Agriculture & Natural Resources Appropriations Subcommittee

February 9, 2016
9:00 AM – 11:00 AM
Reed Hall

Meeting Packet

Steve Crisafulli
Speaker

Ben Albritton
Chair

The Florida House of Representatives

Appropriations Committee

Agriculture & Natural Resources Appropriations Subcommittee

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AGENDA
9:00 AM – 11:00 AM
Reed Hall

I. Call to Order/Roll Call

II. CS/HB 153—Healthy Food Financing Initiative by Santiago

III. CS/HB 285—Natural Gas Fuel Fleet Vehicle Rebate Program by Ray

IV. CS/HB 447—Local Government Environmental Financing by Raschein

V. CS/HB 489—Shellfish Harvesting by Drake

VI. CS/HB 561—Organizational Structure of the Department of Environmental Protection by Combee

VII. CS/HB 589—Environmental Control by Pigman

VIII. CS/HB 697—Petroleum Restoration Program by Grant

IX. CS/HB 749—Agriculture by Raburn

X. HB 795—Dredge and Fill Activities by Edwards

XI. HB 987—Solid Waste Management by Drake

XII. Closing/Adjournment

221 The Capitol, 402 South Monroe Street, Tallahassee, Florida 32399-1300
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HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 153 Healthy Food Financing Initiative
SPONSOR(S): Agriculture & Natural Resources Subcommittee; Santiago and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 760

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

SUMMARY ANALYSIS

Food deserts are urban neighborhoods and rural towns without ready access to fresh, healthy, and affordable food. Instead of supermarkets and grocery stores, these communities may have no food access or are served only by fast food restaurants and convenience stores that offer few healthy, affordable food options. Healthy Food Financing Initiatives are programs designed to make funding available in the form of loans, grants, promotions, and other programs to create healthy food options in food deserts.

The bill directs the Department of Agriculture and Consumer Services (DACS) to create a Healthy Food Financing Initiative (program). Specifically the bill:

- Authorizes DACS to contract with one or more qualified nonprofit organizations or Florida-based federally certified community development financial institutions to administer the program and creates eligibility criteria for such organizations.
- Requires DACS to establish program and eligibility guidelines.
- Requires DACS or a third-party administrator to establish program guidelines, raise matching funds, promote the program statewide, evaluate applicants, disburse grants and loans, and monitor compliance and impact.
- Directs projects under the program to be located in underserved communities; primarily serve low to moderate income families; and provide for the construction, renovation, or expansion of independent grocery stores or supermarkets and community facilities.
- Requires DACS to report annually to the President of the Senate and the Speaker of the House of Representatives on the projects funded, geographic distribution of projects, program costs, and program outcomes.
- Enumerates program application requirements.
- Directs DACS or the third-party administrator to give preference to local, Florida-based grocers and business owners; consider the level of need in the area served; and consider the project's positive economic impact when determining which projects to finance.
- Specifies how program financing may be utilized.
- Requires DACS to adopt rules to implement the program.
- Makes creation and implementation of the program contingent on an appropriation.

The bill appears to have a significant negative fiscal impact on DACS. This bill will likely have a positive fiscal impact on the "independent grocery stores and supermarkets" and "community facilities" eligible to receive financial assistance.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Food Deserts

Food deserts are urban neighborhoods and rural towns without ready access to fresh, healthy, and affordable food. Instead of supermarkets and grocery stores, these communities may have no food access or are served only by fast food restaurants and convenience stores that offer few healthy, affordable food options. The lack of access contributes to a poor diet and may lead to higher levels of obesity and other diet-related diseases, such as diabetes and heart disease.[1]

The U.S. Department of Agriculture's (USDA's) Economic Research Service estimates that 23.5 million people live in food deserts. More than half of those people (13.5 million) are low-income.[2]

The USDA, the U.S. Department of Treasury (Treasury), and the U.S. Department of Health and Human Services (HHS) identifies a food desert as a census tract with a substantial share of residents who live in low-income areas that have low levels of access to a grocery store or healthy, affordable food retail outlet. Census tracts qualify as food deserts if they meet low-income and low-access thresholds. Such terms are defined as:

- "Low-income communities" have:
  - a poverty rate of 20 percent or greater; or
  - a median family income at or below 80 percent of the area median family income.
- "Low-access communities" have at least 500 persons or at least 33% of the census tract's population living more than one mile from a supermarket or large grocery store (10 miles in the case of non-metropolitan census tracts).[3]

Healthy Food Financing Initiatives

To decrease the presence of food deserts, several federal and state agencies have undertaken initiatives to increase access to healthy, affordable foods in these communities.

At the federal level, USDA, the Treasury, and HHS work to make funding available in the form of loans, grants, promotions, and other programs to create healthy food options in food deserts.[4] These programs:

- Provide financial and technical assistance;
- Make funds available through selected rural development and Agricultural Marketing Service programs;
- Provide tax credits; and
- Award competitive grants to community development corporations to support projects that finance grocery stores, farmers markets, and other sources of fresh nutritious food.[5]

The federal programs seek to increase access to whole foods such as fruits, vegetables, whole grains, fat free or low-fat dairy, and lean meats that are perishable (fresh, refrigerated, or frozen) or canned as

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[1] USDA, Food Deserts, http://apps.ams.usda.gov/fooddeserts/foodDeserts.aspx (last visited November 18, 2015).
[2] Id.
[3] Id.
[4] HHS, *Healthy Food Financing Initiative*, http://www.acf.hhs.gov/programs/ocs/programs/community-economic-development/healthy-food-financing (last visited November 18, 2015).
[5] Id.

well as nutrient-dense foods and beverages encouraged by the 2010 Dietary Guidelines for Americans.[6]

Twenty-seven states have taken some action to address the issue of food deserts. These include creating Healthy Food Financing Initiatives, undertaking studies, expanding financial support, providing low interest loans, studying access to food, and providing tax incentives.[7]

Community Development Financial Institutions (CDFIs)

CDFIs are banks, credit unions, loan funds, microloan funds, or venture capital providers that help families finance their first homes, support community residents starting businesses, and invest in local health centers, schools, or community centers for low income communities.[8] CDFIs are certified by the CDFI Fund.[9] The CDFI Fund is an agency within the Treasury that promotes economic revitalization in distressed communities throughout the United States by providing financial assistance and information to CDFIs.[10] Once certified, a CDFI may apply for awards under the CDFI Fund's competitive programs, including the Capital Magnet Fund, CDFI Bond Guarantee Program, Community Development Financial Institutions Program, and Native Initiatives.[11]

Effect of the Proposed Changes

The bill directs DACS to establish a Healthy Food Financing Initiative (program) that comprises and coordinates the use of federal, state, and private loans and grants, federal tax credits, and other forms of financial assistance. This financial assistance must be used for the construction, rehabilitation, or expansion of independent grocery stores, supermarkets, and community facilities to increase access to fresh produce and other nutritious food in underserved communities.

The bill defines the following terms:

- "Community facility" means a property owned by a nonprofit or for-profit entity or a unit of government in which health and human services are provided and space is offered in a manner that provides increased access to, or delivery or distribution of, food or other agricultural products to encourage public consumption and household purchases of fresh produce or other healthy food to improve the public health and well-being of low-income children, families, and older adults.
- "Independent grocery store or supermarket" means an independently-owned grocery store or supermarket whose parent company does not own more than 40 grocery stores throughout the country based upon ownership conditions as identified in the latest Nielsen TDLinx Supermarket/Supercenter database.
- "Low-income community" means a population census tract, as reported in the most recent U.S. Census Bureau American Community Survey,[12] that meets one of the following criteria:
    - A poverty rate of at least 20 percent;
    - In the case of a low-income community located outside of a metropolitan area, the median family income does not exceed 80 percent of the statewide median family income; or

[6] USDA, *Food Deserts, Frequently Asked Questions*, https://apps.ams.usda.gov/fooddeserts/FAQ.aspx#healthyfood (last visited November 18, 2015); the guidelines are available at: http://www.cnpp.usda.gov/sites/default/files/dietary_guidelines_for_americans/PolicyDoc.pdf.
[7] Healthy Food Portal, *Policy Efforts and Impacts, State and Local*, http://healthyfoodaccess.org/policy-efforts-and-impacts/state-and-local (last visited November 18, 2015).
[8] CDFI Fund, *What Are CDFIs?*, https://www.cdfifund.gov/Documents/CDFI_infographic_v08A.pdf (last visited November 18, 2015).
[9] CDFI Fund, *Certification*, https://www.cdfifund.gov/programs-training/certification/Pages/default.aspx (last visited November 18, 2015).
[10] CDFI Fund, *About Us*, https://www.cdfifund.gov/about/Pages/default.aspx (last visited November 20, 2015).
[11] Id.
[12] U.S. Census Bureau, *Our Surveys and Programs*, https://www.census.gov/programs-surveys.html (last visited November 20, 2015).

    - In the case of a low-income community located inside of a metropolitan area, the median family income does not exceed 80 percent of the statewide median family income or 80 percent of the metropolitan median family income, whichever is greater.
- "Moderate-income community" means a population census tract, as reported in the most recent U.S. Census Bureau American Community Survey, in which the median family income is between 81 and 95 percent of the median family income for the state or metropolitan area.
- "Underserved community" means a distressed urban, suburban, or rural geographic area where a substantial number of residents have low access to a full-service grocery store or supermarket. An area with limited supermarket access must be:
    - A census tract, as determined to be an area with low access by the USDA, as identified in the Food Access Research Atlas;[13]
    - Identified as a limited supermarket access area as recognized by the CDFI Fund;[14] or
    - Identified as an area with low access to a supermarket or grocery store through a methodology that has been adopted for use by another governmental or philanthropic healthy food initiative.

The bill authorizes DACS to contract with one or more nonprofit organizations or Florida-based federally certified CDFI to administer the program. To be eligible to contract with DACS to administer the program, the CDFI or nonprofit organization must demonstrate:

- Prior experience in healthy food financing;
- Support from the CDFI Fund within the Treasury;
- The ability to manage and operate lending and tax credit programs; and
- The ability to assume full financial risk for loans made under the program.

The bill directs DACS to establish program guidelines, raise matching funds, promote the program statewide, evaluate applicants, underwrite and disburse grants and loans, and monitor program compliance and impact. To carry out these directives, the bill authorizes DACS to contract with a third-party. This third-party must report to DACS annually.

The bill directs DACS to create eligibility guidelines and provide financing through an application process. Eligible projects must:

- Be located in an underserved community;
- Primarily serve low-income or moderate-income communities; and
- Provide for the construction of new independent grocery stores or supermarkets; the renovation or expansion of, including infrastructure upgrades to, existing independent grocery stores or supermarkets; or the construction, renovation or expansion of, including infrastructure upgrades to, community facilities to improve the availability and quality of fresh produce and other healthy foods.

The bill requires DACS to report annually to the President of the Senate and the Speaker of the House of Representatives on:

- The projects funded;
- Geographic distribution of projects;
- Program costs; and
- Program outcomes including the number and type of jobs created and health initiatives associated with the program.

To receive program financing, applicants must:

- Demonstrate the capacity to successfully implement the project and the likelihood that the project will be economically self-sustaining;

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[13] USDA, *Food Access Research Atlas*, http://www.ers.usda.gov/data-products/food-access-research-atlas.aspx (last visited November 18, 2015).

[14] CDFI Fund, *CDFI Information Mapping System*, https://www.cdfifund.gov/Pages/mapping-system.aspx (last visited November 18, 2015).

- Demonstrate the ability to repay the loan; and
- Agree, as an independent grocery store or supermarket, for at least 5 years, to:
  - Accept Supplemental Nutrition Assistance Program (SNAP)[15] benefits;
  - Apply to accept Special Supplemental Nutrition Program for Women, Infants, and Children (WIC)[16] benefits and accept such benefits if approved;
  - Allocate at least 30 percent of food retail space for the sale of perishable foods, which may include fresh or frozen dairy products, fresh produce, and fresh meats, poultry, and fish;
  - Comply with all data collection and reporting requirements established by DACS; and
  - Promote the hiring of local residents.

The bill provides an exception to the 30 percent minimum requirement for food retail space for corner stores, bodegas, and other non-traditional grocery stores if the funding will be used for refrigeration displays, or other one-time capital expenditures to promote the sale of fresh produce or perishables.

The bill requires DACS or its third-party administrator to determine which projects receive financing by:
- Giving preference to local Florida-based grocers or local business owners with experience in grocery stores and to grocers and business owners with a business plan model that includes written documentation of opportunities to purchase from Florida farmers and growers before seeking out-of-state purchases;
- Considering the level of need in the area to be served;
- Considering the degree to which the project will have a positive economic impact on the underserved community, including the creation or retention of jobs for local residents; and
- Considering other criteria as may be determined by DACS.

The bill authorizes financing for selected projects for the following purposes:
- Site acquisition and preparation;
- Construction and build-out costs;
- Equipment and furnishings;
- Workforce training or security;
- Predevelopment costs, such as market studies and appraisals;
- Energy-efficiency measures;
- Working capital for first-time inventory and startup costs; and
- Other purposes as may be determined by DACS or its third-party administrator.

Lastly, the bill makes creation and implementation of the program contingent on an appropriation.

B. SECTION DIRECTORY:

Section 1. Creates the Healthy Food Financing Initiative program.

Section 2. Provides that creation of the Healthy Food Financing Initiative program and implementation of the act is contingent upon appropriation from the Legislature.

Section 3. Provides an effective date of July 1, 2016.

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[15] SNAP is a federal program that offers nutrition assistance to millions of eligible, low-income individuals and families and provides economic benefits to communities. USDA, *Supplemental Nutrition Assistance Program*, http://www.fns.usda.gov/snap/supplemental-nutrition-assistance-program-snap (last visited November 18, 2015).

[16] WIC is a federal program that provides grants to states for supplemental foods, health care referrals, and nutrition education for low-income pregnant, breastfeeding, and non-breastfeeding postpartum women, and to infants and children up to age five who are found to be at nutritional risk. USDA, *Women, Infants, and Children (WIC)*, http://www.fns.usda.gov/wic/women-infants-and-children-wic (last visited November 18, 2015).

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   The bill appears to have a significant negative fiscal impact for the department. DACS estimates $64,499 in recurring funds and $3,999 in nonrecurring funds for 1 OPS and associated expenses to implement the program.[17]

   The department is required to adopt rules, which can be absorbed within existing resources.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may have a positive fiscal impact on the private sector since "independent grocery stores and supermarkets" and "community facilities", as part of the program, will be eligible to receive financial assistance in the form of grants and loans to improve or set up stores to provide access to healthy food and fresh produce.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

The bill requires DACS to adopt rules to administer the program.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

[17] DACS, Agency Analysis of 2016 House Bill 153, p. 3 (October 19, 2015).

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On December 2, 2015, the Agriculture & Natural Resources Subcommittee adopted two amendments and reported the bill favorably with committee substitute. The amendments changed the definition of "independent grocery store or supermarket" to require such stores not to be owned by a parent corporation who owns more than 40 grocery stores throughout the country based upon ownership conditions as identified in the latest Nielsen TDLinx Supermarket/Supercenter database, rather than the Nielsen Trade Dimensions grocery store database, and clarified that the nonprofit organizations must also meet specified criteria to be eligible to contract with DACS to implement the program.

This analysis is drafted to the committee substitute as approved by the Agriculture & Natural Resources Subcommittee.

A bill to be entitled

An act relating to the Healthy Food Financing Initiative; creating the Healthy Food Financing Initiative program; providing definitions; directing the Department of Agriculture and Consumer Services to establish a program to provide specified financing to construct, rehabilitate, or expand grocery stores and supermarkets in underserved communities in low-income and moderate-income areas; authorizing the department to contract with a third-party administrator; providing program, project, and applicant requirements; authorizing funds to be used for specified purposes; directing the department to adopt rules and submit an annual report to the Legislature; providing that creation and implementation of the program is contingent upon legislative appropriations; providing an effective date.

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

Section 1. Healthy Food Financing Initiative.—

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

(a) "Department" means the Department of Agriculture and Consumer Services.

(b) "Community facility" means a property owned by a nonprofit or for-profit entity or a unit of government in which

health and human services are provided and space is offered in a manner that provides increased access to, or delivery or distribution of, food or other agricultural products to encourage public consumption and household purchases of fresh produce or other healthy food to improve the public health and well-being of low-income children, families, and older adults.

(c) "Independent grocery store or supermarket" means an independently-owned grocery store or supermarket whose parent company does not own more than 40 grocery stores throughout the country based upon ownership conditions as identified in the latest Nielsen TDLinx Supermarket/Supercenter database.

(d) "Low-income community" means a population census tract, as reported in the most recent United States Census Bureau American Community Survey, that meets one of the following criteria:

1. A poverty rate of at least 20 percent;

2. In the case of a low-income community located outside of a metropolitan area, the median family income does not exceed 80 percent of the statewide median family income; or

3. In the case of a low-income community located inside of a metropolitan area, the median family income does not exceed 80 percent of the statewide median family income or 80 percent of the metropolitan median family income, whichever is greater.

(e) "Moderate-income community" means a population census tract, as reported in the most recent United States Census Bureau American Community Survey, in which the median family

income is between 81 and 95 percent of the median family income for the state or metropolitan area.

(f) "Program" means the Healthy Food Financing Initiative established by the department.

(g) "Underserved community" means a distressed urban, suburban, or rural geographic area where a substantial number of residents have low access to a full-service grocery store or supermarket. An area with limited supermarket access must be:

1. A census tract, as determined to be an area with low access by the United States Department of Agriculture, as identified in the Food Access Research Atlas;

2. Identified as a limited supermarket access area as recognized by the Community Development Financial Institutions Fund of the United States Department of Treasury; or

3. Identified as an area with low access to a supermarket or grocery store through a methodology that has been adopted for use by another governmental or philanthropic healthy food initiative.

(2) The department shall establish a program that is comprised of and coordinates the use of federal, state, and private loans or grants, federal tax credits, and other types of financial assistance for the construction, rehabilitation, or expansion of independent grocery stores, supermarkets, and community facilities to increase access to fresh produce and other nutritious food in underserved communities.

(3)(a) The department may contract with one or more

qualified nonprofit organizations or Florida-based federally certified community development financial institutions to administer the program through a public-private partnership. Eligible community development financial institutions and nonprofit organizations must be able to demonstrate:

1. Prior experience in healthy food financing.

2. Support from the Community Development Financial Institutions Fund of the United States Department of Treasury.

3. The ability to successfully manage and operate lending and tax credit programs.

4. The ability to assume full financial risk for loans made under this initiative.

(b) The department shall:

1. Establish program guidelines, raise matching funds, promote the program statewide, evaluate applicants, underwrite and disburse grants and loans, and monitor compliance and impact. The department may contract with a third-party administrator to carry out such duties. The third-party administrator shall report to the department annually.

2. Create eligibility guidelines and provide financing through an application process. Eligible projects must be:

a. Located in an underserved community;

b. Primarily serve low-income or moderate-income communities; and

c. Provide for the construction of new independent grocery stores or supermarkets; the renovation or expansion of,

including infrastructure upgrades to, existing independent grocery stores or supermarkets; or the construction, renovation or expansion of, including infrastructure upgrades to, community facilities to improve the availability and quality of fresh produce and other healthy foods.

3. Report annually to the President of the Senate and the Speaker of the House of Representatives on the projects funded, the geographic distribution of the projects, the costs of the program, and the outcomes, including the number and type of jobs created and health initiatives associated with the program.

(4) A for-profit entity or a not-for-profit entity, including, but not limited to, a sole proprietorship, partnership, limited liability company, corporation, cooperative, nonprofit organization, nonprofit community development entity, university, or governmental entity, may apply for financing. An applicant for financing must:

(a) Demonstrate the capacity to successfully implement the project and the likelihood that the project will be economically self-sustaining;

(b) Demonstrate the ability to repay the loan; and

(c) Agree, as an independent grocery store or supermarket, for at least 5 years, to:

1. Accept Supplemental Nutrition Assistance Program benefits;

2. Apply to accept Special Supplemental Nutrition Program for Women, Infants, and Children benefits and accept such

benefits if approved;

3. Allocate at least 30 percent of food retail space for the sale of perishable foods, which may include fresh or frozen dairy products, fresh produce, and fresh meats, poultry, and fish;

4. Comply with all data collection and reporting requirements established by the department; and

5. Promote the hiring of local residents.

Projects, including, but not limited to, corner stores, bodegas, or other types of nontraditional grocery stores that do not meet the 30-percent minimum in subparagraph 3. can still qualify for funding if such funding will be used for refrigeration, displays, or other one-time capital expenditures to promote the sale of fresh produce and other healthy food.

(5) In determining which qualified projects to finance, the department or third-party administrator shall:

(a) Give preference to local Florida-based grocers or local business owners with experience in grocery stores and to grocers and business owners with a business plan model that includes written documentation of opportunities to purchase from Florida farmers and growers before seeking out-of-state purchases.

(b) Consider the level of need in the area to be served;

(c) Consider the degree to which the project will have a positive economic impact on the underserved community, including

the creation or retention of jobs for local residents; and

(d) Consider other criteria as may be determined by the department.

(6) Financing for projects may be used for the following purposes:

(a) Site acquisition and preparation.

(b) Construction and build-out costs.

(c) Equipment and furnishings.

(d) Workforce training or security.

(e) Predevelopment costs, such as market studies and appraisals.

(f) Energy-efficiency measures.

(g) Working capital for first-time inventory and startup costs.

(h) Other purposes as may be determined by the department or third-party administrator.

(7) The department shall adopt rules to administer this section.

Section 2. The creation of the Healthy Food Financing Initiative program and implementation of this act are contingent upon appropriation by the Legislature.

Section 3. This act shall take effect July 1, 2016.

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 Appropriations Subcommittee
Representative Santiago offered the following:

Amendment (with title amendment)

Remove everything after the enacting clause and insert:

Section 1. Healthy Food Financing Initiative Pilot Program.—

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

(a) "Department" means the Department of Agriculture and Consumer Services.

(b) "Community facility" means a property owned by a nonprofit or for-profit entity or a unit of government in which health and human services are provided and space is offered in a manner that provides increased access to, or delivery or distribution of, food or other agricultural products to encourage public consumption and household purchases of fresh

produce or other healthy food to improve the public health and well-being of low-income children, families, and older adults.

(c) "Independent grocery store or supermarket" means an independently-owned grocery store or supermarket whose parent company does not own more than 40 grocery stores throughout the country based upon ownership conditions as identified in the latest Nielsen TDLinx Supermarket/Supercenter database.

(d) "Low-income community" means a population census tract, as reported in the most recent United States Census Bureau American Community Survey, that meets one of the following criteria:

1. A poverty rate of at least 25 percent;

2. In the case of a low-income community located outside of a metropolitan area, the median family income does not exceed 80 percent of the statewide median family income; or

3. In the case of a low-income community located inside of a metropolitan area, the median family income does not exceed 80 percent of the statewide median family income or 80 percent of the metropolitan median family income, whichever is greater.

(e) "Moderate-income community" means a population census tract, as reported in the most recent United States Census Bureau American Community Survey, in which the median family income is between 81 and 95 percent of the median family income for the state or metropolitan area.

(f) "Pilot program" means the Healthy Food Financing Initiative Pilot Program established by the department.

(g) "Underserved community" means a distressed urban, suburban, or rural geographic area where a substantial number of residents have low access to a full-service grocery store or supermarket. An area with limited supermarket access must be:

1. A census tract, as determined to be an area with low access by the United States Department of Agriculture, as identified in the Food Access Research Atlas;

2. Identified as a limited supermarket access area as recognized by the Community Development Financial Institutions Fund of the United States Department of Treasury; or

3. Identified as an area with low access to a supermarket or grocery store through a methodology that has been adopted for use by another governmental or philanthropic healthy food initiative.

(2) The department shall establish a pilot program that comprises and coordinates the use of federal, state, and private loans or grants, federal tax credits, and other types of financial assistance for the construction, rehabilitation, or expansion of independent grocery stores, supermarkets, and community facilities to increase access to fresh produce and other nutritious food in underserved communities.

(3)(a) The department may contract with one or more qualified nonprofit organizations or Florida-based federally certified community development financial institutions to administer the program through a public-private partnership. Eligible community development financial institutions and

nonprofit organizations must be able to demonstrate:

1. Prior experience in healthy food financing.

2. Support from the Community Development Financial Institutions Fund of the United States Department of Treasury.

3. The ability to successfully manage and operate lending and tax credit programs.

4. The ability to assume full financial risk for loans made under this initiative.

(b) The department shall:

1. Establish program guidelines, raise matching funds, promote the program statewide, evaluate applicants, underwrite and disburse grants and loans, and monitor compliance and impact. The department may contract with a third-party administrator to carry out such duties. The third-party administrator shall report to the department annually.

2. Create eligibility guidelines and provide financing through an application process. Eligible projects must be:

a. Located in an underserved community;

b. Primarily serve low-income or moderate-income communities; and

c. Provide for the construction of new independent grocery stores or supermarkets; the renovation or expansion of, including infrastructure upgrades to, existing independent grocery stores or supermarkets; or the construction, renovation or expansion of, including infrastructure upgrades to, community facilities to improve the availability and quality of fresh

produce and other healthy foods.

3. Report by March 1, 2021 to the President of the Senate and the Speaker of the House of Representatives on the projects funded, the geographic distribution of the projects, the costs of the program, and the outcomes, including the number and type of jobs created and health initiatives associated with the program.

(4) A for-profit entity or a not-for-profit entity, including, but not limited to, a sole proprietorship, partnership, limited liability company, corporation, cooperative, nonprofit organization, nonprofit community development entity, university, or governmental entity, may apply for financing. An applicant for financing must:

(a) Demonstrate the capacity to successfully implement the project and the likelihood that the project will be economically self-sustaining;

(b) Demonstrate the ability to repay the loan; and

(c) Agree, as an independent grocery store or supermarket, for at least 5 years, to:

1. Accept Supplemental Nutrition Assistance Program benefits;

2. Apply to accept Special Supplemental Nutrition Program for Women, Infants, and Children benefits and accept such benefits if approved;

3. Allocate at least 30 percent of food retail space for the sale of perishable foods, which may include fresh or frozen

dairy products, fresh produce, and fresh meats, poultry, and fish;

4. Comply with all data collection and reporting requirements established by the department; and

5. Promote the hiring of local residents.

Projects, including, but not limited to, corner stores, bodegas, or other types of nontraditional grocery stores that do not meet the 30-percent minimum in subparagraph 3. can still qualify for funding if such funding will be used for refrigeration, displays, or other one-time capital expenditures to promote the sale of fresh produce and other healthy food.

(5) In determining which qualified projects to finance, the department or third-party administrator shall:

(a) Give preference to local Florida-based grocers or local business owners with experience in grocery stores and to grocers and business owners with a business plan model that includes written documentation of opportunities to purchase from Florida farmers and growers before seeking out-of-state purchases.

(b) Consider the level of need in the area to be served;

(c) Consider the degree to which the project will have a positive economic impact on the underserved community, including the creation or retention of jobs for local residents; and

(d) Consider other criteria as may be determined by the department.

(6) Financing for projects may be used for the following purposes:

(a) Site acquisition and preparation.

(b) Construction and build-out costs.

(c) Equipment and furnishings.

(d) Workforce training or security.

(e) Predevelopment costs, such as market studies and appraisals.

(f) Energy-efficiency measures.

(g) Working capital for first-time inventory and startup costs.

(h) Other purposes as may be determined by the department or third-party administrator.

(7) The department shall transfer funds received from loan repayments to the General Revenue Fund within 15 days of such repayment.

(8) The department shall adopt rules to administer this section.

(9) This section expires July 1, 2021.

Section 2. For the 2016-2017 fiscal year, the sum of $500,000 in nonrecurring funds from the General Revenue Fund is appropriated to the Department of Agriculture and Consumer Services for the purpose of implementing the provisions of this act.

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

Remove everything before the enacting clause and insert:

A bill to be entitled

An act relating to the Healthy Food Financing Initiative Pilot Program; creating the Healthy Food Financing Initiative Pilot Program; providing definitions; directing the Department of Agriculture and Consumer Services to establish a program to provide grants to construct, rehabilitate, or expand grocery stores and supermarkets in underserved communities in low-income and moderate-income areas; providing program, project, and applicant requirements; authorizing funds to be used for specified purposes; directing the department to submit by March 1, 2021 a report to the Legislature; requiring transfer of loan repayments to the General Revenue Fund; providing a program expiration date; providing an appropriation; providing an effective date.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 285 Natural Gas Fuel Fleet Vehicle Rebate Program
SPONSOR(S): Business & Professions Subcommittee; Ray
TIED BILLS: None. **IDEN./SIM. BILLS:** SB 90

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Business & Professions Subcommittee	13 Y, 0 N, As CS	Whittier	Anstead
2) Agriculture & Natural Resources Appropriations Subcommittee		Lolley	Massengale
3) Regulatory Affairs Committee			

SUMMARY ANALYSIS

In 2013, the Legislature created the Natural Gas Fuel Fleet Vehicle Rebate Program (program) within the Department of Agriculture and Consumer Services (DACS) to "help reduce transportation costs in this state and encourage freight mobility investments that contribute to the economic growth of the state."

The Legislature appropriated $6 million beginning in the 2013-2014 fiscal year and each year thereafter through the 2017-2018 fiscal year from the General Revenue Fund to DACS to award rebates for the following eligible costs:

- The conversion or retrofitting of a diesel- or gasoline-powered motor vehicle to a natural gas fuel-powered motor vehicle or
- The purchase or lease of a natural gas fuel fleet motor vehicle.

Specifically, DACS must award rebates for up to 50 percent of the eligible costs of a natural gas fuel fleet vehicle or bi-fuel natural gas fuel operating system placed into service on or after July 1, 2013. An applicant is eligible to receive a maximum rebate of $25,000 per vehicle up to a total of $250,000 per applicant per fiscal year, on a first-come, first-served basis.

DACS reports the following approximate unexpended balances by fiscal year since the program's inception:

- 2013-2014: $2,128,397,
- 2014-2015: $769,348, and
- 2015-2016: $3,397,406 (at December 1, 2015).

The bill allows any unexpended funds remaining for the fiscal year to be used by DACS to award additional rebates of $25,000 for each vehicle that has not received a rebate under the program, up to an additional $250,000 per applicant. Government applicants are to receive preference on a first-come, first-served basis and remaining funds will be available to eligible commercial applicants on a first-come, first-served basis.

The awarding of any additional rebates will begin in 2017. The provisions of the bill should lower the amount of any unexpended balance, if any, in Fiscal Years 2016-2017 and 2017-2018.

The act takes effect July 1, 2016.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Natural Gas Fuel

During the past several years, exploration has uncovered a supply of natural gas in the United States, resulting in a reduction in the price of natural gas and an increased interest in natural gas-powered vehicles, fuel plants, and refueling infrastructure.

Natural gas is the cleanest of the fossil fuels.[1] The Natural Gas Supply Association points out that, "Pollutants emitted in the United States, particularly from the combustion of fossil fuels, have led to the development of many pressing environmental problems. Natural gas, emitting fewer harmful chemicals into the atmosphere than other fossil fuels, can help to mitigate some of these environmental issues." These concerns include:

- Greenhouse Gas Emissions;
- Smog, Air Quality, and Acid Rain;
- Industry and Electric Generation Emissions; and
- Pollution from the Transportation Sector.[2]

When compared using equivalent units of measure, natural gas is less expensive per gallon than traditional fuels. In July 2015, the U.S. Department of Energy reported the national average prices for the following:

- Gasoline at $2.82 a gallon;
- Diesel at $2.93 a gallon; and
- Compressed natural gas (CNG) for a gasoline gallon equivalent at $2.12.[3]

In 2013, Florida had approximately 32 CNG stations[4] and 61 in 2014.[5] Currently, there are approximately 67 CNG fueling stations in the state.[6]

Natural Gas Fuel Fleet Vehicle Rebate Program

In 2013, the Legislature created the Natural Gas Fuel Fleet Vehicle Rebate Program (program) within the Department of Agriculture and Consumer Services (DACS), the purpose of which was to "help reduce transportation costs in this state and encourage freight mobility investments that contribute to the economic growth of the state."[7]

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[1] Swarthmore College, *Comparison Against Other Fossil Fuels*, Environmental Studies Capstone, 2010, *available at* http://www.swarthmore.edu/environmental-studies-capstone/comparison-against-other-fossil-fuels (last visited Oct. 29, 2015).
[2] NaturalGas.Org, http://www.naturalgas.org/environment/naturalgas/ (last visited Oct. 13, 2015).
[3] United States Department of Energy, *Clean Cities Alternative Fuel Price Report*, July 2015, p. 4, *available at* http://www.afdc.energy.gov/publications/ (last visited Oct. 13, 2015).
[4] Email from Dale Calhoun, Executive Director, Florida Natural Gas Association, RE: CNG Fueling Stations (Mar. 1, 2013).
[5] Isabel Lane, *Florida's natural gas vehicle incentive program creates 200% growth in fueling stations*, BioFuels Digest, (Oct. 6, 2014), *available at* http://www.biofuelsdigest.com/bdigest/2014/10/06/floridas-natural-gas-vehicle-incentive-program-creates-200-growth-in-fueling-stations/.
[6] Email from Dale Calhoun, Executive Director, Florida Natural Gas Association, RE: CNG Fueling Stations (Oct. 29, 2015).
[7] s. 377.810(1), F.S.

Section 377.810, F.S., provides the following pertinent definitions under the program:

- "Conversion costs" means the excess cost associated with retrofitting a diesel- or gasoline-powered motor vehicle to a natural gas fuel-powered motor vehicle.
- "Eligible costs" means the cost of conversion or the incremental cost incurred by an applicant in connection with an investment in the conversion, purchase, or lease lasting at least 5 years, of a natural gas fuel fleet vehicle placed into service on or after July 1, 2013. The term does not include costs for project development, fueling stations, or other fueling infrastructure.
- "Incremental costs" means the excess costs associated with the purchase or lease of a natural gas fuel fleet motor vehicle as compared to an equivalent diesel- or gasoline-powered motor vehicle.
- "Fleet vehicles" means three or more motor vehicles registered in this state and used for commercial business or governmental purposes.
- "Natural gas fuel" means any:
    - Liquefied petroleum gas product,
    - Compressed natural gas product, or
    - Combination thereof used in a motor vehicle as defined in s. 206.01(23), F.S.

