Agriculture & Natural Resources Subcommittee

Tuesday, January 26, 2016
12:00 PM
Reed Hall (102 HOB)

Meeting Packet

Steve Crisafulli
Speaker

Tom Goodson
Chair

Committee Meeting Notice

HOUSE OF REPRESENTATIVES

Agriculture & Natural Resources Subcommittee

Start Date and Time:	Tuesday, January 26, 2016 12:00 pm
End Date and Time:	Tuesday, January 26, 2016 02:00 pm
Location:	Reed Hall (102 HOB)
Duration:	2.00 hrs

Consideration of the following bill(s):

HB 561 Organizational Structure of Department of Environmental Protection by Combee
HB 847 Pasco County by Burgess
HB 995 Local Government Infrastructure Surtax by Mayfield
HB 1051 Recreational Boating Zones by Caldwell
HB 1153 Public Records/Recreational Activities Licenses/FWCC by Goodson

Consideration of the following proposed committee substitute(s):

PCS for HB 589 -- Environmental Control
PCS for HB 697 -- Petroleum Restoration Program

NOTICE FINALIZED on 01/22/2016 3:55PM by Love.John

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

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

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Agriculture & Natural Resources Subcommittee		Moore, R.	Harrington
2) Agriculture & Natural Resources Appropriations Subcommittee			
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 combine, separate, or delete 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 districts DEP must have; and
- The secretary may establish divisions 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. The Division of State Lands is established within DEP, but all other named divisions are removed, including 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, and the Division of Recreation and Parks.

The bill has an indeterminate fiscal impact on the state, and does not appear to 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 provides that:

- The secretary must appoint a general counsel who is directly responsible to and serves at the pleasure of the secretary. The bill provides that the general counsel is responsible for all legal matters of DEP.
- The secretary may establish divisions 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.
- The divisions must be headed by directors, who are appointed by and serve at the pleasure of the secretary.
- The Division of State Lands is established within DEP, the director of which is to be appointed by the secretary, subject to confirmation by the Governor and Cabinet sitting as the Board. The bill removes the Division of Administrative Services, Division of Air Resource Management, Division of Water Resource Management, Division of Environmental Assessment and Restoration, Division of Waste Management, and the Division of Recreation and Parks.
- Offices may be established as deemed necessary to promote the efficient and effective operation of DEP. The secretary may combine, separate, or delete offices as necessary in consultation with the Executive Office of the Governor. The offices must be headed by managers, who are appointed by and serve at the pleasure of the secretary. The bill 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.

The bill deletes the requirement that DEP maintain six administrative districts. The bill deletes the requirement that divisions have one assistant or two deputy division directors, as required to facilitate effective operation.

The bill provides that the managers of all divisions, offices, and districts, 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.

[23] *Id.*

2. Expenditures:

   Depending on whether more SMS class positions are created, the bill may have an indeterminate negative fiscal impact on the state. Reclassifying a position as SMS class results in a 15.25 percent increase in salary retirement benefits for each position.

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:

   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

Not applicable.

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; authorizing the Secretary of Environmental Protection to establish divisions as necessary to accomplish the missions and goals of the department; authorizing offices to be established as necessary to promote the efficient and effective operation of the department; deleting the required establishment of certain offices and divisions; 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) The secretary may establish divisions as he or she deems necessary to accomplish the mission and goals of the department, 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 of whom is to be appointed by and serve at the pleasure of the secretary. The Division of State Lands is established within the department, the director of which 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.

(d) Offices may be established as deemed necessary to promote the efficient and effective operation of the department. The secretary may combine, separate, or delete offices as necessary in consultation with the Executive Office of the Governor. The ~~following special~~ offices shall be ~~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~~.

(e)~~(b)~~ There shall be ~~six~~ administrative districts 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 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 managers of all divisions, ~~and~~ offices, and districts ~~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, 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.

COMMITTEE/SUBCOMMITTEE ACTION

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

Committee/Subcommittee hearing bill: Agriculture & Natural Resources Subcommittee

Representative Combee offered the following:

Amendment (with title amendment)

Remove everything after the enacting clause and insert:

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) The secretary may establish divisions, in addition to the divisions specified in subsection (3), and bureaus as he or she deems necessary to accomplish the mission and goals of the department, which includes, but is 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, excepting the director of the Division of State Lands, is to 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 also combine, separate, or delete offices as necessary. Such ~~the following special~~ offices shall be ~~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.~~

(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. These districts~~, 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 managers of all divisions, ~~and~~ offices, and districts ~~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~~, 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.

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

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

Remove everything before the enacting clause and insert: An act relating to the organizational structure of the Department of Environmental Protection; amending s. 20.255, F.S.; deleting a provision requiring a certain number of deputy secretaries in the department; requiring the Secretary of Environmental Protection to appoint a general counsel to serve the department; authorizing the secretary to establish divisions and bureaus as necessary to accomplish the missions and goals of the department; providing for management of the divisions; authorizing the secretary to establish offices as necessary to promote the efficient and effective operation of the department; authorizing the combination, separation, and deletion of such

offices under certain circumstances; deleting the required establishment of certain offices; requiring the secretary to establish administrative districts to be involved in certain regulatory matters; deleting a provision authorizing divisions to have only specified numbers of assistants or deputy division directors; providing an exemption for managers of districts from part II of chapter 110; revising the specified divisions within the department; providing an effective date.

HB 847

HOUSE OF REPRESENTATIVES LOCAL BILL STAFF ANALYSIS

BILL #: HB 847 Pasco County
SPONSOR(S): Burgess, Jr.
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Local Government Affairs Subcommittee	9 Y, 0 N	Darden	Miller
2) Agriculture & Natural Resources Subcommittee		Moore, R.	Harrington
3) Local & Federal Affairs Committee			

SUMMARY ANALYSIS

Chapter 99-166, Laws of Florida, deals with the elimination of sewage treatment facility discharges into coastal waters within Pasco County, and provides as follows:

- Prohibits new discharges, or increased pollutant loadings from existing sewage treatment facilities, into the coastal waters of the state within Pasco County, which includes, but is not limited to, Anclote Anchorage, Sandy Bay, Cross Bayou, Millers Bayou, Boggy Bay, Hope Bayou, Lighter Bayou, or Fillman Bayou, or into waters tributary thereto;
- Requires existing sewage treatment facility discharges into the coastal waters of the state within Pasco County or into waters tributary thereto to be eliminated before July 1, 2004; and
- Provides that DEP may grant an exception to these requirements if:
  - The applicant conclusively demonstrates that no other practical alternative exists, the discharge will receive advanced waste treatment or a higher level of treatment, and the applicant conclusively demonstrates that the proposed discharge will not result in a violation of water quality standards; or
  - The applicant's discharge is a limited wet weather surface water discharge serving as a backup to a reuse system, will not cause a violation of state water quality standards and is subject to the requirements of DEP's rules

The bill repeals ch. 99-166, Laws of Florida, and would place Pasco County under the generally applicable laws and regulations applying to the elimination of domestic wastewater discharges through ocean outfalls.

The bill does not appear to have a fiscal impact on state or local governments or the private sector.

This bill will take effect upon becoming law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Domestic Wastewater Ocean Outfalls

The Legislature has determined that the discharge of domestic wastewater[1] through ocean outfalls[2]:

- Wastes valuable water supplies that should be reclaimed for beneficial purposes to meet public and natural systems demands; and
- Compromises the coastal environment, quality of life, and local economies that depend on those resources.[3]

The Legislature has declared that more stringent treatment and management requirements for domestic wastewater and the subsequent, timely elimination of ocean outfalls as a primary means of domestic wastewater discharge are in the public interest.[4]

Accordingly, the construction of new ocean outfalls for domestic wastewater discharge and the expansion of existing ocean outfalls, along with associated pumping and piping systems, are prohibited.[5] Each domestic wastewater ocean outfall must be limited to the discharge capacity specified in the Department of Environmental Protection (DEP) permit authorizing the outfall in effect on July 1, 2008, and must not be increased.[6] DEP is directed to work with the United States Environmental Protection Agency to ensure that these requirements are implemented consistently for all domestic wastewater facilities in the state which discharge through ocean outfalls.[7]

The discharge of domestic wastewater through ocean outfalls must meet advanced wastewater treatment and management requirements by December 31, 2018.[8] Advanced wastewater treatment and management requirements means:

- The advanced waste treatment requirements set forth in s. 403.086(4), F.S.;[9]
- A reduction in outfall baseline loadings of total nitrogen and total phosphorus which is equivalent to that which would be achieved by the advanced waste treatment requirements in s. 403.086(4), F.S.; or

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[1] "Domestic wastewater" is defined in r. 62-600.200(25), F.A.C., as the wastewater derived principally from dwellings, business buildings, institutions, and the like; sanitary wastewater; sewage.

[2] Rule 62-600.200(55), F.A.C., defines the term "ocean outfall" as the outlet or structure through which effluent is finally discharged to the marine environment which includes the territorial sea, contiguous zone and the ocean.

[3] Section 403.086(9), F.S.

[4] *Id.*

[5] Section 403.086(9)(a), F.S.

[6] *Id.*

[7] *Id.*

[8] Section 403.086(9)(b), F.S.

[9] Section 403.086(4), F.S., provides that "advanced waste treatment" means treatment which will provide a reclaimed water product that:

(a) Contains not more, on a permitted annual average basis, than the following concentrations:

1. Biochemical Oxygen Demand.....5mg/l
2. Suspended Solids.....5mg/l
3. Total Nitrogen, expressed as N.....3mg/l
4. Total Phosphorus, expressed as P.....1mg/l

(b) Has received high level disinfection, as defined by DEP rule. (*See* r. 62-600.520, F.A.C.)

In those waters where the concentrations of phosphorus have been shown not to be a limiting nutrient or a contaminant, DEP may waive or alter the compliance levels for phosphorus until there is a demonstration that phosphorus is a limiting nutrient or a contaminant.

