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# **Agriculture & Natural Resources Subcommittee**

**Wednesday, March 20, 2013  
12:00 PM  
Reed Hall**

**Will Weatherford  
Speaker**

**Matthew H. "Matt" Caldwell  
Chair**

# Committee Meeting Notice

## HOUSE OF REPRESENTATIVES

### Agriculture & Natural Resources Subcommittee

**Start Date and Time:** Wednesday, March 20, 2013 12:00 pm  
**End Date and Time:** Wednesday, March 20, 2013 03:00 pm  
**Location:** Reed Hall (102 HOB)  
**Duration:** 3.00 hrs

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

HB 183 Stormwater Management Permits by Raulerson  
HB 1063 Water Supply by Hutson  
HB 1083 Underground Natural Gas Storage by Eagle  
HB 1085 Public Records/Natural Gas Storage Facility Permit by Eagle  
HB 1121 Community Cats by Raschein  
HB 1393 Agricultural Storage and Shipping Containers by Beshears

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

PCB ANRS 13-03 -- Total Maximum Daily Loads

**NOTICE FINALIZED on 03/18/2013 16:17 by Love.John**



## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 183 Stormwater Management Permits  
**SPONSOR(S):** Raulerson  
**TIED BILLS:** None **IDEN./SIM. BILLS:** SB 934

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

### SUMMARY ANALYSIS

The bill authorizes counties and municipalities that have created a community redevelopment area (CRA) or an urban infill and redevelopment area to adopt a stormwater adaptive management plan addressing the quantity and quality of stormwater discharges for the redevelopment or infill area and obtain a conceptual permit from a Water Management District (WMD) or the Department of Environmental Protection (DEP). The bill provides that the conceptual permit:

- Must allow for the rate and volume of stormwater discharges for stormwater management systems of urban redevelopment projects within a CRA or an urban infill and redevelopment area to continue up to the maximum rate and volume of stormwater discharges within the area as of the date that the stormwater management plan is adopted.
- Must presume that stormwater discharges for stormwater management systems of urban redevelopment projects within a CRA or urban infill and redevelopment areas that demonstrate a net improvement of the quality of the discharged water that existed as of the date the plan is adopted for any applicable pollutants of concern in the receiving water body do not cause or contribute to violations of water quality criteria.
- Must not prescribe additional or more stringent limitations concerning the quantity and quality of stormwater discharges from stormwater management systems beyond those provided in this section.
- Must be issued for a duration of 20 years, and can be renewed, unless a shorter duration is requested by the applicant.

The bill also provides that urban redevelopment projects that meet the requirements of the conceptual permit qualify for general permits authorizing construction and operation for the duration of the conceptual permit.

In addition, the bill provides that conceptual permits cannot conflict with the requirements of a federally approved state National Pollution Discharge Elimination System program or with the implementation of total maximum daily loads and basin management action plans.

Lastly, the bill provides a consolidated environmental permit or any associated variance or any sovereign submerged lands authorization proposed or issued by DEP in connection with the state's deep water ports must be subject to a summary hearing. However, the summary proceeding must be conducted within 30 days after a party files a motion for a summary hearing, and the administrative law judge's decision must be in the form of a recommended order and does not constitute final agency action by DEP. DEP must issue the final order within 45 working days after receiving the administrative law judge's recommended order.

There may be an insignificant fiscal impact on those local governments that have already established either a community redevelopment area or an urban infill and redevelopment area. Those local governments would have to amend those plans if they want to obtain a conceptual permit. However, there may be a time and cost savings for those cities or counties that meet the requirements of the conceptual permit. Those cities or counties would be able to obtain general permits during the duration of the conceptual permit, which are generally easier to obtain and more cost effective.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### Present Situation

##### **Growth Policy Act**

In 1999, the Florida Legislature enacted the Growth Policy Act<sup>1</sup> (Act) in order to provide incentives to promote urban infill and redevelopment. The Act authorizes local governments to designate urban infill and redevelopment areas for the purpose of targeting economic development, job creation, housing, transportation, crime prevention, neighborhood revitalization and preservation and land use incentives to encourage infill and redevelopment within urban centers. The Act defines an urban infill and redevelopment area as an area where:

- Public services (water and wastewater, transportation, schools, and recreation) are already available or are scheduled to be provided in the 5-year schedule of capital improvements;
- The area, or one or more neighborhoods within the area, suffers from pervasive poverty, unemployment, and general distress;<sup>2</sup>
- The proportion of properties that are substandard, overcrowded, dilapidated, vacant or abandoned, or functionally obsolete is higher than the average for the local government;
- More than 50 percent of the area is within one-fourth mile of a transit stop, or a sufficient number of such transit stops will be made available concurrent with the designation; and
- The area includes or is adjacent to community redevelopment areas, brownfields, enterprise zones, or Main Street programs, or has been designated by the state or federal government as an urban redevelopment, revitalization, or infill area under empowerment zone, enterprise community, or brownfield showcase community program or similar program.<sup>3</sup>

Pursuant to s. 163.2517, F.S., local governments that want to designate urban infill and redevelopment areas must develop plans describing redevelopment objectives and strategies, or to amend existing plans. Local governments must also adopt urban infill and redevelopment plans by ordinance and amend their comprehensive plans to delineate urban infill and redevelopment area boundaries. Section 163.2520, F.S., provides that a local government with an adopted urban infill and redevelopment plan or plan employed in lieu thereof can issue revenue bonds and employ tax increment financing for the purpose of financing the implementation of the plan.

##### **Community Redevelopment Act**

Part III of chapter 163, F.S., the Community Redevelopment Act of 1969 (Redevelopment Act), was enacted in order to revitalize economically distressed areas in order to improve public welfare and increase the local tax base. The Redevelopment Act authorizes a county or municipality to create community redevelopment areas (CRAs) by adopting a resolution declaring the need for a CRA in order to redevelop slum and blighted areas.<sup>4</sup> CRAs are not permitted to levy or collect taxes; however, the local government is permitted to establish a community redevelopment trust fund utilizing revenues derived from tax increment financing (TIF). TIF uses the incremental increase in ad valorem tax revenue within a designated CRA to finance redevelopment projects within that area. To obtain this

<sup>1</sup> Sections 163.2511-163.2523, F.S.

<sup>2</sup> Section 290.0058, F.S., provides the definition for "general distress."

<sup>3</sup> Section 163.2514(2), F.S.

<sup>4</sup> Section 163.340(7), F.S., provides the definition for "slum area" and s. 163.340(8), F.S., provides the definition for "blighted area."

revenue, in addition to establishing a trust fund, a local government must create a community redevelopment agency,<sup>5</sup> designate an area or areas to be a CRA, and approve a community redevelopment plan.<sup>6</sup> Once this is accomplished, the CRA can direct the tax increment revenues from within the CRA to accrue to the local government and to be used for the conservation, rehabilitation, or redevelopment of the CRA.

## **Stormwater**

Unmanaged urban stormwater creates a wide variety of effects on Florida's surface and ground waters. Urbanization leads to the compaction of soil; the addition of impervious surfaces such as roads and parking lots; alteration of natural landscape features such as natural depressional areas which hold water, floodplains and wetlands; construction of highly efficient drainage systems; and the addition of pollutants from everyday human activities. These alterations within a watershed decrease the amount of rainwater that can seep into the soil to recharge aquifers, maintain water levels in lakes and wetlands, and maintain spring and stream flows. Consequently, the increased volume, speed, and pollutant loading in stormwater that runs off developed areas lead to flooding, water quality problems, and the loss of habitat.<sup>7</sup>

In 1982, to manage urban stormwater and minimize impacts to our natural systems, Florida adopted a technology-based rule requiring the treatment of stormwater to a specified level of pollutant load reduction for all new development. The rule included a performance standard for the minimum level of treatment, design criteria for best management practices (BMPs) that will achieve the performance standard, and a rebuttable presumption that discharges from a stormwater management system designed in accordance with the BMP design criteria will meet water quality standards. The performance standard was to reduce post-development stormwater pollutant loading of Total Suspended Solids (TSS)<sup>8</sup> by 80 percent or by 95 percent for Outstanding Florida Waters.<sup>9</sup>

In 1990, in response to legislation, the Department of Environmental Protection (DEP) developed and implemented the State Water Resource Implementation Rule (originally known as the State Water Policy rule).<sup>10</sup> The rule sets forth the broad guidelines for the implementation of Florida's stormwater program and describes the roles of DEP, the water management districts (WMDs), and local governments. The rule provides that one of the primary goals of the program is to maintain, to the highest degree possible, during and after construction and development, the predevelopment stormwater characteristics of a site. The rule also provides a specific minimum performance standard for stormwater treatment systems: to remove 80 percent of the post-development stormwater pollutant loading of pollutants "that cause or contribute to violations of water quality standards." This performance standard is significantly different than the one used in DEP and WMD stormwater treatment rules of the 1980s.

## **Effect of Proposed Changes**

The bill creates s. 373.41305, F.S., relating to conceptual permits for urban redevelopment projects. The bill provides that a city or county that creates a community redevelopment area or urban infill and redevelopment area pursuant to chapter 163, F.S., is authorized to adopt a stormwater adaptive management plan that addresses the quantity and quality of stormwater discharges for the area and

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<sup>5</sup> Section 163.356, F.S.

<sup>6</sup> See ch. 163, part III, F.S.

<sup>7</sup> National Resources Defense Council. *Stormwater Strategies*, May 1999 report, available at: <http://www.nrdc.org/water/pollution/storm/stoinx.asp>.