  The term includes, but is not limited to, all forms of fuel commonly or commercially known or sold as natural gasoline, butane gas, propane gas, or any other form of liquefied petroleum gas, compressed natural gas, or liquefied natural gas. This term does not include natural gas or liquefied petroleum placed in a separate tank of a motor vehicle for cooking, heating, water heating, or electric generation.[8]

The Legislature appropriated $6 million beginning in the 2013-2014 fiscal year and each year thereafter through the 2017-2018 fiscal year from the General Revenue Fund to DACS to award rebates for the eligible costs of conversion or retrofitting of a diesel- or gasoline-powered motor vehicle to a natural gas fuel-powered motor vehicle or the incremental costs associated with the purchase or lease of a natural gas fuel fleet motor vehicle. Specifically, DACS must award rebates for up to 50 percent of the eligible costs of a natural gas fuel fleet vehicle or bi-fuel natural gas fuel operating system placed into service on or after July 1, 2013. An applicant is eligible to receive a maximum rebate of $25,000 per vehicle up to a total of $250,000 per applicant per fiscal year, on a first-come, first-served basis. Forty percent of the annual allocation must be reserved for governmental applicants and 60 percent for commercial applicants.[9]

The law requires DACS to determine and publish on its website, on an ongoing basis, the amount of available funding for rebates remaining in each fiscal year[10] and to provide an annual assessment of the use of the rebate program during the previous year to the Governor, the President of the Senate, the Speaker of the House of Representatives, and the Office of Program Policy Analysis and Government Accountability (OPPAGA) by October 1. The law also requires OPPAGA to release a report reviewing the rebate program, including an analysis of the economic benefits resulting to the state, to the Governor, the President of the Senate, and the Speaker of the House of Representatives by January 31, 2016.[11]

Effect of Proposed Changes

The bill allows any unexpended funds each fiscal year to be used by DACS to award additional rebates of $25,000 for each vehicle up to an additional $250,000 per applicant. Between June 1 and June 30 of each fiscal year, eligible applicants may apply for additional funds for vehicles that have not already received a rebate. Additional applications will be held and reviewed after all applications from applicants who have not reached the maximum rebate are received and reviewed.

[8] s. 377.810(2), F.S.
[9] s. 377.810(3) and (4)(b), F.S.
[10] s. 377.810(6), F.S.
[11] s. 377.810(7) and (8), F.S.

The additional rebates will be awarded after June 30 on a first-come, first-served basis, determined by the date the application is received. Governmental applicants have preference and the remaining unexpended funds may be used by commercial applicants. The 40/60 percentage reservation for government and commercial applicants will not apply to the awarding of additional rebates. The awarding of additional rebates will begin at the end of Fiscal Year 2016-2017.

The bill also removes an obsolete rulemaking deadline and makes technical corrections to two definitions.

B. SECTION DIRECTORY:

Section 1. Amends s. 377.810, F.S.; authorizing the Department of Agriculture and Consumer Services to award additional rebates under the Natural Gas Fuel Fleet Vehicle Rebate Program.

Section 2. Provides an effective date of July 1, 2016.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   The bill allows the unexpended balance remaining in the program for the fiscal year to be used by DACS to award additional rebates of $25,000 for each vehicle up to an additional $250,000 per applicant.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   The bill authorizes eligible governmental applicants to have preference to receive unencumbered funds for an additional maximum rebate of $25,000 per vehicle up to a total of $250,000 on a first-come, first-served basis.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may result in increased savings for commercial entities using vehicles powered by natural gas fuel; an increase in conversions of vehicle fleets from being powered by traditional fuels to natural gas fuel; and an increase in natural gas fueling infrastructure across the state to meet the additional demand created by natural gas-powered vehicles.

D. FISCAL COMMENTS:

DACS reports the following unexpended balances by fiscal year since the inception of the program:

- 2013-2014: $2,128,397,
- 2014-2015: $769,348, and
- 2015-2016: $3,397,406.[12]

[12] Florida Department of Agriculture and Consumer Services, Office of Energy, http://www.freshfromflorida.com/Divisions-Offices/Energy/Natural-Gas-Fuel-Fleet-Vehicle-Rebate (last visited Dec. 1, 2015).

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:

Current rulemaking authority for the program is provided in s. 377.810(5), F.S. DACS will need to adopt rules to implement the awarding of additional rebates. The bill removes an obsolete deadline in this subsection.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Beginning on line 48, the bill specifies that all of *unexpended* balance remaining for the fiscal year may be used by the department to award additional rebates. However, section 216.301, F.S., requires that "any appropriation not identified as an incurred obligation effective June 30th shall revert to the fund from which it was appropriated and shall be available for reappropriation by the Legislature." An appropriation may be obligated at June 30, but not yet expended. Obligations not paid at June 30 are paid in the following fiscal year. Unobligated or *unencumbered* appropriations are what revert.

Additionally, s. 216.351, F.S., specifies that subsequent inconsistent laws supersede chapter 216, "only to the extent that they do so by express reference to this section." If it becomes law, the bill clearly authorizes DACS to award rebates and, as subsequent enactment by the Legislature, would appear to be an exception to the requirements of ss. 216.301 and 216.351, F.S.

However, consideration should be given to amending the sentence beginning at line 48 to read: "Notwithstanding ss. 216.301 and 216.351, all of the unencumbered balance remaining after June 30 of each fiscal year shall not revert and may be used by the department to award additional rebates described in this section."

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On October 21, 2015, the Business & Professions Subcommittee considered and adopted a strike-all amendment and reported the bill favorably as a committee substitute. The amendment:

- Clarifies the process that will be used by DACS to determine the order of preference for awarding the additional rebates.
- Removes an obsolete rulemaking date and makes technical corrections to two statutory definitions.

This staff analysis is drafted to reflect the committee substitute.

A bill to be entitled

An act relating to the natural gas fuel fleet vehicle rebate program; amending s. 377.810, F.S.; revising definitions; authorizing the Department of Agriculture and Consumer Services to receive additional rebate applications from certain applicants; authorizing any remaining unencumbered funds to be used by the department to award additional rebates; providing for rulemaking; providing an effective date.

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

Section 1. Paragraphs (c) and (e) of subsection (2) and subsections (3) and (5) of section 377.810, Florida Statutes, are amended to read:

377.810 Natural gas fuel fleet vehicle rebate program.—

(2) DEFINITIONS.—For purposes of this section, the term:

(c) "Eligible costs" means the cost of conversion or the incremental cost incurred by an applicant in connection with an investment in the conversion, purchase, or lease lasting at least 5 years, of a natural gas <u>fuel</u> fleet vehicle placed into service on or after July 1, 2013. The term does not include costs for project development, fueling stations, or other fueling infrastructure.

(e) "Incremental costs" means the excess costs associated with the purchase or lease of a natural gas fuel <u>fleet</u> motor

vehicle as compared to an equivalent diesel- or gasoline-powered motor vehicle.

(3) NATURAL GAS FUEL FLEET VEHICLE REBATE.—The department shall award rebates for eligible costs as defined in this section. Forty percent of the annual allocation shall be reserved for governmental applicants, with the remaining funds allocated for commercial applicants. A rebate may not exceed 50 percent of the eligible costs of a natural gas fuel fleet vehicle with a dedicated or bi-fuel natural gas fuel operating system placed into service on or after July 1, 2013. An applicant is eligible to receive a maximum rebate of $25,000 per vehicle up to a total of $250,000 per fiscal year. Between June 1 and June 30, applicants that have received the maximum rebate of $250,000 during the fiscal year may submit additional applications in accordance with department rules. Additional applications shall be held and reviewed after all program applications from applicants that have not reached the maximum rebate of $250,000 per fiscal year are received and reviewed. Those applicants may apply for additional funds for vehicles during the fiscal year that did not receive a rebate. An applicant is eligible to receive an additional maximum rebate of $25,000 per vehicle up to a total of $250,000. All of the unexpended balance remaining for the fiscal year may be used by the department to award the additional rebates described in this section. Upon conclusion of the June application period, the department shall determine the rebate eligibility of each

applicant in accordance with this section and department rules. Eligible governmental applicants shall have preference and will receive funding on a first-come, first-served basis according to the date the application is received. Any remaining unencumbered funds shall be awarded to eligible commercial applicants on a first-come, first-served basis according to the date the application is received. All natural gas fuel fleet vehicles eligible for the rebate must comply with applicable United States Environmental Protection Agency emission standards.

(5) RULES.—The department shall adopt rules to implement and administer this section ~~by December 31, 2013~~, including rules relating to the forms required to claim a rebate under this section, the required documentation and basis for establishing eligibility for a rebate, procedures and guidelines for claiming a rebate, and the collection of economic impact data from applicants.

Section 2. This act shall take effect July 1, 2016.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 447 Local Government Environmental Financing
SPONSOR(S): Agriculture & Natural Resources Subcommittee; Raschein
TIED BILLS: **IDEN./SIM. BILLS:** SB 770

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Agriculture & Natural Resources Subcommittee	13 Y, 0 N, As CS	Moore	Harrington
2) Agriculture & Natural Resources Appropriations Subcommittee		Helpling	Massengale
3) State Affairs Committee			

SUMMARY ANALYSIS

The bill revises various policies relating to local government environmental financing, including, but not limited to:

- Requiring the Department of Environmental Protection (DEP) to annually consider the recommendations of the Department of Economic Opportunity (DEO) relating to purchases of land within an area of critical state concern or lands outside an area of critical state concern that directly impact an area of critical state concern, which may include lands used to preserve and protect water supply, and to make recommendations to the Board of Trustees of the Internal Improvement Trust Fund (Board) with respect to the purchase of fee or any lesser interest in specified types of lands.
- Allowing local governments and special districts within an area of critical state concern to make recommendations to the Board for additional land purchases that were not included in DEO's recommendations.
- Authorizing a land authority to acquire and dispose of real and personal property or any interest therein when the acquisition is necessary or appropriate to prevent or satisfy private property rights claims resulting from limitations imposed by the designation of an area of critical state concern, and to contribute funds to DEP for the purchase of lands by DEP. The acquisition or contribution must not be used to improve public transportation facilities or otherwise increase road capacity to reduce hurricane evacuation clearance times.
- Modifying legislative intent provisions to specify that it is the intent of the Legislature to protect and improve the nearshore water quality of the Florida Keys through federal, state, and local funding of water quality improvement projects, including the construction and operation of wastewater management facilities.
- Providing additional principles for guiding development within the Florida Keys Area of Critical State Concern.
- Expanding the purposes for which the local government infrastructure surtax can be used to include acquiring any interest in land for public recreation, conservation, or protection of natural resources or to prevent or satisfy private property rights claims resulting from limitations imposed by the designation of an area of critical state concern.
- Extending the timeframe in which Everglades restoration bonds may be issued and increasing the maturation date of Everglades restoration bonds.
- Expanding the uses for Everglades restoration bonds to include projects that protect, restore or enhance nearshore water quality and fisheries, and protect water resources available to the Florida Keys.
- Providing a procedure to dispose of certain lands purchased with Everglades restoration bond proceeds.
- Providing a 10-year appropriation of at least $5 million annually through the Florida Forever Act for land acquisition within the Florida Keys Area of Critical State Concern.
- Providing for a 10-year appropriation of at least $20 million annually through the issuance of Everglades restoration bonds or through appropriation to DEP to be distributed to local governments in the Florida Keys Area of Critical State Concern.

The bill has a significant negative fiscal impact on the state, a positive fiscal impact on local governments in the Florida Keys Area of Critical State Concern, and no impact on the private sector.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Areas of Critical State Concern

The Governor and Cabinet, sitting as the Administration Commission,[1] are authorized to designate certain areas within the state that contain resources of statewide significance as areas of critical state concern.[2] An area of critical state concern may be designated for an area:

- Containing, or having a significant impact upon, environmental or natural resources of regional or statewide importance, including, state or federal parks, forests, wildlife refuges, wilderness areas, aquatic preserves, major rivers and estuaries, state environmentally endangered lands, Outstanding Florida Waters, and aquifer recharge areas, the uncontrolled private or public development of which would cause substantial deterioration of such resources;[3]
- Containing, or having a significant impact upon, historical or archaeological resources, sites, or statutorily defined historical or archaeological districts, the private or public development of which would cause substantial deterioration or complete loss of such resources, sites, or districts;[4] or
- Having a significant impact upon, or being significantly impacted by, an existing or proposed major public facility or other area of major public investment including, highways, ports, airports, energy facilities, and water management projects.[5]

The designated areas of critical state concern in the state are: the Big Cypress Area,[6] the Green Swamp Area,[7] the Florida Keys Area, the City of Key West Area,[8] and the Apalachicola Bay Area.[9]

The Florida Keys Area of Critical State Concern

Present Situation

In 1975, the Florida Keys were designated as an area of critical state concern. The designation includes the municipalities of Key West,[10] Islamorada, Marathon, Layton and Key Colony Beach, and unincorporated Monroe County.[11] The designation is intended to:

- Establish a land use management system that protects the natural environment of the Florida Keys; conserves and promotes the community character of the Florida Keys; promotes orderly and balanced growth in accordance with the capacity of available and planned public facilities and services; and promotes and supports a diverse and sound economic base;[12]
- Provide affordable housing in close proximity to places of employment in the Florida Keys;[13]

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[1] *See* ss. 380.031(1) and 14.202, F.S.
[2] Section 380.05, F.S.
[3] Section 380.05(2)(a), F.S.
[4] Section 380.05(2)(b), F.S.
[5] Section 380.05(2)(c), F.S.
[6] Section 380.055, F.S.
[7] Section 380.0551, F.S.
[8] Section 380.0552, F.S.
[9] Section 380.0555, F.S.
[10] The City of Key West challenged the designation as a critical area and after litigation in 1984 was given its own area of critical state concern designation. *See 2013 Florida Keys Area of Critical State Concern Annual Report* available at http://www.floridajobs.org/docs/default-source/2015-community-development/2015-cmty-plan-acsc/2013annualreport.pdf?sfvrsn=2.
[11] Section 380.0552, F.S.; *2013 Florida Keys Area of Critical State Concern Annual Report* available at http://www.floridajobs.org/docs/default-source/2015-community-development/2015-cmty-plan-acsc/2013annualreport.pdf?sfvrsn=2.
[12] Section 380.0552(2)(a)-(c) and (e), F.S.
[13] Section 380.0552(2)(d), F.S.

- Protect the constitutional rights of property owners to own, use, and dispose of their real property;[14]
- Promote coordination and efficiency among governmental agencies that have permitting jurisdiction over land use activities in the Florida Keys;[15]
- Promote an appropriate land acquisition and protection strategy for environmentally sensitive lands within the Florida Keys;[16]
- Protect and improve the nearshore water quality of the Florida Keys through the construction and operation of wastewater management facilities, as applicable;[17] and
- Ensure that the population of the Florida Keys can be safely evacuated.[18]

State, regional and local governments in the Florida Keys Area of Critical State Concern are required to coordinate development plans and conduct programs and activities consistent with principles for guiding development that:

- Strengthen local government capabilities for managing land use and development so that local government is able to achieve these objectives without continuing the area of critical state concern designation;[19]
- Protect shoreline and marine resources, including mangroves, coral reef formations, seagrass beds, wetlands, fish and wildlife, and their habitat;[20]
- Protect upland resources, tropical biological communities, freshwater wetlands, native tropical vegetation (e.g., hardwood hammocks and pinelands), dune ridges and beaches, wildlife, and their habitat;[21]
- Ensure the maximum well-being of the Florida Keys and its citizens through sound economic development;[22]
- Limit the adverse impacts of development on the quality of water throughout the Florida Keys;[23]
- Enhance natural scenic resources, promoting the aesthetic benefits of the natural environment, and ensuring that development is compatible with the unique historic character of the Florida Keys;[24]
- Protect the historical heritage of the Florida Keys; [25]
- Protect the value, efficiency, cost-effectiveness, and amortized life of existing and proposed major public investments, including:
    - The Florida Keys Aqueduct and water supply facilities;
    - Sewage collection, treatment, and disposal facilities;
    - Solid waste treatment, collection, and disposal facilities;
    - Key West Naval Air Station and other military facilities;
    - Transportation facilities;
    - Federal parks, wildlife refuges, and marine sanctuaries;
    - State parks, recreation facilities, aquatic preserves, and other publicly owned properties;
    - City electric service and the Florida Keys Electric Co-op; and
    - Other utilities, as appropriate;[26]
- Protect and improve water quality by providing for the construction, operation, maintenance, and replacement of stormwater management facilities; central sewage collection; treatment and

[14] Section 380.0552(2)(f), F.S.
[15] Section 380.0552(2)(g), F.S.
[16] Section 380.0552(2)(h), F.S.
[17] Section 380.0552(2)(i), F.S.
[18] Section 380.0552(2)(j), F.S.
[19] Section 380.0552(7)(a), F.S.
[20] Section 380.0552(7)(b), F.S.
[21] Section 380.0552(7)(c), F.S.
[22] Section 380.0552(7)(d), F.S.
[23] Section 380.0552(7)(e), F.S.
[24] Section 380.0552(7)(f), F.S.
[25] Section 380.0552(7)(g), F.S.
[26] Section 380.0552(7)(h), F.S.

disposal facilities; and the installation and proper operation and maintenance of onsite sewage treatment and disposal systems;[27]

- Ensure the improvement of nearshore water quality by requiring the construction and operation of wastewater management facilities, as applicable, and by directing growth to areas served by central wastewater treatment facilities through permit allocation systems;[28]
- Limit the adverse impacts of public investments on the environmental resources of the Florida Keys;[29]
- Make available adequate affordable housing for all sectors of the population of the Florida Keys;[30]
- Provide adequate alternatives for the protection of public safety and welfare in the event of a natural or manmade disaster and for a postdisaster reconstruction plan;[31] and
- Protect the public health, safety, and welfare of the citizens of the Florida Keys and maintaining the Florida Keys as a unique Florida resource.[32]

Section 380.0552(9)(a), F.S., provides that a land development regulation or element of a local comprehensive plan in the Florida Keys Area may be enacted, amended, or rescinded by a local government, but the enactment, amendment, or rescission becomes effective only upon approval by the state land planning agency[33] (DEO). Amendments to local comprehensive plans must also be reviewed for compliance with the following:

- Construction schedules and detailed capital financing plans for wastewater management improvements in the annually adopted capital improvements element, and standards for the construction of wastewater treatment and disposal facilities or collection systems that meet or exceed criteria for wastewater treatment and disposal facilities or onsite sewage treatment and disposal systems; and
- Goals, objectives, and policies to protect public safety and welfare in the event of a natural disaster by maintaining a hurricane evacuation clearance time for permanent residents of no more than 24 hours. The hurricane evacuation clearance time must be determined by a hurricane evacuation study conducted in accordance with a professionally accepted methodology and approved by DEO.[34]

In 2011, the Administration Commission, directed DEO and the Division of Emergency Management to enter into a Memorandum of Understanding (MOU) with Monroe County, Village of Islamorada, and the cities of Marathon, Key West, Key Colony Beach, and Layton regarding hurricane evacuation modeling.[35] The MOU is the basis for an analysis on the maximum build-out capacity of the Florida Keys while maintaining the ability of the permanent population to evacuate within 24 hours.[36] Based on the MOU that stipulates the input variables and assumptions, DEO has determined that an additional 3,550 residential building allocations could be constructed while still maintaining the 24-hour hurricane evacuation clearance time.[37] Thus, once 3,550 additional residential units are constructed, the evacuation time for the Florida Keys will be at the 24-hour mark. Unless the highway is widened or

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[27] Section 380.0552(7)(i), F.S.
[28] Section 380.0552(7)(j), F.S.
[29] Section 380.0552(7)(k), F.S.
[30] Section 380.0552(7)(l), F.S.
[31] Section 380.0552(7)(m), F.S.
[32] Section 380.0552(7)(n), F.S.
[33] Section 380.031(18), F.S., defines the "state land planning agency" as the Department of Economic Opportunity.
[34] Section 380.0552(9)(a)1. and 2., F.S.
[35] DEO Florida Keys Hurricane Evacuation available at http://www.floridajobs.org/community-planning-and-development/programs/community-planning-table-of-contents/areas-of-critical-state-concern/city-of-key-west-and-the-florida-keys/florida-keys-hurricane-evacuation.
[36] *Id.*
[37] *2013 Florida Keys Area of Critical State Concern Annual Report* available at http://www.floridajobs.org/docs/default-source/2015-community-development/2015-cmty-plan-acsc/2013annualreport.pdf?sfvrsn=2.

s. 380.0552(9)(a)2., F.S., is amended to allow additional hurricane evacuation times, no new residential permits could be issued for the area.[38]

Effect of Proposed Changes

The bill amends s. 380.0552(2)(i), F.S., relating to the Florida Keys Area of Critical State Concern, providing that it is the intent of the Legislature to protect and improve the nearshore water quality of the Florida Keys through federal, state, and local funding of water quality improvement projects, including the construction and operation of wastewater management facilities.

The bill also amends s. 380.0552(7)(i), F.S., to provide additional principles for guiding development within the Florida Keys Area of Critical State Concern. Development plans must be consistent with the principle of protecting and improving water quality by providing for the construction, operation, maintenance, and replacement of other water quality and water supply projects, including direct and indirect potable reuse.

Purchase of Lands in Areas of Critical State Concern

Present Situation

Within 45 days of being designated as an area of critical state concern, the Department of Environmental Protection (DEP) must consider the recommendations of DEO relating to the purchase of lands within the proposed area and must make recommendations to the Board of Trustees of the Internal Improvement Trust Fund[39] (Board) with respect to the purchase of fee or any lesser interest in any lands situated in an area of critical state concern as environmentally endangered lands or outdoor recreation lands.[40] DEP, and a land authority within an area of critical state concern,[41] may make recommendations with respect to additional purchases which were not included in DEO's recommendations.

In carrying out the purposes of the areas of critical state concern program, the land authority is also authorized to:

- Acquire and dispose of real and personal property or any interest therein when the acquisition is necessary or appropriate to protect the natural environment, provide public access or public recreational facilities, preserve wildlife habitat areas, provide affordable housing to families whose income does not exceed 160 percent of the median family income for the area, or provide access to management of acquired lands;
- Acquire interests in land by means of land exchanges;
- Contribute tourist impact tax revenues received to its most populous municipality or the housing authority of such municipality, at the request of the commission or council of such municipality, for the construction, redevelopment, or preservation of affordable housing in an area of critical state concern within such municipality; and
- Enter into all alternatives to the acquisition of fee interests in land, including, but not limited to, the acquisition of easements, development rights, life estates, leases, and leaseback arrangements.[42]

[38] *Id.*
[39] Section 259.03(2), F.S.
[40] Section 259.045, F.S.
[41] Section 380.0663, F.S., provides that each county in which one or more areas of critical state concern are located is authorized to create, by ordinance, a public body corporate and politic, to be known as a land authority.
[42] Section 380.0666(3), F.S.

Effect of Proposed Changes

The bill amends s. 259.045, F.S., to require DEP to annually consider the recommendations of DEO relating to purchases of land within an area of critical state concern or lands outside an area of critical state concern that directly impact an area of critical state concern. These may include lands used to preserve and protect water supply, and to make recommendations to the Board with respect to the purchase of fee or any lesser interest in lands that are:

- Environmentally endangered lands;
- Outdoor recreation lands;
- Lands that conserve sensitive habitat;
- Lands that protect, restore, or enhance nearshore water quality and fisheries;
- Lands used to protect and enhance water supply to the Florida Keys, including alternative water supplies such as reverse osmosis and reclaimed water systems; or
- Lands used to prevent or satisfy private property rights claims resulting from limitations imposed by the designation of an area of critical state concern.

The bill also allows local governments and special districts within an area of critical state concern to make recommendations to the Board for additional purchases that were not included in DEO's recommendations.

The bill amends s. 380.0666(3), F.S., to authorize a land authority to acquire and dispose of real and personal property or any interest therein when the acquisition is necessary or appropriate to prevent or satisfy private property rights claims resulting from limitations imposed by the designation of an area of critical state concern. The bill also allows a land authority to contribute funds to DEP for the purchase of lands by DEP. The bill provides that an acquisition or contribution is not to be used to improve public transportation facilities or otherwise increase road capacity to reduce hurricane evacuation clearance times.

Discretionary Sales Surtaxes

Present Situation

There are eight discretionary sales surtaxes that serve as potential revenue sources for county and municipal governments and school districts.[43] They are:

- The charter county and regional transportation system surtax;[44]
- The local government infrastructure surtax;[45]
- The small county surtax;[46]
- The indigent care and trauma center surtax;[47]
- The county public hospital surtax;[48]
- The school capital outlay surtax;[49]
- The voter-approved indigent care surtax;[50] and
- The emergency fire rescue services and facilities surtax.[51]

[43] Section 212.055, F.S.
[44] Section 212.055(1), F.S.
[45] Section 212.055(2), F.S.
[46] Section 212.055(3), F.S.
[47] Section 212.055(4), F.S.
[48] Section 212.055(5), F.S.
[49] Section 212.055(6), F.S.
[50] Section 212.055(7), F.S.
[51] Section 212.055(8), F.S.

The Local Government Infrastructure Surtax

A county may levy a discretionary sales surtax of 0.5 percent or 1 percent pursuant to ordinance enacted by a majority of the members of the county and approved by a majority of the electors of the county voting in a referendum on the surtax.[52] If municipalities representing a majority of the county's population adopt uniform resolutions establishing the rate of the surtax and calling for a referendum on the surtax, the levy of the surtax must be placed on the ballot and will take effect if approved by a majority of the electors of the county voting on the surtax.[53]

Surtax proceeds and any accrued interest must be expended by the school district within the county and municipalities within the county, or, in the case of a negotiated joint county agreement, within another county to:

- Finance, plan, and construct infrastructure;
- Acquire land for public recreation, conservation, or protection of natural resources;
- Provide loans, grants, or rebates to residential or commercial property owners who make energy efficiency improvements to their residential or commercial property, if a local government ordinance authorizing such use is approved by referendum; or
- Finance the closure of county-owned or municipally owned solid waste landfills that have been closed or are required to be closed by order of DEP.[54]

Proceeds and any interest may not be used for operational expenses of infrastructure, except that a county that has a population of fewer than 75,000 and that is required to close a landfill may use the proceeds or interest for long-term maintenance costs associated with landfill closure.[55]

For purposes of the local government infrastructure surtax, the term "infrastructure" means:

- Any fixed capital expenditure or fixed capital outlay associated with the construction, reconstruction, or improvement of public facilities that have a life expectancy of 5 or more years and any related land acquisition, land improvement, design, and engineering costs;[56]
- A fire department vehicle, an emergency medical service vehicle, a sheriff's office vehicle, a police department vehicle, or any other vehicle, and the equipment necessary to outfit the vehicle for its official use or equipment that has a life expectancy of at least 5 years;[57]
- Any expenditure for the construction, lease, or maintenance of, or provision of utilities or security for, facilities;[58]
- Any fixed capital expenditure or fixed capital outlay associated with the improvement of private facilities that have a life expectancy of 5 or more years and that the owner agrees to make available for use on a temporary basis as needed by a local government as a public emergency shelter or a staging area for emergency response equipment during an emergency officially declared by the state or by the local government;[59] or
- Any land acquisition expenditure for a residential housing project in which at least 30 percent of the units are affordable to individuals or families whose total annual household income does not exceed 120 percent of the area median income adjusted for household size, if the land is owned by a local government or by a special district that enters into a written agreement with the local government to provide such housing.[60]

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[52] Section 212.055(2)(a)1., F.S.
[53] *Id.*
[54] Section 212.055(2)(d), F.S.
[55] *Id.*
[56] Section 212.055(2)(d)1.a., F.S.
[57] Section 212.055(2)(d)1.b., F.S.
[58] Section 212.055(2)(d)1.c., F.S.
[59] Section 212.055(2)(d)1.d., F.S.
[60] Section 212.055(2)(d)1.e., F.S.

Effect of Proposed Changes

The bill amends s. 212.055(2)(d), F.S., to expand the purposes for which proceeds and accrued interest from the local government infrastructure surtax can be used to include acquiring *any interest* in land for public recreation, conservation, or protection of natural resources or to prevent or satisfy private property rights claims resulting from limitations imposed by the designation of an area of critical state concern.

The bill amends the definition of "infrastructure" in s. 212.055(2)(d)1.a., F.S., to include any fixed capital expenditure or capital outlay associated with the construction, reconstruction, or improvement of public facilities that have a life expectancy of 5 or more years, including all other professional and related costs required to bring public facilities into service. By including "all other professional and related costs" the bill expands the array of costs that can be paid from this surtax. Such an expansion may include costs associated with land acquisition or attorney fees among other related costs.

The bill also defines the term "public facilities" to mean facilities as defined in three other sections of law, regardless of whether the facilities are owned by the local taxing authority or another governmental entity. The three sections of law are:

- Section 163.3164(38), F.S., which defines the term "public facilities" as major capital improvements, including transportation, sanitary sewer, solid waste, drainage, potable water, educational, parks and recreational facilities;
- Section 163.3221(13), F.S., which defines the term "public facilities" as major capital improvements, including transportation, sanitary sewer, solid waste, drainage, potable water, educational, parks and recreational, and health systems and facilities; or
- Section 189.012(5), F.S., which defines the term "public facilities" as major capital improvements, including transportation facilities, sanitary sewer facilities, solid waste facilities, water management and control facilities, potable water facilities, alternative water systems, educational facilities, parks and recreational facilities, health systems and facilities, and, except for spoil disposal by those ports listed in s. 311.09(1), F.S., spoil disposal sites for maintenance dredging in waters of the state.

Everglades Restoration Bonds

Present Situation

Everglades restoration bonds are issued to finance or refinance the cost of acquisition and improvement of land, water areas, and related property interests and resources for the purpose of implementing the Comprehensive Everglades Restoration Plan,[61] the Lake Okeechobee Watershed Protection Plan,[62] the Caloosahatchee River Watershed Protection Plan,[63] the St. Lucie River Watershed Protection Plan,[64] and the Florida Keys Area of Critical State Concern[65] protection program to restore and conserve natural systems through the implementation of water management projects, including wastewater management projects identified in the Keys Wastewater Plan[66].[67]

Everglades restoration bonds, except refunding bonds, may only be issued in Fiscal Years 2002-2003 through 2019-2020, and may not be issued in an amount exceeding $100 million per fiscal year, unless:

[61] Section 373.470, F.S.
[62] Section 373.4595, F.S.
[63] *Id.*
[64] *Id.*
[65] Sections 380.05 and 380.0552, F.S.
[66] *Keys Wastewater Plan*, available at http://www.monroecounty-fl.gov/DocumentView.aspx?DID=478.
[67] Section 215.619(1), F.S.

- DEP requests additional amounts to achieve cost savings or accelerate the purchase of land;[68] or
- The Legislature authorizes an additional amount of bonds not to exceed $200 million, limited to $50 million per fiscal year, to fund the Florida Keys Area of Critical State Concern protection program. Proceeds from the bonds must be managed by DEP for the purpose of entering into financial assistance agreements with local governments located in the Florida Keys Area of Critical State Concern to finance or refinance the cost of constructing sewage collection, treatment, and disposal facilities.[69]

The Legislature authorized the issuance of $50 million in Everglades restoration bonds in Fiscal Year 2012-2013 and Fiscal Year 2014-2015 to fund wastewater treatment efforts in the Florida Keys.[70]

The duration of Everglades restoration bonds may not exceed 20 annual maturities and must mature by December 31, 2040.[71]

Effect of Proposed Changes

The bill amends s. 215.619(1), F.S., to provide that the City of Key West Area of Critical State Concern may receive Everglades restoration bonds and adds certain other projects for which Everglades restoration bonds may be issued to include projects that protect, restore, or enhance nearshore water quality and fisheries, such as stormwater or canal restoration projects, projects to protect water resources available to the Florida Keys, including alternative water systems such as reverse osmosis and reclaimed water systems.

The bill amends s. 215.619(1)(a), F.S., regarding the timeframe in which Everglades restoration bonds may be issued, extending the timeframe from Fiscal Year 2019-2020 to Fiscal Year 2026-2027.

The bill amends s. 215.619(1)(a)2., F.S., regarding the conditions under which Everglades restoration bonds may be issued in an amount exceeding $100 million per fiscal year. The bill provides that beginning in Fiscal Year 2016-2017 bonds may not be issued in excess of $100 million per fiscal year unless the Legislature authorizes an additional amount not to exceed $200 million, limited to $20 million per fiscal year to fund the Florida Keys Area of Critical State Concern protection program and the City of Key West Area of Critical State Concern. The bill provides that if $20 million in bonds are not authorized pursuant to this section, $20 million must be appropriated to DEP to be distributed to local governments in the Florida Keys Area of Critical State Concern and the City of Key West Area of Critical State Concern for specified projects.

The bill also provides that proceeds from the bonds may be used to finance or refinance the cost of building projects that protect, restore, or enhance nearshore water quality and fisheries, such as stormwater or canal restoration projects and projects to protect water resources available to the Florida Keys, including alternative water supplies such as reverse osmosis and reclaimed water systems.

The bill amends s. 215.619(1)(b), F.S., regarding the maturation date of Everglades restoration bonds, increasing the maturation date from December 31, 2040, to December 31, 2047.

The bill also creates s. 215.619(7), F.S., to address certain surplused lands purchased using bond proceeds within the Florida Keys Area of Critical State Concern, the City of Key West Area of Critical

[68] Section 215.619(1)(a)1., F.S.
[69] Section 215.619(1)(a)2., F.S.
[70] DEP's analysis of HB 447, on file with the Agriculture & Natural Resources Subcommittee; *2013 Florida Keys Area of Critical State Concern Annual Report* available at http://www.floridajobs.org/docs/default-source/2015-community-development/2015-cmty-plan-acsc/2013annualreport.pdf?sfvrsn=2.
[71] Section 215.619(1)(b), F.S.

State Concern, or outside of the Florida Keys Area of Critical State Concern.[72] The bill provides that if the South Florida Water Management District and DEP determine that lands purchased using bond proceeds within the Florida Keys Area of Critical State Concern, the City of Key West Area of Critical State Concern, or outside the Florida Keys Area of Critical State Concern were purchased to preserve and protect the potable water supply to the Florida Keys and are no longer needed for the purpose for which they were purchased, the entity owning the lands may dispose of them. However, before the lands can be disposed of, each local government within whose boundaries a portion of the land lies must agree to the disposal of lands within its boundaries and must be offered the first right to purchase.[73]

The Florida Forever Act

Present Situation

The Florida Forever Act is a land acquisition program to conserve the state's natural resources and cultural heritage.[74] The proceeds of cash payments or bonds used under the Florida Forever Act are deposited into the Florida Forever Trust Fund and are distributed by DEP as follows:

- Thirty percent to DEP for the acquisition of lands and capital project expenditures necessary to implement water management districts' priority lists;[75]
- Thirty-five percent to DEP for the acquisition of lands and capital project expenditures. Priority should be given to those acquisitions which achieve a combination of conservation goals, including protecting Florida's water resources and natural groundwater recharge;[76]
- Twenty-one percent to DEP for use by the Florida Communities Trust, and grants to local governments or nonprofit environmental organizations that are tax-exempt under s. 501(c)(3) of the United States Internal Revenue Code for the acquisition of community-based projects, urban open spaces, parks, and greenways to implement local government comprehensive plans;[77]
- Two percent to DEP for grants pursuant to the Florida Recreation Development Assistance Program;[78]
- One and five-tenths percent to DEP for the purchase of inholdings and additions to state parks and for capital project expenditures;[79]
- One and five-tenths percent to the Florida Forest Service of the Department of Agriculture and Consumer Services (DACS) to fund the acquisition of state forest inholdings and additions, the implementation of reforestation plans or sustainable forestry management practices, and for capital project expenditures;[80]
- One and five-tenths percent to the Fish and Wildlife Conservation Commission to fund the acquisition of inholdings and additions to lands managed by the commission which are important to the conservation of fish and wildlife and for capital project expenditures;[81]
- One and five-tenths percent to DEP for the Florida Greenways and Trails Program, to acquire greenways and trails or greenways and trail systems, including, but not limited to, abandoned railroad rights-of-way and the Florida National Scenic Trail and for capital project expenditures;[82]

[72] Section 215.619(6), F.S., provides a similar process for surplused lands within the Northern Everglades and Estuaries Protection Program.
[73] Generally, procedures for the surplus of lands do not require local governments to agree prior to surplus. *See* ss. 253.111, 215.619, and 253.034, F.S.
[74] Section 259.105, F.S.
[75] Section 259.105(3)(a), F.S.
[76] Section 259.105(3)(b), F.S.
[77] Section 259.105(3)(c), F.S.
[78] Section 259.105(3)(d), F.S.
[79] Section 259.105(3)(e), F.S.
[80] Section 259.105(3)(f), F.S.
[81] Section 259.105(3)(g), F.S.
[82] Section 259.105(3)(h), F.S.

