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# **Agriculture & Natural Resources Subcommittee**

**Tuesday, November 03, 2015  
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, November 03, 2015 12:00 pm  
**End Date and Time:** Tuesday, November 03, 2015 02:00 pm  
**Location:** Reed Hall (102 HOB)  
**Duration:** 2.00 hrs

**Consideration of the following bill(s):**

HB 191 Regulation of Oil and Gas Resources by Rodrigues, R., Pigman

**Consideration of the following proposed committee bill(s):**

PCB ANRS 16-01 -- Department of Agriculture & Consumer Services

Presentation by the Department of Agriculture and Consumer Services on their legislative proposals.

**NOTICE FINALIZED on 10/27/2015 3:12PM by Love.John**



## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 191 Regulation of Oil and Gas Resources  
**SPONSOR(S):** Rodrigues and others  
**TIED BILLS:** IDEN./SIM. **BILLS:** SB 318

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

### SUMMARY ANALYSIS

The Department of Environmental Protection's (DEP) Mining and Minerals Regulation Program in the Division of Water Resource Management (Division) oversees permitting for oil and gas drilling, production, and exploration within Florida through its Oil and Gas Program (Program). The Program's primary responsibilities include conservation of oil and gas resources, correlative rights protection, maintenance of health and human safety, and environmental protection.

The bill makes the following revisions related to the Program:

- Preempts to the state the ability to regulate any activity related to oil and gas exploration, development, production, processing, storage, and transportation;
- Voids any county, municipality, or other political subdivision's ordinance or regulation (except for zoning) related to oil and gas exploration, development, production, processing, storage, and transportation;
- Empowers DEP to issue a single permit that authorizes multiple Program activities;
- Requires the Division, when determining whether to issue a permit, to consider the history of past adjudicated violations committed by the applicant or an affiliated entity of any rule or law pertaining to the regulation of oil or gas, including violations that occurred outside the state;
- Allows information about past violations to be used as a basis for permit denial or imposition of permit conditions, including increased monitoring or increasing the required surety amount to up to five times the standard amount;
- Requires DEP to conduct inspections during specified Program activities;
- Defines "high-pressure well stimulation" as all stages of a well intervention performed by injecting fluids into a rock formation at high pressure that exceeds the fracture gradient of the rock formation in order to propagate fractures in such formation to increase production at an oil or gas well by improving the flow of hydrocarbons from the formation into the wellbore. The term does not include well stimulation or conventional workover procedures that may incidentally fracture the formation near the wellbore;
- Requires a well operator to obtain a permit, pay a fee, and provide a surety to DEP prior to performing a high-pressure well stimulation;
- Requires DEP to conduct a study on the potential effects of performing high-pressure well stimulations and provides an appropriation for the study;
- Requires certain individuals to report information relating to high-pressure well stimulations to DEP, including each chemical ingredient used in the well stimulation fluid, within 60 days of initiating the well stimulation;
- Requires DEP to designate the national chemical registry, known as FracFocus, as the state's registry for chemical disclosure for all wells on which high-pressure well stimulations are performed;
- Removes the requirement to receive municipal approval prior to granting an permit to drill a gas or oil well within the municipality's jurisdiction;
- Increases the maximum civil penalty for violation of any provision of the laws governing energy resources, including any rule, regulation, or order of the Division, or an oil or gas permit from \$10,000 to \$25,000 per offense; and
- Requires DEP to adopt rules to implement these changes.

The bill has a significant negative fiscal impact on the state, an indeterminate but likely insignificant fiscal impact on local governments, and an indeterminate negative fiscal impact on the private sector.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Present Situation**

##### Oil and Gas Production in Florida

Oil and gas production occurs in two major areas of Florida: the Sunniland Trend in South Florida and the Jay Field in the western panhandle.<sup>1</sup> The Sunniland Trend began producing in 1943 and is located in Lee, Hendry, Collier, and Dade counties.<sup>2</sup> The Jay Field, located in Escambia and Santa Rosa counties, began producing in 1970.<sup>3</sup> Oil production from the two regions peaked at 48 million barrels in 1978, but steadily declined over the years, producing only 2.2 million barrels in 2014.<sup>4</sup> Natural gas production decreased as well, from 52 billion cubic feet in 1978 to approximately 21 billion cubic feet in 2014.<sup>5</sup> There are currently 161 oil and gas wells actively operating in Florida.<sup>6</sup>

##### The Oil and Gas Program

The Department of Environmental Protection's (DEP) Mining and Minerals Regulation Program in the Division of Water Resource Management (Division) oversees permitting for oil and gas drilling, production, and exploration within Florida through its Oil and Gas Program (Program).<sup>7</sup> The Program's primary responsibilities include conserving and controlling the state's oil and gas resources and products; protecting the correlative rights of landowners, owners and producers of oil and gas resources and products, and others interested in these resources and products; safeguarding the health, property, and public welfare of the state's residents; and protecting the environment.<sup>8</sup> DEP addresses these concerns through a system of permits and field inspections to ensure compliance.

DEP must adopt rules and issue orders to implement and enforce the Program.<sup>9</sup> The rules and orders must ensure that all precautions are taken to prevent the spillage of oil or any other pollutant in all phases of the drilling for, and extracting of, oil, gas, or other petroleum products, or during the injection of gas into and recovery of gas from a natural gas storage reservoir.<sup>10</sup> DEP must adopt rules and orders for the following purposes:

- To require the drilling, casing, and plugging of wells to be done in such a manner as to prevent the pollution of the fresh, salt, or brackish waters or the lands of the state and to protect the integrity of natural gas storage reservoirs;
- To prevent the alteration of the sheet flow of water in any area;
- To require that appropriate safety equipment be installed to minimize the possibility of an escape of oil or other petroleum products in the event of accident, human error, or a natural disaster during drilling, casing, or plugging of any well and during extraction operations;
- To require the drilling, casing, and plugging of wells to be done in such a manner as to prevent the escape of oil or other petroleum products from one stratum to another;

<sup>1</sup> Jacqueline M. Lloyd, *Florida Geological Survey Information Circular No. 107*, June 1991, available at <http://ufdcweb1.uflib.ufl.edu/UF00001168/00001/3x>.

<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

<sup>4</sup> DEP, *Annual Production Reports*, available at [http://www.dep.state.fl.us/water/mines/oil\\_gas/data.htm](http://www.dep.state.fl.us/water/mines/oil_gas/data.htm) (last visited September 17, 2015).

<sup>5</sup> *Id.*

<sup>6</sup> Email from Amanda Marsh, Office of Legislative Affairs, DEP, RE: Oil and Gas Info (October 14, 2015).

<sup>7</sup> The Oil and Gas Program is governed by part 1 of ch. 377, F.S., and chs. 62C-25 through 62C-30, F.A.C.

<sup>8</sup> Section 377.06, F.S.

<sup>9</sup> Section 377.22(2), F.S.

<sup>10</sup> *Id.*

- To prevent the intrusion of water into an oil or gas stratum from a separate stratum;
- To require a reasonable bond, or other form of security acceptable to the department, conditioned upon the performance of the duty to plug properly each dry and abandoned well and the full and complete restoration by the applicant of the area over which geophysical exploration, drilling, or production is conducted to the similar contour and general condition in existence prior to such operation;
- To require and carry out a reasonable program of monitoring or inspection of all drilling operations, producing wells, or injecting wells, including regular inspections by division personnel;
- To require the making of reports showing the location of all oil and gas wells; the making and filing of logs; the taking and filing of directional surveys; the filing of electrical, sonic, radioactive, and mechanical logs of oil and gas wells; if taken, the saving of cutting and cores, the cuts of which shall be given to the Bureau of Geology; and the making of reports with respect to drilling and production records;
- To prevent wells from being drilled, operated, or produced in such a manner as to cause injury to neighboring leases, property, or natural gas storage reservoirs;
- To prevent the drowning by water of any stratum, or part thereof, capable of producing oil or gas in paying quantities and to prevent the premature and irregular encroachment of water which reduces, or tends to reduce, the total ultimate recovery of oil or gas from any pool.
- To require the operation of wells with efficient gas-oil ratio, and to fix such ratios;
- To prevent "blowouts," "caving," and "seepage;"
- To prevent fires;
- To identify the ownership of all oil or gas wells, producing leases, refineries, tanks, plants, structures, and storage and transportation equipment and facilities;
- To regulate the "shooting," perforating and chemical treatment of wells;
- To regulate secondary recovery methods, including the introduction of gas, air, water, or other substance into producing formations;
- To regulate gas cycling operations;
- To regulate the storage and recovery of gas injected into natural gas storage facilities;
- To, if necessary, determine, limit, and prorate the production of oil or gas, or both, from any pool or field in the state;
- To require certificates of clearance or tenders in connection with the transportation or delivery of oil or gas, or any product;
- To regulate the spacing of wells and to establish drilling units;
- To prevent, so far as is practicable, reasonably avoidable drainage from each developed unit which is not equalized by counterdrainage;
- To require that geophysical operations requiring a permit be conducted in a manner which will minimize the impact on hydrology and biota of the area, especially environmentally sensitive lands and coastal areas;
- To regulate aboveground crude oil storage tanks in a manner which will protect the water resources of the state; and
- To act in a receivership capacity for fractional mineral interests for which the owners are unknown or unlocated and to administratively designate the operator as the lessee.<sup>11</sup>

### *Permitting*

DEP possesses the power and authority to issue permits:

- For the drilling for, exploring for, or production of oil, gas, or other petroleum products that are to be extracted from below the surface of the land, including submerged land, only through the well hole drilled for oil, gas, and other petroleum products.<sup>12</sup>

<sup>11</sup> Id.

<sup>12</sup> Section 377.242(1), F.S.

- To explore for and extract minerals that are subject to extraction from the land by means other than through a well hole.<sup>13</sup>
- To establish natural gas storage facilities or construct wells for the injection and recovery of any natural gas for storage in natural gas storage reservoirs.<sup>14</sup>

Before any geophysical operation in search of oil, gas, or minerals, the person desiring to conduct the operation must apply for a permit from DEP and pay a processing fee.<sup>15</sup> Geophysical operations consist of using various methods to locate geologic structures in the ground that could contain oil or gas.<sup>16</sup> These methods include gravity surveys, magnetic surveys, and seismic surveys.<sup>17</sup> The industry uses seismic surveys as its primary tool for locating areas containing oil or gas.<sup>18</sup> These surveys consist of using explosives or heavy vibrations to create sound pulses in the ground that reflect off geologic structures and are then captured by specialized microphones.<sup>19</sup> The surveyors use the collected data to establish drilling targets.

After a drilling target is established, a person who would like to drill a well in search of oil or gas or drill a well to inject gas into and recover gas from a natural gas storage reservoir must notify the Division, pay a fee,<sup>20</sup> and obtain a separate permit authorizing the drilling before the drilling commences.<sup>21</sup> These drilling permits are valid for one year and may be renewed for an additional year provided the permit holder does not request any substantive changes.<sup>22</sup> After a well is drilled, a person must obtain a separate operating permit and pay a fee<sup>23</sup> before using the well for its intended purpose, such as producing oil, disposing of saltwater, or injecting fluids for pressure maintenance.<sup>24</sup> An operating permit is valid for the life of the well, but both the well and permit must be re-certified every five years.<sup>25</sup> A person must obtain a separate permit before they store gas in or recover gas from a natural gas storage reservoir.<sup>26</sup>

When evaluating a permit application, DEP must consider:

- The nature, character, and location of the lands involved; and whether the lands are rural, such as farms, groves, or ranches, or urban property vacant or presently developed for residential or business purposes or are in such a location or of such a nature as to make such improvements and developments a probability in the near future;
- The nature, type, and extent of ownership of the applicant, including such matters as the length of time the applicant has owned the rights claimed without having performed any of the exploratory operations so granted or authorized;
- The proven or indicated likelihood of the presence of oil, gas, or related minerals in such quantities as to warrant the exploration and extraction of such products on a commercially profitable basis; and
- For activities and operations concerning a natural gas storage facility, whether the nature, structure, and proposed use of the natural gas storage reservoir is suitable for the storage and recovery of gas without adverse effect to public health or safety or the environment.<sup>27</sup>

<sup>13</sup> Section 377.242(2), F.S.

<sup>14</sup> Section 377.242(3), F.S.

<sup>15</sup> Section 377.2408(1), F.S.

<sup>16</sup> Department of Environmental Protection, *Oil & Gas: Geophysical Prospecting*, available at

[http://www.dep.state.fl.us/water/mines/oil\\_gas/docs/OilGasGeophysicalProspectingFactSheet.pdf](http://www.dep.state.fl.us/water/mines/oil_gas/docs/OilGasGeophysicalProspectingFactSheet.pdf) (last visited September 16, 2015).

<sup>17</sup> Id.

<sup>18</sup> Id.

<sup>19</sup> Id.

<sup>20</sup> The fee to apply for a drilling permit is currently \$2,000. Rule 62C-26.003(8), F.A.C.

<sup>21</sup> Sections 377.24 and 377.2407, F.S.

<sup>22</sup> Rule 62C-26.007(4), F.A.C.

<sup>23</sup> The fee to apply for an operating permit is currently \$2,000. Rule 62C-26.008(3), F.A.C.

<sup>24</sup> Rule 62C-26.008, F.A.C.

<sup>25</sup> Id.

<sup>26</sup> Section 377.24(1), F.S.

<sup>27</sup> Section 377.241, F.S.

DEP must weigh these criteria and balance environmental interests against the applicant's right to explore for oil.<sup>28</sup>

DEP may not permit to drill a well in search of oil or gas:

- In Florida's territorial waters in the gulf of Mexico or Atlantic Ocean;<sup>29</sup>
- In bays or estuaries;<sup>30</sup>
- Within one mile of coastline;<sup>31</sup>
- Within 1 mile of seaward boundary of any local, state, or federal park or aquatic or wildlife preserve;<sup>32</sup> and
- Within 1 mile inland from Gulf, Atlantic, any bay, or any estuary 1 mile of any freshwater lake, river, or stream unless the DEP is satisfied that the natural resources of such bodies of water and shore areas of the state will be adequately protected in the event of accident or blowout.<sup>33</sup>

#### *Payment of Surety*

Before DEP may grant a permit, the permit applicant must provide surety that the exploration, drilling, or production activity requested in the application will be conducted in a safe and environmentally compatible manner.<sup>34</sup> An applicant for a drilling, production, or injection well permit or a geophysical permit may provide the following types of surety to meet this requirement:

- A deposit of cash or other securities made payable to the Minerals Trust Fund;
- A bond of a surety company authorized to do business in the state; or
- A surety in the form of an irrevocable letter of credit guaranteed by an acceptable financial institution.<sup>35</sup>

Individuals conducting geophysical operations must provide a surety of \$25,000 per field crew or \$100,000 per operation.<sup>36</sup> For wells, the amount of the required surety varies based on the depth of the well drilled and whether the well becomes an operating well.<sup>37</sup> Currently, well drilled between zero and 9,000 feet deep require an initial surety of \$50,000, and a well drilled at 9,001 feet deep or more requires a \$100,000 surety.<sup>38</sup> If a drilled well becomes an operating well, the required surety for the well is twice the initial surety amount.<sup>39</sup> In lieu of furnishing separate securities for each well, an owner or operators may provide a blanket bond of \$1,000,000, which can cover up to ten wells.<sup>40</sup> When all drilling, exploration, and production activities have ceased and permit conditions satisfied, DEP releases the security.<sup>41</sup>

Alternatively, an applicant for a drilling, production, or injection well permit, or a permittee who intends to continue participating in long-term production activities, may meet the surety requirement by paying an annual fee to the Minerals Trust Fund based on the following amounts:

- For the first year, or part of a year, the fee is \$4,000 per permitted well.
- For each subsequent year, or part of a year, the fee is \$1,500 per permitted well.<sup>42</sup>

<sup>28</sup> *Coastal Petroleum Co. v. Florida Wildlife Federation, Inc.*, 766 So. 2d 226, 228 (Fla. 1st DCA 1999).

<sup>29</sup> Sections 377.24(9) and 377.242(1)(a)5., F.S.

<sup>30</sup> Section 377.242(1)(a)1., F.S.

<sup>31</sup> Section 377.242(1)(a)2., F.S.

<sup>32</sup> Section 377.242(1)(a)3., F.S.

<sup>33</sup> Section 377.242(1)(a)4., F.S.

<sup>34</sup> Section 377.2425(1), F.S.

<sup>35</sup> *Id.*

<sup>36</sup> Rule 62C-26.007(5), F.A.C.

<sup>37</sup> Rule 62C-26.002(1), F.A.C.

<sup>38</sup> Rule 62C-26.002(2), F.A.C.

<sup>39</sup> *Id.*

<sup>40</sup> *Id.*

<sup>41</sup> Rule 62C-26.002(7), F.A.C.

<sup>42</sup> Section 377.2425(1)(b), F.S.



The maximum fee that an applicant or permittee may be required to pay into the Minerals Trust Fund is \$30,000 per calendar year, regardless of the number of permits applied for or in effect.<sup>43</sup>

### *Inspections*

DEP monitors and inspects drilling operations, producing wells, or injecting wells.<sup>44</sup> Division staff working in the field offices inspect all permitted activities. Each permit issued by DEP must contain an agreement that the permit holder will not prevent inspection by Division personnel at any time.<sup>45</sup>

### *Penalties*

A person who violates any statute, rule, regulation, order, or permit of the Program is liable to the state for any damage caused to the air, waters, or property, including animal, plant, or aquatic life, of the state and for reasonable costs and expenses of the state in tracing the source of the discharge, in controlling and abating the source and the pollutants, and in restoring the air, waters, and property of the state.<sup>46</sup> Further, civil penalty not to exceed \$10,000 per offense may be imposed on such violators.<sup>47</sup> Each day during any portion of which a violation occurs constitutes a separate offense.<sup>48</sup> These penalties also apply to a person who refuses inspection by the Division.<sup>49</sup>

### Well Stimulation

Underground oil and gas often forms in certain rock formations resistant to conventional methods of drilling. Some of these rock formations are less permeable than traditional reservoirs of oil and gas. A traditional reservoir of oil and/or gas will be permeable enough to naturally allow the migration of oil and/or gas out of the reservoir rock. However, the decreased permeability of some reservoir rock formations traps oil and gas within the reservoir. The most common types of rock formations trapping oil and gas in this fashion are shale, sandstone, and methane coalbeds.<sup>50</sup> Until recently, these formations rarely produced oil or gas due to their lack of permeability. The development of horizontal drilling, combined with hydraulic fracturing, has made oil and gas production from these formations more feasible.<sup>51</sup>

Well stimulation refers to any action taken by a well operator to increase the inherent productivity of an oil or gas well.<sup>52</sup> Common examples of well stimulation treatments are hydraulic fracturing and acid fracturing. Both hydraulic fracturing and acid fracturing involve the pressurized injection of fluids and chemicals to create fractures within a rock formation. The fractures then allow for more oil and gas to escape the rock formation and migrate up the well.

### *Hydraulic Fracturing*

Hydraulic fracturing consists of using fluid and material to create or restore fractures in a rock formation to stimulate production. A hydraulic fracturing well is first drilled vertically. Then the well is drilled horizontally directly into the reservoir rock. The fracturing fluid and materials are pressurized and

<sup>43</sup> Id.

<sup>44</sup> Section 377.22(2)(g), F.S.

<sup>45</sup> Section 377.242, F.S.

<sup>46</sup> Section 377.37(1)(a), F.S.

<sup>47</sup> Id.

<sup>48</sup> Id.

<sup>49</sup> Id.

<sup>50</sup> See generally Hannah Wiseman & Francis Gradijan, *Regulation of Shale Gas Development, Including Hydraulic Fracturing* (Univ. of Tulsa Legal Studies, Research Paper No. 2011-11), available at [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1953547](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1953547).

<sup>51</sup> Oil and Gas; Hydraulic Fracturing on Federal and Indian Lands; Final Rule, 80 Fed. Reg. 16130 – 16131 (proposed March 26, 2015)(to be codified at 43 C.F.R. 3160).

<sup>52</sup> Keith B. Hall, *Recent Developments in Hydraulic Fracturing Regulation and Litigation*, 29 J. LAND USE & ENVTL. L. 29, 22 (2013).

released through small perforations in the well casing. The pressurized mixture causes the rock layer to fracture. The fissures are held open by the proppant to allow natural gas and oil to flow into and out of the well. Fractured rock formations may be refractured to allow for continued flow of any remaining oil and gas. This process allows for future productivity of older wells.<sup>53</sup>

The composition of a fracturing fluid varies with the nature of the formation, but typically contains large amounts of water, a proppant to keep the fractures open (typically sand), and chemical additives. Each hydraulic fracturing well can require between one and seven million gallons of water. The chemical additives include a friction reducer, biocides (to kill bacteria), a scale inhibitor, surfactants, and breakers.<sup>54</sup> Scale inhibitors prevent the buildup of scale<sup>55</sup> on the drilling equipment. The breakers and friction reducer help to transport the proppants into the fracture, as well as remove them. The surfactants help control water's reaction with other fluids (in this case, oil and/or gas). A typical fracture treatment will use between three and 12 additive chemicals depending on the characteristics of the water and the shale formation being fractured; most often, either 10 or 11 are used. These chemicals are selected from a list of over 250 chemicals.<sup>56</sup> The chemicals typically make up between 1 percent and 2 percent of the hydraulic fracturing fluid, by weight.<sup>57</sup>

### *Acid Fracturing*

Acid fracturing, also known as acidizing, is most often used in limestone formations and other carbonate formations because the permeability of limestone varies and is too complex for conventional hydraulic fracturing. Carbonate formations can be dissolved by acid. Acid fracturing is similar to hydraulic fracturing with some differences. A fluid is still injected at fracturing pressures, but it also includes a diluted acid, either hydrochloric acid or formic acid, to "etch" channels into the rock formation. The channels created through the rock formation can either let oil and gas escape as is, or can also be propped open with sand, as with hydraulic fracturing. "The effective fracture length is a function of the type of acid used, the acid reaction rate, and the fluid loss from the fracture into the formation."<sup>58</sup>

### *Well Stimulation in Florida*

DEP's rules currently require an operator to notify DEP before beginning any workover operation on an oil or gas well.<sup>59</sup> A workover is defined as "an operation involving a deepening, plug back, repair, cement squeeze, perforation, hydraulic fracturing, acidizing, or other chemical treatment which is performed in a production, disposal, or injection well in order to restore, sustain, or increase production, disposal, or injection rates."<sup>60</sup> Thus, an operator performing a well stimulation need not apply for a separate permit authorizing the well stimulation, but must only provide notification to DEP before beginning the operation.

Both hydraulic fracturing and acid fracturing have been utilized in Florida. According to DEP, the last hydraulic fracturing on record was conducted in the Jay Field in 2003.<sup>61</sup> Acid fracturing was used for

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<sup>53</sup> See generally Wiseman & Francis Gradijan.

<sup>54</sup> Id.

<sup>55</sup> "Scale" is inorganic soluble salts that form when incompatible types of water are mixed. Scale buildup can cause costly damage to equipment parts.

<sup>56</sup> For a list of the chemicals most often used, see *What Chemicals Are Used*, FRAC FOCUS, <https://fracfocus.org/chemical-use/what-chemicals-are-used> (last visited October 28, 2015).

<sup>57</sup> 80 Fed. Reg. 16131.

<sup>58</sup> The Society of Petroleum Engineers, *Continuous Improvements in Acid Fracturing at Lake Maracaibo*, J. Petroleum Tech. 54 (2006), available at [http://www.slb.com/~media/Files/stimulation/industry\\_articles/200607\\_cont\\_imp.pdf](http://www.slb.com/~media/Files/stimulation/industry_articles/200607_cont_imp.pdf).

<sup>59</sup> Rule 62C-29.006(1), F.A.C.

<sup>60</sup> Rule 62C-25.002(61), F.A.C.

<sup>61</sup> DEP, *Frequent Questions about the Oil and Gas Permitting Process*, available at [http://www.dep.state.fl.us/water/mines/oil\\_gas/docs/faq\\_og.pdf](http://www.dep.state.fl.us/water/mines/oil_gas/docs/faq_og.pdf), (last visited September 16, 2015).

the first time in Florida in Collier County in 2013, but the operation was halted by a cease and desist order from DEP based on concerns about groundwater contamination.<sup>62</sup>

### *Disclosure of Well Stimulation Chemicals*

In March 2015, the Bureau of Land Management (BLM), part of the U.S. Department of the Interior, published its final rule that requires disclosures about chemicals used in hydraulic fracturing on federal and Indian lands.<sup>63</sup> After hydraulic fracturing is complete, BLM requires the driller to provide a description of the base fluid and each additive in the hydraulic fracturing fluid.<sup>64</sup> Some commenters on the rule requested that BLM only require disclosure of chemicals required for disclosure on Manage Materials Safety Data Sheets.<sup>65</sup> However, BLM determined that other chemical used during hydraulic fracturing might be harmful to humans in an environmental setting, and therefore, disclosure would be required.<sup>66</sup> BLM does not require chemical disclosure prior to drilling because operators often change chemical composition after permit approval in response to chemical availability, change in vendor, and unexpected geological conditions.<sup>67</sup> Operators may request that chemical information not be disclosed to the public.<sup>68</sup> These companies have traditionally kept the chemical composition confidential in order to preserve a competitive advantage.<sup>69</sup>

Wyoming and several other states challenged BLM's rule stating the agency lacked the power to regulate the activity.<sup>70</sup> A federal judge issued a preliminary injunction barring implementation of the rule and the case is currently awaiting resolution.<sup>71</sup>

Of the states that produce oil, natural gas, or both, at least 15 require some disclosure of information about the chemicals added to the hydraulic fracturing fluid used to stimulate a particular well.<sup>72</sup> These provisions vary widely, but generally indicate: (1) which parties must disclose information about chemical additives and whether these disclosures must be made to the public or a state agency; (2) what information about chemicals added to a hydraulic fracturing fluid must be disclosed, including how specifically parties must describe the chemical makeup of the hydraulic fracturing fluid and the additives that are combined with it; (3) what protections, if any, will be given to trade secrets; and (4) at what time disclosure must be made in relation to when fracturing takes place.<sup>73</sup>

### Local Regulation of Oil and Gas Production

In certain instances, DEP may not issue a permit without specified approval. DEP may not issue permits to drill a gas or oil well:

- Within the corporate limits of a municipality without a resolution approving the permit from the governing authority;<sup>74</sup>

<sup>62</sup> DEP, *Collier Oil Drilling*, [http://www.dep.state.fl.us/secretary/oil/collier\\_oil.htm](http://www.dep.state.fl.us/secretary/oil/collier_oil.htm) (last visited September 16, 2015).

<sup>63</sup> 80 Fed. Reg. 16128; *See also* Bureau of Land Management, *Interior Department Releases Final Rule to Support Safe, Responsible Hydraulic Fracturing Activities on Public and Tribal Lands*,

[http://www.blm.gov/wo/st/en/info/newsroom/2015/march/nr\\_03\\_20\\_2015.html](http://www.blm.gov/wo/st/en/info/newsroom/2015/march/nr_03_20_2015.html), (last visited September 16, 2015).

<sup>64</sup> 80 Fed. Reg. 16220.

<sup>65</sup> 80 Fed. Reg. 16170.