<sup>8</sup> Total Suspended Solid (TSS) is listed as a conventional pollutant under s. 304(a)(4) of the Clean Water Act. A conventional pollutant is a water pollutant that is amenable to treatment by a municipal sewage treatment plant.

<sup>9</sup> Rule 62-302.700 F.A.C., provides that an Outstanding Florida Water (OFW), is a water designated worthy of special protection because of its natural attributes. This special designation is applied to certain waters and is intended to protect existing good water quality.

<sup>10</sup> Chapter 62-40 F.A.C.

obtain a conceptual permit from a WMD or DEP. The conceptual permit must be established by a WMD in consultation with DEP.

The bill also provides that the conceptual permit:

- Must allow for the rate and volume of stormwater discharges for stormwater management systems of urban redevelopment projects within a CRA or an urban infill and redevelopment area to continue up to the maximum rate and volume of stormwater discharges within the area as of the date that the stormwater management plan is adopted.
- Must presume that stormwater discharges for stormwater management systems of urban redevelopment projects within a CRA or urban infill and redevelopment areas that demonstrate a net improvement of the quality of the discharged water that existed as of the date the plan is adopted for any applicable pollutants of concern in the receiving water body do not cause or contribute to violations of water quality criteria.
- Must not prescribe additional or more stringent limitations concerning the quantity and quality of stormwater discharges from stormwater management systems beyond those provided in this section.
- Must be issued for a duration of 20 years, and can be renewed, unless a shorter duration is requested by the applicant.

Urban redevelopment projects that meet the criteria established in the conceptual permit qualify for a general permit that authorizes construction and operation for the duration of the conceptual permit.

The bill provides that a conceptual permit must not conflict with the requirements of a federally approved state National Pollution Discharge Elimination System program or with the implementation of total maximum daily loads and basin management action plans.

Lastly, the bill provides that a consolidated environmental permit, any associated variance or any sovereign submerged lands authorization proposed or issued by DEP in connection with the state's deep water ports<sup>11</sup> must be subject to a summary hearing.<sup>12</sup> The summary proceeding must be conducted within 30 days after a party files a motion for a summary hearing, and the administrative law judge's decision must be in the form of a recommended order and does not constitute final agency action by DEP. DEP shall issue the final order within 45 working days after receiving the administrative law judge's recommended order. The summary hearing provisions of this section apply to pending administrative proceedings.

## B. SECTION DIRECTORY:

**Section 1.** Creates s. 373.41305, F.S., authorizing certain municipalities and counties to adopt stormwater adaptive management plans and obtain conceptual permits for urban redevelopment projects; providing requirements to establish such permits; providing that certain urban redevelopment projects qualify for a noticed general permit; prohibiting provisions for general permits from conflicting with specified federally delegated pollution reduction programs.

**Section 2.** Requires a challenge to a consolidated ERP, associated variance, or a sovereign submerged lands authorization proposed or issued by DEP in connection with specified deepwater ports to be conducted pursuant to specified summary hearing provisions and within a certain timeframe; providing that the ALJ's order is a recommended order and does not constitute final agency action; requiring DEP to issue the final order within a certain timeframe.

**Section 3.** Provides the bill will take effect upon becoming a law.

<sup>11</sup> For purposes of this section, it is the ports listed in s. 403.021(9), F.S.

<sup>12</sup> Section 120.574, F.S.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

See Fiscal Comments.

2. Expenditures:

See Fiscal Comments.

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

None.

### D. FISCAL COMMENTS:

There may be a time and cost savings for those cities or counties that meet the requirements of the conceptual permit. Those cities or counties would be able to obtain general permits during the duration of the conceptual permit, which are generally easier to obtain and more cost effective.

## III. COMMENTS

### A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

### B. RULE-MAKING AUTHORITY:

None.

### C. DRAFTING ISSUES OR OTHER COMMENTS:

In 2012, HB 7003 was approved by the governor and directed DEP to develop statewide resource permitting rules for activities relating to management and storage of surface waters. Proposed Rule 62-330.055, F.A.C., addresses conceptual approval permits for urban infill or redevelopment.

In 2012, HB 599 was approved by the governor and, in part, provided that a consolidated environmental resource permit issued by DEP in connection with the state's deepwater ports is subject to a summary hearing. Therefore, section 2 of HB 183 appears to be unnecessary.



#### IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.

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A bill to be entitled  
 An act relating to stormwater management permits;  
 creating s. 373.41305, F.S.; authorizing certain  
 municipalities and counties to adopt stormwater  
 adaptive management plans and obtain conceptual  
 permits for urban redevelopment projects; providing  
 requirements for establishment of such permits by  
 water management districts in consultation with the  
 Department of Environmental Protection; providing that  
 certain urban redevelopment projects qualify for a  
 noticed general permit; prohibiting provisions for  
 such permits from conflicting with specified federally  
 delegated pollution reduction programs; requiring a  
 challenge to a consolidated environmental resource  
 permit or associated variance or a sovereign submerged  
 lands authorization proposed or issued by the  
 department in connection with specified deepwater  
 ports to be conducted pursuant to specified summary  
 hearing provisions and within a certain timeframe;  
 providing that the administrative law judge's decision  
 is a recommended order and does not constitute final  
 agency action of the department; requiring the  
 department to issue the final order within a certain  
 timeframe; providing for applicability; providing  
 effective dates.

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

29 Section 1. Effective July 1, 2013, section 373.41305,  
 30 Florida Statutes, is created to read:

31 373.41305 Conceptual permits for urban redevelopment  
 32 projects.-

33 (1) A municipality or county that creates a community  
 34 redevelopment area or an urban infill and redevelopment area  
 35 pursuant to chapter 163 may adopt a stormwater adaptive  
 36 management plan that addresses the quantity and quality of  
 37 stormwater discharges for the area and may obtain a conceptual  
 38 permit from a water management district or the department.

39 (2) The water management district, in consultation with  
 40 the department, shall establish the conceptual permit. The  
 41 permit:

42 (a) Must allow for the rate and volume of stormwater  
 43 discharges for stormwater management systems of urban  
 44 redevelopment projects located within a community redevelopment  
 45 area created under part III of chapter 163 or an urban infill  
 46 and redevelopment area designated under s. 163.2517 to continue  
 47 up to the maximum rate and volume of stormwater discharges  
 48 within the area as of the date that the stormwater adaptive  
 49 management plan is adopted.

50 (b) Must presume that stormwater discharges for stormwater  
 51 management systems of urban redevelopment projects located  
 52 within a community redevelopment area created under part III of  
 53 chapter 163 or an urban infill and redevelopment area designated  
 54 under s. 163.2517, which demonstrate a net improvement of the  
 55 quality of the discharged water that existed as of the date that  
 56 the stormwater adaptive management plan is adopted for any

57 applicable pollutants of concern in the receiving water body, do  
 58 not cause or contribute to violations of water quality criteria.

59 (c) Must not prescribe additional or more stringent  
 60 limitations concerning the quantity and quality of stormwater  
 61 discharges from stormwater management systems beyond those  
 62 provided in this section.

63 (d) Must be issued for a duration of at least 20 years,  
 64 unless a shorter duration is requested by the applicant, and may  
 65 be renewed.

66 (3) Urban redevelopment projects that meet the criteria  
 67 established in the conceptual permit pursuant to this section  
 68 qualify for a noticed general permit that authorizes  
 69 construction and operation for the duration of the conceptual  
 70 permit.

71 (4) Notwithstanding subsections (1)-(3), a permit issued  
 72 pursuant to this section must not conflict with the requirements  
 73 of a federally approved program pursuant to s. 403.0885 or with  
 74 the implementation of s. 403.067(7) regarding total maximum  
 75 daily loads and basin management plans.

76 Section 2. (1) Notwithstanding s. 120.569, s. 120.57, or  
 77 s. 373.427, Florida Statutes, or any other provision of law to  
 78 the contrary, a challenge to a consolidated environmental  
 79 resource permit or an associated variance or a sovereign  
 80 submerged lands authorization proposed or issued by the  
 81 Department of Environmental Protection in connection with the  
 82 state's deepwater ports listed in s. 403.021(9), Florida  
 83 Statutes, shall be conducted pursuant to the summary hearing  
 84 provisions of s. 120.574, Florida Statutes. However, the summary

85 proceeding shall be conducted within 30 days after a party files  
 86 a motion for a summary hearing, regardless of whether the  
 87 parties agree to the summary proceeding, and the administrative  
 88 law judge's decision shall be in the form of a recommended order  
 89 and does not constitute final agency action of the department.  
 90 The department shall issue the final order within 45 working  
 91 days after receipt of the administrative law judge's recommended  
 92 order.

93 (2) The summary hearing provisions of this section apply  
 94 to pending administrative proceedings. However, the provisions  
 95 of s. 120.574(1)(b) and (d), Florida Statutes, do not apply to  
 96 pending administrative proceedings.

97 Section 3. Except as otherwise expressly provided in this  
 98 act, this act shall take effect upon becoming a law.



Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

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

1 Committee/Subcommittee hearing bill: Agriculture & Natural  
 2 Resources Subcommittee  
 3 Representative Raulerson offered the following:

**Amendment (with title amendment)**

Remove everything after the enacting clause and insert:

Section 1. Subsection (1) of section 373.4131, Florida Statutes, is amended to read:

373.4131 Statewide environmental resource permitting rules.-

(1)~~(a)~~ No later than October 1, 2012, the department shall initiate rulemaking to adopt, in coordination with the water management districts, statewide environmental resource permitting rules governing the construction, alteration, operation, maintenance, repair, abandonment, and removal of any stormwater management system, dam, impoundment, reservoir, appurtenant work, works, or any combination thereof, under this part.