- Three and five-tenths percent to DACS for the acquisition of agricultural lands, through perpetual conservation easements and other perpetual less-than-fee techniques, which will achieve the objectives of Florida Forever;[83] and
- Two and five-tenths percent to DEP for the acquisition of land and capital project expenditures necessary to implement the Stan Mayfield Working Waterfronts Program within the Florida Communities Trust. [84]

Effect of Proposed Changes

The bill amends s. 259.105(3)(b), F.S., to provide that, beginning in Fiscal Year 2016-2017 and continuing through fiscal year 2026-2027, at least $5 million of the proceeds distributed to DEP for the acquisition of lands and capital project expenditures must be spent on land acquisition within the Florida Keys Area of Critical State Concern.

B. SECTION DIRECTORY:

Section 1. Provides the act may be cited as the "Florida Keys Stewardship Act."

Section 2. Amends s. 212.055(2), F.S., regarding local government infrastructure surtaxes.

Section 3. Amends s. 215.619, F.S., regarding bonds for Everglades restoration.

Section 4. Amends s. 259.045, F.S., regarding purchases of lands in areas of critical state concern.

Section 5. Amends s. 259.105, F.S., regarding the Florida Forever Act.

Section 6. Amends s. 380.0552, F.S., regarding the Florida Keys Area of Critical State Concern.

Section 7. Amends s. 380.0666, F.S., regarding the powers of the land authority.

Section 8. Provides an appropriation.

Section 9. Provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   Everglades Restoration Bonds

   The bill lowers the per year authorization of bonding from $50 million to $20 million for the Florida Keys Area of Critical State Concern beginning Fiscal Year 2016-2017 and expands the use of such bonds to include the City of Key West Area of Critical State Concern. In addition, the types of construction projects authorized are expanded to include building projects that protect, restore, or enhance nearshore water quality and fisheries, such as stormwater or canal restoration projects and projects to protect water resources available to the Florida Keys, including alternative water supplies such as reverse osmosis and reclaimed water systems.

[83] Section 259.105(3)(i), F.S.
[84] Section 259.105(3)(j),F.S.

Current statute authorizes bonding up to $200 million in total for the Florida Keys Area of Critical State Concern. In Fiscal Years 2012-2013 and 2014-2015, the Legislature appropriated a total of $100 million, or half of the amount authorized. The bill authorizes additional bonding authority of $200 million for the expanded purposes outlined in the bill, beginning in Fiscal Year 2016-2017. The bill extends the duration date for the maturity of bonds from December 31, 2040, to December 31, 2047.

The bill requires that if $20 million in bonds are not authorized from Fiscal Year 2016-2017 through Fiscal Year 2026-2027, $20 million is to be appropriated to DEP to be distributed to local governments in the Florida Keys Area of Critical State Concern and the City of Key West Area of Critical State Concern for projects that protect, restore, or enhance nearshore water quality and fisheries, such as stormwater or canal restoration projects and projects to protect water resources available to the Florida Keys, including alternative water supplies such as reverse osmosis and reclaimed water systems.

The Fiscal Year 2016-2017 House proposed General Appropriations Act includes $25 million in bonding for the Florida Keys Area of Critical State Concern protection program to finance or refinance the cost of constructing sewage collection, treatment, and disposal facilities.

The Florida Forever Act

Pursuant to s. 259.105, F.S., DEP receives 35 percent of the funds appropriated through the Florida Forever Act for acquisition of lands and capital projects. The bill requires that from Fiscal Year 2016-2017 through 2026-2027, at least $5 million from the 35 percent distribution to DEP be allocated for land acquisition within the Florida Keys Area of Critical State Concern.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   The bill requires that if $20 million in bonds are not authorized from Fiscal Year 2016-2017 through Fiscal Year 2026-2027, $20 million is to be appropriated to DEP to be distributed to local governments in the Florida Keys Area of Critical State Concern and the City of Key West Area of Critical State Concern.

   The bill requires that from Fiscal Year 2016-2017 through 2026-2027, at least $5 million distributed to DEP through the Florida Forever Act be allocated for land acquisition within the Florida Keys Area of Critical State Concern.

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:

   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, or reduce the percentage of state tax shared with counties or municipalities.

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On January 12, 2016, the Agriculture & Natural Resources Subcommittee adopted a strike-all amendment and reported the bill favorably with committee substitute. The strike-all amendment:

- Amends the purposes for which the local government infrastructure surtax can be used to include acquiring any interest in land for public recreation, conservation, or protection of natural resources or to prevent or satisfy private property rights claims resulting from limitations imposed by the designation of an area of critical state concern.
- Amends the uses for Everglades restoration bonds can be used to include projects that protect, restore or enhance nearshore water quality and fisheries, and protect water resources available to the Florida Keys.
- Amends the maturation date of Everglades restoration bonds, increasing the maturation date from December 31, 2040, to December 31, 2047.
- Removes the requirement that lands purchased using bond proceeds within the Florida Keys Area of Critical State Concern, the City of Key West Area of Critical State Concern, or outside of the Florida Keys Area of Critical State Concern must have been required to be purchased to preserve and protect the potable water supply to the Florida Keys before they can be surplused. Revises the surplus procedure for such lands.
- Removes legislative findings and declarations of the Florida Forever Act that included coral reefs.
- Provides that it is the Legislature's intent to protect and improve the nearshore water quality of the Florida Keys through federal, state, and local funding of water quality improvement projects, including the construction and operation of wastewater management facilities.
- Authorizes a land authority to acquire and dispose of real and personal property or any interest therein when the acquisition is necessary or appropriate to prevent or satisfy private property rights claims resulting from limitations imposed by the designation of an area of critical state concern, and to contribute funds to DEP for the purchase of lands by DEP. Specifies that the acquisition or contribution must not be used to improve public transportation facilities or otherwise increase road capacity to reduce hurricane evacuation clearance times.

This analysis is drafted to the committee substitute as approved by the subcommittee.

A bill to be entitled

An act relating to local government environmental financing; providing a short title; amending s. 212.055, F.S.; expanding the uses of local government infrastructure surtaxes to include acquiring any interest in land for public recreation, conservation, or protection of natural resources or to prevent or satisfy private property rights claims resulting from limitations imposed by the designation of an area of critical state concern; revising definitions for purposes of using surtax proceeds; amending s. 215.619, F.S.; expanding the use of Everglades restoration bonds to include the City of Key West Area of Critical State Concern; expanding the types of water management projects eligible for funding; revising the dates for issuance and maturity of Everglades restoration bonds; reducing the annual appropriation amount dedicated to fund the Florida Keys Area of Critical State Concern protection program; authorizing bond proceeds to be spent on the City of Key West Area of Critical State Concern; expanding projects that may be funded by bond proceeds; specifying procedures to be followed for certain lands that are no longer needed for certain restoration purposes; amending s. 259.045, F.S.; requiring the Department of Environmental Protection

to annually consider certain recommendations to buy specific lands within and outside an area of critical state concern; authorizing certain local governments and special districts to recommend additional lands for purchase; amending s. 259.105, F.S.; requiring specific Florida Forever appropriations to be used for the purchase of lands in the Florida Keys Area of Critical State Concern; amending s. 380.0552, F.S.; revising legislative intent regarding the Florida Keys Area of Critical State Concern; specifying that plan amendments in the Florida Keys must also be consistent with protecting and improving specified water quality and water supply projects; amending s. 380.0666, F.S.; expanding powers of a land authority to include acquiring lands to prevent or satisfy private property rights claims resulting from limitations imposed by the designation of an area of critical state concern and contribute funds for certain land purchases by the department; providing limitations relating to acquiring or contributing lands to improve public transportation facilities; providing a contingent appropriation; providing an effective date.

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

Section 1. This act may be cited as the "Florida Keys

Stewardship Act."

Section 2. Paragraph (d) of subsection (2) of section 212.055, Florida Statutes, is amended to read:

212.055 Discretionary sales surtaxes; legislative intent; authorization and use of proceeds.—It is the legislative intent that any authorization for imposition of a discretionary sales surtax shall be published in the Florida Statutes as a subsection of this section, irrespective of the duration of the levy. Each enactment shall specify the types of counties authorized to levy; the rate or rates which may be imposed; the maximum length of time the surtax may be imposed, if any; the procedure which must be followed to secure voter approval, if required; the purpose for which the proceeds may be expended; and such other requirements as the Legislature may provide. Taxable transactions and administrative procedures shall be as provided in s. 212.054.

(2) LOCAL GOVERNMENT INFRASTRUCTURE SURTAX.—

(d) The proceeds of the surtax authorized by this subsection and any accrued interest shall be expended by the school district, within the county and municipalities within the county, or, in the case of a negotiated joint county agreement, within another county, to finance, plan, and construct infrastructure; to acquire any interest in land for public recreation, conservation, or protection of natural resources or to prevent or satisfy private property rights claims resulting from limitations imposed by the designation of an area of

critical state concern; to provide loans, grants, or rebates to residential or commercial property owners who make energy efficiency improvements to their residential or commercial property, if a local government ordinance authorizing such use is approved by referendum; or to finance the closure of county-owned or municipally owned solid waste landfills that have been closed or are required to be closed by order of the Department of Environmental Protection. Any use of the proceeds or interest for purposes of landfill closure before July 1, 1993, is ratified. The proceeds and any interest may not be used for the operational expenses of infrastructure, except that a county that has a population of fewer than 75,000 and that is required to close a landfill may use the proceeds or interest for long-term maintenance costs associated with landfill closure. Counties, as defined in s. 125.011, and charter counties may, in addition, use the proceeds or interest to retire or service indebtedness incurred for bonds issued before July 1, 1987, for infrastructure purposes, and for bonds subsequently issued to refund such bonds. Any use of the proceeds or interest for purposes of retiring or servicing indebtedness incurred for refunding bonds before July 1, 1999, is ratified.

1. For the purposes of this paragraph, the term "infrastructure" means:

a. Any fixed capital expenditure or fixed capital outlay associated with the construction, reconstruction, or improvement of public facilities that have a life expectancy of 5 or more

years, ~~and~~ any related land acquisition, land improvement, design, and engineering costs, and all other professional and related costs required to bring the public facilities into service. For purposes of this sub-subparagraph, the term "public facilities" means facilities as defined in s. 163.3164(38), s. 163.3221(13), or s. 189.012(5), regardless of whether the facilities are owned by the local taxing authority or another governmental entity.

b. A fire department vehicle, an emergency medical service vehicle, a sheriff's office vehicle, a police department vehicle, or any other vehicle, and the equipment necessary to outfit the vehicle for its official use or equipment that has a life expectancy of at least 5 years.

c. Any expenditure for the construction, lease, or maintenance of, or provision of utilities or security for, facilities, as defined in s. 29.008.

d. Any fixed capital expenditure or fixed capital outlay associated with the improvement of private facilities that have a life expectancy of 5 or more years and that the owner agrees to make available for use on a temporary basis as needed by a local government as a public emergency shelter or a staging area for emergency response equipment during an emergency officially declared by the state or by the local government under s. 252.38. Such improvements are limited to those necessary to comply with current standards for public emergency evacuation shelters. The owner must enter into a written contract with the

local government providing the improvement funding to make the private facility available to the public for purposes of emergency shelter at no cost to the local government for a minimum of 10 years after completion of the improvement, with the provision that the obligation will transfer to any subsequent owner until the end of the minimum period.

e. Any land acquisition expenditure for a residential housing project in which at least 30 percent of the units are affordable to individuals or families whose total annual household income does not exceed 120 percent of the area median income adjusted for household size, if the land is owned by a local government or by a special district that enters into a written agreement with the local government to provide such housing. The local government or special district may enter into a ground lease with a public or private person or entity for nominal or other consideration for the construction of the residential housing project on land acquired pursuant to this sub-subparagraph.

2. For the purposes of this paragraph, the term "energy efficiency improvement" means any energy conservation and efficiency improvement that reduces consumption through conservation or a more efficient use of electricity, natural gas, propane, or other forms of energy on the property, including, but not limited to, air sealing; installation of insulation; installation of energy-efficient heating, cooling, or ventilation systems; installation of solar panels; building

modifications to increase the use of daylight or shade; replacement of windows; installation of energy controls or energy recovery systems; installation of electric vehicle charging equipment; installation of systems for natural gas fuel as defined in s. 206.9951; and installation of efficient lighting equipment.

3. Notwithstanding any other provision of this subsection, a local government infrastructure surtax imposed or extended after July 1, 1998, may allocate up to 15 percent of the surtax proceeds for deposit into a trust fund within the county's accounts created for the purpose of funding economic development projects having a general public purpose of improving local economies, including the funding of operational costs and incentives related to economic development. The ballot statement must indicate the intention to make an allocation under the authority of this subparagraph.

Section 3. Subsection (1) of section 215.619, Florida Statutes, is amended, subsections (7) and (8) are renumbered as subsections (8) and (9), respectively, and a new subsection (7) is added to that section, to read:

215.619 Bonds for Everglades restoration.—

(1) The issuance of Everglades restoration bonds to finance or refinance the cost of the acquisition and improvement of land, water areas, and related property interests and resources for the purpose of implementing the Comprehensive Everglades Restoration Plan under s. 373.470, the Lake

Okeechobee Watershed Protection Plan under s. 373.4595, the Caloosahatchee River Watershed Protection Plan under s. 373.4595, the St. Lucie River Watershed Protection Plan under s. 373.4595, the City of Key West Area of Critical State Concern as designated by the Administration Commission under s. 380.05, and the Florida Keys Area of Critical State Concern protection program under ss. 380.05 and 380.0552 in order to restore and conserve natural systems through ~~the~~ implementation of water management projects, including projects that protect, restore, or enhance nearshore water quality and fisheries, such as stormwater or canal restoration projects, projects to protect water resources available to the Florida Keys, including alternative water supplies such as reverse osmosis and reclaimed water systems, and wastewater management projects identified in the Keys Wastewater Plan, dated November 2007, and submitted to the Florida House of Representatives on December 4, 2007, is authorized in accordance with s. 11(e), Art. VII of the State Constitution.

(a) Everglades restoration bonds, except refunding bonds, may be issued only in fiscal years 2002-2003 through 2026-2027 ~~2019-2020~~ and may not be issued in an amount exceeding $100 million per fiscal year unless:

1. The Department of Environmental Protection has requested additional amounts in order to achieve cost savings or accelerate the purchase of land; or

2. Beginning in fiscal year 2016-2017, the Legislature

authorizes an additional amount of bonds not to exceed $200 million, and limited to $20 ~~$50~~ million per fiscal year, specifically for the purpose of funding the Florida Keys Area of Critical State Concern protection program and the City of Key West Area of Critical State Concern. Proceeds from the bonds shall be managed by the Department of Environmental Protection for the purpose of entering into financial assistance agreements with local governments located in the Florida Keys Area of Critical State Concern or the City of Key West Area of Critical State Concern to finance or refinance the cost of constructing sewage collection, treatment, and disposal facilities or building projects that protect, restore, or enhance nearshore water quality and fisheries, such as stormwater or canal restoration projects and projects to protect water resources available to the Florida Keys, including alternative water supplies such as reverse osmosis and reclaimed water systems.

(b) The duration of Everglades restoration bonds may not exceed 20 annual maturities and must mature by December 31, 2047 ~~2040~~. Except for refunding bonds, a series of bonds may not be issued unless an amount equal to the debt service coming due in the year of issuance has been appropriated by the Legislature. Not more than 58.25 percent of documentary stamp taxes collected may be taken into account for the purpose of satisfying an additional bonds test set forth in any authorizing resolution for bonds issued on or after July 1, 2015. Beginning July 1, 2010, the Legislature shall analyze the ratio of the state's

debt to projected revenues before authorizing the issuance of bonds under this section.

(7) If the South Florida Water Management District and the Department of Environmental Protection determine that lands purchased using bond proceeds within the Florida Keys Area of Critical State Concern, the City of Key West Area of Critical State Concern, or outside the Florida Keys Area of Critical State Concern but which were purchased to preserve and protect the potable water supply to the Florida Keys are no longer needed for the purpose for which they were purchased, the entity owning the lands may dispose of them. However, before the lands can be disposed of, each general purpose local government within the boundaries of which a portion of the land lies must agree to the disposal of lands within its boundaries and must be offered the first right to purchase those lands.

Section 4. Section 259.045, Florida Statutes, is amended to read:

259.045 Purchase of lands in areas of critical state concern; recommendations by department and land authorities.—Within 45 days after ~~of the designation by~~ the Administration Commission designates ~~of~~ an area as an area of critical state concern under s. 380.05, and annually thereafter, the Department of Environmental Protection shall consider the recommendations of the state land planning agency pursuant to s. 380.05(1)(a) relating to purchase of lands within an area of critical state concern or lands outside an area of critical state concern that

directly impact an area of critical state concern, which may include lands used to preserve and protect water supply, ~~the proposed area~~ and shall make recommendations to the board with respect to the purchase of the fee or any lesser interest in any such lands that are: ~~situated in such area of critical state concern as~~

(1) Environmentally endangered lands; ~~or~~

(2) Outdoor recreation lands;

(3) Lands that conserve sensitive habitat;

(4) Lands that protect, restore, or enhance nearshore water quality and fisheries;

(5) Lands used to protect and enhance water supply to the Florida Keys, including alternative water supplies such as reverse osmosis and reclaimed water systems; or

(6) Lands used to prevent or satisfy private property rights claims resulting from limitations imposed by the designation of an area of critical state concern.

The department, or a local government, special district, or ~~and a~~ land authority within an area of critical state concern ~~as authorized in chapter 380~~, may make recommendations with respect to additional purchases which were not included in the state land planning agency recommendations.

Section 5. Paragraph (b) of subsection (3) of section 259.105, Florida Statutes, is amended to read:

259.105 The Florida Forever Act.—

(3) Less the costs of issuing and the costs of funding reserve accounts and other costs associated with bonds, the proceeds of cash payments or bonds issued pursuant to this section shall be deposited into the Florida Forever Trust Fund created by s. 259.1051. The proceeds shall be distributed by the Department of Environmental Protection in the following manner:

(b) Thirty-five percent to the Department of Environmental Protection for the acquisition of lands and capital project expenditures described in this section. Of the proceeds distributed pursuant to this paragraph, it is the intent of the Legislature that an increased priority be given to those acquisitions which achieve a combination of conservation goals, including protecting Florida's water resources and natural groundwater recharge. At a minimum, 3 percent, and no more than 10 percent, of the funds allocated pursuant to this paragraph shall be spent on capital project expenditures identified during the time of acquisition which meet land management planning activities necessary for public access. Beginning in fiscal year 2016-2017 and continuing through fiscal year 2026-2027, at least $5 million of the funds allocated pursuant to this paragraph shall be spent on land acquisition within the Florida Keys Area of Critical State Concern.

Section 6. Paragraph (i) of subsection (2) and paragraph (i) of subsection (7) of section 380.0552, Florida Statutes, are amended to read:

380.0552 Florida Keys Area; protection and designation as

area of critical state concern.—

(2) LEGISLATIVE INTENT.—It is the intent of the Legislature to:

(i) Protect and improve the nearshore water quality of the Florida Keys through federal, state, and local funding of water quality improvement projects, including the construction and operation of wastewater management facilities that meet the requirements of ss. 381.0065(4)(l) and 403.086(10), as applicable.

(7) PRINCIPLES FOR GUIDING DEVELOPMENT.—State, regional, and local agencies and units of government in the Florida Keys Area shall coordinate their plans and conduct their programs and regulatory activities consistent with the principles for guiding development as specified in chapter 27F-8, Florida Administrative Code, as amended effective August 23, 1984, which is adopted and incorporated herein by reference. For the purposes of reviewing the consistency of the adopted plan, or any amendments to that plan, with the principles for guiding development, and any amendments to the principles, the principles shall be construed as a whole and specific provisions may not be construed or applied in isolation from the other provisions. However, the principles for guiding development are repealed 18 months from July 1, 1986. After repeal, any plan amendments must be consistent with the following principles:

(i) Protecting and improving water quality by providing for the construction, operation, maintenance, and replacement of

stormwater management facilities; central sewage collection; treatment and disposal facilities; ~~and~~ the installation and proper operation and maintenance of onsite sewage treatment and disposal systems; and other water quality and water supply projects, including direct and indirect potable reuse.

Section 7. Subsection (3) of section 380.0666, Florida Statutes, is amended to read:

380.0666 Powers of land authority.—The land authority shall have all the powers necessary or convenient to carry out and effectuate the purposes and provisions of this act, including the following powers, which are in addition to all other powers granted by other provisions of this act:

(3) To acquire and dispose of real and personal property or any interest therein when such acquisition is necessary or appropriate to protect the natural environment, provide public access or public recreational facilities, preserve wildlife habitat areas, provide affordable housing to families whose income does not exceed 160 percent of the median family income for the area, prevent or satisfy private property rights claims resulting from limitations imposed by the designation of an area of critical state concern, or provide access to management of acquired lands; to acquire interests in land by means of land exchanges; to contribute tourist impact tax revenues received pursuant to s. 125.0108 to its most populous municipality or the housing authority of such municipality, at the request of the commission or council of such municipality, for the

construction, redevelopment, or preservation of affordable housing in an area of critical state concern within such municipality; to contribute funds to the Department of Environmental Protection for the purchase of lands by the department; and to enter into all alternatives to the acquisition of fee interests in land, including, but not limited to, the acquisition of easements, development rights, life estates, leases, and leaseback arrangements. However, the land authority shall make an ~~such~~ acquisition or contribution only if:

(a) Such acquisition or contribution is consistent with land development regulations and local comprehensive plans adopted and approved pursuant to this chapter;

(b) The property acquired is within an area designated as an area of critical state concern at the time of acquisition or is within an area that was designated as an area of critical state concern for at least 20 consecutive years prior to removal of the designation; ~~and~~

(c) The property to be acquired has not been selected for purchase through another local, regional, state, or federal public land acquisition program. Such restriction shall not apply if the land authority cooperates with the other public land acquisition programs which listed the lands for acquisition, to coordinate the acquisition and disposition of such lands. In such cases, the land authority may enter into contractual or other agreements to acquire lands jointly or for

eventual resale to other public land acquisition programs; and

(d) The acquisition or contribution is not used to improve public transportation facilities or otherwise increase road capacity to reduce hurricane evacuation clearance times.

Section 8. Notwithstanding any other provision of law, in fiscal year 2016-2017 through fiscal year 2026-2027, if $20 million in bonds are not authorized to be issued pursuant to s. 215.619, Florida Statutes, $20 million shall be appropriated to the Department of Environmental Protection to be distributed to local governments in the Florida Keys Area of Critical State Concern and the City of Key West Area of Critical State Concern for projects that protect, restore, or enhance nearshore water quality and fisheries and projects to protect and enhance water supply to the Florida Keys, including alternative water supplies such as reverse osmosis and reclaimed water systems.

Section 9. This act shall take effect July 1, 2016.

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 Appropriations Subcommittee
Representative Raschein offered the following:

Amendment

Remove lines 195-224 and insert:

wastewater management projects identified in the Keys Wastewater Plan, dated November 2007, and submitted to the Florida House of Representatives on December 4, 2007, is authorized in accordance with s. 11(e), Art. VII of the State Constitution.

(a) Everglades restoration bonds, except refunding bonds, may be issued only in fiscal years 2002-2003 through 2026-2027 ~~2019-2020~~ and may not be issued in an amount exceeding $100 million per fiscal year unless:

1. The Department of Environmental Protection has requested additional amounts in order to achieve cost savings or accelerate the purchase of land; or

2. Beginning in fiscal year 2016-2017, the Legislature authorizes an additional amount of bonds not to exceed $200 million, and limited to $20 ~~$50~~ million per fiscal year, specifically for the purpose of funding the Florida Keys Area of Critical State Concern protection program and the City of Key West Area of Critical State Concern. Proceeds from the bonds shall be managed by the Department of Environmental Protection for the purpose of entering into financial assistance agreements with local governments located in the Florida Keys Area of Critical State Concern or the City of Key West Area of Critical State Concern to finance or refinance the cost of constructing sewage collection, treatment, and disposal facilities or building projects that protect, restore, or enhance nearshore water quality and fisheries, such as stormwater or canal restoration projects and projects to protect water resources available to the Florida Keys.

Amendment No. 2

COMMITTEE/SUBCOMMITTEE ACTION

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

Committee/Subcommittee hearing bill: Agriculture & Natural Resources Appropriations Subcommittee

Representative Raschein offered the following:

Amendment (with title amendment)

Remove lines 395-405

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

Remove lines 47-48 and insert:

transportation facilities; providing an effective date.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 489 Shellfish Harvesting
SPONSOR(S): Agriculture and Natural Resources Subcommittee, Drake, and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 1564

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

SUMMARY ANALYSIS

An individual who wishes to conduct aquaculture activities on sovereign submerged lands, such as shellfish harvesting, must obtain a lease from the Board of Trustees of the Internal Improvement Trust (Board of Trustees). Current law prohibits the removal of oysters from natural or artificial reefs by dredge or other mechanical device unless specifically authorized by the Board of Trustees in a lease before July 1, 1989.

This bill makes changes to the shellfish harvesting provisions by:

- Expanding the definition of shellfish to include scallops, mussels, and clams;
- Defining "dredge or mechanical harvesting device;"
- Removing the prohibition on mechanical dredging of shellfish from Apalachicola Bay unless specifically authorized by the Board of Trustees in a lease issued before July 1, 1989;
- Authorizing the Board of Trustees to permit the harvest of shellfish using a dredge or mechanical harvesting device in a submerged lands lease with certain conditions;
- Prohibiting the use of dredge or mechanical harvesting devices on public shellfish beds;
- Authorizing individuals to use one rather than two dredge or mechanical harvesting devices per lease at any one time;
- Providing that violations of shellfish harvesting statutes, rules, or lease conditions will result in the revocation of the violator's lease and denial of any future application to use sovereign submerged lands;
- Repealing a provision relating to shellfish harvesting seasons;
- Removing the requirement that the harvester must notify the Florida Fish and Wildlife Conservation Commission 48 hours in advance of any dredging or mechanical harvesting activity and that each vessel display its lease number in 12-inch high numbering;
- Removing a provision that authorized harvesting oysters from natural or public or private leased or granted grounds by hand tongs or by hand, by scuba diving, free diving, leaning from vessels, or wading;
- Authorizing, rather than requiring, DACS to designate areas for the taking of oysters and clams to be planted on leases, grants, and public areas; and
- Removing the prohibition on dredging of dead shell deposits.

The bill appears to have no fiscal impact on state and local governments, and an indeterminate fiscal impact on the private sector.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Shellfish such as oysters, scallops, clams, and mussels occur throughout Florida waters. Evidence suggests that humans harvested shellfish as far back as 150,000 years ago. Native Americans hand collected clams and oysters in shallow coastal waters and later fished with rakes and tongs from canoes and skiffs to access deeper waters.[1]

Over the past century, aquacultural cultivation of shellfish has replaced direct harvest of natural stocks.[2] Shellfish aquaculture often involves "planting" empty shells on the beds of submerged lands and "seeding" the shells with larva.[3] The shellfish grow to maturity and are then harvested. The shellfish provide environmentally-beneficial ecosystem services such as water filtration, nitrogen removal, and carbon storage.[4]

Contemporary on-bottom shellfish cultivation uses rake-like dredges to harvest planted shellfish seed or to collect naturally recruited stocks from leased beds. The type of mechanical dredge used depends on the type of shellfish harvested. Oysters may be collected by dragging behind the boat a steel frame with bladed teeth and a collection bag or using a suction dredge. Clams may be collected by a hydraulic dredge that loosens the clams with high pressure jets and collects the clams in chain mesh bags. Harvesters collect scallops with a steel-framed structure with a cutting bar on the leading edge that rides above the surface of the submerged lands, kicking up sea scallops and collecting them into an attached bag.[5]

In Florida, an individual who wishes to conduct aquaculture activities on sovereign submerged lands must obtain a lease from the Board of Trustees of the Internal Improvement Trust (Board of Trustees).[6] The Board of Trustees delegated the power to issue these leases to the Department of Agriculture and Consumer Services (DACS).[7] Individuals may not remove oysters from natural or artificial reefs by dredge or other mechanical device unless specifically authorized by Board of Trustees in a lease issued before July 1, 1989.[8]

Certified aquaculture activities that apply appropriate best management practices (BMPs) adopted by DACS are exempt from obtaining an environmental resource permit (ERP) from the Department of Environmental Protection (DEP) or water management districts (WMDs).[9] The following are examples of the BMP requirements:

- Land-based facilities must be designed and operated in a manner which minimizes adverse impacts to the receiving waters, adjacent wetlands, and uplands;
- Pumping, intake and discharge systems must be designed in a manner which does not create currents which increase sedimentation, scouring, turbidity, or in any way damage the surrounding habitat;

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[1] National Oceanic and Atmospheric Administration (NOAA), Review of the Ecological Effects of Dredging in the Cultivation and Harvest of Molluscan Shellfish, available at: http://www.nefsc.noaa.gov/publications/tm/tm220/ (last visited January 7, 2016).
[2] Id.
[3] University of Florida Institute of Food and Agricultural Sciences, *About the Industry*, available at: http://shellfish.ifas.ufl.edu/industry/ (last visited January 8, 2016).
[4] University of Florida Institute of Food and Agricultural Sciences, *Environmental Benefits*, available at: http://shellfish.ifas.ufl.edu/environmental-benefits/, (last visited January 8, 2016).
[5] NOAA, *supra* note 1.
[6] Sections 253.67 through 253.75 and 597.010, F.S.; Rule 18-21.021, F.A.C.
[7] Section 253.002(1), F.S.
[8] Sections 379.2525(2) and 597.010(18), F.S.
[9] Section 373.406(8), F.S.

- Sediment removal and disposal must be conducted in a manner that eliminates or minimizes adverse impacts to the receiving waters;
- Shell stock must not be used to fill wetlands or be placed on submerged lands. Shell stock may be disposed of in appropriate upland areas, landfills, or designated shell recycling areas;
- Hatchery operators must maintain records of all brood stock purchases and seed sales for a period at least two years. These records must be available for inspection by DACS upon request;
- A Florida based clam hatchery selling seed must be certified as a clam hatchery facility. Clam seed sold or transferred from these certified facilities must be accompanied with an aquaculture certification number attached to all product containers and associated sales documentation;
- The activity must follow all the terms of the submerged lands lease;
- The lease area must be marked to sufficiently warn mariners passing in the vicinity of the lease and the potential hazards to navigation;
- Culture materials placed on the grow-out area must be a suitable substrate for attachment of oyster larvae;
- Bags, cover nets, or trays used in the culture operation must be removed from the water during all mechanical cleaning, maintenance and repair operations. During harvest, culture bags and cover nets must be rinsed and cleaned over the grow-out area to allow sediments to remain in the lease area.[10]

While exempted from ERP requirements, individuals engaged in aquaculture may need to obtain a dredge and fill permit from the U.S. Army Corps of Engineers and a National Pollution Discharge Elimination System (NPDES) program permit from the U.S. Environmental Protection Agency if certain thresholds are met.[11]

An individual who engages in aquaculture must be certified by DACS.[12] Further, individuals who commercially harvest, possess, or sell shellfish must obtain a saltwater products license[13] and a shellfish endorsement[14] or Apalachicola Bay oyster harvesting license from the Fish and Wildlife Conservation Commission (FWC), unless they are harvesting from an aquaculture lease under the authority of an aquaculture certificate of registration issued by DACS.[15] Individuals may not commercially harvest bay scallops or freshwater mussels.[16]

Effect of the Proposed Changes

This bill makes changes to the shellfish harvesting provisions by:

- Repealing an outdated provision relating to DACS' and FWC's duty relating to shellfish development and replacing it with language regarding interagency coordination to protect shellfish beds, grounds, and reefs;
- Defining "dredge or mechanical harvesting device" to mean any dredge, scrape, rake, drag, or other device, being towed by a vessel or self-propelled, that is used for the purpose of harvesting shellfish. The bill specifically excludes handheld or hand drawn hydraulically or mechanically operated devices for harvesting cultured clams from the requirements of the bill;

[10] DACS, Aquaculture Best Management Practices Manual, p. 45 – 51, available at: http://www.freshfromflorida.com/content/download/64046/1520658/BMP_RULE_AND_MANUAL_FINAL.pdf (last visited January 15, 2016).
[11] DACS, *Aquaculture Best Management Practices Manual, September 2015*, p. 8-9, available at: http://www.freshfromflorida.com/content/download/64046/1520658/BMP_RULE_AND_MANUAL_FINAL.pdf (last visited January 7, 2016).
[12] Section 597.004, F.S.
[13] Section 379.361, F.S.
[14] Rules 68B-17.009 and 68B-27.018(1), F.A.C.
[15] FWC, *Shellfish*, available at: http://myfwc.com/fishing/saltwater/commercial/shellfish/ (last visited January 8, 2016).
[16] Rules 68B-18.004 and 68A-23.015, F.A.C.

- Expanding the definition of shellfish that may be harvested to include scallops, mussels, and clams;
- Removing the prohibition on mechanical dredging of shellfish from Apalachicola Bay unless specifically authorized by the Board of Trustees in a lease issued before July 1, 1989;
- Authorizing the Board of Trustees to permit the harvest of shellfish using a dredge or other mechanical devices in a submerged land lease when:
    - The activity does not adversely affect public health, safety, and welfare of adjacent natural resources;
    - The activity is an existing condition of perpetual shellfish lease issued pursuant to former chapter 370; and
    - Aquaculture best management practices have been adopted that describe the approved size and specifications of the dredge or mechanical harvesting device to be used; provide conditions for deploying and using the approved dredge or mechanical harvesting device; and specifying the requirements of the lease holder to monitor for potential impacts at and adjacent to the sovereign submerged lands lease site.
- Authorizing individuals to use one rather than two dredge or mechanical harvesting devices per lease at any one time;
- Prohibiting the use of dredge or mechanical harvesting devices on public shellfish beds;
- Prohibiting the possession of any dredges or other mechanical devices on the water of the state from 5pm until sunrise;
- Providing that violations of shellfish harvesting statutes, rules, or lease conditions will result in the revocation of the violator's lease and denial of any future application to use sovereign submerged lands;
- Prohibiting harvesting shellfish from natural reefs;
- Repealing a provision relating to shellfish harvesting seasons;
- Removing the requirement that the harvester must notify FWC 48 hours in advance of any dredging or mechanical harvesting activity and that each vessel display its lease number in 12-inch high numbering. According to DACS, these are requirements of the now defunct Marine Fisheries Commission that were placed in statutes approximately 35-40 years ago;[17]
- Removing a provision that authorized harvesting oysters from natural or public or private leased or granted grounds by hand tongs or by hand, by scuba diving, free diving, leaning from vessels, or wading;
- Authorizing, rather than requiring, DACS to designate areas for the taking of oysters and clams to be planted on leases, grants, and public areas; and
- Removing the prohibition on dredging of dead shell deposits.

