penalty provided in this chapter, be subject to an additional administrative fine in the Class II category pursuant to s. 570.971 for each ~~of up to $10,000 per~~ violation.

(3) Any administrative order made and entered by the department imposing a fine pursuant to this section shall specify the amount of the fine and the time limit for payment thereof, not exceeding 21 ~~15~~ days, and, upon failure of the permitholder to pay the fine within that time, the permit is subject to suspension or revocation.

(7) The department may determine that a food establishment regulated under this chapter requires immediate closure when the food establishment fails to comply with this chapter or rules adopted under this chapter and presents an imminent threat to the public health, safety, and welfare. The department may accept inspection results from other state and local building officials and other regulatory agencies as justification for such action. The department shall, upon such a determination,

issue an immediate final order to close a food establishment as follows:

(a) The division director or designee shall determine that the continued operation of a food establishment presents an immediate danger to the public health, safety, and welfare.

(b) Upon such determination, the department shall issue an immediate final order directing the owner or operator of the food establishment to cease operation and close the food establishment. The department shall serve the order upon the owner, operator, or agent thereof of the food establishment. The department may attach a closed-for-operation sign to the food establishment while the order remains in place.

(c) The department shall inspect the food establishment within 24 hours after the issuance of the order. Upon a determination that the food establishment has met the applicable requirements to resume operations, the department shall serve a release upon the owner, operator, or agent thereof of the food establishment.

(d) A food establishment ordered by the department to cease operation and close under this section shall remain closed until released by the department or by a judicial order to reopen.

(e) It is a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083, for a person to deface or remove a closed-for-operation sign placed on a food establishment by the department or for the owner or operator of

a food establishment to resist closure of the establishment by the department. The department may impose administrative sanctions for violations of this paragraph.

(f) The department may adopt rules to administer this subsection.

Section 33. Subsection (1) of section 500.147, Florida Statutes, is amended to read:

500.147 Inspection of food establishments, food records, and vehicles.—

(1) The department or its duly authorized agent shall have free access at all reasonable hours to any food establishment, any food records, or any vehicle being used to transport or hold food in commerce for the purpose of inspecting such establishment, records, or vehicle to determine whether ~~if any provision of~~ this chapter or any rule adopted under this ~~the~~ chapter is being violated; to secure a sample or a specimen of any food after paying or offering to pay for such sample; to see that all sanitary rules adopted by the department are complied with; to facilitate tracing of food products in the event of a food-borne illness outbreak or identification of an adulterated or misbranded food item; or to enforce the special-occupancy provisions of the Florida Building Code which apply to food establishments.

Section 34. Subsection (3) of section 500.165, Florida Statutes, is amended to read:

500.165 Transporting shipments of food items; rules;

penalty.—

(3) A ~~Any~~ person who violates subsection (1) or the rules adopted under subsection (2) is subject to an administrative fine in the Class III category pursuant to s. 570.971 for each ~~not to exceed $50,000 per~~ violation. In addition, a ~~any~~ person who violates subsection (1) commits ~~is guilty of~~ a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

Section 35. Section 500.172, Florida Statutes, is amended to read:

500.172 Embargoing, detaining, destroying of food, ~~or~~ food-processing equipment, or areas that are ~~is~~ in violation.—

(1) When the department or its duly authorized agent finds, or has probable cause to believe, that any food, ~~or~~ food-processing equipment, food-processing area, or food storage area is in violation of this chapter or any rule adopted under this chapter so as to be dangerous, unwholesome, fraudulent, or insanitary within the meaning of this chapter, an agent of the department may issue and enforce a stop-sale, stop-use, removal, or hold order, which order gives notice that such article, ~~or~~ processing equipment, processing area, or storage area is, or is suspected of being, in violation and has been detained or embargoed and which order warns all persons not to remove, use, or dispose of such article, ~~or~~ processing equipment, processing area, or storage area by sale or otherwise until permission for removal, use, or disposal is given by the department or the

court. A person may not ~~It is unlawful for any person to~~ remove, use, or dispose of such detained or embargoed article, ~~or~~ processing equipment, processing area, or storage area by sale or otherwise without such permission.

(2) If an article, ~~or~~ processing equipment, a processing area, or a storage area detained or embargoed under subsection (1) has been found by the department to be in violation of law or rule, the department may, within a reasonable period ~~of time~~ after the issuance of such notice, petition the circuit court~~,~~ in the jurisdiction of which the article, ~~or~~ processing equipment, processing area, or storage area is detained or embargoed~~,~~ for an order for condemnation of such article, ~~or~~ processing equipment, processing area, or storage area. When the department has found that an article, ~~or~~ processing equipment, a processing area, or a storage area so detained or embargoed is not in violation, the department shall rescind the stop-sale, stop-use, removal, or hold order.

(3) If the court finds that the detained or embargoed article, ~~or~~ processing equipment, processing area, or storage area is in violation, such article, ~~or~~ processing equipment, processing area, or storage area shall, after entry of the decree, be destroyed or made sanitary at the expense of the claimant thereof under the supervision of the department, and~~,~~ all court costs, fees, and storage and other proper expenses shall be taxed against the claimant of such article, ~~or~~ processing equipment, processing area, or storage area or her or

his agent. However, if the violation can be corrected by proper labeling of the article or sanitizing of the processing equipment, processing area, or storage area, and after such costs, fees, and expenses have been paid and a good and sufficient bond, conditioned that such article be so labeled or processed or such processing equipment, processing area, or storage area so sanitized, has been executed, the court may by order direct that such article, ~~or~~ processing equipment, processing area, or storage area be made available ~~delivered~~ to the claimant thereof for such labeling, processing, or sanitizing under the supervision of the department. The expense of such supervision shall be paid by the claimant. Such bond shall be returned to the claimant of the article, ~~or~~ processing equipment, processing area, or storage area on representation to the court by the department that the article, ~~or~~ processing equipment, processing area, or storage area is no longer in violation of this chapter and that the expenses of such supervision have been paid.

(4) When the department or any of its authorized agents finds in any room, building, vehicle, or other structure any meat, seafood, poultry, vegetable, fruit, or other perishable articles which are unsound or contain any filthy, decomposed, or putrid substances, or which may be poisonous or deleterious to health or otherwise unsafe, the same is ~~being hereby~~ declared to be a nuisance, and the department~~,~~ or its authorized agent~~,~~ shall ~~forthwith~~ condemn or destroy the same~~,~~ or in any other

manner render the same unsalable as human food.

Section 36. Sections 500.301, 500.302, 500.303, 500.304, 500.305, 500.306, and 500.601, Florida Statutes, are repealed.

Section 37. Paragraph (b) of subsection (3) of section 500.70, Florida Statutes, is amended to read:

500.70 Tomato food safety standards; inspections; penalties; tomato good agricultural practices; tomato best management practices.—

(3)

(b) The department may impose an administrative fine in the Class II category pursuant to s. 570.971 for each ~~not to exceed $5,000 per~~ violation, or issue a written notice or warning under s. 500.179, against a person who violates any applicable provision of this section or any rule adopted under this section.

Section 38. Subsection (3) and paragraph (b) of subsection (4) of section 501.019, Florida Statutes, are amended to read:

501.019 Health studios; penalties.—

(3) The department may institute proceedings in the appropriate circuit court to recover any penalties or damages allowed in this section and for injunctive relief to enforce compliance with ss. 501.012-501.019 or any rule or order of the department. The department may seek a civil penalty in the Class II category pursuant to s. 570.971 ~~of up to $5,000~~ for each violation of this section.

(4)

(b) Upon a finding as set forth in paragraph (a), the department may enter an order doing one or more of the following:

1. Issuing a notice of noncompliance pursuant to s. 120.695.

2. For a violation of s. 501.015 or s. 501.016, imposing an administrative fine in the Class II category pursuant to s. 570.971 for each ~~not to exceed $5,000 per~~ violation.

~~3. For a violation of s. 501.013, s. 501.017, or s. 501.018, imposing an administrative fine not to exceed $500 per violation.~~

3.~~4.~~ Directing that the health studio cease and desist specified activities.

4.~~5.~~ Refusing to register or revoking or suspending a registration.

5.~~6.~~ Placing the registrant on probation for a period of 5 years, subject to such conditions as the department may specify by rule.

Section 39. Subsection (9) of section 501.059, Florida Statutes, is amended, and subsection (12) is added to that section, to read:

501.059 Telephone solicitation.—

(9)(a) The department shall investigate any complaints received concerning violations of this section. If, after investigating a ~~any~~ complaint, the department finds that there has been a violation of this section, the department or the

Department of Legal Affairs may bring an action to impose a civil penalty and to seek other relief, including injunctive relief, as the court deems appropriate against the telephone solicitor. The civil penalty shall be in the Class III category pursuant to s. 570.971 for each ~~may not exceed $10,000 per~~ violation and shall be deposited in the General Inspection Trust Fund if the action or proceeding was brought by the department, or the Legal Affairs Revolving Trust Fund if the action or proceeding was brought by the Department of Legal Affairs. This civil penalty may be recovered in any action brought under this part by the department, or the department may terminate any investigation or action upon agreement by the person to pay a stipulated civil penalty. The department or the court may waive any civil penalty if the person has previously made full restitution or reimbursement or has paid actual damages to the consumers who have been injured by the violation.

(b) The department may, as an alternative to the civil penalties provided in paragraph (a), impose an administrative fine in the Class I category pursuant to s. 570.971 ~~not to exceed $1,000~~ for each act or omission that constitutes a violation of this section. An administrative proceeding that could result in the entry of an order imposing an administrative penalty must be conducted pursuant to ~~in accordance with~~ chapter 120.

(12) The department may adopt rules to implement this section.

Section 40. Paragraph (b) of subsection (2) of section 501.612, Florida Statutes, is amended to read:

501.612 Grounds for departmental action against licensure applicants or licensees.—

(2) Upon a finding as set forth in subsection (1), the department may enter an order:

(b) Imposing an administrative fine in the Class III category pursuant to s. 570.971 ~~not to exceed $10,000~~ for each act or omission which constitutes a violation under this part.

Section 41. Section 501.619, Florida Statutes, is amended to read:

501.619 Civil penalties.—A ~~Any~~ person who engages in any act or practice declared in this part to be unlawful is liable for a civil penalty in the Class III category pursuant to s. 570.971 ~~of not more than $10,000~~ for each such violation. This civil penalty may be recovered in any action brought under this part by the department, or the department may terminate any investigation or action upon agreement by the person to pay a stipulated civil penalty. The department or the court may waive any such civil penalty or other fines or costs if the person has previously made full restitution or reimbursement or has paid actual damages to the purchasers who have been injured by the unlawful act or practice.

Section 42. Paragraph (a) of subsection (1) of section 501.922, Florida Statutes, is amended to read:

501.922 Violation.—

(1) The department may enter an order imposing one or more of the following penalties against any person who violates ss. 501.91-501.923 or who impedes, obstructs, or hinders the department in performing its duties under those sections:

(a) Imposition of an administrative fine in the Class II category pursuant to s. 570.971 for each ~~of not more than $1,000 per violation for a first-time offender. For a second-time or repeat offender, or any person who willfully and intentionally violates ss. 501.91-501.923, the administrative fine may not exceed $5,000 per~~ violation.

Section 43. Paragraph (b) of subsection (1) of section 502.231, Florida Statutes, is amended to read:

502.231 Penalty and injunction.—

(1) The department may enter an order imposing one or more of the following penalties against any person who violates any provision of this chapter:

(b) Imposition of an administrative fine ~~not to exceed~~:

1. In the Class II category pursuant to s. 570.971 for each ~~Ten thousand dollars per~~ violation in the case of a frozen dessert licensee;

2. Ten percent of the license fee or $100, whichever is greater, for failure to report the information described in s. 502.053(3)(d); or

3. In the Class I category pursuant to s. 570.971 for each ~~One thousand dollars per~~ occurrence for any other violation.

When imposing a fine under this paragraph, the department must consider the degree and extent of harm caused by the violation, the cost of rectifying the damage, the benefit to the violator, whether the violation was committed willfully, and the violator's compliance record.

Section 44. Subsection (1) of section 507.09, Florida Statutes, is amended to read:

507.09 Administrative remedies; penalties.—

(1) The department may enter an order doing one or more of the following if the department finds that a mover or moving broker, or a person employed or contracted by a mover or broker, has violated or is operating in violation of this chapter or the rules or orders issued pursuant to ~~in accordance with~~ this chapter:

(a) Issuing a notice of noncompliance under s. 120.695.

(b) Imposing an administrative fine in the Class II category pursuant to s. 570.971 ~~not to exceed $5,000~~ for each act or omission.

(c) Directing that the person cease and desist specified activities.

(d) Refusing to register or revoking or suspending a registration.

(e) Placing the registrant on probation ~~for a period of time~~, subject to the conditions specified by the department.

Section 45. Subsection (2) of section 507.10, Florida Statutes, is amended to read:

507.10 Civil penalties; remedies.—

(2) The department may seek a civil penalty in the Class II category pursuant to s. 570.971 ~~of up to $5,000~~ for each violation of this chapter.

Section 46. Paragraph (g) of subsection (2) and paragraph (c) of subsection (3) of section 509.032, Florida Statutes, are amended to read:

509.032 Duties.—

(2) INSPECTION OF PREMISES.—

(g) In inspecting public food service establishments, the department shall provide each inspected establishment with the food-recovery brochure developed under s. 595.420 ~~570.0725~~.

(3) SANITARY STANDARDS; EMERGENCIES; TEMPORARY FOOD SERVICE EVENTS.—The division shall:

(c) Administer a public notification process for temporary food service events and distribute educational materials that address safe food storage, preparation, and service procedures.

1. Sponsors of temporary food service events shall notify the division not less than 3 days before ~~prior to~~ the scheduled event of the type of food service proposed, the time and location of the event, a complete list of food service vendors participating in the event, the number of individual food service facilities each vendor will operate at the event, and the identification number of each food service vendor's current license as a public food service establishment or temporary food service event licensee. Notification may be completed orally, by

telephone, in person, or in writing. A public food service establishment or food service vendor may not use this notification process to circumvent the license requirements of this chapter.

2. The division shall keep a record of all notifications received for proposed temporary food service events and shall provide appropriate educational materials to the event sponsors, including the food-recovery brochure developed under s. 595.420 ~~570.0725~~.

3.a. A public food service establishment or other food service vendor must obtain one of the following classes of license from the division: an individual license, for a fee of no more than $105, for each temporary food service event in which it participates; or an annual license, for a fee of no more than $1,000, that entitles the licensee to participate in an unlimited number of food service events during the license period. The division shall establish license fees, by rule, and may limit the number of food service facilities a licensee may operate at a particular temporary food service event under a single license.

b. Public food service establishments holding current licenses from the division may operate under the regulations of such a license at temporary food service events of 3 days or less in duration.

Section 47. Paragraph (a) of subsection (1) of section 525.16, Florida Statutes, is amended to read:

525.16 Administrative fine; penalties; prosecution of cases by state attorney.—

(1)(a) The department may enter an order imposing one or more of the following penalties against a ~~any~~ person who violates ~~any of the provisions of~~ this chapter or the rules adopted under this chapter or impedes, obstructs, or hinders the department in the performance of its duty in connection with ~~the provisions of~~ this chapter:

1. Issuance of a warning letter.

2. Imposition of an administrative fine in the Class II category pursuant to s. 570.971 for each ~~of not more than $1,000 per violation for a first-time offender. For a second-time or repeat offender, or any person who is shown to have willfully and intentionally violated any provision of this chapter, the administrative fine shall not exceed $5,000 per~~ violation. When imposing any fine under this section, the department shall consider the degree and extent of harm caused by the violation, the cost of rectifying the damage, the amount of money the violator benefited from by noncompliance, whether the violation was committed willfully, and the compliance record of the violator.

3. Revocation or suspension of any registration issued by the department.

Section 48. Subsection (1) of section 526.311, Florida Statutes, is amended to read:

526.311 Enforcement; civil penalties; injunctive relief.—

(1) A ~~Any~~ person who knowingly violates this act shall be subject to a civil penalty in the Class III category pursuant to s. 570.971 for each ~~not to exceed $10,000 per~~ violation. Each day that a violation of this act occurs shall be considered a separate violation, but the ~~no~~ civil penalty may not ~~shall~~ exceed $250,000. ~~Any~~ Such a person shall also be liable for attorney ~~attorney's~~ fees and shall be subject to an action for injunctive relief.