(a)~~(b)~~ The rules must ~~shall~~ provide for statewide, consistent regulation of activities under this part and must



Amendment No. 1

21 ~~shall~~ include, at a minimum:

- 22 1. Criteria and thresholds for requiring permits.
- 23 2. Types of permits.
- 24 3. Procedures governing the review of applications and
- 25 notices, duration and modification of permits, operational
- 26 requirements, transfers of permits, provisions for emergencies,
- 27 and provisions for abandonment and removal of systems.
- 28 4. Exemptions and general permits that do not allow
- 29 significant adverse impacts to occur individually or
- 30 cumulatively.
- 31 5. Conditions for issuance.
- 32 6. General permit conditions, including monitoring,
- 33 inspection, and reporting requirements.
- 34 7. Standardized fee categories for activities under this
- 35 part to promote consistency. The department and water management
- 36 districts may amend fee rules to reflect the standardized fee
- 37 categories but are not required to adopt identical fees for
- 38 those categories.
- 39 8. Application, notice, and reporting forms. To the
- 40 maximum extent practicable, the department and water management
- 41 districts shall provide for electronic submittal of forms and
- 42 notices.
- 43 9. An applicant's handbook that, at a minimum, contains
- 44 general program information, application and review procedures,
- 45 a specific discussion of how environmental criteria are
- 46 evaluated, and discussion of stormwater quality and quantity
- 47 criteria.
- 48 (b) The rules must provide for a conceptual permit for a
- 49 municipality or county that creates a stormwater management
- 50 master plan for urban infill and redevelopment areas or



Amendment No. 1

51 community redevelopment areas created under chapter 163. Upon  
52 approval by the department or water management district, such a  
53 master plan shall become part of the conceptual permit issued by  
54 the department or water management district. The rules must  
55 additionally provide for an associated general permit for the  
56 construction and operation of urban redevelopment projects that  
57 meet the criteria established in the conceptual permit. The  
58 conceptual permit and associated general permit must not  
59 conflict with the requirements of a federally approved program  
60 pursuant to s. 403.0885 or with the implementation of s.  
61 403.067(7) regarding total maximum daily loads and basin  
62 management action plans. The conceptual permit must include:

63 1. Provisions for the rate and volume of stormwater  
64 discharges from the urban redevelopment area to continue up to  
65 the maximum rate and volume of stormwater discharges as of the  
66 date that the conceptual permit is approved.

67 2. A presumption that stormwater discharges from the urban  
68 redevelopment area do not cause or contribute to violations of  
69 water quality standards, after making a demonstration of net  
70 improvement of the quality of the discharged water that existed  
71 as of the date the conceptual permit is approved.

72 3. Provisions for the use of stormwater best management  
73 practices to the maximum extent practicable.

74 4. Provisions to ensure that stormwater management systems  
75 constructed within the urban redevelopment area are operated and  
76 maintained in compliance with s. 373.416.

77 5. A duration of at least 20 years, unless a shorter  
78 duration is requested, with an option to renew.

79 (c) The rules must ~~shall~~ rely primarily on the rules of  
80 the department and water management districts in effect





Amendment No. 1

81 immediately prior to the effective date of this section, except  
82 that the department may:

83 1. Reconcile differences and conflicts to achieve a  
84 consistent statewide approach.

85 2. Account for different physical or natural  
86 characteristics, including special basin considerations, of  
87 individual water management districts.

88 3. Implement additional permit streamlining measures.

89 (d) The application of the rules must ~~shall~~ continue to be  
90 governed by the first sentence of s. 70.001(12).

91 Section 2. This act shall take effect July 1, 2013.  
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94 **T I T L E A M E N D M E N T**

95 Remove everything before the enacting clause and insert:  
96 An act relating to statewide environmental resource permitting;  
97 amending s. 373.4131, F.S.; providing that rules must provide  
98 for conceptual permits for municipalities or counties that  
99 create stormwater management master plans for urban  
100 redevelopment projects; providing for master plans to become  
101 part of the conceptual permit authorized by the department or  
102 water management district; providing that rules must provide for  
103 an associated general permit; prohibiting provisions for such  
104 permits from conflicting with specified federally delegated  
105 pollution reduction programs; providing certain requirements for  
106 conceptual permits; providing an effective date.



## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 1063 Water Supply  
**SPONSOR(S):** Hutson and others  
**TIED BILLS:** None **IDEN./SIM. BILLS:** SB 948

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

### SUMMARY ANALYSIS

Current law provides that water management districts (WMDs) are required to develop a regional water supply plan in areas where they have determined that available water sources are not sufficient to meet existing and future water supply needs within a 20-year planning period. The plans include projected water supply needs for all users, including agriculture. The WMDs employ different methods in making such projections for agricultural users and use a combination of common and unique data sources. The Department of Agriculture and Consumer Services (DACS) participates in the regional water supply planning process and can provide input regarding agricultural water supply demand projection, but has no formal role in determining future water supply needs for agriculture.

The bill adds utility companies, private landowners, water consumers, and DACS to the list of entities that should cooperate in order to meet the water needs of rural and rapidly urbanizing areas. The bill adds "self-suppliers" to the list of entities the governing boards of WMDs must assist in meeting water supply needs and to the list of entities governing boards can join with for the purpose of carrying out its duties and contract with to finance acquisitions, construction, operation, and maintenance.

The bill includes DACS in the list of entities the governing boards of the WMDs must coordinate and cooperate with when conducting water supply planning for water supply planning regions. The bill provides that agricultural demand projections used for determining the needs of agricultural self-suppliers must be based upon the best available data. The WMD must consider the data indicative of future water supply demands provided by DACS when determining the best available data for agricultural self-supplied water needs. Any adjustment of or deviation from the data provided by DACS must be fully described, and the original data must be presented along with the adjusted data.

The bill directs DACS to establish an agricultural water supply planning program that includes the development of data indicative of future agricultural water supply demands, which must be based on at least a 20-year planning period. The data on future agricultural water supply demands, which are provided to each WMD, must include certain provisions (See Effect of Proposed Changes). In developing the data of future agricultural water supply needs, DACS must consult with the agricultural industry, the University of Florida's Institute of Food and Agricultural Sciences, DEP, the WMDs, the National Agricultural Statistics Service, and the U.S. Geological Survey. Lastly, DACS must coordinate with each WMD to establish a schedule for providing the data on agricultural water supply needs.

The bill appears to have a significant fiscal impact on state government expenditures. DACS is requesting \$1.5 million in non-recurring General Revenue as part of its 2013-2014 legislative budget request to fund the provisions of the bill. The bill does not appear to have a fiscal impact on local government.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### Current Situation

Section 373.701, F.S., provides that it is the policy of the Legislature to:

- Promote the availability of sufficient water for all existing and future reasonable-beneficial uses and natural systems;
- Provide that those waters be managed on a state and regional basis; and
- Provide that cooperative efforts between municipalities, counties, water management districts (WMDs), and the Department of Environmental Protection (DEP) are mandatory in order to meet the water needs.

Section 373.703, F.S., provides for certain powers and duties of the governing board of a WMD.

Section 373.709(1), F.S., provides that each WMD must conduct water supply planning for any water supply planning region within the district where it determines that existing sources of water are not adequate to supply water for all existing and future reasonable-beneficial uses<sup>1</sup> and to sustain the water resources and related natural systems for the planning period. The planning must be conducted in an open public process and in coordination and cooperation with local governments, regional water supply authorities, government-owned and privately owned water and wastewater utilities, multijurisdictional water supply entities, self-suppliers, reuse utilities, DEP, and other affected and interested parties. A determination by the governing board that initiation of a regional water supply plan for a specific planning region is not needed must be reevaluated by the WMD governing board at least once every 5 years and must initiate a regional water supply plan, if needed.

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

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

Regional water supply plans include projected water supply needs for all users, including agriculture. The WMDs employ different methods in making such projections for agricultural users and use a combination of common and unique data sources. The Department of Agriculture and Consumer Services (DACs) participates in the regional water supply planning process and can provide input

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<sup>1</sup> Section 373.019(16), F.S., defines reasonable-beneficial use as "the use of water in such quantity as is necessary for economic and efficient utilization for a purpose and in a manner which is both reasonable and consistent with the public interest."

regarding agricultural water supply demand projection, but has no formal role in determining future water supply needs for agriculture.<sup>2</sup>

The regional water supply plans typically list water resource development and water supply development options that can meet the projected reasonable-beneficial use needs of the water supply region. The plans normally include a mix of traditional and alternative water supply options.<sup>3</sup> Traditional water supplies come from surface water sources, such as lakes and rivers, and from groundwater withdrawals. Alternative water supplies include activities such as treating wastewater for agricultural use, desalination of saltwater or brackish water to produce drinking water, and surface and rain water storage. Water consumers either purchase or self-supply water. Self-supplied water often comes from on-site wells or through surface water retention, among other methods.

Pursuant to s. 570.085, F.S., DACS must establish an agricultural water conservation program that includes:

- A cost-share program, between the U.S. Dept. of Agriculture and other federal, state, regional, and local agencies for irrigation system retrofit and the application of mobile irrigation laboratory evaluations for water conservation.
- The development and implementation of voluntary interim measures or best management practices which provide for increased efficiencies in the use and management of water for agricultural production. In the process of developing and adopting rules for interim measures or best management practices, DACS must consult with DEP and the WMDs.
- Provide assistance to the WMDs in the development and implementation of a consistent methodology for the efficient allocation of water for agricultural irrigation.