- A reduction in cumulative outfall loadings of total nitrogen and total phosphorus occurring between December 31, 2008, and December 31, 2025, which is equivalent to that which would be achieved if the advanced waste treatment requirements in s. 403.086(4), F.S., were fully implemented beginning December 31, 2018, and continued through December 31, 2025.[10]

The discharge of domestic wastewater through ocean outfalls is prohibited after December 31, 2025, except as a backup discharge that is part of a functioning reuse system or other wastewater management system authorized by DEP.[11] Except as otherwise provided, a backup discharge may occur:

- Only during periods of reduced demand for reclaimed water in the reuse system, such as periods of wet weather, or as the result of peak flows from other wastewater management systems; and
- Must comply with advanced wastewater treatment and management requirements.[12]

The holder of a DEP permit authorizing the discharge of domestic wastewater through an ocean outfall as of July 1, 2008, must submit the following to DEP:[13]

- By July 1, 2013, a detailed plan to meet the requirements of s. 403.086(9), F.S., including:
  - The identification of the technical, environmental, and economic feasibility of various reuse options;
  - The identification of each land acquisition and facility necessary to provide for reuse of the domestic wastewater;
  - An analysis of the costs to meet the requirements, including the level of treatment necessary to satisfy state water quality requirements and local water quality considerations and a cost comparison of reuse using flows from ocean outfalls and flows from other domestic wastewater sources;
  - A financing plan for meeting the requirements, including identifying any actions necessary to implement the financing plan, such as bond issuance or other borrowing, assessments, rate increases, fees, other charges, or other financing mechanisms; and
  - A detailed schedule for the completion of all necessary actions and be accompanied by supporting data and other documentation.[14]
- By July 1, 2016, an update of the plan documenting any refinements or changes in the costs, actions, or financing necessary to eliminate the ocean outfall discharge or a written statement that the plan is current and accurate.[15]

By December 31, 2009, and by December 31 every 5 years thereafter, the holder of a DEP permit authorizing the discharge of domestic wastewater through an ocean outfall must submit to DEP a report summarizing the actions accomplished to date and the actions remaining and proposed to meet the requirements of s. 403.086(9), F.S., including progress toward meeting specific deadlines.[16] The report must include a detailed schedule for and status of the evaluation of reuse and disposal options, preparation of preliminary design reports, preparation and submittal of permit applications, construction initiation, construction progress milestones, construction completion, initiation of operation, and continuing operation and maintenance.[17]

By July 1, 2010, and by July 1 every 5 years thereafter, DEP must submit a report to the Governor, the President of the Senate, and the Speaker of the House of Representatives on the implementation of s. 403.089(9), F.S.[18] In the report, DEP must summarize the progress to date, including the increased

[10] Section 403.086(9)(b), F.S.
[11] Section 403.086(9)(d), F.S.
[12] *Id.*
[13] Section 403.086(9)(e), F.S.
[14] Section 403.086(9)(e)1., F.S.
[15] Section 403.086(9)(e)2., F.S.
[16] Section 403.086(9)(f), F.S.
[17] *Id.*
[18] Section 403.086(9)(g), F.S.

amount of reclaimed water provided and potable water offsets achieved, and identify any obstacles to continued progress, including all instances of substantial noncompliance.[19]

Chapter 99-166, Laws of Florida - Elimination of Sewage Treatment Facility Discharges into Coastal Waters within Pasco County

In 1999, CS/SB 1424, relating to the elimination of sewage treatment discharges into coastal waters[20] of Pasco County became law.[21] At the time the bill passed, Pasco County had three wastewater treatment facilities that were permitted to discharge effluent into canals and waterways that entered the Gulf of Mexico.[22] Chapter 99-166, Laws of Florida:

- Prohibits new discharges, or increased pollutant loadings from existing sewage treatment facilities, into the coastal waters of the state within Pasco County, which includes, but is not limited to, Anclote Anchorage, Sandy Bay, Cross Bayou, Millers Bayou, Boggy Bay, Hope Bayou, Lighter Bayou, or Fillman Bayou, or into waters tributary thereto;
- Requires existing sewage treatment facility discharges into the coastal waters of the state within Pasco County or into waters tributary thereto to be eliminated before July 1, 2004; and
- Provides that DEP may grant an exception to these requirements if:
  - The applicant conclusively demonstrates that no other practical alternative exists, the discharge will receive advanced waste treatment as defined in s. 403.086(4), F.S., or a higher level of treatment, and the applicant conclusively demonstrates that the proposed discharge will not result in a violation of water quality standards; or
  - The applicant's discharge is a limited wet weather surface water discharge serving as a backup to a reuse system, will not cause a violation of state water quality standards and is subject to the requirements of DEP's rules.[23]

Effect of Proposed Changes

The bill repeals ch. 99-166, Laws of Florida, regarding the elimination of sewage treatment facility discharges into coastal waters within Pasco County. The bill will result in the coastal waters of Pasco County being subject to the general regulatory statutes applicable to domestic wastewater discharges to ocean outfalls contained in s. 403.086(9), F.S.

The Economic Impact Statement submitted for this bill simply stated the bill would have no impact on revenues or expenditures and did not provide any other information or discuss the specific data used in reaching the estimates.[24]

B. SECTION DIRECTORY:

Section 1: Repeals ch. 99-166, Laws of Florida, concerning sewage treatment facility discharges into coastal waters within Pasco County.

Section 2: Provides that the bill shall take effect upon becoming law.

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[19] *Id.*

[20] Rule 62-600.200(13), F.A.C., defines the term "coastal waters" as all estuarine, gulf, or ocean waters which are not classified as open ocean waters.

[21] Chapter 99-166, Laws of Florida.

[22] Senate Staff Analysis of CS/SB 1424 (1999), available at http://archive.flsenate.gov/data/session/1999/Senate/bills/analysis/pdf/SB1424.nr.pdf.

[23] Chapter 62-600.520, F.A.C.

[24] Economic Impact Statement for HB 847 (2016).

II. NOTICE/REFERENDUM AND OTHER REQUIREMENTS

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

IF YES, WHEN? August 28, 2015

WHERE? *Baylink Pasco*, a publication of general circulation in Pasco County, Florida, published by the *Tampa Bay Times*, a daily newspaper in Pasco County, Florida.

B. REFERENDUM(S) REQUIRED? Yes [] No [x]

IF YES, WHEN?

C. LOCAL BILL CERTIFICATION FILED? Yes, attached [x] No []

D. ECONOMIC IMPACT STATEMENT FILED? Yes, attached [x] No []

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

This bill does not provide authority or require executive branch rulemaking.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.

A bill to be entitled

An act relating to Pasco County; repealing chapter 99-166, Laws of Florida, relating to sewage treatment facility discharges into coastal waters within the county or waters tributary thereto; providing an effective date.

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

Section 1. Chapter 99-166, Laws of Florida, is repealed.

Section 2. This act shall take effect upon becoming a law.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 995 Local Government Infrastructure Surtax
SPONSOR(S): Mayfield
TIED BILLS: **IDEN./SIM. BILLS:** SB 346

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Agriculture & Natural Resources Subcommittee		Moore, R.	Harrington
2) Finance & Tax Committee			
3) Local & Federal Affairs Committee			

SUMMARY ANALYSIS

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. 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.

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 the Department of Environmental Protection.

The bill allows proceeds and accrued interest from the local government infrastructure surtax to be used for funding capital projects to restore natural water bodies for public use, including tributaries, canals, stormwater conveyance systems, and channels that are directly connected to natural water bodies. The bill provides that the use is limited to dredging operations related to ecologically beneficial muck removal.

The bill may have a positive fiscal impact on local governments and does not appear to have an impact on the state.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Discretionary Sales Surtaxes

There are eight discretionary sales surtaxes that serve as potential revenue sources for county and municipal governments and school districts.[1] They are:

- The charter county and regional transportation system surtax;[2]
- The local government infrastructure surtax;[3]
- The small county surtax;[4]
- The indigent care and trauma center surtax;[5]
- The county public hospital surtax;[6]
- The school capital outlay surtax;[7]
- The voter-approved indigent care surtax;[8] and
- The emergency fire rescue services and facilities surtax.[9]

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.[10] 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.[11]

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 the use is approved by referendum; or
- Finance the closure of county-owned or municipally owned solid waste landfills that are closed or are required to be closed by order of the Department of Environmental Protection.[12]

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[1] Section 212.055, F.S.
[2] Section 212.055(1), F.S.
[3] Section 212.055(2), F.S.
[4] Section 212.055(3), F.S.
[5] Section 212.055(4), F.S.
[6] Section 212.055(5), F.S.
[7] Section 212.055(6), F.S.
[8] Section 212.055(7), F.S.
[9] Section 212.055(8), F.S.
[10] Section 212.055(2)(a)1., F.S.
[11] *Id.*
[12] Section 212.055(2)(d), F.S.

A county may not levy a discretionary sales surtax under the local government infrastructure surtax, the small county surtax, the indigent care and trauma center surtax, and the county public hospital surtax in excess of a combined rate of 1 percent.[13]

Effect of Proposed Changes

The bill amends s. 212.055(2), F.S., regarding the local government infrastructure surtax to provide that proceeds of the surtax and accrued interest may be used for funding capital projects to restore natural water bodies for public use, including tributaries, canals, stormwater conveyance systems, and channels that are directly connected to natural water bodies. The bill provides that the use is limited to dredging operations related to ecologically beneficial muck removal. The bill requires the use to be approved by referendum.

B. SECTION DIRECTORY:

Section 1. Amends s. 212.055(2), F.S., regarding local government infrastructure surtaxes.

Section 2. Reenacts s. 202.19, F.S., to incorporate the changes made to s. 212.055(2), F.S.

Section 3. Reenacts s. 202.20, F.S., to incorporate the changes made to s. 212.055(2), F.S.

Section 4. Reenacts s. 212.054, F.S., to incorporate the changes made to s. 212.055(2), F.S.

Section 5. Reenacts s. 212.0597, F.S., to incorporate the changes made to s. 212.055(2), F.S.

Section 6. Reenacts s. 212.20, F.S., to incorporate the changes made to s. 212.055(2), F.S.

Section 7. Reenacts s. 1013.736, F.S., to incorporate the changes made to s. 212.055(2), F.S.

Section 8. Provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   The bill may have a positive fiscal impact on local governments if the local government infrastructure surtax is approved by referendum for this use.

2. Expenditures:

   None.

[13] Section 212.055(2)(h), F.S.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill does not directly impact the private sector, but if a county approves the tax by referendum, it will increase the tax rate on transactions within the county.

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

Not applicable.

A bill to be entitled

An act relating to local government infrastructure surtax; amending s. 212.055, F.S.; authorizing proceeds from a discretionary sales surtax to fund capital restoration of natural water bodies for public use under certain circumstances; limiting uses to dredging operations related to ecologically beneficial muck removal; reenacting s. 202.19(5) and (8), F.S., relating to the local communications services tax, s. 202.20(3), F.S., relating to local communications services tax conversion rates, s. 212.054(1), (2)(a), and (4)(a) and (b), F.S., relating to discretionary sales surtaxes, s. 212.0597, F.S., relating to the maximum tax on fractional aircraft ownership interests, s. 212.20(6)(b), F.S., relating to the proceeds of discretionary sales surtaxes, and s. 1013.736(2)(b), F.S., relating to eligibility for the District Effort Recognition Program, to incorporate the amendment made to s. 212.055(2), F.S., in references thereto; providing an effective date.