<sup>66</sup> *Id.*

<sup>67</sup> 80 Fed. Reg. 16149.

<sup>68</sup> 80 Fed. Reg. 16221.

<sup>69</sup> 29 J. Land Use & Envtl. L. at 35.

<sup>70</sup> Casper Star Tribune, Benjamin Storrow, *Federal judge issues stay on BLM fracking rule*, [http://trib.com/business/energy/federal-judge-issues-stay-on-blm-fracking-rule/article\\_7e14957f-11d9-5120-b1d9-e86bf382bb1c.html](http://trib.com/business/energy/federal-judge-issues-stay-on-blm-fracking-rule/article_7e14957f-11d9-5120-b1d9-e86bf382bb1c.html) (last visited September 15, 2015).

<sup>71</sup> *Id.* *See also* Amy Harder Wall Street Journal, *Federal Court Blocks Obama Administration Fracking Rule*, <http://www.wsj.com/articles/federal-court-blocks-obama-administration-hydraulic-fracturing-rule-1443641565> (last visited September 30, 2015).

<sup>72</sup> Brandon J. Merrill and Adam Vann, *Hydraulic Fracturing: Chemical Disclosure Requirements*, Congressional Research Service (June 19, 2012), available at <http://fas.org/sgp/crs/misc/R42461.pdf> (last visited September 16, 2015).

<sup>73</sup> *Id.*

<sup>74</sup> Section 377.24(5), F.S.

- In tidal waters abutting or immediately adjacent to the corporate limits of a municipality or within 3 miles of such corporate limits extending from the line of mean high tide into such waters without a resolution approving the permit from the governing authority;<sup>75</sup> or
- On any improved beach, located outside of an incorporated town or municipality, or at a location in the tidal waters abutting or immediately adjacent to an improved beach, or within 3 miles of an improved beach extending from the line of mean high tide into such tidal waters without a resolution approving the permit from the county commission.<sup>76</sup>

If the proposed oil or gas well is on lands owned by the Board of Trustees of the Internal Improvement Trust Fund (BOT), it may not grant a lease for gas, oil, or mineral rights:

- Within the corporate limits of a municipality without a resolution approving the lease from the governing authority;<sup>77</sup>
- In tidal waters abutting or immediately adjacent to the corporate limits of a municipality or within 3 miles of such corporate limits extending from the line of mean high tide into such waters without a resolution approving the lease from the governing authority;<sup>78</sup>
- On any improved beach, located outside of an incorporated town or municipality, or at a location in the tidal waters abutting or immediately adjacent to an improved beach, or within 3 miles of an improved beach extending from the line of mean high tide into such tidal waters without a resolution approving the lease from the county commission;<sup>79</sup> or
- In Florida's territorial waters in the Gulf of Mexico or Atlantic Ocean.<sup>80</sup>

According to DEP, no counties or municipalities currently operate oil and gas permitting programs. However, some municipalities have banned hydraulic fracturing in their jurisdictions.<sup>81</sup>

## Effect of Proposed Changes

### State Preemption

The bill amends s. 377.06, F.S., to preempt counties, municipalities, or other political subdivisions from regulating any activity related to oil and gas exploration, development, production, processing, storage, and transportation. Further, the bill voids any county, municipality, or other political subdivision's ordinance or regulation related to oil and gas exploration, development, production, processing, storage, and transportation. Counties and municipalities may, however, enforce zoning ordinances adopted before January 1, 2015.

### Permits for Oil and Gas Exploring, Drilling, and Extracting

The bill adds s. 377.241(6), F.S., to require the Division, when determining whether to issue a permit for activities related to oil and gas, to consider the history of past adjudicated violations committed by the applicant or an affiliated entity of any substantive and material rule or law pertaining to the regulation of oil or gas, including violations that occurred outside the state. This information may be used as a basis for permit denial or imposition of specific permit conditions, including increased monitoring, or increasing the amount of the required surety to up to five times the standard amount. The bill amends s. 377.22(2), F.S., to authorize DEP to adopt rules to implement this requirement.

<sup>75</sup> Section 377.24(6), F.S.

<sup>76</sup> Section 377.24(7), F.S.

<sup>77</sup> Section 253.61(1)(a), F.S.

<sup>78</sup> Section 253.61(1)(b), F.S.

<sup>79</sup> Section 253.61(1)(c), F.S.

<sup>80</sup> Section 253.61(1)(d), F.S.

<sup>81</sup> Bonita Springs: <http://www.news-press.com/story/news/local/bonita-springs/2015/07/15/crowd-cramps-bonita-city-hall-ahead-of-fracking-vote/30182897/> (last visited September 18, 2015).

Further, the bill amends s. 377.24(1), F.S., to empower DEP, when issuing a permit for activities related to oil and gas drilling and extracting, to authorize multiple activities in a single permit.

### Inspections

The bill amends s. 377.22(2)(g), F.S., to require DEP's rules and orders to require inspections during the testing of blowout preventers, during the pressure testing of the casing and casing shoe, and during the integrity testing of the cement plugs in plugging and abandonment operations. The bill amends s. 377.242, F.S., to require each permit to contain an agreement that the permit holder will not prevent inspections during these activities.

### High-Pressure Well Stimulation Permits

The bill amends s. 377.24, F.S., to specifically authorize DEP to issue permits for performance of a high-pressure well stimulation. The bill requires DEP to issue orders and adopt rules to implement the permitting requirements for high-pressure well stimulations and to ensure that all precautions are taken to prevent the spillage of oil or any other pollutant during these operations.

The bill amends s. 377.19, F.S., to define "high-pressure well stimulation" as a well intervention performed by injecting fluids into a rock formation at high pressure that exceeds the fracture gradient of the rock formation in order to propagate fractures in such formation to increase production at an oil or gas well by improving the flow of hydrocarbons from the formation into the wellbore. The term does not include well stimulation or conventional workover procedures that may incidentally fracture the formation near the wellbore.

The bill amends s. 377.24, F.S., to impose on high-pressure well stimulations the same permitting requirements that apply to drilling an oil or gas well. Thus, a person who would like to perform a high-pressure well stimulation must first apply for and obtain a permit from DEP that authorizes the activity and must also pay a fee not to exceed the actual cost of processing and inspecting for each well. While the permitting criteria for all oil and gas permits will now apply to high-pressure well stimulation permits, the bill also creates additional criteria applicable to permits for high-pressure well stimulation. Specifically, the bill amends s. 377.241, F.S., to direct the Division, when issuing a permit, to consider whether the high-pressure well stimulation is designed to ensure that:

- The groundwater through which the well will be or has been drilled is not contaminated by the high-pressure well stimulation; and
- The high-pressure well stimulation is consistent with the public policy of the state.

The bill also amends s. 377.2425, F.S., to require that high-pressure well stimulation permit applicants or operators provide surety to DEP that the activity will be conducted in a safe and environmentally compatible manner before DEP may grant a permit. The surety requirement for high-pressure well stimulation is the same as the surety required for other oil and gas permits.

The bill prohibits DEP from issuing permits for high-pressure well stimulation until rules for high-pressure well stimulation are adopted.

### Study on High-Pressure Well Stimulation

The bill creates s. 377.2436, F.S., to require DEP to conduct a study on high-pressure well stimulation that:

- Evaluates the underlying geologic features present in the counties where oil wells have been permitted and analyzes the potential impact that high-pressure well stimulation and wellbore construction may have on the underlying geologic features;
- Evaluates the potential hazards and risks that high-pressure well stimulation poses to surface water or groundwater resources, including an assessment of the potential impacts on drinking water resources, identification of the main factors affecting the severity and frequency of

impacts, and an analysis of the potential for the use or reuse of recycled water in well stimulation fluids while meeting appropriate water quality standards;

- Reviews and evaluates the potential for groundwater contamination from conducting high-pressure well stimulation under wells that have been previously abandoned and plugged and identifies a setback radius from previously plugged and abandoned wells that could be impacted by high-pressure well stimulation; and
- Reviews and evaluates the ultimate disposition of well stimulation fluids after use in well stimulation processes.

The bill specifies that DEP must continue conventional oil and gas business operations during the performance of the study and prohibits a moratorium on the evaluation and issuance of permits for conventional drilling, exploration, conventional completions, or conventional workovers during the study. The bill provides that the study is subject to independent scientific peer review.

The bill requires the findings of the study to be posted on DEP's website and submitted to the Governor, the President of the Senate, and the Speaker of the House of Representatives by June 30, 2017.

The bill appropriates \$1 million in nonrecurring funds from the General Revenue Fund to DEP for the purpose of performing the study.

#### High-Pressure Well Stimulation Chemical Disclosure Registry

The bill creates s. 377.45, F.S., to require DEP to designate the national chemical registry, known as FracFocus, as the state's registry for chemical disclosure for all wells on which high-pressure well stimulations are performed. DEP must provide a link to FracFocus on its website. The bill requires a service provider, vendor, or well owner or operator to report to DEP, at a minimum, the following information:

- The name of the service provider, vendor, or well owner or operator;
- The date of completion of the high-pressure well stimulation;
- The county in which the well is located;
- The API (American Petroleum Institute) number for the well;
- The well name and number;
- The longitude and latitude of the wellhead;
- The total vertical depth of the well;
- The total volume of water used in the high-pressure well stimulation;
- Each chemical ingredient that is subject to 29 C.F.R. s. 1910.1200(g)(2)<sup>82</sup> and the ingredient concentration in the high-pressure well stimulation fluid by mass for each well on which a high-pressure well stimulation is performed; and
- The trade or common name and the CAS registry number for each chemical ingredient.

DEP must report the information listed above to FracFocus, excluding any information subject to ch. 688, F.S., which relates to trade secrets. If FracFocus cannot accept and make publicly available any of the required information, the bill requires DEP to post the information on its website, excluding any information subject to ch. 688, F.S., which relates to trade secrets.

The bill requires a service provider, vendor, or well owner or operator to report the required information to DEP within 60 days after the initiation of the high-pressure well stimulation for each well on which it is performed. The service provider, vendor, or well owner or operator is also required to notify DEP if any chemical ingredient not previously reported is intentionally included and used for the purpose of performing a high-pressure well stimulation.

<sup>82</sup> 29 C.F.R. s. 1910.1200(g)(2) specifies the information that must be included in reports that chemical manufacturers and importers are required to prepare for the purpose of alerting employers and employees to chemical hazards in the workplace. These are called Material Safety Data Sheets.

The bill specifies that the chemical disclosure requirements do not apply to an ingredient that is not intentionally added to the high-pressure well stimulation or that occurs incidentally or is otherwise unintentionally present in a high-pressure well stimulation.

The bill requires DEP to adopt rules to implement the chemical disclosure requirements.

#### Local Regulation of Oil and Gas Production

The bill removes subsection (5) from s. 377.24, F.S., which prohibits DEP from issuing permits within the corporate limits of a municipality without a resolution approving the permit from the governing authority.

#### Penalties

The bill amends s. 377.37, F.S., to increase the maximum civil penalty that may be imposed on a person who violates any provision of ch. 377, F.S., or any rule, regulation, or order of the Division made under the chapter or who violates the terms of an oil or gas permit from \$10,000 to \$25,000 per offense. Each day during any portion of which a violation occurs constitutes a separate offense.

#### B. SECTION DIRECTORY:

- Section 1.** Amends s. 377.06, F.S., preempting the regulation of all matters relating to the exploration, development, production, processing, storage, and transportation of oil and gas.
- Section 2.** Amends s. 377.19, F.S., relating to definitions used in ch. 377, F.S.
- Section 3.** Amends s. 377.22, F.S., revising the rulemaking authority of DEP.
- Section 4.** Amends s. 377.24, F.S., relating to oil and gas well drilling permits.
- Section 5.** Amends s. 377.241, F.S., relating to criteria for issuance of permits.
- Section 6.** Amends s. 377.242, F.S., relating to permits for oil and gas drilling, exploration, and extraction.
- Section 7.** Amends s. 377.2425, F.S., relating to providing a surety for oil and gas production.
- Section 8.** Creates s. 377.2436, F.S., relating to a study on high-pressure well stimulation.
- Section 9.** Amends s. 377.37, F.S., relating to penalties for oil and gas for oil and gas law violations.
- Section 10.** Creates s. 377.45, F.S., relating to disclosure of high-pressure well stimulation chemicals.
- Section 11.** Amends s. 377.07, F.S., conforming provisions to changes made by the act.
- Section 12.** Amends s. 377.10, F.S., conforming provisions to changes made by the act.
- Section 13.** Amends s. 377.243, F.S., conforming provisions to changes made by the act.
- Section 14.** Amends s. 377.244, F.S., conforming provisions to changes made by the act.
- Section 15.** Provides an appropriation.

**Section 16.** Provides an effective date of July 1, 2016.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

#### 1. Revenues:

The bill may have an indeterminate positive fiscal impact on the state because it requires oil and gas well operators to pay a permit fee, which will be determined by DEP, before performing a high-pressure well stimulation.

The bill may also have an indeterminate positive fiscal impact on the state because it raises the maximum fine that may be imposed for violation of any oil and gas law, rule, regulation, or order from \$10,000 to \$25,000 per offense.

#### 2. Expenditures:

The bill has a significant negative fiscal impact on the state because it requires DEP to conduct a study on the potential effects of performing high-pressure well stimulations. According to DEP, this study will cost approximately \$1 million.<sup>83</sup> The bill provides \$1 million to DEP in nonrecurring funds from the General Revenue Fund for the purpose of performing the study.

The bill appears to have an insignificant negative fiscal impact on DEP because it requires DEP to adopt and revise its oil and gas rules.

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

#### 1. Revenues:

See CONSTITUTIONAL ISSUES: Applicability of Municipality/County Mandates Provision.

#### 2. Expenditures:

See CONSTITUTIONAL ISSUES: Applicability of Municipality/County Mandates Provision.

### C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may have an indeterminate negative fiscal impact on the private sector because it requires oil and gas well operators to pay a permit fee, which will be determined by DEP, before performing a high-pressure well stimulation.

The bill may also have an indeterminate negative fiscal impact on the private sector because it raises the maximum fine that may be imposed for violation of any oil and gas law, rule, regulation, or order from \$10,000 to \$25,000 per offense.

### D. FISCAL COMMENTS:

None.

<sup>83</sup> According to an email from DEP staff received on March 23, 2015.  
STORAGE NAME: h0191.ANRS  
DATE: 10/28/2015



### III. COMMENTS

#### A. CONSTITUTIONAL ISSUES:

##### 1. Applicability of Municipality/County Mandates Provision:

The county/municipality mandates provision of Art. VII, s. 18(b) of the Florida Constitution may apply because the bill may reduce the authority of counties and municipalities to raise total aggregate revenues as such authority existed on February 1, 1989, by prohibiting them from adopting or establishing programs to issue permits for any activity related to oil and gas drilling, exploration, or production for which DEP has permitting authority. According to DEP, no counties or municipalities currently operate such permitting programs. Therefore, an exemption to the mandates provision may apply because the fiscal impact of the reduced authority is likely insignificant.

An exception to the mandates provision may also apply because the bill applies to all persons similarly situated. However, the Legislature would have to make a formal determination that the bill fulfills an important state interest.

If the exemption and exception do not apply and the bill does qualify as a mandate, final passage must be approved by two-thirds of the membership of each house of the Legislature.

##### 2. Other:

None.

#### B. RULE-MAKING AUTHORITY:

The bill requires DEP to adopt rules to implement the permitting requirements for high-pressure well stimulations and to ensure that all precautions are taken to prevent the spillage of oil or any other pollutant during these operations. DEP may not issue permits for high-pressure well stimulation until it adopts rules for high-pressure well stimulation. The bill also requires DEP to adopt rules to evaluate previous violations of permit applicants, conduct specific inspection activities, require reports for high-pressure well stimulations, and require chemical disclosure to FracFocus for high-pressure well stimulations.

#### C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

### IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

Not applicable.

1                   A bill to be entitled  
2           An act relating to the regulation of oil and gas  
3           resources; amending s. 377.06, F.S.; preempting the  
4           regulation of all matters relating to the exploration,  
5           development, production, processing, storage, and  
6           transportation of oil and gas; declaring existing  
7           ordinances and regulations relating thereto void;  
8           providing an exception for certain zoning ordinances;  
9           amending s. 377.19, F.S.; applying the definitions of  
10          certain terms to additional sections of chapter 377,  
11          F.S.; revising the definition of the term "division";  
12          conforming a cross-reference; defining the term "high-  
13          pressure well stimulation"; amending s. 377.22, F.S.;  
14          revising the rulemaking authority of the Department of  
15          Environmental Protection; amending s. 377.24, F.S.;  
16          requiring that a permit be obtained before the  
17          performance of a high-pressure well stimulation;  
18          specifying that a permit may authorize single or  
19          multiple activities; deleting provisions prohibiting  
20          the division from granting permits to drill gas or oil  
21          wells within the limits of a municipality without  
22          approval of the governing authority of the  
23          municipality; prohibiting the department from  
24          approving permits for high-pressure well stimulation  
25          until certain rules are adopted; amending s. 377.241,  
26          F.S.; requiring the Division of Water Resource

27 Management to give consideration to and be guided by  
28 certain additional criteria when issuing permits;  
29 amending s. 377.242, F.S.; authorizing the department  
30 to issue permits for the performance of a high-  
31 pressure well stimulation; revising permit  
32 requirements that permitholders agree not to prevent  
33 division inspections; amending s. 377.2425, F.S.;  
34 requiring an applicant or operator to provide surety  
35 that performance of a high-pressure well stimulation  
36 will be conducted in a safe and environmentally  
37 compatible manner; creating s. 377.2436, F.S.;  
38 directing the department to conduct a study on high-  
39 pressure well stimulation; providing study criteria;  
40 requiring the study to be submitted to the Governor  
41 and Legislature; amending s. 377.37, F.S.; increasing  
42 the maximum amount of a civil penalty; creating s.  
43 377.45, F.S.; requiring the department to designate  
44 the national chemical registry as the state's  
45 registry; requiring service providers, vendors, and  
46 well owners or operators to report certain information  
47 to the department; requiring the department to report  
48 certain information to the national chemical registry;  
49 providing applicability; requiring the department to  
50 adopt rules; amending ss. 377.07, 377.10, 377.243, and  
51 377.244, F.S.; conforming provisions; providing an  
52 appropriation; providing an effective date.

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

Section 1. Section 377.06, Florida Statutes, is amended to read:

377.06 Public policy of state concerning natural resources of oil and gas; preemption.—

(1) It is ~~hereby declared~~ the public policy of this state to conserve and control the natural resources of oil and gas in this state, and the products made from oil and gas in this state, ~~to~~ prevent waste of natural resources; to provide for the protection and adjustment of the correlative rights of the owners of the land in which the natural resources lie, ~~of~~ the owners and producers of oil and gas resources and the products made from oil and gas, and ~~of~~ others interested in these resources and products; and to safeguard the health, property, and public welfare of the residents of this state and other interested persons ~~and for all purposes indicated by the provisions in this section.~~

(2) ~~Further,~~ It is the public policy of this state ~~declared~~ that underground storage of natural gas is in the public interest because underground storage promotes conservation of natural gas, ~~and~~ makes gas more readily available to the domestic, commercial, and industrial consumers of this state, ~~and~~ allows the accumulation of large quantities of gas in reserve for orderly withdrawal during emergencies or periods

79 of peak demand. It is not the intention of this section to  
 80 limit, restrict, or modify in any way the provisions of this  
 81 law.

82 (3) The Legislature declares that all matters relating to  
 83 the regulation of the exploration, development, production,  
 84 processing, storage, and transportation of oil and gas are  
 85 preempted to the state, to the exclusion of all existing and  
 86 future ordinances or regulations relating thereto adopted by any  
 87 county, municipality, or other political subdivision of the  
 88 state. Any such existing ordinance or regulation is void. A  
 89 county or municipality may, however, enforce an existing zoning  
 90 ordinance adopted before January 1, 2015, if the ordinance is  
 91 otherwise valid.

92 Section 2. Section 377.19, Florida Statutes, is amended to  
 93 read:

94 377.19 Definitions.—As used in ss. 377.06, 377.07, and  
 95 ~~377.10-377.45~~ ~~377.10-377.40~~, the term:

96 (1) "Completion date" means the day, month, and year that  
 97 a new productive well, a previously shut-in well, or a  
 98 temporarily abandoned well is completed, repaired, or  
 99 recompleted and the operator begins producing oil or gas in  
 100 commercial quantities.

101 (2) "Department" means the Department of Environmental  
 102 Protection.

103 (3) "Division" means the Division of Water Resource  
 104 Management of the Department of Environmental Protection.

105 (4) "Field" means the general area that is underlaid, or  
 106 appears to be underlaid, by at least one pool. The term includes  
 107 the underground reservoir, or reservoirs, containing oil or gas,  
 108 or both. The terms "field" and "pool" mean the same thing if  
 109 only one underground reservoir is involved; however, the term  
 110 "field," unlike the term "pool," may relate to two or more  
 111 pools.

112 (5) "Gas" means all natural gas, including casinghead gas,  
 113 and all other hydrocarbons not defined as oil in subsection (16)  
 114 ~~(15)~~.

115 (6) "High-pressure well stimulation" means all stages of a  
 116 well intervention performed by injecting fluids into a rock  
 117 formation at high pressure that exceeds the fracture gradient of  
 118 the rock formation in order to propagate fractures in such  
 119 formation to increase production at an oil or gas well by  
 120 improving the flow of hydrocarbons from the formation into the  
 121 wellbore. The term does not include well stimulation or  
 122 conventional workover procedures that may incidentally fracture  
 123 the formation near the wellbore.

124 ~~(7)(6)~~ "Horizontal well" means a well completed with the  
 125 wellbore in a horizontal or nearly horizontal orientation within  
 126 10 degrees of horizontal within the producing formation.

127 ~~(8)(7)~~ "Illegal gas" means gas that has been produced  
 128 within the state from any well or wells in excess of the amount  
 129 allowed by any rule, regulation, or order of the division, as  
 130 distinguished from gas produced within the State of Florida from

131 a well not producing in excess of the amount so allowed, which  
132 is "legal gas."

133 (9)~~(8)~~ "Illegal oil" means oil that has been produced  
134 within the state from any well or wells in excess of the amount  
135 allowed by rule, regulation, or order of the division, as  
136 distinguished from oil produced within the state from a well not  
137 producing in excess of the amount so allowed, which is "legal  
138 oil."

139 (10)~~(9)~~ "Illegal product" means a product of oil or gas,  
140 any part of which was processed or derived, in whole or in part,  
141 from illegal gas or illegal oil or from any product thereof, as  
142 distinguished from "legal product," which is a product processed  
143 or derived to no extent from illegal oil or illegal gas.

144 (11)~~(10)~~ "Lateral storage reservoir boundary" means the  
145 projection up to the land surface of the maximum horizontal  
146 extent of the gas volume contained in a natural gas storage  
147 reservoir.

148 (12)~~(11)~~ "Native gas" means gas that occurs naturally  
149 within this state and does not include gas produced outside the  
150 state, transported to this state, and injected into a permitted  
151 natural gas storage facility.

152 (13)~~(12)~~ "Natural gas storage facility" means an  
153 underground reservoir from which oil or gas has previously been  
154 produced and which is used or to be used for the underground  
155 storage of natural gas, and any surface or subsurface structure,  
156 or infrastructure, except wells. The term also includes a right

157 or appurtenance necessary or useful in the operation of the  
158 facility for the underground storage of natural gas, including  
159 any necessary or reasonable reservoir protective area as  
160 designated for the purpose of ensuring the safe operation of the  
161 storage of natural gas or protecting the natural gas storage  
162 facility from pollution, invasion, escape, or migration of gas,  
163 or any subsequent extension thereof. The term does not mean a  
164 transmission, distribution, or gathering pipeline or system that  
165 is not used primarily as integral piping for a natural gas  
166 storage facility.

167 (14)~~(13)~~ "Natural gas storage reservoir" means a pool or  
168 field from which gas or oil has previously been produced and  
169 which is suitable for or capable of being made suitable for the  
170 injection, storage, and recovery of gas, as identified in a  
171 permit application submitted to the department under s.  
172 377.2407.

173 (15)~~(14)~~ "New field well" means an oil or gas well  
174 completed after July 1, 1997, in a new field as designated by  
175 the Department of Environmental Protection.

176 (16)~~(15)~~ "Oil" means crude petroleum oil and other  
177 hydrocarbons, regardless of gravity, which are produced at the  
178 well in liquid form by ordinary production methods, and which  
179 are not the result of condensation of gas after it leaves the  
180 reservoir.

181 (17)~~(16)~~ "Oil and gas" has the same meaning as the term  
182 "oil or gas."



183        (18)~~(17)~~ "Oil and gas administrator" means the State  
184 Geologist.

185        (19)~~(18)~~ "Operator" means the entity who:

186        (a) Has the right to drill and to produce a well; or

187        (b) As part of a natural gas storage facility, injects, or  
188 is engaged in the work of preparing to inject, gas into a  
189 natural gas storage reservoir; or stores gas in, or removes gas  
190 from, a natural gas storage reservoir.

191        (20)~~(19)~~ "Owner" means the person who has the right to  
192 drill into and to produce from any pool and to appropriate the  
193 production for the person or for the person and another, or  
194 others.

195        (21)~~(20)~~ "Person" means a natural person, corporation,  
196 association, partnership, receiver, trustee, guardian, executor,  
197 administrator, fiduciary, or representative of any kind.

198        (22)~~(21)~~ "Pool" means an underground reservoir containing  
199 or appearing to contain a common accumulation of oil or gas or  
200 both. Each zone of a general structure which is completely  
201 separated from any other zone on the structure is considered a  
202 separate pool as used herein.

203        (23)~~(22)~~ "Producer" means the owner or operator of a well  
204 or wells capable of producing oil or gas, or both.

205        (24)~~(23)~~ "Product" means a commodity made from oil or gas  
206 and includes refined crude oil, crude tops, topped crude,  
207 processed crude petroleum, residue from crude petroleum,  
208 cracking stock, uncracked fuel oil, fuel oil, treated crude oil,

209 residuum, gas oil, casinghead gasoline, natural gas gasoline,  
 210 naphtha, distillate, condensate, gasoline, waste oil, kerosene,  
 211 benzine, wash oil, blended gasoline, lubricating oil, blends or  
 212 mixtures of oil with one or more liquid products or byproducts  
 213 derived from oil or gas, and blends or mixtures of two or more  
 214 liquid products or byproducts derived from oil or gas, whether  
 215 hereinabove enumerated or not.

216 (25)~~(24)~~ "Reasonable market demand" means the amount of  
 217 oil reasonably needed for current consumption, together with a  
 218 reasonable amount of oil for storage and working stocks.

219 (26)~~(25)~~ "Reservoir protective area" means the area  
 220 extending up to and including 2,000 feet surrounding a natural  
 221 gas storage reservoir.

222 (27)~~(26)~~ "Shut-in bottom hole pressure" means the pressure  
 223 at the bottom of a well when all valves are closed and no oil or  
 224 gas has been allowed to escape for at least 24 hours.

225 (28)~~(27)~~ "Shut-in well" means an oil or gas well that has  
 226 been taken out of service for economic reasons or mechanical  
 227 repairs.

228 (29)~~(28)~~ "State" means the State of Florida.