### **Effect of Proposed Changes**

The bill amends s. 373.701, F.S., to include utility companies, private landowners, water consumers, and DACS to the list of entities that should cooperate in order to meet the water needs of rural and rapidly urbanizing areas.

The bill amends s. 373.703, F.S., to add "self-suppliers" to the list of entities the governing boards of WMDs must engage in planning to assist in meeting water supply needs. In such planning, the governing boards must give priority to encouraging conservation and reducing adverse environmental effects of improper or excessive withdrawals of water from concentrated areas. The bill also adds self-suppliers to the list of entities the governing boards must assist in meeting water supply needs. In addition, the bill adds self-suppliers to the list of entities the governing boards can join with for the purpose of carrying out its powers, and can contract with to finance acquisitions, construction, operation, and maintenance.

The bill amends s. 373.709, F.S., to include DACS in the list of entities the governing boards of the WMDs must coordinate and cooperate with when conducting water supply planning for water supply planning regions. The bill provides that a water supply development component for each water supply planning region identified by the district must include agricultural demand projections used for determining the needs of agricultural self-suppliers. Such agricultural demand projections must be based upon the best available data. The WMD must consider the data indicative of future water supply demands provided by the DACS when determining the best available data for agricultural self-supplied water needs. Any adjustment of or deviation from the data provided by DACS must be fully described, and the original data must be presented along with the adjusted data. The bill changes the term "alternative water supply projects" to "water supply development project options", thus broadening the options that may be considered and chosen by various entities for water supply development. The bill

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<sup>2</sup> DACS 2013 analysis. On file with staff.

<sup>3</sup> DEP website on "Regional Water Supply Planning." See <http://www.dep.state.fl.us/water/waterpolicy/rwsp.htm>

also includes the term “self-suppliers” in the list of entities that WMDs are to assist in developing multijurisdictional approaches to water supply project development.

The bill amends s. 570.085, F.S., directing DACS to establish an agricultural water supply planning program that includes the following:

- The development of data indicative of future agricultural water supply demands which must be:
  - Based on at least a 20-year planning period.
  - Provided to each WMD.
  - Considered by each WMD when developing WMD water management plans.
- The data on future agricultural water supply demands, which are provided to each WMD, must include, but not be limited to:
  - Applicable agricultural crop types or categories.
  - Historic, current, and future estimates of irrigated acreage for each applicable crop type or category, spatially for each county, including the historic and current methods and assumptions used to generate the spatial acreage estimates and projections.
  - Crop type or category water use coefficients for a 1-in-10 year drought average used in calculating historic, current, and future water demands, including data, methods, and assumptions used to generate the coefficients. Estimates of historic and current water demands must take into account actual metered data as available.
  - An evaluation of significant uncertainties affecting agricultural production which may require a range of projections for future agricultural water supply demands.
- In developing the data of future agricultural water supply needs, DACS must consult with the agricultural industry, the University of Florida’s Institute of Food and Agricultural Sciences, DEP, the WMDs, the National Agricultural Statistics Service, and the U.S. Geological Survey.
- DACS must coordinate with each WMD to establish a schedule for provision of data on agricultural water supply needs.

**B. SECTION DIRECTORY:**

**Section 1.** Amends s. 373.701, F.S., relating to a declaration of policy for water needs.

**Section 2.** Amends s. 373.703, F.S., relating to water production.

**Section 3.** Amends s. 373.709, F.S., relating to regional water supply planning.

**Section 4.** Amends s. 570.076, F.S., conforming a cross-reference.

**Section 5.** Amends s. 570.085, F.S., relating to agricultural water conservation under the Department of Agriculture and Consumer Services.

**Section 6.** Provides an effective date of July 1, 2013.

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

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

1. Revenues:

None.

2. Expenditures:

See Fiscal Comments Section.

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

None.

2. Expenditures:

None.

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

None.

**D. FISCAL COMMENTS:**

DACS is requesting \$1.5 million in non-recurring General Revenue as part of its 2013-2014 legislative budget request to fund this activity.

**III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

**B. RULE-MAKING AUTHORITY:**

None.

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

None.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

None.

1                                   A bill to be entitled  
2       An act relating to water supply; amending s. 373.701,  
3       F.S.; providing a legislative declaration that efforts  
4       to adequately and dependably meet water needs require  
5       the cooperation of utility companies, private  
6       landowners, water consumers, and the Department of  
7       Agriculture and Consumer Services; amending s.  
8       373.703, F.S.; providing that the governing board of a  
9       water management district shall assist self-suppliers,  
10      among others, in meeting water supply demands in a  
11      manner that will give priority to encouraging  
12      conservation and reducing adverse environmental  
13      effects; providing that the governing board of a water  
14      management district may contract with self-suppliers  
15      for the purpose of carrying out its powers; amending  
16      s. 373.709, F.S.; providing that certain planning by  
17      the governing board of a water management district  
18      must be conducted in coordination and cooperation with  
19      the Department of Agriculture and Consumer Services,  
20      among other interested parties; requiring that certain  
21      agricultural demand projections be based upon the best  
22      available data and providing considerations to  
23      determine the best available data; requiring certain  
24      information if there is a deviation from the data  
25      provided by the Department of Agriculture and Consumer  
26      Services; authorizing certain users to propose  
27      specific projects for inclusion in the list of water  
28      supply development project options; removing



29 references to alternative water supply projects;  
 30 requiring water management districts to assist in  
 31 developing multijurisdictional approaches to water  
 32 supply project development jointly with affected self-  
 33 suppliers in certain areas; amending s. 570.076, F.S.;  
 34 conforming a cross-reference; amending s. 570.085,  
 35 F.S.; requiring the Department of Agriculture and  
 36 Consumer Services to establish an agricultural water  
 37 supply planning program that includes certain data;  
 38 providing criteria for development of data; providing  
 39 an effective date.

40

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

42

43 Section 1. Subsection (3) of section 373.701, Florida  
 44 Statutes, is amended to read:

45 373.701 Declaration of policy.—It is declared to be the  
 46 policy of the Legislature:

47 (3) Cooperative efforts between municipalities, counties,  
 48 utility companies, private landowners, water consumers, water  
 49 management districts, and the Department of Environmental  
 50 Protection, and the Department of Agriculture and Consumer  
 51 Services are necessary ~~mandatory~~ in order to meet the water  
 52 needs of rural and rapidly urbanizing areas in a manner that  
 53 will supply adequate and dependable supplies of water where  
 54 needed without resulting in adverse effects upon the areas from  
 55 which ~~such~~ water is withdrawn. Such efforts should employ ~~use~~  
 56 all practical means of obtaining water, including, but not

57 limited to, withdrawals of surface water and groundwater, reuse,  
 58 and desalination, and will require ~~necessitate not only~~  
 59 cooperation and ~~but also~~ well-coordinated activities.  
 60 Municipalities, counties, and special districts are encouraged  
 61 to create multijurisdictional water supply entities or regional  
 62 water supply authorities as authorized in s. 373.713 ~~or~~  
 63 ~~multijurisdictional water supply entities.~~

64 Section 2. Subsections (1), (2), and (9) of section  
 65 373.703, Florida Statutes, are amended to read:

66 373.703 Water production; general powers and duties.—In  
 67 the performance of, and in conjunction with, its other powers  
 68 and duties, the governing board of a water management district  
 69 existing pursuant to this chapter:

70 (1) Shall engage in planning to assist counties,  
 71 municipalities, special districts, publicly owned and privately  
 72 owned water utilities, multijurisdictional water supply  
 73 entities, ~~or~~ regional water supply authorities, or self-  
 74 suppliers in meeting water supply needs in such manner as will  
 75 give priority to encouraging conservation and reducing adverse  
 76 environmental effects of improper or excessive withdrawals of  
 77 water from concentrated areas. As used in this section and s.  
 78 373.707, regional water supply authorities are regional water  
 79 authorities created under s. 373.713 or other laws of this  
 80 state.

81 (2) Shall assist counties, municipalities, special  
 82 districts, publicly owned or privately owned water utilities,  
 83 multijurisdictional water supply entities, ~~or~~ regional water  
 84 supply authorities, or self-suppliers in meeting water supply

85 | needs in such manner as will give priority to encouraging  
 86 | conservation and reducing adverse environmental effects of  
 87 | improper or excessive withdrawals of water from concentrated  
 88 | areas.

89 |         (9) May join with one or more other water management  
 90 | districts, counties, municipalities, special districts, publicly  
 91 | owned or privately owned water utilities, multijurisdictional  
 92 | water supply entities, ~~or~~ regional water supply authorities, or  
 93 | self-suppliers for the purpose of carrying out ~~any of its~~  
 94 | powers, and may contract with such other entities to finance  
 95 | acquisitions, construction, operation, and maintenance. The  
 96 | contract may provide for contributions to be made by each party  
 97 | to the contract thereto, for the division and apportionment of  
 98 | the expenses of acquisitions, construction, operation, and  
 99 | maintenance, and for the division and apportionment of resulting  
 100 | ~~the~~ benefits, services, and products ~~therefrom~~. The contracts  
 101 | may contain other covenants and agreements necessary and  
 102 | appropriate to accomplish their purposes.