B. SECTION DIRECTORY:

Section 1. Amends s. 597.010, F.S., relating to shellfish regulations and leases.

Section 2. Provides an effective date of July 1, 2016.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

[17] DACS, Agency Analysis of 2016 House Bill 497, p. 2 (November 16, 2015).

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may have a positive fiscal impact on individuals or companies who engage in aquaculture by harvesting shellfish with dredges or other mechanical devices. As a result, the bill may have a negative fiscal impact on individuals who are employed to harvest shellfish by hand.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

DACS, FWC, and the Board of Trustees appear to have sufficient rulemaking authority to conform their rules to the changes made in the bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Other Comments: Shellfish Definition

The bill may need to be amended to clarify that bay scallops and freshwater mussels may not be commercially harvested to conform to FWC Rules 68B-18.004 and 68A-23.015, F.A.C., which provide that bay scallops and freshwater mussels may not be commercially harvested. The Legislature may not enact laws that are inconsistent with FWC regulations.[18]

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On January 20, 2016, the Agriculture and Natural Resources Subcommittee adopted a strike-all amendment and reported the bill favorably with committee substitute. The amendment:

- Removed an outdated provision regarding shellfish development and replaced it with language regarding interagency coordination to protect shellfish beds, grounds, and reefs;
- Defined "dredge or mechanical harvesting device;"

[18] Section 9, Art. IV, Fla. Const.

- Removed the prohibition on dredging or mechanically harvesting shellfish beds in Apalachicola Bay without a lease issued before 1989;
- Specified what protections must be in place in the best management practices for dredging or mechanically harvesting shellfish;
- Prohibited the use of dredge or mechanical harvesting devices on public shellfish beds;
- Authorized the use of only one dredge or mechanical harvesting devices per lease area at any one time;
- Removed the requirement that the harvester must notify FWC 48 hours in advance of any dredging or mechanical harvesting activity and that each vessel display its lease number in 12 inch high numbering;
- Provided that violations of shellfish harvesting statutes, rules, or lease conditions will result in the revocation of the violator's lease and denial of any future application to use sovereign submerged lands;
- Authorized, rather than required, DACS to designate areas for the taking of oysters and clams to be planted on leases, grants, and public areas; and
- Removed the prohibition on dredging of dead shell deposits.

This analysis is drawn to the committee substitute reported favorably by the Agriculture and Natural Resources Subcommittee.

A bill to be entitled

An act relating to shellfish harvesting; amending s. 597.010, F.S.; revising provisions directing the Department of Agriculture and Consumer Services, in cooperation with the Fish and Wildlife Conservation Commission and the Department of Environmental Protection, to protect specified shellfish beds, grounds, and reefs and to control water pollution in such areas; defining the terms "dredge or mechanical harvesting devices" and "shellfish"; providing for the harvesting of shellfish from sovereign submerged land leases; providing for the Board of Trustees of the Internal Improvement Trust Fund to authorize the use of dredges or mechanical harvesting devices as special lease conditions of sovereign submerged land leases; limiting the number of such dredges or mechanical harvesting devices per lease; prohibiting certain use and possession of such dredges or mechanical harvesting devices; providing penalties; removing provisions relating to shellfish harvesting seasons, removal of oysters, clams, or mussels from natural reefs, dredging of dead shells, and oyster culture; making technical changes; providing an effective date.

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

Section 1. Subsections (14) and (17) through (25) of section 597.010, Florida Statutes, are amended to read:

597.010 Shellfish regulation; leases.—

(14) SHELLFISH DEVELOPMENT.—The department, in cooperation with the Fish and Wildlife Conservation Commission and the Department of Environmental Protection, shall protect all clam beds, oyster beds, shellfish grounds, and oyster reefs from damage or destruction resulting from improper cultivation, propagation, planting, or harvesting and shall control the pollution of the waters over or surrounding such beds, grounds, and reefs. The Department of Health is authorized and directed to cooperate with the department and to make available its laboratory testing facilities and apparatus.

~~(a) The department shall improve, enlarge, and protect the natural oyster and clam reefs and beds of this state to the extent it may deem advisable and the means at its disposal will permit.~~

~~(b) The Fish and Wildlife Conservation Commission shall, to the same extent, assist in protecting shellfish aquaculture products produced on leased or granted reefs and beds.~~

~~(c) The department, in cooperation with the commission, shall provide the Legislature with recommendations as needed for the development and the proper protection of the rights of the state and private holders therein with respect to the oyster and clam business.~~

(17) SHELLFISH HARVESTING FROM SOVEREIGN SUBMERGED LAND

LEASES; USE OF DREDGE OR MECHANICAL HARVESTING DEVICE ~~SEASONS; SPECIAL PROVISIONS RELATING TO APALACHICOLA BAY~~.—

(a) As used in this subsection, the term:

1. "Dredge or mechanical harvesting device" means a dredge, scrape, rake, drag, or other device that is towed by a vessel or self propelled and that is used to harvest shellfish. The term does not include handheld or handdrawn hydraulically or mechanically operated devices used to harvest cultured clams leased sovereign submerged lands, and this subsection does not apply to such handheld or handdrawn devices.

2. "Shellfish" means aquaculture oysters, clams, mussels, and scallops.

(b) The harvesting of shellfish from a sovereign submerged land lease may be authorized pursuant to chapter 253.

(c) The Board of Trustees of the Internal Improvement Trust Fund may authorize the use of a dredge or mechanical harvesting device as a special lease condition of a sovereign submerged land lease issued under chapter 253 if:

1. The use of the dredge or mechanical harvesting device does not adversely impact the public health, safety, and welfare of adjacent natural resources.

2. The use of the dredge or mechanical harvesting device is an existing condition of a perpetual shellfish lease issued pursuant to former chapter 370.

3. Aquaculture best management practices have been adopted pursuant to chapter 120 which:

a. Describe the approved size and specifications of the dredge or mechanical harvesting device to be used.

b. Provide conditions for deploying and using an approved dredge or mechanical harvesting device.

c. Specify requirements for monitoring potential impacts at, and adjacent to, the sovereign submerged land lease site by the leaseholder.

(d) Only one dredge or mechanical harvesting device per lease may be possessed or operated at any time at a lease site.

(e) A dredge or mechanical harvesting device authorized by this subsection may not be used for taking shellfish for any purpose from public shellfish beds in waters of the state, and such dredge or mechanical harvesting device may not be possessed on the waters of the state from 5 p.m. until sunrise.

(f) This subsection does not authorize the harvesting of shellfish from natural reefs.

A violation of this subsection or of any law, rule, or condition referenced in a sovereign submerged lease is a violation of the lease agreement and will result in the revocation of all leases held by the violator and denial of any future use of sovereign submerged land.

~~(a) The Fish and Wildlife Conservation Commission shall by rule set the noncultured shellfish harvesting seasons in Apalachicola Bay.~~

~~(b) If the commission changes the harvesting seasons by~~

~~rule as set forth in this subsection, for 3 years after the new rule takes effect, the commission, in cooperation with the department, shall monitor the impacts of the new harvesting schedule on the bay and on local shellfish harvesters to determine whether the new harvesting schedule should be discontinued, retained, or modified. In monitoring the new schedule and in preparing its report, the following information shall be considered:~~

~~1. Whether the bay benefits ecologically from the new harvesting schedule.~~

~~2. Whether the new harvesting schedule enhances the enforcement of shellfish harvesting laws in the bay.~~

~~3. Whether the new harvesting schedule enhances natural shellfish production, oyster relay and planting programs, and shell planting programs in the bay.~~

~~4. Whether the new harvesting schedule has more than a short-term adverse economic impact, if any, on local shellfish harvesters.~~

~~(18) REMOVING OYSTERS, CLAMS, OR MUSSELS FROM NATURAL REEFS; LICENSES, ETC.; PENALTY.—~~

~~(a) It is unlawful to use a dredge or any means or implement other than hand tongs in removing oysters from the natural or artificial state reefs or beds. This restriction shall apply to all areas of Apalachicola Bay for all shellfish harvesting, excluding private grounds leased or granted by the state prior to July 1, 1989, if the lease or grant specifically~~

~~authorizes the use of implements other than hand tongs for harvesting. Except in Apalachicola Bay, upon the payment of $25 annually, for each vessel or boat using a dredge or machinery in the gathering of clams or mussels, a special activity license may be issued by the Fish and Wildlife Conservation Commission pursuant to subsection (15) or s. 379.361 for such use to such person.~~

~~(b) Approval by the department to harvest shellfish by dredge or other mechanical means from privately held shellfish leases or grants in Apalachicola Bay shall include, but not be limited to, the following conditions:~~

~~1. The use of any mechanical harvesting device other than ordinary hand tongs for taking shellfish for any purpose from public shellfish beds in Apalachicola Bay shall be unlawful.~~

~~2. The possession of any mechanical harvesting device on the waters of Apalachicola Bay from 5 p.m. until sunrise shall be unlawful.~~

~~3. Leaseholders or grantees shall notify the department no less than 48 hours prior to each day's use of a dredge or scrape in order for the department to notify the Fish and Wildlife Conservation Commission that a mechanical harvesting device will be deployed.~~

~~4. Only two dredges or scrapes per lease or grant may be possessed or operated at any time.~~

~~5. Each vessel used for the transport or deployment of a dredge or scrape shall prominently display the lease or grant~~

~~number or numbers, in numerals which are at least 12 inches high and 6 inches wide, in such a manner that the lease or grant number or numbers are readily identifiable from both the air and the water.~~

~~Any violation of this paragraph or of any other statutes, rules, or conditions referenced in the lease agreement shall be considered a violation of the license and shall result in revocation of the lease or a denial of use or future use of a mechanical harvesting device.~~

~~(c) Oysters may be harvested from natural or public or private leased or granted grounds by common hand tongs or by hand, by scuba diving, free diving, leaning from vessels, or wading. In Apalachicola Bay, this provision shall apply to all shellfish.~~

(18)~~(19)~~ FISHING FOR RELAYING OR TRANSPLANTING PURPOSES.—

(a) The department may ~~shall~~ designate areas for the taking of oysters and clams to be planted on leases, grants, and public areas. Oysters, clams, and mussels may be taken for relaying or transplanting at any time during the year so long as, in the opinion of the department, the public health will not be endangered. The amount of oysters, clams, and mussels to be obtained for relaying or transplanting, the area relayed or transplanted to, and relaying or transplanting time periods shall be established in each case by the department.

(b) Application for a special activity license issued

pursuant to subsection (15) for obtaining oysters, clams, or mussels for relaying from closed public shellfish harvesting areas to open areas or certified controlled purification plants or for transplanting sublegal-sized oysters, clams, or mussels must be made to the department. In return, the department may assign an area and a period of time for the oysters, clams, or mussels to be relayed or transplanted to be taken. All relaying and transplanting operations shall take place under the direction of the department.

(c) Relayed oysters, clams, or mussels shall not be subsequently harvested for any reason without written permission or public notice from the department.

(19) ~~(20)~~ OYSTER AND CLAM REHABILITATION.—The board of county commissioners ~~of the several counties~~ may appropriate and expend such sums as it may deem proper for the purpose of planting or transplanting oysters, clams, oyster shell, clam shell, or cultch or to perform such other acts for the enhancement of the oyster and clam industries of the state, out of any sum in the county treasury not otherwise appropriated.

~~(21) DREDGING OF DEAD SHELLS PROHIBITED.—The dredging of dead shell deposits is prohibited in the state.~~

(20) ~~(22)~~ COOPERATION WITH UNITED STATES FISH AND WILDLIFE SERVICE.—The department shall cooperate with the United States Fish and Wildlife Service, under existing federal laws, rules, and regulations, and is authorized to accept donations, grants, and matching funds from the Federal Government in order to carry

out its oyster resource and development responsibilities. The department is further authorized to accept any and all donations including funds, oysters, or oyster shells.

(21)~~(23)~~ OYSTER AND CLAM SHELLS PROPERTY OF DEPARTMENT.—

(a) Except for oysters used directly in the half-shell trade, 50 percent of all shells from oysters and clams shucked commercially in the state shall be and remain the property of the department when such shells are needed and required for rehabilitation projects and planting operations, in cooperation with the Fish and Wildlife Conservation Commission, when sufficient resources and facilities exist for handling and planting such shells ~~shell~~, and when the collection and handling of such shells ~~shell~~ is practicable and useful, except that bona fide holders of leases and grants may retain 75 percent of such shells ~~shell~~ as they produce for aquacultural purposes. Storage, transportation, and planting of shells so retained by lessees and grantees shall be carried out under the conditions of the lease agreement or with the written approval of the department and shall be subject to such reasonable time limits as the department may fix. In the event of an accumulation of an excess of shells, the department is authorized to sell shells only to private growers for use in oyster or clam cultivation on bona fide leases and grants. No profit shall accrue to the department in these transactions, and shells are to be sold for the estimated moneys spent by the department to gather and stockpile the shells. Planting of shells obtained from the department by

purchase shall be subject to the conditions set forth in the lease agreement or in the written approval as issued by the department. Any shells not claimed and used by private oyster cultivators 10 years after shells are gathered and stockpiled may be sold at auction to the highest bidder for any private use.

(b) If ~~Whenever~~ the department determines that it is unfeasible to collect oyster or clam shells, the shells become the property of the producer.

(c) If ~~Whenever~~ oyster or clam shells are owned by the department and it is not useful or feasible to use them in the rehabilitation projects, and if a ~~when no~~ leaseholder has not exercised his or her option to acquire them, the department may sell such shells for the highest price obtainable. Such ~~The~~ shells ~~thus sold~~ may be used in any manner and for any purpose at the discretion of the purchaser.

(d) Moneys derived from the sale of shell shall be deposited in the General Inspection Trust Fund for shellfish programs.

(e) The department may publish notice, in a newspaper serving the county, of its intention to collect the oyster and clam shells and shall notify, by certified mail, each shucking establishment from which shells are to be collected. The notice shall contain the period of time the department intends to collect the shells in that county and the collection purpose.

~~(24) OYSTER CULTURE.—The department, in cooperation with~~

~~the Fish and Wildlife Conservation Commission and the Department of Environmental Protection, shall protect all clam beds, oyster beds, shellfish grounds, and oyster reefs from damage or destruction resulting from improper cultivation, propagation, planting, or harvesting and control the pollution of the waters over or surrounding beds, grounds, or reefs, and to this end the Department of Health is authorized and directed to lend its cooperation to the department, to make available its laboratory testing facilities and apparatus.~~

(22)~~(25)~~ REQUIREMENTS FOR OYSTER OR CLAM VESSELS.—

(a) All vessels used for the harvesting, gathering, or transporting of oysters or clams for commercial purposes shall be constructed and maintained to prevent contamination or deterioration of shellfish. To this end, all such vessels shall have ~~be provided with~~ false bottoms and bulkheads fore and aft to prevent onboard shellfish from coming in contact with any bilge water. ~~No~~ Dogs or other animals are not ~~shall be~~ allowed at any time on vessels used to harvest or transport shellfish. A violation of ~~any provision of~~ this subsection will, at a minimum, ~~shall~~ result in ~~at least~~ the revocation of the violator's license.

(b) For the purpose of this subsection, "harvesting, gathering, or transporting of oysters or clams for commercial purposes" means to harvest, gather, or transport oysters or clams with the intent to sell and shall apply to a quantity of two or more bags of oysters per vessel or more than one 5-gallon

bucket of unshucked hard clams per person or more than two 5-gallon buckets of unshucked hard clams per vessel.

Section 2. This act shall take effect July 1, 2016.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 561 Organizational Structure of Department of Environmental Protection
SPONSOR(S): Agriculture & Natural Resources Subcommittee and Combee
TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 400

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

SUMMARY ANALYSIS

The Department of Environmental Protection (DEP) is organized into the following organizational structure:

- The secretary is the head of the agency;
- Three deputy secretaries are appointed by the secretary;
- Managers are appointed by the secretary and head the following special offices: the Office of Chief of Staff, the Office of General Counsel, the Office of Inspector General, the Office of External Affairs, the Office of Legislative Affairs, the Office of Intergovernmental Programs, the Office of Greenways and Trails and the Office of Emergency Response;
- Six districts are headed by managers, appointed by the secretary and involved in regulatory matters concerning waste management, water resource management, wetlands, and air resources; and
- Divisions may have one assistant or two deputy division directors that direct the districts and bureaus on matters of interpretation and applicability of DEP's rules and programs to ensure statewide and intradepartmental consistency. The divisions are: the Division of Administrative Services, the Division of Air Resource Management, the Division of Water Resource Management, the Division of Environmental Assessment and Restoration, the Division of Waste Management, the Division of Recreation and Parks, and the Division of State Lands.

The bill revises the organizational structure of DEP to provide that:

- The secretary must appoint a general counsel who is directly responsible to and serves at the pleasure of the secretary. The general counsel is responsible for all legal matters of the DEP;
- Offices may be established as deemed necessary to promote the efficient and effective operation of DEP. The secretary may merge, divide, or abolish offices as necessary in consultation with the Executive Office of the Governor. The bill removes the Office of Chief of Staff, the Office of General Counsel, the Office of Inspector General, the Office of External Affairs, the Office of Legislative Affairs, the Office of Intergovernmental Programs, the Office of Greenways and Trails, and the Office of Emergency Response;
- There are no parameters on the number of deputy secretaries or districts DEP must have;
- The secretary may establish other divisions and bureaus deemed necessary to accomplish the mission and goals of DEP, including, the following areas of program responsibility: water resources management, regulatory programs; and lands and recreation. The divisions must be headed by directors, appointed by the secretary; and
- The Division of Water Restoration Assistance is a division with DEP.

The bill has an indeterminate fiscal impact on the state, and does not have a fiscal impact on local government or the private sector.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Section 20.04, F.S., provides the structure of the executive branch of state government as follows:

- A department is the principal administrative unit of the executive branch, and must bear a title beginning with the words "State of Florida" and continuing with "Department of...";[1]
- For field operations, departments may establish district or area offices that combine division, bureau, section, and subsection functions;[2] and
- For internal structure, departments[3] must adhere to the following standard terms:
  - The principal unit of the department is the "division." Each division is headed by a "director";
  - The principal unit of the division is the "bureau." Each bureau is headed by a "chief";
  - The principal unit of the bureau is the "section." Each section is headed by an "administrator"; and
  - If further subdivision is necessary, sections may be divided into "subsections," which are headed by "supervisors."

The Executive Office of the Governor must maintain a current organizational chart of each agency of the executive branch, which must identify all divisions, bureaus, units, and subunits of the agency.[4] Agencies must submit organizational charts in accordance with guidelines established by the Executive Office of the Governor.[5]

Department of Environmental Protection Organizational Structure

Section 20.255, F.S., provides the organizational structure of the Department of Environmental Protection (DEP). The head of DEP is the secretary.[6] The secretary is appointed by the Governor, with concurrence of three Cabinet members, and must be confirmed by the Senate.[7] The secretary serves at the pleasure of the Governor.[8]

DEP must have three deputy secretaries.[9] These deputy secretaries are appointed by and serve at the pleasure of the secretary.[10] The secretary also appoints managers to head the following special offices within DEP:

- Office of Chief of Staff;
- Office of General Counsel;
- Office of Inspector General;
- Office of External Affairs;
- Office of Legislative Affairs;

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[1] Section 20.04(1), F.S.
[2] Section 20.04(2), F.S.
[3] Section 20.04(3), F.S., provides an exception for the Department of Financial Services, the Department of Children and Families, the Department of Corrections, the Department of Management Services, the Department of Revenue, and the Department of Transportation.
[4] Section 20.04(8), F.S.
[5] *Id.*
[6] Section 20.255(1), F.S.
[7] *Id.*
[8] *Id.*
[9] Section 20.255(2)(a), F.S.
[10] *Id.*

- Office of Intergovernmental Programs;
- Office of Greenways and Trails; and
- Office of Emergency Response.[11]

DEP has six districts involved in regulatory matters concerning waste management, water resource management, wetlands, and air resources.[12] The districts are headed by managers, who are appointed by and serve at the pleasure of the secretary.[13]

DEP also has the following divisions:
- Division of Administrative Services;
- Division of Air Resource Management;
- Division of Water Resource Management;
- Division of Environmental Assessment and Restoration;
- Division of Waste Management;
- Division of Recreation and Parks; and
- Division of State Lands. The director of this division is to be appointed by the secretary, subject to confirmation by the Governor and Cabinet sitting as the Board of Trustees of the Internal Improvement Trust Fund (Board).[14]

Divisions of DEP may have one assistant or two deputy division directors, as required to facilitate effective operation.[15] Divisions are required to direct the districts and bureaus on matters of interpretation and applicability of DEP's rules and programs to ensure statewide and intradepartmental consistency.[16]

Reorganization

Departments must be organized along functional or program lines.[17] Structural reorganization must be a continuing process through careful executive and legislative appraisal of the placement of proposed new programs and the coordination of existing programs in response to public needs.[18] When a reorganization of state government abolishes positions, the individuals affected, when otherwise qualified, must be given priority consideration for any new positions created by reorganization or for other vacant positions in state government.[19]

Unless specifically authorized by law, the head of a department may not reallocate duties and functions specifically assigned by law to a specific unit of the department.[20] Those functions or agencies assigned generally to the department without specific designation to a unit of the department may be allocated and reallocated to a unit of the department at the discretion of the head of the department.[21]

The head of a department may recommend additional divisions, bureaus, sections, and subsections to promote efficient and effective operation of the department.[22] New bureaus, sections, and subsections may be initiated by a department and established as recommended by the Department of Management

[11] *Id.*
[12] Section 20.255(b), F.S.
[13] *Id.*
[14] Section 20.255(3), F.S.
[15] Section 20.255(2)(b), F.S.
[16] Section 20.255(3), F.S.
[17] Section 20.02(6), F.S.
[18] Section 20.02(4), F.S.
[19] Section 20.02(8), F.S.
[20] Section 20.04(7)(a), F.S.
[21] *Id.*
[22] Section 20.04(7)(b), F.S.

Services and approved by the Executive Office of the Governor, or may be established by specific statutory enactment.[23]

Effect of Proposed Changes

The bill amends s. 20.255, F.S., amending the organizational structure of DEP. Specifically, the bill:

- Removes the number of deputy secretaries DEP must have;
- Provides that the secretary must appoint a general counsel who is directly responsible to and serves at the pleasure of the secretary, and provides that the general counsel is responsible for all legal matters of DEP;
- Removes the Office of Chief of Staff, Office of General Counsel, Office of Inspector General, Office of External Affairs, Office of Legislative Affairs, Office of Intergovernmental Programs, Office of Greenways and Trails, and Office of Emergency Response;
- Provides that the secretary may establish offices necessary to promote the efficient and effective operation of DEP. The secretary, in consultation with the Executive Office of the Governor, may merge, divide, or abolish offices as necessary;
- Removes the number of administrative districts DEP must have;
- Adds the Division of Water Restoration Assistance as a division within DEP;
- Provides that the secretary may establish divisions, in addition to those otherwise provided for in s. 20.255, F.S., and bureaus deemed necessary to accomplish the mission and goals of DEP, which include the following areas of program responsibility:
  - Water resources management;
  - Regulatory programs; and
  - Lands and recreation;
- Clarifies that offices and districts are headed by managers, and divisions are headed by directors;
- Removes the provision allowing divisions to have one assistant or two deputy division directors; and
- Provides that the managers of all offices and districts and directors of all divisions, rather than only those specifically named in the section, are exempt from part II of chapter 110, F.S., and are included in the Senior Management Service (SMS) in accordance with s. 110.205(2)(j), F.S.

B. SECTION DIRECTORY:

Section 1. Amends s. 20.255, F.S., regarding the organizational structure of DEP.

Section 2. Provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   Reclassifying a position as SMS class, results in a 15.25 percent increase in salary retirement benefits for each position. The bill removes the limits on the number of divisions, offices, and districts. Division directors, office managers, and district managers are included in the SMS class.

[23] *Id.*

Because it is not known whether additional division offices or districts would be created, and thus, new SMS class positions, the fiscal impact is indeterminate.

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, or reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On January 26, 2016, the Agriculture & Natural Resources Subcommittee adopted a strike-all amendment and reported the bill favorably with committee substitute. The strike-all amendment:

- Removed the requirement that DEP must have three deputy secretaries;
- Provided that DEP may establish divisions in addition to the enumerated divisions within s. 20.255, F.S., and the Division of Water Restoration Assistance; and
- Clarified that offices and districts are headed by managers, and divisions are headed by directors.

This analysis is drawn to the committee substitute.

A bill to be entitled

An act relating to the organizational structure of the Department of Environmental Protection; amending s. 20.255, F.S.; revising provisions for the appointment of deputy secretaries and a general counsel; removing the number of deputy secretaries required to be appointed; authorizing the Secretary of Environmental Protection to establish divisions and bureaus as necessary to accomplish the department's mission and goals and to establish offices as necessary to promote the efficient and effective operation of the department; authorizing the secretary, in consultation with the Executive Office of the Governor, to merge, divide, or abolish such offices; removing the required establishment of certain offices; authorizing the secretary to establish administrative districts; removing the number of assistant or deputy division directors required to be appointed; establishing the Division of Water Restoration Assistance within the department; providing an effective date.

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

Section 1. Subsections (2) and (3) of section 20.255, Florida Statutes, are amended to read:

20.255 Department of Environmental Protection.—There is

created a Department of Environmental Protection.

(2)(a) The secretary shall appoint ~~There shall be three~~ deputy secretaries who ~~are to be appointed by and~~ shall serve at the pleasure of the secretary. The secretary may assign any deputy secretary the responsibility to supervise, coordinate, and formulate policy for any division, office, or district.

(b) The secretary shall appoint a general counsel who is directly responsible to and serves at the pleasure of the secretary. The general counsel is responsible for all legal matters of the department.

(c) In addition to the divisions established pursuant to subsection (3), the secretary may establish other divisions and bureaus of the department as he or she deems necessary to accomplish the department's mission and goals, including, but not limited to, the following areas of program responsibility: water resources management, regulatory programs, and lands and recreation. The divisions shall be headed by directors. Each director, except for the director of the Division of State Lands, shall be appointed by and serve at the pleasure of the secretary. The director of the Division of State Lands shall be appointed by the secretary, subject to confirmation by the Governor and Cabinet sitting as the Board of Trustees of the Internal Improvement Trust Fund.

(d) The secretary may establish offices as he or she deems necessary to promote the efficient and effective operation of the department. The secretary, in consultation with the

Executive Office of the Governor, may merge, divide, or abolish offices as necessary. The ~~following special~~ offices shall be ~~are established and~~ headed by managers.~~,~~ Each manager shall ~~of whom is to~~ be appointed by and serve at the pleasure of the secretary~~:~~

~~1. Office of Chief of Staff;~~

~~2. Office of General Counsel;~~

~~3. Office of Inspector General;~~

~~4. Office of External Affairs;~~

~~5. Office of Legislative Affairs;~~

~~6. Office of Intergovernmental Programs; and~~

~~7. Office of Greenways and Trails.~~

~~8. Office of Emergency Response~~.

(e)~~(b)~~ The secretary ~~There~~ shall establish ~~be six~~ administrative districts to be involved in regulatory matters, such as ~~of~~ waste management, water resource management, wetlands, and air resources. The districts~~, which~~ shall be headed by managers.~~,~~ Each manager shall ~~of whom is to~~ be appointed by and serve at the pleasure of the secretary. ~~Divisions of the department may have one assistant or two deputy division directors, as required to facilitate effective operation.~~

(f) The directors ~~managers~~ of all divisions, and the managers of all offices and ~~specifically named in this section and the directors of the six administrative~~ districts, are exempt from part II of chapter 110 and are included in the

Senior Management Service in accordance with s. 110.205(2)(j).

(3) The following divisions of the Department of Environmental Protection are established:

(a) Division of Administrative Services.

(b) Division of Air Resource Management.

(c) Division of Water Resource Management.

(d) Division of Environmental Assessment and Restoration.

(e) Division of Waste Management.

(f) Division of Recreation and Parks.

(g) Division of State Lands.

(h) Division of Water Restoration Assistance~~, the director of which is to be appointed by the secretary of the department, subject to confirmation by the Governor and Cabinet sitting as the Board of Trustees of the Internal Improvement Trust Fund~~.

In order to ensure statewide and intradepartmental consistency, the department's divisions shall direct the district offices and bureaus on matters of interpretation and applicability of the department's rules and programs.

Section 2. This act shall take effect July 1, 2016.

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 Appropriations Subcommittee

Representative Combee offered the following:

Amendment (with title amendment)

Remove lines 28-97 and insert:

(2)(a) There shall be three deputy secretaries who are to be appointed by and shall serve at the pleasure of the secretary. The secretary may assign any deputy secretary the responsibility to supervise, coordinate, and formulate policy for any division, office, or district. ~~The following special offices are established and headed by managers, each of whom is to be appointed by and serve at the pleasure of the secretary:~~

~~1. Office of Chief of Staff;~~

~~2. Office of General Counsel;~~

~~3. Office of Inspector General;~~

~~4. Office of External Affairs;~~

~~5. Office of Legislative Affairs;~~

~~6. Office of Intergovernmental Programs; and~~

~~7. Office of Greenways and Trails.~~

~~8. Office of Emergency Response.~~

(b) The Office of the Secretary is established. The secretary may establish offices within divisions or within the Office of the secretary to promote the efficient and effective operation of the department.

(c) The secretary shall appoint a general counsel who is directly responsible to and serves at the pleasure of the secretary. The general counsel is responsible for all legal matters of the department.

(d) ~~(b)~~ There shall be six administrative districts involved in regulatory matters of waste management, water resource management, wetlands, and air resources, which shall be headed by managers, each of whom is to be appointed by and serve at the pleasure of the secretary. Divisions of the department may have one assistant or two deputy division directors, as required to facilitate effective operation.

The directors ~~managers~~ of all divisions, managers of all ~~and~~ offices, ~~specifically named in this section~~ and the managers ~~directors~~ of the six administrative districts are exempt from part II of chapter 110 and are included in the Senior Management Service in accordance with s. 110.205(2)(j).

(3) The following divisions of the Department of

Environmental Protection are established:

(a) Division of Administrative Services.

(b) Division of Air Resource Management.

(c) Division of Water Resource Management.

(d) Division of Environmental Assessment and Restoration.

(e) Division of Waste Management.

(f) Division of Recreation and Parks.

(g) Division of State Lands, the director of which is to be appointed by the secretary of the department, subject to confirmation by the Governor and Cabinet sitting as the Board of Trustees of the Internal Improvement Trust Fund.

(h) Division of Water Restoration Assistance.

In order to ensure statewide and intradepartmental consistency, the department's divisions shall direct the district offices and bureaus on matters of interpretation and applicability of the department's rules and programs.

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

Remove lines 4-18 and insert:

20.255, F.S.; removing certain offices; authorizing the appointment of a general counsel; establishing the Office of the Secretary; authorizing the secretary to establish offices within divisions or the Office of the Secretary as necessary to promote the efficient and effective operation of the department;

establishing the Division of Water Restoration Assistance within the

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 589 Environmental Control
SPONSOR(S): Pigman and others
TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 1052

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

SUMMARY ANALYSIS

The bill makes the following changes to chs. 373 and 403, F.S., regarding environmental control:

- Amends the licensure requirements for water well contractors;
- Provides that if the beneficial use of a constructed clay settling area (CSA) of a phosphate mine is extended, the rate of reclamation requirements and the financial responsibility requirements do not apply to the CSA until the beneficial use of the CSA is complete;
- Allows the use of land set-asides and land use modifications not otherwise required by state law or permit, including constructed wetlands or other water quality improvement projects, that reduce nutrient loads into nutrient impaired surface waters to generate water quality credits for trading;
- Provides that the limitation on the granting of a variance does not prohibit the issuance of moderating provisions or requirements under state law, subject to any necessary approval by the United States Environmental Protection Agency;
- Deletes the July 1, 2016 expiration date of the solid waste landfill closure account within the Solid Waste Management Trust Fund (SWMTF);
- Provides that counties and municipalities may implement a flow control ordinance to ensure an adequate amount of solid waste is received at a resource recovery facility only after it owns, and actively uses a resource recovery facility, and proves the necessity of implementing flow control;
- Provides that a flow control ordinance does not limit other entities and districts to contract for waste management services;
- Specifies that for purposes of exercising flow control authority, a resource recovery facility does not include a landfill gas-to-energy system or facility; and
- Provides an appropriation for Fiscal Year 2016-2017 of $2,399,764 from the SWMTF for the closure and long-term care of solid waste management facilities.

The bill has a neutral impact on the state, a negative fiscal impact to local governments, and a positive fiscal impact on the private sector (See Fiscal Analysis and Economic Impact Statement).

The bill may be a county or municipality mandate pursuant to Art. VII section 18 of the Florida Constitution. See Section III.A.1 of the analysis.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Water Well Contractor Licensure

Present Situation

The practice of constructing, repairing, and abandoning water wells, if conducted by incompetent contractors, is potentially threatening to the health of the public and to the environment.[1] The Legislature finds that a threat to the public and the environment exists if water resources become contaminated as a result of wells drilled by incompetent or dishonest contractors, and that to prevent contamination it is necessary to regulate the construction, repair, and abandonment of wells, and the persons and businesses responsible.[2]

Every person who wishes to engage in business as a water well contractor must obtain a water well contractor license from the water management district (WMD).[3] Licensure by a WMD is the only water well contractor license required for the construction, repair, or abandonment of water wells in the state.[4]

Each person desiring to be licensed as a water well contractor must apply to take the licensure examination.[5] Application must be made to the WMD where the applicant resides or where his or her principal place of business is located.[6] A resident of another state must apply to the WMD where most of the business of the applicant will take place.[7] Application is made on forms provided by the WMD.[8]

In order to be entitled to take the water well contractor licensure examination, an applicant must:

- Be at least 18 years of age;
- Have at least 2 years of experience in constructing, repairing, or abandoning water wells. Satisfactory proof of such experience must be demonstrated 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 a water well contractor and a letter from 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 5 years. Of these wells, at least seven must have been constructed, as defined in s. 373.303(2), F.S., by the applicant. The list must also include:
    - The name and address of the owner or owners of each well.
    - The location, primary use, and approximate depth and diameter of each well that the applicant has constructed, repaired, or abandoned.
    - The approximate date the construction, repair, or abandonment of each well was completed.
- Have completed the application form and remitted a nonrefundable application fee.[9]

[1] Section 373.302, F.S.
[2] *Id.*
[3] Section 373.323(1), F.S.
[4] *Id.*
[5] Section 373.323(2), F.S.
[6] *Id.*
[7] *Id.*
[8] *Id.*
[9] Section 373.323(3)(c), F.S.