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

Section 1. Paragraph (h) of subsection (2) of section 212.055, Florida Statutes, is redesignated as paragraph (i), and a new paragraph (h) is added to that subsection 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.—

(h) Notwithstanding paragraph (d), if approved by a majority of the electors of the county voting in a referendum, the proceeds of the surtax authorized by this subsection, and any accrued interest, may be used for the purpose of funding capital projects to restore natural water bodies for public use, including tributaries, canals, stormwater conveyance systems, and channels that are directly connected to such natural water bodies. Such use is limited to dredging operations related to ecologically beneficial muck removal.

Section 2. For the purpose of incorporating the amendment made by this act to section 212.055(2), Florida Statutes, in references thereto, subsections (5) and (8) of section 202.19,

Florida Statutes, are reenacted to read:

202.19 Authorization to impose local communications services tax.—

(5) In addition to the communications services taxes authorized by subsection (1), a discretionary sales surtax that a county or school board has levied under s. 212.055 is imposed as a local communications services tax under this section, and the rate shall be determined in accordance with s. 202.20(3).

(a) Except as otherwise provided in this subsection, each such tax rate shall be applied, in addition to the other tax rates applied under this chapter, to communications services subject to tax under s. 202.12 which:

1. Originate or terminate in this state; and

2. Are charged to a service address in the county.

(b) With respect to private communications services, the tax shall be on the sales price of such services provided within the county, which shall be determined in accordance with the following provisions:

1. Any charge with respect to a channel termination point located within such county;

2. Any charge for the use of a channel between two channel termination points located in such county; and

3. Where channel termination points are located both within and outside of such county:

a. If any segment between two such channel termination points is separately billed, 50 percent of such charge; and

b. If any segment of the circuit is not separately billed, an amount equal to the total charge for such circuit multiplied by a fraction, the numerator of which is the number of channel termination points within such county and the denominator of which is the total number of channel termination points of the circuit.

(8) The revenues raised by any tax imposed under subsection (1) or s. 202.20(1), or distributed to a local government pursuant to s. 202.18, may be used by a municipality or county for any public purpose, including, but not limited to, pledging such revenues for the repayment of current or future bonded indebtedness. Revenues raised by a tax imposed under subsection (5) shall be used for the same purposes as the underlying discretionary sales surtax imposed by the county or school board under s. 212.055.

Section 3. For the purpose of incorporating the amendment made by this act to section 212.055(2), Florida Statutes, in a reference thereto, subsection (3) of section 202.20, Florida Statutes, is reenacted to read:

202.20 Local communications services tax conversion rates.—

(3) For any county or school board that levies a discretionary surtax under s. 212.055, the rate of such tax on communications services as authorized by s. 202.19(5) shall be as follows:

County	.5% Discretionary surtax conversion rates	1% Discretionary surtax conversion rates	1.5% Discretionary surtax conversion rates
Alachua	0.3%	0.6%	0.8%
Baker	0.3%	0.5%	0.8%
Bay	0.3%	0.5%	0.8%
Bradford	0.3%	0.6%	0.8%
Brevard	0.3%	0.6%	0.9%
Broward	0.3%	0.5%	0.8%
Calhoun	0.3%	0.5%	0.8%
Charlotte	0.3%	0.6%	0.9%
Citrus	0.3%	0.6%	0.9%

Clay	0.3%	0.6%	0.8%
Collier	0.4%	0.7%	1.0%
Columbia	0.3%	0.6%	0.9%
Desoto	0.3%	0.6%	0.8%
Dixie	0.3%	0.5%	0.8%
Duval	0.3%	0.6%	0.8%
Escambia	0.3%	0.6%	0.9%
Flagler	0.4%	0.7%	1.0%
Franklin	0.3%	0.6%	0.9%
Gadsden	0.3%	0.5%	0.8%
Gilchrist	0.3%	0.5%	0.7%
Glades	0.3%	0.6%	0.8%
Gulf	0.3%	0.5%	0.8%

Hamilton	0.3%	0.6%	0.8%
Hardee	0.3%	0.5%	0.8%
Hendry	0.3%	0.6%	0.9%
Hernando	0.3%	0.6%	0.9%
Highlands	0.3%	0.6%	0.9%
Hillsborough	0.3%	0.6%	0.8%
Holmes	0.3%	0.6%	0.8%
Indian River	0.3%	0.6%	0.9%
Jackson	0.3%	0.5%	0.7%
Jefferson	0.3%	0.5%	0.8%
Lafayette	0.3%	0.5%	0.7%
Lake	0.3%	0.6%	0.9%
Lee	0.3%	0.6%	0.9%

Leon	0.3%	0.6%	0.8%
Levy	0.3%	0.5%	0.8%
Liberty	0.3%	0.6%	0.8%
Madison	0.3%	0.5%	0.8%
Manatee	0.3%	0.6%	0.8%
Marion	0.3%	0.5%	0.8%
Martin	0.3%	0.6%	0.8%
Miami-Dade	0.3%	0.5%	0.8%
Monroe	0.3%	0.6%	0.9%
Nassau	0.3%	0.6%	0.8%
Okaloosa	0.3%	0.6%	0.8%
Okeechobee	0.3%	0.6%	0.9%
Orange	0.3%	0.5%	0.8%

Osceola	0.3%	0.5%	0.8%
Palm Beach	0.3%	0.6%	0.8%
Pasco	0.3%	0.6%	0.9%
Pinellas	0.3%	0.6%	0.9%
Polk	0.3%	0.6%	0.8%
Putnam	0.3%	0.6%	0.8%
St. Johns	0.3%	0.6%	0.8%
St. Lucie	0.3%	0.6%	0.8%
Santa Rosa	0.3%	0.6%	0.9%
Sarasota	0.3%	0.6%	0.9%
Seminole	0.3%	0.6%	0.8%
Sumter	0.3%	0.5%	0.8%
Suwannee	0.3%	0.6%	0.8%

Taylor	0.3%	0.6%	0.9%
Union	0.3%	0.5%	0.8%
Volusia	0.3%	0.6%	0.8%
Wakulla	0.3%	0.6%	0.9%
Walton	0.3%	0.6%	0.9%
Washington	0.3%	0.5%	0.8%

The discretionary surtax conversion rate with respect to communications services reflected on bills dated on or after October 1, 2001, shall take effect without any further action by a county or school board that has levied a surtax on or before October 1, 2001. For a county or school board that levies a surtax subsequent to October 1, 2001, the discretionary surtax conversion rate with respect to communications services shall take effect upon the effective date of the surtax as provided in s. 212.054. The discretionary sales surtax rate on communications services for a county or school board levying a combined rate which is not listed in the table provided by this subsection shall be calculated by averaging or adding the appropriate rates from the table and rounding up to the nearest tenth of a percent.

Section 4. For the purpose of incorporating the amendment made by this act to section 212.055(2), Florida Statutes, in references thereto, subsection (1), paragraph (a) of subsection (2), and paragraphs (a) and (b) of subsection (4) of section 212.054, Florida Statutes, are reenacted to read:

212.054 Discretionary sales surtax; limitations, administration, and collection.—

(1) No general excise tax on sales shall be levied by the governing body of any county unless specifically authorized in s. 212.055. Any general excise tax on sales authorized pursuant to said section shall be administered and collected exclusively as provided in this section.

(2)(a) The tax imposed by the governing body of any county authorized to so levy pursuant to s. 212.055 shall be a discretionary surtax on all transactions occurring in the county which transactions are subject to the state tax imposed on sales, use, services, rentals, admissions, and other transactions by this chapter and communications services as defined for purposes of chapter 202. The surtax, if levied, shall be computed as the applicable rate or rates authorized pursuant to s. 212.055 times the amount of taxable sales and taxable purchases representing such transactions. If the surtax is levied on the sale of an item of tangible personal property or on the sale of a service, the surtax shall be computed by multiplying the rate imposed by the county within which the sale occurs by the amount of the taxable sale. The sale of an item of

tangible personal property or the sale of a service is not subject to the surtax if the property, the service, or the tangible personal property representing the service is delivered within a county that does not impose a discretionary sales surtax.

(4)(a) The department shall administer, collect, and enforce the tax authorized under s. 212.055 pursuant to the same procedures used in the administration, collection, and enforcement of the general state sales tax imposed under the provisions of this chapter, except as provided in this section. The provisions of this chapter regarding interest and penalties on delinquent taxes shall apply to the surtax. Discretionary sales surtaxes shall not be included in the computation of estimated taxes pursuant to s. 212.11. Notwithstanding any other provision of law, a dealer need not separately state the amount of the surtax on the charge ticket, sales slip, invoice, or other tangible evidence of sale. For the purposes of this section and s. 212.055, the "proceeds" of any surtax means all funds collected and received by the department pursuant to a specific authorization and levy under s. 212.055, including any interest and penalties on delinquent surtaxes.

(b) The proceeds of a discretionary sales surtax collected by the selling dealer located in a county imposing the surtax shall be returned, less the cost of administration, to the county where the selling dealer is located. The proceeds shall be transferred to the Discretionary Sales Surtax Clearing Trust

Fund. A separate account shall be established in the trust fund for each county imposing a discretionary surtax. The amount deducted for the costs of administration may not exceed 3 percent of the total revenue generated for all counties levying a surtax authorized in s. 212.055. The amount deducted for the costs of administration may be used only for costs that are solely and directly attributable to the surtax. The total cost of administration shall be prorated among those counties levying the surtax on the basis of the amount collected for a particular county to the total amount collected for all counties. The department shall distribute the moneys in the trust fund to the appropriate counties each month, unless otherwise provided in s. 212.055.

Section 5. For the purpose of incorporating the amendment made by this act to section 212.055(2), Florida Statutes, in a reference thereto, section 212.0597, Florida Statutes, is reenacted to read:

212.0597 Maximum tax on fractional aircraft ownership interests.—The maximum tax imposed under this chapter, including any discretionary sales surtax under s. 212.055, is limited to $300 on the sale or use in this state of a fractional ownership interest in aircraft pursuant to a fractional aircraft ownership program. The tax applies to the total consideration paid for the fractional ownership interest, including any amounts paid by the fractional owner as monthly management or maintenance fees. The tax applies only if the fractional ownership interest is sold by

or to the program manager of the fractional aircraft ownership program, or if the fractional ownership interest is transferred upon the approval of the program manager of the fractional aircraft ownership program.

Section 6. For the purpose of incorporating the amendment made by this act to section 212.055(2), Florida Statutes, in a reference thereto, paragraph (b) of subsection (6) of section 212.20, Florida Statutes, is reenacted to read:

212.20 Funds collected, disposition; additional powers of department; operational expense; refund of taxes adjudicated unconstitutionally collected.—

(6) Distribution of all proceeds under this chapter and ss. 202.18(1)(b) and (2)(b) and 203.01(1)(a)3. is as follows:

(b) Proceeds from discretionary sales surtaxes imposed pursuant to ss. 212.054 and 212.055 shall be reallocated to the Discretionary Sales Surtax Clearing Trust Fund.