Section 49. Paragraph (b) of subsection (2) of section 526.55, Florida Statutes, is amended to read:

526.55 Violation and penalties.—

(2) If the department finds that a person has violated or is operating in violation of ss. 526.50-526.56 or the rules or orders adopted thereunder, the department may, by order:

(b) Impose an administrative fine in the Class II category pursuant to s. 570.971 ~~not to exceed $5,000~~ for each violation;

Section 50. Subsection (1) of section 527.13, Florida Statutes, is amended to read:

527.13 Administrative fines and warning letters.—

(1) If a ~~any~~ person violates ~~any provision of~~ this chapter or any rule adopted under this chapter ~~pursuant thereto~~ or a cease and desist order, the department may impose civil or administrative penalties in the Class II category pursuant to s. 570.971 not to exceed $3,000 for each offense, suspend or revoke the license or qualification issued to such person, or any of the foregoing. The cost of the proceedings to enforce this

chapter may be added to any penalty imposed. The department may allow the licensee a reasonable period, not to exceed 90 days, within which to pay to the department the amount of the penalty so imposed. If the licensee fails to pay the penalty in its entirety to the department at its office at Tallahassee within the period so allowed, the licenses of the licensee shall stand revoked upon expiration of such period.

Section 51. Subsection (1) of section 531.50, Florida Statutes, is amended to read:

531.50 Administrative fine, penalties, and offenses.—

(1) The department may enter an order imposing one or more of the following penalties against a ~~any~~ person who violates ~~any provision of~~ this chapter or any rule adopted under this chapter or impedes, obstructs, or hinders the department in performing ~~the performance of~~ its duties under ~~in connection with the provisions of~~ this chapter:

(a) Issuance of a warning letter or notice.

(b) Imposition of an administrative fine in the Class II category pursuant to s. 570.971 for each ~~of:~~

~~1. Up to $1,000 for a first violation;~~

~~2. Up to $2,500 for a second violation within 2 years after the first violation; or~~

~~3. Up to $5,000 for a third violation within 2 years after the first~~ violation.

When imposing any fine under this section, the department shall

consider the degree and extent of potential harm caused by the violation, the amount of money by which the violator benefited from noncompliance, whether the violation was committed willfully, and the compliance record of the violator. All fines, monetary penalties, and costs received by the department shall be deposited in the General Inspection Trust Fund for the purpose of administering ~~the provisions of~~ this chapter.

Section 52. Subsection (2) of section 534.52, Florida Statutes, is amended to read:

534.52 Violations; refusal, suspension, revocation; penalties.—

(2) In addition, or as an alternative to refusing, suspending, or revoking a license in cases involving violations, the department may impose an administrative ~~a~~ fine in the Class I category pursuant to s. 570.971 not to exceed $500 for the first offense and not to exceed $1,000 for the second or subsequent violations. When imposed and paid, such fines shall be deposited in the General Inspection Trust Fund.

Section 53. Paragraphs (b) and (d) of subsection (7) of section 539.001, Florida Statutes, are amended to read:

539.001 The Florida Pawnbroking Act.—

(7) ORDERS IMPOSING PENALTIES.—

(b) Upon a finding as set forth in paragraph (a), the agency may enter an order doing one or more of the following:

1. Issuing a notice of noncompliance pursuant to s. 120.695.

2. Imposing an administrative fine in the Class II category pursuant to s. 570.971 ~~not to exceed $5,000~~ for each act which constitutes a violation of this section or a rule or an order.

3. Directing that the pawnbroker cease and desist specified activities.

4. Refusing to license or revoking or suspending a license.

5. Placing the licensee on probation ~~for a period of time~~, subject to such conditions as the agency may specify.

(d)1. When the agency, if a violation of this section occurs, has reasonable cause to believe that a person is operating in violation of this section, the agency may bring a civil action in the appropriate court for temporary or permanent injunctive relief and may seek other appropriate civil relief, including a civil penalty in the Class II category pursuant to s. 570.971 ~~not to exceed $5,000~~ for each violation, restitution and damages for injured customers, court costs, and reasonable attorney ~~attorney's~~ fees.

2. The agency may terminate any investigation or action upon agreement by the offender to pay a stipulated civil penalty, to make restitution or pay damages to customers, or to satisfy any other relief authorized herein and requested by the agency.

Section 54. Paragraph (b) of subsection (4) and paragraph (a) of subsection (5) of section 559.921, Florida Statutes, are

amended to read:

559.921 Remedies.—

(4)

(b) Upon a finding as set forth in paragraph (a), the department may enter an order doing one or more of the following:

1. Issuing a notice of noncompliance pursuant to s. 120.695.

2. Imposing an administrative fine in the Class I category pursuant to s. 570.971 for each ~~not to exceed $1,000 per~~ violation for each act which constitutes a violation of this part or a rule or order.

3. Directing that the motor vehicle repair shop cease and desist specified activities.

4. Refusing to register or revoking or suspending a registration.

5. Placing the registrant on probation ~~for a period of time~~, subject to such conditions as the department may specify.

(5)(a) The department or the state attorney, if a violation of this part occurs in his or her judicial circuit, shall be the enforcing authority for purposes of this part and may bring a civil action in circuit court for temporary or permanent injunctive relief and may seek other appropriate civil relief, including a civil penalty in the Class I category pursuant to s. 570.971 ~~not to exceed $1,000~~ for each violation, restitution and damages for injured customers, court costs, and

reasonable attorney ~~attorney's~~ fees.

Section 55. Subsection (1) of section 559.9355, Florida Statutes, is amended to read:

559.9355 Administrative remedies; penalties.—

(1) The department may enter an order doing one or more of the following if the department finds that a person has violated or is operating in violation of ~~any of the provisions of~~ this part or the rules or orders issued thereunder:

(a) Issuing a notice of noncompliance pursuant to s. 120.695.

(b) Imposing an administrative fine in the Class II category pursuant to s. 570.971 ~~not to exceed $5,000~~ for each act or omission.

~~(c) Imposing an administrative fine not to exceed $10,000 for each act or omission in violation of s. 559.9335(22) or (23).~~

(c) ~~(d)~~ Directing that the person cease and desist specified activities.

(d) ~~(e)~~ Refusing to register or canceling or suspending a registration.

(e) ~~(f)~~ Placing the registrant on probation ~~for a period of time~~, subject to such conditions as the department may specify.

(f) ~~(g)~~ Canceling an exemption granted under s. 559.935.

Section 56. Subsections (2) and (3) of section 559.936, Florida Statutes, are amended to read:

559.936 Civil penalties; remedies.—

(2) The department may seek a civil penalty in the Class II category pursuant to s. 570.971 ~~of up to $5,000~~ for each violation of this part.

(3) The department may seek a civil penalty in the Class III category pursuant to s. 570.971 ~~of up to $10,000~~ for each act or omission in violation of s. 559.9335(22) or (23).

Section 57. Subsection (33) of section 570.07, Florida Statutes, is amended to read:

570.07 Department of Agriculture and Consumer Services; functions, powers, and duties.—The department shall have and exercise the following functions, powers, and duties:

(33) To assist local volunteer and nonprofit organizations in soliciting, collecting, packaging, or delivering surplus fresh fruit and vegetables for distribution pursuant to ~~in accordance with~~ s. 595.420 ~~570.0725~~. The department also may coordinate the development of food recovery programs in the production areas of the state using local volunteer and nonprofit organizations.

Section 58. Section 570.0705, Florida Statutes, is renumbered as section 570.232, Florida Statutes.

Section 59. Section 570.0725, Florida Statutes, is transferred and renumbered as section 595.420, Florida Statutes.

Section 60. Section 570.073, Florida Statutes, is renumbered as section 570.65, Florida Statutes.

Section 61. Section 570.074, Florida Statutes, is renumbered as section 570.66, Florida Statutes, and amended to

read:

570.66 ~~570.074~~ Department of Agriculture and Consumer Services; water policy.—The commissioner may create an Office of Agricultural Water Policy under the supervision of a senior manager exempt under s. 110.205 in the Senior Management Service. The commissioner may designate the bureaus and positions in the various organizational divisions of the department that report to the ~~this~~ office relating to any matter over which the department has jurisdiction in matters relating to water policy affecting agriculture, application of such policies, and coordination of such matters with state and federal agencies. The office shall enforce and implement the provisions of chapter 582 and rules relating to soil and water conservation.

Section 62. Section 570.0741, Florida Statutes, is transferred, renumbered as section 377.805, Florida Statutes, and amended to read:

377.805 ~~570.0741~~ Energy efficiency and conservation clearinghouse.—The Office of Energy within the Department of Agriculture and Consumer Services, in consultation with the Public Service Commission, the Florida Building Commission, and the Florida Energy Systems Consortium, shall develop a clearinghouse of information regarding cost savings associated with various energy efficiency and conservation measures. The Department of Agriculture and Consumer Services shall post the information on its website ~~by July 1, 2013~~.

Section 63. Section 570.075, Florida Statutes, is renumbered as section 570.916, Florida Statutes.

Section 64. Section 570.076, Florida Statutes, is renumbered as section 570.921, Florida Statutes, and paragraph (c) of subsection (2) of that section is amended to read:

570.921 ~~570.076~~ Environmental Stewardship Certification Program.—The department may, by rule, establish the Environmental Stewardship Certification Program consistent with this section. A rule adopted under this section must be developed in consultation with state universities, agricultural organizations, and other interested parties.

(2) The department shall provide an agricultural certification under this program for implementation of one or more of the following criteria:

(c) Best management practices adopted by rule pursuant to s. 403.067(7)(c) or s. 570.93(1)(b) ~~570.085(1)(b)~~.

Section 65. Section 570.085, Florida Statutes, is renumbered as section 570.93, Florida Statutes.

Section 66. Section 570.087, Florida Statutes, is renumbered as section 570.94, Florida Statutes.

Section 67. Section 570.14, Florida Statutes, is renumbered as section 570.031, Florida Statutes, and amended to read:

570.031 ~~570.14~~ Seal of department.—The department shall have an official seal which shall be used for the authentication of the orders and proceedings of the department and for such

other purposes as the department may prescribe. Use of the seal or any likeness thereof requires written approval of the department.

Section 68. Section 570.16, Florida Statutes, is renumbered as section 570.051, Florida Statutes.

Section 69. Section 570.17, Florida Statutes, is renumbered as section 570.081, Florida Statutes.

Section 70. Section 570.18, Florida Statutes, is renumbered as section 570.041, Florida Statutes.

Section 71. Paragraph (d) of subsection (1) and subsection (2) of section 570.23, Florida Statutes, are amended to read:

570.23 State Agricultural Advisory Council.—

(1) COMPOSITION.—The State Agricultural Advisory Council is hereby created in the department.

(d) ~~On or after January 15, 1988,~~ Alternates shall be appointed for each member and shall serve as alternates for the remainder of the corresponding members' terms. As terms of current members expire, members and their alternates shall be appointed for 4-year terms and shall serve until their successors are duly qualified and appointed. A vacancy shall be filled for the remainder of an unexpired term in the same manner as an initial appointment.

(2) POWERS AND DUTIES; MEETINGS; PROCEDURES; RECORDS.—The meetings, powers and duties, procedures, and recordkeeping of the State Agricultural Advisory Council shall be pursuant to ~~governed by the provisions of~~ s. 570.232 ~~570.0705 relating to~~

~~advisory committees established within the department~~.

Section 72. Section 570.241, Florida Statutes, is renumbered as section 570.73, Florida Statutes.

Section 73. Section 570.242, Florida Statutes, is renumbered as section 570.74, Florida Statutes, and amended to read:

570.74 ~~570.242~~ Definitions relating to Agricultural Economic Development Act.—For purposes of this act, the term ~~following terms shall have the following meanings~~:

(1) "Agriculturally depressed area" means a rural area that ~~which~~ has declining profitability from agricultural enterprises and one or more of the following characteristics:

(a) A stable or declining population.

(b) A stable or declining real per capita income.

(c) A traditional economy based on agriculture or extraction of solid minerals.

(d) A low ad valorem tax base.

(e) A need for agribusiness and leadership training.

(f) Crop losses or economic depression resulting from a natural disaster or socioeconomic conditions or events that ~~which~~ negatively impact a crop.

(2) "Assistance" means financial or nonfinancial assistance issued pursuant to ~~the provisions of~~ this act.

~~(3) "Commissioner" means the Commissioner of Agriculture.~~

~~(4) "Department" means the Department of Agriculture and Consumer Services.~~

(3) ~~(5)~~ "Financial assistance" means the providing of funds to an agribusiness.

(4) ~~(6)~~ "Nonfinancial assistance" means the providing of personnel to work with an agribusiness to establish an infrastructure, including, but not limited to, the development of an accounting system, management procedures, and a marketing plan. Nonfinancial assistance ~~shall~~ also includes ~~include~~ the providing of equipment.

Section 74. Section 570.243, Florida Statutes, is renumbered as section 570.75, Florida Statutes.

Section 75. Section 570.244, Florida Statutes, is renumbered as section 570.76, Florida Statutes.

Section 76. Section 570.245, Florida Statutes, is renumbered as section 570.77, Florida Statutes.

Section 77. Section 570.246, Florida Statutes, is renumbered as section 570.78, Florida Statutes.

Section 78. Section 570.247, Florida Statutes, is renumbered as section 570.79, Florida Statutes, and amended to read:

570.79 ~~570.247~~ Adoption ~~Promulgation~~ of rules. ~~In conjunction with funds specifically appropriated for the purposes specified in this act,~~ The department shall adopt ~~shall begin to promulgate~~ rules ~~no later than January 1, 1992, pursuant to s. 120.54,~~ pertaining to:

(1) Formal notification procedures for the availability of assistance, including publication in the Florida Administrative

Register pursuant to s. 120.55.

(2) Written evaluation criteria for selecting project proposals to receive assistance. The criteria for eligibility of assistance shall include a written business plan delineating the economic viability of the proposed project, including the financial commitment by project participants and a schedule for repayment of agricultural economic development funds.

(3) Procedures for repayment of financial assistance by an assisted agribusiness into the General Inspection Trust Fund within the department. Repayment of financial assistance shall be based upon a percentage of future profits until repayment is complete.

(4) Funding procedures for projects eligible for assistance. These procedures shall include the amount of funding, the limits and requirements for the objects of expenditure, and the duration of assistance.

(5) Other subject matter pertaining to the implementation of this act.

Section 79. Section 570.248, Florida Statutes, is renumbered as section 570.81, Florida Statutes.

Section 80. Section 570.249, Florida Statutes, is renumbered as section 570.82, Florida Statutes.

Section 81. Section 570.345, Florida Statutes, is repealed.

Section 82. Subsection (5) of section 570.36, Florida Statutes, is amended to read:

570.36 Division of Animal Industry; powers and duties.—The duties of the Division of Animal Industry include, but are not limited to:

(5) Operating and managing the animal disease diagnostic laboratory ~~laboratories~~ provided for in chapter 585.

Section 83. Section 570.38, Florida Statutes, is transferred, renumbered as section 585.008, Florida Statutes, and amended to read:

585.008 ~~570.38~~ Animal Industry Technical Council.—

(1) COMPOSITION.—The Animal Industry Technical Council is hereby created in the department and shall be composed of 14 members as follows:

(a) The beef cattle, swine, dairy, horse, independent agricultural market ~~markets~~, meat processing and packing establishment ~~establishments~~, veterinary medicine, and poultry representatives who serve on the State Agricultural Advisory Council and three additional representatives from the beef cattle industry, as well as three at-large members representing other animal industries in the state, who shall be appointed by the commissioner for 4-year terms or until their successors are duly qualified and appointed.

(b) Each additional beef cattle representative shall be appointed subject to the qualifications and by the procedure as prescribed in s. 570.23 for membership to the council by the beef cattle representative. If a vacancy occurs in these three positions, it shall be filled for the remainder of the term in

the same manner as an initial appointment.