103 |         Section 3. Subsection (1), paragraph (a) of subsection  
 104 | (2), and subsection (3) of section 373.709, Florida Statutes, is  
 105 | amended to read:

106 |         373.709 Regional water supply planning.—

107 |         (1) The governing board of each water management district  
 108 | shall conduct water supply planning for a ~~any~~ water supply  
 109 | planning region within the district identified in the  
 110 | appropriate district water supply plan under s. 373.036, where  
 111 | it determines that existing sources of water are not adequate to  
 112 | supply water for all existing and future reasonable-beneficial

113 | uses and to sustain the water resources and related natural  
 114 | systems for the planning period. The planning must be conducted  
 115 | in an open public process, in coordination and cooperation with  
 116 | local governments, regional water supply authorities,  
 117 | government-owned and privately owned water and wastewater  
 118 | utilities, multijurisdictional water supply entities, self-  
 119 | suppliers, reuse utilities, the Department of Environmental  
 120 | Protection, the Department of Agriculture and Consumer Services,  
 121 | and other affected and interested parties. The districts shall  
 122 | actively engage in public education and outreach to all affected  
 123 | local entities and their officials, as well as members of the  
 124 | public, in the planning process and in seeking input. During  
 125 | preparation, but before ~~prior to~~ completion of the regional  
 126 | water supply plan, the district shall ~~must~~ conduct at least one  
 127 | public workshop to discuss the technical data and modeling tools  
 128 | anticipated to be used to support the regional water supply  
 129 | plan. The district shall also hold several public meetings to  
 130 | communicate the status, overall conceptual intent, and impacts  
 131 | of the plan on existing and future reasonable-beneficial uses  
 132 | and related natural systems. During the planning process, a  
 133 | local government may choose to prepare its own water supply  
 134 | assessment to determine if existing water sources are adequate  
 135 | to meet existing and projected reasonable-beneficial needs of  
 136 | the local government while sustaining water resources and  
 137 | related natural systems. The local government shall submit such  
 138 | assessment, including the data and methodology used, to the  
 139 | district. The district shall consider the local government's  
 140 | assessment during the formation of the plan. A determination by

141 the governing board that initiation of a regional water supply  
 142 plan for a specific planning region is not needed pursuant to  
 143 this section is ~~shall be~~ subject to s. 120.569. The governing  
 144 board shall reevaluate the ~~such a~~ determination at least once  
 145 every 5 years and shall initiate a regional water supply plan,  
 146 if needed, pursuant to this subsection.

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

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

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

159 a. Population projections used for determining public  
 160 water supply needs must be based upon the best available data.  
 161 In determining the best available data, the district shall  
 162 consider the University of Florida's Bureau of Economic and  
 163 Business Research (BEBR) medium population projections and ~~any~~  
 164 population projection data and analysis submitted by a local  
 165 government pursuant to the public workshop described in  
 166 subsection (1) if the data and analysis support the local  
 167 government's comprehensive plan. Any adjustment of or deviation  
 168 from the BEBR projections must be fully described, and the

169 original BEBR data must be presented along with the adjusted  
 170 data.

171 b. Agricultural demand projections used for determining  
 172 the needs of agricultural self-suppliers must be based upon the  
 173 best available data. In determining the best available data for  
 174 agricultural self-supplied water needs, the district shall  
 175 consider the data indicative of future water supply demands  
 176 provided by the Department of Agriculture and Consumer Services  
 177 pursuant to s. 570.085. Any adjustment of or deviation from the  
 178 data provided by the Department of Agriculture and Consumer  
 179 Services must be fully described, and the original data must be  
 180 presented along with the adjusted data.

181 2. A list of water supply development project options,  
 182 including traditional and alternative water supply project  
 183 options, from which local government, government-owned and  
 184 privately owned utilities, regional water supply authorities,  
 185 multijurisdictional water supply entities, self-suppliers, and  
 186 others may choose for water supply development. In addition to  
 187 projects listed by the district, such users may propose specific  
 188 projects for inclusion in the list of ~~alternative~~ water supply  
 189 development project options ~~projects~~. If such users propose a  
 190 project to be listed as a ~~an alternative~~ water supply project,  
 191 the district shall determine whether it meets the goals of the  
 192 plan, and, if so, it shall be included in the list. The total  
 193 capacity of the projects included in the plan must ~~shall~~ exceed  
 194 the needs identified in subparagraph 1. and ~~shall~~ take into  
 195 account water conservation and other demand management measures,  
 196 as well as water resources constraints, including adopted

197 minimum flows and levels and water reservations. Where the  
 198 district determines it is appropriate, the plan should  
 199 specifically identify the need for multijurisdictional  
 200 approaches to project options that, based on planning level  
 201 analysis, are appropriate to supply the intended uses and that,  
 202 based on such analysis, appear to be permissible and financially  
 203 and technically feasible. The list of water supply development  
 204 options must contain provisions that recognize that alternative  
 205 water supply options for agricultural self-suppliers are  
 206 limited.

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

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

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

214 c. An analysis of funding needs and sources of possible  
 215 funding options. For alternative water supply projects, the  
 216 water management districts shall provide funding assistance in  
 217 accordance with s. 373.707(8).

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

220 (3) The water supply development component of a regional  
 221 water supply plan which deals with or affects public utilities  
 222 and public water supply for those areas served by a regional  
 223 water supply authority and its member governments within the  
 224 boundary of the Southwest Florida Water Management District

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225 shall be developed jointly by the authority and the district. In  
 226 areas not served by regional water supply authorities, or other  
 227 multijurisdictional water supply entities, and where  
 228 opportunities exist to meet water supply needs more efficiently  
 229 through multijurisdictional projects identified pursuant to  
 230 paragraph (2)(a), water management districts are directed to  
 231 assist in developing multijurisdictional approaches to water  
 232 supply project development jointly with affected water  
 233 utilities, special districts, self-suppliers, and local  
 234 governments.

235 Section 4. Paragraph (c) of subsection (2) of section  
 236 570.076, Florida Statutes, is amended to read:

237 570.076 Environmental Stewardship Certification Program.—  
 238 The department may, by rule, establish the Environmental  
 239 Stewardship Certification Program consistent with this section.  
 240 A rule adopted under this section must be developed in  
 241 consultation with state universities, agricultural  
 242 organizations, and other interested parties.

243 (2) The department shall provide an agricultural  
 244 certification under this program for implementation of one or  
 245 more of the following criteria:

246 (c) Best management practices adopted by rule pursuant to  
 247 s. 403.067(7)(c) or s. 570.085(1)(b) ~~570.085(2)~~.

248 Section 5. Section 570.085, Florida Statutes, is amended  
 249 to read:

250 570.085 Department of Agriculture and Consumer Services;  
 251 agricultural water conservation and agricultural water supply  
 252 planning.—



253           (1) The department shall establish an agricultural water  
 254 conservation program that includes the following:

255           ~~(a) (1)~~ A cost-share program, coordinated where appropriate  
 256 with the United States Department of Agriculture and other  
 257 federal, state, regional, and local agencies, for irrigation  
 258 system retrofit and application of mobile irrigation laboratory  
 259 evaluations for water conservation as provided in this section  
 260 and, where applicable, for water quality improvement pursuant to  
 261 s. 403.067(7)(c).

262           ~~(b) (2)~~ The development and implementation of voluntary  
 263 interim measures or best management practices, adopted by rule,  
 264 which provide for increased efficiencies in the use and  
 265 management of water for agricultural production. In the process  
 266 of developing and adopting rules for interim measures or best  
 267 management practices, the department shall consult with the  
 268 Department of Environmental Protection and the water management  
 269 districts. Such rules may also include a system to assure the  
 270 implementation of the practices, including recordkeeping  
 271 requirements. As new information regarding efficient  
 272 agricultural water use and management becomes available, the  
 273 department shall reevaluate and revise as needed, the interim  
 274 measures or best management practices. The interim measures or  
 275 best management practices may include irrigation retrofit,  
 276 implementation of mobile irrigation laboratory evaluations and  
 277 recommendations, water resource augmentation, and integrated  
 278 water management systems for drought management and flood  
 279 control and should, to the maximum extent practicable, be  
 280 designed to qualify for regulatory incentives and other

281 | incentives, as determined by the agency having applicable  
 282 | statutory authority.

283 | ~~(c)(3)~~ Provision of assistance to the water management  
 284 | districts in the development and implementation of a consistent,  
 285 | to the extent practicable, methodology for the efficient  
 286 | allocation of water for agricultural irrigation.

287 | (2) The department shall establish an agricultural water  
 288 | supply planning program that includes the following:

289 | (a) The development of data indicative of future  
 290 | agricultural water supply demands which must be:

- 291 | 1. Based on at least a 20-year planning period.
- 292 | 2. Provided to each water management district.
- 293 | 3. Considered by each water management district in  
 294 | accordance with ss. 373.036(2) and 373.709(2)(a)1.b.

295 | (b) The data on future agricultural water supply demands  
 296 | which are provided to each district must include, but need not  
 297 | be limited to:

- 298 | 1. Applicable agricultural crop types or categories.
- 299 | 2. Historic estimates of irrigated acreage, current  
 300 | estimates of irrigated acreage, and future projections of  
 301 | irrigated acreage for each applicable crop type or category,  
 302 | spatially for each county, including the historic and current  
 303 | methods and assumptions used to generate the spatial acreage  
 304 | estimates and projections.
- 305 | 3. Crop type or category water use coefficients for a 1-  
 306 | in-10 year drought and average year used in calculating historic  
 307 | and current water demands and projected future water demands,  
 308 | including data, methods, and assumptions used to generate the

309 | coefficients. Estimates of historic and current water demands  
 310 | must take into account actual metered data as available.

311 | 4. An evaluation of significant uncertainties affecting  
 312 | agricultural production which may require a range of projections  
 313 | for future agricultural water supply demands.