Section 7. For the purpose of incorporating the amendment made by this act to section 212.055(2), Florida Statutes, in a reference thereto, paragraph (b) of subsection (2) of section 1013.736, Florida Statutes, is reenacted to read:

1013.736 District Effort Recognition Program.—

(2) ELIGIBILITY.—Annually, the Department of Education shall determine each district's compliance with the provisions of s. 1003.03 and determine the district's eligibility to receive a district effort recognition grant for local school facilities projects pursuant to this section. Districts shall be

eligible for a district effort recognition grant based upon participation in any of the following:

(b) The district participates in the levy of the local government infrastructure sales surtax authorized in s. 212.055(2).

Section 8. This act shall take effect July 1, 2016.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1051 Recreational Boating Zones
SPONSOR(S): Caldwell
TIED BILLS: **IDEN./SIM. BILLS:** SB 1260

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Agriculture & Natural Resources Subcommittee		Moore, R.	Harrington
2) Agriculture & Natural Resources Appropriations Subcommittee			
3) State Affairs Committee			

SUMMARY ANALYSIS

The public may use sovereignty submerged lands for navigation, commerce, fishing, bathing, and other public purposes. These rights are designed to promote the general welfare and are subject to lawful regulation by the state. The public's right to navigation entitles the public to the reasonable use of navigable waters for legitimate purposes of travel or transportation, boating or sailing for pleasure, carrying persons or property gratuitously for hire, and for uses which are consistent with other uses enjoyed in common. Anchoring is a right incidental to the public's right of navigation, which must be balanced against other public purposes. As such, the right to anchor or moor must not unreasonably obstruct others' navigation rights and does not include the right to anchor indefinitely in a manner that impairs a riparian owner's use and enjoyment of their property.

Riparian owners are entitled to the same rights to use sovereignty submerged lands as the public, but also hold riparian rights, such as the right to access the water, the right to reasonably use the water, the right to accretion and reliction, and the right to an unobstructed view of the water. Riparian rights are necessary for the use and enjoyment of the upland property, but may not be exercised as to injure others in their lawful rights.

The bill creates s. 327.4107, F.S., providing for the anchoring or mooring of vessels in recreational boating zones. The bill prohibits a person from anchoring or mooring a vessel from one-half hour after sunset to one-half hour before sunrise in the following recreational boating zones:

- The section of Middle River lying between Northeast 21st Court and the Intracoastal Waterway in Broward County.
- Sunset Lake in Miami-Dade County.
- The sections of Biscayne Bay in Miami-Dade County lying between:
  - Rivo Alto Island and Di Lido Island;
  - San Marino Island and San Marco Island; and
  - San Marco Island and Biscayne Island.
- Crab Island in Choctawhatchee Bay at the East Pass in Okaloosa County.

The bill provides that a violation of the prohibition on the anchoring or mooring of a vessel in a recreational boating zone is a noncriminal infraction.

The bill may have an indeterminate fiscal impact on local governments and the private sector.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Submerged Lands Act

The Submerged Lands Act (SLA), enacted in 1953, provides that a state, upon becoming a member of the United States (U.S.), acquires:

- Title to and ownership of the lands beneath navigable waters within the boundaries of the respective states,[1] and the natural resources within such lands and waters; and
- The right and power to manage, administer, lease, develop, and use the lands and natural resources all in accordance with applicable state law.[2]

Under the SLA, the U.S. retains all its navigational servitude and rights in and powers of regulation and control of said lands and navigable waters for the constitutional purposes of commerce, navigation, national defense, and international affairs, all of which are paramount to, but are not deemed to include, proprietary rights of ownership, or the rights of management, administration, leasing, use, and development of the lands and natural resources which are specifically recognized, confirmed, established, and vested in and assigned to the respective states.[3]

States possess an "absolute right to all their navigable waters and the soils under them for their own common use."[4] Drawing on this principle, the U.S. Supreme Court held that ownership of submerged lands, and the accompanying power to control navigation, fishing, and other public uses of water, "is an essential attribute of sovereignty."[5] Consequently, "'[a] court deciding a question of title to [a] bed of navigable water [within a State's boundaries] must ... begin with a strong presumption' against defeat of a State's title."[6]

Federal Regulations on Anchoring and Mooring

Federal law restricts anchoring and mooring in all waterways tributary to the Atlantic Ocean south of Chesapeake Bay and the Gulf of Mexico east and south of St. Marks, Florida,[7] and the Gulf of Mexico (except the Mississippi River) from St. Marks, Florida, to the Rio Grande.[8] Waterways include all navigable waters of the U.S., natural or artificial, including bays, lakes, sounds, rivers, creeks, intracoastal waterways, as well as canals and channels of all types, which are tributary to or connected by other waterways.[9]

A clear channel must at all times be left open to permit free and unobstructed navigation by all types of vessels.[10] Accordingly, a person may not anchor or moor a vessel in any of the land cuts or other

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[1] 43 U.S.C. §1301 et seq. 43 U.S.C. §1312 designates the seaward boundary of each coastal State as three miles out from its coast line; *U.S. v. Louisiana, et al.*, 363 U.S. 1 (1960), recognizing Florida's seaward boundary into the Gulf of Mexico is three marine leagues (approximately 9-10 miles).
[2] 43 U.S.C. §1301 and §1311(a).
[3] 43 U.S.C. §1314(a).
[4] *Tarrant Regional Water District v. Hermann*, 133 S.Ct. 2120 (2013) (quoting *Martin v. Lessee of Waddell*, 41 U.S. 367 (1842)).
[5] *Id.*, (quoting *U. S. v. Alaska*, 521 U.S. 1 (1997).
[6] *Id.*, (quoting *Montana v. United States*, 450 U.S. 544 (1981)); see also *Solid Waste Agency of Northern Cook Cty. v. Army Corps of Engineers*, 531 U.S. 159 (2001); *Utah Div. of State Lands v. United States*, 482 U.S. 193 (1987).
[7] 33 C.F.R. §162.65.
[8] 33 C.F.R. §162.75.
[9] 33 C.F.R. §162.65(a)(1) and §162.75(a)(1).
[10] 33 C.F.R. §162.65(b)(1) and §162.75(b)(1).

narrow parts of the waterway, except in case of an emergency, or with permission of the U.S. Army Corps of Engineers (Corps).[11] Stoppage may be only for such periods as may be necessary.[12] Additionally, a vessel may not anchor in a dredged channel or narrow portion of a waterway to fish if navigation is obstructed.[13] Lastly, when temporarily anchored or moored, vessels must be tied up and display lights as required by the federal navigation rules.[14]

Federal Anchorage Grounds

The U.S. Department of Homeland Security is authorized, empowered, and directed to establish anchorage grounds in all harbors, rivers, bays, and other navigable waters of the U.S. whenever the maritime or commercial interests of the U.S. requires anchorage grounds for safe navigation. Rules and regulations adopted regarding the establishment of anchorage grounds are enforced by the U.S. Coast Guard (Coast Guard), provided that at ports or places where there is no Coast Guard vessel available such rules and regulations may be enforced by the Corps.[15]

The following anchorage grounds have been established in Florida, primarily for large commercial vessels using major ports:

- Atlantic Ocean off Fort George Inlet, near Mayport;[16]
- St. Johns River;[17]
- Atlantic Ocean, off the Port of Palm Beach;[18]
- Port Everglades;[19]
- Atlantic Ocean off Miami and Miami Beach;[20]
- Key West Harbor, Key West, FL, naval explosives anchorage area;[21]
- Tortugas Harbor, in vicinity of Garden Key, Dry Tortugas, FL;[22]
- Tampa Bay; and[23]
- St. Joseph Bay.[24]

Federal Special Anchorage Areas

A special anchorage area is an area where vessels that are not more than 65 feet in length, when at anchor, will not be required to carry or exhibit anchorage lights. The areas designated are to be well removed from the fairways and located where general navigation will not endanger or be endangered by unlighted vessels. The authority to designate special anchorage areas is vested in the U.S. Department of Homeland Security and delegated to the Coast Guard.[25]

Special anchorages in Florida include the:

- St. Johns River;[26]

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[11] 33 C.F.R. §162.65(b)(2)(i)-(ii) and §162.7(b)(3)(i).
[12] 33 C.F.R. §162.65(b)(2)(i) and §162.7(b)(3)(i).
[13] 33 C.F.R. §162.65(b)(2)(vii) and §162.75(b)(3)(v).
[14] 33 C.F.R. §162.65(b)(2)(iii)-(iv) and §162.75(b)(3)(ii)-(iii).
[15] 33 U.S.C. §471(a); 33 C.F.R. §109.05.
[16] 33 C.F.R. §110.182.
[17] 33 C.F.R. §110.183; §110.183(3), provides that vessels may not anchor for more than 24 hours in either anchorage without specific written authorization from the Captain of the Port.
[18] 33 C.F.R. §110.185.
[19] 33 C.F.R. §110.186; §110.186(6), provides that no vessel may anchor within the anchorage for more than 72 hours without the prior approval of the Captain of the Port.
[20] 33 C.F.R. §110.188.
[21] 33 C.F.R. §110.189a.
[22] 33 C.F.R. §110.190.
[23] 33 C.F.R. §110.193.
[24] 33 C.F.R. §110.193a.
[25] 33 C.F.R. §109.10.
[26] 33 C.F.R. §110.73.