(2) POWERS AND DUTIES; MEETINGS; PROCEDURES; RECORDS.—The meetings, powers and duties, procedures, and recordkeeping of the Animal Industry Technical Council shall be pursuant to ~~governed by the provisions of~~ s. 570.232 ~~570.0705 relating to advisory committees established within the department~~.

Section 84. Section 570.42, Florida Statutes, is transferred, renumbered as section 502.301, Florida Statutes, and amended to read:

502.301 ~~570.42~~ Dairy Industry Technical Council.—

(1) COMPOSITION.—The Dairy Industry Technical Council is ~~hereby~~ created within ~~in~~ the department and shall be composed of seven members as follows:

(a) Two citizens of the state, one of whom shall be associated with the Agricultural Extension Service of the University of Florida and the other with the College of Agricultural and Life Science ~~Agriculture~~ of the University of Florida.

(b) An employee of the Department of Health.

(c) Two dairy farmers who are actively engaged in the production of milk in this state and who earn a major portion of their income from the production of milk. The commissioner shall appoint the two members ~~provided for in this paragraph~~ from no fewer than four nor more than six nominees submitted by the recognized statewide organizations representing this group. In the absence of nominations, the commissioner shall appoint other

persons qualified under ~~the provisions of~~ this paragraph.

(d) Two distributors of milk. "Distributor" means a ~~any~~ milk dealer who operates a milk gathering station or processing plant where milk is collected and bottled or otherwise processed and prepared for sale. The commissioner shall appoint the two members ~~provided for in this paragraph~~ from no fewer than four nor more than six nominees submitted by the recognized statewide organizations representing this group. In the absence of nominations, the commissioner shall appoint other persons qualified under ~~the provisions of~~ this paragraph.

(e) All members shall serve 4-year terms or until their successors are duly qualified and appointed. If a vacancy occurs, it shall be filled for the remainder of the term in the manner of an initial appointment.

(2) POWERS AND DUTIES; MEETINGS; PROCEDURES; RECORDS.—The meetings, powers and duties, procedures, and recordkeeping of the Dairy Industry Technical Council shall be pursuant to ~~governed by the provisions of~~ s. 570.232 ~~570.0705 relating to advisory committees established within the department~~.

Section 85. Subsections (5) through (9) of section 570.44, Florida Statutes, are renumbered as subsections (4) through (8), respectively, and subsections (3) and (4) of that section are amended to read:

570.44 Division of Agricultural Environmental Services; powers and duties.—The duties of the Division of Agricultural Environmental Services include, but are not limited to:

(3) ~~Supporting the Pesticide Review Council and~~ Reviewing and evaluating technical and scientific data associated with the production, manufacture, storage, transportation, sale, or use of any article or product with respect to any statutory authority ~~which is~~ conferred on the department. The department may ~~is authorized to~~ establish positions within the division for the employment of experts in the fields of toxicology, hydrology, and biology to conduct such reviews and evaluations and may~~. The department is also authorized to~~ establish appropriate clerical support positions to implement the duties and responsibilities of the division.

~~(4) Enforcing and implementing the responsibilities of chapter 582, and the rules relating to soil and water conservation.~~

Section 86. Subsection (2) of section 570.45, Florida Statutes, is amended to read:

570.45 Director; duties.—

(2) The director shall supervise, direct, and coordinate the activities of the division and enforce ~~the provisions of~~ chapters 388, 482, 487, 501, 504, 531, 570, 576, 578, and 580~~,~~ ~~and 582~~ and any other chapter necessary to carry out the responsibilities of the division.

Section 87. Paragraph (d) of subsection (3) of section 570.451, Florida Statutes, is amended to read:

570.451 Agricultural Feed, Seed, and Fertilizer Advisory Council.—

(3)

(d) The meetings, powers and duties, procedures, and recordkeeping of the council shall be pursuant to ~~in accordance with the provisions of~~ s. 570.232 ~~570.0705 relating to advisory committees established within the department~~.

Section 88. Section 570.481, Florida Statutes, is transferred and renumbered as section 603.011, Florida Statutes.

Section 89. Subsections (2) and (3) of section 570.50, Florida Statutes, are amended to read:

570.50 Division of Food Safety; powers and duties.—The duties of the Division of Food Safety include, but are not limited to:

(2) Conducting those general inspection activities relating to food and food products being processed, held, or offered for sale in this state and enforcing those provisions of chapters 500, 501, 502, 531, 583, 585, 586, 597, and 601 relating to foods as authorized by the department.

(3) Analyzing samples of foods offered for sale in this state as required under chapters 500, 501, 502, 585, 586, 597, and 601.

Section 90. Subsection (2) of section 570.51, Florida Statutes, is amended to read:

570.51 Director; qualifications; duties.—

(2) The director shall supervise, direct, and coordinate the activities of the division and enforce the provisions of chapters 500, 501, 502, 531, 583, 585, 597, and 601 and any

other chapter necessary to carry out the responsibilities of the division.

Section 91. Section 570.531, Florida Statutes, is renumbered as section 570.209, Florida Statutes.

Section 92. Section 570.542, Florida Statutes, is repealed.

Section 93. Subsection (2) of section 570.543, Florida Statutes, is amended to read:

570.543 Florida Consumers' Council.—The Florida Consumers' Council in the department is created to advise and assist the department in carrying out its duties.

(2) POWERS AND DUTIES; MEETINGS; PROCEDURES; RECORDS.—The meetings, powers and duties, procedures, and recordkeeping of the Florida Consumers' Council shall be pursuant to ~~governed by the provisions of~~ s. 570.232 ~~570.0705 relating to advisory committees established within the department~~. The council members or chair may call no more than two meetings.

Section 94. Section 570.545, Florida Statutes, is transferred and renumbered as section 501.0113, Florida Statutes.

Section 95. Section 570.55, Florida Statutes, is transferred and renumbered as section 603.211, Florida Statutes.

Section 96. Section 570.67, Florida Statutes, is created to read:

570.67 Office of Energy.—The Office of Energy is created within the department. The office shall be under the supervision

of a senior manager exempt under s. 110.205 in the Senior Management Service appointed by the commissioner. The duties of the office shall include, but are not limited to, administering and enforcing chapter 377, the rules adopted under that chapter, and any other duties authorized by the commissioner.

Section 97. Subsections (2) and (12) of section 570.71, Florida Statutes, are amended to read:

570.71 Conservation easements and agreements.—

(2) To achieve the purposes of this section ~~act~~, ~~beginning no sooner than July 1, 2002, and every year thereafter,~~ the department may accept applications for project proposals that:

(a) Purchase conservation easements, as defined in s. 704.06.

(b) Purchase rural-lands-protection easements pursuant to this section ~~act~~.

(c) Fund resource conservation agreements pursuant to this section ~~act~~.

(d) Fund agricultural protection agreements pursuant to this section ~~act~~.

(12) The department may ~~is authorized to~~ use funds from the following sources to implement this section ~~act~~:

(a) State funds;

(b) Federal funds;

(c) Other governmental entities;

(d) Nongovernmental organizations; or

(e) Private individuals.

Any such funds provided shall be deposited into the Conservation and Recreation Lands Program Trust Fund within the Department of Agriculture and Consumer Services and used for the purposes of this section, including administrative and operating expenses related to appraisals, mapping, title process, personnel, and other real estate expenses ~~act~~.

Section 98. Section 570.72, Florida Statutes, is repealed.

Section 99. Section 570.901, Florida Statutes, is renumbered as section 570.692, Florida Statutes.

Section 100. Section 570.902, Florida Statutes, is renumbered as section 570.69, Florida Statutes, and amended to read:

570.69 ~~570.902~~ Definitions; ss. 570.69 and 570.691 ~~570.902 and 570.903~~.—For the purpose of this section and s. 570.691 ~~570.903~~:

(1) "Designated program" means the departmental program which a direct-support organization has been created to support.

(2) "Direct-support organization" or "organization" means an organization which is a Florida corporation not for profit incorporated under ~~the provisions of~~ chapter 617 and approved by the department to operate for the benefit of a museum or a designated program.

(3) "Museum" means the Florida Agricultural Museum, which is designated as the museum for agriculture and rural history of the State of Florida.

Section 101. Section 570.903, Florida Statutes, is renumbered as section 570.691, Florida Statutes.

Section 102. Section 570.91, Florida statutes, is renumbered as section 570.693, Florida Statutes.

Section 103. Section 570.9135, Florida Statutes, is renumbered as section 570.83, Florida Statutes, and subsection (6) of that section is amended to read:

570.83 ~~570.9135~~ Beef Market Development Act; definitions; Florida Beef Council, Inc., creation, purposes, governing board, powers, and duties; referendum on assessments imposed on gross receipts from cattle sales; payments to organizations for services; collecting and refunding assessments; vote on continuing the act; council bylaws.—

(6) REFERENDUM ON ASSESSMENTS.—All producers in this state shall have the opportunity to vote in a referendum to determine whether the council shall be authorized to impose an assessment of not more than $1 per head on cattle sold in the state. The referendum shall pose the question: "Do you approve of an assessment program, up to $1 per head of cattle pursuant to section 570.83 ~~570.9135~~, Florida Statutes, to be funded through specific contributions that are mandatory and refundable upon request?"

(a) A referendum held under this section must be conducted by secret ballot at extension offices of the Institute of Food and Agricultural Sciences of the University of Florida or at offices of the United States Department of Agriculture with the

cooperation of the department.

(b) Notice of a referendum to be held under this act must be given at least once in trade publications, the public press, and statewide newspapers at least 30 days before the referendum is held.

(c) Additional referenda may be held to authorize the council to increase the assessment to more than $1 per head of cattle. Such referendum shall pose the question: "Do you approve of granting the Florida Beef Council, Inc., authority to increase the per-head-of-cattle assessment pursuant to section 570.83 ~~570.9135~~, Florida Statutes, from ...(present rate)... to up to a maximum of ...(proposed rate)... per head?" Referenda may not be held more often than once every 3 years.

(d) Each cattle producer is entitled to only one vote in a referendum held under this section ~~act~~. Proof of identification and cattle ownership must be presented before voting.

(e) A simple majority of those casting ballots shall determine any issue that requires a referendum under this section ~~act~~.

Section 104. Section 570.92, Florida Statutes, is repealed.

Section 105. Section 570.951, Florida Statutes, is renumbered as section 570.681, Florida Statutes.

Section 106. Section 570.952, Florida Statutes, is renumbered as section 570.685, Florida Statutes, and amended to read:

570.685 ~~570.952~~ Florida Agriculture Center and Horse Park Authority.—

(1) There is created within the Department of Agriculture and Consumer Services the Florida Agriculture Center and Horse Park Authority which shall be governed by this section and s. 570.232 ~~570.903~~.

(2) The authority shall be composed of 21 members appointed by the commissioner.

(a) Initially, the commissioner shall appoint 11 members for 4-year terms and 10 members for 2-year terms. Thereafter, each member shall be appointed for a term of 4 years from the date of appointment, except that a vacancy shall be filled by appointment for the remainder of the term.

(b) A ~~Any~~ member of the authority who fails to attend three consecutive authority meetings without good cause shall be deemed to have resigned from the authority.

~~(c) Terms for members appointed prior to July 1, 2005, shall expire on July 1, 2005.~~

(3) The Florida Agriculture Center and Horse Park Authority shall ~~have the power and duty to~~:

(a) Appoint, with approval from the commissioner, an executive director for the Florida Agriculture Center and Horse Park.

(b) Establish rules of procedure for conducting its meetings and approving matters before the authority pursuant to ~~that are consistent with~~ s. 570.232 ~~570.903~~.

(c) Develop, document, and implement strategies for the planning, construction, and operation of the Florida Agriculture Center and Horse Park.

(d) Advise and consult with the commissioner on matters related to the Florida Agriculture Center and Horse Park.

(e) Consider all matters submitted to the authority by the commissioner.

(4) The authority shall meet at least semiannually and elect a chair ~~chairperson~~, a vice chair ~~chairperson~~, and a secretary for 1-year terms.

(a) The authority shall meet at the call of its chair ~~chairperson~~, at the request of a majority of its membership, at the request of the commissioner, or at such times as may be prescribed by its rules of procedure.

(b) The department shall be responsible for providing administrative and staff support services relating to the meetings of the authority and shall provide suitable space in the offices of the department for the meetings and the storage of records of the authority.

(c) In conducting its meetings, the authority shall use accepted rules of procedure. The secretary shall keep a complete record of the proceedings of each meeting, which record shall show the names of the members present and the actions taken. These records shall be kept on file with the department, and such records and other documents regarding matters within the jurisdiction of the authority shall be subject to inspection by

members of the authority.

Section 107. Section 570.953, Florida Statutes, is renumbered as section 570.686, Florida Statutes.

Section 108. Section 570.954, Florida Statutes, is renumbered as section 570.841, Florida Statutes.

Section 109. Section 570.96, Florida Statutes, is renumbered as section 570.85, Florida Statutes.

Section 110. Section 570.961, Florida Statutes, is renumbered as section 570.86, Florida Statutes, and amended to read:

570.86 ~~570.961~~ Definitions.—As used in ss. 570.85-570.89 ~~570.96-570.964~~, the term:

(1) "Agritourism activity" means any agricultural related activity consistent with a bona fide farm or ranch or in a working forest which allows members of the general public, for recreational, entertainment, or educational purposes, to view or enjoy activities, including farming, ranching, historical, cultural, or harvest-your-own activities and attractions. An agritourism activity does not include the construction of new or additional structures or facilities intended primarily to house, shelter, transport, or otherwise accommodate members of the general public. An activity is an agritourism activity regardless of whether ~~or not~~ the participant paid to participate in the activity.

(2) "Agritourism operator" means a ~~any~~ person who is engaged in the business of providing one or more agritourism

activities, whether for compensation or not for compensation.

(3) "Farm" means the land, buildings, support facilities, machinery, and other appurtenances used in the production of farm or aquaculture products, including land used to display plants, animals, farm products, or farm equipment to the public.

(4) "Farm operation" has the same meaning as ~~defined~~ in s. 823.14.

(5) "Inherent risks of agritourism activity" means those dangers or conditions that are an integral part of an agritourism activity including certain hazards, such as surface and subsurface conditions; natural conditions of land, vegetation, and waters; the behavior of wild or domestic animals; and the ordinary dangers of structures or equipment ordinarily used in farming and ranching operations. The term also includes the potential of a participant to act in a negligent manner that may contribute to the injury of the participant or others, including failing to follow the instructions given by the agritourism operator or failing to exercise reasonable caution while engaging in the agritourism activity.

Section 111. Section 570.962, Florida Statutes, is renumbered as section 570.87, Florida Statutes.

Section 112. Section 570.963, Florida Statutes, is renumbered as section 570.88, Florida Statutes, and subsection (1) of that section is amended to read:

570.88 ~~570.963~~ Liability.—

(1) Except as provided in subsection (2), an agritourism operator, his or her employer or employee, or the owner of the underlying land on which the agritourism occurs is not liable for injury or death of, or damage or loss to, a participant resulting from the inherent risks of agritourism activities if the notice of risk required under s. 570.89 ~~570.964~~ is posted as required. Except as provided in subsection (2), a participant, or a participant's representative, may not maintain an action against or recover from an agritourism operator, his or her employer or employee, or the owner of the underlying land on which the agritourism occurs for the injury or death of, or damage or loss to, an agritourism participant resulting exclusively from any of the inherent risks of agritourism activities.

Section 113. Section 570.964, Florida Statutes, is renumbered as section 570.89, Florida Statutes, and subsection (3) of that section is amended to read:

570.89 ~~570.964~~ Posting and notification.—

(3) Failure to comply with ~~the requirements of~~ this section ~~subsection~~ prevents an agritourism operator, his or her employer or employee, or the owner of the underlying land on which the agritourism occurs from invoking the privileges of immunity provided by this section.

Section 114. Section 570.971, Florida Statutes, is created to read:

570.971 Penalties; administrative and civil.—

(1) The department or enforcing authority may impose the following fine amount for the class category specified in the chapter or section of law violated:

(a) Class I.—For each violation in the Class I category, a fine not to exceed $1,000 may be imposed.

(b) Class II.—For each violation in the Class II category, a fine not to exceed $5,000 may be imposed.

(c) Class III.—For each violation in the Class III category, a fine not to exceed $10,000 may be imposed.