229 (30)~~(29)~~ "Temporarily abandoned well" means a permitted  
 230 well or wellbore that has been abandoned by plugging in a manner  
 231 that allows reentry and redevelopment in accordance with oil or  
 232 gas rules of the Department of Environmental Protection.

233 (31)~~(30)~~ "Tender" means a permit or certificate of  
 234 clearance for the transportation or the delivery of oil, gas, or

235 products, approved and issued or registered under the authority  
 236 of the division.

237 (32)~~(31)~~ "Waste," in addition to its ordinary meaning,  
 238 means "physical waste" as that term is generally understood in  
 239 the oil and gas industry. The term "waste" includes:

240 (a) The inefficient, excessive, or improper use or  
 241 dissipation of reservoir energy; and the locating, spacing,  
 242 drilling, equipping, operating, or producing of any oil or gas  
 243 well or wells in a manner that results, or tends to result, in  
 244 reducing the quantity of oil or gas ultimately to be stored or  
 245 recovered from any pool in this state.

246 (b) The inefficient storing of oil; and the locating,  
 247 spacing, drilling, equipping, operating, or producing of any oil  
 248 or gas well or wells in a manner that causes, or tends to cause,  
 249 unnecessary or excessive surface loss or destruction of oil or  
 250 gas.

251 (c) The producing of oil or gas in a manner that causes  
 252 unnecessary water channeling or coning.

253 (d) The operation of any oil well or wells with an  
 254 inefficient gas-oil ratio.

255 (e) The drowning with water of any stratum or part thereof  
 256 capable of producing oil or gas.

257 (f) The underground waste, however caused and whether or  
 258 not defined.

259 (g) The creation of unnecessary fire hazards.

260 (h) The escape into the open air, from a well producing

261 both oil and gas, of gas in excess of the amount that is  
 262 necessary in the efficient drilling or operation of the well.

263 (i) The use of gas for the manufacture of carbon black.

264 (j) Permitting gas produced from a gas well to escape into  
 265 the air.

266 (k) The abuse of the correlative rights and opportunities  
 267 of each owner of oil and gas in a common reservoir due to  
 268 nonuniform, disproportionate, and unratable withdrawals, causing  
 269 undue drainage between tracts of land.

270 (33)~~(32)~~ "Well site" means the general area around a well,  
 271 which area has been disturbed from its natural or existing  
 272 condition, as well as the drilling or production pad, mud and  
 273 water circulation pits, and other operation areas necessary to  
 274 drill for or produce oil or gas, or to inject gas into and  
 275 recover gas from a natural gas storage facility.

276 Section 3. Subsection (2) of section 377.22, Florida  
 277 Statutes, is amended to read:

278 377.22 Rules and orders.—

279 (2) The department shall issue orders and adopt rules  
 280 pursuant to ss. 120.536 and 120.54 to implement and enforce ~~the~~  
 281 ~~provisions of~~ this chapter. Such rules and orders shall ensure  
 282 that all precautions are taken to prevent the spillage of oil or  
 283 any other pollutant in all phases of the drilling for, and  
 284 extracting of, oil, gas, or other petroleum products, including  
 285 high-pressure well stimulations, or during the injection of gas  
 286 into and recovery of gas from a natural gas storage reservoir.

287 The department shall revise such rules from time to time as  
288 necessary for the proper administration and enforcement of this  
289 chapter. Rules adopted and orders issued in accordance with this  
290 section are for, but not limited to, the following purposes:

291 (a) To require the drilling, casing, and plugging of wells  
292 to be done in such a manner as to prevent the pollution of the  
293 fresh, salt, or brackish waters or the lands of the state and to  
294 protect the integrity of natural gas storage reservoirs.

295 (b) To prevent the alteration of the sheet flow of water  
296 in any area.

297 (c) To require that appropriate safety equipment be  
298 installed to minimize the possibility of an escape of oil or  
299 other petroleum products in the event of accident, human error,  
300 or a natural disaster during drilling, casing, or plugging of  
301 any well and during extraction operations.

302 (d) To require the drilling, casing, and plugging of wells  
303 to be done in such a manner as to prevent the escape of oil or  
304 other petroleum products from one stratum to another.

305 (e) To prevent the intrusion of water into an oil or gas  
306 stratum from a separate stratum, except as provided by rules of  
307 the division relating to the injection of water for proper  
308 reservoir conservation and brine disposal.

309 (f) To require a reasonable bond, or other form of  
310 security acceptable to the department, conditioned upon properly  
311 drilling, casing, producing, and operating each well, and  
312 properly plugging ~~the performance of the duty to plug properly~~

313 each dry and abandoned well and the full and complete  
 314 restoration by the applicant of the area over which geophysical  
 315 exploration, drilling, or production is conducted to the similar  
 316 contour and general condition in existence before ~~prior to~~ such  
 317 operation.

318 (g) To require and carry out a reasonable program of  
 319 monitoring and inspecting ~~or inspection of~~ all drilling  
 320 operations, high-pressure well stimulations, producing wells, ~~or~~  
 321 injecting wells, and well sites, including regular inspections  
 322 by division personnel. Inspections will be required during the  
 323 testing of blowout preventers, during the pressure testing of  
 324 the casing and casing shoe, and during the integrity testing of  
 325 the cement plugs in plugging and abandonment operations.

326 (h) To require the making of reports showing the location  
 327 of all oil and gas wells; the making and filing of logs; the  
 328 taking and filing of directional surveys; the filing of  
 329 electrical, sonic, radioactive, and mechanical logs of oil and  
 330 gas wells; if taken, the saving of cutting and cores, the cuts  
 331 of which shall be given to the Bureau of Geology; and the making  
 332 of reports with respect to drilling and production records.  
 333 However, such information, or any part thereof, at the request  
 334 of the operator, shall be exempt from ~~the provisions of~~ s.  
 335 119.07(1) and held confidential by the division for ~~a period of~~  
 336 1 year after the completion of a well.

337 (i) To prevent wells from being drilled, operated, or  
 338 produced in such a manner as to cause injury to neighboring

339 leases, property, or natural gas storage reservoirs.

340 (j) To prevent the drowning by water of any stratum, or  
 341 part thereof, capable of producing oil or gas in paying  
 342 quantities and to prevent the premature and irregular  
 343 encroachment of water which reduces, or tends to reduce, the  
 344 total ultimate recovery of oil or gas from any pool.

345 (k) To require the operation of wells with efficient gas-  
 346 oil ratio, and to fix such ratios.

347 (l) To prevent "blowouts," "caving," and "seepage," in the  
 348 sense that conditions indicated by such terms are generally  
 349 understood in the oil and gas business.

350 (m) To prevent fires.

351 (n) To identify the ownership of all oil or gas wells,  
 352 producing leases, refineries, tanks, plants, structures, and  
 353 storage and transportation equipment and facilities.

354 (o) To regulate the "shooting," perforating, ~~and~~ chemical  
 355 treatment, and high-pressure stimulations of wells.

356 (p) To regulate secondary recovery methods, including the  
 357 introduction of gas, air, water, or other substance into  
 358 producing formations.

359 (q) To regulate gas cycling operations.

360 (r) To regulate the storage and recovery of gas injected  
 361 into natural gas storage facilities.

362 (s) If necessary for the prevention of waste, as herein  
 363 defined, to determine, limit, and prorate the production of oil  
 364 or gas, or both, from any pool or field in the state.

365 (t) To require, either generally or in or from particular  
366 areas, certificates of clearance or tenders in connection with  
367 the transportation or delivery of oil or gas, or any product.

368 (u) To regulate the spacing of wells and to establish  
369 drilling units.

370 (v) To prevent, so far as is practicable, reasonably  
371 avoidable drainage from each developed unit which is not  
372 equalized by counterdrainage.

373 (w) To require that geophysical operations requiring a  
374 permit be conducted in a manner which will minimize the impact  
375 on hydrology and biota of the area, especially environmentally  
376 sensitive lands and coastal areas.

377 (x) To regulate aboveground crude oil storage tanks in a  
378 manner which will protect the water resources of the state.

379 (y) To act in a receivership capacity for fractional  
380 mineral interests for which the owners are unknown or unlocated  
381 and to administratively designate the operator as the lessee.

382 (z) To evaluate the history of past adjudicated violations  
383 committed by permit applicants or the applicants' affiliated  
384 entities of any substantive and material rule or law pertaining  
385 to the regulation of oil or gas.

386 Section 4. Subsections (6) through (9) of section 377.24,  
387 Florida Statutes, are renumbered as subsections (5) through (8),  
388 respectively, present subsections (1), (2), (4), and (5) are  
389 amended, and a new subsection (9) is added to that section, to  
390 read:



391 377.24 Notice of intention to drill well; permits;  
 392 abandoned wells and dry holes.—

393 (1) Before drilling a well in search of oil or gas, before  
 394 performing a high-pressure well stimulation, or before storing  
 395 gas in or recovering gas from a natural gas storage reservoir,  
 396 the person who desires to drill for, store, or recover gas, ~~or~~  
 397 drill for oil or gas, or perform a high-pressure well  
 398 stimulation shall notify the division upon such form as it may  
 399 prescribe and shall pay a reasonable fee set by rule of the  
 400 department not to exceed the actual cost of processing and  
 401 inspecting for each well or reservoir. The drilling of any well,  
 402 the performance of any high-pressure well stimulation, and the  
 403 storing and recovering of gas are prohibited until such notice  
 404 is given, the fee is paid, and a ~~the~~ permit is granted. A permit  
 405 may authorize a single activity or multiple activities.

406 (2) An application for the drilling of a well in search of  
 407 oil or gas, for the performance of a high-pressure well  
 408 stimulation, or for the storing of gas in and recovering of gas  
 409 from a natural gas storage reservoir, in this state must include  
 410 the address of the residence of the applicant, or applicants,  
 411 which must be the address of each person involved in accordance  
 412 with the records of the Division of Water Resource Management  
 413 until such address is changed on the records of the division  
 414 after written request.

415 (4) Application for permission to drill or abandon any  
 416 well or perform a high-pressure well stimulation may be denied

417 by the division for only just and lawful cause.

418 ~~(5) No permit to drill a gas or oil well shall be granted~~  
 419 ~~within the corporate limits of any municipality, unless the~~  
 420 ~~governing authority of the municipality shall have first duly~~  
 421 ~~approved the application for such permit by resolution.~~

422 (9) The department may not approve a permit to authorize a  
 423 high-pressure well stimulation until rules for high-pressure  
 424 well stimulation are adopted.

425 Section 5. Subsections (5) and (6) are added to section  
 426 377.241, Florida Statutes, to read:

427 377.241 Criteria for issuance of permits.—The division, in  
 428 the exercise of its authority to issue permits as hereinafter  
 429 provided, shall give consideration to and be guided by the  
 430 following criteria:

431 (5) For high-pressure well stimulations, whether the high-  
 432 pressure well stimulation as proposed is designed to ensure  
 433 that:

434 (a) The groundwater through which the well will be or has  
 435 been drilled is not contaminated by the high-pressure well  
 436 stimulation; and

437 (b) The high-pressure well stimulation is consistent with  
 438 the public policy of this state as specified in s. 377.06.

439 (6) As a basis for permit denial or imposition of specific  
 440 permit conditions, including increased bonding up to five times  
 441 the applicable limits and increased monitoring, the history of  
 442 past adjudicated violations committed by the applicant or an

443 affiliated entity of the applicant of any substantive and  
444 material rule or law pertaining to the regulation of oil or gas,  
445 including violations that occurred outside the state.

446 Section 6. Section 377.242, Florida Statutes, is amended  
447 to read:

448 377.242 Permits for drilling or exploring and extracting  
449 through well holes or by other means.—The department is vested  
450 with the power and authority:

451 (1)(a) To issue permits for the performance of a high-  
452 pressure well stimulation or the drilling for, exploring for, or  
453 production of oil, gas, or other petroleum products ~~that~~ ~~which~~  
454 are to be extracted from below the surface of the land,  
455 including submerged land, only through the well hole drilled for  
456 oil, gas, and other petroleum products.

457 1. A ~~Ne~~ structure intended for the drilling for, or  
458 production of, oil, gas, or other petroleum products may not be  
459 permitted or constructed on any submerged land within any bay or  
460 estuary.

461 2. A ~~Ne~~ structure intended for the drilling for, or  
462 production of, oil, gas, or other petroleum products may not be  
463 permitted or constructed within 1 mile seaward of the coastline  
464 of the state.

465 3. A ~~Ne~~ structure intended for the drilling for, or  
466 production of, oil, gas, or other petroleum products may not be  
467 permitted or constructed within 1 mile of the seaward boundary  
468 of any state, local, or federal park or aquatic or wildlife

469 preserve or on the surface of a freshwater lake, river, or  
470 stream.

471 4. A ~~Ne~~ structure intended for the drilling for, or  
472 production of, oil, gas, or other petroleum products may not be  
473 permitted or constructed within 1 mile inland from the shoreline  
474 of the Gulf of Mexico, the Atlantic Ocean, or any bay or estuary  
475 or within 1 mile of any freshwater lake, river, or stream unless  
476 the department is satisfied that the natural resources of such  
477 bodies of water and shore areas of the state will be adequately  
478 protected in the event of accident or blowout.

479 5. Without exception, after July 1, 1989, a ~~ne~~ structure  
480 intended for the drilling for, or production of, oil, gas, or  
481 other petroleum products may not be permitted or constructed  
482 south of 26°00'00" north latitude off Florida's west coast and  
483 south of 27°00'00" north latitude off Florida's east coast,  
484 within the boundaries of Florida's territorial seas as defined  
485 in 43 U.S.C. s. 1301. After July 31, 1990, a ~~ne~~ structure  
486 intended for the drilling for, or production of, oil, gas, or  
487 other petroleum products may not be permitted or constructed  
488 north of 26°00'00" north latitude off Florida's west coast to  
489 the western boundary of the state bordering Alabama as set forth  
490 in s. 1, Art. II of the State Constitution, or located north of  
491 27°00'00" north latitude off Florida's east coast to the  
492 northern boundary of the state bordering Georgia as set forth in  
493 s. 1, Art. II of the State Constitution, within the boundaries  
494 of Florida's territorial seas as defined in 43 U.S.C. s. 1301.

495 (b) Subparagraphs (a)1. and 4. do not apply to permitting  
 496 or construction of structures intended for the drilling for, or  
 497 production of, oil, gas, or other petroleum products pursuant to  
 498 an oil, gas, or mineral lease of such lands by the state under  
 499 which lease any valid drilling permits are in effect on the  
 500 effective date of this act. In the event that such permits  
 501 contain conditions or stipulations, such conditions and  
 502 stipulations shall govern and supersede subparagraphs (a)1. and  
 503 4.

504 (c) The prohibitions of subparagraphs (a)1.-4. ~~in this~~  
 505 ~~subsection~~ do not include "infield gathering lines," provided no  
 506 other placement is reasonably available and all other required  
 507 permits have been obtained.

508 (2) To issue permits to explore for and extract minerals  
 509 which are subject to extraction from the land by means other  
 510 than through a well hole.

511 (3) To issue permits to establish natural gas storage  
 512 facilities or construct wells for the injection and recovery of  
 513 any natural gas for storage in natural gas storage reservoirs.

514  
 515 Each permit shall contain an agreement by the permitholder that  
 516 the permitholder will not prevent inspection by division  
 517 personnel at any time, including during installation and  
 518 cementing of casing, testing of blowout preventers, pressure  
 519 testing of the casing and casing shoe, and integrity testing of  
 520 the cement plugs in plugging and abandonment operations. The

521 provisions of this section prohibiting permits for drilling or  
 522 exploring for oil in coastal waters do not apply to any leases  
 523 entered into before June 7, 1991.

524 Section 7. Subsection (1) of section 377.2425, Florida  
 525 Statutes, is amended to read:

526 377.2425 Manner of providing security for geophysical  
 527 exploration, drilling, and production.-

528 (1) Before ~~Prior to~~ granting a permit for conducting ~~to~~  
 529 ~~conduct~~ geophysical operations; drilling of exploratory,  
 530 injection, or production wells; producing oil and gas from a  
 531 wellhead; performing a high-pressure well stimulation; or  
 532 transporting oil and gas through a field-gathering system, the  
 533 department shall require the applicant or operator to provide  
 534 surety that these operations will be conducted in a safe and  
 535 environmentally compatible manner.

536 (a) The applicant for a drilling, production, high-  
 537 pressure well stimulation, or injection well permit or a  
 538 geophysical permit may provide the following types of surety to  
 539 the department for this purpose:

540 1. A deposit of cash or other securities made payable to  
 541 the Minerals Trust Fund. Such cash or securities so deposited  
 542 shall be held at interest by the Chief Financial Officer to  
 543 satisfy safety and environmental performance provisions of this  
 544 chapter. The interest shall be credited to the Minerals Trust  
 545 Fund. Such cash or other securities shall be released by the  
 546 Chief Financial Officer upon request of the applicant and

547 certification by the department that all safety and  
548 environmental performance provisions established by the  
549 department for permitted activities have been fulfilled.

550 2. A bond of a surety company authorized to do business in  
551 the state in an amount as provided by rule.

552 3. A surety in the form of an irrevocable letter of credit  
553 in an amount as provided by rule guaranteed by an acceptable  
554 financial institution.

555 (b) An applicant for a drilling, production, high-pressure  
556 well stimulation, or injection well permit, or a permittee who  
557 intends to continue participating in long-term production  
558 activities of such wells, has the option to provide surety to  
559 the department by paying an annual fee to the Minerals Trust  
560 Fund. For an applicant or permittee choosing this option the  
561 following shall apply:

562 1. For the first year, or part of a year, of a drilling,  
563 production, or injection well permit, or change of operator, the  
564 fee is \$4,000 per permitted well.

565 2. For each subsequent year, or part of a year, the fee is  
566 \$1,500 per permitted well.

567 3. The maximum fee that an applicant or permittee may be  
568 required to pay into the trust fund is \$30,000 per calendar  
569 year, regardless of the number of permits applied for or in  
570 effect.

571 4. The fees set forth in subparagraphs 1., 2., and 3.  
572 shall be reviewed by the department on a biennial basis and

573 | adjusted for the cost of inflation. The department shall  
 574 | establish by rule a suitable index for implementing such fee  
 575 | revisions.

576 | (c) An applicant for a drilling or operating permit for  
 577 | operations planned in coastal waters that by their nature  
 578 | warrant greater surety shall provide surety only in accordance  
 579 | with paragraph (a), or similar proof of financial responsibility  
 580 | other than as provided in paragraph (b). For all such  
 581 | applications, including applications pending at the effective  
 582 | date of this act and notwithstanding ~~the provisions of~~ paragraph  
 583 | (b), the Governor and Cabinet in their capacity as the  
 584 | Administration Commission, at the recommendation of the  
 585 | department ~~of Environmental Protection~~, shall set a reasonable  
 586 | amount of surety required under this subsection. The surety  
 587 | amount shall be based on the projected cleanup costs and natural  
 588 | resources damages resulting from a maximum oil spill and adverse  
 589 | hydrographic and atmospheric conditions that would tend to  
 590 | transport the oil into environmentally sensitive areas, as  
 591 | determined by the department ~~of Environmental Protection~~.

592 | Section 8. Section 377.2436, Florida Statutes, is created  
 593 | to read:

594 | 377.2436 Study on high-pressure well stimulation.—

595 | (1) The department shall conduct a study on high-pressure  
 596 | well stimulation. The study shall:

597 | (a) Evaluate the underlying geologic features present in  
 598 | the counties where oil wells have been permitted and analyze the



599 potential impact that high-pressure well stimulation and  
600 wellbore construction may have on the underlying geologic  
601 features.

602 (b) Evaluate the potential hazards and risks that high-  
603 pressure well stimulation poses to surface water or groundwater  
604 resources. The study shall assess the potential impacts of high-  
605 pressure well stimulation on drinking water resources and  
606 identify the main factors affecting the severity and frequency  
607 of impacts and shall analyze the potential for the use or reuse  
608 of recycled water in well stimulation fluids while meeting  
609 appropriate water quality standards.

610 (c) Review and evaluate the potential for groundwater  
611 contamination from conducting high-pressure well stimulation  
612 under wells that have been previously abandoned and plugged and  
613 identify a setback radius from previously plugged and abandoned  
614 wells that could be impacted by high-pressure well stimulation.

615 (d) Review and evaluate the ultimate disposition of well  
616 stimulation fluids after use in well stimulation processes.

617 (2) The department shall continue conventional oil and gas  
618 business operations during the performance of the study. There  
619 shall not be a moratorium on the evaluation and issuance of  
620 permits for conventional drilling, exploration, conventional  
621 completions, or conventional workovers during the performance of  
622 the study.

623 (3) The study is subject to independent scientific peer  
624 review.

625           (4) The findings of the study shall be submitted to the  
 626 Governor, the President of the Senate, and the Speaker of the  
 627 House of Representatives by June 30, 2017, and shall be  
 628 prominently posted on the department website.

629           Section 9. Paragraph (a) of subsection (1) of section  
 630 377.37, Florida Statutes, is amended to read:

631           377.37 Penalties.—

632           (1)(a) A ~~Any~~ person who violates any provision of this  
 633 chapter law or any rule, regulation, or order of the division  
 634 made under this chapter or who violates the terms of any permit  
 635 to drill for or produce oil, gas, or other petroleum products  
 636 referred to in s. 377.242(1) or to store gas in a natural gas  
 637 storage facility, or any lessee, permitholder, or operator of  
 638 equipment or facilities used in the exploration for, drilling  
 639 for, or production of oil, gas, or other petroleum products, or  
 640 storage of gas in a natural gas storage facility, who refuses  
 641 inspection by the division as provided in this chapter, is  
 642 liable to the state for any damage caused to the air, waters, or  
 643 property, including animal, plant, or aquatic life, of the state  
 644 and for reasonable costs and expenses of the state in tracing  
 645 the source of the discharge, in controlling and abating the  
 646 source and the pollutants, and in restoring the air, waters, and  
 647 property, including animal, plant, and aquatic life, of the  
 648 state. Furthermore, such person, lessee, permitholder, or  
 649 operator is subject to the judicial imposition of a civil  
 650 penalty ~~in an amount~~ of not more than \$25,000 ~~\$10,000~~ for each

651 offense. However, the court may receive evidence in mitigation.  
652 Each day during any portion of which such violation occurs  
653 constitutes a separate offense. This paragraph does not ~~Nothing~~  
654 ~~herein shall~~ give the department the right to bring an action on  
655 behalf of a any private person.

656 Section 10. Section 377.45, Florida Statutes, is created  
657 to read:

658 377.45 High-pressure well stimulation chemical disclosure  
659 registry.—

660 (1)(a) The department shall designate the national  
661 chemical disclosure registry, known as FracFocus, developed by  
662 the Ground Water Protection Council and the Interstate Oil and  
663 Gas Compact Commission, as the state's registry for chemical  
664 disclosure for all wells on which high-pressure well  
665 stimulations are performed. The department shall provide a link  
666 to FracFocus through the department's website.

667 (b) In addition to providing such information to the  
668 department as part of the permitting process, a service  
669 provider, vendor, or well owner or operator shall report, by  
670 department rule, to the department, at a minimum, the following  
671 information:

672 1. The name of the service provider, vendor, or owner or  
673 operator.

674 2. The date of completion of the high-pressure well  
675 stimulation.

676 3. The county in which the well is located.

- 677        4. The API number for the well.
- 678        5. The well name and number.
- 679        6. The longitude and latitude of the wellhead.
- 680        7. The total vertical depth of the well.
- 681        8. The total volume of water used in the high-pressure  
 682 well stimulation.
- 683        9. Each chemical ingredient that is subject to 29 C.F.R.  
 684 s. 1910.1200(g)(2) and the ingredient concentration in the high-  
 685 pressure well stimulation fluid by mass for each well on which a  
 686 high-pressure well stimulation is performed.
- 687        10. The trade or common name and the CAS registry number  
 688 for each chemical ingredient.
- 689        (c) The department shall report to FracFocus all  
 690 information received pursuant to paragraph (b), excluding any  
 691 information subject to chapter 688.
- 692        (d) If the chemical disclosure registry cannot accept and  
 693 make publicly available any information specified in this  
 694 section, the department shall post the information on the  
 695 department's website, excluding any information subject to  
 696 chapter 688.
- 697        (2) A service provider, vendor, or well owner or operator  
 698 shall:
- 699        (a) Report the information required under subsection (1)  
 700 to the department within 60 days after the initiation of the  
 701 high-pressure well stimulation for each well on which such high-  
 702 pressure well stimulation is performed.

703           (b) Notify the department if any chemical ingredient not  
 704 previously reported is intentionally included and used for the  
 705 purpose of performing a high-pressure well stimulation.

706           (3) This section does not apply to an ingredient that:

707           (a) Is not intentionally added to the high-pressure well  
 708 stimulation; or

709           (b) Occurs incidentally or is otherwise unintentionally  
 710 present in a high-pressure well stimulation.

711           (4) The department shall adopt rules to administer this  
 712 section.

713           Section 11. Section 377.07, Florida Statutes, is amended  
 714 to read:

715           377.07 Division of Water Resource Management; powers,  
 716 duties, and authority.—The Division of Water Resource Management  
 717 of the Department of Environmental Protection is ~~hereby~~ vested  
 718 with power, authority, and duty to administer, carry out, and  
 719 enforce ~~the provisions of this part law as directed in s.~~  
 720 ~~370.02(3).~~

721           Section 12. Section 377.10, Florida Statutes, is amended  
 722 to read:

723           377.10 Certain persons not to be employed by division.—A  
 724 ~~No~~ person in the employ of, or holding any official connection  
 725 or position with any person, firm, partnership, corporation, or  
 726 association of any kind, engaged in the business of buying or  
 727 selling mineral leases, drilling wells in the search of oil or  
 728 gas, producing, transporting, refining, or distributing oil or

729 gas may not ~~shall~~ hold any position under, or be employed by,  
 730 the Division of Water Resource Management in the prosecution of  
 731 its duties under this part law.

732 Section 13. Subsection (1) of section 377.243, Florida  
 733 Statutes, is amended to read:

734 377.243 Conditions for granting permits for extraction  
 735 through well holes.-

736 (1) Before ~~Prior to~~ the application to the Division of  
 737 Water Resource Management for the permit to drill for oil, gas,  
 738 and related products referred to in s. 377.242(1), the applicant  
 739 must own a valid deed, or other muniment of title, or lease  
 740 granting the ~~said~~ applicant the privilege to explore for oil,  
 741 gas, or related mineral products to be extracted only through  
 742 the well hole on the land or lands included in the application.  
 743 However, unallocated interests may be unitized according to s.  
 744 377.27.

745 Section 14. Subsection (1) of section 377.244, Florida  
 746 Statutes, is amended to read:

747 377.244 Conditions for granting permits for surface  
 748 exploratory and extraction operations.-

749 (1) Exploration for and extraction of minerals under ~~and~~  
 750 ~~by virtue of~~ the authority of a grant of oil, gas, or mineral  
 751 rights, or which, subsequent to such grant, may ~~be interpreted~~  
 752 ~~to~~ include the right to explore for and extract minerals which  
 753 are subject to extraction from the land by means other than  
 754 through a well hole, that is by means of surface exploratory and

755 extraction operations such as sifting of the sands, dragline,  
 756 open pit mining, or other type of surface operation, which would  
 757 include movement of sands, dirt, rock, or minerals, shall be  
 758 exercised only pursuant to a permit issued by the Division of  
 759 Water Resource Management upon the applicant's compliance  
 760 ~~applicant complying~~ with the following conditions:

761 (a) The applicant must own a valid deed, or other muniment  
 762 of title, or lease granting the applicant the right to explore  
 763 for and extract oil, gas, and other minerals from the said  
 764 lands.