- Indian River at Sebastian;[27]
- Indian River at Vero Beach;[28]
- Okeechobee Waterway, St. Lucie River, Stuart;[29]
- Marco Island, Marco River;[30]
- Manatee River, Bradenton; and[31]
- Apollo Beach.[32]

Other Federally Designated Anchorages and Moorings in Florida

The Corps possesses the authority to regulate public use of federal water resource development projects in the public interest and the navigable capacity of waters of the U.S.[33] In 2013, the Corps published the Okeechobee Waterway Anchoring and Mooring Policy.[34] It provides the following anchoring and mooring guidance within the Okeechobee Waterway:[35]

- No vessel may anchor in the Okeechobee Waterway, except in case of an emergency or incidental to navigating the 152 mile waterway. Anchoring incidental to navigating the length of the waterway over multiple days is allowed to provide adequate rest for crew members while crossing the waterway to ensure the safety of crew and other users on the waterway. Overnight anchoring may not exceed 24 hours in one location and the vessel needs to show one days travel distance before anchoring again.
- Vessels stopped for longer than 24 hours should be moored or stored at designated areas approved by the Corps, which consists of commercial authorized marinas/docks.[36]

Public and Private Use of Sovereignty Submerged Lands

When Florida entered the Union as a state,[37] pursuant to the SLA, it gained title to the beds of all navigable waterways (sovereignty submerged lands).[38] Sovereignty submerged lands include, but are not limited to, tidal lands, islands, sandbars, shallow banks and lands waterward of the ordinary or mean high water line, beneath navigable fresh water or beneath tidally-influenced waters.[39] The title to lands under navigable waters, within the boundaries of the state, which have not been alienated, including beaches below mean high water lines, is held by the state by virtue of its sovereignty in trust for all the people.[40] Private use of portions of these lands may be authorized by law, but only when not contrary to the public interest.[41] However, these lands cannot be wholly alienated by the state.[42]

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[27] 33 C.F.R. §110.73a.
[28] 33 C.F.R. §110.73b.
[29] 33 C.F.R. §110.73c.
[30] 33 C.F.R. §110.74.
[31] 33 C.F.R. §110.74a.
[32] 33 C.F.R. §110.74b.
[33] 16 U.S.C. §460d; 33 U.S.C. §1; 36 C.F.R. Part 327; 33 C.F.R. §207.160.
[34] Okeechobee Waterway Anchoring and Mooring Policy, available at http://www.saj.usace.army.mil/Portals/44/docs/Navigation/Notices/NTN130318%20Okeechobee%20Waterway%20Anchoring%20and%20Mooring%20Policy.pdf.
[35] *Id.*; The Okeechobee Waterway is defined as the area of water connecting the W.P. Franklin Lock to the St. Lucie Lock via the Caloosahatchee River, Lake Okeechobee, and the St. Lucie Canal, excluding privately excavated canals and tidal influenced waters from the Gulf of Mexico and Atlantic Ocean.
[36] *Id.*
[37] March 3, 1845.
[38] 43 U.S.C. §1312, designates the seaward boundary of each coastal State as three miles out from its coast line; *U.S. v. Louisiana, et al.*, 363 U.S. 1 (1960), recognizing Florida's seaward boundary into the Gulf of Mexico is three marine leagues (approximately 9-10 miles); *Coastal Petroleum Co. v. American Cyanamid Co.*, 492 So.2d 339 (Fla. 1986); r. 18-21.003(61), F.A.C.
[39] DEP Sovereignty Submerged Lands available at http://www.dep.state.fl.us/lands/submerged.htm.
[40] Section 11, Art. X, Fla. Const.
[41] *Id.*
[42] *Walton Co. v. Stop the Beach Renourishment, Inc.*, 988 So.2d 1102, 1110 (Fla. 2008) *citing Brickell v. Trammell*, 82 So. 221 (Fla. 1919). There are rare instances where sovereignty submerged lands have been conveyed. *See* L.O.F. (Vol. II) Chapter 6769 – (No. 349) (1913).

The state may regulate the public's use of sovereignty submerged lands for the benefit of the public as a whole as circumstances may demand, subject to Congress' regulatory power to control commerce.[43] When regulating sovereignty submerged lands, a state has greater authority to restrict its use than it would have over private lands.[44] However, the right to restrict or grant privileges to use such lands must be done in a manner that does not substantially impair the interest of the public as a whole.[45]

The public may use sovereignty submerged lands for navigation, commerce, fishing, bathing, and other public purposes.[46] These rights are designed to promote the general welfare and are subject to lawful regulation by the state.[47] The public's right to navigation entitles the public to the reasonable use of navigable waters for legitimate purposes of travel or transportation, boating or sailing for pleasure, carrying persons or property gratuitously for hire, and for uses which are consistent with other uses enjoyed in common.[48] Anchoring is a right incidental to the public's right of navigation, which must be balanced against other public purposes.[49] As such, the right to anchor or moor must not unreasonably obstruct others' navigation rights and does not include the right to anchor indefinitely in a manner that impairs a riparian owner's use and enjoyment of their property.[50]

Riparian owners are entitled to the same rights to use sovereignty submerged lands as the public, but also hold riparian rights,[51] such as the right to access the water,[52] the right to reasonably use the water, the right to accretion and reliction, and the right to an unobstructed view[53] of the water.[54] Riparian rights are necessary for the use and enjoyment of the upland property, but may not be exercised as to injure others in their lawful rights.[55]

State Anchoring and Mooring Regulations

The Legislature delegated the responsibility of managing sovereignty submerged lands to the Governor and Cabinet, sitting as the Board of Trustees of the Internal Improvement Trust Fund (Board).[56] The Board is authorized to adopt rules governing anchoring, mooring, or otherwise attaching to the bottom of sovereignty submerged lands by vessels, floating homes, or any other watercraft.[57] The Board has

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[43] *State v. Gerbing*, 47 So. 353, 356 (Fla. 1908); *State v. Black River Phosphate Co.*, 13 So. 640, 645 (Fla. 1893).
[44] *Mariner Properties Development, Inc. v. Board of Trustees of the Internal Improvement Trust Fund*, 743 So. 2d 1121, 1122-1123 (Fla. 1st DCA 1999).
[45] *Black River Phosphate Co.*, at 645.
[46] *Stop the Beach Renourishment, Inc.*, at 1110 citing *Brickell*, at 221.
[47] *Id.*
[48] 85-45 Fla. Op. Att'y Gen. (1985).
[49] 85-45 Fla. Op. Att'y Gen. (1985); Ankersen, Thomas T., Richard Hamann & Bryon Flagg, Anchoring Away: Government Regulation of the Right of Navigation in Florida 22 (National Sea Grant 2012) *available at* http://www.floridawateraccess.org/boating/Boating-Toolkit/.
[50] 85-45 Fla. Op. Att'y Gen. (1985), *citing Hall v. Wantz*, 57 N.W.2d 462 (Mich. 1953).
[51] Section 253.141(1), F.S.
[52] *Webb v. Giddens*, 82 So.2d 743, 745 (Fla. 1955) (State Road Department construction of culvert on Lake Jackson blocking access to main water body was found to be an impairment of riparian proprietorship.) *Compare Carmazi v. Board of County Commissioners of Dade Co.,* 108 So.2d 318, 323 (Fla. 3d DCA 1959) (Construction of dam on Little River blocking access to Biscayne Bay was not considered an impairment of riparian rights because it did not deprive a private riparian right. The right of navigation is an interest held by the public as a whole and may be restricted to exercise a necessary police power.)
[53] *Lee Co v. Kiesel*, 705 So.2d 1013, 1016 (Fla. 2d DCA 1998) (Holding that upland owners were entitled to compensation because bridge substantially and materially obstructed their littoral view). *Compare Hayes v. Bowman*, 91 So.2d 795 (Fla. 1957) (To be a compensable obstruction of the riparian right of view, the interference must be substantial).
[54] Section 253.141(1), F.S.; *Stop the Beach Renourishment, Inc.*, at 1111.
[55] *Id.*
[56] Section 253.03(1), F.S. Section 253.03(7), F.S., authorizes the Board to adopt rules governing anchoring, mooring, or otherwise attaching to the bottom of all sovereign submerged lands by vessels, floating homes, or any other watercraft. The Board has not exercised this authority to adopt rules to regulate anchoring, but has adopted rules regulating the construction of mooring and docking structures. *See* ch. 18-21, F.A.C.
[57] Section 253.03(1) and (7), F.S.

adopted rules regulating the construction of mooring and docking structures,[58] but has not adopted rules regulating anchoring.

Local Government Regulatory Limitations on Anchoring and Mooring

Local governments may only enact and enforce regulations prohibiting or restricting the mooring or anchoring of:

- A floating structure;[59]
- A live-aboard vessel;[60] or
- A vessel[61] that is within the marked boundaries of a mooring field.[62]

Local governments are otherwise prohibited from regulating the anchoring of vessels that are located outside of a mooring field.[63]

Fish and Wildlife Conservation Commission Anchoring and Mooring Pilot Program

In 2009, the Legislature required the Fish and Wildlife Conservation Commission (FWC), in consultation with the Department of Environmental Protection (DEP), to establish a pilot program to explore options for local governments to regulate the anchoring and mooring of vessels located outside of mooring fields.[64] The program today is commonly referred to as the "Anchoring and Mooring Pilot Program."[65] Currently, the only local governments that are allowed to regulate anchoring and mooring outside the marked boundaries of mooring fields are the participants in the program,[66] which include:

- The City of St. Augustine;[67]
- The City of St. Petersburg;[68]
- The City of Sarasota;[69]
- Martin County in partnership with the City of Stuart;[70] and
- Monroe County in partnership with the cities of Marathon and Key West.[71]

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[58] *See* Ch. 18-21, F.A.C.

[59] Section 327.02(11), F.S., defines the term "floating structure" as "a floating entity, with or without accommodations built thereon, which is not primarily used as a means of transportation on water but which serves purposes or provides services typically associated with a structure or other improvement to real property. The term includes, but is not limited to, an entity used as a residence, place of business or office with public access; a hotel or motel; a restaurant or lounge; a clubhouse; a meeting facility; a storage or parking facility; or a mining platform, dredge, dragline, or similar facility or entity represented as such. Floating structures are expressly excluded from the definition of the term 'vessel.' Incidental movement upon water or resting partially or entirely on the bottom does not, in and of itself, preclude an entity from classification as a floating structure."

[60] Section 327.02(19), F.S., defines the term "live-aboard vessel" as "a vessel used solely as a residence and not for navigation; a vessel represented as a place of business or a professional or other commercial enterprise; or a vessel for which a declaration of domicile has been filed pursuant to s. 222.17." The term expressly excludes commercial fishing boats.

[61] Section 327.02(43), F.S., defines term "vessel" as "synonymous with boat as referenced in s. 1(b), Art. VII of the State Constitution and includes every description of watercraft, barge, and airboat, other than a seaplane on the water, used or capable of being used as a means of transportation on water."

[62] Section 327.60(3), F.S.

[63] Section 327.60(2)(f) and (3), F.S.

[64] Chapter 2009-86, Laws of Florida; s. 327.4105, F.S.

[65] *FWCC Anchoring and Mooring Pilot Program Report of Finding and Recommendations*, (Dec. 31, 2013), available at http://myfwc.com/media/2704721/FindingsRecommendations.pdf.

[66] Section 327.4105(3), F.S.

[67] The City of St. Augustine's ordinance is available at http://www.staugustinegovernment.com/visitors/documents/Ord2011-10-2.pdf.

[68] The City of St. Petersburg's ordinance is available at http://myfwc.com/media/2221101/StPeteOrdinance.pdf.

[69] The City of Sarasota's ordinance is available at http://myfwc.com/media/2405171/Sarasota-final-Ord-12-5003.pdf.

[70] Martin County's ordinance is available at http://www.google.com/url?sa=t&rct=j&q=&esrc=s&frm=1&source=web&cd=3&cad=rja&uact=8&ved=0CC8QFjACahUKEwivnoHv4urIAhVMVh4KHRx7AEg&url=http%3A%2F%2Fwww.martin.fl.us%2Fweb_docs%2Feng%2Fweb%2Fcoastal%2FAnchoring_Mooring%2FOrd928.pdf&usg=AFQjCNFK0Ou_MYuDiO-U5VxVaZt_WautuA.