(d) Class IV.—For each violation in the Class IV category, a fine of $10,000 or more may be imposed.

(2)(a) This section does not supersede a chapter or section of law or rule that limits the total fine amount that may be imposed for a violation.

(b) The class categories under this section also apply to penalties provided by rule.

(c) The penalties under this section are in addition to any other remedy provided by law.

(3) A person who violates this chapter or any rule adopted under this chapter is subject to an administrative or civil fine in the Class II category in addition to any other penalty provided by law.

(4) The department may refuse to issue or renew any license, permit, authorization, certificate, or registration to a person who has not satisfied a penalty imposed by the department.

(5) The department may adopt rules to implement this section or any section that references this section.

Section 115. Subsection (1) of section 571.11, Florida Statutes, is amended to read:

571.11 Eggs and poultry; seal of quality violations; administrative penalties.—

(1) The Department of Agriculture and Consumer Services may impose an administrative ~~a~~ fine in the Class II category pursuant to s. 570.971 ~~not exceeding $5,000~~ against any dealer, as defined in ~~under~~ s. 583.01(4), in violation of the guidelines for the Florida seal of quality for eggs or poultry programs. All fines, when imposed and paid, shall be deposited by the department into the General Inspection Trust Fund.

Section 116. Subsection (2) of section 571.28, Florida Statutes, is amended to read:

571.28 Florida Agricultural Promotional Campaign Advisory Council.—

(2) MEETINGS; POWERS AND DUTIES; PROCEDURES; RECORDS.—The meetings, powers and duties, procedures, and recordkeeping of the Florida Agricultural Promotional Campaign Advisory Council shall be pursuant to ~~governed by the provisions of~~ s. 570.232 ~~570.0705 relating to advisory committees established within the department~~.

Section 117. Paragraph (b) of subsection (3) of section 571.29, Florida Statutes, is amended to read:

571.29 Unlawful acts; administrative remedies; criminal

penalties.—

(3) The department may enter an order imposing one or more of the following penalties against any person who violates any of the provisions of this part or any rules adopted under this part:

(b) Imposition of an administrative fine in the Class I category pursuant to s. 570.971 for each ~~of not more than $1,000 per~~ violation for a first-time ~~first time~~ offender. For a second-time ~~second time~~ offender~~,~~ or a ~~any~~ person who is shown to have willfully and intentionally violated ~~any provision of~~ this part or any rules adopted under this part, the administrative fine shall be in the Class II category pursuant to s. 570.971 for each ~~may not exceed $5,000 per~~ violation. The term "each ~~per~~ violation" means each incident in which a logo of the Florida Agricultural Promotional Campaign has been used, reproduced, or distributed in any manner inconsistent with ~~the provisions of~~ this part or the rules adopted under this part.

The administrative proceedings that could result in the entry of an order imposing any of the penalties specified in paragraphs (a)-(c) shall be conducted pursuant to ~~in accordance with~~ chapter 120.

Section 118. Subsection (1) and paragraph (a) of subsection (2) of section 576.021, Florida Statutes, are amended to read:

576.021 Registration and licensing.—

(1) A company the ~~person whose~~ name and address of which appears upon a label and that ~~who~~ guarantees a fertilizer may not distribute that fertilizer to a nonlicensee until a license to distribute has been obtained by the company ~~that person~~ from the department upon payment of a $100 fee. All licenses shall expire on June 30 each year. An application for license shall include the following information:

(a) The name and address of the applicant.

(b) The name and address of the distribution point. The name and address shown on the license shall be shown on all labels, pertinent invoices, and storage facilities for fertilizer distributed by the licensee in this state.

(2)(a) A company the name and address of which appears upon a label and that guarantees a fertilizer ~~person~~ may not distribute a specialty fertilizer in this state until it is registered with the department ~~by the licensee whose name appears on the label~~. An application for registration of each brand and grade of specialty fertilizer shall be filed with the department by using a form prescribed by the department or by using the department's website ~~made on a form furnished by the department~~ and shall be accompanied by an annual fee of $100 for each specialty fertilizer that is registered. All specialty fertilizer registrations expire June 30 each year. All licensing and registration fees paid to the department under this section shall be deposited into the State Treasury to be placed in the General Inspection Trust Fund to be used for the sole purpose of

funding the fertilizer inspection program.

Section 119. Subsection (2) of section 576.031, Florida Statutes, is amended to read:

576.031 Labeling.—

(2) If distributed in bulk, two ~~five~~ labels containing the information required in paragraphs (1)(a)-(f) shall accompany delivery and be supplied to the purchaser at time of delivery with the delivery ticket, which shall show the certified net weight.

Section 120. Subsections (3), (4), (6), and (7) of section 576.041, Florida Statutes, are amended to read:

576.041 Inspection fees; records~~; bond~~.—

(3) In addition to any other penalty provided by this chapter, a ~~any~~ licensee who fails to timely pay the inspection ~~tonnage~~ fee shall be assessed a penalty of 1.5 percent for each month or part of a month that the fee or portion of the fee is not paid.

(4) If the report is not filed and the inspection fee is not paid on the date due, or if the report of tonnage is false, the amount of the inspection fee due is subject to a penalty of 10 percent or $25, whichever is greater. ~~The penalty shall be added to the inspection fee due and constitutes a debt and becomes a claim and lien against the surety bond or certificate of deposit required by this chapter.~~

~~(6) In order to guarantee faithful performance of the provisions of subsection (2), the applicant for license shall~~

~~post with the department a surety bond, or assign a certificate of deposit, in an amount required by rule of the department to cover fees for any reporting period. The amount shall not be less than $1,000. The surety bond shall be executed by a corporate surety company authorized to do business in this state. The certificate of deposit shall be issued by any recognized financial institution doing business in the United States. The department shall establish, by rule, whether an annual or continuous surety bond or certificate of deposit will be required and shall approve each surety bond or certificate of deposit before acceptance. The department shall examine and approve as to sufficiency all such bonds and certificates of deposit before acceptance. When the licensee ceases operation, said bond or certificate of deposit shall be returned, provided there are no outstanding fees due and payable.~~

(6) ~~(7)~~ In order to obtain information that will facilitate the collection of inspection fees and serve other useful purposes relating to fertilizer, the department may, by rule, require licensees, manufacturers, registrants, and dealers to report movements of fertilizer.

Section 121. Subsection (3) of section 576.051, Florida Statutes, is amended to read:

576.051 Inspection, sampling, analysis.—

(3) The official analysis shall be made from the official sample. The department, before making the official analysis, shall take a sufficient portion from the official sample for

check analysis and place that portion in a bottle sealed and identified by number, date, and the preparer's initials. The official check sample shall be kept until the analysis of the official sample is completed. However, the licensee may obtain upon request a portion of the official check sample. Upon completion of the analysis of the official sample, a true copy of the fertilizer analysis report shall be mailed to the licensee of the fertilizer from whom the official sample was taken and to the dealer or agent, if any, and purchaser, if known. This fertilizer analysis report shall show all determinations of plant nutrient and pesticides. If the official analysis conforms with ~~the provisions of~~ this section ~~law~~, the official check sample may be destroyed. If the official analysis does not conform with ~~the provisions of~~ this section ~~law~~, the official check sample shall be retained for 60 ~~a period of 90~~ days from the date of the fertilizer analysis report of the official sample. If within that time the licensee of the fertilizer from whom the official sample was taken, upon receipt of the fertilizer analysis report, makes written demand for analysis of the official check sample by a referee chemist, a portion of the official check sample sufficient for analysis shall be sent to a referee chemist who is mutually acceptable to the department and the licensee for analysis at the expense of the licensee. The referee chemist, upon completion of the analysis, shall forward to the department and to the licensee a fertilizer analysis report bearing a proper identification mark

or number, ~~,~~ and the fertilizer analysis report shall be verified by an affidavit of the person making the analysis. If the results reported on the fertilizer analysis report agree within the matching criteria defined in department rule with the department's analysis on each element for which analysis was made, the mean average of the two analyses shall be accepted as final and binding on all concerned. However, if the referee's fertilizer analysis report results do not agree within the matching criteria defined in department rule with the department's analysis in any one or more elements for which an analysis was made, upon demand of either the department or the licensee from whom the official sample was taken, a portion of the official check sample sufficient for analysis shall be submitted to a second referee chemist who is mutually acceptable to the department and to the licensee from whom the official sample was taken, at the expense of the party or parties requesting the referee analysis. If no demand is made for an analysis by a second referee chemist, the department's fertilizer analysis report shall be accepted as final and binding on all concerned. The second referee chemist, upon completion of the analysis, shall make a fertilizer analysis report as provided in this subsection for the first referee chemist. The mean average of the two analyses nearest in conformity to each other shall be accepted as final and binding on all concerned.

Section 122. Subsections (4) and (5) of section 576.061,

Florida Statutes, are amended to read:

576.061 Plant nutrient investigational allowances, deficiencies, and penalties.—

~~(4) When it is determined by the department that a fertilizer has been distributed without being licensed or registered, or without labeling, the department shall require the licensee to pay a penalty in the amount of $100. The proceeds from any penalty payments shall be deposited by the department in the General Inspection Trust Fund to be used for the sole purpose of funding the fertilizer inspection program.~~

(4) ~~(5)~~ The department may enter an order imposing one or more of the following penalties against a ~~any~~ person who violates ~~any of the provisions of~~ this chapter or the rules adopted under this chapter ~~hereunder~~ or who impedes, obstructs, or hinders ~~shall impede, obstruct, hinder, or otherwise prevent or attempt to prevent~~ the department in performing ~~the performance of~~ its duties under ~~duty in connection with the provisions of~~ this chapter:

(a) Issuance of a warning letter.

(b) Imposition of an administrative fine in the Class I category pursuant to s. 570.971 for each ~~of not more than $1,000 per~~ occurrence after the issuance of a warning letter.

(c) Cancellation, revocation, or suspension of any license issued by the department.

Section 123. Section 576.071, Florida Statutes, is amended to read:

576.071 Commercial value.—The commercial value used in assessing penalties for any deficiency shall be determined by surveying the fertilizer industry in the state using annualized plant nutrient values contained in one or more generally recognized journals.

Section 124. Subsections (3) and (4) of section 576.087, Florida Statutes, are amended to read:

576.087 Antisiphon requirements for irrigation systems.—

~~(3) The department shall establish specific requirements for antisiphon devices.~~

~~(4) Any governmental agency which requires antisiphon devices on irrigation systems used for the application of fertilizer shall use the specific antisiphon device requirements adopted by the department.~~

Section 125. Section 576.101, Florida Statutes, is amended to read:

576.101 Cancellation, revocation, and suspension~~; probationary status~~.—

~~(1)~~ The department may deny, suspend, or revoke any license issued by the department for any violation of ~~the provisions of~~ this chapter, the rules adopted under this chapter ~~thereunder~~, or any lawful order of the department.

~~(2) The department may place any licensee on a probationary status when the deficiency levels of samples taken from that licensee do not meet minimum performance levels established by statute within the investigational allowances~~

~~provided in s. 576.061.~~

Section 126. Subsection (1) of section 578.08, Florida Statutes, is amended to read:

578.08 Registrations.—

(1) Every person, except as provided in subsection (4) and s. 578.14, before selling, distributing for sale, offering for sale, exposing for sale, handling for sale, or soliciting orders for the purchase of any agricultural, vegetable, flower, or forest tree seed or mixture thereof, shall first register with the department as a seed dealer. ~~The application for registration shall include the name and location of each place of business at which the seed is sold, distributed for sale, offered for sale, exposed for sale, or handled for sale.~~ The application for registration shall be filed with department by using a form prescribed by the department or by using the department's website and shall be accompanied by an annual registration fee for each such place of business based on the gross receipts from the sale of such seed for the last preceding license year as follows:

(a)1. Receipts of less than $500, a fee of $10.

2. Receipts of $500 or more but less than $1,000, a fee of $25.

3.~~1.~~ Receipts of $1,000 or more but less than $2,500 ~~$2,500.01~~, a fee of $100.

4.~~2.~~ Receipts of ~~more than~~ $2,500 or more but ~~and~~ less

than $5,000 ~~$5,000.01~~, a fee of $200.

5.~~3.~~ Receipts of ~~more than~~ $5,000 or more but ~~and~~ less than $10,000 ~~$10,000.01~~, a fee of $350.

6.~~4.~~ Receipts of ~~more than~~ $10,000 or more but ~~and~~ less than $20,000 ~~$20,000.01~~, a fee of $800.

7.~~5.~~ Receipts of ~~more than~~ $20,000 or more but ~~and~~ less than $40,000 ~~$40,000.01~~, a fee of $1,000.

8.~~6.~~ Receipts of ~~more than~~ $40,000 or more but ~~and~~ less than $70,000 ~~$70,000.01~~, a fee of $1,200.

9.~~7.~~ Receipts of ~~more than~~ $70,000 or more but ~~and~~ less than $150,000 ~~$150,000.01~~, a fee of $1,600.

10.~~8.~~ Receipts of ~~more than~~ $150,000 or more but ~~and~~ less than $400,000 ~~$400,000.01~~, a fee of $2,400.

11.~~9.~~ Receipts of ~~more than~~ $400,000 or more, a fee of $4,600.

(b) For places of business not previously in operation, the fee shall be based on anticipated receipts for the first license year.

Section 127. Subsection (1) of section 578.181, Florida Statutes, is amended to read:

578.181 Penalties; administrative fine.—

(1) The department may enter an order imposing one or more of the following penalties against a ~~any~~ person who violates ~~any of the provisions of~~ this chapter or the rules adopted under this chapter ~~promulgated hereunder~~ or who impedes, obstructs, or hinders~~, or otherwise prevents or attempts to prevent~~ the

department in performing ~~the performance of~~ its duties under ~~duty in connection with the provisions of~~ this chapter:

(a) Issuance of a warning letter.

(b) Imposition of an administrative fine in the Class I category pursuant to s. 570.971 for each ~~of not more than $1,000 per~~ occurrence after the issuance of a warning letter.

(c) Revocation or suspension of the registration as a seed dealer.

Section 128. Paragraph (g) of subsection (2) of section 580.036, Florida Statutes, is amended to read:

580.036 Powers and duties.—

(2) The department is authorized to adopt rules pursuant to ss. 120.536(1) and 120.54 to enforce the provisions of this chapter. These rules shall be consistent with the rules and standards of the United States Food and Drug Administration and the United States Department of Agriculture, when applicable, and shall include:

(g) Establishing standards for the sale, use, and distribution of commercial feed or feedstuff to ensure usage that is consistent with animal safety and well-being and, to the extent that meat, poultry, and other animal products for human consumption may be affected by commercial feed or feedstuff, to ensure that these products are safe for human consumption. Such standards, if adopted, must be developed in consultation with the Agricultural Feed, Seed, and Fertilizer Advisory Council under s. 570.451.

Section 129. Paragraphs (a), (b), and (d) of subsection (1) of section 580.041, Florida Statutes, are amended to read:

580.041 Master registration; fee; refusal or cancellation of registration; reporting.—

(1)(a) Each distributor of commercial feed must annually obtain a master registration before her or his brands are distributed in this state. Upon initial registration, ~~The department shall furnish the registration forms requiring the distributor to state that~~ the distributor shall agree to ~~will~~ comply with ~~all provisions of~~ this chapter and applicable rules. ~~The registration form shall identify the manufacturer's or guarantor's name and place of business and the location of each manufacturing facility in the state and shall be signed by the owner, by a partner, if a partnership, or by an authorized officer or agent, if a corporation.~~ All registrations expire on June 30 of each year.

(b) The application for registration ~~form~~ shall be filed with department by using a form prescribed by the department or by using the department's website and shall be accompanied by a fee ~~that shall be~~ based on tons of feed distributed in this state during the previous year. If a distributor has been in business less than 1 year, the tonnage shall be estimated by the distributor for the first year and based on actual tonnage thereafter. These fees shall be as follows:

SALES IN TONS	FEE
Zero, up to and including 25	$40

More than 25, up to and including 50.....$75
More than 50, up to and including 100.....$150
More than 100, up to and including 300.....$375
More than 300, up to and including 600.....$600
More than 600, up to and including 1,000.....$900
More than 1,000, up to and including 2,000.....$1,250
More than 2,000, up to and including 5,000.....$2,000
More than 5,000.....$3,500

(d) The department shall provide ~~mail~~ a copy of the master registration to the registrant to signify that administrative requirements have been met.