314 | (c) In developing the data on future agricultural water  
 315 | supply needs described in paragraph (b), the department shall  
 316 | consult with the agricultural industry, the University of  
 317 | Florida Institute of Food and Agricultural Sciences, the  
 318 | Department of Environmental Protection, the water management  
 319 | districts, the National Agricultural Statistics Service, and the  
 320 | United States Geological Survey.

321 | (d) The department shall coordinate with each water  
 322 | management district to establish a schedule for provision of  
 323 | data on agricultural water supply needs in order to comply with  
 324 | water supply planning provisions in ss. 373.036(2) and  
 325 | 373.709(2)(a)1.b.

326 | Section 6. This act shall take effect July 1, 2013.



Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

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

1 Committee/Subcommittee hearing bill: Agriculture & Natural  
2 Resources Subcommittee  
3 Representative Beshears offered the following:

**Amendment**

4  
5  
6 Remove line 95 and insert:  
7 acquisitions, construction, operation, and maintenance provided  
8 such contracts are consistent with the public interest. The  
9



Amendment No. 2

COMMITTEE/SUBCOMMITTEE ACTION

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

1 Committee/Subcommittee hearing bill: Agriculture & Natural  
 2 Resources Subcommittee  
 3 Representative Beshears offered the following:

**Amendment**

6 Remove lines 187-190 and insert:  
 7 projects for inclusion in the list of alternative water supply  
 8 projects. If such users propose a project to be listed as an  
 9 alternative water supply project,

10



Amendment No. 3

COMMITTEE/SUBCOMMITTEE ACTION

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

1 Committee/Subcommittee hearing bill: Agriculture & Natural  
2 Resources Subcommittee

3 Representative Beshears offered the following:

4  
5 **Amendment**

6 Between lines 310 and 311, insert:

7 Projected future water demands shall incorporate appropriate  
8 potential water conservation factors based upon data collected  
9 as part of the department's agricultural water conservation  
10 program pursuant to s. 570.085(1).



Amendment No. 4

COMMITTEE/SUBCOMMITTEE ACTION

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

1 Committee/Subcommittee hearing bill: Agriculture & Natural  
 2 Resources Subcommittee  
 3 Representative Beshears offered the following:

**Amendment (with title amendment)**

Remove line 77 and insert:

4  
 5  
 6  
 7  
 8 water from concentrated areas. As used in part VII of this  
 9 chapter, self-supplier means a person who obtains their surface  
 10 or groundwater from other than a public water supply. As used  
 11 in this section and s.

12  
 13  
 14  
 15 -----  
 16 **T I T L E A M E N D M E N T**

Remove line 13 and insert:

17  
 18 effects; providing a definition; providing that the governing  
 19 board of a water  
 20





## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 1083 Underground Natural Gas Storage  
**SPONSOR(S):** Eagle and others  
**TIED BILLS:** HB 1085 **IDEN./SIM. BILLS:** SB 958

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

### SUMMARY ANALYSIS

Natural gas can be stored for an indefinite period of time. When natural gas reaches its destination, it is not always needed right away and can be injected into underground storage facilities. Underground natural gas storage provides pipelines, local distribution companies, producers, and pipeline shippers with an inventory management tool, seasonal supply backup, and access to natural gas needed to avoid imbalances between receipts and deliveries on a pipeline network. Currently, Florida has no regulatory provisions for underground natural gas storage facilities.

The bill establishes a regulatory structure for the underground storage of natural gas by providing the following:

- Declares that underground gas storage is in the public interest.
- Exempts gas-phase hydrocarbons that are transported into Florida, injected into an underground natural gas storage facility, and later recovered as liquid hydrocarbons from the severance tax on oil production; providing that the severance tax on natural gas applies only to native gas.
- Creates definitions for terms including: DEP, lateral storage reservoir boundary, native gas, natural gas storage facility, natural gas storage reservoir, oil and gas, reservoir protective area, shut-in wellhead pressure, operator, and well site.
- Provides DEP with authority to administer and enforce laws relating to the storage of gas in and recovery of gas from natural gas storage reservoirs.
- Provides DEP with authority to adopt rules and issue orders in regards to the injection of gas into and recovery of gas from a natural gas storage reservoir, and provides that DEP's authority is self-executing and not dependent upon the adoption of rules.
- Requires that permits from DEP prior to storing gas in, or recovering gas from, a natural gas storage include the name and address of the applicant.
- Provides what must be included in an application for a permit to store gas in a natural gas storage reservoir.
- Creates standards and conditions for the issuance of a natural gas storage facility permit.
- Declares that DEP is vested with the power and authority to issue permits for natural gas storage facilities.
- Provides for the protection of water supplies; provides that a facility operator is responsible for pollution to water supplies; and provides for defenses to claims of pollution to water supplies.
- Provides for the protection of natural gas storage facilities.
- Provides property rights with respect to injected gas.
- Provides that certain well spacing requirements do not apply to injection wells associated with a natural gas storage facility.
- Provides for agreements in the interest of conservation relating to natural gas storage facilities.
- Provides that limitations on the amount of oil and gas taken do not apply to nonnative gas recovered from a permitted natural gas storage facility.
- Provides for DEP to enforce laws, rules and orders against those engaged in the storage or recovering of natural gas.
- Provides that penalties may be applied to any person who violates the law or the provisions of a permit for a natural gas storage facility.
- Provides that the prohibition of pollution and the cost of clean-up provisions apply to natural gas storage facilities.
- Provides that projects for natural gas storage facilities are eligible for expedited permitting.

The bill appears to have a negative fiscal impact on DEP that may be able to be offset by permitting and other fees. (See Fiscal Comments Section) The bill appears to have a positive fiscal impact on local governments as a result of local utilities benefitting from the increased availability of natural gas and potentially lower energy prices.

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

STORAGE NAME: h1083.ANRS.DOCX

DATE: 3/19/2013

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### Current Situation

The Oil and Gas Program (Chapter 377, Part 1, F.S., and Rules 62C-25 through 30, F.A.C.) is the permitting authority within the Department of Environmental Protection's (DEP's) Mining and Minerals Regulation Program in the Division of Water Resource Management (Division). Companies interested in the exploration or production of hydrocarbons in Florida are regulated by the Oil and Gas Program. Primary responsibilities of the Program include conservation of oil and gas resources, correlative rights protection, maintenance of health and human safety, and environmental protection. These concerns are addressed through a system of permits and field inspections to insure compliance. Primary duties include permitting geophysical operations (usually seismic prospecting), permitting drilling or operating wells (all separate permits), and tracking activities through the use of a computer database. All permitted activities are inspected by staff of the Oil and Gas Program. Two field offices facilitate these inspections.

DEP is vested with 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>1</sup>
- To explore for and extract minerals that are subject to extraction from the land by means other than through a well hole<sup>2</sup>
- To construct wells for the injection and recovery of any natural gas for temporary storage in subsurface reservoirs<sup>3</sup>

Before any well in search of oil or gas is drilled, the person desiring to drill the well must notify the Division using such form as it may prescribe and must pay a reasonable fee set by rule of DEP not to exceed the actual cost of processing and inspecting for each well. The drilling of any well is prohibited until such notice is given and the fee has been paid and permit granted.<sup>4</sup> Each permit must contain an agreement by the permit-holder that he or she will not prevent inspection by the Division personnel at any time.<sup>5</sup> The Division, in the exercise of its authority to issue permits, must give consideration to and be guided by certain statutorily specified criteria.<sup>6</sup> Under certain circumstances, before a permit to drill a gas or oil well is granted, the governing authority of the municipality<sup>7</sup> or the county commissioners of the county<sup>8</sup> in which the land is located must have first duly approved the application for the permit by resolution.

Section 211.02(1), F.S., provides for a severance tax to be levied upon production of oil within Florida for sale, transport, storage, profit, or commercial use. The tax is measured by the value of the oil

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

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

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

<sup>4</sup> Section 377.24(1), F.S.

<sup>5</sup> Section 377.242, F.S.

<sup>6</sup> Section 377.241, F.S.

<sup>7</sup> Section 377.24(5) and (6), F.S.

<sup>8</sup> Section 377.24(7), F.S.

produced and saved or sold during a month. The current tax rate for small well oil<sup>9</sup> is 5 percent of the gross value. The tax rate for tertiary oil<sup>10</sup> and mature field recovery oil<sup>11</sup> applies as follows:

- 9% of the gross value of oil on the value of oil \$80 and above per barrel
- 7% of the gross value of oil on the value of oil above \$60 and below \$80 per barrel
- 1% of the gross value of oil on the value of oil \$60 and below per barrel

Currently, Florida has no regulatory provisions for underground natural gas storage facilities.

### Underground Natural Gas Storage

Natural gas can be stored for an indefinite period of time. When natural gas reaches its destination, it is not always needed right away and can be injected into underground storage facilities.<sup>12</sup>

Underground natural gas storage provides pipelines, local distribution companies, producers, and pipeline shippers with an inventory management tool, seasonal supply backup, and access to natural gas needed to avoid imbalances between receipts and deliveries on a pipeline network.<sup>13</sup>

There are three types of underground storage sites used in the United States. They are:

- Depleted natural gas or oil fields (326 sites),<sup>14</sup>
- Aquifers (43 sites),<sup>15</sup> and
- Salt caverns (31 sites).<sup>16</sup>

As of 2007, there were 34 total sites in the Southeast region where natural gas could be stored, which includes Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, and Tennessee.<sup>17</sup>

Any underground storage facility is reconditioned before injection to create a sort of storage vessel underground. Natural gas is injected into the formation, building up pressure as more natural gas is added. The underground formation becomes a sort of pressurized natural gas container. As with newly drilled wells, the higher the pressure in the storage facility, the more readily gas may be extracted. Once the pressure drops to below that of the wellhead, there is no pressure differential left to push the natural gas out of the storage facility. This means that, in any underground storage facility, there is a certain amount of gas that may never be extracted. This is known as physically unrecoverable gas; it is permanently embedded in the formation.<sup>18</sup>

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<sup>9</sup> "Small well oil" is defined in s. 211.01(21), F.S., as oil produced from a well from which less than 100 barrels of oil per day are severed, considering only those days of the month during which production of oil from the well actually occurred.