765 (b) The applicant shall post a good and sufficient surety  
 766 bond with the division in such amount as the division determines  
 767 ~~may determine~~ is adequate to afford full and complete protection  
 768 for the owner of the surface rights of the lands described in  
 769 the application, conditioned upon the full and complete  
 770 restoration, by the applicant, of the area over which the  
 771 exploratory and extraction operations are conducted to the same  
 772 condition and contour in existence before ~~prior to~~ such  
 773 operations.

774 Section 15. For the 2016-2017 fiscal year, the sum of \$1  
 775 million in nonrecurring funds is appropriated from the General  
 776 Revenue Fund to the Department of Environmental Protection to  
 777 perform a high-pressure well stimulation study pursuant to s.  
 778 377.2436, Florida Statutes.

779 Section 16. This act shall take effect July 1, 2016.







# Florida Department of Agriculture and Consumer Services

House Agriculture and Natural Resources Subcommittee

Rep. Tom Goodson, Chair

November 3, 2015

Proposed Committee Bill Overview

Adam H. Putnam, Commissioner of Agriculture

# Mission

## Safeguard the Public and Promote Agriculture

### Goals

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



# Department Overview

6 Programs and 16 Services

## **Office of the Commissioner and Administration:**

- Agricultural Law Enforcement
- Agricultural Water Policy Coordination
- Executive Direction and Support Services
- Division of Licensing
- Office of Energy

## **Forest and Resource Protection:**

- Florida Forest Service

## **Agricultural Management Information Center:**

- Office of Agricultural Technology Services

## **Food Safety and Quality:**

- Food Safety Inspection Enforcement

## **Consumer Protection:**

- Agricultural Environmental Services
- Consumer Services

## **Agricultural**

## **Economic Development:**

- Fruit and Vegetables Inspection and Enforcement
- Agricultural Products Marketing
- Aquaculture
- Animal Pest and Disease Control
- Plant Pest and Disease Control
- Food, Nutrition and Wellness



# Agricultural Environmental Services

- Pest Control Operators Certification—eliminate fee
- Limited Certification for Urban Landscape Commercial Fertilizer Application License—eliminate late fee
- Use of funds deposited in the Pest Control Trust Fund

**Mission:** To protect agriculture, the public, and the environment from unsafe and unethical products and services used for agricultural production or for managing pests



# Food, Nutrition & Wellness

- Definitions:
  - School Breakfast Program
  - Summer Nutrition Program
  - Universal School Breakfast
- Clarify FDACS has authority to implement SNAP/WIC farmers' market program
- Clarifying the statutes and updating terms
- No added requirements to schools with feeding programs

**Mission:** To ensure that every child in Florida has access to a nutritious meal that is full of fresh fruits and vegetables and is educated on the importance of making healthy choices through outreach, partnerships, education, and oversight to ensure quality and compliance, training and technical assistance.



# Food Safety

- Add definitions:
  - Dietary Supplement
  - Vehicle
- Adopt federal code regarding dietary supplements
- Adopt federal code regarding misbranding/labeling to include allergens

**Mission:** To assure the public of a safe, wholesome and properly represented food supply



# Marketing & Development

- Fresh From Florida brand clarifications
- Florida Agricultural Promotional Campaign Advisory Council updates
- Updating Florida Agricultural Center and Horse Park statutes
- Creating efficiencies in the Agricultural Dealer's License process
- Creating efficiencies in the Grain Dealers reporting requirements

**Mission:** To drive awareness and sales of Florida's commodities by developing and expanding marketing opportunities for Fresh from Florida products and to ensure fair trade practices to reduce financial risk to the state's agribusiness community.



# Miscellaneous

- Florida Forest Service: repeal 589.26 F.S., Dedication of State Park Lands for Public Use
- Plant Industry: update language regarding the removal of noxious, infested or infected plants or plant products
- Provide the department with the specific authority to enforce the trademarks and copyrights it obtains on behalf of the state
- Office of Agriculture Technology: formalize the department's IT office, removing the duties from the Division of Administration
- Make clear the state has jurisdiction over any feed or feedstuff regulation





# Soil & Water Conservation Districts

- Propose to modernize F.S. Ch. 582 which has not been significantly changed since boiler plate language was adopted across the country after the Dust Bowl era of the 1930s
- Moves the statutes from an emphasis on soil erosion to that of soil and water BMPs
- Removes the entire concept of watershed improvement districts, a taxing authority





# Questions?



Florida Department of Agriculture  
and Consumer Services

Adam H. Putnam, Commissioner

Grace Lovett, Office of Legislative Affairs



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## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** PCB ANRS 16-01 Department of Agriculture & Consumer Services  
**SPONSOR(S):** Agriculture & Natural Resources Subcommittee  
**TIED BILLS:**                   **IDEN./SIM. BILLS:**

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

### SUMMARY ANALYSIS

The bill addresses a number of issues relating to the powers and duties of the Department of Agriculture and Consumer Services (DACS), including, but not limited to:

- Changing the procedure to obtain and renew a pest control operator's certificate and eliminating a late charge.
- Changing the deadline to submit a recertification application for the limited certification for urban landscape commercial fertilizer application and eliminating the \$50 per month late charge for late recertification.
- Adding dietary supplements to the list of possibly adulterated foods.
- Adding allergen information labeling requirements to the list of possibly misbranded foods.
- Authorizing DACS to sponsor "events" (not just breakfasts, luncheons, or dinners) to promote agriculture and agricultural business products.
- Authorizing DACS to acquire, secure, enjoy, use, enforce, and dispose of all patents, trademarks, copyrights, and other rights or similar interests.
- Authorizing DACS to use money deposited in the Pest Control Trust Fund to carry out any of the powers of the Division of Agricultural Environmental Services.
- Removing the requirement for DACS to provide staff and meeting space for the Florida Agricultural Center and Horse Park Authority.
- Specifying the intent of the "Fresh From Florida" marketing brand.
- Amending membership requirements for the Florida Agricultural Promotional Campaign Advisory Council.
- Removing the requirement that DACS notify a property owner that a plant infested or infected with plant pests or noxious weeds has been found on their property if the plant is infested with pests or noxious weeds that are determined to be widely established in Florida; thus, not requiring the owner to destroy or remove the plant.
- Modifying the reporting period for fertilizer tonnage sales from monthly to quarterly and changing the reporting requirement from 30 days following the reporting period instead of 15 days.
- Preempting regulatory authority for commercial feed and feedstuff to DACS.
- Changing the powers and duties of the Soil and Water Conservation Districts to reflect the district practices.
- Eliminating Watershed Improvement Districts.
- Eliminating the Florida Forest Service's power to dedicate its land for use by the public as a park.
- Adding definitions for "school breakfast program," "summer nutrition program," and "universal school breakfast program" to specify that they are the programs authorized by federal law.
- Authorizing DACS to implement the Farmer's Market Nutrition Program for Supplemental Nutrition Program for Women, Children and Infants.
- Creating a duty to provide to a "severe need school" the highest rate of reimbursement to which it is entitled under the federal school breakfast program.
- Renaming the "Florida Farm Fresh Schools Program" the "Florida Farm to School Program."
- Eliminating the requirement that each grain dealer report monthly to DACS the value of grain it received from producers for which the producers have not received payment.

The bill appears to have an indeterminate fiscal impact on state and local governments, and the private sector.

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

STORAGE NAME: pcb01.ANRS

DATE: 10/28/2015

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Pest Control Operator's Certification Application Fee**

###### Present Situation

Each location of each licensed pest control business must have a certified operator in charge that is registered with the Department of Agriculture and Consumer Services (DACS).<sup>1</sup> This person must be certified for the particular category of pest control engaged in at that location and may be in charge of one or more categories if they are certified in those categories.<sup>2</sup> A certified operator may not be in charge of the performance of pest control activities at more than one business location for a licensee except during a temporary absence.<sup>3</sup> To become a certified operator, an individual must pass an examination and satisfy specified education and experience requirements.<sup>4</sup>

Each person seeking to be a certified operator must pay a \$300 application fee to take the exam.<sup>5</sup> Once that person passes the exam, he or she must then receive an original certificate before engaging in pest control work.<sup>6</sup> To obtain the original certificate, the individual must pay a \$150 issuance fee.<sup>7</sup>

###### Effect of Proposed Changes

The bill amends s. 482.111, F.S., to eliminate the issuance fee and associated application deadlines. Instead, DACS must issue a pest control operator's certificate to an individual who completes an application for examination, pays the examination fee, and passes the examination. DACS indicated that its online capabilities eliminated the need to have an extra step to issue an original certificate and will speed up the certification process.<sup>8</sup>

##### **Limited Certification for Urban Landscape Commercial Fertilizer Application**

###### Present Situation

The Department of Environmental Protection and the Institute of Food and Agricultural Sciences must provide training and testing programs in urban landscape best management practices.<sup>9</sup> Persons who receive a certificate demonstrating successful completion of such training may apply to DACS to receive limited certification for urban landscape commercial fertilizer application.<sup>10</sup> Individuals who hold such certification are not subject to additional local testing.<sup>11</sup>

Section 482.1562, F.S., sets forth the application requirements to receive the limited certification. Beginning January 1, 2014, all persons applying commercial fertilizer to an urban landscape must be certified by DACS.<sup>12</sup> Individuals who hold the limited certification must apply for recertification at least 90 days before the expiration of the certification. If the certification application is late, the applicant must pay a \$50 per month late charge in addition to the renewal fee.

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<sup>1</sup> Section 482.111(6)(a), F.S.

<sup>2</sup> Id.

<sup>3</sup> Id.

<sup>4</sup> Section 482.132, F.S.

<sup>5</sup> Section 482.141, F.S.; rule 5E-14.123(4), F.A.C.

<sup>6</sup> Section 482.111, F.S.

<sup>7</sup> Id.; rule 5E-14.132(3), F.A.C.

<sup>8</sup> DACS FISCAL Memo (August 18, 2015).

<sup>9</sup> Section 403.9338(1), F.S.

<sup>10</sup> Section 403.9338(2), F.S.

<sup>11</sup> Id.

<sup>12</sup> Section 482.1562, F.S.

### Effect of the Proposed Changes

The bill amends s. 482.1562(5), F.S., to change the deadline to submit a recertification application from 90 days before expiration of the current certification to every four years from the date of issuance. The bill eliminates the \$50 per month charge for late recertification. The bill also grants a grace period not to exceed 30 days after expiration for which a person can obtain recertification without having to go through the initial application process.

## **Florida Food Safety Act**

### Present Situation

The Florida Food Safety Act (act) is designed to:

- Promote public welfare by protecting the consuming public from injury by product use and the purchasing public from injury by merchandizing deceit, flowing from intrastate commerce in food;
- Provide uniform legislation so far as practical with federal regulations; and
- Promote uniform administration and enforcement of federal and state food safety laws.<sup>13</sup>

Under the act, individuals may not sell food that is adulterated, adulterate food, or receive food in commerce that is adulterated.<sup>14</sup> These prohibitions are similar to federal law.<sup>15</sup> The following are examples when food is deemed adulterated:

- Food that bears or contains any poisonous or deleterious substance which may render it injurious to health;
- Food that bears or contains any added poisonous or added deleterious substance; a food additive; or a color additive, which is unsafe;
- Food that is a raw agricultural commodity and bears or contains a pesticide chemical which is unsafe;
- Food that is or bears or contains any food additive which is unsafe;
- Food that consists in whole or in part of a diseased, contaminated, filthy, putrid, or decomposed substance;
- Food that has been produced, prepared, packed, or held under insanitary conditions;
- Food that is the product of a diseased animal or an animal which has died other than by slaughter, or that has been fed upon the uncooked offal from a slaughterhouse;
- Food whose container is composed, in whole or in part, of any poisonous or deleterious substance;
- Food where any valuable constituent has been in whole or in part omitted or abstracted therefrom;
- Food where any substance has been substituted wholly or in part therefor;
- Food where damage or inferiority has been concealed in any manner; and
- Food where any substance has been added thereto or mixed or packed therewith so as to increase its bulk or weight, or reduce its quality or strength or make it appear better or of greater value than it is.<sup>16</sup>

Also under the act, individuals may not sell food that is misbranded, misbrand food, or receive food in commerce that is misbranded.<sup>17</sup> These prohibitions are similar to federal law.<sup>18</sup> The following are examples of food that is deemed misbranded:

- The food's label is false or misleading in any particular;
- The food is offered for sale under the name of another food;

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<sup>13</sup> Section 500.02, F.S.

<sup>14</sup> Section 500.04, F.S.

<sup>15</sup> 21 U.S.C. 331.

<sup>16</sup> Section 500.10, F.S.

<sup>17</sup> Section 500.04, F.S.

<sup>18</sup> 21 U.S.C. 331.

- The food is an imitation of another food, unless its label bears, in type of uniform size and prominence, the words "imitation" and, immediately thereafter, the name of the food imitated;
- The food's container is so made, formed, or filled as to be misleading;
- If any word, statement, or other information required by or under authority of the Food Safety Act to appear on the label or labeling is not prominently placed thereon with conspicuousness;
- Unless the food's label bears:
  - The common or usual name of the food, if any; and
  - If it is fabricated from two or more ingredients, the common or usual name of each ingredient and, if the food purports to be a beverage containing vegetable or fruit juice, a statement placed with appropriate prominence on the information panel specifying the total percentage of such vegetable or fruit juice contained in the food;
- Food that bears or contains any artificial flavoring, artificial coloring, or chemical preservative, unless it bears labeling stating that fact;
- Food that is offered for sale and its label or labeling does not comply with federal law pertaining to nutrition information;
- Food that is offered for sale and its label or labeling does not comply with the requirements of federal law pertaining to nutritional content claims and health claims; or
- Bottled water and its label bears a corporate name, brand name, or trademark containing the word "spring," "springs," "well," "artesian well," "natural," or any derivative of those words without stating on the label the source of the water in typeface at least equal to the size of the typeface of the corporate name, brand name, or trademark, if the source of the water is different from the source indicated in the corporate name, brand name, or trademark.<sup>19</sup>

DACS may inspect food that may be adulterated or misbranded;<sup>20</sup> seize food that is adulterated or misbranded;<sup>21</sup> suspend permits of those who sell food that is adulterated or misbranded, adulterate or misbrand food, or receive food in commerce that is adulterated or misbranded;<sup>22</sup> and impose a fine for adulterated or misbranded food.<sup>23</sup>

#### Effect of Proposed Changes

The bill amends s. 500.03, F.S., to add a definition for the term "vehicle" in order to recognize the various modes of transportation that service food establishments, and to be consistent with the federal rules implementing the Food Safety Modernization Act. Currently, the Florida Food Safety Act does not define the term.

The bill amends s. 500.03, F.S., to add "dietary supplements" as defined in 21 U.S.C. 321(ff)(1) and (2) to the definition of "food." Under 21 U.S.C. 321(ff)(1) and (2), the term "dietary supplement" means:

- A product (other than tobacco) intended to supplement the diet that bears or contains one or more of the following dietary ingredients:
  - A vitamin;
  - A mineral;
  - An herb or other botanical;
  - An amino acid;
  - A dietary substance for use by man to supplement the diet by increasing the total dietary intake; or
  - A concentrate, metabolite, constituent, extract, or combination of any ingredient described above;
- A product that:
  - Is intended for ingestion

<sup>19</sup> Section 500.11, F.S.

<sup>20</sup> Section 500.147(1), F.S.

<sup>21</sup> Section 500.173, F.S.

<sup>22</sup> Section 500.12(4), F.S.

<sup>23</sup> Section 500.121, F.S.

- Is not represented for use as a conventional food or as a sole item of a meal or the diet; and
- Is labeled as a dietary supplement.

The bill amends s. 500.10, F.S., to include foods transported under certain conditions to be adulterated. The change also adds dietary supplements in the list of foods that could possibly be adulterated and sets forth criteria to determine if it is adulterated. The criteria to identify a dietary supplement as adulterated are similar to the criteria in the federal Food Safety Act.<sup>24</sup>

The bill amends s. 500.11, F.S., to include failing to properly label food with allergen information on the list of foods that could possibly be misbranded by referencing federal law. Under federal law, food that contains allergens must be labeled if the food is not a raw agricultural commodity and it is, or it contains an ingredient that bears or contains, a major food allergen. The label must:

- Include the word “contains,” followed by the name of the food source from which the major food allergen is derived, is printed immediately after or is adjacent to the list of ingredients (in a type size no smaller than the type size used in the list of ingredients); or
- Include the common or usual name of the major food allergen in the list of ingredients is followed in parentheses by the name of the food source from which the major food allergen is derived, except that the name of the food source is not required when:
  - The common or usual name of the ingredient uses the name of the food source from which the major food allergen is derived; or
  - The name of the food source from which the major food allergen is derived appears elsewhere in the ingredient list.<sup>25</sup>

## **Powers and Organization of the Department of Agriculture and Consumer Services**

### Present Situation

The Legislature granted DACS various powers to regulate and promote Florida agriculture, protect the environment, safeguard consumers, and ensure the safety of food. Many of these powers and the organization of DACS can be found in chapter 570, F.S., such as:

- DACS may stimulate, encourage, and foster the production and consumption of agricultural and agricultural business products by sponsoring trade breakfasts, luncheons, and dinners that will assist in the promotion and marketing of Florida’s agricultural and agricultural business products to the consuming public.<sup>26</sup>
- DACS’ Division of Administration possesses the power to provide electronic data processing and management information systems support for DACS.<sup>27</sup>
- DACS must deposit fees and fines collected under the Structural Pest Control Act into the Pest Control Trust Fund.<sup>28</sup> DACS may use this money to carry out the provisions of the Structural Pest Control Act, educate the pest control industry, or support research or education in pest control.<sup>29</sup>
- DACS’s Division of Marketing must enforce the provisions of ss. 604.15 through 604.34, F.S., (regulating dealers in agricultural products) and ss. 534.47 through 534.53, F.S. (regulating livestock markets).<sup>30</sup>

DACS does not possess the authority to secure or hold a trademark. Any agency created by statute does not have the inherent power to acquire, secure, enjoy, use, enforce, or dispose of patents,

<sup>24</sup> 21 U.S.C. 342(f).

<sup>25</sup> 21 U.S.C. 343(w).

<sup>26</sup> Section 570.07(20), F.S.

<sup>27</sup> Section 570.30(5), F.S.

<sup>28</sup> Section 482.2401, F.S.

<sup>29</sup> Id.; s. 570.441, F.S.

<sup>30</sup> Section 570.53, F.S.



trademarks, copyrights, or other rights or similar interests.<sup>31</sup> Rather, such powers must be granted by the Legislature, either expressly or by necessary implication.<sup>32</sup>

### Effect of Proposed Changes

The bill grants DACS certain powers and moves other powers to different divisions within DACS.

These changes include:

- Amending paragraph (20)(c) of s. 570.07, F.S., to grant DACS the power to sponsor “events,” in addition to breakfasts, luncheons, and dinners, to stimulate, encourage, and foster the production and consumption of agricultural and agricultural business products;
- Adding subsection (44) to s. 570.07, F.S., to grant DACS the power to acquire, secure, enjoy, use, enforce, and dispose of all patents, trademarks, and copyrights and other rights or similar interests (currently the Department of State may hold the patent, trademark and copyright and the Attorney General’s Office may enforce those rights). According to DACS, as the “Fresh From Florida” trademark becomes more popular, it needs the authority to take immediate action to stop its misuse;<sup>33</sup>
- Creating s. 570.68, F.S., to create an Office of Agriculture Technology Services to provide electronic data processing and management information systems support for DACS;
- Amending s. 570.441, F.S., to authorize DACS to use money deposited in the Pest Control Trust Fund to carry out any of the powers of the Division of Agricultural Environmental Services, not just the Structural Pest Control Act (ch. 482, F.S.). The powers of the Division of Agricultural and Environmental Services include state mosquito control program coordination; agricultural pesticide registration, testing, and regulation; pest control regulation; and feed, seed, and fertilizer production inspection and testing. This authorization expires June 30, 2019; and
- Amending s. 570.53, F.S., to remove the power to enforce the provisions of ss. 604.15 through 604.34, F.S., (regulating dealers in agricultural products) and ss. 534.47 through 534.53, F.S., (regulating livestock markets) from the Division of Marketing and Development. The bill grants the power to regulate dealers in agricultural products to the Division of Consumer Services. According to DACS, moving the program to the Division of Consumer Services, which already handles a number of similar programs, will create efficiencies by streamlining department processes.<sup>34</sup>

## **Florida Agricultural Center and Horse Park**

### Present Situation

In 1994, the Florida Legislature created the Florida Agricultural Center and Horse Park (Florida Horse Park) in order to provide Florida with a unique tourist experience for visitors and residents.<sup>35</sup> The Florida Horse Park is situated on 500 acres located south of Ocala. Numerous events occur at the Florida Horse Park throughout the year including rodeos, dressage, polo, obstacle challenges, dog shows, and trail rides.<sup>36</sup> A twenty-one member group appointed by the Commissioner of Agriculture called the Florida Agricultural Center and Horse Park Authority (Authority) oversees the management of the park.<sup>37</sup> DACS is currently required to provide administrative and staff support services for the

<sup>31</sup> *Florida Virtual School v. K12, Inc.*, 148 So.3d 97, 99 (Fla. 2014).

<sup>32</sup> *Id.* The following entities may hold trademarks: Department of Health, s. 20.43(8), F.S., Department of Management Services, s. 282.702(5), F.S., Department of State, s. 286.021, F.S., Department of Transportation, s. 334.049, F.S., Water Management Districts, s. 373.608, F.S., Department of Law Enforcement, s. 943.146, F.S., and State Universities, s. 1004.23, F.S.

<sup>33</sup> DACS Agency Analysis of 2015 PCB ANRS 15-01, p. 6 (January 19, 2015).

<sup>34</sup> *Id.*

<sup>35</sup> Section 570.681, F.S.

<sup>36</sup> Florida Agricultural Center and Horse Park Authority, *Welcome to the Florida Horse Park*, <http://flhorsepark.com/> (last visited September 15, 2015).

<sup>37</sup> Section 570.685, F.S.

meetings of the Authority, and to provide suitable space in the offices of the department for the meetings and the storage of records of the Authority.<sup>38</sup>

#### Effect of Proposed Changes

The bill amends s. 570.685, F.S., to authorize DACS to provide administrative and staff support services for the meetings of the Authority, and to provide suitable space in the offices at DACS for the meetings and the storage of records of the Authority.

### **Florida Agricultural Promotion Campaign**

#### Present Situation

DACS possesses the power to establish and coordinate the Florida Agricultural Promotional Campaign (FAPC), also known as the "Fresh From Florida" campaign.<sup>39</sup> This campaign is intended to increase consumer awareness and expand the market for Florida's agricultural products.<sup>40</sup> Florida agricultural producers may voluntarily join FAPC. FAPC members may use the "Fresh From Florida" logos, participate in industry trade shows at a reduced cost, receive point-of-purchase materials, have access to trade leads, receive the "Fresh From Florida" magazine and industry newsletter, tie in to supermarket promotions that feature Florida products in newspaper and store circular advertisements, and receive a farm sign customized with the member's business name.<sup>41</sup>

Currently, DACS must designate an employee to serve on the Advertising Interagency Coordinating Council.<sup>42</sup> This council no longer exists.

In addition, DACS is authorized to adopt rules related to the FAPC, including rules pertaining to negotiating and entering into contracts with advertising agencies.<sup>43</sup>

Lastly, the Legislature created the 15-member Florida Agricultural Promotional Campaign Advisory Council to provide advice to DACS.<sup>44</sup> The membership must include:

- Six members representing agricultural producers, shippers, or packers;
- Three members representing agricultural retailers;
- Two members representing agricultural associations;
- One member representing a wholesaler of agricultural products;
- One member representing consumers; and
- One member representing DACS.<sup>45</sup>

#### Effect of Proposed Changes

The bill amends ss. 571.24, 571.27, and 571.28, F.S., regarding the FAPC to:

- Specify that the intent of the marketing brand is to serve as a marketing program to promote Florida agriculture commodities, value added products, and agricultural related businesses and is not a food safety or traceability program. The purpose of this provision is to avoid the misconception that the brand indicates that food has been inspected by DACS for safety;
- Eliminate the requirement for DACS to designate an employee to be a member of the Advertising Interagency Coordinating Council, since this council no longer exists;

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<sup>38</sup> Section 570.685(4)(b), F.S.

<sup>39</sup> Section 571.24, F.S.

<sup>40</sup> Section 571.22, F.S.

<sup>41</sup> Florida Department of Agricultural and Consumer Services, *Join "Fresh From Florida,"*

<http://www.freshfromflorida.com/Divisions-Offices/Marketing-and-Development/Agriculture-Industry/Join-Fresh-From-Florida>. (last visited September 15, 2015).

<sup>42</sup> Section 571.24(8), F.S.

<sup>43</sup> Section 571.27, F.S.

<sup>44</sup> Section 571.28(1), F.S.

<sup>45</sup> *Id.*

- Eliminate the power to adopt rules related to negotiating and entering into contracts with advertising agencies. Such rules are already adopted by the Department of Management Services in ch. 60A-1, F.A.C.; and
- Change the membership requirements for the Florida Agricultural Promotional Campaign Advisory Council. The bill strikes the requirement that there be a specific number of council members from each industry category while maintaining the overall number of members and staggered terms.

## Reporting Requirements for Agricultural Fertilizer

### Present Situation

Any person who guarantees a fertilizer and distributes fertilizer (licensee) in Florida must pay an inspection of \$1 per ton of fertilizer sold in the state.<sup>46</sup> DACS uses this fee to fund the fertilizer inspection program.<sup>47</sup> Before distributing a fertilizer, each licensee must apply to DACS, report monthly the tonnage of fertilizer sold, and pay the inspection fee.<sup>48</sup> The monthly reports and inspection fees must be made before the 15th day of the month succeeding the month covered by the report.<sup>49</sup> Any licensee who fails to report all fertilizer sold each month is subject to a penalty of 10 percent or \$25,<sup>50</sup> whichever is greater, and must secure with DACS a surety bond or certificate of deposit.<sup>51</sup> Further, failure to make an accurate statement of tonnage or to pay the inspection fee may constitute cause for revocation of the license and also for cancellation of all registrations on file for the licensee.<sup>52</sup>

### Effect of Proposed Changes

The bill amends paragraph 576.041(2)(b), F.S., to change the fertilizer reporting requirement from monthly to quarterly; authorize use of DACS's website to report tonnage of fertilizer sold; and change the reporting deadline from 15 days to 30 days following the close of the reporting period.