Section 130. Paragraphs (d) and (e) of subsection (1) of section 580.071, Florida Statutes, are amended, and paragraphs (f), (g), and (h) are added to that subsection, to read:

580.071 Adulteration.—No person shall distribute an adulterated commercial feed or feedstuff. A commercial feed or feedstuff shall be deemed to be adulterated:

(1)

(d) If it is a raw agricultural commodity and it bears or contains a pesticide chemical that is unsafe within the meaning of s. 408(a) of the Federal Food, Drug, and Cosmetic Act; however, where a pesticide chemical has been used in or on a raw agricultural commodity in conformity with an exemption granted or a tolerance prescribed under s. 408 of the Federal Food,

Drug, and Cosmetic Act and that raw agricultural commodity has been subjected to processing such as canning, cooking, freezing, dehydrating, or milling, the processed feed will result, or is likely to result, in pesticide residue in the edible product of the animal which is unsafe within the meaning of s. 408(a) of the Federal Food, Drug, and Cosmetic Act; ~~or~~

(e) If it is, or it bears or contains, any new animal drug that is unsafe within the meaning of s. 512 of the Federal Food, Drug, and Cosmetic Act;

(f) If it consists in whole or in part of any filthy, putrid, or decomposed substance or is otherwise unfit for feed;

(g) If it is prepared, packaged, or held under unsanitary conditions in which it may have become contaminated with filth or rendered injurious to health; or

(h) If it is, in whole or in part, the product of a diseased animal or of an animal that has died by a means other than slaughter which is unsafe within the meaning of s. 402(a)(1) or (2) of the Federal Food, Drug, and Cosmetic Act.

Section 131. Paragraph (b) of subsection (1) of section 580.121, Florida Statutes, is amended to read:

580.121 Penalties; duties of law enforcement officers; injunctive relief.—

(1) The department may impose one or more of the following penalties against any person who violates any provision of this chapter:

(b) Imposition of an administrative fine in the Class I

category pursuant to s. 570.971 for each~~, by the department, of not more than $1,000 per~~ occurrence.

However, the severity of the penalty imposed shall be commensurate with the degree of risk to human or animal safety or the level of financial harm to the consumer that is created by the violation.

Section 132. Subsection (5) of section 581.091, Florida Statutes, is amended to read:

581.091 Noxious weeds and infected plants or regulated articles; sale or distribution; receipt; information to department; withholding information.—

(5)(a) Notwithstanding any other ~~provision of state~~ law or rule, a person may obtain a special permit from the department to plant Casuarina cunninghamiana as a windbreak for a commercial citrus grove if ~~provided~~ the plants are produced in an authorized registered nursery and certified by the department as being vegetatively propagated from male plants. ~~A "commercial citrus grove" means a contiguous planting of 100 or more citrus trees where citrus fruit is produced for sale.~~

~~(b) For a 5-year period, special permits authorizing a person to plant Casuarina cunninghamiana shall be issued only as part of a pilot program for fresh fruit groves in areas of Indian River, St. Lucie, and Martin Counties where citrus canker is determined by the department to be widespread. The pilot program shall be reevaluated annually, and a comprehensive~~

~~review shall be conducted in 2013. The purpose of the annual and 5-year reviews is to determine if the use of Casuarina cunninghamiana as an agricultural pest and disease windbreak poses any adverse environmental consequences. At the end of the 5-year pilot program, if the Noxious Weed and Invasive Plant Review Committee, created by the department, and the Department of Environmental Protection, in consultation with a representative of the citrus industry who has a Casuarina cunninghamiana windbreak, determine that the potential is low for adverse environmental impacts from planting Casuarina cunninghamiana as windbreaks, the department may, by rule, allow the use of Casuarina cunninghamiana windbreaks for commercial citrus groves in other areas of the state. If it is determined at the end of the 5-year pilot program that additional time is needed to further evaluate Casuarina cunninghamiana, the department will remain the lead agency.~~

(b) ~~(c)~~ Each application for a special permit shall be accompanied by a fee in an amount determined by the department, by rule, not to exceed $500. A special permit shall be required for each noncontiguous commercial citrus grove and shall be renewed every 5 years. The property owner is responsible for maintaining and producing for inspection the original nursery invoice with certification documentation. If ownership of the property is transferred, the seller must notify the department and provide the buyer with a copy of the special permit and copies of all invoices and certification documentation before

~~prior to~~ the closing of the sale.

(c) ~~(d)~~ Each application shall include a baseline survey of all lands within 500 feet of the proposed Casuarina cunninghamiana windbreak showing the location and identification to species of all existing Casuarina spp.

(d) ~~(e)~~ Nurseries authorized to produce Casuarina cunninghamiana must obtain a special permit from the department certifying that the plants have been vegetatively propagated from sexually mature male source trees currently grown in the state. The importation of Casuarina cunninghamiana from any area outside the state to be used as a propagation source tree is prohibited. Each male source tree must be registered by the department as being a horticulturally true-to-type male plant and be labeled with a source tree registration number. Each nursery application for a special permit shall be accompanied by a fee in an amount determined by the department, by rule, not to exceed $200. Special permits shall be renewed annually. The department shall, by rule, set the amount of an annual fee, not to exceed $50, for each Casuarina cunninghamiana registered as a source tree. ~~Nurseries may only sell Casuarina cunninghamiana to a person with a special permit as specified in paragraphs (a) and (b).~~ The source tree registration numbers of the parent plants must be documented on each invoice or other certification documentation provided to the buyer.

(e) ~~(f)~~ All Casuarina cunninghamiana must be destroyed by the property owner within 6 months after:

1. The property owner takes permanent action to no longer use the site for commercial citrus production;

2. The site has not been used for commercial citrus production for a period of 5 years; or

3. The department determines that the Casuarina cunninghamiana on the site has become invasive. This determination shall be based on, but not limited to, the recommendation of the Noxious Weed and Invasive Plant Review Committee and the Department of Environmental Protection and in consultation with a representative of the citrus industry who has a Casuarina cunninghamiana windbreak.

If the owner or person in charge refuses or neglects to comply, the director or her or his authorized representative may, under authority of the department, proceed to destroy the plants. The expense of the destruction shall be assessed, collected, and enforced against the owner by the department. If the owner does not pay the assessed cost, the department may record a lien against the property.

(f) ~~(g)~~ The use of Casuarina cunninghamiana for windbreaks does ~~shall~~ not preclude the department from issuing permits for the research or release of biological control agents to control Casuarina spp. pursuant to ~~in accordance with~~ s. 581.083.

(g) ~~(h)~~ The use of Casuarina cunninghamiana for windbreaks may ~~shall~~ not restrict or interfere with any other agency or local government effort to manage or control noxious weeds or

invasive plants, including Casuarina cunninghamiana. An~~, nor shall any other~~ agency or local government may not remove any Casuarina cunninghamiana planted as a windbreak under special permit issued by the department.

~~(i) The department shall develop and implement a monitoring protocol to determine invasiveness of Casuarina cunninghamiana. The monitoring protocol shall, at a minimum, require:~~

~~1. Inspection of the planting site by department inspectors within 30 days following initial planting or any subsequent planting of Casuarina cunninghamiana to ensure the criteria of the special permit have been met.~~

~~2. Annual site inspections of planting sites and all lands within 500 feet of the planted windbreak by department inspectors who have been trained to identify Casuarina spp. and to make determinations of whether Casuarina cunninghamiana has spread beyond the permitted windbreak location.~~

~~3. Any new seedlings found within 500 feet of the planted windbreak to be removed, identified to the species level, and evaluated to determine if hybridization has occurred.~~

~~4. The department to submit an annual report and a final 5-year evaluation identifying any adverse effects resulting from the planting of Casuarina cunninghamiana for windbreaks and documenting all inspections and the results of those inspections to the Noxious Weed and Invasive Plant Review Committee, the Department of Environmental Protection, and a designated~~

~~representative of the citrus industry who has a Casuarina cunninghamiana windbreak.~~

~~(j) If the department determines that female flowers or cones have been produced on any Casuarina cunninghamiana that have been planted under a special permit issued by the department, the property owner shall be responsible for destroying the trees. The department shall notify the property owner of the timeframe and method of destruction.~~

~~(k) If at any time the department determines that hybridization has occurred during the pilot program between Casuarina cunninghamiana planted as a windbreak and other Casuarina spp., the department shall expeditiously initiate research to determine the invasiveness of the hybrid. The information obtained from this research shall be evaluated by the Noxious Weed and Invasive Plant Review Committee, the Department of Environmental Protection, and a designated representative of the citrus industry who has a Casuarina cunninghamiana windbreak. If the department determines that the hybrids have a high potential to become invasive, based on, but not limited to, the recommendation of the Noxious Weed and Invasive Plant Review Committee, the Department of Environmental Protection, and a designated representative of the citrus industry who has a Casuarina cunninghamiana windbreak, this pilot program shall be permanently suspended.~~

~~(l) Each application for a special permit must be accompanied by a fee as described in paragraph (c) and an~~

~~agreement that the property owner will abide by all permit conditions including the removal of Casuarina cunninghamiana if invasive populations or other adverse environmental factors are determined to be present by the department as a result of the use of Casuarina cunninghamiana as windbreaks. The application must include, on a form provided by the department, the name of the applicant and the applicant's address or the address of the applicant's principal place of business; a statement of the estimated cost of removing and destroying the Casuarina cunninghamiana that is the subject of the special permit; and the basis for calculating or determining that estimate. If the applicant is a corporation, partnership, or other business entity, the applicant must also provide in the application the name and address of each officer, partner, or managing agent. The applicant shall notify the department within 30 business days of any change of address or change in the principal place of business. The department shall mail all notices to the applicant's last known address.~~

1. Upon obtaining a permit, the permitholder must annually maintain the Casuarina cunninghamiana authorized by a special permit as required in the permit. If the permitholder ceases to maintain the Casuarina cunninghamiana as required by the special permit, if the permit expires, or if the permitholder ceases to abide by the conditions of the special permit, the permitholder must ~~shall~~ remove and destroy the Casuarina cunninghamiana in a timely manner as specified in the permit.

2. If the department:

a. Determines that the permitholder is no longer maintaining the Casuarina cunninghamiana subject to the special permit and has not removed and destroyed the Casuarina cunninghamiana authorized by the special permit;

b. Determines that the continued use of Casuarina cunninghamiana as windbreaks presents an imminent danger to public health, safety, or welfare; or

c. Determines that the permitholder has exceeded the conditions of the authorized special permit, ~~;~~

the department may issue an immediate final order, which shall be immediately appealable or enjoinable pursuant to ~~as provided by~~ chapter 120, directing the permitholder to immediately remove and destroy the Casuarina cunninghamiana authorized to be planted under the special permit. A copy of the immediate final order shall be mailed to the permitholder.

3. If, upon issuance by the department of an immediate final order to the permitholder, the permitholder fails to remove and destroy the Casuarina cunninghamiana subject to the special permit within 60 days after issuance of the order, or such shorter period as is designated in the order as public health, safety, or welfare requires, the department may remove and destroy the Casuarina cunninghamiana that are the subject of the special permit. If the permitholder makes a written request to the department for an extension of time to remove and destroy

the Casuarina cunninghamiana that demonstrates specific facts showing why the Casuarina cunninghamiana could not reasonably be removed and destroyed in the applicable timeframe, the department may extend the time for removing and destroying Casuarina cunninghamiana subject to a special permit. The reasonable costs and expenses incurred by the department for removing and destroying Casuarina cunninghamiana subject to a special permit shall be paid out of the Citrus Inspection Trust Fund and shall be reimbursed by the party to which the immediate final order is issued. If the party to which the immediate final order has been issued fails to reimburse the state within 60 days, the department may record a lien on the property. The lien shall be enforced by the department.

4. In order to carry out the purposes of this paragraph, the department or its agents may require a permitholder to provide verified statements of the planted acreage subject to the special permit and may review the permitholder's business or planting records at her or his place of business during normal business hours in order to determine the acreage planted. The failure of a permitholder to furnish such statement or to make such records available is cause for suspension of the special permit. If the department finds such failure to be willful, the special permit may be revoked.

Section 133. Subsection (8) of section 581.131, Florida Statutes, is amended to read:

581.131 Certificate of registration.—

(8) The department shall provide to each person subject to this section written notice and renewal forms 30 ~~60~~ days before ~~prior to~~ the annual renewal date informing the person of the certificate of registration renewal date and the applicable fee.

Section 134. Paragraph (a) of subsection (2) of section 581.141, Florida Statutes, is amended to read:

581.141 Certificate of registration or of inspection; revocation and suspension; fines.—

(2) FINES; PROBATION.—

(a)1. The department may, after notice and hearing, impose an administrative ~~a~~ fine in the Class II category pursuant to s. 570.971 ~~not exceeding $5,000~~ or probation not exceeding 12 months, or both, for a ~~the~~ violation of ~~any of the provisions of~~ this chapter or the rules adopted under this chapter upon a ~~any~~ person, nurseryman, stock dealer, agent, or plant broker. The fine, when paid, shall be deposited in the Plant Industry Trust Fund.

2. The imposition of a fine or probation pursuant to this subsection may be in addition to or in lieu of the suspension or revocation of a certificate of registration or certificate of inspection.

Section 135. Section 581.186, Florida Statutes, is amended to read:

581.186 Endangered Plant Advisory Council; organization; meetings; powers and duties.—

(2) POWERS AND DUTIES; MEETINGS; PROCEDURES; RECORDS.—The

meetings, powers and duties, procedures, and recordkeeping of the Endangered Plant Advisory Council shall be pursuant to ~~governed by the provisions of~~ s. 570.232 ~~570.0705 relating to advisory committees established within the department~~.

Section 136. Paragraph (a) of subsection (3) of section 581.211, Florida Statutes, is amended to read:

581.211 Penalties for violations.—

(3)(a)1. In addition to any other provision of law, the department may, after notice and hearing, impose an administrative fine pursuant to s. 570.971 in the Class II category ~~not exceeding $5,000~~ for each violation of this chapter, upon a ~~any~~ person, nurseryman, stock dealer, agent, or plant broker. The fine, when paid, shall be deposited in the Plant Industry Trust Fund. In addition, the department may place the violator on probation for up to 1 year, with conditions.

2. The imposition of a fine or probation pursuant to this subsection may be in addition to or in lieu of the suspension or revocation of a certificate of registration or certificate of inspection.

Section 137. Subsection (2) of section 582.06, Florida Statutes, is amended to read:

582.06 Soil and Water Conservation Council; powers and duties.—

(2) POWERS AND DUTIES; MEETINGS; PROCEDURES; RECORDS.—The meetings, powers and duties, procedures, and recordkeeping of the Soil and Water Conservation Council shall be pursuant to

~~governed by the provisions of~~ s. 570.232 ~~570.0705 relating to advisory committees established within the department~~.

Section 138. Subsection (4) of section 583.01, Florida Statutes, is amended to read:

583.01 Definitions.—For the purpose of this chapter, unless elsewhere indicated, the term:

(4) "Dealer" means a ~~any~~ person, firm, or corporation, including a producer, processor, retailer, or wholesaler, that sells, offers for sale, or holds for the purpose of sale in this state 30 dozen or more eggs or its equivalent in any one week, or more than 384 ~~in excess of 100 pounds of~~ dressed birds ~~poultry~~ in any one week.

Section 139. Subsection (1) of section 585.007, Florida Statutes, is amended to read:

585.007 Violation of rules; violation of chapter.—

(1) A ~~Any~~ person who violates ~~the provisions of~~ this chapter or any rule of the department shall be subject to the imposition of an administrative fine in the Class III category pursuant to s. 570.971 ~~of up to $10,000~~ for each offense. Upon repeated violation, the department may seek enforcement pursuant to s. 120.69.