Effect of Proposed Changes

The bill amends the requirements for water well contractor licensure examination in s. 373.323(3)(b), F.S., by requiring applicants to demonstrate 2 years of experience in constructing, repairing, or abandoning water wells by a letter from a water well contractor or letter from a water well inspector employed by a governmental agency.

Phosphate Mining Reclamation

Present Situation

Currently, phosphate mining occurs primarily in the central Florida area, consisting of Polk, Hillsborough, Manatee, and Hardee counties.[10] The central Florida phosphate-mining region covers approximately 1.3 million acres of land known as the "Bone Valley."[11] Currently, there are 27 phosphate mines covering more than 491,900 acres.[12] The smallest mine is approximately 5,000 acres and the largest is approximately 100,000 acres.[13] Of the commodities mined in Florida, mining phosphate is the most land intensive, disturbing between 5,000 to 6,000 acres annually, with approximately 25 to 30 percent of the lands consisting of isolated wetlands or wetlands connected to waters of the state.[14]

The extraction of phosphate is important to the economic well-being of Florida and to the needs of society.[15] It is primarily used to produce fertilizers for food production, but may also be used in animal feed supplements, food preservatives, and many industrial products.[16]

Since mining is a temporary land use that disturbs surface areas and produces waste materials, mined lands must be reclaimed[17] to a beneficial use in a timely manner and in a manner which recognizes the diversity among mines, mining operations, and types of lands which are mined.[18] Lands mined for phosphate on or after July 1, 1975, and lands initially used after July 1, 1984, as a clay settling area (CSA) or a dam for use with a CSA are subject to reclamation requirements.[19] Seventy-three percent of the lands mined or disturbed for phosphate since July 1, 1975, have been reclaimed.[20]

Financial Responsibility for Phosphate Mine Reclamation

A mine operator must provide financial assurance to the state that the reclamation of lands will be completed in a timely manner.[21] A mine operator that is in compliance with the timing of reclamation[22] is deemed to have provided appropriate financial assurance to the state.[23] However, a mine operator who is not in compliance with the timing of reclamation is required to provide one or more of the following forms of security:

- A lien in favor of the state on unmined lands or on reclaimed and released real property owned in fee simple by the operator;

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[10] DEP's Phosphate Mines, available at http://www.dep.state.fl.us/water/mines/manpho.htm (last visited Jan. 22, 2016).
[11] *Id.*
[12] *Id.*
[13] *Id.*
[14] *Id.*
[15] Section 378.202(1), F.S.
[16] DEP's Phosphate Mines, available at http://www.dep.state.fl.us/water/mines/manpho.htm (last visited Jan. 22, 2016).
[17] Section 378.203(9), F.S., defines "reclamation" as the reshaping of lands in a manner that meets the reclamation criteria and standards of the Phosphate Land Reclamation Act, Part II, ch. 378, F.S.
[18] Section 378.202(1), F.S.
[19] Section 378.204, F.S.
[20] DEP's Rate of Reclamation Report July 1, 1975 through December 31, 2013, available at http://www.dep.state.fl.us/water/mines/docs/ROR-Report-2013.pdf. (last visited Jan. 22, 2016).
[21] Section 378.208(1), F.S.
[22] Provided in s. 378.209, F.S.
[23] Section 378.208(1), F.S.

- A surety bond or letter of credit in either a fixed amount, adjusted annually for inflation, or in an amount to be determined based upon projected reclamation costs at the time the security is purchased;
- A donation of land acceptable to the state whereby every acre donated would relieve the company of the obligation to bond or otherwise provide security for the reclamation of acres mined, based on a ratio of 1 acre donated to cover the financial responsibility for 10 or more acres of mined lands. However, donation would not relieve the operator of the obligation to reclaim;
- A cash deposit or trust fund payable to the state in a fixed amount, adjusted annually for inflation, or in an amount to be determined based upon projected reclamation costs at the time the cash deposit or trust fund is established; or
- Any combination of these financial assurance methods.[24]

The form of security provided is the operator's option, but must cover the number of acres for which the operator is delinquent in reclaiming and the number of acres the operator is to reclaim in the current 5-year period.[25] The security, other than the donation of land, is to be released upon completion of reclamation of delinquent acres.[26]

The amount of financial responsibility is established by the Department of Environmental Protection[27] (DEP) and must not exceed $4,000 per acre for each reclamation program, adjusted annually by the appropriate inflationary index for construction.[28] In establishing the amount of financial responsibility, DEP must consider:

- The amount and type of reclamation involved;
- The probable cost of proper reclamation;
- Inflation rates; and
- Changes in mining operations.[29]

Timing of Reclamation

Reclamation should be completed within 2 years after the completion of mining operations, exclusive of a growing season required to ensure establishment of vegetation.[30] Completion of reclamation occurs when initial revegetation is completed, not at the time of final release of the reclamation area.[31] For the purposes of financial responsibility requirements,[32] the schedule for complete reclamation is as follows:

- July 1, 1975, to December 31, 1980, for existing mines or the first 5-year period of mining for new mines, reclamation may not be required, and any reclamation that is completed must be credited forward;
- January 1, 1981, to December 31, 1985, for existing mines or the second 5-year period of mining for new mines, reclamation of acres mined must be completed at the rate of an acreage equivalent of 15 percent of the acres mined during the period July 1, 1975, to December 31, 1980, or the immediately preceding 5-year period, as appropriate. Reclamation in excess of the required percentage must be credited forward;
- January 1, 1986, to December 31, 1990, for existing mines or the third 5-year period of mining for new mines, reclamation of acres mined must be completed at the rate of an acreage equivalent of 60 percent of the acres mined during the period January 1, 1981, to December 31,

[24] Section 378.208(2)(a)-(f), F.S.
[25] Section 378.208(2), F.S.
[26] *Id.*
[27] Section 378.208(3), F.S., requires the Office of Insurance Regulation of the Financial Services Commission to be available to assist DEP in making this determination.
[28] Section 378.208(3), F.S.
[29] *Id.*
[30] Section 378.209(1), F.S.
[31] *Id.*
[32] Section 378.208, F.S.

1985, or the immediately preceding 5-year period, as appropriate. Reclamation in excess of the required percentage must be credited forward;

- January 1, 1991, to December 31, 1995, for existing mines or the fourth 5-year period of mining for new mines, reclamation of acres mined must be completed at the rate of an acreage equivalent of 75 percent of the acres mined during the period January 1, 1986, to December 31, 1990, or the immediately preceding 5-year period, as appropriate. Reclamation in excess of the required percentage must be credited forward; and
- January 1, 1996, to December 31, 2000, for existing mines or the fifth 5-year period of mining for new mines, and each 5-year period thereafter, reclamation of acres mined must be completed at the rate of an acreage equivalent of 100 percent of acres mined during the immediately preceding 5-year period. Reclamation in excess of the required percentage must be credited forward.[33]

The rate of mining during any 5-year period is to be determined solely by the operator and not the state.[34] The time periods and reclamation rates may be modified or waived for experimental reclamation programs to take into account the effect of temporary shutdown of mining operations or other physical restraints, for unreasonable delays in the processing of reclamation applications by DEP, or to relieve or prevent extreme economic hardship on the operator.[35]

Clay Settling Areas

The phosphate ore layer (matrix) comprises nearly equal parts of sand, clay, and phosphate minerals.[36] Separation of the matrix results in large quantities of sand and phosphatic clay. For instance, extracting one ton of phosphate rock creates one ton of phosphatic clay.[37] In Florida, approximately 100,000 tons of phosphatic clay is generated every day.[38]

Phosphatic clay is highly plastic, or moldable, and retains large quantities of water. The high moisture-induced shrink-swell characteristics of phosphatic clay make them unsuitable foundations for structures.[39] The low hydraulic conductivity of phosphatic clay leads to ponding.[40] Without drainage, wet phosphatic clays are difficult to traverse with most standard farm equipment, making them impractical for crop production.[41] Due to the properties and quantities of phosphatic clay, the conversion of phosphatic clay to a beneficial use following mining is likely the most significant problem in the reclamation of Florida phosphate mined lands.[42]

CSAs are the dominant method of storing phosphatic clay in Florida.[43] CSAs comprise 40 percent of the post-mining landscape, have dam walls between 20 and 60 feet in height, and remain irreclaimable for many years during active use. When no additional clays are to be added, CSAs must undergo a protracted process of draining and clay drying.[44]

DEP has encouraged prolonged use of CSAs to minimize the total acreage used for CSAs, reduce reclamation delays in areas of the mine that are not used as a CSA, and reduce the number of dams that are built.[45] Changes in mining practices to utilize CSAs for longer periods of time have resulted in

[33] Section 378.209(1)(a)-(e), F.S.
[34] Section 378.209(2), F.S.
[35] Section 378.209(3), F.S.
[36] *Sand-Clay Mix in Phosphate Mine Reclamation: Characteristics and Land Use*, available at https://edis.ifas.ufl.edu/ss636.
[37] *Id.*
[38] *Id.*
[39] *Id.*
[40] *Id.*
[41] *Id.*
[42] *Id.*
[43] *Id.*
[44] *Id.*
[45] DEP's analysis of HB 589 (2016), on file with the Agriculture & Natural Resources Subcommittee.

delays in reclamation of these areas, which has resulted in the requirement for mine operators to provide financial assurance to the state to ensure that reclamation is completed in a timely manner.[46]

Effect of Proposed Changes

The bill creates subsection 378.209(4), F.S., regarding the timing of reclamation for CSAs. The bill provides that if the beneficial use of a constructed CSA is extended, the rate of reclamation requirements[47] and the financial responsibility requirements[48] do not apply to the constructed CSA until the beneficial use of the area is complete.

Exempting CSAs from the rate of reclamation requirements will encourage mine operators to prolong the use of CSAs, minimize the construction of new CSAs, reduce reclamation delays in areas of the mine that are not used for clay settling, reduce the number of dams that need to be built, and decrease DEP's administrative process involved with variances for projects where the rate of reclamation is not being met due to extended use of CSAs.[49]

Water Quality Credit Trading

Present Situation

Water quality credit trading (WQCT, sometimes referred to as "pollutant trading") is a voluntary, market-based approach to promote the protection and restoration of Florida's rivers, lakes, streams, and estuaries.[50] Trading is based on the fact that businesses and industries, wastewater treatment facilities, urban stormwater systems and agricultural sites that discharge the same pollutants to a waterbody or a basin, watershed, or other defined geographic area, may face substantially different costs to control pollutants.[51] WQCT allows pollutant reductions to be environmentally valued in the form of credits,[52] which can then be traded on a local market to promote cost-effective water quality improvements, which results is better water quality protection for less money.[53]

The WQCT program is authorized statewide[54] as provided in s. 403.086(8), F.S., and:

- Requires WQCT to be consistent with federal law and regulation;
- Requires WQCT to be implemented through permits, including WQCT permits, other authorizations, or other legally binding agreements established by DEP rule;
- Requires DEP to establish the pollutant load reduction value of credits and provides that DEP is responsible for authorizing their use;
- Provides that DEP may not participate in the establishment of credit prices;
- Requires a person who acquires credits (buyer) to timely submit to DEP an affidavit, signed by the buyer and the credit generator (seller), disclosing the term of acquisition, number of credits, unit credit price paid, and any state funding received for the facilities or activities that generated the credits;
- Provides that sellers of credits are responsible for achieving the load reductions on which the credits are based and complying with the terms of DEP's authorization, and any trading agreements entered;

[46] *Id.*
[47] Section 378.209(1)(a)-(e), F.S.
[48] Section 378.208, F.S.
[49] DEP's analysis of HB 589 (2016), on file with the Agriculture & Natural Resources Subcommittee.
[50] DEP's *The Pilot Water Quality Credit Trading Program for the Lower St. Johns River: A Report to the Governor and Legislature* (Oct. 2010), available at http://dep.state.fl.us/water/wqssp/docs/Water QualityCreditReport-101410.pdf (last visited Jan . 22, 2016).
[51] *Id.*
[52] Rule 62-306.200(3), F.A.C., defines "credit" as the amount of an entity's nutrient load reduction below the baseline that will be available for trading purposes, measured in units of pounds per year or kilograms per year.
[53] *Id.*
[54] Chapter 2013-146, Laws of Florida, expanded the original WQCT pilot program in the St. Johns River BMAP established in ch. 2008-189, Laws of Florida.

- Provides that buyers are responsible for complying with the terms of their DEP permit;
- Requires DEP to take action to address the failure of a seller to fulfill its obligations, including deeming the seller's credits invalid if the seller cannot achieve the load reductions on which the credits were based in a reasonable time;
- Provides that if DEP determines credits to be invalid, in whole or in part, which causing the buyer to be unable to timely meet its pollutant reduction obligations, DEP must issue an order establishing the actions required of the buyer to meet its obligations by alternative means and a reasonable schedule for completing the actions. Provides that the invalidation of credits does not, in and of itself, constitute a violation of the buyer's permit;
- Provides that DEP may authorize WQCT in adopted basin management action plans (BMAP) and that participation in WQCT is voluntary; and
- Requires entities that participate in WQCT to timely report to DEP the prices for credits, how the prices were determined, and any state funding received for the facilities or activities that generated the credits.[55]

Activities that are potentially eligible to generate credits include:

- Installation or modification of water pollution control equipment or activities that are not required to meet technology-based effluent levels, water quality based effluent levels, or other pollution control obligations, and reduce nutrient loads below the baseline;
- Operational changes or the modification of a process or process equipment that reduces the quantity of water discharged through reuse, recycling, water conservation, or other measures and thereby reduce the load of nutrients discharged. Credits may be generated when a permitted surface water discharge facility closes its operations or ceases discharging to surface waters, but the credits will only be valid while the permit remains in effect;
- Implementation of structural nonpoint source management controls;
- Installation, operation and maintenance of new drainage projects designed to treat stormwater;
- Implementation by agricultural operations of soil or water treatment technologies or water-quality enhancing production practices or systems that are confirmed in writing by the Department of Agriculture and Consumer Services to reduce nutrient loads below the baseline;
- Other pollution controls, technologies or management practices with a demonstrated ability to reduce nutrient loads below the baseline established in a BMAP or remedial action plan (RAP); or
- A documented change in land use that goes beyond normal crop rotations or other standard agronomic practices that results in a reduction of nutrient loads below the baseline land use in the total maximum daily load, BMAP or RAP.[56]

Effect of Proposed Changes

The bill amends s. 403.067(8), F.S., to allow the use of land set-asides and land use modifications not otherwise required by state law or a permit, including constructed wetlands or other water quality improvement projects that reduce nutrient loads into nutrient impaired surface waters in WQCT.

Variances

Present Situation

Upon application to DEP, a variance from the requirements of ch. 403, F.S., the Florida Air and Water Pollution Control Act (Act), or the rules and regulations adopted pursuant to the Act, may be granted, but only for the following circumstances:

- There is no practicable means known or available for the adequate control of the pollution;

[55] Section 403.067(8)(a)-(h), F.S.
[56] Rule 62-306.400(1)(a)-(g), F.A.C.

- Compliance with the requirement(s) will necessitate the taking of measures which, because of their extent or cost, must be spread over a considerable period of time; however, a variance granted for this reason must prescribe a timetable for the taking of the measures required; or
- To relieve or prevent hardship other than what is provided above.[57]

Variances are required to be limited to 24 months, unless the variance is granted pursuant to part II of the Act, the Florida Electrical Power Plant Siting Act, which may be for the life of the permit or certification.[58]

However, DEP cannot grant a variance for discharges of waste into waters of the state or hazardous waste management if it results in less stringent requirements than those required by federal law.[59] There is one exception for when DEP issues a research, development and demonstration permit to a solid waste management facility or hazardous waste management facility that proposes to use an innovative and experimental solid waste treatment technology or process where permit standards have not been promulgated.[60]

A moderating provision is a condition in a permit authorized under state and federal law and applied when natural conditions prevent attainment of the criterion or when existing technology is not available to achieve the criterion.[61]

Effect of Proposed Changes

The bill amends s. 403.201(2), F.S., to provide that the limitation on the granting of a variance does not prohibit the issuance of moderating provisions or requirements under state law, subject to any necessary approval by the United States Environmental Protection Agency.

The bill reenacts s. 373.414(17), F.S., to incorporate the proposed changes to s. 403.201, F.S. made by the bill.

Solid Waste Landfill Closure and Long-term Care

Present Situation

DEP is responsible for the implementation and enforcement of the state's solid waste management program.[62] DEP is authorized to adopt rules to implement and enforce the state's solid waste management program, which includes the classification, construction, operation, maintenance and closure[63] of solid waste management facilities[64].[65]

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[57] Section 403.201(1)(a)-(c), F.S.
[58] Section 403.201(1), F.S.
[59] Section 403.201(2), F.S.
[60] *Id.*; Section 403.70715, F.S.
[61] DEP's Water Quality Q & A, available at http://www.dep.state.fl.us/evergladesforever/restoration/quality_qa.htm (last visited Jan. 22, 2016).
[62] Sections 403.703 and 403.705, F.S.
[63] Section 403.703(5), F.S., defines "closure" as the cessation of operation of a solid waste management facility and the act of securing the facility so that it will pose no significant threat to human health or the environment and includes long-term monitoring and maintenance of a facility if required by DEP rule.
[64] Section 403.703(35), F.S., defines a "solid waste management facility" as any solid waste disposal area, volume reduction plant, transfer station, materials recovery facility, or other facility, the purpose of which is resource recovery or the disposal, recycling, processing, or storage of solid waste. The term does not include recovered materials processing facilities that meet the requirements of s. 403.7046, F.S., except the portion of such facilities, if any, which is used for the management of solid waste.
[65] Section 403.709(9), F.S.; chs. 62-701 through 62-722, F.A.C.

An owner or operator[66] of any other landfill,[67] or any other solid waste management facility, must provide financial assurance to DEP for the closure of the facility.[68] Financial assurance may include surety bonds, certificates of deposit, securities, letters of credit, or other documents showing that the owner or operator has sufficient financial resources to cover, at a minimum, the costs of complying with closure requirements.[69] An owner or operator must estimate costs to the satisfaction of DEP.[70]

Section 403.709(5), F.S.,[71] creates a solid waste landfill closure account within the Solid Waste Management Trust Fund (SWMTF) to provide for the closure and long-term care[72] of solid waste management facilities.[73] DEP may use funds from the solid waste landfill closure account to contract with a third party for the closure 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 abandoned or was 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 the closure and long-term care of the facility.[74]

DEP must deposit funds received from an insurance company as reimbursement for the costs of closing or long-term care of the facility into the solid waste landfill closure account.[75] This law is scheduled for repeal on July 1, 2016.[76]

Effect of Proposed Changes

The bill deletes the scheduled repeal date of July 1, 2016. The bill also provides an appropriation for Fiscal Year 2016-2017 in the sum of $2,339,764 in nonrecurring funds to be appropriated to DEP from the SWMTF for the closing and long-term care of solid waste management facilities.

Solid Waste and Recovered Materials Flow Control Ordinances

Present Situation

Counties are responsible for operating solid waste disposal facilities[77] in incorporated and unincorporated areas of the county.[78] Unless otherwise approved by an interlocal agreement or special

[66] Section 403.7125(1), F.S., defines an "owner or operator" as any owner of record of any interest in land wherein a landfill is or has been located and any person or corporation that owns a majority interest in any other corporation that is the owner or operator of a landfill.
[67] Section 403.7125(17), F.S., defines a "landfill" as any solid waste land disposal area for which a permit, other than a general permit, is required by s. 403.707, F.S., and which receives solid waste for disposal in or upon land. The term does not include a land-spreading site, an injection well, a surface impoundment, or a facility for the disposal of construction and demolition debris.
[68] Sections 403.707(9) and 403.7125(3), F.S.; rule 62-701.630, F.A.C.
[69] *Id.*
[70] *Id.*
[71] Section 53, ch. 2015-222, Laws of Florida, created s. 403.709(5), F.S., in order to implement Specific Appropriation 1689A of the 2015-2016 General Appropriations Act.
[72] Rule 62-701.620, F.A.C., provides for the long-term care of solid waste management facilities.
[73] Section 403.703(35), F.S., defines a "solid waste management facility" as any solid waste disposal area, volume reduction plant, transfer station, materials recovery facility, or other facility, the purpose of which is resource recovery or the disposal, recycling, processing, or storage of solid waste. The term does not include recovered materials processing facilities that meet the requirements of s. 403.7046, F.S., except the portion of such facilities, if any, which is used for the management of solid waste.
[74] Section 403.709(5)(a), F.S.
[75] Section 403.709(5)(b), F.S.
[76] Section 403.709(5)(c), F.S.; Due to implementation of the section through the Implementing Bill.

act, municipalities may not operate these facilities unless they demonstrate that the use of a county facility, when compared to alternatives proposed by the municipality, places a significantly higher and disproportionate financial burden on its citizens when compared to the financial burden placed on persons residing within the county but outside of the municipality.[79]

However, municipalities may construct and operate a resource recovery[80] facility and related onsite solid waste disposal facilities without an interlocal agreement with the county if the municipality can demonstrate that the operation of the facility will not significantly impair financial commitments made by the county with respect to solid waste management facilities or result in significantly increased solid waste management costs to the remaining persons residing within the county but not served by the municipality's facility.[81]

Counties have the authority to adopt ordinances governing the disposal of solid waste[82] generated outside of the county at the county's solid waste disposal facility.[83] Municipalities are responsible for collecting and transporting solid waste from their jurisdictions to a solid waste disposal facility operated by a county.[84] Counties may charge reasonable fees for the handling and disposal of solid waste at their facilities.[85]

Counties and municipalities who undertake resource recovery[86] from solid waste may institute a flow control ordinance to ensure that the resource recovery facility receives an adequate quantity of solid waste generated within its jurisdiction.[87] However, this authority does not extend to recovered materials[88] that are intended for recycling[89].[90]

Landfill Gas-to-Energy Systems

Landfills that receive degradable wastes[91] are required to have a gas management system designed to prevent explosions and fires, and to minimize off-site odors, lateral migration of gases and damage to vegetation.[92] Landfill gas contains methane that can be captured and used to fuel power plants,

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[77] Section 403.703(33), F.S., defines a "solid waste disposal facility" as any solid waste management facility that is the final resting place for solid waste, including landfills and incineration facilities that produce ash from the process of incinerating municipal solid waste.
[78] Section 403.706(1), F.S.
[79] *Id.*
[80] Section 403.703(28), F.S., defines "resource recovery" as the process of recovering materials or energy from solid waste, excluding those materials or solid waste under the control of the Nuclear Regulatory Commission.
[81] Section 403.706(1), F.S.
[82] Section 403.703(32), F.S., defines "solid waste" as sludge unregulated under the federal Clean Water Act or Clean Air Act, sludge from a waste treatment works, water supply treatment plant, or air pollution control facility, or garbage, rubbish, refuse, special waste, or other discarded material, including solid, liquid, semisolid, or contained gaseous material resulting from domestic, industrial, commercial, mining, agricultural, or governmental operations. Recovered materials are not solid waste.
[83] *Id.*
[84] *Id.*
[85] *Id.*
[86] Section 403.703(28), F.S., defines "resource recovery" as the process of recovering materials or energy from solid waste, excluding those materials or solid waste under the control of the Nuclear Regulatory Commission.
[87] Section 403.713(2), F.S.
[88] Section 403.703(24), F.S., defines "recovered materials" as metal, paper, glass, plastic, textile, or rubber materials that have known recycling potential, can be feasibly recycled, and have been diverted and source separated or have been removed from the solid waste stream for sale, use, or reuse as raw materials, whether or not the materials require subsequent processing or separation from each other, but the term does not include materials destined for any use that constitutes disposal. Recovered materials are not solid waste.
[89] Section 403.703(27), F.S., defines "recycling" as any process by which solid waste, or materials that would otherwise become solid waste, are collected, separated, or processed and reused or returned to use in the form of raw materials or products.
[90] Section 403.713(2), F.S.
[91] Rule 62-701.200(26), F.A.C., defines "degradable waste" as waste that decomposes through chemical breakdown or microbiological activity. It includes materials such as food and vegetative wastes, but does not include materials like concrete and ash residue from the combustion of solid wastes and metals.
[92] Rule 62-701.530(1)(a), F.A.C.

manufacturing facilities, vehicles, and homes.[93] Counties are encouraged to form multicounty regional solutions for the capture and reuse or sale of methane gas from landfills.[94]

Effect of Proposed Changes

The bill amends s. 403.713(2), F.S., to provide that counties and municipalities may implement a flow control ordinance for resource recovery only after it owns, and actively uses, a resource recovery facility and the county or municipality proves the necessity of implementing flow control to ensure sufficient material for that resource recovery facility. The bill also provides that a flow control ordinance does not limit other entities and districts to contract for waste management services.

The bill creates s. 403.713(3), F.S., to specify that for purposes of exercising flow control authority, a resource recovery facility does not include a landfill gas-to-energy system or facility.

B. SECTION DIRECTORY:

Section 1. Amends s. 373.323, F.S., regarding licensure of water well contractors.

Section 2. Amends s. 378.209, F.S., regarding timing of reclamation.

Section 3. Amends s. 403.067, F.S., regarding water quality credit trading.

Section 4. Amends s. 403.201, F.S., regarding variances.

Section 5. Amends s. 403.709, F.S., regarding the Solid Waste Management Trust Fund.

Section 6. Amends s. 403.713, F.S., regarding the ownership and control of solid waste and recovered materials.

Section 7. Reenacts s. 403.414(17), F.S., to incorporate the changes made to s. 403.201, F.S.

Section 8. Provides an appropriation.

Section 9. Provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   For Fiscal Year 2016-2017, the bill provides $2,339,764 in nonrecurring funds to be appropriated to DEP from the SWMTF for the closing and long-term care of solid waste management facilities. The appropriation would allow DEP to execute contracts with a third party for the closure of five landfills.[95]The appropriation is identical to one that was adopted in the Fiscal Year 2015-2016 General Appropriations Act;[96] therefore the appropriation in the bill is not necessary.

[93] EPA's Landfill Methane Outreach Program, available at http://www3.epa.gov/lmop/ (last visited Jan. 22, 2016).
[94] Section 403.7055(1), F.S.
[95] DEP's analysis of HB 589 (2016), on file with the Agriculture & Natural Resources Subcommittee.
[96] *Id.*

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill may have a negative fiscal impact on local governments who are divested of implementing flow control ordinances to ensure adequate amounts of waste are received at resource recovery facilities because the bill requires local governments to own and actively use the resource recovery facility and prove the necessity of instituting the ordinance prior to enacting a flow control ordinance. The bill also provides that flow control ordinances cannot limit other entities and districts from contracting for waste management services. The bill also provides that flow control ordinances do not apply to landfill gas-to-energy systems or facilities, which could also decrease revenue.[97]

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may have an indeterminate positive fiscal impact on the private sector by extending the rate of reclamation and financial responsibility requirements of CSAs until the beneficial use of the CSA is complete, and by allowing land-set asides and land use modifications that reduce nutrient loads into impaired surface waters to be included in WQCT.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The county/municipality mandates provision of Art. VII, s. 18, of the Florida Constitution may apply because this bill may limit a local government's ability to raise revenue by limiting their ability to institute flow control ordinances for solid waste. An exemption may apply if the bill results in an insignificant fiscal impact to county or municipal governments. A fiscal estimate is not available for this bill.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The bill states that rate of reclamation and financial responsibility requirements do not apply to a CSA when the "beneficial use" of the CSA is extended, and does not become applicable until the "beneficial use" is complete, however, there is no provision in statute or rule that defines what "beneficial use" is in relation to a CSA for purposes of implementing the bills meaning.

[97] DEP's analysis of HB 589 (2016), on file with the Agriculture & Natural Resources Subcommittee.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On January 26, 2016, the Agriculture & Natural Resources Subcommittee adopted a proposed committee substitute and reported the bill favorably as a committee substitute. The proposed committee substitute removed the following sections from the bill:

- Section 1. – Amending s. 373.227, F.S., regarding water conservation;
- Section 3. – Amending s. 373.467, F.S., regarding the Harris Chain of Lakes Restoration Council;
- Section 4. – Amending s. 373.705, F.S., regarding water resource development;
- Section 6. – Amending s. 403.061, F.S., creating a specific surface water classification; and
- Section 10. – Amending s. 403.861, F.S., creating certain powers and duties of the DEP.

In addition, the proposed committee substitute amended s. 403.709(2), F.S., relating to the SWMTF, s. 378.209(4), F.S., regarding timing of reclamation, to provide that if the beneficial use of a constructed CSA is extended, the rate of reclamation requirements and the financial responsibility requirements do not apply to the constructed CSA until the beneficial use of the area is complete, and s. 403.713(2), F.S., regarding ownership and control of solid waste and recovered material, to provide that counties and municipalities may implement a flow control ordinance for resource recovery only after it owns, and actively uses, a resource recovery facility and the county or municipality proves the necessity of implementing flow control to ensure sufficient material for that resource recovery facility. The bill also provides that a flow control ordinance does not limit other entities and districts to contract for waste management services.

This analysis is drafted to the committee substitute as approved by the subcommittee.

A bill to be entitled

An act relating to environmental control; amending s. 373.323, F.S.; revising eligibility requirements for taking the water well contractor licensure examination; amending s. 378.209, F.S.; providing conditions under which certain constructed clay settling areas are exempt from reclamation rate and financial responsibility requirements; amending s. 403.067, F.S.; authorizing the use of land set-asides and land use modifications, including constructed wetlands or other water quality improvement projects, in water quality credit trading; amending s. 403.201, F.S.; providing applicability of prohibited variances concerning discharges of waste into waters of the state and hazardous waste management; amending s. 403.709, F.S.; revising conditions under which the department may use specified funds to contract with a third party for the closing and long-term care of solid waste facilities; abrogating the scheduled expiration of such authorization; amending s. 403.713, F.S.; authorizing local governments to implement a flow control ordinance only upon ownership and use of a resource recovery facility and a proven need of flow control for the facility; providing applicability of such ordinance; excluding certain landfill systems and facilities from regulation under such ordinance;

reenacting s. 373.414(17), F.S., relating to variances for activities in surface waters and wetlands, to incorporate the amendment made by the act to s. 403.201, F.S., in a reference thereto; providing an appropriation; providing an effective date.

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

Section 1. 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:

(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 a water well contractor or ~~and~~ a letter from 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 2. Subsection (4) is added to section 378.209, Florida Statutes, to read:

378.209 Timing of reclamation.—

(4) If the beneficial use of a constructed clay settling area is extended, the rate-of-reclamation requirements of paragraphs (1)(a)-(e) and the requirements of s. 378.208 do not apply to the clay settling area until the beneficial use of such area is completed.

Section 3. Paragraph (i) is added to subsection (8) of section 403.067, Florida Statutes, to read:

403.067 Establishment and implementation of total maximum daily loads.—

(8) WATER QUALITY CREDIT TRADING.—

(i) Land set-asides and land use modifications not otherwise required by state law or a permit, including constructed wetlands or other water quality improvement projects, that reduce nutrient loads into nutrient impaired

surface waters may be used under this subsection.

Section 4. Subsection (2) of section 403.201, Florida Statutes, is amended to read:

403.201 Variances.—

(2) A ~~No~~ variance may not ~~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, this subsection does not prohibit the issuance of moderating provisions or requirements under state law, subject to any necessary approval by the United States Environmental Protection Agency.

Section 5. Subsection (5) of section 403.709, Florida Statutes, is amended 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

as a solid waste management ~~the~~ facility;

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

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

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

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 the closure ~~closing~~ or long-term care of the facility into the solid waste landfill closure account.

~~(c) This subsection expires July 1, 2016.~~

Section 6. Subsection (2) of section 403.713, Florida Statutes, is amended, and subsection (3) is added to that section, to read:

403.713 Ownership and control of solid waste and recovered materials.—

(2) Any local government that ~~which~~ undertakes resource recovery from solid waste pursuant to general law or special act may implement ~~institute~~ a flow control ordinance for the purpose of ensuring that the resource recovery facility receives an

adequate quantity of solid waste from solid waste generated within its jurisdiction. Such authority does ~~shall~~ not extend to recovered materials, whether separated at the point of generation or after collection, which ~~that~~ are intended to be held for purposes of recycling pursuant to the requirements of this part; however, the handling of such materials is ~~shall be~~ subject to applicable state and local public health and safety laws. A flow control ordinance may be implemented under this section by a local government only after it owns and actively uses a resource recovery facility and the local government proves the necessity of implementing flow control to ensure sufficient materials for that resource recovery facility. A flow control ordinance does not limit the ability of other entities and districts to contract for waste management services.

(3) For the purposes of exercising flow control authority under this section, a resource recovery facility does not include a landfill gas-to-energy system or facility.

Section 7. For the purpose of incorporating the amendment made by this act to section 403.201, Florida Statutes, in a reference thereto, subsection (17) of section 373.414, Florida Statutes, is reenacted to read:

373.414 Additional criteria for activities in surface waters and wetlands.—

(17) The variance provisions of s. 403.201 are applicable to the provisions of this section or any rule adopted pursuant to this section. The governing boards and the department are

authorized to review and take final agency action on petitions requesting such variances for those activities they regulate under this part and s. 373.4145.

Section 8. For the 2016-2017 fiscal year, the sum of $2,339,764 in nonrecurring funds is appropriated to the Department of Environmental Protection from the Solid Waste Management Trust Fund in the Fixed Capital Outlay-Agency Managed-Closing and Long-Term Care of Solid Waste Management Facilities appropriation category for the closing and long-term care of solid waste management facilities.

Section 9. This act shall take effect upon becoming a law.

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 Appropriations Subcommittee
Representative Pigman offered the following:

Amendment (with title amendment)

Remove lines 92-121 and insert:

Section 5. Subsections (2) through (4) of section 403.709, Florida Statutes, are renumbered as subsections (3) through (5), respectively, and a new subsection (2) is added to that section 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.

(2) 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.

(a) 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, had, or was not required to obtain a department permit to operate the facility;

2. The permittee, where required by permit or rule, provided proof of financial assurance for closure in the form of an insurance certificate or an alternative form of financial assurance mechanism established pursuant to s. 403.7125;

3. The department has ordered the facility closed or has deemed the facility abandoned;

4. The closure of the facility is accomplished in substantial accordance with a closure plan approved by the department; and

5. The department has sufficient documentation to confirm that the issuer of the insurance policy or alternative form of financial assurance will provide or reimburse the funds required to complete the closing and long-term care of the facility.

(b) The department shall deposit all funds received from the insurer or other parties for reimbursing the costs of closing or long-term care of the facility under this subsection into the solid waste landfill closure account.

(c) If the amount available under the insurance policy or alternative form of financial assurance is insufficient, or is otherwise unavailable, to perform or complete the facility closing or long-term care under this subsection, and the

department has used all such funds from the insurance policy or alternative form of financial assurance, the department may use funds from the Solid Waste Management Trust Fund to pay for or reimburse additional expenses needed for performing or completing the approved facility closure or long-term care activities.