[71] Monroe County's ordinance is available at https://fl-monroecounty.civicplus.com/Documentview.aspx?DID=4039

The goals of the pilot program are to encourage the establishment of additional mooring fields and to develop and test policies and regulatory regimes that:[72]

- Promote the establishment and use of mooring fields;
- Promote access to the waters of the state;
- Enhance navigational safety;
- Protect maritime infrastructure;
- Protect marine environment; and
- Deter improperly stored, abandoned, or derelict vessels.

FWC submitted a report of its findings and recommendations of the pilot program to the Legislature on December 31, 2013.[73] FWC recommended an extension of the program for an additional three years to allow a more thorough and complete assessment of the local government ordinances being implemented.[74] In 2014, the program was extended by the Legislature.[75] The program and the local government ordinances developed under the program are set to expire on July 1, 2017, unless reenacted by the Legislature.[76]

Noncriminal Boating Infractions

Section 327.73(1), F.S., provides that a person cited for a violation of certain vessel laws of the state is charged with a noncriminal infraction, will be cited for the infraction, and ordered to appear in county court. The civil penalty for an infraction is $50, except as otherwise provided by law.[77] A person who fails to appear or otherwise properly respond to the citation will, in addition to the civil penalty, be charged with failing to respond to the citation and upon conviction will be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082[78] or s. 775.083, F.S.[79] A written warning to this effect is provided when the citation is issued.[80]

Effect of Proposed Changes

The bill creates s. 327.4107, F.S., providing for the anchoring or mooring of vessels in recreational boating zones. The bill prohibits a person from anchoring or mooring a vessel from one-half hour after sunset to one-half hour before sunrise in the following recreational boating zones:

- The section of Middle River lying between Northeast 21st Court and the Intracoastal Waterway in Broward County.
- Sunset Lake in Miami-Dade County.
- The sections of Biscayne Bay in Miami-Dade County lying between:
  - Rivo Alto Island and Di Lido Island;
  - San Marino Island and San Marco Island; and
  - San Marco Island and Biscayne Island.
- Crab Island in Choctawhatchee Bay at the East Pass in Okaloosa County.

FWCC Anchoring and Mooring Pilot Program Report of Finding and Recommendations, (Dec. 31, 2013), available at http://myfwc.com/media/2704721/FindingsRecommendations.pdf.

[72] Section 327.4105(1), F.S.

[73] Section 327.4105(5), F.S.; *FWCC Anchoring and Mooring Pilot Program Report of Finding and Recommendations*, (Dec. 31, 2013), available at http://myfwc.com/media/2704721/FindingsRecommendations.pdf.

[74] *FWCC Anchoring and Mooring Pilot Program Report of Finding and Recommendations*, (Dec. 31, 2013), available at http://myfwc.com/media/2704721/FindingsRecommendations.pdf.

[75] Chapter 2014-136, Laws of Florida.

[76] Section 327.4105(6), F.S.

[77] Section 327.73(1), F.S.

[78] A person who has been convicted of a misdemeanor of the second degree may be sentenced by a definite term of imprisonment not exceeding 60 days.

[79] A person who has been convicted of a noncriminal violation may be sentenced to pay a fine which must not exceed $500.

[80] Section 327.73(1), F.S

The bill provides that a violation of the prohibition on the anchoring or mooring of a vessel in a recreational boating zone is punishable as a noncriminal infraction of the vessel laws of the state.

B. SECTION DIRECTORY:

Section 1. Creates s. 327.4107, F.S., regarding the anchoring or mooring of vessels in recreational boating zones.

Section 2. Amends s. 327.73(1), F.S., regarding noncriminal infractions of vessel laws of the state.

Section 3. Provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill may have an indeterminate fiscal impact on local governments. While local governments may experience positive fiscal impacts resulting from the issuance of boating citations, local governments may also experience increased costs due to increased enforcement efforts.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill creates a noncriminal boating infraction for anchoring or mooring in a recreational boating zone. As such, a violator will be charged with a noncriminal infraction, cited, and ordered to appear in county court. The noncriminal infraction includes a $50 civil penalty. A person who fails to appear or otherwise properly respond to the citation will, in addition to the civil penalty, be charged with failing to respond to the citation and upon conviction will be guilty of a misdemeanor of the second degree, punishable by a term of imprisonment not exceeding 60 days or a fine which must not exceed $500.

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:

There are three basic categorizes of law: general laws, general laws of local application, and special laws. The State Constitution does not provide definitions for these categories of law. Article III, s. 10 of the State Constitution provides that the Legislature may not enact any special law unless certain procedures are followed. The State Constitution also provides 21 categories of areas of the law where special laws and general laws of local application are expressly forbidden.

Most laws enacted by the Legislature are general laws. General laws need not apply to every person across the state, but must consistently apply to those persons or entities affected by their provisions.[81] If a law applies equally to a category of persons or entities, which have a reasonable relationship to the subject matter of the law, it is a general law.[82] In addition, a general law may use a classification scheme that is geographical in terms if the purpose of the statute is one of statewide importance and the impact of the classification is reasonably related to the law's purpose.[83]

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

Not applicable.

[81] *Department of Legal Affairs v. Sanford-Orlando Kennel Club, Inc.*, 434 So.2d 879 (Fla. 1983).
[82] *Catogas v. Southern Fed. Sav. & Loan Ass'n,* 369 So.2d 922 (Fla. 1979).
[83] *Schrader v. Florida Keys Aqueduct Authority*, 840 So.2d 1050 at 1055-56 (Fla. 2003).

A bill to be entitled

An act relating to recreational boating zones; creating s. 327.4107, F.S.; prohibiting overnight anchoring or mooring of vessels in specified recreational boating zones; amending s. 327.73, F.S.; providing penalties; providing an effective date.

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

Section 1. Section 327.4107, Florida Statutes, is created to read:

327.4107 Anchoring or mooring of vessels in recreational boating zones.—

(1) A person may not anchor or moor a vessel at any time between the hours from one-half hour after sunset to one-half hour before sunrise in the following recreational boating zones:

(a) The section of Middle River lying between Northeast 21st Court and the Intracoastal Waterway in Broward County.

(b) Sunset Lake in Miami-Dade County.

(c) The sections of Biscayne Bay in Miami-Dade County lying between:

1. Rivo Alto Island and Di Lido Island.

2. San Marino Island and San Marco Island.

3. San Marco Island and Biscayne Island.

(d) Crab Island in Choctawhatchee Bay at the East Pass in Okaloosa County.

(2) A violation of this section is punishable as provided in s. 327.73(1)(y).

Section 2. Paragraph (y) is added to subsection (1) of section 327.73, Florida Statutes, to read:

327.73 Noncriminal infractions.—

(1) Violations of the following provisions of the vessel laws of this state are noncriminal infractions:

(y) Section 327.4107, relating to the anchoring or mooring of vessels in recreational boating zones.

Any person cited for a violation of any provision of this subsection shall be deemed to be charged with a noncriminal infraction, shall be cited for such an infraction, and shall be cited to appear before the county court. The civil penalty for any such infraction is $50, except as otherwise provided in this section. Any person who fails to appear or otherwise properly respond to a uniform boating citation shall, in addition to the charge relating to the violation of the boating laws of this state, be charged with the offense of failing to respond to such citation and, upon conviction, be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083. A written warning to this effect shall be provided at the time such uniform boating citation is issued.

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

Amendment No.

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

Committee/Subcommittee hearing bill: Agriculture & Natural Resources Subcommittee

Representative Caldwell offered the following:

Amendment (with title amendment)

Remove everything after the enacting clause and insert:

Section 1. Section 327.4107, Florida Statutes, is created to read:

327.4107 Anchoring of vessels in recreational boating zones.—

(1) Except as provided in (2) and (3), a person may not anchor a vessel at any time between the hours from one-half hour after sunset to one-half hour before sunrise in the following recreational boating zones:

(a) The section of Middle River lying between Northeast 21st Court and the Intracoastal Waterway in Broward County.

(b) Sunset Lake in Miami-Dade County.

(c) The sections of Biscayne Bay in Miami-Dade County lying between:

1. Rivo Alto Island and Di Lido Island.

2. San Marino Island and San Marco Island.

3. San Marco Island and Biscayne Island.

(d) Crab Island in Choctawhatchee Bay at the East Pass in Okaloosa County.

(2) Notwithstanding (1), a vessel may anchor in a recreational boating zone as follows:

(a) When a vessel suffers a mechanical failure that will pose an unreasonable risk of harm to the vessel or its occupants if the vessel does not anchor, the vessel may anchor until repaired or for 3 business days after first anchoring within the recreational boating zone, whichever occurs first.

(b) When imminent or existing weather conditions in the vicinity of a vessel will pose an unreasonable risk of harm to the vessel or its occupants if the vessel does not anchor, the vessel may anchor until weather conditions improve to the point where operating the vessel no longer poses an unreasonable risk of harm. In the event of a hurricane or tropical storm, weather conditions are deemed to have improved to the point where operating the vessel no longer poses an unreasonable risk of harm when the hurricane or tropical storm warning affecting the area has expired.

(c) During events described in s. 327.48 or during other special events, such as public music performances, local

government waterfront activities, boat parades, and fireworks displays, a vessel may anchor for the duration of the special event or for 3 days, whichever occurs first.

(3) This section does not apply to the following vessels:

(a) Vessels owned or operated by a governmental entity for law enforcement, firefighting, military, or rescue purposes.

(b) Construction or dredging vessels while on an active job site.

(c) Vessels actively engaged in commercial fishing.

(d) Vessels engaged in recreational fishing if persons onboard are actively tending hook and line fishing gear or nets.

(4)(a) A law enforcement officer or agency authorized to enforce this section pursuant to s. 327.70 may remove or cause a vessel to be removed from a recreational boating zone and impounded for up to 48 hours if an operator of the vessel, after being issued a citation for violating this section:

1. Anchors the vessel in violation of this section within 12 hours after being issued the citation; or

2. Refuses to weigh anchor and get underway after being directed to do so by a law enforcement officer.

(b) In addition to the civil penalty imposed under s. 327.73(1)(y), a person whose vessel is removed and impounded pursuant to paragraph (a) shall pay all removal and storage charges before the vessel is released.

(c) A law enforcement officer or agency acting under this subsection to remove or impound a vessel or cause to be removed

or impounded a vessel anchored in violation of this section shall be held harmless for all damages to the vessel resulting from such removal or impoundment unless the damage results from gross negligence or willful misconduct.

(d) A contractor performing removal or impoundment activities at the direction of a law enforcement officer or agency pursuant to this subsection must be licensed in accordance with applicable United States Coast Guard regulations where required; obtain and carry in full force and effect a policy from a licensed insurance carrier in this state to insure against any accident, loss, injury, property damage, or other casualty caused by or resulting from the contractor's actions; and be properly equipped to perform the services to be provided.