<sup>10</sup> "Tertiary oil" is defined in s. 211.02(3)(a), F.S., as the excess barrels of oil produced, or estimated to be produced, as a result of the actual use of a tertiary recovery method in a qualified enhanced oil recovery project, over the barrels of oil which could have been produced by continued maximum feasible production methods in use prior to the start of tertiary recovery. A "qualified enhanced oil recovery project" means a project for enhancing recovery of oil which meets the requirements of 26 U.S.C. s. 43(c)(2) or substantially similar requirements.

<sup>11</sup> "Mature field recovery oil" is defined in s. 211.01(4), F.S., as the barrels of oil recovered from new wells that begin production after July 1, 2012, in fields that were discovered prior to 1981.

<sup>12</sup> See NaturalGas.org at <http://www.naturalgas.org/naturalgas/storage.asp>

<sup>13</sup> U.S. Energy Information Administration website on 'Underground Natural Gas Storage.' See [http://www.eia.gov/pub/oil\\_gas/natural\\_gas/analysis\\_publications/ngpipeline/undrgrnd\\_storage.html](http://www.eia.gov/pub/oil_gas/natural_gas/analysis_publications/ngpipeline/undrgrnd_storage.html)

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

<sup>18</sup> See NaturalGas.org at <http://www.naturalgas.org/naturalgas/storage.asp>

In addition to this physically unrecoverable gas, underground storage facilities contain what is known as 'base gas' or 'cushion gas'. This is the volume of gas that must remain in the storage facility to provide the required pressurization to extract the remaining gas. In the normal operation of the storage facility, this cushion gas remains underground; however, a portion of it may be extracted using specialized compression equipment at the wellhead.<sup>19</sup>

'Working gas' is the volume of natural gas in the storage reservoir that can be extracted during the normal operation of the storage facility. This is the natural gas that is being stored and withdrawn (the capacity of storage facilities normally refers to their working gas capacity). At the beginning of a withdrawal cycle, the pressure inside the storage facility is at its highest; meaning working gas can be withdrawn at a high rate. As the volume of gas inside the storage facility drops, pressure (and thus deliverability) in the storage facility also decreases. Periodically, underground storage facility operators may reclassify portions of working gas as base gas after evaluating the operation of their facilities.<sup>20</sup>

Under the Natural Gas Act,<sup>21</sup> the Federal Energy Regulatory Commission (FERC) determines the rate-setting methods for interstate pipeline companies, sets rules for business practices, and is responsible for authorizing the siting, construction, and operations of interstate pipelines, natural gas storage fields, and liquefied natural gas facilities. The Natural Gas Act does not apply to the production, gathering, or local distribution of natural gas.

### **Effect of Proposed Changes**

The bill names this act the "Florida Underground Natural Gas Storage Act."

The bill exempts gas-phase hydrocarbons that are transported into the state and injected into a natural gas storage facility from the severance tax on oil production. The bill also provides that the severance tax on natural gas applies only to "native gas"<sup>22</sup> as defined in s. 377.19, F.S.

The bill declares that underground storage of natural gas is in the public interest because underground storage:

- Promotes conservation of natural gas;
- Makes gas more readily available to the domestic, commercial, and industrial consumers of Florida; and
- Allows the accumulation of large quantities of gas in reserve for orderly withdrawal during emergencies or periods of peak demand.

The bill amends s. 377.18, F.S., to specify that control and regulation of gas only applies to native gas.

The bill amends s. 377.19, F.S., adding new definitions for the following terms:

- "Department," which means the Department of Environmental Protection
- "Lateral storage reservoir boundary," which means the projection up to the land surface of the maximum horizontal extent of the gas volume contained in a natural gas storage reservoir.
- "Native gas," which means gas that occurs naturally within Florida and does not include gas that is produced outside the state, transported to Florida, and injected into a permitted natural gas storage facility.
- "Natural gas storage facility," which means an underground reservoir used or to be used for the underground storage of natural gas, and any surface or subsurface structure, infrastructure,

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<sup>19</sup> *Id.*

<sup>20</sup> *Id.*

<sup>21</sup> Natural Gas Act, 15 U.S.C., § 717 et seq.

<sup>22</sup> Native gas is defined as gas that occurs naturally within Florida and does not include gas produced outside the state, transported to Florida, and injected into a permitted natural gas storage facility.

right, or appurtenance necessary or useful in the operation of the facility for the underground storage of natural gas, including any necessary or reasonable reservoir protective area as designated for the purpose of ensuring the safe operation of the storage of natural gas or protecting the natural gas storage facility from pollution, invasion, escape, or migration of gas, or any subsequent extension thereof.

- “Natural gas storage reservoir,” which means a pool or field suitable for or capable of being made suitable for the injection, storage, and recovery of gas.
- “Oil and gas,” which has the same meaning as the term “oil or gas.”
- “Operator,” which means the entity who, as part of a natural gas storage facility, injects, or is engaged in the work of preparing to inject, gas into a natural gas storage reservoir; or who stores gas in, or removes gas from, a natural gas storage reservoir.
- “Reservoir protective area,” which means the area extending up to and including 2,000 feet surrounding a natural gas lateral storage reservoir boundary.
- “Shut-in wellhead pressure,” which means the pressure at the casinghead or wellhead when all valves are closed and no oil or gas has been allowed to escape for at least 24 hours.
- “Well site,” which means the general area around a well, which area has been disturbed from its natural or existing condition, as well as the drilling or production pad, mud and water circulation pits, and other operation areas necessary to drill for or produce oil or gas, or to inject gas into and recover gas from a natural gas storage facility.

The bill amends the term “waste” to specify that the term waste:

- Does not include seepage or migration of injected nonnative gas from a natural gas storage reservoir; and
- Does include the unnecessary escape into the air of gas produced from a gas well.

The bill amends s. 377.21, F.S., to provide that the Division has the jurisdiction and authority to administer and enforce laws relating to the storage of gas in and recovery of gas from natural gas storage reservoirs.

The bill amends s. 377.22, F.S., authorizing DEP to issue orders and adopt rules with regard to:

- The injection of gas into and recovery of gas from a natural gas storage reservoir.
- Protecting the integrity of natural gas storage reservoirs.
- Requiring and carrying out a reasonable program of producing or injecting wells.
- Preventing wells from being drilled, operated, or produced in such a manner as to cause injury to neighboring natural gas storage reservoirs.
- Regulating the storage and recovery of gas injected into natural gas storage facilities.

The bill also provides that the authority of DEP to regulate natural gas storage is self-executing. A regulatory action taken by DEP, including, but not limited to, the receipt and processing of permit applications or the issuance of permits, cannot be deemed invalid solely because DEP has not yet adopted rules regarding such regulatory action.

The bill amends s. 377.24, F.S., to provide that before storing gas in or recovering gas from a natural gas storage reservoir, the person who desires to drill, store, or recover oil or gas must notify the Division. The storing and recovering of gas are prohibited until notice is given, a fee is paid, and the permit is granted. An application for the storing of gas in and recovering of gas from a natural gas storage reservoir must include the address of the applicant.

The bill creates s. 377.2407, F.S., establishing the permitting requirements to store gas in a natural gas storage reservoir. The bill provides that before drilling a well to inject gas into and recover gas from a natural gas storage reservoir, the person who desires to conduct such operation must apply to DEP in

the manner described below, or using such form as DEP may prescribe and must pay a reasonable fee for processing to obtain a natural gas storage facility permit.

The bill also provides that each permit application must contain:

- A detailed, three-dimensional description of the natural gas storage reservoir, including geologic-based descriptions of the reservoir boundaries, and the horizontal and vertical dimensions.
- A geographic description of the lateral reservoir boundary.
- A description and location of all injection, recovery, and observation wells, including casing and cementing plans for each well.
- A description of the reservoir protective area.
- Information demonstrating that the proposed natural gas storage reservoir is suitable for the storage and recovery of gas.
- Information identifying all known abandoned or active wells within the natural gas storage facility.
- A field-monitoring plan that requires, at a minimum, monthly field inspections of all wells that are part of the natural gas storage facility.
- A monitoring and testing plan for the well integrity.
- A well inspection plan that requires, at a minimum, the inspection of all wells that are part of the natural gas storage facility and plugged wells within the natural gas storage facility boundary.
- A casing inspection plan.
- A spill prevention and response plan.
- A well spacing plan.
- An operating plan for the natural gas storage reservoir, which must include gas capacities, anticipated operating conditions, and maximum storage pressure.
- A gas migration response plan.

Each application can require additional information that is deemed necessary to permit the development of wells; drilling of wells; and operation of exploratory investigation, injection of gas into and recovery of gas from reservoirs, and monitoring of wells. Each well can be authorized under the natural gas storage facility permit subject to each well individually satisfying applicable well construction and operation criteria.

The bill amends s. 377.241, F.S., to provide that the Division must give consideration, for activities and operations concerning a natural gas storage facility, that 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.

The bill amends s. 377.242, F.S., to provide that DEP is vested with the power and authority to issue permits 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.