DACS indicated these changes are necessary to take full advantage of its web based reporting tool and align Florida's tonnage reporting requirement with other states.<sup>53</sup> Further, DACS indicated these changes will decrease the potential penalties that licensees could incur for late reporting and increase compliance.<sup>54</sup>

## Commercial Feed and Feedstuff Preemption

### Present Situation

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

- Unmixed whole seeds, including physically altered entire unmixed seeds, when such seeds are not chemically changed or are not adulterated;
- Unground hay, straw, stover, silage, cobs, husks, and hulls, and individual chemical compounds or substances, when such commodities, compounds, or substances are unmixed with other substances and are not adulterated; and
- Feed mixed by the consumer for the consumer's own use made entirely or in part from products raised on the consumer's farm.<sup>55</sup>

<sup>46</sup> Section 576.041(1), F.S.; rule 5E-1.012(1), F.A.C.

<sup>47</sup> Id.

<sup>48</sup> Section 576.041(2), F.S.

<sup>49</sup> Section 576.041(2)(b), F.S.

<sup>50</sup> Section 576.041(4), F.S.

<sup>51</sup> Rule 5E-1.012(4), F.A.C.

<sup>52</sup> Section 576.041(5), F.S.

<sup>53</sup> DACS, *2016 Proposals—Agricultural Environmental Services (Additional Item) Short title: Modify Chapter 576.041 F.S. modification of required tonnage reporting period*, p. 1 (October 1, 2015).

<sup>54</sup> Id.

<sup>55</sup> Section 580.031(2), F.S.

"Feedstuff" is edible materials, other than commercial feed, that are distributed for animal consumption and that contribute energy or nutrients, or both, to an animal diet.<sup>56</sup>

DACS regulates commercial feed and feedstuff for quality, safety, labeling requirements, and standards.<sup>57</sup> A distributor of commercial feed must obtain a master registration and place on file a copy of the label for each brand of feed to be distributed in Florida.<sup>58</sup>

#### Effect of Proposed Changes

The bill creates s. 580.0365, F.S., to preempt the regulatory authority for commercial feed and feedstuff to DACS.

### **Removal and Destruction of Infested and Infested Plants**

#### Present Situation

The Division of Plant Industry must order the removal and destruction of any plant or plant product infested or infected with plant pests or noxious weeds.<sup>59</sup> A "plant pest" is any living stage of any insects, mites, nematodes, slugs, snails, protozoa, or other invertebrate animals, bacteria, fungi, other parasitic plants or their reproductive parts, or viruses, or any organisms similar to or allied with any of the foregoing, including any genetically engineered organisms, or any infectious substances which can directly or indirectly injure or cause disease or damage in any plants or plant parts or any processed, manufactured, or other plant products.<sup>60</sup> A "noxious weed" is any living stage, including, but not limited to, seeds and productive parts, of a parasitic or other plant of a kind, or subdivision of a kind, which may be a serious agricultural threat in Florida or have a negative impact on the plant species protected under s. 581.185, F.S. (endangered, threatened, or commercially exploited native plants).<sup>61</sup> The Division of Plant Industry may take these actions in order to stop the introduction and dissemination of plants or pests that may threaten Florida's agriculture industry.

The Director of the Division of Plant Industry must provide notice to the owner or the person having charge of the premises when DACS finds an infested or infected plant or plant product.<sup>62</sup> Within 10 days of the notice, the owner or person in charge must treat as directed or remove and destroy the infested or infected plant or plant product.<sup>63</sup> If the owner or person in charge does not, DACS may treat as directed or remove and destroy the infested or infected plant or plant product.<sup>64</sup>

#### Effect of Proposed Changes

The bill amends s. 581.181, F.S., to create an exception from the destruction requirement for plant or plant products infested with pest or noxious weeds that are widely established in Florida and not regulated by DACS. According to DACS, there are times when it is unnecessary for the owner to treat or destroy the plant, but DACS lacks the discretion not to give notice to the owner that they must destroy any infested plants or plant products.<sup>65</sup>

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<sup>56</sup> Section 580.031(10), F.S.

<sup>57</sup> Section 580.036, F.S.

<sup>58</sup> Section 580.051, F.S.

<sup>59</sup> Section 581.181(1), F.S.

<sup>60</sup> Section 581.011(26), F.S.

<sup>61</sup> Section 581.011(19), F.S.

<sup>62</sup> Section 581.181(1), F.S.

<sup>63</sup> Id.

<sup>64</sup> Section 581.181(2), F.S.

<sup>65</sup> DACS Agency Analysis of 2015 PCB ANRS 15-01, p. 9 (January 19, 2015).

## Soil and Water Conservation Districts

### Present Situation

Faced with the problems of the Dust Bowl in the 1930's, the federal government passed the Standard State Soil Conservation Districts Law (model law) in 1936.<sup>66</sup> Drafters of the model law intended to decentralize federal soil erosion control efforts in a form of cooperative federalism that relied on individual districts to achieve national and local objectives.<sup>67</sup> The model law proposed that state legislatures delegate broad power to the districts through the use of both "project" and "regulatory" power.<sup>68</sup> Project power granted local districts the power to carry out conservation measures with the assistance of federal funding and technical oversight.<sup>69</sup> Regulatory powers granted districts the power to adopt local land use regulations.<sup>70</sup> By 1947, all of the states enacted soil and water conservation district programs.<sup>71</sup> These programs favored the project powers of the soil and water conservation districts, but were reluctant to grant regulatory powers.<sup>72</sup> Thus, soil and water conservation districts often failed to utilize the full extent of their regulatory powers.<sup>73</sup>

Florida adopted much of the model law in 1937.<sup>74</sup> The Legislature recognized farms, forests, and grazing lands as among Florida's basic assets in need of protection from improper land use techniques that cause erosion.<sup>75</sup> It found erosion reduced the productivity of land, harmed water resources, injured wildlife, caused flooding, and destroyed infrastructure.<sup>76</sup> Thus, corrective measures were required to prevent erosion and conserve, develop, and utilize soil and water resources.<sup>77</sup> The Legislature intended for soil and water conservation districts (SWCDs) to control and prevent soil erosion; prevent floodwater and sediment damage; further conservation, development, and utilization of soil and water resources; preserve natural resources; control floods; prevent impairment of dams and reservoirs; assist in maintaining the navigability of rivers and harbors; preserve wildlife; protect the tax base; protect public lands; and protect and promote the health, safety and general welfare of the people of this state.<sup>78</sup> Currently, there are 58 SWCDs in Florida.<sup>79</sup>

DACS oversees the SWCDs.<sup>80</sup> DACS may:

- Receive gifts, appropriations, materials, equipment, lands, and facilities and to manage, operate, and disburse them for the use and benefit of the SWCDs;<sup>81</sup>
- Audit the SWCDs;<sup>82</sup>
- Seeks assistance in implementing its powers;<sup>83</sup>
- Offer assistance to the SWCD supervisors;<sup>84</sup>
- Keep the SWCDs aware of the activities of the other SWCDs and facilitate the interchange of advice and experience;<sup>85</sup>

<sup>66</sup> Jess Phelps, *A Vision Of The New Deal Unfulfilled? Soil and Water Conservation Districts and Land Use Regulation*, 11 Drake J. Agric. L. 353, 354 & 357 (2006).

<sup>67</sup> Id. at 355 & 360

<sup>68</sup> Id. at 355.

<sup>69</sup> Id. at 355 & 361.

<sup>70</sup> Id. at 362.

<sup>71</sup> Id. at 364.

<sup>72</sup> Id.

<sup>73</sup> Id. at 368.

<sup>74</sup> Chapter 18144, 1937, Laws of Florida.

<sup>75</sup> Section 582.02, F.S.

<sup>76</sup> Section 582.03, F.S.

<sup>77</sup> Section 582.04, F.S.

<sup>78</sup> Section 582.05, F.S.

<sup>79</sup> Email from DACS dated September 15, 2015.

<sup>80</sup> Section 582.055(1), F.S.

<sup>81</sup> Section 582.055(2), F.S.

<sup>82</sup> Section 582.055(3), F.S.

<sup>83</sup> Section 582.055(4), F.S.

<sup>84</sup> Section 582.08(1), F.S.

<sup>85</sup> Section 582.08(2), F.S.

- Coordinate the programs of the several SWCDs;<sup>86</sup>
- Secure cooperation of other governmental entities in the work of the SWCDs;<sup>87</sup>
- Disseminate information throughout the state about the activities and programs of the SWCDs;<sup>88</sup> and
- Employ an administrative officer and other staff to oversee the SWCDs.<sup>89</sup>

Within DACS, the Soil and Water Conservation Council (council) consists of seven members who have previously been involved in soil and water conservation and agriculture.<sup>90</sup> The council may:

- Consider and study the entire field relating to its area of responsibility;
- Consider all matters submitted to it by the commissioner or the division directors;
- Submit proposed legislation and rules to the commissioner;
- Advise and consult with the commissioner and the division directors of the department, at their request or upon its own initiative, regarding the promulgation, administration, and enforcement of all laws and rules relating to its area of responsibility; and
- Suggest policies and practices for the conduct of DACS business which shall be duly considered by the commissioner or division directors.<sup>91</sup>

When 10 percent of land owners within a territory propose to form a SWCD, they must file a petition with DACS.<sup>92</sup> DACS must then publish notice of a hearing to consider the desirability and necessity of a SWCD, the appropriate boundaries of a SWCD, and all other relevant questions.<sup>93</sup> If DACS determines that a SWCD is necessary based on the facts presented at the hearing, it must then propose the boundaries of the district,<sup>94</sup> determine if operating the district is administratively practicable and feasible,<sup>95</sup> and hold a referendum of all the land owners in the proposed district whether it is appropriate to form a SWCD.<sup>96</sup> DACS must publish the results of the referendum and may proceed to form the SWCD if a majority of the votes cast are in favor of creating the district.<sup>97</sup> The Department of State must certify the formation of the SWCD and record the certification and application within its records.<sup>98</sup> The SWCD is presumed established upon proof of the certificate filed with the Department of State.<sup>99</sup> After the district is formed, land owners may petition to add or remove territory within a SWCD in the same manner as the petition to form a district.<sup>100</sup>

Each SWCD must have five supervisors.<sup>101</sup> Elections of district supervisors must be held every two years in a manner consistent with general election laws.<sup>102</sup> Supervisors serve four year terms.<sup>103</sup> The supervisors and districts possess the power to:

- Conduct surveys, investigations, and research relating to the character of soil erosion and floodwater and sediment damages and publish its results;

<sup>86</sup> Section 582.08(3), F.S.

<sup>87</sup> Section 582.08(4), F.S.

<sup>88</sup> Section 582.08(5), F.S.

<sup>89</sup> Section 582.09, F.S.

<sup>90</sup> Section 582.06(1), F.S.

<sup>91</sup> Section 582.06(2), F.S.

<sup>92</sup> Section 582.10(1), F.S.

<sup>93</sup> Section 582.11, F.S.

<sup>94</sup> Id.

<sup>95</sup> Section 582.12, F.S.

<sup>96</sup> Id.

<sup>97</sup> Section 582.14, F.S.

<sup>98</sup> Id.

<sup>99</sup> Section 582.17, F.S.

<sup>100</sup> Section 582.16, F.S.

<sup>101</sup> Section 582.19, F.S.

<sup>102</sup> Section 582.18, F.S.

<sup>103</sup> Section 582.19(2), F.S. Two supervisors must serve a two year term when the SWCD is initially formed.

- Conduct projects to demonstrate soil conservation methods, erosion prevention and control methods, works for flood prevention or the conservation, development and utilization of soil and water resources, and the disposal of water;
- Carry out flood prevention and control measures;
- Provide financial aid to carry out erosion control and prevention operations and works for flood prevention;
- Provide financial aid for the conservation, development and utilization, of soil and water resources and the disposal of water within the district's boundaries;
- Acquire real or personal property, maintain such property, receive income from such property, or sell such property to further the goals and duties of the SWCD;
- Construct, improve, operate, and maintain structures;
- Develop a comprehensive plan to conserve soil and water resources, control and prevent erosion, prevent floods, conserve and develop water resources, dispose of water, and control artesian wells;
- Takeover, by purchase, lease, or otherwise, and administer any soil-conservation, erosion-control, erosion-prevention project, or any project for flood-prevention or for the conservation, development and utilization of soil and water resources, and the disposal of water, or act as an agent for the federal government to perform such projects; and
- Perform other administrative duties as necessary to perform its powers.<sup>104</sup>

SWCDs may adopt land use regulations to conserve soil and soil resources, and to prevent and control soil erosion.<sup>105</sup> The supervisors must publish notice of a referendum to adopt such regulations and make copies of such regulations available.<sup>106</sup> The supervisors may not adopt the proposed regulations unless a majority of the voting land owners approve.<sup>107</sup> All owners and occupiers of land within a district must obey adopted land use regulations.<sup>108</sup> A similar referendum must be held to amend, supplement, or repeal such regulations.<sup>109</sup>

SWCDs may enforce their land use regulations in circuit court.<sup>110</sup> The SWCD supervisors must serve on a board of adjustment to hear and consider petitions for relief from land use regulations.<sup>111</sup> The board of adjustment may grant a petition for variance if it determines the petitioner is suffering a great personal difficulty or unnecessary hardship.<sup>112</sup>

Within each SWCD, owners may petition to form a watershed improvement district for the development and execution of plans and projects for works to control and prevent soil erosion, prevent floods, conserve, develop, and utilize soil and water resources, dispose of water, develop fish and wildlife or recreational, preserve and protect land and water resources, and protect and promote the health, safety, and general welfare of the people of this state.<sup>113</sup> The SWCD supervisors must publish notice of and hold a hearing on the practicability and feasibility of the proposed watershed improvement district.<sup>114</sup> If they determine there is a need for a watershed improvement district, the supervisors must define its boundaries.<sup>115</sup> Once approved by DACS, the supervisors must hold a referendum of land owners within the proposed watershed improvement district about whether the operation of the proposed district is administratively practicable and feasible.<sup>116</sup> The supervisors must then consider the

<sup>104</sup> Section 582.20, F.S.

<sup>105</sup> Section 582.21(1), F.S.

<sup>106</sup> Id.

<sup>107</sup> Section 582.21(2), F.S.

<sup>108</sup> Id.

<sup>109</sup> Section 582.21(3), F.S.

<sup>110</sup> Section 582.23, F.S.

<sup>111</sup> Section 582.24, F.S.

<sup>112</sup> Section 582.26, F.S.

<sup>113</sup> Sections 582.331 and 582.34, F.S.

<sup>114</sup> Section 582.35, F.S.

<sup>115</sup> Id.

<sup>116</sup> Section 582.36, F.S.

result of the referendum and may form the watershed improvement district if a majority of the land area voted to create the district.<sup>117</sup> Once the supervisors decide to form the watershed improvement district, they must certify its formation with DACS and furnish the certification to the clerk of courts.<sup>118</sup> Land owners may petition to have the land added, removed, and transferred between watershed improvement districts.<sup>119</sup>

Thirty days after formation of the watershed improvement district, three individuals must be elected to a board of directors.<sup>120</sup> Directors must own land within the district and be nominated by 10 of their fellow land owners.<sup>121</sup> Directors serve three year terms.<sup>122</sup>

Watershed improvement districts may exercise powers under the supervision of the SWCD to:

- Exercise the powers of the SWCD;
- Levy ad valorem taxes for the purposes of the watershed improvement district;
- Acquire land to accomplish the goals of the district;
- Borrow money and issue bonds; and
- Construct, improve, operate, and maintain such structures and works as may be necessary to perform its duties.<sup>123</sup>

Watershed improvement districts may not raise more taxes than necessary to fund their operations and may not exceed three mills.<sup>124</sup> The county property appraisers impose and assess this property tax.<sup>125</sup>

There are currently no watershed improvement districts in Florida.

A SWCD may be discontinued or dissolved if:

- Two-thirds of the lands owners vote in a referendum to discontinue the district;<sup>126</sup>
- The Soil and Water Conservation Council determines that continued operation of the district is not administratively practicable or feasible;<sup>127</sup>
- DACS' inspector general determines that the SWCD failed to comply with financial auditing and reporting requirements;<sup>128</sup> or
- The supervisors of the SWCD adopt a resolution and DACS accepts that that the continued operation of the district is not administratively practicable and feasible.<sup>129</sup>

DACS must publish notice of dissolution in a newspaper of general circulation for two weeks and state that any comments or objections to the proposed certification, or any claims against the assets of the district, must be filed with the department clerk not later than 60 days after the date of last publication.<sup>130</sup>

A watershed improvement district may be discontinued if 25 percent of the land owners file a petition to discontinue the watershed improvement district, a referendum is held, and a majority of the voters vote to discontinue the district.<sup>131</sup>

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<sup>117</sup> Section 582.37, F.S.

<sup>118</sup> Section 582.38, F.S.

<sup>119</sup> Section 582.40, F.S.

<sup>120</sup> Section 582.41(2), F.S.

<sup>121</sup> Section 582.41(1), F.S.

<sup>122</sup> Section 582.41(2), F.S.

<sup>123</sup> Sections 582.43 and 582.46, F.S.

<sup>124</sup> Section 582.44, F.S.

<sup>125</sup> Id.

<sup>126</sup> Section 582.30(2), F.S.

<sup>127</sup> Section 582.30(3)(a), F.S.

<sup>128</sup> Section 582.30(3)(b), F.S.

<sup>129</sup> Section 582.30(3)(c), F.S.

<sup>130</sup> Section 582.30(4), F.S.

<sup>131</sup> Section 582.48, F.S.



### Effect of Proposed Changes

The bill amends several sections of ch. 582, F.S., to eliminate powers and duties not used by SWCDs or powers and duties exercised by other arms of government. Specifically the bill:

- Amends s. 582.01, F.S., to amend the definition of "due notice" to require notification in a newspaper of general circulation seven days in advance of an event, and eliminate the definition of "administrative officer";
- Amends s. 582.02, F.S., to update the legislative policy to emphasize the purpose of SWCDs is to promote the appropriate and efficient use of soil and water resources, protect water quality, prevent floodwater and sediment damage, preserve wildlife, protect public lands, and to provide assistance, guidance, and education to landowners, land occupiers, the agricultural industry, and the general public in implementing land and water resource protection practices;
- Repeals ss. 582.03, 582.04, and 582.05, F.S., to recognize that many of the goals and responsibilities of SWCDs are no longer necessary because they are performed by the Department of Environmental Protection, the water management districts, and DACS;
- Amends s. 582.055, F.S., to update DACS's powers in relation to SWCDs to reflect its current practices, ensure DACS possesses the power to work with SWCD to receive state/federal assistance, grant DACS the power to create and dissolve SWCDs, grant DACS rulemaking powers to implement the chapter, and combine this section with s. 582.08, F.S., which is being repealed;
- Amends s. 582.06, F.S., to grant the Soil and Water Conservation Council the authority to review requests to create or dissolve SWCD and the ability to review and provide a recommendation, at the request of the governor, whether a SWCD supervisor should be removed because of neglect of duty;
- Repeals s. 582.09, F.S., to eliminate the administrative officer of soil and water conservation. According to DACS, the Officer of Agricultural Water Policy performs the administrative officer's duty;<sup>132</sup>
- Amends s. 582.16, F.S., to change the procedure to procedure to change boundary of the district to be the same as forming a district;
- Repeals s. 582.17, F.S., because proof of establishment of a SWCD can be demonstrated by showing compliance with the procedures of ss. 582.10 through 582.15, F.S.;
- Amends s. 582.20, F.S., to change or eliminate the powers of the SWCDs and their supervisors because they are not used by SWCDs or are powers exercised by other arms of government. The SWCDs will now emphasis research relating to soil and water resources, conducting and promoting best management practices, providing agricultural assistance in form of materials and equipment, provide training, and coordinate with other governmental entities to meet its goals and duties;
- Repeals s. 582.21, F.S., to eliminate the SWCDs' ability to adopt land use regulations. Further, municipalities and county largely control land use under their authorities in Chapters 125 and 163, F.S. The Department of Environmental Protection and the water management districts do possess some regulatory authority for erosion control in s. 373.414, F.S.;
- Repeals ss. 582.22, 582.23, 582.24, 582.25, and 582.26, F.S., which set forth what must be in SWCD land use regulations, how SWCD land use regulations are enforced, and the procedure to vary from SWCD land use regulations because SWCDs will no longer have the ability to adopt land use regulations;
- Amends s. 582.29, F.S., to conform to other changes made in the bill; and
- Repeals ss. 582.331, 582.34, 582.35, 582.36, 582.37, 582.38, 582.39, 582.40, 582.41, 582.42, 582.43, 582.44, 582.45, 582.46, 582.47, 582.48, and 582.49, F.S., to eliminate watershed improvement districts. These districts performed many of the same functions as SWCDs, which as discussed above are also performed by other arms of government. Further, SWCDs will no

<sup>132</sup> DACS, *Supporting Information for Proposed Legislative Edits to: Chapter 582 Soil and Water Conservation*, p. 1 (August 19, 2015).

longer be authorized to have sub-entities with the power to levy ad valorem taxes. There are currently no watershed improvement districts in Florida.

## **Parks on Florida Forest Service Land**

### Present Situation

The Florida Forest Service may dedicate its land for use by the public as a park.<sup>133</sup> These lands must be subject to the rules and regulations adopted by DEP's Division of Recreation and Parks.<sup>134</sup>

### Effect of Proposed Changes

The bill repeals s. 589.26, F.S., to eliminate the Florida Forest Service's power to dedicate its land for use by the public as a park. According to DACS, the Florida Forest Service does not have any state parks or manage land for "park purposes."<sup>135</sup>

## **School Nutrition Program**

### Present Situation

The National School Lunch Program (NSLP) is a federally funded program that assists schools and other agencies in providing nutritious meals to children at reasonable prices. In addition to financial assistance, the NSLP provides donated commodity foods to help reduce lunch program costs.

Chapter 595, F.S., authorizes DACS to coordinate with the federal government to use federal and state funding to provide school nutrition programs. The Legislature declared that it is the policy of the state to provide standards for school food and nutrition services and to require each school district to establish and maintain an appropriate school food and nutrition service program consistent with the nutritional needs of students.<sup>136</sup>

Schools must apply through DACS and complete certain requirements<sup>137</sup> prior to the operation of a school nutrition program. Once approved, DACS will reimburse schools for each lunch and breakfast meal served provided they meet established state and federal regulations.

Currently, DACS must make a reasonable effort to ensure that any school designated as a "severe need school" receives the highest rate of reimbursement to which it is entitled under the federal school breakfast program for each breakfast meal served.<sup>138</sup> Further, DACS may advance funds from the school nutrition program's annual appropriation to sponsors in order to implement the school nutrition program.<sup>139</sup> There is no restriction on when or for which program the funds may be advanced.

Each school district must implement a school breakfast program that makes breakfast meals available to all students in each elementary school.<sup>140</sup> School districts must offer universal school breakfast programs (a no-cost program) in schools in which 80 percent or more of the students are eligible for free or reduced-price meals.<sup>141</sup> There is no exception to these requirements.

Each school must, to the maximum extent practicable, make breakfast meals available to students at an alternative site location.<sup>142</sup>

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<sup>133</sup> Section 589.26, F.S.

<sup>134</sup> Id.

<sup>135</sup> DACS Agency Analysis of 2015 PCB ANRS 15-01, p. 9 (January 19, 2015).

<sup>136</sup> Section 595.403, F.S.

<sup>137</sup> Requirements found in s. 595.405, F.S.

<sup>138</sup> Section 595.404(5), F.S.

<sup>139</sup> Section 595.404(12), F.S.

<sup>140</sup> Section 595.405(2), F.S.

<sup>141</sup> Id.

<sup>142</sup> Id.

The Legislature encourages school districts to provide universal free school breakfast meals to all students.<sup>143</sup> The school may approve or disapprove a universal free school breakfast only after receiving public testimony concerning the proposed policy at two or more regular meetings.<sup>144</sup>

Each school district is required to sponsor a summer nutrition program that operates a site either:

- Within 5 miles of at least one elementary school at which 50 percent or more of the students are eligible for free or reduced-price school meals and for the duration of 35 consecutive days; or
- Within 10 miles of each elementary school at which 50 percent or more of the students are eligible for free or reduced-price school meals.

DACS must conduct, supervise, and administer all commodity distribution services related to the school nutrition program that will be carried on using federal or state funds, or funds from any other source, or commodities received and distributed from the United States or any of its agencies.<sup>145</sup> DACS must cooperate fully with the federal government in order to assure it receives the benefit of all federal financial allotments and assistance possible to carry out the school nutrition program.<sup>146</sup>

### Effect of Proposed Changes

The bill includes the following revisions to the School Nutrition Program:

- Amends s. 595.402, F.S., to add definitions for “school breakfast program,” “summer nutrition program,” and “universal school breakfast program” to specify that they are the programs authorized by federal law;
- Changes the term “school district” to “district school board”;
- Amends subsection 595.404(2), F.S., to authorize DACS to implement the Farmer’s Market Nutrition Program (FMNP) for Supplemental Nutrition Program for Women, Children and Infants (SNAP-WIC);<sup>147</sup>
- Amends subsection 595.404(6), F.S., to create a duty to provide to a “severe need school” the highest rate of reimbursement to which it is entitled under the federal school breakfast program for each breakfast meal served. This is consistent with the federal requirement in 7 CFR 220.9. According to DACS, the department currently provides the highest rate of reimbursement to which each severe need school is entitled;<sup>148</sup>
- Amends subsection 595.404(10), F.S., to authorize DACS to adopt rules for the farmer’s market nutrition program;
- Amends subsection 595.404(13), F.S., to specify that funds from the school nutrition program may only be advanced to the sponsors of Summer Food Service Programs. This is consistent with the federal requirement in 7 CFR 225.9. According to DACS, the bill will have no economic or substantive effect on any interest groups or stakeholders, and will remove ambiguities from the statute that could potentially result in misinterpretation and misapplication of the law;<sup>149</sup>
- Creates subsection 595.404(14), F.S., to authorize DACS to collect and publish data from multiple sources on food purchased by sponsors through the Florida Farm to School Program and other school food and nutrition service programs;

<sup>143</sup> Section 595.405(4), F.S.

<sup>144</sup> Id.

<sup>145</sup> Section 595.408(1), F.S.

<sup>146</sup> Section 595.408(2), F.S.

<sup>147</sup> SNAP-WIC provides federal grants to states for supplemental foods, health care referrals, and nutrition education for low-income pregnant, breastfeeding, and non-breastfeeding postpartum women, and to infants and children up to age five who are found to be at nutritional risk. Women, infants (over 4 months old), and children that have been certified to receive WIC program benefits or who are on a waiting list for WIC certification are eligible to participate in the FMNP. State agencies may serve some or all of these categories. A variety of fresh, nutritious, unprepared, locally grown fruits, vegetables and herbs may be purchased with FMNP coupons. State agencies can limit sales to specific foods grown within state borders to encourage FMNP recipients to support the farmers in their own States. United States Department of Agriculture, Farmers’ Market Nutrition Program (FMNP) FMNP Contacts, <http://www.fns.usda.gov/fmnp/fmnp-contacts>. (last visited September 10, 2015).

<sup>148</sup> DACS Agency Analysis of 2015 PCB ANRS 15-01, p. 9 (January 19, 2015).

<sup>149</sup> Id. at 10.