~~(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; and~~

~~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 in to the solid waste landfill closure account.~~

~~(c) This subsection expires July 1, 2016.~~

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

Remove line 15 and insert:
department to use funds from the Solid Waste Management Trust Fund to pay for or

Amendment No. 2

COMMITTEE/SUBCOMMITTEE ACTION

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

Committee/Subcommittee hearing bill: Agriculture & Natural Resources Appropriations Subcommittee

Representative Pigman offered the following:

Amendment (with title amendment)

Remove lines 160-166

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

Remove lines 30-31 and insert:

403.201, F.S., in a reference thereto; providing an effective date.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 697 Petroleum Restoration Program
SPONSOR(S): Agriculture and Natural Resources Subcommittee and Grant
TIED BILLS: **IDEN./SIM. BILLS:** SB 100

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

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. The Petroleum Restoration Program within the Department of Environmental Protection (DEP) establishes the requirements and procedures for cleaning up contaminated land, as well as the circumstances under which the state will pay for the cleanup. Under the Restoration Program, eligible contaminated sites are rehabilitated by the state in priority order.

The bill makes numerous changes to various state-assisted petroleum cleanup eligibility programs. Specifically, the bill:

- Reopens and changes the eligibility criteria of the Abandoned Tank Restoration Program (ATRP) to allow more contaminated sites to receive state funding assistance;
- Specifies that sites participating in the Petroleum Cleanup Participation Program (PCPP) are not eligible for the ATRP;
- Removes the exclusion for ATRP eligibility for sites that are owned by a person who had knowledge of the polluting condition when title was acquired;
- Changes the name of the "low-scored site initiative" (LSSI) to the "low-risk site initiative" (LRSI) and revises the criteria that must be met to participate in the LRSI;
- Increases the funding available to LRSI sites and allows more activities to receive funding under LRSI;
- Reopens the Petroleum Cleanup Participation Program (PCPP) to allow more contaminated sites to receive state funding assistance;
- Reduces the minimum number of sites that a facility owner or operator may bundle in order to be eligible for performance-based contracts to from 20 sites to 10 sites under the Advanced Cleanup Program;
- Increases the amount DEP may contract for advanced cleanup work from $15 million to $25 million; and
- Provides that a property owner that enters into a voluntary cost-share agreement with other property owners to bundle sites is not subject to agency term contractor assignment.

The bill appears to have a significant fiscal impact on state government, an indeterminate positive fiscal impact on the private sector, and no fiscal impact on local government.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Petroleum Restoration Programs

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, the source of 90 percent of Florida's 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 (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 DEP 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).[6] 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.[7]

State Funding Assistance for Rehabilitation

The average cost to rehabilitate a site is approximately $233,000,[8] but some sites may cost millions of dollars to rehabilitate. An owner of contaminated land or the person who caused the discharge is responsible for rehabilitating the land unless the site owner can show that the contamination resulted from the activities of a previous owner or other third party (responsible party), who is then responsible.[9] Over the years, DEP has implemented different eligibility programs 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, outlined below:

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

[1] DEP, Guide to Florida's Petroleum Cleanup Program, 1 (2002).
[2] Id.
[3] Id.
[4] Chapter 83-310, Laws of Fla.
[5] Chapter 86-159, Laws of Fla.
[6] Samuel J. Morely, *Florida' New Petroleum Contamination Reimbursement Program*, 70 Fla. B.J. 24 (1996).
[7] DEP, *Petroleum Restoration Program*, http://www.dep.state.fl.us/Waste/categories/pcp/default.htm (last visited December 7, 2015).
[8] DEP, Agency Analysis of 2016 House Bill 697, p. 5 (December 15, 2015).
[9] Section 376.308, F.S.

State-Assisted Petroleum Cleanup Eligibility Programs		
PROGRAM NAME	**PROGRAM DATES**	**PROGRAM DESCRIPTION**
		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 amounts of state-funded site restoration coverage[10]
Abandoned Tank Restoration Program (ATRP) s. 376.305(6), F.S.	Applications must have been submitted between June 1, 1990, and June 30, 1996	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 • Originally had a $300,000 cap on the amount of coverage, which was raised to $400,000 beginning July 1, 2008
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 for sites that DEP initiates an enforcement action to clean up • An agreement is formed whereby DEP conducts the cleanup and the site owner or responsible party pays for a portion of the costs

As of October 2015, 19,128 sites are eligible for state funding through one of the above programs.[11] Of these, approximately 8,603 have been rehabilitated and closed, approximately 5,576 are currently undergoing some phase of rehabilitation, and approximately 4,949 await rehabilitation.[12]

Inland Protection Trust Fund

To fund the cleanup of contaminated sites, the SUPER Act created the Inland Protection Trust Fund (IPTF).[13] An excise tax per barrel on petroleum and petroleum products in or imported into the state

[10] 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.

[11] DEP, Agency Analysis of 2016 House Bill 697, p. 3 (December 15, 2015).

[12] Id.

[13] Section 376.3071(3)-(4), F.S.

funds the IPTF.[14] The amount of the excise tax per barrel is determined by a formula, which is dependent upon the unobligated balance of the IPTF.[15] Each year, approximately $200 million from the excise tax is deposited into the IPTF to fund restoration of petroleum contaminated sites.[16]

Funding for rehabilitation of a site is based on a relative risk scoring system.[17] 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.[18] Sites currently in the Restoration Program range in score from 5 to 115 points. A score of 115 represents a substantial threat and a score of 5 represents a very low threat.[19] Sites are rehabilitated in priority order beginning with the highest score, with funding based on available budget.[20] DEP 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. Currently, the threshold is set at 30 points.[21]

Abandoned Tank Restoration Program

Present Situation

The Legislature created the ATRP in 1990 to address the problem of out-of-service or abandoned tanks that had contamination associated with previous operation.[22] The original program had a one-year application period. The Legislature extended the application deadline to participate in the program to 1992, 1994, and finally in 1996 the deadline was waived indefinitely for owners financially unable to comply with tank closure.[23] To be included in the program:

- Applicants must have submitted an application to DEP by June 30, 1996, unless the owner of the site cannot financially comply with DEP's closure rule;
- 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;
- The site must not be otherwise eligible for the ECI, Consent Order, or PLRIP cleanup programs;
- The site must have been closed pursuant to DEP's petroleum storage tank regulations, unless DEP determines the owner of the facility cannot financially comply with the closure rules;
- The site must be eligible for site rehabilitation funding in s. 376.3071, F.S.;
- The site must not be:
    - Owned by the Federal Government;
    - Contaminated by pollutants that are not petroleum products;
    - A site where DEP has been denied site access; and
    - Be owned by an individual who had knowledge of the polluting condition when title was acquired, unless the person acquired title to the site after issuance of a notice of site eligibility by DEP.[24]

There are 4,084 ATRP eligible discharges. The ATRP has helped remediate 2,138.[25]

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[14] Sections 206.9935(3) and 376.3071(7), F.S.

[15] 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.

[16] DEP Agency Analysis of 2016 House Bill 697, p. 3 (December 15, 2015).

[17] Section 376.3071(5)(a), F.S.

[18] Chapter 62-771.100, F.A.C.

[19] DEP Agency Analysis of 2016 House Bill 697, p. 3 (December 15, 2015).

[20] Chapter 62-771.300(3), F.A.C.

[21] DEP, *Petroleum Restoration Program*, http://www.dep.state.fl.us/waste/categories/pcp/default.htm (last visited December 7, 2015).

[22] DEP, *Abandoned Tank Restoration >> Petroleum Cleanup Program*, http://www.dep.state.fl.us/waste/categories/pcp/pages/atrp.htm, (last visited December 9, 2015).

[23] Id.

[24] Section 376.305(6), F.S.; rule 62-769.800(3), F.A.C.

Effect of Proposed Changes

The bill changes several portions of the eligibility requirements for ATRP. Specifically, the bill:

- Reopens the ATRP by deleting the application date, June 30, 1996, that limited participation in the program by amending subparagraph 376.305(6)(a)1. and paragraph 376.305(6)(b), F.S.
- Removes prohibition for sites eligible for rehabilitation under s. 376.3071, F.S., from participating in the ATRP by amending subparagraph 376.305(6)(a)3., F.S. This change would allow EDI program sites and Consent Order sites to participate in ATRP.
- Provides that a site is not eligible for ATRP if it is eligible for cleanup under s. 376.3071(13), F.S., PCPP, based on discharge reports received by DEP before January 1, 1995, or a written report of contamination submitted to DEP on or before December 31, 1998.
- Allows sites where the owner had knowledge of polluting condition prior to acquisition of the property to participate in ATRP by repealing subparagraph 376.305(6)(d)4., F.S. The bill also removes the reference to a defense from liability under paragraph 376.308(1)(c), F.S., that site owners who acquired title to property after July 1, 1992, demonstrate that they undertook all appropriate inquiry into the previous ownership and use of the property when seeking inclusion in the program.

DEP estimates these changes would create 20 new abandoned tank-related remediation activities per year.[26]

Low Score Site Initiative

Present Situation

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 cleanup programs. The Legislature created the Low Scored Site Initiative (LSSI) 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 LSSI, 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;
- No excessively contaminated soil exists onsite;
- A minimum of six months of groundwater monitoring indicates that the contamination 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 established by DEP unless human exposure is limited by appropriate institutional or engineering controls.[27]

An assessment is conducted to determine whether the above criteria are met.[28] DEP may pay the assessment costs for sites eligible for funding under EDI, ATRP, Innocent Victim, PLRIP, or PCPP.[29] DEP may only spend $10 million per fiscal year for LSSI.[30] These funds may only be used to fund site

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[25] DEP, Agency Analysis of 2016 House Bill 697, p. 3 (December 15, 2015).
[26] DEP, Agency Analysis of 2016 House Bill 697, p. 5 (December 15, 2015).
[27] Section 376.3071(12)(b)1., F.S.
[28] DEP, Petroleum Restoration Program, *Procedural and Technical Guidance for the Low-Scored Site Initiative*, p. 9 (2013) available at: http://www.dep.state.fl.us/waste/categories/pcp/pages/screening.htm (last visited December 9, 2015).
[29] Id. at 3.
[30] Section 376.3071(12)(b)3., F.S.

assessments.[31] Each site may only receive up to $30,000, which can include six months of ground water monitoring.[32] Each site owner or responsible party is limited to 10 eligible sites per fiscal year.[33] Site assessment must be completed within six months.[34] Funds are allocated on a first-come, first-served basis.[35] 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 DEP will not pay for the assessment.[36]

If the assessment shows the above criteria are met, there are three options for site closure:

- If no contamination is detected during the assessment, DEP may issue a site rehabilitation completion order;[37]
- If the assessment demonstrates that minimal contamination exists onsite, but the above criteria are met, DEP 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;[38] or
- If soil between the land surface and two feet below the land surface exceeds soil cleanup target levels, but the above criteria are otherwise met, DEP 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.[39] DEP is not authorized to fund such controls.[40]

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.[41] 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.[42] A site determined to be ineligible for LSSI funding retains its current program eligibility and will receive rehabilitation funding in priority order.

Effect of Proposed Changes

The bill changes numerous aspects of the LSSI program. Specifically the bill:

- Renames the program the Low Risk Site Initiative (LRSI);
- Requires a responsible party to submit a No Further Action proposal that demonstrates the current eligibility criteria by amending subparagraph 376.3071(12)(b)1., F.S.;
- Requires a responsible party who wishes to participate in the LRSI to provide evidence of authorization from the property owner by amending subparagraph 376.3071(12)(b)1. and sub-subparagraphs 376.3071(12)(b)3.a. and d., F.S.;
- Requires DEP to issue a site rehabilitation completion order that incorporates the No Further Action proposal submitted by the property owner or responsible party if the eligibility criteria are met by amending subparagraph 376.3071(12)(b)2. and creating subparagraph 376.3071(12)(b)4., F.S.;
- Revises the criteria that a responsible party must demonstrate to participate in LRSI by repealing sub-paragraph 376.3071(12)(b)1.a. through f., F.S. and creating subparagraph 376.3071(12)(b)4., F.S. The criteria is revised as follows:

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[31] Id.
[32] Id.
[33] Id.
[34] Id.
[35] Id.
[36] DEP, Petroleum Restoration Program, *Procedural and Technical Guidance for the Low-Scored Site Initiative*, p. 1-2 (2013) available at: http://www.dep.state.fl.us/waste/categories/pcp/pages/screening.htm (last visited December 9, 2015).
[37] Section 376.3071(12)(b)2., F.S.
[38] Id.
[39] DEP, Petroleum Restoration Program, *Procedural and Technical Guidance for the Low-Scored Site Initiative*, p. 3 (2013) available at: http://www.dep.state.fl.us/waste/categories/pcp/pages/screening.htm (last visited December 9, 2015).
[40] Section 376.3071(12)(b)3.a., F.S.
[41] DEP, Petroleum Restoration Program, *Procedural and Technical Guidance for the Low-Scored Site Initiative*, p. 11 (2013) available at: http://www.dep.state.fl.us/waste/categories/pcp/pages/screening.htm (last visited December 9, 2015).
[42] Id.

- Removes the requirement that a contaminated site must have a priority ranking score of 29 points or less;
- Provides a more specific standard for the prohibition on the presence of excessively contaminated soil on the site. Specifically, soil saturated with petroleum or petroleum products, or soil that causes a total corrected hydrocarbon measurement of 500 parts per million (ppm) or higher for Gasoline Analytical Group or 50 ppm or higher for Kerosene Analytical Group, as defined by DEP rule, must not exist onsite as a result of a release of petroleum products;
- Specifies that the requirement that contamination remaining at the site does not adversely affect adjacent surface waters includes the effects of those waters on human health and the environment;
- Removes the requirement that the area of groundwater contamination is less than one-quarter acre;
- Allows the presence of groundwater containing petroleum products' chemicals of concern that is not confined to the source property boundaries if the chemicals only migrate to a transportation facility of the Florida Department of Transportation; and
- Adds a requirement that the groundwater contamination containing the petroleum products' chemicals of concern is not a threat to any permitted potable water supply well;

- Provides that a site rehabilitation completion order acknowledges that minimal contamination exists onsite and that such contamination is not a threat to the public health, safety, or welfare, water resources, or the environment. If the DEP determines that a discharge for which a site rehabilitation completion order was issued pursuant to LRSI may pose a threat to the public health, safety, or welfare, water resources, or the environment, the issuance of the site rehabilitation completion order does not alter eligibility for state-funded rehabilitation that would otherwise apply;
- Increase funding limit per site from $30,000 to $35,000 by amending sub-subparagraph 376.3071(12)(b)3.a., F.S.;
- Authorizes responsible parties to submit limited remediation plans and to receive funding assistance for limited remediation, not solely assessment and monitoring, by amending sub-subparagraph 376.3071(12)(b)3.a., F.S.;
- Allows DEP to use funding to pay for land surveys and title reports and recording fees associated with institutional controls by amending sub-subparagraph 376.3071(12)(b)3.a., F.S.;
- Authorizes DEP to approve an additional $35,000 for limited remediation where needed to achieve "No Further Action" by adding sub-subparagraph 376.3071(12)(b)3.b., F.S.;
- Extends the time period for work to be complete from 6 months to 9 months by amending sub-subparagraph 376.3071(12)(b)3.c., F.S. DEP may extend the completion deadline an additional 6 months if groundwater monitoring is necessary; and
- Increases the amount DEP may use for LRSI from $10 million to $15 million per fiscal year by amending sub-subparagraph 376.3071(12)(b)3.d., F.S.

Petroleum Cleanup Participation Program

Present Situation

In 1996, the Legislature created PCPP to implement a cost-sharing cleanup program to provide rehabilitation funding assistance for all property contaminated by discharges of petroleum or petroleum products that occurred before January 1, 1995.[43] Sites reported after December 31, 1998, are not eligible for the program.[44] Further the following sites are not eligible for PCPP:

- Sites where DEP has been denied access;
- Sites owned or operated by the federal government;
- Sites identified by the Environmental Protection Agency to be on or qualify for the National Priority List under Superfund; and

[43] Section 376.3071(13), F.S.

[44] Section 376.3071(13)(a)2., F.S.

- Site that are eligible under ATRP, EDI, or PLRIP.[45]

DEP ranks PCPP program sites based on human health and safety risks.[46] When funds become available to clean up the site based on that priority ranking, DEP will notify the owner in writing.[47] The owner, operator, or person otherwise responsible for site rehabilitation must then prepare and provide DEP a limited contamination assessment report sufficient to determine the extent of the contamination and cleanup.[48] After selecting a certified petroleum rehabilitation contractor to clean up the site, the owner must enter into a preapproved site rehabilitation agreement with DEP.[49] Sites qualifying for the program are eligible for up to $400,000 of site rehabilitation funding.[50] The owner, operator, or person responsible must agree to pay a 25 percent copayment.[51] The copayment percentage may be reduced or eliminated if the owner or responsible party demonstrates an inability to pay.[52]

Florida contains 2,152 PCPP eligible discharges.[53] The program has helped remediate 768.[54]

Effect of Proposed Changes

The bill changes several aspects of PCPP. Specifically, the bill:

- Specifies that DEP must implement a cost-sharing program to provide funding assistance for all property contaminated by discharges of petroleum or petroleum products from a petroleum storage system by amending subsection 376.3071(13), F.S. Thus, petroleum discharges for sources other than a petroleum storage system cannot receive funding assistance under PCPP;
- Allows an owner or operator to apply for PCPP regardless of whether ownership of the contaminated site has changed by amending subparagraph 376.3071(13)(a)2., F.S.; and
- Reopens PCPP by removing the requirement that sites must have been reported to DEP by December 31, 1998, to be eligible for participation by amending subparagraph 376.3071(13)(a)2., F.S.

Advanced Cleanup

Present Situation

The Legislature created Advanced Cleanup (formerly known as Preapproved Advanced Cleanup) 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.[55] The purpose of creating Advanced Cleanup was to facilitate property transactions or public works projects on contaminated sites.[56] To participate in Advanced Cleanup, a site must be eligible for state rehabilitation funding under EDI, PLRIP, ATRP, the Innocent Victim program, or PCPP.[57]

To apply for Advanced Cleanup, a site owner or responsible party must bid a cost share of the total site rehabilitation.[58] The cost share must be at least 25 percent of the total cost of rehabilitation.[59] For

[45] Section 376.3071(13)(g), F.S.
[46] Rule 62-771.100(4), F.A.C.
[47] DEP, *Petroleum Cleanup Participation Program*, http://www.dep.state.fl.us/waste/categories/pcp/pages/pcpp.htm, (last visited December 9, 2015).
[48] Section 376.3071(13)(c), F.S.
[49] Id.; DEP, *Petroleum Cleanup Participation Program*, http://www.dep.state.fl.us/waste/categories/pcp/pages/pcpp.htm, (last visited December 9, 2015).
[50] Section 376.3071(13)(b), F.S.
[51] Section 376.3071(13)(c), F.S.
[52] Id.
[53] DEP Agency Analysis of 2016 House Bill 697, p. 3 (December 15, 2015).
[54] Id.
[55] Section 376.30713(2), F.S.
[56] Section 376.30713(1), F.S.
[57] For PCPP sites, Advanced Cleanup is only available if the 25 percent copay requirement of PCPP has not been reduced or eliminated. Section 376.30713(1)(d), F.S.
[58] Section 376.30713(2)(a), F.S.
[59] Id.

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.[60] Alternatively, an applicant may use a commitment to pay, a demonstrated cost savings to DEP, or both to meet this requirement if the application proposes a performance-based contract for the cleanup of 20 or more sites.[61]

In years when DEP runs a bid cycle, bids may be accepted in two windows of May 1 through June 30 and November 1 through December 31.[62] DEP accepts bids awarded based solely on the proposed highest cost-share percentage and not the estimated dollar amount of that share.[63] DEP may enter into Advanced Cleanup contracts for a total of up to $15 million per fiscal year,[64] and no more than $5 million per fiscal year may be approved for rehabilitation work at an individual site.[65] DEP has received applications totaling $22.8 million during Fiscal Year 2014-15.[66] The average cost share proposed to be borne by the applicant has been 35 percent (the program requires a minimum of 25 percent) or $8 million.[67]

Effect of Proposed Changes

The bill makes several changes to the Advanced Cleanup Program. Specifically the bill:

- Reduces the minimum number of sites that a facility owner or operator may bundle to demonstrate a cost savings in order to be eligible for performance-based contracts from 20 sites to 10 sites by amending sub-sub-subparagraph 376.30713(2)(a)1.a., F.S.;
- Increases the amount that DEP may contract for advanced cleanup work from $15 million to $25 million by amending subsection 376.30713(4), F.S.; and
- Allows a property owner or responsible party to enter into a voluntary cost share agreement for bundling multiple sites and to provide a list of the sites to be included in future bundles by amending subsection 376.30713(4), F.S. The bill further provides that a property owner that enters into a voluntary cost-share agreement with other property owners to bundle sites is not subject to agency term contractor assignment. DEP may terminate the voluntary cost share agreement if the application to bundle multiple sites is not submitted during the open application period. This provision will extend the period of time listed sites will be remediated because they are not subject to the agency term contractor assignment.

B. SECTION DIRECTORY:

Section 1. Amends s. 376.305, F.S., relating to the Abandoned Tank Restoration Program.

Section 2. Amends s. 376.3071, F.S., relating to the Inland Protection Trust Fund.

Section 3. Amends s. 376.30713, F.S., relating to advanced cleanup.

Section 4. Provides and effective date of July 1, 2016.

[60] Section 376.30713(1)(d)-(2)(a), F.S.
[61] Section 376.30713(2)(a)1., F.S.
[62] Section 376.30713(2)(a), F.S.
[63] Section 376.30713(2)(b), F.S.
[64] Section 376.30713(4), F.S.
[65] 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.
[66] DEP Agency Analysis of 2016 House Bill 697, p. 3 (December 15, 2015).
[67] Id.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   The bill appears to have a significant fiscal impact on the state. A breakdown of the impact is discussed below.

   Section 1. Abandoned Tank Restoration Program
   The bill reopens the ATRP by deleting the application date, June 30, 1996, that limited participation in the program. The removal of the application deadline could potentially allow a number of additional sites into the ATRP. DEP estimates changes to this program would create 20 new abandoned tank related remediation activities per year. The average cost to remediate a discharge is $233,000. Given the assumption of 20 new discharges per year, the total estimated annual cost would be $233,000 x 20 = $4.66 million per year.[68]

   Section 2. Low-Risk Site Initiative
   The bill increases from $30,000 to $35,000 the amount of funds DEP may approve for performing site assessment, limited remediation, and 6 months of groundwater monitoring for LRSI sites. On average, DEP handles 300 LRSI sites per year. According to DEP, this increase would cost approximately $1.5 million annually, or $6 million for the remaining four year anticipated life of the LRSI program. These costs may be offset due to the increased site closure opportunities provided by the proposed changes to the LRSI program.[69]

   Further, the bill provides up to an additional $35,000 for limited remediation where needed to achieve a no further action determination at LRSI sites. DEP estimates that the total cost would be $10.5 million for the remaining four year anticipated life of the LRSI program.[70]

   Section 2. Petroleum Cleanup Participation Program
   The bill eliminates the reporting deadline for PCPP eligible discharges, which provided that sites reported to DEP after December 31, 1998, are not eligible for the program. DEP estimates this change will have a fiscal impact of approximately $930,000 per year. This fiscal impact represents the annual cost as amortized over the life of the program. DEP's estimate assumes four new sites per year will apply for the program with an average cost of $233,000 to remediate a site. DEP's estimate assumes 64 additional sites may qualify for the program. The total cost to remediate the sites that did not participate from 1999 to 2015 will be approximately $14.9 million.[71]

   Section 3. Advanced Cleanup
   The bill reduces the minimum number of sites that a facility owner or operator may bundle to demonstrate a cost savings in order to be eligible for performance-based contracts in the Advanced Cleanup Program from 20 sites to 10 sites. According to DEP, the current process of bundling sites and implementing cleanups under a performance-based contract has resulted in an average cost savings ranging between 25 percent and 40 percent. The decrease in the number of sites needed for a bundle in conjunction with raising the amount of funds available may result in pushing the average cost savings closer to 25 percent. Concurrently, there may be a positive indeterminate

[68] DEP Agency Analysis of 2016 Senate Bill 100, p. 4 (October 5, 2015).
[69] Id. at 5.
[70] Id.
[71] Id.

fiscal impact realized because the number of sites being rehabilitated at a discounted price would increase.[72]

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Overall Restoration Funding Availability
The bill appears to have an indeterminate positive fiscal impact on the private sector because more sites contaminated with petroleum will be eligible to receive financial assistance to facilitate cleanup and more funding will be available to pay for the cleanup.

Section 3. Advanced Cleanup
The bill reduces the minimum number of sites that a facility owner or operator may bundle to demonstrate a cost savings in order to be eligible for performance-based contracts in the Advanced Cleanup Program from 20 sites to 10 sites. This may positively impact contaminated site owners by providing an opportunity for more property owners to participate in the program.

D. FISCAL COMMENTS:

The bill will expand the number of sites eligible for petroleum site cleanup and will allow DEP to increase spending on the LRSI projects. These modifications will not require an increase in funding. However, expanding the program and increasing the amount DEP is able to spend will result in less funds available for more sites. These modifications will delay the termination of state-funded petroleum cleanup. An estimated extension in program funding is not available at this time.

In Fiscal Year 2015-2016, $125,000,000 from the IPTF was appropriated for petroleum site cleanup. The Fiscal Year 2016-2017 House proposed General Appropriations Act includes $110,000,000 from the IPTF for petroleum site cleanup.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

[72] Id.

B. RULE-MAKING AUTHORITY:

DEP possess sufficient rulemaking authority to update its various petroleum cleanup rules to reflect the new requirements of the bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On January 26, 2016, the Agriculture & Natural Resources Subcommittee adopted a proposed committee substitute and reported the bill favorably as a committee substitute. The proposed committee substitute:

- Removed an amendment to subparagraph 376.305(6)(a)2., F.S., that would have required applicants for ATRP to have ceased using the petroleum storage system to conduct business involving consumption, use, or sale of petroleum products on or before March 1, 1990, rather than the facility as a whole;
- Removed amendments to subsection 376.3071(6), F.S., relating to petroleum cleanup contracting and contractors selection requirements;
- Removed an amendment to sub-subparagraph 376.3071(12)(b)3.d., F.S., that would have only permitted an agency term contractor to participate in LSSI;
- Removed an amendment to sub-subparagraph 376.3071(12)(b)3.e., F.S., that would have required DEP to grant completed LSSI properties a priority 2 scoring status for ongoing assessment or remedial activity or, based on funding, assign additional cleanup directly to the selected agency term contractor;
- Revised the criteria that a responsible party must demonstrate to participate in LRSI by repealing sub-paragraph 376.3071(12)(b)1.a. through f., F.S. and creating subparagraph 376.3071(12)(b)4., F.S.;
- Removed an amendment to paragraph 376.3071(13)(b), F.S., that would have increased funding for PCPP sites from $400,000 to $500,000;
- Reduced the minimum number of sites that a facility owner or operator may bundle to demonstrate a cost savings in order to be eligible for performance-based contracts from 20 sites to 10 sites, rather than 5, by amending sub-sub-subparagraph 376.30713(2)(a)1.a., F.S.;
- Removed an amendment to sub-sub-subparagraph 376.30713(2)(a)1.b., F.S., that would have allowed Advanced Cleanup applicants proposing to enter into a performance-based contract for an individual site with DEP to use a commitment to pay, a demonstrated cost savings to DEP, or both to meet the cost-share requirement; and
- Removed amendments to s. 376.3072, F.S., relating to the Florida Liability and Restoration Insurance Program.

This analysis is drafted to the committee substitute as approved by the subcommittee.

A bill to be entitled

An act relating to the Petroleum Restoration Program; amending s. 376.305, F.S.; revising eligibility requirements for the Abandoned Tank Restoration Program; deleting provisions prohibiting the relief of liability for persons who acquired title after a specified date; amending s. 376.3071, F.S.; renaming the "low-scored site initiative" under the Inland Protection Trust Fund as the "low-risk site initiative"; revising conditions for eligibility and methods for payment of costs for the low-risk site initiative; revising eligibility requirements for receiving rehabilitation funding; providing that a change in ownership does not preclude a site from entering into the Petroleum Cleanup Participation Program; amending s. 376.30713, F.S.; reducing the number of sites that may be proposed for certain advanced cleanup applications; increasing the total amount for which the department may contract for advanced cleanup work in a fiscal year; authorizing property owners and responsible parties to enter into voluntary cost-share agreements under certain circumstances; providing an effective date.

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

Section 1. 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 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.

4. The site is not otherwise eligible for the Petroleum Cleanup Participation Program under s. 376.3071(13) based on any discharge reporting form received by the department before

January 1, 1995, or a written report of contamination submitted to the department on or before December 31, 1998.

(b) In order to be eligible for the program, petroleum storage systems from which a discharge occurred must be closed pursuant to department rules before an eligibility determination. However, if the department determines that the owner of the facility cannot financially 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 financially comply.~~

(c) Sites accepted in the program are eligible for site rehabilitation funding as provided in s. 376.3071.

(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; or

3. Sites where the department has been denied site access~~; or~~

~~4. Sites which are owned by a person who had knowledge of the polluting condition when title was acquired unless the 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.

~~This subsection does not relieve a person who has acquired title after 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 2. Subsections (12) and (13) of section 376.3071, Florida Statutes, are amended to read:

376.3071 Inland Protection Trust Fund; creation; purposes; funding.—

(12) SITE CLEANUP.—

(a) Voluntary cleanup.—This section does not prohibit a person from conducting site rehabilitation 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-risk ~~Low-scored~~ site initiative.—Notwithstanding subsections (5) and (6), a site ~~with a priority ranking score of 29 points or less~~ may voluntarily participate in the low-risk ~~low-scored~~ site initiative regardless of whether the site is

eligible for state restoration funding.

1. To participate in the low-risk ~~low-scored~~ site initiative, the ~~responsible party or~~ property owner or a responsible party that provides evidence of authorization from the property owner must submit a "No Further Action" proposal and affirmatively demonstrate that the ~~following~~ conditions under subparagraph 4. are met.~~:~~

~~a. Upon reassessment pursuant to department rule, the site retains a priority ranking score of 29 points or less.~~

~~b. Excessively contaminated soil, as defined by department rule, does not exist 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 that ~~of~~ the conditions under subparagraph 4. are met ~~1.~~, the department shall issue a site rehabilitation completion order incorporating the ~~determination of~~ "No Further Action~~.~~" proposal submitted by the property owner or the responsible party that provides evidence of authorization from the property owner ~~Such determination acknowledges that minimal contamination exists onsite and that such contamination is not a threat to the public 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 costs for the low-risk ~~low-scored~~ site initiative as follows:

a. A ~~responsible party or~~ property owner or a responsible party that provides evidence of authorization from the property owner may submit an assessment and limited remediation plan designed to affirmatively demonstrate that the site meets the conditions under subparagraph 4. ~~1.~~ Notwithstanding the priority ranking score of the site, the department may approve the cost of the assessment and limited remediation, including up to 6 months of groundwater monitoring, in one or more task assignments, or modifications thereof, not to exceed the threshold amount provided in s. 287.017 for CATEGORY TWO, ~~$30,000~~ for each site where the department has determined that the assessment and limited remediation, if applicable, will

likely result in a determination of "No Further Action." The department may not pay the costs associated with the establishment of institutional or engineering controls, except the costs associated with a professional land survey or specific purpose survey, if needed, and the costs associated with obtaining a title report and paying recording fees.

b. After the approval of initial site assessment results provided pursuant to state funding under sub-subparagraph a., the department may approve an additional amount not to exceed the threshold amount provided in s. 287.017 for CATEGORY TWO for limited remediation where needed to achieve a determination of "No Further Action."

c.~~b.~~ The assessment and limited remediation work shall be completed no later than 9 ~~6~~ months after the department authorizes the start of a state-funded, low-risk site initiative task ~~issues its approval~~. If groundwater monitoring is required after the assessment and limited remediation in order to satisfy the conditions under subparagraph 4., the department may authorize an additional 6 months to complete the monitoring.

d.~~c.~~ No more than $15 ~~$10~~ million for the low-risk ~~low-scored~~ site initiative may be encumbered from the 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 or each responsible party that provides evidence of authorization from the property owner.

e.~~d.~~ Program deductibles, copayments, and the limited contamination assessment report requirements under paragraph (13)(c) do not apply to expenditures under this paragraph.

4. The department shall issue a site rehabilitation completion order incorporating the "No Further Action" proposal submitted by a property owner or a responsible party that provides evidence of authorization from the property owner upon affirmative demonstration that all of the following conditions are met:

a. Soil saturated with petroleum or petroleum products, or soil that causes a total corrected hydrocarbon measurement of 500 parts per million or more for the gasoline analytical group or 50 parts per million or more for the kerosene analytical group, as defined by department rule, does not exist onsite as a result of a release of petroleum products.

b. A minimum of 6 months of groundwater monitoring indicates that the plume is shrinking or stable.

c. The release of petroleum products at the site does not adversely affect adjacent surface waters, including their effects on human health and the environment.

d. The area of groundwater containing the petroleum products' chemicals of concern is confined to the source property boundaries of the real property on which the discharge originated or has migrated from the source property to only a transportation facility of the Department of Transportation.

e. The groundwater contamination containing the petroleum

products' chemicals of concern is not a threat to any permitted potable water supply well.

f. Soils onsite found between land surface and 2 feet below land surface which are subject to human exposure meet the soil cleanup target levels established in subparagraph (5)(b)9., or human exposure is limited by appropriate institutional or engineering controls.

Issuance of a site rehabilitation completion order under this paragraph acknowledges that minimal contamination exists onsite and that such contamination is not a threat to the public health, safety, or welfare, water resources, or the environment. If the department determines that a discharge for which a site rehabilitation completion order was issued pursuant to this paragraph may pose a threat to the public health, safety, or welfare, water resources, or the environment, the issuance of the site rehabilitation completion order, with or without conditions, does not alter eligibility for state-funded rehabilitation that would otherwise be applicable under this section.

(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 from a petroleum storage system occurring before January 1, 1995, subject to a copayment provided for in a Petroleum Cleanup Participation Program site rehabilitation agreement. Eligibility is subject to an annual appropriation from the fund. In addition ~~Additionally~~, funding for eligible sites is contingent upon annual appropriation in subsequent years. Such continued state funding is not an entitlement or a vested right under this subsection. Eligibility shall be determined in the program, 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 January 1, 1995, as an application for this program, and the facility owner or operator need not reapply.

2. Owners or operators of property, regardless of whether ownership has changed, which is 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 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 January 1, 1995. An operator's filed report shall be an application of the owner for all purposes. ~~Sites reported to the department after December 31, 1998, are not eligible for the~~

~~program.~~

(b) Subject to annual appropriation from the 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 (5) and (6). Sites meeting the criteria of this subsection for which a site rehabilitation completion order was issued before 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 June 1, 2008, regardless of whether they have previously transitioned to nonstate-funded cleanup status, may continue state-funded cleanup pursuant to this section 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 expenses incurred beyond the scope of an approved contract.

(c) Upon notification by the department that rehabilitation funding assistance is available for the site pursuant to subsections (5) and (6), 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 site rehabilitation agreement with the department. The agreement must 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 financially 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 complete negotiation of the cost-sharing agreement within 120 days after beginning negotiations, the department shall terminate negotiations and the site shall be ineligible for state funding under this subsection and all liability protections provided for in this subsection shall be revoked.