(5) A violation of this section is punishable as provided in s. 327.73(1)(y).

Section 2. Paragraph (y) is added to subsection (1) of section 327.73, Florida Statutes, to read:

327.73 Noncriminal infractions.—

(1) Violations of the following provisions of the vessel laws of this state are noncriminal infractions:

(y) Section 327.4107, relating to the anchoring of vessels in recreational boating zones, for which the penalty is:

1. For a first offense, up to a maximum of $50.

2. For a second offense, up to a maximum of $100.

3. For a third or subsequent offense, up to a maximum of $250.

Any person cited for a violation of any provision of this subsection shall be deemed to be charged with a noncriminal infraction, shall be cited for such an infraction, and shall be cited to appear before the county court. The civil penalty for any such infraction is $50, except as otherwise provided in this section. Any person who fails to appear or otherwise properly respond to a uniform boating citation shall, in addition to the charge relating to the violation of the boating laws of this state, be charged with the offense of failing to respond to such citation and, upon conviction, be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083. A written warning to this effect shall be provided at the time such uniform boating citation is issued.

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

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

Remove everything before the enacting clause and insert: An act relating to recreational boating zones; creating s. 327.4107, F.S.; prohibiting overnight anchoring of vessels in specified recreational boating zones; providing construction; providing exceptions; authorizing removal and impoundment of unauthorized vessels anchored in recreational boating zones; holding harmless law enforcement officers and agencies for

certain damages to removed or impounded vessels; requiring contractors to satisfy certain requirements; amending s. 327.73, F.S.; providing penalties; providing an effective date.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1153 Public Records/Recreational Activities Licenses/FWCC
SPONSOR(S): Goodson
TIED BILLS: **IDEN./SIM. BILLS:** SB 1364

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Agriculture & Natural Resources Subcommittee		Gregory	Harrington
2) Government Operations Subcommittee			
3) State Affairs Committee			

SUMMARY ANALYSIS

Current law does not provide a public records exemption for information held by the Florida Fish and Wildlife Conservation Commission (FWC) in connection with recreational fishing, hunting, or use licenses and permits, hunter safety certifications, or boating safety certifications or recreation records. Thus, such information is subject to public records request and disclosure.

The bill creates a public record exemption for personal information held by FWC in connection with recreational fishing, hunting, or use licenses and permits; hunter safety certifications; and boating safety certifications or recreation records. The bill authorizes FWC to disclose personal information to an agency carrying out its duties; for use in connection with any civil, criminal, administrative, or arbitral proceeding; and when the requestor demonstrates it has obtained the written consent of the individual to whom the information pertains.

The bill provides that the exemption applies to personal information held by an agency before, on, or after July 1, 2016. The public record exemption is subject to the Open Government Sunset Review Act and will stand repealed on October 2, 2021, unless reviewed and saved from repeal through reenactment by the Legislature. The bill also provides a public necessity statement as required by the State Constitution.

The bill may have an insignificant fiscal impact on FWC.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Public Records Law

Article I, section 24(a) of the State Constitution sets forth the state's public policy regarding access to government records. The State Constitution guarantees every person a right to inspect or copy any public record of the legislative, executive, and judicial branches of government.

Public policy regarding access to government records is addressed further in the Florida Statutes. Section 119.01, F.S., provides that it is the policy of the state that all state, county, and municipal records are open for personal inspection and copying by any person, and that it is the responsibility of each agency[1] to provide access to public records.[2] Section 119.07(1), F.S., guarantees every person a right to inspect and copy any public record unless an exemption applies. The state's public records laws are construed liberally in favor of granting public access to public records.

Public Records Exemptions

The Legislature may provide by general law for the exemption of records from the requirements of article I, section 24(a) of the State Constitution. The general law must state with specificity the public necessity justifying the exemption (public necessity statement) and must be no broader than necessary to accomplish its purpose.[3]

The Open Government Sunset Review Act[4] provides that a public record exemption may be created or maintained only if it serves an identifiable public purpose. In addition, it may be no broader than is necessary to meet one of the following purposes:

- Allows the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption.
- Protects sensitive personal information that, if released, would be defamatory or would jeopardize an individual's safety; however, only the identity of an individual may be exempted under this provision.
- Protects trade or business secrets.[5]

The Open Government Sunset Review Act requires the automatic repeal of a newly created exemption on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.[6]

Confidential versus Confidential and Exempt

When creating a public record exemption, the Legislature designates the record as "exempt" or "confidential and exempt." There is a difference between records the Legislature has designated as

[1] Section 119.011(2), F.S., defines the term "agency" to mean any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of chapter 119, F.S., the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency.

[2] Section 119.011(12), F.S., defines the term "public records" to mean all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency.

[3] FLA. CONST. art. I, s. 24(c).

[4] Section 119.15, F.S.

[5] Section 119.15(6)(b), F.S.

[6] Section 119.15(3), F.S.

exempt and those designated as confidential and exempt. A record that is designated as confidential and exempt may only be released by the records custodian to those persons or entities designated in statute.[7] However, records designated as exempt may be disclosed under certain circumstances.[8]

FWC Recreational Licenses, Permits, and Certifications

Any person who wishes to recreationally take wild animal life, freshwater aquatic life, or marine life must obtain a license, permit, or other authorization from the Florida Fish and Wildlife Conservation Commission (FWC) unless exempt by statute.[9] Each applicant for a recreational license must provide their social security number on the application form.[10] However, social security numbers held by agencies are confidential and exempt from disclosure and may only be released in specified situations.[11]

According to FWC, personal information collected for a recreational hunting or fishing license is populated by the personal information held by the Department of Highway Safety and Motor Vehicles (HSMV) by using the applicant's driver license number or identification card number or by swiping the identification card. The personal information contained in the HSMV motor vehicle record is confidential pursuant to the federal Driver's Privacy Protection Act of 1994, and only may be released as provided by the act.[12] Such information is not protected once obtained by FWC.[13]

Any person born on or after June 1, 1975, may not be issued a license to hunt in Florida with the use of a firearm, gun (including a muzzle-loading gun), bow, or crossbow without first having successfully completed a hunter safety course.[14] This course includes 16 hours of instruction including, but not limited to, instruction in the competent and safe handling of firearms, conservation, and hunting ethics.[15] FWC may accept hunter safety certification cards issued by another wildlife agency of another state, or any Canadian province.[16] In addition, any person born on or after January 1, 1988, may not operate a vessel powered by a motor of 10 horsepower or greater unless such person has in his or her possession aboard the vessel photographic identification and a boater safety identification card issued by FWC.[17] To obtain a boater safety identification card, each individual must take an 8 hour instructional course, pass a course equivalency examination, or pass a temporary certificate examination.[18] An applicant must disclose certain personal information to obtain either a hunter safety certification or a boater safety certification.

Currently, there is no public record exemption for personal information held by FWC in connection with recreational licenses, permits, other noncommercial or nonprofessional licenses, permits, and certifications.

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[7] WFTV, Inc. v. School Board of Seminole County, 874 So. 2d 48, 53 (Fla. 5th DCA 2004), *review denied*, 892 So. 2d 1015 (Fla. 2004).
[8] *See* Williams v. City of Minneola, 575 So. 2d 683, 687 (Fla. 5th DCA 1991), *review denied*, 589 So. 2d 289 (Fla. 1991).
[9] *See* ss. 379.352(3), 379.353 and 379.401, F.S.; FWC, *Exemptions – Do I need a license or permit*, http://myfwc.com/license/recreational/do-i-need-a-license/ (last visited January 18, 2016).
[10] Section 379.352(3), F.S.
[11] Section 119.071(5)(a), F.S., provides specific instances when a social security number may be released. In addition, FWC must release such numbers for purposes of administration of the Title IV-D program for child support enforcement and use by the FWC. Section 379.352, F.S.
[12] Section 119.0712(2)(b), F.S.
[13] *See* 2010-10 Fla. Op. Att'y Gen. (2010).
[14] Section 379.3581(2)(a), F.S.; FWC, *Hunter Safety License Requirement*, http://myfwc.com/license/recreational/hunter-safety-requirement/ (last visited January 18, 2016).
[15] Section 379.3581(3), F.S.
[16] Section 379.3581(5), F.S.
[17] Section 327.395(1), F.S.
[18] Id.

Effect of the Proposed Changes

The bill creates a public record exemption for personal information held by FWC in connection with recreational fishing, hunting, or use licenses and permits, or other noncommercial or nonprofessional licenses and permits; hunter safety certifications; and boating safety certifications or recreation records.

The bill defines personal information as information that identifies an individual, including, but not limited to, an individual's photograph; social security number; driver license number; name; date of birth; address, exclusive of the five-digit zip code; telephone number; e-mail or other electronic communication address; and medical or disability information. Such information is deemed confidential and exempt, meaning FWC only may disclose such information to those persons or entities designated in statute.

The bill authorizes FWC to disclose the personal information it holds:

- For use by a court, law enforcement agency, or other agency, in carrying out its duties;
- For use in connection with any civil, criminal, administrative, or arbitral proceeding in any federal, state, or local court or agency presenting before a self-regulatory body, including the service of process, investigation in anticipation of litigation, and the execution or enforcement of judgments and orders, or pursuant to an order of a federal, state, or local court; and
- For use by any requester, if the requester demonstrates it has obtained the written consent of the individual to whom the information pertains.

The bill provides that the exemption applies to personal information held by an agency before, on, or after July 1, 2016.[19]

The public record exemption is subject to the Open Government Sunset Review Act and will stand repealed on October 2, 2021, unless reviewed and saved from repeal through reenactment by the Legislature.

The bill provides a statement of public necessity as required by the State Constitution. Specifically, the bill provides that such personal information provided on applications can be obtained and used to perpetrate identity theft and other invasive contacts. However, the bill creates a public record exemption for information held by FWC, which may include more information than provided on the application.

B. SECTION DIRECTORY:

Section 1. Creates s. 379.107, F.S., creating a public record exemption for certain personal information held by FWC in connection with recreational fishing, hunting, or use licenses and permits, or other noncommercial or nonprofessional licenses and permits; hunter safety certifications; and boating safety certifications or recreation records.

Section 2. Provides a public necessity statement.

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

[19] In 2001, the Florida Supreme Court ruled that a public record exemption does not apply retroactively unless the legislation clearly expresses such intent. Memorial Hospital-West Volusia, Inc. v. News-Journal Corporation, 729 So.2d 373 (Fla. 2001).

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   The bill may have a minimal fiscal impact on FWC because staff responsible for complying with public record requests could require training related to the new public record exemption. In addition, FWC may incur costs associated with redacting the exempt financial information prior to releasing a record. However, these costs can be absorbed as they are part of the day-to-day responsibilities of FWC.