- Creates subsection 595.404(15), F.S., to authorize DACS to enter into agreements with federal or state agencies to coordinate and cooperate in the implementation of nutrition programs;
- Amends s. 595.406, F.S., to change the name of the “Florida Farm Fresh Schools Program” to “Florida Farm to School Program”;
- Creates subsection 595.406(3), F.S., to authorize DACS to recognize sponsors who purchase at least 10 percent of the food they serve from the Florida Farm to School Program;
- Amends s. 595.407, F.S., to specify that each school district must provide a summer nutrition program within 5 miles of at least one school that serves any combination of grades K through 5, not just elementary schools. This provision attempts to close a loophole where some K-8 or K-12 schools claimed they were not elementary schools, and therefore, did not have to comply. According to DACS, interpretation of this statute has varied greatly.<sup>150</sup> Thus, the proposed change may require district school boards to adjust the location or increase the number of summer nutrition program sites they operate.<sup>151</sup> However, these district school boards may seek reimbursement for the program from the state and federal programs;<sup>152</sup>
- Amends paragraph 595.407(2)(a), F.S., to remove the requirement that each school district provide reduced-price school meals during the summer for 35 consecutive days and replace it with the requirement for each school district provide reduced-price school meals during the summer for 35 days between the end of one school year and the beginning of the next. School districts may exclude holidays and weekends;
- Amends s. 595.408, F.S., to change the term “commodity” to “food” to be consistent with federal statutes; and
- Amends s. 595.501, F.S., to remove “school district” from the phrase “any person, sponsor, or school district” because the definition of “sponsor” is inclusive of “school districts.”<sup>153</sup>

## Financial Assurance Requirements for Dealers in Agricultural Products and Grain Dealers

### Present Situation

Any individual or business entity who wishes to be a dealer in agricultural products<sup>154</sup> must receive a license from DACS and deliver a bond or certificate of deposit to DACS in favor of the Commissioner of Agriculture.<sup>155</sup> This financial assurance requirement is essentially a third-party beneficiary contract to protect individuals who are harmed when conducting business with dealers in agricultural products who fail to pay for products.<sup>156</sup>

Individuals claiming to be damaged by an agricultural products dealer by any breach of the conditions of a bond or certificate of deposit assignment or agreement may file a complaint with DACS.<sup>157</sup> DACS must investigate these complaints and determine if a complaint should be filed against the agricultural products dealer in order to seek damages.<sup>158</sup> To file the complaint, the aggrieved party must file three complaint affidavits or notarizations.<sup>159</sup> If the aggrieved party files the complaint by electronic transmission or facsimile, the original affidavits and original notarizations must be filed with DACS by the close of business of the tenth business day following the electronic transmission or facsimile

<sup>150</sup> DACS Agency Analysis of 2015 PCB ANRS 15-01, p. 11 (January 19, 2015).

<sup>151</sup> Id.

<sup>152</sup> Section 595.405(3), F.S.

<sup>153</sup> Section 595.402(5), F.S.

<sup>154</sup> A “dealer in agricultural products” is any person or business entity, whether itinerant or domiciled within this state, engaged in Florida in the business of purchasing, receiving, or soliciting agricultural products from the producer or the producer’s agent or representative for resale or processing for sale; acting as an agent for such producer in the sale of agricultural products for the account of the producer on a net return basis; or acting as a negotiating broker between the producer or the producer’s agent or representative and the buyer. Section 604.15(2), F.S.

<sup>155</sup> Sections 604.17, 604.19, and 604.20, F.S.

<sup>156</sup> *In re Hallmark Builders, Inc.*, 205 B.R. 974, 975 (Bankr. M.D. Fla. 1996).

<sup>157</sup> Section 604.21(1)(a), F.S.

<sup>158</sup> Section 604.21(2), F.S.

<sup>159</sup> Section 604.21(1)(b), F.S.

filing.<sup>160</sup> If the agricultural products dealer fails to respond to the complaint, it waives its point of entry into the proceeding.<sup>161</sup>

Further, each grain dealer<sup>162</sup> doing business in Florida must maintain a liquid security in an amount equal to the value of grain which the grain dealer has received from grain producers and for which the producers have not received payment.<sup>163</sup> Each grain dealer must report to DACS monthly the value of grain it received from producers for which the producers have not received payment.<sup>164</sup> This report must include a statement showing the type and amount of security maintained to cover the grain dealer's liability to producers.<sup>165</sup>

#### Effect of Proposed Changes

The bill amends subsection 604.21(1), F.S., eliminating the requirement that a complainant file three complaint affidavits or notarizations. The bill also eliminates the requirement to file an original complaint with DACS if the complaint is submitted electronically.

Further, the bill amends s. 604.33, F.S., to eliminate the requirement that each grain dealer report monthly to DACS the value of grain it received from producers for which the producers have not received payment. DACS possess the authority to request this information if a complaint is filed or if malpractice is suspected.

#### B. SECTION DIRECTORY:

- Section 1.** Amends s. 482.111, F.S., relating to a pest control operator's certificate.
- Section 2.** Amends s. 482.1562, F.S., relating to limited certification for urban landscape commercial fertilizer application.
- Section 3.** Amends s. 500.03, F.S., defining the term "vehicle."
- Section 4.** Amends s. 500.10, F.S., relating to foods deemed adulterated.
- Section 5.** Amends s. 500.11, F.S., relating to foods deemed misbranded.
- Section 6.** Amends s. 570.07, F.S., relating to the powers and duties of DACS.
- Section 7.** Amends s. 570.30, F.S., relating to the powers and duties of the Division of Administration.
- Section 8.** Amends s. 570.441, F.S., relating to the Pest Control Trust Fund.
- Section 9.** Amends s. 570.53, F.S., relating to the powers of the DACS Division of Marketing and Development.
- Section 10.** Amends s. 570.544, F.S., relating to the duties of the director of the Division of Consumer Services.

<sup>160</sup> Section 604.21(1)(d), F.S.

<sup>161</sup> *Southeast Grove Management, Inc. v. McKiness*, 578 So.2d 883, 886 (Fla. 1st DCA 1991).

<sup>162</sup> A "grain dealer" is any person engaged in this state in: (a) buying, receiving, selling, exchanging, negotiating, or processing for resale, or soliciting the sale, resale, exchange, or transfer of, grain purchased from the producer or the producer's agent or representative or received from the producer to be handled on a net return basis; or (b) receiving grain for storage. Section 604.15(6), F.S.

<sup>163</sup> Section 604.33, F.S.

<sup>164</sup> *Id.*

<sup>165</sup> *Id.*

- Section 11.** Creates s. 570.68, F.S., creating the Office of Agriculture Technology Services.
- Section 12.** Amends s. 570.681, F.S., relating to the Florida Agriculture Center and Horse Park.
- Section 13.** Amends s. 570.685, F.S., relating the Florida Agriculture Center and Horse Park Authority.
- Section 14.** Amends s. 571.24, F.S., relating to the FAPC and the Advertising Interagency Coordinating Council.
- Section 15.** Amends s. 571.27, F.S., removing obsolete provisions relating to the authority of DACS to adopt rules related to negotiating and entering into contracts with advertising agencies.
- Section 16.** Amends s. 571.28, F.S., revising membership requirements for the FAPC Advisory Council.
- Section 17.** Amends s. 576.041, F.S., relating to fertilizer inspection fees and records.
- Section 18.** Creates s. 580.0365, F.S., relating to preemption of regulatory authority over commercial feed and feedstuff.
- Section 19.** Amends s. 581.181, F.S., relating to plants or plant products infested with pest or noxious weeds.
- Section 20.** Amends s. 582.01, F.S., revising definitions.
- Section 21.** Amends s. 582.02, F.S., relating to legislative policy and findings and the purpose of SWCDs.
- Section 22.** Repeals s. 582.03, F.S., pertaining to consequences of soil erosion.
- Section 23.** Repeals s. 582.04, F.S., pertaining to appropriate corrective measures for soil conservation.
- Section 24.** Repeals s. 582.05, F.S., pertaining to legislative policy for conservation.
- Section 25.** Amends s. 582.055, F.S., relating to the powers and duties of the DACS with regard to SWCDs.
- Section 26.** Amends s. 582.06, F.S., relating to the powers and duties of the Soil and Water Conservation Council.
- Section 27.** Repeals s. 582.08, F.S., pertaining to additional powers of DACS in relation to SWCDs.
- Section 28.** Repeals s. 582.09, F.S., pertaining to administrative officer of soil and water conservation.
- Section 29.** Amends s. 582.16, F.S., relating to SWCD boundaries.
- Section 30.** Repeals s. 582.17, F.S., pertaining to the establishment of SWCDs.
- Section 31.** Amends s. 582.20, F.S., relating to powers and duties of the SWCDs and supervisors.
- Section 32.** Repeals s. 582.21, F.S., pertaining to adoption of land use regulations of SWCDs.

- Section 33.** Repeals s. 582.22, F.S., pertaining to SWCD regulations and content.
- Section 34.** Repeals s. 582.23, F.S., pertaining to performance of work under the SWCD regulations.
- Section 35.** Repeals s. 582.24, F.S., pertaining to boards of adjustment for SWCDs.
- Section 36.** Repeals s. 582.25, F.S., pertaining to rules and procedures of the board.
- Section 37.** Repeals s. 582.26, F.S., pertaining to petitions to board to vary from SWCD regulations.
- Section 38.** Amends s. 582.29, F.S., relating to state agencies cooperating with SWCDs.
- Section 39.** Repeals s. 582.331, F.S., pertaining to establishment of watershed improvement districts within SWCDs.
- Section 40.** Repeals s. 582.34, F.S., pertaining to petition for establishment of watershed improvement districts.
- Section 41.** Repeals s. 582.35, F.S., pertaining to notice and hearing on petition to establish watershed improvement districts, determination of need for a watershed improvement district, and boundaries.
- Section 42.** Repeals s. 582.36, F.S., pertaining to determination of feasibility of proposed watershed improvement district and referendum.
- Section 43.** Repeals s. 582.37, F.S., pertaining to consideration of results of referendum on establishing watershed improvement district and declaration of organization of district.
- Section 44.** Repeals s. 582.38, F.S., pertaining to organization of watershed improvement district, certification to clerks of circuit courts, and limitation on tax rate.
- Section 45.** Repeals s. 582.39, F.S., pertaining to establishment of watershed improvement district situated in more than one SWCD.
- Section 46.** Repeals s. 582.40, F.S., pertaining to changes of district boundaries, additions, detachments, transfers of land from one district to another, and change of district name.
- Section 47.** Repeals s. 582.41, F.S., pertaining to the board of directors of the watershed improvement districts.
- Section 48.** Repeals s. 582.42, F.S., pertaining to officers, agents, and employees; surety bonds; annual audits of watershed improvement districts.
- Section 49.** Repeals s. 582.43, F.S., pertaining to the status and general powers of watershed improvement districts.
- Section 50.** Repeals s. 582.44, F.S., pertaining to watershed improvement districts levying taxes.
- Section 51.** Repeals s. 582.45, F.S., pertaining to the fiscal powers of the watershed improvement district's governing board.
- Section 52.** Repeals s. 582.46, F.S., pertaining to additional powers and authorities of watershed improvement districts.

- Section 53.** Repeals s. 582.47, F.S., pertaining to watershed improvement district to coordinating work with flood control districts.
- Section 54.** Repeals s. 582.48, F.S., pertaining to discontinuing watershed improvement district.
- Section 55.** Repeals s. 582.49, F.S., pertaining to discontinuing of soil and water conservation district.
- Section 56.** Repeals s. 589.26, F.S., relating to the authority of the Florida Forest Service to dedicate its land for use by the public as a park.
- Section 57.** Amends s. 595.402, F.S., defining terms relating to the school food and nutrition service program.
- Section 58.** Amends s. 595.404, F.S., relating to DACS's powers for the school food and nutrition service programs.
- Section 59.** Amends s. 595.405, F.S., relating to school food and nutrition program requirements.
- Section 60.** Amends s. 595.406, F.S., to change the name of the "Florida Farm Fresh Schools Program" to "Florida Farm to School Program."
- Section 61.** Amends s. 595.407, F.S., relating to children's summer nutrition program.
- Section 62.** Amends s. 595.408, F.S., to change every instance of the word "commodity" to "food" to be consistent with the federal statutes.
- Section 63.** Amends s. 595.501, F.S., relating to penalties under ch. 595, F.S.
- Section 64.** Amends s. 595.601, F.S., correcting a cross-reference.
- Section 65.** Amends s. 604.21, F.S., revising affidavit requirements for agricultural products dealers.
- Section 66.** Amends s. 604.33, F.S., relating to grain dealer report.
- Section 67.** Provides an effective date of July 1, 2016.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

### **A. FISCAL IMPACT ON STATE GOVERNMENT:**

#### **1. Revenues:**

##### Pest Control Operator's Certification Application Fee

The bill appears to have an insignificant negative fiscal impact on state government by eliminating the issuance fee to apply for a pest control operator's original certificate. DACS indicated that it expects the impact to be \$67,250 per year.

##### Fee for Limited Certification for Urban Landscape Commercial Fertilizer Application

The bill appears to have an insignificant negative fiscal impact on state government revenues by eliminating a late fee for limited certification for urban landscape commercial fertilizer application. DACS indicated that it expects the impact to be minimal.



2. Expenditures:

Office of Agricultural Technology Services

The bill may have a negative fiscal impact associated with the creation of s. 570.68, F.S. This provision creates the Office of Agricultural Technology Services, under the supervision of a senior management class employee. Currently, the Chief Information Officer within the department is classified as a retiree that has been reemployed and not eligible to participate in a state administered retirement plan. The state does contribute a set amount to the state retirement account for employees in these ineligible classes, despite their inability to participate. The current retirement contribution rate for an ineligible employee in a regular class is 4.31 percent, while the contribution rate for an ineligible employee in a senior management class is 17.07 percent. Changing the department's current Chief Information Officer to a senior management class would result in an additional state retirement contribution of \$12,402 from the salary and benefits appropriation category.

If the current Chief Information Officer were to leave and the position was filled at the same annual rate with an employee that was eligible to participate in state retirement, then the retirement contribution for this regular class employee would be 7.26 percent. In this scenario, changing the position to a senior management class would increase the contribution rate to 21.43 percent and result in \$13,722 in additional state retirement contributions.

In either scenario, DACS indicated it would manage these additional costs within existing salary and benefit appropriations.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None

2. Expenditures:

The bill amends s. 595.407, F.S., to specify that each school district must provide a summer nutrition program within 5 miles of at least one school that serves any combination of grades K through 5, not just an elementary school. This provision attempts to close a loophole where some K-8 or K-12 schools claimed they were not elementary schools, and therefore, did not have to comply. According to DACS, interpretation of this statute has varied greatly. Thus, the proposed change may require district school boards to adjust the location or increase the number of summer nutrition program sites they operate. However, these district school boards may seek reimbursement for the program from the state and federal programs.<sup>166</sup>

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill amends s. 482.1562, F.S., to eliminate a late fee for limited certification for urban landscape commercial fertilizer application. This may have a positive impact on those who apply commercial fertilizer by eliminating a fee.

The bill amends s. 581.181, F.S., to create an exception from the destruction requirement for plant or plant products infested with pest or noxious weeds that are widely established in Florida and not regulated by DACS. This may have a positive impact on those who own plant or plant products infested with pest or noxious weeds by not requiring the owners to destroy them when they are widely established in Florida and not regulated by DACS.

The bill amends subsection 604.21(1), F.S., to eliminate the necessity for a complainant to submit three complaint affidavits or notarizations when an individual is damaged by an agricultural products dealer.

<sup>166</sup> See s. 595.405(3), F.S.

This may have a positive impact on those individuals by eliminating the extra filings and speeding up the complaint process.

The bill amends s. 604.33, F.S., to eliminate certain licensing requirements for dealers in agricultural products and grain dealers. This may have a positive impact on those professions by eliminating the filing requirements.

**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 expenditure 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:**

The bill eliminates the authority for DACS to adopt rules related to negotiating and entering into contracts with advertising agencies. The bill authorizes DACS and SWCD to adopt rules relating to the districts' powers and duties. The bill eliminates the authority for SWCDs to adopt rules related land use.

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

None.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

Not Applicable.

1 A bill to be entitled

2 An act relating to the Department of Agriculture and  
3 Consumer Services; amending s. 482.111, F.S.; revising  
4 requirements for issuance of an original pest control  
5 operator's certificate; amending s. 482.1562, F.S.;  
6 revising the date by which an application for  
7 recertification of a limited certification for urban  
8 landscape commercial fertilizer application is  
9 required; removing provisions imposing late renewal  
10 charges; providing a grace period for such  
11 recertification; amending s. 500.03, F.S.; defining  
12 terms relating to the Florida Food Safety Act;  
13 amending s. 500.10, F.S.; providing that food  
14 transported under specified conditions or containing  
15 ingredients for which there is inadequate information  
16 is deemed adulterated; providing conditions under  
17 which a dietary supplement or its ingredients is  
18 deemed adulterated; amending s. 500.11, F.S.;  
19 providing that a food is deemed misbranded for  
20 noncompliance with specified allergen information;  
21 amending s. 570.07, F.S.; revising powers and duties  
22 of the department to include sponsoring events;  
23 authorizing the department to secure letters of  
24 patent, copyrights, and trademarks on work products  
25 and to engage in acts accordingly; amending s. 570.30,  
26 F.S.; removing electronic data processing and  
27 management information systems support for the

28 department as a power and duty of the Division of  
 29 Administration; amending s. 570.441, F.S.; authorizing  
 30 the use of funds in the Pest Control Trust Fund for  
 31 activities of the Division of Agricultural  
 32 Environmental Services; amending s. 570.53, F.S.;  
 33 revising duties of the Division of Marketing and  
 34 Development to remove enforcement of provisions  
 35 relating to dealers in agricultural products; amending  
 36 s. 570.544, F.S.; revising duties of the director of  
 37 the Division of Consumer Services to include  
 38 enforcement of provisions relating to dealers in  
 39 agricultural products and grain dealers; creating s.  
 40 570.68, F.S.; authorizing the Commissioner of  
 41 Agriculture to create an Office of Agriculture  
 42 Technology Services; providing duties of the office;  
 43 amending s. 570.681, F.S.; revising legislative  
 44 findings with regard to the Florida Agriculture Center  
 45 and Horse Park; amending s. 570.685, F.S.;  
 46 authorizing, rather than requiring, the department to  
 47 provide administrative and staff support services,  
 48 meeting space, and record storage for the Florida  
 49 Agriculture Center and Horse Park Authority; amending  
 50 s. 571.24, F.S.; providing legislative intent of the  
 51 Florida Agricultural Promotional Campaign serve as a  
 52 marketing program for certain purposes; removing an  
 53 obsolete provision relating to the designation of a  
 54 Division of Marketing and Development employee as a

55 member of the Advertising Interagency Coordinating  
 56 Council; amending s. 571.27, F.S.; removing obsolete  
 57 provisions relating to the authority of the department  
 58 to adopt rules for entering into contracts with  
 59 advertising agencies for services which are directly  
 60 related to the Florida Agricultural Promotional  
 61 Campaign; amending s. 571.28, F.S.; revising  
 62 provisions specifying membership criteria of the  
 63 Florida Agricultural Promotional Campaign Advisory  
 64 Council; amending s. 576.041, F.S.; revising the  
 65 frequency of fertilizer sales reports and the payment  
 66 of related inspection fees; providing for such reports  
 67 and fees to be made through the department's website;  
 68 revising the time by which such reports must be made  
 69 and fees must be paid; creating s. 580.0365, F.S.;  
 70 providing legislative intent with regard to regulation  
 71 of commercial feed and feedstuff; preempting  
 72 regulatory authority for commercial feed and feedstuff  
 73 to the department; amending s. 581.181, F.S.;  
 74 providing applicability of provisions requiring  
 75 treatment or destruction of infested or infected  
 76 plants and plant products; amending s. 582.01, F.S.;  
 77 revising definitions; amending s. 582.02, F.S.;  
 78 revising legislative findings and intent with regard  
 79 to the purpose of soil and water conservation  
 80 districts; repealing s. 582.03, F.S., relating to soil  
 81 erosion; repealing s. 582.04, F.S., relating to

82 appropriate corrective methods; repealing s. 582.05,  
 83 F.S., relating to legislative policy; amending s.  
 84 582.055, F.S.; revising provisions relating to powers  
 85 and duties of the department with regard to soil and  
 86 water conservation districts; amending s. 582.06,  
 87 F.S.; revising provisions relating to powers and  
 88 duties of the Soil and Water Conservation Council;  
 89 repealing s. 582.08, F.S., relating to additional  
 90 powers of department; repealing s. 582.09, F.S.,  
 91 relating to the administrative officer; amending s.  
 92 582.16, F.S.; revising provisions for modifying soil  
 93 and water conservation district boundaries; repealing  
 94 s. 582.17, F.S., relating to the presumption that  
 95 districts are established in accordance with specified  
 96 provisions; amending s. 582.20, F.S.; revising  
 97 provisions relating to powers and duties of soil and  
 98 water conservation districts and district supervisors;  
 99 repealing s. 582.21, F.S., relating to the adoption of  
 100 land use regulations; repealing s. 582.22, F.S.,  
 101 relating to regulations adopted by supervisors;  
 102 repealing s. 582.23, F.S., relating to performance of  
 103 work under the regulations by the supervisors;  
 104 repealing s. 582.24, F.S., relating to the board of  
 105 adjustment; repealing s. 582.25, F.S., relating to  
 106 rules of procedure of the board; repealing s. 582.26,  
 107 F.S., relating to variances; amending s. 582.29, F.S.;  
 108 deleting a provision governing land use regulation;

109        repealing ss. 582.331, 582.34, 582.35, 582.36, 582.37,  
 110        582.38, 582.39, 582.40, 582.41, 582.42, 582.43,  
 111        582.44, 582.45, 582.46, 582.47, 582.48, and 582.49,  
 112        F.S., relating to watershed improvement districts  
 113        within soil and water conservation districts;  
 114        repealing s. 589.26, F.S., relating to the authority  
 115        of the Florida Forest Service to dedicate and reserve  
 116        state park lands for public use; amending s. 595.402,  
 117        F.S.; defining terms relating to the school food and  
 118        nutrition service program; amending s. 595.404, F.S. ;  
 119        revising powers and duties of the department with  
 120        regard to food and nutrition programs; authorizing the  
 121        department to conduct, supervise, and administer a  
 122        farmers' market nutrition program for certain  
 123        purposes; directing the department to collect and  
 124        publish data on food purchased through specified  
 125        programs; authorizing the department to enter into  
 126        agreements with federal and state agencies to  
 127        implement food and nutrition programs; amending s.  
 128        595.405, F.S.; revising requirements for the school  
 129        nutrition program; providing for breakfast meals to be  
 130        available to all students in schools that serve  
 131        specified grade levels; amending s. 595.406, F.S. ;  
 132        renaming the "Florida Farm Fresh Schools Program" as  
 133        the "Florida Farm to School Program"; authorizing the  
 134        department to establish by rule a recognition program  
 135        for certain sponsors; amending s. 595.407, F.S. ;

136 revising provisions of the children's summer nutrition  
 137 program to include certain schools that serve any  
 138 combination of grades kindergarten through 5; revising  
 139 provisions relating to the duration of the program;  
 140 authorizing school districts to exclude holidays and  
 141 weekends; amending s. 595.408, F.S.; conforming  
 142 references to changes made by the act; amending s.  
 143 595.501, F.S.; requiring entities to complete  
 144 corrective action plans required by the department or  
 145 a federal agency to be in compliance with school food  
 146 and nutrition service programs; amending s. 595.601,  
 147 F.S.; correcting a cross-reference; amending s.  
 148 604.21, F.S.; revising affidavit requirements for an  
 149 agricultural products dealer who files a complaint  
 150 against another such dealer; amending s. 604.33, F.S.;  
 151 removing provisions requiring grain dealers to submit  
 152 monthly reports; authorizing, rather than requiring,  
 153 the department to make at least one spot check  
 154 annually of each grain dealer; providing an effective  
 155 date.

156  
 157 Be It Enacted by the Legislature of the State of Florida:

158  
 159 Section 1. Subsections (1) and (7) of section 482.111,  
 160 Florida Statutes, are amended to read:

161 482.111 Pest control operator's certificate.-

162 (1) The department shall issue a pest control operator's



163 certificate to each individual who qualifies under this chapter.  
 164 Prior to the issuance of the original certificate, an individual  
 165 must have completed an application for examination, paid the  
 166 examination fee provided for in s. 482.141, and passed the  
 167 examination. Before engaging in pest control work, each  
 168 certified operator must be certified as provided in this  
 169 section. ~~Application must be made and the issuance fee must be~~  
 170 ~~paid to the department for the original certificate within 60~~  
 171 ~~days after the postmark date of written notification of passing~~  
 172 ~~the examination. During a period of 30 calendar days following~~  
 173 ~~expiration of the 60-day period, an original certificate may be~~  
 174 ~~issued; however, a late issuance charge of \$50 shall be assessed~~  
 175 ~~and must be paid in addition to the issuance fee. An original~~  
 176 ~~certificate may not be issued after expiration of the 30-day~~  
 177 ~~period, without reexamination.~~

178 (7) ~~The fee for issuance of an original certificate or the~~  
 179 ~~renewal of a certificate thereof shall be set by the department~~  
 180 ~~but may not be more than \$150 or less than \$75; however, until~~  
 181 ~~rules setting these fees are adopted by the department, the~~  
 182 ~~issuance fee and the renewal fee shall each be \$75.~~

183 Section 2. Subsections (5) and (6) of section 482.1562,  
 184 Florida Statutes, are amended to read:

185 482.1562 Limited certification for urban landscape  
 186 commercial fertilizer application.-

187 (5) An application for recertification must be made 4  
 188 years after the date of issuance ~~at least 90 days before the~~  
 189 ~~expiration~~ of the current certificate and be accompanied by:

190 (a) Proof of having completed the 4 classroom hours of  
 191 acceptable continuing education required under subsection (4).

192 (b) A recertification fee set by the department in an  
 193 amount of at least \$25 but not more than \$75. Until the fee is  
 194 set by rule, the fee for certification is \$25.

195 ~~(6) A late renewal charge of \$50 per month shall be~~  
 196 ~~assessed 30 days after the date the application for~~  
 197 ~~recertification is due and must be paid in addition to the~~  
 198 ~~renewal fee. Unless timely recertified, a certificate~~  
 199 ~~automatically expires 90 days after the recertification date.~~  
 200 Upon expiration, or after a grace period that does not exceed 30  
 201 days after expiration, a certificate may be issued only upon  
 202 reapplying in accordance with subsection (3).

203 Section 3. Paragraph (cc) of subsection (1) is added to  
 204 that subsection, and paragraph (n) is amended to read:

205 500.03 Definitions; construction; applicability.—

206 (1) For the purpose of this chapter, the term:

207 (n) "Food" includes:

- 208 1. Articles used for food or drink for human consumption;
- 209 2. Chewing gum;
- 210 3. Articles used for components of any such article; ~~and~~
- 211 4. Articles for which health claims are made, which claims  
 212 are approved by the Secretary of the United States Department of  
 213 Health and Human Services and which claims are made in  
 214 accordance with s. 343(r) of the federal act, and which are not  
 215 considered drugs solely because their labels or labeling contain  
 216 health claims; and

217 5. Dietary supplements defined in 21 U.S.C. s. 321(ff) (1)  
 218 and (2).

219  
 220 The term includes any raw, cooked, or processed edible  
 221 substance; ice; any beverage; or any ingredient used, intended  
 222 for use, or sold for human consumption.