(d) A report of a discharge made to the department by a person pursuant to this subsection or any rules adopted pursuant to this subsection may not be used directly as evidence of liability for such discharge in any civil or criminal trial arising out of the discharge.

(e) This subsection does not preclude the department from pursuing penalties under 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), the department or local government may not pursue any judicial or enforcement action to compel rehabilitation of the discharge. This paragraph does 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 (5) and (6).

(g) The following are excluded from participation in the program:

1. Sites at which the department has been denied reasonable site access to implement 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 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.

Section 3. Paragraph (a) of subsection (2) and subsection

(4) of section 376.30713, Florida Statutes, are amended to read:

376.30713 Advanced cleanup.—

(2) The department may approve an application for advanced cleanup at eligible sites, before funding based on the site's priority ranking established pursuant to s. 376.3071(5)(a), pursuant to this section. Only the facility owner or operator or the person otherwise responsible for site rehabilitation qualifies as an applicant under this section.

(a) 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 consist of:

1. A commitment to pay 25 percent or more of the total cleanup cost deemed recoverable under this section along with proof of the ability to pay the cost share. An application proposing that the department enter into a performance-based contract for the cleanup of 10 ~~20~~ or more sites may use a commitment to pay, a demonstrated cost savings to the department, or both to meet the cost-share requirement. For an application relying on a demonstrated cost savings to the department, the applicant shall, in conjunction with the proposed agency term contractor, establish and provide in the application the percentage of cost savings in the aggregate that is being provided to the department for cleanup of the sites under the application compared to the cost of cleanup of those

same sites using the current rates provided to the department by the proposed agency term contractor. The department shall determine whether the cost savings demonstration is acceptable. Such determination is not subject to chapter 120.

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 be sufficient to support the proposed course of action and to estimate the cost of the proposed course of action. 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 not an entitlement to advanced cleanup or continued restoration funding. The applicant shall certify to the department that the applicant has the prerequisite authority to enter into an advanced cleanup contract with the department. The certification must be submitted with the application.

(4) The department may enter into contracts for a total of up to $25 ~~$15~~ million of advanced cleanup work in each fiscal year. However, a facility or an applicant who bundles multiple sites as specified in subparagraph (2)(a)1. may not be approved for more than $5 million of cleanup activity in each fiscal

year. A property owner or responsible party may enter into a voluntary cost-share agreement in which the property owner or responsible party commits to bundle multiple sites and lists the facilities that will be included in those future bundles. The facilities listed are not subject to agency term contractor assignment pursuant to department rule. The department reserves the right to terminate the voluntary cost-share agreement if the property owner or responsible party fails to submit an application to bundle multiple sites within an open application period during which it is eligible to participate. For ~~the~~ purposes of this section, the term "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 4. This act shall take effect July 1, 2016.

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 Appropriations Subcommittee
Representative Grant offered the following:

Amendment (with title amendment)

Between lines 93 and 94, insert:

(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 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 the site selection and cleanup criteria established by the department under subsection (5), except that this paragraph does not 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 as a component of site rehabilitation and requires removal of the tank where remediation is conducted under this section or if such activities were justified in an approved remedial action plan.

(k) Reasonable costs of restoring property as nearly as practicable to the conditions which existed before activities associated with contamination assessment or remedial action taken under s. 376.303(4).

(l) Repayment of loans to the fund.

(m) 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 the same procedures established for recovery and reimbursement of sums otherwise owed to or expended from the fund.

(n) 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) Petroleum remediation pursuant to this section 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 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 paragraph (5)(c) or the advanced cleanup program provided in s. 376.30713.

(p) 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.

(q) Payments for program deductibles, copayments, and limited contamination assessment reports that otherwise would be paid by another state agency for state-funded petroleum contamination site rehabilitation. ~~This paragraph expires July 1, 2016.~~

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 fund in each fiscal year shall first be applied or allocated for the payment of amounts payable by the department pursuant to paragraph (n) under a

service contract entered into by the department pursuant to s. 376.3075 and appropriated in each year by the Legislature before making or providing for other disbursements from the fund. This subsection does not authorize the use of the 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 not excluded from eligibility pursuant to this section.

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

Remove line 7 and insert:

specified date; amending s. 376.3071, F.S.; deleting expiration date for certain use of the funds; renaming

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 749 Agriculture
SPONSOR(S): Agriculture and Natural Resources Subcommittee and Raburn
TIED BILLS: **IDEN./SIM. BILLS:** SB 1310

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Agriculture & Natural Resources Subcommittee	10 Y, 0 N, As CS	Gregory	Harrington
2) Agriculture & Natural Resources Appropriations Subcommittee		Lolley	Massengale
3) State Affairs Committee			

SUMMARY ANALYSIS

Agricultural Lands Classification

Florida's "greenbelt law" allows properties classified as a bona fide agricultural operation to be taxed according to the "use" value of the agricultural operation, rather than the development value. The bill amends the greenbelt law to identify the Citrus Health Response Program as a state or federal eradication or quarantine program; allow land to retain its agricultural classification for 5 years after execution of a compliance agreement; and require property tax collectors to assess the lands at a de minimis value during the 5-year term of the agreement, when such lands have been replanted in citrus pursuant to a compliance agreement.

Commercial Feed and Feedstuff Preemption

"Commercial feed" is all materials that are distributed or intended to be distributed for use as feed or for mixing in a feed for animals other than humans. "Feedstuff" is edible materials that are distributed for animal consumption and that contribute energy or nutrients, or both, to an animal diet. The Department of Agriculture and Consumer Services (DACS) regulates commercial feed and feedstuff for quality, safety, labeling requirements, and standards. The bill preempts local governments from regulating commercial feed and feedstuff.

Penalties for Introduction of Plant Pests

The introduction into or release into the state of any plant pest, noxious weed, genetically engineered plant or plant pest, or any other organism which may directly or indirectly affect the plant life of this state is prohibited except under special permit issued by DACS. Individuals who violate this provision commit a first degree misdemeanor and are subject to an administrative fine. The bill adds additional penalties for individuals who *knowingly* acquire, import, possess, sell or offer to sell, trade or offer to trade, barter or offer to barter, move or cause to be moved, introduce, or release a plant pest without a special permit from DACS. Specifically, the bill provides that violators are liable for all reasonable costs and expenses incurred by DACS in a plant pest control or eradication program, and subject to increased administrative and criminal penalties.

Conservation Easements

A "conservation easement" is a perpetual, undivided right or interest in real property used to retain land or water areas predominantly in their natural, scenic, open, agricultural, or wooded condition; retain such areas as suitable habitat for fish, plants, or wildlife; retain the structural integrity or physical appearance of sites or properties of historical, architectural, archaeological, or cultural significance; or maintain existing land uses. The bill adds that conservation easements may prohibit the removal or destruction of trees, shrubs, or other vegetation, except when needed for maintenance purposes, and may allow land and water areas to remain in an agricultural condition, which may include livestock grazing where such activity is a current or historic use of the land and the future grazing is conducted in accordance with applicable best management practices.

The bill appears to have an indeterminate fiscal impact on the state, an insignificant negative fiscal impact on local government, and an indeterminate fiscal impact on the private sector. See the Fiscal Analysis & Economic Impact Statement for more details.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Agricultural Land Classification

Present Situation

Section 193.461, F.S., also known as Florida's "greenbelt law," allows properties classified as a bona fide agricultural operation to be taxed according to the "use" value of the agricultural operation, rather than the development value. Generally, tax assessments for qualifying lands are lower than tax assessments for other uses. In response to the spread of citrus canker, the Legislature amended the greenbelt law to allow lands classified as agricultural for assessment purposes to retain their agricultural classification if the land is taken out of production by a state or federal eradication or quarantine program.[1] Property tax collectors may only assess these agricultural lands converted to fallow or otherwise nonincome producing, a de minimis value up to $50 per acre on a single-year assessment.[2]

Effect of the Proposed Changes

The bill amends paragraph s. 193.461(7)(a), F.S., to identify the Citrus Health Response Program as a state or federal eradication or quarantine program. The bill allows land to retain its agricultural classification for 5 years after the date of execution of a compliance agreement between the landowner and the Department of Agriculture and Consumer Services (DACS) or a federal agency pursuant to such program. Lastly, the bill states that if the land retaining the agricultural classification is replanted as required by a compliance agreement, the property tax collector must continue to assess the land at a de minimis value of up to $50 per acre, on a single-year assessment methodology. These changes are intended to incentivize removal of sources of citrus greening, provide consistency in the land classification, provide landowners time to determine the viability of replanting, and encourage the replanting of citrus.

Commercial Feed and Feedstuff Preemption

Present Situation

"Commercial feed" is all materials or combinations of materials that are distributed or intended to be distributed for use as feed or for mixing in a feed for animals other than humans, except:

- Unmixed whole seeds, including physically altered entire unmixed seeds, when such seeds are not chemically changed or are not adulterated;
- Unground hay, straw, stover, silage, cobs, husks, and hulls, and individual chemical compounds or substances, when such commodities, compounds, or substances are unmixed with other substances and are not adulterated; and
- Feed mixed by the consumer for the consumer's own use made entirely or in part from products raised on the consumer's farm.[3]

"Feedstuff" is edible materials, other than commercial feed, that are distributed for animal consumption and that contribute energy or nutrients, or both, to an animal diet.[4]

DACS regulates commercial feed and feedstuff for quality, safety, labeling requirements, and standards.[5] A distributor of commercial feed must obtain a master registration[6] and place on file a copy of the label for each brand of feed to be distributed in Florida.[7]

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[1] Chapter 2000-308, Laws of Fla.
[2] Section 193.461(7)(a), F.S.
[3] Section 580.031(2), F.S.
[4] Section 580.031(10), F.S.
[5] Section 580.036, F.S.

Effect of Proposed Changes
The bill creates s. 580.0365, F.S., to preempt local governments from regulating commercial feed and feedstuff.

Penalties for Introduction of Plant Pests

Present Situation
The introduction into or release into the state of any plant pest,[8] noxious weed,[9] genetically engineered plant or plant pest, or any other organism which may directly or indirectly affect the plant life of this state as an injurious pest, parasite, or predator of other organisms, or any arthropod, is prohibited except under special permit issued by DACS.[10] Any individual who violates this provision commits a first degree misdemeanor which may be punished by a fine not to exceed $1,000 or jail time not to exceed one year.[11] DACS may impose an administrative fine that may not exceed $5,000.[12] In addition, DACS may place the violator on probation, or suspend or revoke the violator's registration or certificate, if appropriate.[13]

While DACS may impose specified administrative fines, DACS does not have authority to require a violator to pay for the costs associated with eradicating a plant pest or noxious weed. As an example of costs incurred by DACS eradicating an illegally imported species, DACS and the USDA have spent $11.5 million over 4 years in an attempt to eradicate giant African land snails illegally introduced into Florida.[14]

Effect of the Proposed Changes
The bill adds subsection (4) to s. 581.211, F.S., to add an additional penalty associated with reasonable costs and expenses for a plant pest control or eradication program. Specifically, the bill provides that any person who *knowingly* acquires, imports, possesses, sells or offers to sell, trades or offers to trade, barters or offers to barter, moves or causes to be moved, introduces, or releases a plant pest without a special permit from the DACS:

- Commits a first degree misdemeanor, which is consistent with the current penalty;
- Is subject to an administrative fine not to exceed $5,000, which is consistent with the current penalty;
- May have their certificate of registration or certificate of inspection suspended or revoked, which is consistent with the current penalty; and
- Is liable for the payment of all reasonable costs and expenses incurred by DACS in a pest control or eradication program, which is a new penalty.

Further, the bill adds subsection (5) to s. 581.211, F.S., to address incidents where the introduction of a plant pest causes DACS to issue a declaration of an agricultural emergency or implement an eradication program. The bill provides that any person who *knowingly* acquires, imports, possesses,

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[6] Section 580.041, F.S.
[7] Section 580.051, F.S.
[8] The term "plant pest" means any living stage of any insects, mites, nematodes, slugs, snails, protozoa, or other invertebrate animals, bacteria, fungi, other parasitic plants or their reproductive parts, or viruses, or any organisms similar to or allied with any of the foregoing, including any genetically engineered organisms, or any infectious substances which can directly or indirectly injure or cause disease or damage in any plants or plant parts or any processed, manufactured, or other plant products. Section 581.011(26), F.S.
[9] The term "noxious weed" means any living stage, including, but not limited to, seeds and productive parts, of a parasitic or other plant of a kind, or subdivision of a kind, which may be a serious agricultural threat in Florida or have a negative impact on protected plant species protected. Section 581.011(19), F.S.
[10] Section 581.083(1), F.S.
[11] Section 581.211(1), F.S.
[12] Section 581.211(3), F.S.
[13] Id.
[14] DACS, Agency Analysis of 2016 House Bill 749, p. 1 (January 5, 2016).

sells or offers to sell, trades or offers to trade, barters or offers to barter, moves or causes to be moved, introduces, or releases a plant pest without a special permit from DACS that results in the issuance of a declaration of an agricultural emergency by DACS or the implementation of a control or eradication program by DACS or the USDA:

- Commits a second degree felony, punishable by up to 15 years in prison or up to a $10,000 fine;[15]
- Is subject to an administrative fine of $10,000 or more;
- May have their certificate of registration or certificate of inspection suspended or revoked; and
- Is liable for the payment of all reasonable costs and expenses incurred by DACS in a pest control or eradication program.

Conservation Easements

Present Situation

A conservation easement is a right or interest in real property used to:

- Retain land or water areas predominantly in their natural, scenic, open, agricultural, or wooded condition;
- Retain such areas as suitable habitat for fish, plants, or wildlife;
- Retain the structural integrity or physical appearance of sites or properties of historical, architectural, archaeological, or cultural significance; or
- Maintain existing land uses.[16]

A conservation easement must prohibit or limit any or all of the following:

- Construction or placing of buildings, roads, signs, billboards or other advertising, utilities, or other structures on or above the ground;
- Dumping or placing of soil or other substance or material as landfill or dumping or placing of trash, waste, or unsightly or offensive materials;
- Removal or destruction of trees, shrubs, or other vegetation;
- Excavation, dredging, or removal of loam, peat, gravel, soil, rock, or other material substance in such manner as to affect the surface;
- Surface use except for purposes that permit the land or water area to remain predominantly in its natural condition;
- Activities detrimental to drainage, flood control, water conservation, erosion control, soil conservation, or fish and wildlife habitat preservation;
- Acts or uses detrimental to such retention of land or water areas; and
- Acts or uses detrimental to the preservation of the structural integrity or physical appearance of sites or properties of historical, architectural, archaeological, or cultural significance.[17]

Conservation easements are perpetual, undivided interests in property that are created or stated in a restriction, easement, covenant, or condition in any deed, will, or other instrument executed by or on behalf of the property owner, or in any order of taking.[18] These interests run with the land and are binding on all subsequent owners of the servient estate.[19] They must be recorded and indexed in the same manner as any other instrument affecting the title to real property.[20] Recording of the conservation easement gives notice to the property appraiser and tax collector of the conservation easement.[21]

[15] Sections 775.082 and 775.083, F.S.
[16] Section 704.06(1), F.S.
[17] Id.
[18] Section 704.06(2), F.S.
[19] Section 704.06(4), F.S.
[20] Section 704.06(5), F.S.
[21] Section 704.06(7), F.S.

Corporations and governmental bodies acquire conservation easements in the same manner as other property interests, with the exception of condemnation or eminent domain proceedings.[22] Conservation easements may be acquired by any governmental body or agency or by a charitable corporation or trust whose purposes include protecting natural, scenic, or open space values of real property; assuring its availability for agricultural, forest, recreational, or open space use; protecting natural resources; maintaining or enhancing air or water quality; or preserving sites or properties of historical, architectural, archaeological, or cultural significance.[23]

Land that is dedicated in perpetuity[24] for conservation purposes[25] and that is used exclusively for conservation purposes, is exempt from ad valorem taxation.[26] Additionally, land that is dedicated in perpetuity for conservation purposes and that is used for allowed commercial use[27] is exempt from ad valorem taxation up to 50 percent of the assessed value of the land.[28] If the allowed commercial use includes agriculture, the use must comply with the most recent best management practices adopted by DACS.[29]

Effect of the Proposed Changes

The bill amends paragraph 704.06(1)(c) and (e), F.S., to add that conservation easements may prohibit or limit the removal or destruction of trees, shrubs, or other vegetation, except when needed for maintenance purposes, and allow land and water areas to remain in an agricultural condition, which may include livestock grazing where such activity is a current or historic use of the land to be placed under the conservation easement and requires that future livestock grazing within the conservation easement area is conducted in accordance with applicable best management practices adopted by the DACS.

B. SECTION DIRECTORY:

Section 1. Amends s. 193.461, F.S., relating to agricultural lands classification and assessment.

Section 2. Creates s. 580.0365, F.S., relating to preemption of regulatory authority over commercial feed and feedstuff.

Section 3. Amends s. 581.211, F.S., relating to penalties for plant industry regulations.

Section 4. Amends s. 704.06, F.S., relating to conservation easements.

Section 5. Provides an effective date of July 1, 2016.

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[22] Section 704.06(2), F.S.

[23] Section 704.06(3), F.S.

[24] "Dedicated in perpetuity" means the land is encumbered by an irrevocable, perpetual conservation easement. Section 196.26(1)(d), F.S

[25] "Conservation purposes" means:

1. Serving a conservation purpose, as defined in 26 U.S.C. s. 170(h)(4)(A)(i)-(iii), for land which serves as the basis of a qualified conservation contribution under 26 U.S.C. s. 170(h); or

2.a. Retention of the substantial natural value of land, including woodlands, wetlands, watercourses, ponds, streams, and natural open spaces;

b. Retention of such lands as suitable habitat for fish, plants, or wildlife; or

c. Retention of such lands' natural value for water quality enhancement or water recharge. Section 196.26(1)(c), F.S.

[26] Section 196.26(2), F.S.

[27] "Allowed commercial uses" are commercial uses that are allowed by the conservation easement encumbering the land. Section 196.26(1)(a), F.S.

[28] Section 196.26(3), F.S.

[29] Section 196.26(7), F.S.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill allows the department to impose and collect increased fines from a person who knowingly acquires, imports, possesses, sells or offers to sell, trades or offers to trade, moves or causes to be moved, introduces, or releases a plant pest without a special permit from DACS, as well as recover the costs incurred attempting to control or eradicate plant pests. The amount that may be collected is unknown.

2. Expenditures:

The bill specifies that a person who knowingly acquires, imports, possesses, sells or offers to sell, trades or offers to trade, moves or causes to be moved, introduces, or releases a plant pest without a special permit from DACS that results in the declaration of an agricultural emergency or the implementation of a control or eradication program by DACS or the USDA commits a felony of the second degree. The Criminal Justice Impact Conference met on January 29, 2016, and determined that this bill will have an positive insignificant prison bed impact on the Department of Corrections (an increase of 10 or fewer beds).

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill amends the greenbelt law to allow land to retain its agricultural classification for 5 years after execution of a compliance agreement, and requires property tax collectors to assess the lands at a de minimis value during the 5-year term of the agreement when such lands have been replanted in citrus according to the compliance agreement. The Revenue Estimating Impact Conference met on February 5, 2016, and determined that there would be a recurring revenue loss of $200,000 and an insignificant nonrecurring revenue loss in the aggregate.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Agricultural Land Classification
The bill may have an indeterminate positive fiscal impact on land owners who participate in an eradication or quarantine program by allowing them to retain their agricultural lands classification when they replant their land pursuant to a compliance agreement.

Penalties for Introduction of Plant Pests
The bill may have an indeterminate negative fiscal impact on any person who knowingly acquires, imports, possesses, sells, offers to sell, trades, offers to trade, barter, offers to barter, moves, causes to be moved, introduces, or releases a plant pest, without a special permit from DACS. Such individuals may face increased administrative and criminal penalties and fines, as well as be liable for costs incurred by DACS to control or eradicate the plant pest.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The county/municipality mandates provision of Art. VII, section 18(b), of the Florida Constitution may apply because this bill, by allowing land to retain its agricultural classification in certain circumstances, may reduce local government's authority to raise revenue. However, an exemption to the mandates provision appears to apply because the provision will likely have an insignificant impact on the counties The Revenue Estimating Impact Conference met on February 5, 2016, and determined that there would be a recurring revenue loss of $200,000 and an insignificant nonrecurring revenue loss in the aggregate.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On January 20, 2016, the Agriculture and Natural Resources Subcommittee adopted two amendments and reported the bill favorably with committee substitute. The amendments:

- Removed from the bill changes to s. 163.3162, F.S., relating to the regulation of burning agricultural crops;
- Amended paragraph s. 193.461(7)(a), F.S., to:
    - Identify the Citrus Health Response Program as a state or federal eradication or quarantine program;
    - Allow land to retain its agricultural classification for 5 years after the date of execution of a compliance agreement between the landowner and DACS or a federal agency pursuant to such program; and
    - Require property tax collectors to continue to assess the lands retaining their agricultural classification at a de minimis value of up to $50 per acre, on a single-year assessment methodology, while such lands are fallow or otherwise nonincome-producing. Lands that have been replanted pursuant to a compliance agreement must continue to be classified as agricultural lands and assessed at a de minimis value during the 5-year term of the agreement; and
- Amended s. 704.06, F.S., to add that conservation easements may prohibit or limit the removal or destruction of trees, shrubs, or other vegetation, except when needed for maintenance purposes and may allow land and water areas to remain in an agricultural condition, which may include livestock grazing where such activity is a current or historic use of the land to be placed under the conservation easement and require that future livestock grazing within the conservation easement area is conducted in accordance with applicable best management practices adopted by the DACS.

This analysis is drawn to the committee substitute.

A bill to be entitled

An act relating to agriculture; amending 193.461, F.S.; revising the period during which certain agricultural lands in eradication or quarantine programs continue to be classified as such; providing for the classification of such lands replanted in citrus; creating s. 580.0365, F.S.; preempting regulatory authority over commercial feed and feedstuff to the Department of Agriculture and Consumer Services; amending s. 581.211, F.S.; providing penalties for certain handling of plant pests without a special permit from the Division of Plant Industry within the department; amending s. 704.06, F.S.; revising the definition of the term "conservation easement" to allow such lands to remain in an agricultural condition for specified purposes; providing an exception for maintenance purposes; providing an effective date.

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

Section 1. Paragraph (a) of 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 state or federal eradication or quarantine program, including the Citrus Health Response Program, shall continue to be classified as agricultural lands for 5 years after the date of execution of a compliance agreement between the landowner and the Department of Agriculture and Consumer Services or a federal agency, as applicable, pursuant to ~~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 $50 per acre on a single-year assessment methodology while fallow or otherwise used for nonincome-producing purposes. Lands under these programs which are replanted in citrus pursuant to the requirements of the compliance agreement shall continue to be classified as agricultural lands and shall be assessed at a de minimis value of up to $50 per acre, on a single-year assessment methodology, during the 5-year term of agreement.~~.~~ 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.

Section 2. Section 580.0365, Florida Statutes, is created to read:

580.0365 Preemption of regulatory authority over

commercial feed and feedstuff.—It is the intent of the Legislature to eliminate duplication of regulation over commercial feed and feedstuff. Notwithstanding any other provision of law, the authority to regulate, inspect, sample, and analyze any commercial feed or feedstuff distributed in this state or to exercise the powers and duties under this chapter, including the assessment of any penalties for violations of this chapter, is preempted to the department.

Section 3. Subsections (4) and (5) are added to section 581.211, Florida Statutes, to read:

581.211 Penalties for violations.—

(4) A person who knowingly acquires, imports, possesses, sells or offers to sell, trades or offers to trade, barters or offers to barter, moves or causes to be moved, introduces, or releases a plant pest without a special permit from the division:

(a) Commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083;

(b) Is subject to an administrative fine pursuant to s. 570.971 in the Class II category for each violation of this chapter;

(c) May have a certificate of registration or certificate of inspection suspended or revoked; and

(d) Is liable for the payment of all reasonable costs and expenses incurred by the department in a pest control or eradication program. Moneys collected pursuant to this section

shall be deposited into the Plant Industry Trust Fund.

(5) A person who knowingly acquires, imports, possesses, sells or offers to sell, trades or offers to trade, barters or offers to barter, moves or causes to be moved, introduces, or releases a plant pest without a special permit from the division that results in the issuance of a declaration of an agricultural emergency by the Commissioner of Agriculture or the implementation of a control or eradication program by the department or the United States Department of Agriculture:

(a) Commits a felony of the second degree, punishable as provided in s. 775.082 or s. 775.083;

(b) Is subject to an administrative fine pursuant to s. 570.971 in the Class IV category for each violation of this chapter;

(c) May have a certificate of registration or certificate of inspection suspended or revoked; and

(d) Is liable for the payment of all reasonable costs and expenses incurred by the department in a plant pest control or eradication program. Moneys collected pursuant to this section shall be deposited into the Plant Industry Trust Fund.

Section 4. Paragraphs (c) and (e) of subsection (1) of section 704.06, Florida Statutes, are amended to read:

704.06 Conservation easements; creation; acquisition; enforcement.—

(1) As used in this section, "conservation easement" means a right or interest in real property which is appropriate to

retaining land or water areas predominantly in their natural, scenic, open, agricultural, or wooded condition; retaining such areas as suitable habitat for fish, plants, or wildlife; retaining the structural integrity or physical appearance of sites or properties of historical, architectural, archaeological, or cultural significance; or maintaining existing land uses and which prohibits or limits any or all of the following:

(c) Removal or destruction of trees, shrubs, or other vegetation except when needed for maintenance purposes.

(e) Surface use except for purposes that permit the land or water area to remain predominantly in its natural or agricultural condition, which may include livestock grazing if such activity is a current or historic use of the land to be placed under the conservation easement and if any future livestock grazing within the conservation easement area is conducted in accordance with applicable best management practices adopted by the Department of Agriculture and Consumer Services.

Section 5. This act shall take effect July 1, 2016.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 795 Dredge and Fill Activities
SPONSOR(S): Edwards
TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 1176

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Agriculture & Natural Resources Subcommittee	13 Y, 0 N	Moore	Harrington
2) Agriculture & Natural Resources Appropriations Subcommittee		Helpling	Massengale
3) State Affairs Committee			

SUMMARY ANALYSIS

Under Section 10 of the Rivers and Harbors Act of 1899, the United States Army Corps of Engineers (Corps) has regulatory jurisdiction over all obstructions or alterations of any navigable water of the U.S., the construction of any structures in or over any navigable water of the U.S., and any work affecting the course, location, condition, or capacity of navigable waters of the U.S. Under Section 404 of the Clean Water Act, the Corps has regulatory jurisdiction over the discharge of dredged or fill material into waters of the U.S. Under these authorizations, the Corps has authority to issue general permits on a statewide, regional, or nationwide basis for specific categories of work. However, a state may seek to administer a general permit for categories of work by applying to the Corps. If approved, the Corps will suspend its issuance of permits and the administration and enforcement of activities with respect to the activities authorized under the general permit to the state. A state may also seek assumption of the Clean Water Act to regulate the discharge of dredged or fill material into certain waters.

The Legislature has specified that it is the policy of the state to provide efficient government services by consolidating, to the maximum extent practicable, federal and state permitting regarding wetlands and navigable waters within the state. The Legislature has authorized the Department of Environmental Protection (DEP) and water management districts (WMDs) to implement a voluntary state programmatic general permit (SPGP) for all dredge and fill activities impacting 3 acres or less of wetlands or other surface waters, including navigable waters, subject to agreement with the Corps. The Legislature has also authorized DEP to pursue assumption of federal permitting programs regulating the discharge of dredged or fill material under the Clean Water Act.

The bill increases the acreage of wetland or other surface water impacts, including navigable waters, DEP or WMDs are authorized to implement through a SPGP, subject to agreement with the Corp, from 3 acres or less to 10 acres of less. The bill provides that by seeking to use a SPGP, an applicant consents to applicable federal wetland jurisdiction criteria and for the limited purpose of implementing the SPGP.

In addition, the bill allows DEP to seek delegation of, in addition to assumption of, federal permitting programs regulating the discharge of dredged or fill material pursuant to the Clean Water Act and the Rivers and Harbors Act, so long as the delegation encompasses all dredge and fill activities in, on, or over jurisdictional wetlands or waters, including navigable waters, within the state.

The bill appears to have an insignificant fiscal impact on the state, a potential positive fiscal impact on the private sector, and no fiscal impact on local government.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Rivers and Harbors Act of 1899 and the Clean Water Act

Under Section 10 of the Rivers and Harbors Act of 1899, the United States Army Corps of Engineers (Corps) has regulatory jurisdiction over all obstructions or alterations of any navigable water of the U.S., the construction of any structures in or over any navigable water of the U.S., and any work affecting the course, location, condition, or capacity of navigable waters of the U.S.[1] Under Section 404 of the Clean Water Act, the Corps has regulatory jurisdiction over the discharge of dredged or fill material into waters of the U.S.[2]

General Permits

Under these authorizations, the Corps has authority to issue general permits on a statewide, regional, or nationwide basis for specific categories of work.[3] General permits issued for activities involving discharges of dredged or fill material are authorized if:

- The category of activity is similar in nature;
- Will cause only minimal adverse impacts of the environment individually; and
- Will have only minimal cumulative adverse impacts on the environment.[4]

General permits are in effect for no more than five years. They may be revoked or modified if they are determined to have an adverse impact on the environment or are more appropriately authorized by individual permits.[5]

The Corps, Jacksonville District, administers the following general permits in Florida:

- SAJ-5, 4/5/2013 - 4/5/2018 Maintenance Dredging in Residential Canals;
- SAJ-13, 12/20/2013 -12/20/2018 Aerial Transmission Lines;
- SAJ-14, 12/20/2013 - 12/20/2018 Sub-aqueous Utility and Transmission Lines;
- SAJ-17, 4/08/2013 - 4/08/2018 Minor Structures;
- SAJ-20, 3/22/2013 - 3/22/2018 Private Single-Family Piers;
- SAJ-33, 4/08/2013 - 4/08/2018 Private Multi-Family or Government Piers;
- SAJ-34, 4/08/2013 - 4/08/2018 Private Commercial Piers;
- SAJ-72, 6/21/2013 - 6/21/2018 Residential Docks in Citrus County;
- SAJ-46, 3/21/2013 – 3/21/2018 Bulkheads and Backfill in Residential Canals;
- SAJ-82, 9/10/2014 - 9/10/2019 Single family residence projects including: lot fills, minor structures, riprap revetments, marginal docks, bulkheads and backfill in residential canals in Monroe County;
- SAJ-86, 3/25/2015 - 3/25/2020: Residential, Commercial, Recreational and Institutional Fill in the Choctawhatchee Bay, Lake Powell, and West Bay Basins, Bay and Walton Counties;
- SAJ-90, 4/05/11 - 4/05/16: Residential, Commercial & Institutional Developments in Northeast Florida;

[1] 33 U.S.C. §403.
[2] 33 U.S.C. §1344.
[3] 33 U.S.C. §403 and §1344.
[4] 33 U.S.C. §1344(e)(1).
[5] 33 U.S.C. §1344(e)(2).

- SAJ-92, 4/08/2015 - 4/08/2020: Improvements to existing Florida Department of Transportation or Florida's Turnpike Enterprise FTE roadways, excluding Monroe County;
- SAJ-93, 2/16/11- 2/16/16: Maintenance dredging activities for the Atlantic Intracoastal Waterway, the Intracoastal Waterway, and the Okeechobee Waterway within the Florida Inland Navigation - East Coast;
- SAJ-103, 10/08/2010 - 10/08/15: Residential Fill in Holley By The Sea, a Subdivision in Santa Rosa County;
- SAJ-105, 11/12/2015 - 11/12/2020: Residential, Commercial, Recreational and Institutional Fill in the West Bay Watershed of Bay County; and
- SAJ-106, 2/14/2012 - 2/14/2017: Water Management services on ranchlands located within the Northern Everglades and Estuaries Region of Florida.[6]

A state desiring to administer a general permit may submit to the Corps a description of the program the state proposes to establish and administer under state law. The state must also submit a statement from the attorney general providing that the laws of the state provide adequate authority to carry out the program.[7] If the state's program is approved, the Corps will suspend its issuance of permits and the administration and enforcement of activities with respect to the activities authorized under the general permit to the state.[8]

State Programmatic General Permit

The Legislature has specified that it is the policy of the state to provide efficient government services by consolidating, to the maximum extent practicable, federal and state permitting regarding wetlands[9] and navigable waters within the state.[10] It is the Legislature's intent, with regard to federal environmental permitting, to:

- Facilitate coordination and a more efficient process of implementing regulatory duties and functions between the Department of Environmental Protection (DEP), water management districts (WMDs),[11] the Corps, the U.S. Fish and Wildlife Service, the National Marine Fisheries Service, the U.S. Environmental Protection Agency, the Fish and Wildlife Conservation Commission, and other relevant federal and state agencies;
- Authorize DEP to obtain issuance by the Corps of an expanded state programmatic general permit (SPGP), or a series of regional general permits, for categories of activities in waters of the U.S. governed by the Clean Water Act, and in navigable waters under the Rivers and Harbors Act of 1899 which are similar in nature, which will cause only minimal adverse environmental effects when performed separately, and which will have only minimal cumulative adverse effects on the environment;
- Use the mechanism of a SPGP or regional general permit to eliminate overlapping federal regulations and state rules that seek to protect the same resource and to avoid duplication of permitting between the Corps and DEP for minor work located in waters of the U.S., including navigable waters, thus eliminating, in appropriate cases, the need for a separate individual approval from the Corps while ensuring the most stringent protection of wetland resources; and

[6] Corps, Jacksonville District, available at http://www.saj.usace.army.mil/Missions/Regulatory/SourceBook.aspx, last visited (Jan. 29, 2016).
[7] 33 U.S.C. §1344(g)(1).
[8] 33 U.S.C. §1344(h).
[9] Section 373.019(27), F.S., provides this definition of "wetlands" for the sole purpose of serving as the basis for the unified statewide methodology adopted pursuant to s. 373.421(1), F.S., as amended. Wetlands are areas that are inundated or saturated by surface water or groundwater at a frequency and a duration sufficient to support, and under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soils. Florida wetlands generally include swamps, marshes, bayheads, bogs, cypress domes and strands, sloughs, wet prairies, riverine swamps and marshes, hydric seepage slopes, tidal marshes, mangrove swamps and other similar areas. Florida wetlands generally do not include longleaf or slash pine flatwoods with an understory dominated by saw palmetto.
[10] Section 373.4143, F.S.
[11] Section 373.4145,(1)(c), F.S., provides that this includes the Northwest Florida WMD.