Section 140. Paragraph (a) of subsection (2) of section 586.15, Florida Statutes, is amended to read:

586.15 Penalty for violation.—

(2)(a) The department may, after notice and hearing, impose an administrative ~~a~~ fine in the Class II category

pursuant to s. 570.971 ~~not exceeding $5,000~~ for a ~~the~~ violation ~~of any of the provisions~~ of this chapter or the rules adopted under this chapter upon any person. The fine, when paid, shall be deposited in the Plant Industry Trust Fund. The imposition of a fine pursuant to this subsection may be in addition to or in lieu of the suspension or revocation of a permit or a certificate of inspection or registration.

Section 141. Subsection (3) of section 586.161, Florida Statutes, is amended to read:

586.161 Honeybee Technical Council.—

~~(~~3) MEETINGS; POWERS AND DUTIES; PROCEDURES; RECORDS.—The meetings, powers and duties, procedures, and recordkeeping of the Honeybee Technical Council shall be pursuant to ~~governed by the provisions of~~ s. 570.232 ~~570.0705 relating to advisory committees established within the department~~.

Section 142. Subsection (3) is added to section 589.08, Florida Statutes, to read:

589.08 Land acquisition restrictions.—

(3) The Florida Forest Service shall pay 15 percent of the gross receipts from the Goethe State Forest to each fiscally constrained county, as described in s. 218.67(1), in which a portion of the respective forest is located in proportion to the forest acreage located in such county. The funds must be equally divided between the board of county commissioners and the school board of each fiscally constrained county.

Section 143. Section 589.081, Florida Statutes, is

repealed.

Section 144. Subsections (1) and (3) of section 589.011, Florida Statutes, are amended to read:

589.011 Use of state forest lands; fees; rules.—

(1)(a) If authorized by a land management plan approved pursuant to chapter 253 or by an interim assignment letter which identifies the interim management activities issued by the Department of Environmental Protection pursuant to chapter 259, the Florida Forest Service of the Department of Agriculture and Consumer Services may grant privileges, permits, leases, and concessions for the use of state forest lands or any lands leased by or otherwise assigned to the Florida Forest Service for management purposes, timber, and forest products pursuant to ~~for purposes not inconsistent with the provisions of~~ this chapter.

(b) Lessees of such lands that are open to the public for recreational purposes, where such lease or agreement recognizes that the state is responsible for personal injury, loss, or damage resulting in whole or in part from public use of the area under the terms of the lease or agreement, subject to the limitations and conditions specified in s. 768.28, owe no duty of care to keep the area safe for entry or use by others or to give warning to persons entering or going into the area of any hazardous conditions, structures, or activities thereon.

(c) Lessees who lease property from the Florida Forest Service that is open to the public for recreational purposes:

1. Are not presumed to extend any assurance that the leased area is safe for any purpose.

2. Do not incur any duty of care toward a person who goes into the area that is subject to the lease or agreement.

3. Are not liable or responsible for any injury to persons or property caused by the act or omission of a person who goes into the area that is subject to the lease or agreement.

(d) This subsection:

1. Applies to all persons going into the leased area, including invitees, licensees, and trespassers.

2. Does not relieve a person of liability that would otherwise exist for deliberate, willful, or malicious injury to persons or property.

3. Does not create or increase liability of a person.

(3) The Florida Forest Service may ~~shall have the power to~~ set and charge reasonable fees, rentals, or charges ~~rent~~ for the use or operation of facilities and concessions on state forests or any lands leased by or otherwise assigned to the Florida Forest Service for management purposes based on factors such as the cost and extent of recreational facilities and services, geographic location, seasonal public demand, fees charged by other governmental and private entities for comparable services and activities, and market value and demand for forest products. Moneys collected from such fees, rentals, and charges ~~rent~~ shall be deposited into the Incidental Trust Fund of the Florida Forest Service.

Section 145. Section 589.20, Florida Statutes, is amended to read:

589.20 Cooperation by Florida Forest Service.—The Florida Forest Service may cooperate with other state agencies, water management districts, municipalities, and other government entities ~~who are custodians of lands which are suitable for forestry purposes,~~ in the designation and dedication of ~~such~~ lands that are suitable for forestry purposes ~~when in the opinion of the state agencies concerned such lands are suitable for these purposes and can be so administered~~. Lands designated and dedicated by a state agency, water management district, municipality, or other government entity ~~Upon the designation and dedication of said lands~~ for forestry ~~these~~ purposes ~~by the agencies concerned, said lands~~ shall be administered by the Florida Forest Service.

Section 146. Subsection (7) of section 590.02, Florida Statutes, is amended to read:

590.02 Florida Forest Service; powers, authority, and duties; liability; building structures; Withlacoochee Training ~~Florida~~ Center ~~for Wildfire and Forest Resources Management Training~~.—

(7) The Florida Forest Service may organize, staff, equip, and operate the Withlacoochee ~~Florida Forest~~ Training Center. The center shall serve as a site where fire and forest resource managers can obtain current knowledge, techniques, skills, and theory as they relate to their respective disciplines.

(a) The center may establish cooperative efforts involving federal, state, and local entities; hire appropriate personnel; and engage others by contract or agreement with or without compensation to assist in carrying out the training and operations of the center.

(b) The center shall provide wildfire suppression training opportunities for rural fire departments, volunteer fire departments, and other local fire response units.

(c) The center shall ~~will~~ focus on curriculum related to, but not limited to, fuel reduction, an incident management system, prescribed burning certification, multiple-use land management, water quality, forest health, environmental education, and wildfire suppression training for structural firefighters.

(d) The center may assess appropriate fees for food, lodging, travel, course materials, and supplies in order to meet its operational costs and may grant free meals, room, and scholarships to persons and other entities in exchange for instructional assistance.

Section 147. Section 590.091, Florida Statutes, is repealed.

Section 148. Subsection (2) of section 590.125, Florida Statutes, is amended to read:

590.125 Open burning authorized by the Florida Forest Service.—

(2) NONCERTIFIED BURNING.—

(a) Persons may be authorized to broadcast burn or pile burn pursuant to ~~in accordance with~~ this subsection if:

1. There is specific consent of the landowner or his or her designee;

2. Authorization has been obtained from the Florida Forest Service or its designated agent before starting the burn;

3. There are adequate firebreaks at the burn site and sufficient personnel and firefighting equipment for the containment of the fire;

4. The fire remains within the boundary of the authorized area;

5. The person named responsible in the burn authorization or a designee is present at the burn site until the fire is completed;

6. The Florida Forest Service does not cancel the authorization; and

7. The Florida Forest Service determines that air quality and fire danger are favorable for safe burning.

(b) A new authorization is not required for smoldering that occurs within the authorized burn area unless new ignitions are conducted by the person named responsible in the burn authorization or a designee.

(c) Monitoring the smoldering activity of a burn does not require an additional authorization even if flames begin to spread within the authorized burn area due to ongoing smoldering.

(d) ~~(b)~~ A person who broadcast burns or pile burns in a manner that violates ~~any requirement of~~ this subsection commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

Section 149. Subsection (3) of section 590.14, Florida Statutes, is amended to read:

590.14 Notice of violation; penalties; legislative intent.—

(3) The department may also impose an administrative fine in the Class I category pursuant to s. 570.971 for each~~, not to exceed $1,000 per~~ violation of ~~any section of~~ chapter 589 or this chapter or violation of any rule adopted by the Florida Forest Service to administer ~~provisions of~~ law conferring duties upon the Florida Forest Service. The fine shall be based upon the degree of damage, the prior violation record of the person, and whether the person knowingly provided false information to obtain an authorization. The fines shall be deposited in the Incidental Trust Fund of the Florida Forest Service.

Section 150. Subsection (2) of section 595.701, Florida Statutes, is amended to read:

595.701 Healthy Schools for Healthy Lives Council.—

(2) The meetings, powers, duties, procedures, and recordkeeping of the Healthy Schools for Healthy Lives Council shall be pursuant to ~~governed by~~ s. 570.232 ~~570.0705, relating to advisory committees established within the department~~.

Section 151. Subsection (2) of section 597.0041, Florida

Statutes, is amended to read:

597.0041 Prohibited acts; penalties.—

(2)(a) A ~~Any~~ person who violates ~~any provision of~~ this chapter or any rule adopted under this chapter ~~promulgated hereunder~~ is subject to a suspension or revocation of his or her certificate of registration or license under this chapter. The department may, in lieu of~~,~~ or in addition to the suspension or revocation, impose on the violator an administrative fine in the Class I category pursuant to s. 570.971 for each violation, for each day the violation exists ~~in an amount not to exceed $1,000 per violation per day~~.

(b) Except as provided in subsection (4), a ~~any~~ person who violates ~~any provision of~~ this chapter~~,~~ or any rule adopted under this chapter ~~hereunder,~~ commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

Section 152. Subsection (1) of section 597.020, Florida Statutes, is amended to read:

597.020 Shellfish processors; regulation.—

(1) The department may:

(a) ~~is authorized to~~ Adopt by rule regulations, specifications, and codes relating to sanitary practices for catching, cultivating, handling, processing, packaging, preserving, canning, smoking, and storing ~~of~~ oysters, clams, mussels, scallops, and crabs.

(b) ~~The department is also authorized to~~ License shellfish processors who handle oysters, clams, mussels, scallops, and

crabs when such activities relate to quality control, sanitary, and public health practices pursuant to this section and chapter 500.

(c) ~~The department is also authorized to~~ License or certify, for a fee determined by rule, facilities used for processing oysters, clams, mussels, scallops, and crabs, to levy an administrative fine in the Class I category pursuant to s. 570.971 for each violation for each day the violation exists ~~of up to $1,000 per violation per day~~ or to suspend or revoke such licenses or certificates upon satisfactory evidence of a ~~any~~ violation of rules adopted pursuant to this section, and to seize and destroy any adulterated or misbranded shellfish products as defined by rule.

Section 153. Subsection (2) of section 599.002, Florida Statutes, is amended to read:

599.002 Viticulture Advisory Council.—

(2) The meetings, powers and duties, procedures, and recordkeeping of the Viticulture Advisory Council shall be pursuant to ~~governed by the provisions of~~ s. 570.232 ~~570.0705 relating to advisory committees established within the department~~.

Section 154. Section 601.67, Florida Statutes, is amended to read:

601.67 Disciplinary action by Department of Agriculture against citrus fruit dealers.—

(1) The Department of Agriculture may impose an

administrative ~~a~~ fine in the Class IV category pursuant to s. 570.971 not to exceed ~~exceeding~~ $50,000 for each ~~per~~ violation against a ~~any~~ licensed citrus fruit dealer who violates ~~for violation of any provision of~~ this chapter and, in lieu of~~,~~ or in addition to~~,~~ such fine, may revoke or suspend the license of ~~any~~ such a dealer when it has been satisfactorily shown that such dealer, in her or his activities as a citrus fruit dealer, has:

(a) Obtained a license by means of fraud, misrepresentation, or concealment;

(b) Violated or aided or abetted in the violation of any law of this state governing or applicable to citrus fruit dealers or any lawful rules of the Department of Citrus;

(c) Been guilty of a crime against the laws of this or any other state or government involving moral turpitude or dishonest dealing or has become legally incompetent to contract or be contracted with;

(d) Made, printed, published, distributed, or caused, authorized, or knowingly permitted the making, printing, publication, or distribution of false statements, descriptions, or promises of such a character as to reasonably induce a ~~any~~ person to act to her or his damage or injury, if such citrus fruit dealer then knew, or by the exercise of reasonable care and inquiry could have known, of the falsity of such statements, descriptions, or promises;

(e) Knowingly committed or been a party to any material

fraud, misrepresentation, concealment, conspiracy, collusion, trick, scheme, or device whereby another ~~any other~~ person lawfully relying upon the word, representation, or conduct of the citrus fruit dealer has acted to her or his injury or damage;

(f) Committed any act or conduct of the same or different character than ~~of~~ that ~~hereinabove~~ enumerated which constitutes fraudulent or dishonest dealing; or

(g) Violated ~~any of the provisions of~~ ss. 506.19-506.28~~, both sections inclusive~~.

(2) The Department of Agriculture may impose an administrative ~~a~~ fine in the Class IV category pursuant to s. 570.971 not to exceed ~~exceeding~~ $100,000 for each ~~per~~ violation against a ~~any~~ person who operates as a citrus fruit dealer without a current citrus fruit dealer license issued by the Department of Agriculture pursuant to s. 601.60. In addition, the Department of Agriculture may order such person to cease and desist operating as a citrus fruit dealer without a license. An administrative order entered by the Department of Agriculture under this subsection may be enforced pursuant to s. 601.73.

(3) The Department of Agriculture shall impose an administrative ~~a~~ fine in the Class IV category pursuant to s. 570.971 not exceed ~~of not less than $10,000 nor more than~~ $100,000 for each ~~per~~ violation against a ~~any~~ licensed citrus fruit dealer and shall suspend, for 60 days during the first available period between September 1 and May 31, the license of

a ~~any~~ citrus fruit dealer who:

(a) Falsely labels or otherwise misrepresents that a fresh citrus fruit was grown in a specific production area specified in s. 601.091; or

(b) Knowingly, falsely labels or otherwise misrepresents that a processed citrus fruit product was prepared solely with citrus fruit grown in a specific production area specified in s. 601.091.

(4) A ~~Any~~ fine imposed pursuant to subsection (1), subsection (2), or subsection (3), when paid, shall be deposited by the Department of Agriculture into its General Inspection Trust Fund.

(5) Whenever an ~~any~~ administrative order has been made and entered by the Department of Agriculture that imposes a fine pursuant to this section, such order shall specify a time limit for payment of the fine, not exceeding 15 days. The failure of the citrus fruit dealer ~~involved~~ to pay the fine within that time shall result in the immediate suspension of such citrus fruit dealer's current license, or any subsequently issued license, until ~~such time as~~ the order has been fully satisfied. An ~~Any~~ order suspending a citrus fruit dealer's license shall include a provision that the ~~such~~ suspension shall be for a specified period ~~of time~~ not to exceed 60 days, and such period of suspension may begin ~~commence~~ at any designated date within the current license period or subsequent license period. Whenever an order has been entered that suspends a citrus fruit

dealer's license for a definite period ~~of time~~ and that license, by law, expires during the period of suspension, the suspension order shall continue automatically and shall be effective against any subsequent citrus fruit dealer ~~dealer's~~ license issued to such dealer until ~~such time as~~ the entire period of suspension has elapsed. Whenever any such administrative order of the Department of Agriculture is sought to be reviewed by the offending dealer involved in a court of competent jurisdiction, if such court proceedings should finally terminate in such administrative order being upheld or not quashed, such order shall ~~thereupon~~, upon the filing with the Department of Agriculture of a certified copy of the mandate or other order of the last court having to do with the matter in the judicial process, become immediately effective and shall then be carried out and enforced notwithstanding such time will be during a new and subsequent shipping season from that during which the administrative order was first originally entered by the Department of Agriculture.

Section 155. Section 604.22, Florida Statutes, is amended to read:

604.22 Dealers to keep records; contents.—

(1)(a) Each licensee, while acting as agent for a producer, shall make and preserve for at least 1 year a record of each transaction, specifying the name and address of the producer for whom she or he acts as agent; the date of receipt; the kind, quality, and quantity of agricultural products

received; the name and address of the purchaser of each package of agricultural products; the price for which each package was sold; the amount of any additional charges necessary to effectuate the sale; the amount and explanation of any adjustments given; and the net amount due from each purchaser.

(b) An account of sales shall be furnished to each producer within 48 hours after the sale of such agricultural products unless otherwise agreed to in a written contract or verifiable oral agreement. Such account of sales shall clearly show the sale price of each lot of agricultural products sold; all adjustments to the original price, along with an explanation of such adjustments; and an itemized showing of all marketing costs deducted by the licensee, along with the net amount due the producer.

(c) The licensee shall make the payment to the producer within 5 days after ~~of~~ the licensee's receipt of payment unless otherwise agreed to in a written contract or verifiable oral agreement.

(2)(a) Notwithstanding ~~The provisions of~~ s. 604.16(2), (3), and (4) ~~notwithstanding~~, a ~~any~~ person, partnership, corporation, or other business entity, except a person described in s. 604.16(1), who possesses and offers for sale agricultural products is required to possess and display, upon the request of a ~~any~~ department representative or state, county, or local law enforcement officer, an invoice, bill of sale, manifest, or other written document showing the date of sale, the name and

address of the seller, and the kind and quantity of products for all such agricultural products.