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 affect county or municipal governments.

2. Other:

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

   Public Necessity Statement
   Article I, s. 24(c) of the State Constitution requires a public necessity statement for a newly created or expanded public record or public meeting exemption. The bill creates a new public record exemption. Thus, it includes a public necessity statement.

   Breadth of Exemption
   Article I, s. 24(c) of the State Constitution requires a newly created public record or public meeting exemption to be no broader than necessary to accomplish the stated purpose of the law. The bill creates a public record exemption for personal information held by FWC in connection with

recreational fishing, hunting, or use licenses and permits, or other noncommercial or nonprofessional licenses and permits; hunter safety certifications; and boating safety certifications or recreation records for the purpose of protecting against identity theft and other invasive contacts. However, the public necessity statement provides that such personal information provided on applications can be obtained and used to perpetrate identity theft and other invasive contacts. Thus, the public necessity statement appears to support an exemption only for information provided on applications. As drafted, the bill may protect more information than necessary to serve the necessity of the exemption by protecting information that may not necessarily be identifying in nature, such as medical information and date of birth. As such, the exemption appears to be in conflict with the constitutional requirement that the exemption be no broader than necessary to accomplish its purpose.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Drafting Issues: Confidential versus Confidential and Exempt
On line 30 of the bill, personal information is made confidential and exempt. However, on lines 60 and 74 of the bill, the information is only identified as exempt.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

Not applicable.

A bill to be entitled

An act relating to public records; creating s. 379.107, F.S.; defining the term "personal information"; providing an exemption from public records requirements for personal information provided to the Fish and Wildlife Conservation Commission on applications for certain licenses, permits, and certifications; providing circumstances under which personal information may be disclosed; providing applicability; providing for future legislative review and repeal of the exemption; providing a statement of public necessity; providing an effective date.

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

Section 1. Section 379.107, Florida Statutes, is created to read:

379.107 Public records exemption; personal information obtained in connection with licensure.—

(1) For purposes of this section, the term "personal information" means information that identifies an individual, including, but not limited to, an individual's photograph; social security number; driver license number; name; date of birth; address, exclusive of the five-digit zip code; telephone number; e-mail or other electronic communication address; and medical or disability information.

(2) Except as provided in subsection (3), personal information held by the commission in connection with the following licenses, permits, and certifications issued by the commission is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution:

(a) Recreational fishing, hunting, or use licenses and permits, or other noncommercial or nonprofessional licenses and permits.

(b) Hunter safety certification.

(c) Boating safety certification or recreation record.

(3) Personal information may be disclosed only as follows:

(a) For use by a court, law enforcement agency, or other agency, as defined in s. 119.011(2), in carrying out its duties.

(b) For use in connection with any civil, criminal, administrative, or arbitral proceeding in any federal, state, or local court or agency presenting before a self-regulatory body, including the service of process, investigation in anticipation of litigation, and the execution or enforcement of judgments and orders, or pursuant to an order of a federal, state, or local court.

(c) For use by any requester, if the requester demonstrates it has obtained the written consent of the individual to whom the information pertains.

(4) This exemption applies to personal information held by an agency before, on, or after July 1, 2016.

(5) This section is subject to the Open Government Sunset

Review Act in accordance with s. 119.15 and shall stand repealed October 2, 2021, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 2. The Legislature finds that it is a public necessity that personal information held by the Fish and Wildlife Conservation Commission in connection with applications for licenses, permits, or certifications for recreational, nonprofessional, or noncommercial activities be made exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution. Under current law, personal information that applicants must provide to the commission in order to apply for such licenses, permits, or certifications is a public record available for any purpose. Such information can be obtained and used to perpetrate identity theft and other invasive contacts. The public availability of this personal information needlessly increases the risk of identity theft and invasive contacts with those applying to the commission for such licenses, permits, or certifications. These unnecessary risks would be diminished or eliminated if the commission preserved the confidentiality of personal information provided on applications for such licenses, permits, or certifications. Therefore, the Legislature finds that it is a public necessity to make exempt from public records requirements personal information that is provided to the commission on applications for licenses, permits, or certifications for recreational, nonprofessional, or noncommercial activities.

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

Amendment No.

COMMITTEE/SUBCOMMITTEE ACTION

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

Committee/Subcommittee hearing bill: Agriculture & Natural Resources Subcommittee

Representative Goodson offered the following:

Amendment (with title amendment)

Remove everything after the enacting clause and insert:

Section 1. Section 379.107, Florida Statutes, is created to read:

379.107 Public records exemption; personal information.—

(1) For purposes of this section, the term:

(a) "Commercial entity" means any corporation, partnership, limited partnership, proprietorship, sole proprietorship, firm, enterprise, franchise, or association.

(b) "Personal information" means information that identifies an individual, including, but not limited to, an individual's photograph; social security number; driver license number; name; date of birth; address, exclusive of the five-

digit zip code; telephone number; e-mail or other electronic communication address; and medical or disability information.

(2) Except as provided in subsection (3), personal information held by the commission in connection with the following licenses, permits, and certifications issued by the commission is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution:

(a) Recreational fishing, hunting, or use licenses and permits, or other noncommercial or nonprofessional licenses and permits.

(b) Hunter safety certification.

(c) Boating safety certification or recreation record.

(3) Personal information may be disclosed only as follows:

(a) For use by a court, law enforcement agency, or other agency, as defined in s. 119.011(2), in carrying out its duties.

(b) For use in connection with any civil, criminal, administrative, or arbitral proceeding in any federal, state, or local court or agency presenting before a self-regulatory body, including the service of process, investigation in anticipation of litigation, and the execution or enforcement of judgments and orders, or pursuant to an order of a federal, state, or local court.

(c) For use by any requester, if the requester demonstrates it has obtained the written consent of the individual to whom the information pertains.

(d) For use by a commercial entity for verification of the accuracy of personal information received by a commercial entity in the normal course of its business, including identification or prevention of fraud or matching, verifying, or retrieving information, which does not include the display or bulk sale of a legal residential address, date of birth, and telephone number of a licenseholder to the public or the distribution of such numbers to any customer that is not identifiable by the commercial entity.

(4) This exemption applies to personal information held by the commission before, on, or after July 1, 2016.

(5) This section is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed October 2, 2021, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 2. The Legislature finds that it is a public necessity that personal information held by the Fish and Wildlife Conservation Commission in connection with applications for licenses, permits, or certifications for recreational, nonprofessional, or noncommercial activities be made confidential and exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution. Under current law, personal information held by the commission relating to such licenses, permits, or certifications is a public record available for any purpose. Such information can be obtained and used to perpetrate identity theft and other invasive contacts.

The public availability of this personal information needlessly increases the risk of identity theft and invasive contacts with those individuals who have a commission issued license, permit, or certificate. These unnecessary risks would be diminished or eliminated if the commission preserved the confidentiality of personal information held by the commission relating to such licenses, permits, or certifications. Therefore, the Legislature finds that it is a public necessity to make confidential and exempt from public records requirements personal information held by the commission relating to licenses, permits, or certifications for recreational, nonprofessional, or noncommercial activities.

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

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

Remove everything before the enacting clause and insert:
An act relating to public records; creating s. 379.107, F.S.; defining the terms "commercial entity" and "personal information"; providing an exemption from public records requirements for personal information provided to the Fish and Wildlife Conservation Commission on applications for certain licenses, permits, and certifications; providing circumstances under which personal information may be

disclosed; providing applicability; providing for future legislative review and repeal of the exemption; providing a statement of public necessity; providing an effective date.

PCS for HB 589

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCS for HB 589 Environmental Control
SPONSOR(S): Agriculture & Natural Resources Subcommittee
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Agriculture & Natural Resources Subcommittee		Moore, R.	Harrington

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 where the beneficial use of a constructed clay settling area (CSA) of a phosphate mine has been extended, the rate of reclamation requirements and the financial responsibility requirements will not apply 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;
- Provides that counties and municipalities may institute 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 instituting 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 for an appropriation for fiscal year 2016-2017 of $2,399,764 from the Solid Waste Management Trust Fund for the closure and long-term care of solid waste management facilities.

The bill may have a negative fiscal impact on the state and local governments and a positive fiscal impact on the private sector.

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]

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[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;

[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 where the beneficial use of a constructed CSA has been extended, the rate of reclamation requirements[47] and the financial responsibility requirements[48] will 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

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[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 institute 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 instituting 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 Solid Waste Management Trust Fund 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

[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.

fiscal year 2015-2016 General Appropriations Act.[96] DEP has requested $1,000,000 for fiscal year 2016-2017 for similar closure activities.[97]

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.[98]

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.

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.

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

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

Not applicable.

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.; exempting certain constructed clay settling areas 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.; establishing a solid waste landfill closure account within the Solid Waste Management Trust Fund to provide funding for the closing and long-term care of solid waste facilities; authorizing the department to contract with a third party for such closing and long-term care under cetain conditions; requiring the department to deposit certain funds in the solid waste landfill closure account; amending s. 403.713, F.S.; authorizing local governments to implement a flow control ordinance only upon ownership and utilization of a resource recovery facility and a proven need of flow control for the

facility; excluding landfill gas-to-energy systems and facilities from certain resource recovery; 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) Where the beneficial use of a constructed clay settling area has been extended, the rate of reclamation requirements in paragraphs (1)(a)-(e) and the requirements of s. 378.208 shall become applicable to the constructed clay settling area when beneficial use of the constructed clay settling 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 (3) is added to section 403.713, Florida Statutes, and subsection (2) is amended 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 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 instituted 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 instituting flow control to ensure sufficient materials for that resource recovery facility. A flow control ordinance also 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.

PCS for HB 697

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

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

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

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 which 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

[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 FY 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-Score 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 six 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:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to require counties or municipalities to spend funds or take 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.

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.

[72] Id.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

Not applicable.

A bill to be entitled

An act relating to the Petroleum Restoration Program; amending s. 376.305, F.S.; revising the eligibility requirements of the Abandoned Tank Restoration Program; deleting provisions prohibiting the relief of liability for persons who acquired title after a certain date; amending s. 376.3071, F.S.; renaming "the low-scored site initiative" as "the low-risk site initiative"; revising the conditions for eligibility and methods for payment of costs for the low-risk site initiative; revising the eligibility requirements for receiving rehabilitation funding; clarifying that a change in ownership does not preclude a site from entering into the 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. Paragraph (b) of subsection (12) and subsection (13) of section 376.3071, Florida Statutes, are amended, and paragraph (c) is added to subsection (12) of that section, to read:

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

(12) SITE CLEANUP.—

(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 ~~subparagraph 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 ~~subparagraph 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, with the exception of 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 higher for Gasoline Analytical Group or 50 parts per million or higher for 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. 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.