- Direct DEP to not issue or take action on a permit unless the conditions are at least as protective of the environment and natural resources as existing state and federal law.[12]

The Legislature has authorized DEP and WMDs to implement a voluntary SPGP for all dredge[13] and fill[14] activities impacting 3 acres or less of wetlands[15] or other surface waters, including navigable waters, subject to agreement with the Corps, if the general permit is at least as protective of the environment and natural resources as existing state law and federal law.[16]

DEP is also authorized to pursue a series of regional general permits for construction activities in wetlands or surface waters or complete assumption of federal permitting programs regulating the discharge of dredged or fill material pursuant to the Clean Water Act, and the Rivers and Harbors Act of 1899, so long as the assumption encompasses all dredge and fill activities in, on, or over jurisdictional wetlands or waters, including navigable waters, within the state.[17]

SPGP IV-R1

The state has been authorized by the Corps to implement a SPGP since the 1990s.[18] In July 2011, the Corps issued a revised SPGP (SPGP IV-R1) to the state that authorizes DEP, a WMD,[19] or a local government with delegated authority[20] to issue a permit on behalf of the Corps for certain types of projects with relatively minor impacts to wetlands or surface waters.[21] The SPGP IV-R1 expanded the state's geographic coverage to include the counties in the panhandle area, the area encompassed by the Northwest Florida WMD. The SPGP IV-R1 now encompasses the entire state, except for Monroe County, and the locations listed in Special Condition 5.[22]

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[12] Section 373.4144(1)(a)-(d), F.S.

[13] Section 373.403(13), F.S., defines "dredging" as excavation, by any means, in surface waters or wetlands. It also means the excavation, or creation, of a water body which is, or is to be, connected to surface waters or wetlands, directly or via an excavated water body or series of water bodies.

[14] Section 373.403(14), F.S., defines "filling" as the deposition, by any means, of materials in surface waters or wetlands.

[15] Section 373.019(27), F.S., defines "wetlands" as areas that are inundated or saturated by surface water or groundwater at a frequency and a duration sufficient to support, and under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soils. Florida wetlands generally include swamps, marshes, bayheads, bogs, cypress domes and strands, sloughs, wet prairies, riverine swamps and marshes, hydric seepage slopes, tidal marshes, mangrove swamps and other similar areas. Florida wetlands generally do not include longleaf or slash pine flatwoods with an understory dominated by saw palmetto; *See also* Section 373.421, F.S.

[16] Section 373.4144(2), F.S.

[17] Section 373.4144(3), F.S.

[18] *DEP's Consolidation of State and Federal Wetland Permitting Programs Implementation of House Bill 759(Chapter2005-273, Laws of Florida)* (Sept. 30, 2005), on file with the Agriculture & Natural Resources Subcommittee; DEP State Programmatic General Permit, available at http://www.dep.state.fl.us/water/wetlands/erp/spgp.htm., last visited (Jan. 29, 2016); The SPGP has gone through several iterations: SPGP I, SPGP II, SPGP III, SPGP III-R1, and SPGP IV.

[19] In December 2013, the St. Johns River WMD entered into a coordination agreement with the Corps that allowed the WMD to issue permits on behalf of the Corps under the SPGP IV-RI.

[20] *See* Section 373.441, F.S.

[21] SPGP IV-R1, available at http://www.saj.usace.army.mil/Portals/44/docs/regulatory/sourcebook/permitting/general_permits/SPGP/SPGP_IV_Permit_Instrument.pdf.; DEP's Coordination Agreement with the Corps, available at http://www.dep.state.fl.us/water/wetlands/forms/spgp/SPGP_IV_Cooperative_Agreement.pdf.

[22] Special Condition 5 of the SPGP IV-R1 provides that is not applicable in the geographical boundaries of: Monroe County; the Timucuan Ecological and Historical Preserve (Duval County); the St. Mary's River, from its headwaters to its confluence with the Bells River; the Wekiva River from its confluence with the St. Johns River to Wekiwa Springs, Rock Springs Run from its headwaters at Rock Springs to the confluence with the Wekiwa Springs Run, Black Water Creek from the outflow from Lake Norris to the confluence with the Wekiva River; canals at Garfield Point including Queens Cove (St. Lucie County); the Loxahatchee River from Riverbend Park downstream to Jonathan Dickinson State Park; the St. Lucie Impoundment (Martin County); all areas regulated under the Lake Okeechobee and Okeechobee Waterway Shoreline Management Plan, located between St. Lucie Lock (Martin County) and W.P. Franklin Lock (Lee County); American Crocodile designated critical habitat (Miami-Dade and Monroe Counties); Johnson's seagrass designated critical habitat (southeast Florida); piping plover designated critical habitat (throughout Florida); acroporid coral designated critical habitat (southeast Florida); Anastasia Island, Southeastern, Perdido Key, Choctawhatchee, or St. Andrews beach

The SPGP IV-R1 includes only the following categories of work:

- Shoreline stabilization;
- Boat ramps and boat launch areas and structures associated with such ramps or launch areas;
- Docks, piers, associated facilities, and other minor piling supported structures; and
- Maintenance dredging of canals and channels, including removal of organic detrital material from freshwater lakes and rivers.[23]

Programmatic General Permit

Programmatic general permits are a type of general permit founded on an existing state, local or federal agency program that is designed to avoid duplication with that program.[24] The Corps has issued the following programmatic general permits in Florida that are administered by others:

- SAJ-42, Miami-Dade County, 4/29/2013 - 4/29/2018: Minor Activities in Miami-Dade County;
- SAJ-75, Palm Beach County, 5/01/2009 - 5/01/2014: Fill for residential Lots in Royal Palm Beach Subdivision;
- SAJ-80, Miccosukee Tribe, 8/09/2012 - 8/09/2017: Residential Fill - Miccosukee Tribe Reservation Lands;
- SAJ-83, Seminole Tribe of Florida, 3/15/15 - 3/15/20: Discharge of fill material for minor activities within the Big Cypress Seminole Indian Reservation;
- SAJ-87, Broward County, 12/14/2010 - 12/14/2015: Residential, Commercial & Institutional Fill in Plantation Acres;
- SAJ-91, City of Cape Coral, 2/28/2013 - 2/28/2018: Minor activities in the canal system of the city of Cape Coral;
- SAJ-96, Pinellas County, 7/17/2014 - 7/17/2019: Minor Activities in Pinellas County;
- SAJ-99, State of Florida, Department of Agriculture and Consumer Services, 11/09/2012 - 11/09/2017: Live Rock and Marine Bivalve Aquaculture; and
- SAJ-111, St. Johns River WMD, 10/31/2014 - 10/31/2019: Residential, Commercial & Institutional Developments in Northeast Florida.[25]

SAJ-111

In October 2014, the Corps issued a programmatic general permit to the St. Johns River WMD authorizing the issuance of a permit on behalf of the Corps for certain types of projects with relatively minor impacts to wetlands or surface waters (SAJ-111).[26] The SAJ-111 authorization is limited to residential, commercial or institutional projects in Northeast Florida with up to 3 acres of impacts to low quality or urbanized non-tidal wetlands of the following four types:

- Wetlands in pine plantations with raised beds in production over 20 years;
- Wetlands in improved pasture;
- Wetlands on parcels bordered by at least 75 percent development; and
- Wetlands covered by greater than 80 percent invasive or exotic vegetation.[27]

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mice habitat (Florida east coast and panhandle coasts); the Biscayne Bay National Park Protection Zone (Miami-Dade County); Harbor Isles (Pinellas County); the Faka Union Canal (Collier County); the Florida panther consultation area (Southwest Florida), the Tampa Bypass Canal (Hillsborough County); canals in the Kings Bay/Crystal River/Homosassa/Salt River system (Citrus County); Lake Miccosukee (Jefferson County).

[23] SPGP IV-R1, available at http://www.saj.usace.army.mil/Portals/44/docs/regulatory/sourcebook/permitting/general_permits/SPGP/SPGP_IV_Permit_Instrument.pdf.

[24] Corps, Jacksonville District, available at http://www.saj.usace.army.mil/Missions/Regulatory/SourceBook.aspx, last visited (Jan. 29, 2016).

[25] *Id.*

[26] SAJ-111, available at http://floridaswater.com/permitting/USACEfiles/SAJ-111_Permit_Instrument.pdf.

[27] *Id.*

Assumption

A state may seek assumption of Section 404 of the Clean Water Act to regulate the discharge of dredged or fill material into certain waters.[28] The state program must regulate all discharges of dredged or fill material into waters regulated by the state; partial state programs are not approvable.[29] A state program may be more stringent and encompass a greater scope than required by federal law.[30] To apply, the state must submit to the U.S. Environmental Protection Agency at least three copies of the following:

- A letter from the Governor of the State requesting program approval;
- A complete program description;[31]
- An Attorney General's statement;[32]
- A Memorandum of Agreement with the Regional Administrator;[33]
- A Memorandum of Agreement with the Secretary;[34] and
- Copies of all applicable state statutes and regulations, including those governing applicable state administrative procedures.[35]

Effect of Proposed Changes

The bill amends s. 373.4144, F.S., regarding federal environmental permitting to increase the acreage of wetland or other surface water impacts, including navigable waters, the state is authorized to implement through a SPGP, subject to agreement with the Corp. The bill increases the acreage from 3 acres or less to 10 acres or less.

The bill provides that by seeking to use a SPGP, an applicant consents to applicable federal wetland jurisdiction criteria, which are authorized by s. 404 of the Clean Water Act, Pub. L. No. 92-500, as amended, 33 U.S.C. ss. 1251 et seq., and s. 10 of the Rivers and Harbors Act of 1899 as required by the Corps, notwithstanding s. 373.4145, F.S.,[36] and for the limited purpose of implementing the SPGP.

The bill allows DEP to seek delegation of, in addition to assumption of, federal permitting programs regulating the discharge of dredged or fill material pursuant to the Clean Water Act and the Rivers and Harbors Act, so long as the delegation encompasses all dredge and fill activities in, on, or over jurisdictional wetlands or waters, including navigable waters, within the state.

B. SECTION DIRECTORY:

Section 1. Amends s. 373.4144(2), F.S., regarding federal environmental permitting.

Section 2. Provides an effective date.

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[28] 40 C.F.R. §232.2(p); § 404(g)(1)
[29] 40 C.F.R. §233.1(b)
[30] 40 C.F.R. § 233.1(c)
[31] 40 C.F.R. § 233.11
[32] 40 C.F.R. § 233.12
[33] 40 C.F.R. § 233.13
[34] 40 C.F.R. § 233.14
[35] 40 C.F.R. § 233.10
[36] Section 373.4145(c), F.S., regards the environmental permitting program within the geographical jurisdiction of the Northwest Florida WMD.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   Currently, the SPGP agreement between the Corps and DEP does not include activities related to wetland impacts. If an agreement is reached, the costs associated with expanding the SPGP to include wetlands impacts are expected to be minor and can be absorbed within existing agency resources.[37]

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may have a positive fiscal impact on the private sector if the bill results in the Corps issuing an expanded SPGP, or the state is granted assumption or delegation of Section 404 of the Clean Water Act. An expanded SPGP or assumption or delegation of Section 404 of the Clean Water Act would result in a reduction of duplicative permitting processes.

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, or reduce the percentage of state tax shared with counties or municipalities.

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

None.

[37] Email from Andrew Ketchel, Director of Legislative Affairs, Department of Environmental Protection, RE: HB795, (Feb. 5, 2016).

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.

A bill to be entitled

An act relating to dredge and fill activities; amending s. 373.4144, F.S.; revising the acreage of wetlands and other surface waters subject to impact by dredge and fill activities under a state programmatic general permit; providing that seeking to use such a permit consents to specified federal wetland jurisdiction criteria; authorizing the Department of Environmental Protection to delegate federal permitting programs for the discharge of dredged or fill material under certain conditions; providing an effective date.

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

Section 1. Subsections (2) and (3) of section 373.4144, Florida Statutes, are amended to read:

373.4144 Federal environmental permitting.—

(2)(a) In order to effectuate efficient wetland permitting and avoid duplication, the department and water management districts are authorized to implement a voluntary state programmatic general permit for all dredge and fill activities impacting 10 ~~3~~ acres or less of wetlands or other surface waters, including navigable waters, subject to agreement with the United States Army Corps of Engineers, if the general permit is at least as protective of the environment and natural

resources as existing state law under this part and federal law under the Clean Water Act and the Rivers and Harbors Act of 1899.

(b) By seeking to use a statewide programmatic general permit, an applicant consents to applicable federal wetland jurisdiction criteria, which are not included pursuant to this part, but which are authorized by the regulations implementing s. 404 of the Clean Water Act, Pub. L. No. 92-500, as amended, 33 U.S.C. ss. 1251 et seq., and s. 10 of the Rivers and Harbors Act of 1899 as required by the United States Army Corps of Engineers, notwithstanding s. 373.4145 and for the limited purpose of implementing the state programmatic general permit authorized by this subsection.

(3) The department may pursue ~~This section may not preclude the department from pursuing~~ a series of regional general permits for construction activities in wetlands or surface waters or delegation or ~~complete~~ assumption of federal permitting programs regulating the discharge of dredged or fill material pursuant to s. 404 of the Clean Water Act, Pub. L. No. 92-500, as amended, 33 U.S.C. ss. 1251 et seq., and s. 10 of the Rivers and Harbors Act of 1899, so long as the delegation or assumption encompasses all dredge and fill activities in, on, or over jurisdictional wetlands or waters, including navigable waters, within the state.

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 987 Solid Waste Management
SPONSOR(S): Drake
TIED BILLS: **IDEN./SIM. BILLS:** SB 922

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Agriculture & Natural Resources Subcommittee	13 Y, 0 N	Moore	Harrington
2) Agriculture & Natural Resources Appropriations Subcommittee		Helpling	Massengale
3) State Affairs Committee			

SUMMARY ANALYSIS

The Department of Environmental Protection (DEP) is responsible for the implementation and enforcement of the state's solid waste management program. DEP also administers the Solid Waste Management Trust Fund (SWMTF) for the solid waste management grant program and the solid waste landfill closure account.

The solid waste management grant program consists of two grant programs: a consolidated grant program, which is responsible for solid waste management, litter prevention and control, and recycling and education programs for counties with populations fewer than 100,000; and a waste tire grant program.

The bill amends the SWMTF to:

- Include and provide funding for a waste tire abatement program that is to receive no more than 5 percent of the 37 percent traditionally used for the solid waste management grant program; and
- Expand the use of funds from the solid waste landfill closure account, as follows:
  - Allows funds from the account to be used on a facility that was not required to obtain a DEP permit to operate;
  - Allows a permittee to provide proof of financial assurance for closure by using an alternative form of financial assurance;
  - Allows DEP to accept sufficient documentation, rather than written documentation, as confirmation that the issuer of the insurance policy or alternative form of financial assurance will provide or reimburse funds required to complete closing and long-term care;
  - Allows DEP to use funds from the SWMTF to pay for or reimburse additional expenses needed for performing or completing closure or long-term care if the amount available under the insurance policy or alternative form of financial assurance is insufficient, or is otherwise unavailable, to perform or complete the facility closing or long-term care, and DEP has used all funds from the insurance policy or alternative form of financial assurance; and
  - Removes the account's expiration date of July 1, 2016.

The bill amends the solid waste management grant program by adding waste tire abatement as an allowable use of funds awarded under the consolidated grant program, and removes the waste tire grant program.

The bill appears to have a significant fiscal impact on the state, no impact on local government, and a positive impact on the private sector.

Except as otherwise expressly provided in the act, which shall take effect upon becoming law, the act takes effect on July 1, 2016.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

The Department of Environmental Protection (DEP) is responsible for the implementation and enforcement of the state's solid waste management program.[1] DEP is authorized to adopt rules to implement and enforce the state's solid waste management program, which includes a waste tire[2] management program,[3] administration of solid waste grant programs,[4] and the classification, construction, operation, maintenance and closure[5] of solid waste management facilities[6].[7]

Solid Waste Management Trust Fund

The Solid Waste Management Trust Fund (SWMTF) is funded from registration fees, fines, and penalties imposed relating to used oil,[8] penalties for littering,[9] and waste tire fees.[10] Annual revenues deposited into the SWMTF, unless otherwise specified in the General Appropriations Act, are to be administered by DEP as follows:

- Up to 40 percent for solid waste activities of DEP and other state agencies, including providing technical assistance to local governments and the private sector, performing solid waste regulatory and enforcement functions, preparing solid waste documents, and implementing solid waste education programs;
- Up to 4.5 percent for research and training programs relating to solid waste management through the Center for Solid and Hazardous Waste Management and other organizations that can reasonably demonstrate the capability to carry out the projects;
- Up to 14 percent to supplement any other funds provided to the Department of Agriculture and Consumer Services for mosquito control;
- Up to 4.5 percent to the Department of Transportation for litter prevention and control programs through a certified Keep America Beautiful Affiliate at the local level; and
- Up to 37 percent for a solid waste management grant program for activities relating to recycling and waste reduction, including waste tires requiring final disposal.[11]

DEP must recover funds used from the SWMTF for the management of tires at illegal waste tire sites[12] from owners or persons responsible for the accumulation of the tires.[13] DEP may decline to pursue

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[1] Chapter 403, Part IV, F.S., Resource and Recovery Management; Section 403.705, F.S.

[2] Section 403.717(1)(e), F.S., defines a "waste tire" to mean a tire that has been removed from a motor vehicle and has not been retreaded or regrooved. It includes used tires and processed tires. It does not include solid rubber tires and tires that are inseparable from the rim.

[3] Section 403.717, F.S.; ch. 62-701, F.A.C.

[4] Section 403.7095, F.S; ch. 62-716, F.A.C.

[5] Section 403.703(5), F.S., defines "closure" as the cessation of operation of a solid waste management facility and the act of securing the facility so that it will pose no significant threat to human health or the environment and includes long-term monitoring and maintenance of a facility if required by DEP rule.

[6] Section 403.703(35), F.S., defines a "solid waste management facility" as any solid waste disposal area, volume reduction plant, transfer station, materials recovery facility, or other facility, the purpose of which is resource recovery or the disposal, recycling, processing, or storage of solid waste. The term does not include recovered materials processing facilities that meet the requirements of s. 403.7046, F.S., except the portion of such facilities, if any, which is used for the management of solid waste.

[7] Section 403.709(9), F.S.; chs. 62-701 through 62-722, F.A.C.

[8] Section 403.759, F.S.; Section 403.75(7), F.S., defines "used oil" as any oil which has been refined from crude oil or synthetic oil and, as a result of use, storage, or handling, has become contaminated and unsuitable for its original purpose due to the presence of physical or chemical impurities or loss of original properties.

[9] Section 403.413(6), F.S.

[10] Section 403.718, F.S.

[11] Section 403.709(1)(a)-(e), F.S.

recovery if it determines that the amount involved is too small or the likelihood of recovery is too uncertain.[14] A court may authorize DEP to take possession and control of a waste tire site to protect the health, safety, and welfare of the community and the environment if the court determines that the owner is unable or unwilling to comply with waste tire requirements[15].[16] DEP may impose a lien on the real property where the waste tire site is located equal to the estimated cost to bring the tire site into compliance, including attorney's fees and court costs.[17]

Waste Tire Abatement Program

DEP's waste tire abatement program is used to identify, evaluate, and cleanup waste tire sites.[18] Funding for DEP's waste tire abatement program has not been funded since the 2009 Legislative Session.[19] DEP has a list of more than 440,000 tires located at 26 waste tire sites within Florida. The number of tires at these sites range from 1,500 to more than 250,000. Preliminary abatement cost estimates per site range from $2,704 to $570,900. DEP's preliminary abatement cost estimate for the 26 sites is $961,390.[20]

Solid Waste Management Consolidated Grant Program and Waste Tire Grant Program

The consolidated grant program serves small counties with populations fewer than 100,000, in solid waste management, litter prevention and control, and recycling and education programs.[21] The consolidated grant program serves 33 counties.[22]

The waste tire grant program provides for the operation and construction of facilities and other activities related to the removal of waste tires and is available to all counties; however, at least 25 percent of grant funding is to be equally distributed to each county having a population fewer than 100,000.[23] Remaining funds are to be distributed to counties having a population of 100,000 or greater, based on population.[24]

SWMTF funds for the grant programs are to be distributed as follows:

- Up to 50 percent to the consolidated grant program; and
- Up to 50 percent to the waste tire grant program.[25]

Funding for the waste tire grant program was last appropriated during the 2003 Legislative Session.[26]

Closure and Long-term Care of Solid Waste Management Facilities

An owner or operator[27] of a landfill,[28] or any other solid waste management facility, must provide financial assurance to DEP for closure of the facility.[29] Financial assurance may include surety bonds,

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[12] Section 403.717(1)(g), F.S., defines a "waste tire site" as a site where 1,500 or more waste tires are accumulated.
[13] Section 403.709(2), F.S.
[14] *Id.*
[15] Section 403.717, F.S.; ch. 62-701, F.A.C.
[16] Section 403.709(2), F.S.
[17] Section 403.709(3), F.S.
[18] DEP's Tires General Information, available at http://www.dep.state.fl.us/waste/categories/tires/pages/info.htm (last visited Jan. 26, 2016).
[19] DEP's analysis of SB 922 (2016), on file with the Agriculture & Natural Resources Subcommittee.
[20] *Id.*
[21] Section 403.7095(1), F.S.; chs. 62-701 and 62-716, F.A.C.
[22] DEP's analysis of SB 922 (2016), on file with the Agriculture & Natural Resources Subcommittee.
[23] Section 403.7095(2), F.S.; chs. 62-701 and 62-716, F.A.C.
[24] *Id.*
[25] Sections 403.709(1)(e) and 403.7095(3), F.S.
[26] DEP's analysis of SB 922 (2016), on file with the Agriculture & Natural Resources Subcommittee.

certificates of deposit, securities, letters of credit, or other documents showing that the owner or operator has sufficient financial resources to cover, at a minimum, the costs of complying with closure requirements.[30] An owner or operator must estimate costs to the satisfaction of DEP.[31]

Section 403.709(5), F.S.,[32] provides for a solid waste landfill closure account within the SWMTF for the closure and long-term care[33] of certain solid waste management facilities.[34] DEP may use funds from the solid waste landfill closure account to contract with a third party for the closure and long-term care of a solid waste management facility if:

- The facility has or had a DEP permit to operate;
- The permittee provided proof of financial assurance for closure in the form of an insurance certificate;
- The facility is deemed abandoned or was 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 the closure and long-term care of the facility.[35]

DEP is required to deposit funds received from an insurance company as reimbursement for the costs of closing or long-term care of the facility into the solid waste landfill closure account.[36] The solid waste landfill closure account is scheduled for repeal on July 1, 2016.[37]

For Fiscal Year 2015-2016, $2.34 million in nonrecurring funds were appropriated to DEP from the solid waste landfill closure account within SWMTF for the closing and long-term care of solid waste management facilities.[38] DEP is using these funds to enter into contracts with a third party to close the following facilities:

- Williams Road (Hillsborough County);
- Coyote Navarre (Santa Rosa County);
- Coyote East (Walton County);
- Coyote West (Walton County); and
- Cerny Road (Escambia County).[39]

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[27] Section 403.7125(1), F.S., defines an "owner or operator" as any owner of record of any interest in land wherein a landfill is or has been located and any person or corporation that owns a majority interest in any other corporation that is the owner or operator of a landfill.

[28] Section 403.7125(17), F.S., defines a "landfill" as any solid waste land disposal area for which a permit, other than a general permit, is required by s. 403.707, F.S., and which receives solid waste for disposal in or upon land. It does not include a land-spreading site, an injection well, a surface impoundment, or a facility for the disposal of construction and demolition debris.

[29] Sections 403.707(9) and 403.7125(3), F.S.; Rule 62-701.630, F.A.C.

[30] *Id.*

[31] *Id.*

[32] Section 53, ch. 2015-222, Laws of Florida, created s. 403.709(5), F.S., in order to implement Specific Appropriation 1689A of the 2015-2016 General Appropriations Act.

[33] Rule 62-701.620, F.A.C., provides for the long-term care of solid waste management facilities.

[34] Section 403.703(35), F.S., defines a "solid waste management facility" as any solid waste disposal area, volume reduction plant, transfer station, materials recovery facility, or other facility, the purpose of which is resource recovery or the disposal, recycling, processing, or storage of solid waste. It does not include recovered materials processing facilities that meet the requirements of s. 403.7046, F.S., except the portion of such facilities, if any, which is used for the management of solid waste.

[35] Section 403.709(5)(a), F.S.

[36] Section 403.709(5)(b), F.S.

[37] Section 403.709(5)(c), F.S.; Due to implementation of the section through the Implementing Bill.

[38] DEP's analysis of SB 922 (2016), on file with the Agriculture & Natural Resources Subcommittee.

[39] *Id.*

Effect of Proposed Changes

The bill amends s. 403.709, F.S., regarding the SWMTF, to include and provide funding for a waste tire abatement program. The bill provides that no more than 5 percent of the 37 percent traditionally used for the solid waste management grant program may be used for the waste tire abatement program.

The bill also expands the areas in which DEP can use funds from the solid waste landfill closure account within the SWMTF on closure and long-term care, as follows:

- Allows the use of funds from the account on a facility that was not required to obtain a DEP permit to operate;
- Allows a permittee, where required by rule or permit, to provide proof of financial assurance for closure by using an alternative form of financial assurance; and
- Allows DEP to accept sufficient documentation to confirm that the issuer of the insurance policy or alternative form of financial assurance will provide or reimburse the funds required to complete the closing and long-term care.

The bill specifies that DEP must deposit funds received from an insurer or other party for reimbursement into the solid waste landfill closure account. The bill specifies that if the amount available under the insurance policy or alternative form of financial assurance is insufficient, or is otherwise unavailable, to perform or complete the facility closing or long-term care, and DEP has used all funds from the insurance policy or alternative form of financial assurance, DEP may use funds from the SWMTF to pay for or reimburse the additional expenses needed for performing or completing the facility closure or long-term care. The bill deletes the account's repeal date of July 1, 2016.

The bill amends s. 403.7095, F.S., regarding the solid waste management grant program to add waste tire abatement as an allowable use of grant funds awarded under the consolidated grant program. The bill removes the waste tire grant program and the requirement for grant funds to be divided between the consolidated grant program and the waste tire grant program. The bill also removes an expired appropriation.

The bill reenacts ss. 403.413 and 403.7032, F.S., to incorporate the changes made by the bill to s. 403.7095, F.S.

B. SECTION DIRECTORY:

Section 1. Amends s. 403.709, F.S., regarding the Solid Waste Management Trust Fund.

Section 2. Amends s. 403.7095, F.S., regarding the solid waste management grant program.

Section 3. Reenacts s. 403.413, F.S., to incorporate the changes made to s. 403.7095, F.S.

Section 4. Reenacts s. 403.7032, F.S., to incorporate the changes made to s. 403.7095, F.S.

Section 5. Provides effective dates.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

The bill modifies the authorized uses of funds under the SWMTF for solid waste management grants to include waste tire abatement and modifies the distribution of such funds. The House proposed General Appropriations Act for Fiscal Year 2016-2017 provides $3 million for solid waste management grants and $2.55 million for waste tire abatement from the SWMTF. Of the $2.55 million for waste tire abatement, $1.8 million is provided for Osborne Reef Waste Tire Removal Project in Broward County, and $750,000 is for the waste tire abatement program.

Current law, and the bill, provides for reimbursement of funds expended from the solid waste landfill closure account within the SWMTF. The bill specifies that if the amount available under the insurance policy or alternative form of financial assurance is insufficient, or is otherwise unavailable, to perform or complete the facility closing or long-term care, and DEP has used all funds from the insurance policy or alternative form of financial assurance, then DEP can use funds from the SWMTF.[40]

DEP estimates $1 million in additional funds from the SWMTF will be needed to complete closure of the 5 sites currently under contract and has identified one additional site for closure.[41] The Fiscal Year 2016-2017 House proposed General Appropriations Act includes $1 million from the SWMTF for the closure and long-term care of solid waste management facilities.

The bill also removes the expiration date of the solid waste landfill closure account, allowing DEP to continue contracting with third parties for the closure and long-term care of solid waste management facilities.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill modifies the current distribution made available for waste tire grants and solid waste management grants. The modification provides that all such funds are made available to counties with a population less than 100,000 and removes the distribution to counties with a population more than 100,000. However, this modification codifies several years of legislative appropriation.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill removes the expiration date on the solid waste landfill closure account within the SWMTF, allowing DEP to continue to contract with private entities for the closure and long-term care of solid waste management facilities. The bill also allows DEP to spend additional funds from the SWMTF for the same purpose.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

[40] *Id.*

[41] Florida Fiscal Portal, *Environmental Protection - Agency Legislative Budget Request for Fiscal Year 2016-2017*, http://floridafiscalportal.state.fl.us/Document.aspx?ID=13845&DocType=PDF, (Last visited Feb. 5, 2016).

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, or reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Other Comment: DEP

The expansion of the solid waste landfill closure account has the potential to increase the amount of land available for redevelopment and reuse, and expedite the process for closing landfills thereby minimizing potential environmental impacts from an abandoned landfill. The expansion would accomplish purposes that benefit the public while supporting the continued availability of insurance policies or other financial assurance instruments as cost effective mechanisms.[42]

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.

[42] *Id.*

A bill to be entitled

An act relating to solid waste management; amending s. 403.709, F.S.; providing for the funding of a waste tire abatement program from the Solid Waste Management Trust Fund up to a specified percentage of total funds; establishing a solid waste landfill closure account within the Solid Waste Management Trust Fund; specifying the purpose of the account; authorizing the Department of Environmental Protection to use account funds to contract with a third party for the closing and long-term care of solid waste management facilities under specified circumstances; requiring the department to deposit certain funds into the solid waste landfill closure account; authorizing the department to use funds from the account to pay for or reimburse specified expenses under certain circumstances; deleting a solid waste landfill closure account within the Solid Waste Management Trust Fund; amending s. 403.7095, F.S.; authorizing waste tire abatement programs under the small county consolidated grant program; removing the waste tire abatement program supported by the solid waste management grant program; removing distribution requirements; deleting an obsolete provision; reenacting ss. 403.413(6)(a) and 403.7032(5)(h), F.S., relating to the Florida Litter Law and recycling, respectively, to incorporate

the amendments made to s. 403.7095, F.S., in references thereto; providing effective dates.

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

Section 1. Paragraph (e) of subsection (1) and subsection (5) of section 403.709, Florida Statutes, are amended, present subsections (2) through (4) of that section are redesignated as subsections (3) through (5), respectively, and a new subsection (2) is added to that section, 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.

(1) From the annual revenues deposited in the trust fund, unless otherwise specified in the General Appropriations Act:

(e) Up to 37 percent shall be used for funding a waste tire abatement program and a solid waste management grant program pursuant to s. 403.7095 for activities relating to recycling and waste reduction, including waste tires requiring final disposal. Of the funding specified in this paragraph, no more than 5 percent of the total may be used for funding the waste tire abatement program.

(2) 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.

(a) 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, had, or was not required to obtain a department permit to operate the facility;

2. The permittee, where required by permit or rule, provided proof of financial assurance for closure in the form of an insurance certificate or an alternative form of financial assurance mechanism established pursuant to s. 403.7125;

3. The department has ordered the facility closed or has deemed the facility abandoned;

4. The closure of the facility is accomplished in substantial accordance with a closure plan approved by the department; and

5. The department has sufficient documentation to confirm that the issuer of the insurance policy or alternative form of financial assurance will provide or reimburse the funds required to complete the closing and long-term care of the facility.

(b) The department shall deposit all funds received from the insurer or other parties for reimbursing the costs of closing or long-term care of the facility under this subsection into the solid waste landfill closure account.

(c) If the amount available under the insurance policy or alternative form of financial assurance is insufficient, or is otherwise unavailable, to perform or complete the facility closing or long-term care under this subsection, and the

department has used all such funds from the insurance policy or alternative form of financial assurance, the department may use funds from the Solid Waste Management Trust Fund to pay for or reimburse additional expenses needed for performing or completing the approved facility closure or long-term care activities.

~~(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; and~~

~~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.~~

~~(c) This subsection expires July 1, 2016.~~

Section 2. Effective upon this act becoming a law, section 403.7095, Florida Statutes, is amended to read:

403.7095 Solid waste management grant program.—

(1) The department shall develop a consolidated grant program for small counties having populations fewer than 100,000, with grants to be distributed equally among eligible counties. Programs to be supported with the small-county consolidated grants include those for the purpose of general solid waste management, litter prevention and control, waste tire abatement, and recycling and education programs.

~~(2) The department shall develop a waste tire grant program making grants available to all counties. The department shall ensure that at least 25 percent of the funding available for waste tire grants is distributed equally to each county having a population fewer than 100,000. Of the remaining funds distributed to counties having a population of 100,000 or greater, the department shall distribute those funds on the basis of population.~~

~~(3) From the funds made available pursuant to s. 403.709(1)(c) for the grant program created by this section, the following distributions shall be made:~~

~~(a) Up to 50 percent for the program described in~~

~~subsection (1); and~~

~~(b) Up to 50 percent for the program described in subsection (2).~~

(2) ~~(4)~~ The department may adopt rules necessary to administer this section, including, but not limited to, rules governing timeframes for submitting grant applications, criteria for prioritizing, matching criteria, maximum grant amounts, and allocation of appropriated funds based upon project and applicant size.

~~(5) Notwithstanding any other provision of this section, and for the 2014-2015 fiscal year only, the Department of Environmental Protection shall award the sum of $3 million in grants equally to counties having populations of fewer than 100,000 for waste tire and litter prevention, recycling education, and general solid waste programs. This subsection expires July 1, 2015.~~

Section 3. For the purpose of incorporating the amendments made by this act to section 403.7095, Florida Statutes, in a reference thereto, paragraph (a) of subsection (6) of section 403.413, Florida Statutes, is reenacted to read:

403.413 Florida Litter Law.—

(6) PENALTIES; ENFORCEMENT.—

(a) Any person who dumps litter in violation of subsection (4) in an amount not exceeding 15 pounds in weight or 27 cubic feet in volume and not for commercial purposes is guilty of a noncriminal infraction, punishable by a civil penalty of $100,

from which $50 shall be deposited into the Solid Waste Management Trust Fund to be used for the solid waste management grant program pursuant to s. 403.7095. In addition, the court may require the violator to pick up litter or perform other labor commensurate with the offense committed.

Section 4. For the purpose of incorporating the amendments made by this act to section 403.7095, Florida Statutes, in a reference thereto, paragraph (h) of subsection (5) of section 403.7032, Florida Statutes, is reenacted to read:

403.7032 Recycling.—

(5) The Department of Environmental Protection shall create the Recycling Business Assistance Center by December 1, 2010. In carrying out its duties under this subsection, the department shall consult with state agency personnel appointed to serve as economic development liaisons under s. 288.021 and seek technical assistance from Enterprise Florida, Inc., to ensure the Recycling Business Assistance Center is positioned to succeed. The purpose of the center shall be to serve as the mechanism for coordination among state agencies and the private sector in order to coordinate policy and overall strategic planning for developing new markets and expanding and enhancing existing markets for recyclable materials in this state, other states, and foreign countries. The duties of the center must include, at a minimum:

(h) Providing evaluation of solid waste management grants, pursuant to s. 403.7095, to reduce the flow of solid waste to

disposal facilities and encourage the sustainable recovery of materials from Florida's waste stream.

Section 5. Except as otherwise expressly provided in this act and except for this section, which shall take effect upon this act becoming a law, this act shall take effect July 1, 2016.

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 Appropriations Subcommittee

Representative Combee offered the following:

Amendment (with title amendment)

Remove line 114 and insert:

110,000 ~~100,000~~ with grants to be distributed equally among eligible

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

Remove line 19 and insert:

amending s. 403.7095, F.S.; revising eligibility criteria for the small county consolidated grant program; authorizing waste tire