(b) A ~~Any~~ person who violates ~~the provisions of~~ this section is subject to s. 604.30(2) and (3) ~~subsection is guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083~~.

Section 156. Paragraph (a) of subsection (3) of section 604.30, Florida Statutes, is amended to read:

604.30 Penalties; injunctive relief; administrative fines.—

(3)(a) In addition to the penalties provided in this section, the department may, after notice and hearing, impose an administrative ~~a~~ fine in the Class II category pursuant to s. 570.971 not to exceed ~~exceeding~~ $2,500 for a ~~the~~ violation of ~~any of the provisions of~~ ss. 604.15-604.34 or the rules adopted thereunder against a ~~any~~ dealer in agricultural products.~~,~~ Such fine, when imposed and paid, shall be deposited by the department into the General Inspection Trust Fund.

Section 157. Paragraph (a) of subsection (19) of section 616.242, Florida Statutes, is amended to read:

616.242 Safety standards for amusement rides.—

(19) ENFORCEMENT AND PENALTIES.—

(a) The department may deny, suspend for a period not to exceed 1 year, or revoke any permit or inspection certificate. In addition to denial, suspension, or revocation, the department may impose an administrative fine in the Class II category

pursuant to s. 570.971 not to exceed ~~of up to~~ $2,500 for each ~~per~~ violation, for each day the violation exists ~~per day~~, against the owner of the amusement ride if it finds that:

1. An amusement ride has operated or is operating:

a. With a mechanical, structural, or electrical defect that affects patron safety, of which the owner or manager has knowledge, or, through the exercise of reasonable diligence, should have knowledge;

b. In a manner or circumstance that presents a risk of serious injury to patrons;

c. At a speed in excess of its maximum safe operating speed;

d. In violation of this section or any rule adopted under this section; or

e. In violation of an ~~any~~ order of the department or order of any court; or~~.~~

2. A ~~Any~~ manager in the course of his or her duties is under the influence of drugs or alcohol.

Section 158. This act shall take effect July 1, 2014.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB ANRS 14-02 Petroleum Restoration Program
SPONSOR(S): Agriculture & Natural Resources Subcommittee
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Agriculture & Natural Resources Subcommittee		Moore AM	Blalock AFB

SUMMARY ANALYSIS

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

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

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

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

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

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

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

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Petroleum Restoration Program

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

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

Site Rehabilitation

Florida law requires land contaminated by petroleum to be cleaned up, or rehabilitated, so that the concentration of each contaminant in the ground is below a certain level.[6] These levels are known as Cleanup Target Levels (CTLs).[7] Once the CTLs for a contaminated site[8] have been attained, rehabilitation is complete and the site may be closed. When a site is closed, no further cleanup action is required unless the contaminant levels increase above the CTLs or another discharge occurs.[9]

State Funding Assistance for Rehabilitation

The average cost to rehabilitate a site is approximately $300,000, but some sites may cost millions of dollars to rehabilitate.[10] Under Florida law, an owner of contaminated land (site owner) is responsible for rehabilitating the land unless the site owner can show that the contamination resulted from the

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[1] DEP, GUIDE TO FLORIDA'S PETROLEUM CLEANUP PROGRAM 1 (2002).
[2] *Id.*
[3] *Id.*
[4] Chapter 83-310, L.O.F.
[5] Chapter 86-159, L.O.F.
[6] Section 376.3071(5)(b)3., F.S.
[7] *Id.*
[8] A "site" is any contiguous land, sediment, surface water, or groundwater area upon or into which a discharge of petroleum or petroleum products has occurred or for which evidence exists that such a discharge has occurred. The site is the full extent of the contamination, regardless of property boundaries. DEP BUREAU OF PETROLEUM STORAGE SYSTEMS, PETROLEUM CLEANUP PREAPPROVAL PROGRAM STANDARD OPERATING PROCEDURES 2 (2012).
[9] DEP, GUIDE TO FLORIDA'S PETROLEUM CLEANUP PROGRAM 24 (2002).
[10] DEP, GUIDE TO FLORIDA'S PETROLEUM CLEANUP PROGRAM 26 (2002).

activities of a previous owner or other third party (responsible party), who is then responsible.[11] Over the years, different eligibility programs have been implemented to provide state financial assistance to certain site owners and responsible parties for site rehabilitation. To receive rehabilitation funding assistance, a site must qualify under one of these programs, which are outlined in the following table:

TABLE 1: STATE-ASSISTED PETROLEUM CLEANUP ELIGIBILITY PROGRAMS

PROGRAM NAME	PROGRAM DATES	PROGRAM DESCRIPTION
Early Detection Incentive Program (EDI) s. 376.3071(9), F.S.	Discharges must have been reported between July 1, 1986, and December 31, 1988, to be eligible	• First state-assisted cleanup program • 100 percent state funding for cleanup if site owners reported releases • Originally gave site owners the option of conducting cleanup themselves and receiving reimbursement from the state or having the state conduct the cleanup in priority order • Reimbursement option was phased out, so all cleanups are now conducted by the state
Petroleum Liability and Restoration Insurance Program (PLRIP) s. 376.3072, F.S.	Discharges must have been reported between January 1, 1989, and December 31, 1998, to be eligible	• Required facilities to purchase third party liability insurance to be eligible • Provides varying amountsof state-funded site restoration coverage[12]
Abandoned Tank Restoration Program (ATRP) s. 376.305(6), F.S.	Applications must have been submitted between June 1, 1990, and June 30, 1996[13]	Provides 100 percent state funding for cleanup, less deductible, at facilities that had out-of-service or abandoned tanks as of March 1990
Innocent Victim Petroleum Storage System Restoration Program s. 376.30715, F.S.	The application period began on July 1, 2005, and remains open	Provides 100 percent state funding for a site acquired before July 1, 1990, that ceased operating as a petroleum storage or retail business before January 1, 1985
Petroleum Cleanup Participation Program (PCPP) s. 376.3071(13), F.S.	PCPP began on July 1, 1996, and accepted applications until December 31, 1998	• Created to provide financial assistance for sites that had missed all previous opportunities • Only discharges that occurred before 1995 were eligible • Site owner or responsible party must pay 25 percent of cleanup costs[14] • Originally had a $300,000 cap on the amount of coverage, which was raised to $400,000 beginning July 1, 2008

[11] Section 376.308, F.S.

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

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

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

TABLE 1: STATE-ASSISTED PETROLEUM CLEANUP ELIGIBILITY PROGRAMS		
PROGRAM NAME	**PROGRAM DATES**	**PROGRAM DESCRIPTION**
Consent Order (aka "Hardship" or "Indigent") s. 376.3071(7)(c), F.S.	This program began in 1986 and remains open	• Created to provide financial assistance under certain circumstances[15] for sites that the Department initiates an enforcement action to clean up • An agreement is formed whereby the Department conducts the cleanup and the site owner or responsible party pays for a portion of the costs

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

Inland Protection Trust Fund

To fund the cleanup of contaminated sites, the SUPER Act created the Inland Protection Trust Fund (IPTF).[16] The IPTF is funded by an excise tax per barrel on petroleum and petroleum products in or imported into the state.[17] The amount of the excise tax per barrel is determined by a formula, which is dependent upon the unobligated balance of the IPTF.[18] Each year, approximately $200 million is deposited into the IPTF, and about $125 million is available for site rehabilitation.

Funding for rehabilitation of a site is based on a relative risk scoring system. Each funding-eligible site receives a numeric score based on the threat the site contamination poses to the environment or to human health, safety, or welfare.[19] Sites currently in the Restoration Program range in score from five to 115 points, with a score of 115 representing a substantial threat and a score of five representing a very low threat. Sites are rehabilitated in priority order beginning with the highest score, with funding based on available budget.[20] The Department sets the priority score funding threshold, which is the minimum score a site must be assigned to receive restoration funding at a particular point in time. The threshold is periodically raised or lowered depending on the Restoration Program's current budget, projected expenditures for the remainder of the fiscal year, and the next fiscal year's anticipated budget.[21] Currently, the threshold is set at 46 points.

Preapproval Program

When enacted in 1986, the SUPER Act gave site owners two options for having their sites rehabilitated through the Restoration Program: site owners could either conduct the rehabilitation themselves and receive reimbursement from the state or have the state conduct the cleanup in priority order.[22]

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[15] Financial assistance is available if DEP determines that the responsible party is unable to pay for cleanup of the site, that the current site owner was not responsible for the discharge when the contamination first occurred, or that the state's interest can best be served by conducting cleanup. Section 376.3071(7)(c), F.S.

[16] Section 376.3071(3)-(4), F.S.

[17] Sections 206.9935(3) and 376.3071(6), F.S.

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

[19] Chapter 62-771.100, F.A.C.

[20] Chapter 62-771.300, F.A.C.

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

[22] DEP, GUIDE TO FLORIDA'S PETROLEUM CLEANUP PROGRAM 2 (2002).

However, the reimbursement program proved to be costly and resulted in a backlog of unpaid claims amounting to $551.5 million.[23]

In 1996, the Legislature made substantial revisions to the Restoration Program as a result of an Attorney General report documenting abuse, inefficiencies, and fraud within the program. This legislation phased out the reimbursement format of funding assistance and created the current Preapproval Program, which requires all state-funded site rehabilitation to be conducted on a preapproved basis.[24] Thus, contractors may only be paid for site rehabilitation tasks if the scope of work was approved in writing by the Department before the work was conducted.[25] The legislation also directed the Department to adopt uniform scopes of work with templated labor and equipment costs to establish the type of work and expenditures that are allowed for preapproved site rehabilitation tasks.[26]

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

Contractor Selection

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

- Meets all certification and license requirements imposed by law;
- Complies with applicable Occupational Safety and Health Administration regulations;
- Maintains workers' compensation insurance for all employees;
- Maintains comprehensive general and automobile liability insurance;
- Maintains professional liability insurance;
- Has submitted a sworn statement on public entity crimes; and
- Has the capacity to perform or supervise the majority of the work at a site.[27]

If a site owner or responsible party does not select a contractor by filling out a Contractor Designation Form (CDF), the Department assigns a state contractor to conduct rehabilitation of the site.[28] A site owner or responsible party may submit a new CDF designating a new contractor at any time, but may not switch contractors more than twice in any 12-month period.[29]

Determining Rehabilitation Costs

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

Fixed Cost Templates

Pursuant to the law, the Department developed fixed costs for many common petroleum rehabilitation expenses.[30] Maximum compensation schedules were established to set fixed prices for commonly used non-labor items, such as lab analyses and equipment rentals.[31] The Department also created

[23] DEP BUREAU OF PETROLEUM STORAGE SYSTEMS, PETROLEUM CONTAMINATION CLEANUP AND DISCHARGE PREVENTION PROGRAMS 17 (2012).
[24] Chapter 96-277, s. 5, L.O.F.
[25] *Id.*
[26] *Id.*
[27] Section 376.30711(2)(c), F.S.
[28] DEP BUREAU OF PETROLEUM STORAGE SYSTEMS, PETROLEUM CLEANUP PREAPPROVAL PROGRAM STANDARD OPERATING PROCEDURES 24 (2012).
[29] *Id.* at 25.
[30] Section 376.3071(2)(e), F.S.
[31] *Id.* at 50.

fixed cost templates that outline the fixed prices for packaged equipment kits and defined scopes of work.[32] These templated costs are based on fixed rates for labor and the maximum compensation schedules.[33] The fixed template amounts are paid to the contractor regardless of the actual cost of the work as long as the specified item was provided or scope of work was completed.[34] If a contractor wishes to increase the scope of work after a work order has been executed, he or she must provide justification for the extra work.[35] The extra work must be approved by the Department before the contractor commences work.[36] A reduction in the scope of work does not have to be preapproved and is instead handled when an invoice is submitted after completion of the work.[37]

Time and Materials

Time and materials estimating is used only for scopes of work for which there are no fixed cost templates.[38] This method is commonly used for more complex rehabilitation work, such as remedial action constructions and deep well installations.[39] Under this method, costs for specific scopes of work are determined using the same standardized labor and equipment rates that the Department uses to determine the fixed cost templates.[40]

Performance-Based Cleanup

Contractors who develop cost proposals using the fixed cost template or time and materials approach are paid as long as the work outlined in the work order is completed, regardless of whether the work actually reduces the site's level of contamination.[41] In contrast, payment for work completed under the performance-based cleanup (PBC) approach is based upon measured progress toward reaching the rehabilitation goal.[42] Under this method, a contractor guarantees complete rehabilitation of a site for a price agreed upon by the Department and the contractor.[43] Contractors are not required to pursue rehabilitation using PBC, but are encouraged to do so for sites having certain factors that make them suitable for PBC.[44]

Subcontractor Selection and Cost

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

[32] *Id.*
[33] *Id.* at 69
[34] *Id.* at 52.
[35] *Id.*
[36] *Id.*
[37] *Id.*
[38] *Id.* at 56.
[39] *Id.* at 57.
[40] *Id.* at 69.
[41] *Id.* at 59.
[42] *Id.*
[43] *Id.*
[44] *Id.* at 60.
[45] *Id.* at 75.
[46] *Id.* at 76.
[47] *Id.* at 78.
[48] *Id.* at 76.

subcontractor, a contractor receives a fee, which is included in the total cost of the contract with the Department, that is equal to 10 percent of the subcontractor cost.[49]

Expediting Site Rehabilitation

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

Preapproved Advanced Cleanup

Preapproved Advanced Cleanup (PAC) was created in 1996 to allow an eligible site to receive state rehabilitation funding even if the site's priority score does not fall within the threshold currently being funded.[50] The purpose of PAC was to facilitate property transactions or public works projects on contaminated sites.[51] To participate in PAC, a site must be eligible for state rehabilitation funding under the Early Detection Incentive Program (EDI), the Petroleum Liability and Restoration Insurance Program (PLRIP), the Abandoned Tank Restoration Program (ATRP), the Innocent Victim Petroleum Storage System Restoration Program (Innocent Victim), or the Petroleum Cleanup Participation Program (PCPP).[52]

To apply for PAC, a site owner or responsible party must bid a cost share of the total site rehabilitation.[53] The cost share must be at least 25 percent of the total cost of rehabilitation.[54] For PCPP sites, the cost share must be at least 25 percent of the state's share of the rehabilitation, as the site owner or responsible party is already required to pay for 25 percent of the total cost of rehabilitation to be eligible for PCPP.[55] In years when the Department runs a bid cycle, bids may be accepted in two windows of May 1 through June 30 and November 1 through December 31.[56] Bids are awarded based solely on the proposed cost share percentage and not the estimated dollar amount of that share.[57] The Department may enter into PAC contracts for a total of up to $15 million per fiscal year,[58] and no more than $5 million per fiscal year may be preapproved for rehabilitation work at an individual facility.[59]

Low Scored Site Initiative

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

- Upon assessment, the site retains a priority ranking score of 29 points or less;

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[49] *Id.* at 53.
[50] Section 376.30713(1), F.S.
[51] *Id.*
[52] For PCPP sites, PAC is only available if the 25 percent copay requirement of PCPP has not been reduced or eliminated. Section 376.30713(1)(d), F.S.
[53] Section 376.30713(2)(a), F.S.
[54] *Id.*
[55] Section 376.30713(1)(d)-(2)(a), F.S.
[56] Section 376.30713(2)(a), F.S.; DEP BUREAU OF PETROLEUM STORAGE SYSTEMS, PETROLEUM CLEANUP PREAPPROVAL PROGRAM STANDARD OPERATING PROCEDURES 7 (2012).
[57] Section 376.30713(2)(b), F.S.; DEP BUREAU OF PETROLEUM STORAGE SYSTEMS, PETROLEUM CLEANUP PREAPPROVAL PROGRAM STANDARD OPERATING PROCEDURES 7 (2012).
[58] Section 376.30713(4), F.S.
[59] A "facility" includes, but is not limited to, "multiple site facilities such as airports, port facilities, and terminal facilities even though such enterprises may be treated as separate facilities for other purposes under this chapter." Section 376.30713(4), F.S.