223 (cc) "Vehicle" means a mode of transportation or mobile  
 224 carrier used to transport food from one location to another,  
 225 including, but not limited to, carts, cycles, vans, trucks,  
 226 cars, trains and railway transport, and aircraft and watercraft  
 227 type transport.

228 Section 4. Paragraph (f) of subsection (1) of section  
 229 500.10, Florida Statutes, is amended, and subsections (5) and  
 230 (6) are added to read:

231 500.10 Food deemed adulterated.—A food is deemed to be  
 232 adulterated:

233 (1)

234 (f) If it has been produced, prepared, packed, transported  
 235 or held under insanitary conditions whereby it may become  
 236 contaminated with filth, or whereby it may have been rendered  
 237 diseased, unwholesome, or injurious to health;

238 (5) If a dietary supplement or its ingredients present a  
 239 significant risk of illness or injury due to:

240 (a) The recommended or suggested conditions of use on the  
 241 product labeling; or

242 (b) The failure to provide conditions of use on the  
 243 product labeling.

244       (6) If it contains an ingredient for which there is  
 245 inadequate information to provide reasonable assurance that such  
 246 ingredient does not present a significant risk of illness or  
 247 injury.

248       Section 5. Paragraph (m) of subsection (1) of section  
 249 500.11, Florida Statutes, is amended to read:

250       500.11 Food deemed misbranded.—

251       (1) A food is deemed to be misbranded:

252       (m) If it is offered for sale and its label or labeling  
 253 does not comply with the requirements of 21 U.S.C. s. 343(q) or  
 254 21 U.S.C. s. 343(w) pertaining to nutrition or allergen  
 255 information.

256       Section 6. Paragraph (c) of subsection (20) of section  
 257 570.07, Florida Statutes, is amended, and subsection (44) is  
 258 added to that section, to read:

259       570.07 Department of Agriculture and Consumer Services;  
 260 functions, powers, and duties.—The department shall have and  
 261 exercise the following functions, powers, and duties:

262       (20)

263       (c) To sponsor events, trade breakfasts, luncheons, and  
 264 dinners and distribute promotional materials and favors in  
 265 connection with meetings, conferences, and conventions of  
 266 dealers, buyers, food editors, and merchandising executives that  
 267 will assist in the promotion and marketing of Florida's  
 268 agricultural and agricultural business products to the consuming  
 269 public.

270

271 The department is authorized to receive and expend donations  
 272 contributed by private persons for the purpose of covering costs  
 273 associated with the above described activities.

274 (44) The department may, in its own name:

275 (a) Perform all things necessary to secure letters of  
 276 patent, copyrights, and trademarks on any work products of the  
 277 department and enforce its rights therein.

278 (b) License, lease, assign, or otherwise give written  
 279 consent to any person, firm, or corporation for the manufacture  
 280 or use of such department work products on a royalty basis or  
 281 for such other consideration as the department deems proper.

282 (c) Take any action necessary, including legal action, to  
 283 protect such department work products against improper or  
 284 unlawful use or infringement.

285 (d) Enforce the collection of any sums due to the  
 286 department for the manufacture or use of such department work  
 287 products by another party.

288 (e) Sell any of such department work products and execute  
 289 all instruments necessary to consummate any such sale.

290 (f) Do all other acts necessary and proper for the  
 291 execution of powers and duties conferred upon the department by  
 292 this section, including adopting rules, as necessary, in order  
 293 to administer this section.

294 Section 7. Subsection (5) of section 570.30, Florida  
 295 Statutes, is amended to read:

296 570.30 Division of Administration; powers and duties.—The  
 297 Division of Administration shall render services required by the

298 department and its other divisions, or by the commissioner in  
 299 the exercise of constitutional and cabinet responsibilities,  
 300 that can advantageously and effectively be centralized and  
 301 administered and any other function of the department that is  
 302 not specifically assigned by law to some other division. The  
 303 duties of this division include, but are not limited to:

304 ~~(5) Providing electronic data processing and management~~  
 305 ~~information systems support for the department.~~

306 Section 8. Subsection (4) is added to section 570.441,  
 307 Florida Statutes, to read:

308 570.441 Pest Control Trust Fund.-

309 (4) In addition to the uses authorized under subsection  
 310 (2), moneys collected or received by the department under  
 311 chapter 482 may be used to carry out the provisions of s.  
 312 570.44. This subsection expires June 30, 2019.

313 Section 9. Subsection (2) of section 570.53, Florida  
 314 Statutes, is amended to read:

315 570.53 Division of Marketing and Development; powers and  
 316 duties.-The powers and duties of the Division of Marketing and  
 317 Development include, but are not limited to:

318 ~~(2) Enforcing the provisions of ss. 604.15-604.34, the~~  
 319 ~~dealers in agricultural products law, and ss. 534.47-534.53.~~

320 Section 10. Subsection (2) of section 570.544, Florida  
 321 Statutes, is amended to read:

322 570.544 Division of Consumer Services; director; powers;  
 323 processing of complaints; records.-

324 (2) The director shall supervise, direct, and coordinate

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325 the activities of the division and shall, under the direction of  
 326 the department, enforce the provisions of ss. 604.15-604.34 and  
 327 chapters 472, 496, 501, 507, 525, 526, 527, 531, 539, 559, 616,  
 328 and 849.

329 Section 11. Section 570.68, Florida Statutes, is created  
 330 to read:

331 570.68 Office of Agriculture Technology Services.—The  
 332 commissioner may create an Office of Agriculture Technology  
 333 Services under the supervision of a senior manager exempt under  
 334 s. 110.205 in the Senior Management Service. The office shall  
 335 provide electronic data processing and agency information  
 336 technology services to support and facilitate the functions,  
 337 powers, and duties of the department.

338 Section 12. Section 570.681, Florida Statutes, is amended  
 339 to read:

340 570.681 Florida Agriculture Center and Horse Park;  
 341 legislative findings.—It is the finding of the Legislature that:

342 ~~(1) Agriculture is an important industry to the State of~~  
 343 ~~Florida, producing over \$6 billion per year while supporting~~  
 344 ~~over 230,000 jobs.~~

345 (1)(2) Equine and other agriculture-related industries  
 346 will strengthen and benefit each other with the establishment of  
 347 a statewide agriculture and horse facility.

348 (2)(3) The A Florida Agriculture Center and Horse Park  
 349 provides will provide Florida with a unique tourist experience  
 350 for visitors and residents, thus generating taxes and additional  
 351 dollars for the state.

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CODING: Words stricken are deletions; words underlined are additions.

352            ~~(3)(4)~~ Promoting the Florida Agriculture Center and Horse  
 353 Park as a joint effort between the state and the private sector  
 354 allows ~~will allow~~ this facility to use ~~utilize~~ experts and  
 355 generate revenue from many areas to ensure the success of this  
 356 facility.

357            Section 13. Paragraphs (b) and (c) of subsection (4) of  
 358 section 570.685, Florida Statutes, are amended to read:

359            570.685 Florida Agriculture Center and Horse Park  
 360 Authority.—

361            (4) The authority shall meet at least semiannually and  
 362 elect a chair, a vice chair, and a secretary for 1-year terms.

363            (b) The department may provide ~~shall be responsible for~~  
 364 ~~providing~~ administrative and staff support services relating to  
 365 the meetings of the authority and may ~~shall~~ provide suitable  
 366 space in the offices of the department for the meetings and the  
 367 storage of records of the authority.

368            (c) In conducting its meetings, the authority shall use  
 369 accepted rules of procedure. The secretary shall keep a complete  
 370 record of the proceedings of each meeting, which shows ~~records~~  
 371 ~~shall show~~ the names of the members present and the actions  
 372 taken. These records shall be kept on file with the department,  
 373 and such records and other documents regarding matters within  
 374 the jurisdiction of the authority shall be subject to inspection  
 375 by members of the authority.

376            Section 14. Section 571.24, Florida Statutes, is amended  
 377 to read:

378            571.24 Purpose; duties of the department.—The purpose of



379 | this part is to authorize the department to establish and  
 380 | coordinate the Florida Agricultural Promotional Campaign. The  
 381 | Legislature intends for the Florida Agricultural Promotion  
 382 | Campaign to serve as a marketing program to promote Florida  
 383 | agricultural commodities, value-added products, and agricultural  
 384 | related businesses and not a food safety or traceability  
 385 | program. The duties of the department shall include, but are not  
 386 | limited to:

387 |       (1) Developing logos and authorizing the use of logos as  
 388 | provided by rule.

389 |       (2) Registering participants.

390 |       (3) Assessing and collecting fees.

391 |       (4) Collecting rental receipts for industry promotions.

392 |       (5) Developing in-kind advertising programs.

393 |       (6) Contracting with media representatives for the purpose  
 394 | of dispersing promotional materials.

395 |       (7) Assisting the representative of the department who  
 396 | serves on the Florida Agricultural Promotional Campaign Advisory  
 397 | Council.

398 |       ~~(8) Designating a division employee to be a member of the~~  
 399 | ~~Advertising Interagency Coordinating Council.~~

400 |       (8)(9) Adopting rules pursuant to ss. 120.536(1) and  
 401 | 120.54 to implement the provisions of this part.

402 |       (9)(10) Enforcing and administering the provisions of this  
 403 | part, including measures ensuring that only Florida agricultural  
 404 | or agricultural based products are marketed under the "Fresh  
 405 | From Florida" or "From Florida" logos or other logos of the

406 Florida Agricultural Promotional Campaign.

407 Section 15. Section 571.27, Florida Statutes, is amended  
408 to read:

409 571.27 Rules.—The department is authorized to adopt rules  
410 that implement, make specific, and interpret the provisions of  
411 this part, ~~including rules for entering into contracts with~~  
412 ~~advertising agencies for services which are directly related to~~  
413 ~~the Florida Agricultural Promotional Campaign. Such rules shall~~  
414 ~~establish the procedures for negotiating costs with the offerors~~  
415 ~~of such advertising services who have been determined by the~~  
416 ~~department to be qualified on the basis of technical merit,~~  
417 ~~creative ability, and professional competency. Such~~  
418 ~~determination of qualifications shall also include consideration~~  
419 ~~of the provisions in s. 287.055(3), (4), and (5).~~ The department  
420 is further authorized to determine, by rule, the logos or  
421 product identifiers to be depicted for use in advertising,  
422 publicizing, and promoting the sale of Florida agricultural  
423 products or agricultural-based products in the Florida  
424 Agricultural Promotional Campaign. The department may also adopt  
425 rules consistent ~~not inconsistent~~ with the provisions of this  
426 part as in its judgment may be necessary for participant  
427 registration, renewal of registration, classes of membership,  
428 application forms, and ~~as well as~~ other forms and enforcement  
429 measures ensuring compliance with this part.

430 Section 16. Subsection (1) of section 571.28, Florida  
431 Statutes, is amended to read:

432 571.28 Florida Agricultural Promotional Campaign Advisory

433 Council.—

434 (1) ORGANIZATION.—There is hereby created within the  
 435 department the Florida Agricultural Promotional Campaign  
 436 Advisory Council, to consist of 15 members appointed by the  
 437 Commissioner of Agriculture for 4-year staggered terms. The  
 438 membership shall include: 13 ~~six~~ members representing  
 439 agricultural producers, shippers, ~~or~~ packers, ~~three members~~  
 440 ~~representing agricultural~~ retailers, ~~two members representing~~  
 441 agricultural associations, and wholesalers ~~one member~~  
 442 ~~representing a wholesaler~~ of agricultural products, one member  
 443 representing consumers, and one member representing the  
 444 department. Initial appointment of the council members shall be  
 445 four members to a term of 4 years, four members to a term of 3  
 446 years, four members to a term of 2 years, and three members to a  
 447 term of 1 year.

448 Section 17. Subsection (2) of section 576.041, Florida  
 449 Statutes, is amended to read:

450 576.041 Inspection fees; records.—

451 (2) ~~Before the distribution of a fertilizer,~~ Each licensee  
 452 shall ~~make application upon a form provided by the department to~~  
 453 report to the department quarterly ~~monthly~~ the tonnage of  
 454 fertilizer sold in the state and pay ~~make payment of~~ the  
 455 inspection fee. The continuance of a license is conditioned upon  
 456 the applicant's:

457 (a) Maintaining records and a bookkeeping system that will  
 458 accurately indicate the tonnage of fertilizer sold by the  
 459 licensee; and

460 (b) Consent to examination of the business records and  
 461 books by the department to verify ~~for a verification of~~ the  
 462 correctness of tonnage reports and the payment of inspection  
 463 fees. Tonnage reports ~~of sales~~ and payment of inspection fees  
 464 fee shall be made quarterly through the department's website or  
 465 monthly on forms provided ~~furnished~~ by the department and  
 466 submitted within 30 days after the close of the reporting period  
 467 ~~on or before the fifteenth day of the month succeeding the month~~  
 468 ~~covered by the reports.~~

469 Section 18. Section 580.0365, Florida Statutes, is created  
 470 to read:

471 580.0365 Preemption of regulatory authority over  
 472 commercial feed and feedstuff.- It is the intent of the  
 473 legislature to eliminate duplication of regulation over  
 474 commercial feed and feedstuff. Notwithstanding any other law to  
 475 the contrary, the authority to regulate, inspect, sample and  
 476 analyze any commercial feed or feedstuff distributed in this  
 477 state and to exercise the powers and duties of regulation in  
 478 this chapter, including the power to assess any penalties  
 479 provide for violation of this chapter, is preempted to the  
 480 department.

481 Section 19. Subsection (3) is added to section 581.181,  
 482 Florida Statutes, to read:

483 581.181 Notice of infection of plants; destruction.-

484 (3) This section does not apply to plants or plant  
 485 products infested with pests or noxious weeds that are  
 486 determined to be widely established within the state and are not

487 specifically regulated under rules adopted by the department or  
 488 under any other provisions of law.

489 Section 20. Subsections (1), (4), (5), (7), and (8) of  
 490 section 582.01, Florida Statutes, are amended to read:

491 582.01 Definitions.—Wherever used or referred to in this  
 492 chapter unless a different meaning clearly appears from the  
 493 context:

494 (1) "District" ~~or "soil conservation district"~~ or "soil  
 495 and water conservation district" means a governmental  
 496 subdivision of this state, and a body corporate and politic,  
 497 organized in accordance with the provisions of this chapter, for  
 498 the purpose, with the powers, and subject to the provisions set  
 499 forth in this chapter. The term "district" ~~or "soil conservation~~  
 500 ~~district,"~~ when used in this chapter, means and includes a "soil  
 501 and water conservation district." All districts heretofore or  
 502 hereafter organized under this chapter shall be known as soil  
 503 and water conservation districts and shall have all the powers  
 504 set out herein.

505 (4) "Landowner" or "owner of land" includes any person who  
 506 holds ~~shall hold~~ legal or equitable title to any lands lying  
 507 within a district organized under the provisions of this  
 508 chapter.

509 (5) "Land occupier" or "occupier of land" includes any  
 510 person, other than the owner, who is ~~shall be~~ in possession of  
 511 any lands lying within a district organized under the provisions  
 512 of this chapter, whether as lessee, renter, tenant, or  
 513 otherwise.

514 (7) "Due notice," in addition to notice required pursuant  
 515 to the provisions of chapter 120, means notice published at  
 516 ~~least twice, with an interval of at least 7 days prior to the~~  
 517 ~~event between the two publication dates,~~ in a newspaper or other  
 518 publication of general circulation within the appropriate area  
 519 ~~or, if no such publication of general circulation be available,~~  
 520 ~~by posting at a reasonable number of conspicuous places within~~  
 521 ~~the appropriate area, such posting to include, where possible,~~  
 522 ~~posting at public places where it may be customary to post~~  
 523 ~~notices concerning county or municipal affairs generally. At any~~  
 524 ~~hearing held pursuant to such notice, at the time and place~~  
 525 ~~designated in such notice, adjournment may be made from time to~~  
 526 ~~time without the necessity of renewing such notice for such~~  
 527 ~~adjourned dates.~~

528 ~~(8) "Administrative officer" means the administrative~~  
 529 ~~officer of soil and water conservation created by s. 582.09.~~

530 Section 21. Section 582.02, Florida Statutes, is amended  
 531 to read:

532 582.02 Legislative policy and findings; purpose of  
 533 districts ~~Lands a basic asset of state.-~~

534 (1) It is the policy of the Legislature to promote the  
 535 appropriate and efficient use of soil and water resources,  
 536 protect water quality, prevent floodwater and sediment damage,  
 537 preserve wildlife, protect public lands, and protect and promote  
 538 the health, safety, and general welfare of the people of this  
 539 state.

540 (2) The Legislature finds that the farm, forest and

541 grazing lands, green spaces, recreational areas, natural areas  
 542 of the state are among the basic assets of the state and the  
 543 conservation ~~preservation~~ of these lands is necessary to protect  
 544 and promote the health, safety, and general welfare of its  
 545 people, and are in the public interest; ~~improper land use~~  
 546 ~~practices have caused and have contributed to, and are now~~  
 547 ~~causing and contributing to a progressively more serious erosion~~  
 548 ~~of the farm and grazing lands of this state by fire, wind and~~  
 549 ~~water; the breaking of natural grass, plant, and forest cover~~  
 550 ~~has interfered with the natural factors of soil stabilization,~~  
 551 ~~causing loosening of soil and exhaustion of humus, and~~  
 552 ~~developing a soil condition that favors erosion; the top soil is~~  
 553 ~~being burned, washed and blown out of fields and pastures; there~~  
 554 ~~has been an accelerated washing of sloping fields; these~~  
 555 ~~processes of erosion by fire, wind and water speed up with~~  
 556 ~~removal of absorptive topsoil, causing exposure of less~~  
 557 ~~absorptive and less protective but more erosive subsoil; failure~~  
 558 ~~by any landowner or occupier to conserve the soil and control~~  
 559 ~~erosion upon her or his lands causes destruction by burning,~~  
 560 ~~washing and blowing of soil and water from her or his lands onto~~  
 561 ~~other lands and makes the conservation of soil and control~~  
 562 ~~erosion of such other lands difficult or impossible.~~

563 (3) The Legislature further finds that to ensure the  
 564 preservation of this state's farm, forest, and grazing lands,  
 565 green spaces, recreational areas, natural areas, and to  
 566 conserve, protect, and utilize soil and water resources, it is  
 567 necessary that appropriate land and water resources protection

568 practices be implemented.

569 (4) The purpose of the soil and water conservation  
 570 districts is to provide assistance, guidance, and education to  
 571 landowners, land occupiers, the agricultural industry, and the  
 572 general public in implementing land and water resource  
 573 protection practices. The legislature also intends for soil and  
 574 water conservation districts to work in conjunction with  
 575 federal, state, and local agencies in all matters that implement  
 576 the provisions of this chapter.

577 Section 22. Section 582.03, Florida Statutes, is repealed.

578 Section 23. Section 582.04, Florida Statutes, is repealed.

579 Section 24. Section 582.05, Florida Statutes, is repealed.

580 Section 25. Section 582.055, Florida Statutes, is amended  
 581 to read:

582 582.055 Powers and duties of the Department of Agriculture  
 583 and Consumer Services; rules.-

584 (1) The provisions of this chapter shall be administered  
 585 by the Department of Agriculture and Consumer Services.

586 (2) The department is authorized to receive gifts,  
 587 appropriations, materials, equipment, lands, and facilities and  
 588 to manage, operate, and disburse them for the use and benefit of  
 589 the soil and water conservation districts of the state.

590 (3) The department shall provide for an annual audit of  
 591 the accounts of receipts and disbursements.

592 (4) The department may furnish information and call upon  
 593 any state or local agencies for cooperation in carrying out the  
 594 provisions of this chapter.



595       (5) The department may offer such assistance as may be  
 596 appropriate to the supervisors of soil and water conservation  
 597 districts, and to facilitate communication and cooperation  
 598 between districts.

599       (6) The department may seek cooperation and assistance of  
 600 the United States and any of its agencies, and of agencies and  
 601 counties of this state, in the work of such districts, including  
 602 the receipt and expenditure of state, federal, and other funds  
 603 or contributions.

604       (7) The department may disseminate information throughout  
 605 the state concerning the activities, research, and programs of  
 606 the soil and water conservation districts and encourage the  
 607 formation of such districts in areas where their organization is  
 608 desirable.

609       (8) The department may create or dissolve a soil and water  
 610 conservation district, pursuant to the provisions of this  
 611 chapter.

612       (9) The department may adopt rules, as necessary, to  
 613 implement the provisions of this chapter.

614       Section 26. Subsection (2) of section 582.06, Florida  
 615 Statutes, is amended to read:

616       582.06 Soil and Water Conservation Council; powers and  
 617 duties.—

618       (2) POWERS AND DUTIES; MEETINGS; PROCEDURES; RECORDS.—

619       (a) The meetings, powers and duties, procedures, and  
 620 recordkeeping of the Soil and Water Conservation Council shall  
 621 be conducted pursuant to s. 570.232.

622           (b) The council shall accept and review requests for  
 623 creating or dissolving soil and water conservation districts,  
 624 and shall, by a majority vote, recommend through a resolution to  
 625 the commissioner either that the district be created or  
 626 dissolved pursuant to the request, or that the request be  
 627 denied.

628           (c) When requested by the Governor or a district, the  
 629 council shall provide a recommendation to the Governor whether  
 630 to remove a supervisor for neglect of duty or malfeasance in  
 631 office only after notice, hearing, and a thorough review.

632           Section 27. Section 582.08, Florida Statutes, is repealed.

633           Section 28. Section 582.09, Florida Statutes, is repealed.

634           Section 29. Section 582.16, Florida Statutes, is amended  
 635 to read:

636           582.16 Change of district boundaries ~~Addition of territory~~  
 637 ~~to district or removal of territory therefrom. Requests for~~  
 638 increasing or reducing the boundaries of ~~Petitions for including~~  
 639 ~~additional territory or removing territory within an existing~~  
 640 ~~district may be filed with the~~ department ~~Department of~~  
 641 ~~Agriculture and Consumer Services, and the~~ department shall  
 642 follow the proceedings provided for in this chapter to create a  
 643 district in the case of petitions to organize a district shall  
 644 ~~be observed in the case of petitions for such inclusion or~~  
 645 ~~removal. The department shall prescribe the form for such~~  
 646 ~~petition, which shall be as nearly as may be in the form~~  
 647 ~~prescribed in this chapter for petitions to organize a district.~~  
 648 ~~If the petition is signed by a majority of the landowners of~~

649 ~~such area, no referendum need be held. In referenda upon~~  
 650 ~~petitions for such inclusions or removals, all owners of land~~  
 651 ~~lying within the proposed area to be added or removed shall be~~  
 652 ~~eligible to vote.~~

653 Section 30. Section 582.17, Florida Statutes, is repealed.

654 Section 31. Section 582.20, Florida Statutes, is amended  
 655 to read:

656 582.20 Powers of districts and supervisors.—A soil and  
 657 water conservation district organized under the provisions of  
 658 this chapter shall constitute a governmental subdivision of this  
 659 state, and a public body corporate and politic, exercising  
 660 public powers, and such district and the supervisors thereof,  
 661 shall have the following powers, in addition to others granted  
 662 in other sections of this chapter:

663 (1) To conduct surveys, studies investigations, and  
 664 research relating to the character of soil and water resources  
 665 ~~erosion and floodwater and sediment damages, to the~~  
 666 ~~conservation, development and utilization of soil and water~~  
 667 ~~resources and the disposal of water, and to the preventive and~~  
 668 ~~control measures and works of improvement needed; to publish and~~  
 669 disseminate the results of such surveys, studies investigations,  
 670 or research and related information; and ~~to disseminate~~  
 671 ~~information concerning such preventive and control measures and~~  
 672 ~~works of improvement; provided, however, that in order to avoid~~  
 673 ~~duplication of research activities, no district shall initiate~~  
 674 ~~any research program except in cooperation with the government~~  
 675 ~~of this state or any of its agencies, or with the United States~~

676 ~~or any of its agencies;~~

677 (2) To conduct agricultural best management practices  
 678 demonstration demonstrational projects and projects for the  
 679 conservation, protection, and restoration of soil and water  
 680 resources:

681 (a) Within the district's boundaries;

682 (b) Within another district's boundaries, subject to the  
 683 other district's approval;

684 (c) In areas within the district's boundaries, territory  
 685 within another district's boundaries subject to the other  
 686 district's approval, or territory not contained within any  
 687 district's boundaries on lands owned or controlled by this state  
 688 or any of its agencies, with the cooperation of the agency  
 689 administering and having jurisdiction thereof; or

690 (d) On , and on any other lands within the district's  
 691 boundaries, territory within another district's boundaries  
 692 subject to the other district's approval, or territory not  
 693 contained within any district's boundaries upon obtaining the  
 694 consent of the owner and occupiers of such lands or the  
 695 necessary rights or interests in such lands; , in order to  
 696 demonstrate by example the means, methods, and measures by which  
 697 soil and soil resources may be conserved, and soil erosion in  
 698 the form of soil blowing and soil washing may be prevented and  
 699 controlled, and works of improvement for flood prevention or the  
 700 conservation, development and utilization of soil and water  
 701 resources, and the disposal of water may be carried out;

702 ~~(3) To carry out preventive and control measures and works~~

703 ~~of improvement for flood prevention or the conservation,~~  
 704 ~~development and utilization of soil and water resources, and the~~  
 705 ~~disposal of water within the district's boundaries, territory~~  
 706 ~~within another district's boundaries subject to the other~~  
 707 ~~district's approval, or territory not contained within any~~  
 708 ~~district's boundaries, including, but not limited to,~~  
 709 ~~engineering operations, methods of cultivation, the growing of~~  
 710 ~~vegetation, changes in use of land, and the measures listed in~~  
 711 ~~s. 582.04 on lands owned or controlled by this state or any of~~  
 712 ~~its agencies, with the cooperation of the agency administering~~  
 713 ~~and having jurisdiction thereof, and on any other lands within~~  
 714 ~~the district's boundaries, territory within another district's~~  
 715 ~~boundaries subject to the other district's approval, or~~  
 716 ~~territory not contained within any district's boundaries upon~~  
 717 ~~obtaining the consent of the owner and the occupiers of such~~  
 718 ~~lands or the necessary rights or interests in such lands;~~

719 (3)(4) To cooperate, or enter into agreements with, and  
 720 ~~within the limits of appropriations duly made available to it by~~  
 721 ~~law, to furnish financial or other aid to, any special district,~~  
 722 ~~or municipal, county, or water management district, state or~~  
 723 ~~federal agency, governmental or otherwise, or any owner or~~  
 724 ~~occupier of lands within the district's boundaries, territory~~  
 725 ~~within another district's boundaries subject to the other~~  
 726 ~~district's approval, or territory not contained within any~~  
 727 ~~district's boundaries, to further the purpose of this chapter in~~  
 728 ~~the carrying on of erosion control or prevention operations and~~  
 729 ~~works of improvement for flood prevention or the conservation,~~

730 ~~development and utilization, of soil and water resources and the~~  
 731 ~~disposal of water within the district's boundaries, territory~~  
 732 ~~within another district's boundaries subject to the other~~  
 733 ~~district's approval, or territory not contained within any~~  
 734 ~~district's boundaries, subject to such conditions as the~~  
 735 ~~supervisors may deem necessary to advance the purposes of this~~  
 736 ~~chapter;~~