- No excessively contaminated soil exists onsite;
- A minimum of six months of groundwater monitoring indicates that the plume is shrinking or stable;
- The remaining contamination resulting from petroleum products does not adversely affect adjacent surface waters;
- The area of groundwater contamination is less than one-quarter acre and is confined to the source property boundary; and
- Soils onsite found between the land surface and two feet below the land surface must meet the soil cleanup target levels (SCTLs) established by the Department unless human exposure is limited by appropriate institutional or engineering controls.[60]

An assessment is conducted to determine whether the above criteria are met.[61] The state pays the assessment costs for sites eligible for funding under EDI, ATRP, Innocent Victim, PLRIP, or PCPP.[62] Funding for LSSI is limited to $10 million per fiscal year, which may only be used to fund site assessments.[63] Each site has a funding cap of $30,000, and each site owner or responsible party is limited to 10 eligible sites per fiscal year.[64] Funds are allocated on a first-come, first-served basis.[65] Sites not eligible for state rehabilitation funding may still qualify for closure under LSSI if an assessment reveals that the above criteria are met, but the state will not pay for the assessment.[66]

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

- If no contamination is detected during the assessment, the Department may issue a site rehabilitation completion order.[67]
- If the assessment demonstrates that minimal contamination exists onsite, but the above criteria are met, the Department may issue an LSSI no further action administrative order. This determination acknowledges that the contamination is not a threat to human health or the environment.[68]
- If soil between the land surface and two feet below the land surface exceeds SCTLs, but the above criteria are otherwise met, the Department may issue a site rehabilitation completion order with conditions. This determination requires that institutional and/or engineering controls be put in place to prevent human or environmental exposure to the contamination. The state is not authorized to fund such controls.[69]

If at any time data collected during the assessment indicate that the above criteria for closure will not be met, assessment activities will be terminated.[70] LSSI funding will be discontinued if it is determined at any point that a closure cannot be accomplished within the $30,000 funding limit, unless the site owner or responsible party is willing to contribute funds to the assessment work.[71] A site determined to be ineligible for LSSI funding retains its current program eligibility and will receive rehabilitation funding in priority order.

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[60] Section 376.3071(11)(b)1., F.S.
[61] DEP PETROLEUM RESTORATION PROGRAM, PROCEDURAL AND TECHNICAL GUIDANCE FOR THE LOW-SCORED SITE INITIATIVE 9 (2013).
[62] *Id.* at 3.
[63] Section 376.3071(11)(b)3.c., F.S.
[64] *Id.*
[65] *Id.*
[66] *Id.* at 1-2.
[67] Section 376.3071(11)(b)2., F.S.
[68] *Id.*
[69] DEP PETROLEUM RESTORATION PROGRAM, PROCEDURAL AND TECHNICAL GUIDANCE FOR THE LOW-SCORED SITE INITIATIVE 3 (2013).
[70] *Id.* at 11.
[71] *Id.*

Procurement

Chapter 287, F.S., regulates state agency[72] procurement of commodities and services. Without an explicit exemption, the Department is required to comply with this chapter when procuring contracts for petroleum rehabilitation tasks.

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

- Single source contracts, which are used when an agency determines that only one vendor is available to provide a commodity or service at the time of purchase;
- Invitations to bid, which are used when an agency determines that standard services or goods will meet needs, wide competition is available, and the vendor's experience will not greatly influence the agency's results;
- Requests for proposal, which are used when the procurement requirements allow for consideration of various solutions and the agency believes more than two or three vendors exist who can provide the required goods or services; and
- Invitations to negotiate, which are used when negotiations are determined to be necessary to obtain the best value and involve a request for highly complex, customized, mission-critical services.[73]

For contracts for commodities or services in excess of $35,000, agencies must utilize a competitive solicitation process.[74] Competitive solicitation means "the process of requesting and receiving two or more sealed bids, proposals, or replies submitted by responsive vendors in accordance with the terms of a competitive process, regardless of the method of procurement."[75] Certain contractual services and commodities are not subject to competitive solicitation requirements.[76]

In addition, s. 287.0595, F.S., directs the Department to adopt rules governing procurement for pollution response action contracts. The term "response action" includes any activity performed to rehabilitate a petroleum-contaminated site.[77] In the rules, the Department must establish procedures for:

- Determining the qualifications of responsible potential vendors prior to advertisement for and receipt of bids, proposals, or replies for pollution response action contracts, including procedures for the rejection of unqualified vendors;
- Awarding such contracts to the lowest responsible and responsive vendor[78] as well as procedures to be followed in cases in which the Department declares a valid emergency to exist which would necessitate the waiver of the rules governing the awarding of such contracts to the lowest responsible and responsive vendor;
- Payment of contracts;
- Negotiating contracts, modifying contract documents, and establishing terms and conditions of contracts.[79]

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

[73] Section 287.057, F.S.

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

[75] Section 287.012(6), F.S.

[76] Section 287.057(3)(f), F.S.

[77] *See* ss. 287.0595(1)(b) and 376.301(39), F.S.

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

[79] Section 287.0595(1), F.S.

Inspector General Review

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

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

2013 Legislation

For the 2013-14 fiscal year, the Legislature appropriated $125 million to the Restoration Program. However, due in part to the concerns raised in the Inspector General's memo, that appropriation was limited by Specific Appropriation 1668 of the 2013-14 General Appropriations Act in Senate Bill 1500 (proviso) and Section 29 of Senate Bill 1502 (implementing bill). The proviso appropriated up to $50 million, available immediately, to the Department to fund payments for preapproved task assignments, contracts, and work orders approved by the Department before June 30, 2013, or to address an imminent environmental threat. The remaining $75 million was placed in reserve until the Department submitted a plan to the Legislative Budget Commission (LBC) detailing how the Department would improve the effectiveness and efficiency of the Restoration Program. The plan was required to include a strategy for developing a competitive procurement process for selecting rehabilitation contractors pursuant to chapter 287, F.S. The implementing bill stipulated that after June 30, 2013, the Department could only enter into contracts that had been competitively procured. In addition, the proviso prohibited the funds in reserve from being released after January 1, 2014, unless the Department had adopted rules to implement the competitive procurement process.

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

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

The LBC approved the plan unanimously.

To further comply with the proviso, the Department initiated rulemaking. On October 4, 2013, the Department filed a Notice of Proposed Rule in the Florida Administrative Register. The rules were filed for adoption with the Secretary of State on December 27, 2013. Some of the rules became effective on January 16, 2014, but two of the rules require ratification by the Legislature before they can become effective.[80]

Effect of Proposed Changes

The proposed committee bill (PCB) repeals s. 376.30711, F.S., which establishes the Preapproval Program, and relocates certain provisions that continue to be necessary. Thus, the Department will no

[80] The two rules requiring legislative ratification are chapters 62-772.300 and 62-772.400, F.A.C.

longer preapprove site rehabilitation work based on templated costs. Instead, the PCB requires all site rehabilitation work to be competitively procured pursuant to chapter 287, F.S., or rules adopted by the Department under s. 376.3071, F.S., or s. 287.0595, F.S. Although the Department was already required to competitively bid rehabilitation projects, the PCB emphasizes that all work must now be procured through a competitive process.

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

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

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

B. SECTION DIRECTORY:

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

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

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

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

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

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

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

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

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

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

Section 11 provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

Not applicable.

A bill to be entitled

An act relating to rehabilitation of petroleum contamination sites; amending s. 376.3071, F.S.; providing legislative findings and intent regarding the Petroleum Restoration Program and the rehabilitation of contamination sites; providing requirements for site rehabilitation contracts and procedures for payment of rehabilitation work under the Petroleum Restoration Program; providing applicability of funding under the Early Detection Incentive Program; deleting obsolete provisions relating to reimbursement for certain cleanup expenses; repealing s. 376.30711, F.S., relating to preapproved site rehabilitation; amending ss. 376.301, 376.302, 376.305, 376.30713, 376.30714, 376.3072, 376.3073, and 376.3075, F.S.; conforming provisions to changes made by the act; providing an effective date.

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

Section 1. Section 376.3071, Florida Statutes, is amended to read:

376.3071 Inland Protection Trust Fund; creation; purposes; funding.—

(1) FINDINGS.—In addition to the legislative findings set forth in s. 376.30, the Legislature finds and declares:

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

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

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

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

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

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

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

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

(2) INTENT AND PURPOSE.—

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

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

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

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

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

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

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

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

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

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

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

(a) Prompt investigation and assessment of contamination sites.

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

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

retrofitting or replacing petroleum storage systems.

(d) Maintenance and monitoring of contamination sites.

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

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

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

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

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

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

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

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

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

(l)~~(m)~~ Repayment of loans to the fund.

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

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

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

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

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

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

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

(5) SITE SELECTION AND CLEANUP CRITERIA.—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

7. Applicable state water quality standards.

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

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

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

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

9. Appropriate cleanup target levels for soils.

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

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

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

a contamination site with a higher priority status.

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

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

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

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

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

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

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

(6) CONTRACTING AND CONTRACTOR SELECTION REQUIREMENTS.—

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

(b) When contracting for site rehabilitation activities

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

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

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

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

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

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

5. Has the capacity to perform or directly supervise the

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

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

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

the assigning party.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(III) Facilities where a discharge was intentionally

concealed.

(IV) Facilities that were denied eligibility due to:

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

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

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

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

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

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

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

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

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

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

(b) Intentionally damage a petroleum storage system.

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

(12)~~(11)~~ SITE CLEANUP.—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

~~(12) REIMBURSEMENT FOR CLEANUP EXPENSES.—Except as provided in s. 2(3), chapter 95-2, Laws of Florida, this subsection shall not apply to any site rehabilitation program task initiated after March 29, 1995. Effective August 1, 1996, no further site rehabilitation work on sites eligible for state-funded cleanup from the Inland Protection Trust Fund shall be eligible for reimbursement pursuant to this subsection. The person responsible for conducting site rehabilitation may seek reimbursement for site rehabilitation program task work conducted after March 28, 1995, in accordance with s. 2(2) and (3), chapter 95-2, Laws of Florida, regardless of whether the site rehabilitation program task is completed. A site rehabilitation program task shall be considered to be initiated when actual onsite work or engineering design, pursuant to chapter 62-770, Florida Administrative Code, which is integral to performing a site rehabilitation program task has begun and shall not include contract negotiation and execution, site research, or project planning. All reimbursement applications pursuant to this subsection must be submitted to the department by January 3, 1997. The department shall not accept any applications for reimbursement or pay any claims on applications for reimbursement received after that date; provided, however if an application filed on or prior to January 3, 1997, was~~

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

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

~~(b) Conditions.~~

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

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

~~described in department rules.~~

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

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

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

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

~~department.~~

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

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

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

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

~~(g) Review.~~

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

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

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

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

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

~~payment on the following terms: The department shall develop a schedule of the anticipated dates of reimbursement of applications submitted to the department pursuant to this subsection. The schedule shall specify the projected date of payment based on equal monthly payments and projected annual revenue of $100 million. Based on the schedule, the department shall notify all reimbursement applicants of the projected date of payment of their applications. The department shall direct the Inland Protection Financing Corporation to pay applicants the present value of their applications as soon as practicable after approval by the department, subject to the availability of funds within the Inland Protection Financing Corporation. The present value of an application shall be based on the date on which the department anticipates the Inland Protection Financing Corporation will settle the reimbursement application and the schedule's projected date of payment and shall use 3.5 percent as the annual discount rate. The determination of the amount of the claim and the projected date of payment shall be subject to s. 120.57.~~

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

~~requirements set forth in this subsection.~~

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

~~(k) Audits.~~

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

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

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

~~likelihood of recovery too uncertain.~~

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

owner, operator, or person otherwise responsible for site rehabilitation shall provide the department with a limited contamination assessment report and shall enter into a Petroleum Cleanup Participation Program ~~preapproved~~ site rehabilitation agreement with the department ~~and a contractor qualified under s. 376.30711(2)(b)~~. The agreement must ~~shall~~ provide for a 25-percent copayment by the owner, operator, or person otherwise responsible for conducting site rehabilitation. The owner, operator, or person otherwise responsible for conducting site rehabilitation shall adequately demonstrate the ability to meet the copayment obligation. The limited contamination assessment report and the copayment costs may be reduced or eliminated if the owner and all operators responsible for restoration under s. 376.308 demonstrate that they cannot ~~are~~ financially ~~unable to~~ comply with the copayment and limited contamination assessment report requirements. The department shall take into consideration the owner's and operator's net worth in making the determination of financial ability. In the event the department and the owner, operator, or person otherwise responsible for site rehabilitation cannot ~~are unable to~~ complete negotiation of the cost-sharing agreement within 120 days after beginning ~~commencing~~ negotiations, the department shall terminate negotiations and the site shall be ~~deemed~~ ineligible for state funding under this subsection and all liability protections provided for in this subsection shall be revoked.

(d) A ~~No~~ report of a discharge made to the department by a

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

376.302 Prohibited acts; penalties.—

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

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

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

376.305 Removal of prohibited discharges.—

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

(a) To be included in the program:

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

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

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

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

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

(d) The following sites are excluded from eligibility:

1. Sites on property of the Federal Government;

2. Sites contaminated by pollutants that are not petroleum products;

3. Sites where the department has been denied site access; or

4. Sites which are owned by a ~~any~~ person who had knowledge of the polluting condition when title was acquired unless the ~~that~~ person acquired title to the site after issuance of a notice of site eligibility by the department.

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

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

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

376.30713 ~~Preapproved~~ Advanced cleanup.—

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

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

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

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

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

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

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

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

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

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

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

3. A limited contamination assessment report.

4. A proposed course of action.

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

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

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

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

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

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

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

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

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

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

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

376.30714 Site rehabilitation agreements.—

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

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

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

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

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

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

of the new discharge.

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

376.3072 Florida Petroleum Liability and Restoration Insurance Program.—

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

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

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

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

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

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

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

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

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

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

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

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

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

(I) Interstitial monitoring of tank and integral piping secondary containment systems;

(II) Automatic tank gauging systems; or

(III) A statistical inventory reconciliation system with a tank test every 3 years.

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

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

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

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

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

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

d. Owners of facilities with existing contamination that install internal release detection systems pursuant to ~~in accordance with~~ sub-subparagraph a. shall permanently close their external groundwater and vapor monitoring wells pursuant to ~~in accordance with~~ department rules by December 31, 1998. Upon installation of the internal release detection system, such ~~these~~ wells must ~~shall~~ be secured and taken out of service until permanent closure.

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

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

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

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

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

3. Should a reinspection of the facility be necessary to

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

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

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

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

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

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

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

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

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

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

per incident.

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

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

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

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

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

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

day after discovery.

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

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

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

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

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

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

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

Incentive ~~EDI~~ Program.

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

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

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

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

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

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

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

376.3075 Inland Protection Financing Corporation.—

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

service contracts may not include any funds derived from penalties or other payments received from any property owner or private party, including payments received under s. 376.3071(7)(b) ~~376.3071(6)(b)~~. In compliance with s. 287.0641 and other applicable provisions of law, the obligations of the department under such service contracts do not constitute a general obligation of the state or a pledge of the faith and credit or taxing power of the state and ~~nor may~~ such obligations are not ~~be construed in any manner as~~ an obligation of the State Board of Administration or entities for which it invests funds, other than the department as provided in this section, but are payable solely from amounts available in the Inland Protection Trust Fund, subject to annual appropriation. In compliance with this subsection and s. 287.0582, the service contract must expressly include the following statement: "The State of Florida's performance and obligation to pay under this contract is contingent upon an annual appropriation by the Legislature."

(5) The corporation may issue and incur notes, bonds, certificates of indebtedness, or other obligations or evidences of indebtedness payable from and secured by amounts payable to the corporation by the department under a service contract entered into pursuant to subsection (4) for the purpose of financing the rehabilitation of petroleum contamination sites pursuant to ss. 376.30-376.317. The term of any such note, bond, certificate of indebtedness, or other obligation or evidence of indebtedness may not have a financing term that exceeds 15

years. The corporation may select its financing team and issue its obligations through competitive bidding or negotiated contracts, whichever is most cost-effective. ~~Any~~ Indebtedness of the corporation does not constitute a debt or obligation of the state or a pledge of the faith and credit or taxing power of the state~~,~~ but is payable from and secured by payments made by the department under the service contract pursuant to s. 376.3071(4)(n) ~~376.3071(4)(o)~~.

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