737       (4)~~(5)~~ To obtain options upon and to acquire, by purchase,  
 738 exchange, lease, gift, grant, bequest, devise or otherwise, any  
 739 property, real or personal, or rights or interests therein; to  
 740 maintain, administer, and improve any properties acquired, to  
 741 receive income from such properties and to expend such income in  
 742 carrying out the purposes and provisions of this chapter; and to  
 743 sell, lease, or otherwise dispose of any of its property or  
 744 interests therein in furtherance of the purposes and the  
 745 provisions of this chapter;

746       (5)~~(6)~~ To make available, on such terms as it shall  
 747 prescribe, to landowners and occupiers within the district's  
 748 boundaries, ~~territory~~ within another district's boundaries  
 749 subject to the other district's approval, or on lands ~~territory~~  
 750 not contained within any district's boundaries, agricultural and  
 751 engineering machinery and equipment, ~~fertilizer, seeds and~~  
 752 ~~seedlings~~, and such other material or equipment, that ~~as~~ will  
 753 assist such landowners and occupiers to carry on operations upon  
 754 their lands for the conservation and protection of soil and  
 755 water resources ~~and for the prevention or control of soil~~  
 756 ~~erosion and for flood prevention or the conservation,~~

757 ~~development and utilization, of soil and water resources and the~~  
 758 ~~disposal of water;~~

759 (6)~~(7)~~ To construct, improve, operate and maintain such  
 760 structures as may be necessary or convenient for the performance  
 761 of any of the operations authorized in this chapter;

762 (7)~~(8)~~ To provide or assist in providing training and  
 763 education programs that further the purposes of this chapter  
 764 ~~develop comprehensive plans for the conservation of soil and~~  
 765 ~~water resources and for the control and prevention of soil~~  
 766 ~~erosion and for flood prevention or the conservation,~~  
 767 ~~development and utilization of soil and water resources, and the~~  
 768 ~~disposal of water within the district's boundaries, territory~~  
 769 ~~within another district's boundaries subject to the other~~  
 770 ~~district's approval, or territory not contained within any~~  
 771 ~~district's boundaries, which plans shall specify in such detail~~  
 772 ~~as may be possible the acts, procedures, performances, and~~  
 773 ~~avoidances which are necessary or desirable for the effectuation~~  
 774 ~~of such plans, including the specification of engineering~~  
 775 ~~operations, methods of cultivation, the growing of vegetation,~~  
 776 ~~cropping programs, tillage practices, and changes in use of~~  
 777 ~~land; control of artesian wells; and to publish such plans and~~  
 778 ~~information and bring them to the attention of owners and~~  
 779 ~~occupiers of lands within the district's boundaries, territory~~  
 780 ~~within another district's boundaries subject to the other~~  
 781 ~~district's approval, or territory not contained within any~~  
 782 ~~district's boundaries;~~

783 ~~(9)~~ To take over, by purchase, lease, or otherwise, and to

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784 ~~administer any soil conservation, erosion control, erosion-~~  
 785 ~~prevention project, or any project for flood prevention or for~~  
 786 ~~the conservation, development and utilization of soil and water~~  
 787 ~~resources, and the disposal of water, located within the~~  
 788 ~~district's boundaries, territory within another district's~~  
 789 ~~boundaries subject to the other district's approval, or~~  
 790 ~~territory not contained within any district's boundaries,~~  
 791 ~~undertaken by the United States or any of its agencies, or by~~  
 792 ~~this state or any of its agencies; to manage as agent of the~~  
 793 ~~United States or any of its agencies, or of the state or any of~~  
 794 ~~its agencies, any soil conservation, erosion control, erosion-~~  
 795 ~~prevention, or any project for flood prevention or for the~~  
 796 ~~conservation, development, and utilization of soil and water~~  
 797 ~~resources, and the disposal of water within the district's~~  
 798 ~~boundaries, territory within another district's boundaries~~  
 799 ~~subject to the other district's approval, or territory not~~  
 800 ~~contained within any district's boundaries; to act as agent for~~  
 801 ~~the United States, or any of its agencies, or for the state or~~  
 802 ~~any of its agencies, in connection with the acquisition,~~  
 803 ~~construction, operation or administration of any soil-~~  
 804 ~~conservation, erosion control, erosion prevention, or any~~  
 805 ~~project for flood prevention or for the conservation,~~  
 806 ~~development and utilization of soil and water resources, and the~~  
 807 ~~disposal of water within the district's boundaries, territory~~  
 808 ~~within another district's boundaries subject to the other~~  
 809 ~~district's approval, or territory not contained within any~~  
 810 ~~district's boundaries; to accept donations, gifts, and~~

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811 ~~contributions in money, services, materials, or otherwise, from~~  
 812 ~~the United States or any of its agencies, or from this state or~~  
 813 ~~any of its agencies, or from others, and to use or expend such~~  
 814 ~~moneys, services, materials or other contributions in carrying~~  
 815 ~~on its operations;~~

816 (8) ~~(10)~~ To sue and be sued in the name of the district; to  
 817 have a seal, which seal shall be judicially noticed; to have  
 818 perpetual succession unless terminated as provided in this  
 819 chapter; to make and execute contracts and other instruments  
 820 necessary or convenient to the exercise of its powers; upon a  
 821 majority vote of the supervisors of the district, to borrow  
 822 money and to execute promissory notes and other evidences of  
 823 indebtedness in connection therewith, and to pledge, mortgage,  
 824 and assign the income of the district and its personal property  
 825 as security therefor, the notes and other evidences of  
 826 indebtedness to be general obligations only of the district and  
 827 in no event to constitute an indebtedness for which the faith  
 828 and credit of the state or any of its revenues are pledged; ~~to~~  
 829 ~~make, amend, and repeal rules and regulations not inconsistent~~  
 830 ~~with this chapter to carry into effect its purposes and powers.~~

831 ~~(11)~~ ~~As a condition to the extending of any benefits under~~  
 832 ~~this chapter to, or the performance of work upon, any lands not~~  
 833 ~~owned or controlled by this state or any of its agencies, the~~  
 834 ~~supervisors may require contributions in money, services,~~  
 835 ~~materials, or otherwise to any operations conferring such~~  
 836 ~~benefits, and may require landowners and occupiers to enter into~~  
 837 ~~and perform such agreements or covenants as to the permanent use~~

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838 ~~of such lands as will tend to prevent or control erosion and~~  
 839 ~~prevent floodwater and sediment damages thereon;~~

840 (9) In coordination with the applicable county or  
 841 counties, to use the services of the county agricultural agents  
 842 and the facilities of their offices, if practicable and  
 843 feasible. The supervisors also may employ additional permanent  
 844 and temporary staff, as needed, and determine their  
 845 qualifications, duties, and compensation. The supervisors may  
 846 delegate to their chair, to one or more supervisors, or to  
 847 employees such powers and duties as they may deem proper,  
 848 consistent with the provisions of this chapter. The supervisors  
 849 shall furnish to the department, upon request, copies of rules,  
 850 orders, contracts, forms and other documents they adopt or  
 851 employ, and other information concerning their activities it may  
 852 require in the performance of its duties under this chapter;

853 (10) To adopt rules to implement the provisions of this  
 854 chapter;

855 (11) To request the Governor to remove a supervisor for  
 856 neglect of duty or malfeasance in office by adoption of a  
 857 resolution at a public meeting. If the district believes there  
 858 is a need for a review of the request, the district may request  
 859 the council, by resolution, review its request to the Governor  
 860 and provide the Governor with a recommendation;

861 (12) No provisions with respect to the acquisition,  
 862 operation, or disposition of property by public bodies of this  
 863 state shall be applicable to a district organized hereunder  
 864 unless the Legislature shall specifically so state. The property

865 and property rights of every kind and nature acquired by any  
 866 district organized under the provisions of this chapter shall be  
 867 exempt from state, county, and other taxation.

868 Section 32. Section 582.21, Florida Statutes, is repealed.

869 Section 33. Section 582.22, Florida Statutes, is repealed.

870 Section 34. Section 582.23, Florida Statutes, is repealed.

871 Section 35. Section 582.24, Florida Statutes, is repealed.

872 Section 36. Section 582.25, Florida Statutes, is repealed.

873 Section 37. Section 582.26, Florida Statutes, is repealed.

874 Section 38. Section 582.29, Florida Statutes, is amended  
 875 to read:

876 582.29 State agencies to cooperate.—Agencies of this state  
 877 that ~~which shall~~ have jurisdiction over, or are ~~be~~ charged with,  
 878 the administration of any state-owned lands, and of any county,  
 879 or other governmental subdivision of the state, that ~~which shall~~  
 880 have jurisdiction over, or are ~~be~~ charged with the  
 881 administration of, any county-owned or other publicly owned  
 882 lands, ~~lying within the boundaries of any district organized~~  
 883 ~~under this chapter, the boundaries of another district subject~~  
 884 ~~to that district's approval, or territory not contained within~~  
 885 ~~the boundaries of any district organized under this chapter,~~  
 886 shall cooperate to the fullest extent with the supervisors of  
 887 such districts in the implementation ~~effectuation~~ of programs  
 888 and operations undertaken by the supervisors under the  
 889 provisions of this chapter. The supervisors of such districts  
 890 shall be given free access to enter and perform work upon such  
 891 publicly owned lands. ~~The provisions of land use regulations~~

892 ~~adopted shall be in all respects observed by the agencies~~  
 893 ~~administering such publicly owned lands.~~

894 Section 39. Section 582.331, Florida Statutes, is  
 895 repealed.

896 Section 40. Section 582.34, Florida Statutes, is repealed.

897 Section 41. Section 582.35, Florida Statutes, is repealed.

898 Section 42. Section 582.36, Florida Statutes, is repealed.

899 Section 43. Section 582.37, Florida Statutes, is repealed.

900 Section 44. Section 582.38, Florida Statutes, is repealed.

901 Section 45. Section 582.39, Florida Statutes, is repealed.

902 Section 46. Section 582.40, Florida Statutes, is repealed.

903 Section 47. Section 582.41, Florida Statutes, is repealed.

904 Section 48. Section 582.42, Florida Statutes, is repealed.

905 Section 49. Section 582.43, Florida Statutes, is repealed.

906 Section 50. Section 582.44, Florida Statutes, is repealed.

907 Section 51. Section 582.45, Florida Statutes, is repealed.

908 Section 52. Section 582.46, Florida Statutes, is repealed.

909 Section 53. Section 582.47, Florida Statutes, is repealed.

910 Section 54. Section 582.48, Florida Statutes, is repealed.

911 Section 55. Section 582.49, Florida Statutes, is repealed.

912 Section 56. Section 589.26, Florida Statutes, is repealed.

913 Section 57. Subsections (4) and (5) of section 595.402,  
 914 Florida Statutes, are renumbered as subsections (5) and (6),  
 915 respectively, and new subsections (4), (7), and (8) are added to  
 916 that section, to read:

917 595.402 Definitions.—As used in this chapter, the term:

918 (4) "School breakfast program" means a program authorized

919 by section 4 of the Child Nutrition Act of 1966 and administered  
 920 by the department.

921 (7) "Summer nutrition program" means one or more of the  
 922 programs authorized under 42 U.S.C. s. 1761.

923 (8) "Universal school breakfast program" means a program  
 924 that makes breakfast available at no cost to all students  
 925 regardless of their household income.

926 Section 58. Subsections (5) and (12) of section 595.404,  
 927 Florida Statutes, are amended, and subsection (13) is added to  
 928 that section, to read:

929 595.404 School food and other nutrition programs ~~service~~  
 930 ~~program~~; powers and duties of the department.—The department has  
 931 the following powers and duties:

932 (2) To conduct, supervise, and administer a farmers'  
 933 market nutrition program to provide participants in the Special  
 934 Supplemental Nutrition Program for Women, Infants and Children  
 935 (WIC) with locally grown fruits and vegetables, to be carried  
 936 out using federal or state funds, or funds from any other  
 937 source.

938 ~~(3)~~ (2) To fully cooperate with the United States  
 939 Government and its agencies and instrumentalities so that the  
 940 department may receive the benefit of all federal financial  
 941 allotments and assistance possible to carry out the purposes of  
 942 this chapter.

943 ~~(4)~~ (3) To implement and adopt by rule, as required,  
 944 federal regulations ~~to maximize federal assistance for the~~  
 945 ~~program.~~

946        ~~(5)(4)~~ To act as agent of, or contract with, the Federal  
 947 Government, another state agency, any county or municipal  
 948 government, or sponsor for the administration of the program,  
 949 including the distribution of funds provided by the Federal  
 950 Government to support the program.

951        ~~(6)(5)~~ To provide ~~make a reasonable effort to ensure that~~  
 952 ~~any school designated as a "severe need school"~~ receives the  
 953 highest rate of reimbursement to which it is entitled under 42  
 954 U.S.C. s. 1773 for each breakfast meal served.

955        ~~(7)(6)~~ To develop and propose legislation necessary to  
 956 implement the program, encourage the development of innovative  
 957 school food and nutrition services, and expand participation in  
 958 the program.

959        ~~(8)(7)~~ To annually allocate among the sponsors, as  
 960 applicable, funds provided from the school breakfast supplement  
 961 in the General Appropriations Act based on each district's total  
 962 number of free and reduced-price breakfast meals served.

963        ~~(9)(8)~~ To employ such persons as are necessary to perform  
 964 its duties under this chapter.

965        ~~(10)(9)~~ To adopt rules covering the administration,  
 966 operation, and enforcement of the program, and the farmers'  
 967 market nutrition program, as well as to implement the provisions  
 968 of this chapter.

969        ~~(11)(10)~~ To adopt and implement an appeal process by rule,  
 970 as required by federal regulations, for applicants and  
 971 participants under the programs implemented under this chapter  
 972 ~~program~~, notwithstanding ss. 120.569 and 120.57-120.595.

973            (12)~~(11)~~ To assist, train, and review each sponsor in its  
 974 implementation of the program.

975            (13)~~(12)~~ To advance funds from the program's annual  
 976 appropriation to a summer nutrition program sponsor ~~sponsors~~,  
 977 when requested, in order to implement the provisions of this  
 978 chapter and in accordance with federal regulations.

979            (14) To collect data on food purchased through the  
 980 programs defined in s. 595.402(3) and s. 595.406 and to publish  
 981 that data annually.

982            (15) To enter into agreements with federal or state  
 983 agencies to coordinate and cooperate in the implementation of  
 984 nutrition programs.

985            Section 59. Section 595.405, Florida Statutes, is amended  
 986 to read:

987            595.405 School nutrition program requirements ~~for school~~  
 988 ~~districts and sponsors.~~

989            (1) Each ~~school~~ district school board shall consider the  
 990 recommendations of the district school superintendent and adopt  
 991 policies to provide for an appropriate food and nutrition  
 992 service program for students consistent with federal law and  
 993 department rules.

994            (2) Each ~~school~~ district school board shall implement  
 995 school breakfast programs that make breakfast meals available to  
 996 all students in each elementary school that serves any  
 997 combination of grades kindergarten through 5. ~~Universal school~~  
 998 ~~breakfast programs shall be offered in schools in which 80~~  
 999 ~~percent or more of the students are eligible for free or~~

1000 ~~reduced price meals. Each school shall, to the maximum extent~~  
 1001 ~~practicable, make breakfast meals available to students at an~~  
 1002 ~~alternative site location, which may include, but need not be~~  
 1003 ~~limited to, alternative breakfast options as described in~~  
 1004 ~~publications of the Food and Nutrition Service of the United~~  
 1005 ~~States Department of Agriculture for the federal School~~  
 1006 ~~Breakfast Program.~~

1007 (3) Each ~~school~~ district school board must annually set  
 1008 prices for breakfast meals at rates that, combined with federal  
 1009 reimbursements and state allocations, are sufficient to defray  
 1010 costs of school breakfast programs without requiring allocations  
 1011 from the district's operating funds, except if the district  
 1012 school board approves lower rates.

1013 ~~(4) Each school district is encouraged to provide~~  
 1014 ~~universal, free school breakfast meals to all students in each~~  
 1015 ~~elementary, middle, and high school. Each school district shall~~  
 1016 ~~approve or disapprove a policy, after receiving public testimony~~  
 1017 ~~concerning the proposed policy at two or more regular meetings,~~  
 1018 ~~which makes universal, free school breakfast meals available to~~  
 1019 ~~all students in each elementary, middle, and high school in~~  
 1020 ~~which 80 percent or more of the students are eligible for free~~  
 1021 ~~or reduced price meals.~~

1022 ~~(4)-(5)~~ Each elementary, middle, and high school operating  
 1023 a breakfast program shall make a breakfast meal available if a  
 1024 student arrives at school on the school bus less than 15 minutes  
 1025 before the first bell rings and shall allow the student at least  
 1026 15 minutes to eat the breakfast.



1027        (5) Each school district is encouraged to provide  
 1028 universal, free school breakfast meals to all students in each  
 1029 elementary, middle, and high school. A universal school  
 1030 breakfast program shall be implemented in each school in which  
 1031 80 percent or more of the students are eligible for free or  
 1032 reduced-price meals, unless the district school board, after  
 1033 considering public testimony at two or more regularly scheduled  
 1034 board meetings, decides to not implement such a program in such  
 1035 schools.

1036        (6) To increase school breakfast and universal school  
 1037 breakfast program participation, each school district must, to  
 1038 the maximum extent practicable, make breakfast meals available  
 1039 to students through alternative service models as described in  
 1040 publications of the Food and Nutrition Service of the United  
 1041 States Department of Agriculture for the federal School  
 1042 Breakfast Program.

1043        (7)~~(6)~~ Each ~~school~~ district school board shall annually  
 1044 provide to all students in each elementary, middle, and high  
 1045 ~~school~~ information prepared by the district's food service  
 1046 administration regarding available ~~its~~ school breakfast  
 1047 programs. The information shall be communicated through school  
 1048 announcements and ~~written~~ notices sent to all parents.

1049        (8)~~(7)~~ A ~~school~~ district school board may operate a  
 1050 breakfast program providing for food preparation at the school  
 1051 site or in central locations with distribution to designated  
 1052 satellite schools or any combination thereof.

1053        ~~(8) Each sponsor shall complete all corrective action~~

1054 ~~plans required by the department or a federal agency to be in~~  
 1055 ~~compliance with the program.~~

1056 Section 60. Section 595.406, Florida Statutes, is amended  
 1057 to read:

1058 595.406 Florida Farm to School ~~Fresh Schools~~ Program.—

1059 (1) In order to implement the Florida Farm to School ~~Fresh~~  
 1060 ~~Schools~~ Program, the department shall develop policies  
 1061 pertaining to school food services which encourage:

1062 (a) Sponsors to buy fresh and high-quality foods grown in  
 1063 this state when feasible.

1064 (b) Farmers in this state to sell their products to  
 1065 sponsors, school districts, and schools.

1066 (c) Sponsors to demonstrate a preference for competitively  
 1067 priced organic food products.

1068 (d) Sponsors to make reasonable efforts to select foods  
 1069 based on a preference for those that have maximum nutritional  
 1070 content.

1071 (2) The department shall provide outreach, guidance, and  
 1072 training to sponsors, schools, school food service directors,  
 1073 parent and teacher organizations, and students about the benefit  
 1074 of fresh food products from farms in this state.

1075 (3) The department may recognize sponsors who purchase at  
 1076 least 10 percent of the food they serve from the Florida Farm to  
 1077 School Program.

1078 Section 61. Subsection (2) of section 595.407, Florida  
 1079 Statutes, is amended to read:

1080 595.407 Children's summer nutrition program.—

1081 (2) Each school district shall develop a plan to sponsor  
 1082 or operate a summer nutrition program to operate sites in the  
 1083 school district as follows:

1084 (a) Within 5 miles of at least one elementary school that  
 1085 serves any combination of grades kindergarten through 5 at which  
 1086 50 percent or more of the students are eligible for free or  
 1087 reduced-price school meals and for the duration of 35  
 1088 consecutive days between the end of the school year and the  
 1089 beginning of the next school year. School districts may exclude  
 1090 holidays and weekends.

1091 (b) Within 10 miles of each elementary school that serves  
 1092 any combination of grades kindergarten through 5 at which 50  
 1093 percent or more of the students are eligible for free or  
 1094 reduced-price school meals, except as operated pursuant to  
 1095 paragraph (a).

1096 Section 62. Section 595.408, Florida Statutes, is amended  
 1097 to read:

1098 595.408 Food Commodity distribution services; department  
 1099 responsibilities and functions.—

1100 (1)(a) The department shall conduct, supervise, and  
 1101 administer all food commodity distribution services that will be  
 1102 carried on using federal or state funds, or funds from any other  
 1103 source, or food commodities received and distributed from the  
 1104 United States or any of its agencies.

1105 (b) The department shall determine the benefits each  
 1106 applicant or recipient of assistance is entitled to receive  
 1107 under this chapter, provided that each applicant or recipient is

1108 a resident of this state and a citizen of the United States or  
 1109 is an alien lawfully admitted for permanent residence or  
 1110 otherwise permanently residing in the United States under color  
 1111 of law.

1112 (2) The department shall cooperate fully with the United  
 1113 States Government and its agencies and instrumentalities so that  
 1114 the department may receive the benefit of all federal financial  
 1115 allotments and assistance possible to carry out the purposes of  
 1116 this chapter.

1117 (3) The department may:

1118 (a) Accept any duties with respect to food commodity  
 1119 distribution services as are delegated to it by an agency of the  
 1120 federal government or any state, county, or municipal  
 1121 government.

1122 (b) Act as agent of, or contract with, the federal  
 1123 government, state government, or any county or municipal  
 1124 government in the administration of food commodity distribution  
 1125 services to secure the benefits of any public assistance that is  
 1126 available from the federal government or any of its agencies,  
 1127 and in the distribution of funds received from the federal  
 1128 government, state government, or any county or municipal  
 1129 government for food commodity distribution services within the  
 1130 state.

1131 (c) Accept from any person or organization all offers of  
 1132 personal services, food commodities, or other aid or assistance.

1133 (4) This chapter does not limit, abrogate, or abridge the  
 1134 powers and duties of any other state agency.

1135 Section 63. Section 595.501, Florida Statutes, is amended  
 1136 to read:

1137 595.501 Penalties.—

1138 (1) When a corrective action plan is issued by the  
 1139 department or a federal agency, each sponsor is required to  
 1140 complete the corrective action plan to be in compliance with the  
 1141 program.

1142 (2) Any person or, ~~sponsor, or school district~~ that  
 1143 violates any provision of this chapter or any rule adopted  
 1144 thereunder or otherwise does not comply with the program is  
 1145 subject to a suspension or revocation of their agreement, loss  
 1146 of reimbursement, or a financial penalty in accordance with  
 1147 federal or state law or both. This section does not restrict the  
 1148 applicability of any other law.

1149 Section 64. Section 595.601, Florida Statutes, is amended  
 1150 to read:

1151 595.601 Food and Nutrition Services Trust Fund.—Chapter  
 1152 99-37, Laws of Florida, recreated the Food and Nutrition  
 1153 Services Trust Fund to record revenue and disbursements of  
 1154 Federal Food and Nutrition funds received by the department as  
 1155 authorized in s. 595.404 and s. 595.408 ~~595.405~~.

1156 Section 65. Paragraphs (b) and (d) of subsection (1) and  
 1157 subsection (2) of section 604.21, Florida Statutes, are amended  
 1158 to read:

1159 604.21 Complaint; investigation; hearing.—

1160 (1)

1161 (b) To be considered timely filed, a complaint together

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1162 with any required affidavit ~~affidavits or notarizations~~ must be  
1163 received by the department within 6 months after the date of  
1164 sale by electronic transmission, facsimile, regular mail,  
1165 certified mail, or private delivery service. If the complaint is  
1166 sent by a service other than electronic mail or facsimile, the  
1167 mailing shall be postmarked or dated on or before the 6-month  
1168 deadline to be accepted as timely filed.

1169 (d) A person, partnership, corporation, or other business  
1170 entity filing a complaint shall submit to the department the  
1171 following documents: a ~~three~~ completed complaint affidavits on a  
1172 form provided by the department with an original signature of an  
1173 owner, partner, general partner, or corporate officer and an  
1174 original notarization on each affidavit. ~~If the complaint is~~  
1175 ~~filed by electronic transmission or facsimile, the original~~  
1176 ~~affidavits and original notarizations shall be filed with the~~  
1177 ~~department not later than the close of business of the tenth~~  
1178 ~~business day following the electronic transmission or facsimile~~  
1179 ~~filing.~~ Attached to the ~~each~~ complaint affidavit shall be copies  
1180 of all documents to support the complaint. Supporting documents  
1181 may be copies of invoices, bills of lading, packing or shipping  
1182 documents, demand letters, or any other documentation to support  
1183 the claim. In cases in which there are multiple invoices being  
1184 claimed, a summary list of all claimed invoices must accompany  
1185 the complaint.

1186 (2) Upon the filing of such complaint in the manner herein  
1187 provided, the department shall investigate the matters  
1188 complained of; whereupon, if, in the opinion of the department,

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1189 the facts contained in the complaint warrant such action, the  
 1190 department shall serve notice of the filing of complaint to the  
 1191 dealer against whom the complaint has been filed at the last  
 1192 address of record. Such notice shall be accompanied by a ~~true~~  
 1193 copy of the complaint. A copy of such notice and complaint shall  
 1194 also be served to the surety company, if any, that provided the  
 1195 bond for the dealer, which surety company shall become party to  
 1196 the action. Such notice of the complaint shall inform the dealer  
 1197 of a reasonable time within which to answer the complaint by  
 1198 advising the department in writing that the allegations in the  
 1199 complaint are admitted or denied or that the complaint has been  
 1200 satisfied. Such notice shall also inform the dealer and the  
 1201 surety company or financial institution of a right to a hearing  
 1202 on the complaint, if requested.

1203 Section 66. Section 604.33, Florida Statutes, is amended  
 1204 to read:

1205 604.33 Security requirements for grain dealers.—Each grain  
 1206 dealer doing business in the state shall maintain liquid  
 1207 security, in the form of grain on hand, cash, certificates of  
 1208 deposit, or other nonvolatile security that can be liquidated in  
 1209 10 days or less, or cash bonds, surety bonds, or letters of  
 1210 credit, that have been assigned to the department and that are  
 1211 conditioned to secure the faithful accounting for and payment to  
 1212 the producers for grain stored or purchased, in an amount equal  
 1213 to the value of grain which the grain dealer has received from  
 1214 grain producers for which the producers have not received  
 1215 payment. The bonds must be executed by the applicant as

1216 principal and by a surety corporation authorized to transact  
 1217 business in the state. The certificates of deposit and letters  
 1218 of credit must be from a recognized financial institution doing  
 1219 business in the United States. ~~Each grain dealer shall report to~~  
 1220 ~~the department monthly, on or before a date established by rule~~  
 1221 ~~of the department, the value of grain she or he has received~~  
 1222 ~~from producers for which the producers have not received payment~~  
 1223 ~~and the types of transaction involved, showing the value of each~~  
 1224 ~~type of transaction. The report shall also include a statement~~  
 1225 ~~showing the type and amount of security maintained to cover the~~  
 1226 ~~grain dealer's liability to producers. The department may shall~~  
 1227 make at least one spot check annually of each grain dealer to  
 1228 determine compliance with the requirements of this section.

1229 Section 67. This act shall take effect July 1, 2016.