The bill creates s. 377.2431, F.S., to provide conditions for granting permits for natural gas storage facilities. A natural gas storage facility permit must be issued for the life of the facility, subject to recertification every 5 years. Before issuing or reissuing a permit, the Division must require satisfactory evidence of the following:

- The applicant has implemented, or is in the process of implementing, programs for the control and mitigation of pollution related to oil, petroleum products or their byproducts, and other pollutants.
- The applicant or operator has acquired a lawful right to drill, explore, or develop a natural gas storage reservoir from a majority of the property interests, which may be acquired through eminent domain or by any legal instrument conveying to the applicant or operator such property

interests or the right to develop the natural gas storage reservoir; or the applicant or operator has obtained a certificate of public convenience and necessity for the natural gas storage reservoir from the Federal Energy Regulatory Commission, pursuant to the Natural Gas Act, 15 U.S.C. ss. 717 et seq.

- The applicant has used all reasonable means to identify known wells that have been drilled into or through the natural gas storage reservoir to determine the status of the wells and whether inactive or abandoned wells have been properly plugged. For any well that has not been properly plugged, before conducting injection operations and after issuance of the permit, the applicant must plug or recondition the well to ensure the integrity of the storage reservoir.
- The applicant has tested the quality of water produced by all water supply wells within the lateral boundary of the natural gas storage facility and complied with all requirements under s. 377.2432, F.S. The applicant must provide to DEP and the owner of the water supply well a written copy of the water quality data collected.

All inspections and other reports required under this section must be submitted to DEP in the manner prescribed by rule.

A natural gas storage facility operator must request approval of a maximum storage pressure for a natural gas storage reservoir in accordance with the following:

- The maximum shut-in wellhead pressure may not exceed the highest shut-in wellhead pressure found to exist during the production history of the reservoir, unless a higher pressure is established by DEP based on testing of caprock and pool containment. The methods used for determining the higher pressure must be approved by DEP.
- If the shut-in wellhead pressure of the original discovery or of the highest production is not known, or a higher pressure has not been established through a method approved by DEP, the maximum storage reservoir pressure must be limited to a freshwater hydrostatic gradient.

DEP is authorized to issue a permit to an applicant regardless of whether DEP has adopted rules for the activities or operations described above, or rules prescribing the forms of the application for a permit.

A county or municipality may not adopt an ordinance, resolution, comprehensive plan, or land development regulation, or otherwise attempt to regulate or enforce any matter concerning natural gas storage facilities governed under this section

The bill creates s. 377.2432, F.S., to provide certain requirements for the protection of water supplies. The bill provides that any operator of a natural gas storage facility who affects a public or private underground water supply by pollution or diminution must restore or replace the affected supply with an alternate source of water adequate in quantity and quality for the purposes served by the supply. DEP must ensure that the quality of the restored or replaced water is comparable to the quality of the water before it was affected by the operator.

Unless rebutted by a defense listed below, an operator is presumed responsible for pollution of an underground water supply if:

- The water supply is within the horizontal boundary of the natural gas storage facility; and
- The pollution occurred within 6 months after completion of drilling or alteration of any well under or associated with the natural gas storage facility permit.

If the affected underground water supply is within the rebuttable presumption area described above and the rebuttable presumption applies, the operator must provide a temporary water supply if the water user is without a readily available alternative source of water. The temporary water supply must be adequate in quantity and quality for the purposes served by the affected supply.

The bill provides that a natural gas storage facility operator rebuts the presumption described above by affirmatively proving any of the following:

- The pollution existed before the drilling or alteration activity as determined by a predrilling or prealteration survey.
- The landowner or water purveyor refused to allow the operator access to conduct a predrilling or prealteration survey.
- The water supply well is not within the lateral boundary of the natural gas storage facility.
- The pollution occurred more than 6 months after completion of drilling or alteration of any well under or associated with the natural gas storage facility permit.
- The pollution occurred as the result of a cause other than activities authorized under the natural gas storage facility permit.

An operator electing to preserve an affirmative defense as provided above must retain an independent certified laboratory to conduct a predrilling or prealteration survey of the water supply. A copy of survey results must be submitted to DEP and the landowner or water purveyor in the manner prescribed by DEP.

An operator must provide written notice to the landowner or water purveyor indicating that the established presumption may be void if the landowner or water purveyor refused to allow the operator access to conduct a predrilling or prealteration survey. Proof of written notice to the landowner or water purveyor must be provided to DEP in order for the operator to retain the protections.

These provisions in the bill do not prevent a landowner or water purveyor who claims pollution or diminution of a water supply from seeking any other remedy at law or in equity.

The bill creates s. 377.2433, F.S., to provide protection of natural gas storage facilities and remedies. DEP cannot authorize the drilling of any well into or through a permitted natural gas storage reservoir or reservoir protective area, except upon conditions deemed by DEP to be sufficient to prevent the loss, migration, or escape of gas from the natural gas storage reservoir. DEP must provide written notice to the natural gas storage facility operator of any application filed with DEP and any agency action taken related to drilling a well into or through a permitted natural gas storage facility boundary or reservoir protective area.

As a condition for the issuance of a permit by DEP, an applicant seeking to drill a well into or through a permitted natural gas storage facility boundary or reservoir protective area must provide the affected natural gas storage facility operator a reasonable right of entry to observe and monitor all drilling activities.

DEP must ensure that any well drilled into or through a permitted natural gas storage reservoir or reservoir protective area is cased and cemented in a manner sufficient to protect the integrity of the natural gas storage reservoir.

A natural gas storage facility operator may petition DEP for a determination that any other activity is causing gas migration, escape, or loss, or in any other respect adversely affecting the integrity and use of the natural gas storage reservoir. Upon the filing of such petition, DEP must conduct a preliminary investigation and make a preliminary determination of whether probable cause exists to believe that the allegations of the petition may be true and correct. If DEP determines that probable cause exists, DEP must:

- Require the activity allegedly causing the adverse effect to immediately cease operations or take other steps necessary to prevent harm pending a final determination.
- Refer the petition to the Division of Administrative Hearings to conduct formal administrative proceedings pursuant to ss. 120.57 and 120.569, F.S., to make findings of fact regarding the



allegations of the petition. Based upon such findings of fact, DEP must enter a final order granting or denying the petition. Any final order granting such petition must include remedial measures to be undertaken by the activity alleged to be causing gas migration up to and including complete cessation of such activity. Final orders issued are appealable pursuant to s. 120.68, F.S.

This does not prohibit a natural gas storage facility operator from seeking any other remedy at law or in equity.

The bill creates s. 377.2434, F.S., to provide for certain property rights in injected natural gas. The bill provides that all natural gas that has previously been reduced to possession and that is subsequently injected into a natural gas storage facility, whether the storage rights were acquired by eminent domain or otherwise, are at all times the property of the injector or the injector's heirs, successors, or assigns, whether owned by the injector or stored under contract.

The gas may not be subject to the right of the owner of the surface of the lands or of any mineral interest therein, under which the natural gas storage facilities lie, or to the right of any person, other than the injector or the injector's heirs, successors, or assigns, to waste or otherwise interfere with or exercise control over such gas, to produce, to take, or to reduce to possession, by means of the law of capture or otherwise. This section does not affect the ownership of hydrocarbons occurring naturally within Florida or the right of the owner of the surface of the lands or of any mineral interest therein to drill or bore through the natural gas storage facilities in a manner that will protect the facilities against pollution or the escape of stored natural gas.

For natural gas that has migrated to an adjoining property or to a stratum, or portion thereof, that has not been condemned or otherwise purchased:

- The injector or the injector's heirs, successors, or assigns:
  - May not lose title to or possession of the gas if the injector or the injector's heirs, successors, or assigns can prove by a preponderance of the evidence that the gas was originally injected into the underground storage; and
  - Have the right to conduct tests on any existing wells on adjoining property as may be reasonable to determine ownership of the gas, but the tests are solely at the injector's risk and expense.
- The owner of the stratum and the owner of the surface are entitled to compensation, including compensation for use of or damage to the surface or substratum, as provided by law.

The bill amends s. 377.25, F.S., providing that well spacing requirements do not apply to injection wells associated with a natural gas storage facility.

The bill amends s. 377.28, F.S., providing for DEP to consider the need for the operation as a unit of an entire field, or of any pool or pools, or portions for the storage of natural gas. DEP must issue an order requiring unit operation if it finds that the additional recovery of oil or gas does not adversely interfere with the storage or recovery of natural gas within a natural gas storage reservoir.

The bill amends s. 377.29, F.S., authorizing agreements made in the interest of conservation of oil or gas or for the prevention of waste between owners and operators of a natural gas storage facility.

The bill amends s. 377.30, F.S., to provide that the limitations on the amount of oil and gas taken do not apply to nonnative gas recovered from a permitted natural gas storage facility.

The bill amends s. 377.34, F.S., providing that the Division may enforce laws, rules, and orders against those engaged in the storing or recovering of natural gas.

The bill amends s. 377.37, F.S., providing that penalties may be applied to any person who violates the law or the provisions of a permit for a natural gas storage facility.

The bill amends s. 377.371, F.S., providing that the storage of gas in a natural gas storage facility cannot pollute land or water; damage aquatic or marine life, wildlife, birds, or public or private property; or allow an extraneous matter to enter or damage any mineral or freshwater-bearing formation. If the storage of natural gas does result in water pollution, and the pollution damages or threatens to damage human, animal, or plant life; public or private property; or any mineral or water-bearing formation, the person is liable to the state for all costs of cleanup or other damage incurred by the state. However, a person conducting the storage cannot be held liable if the person proves that the prohibited discharge was the result of:

- An act of war.
- An act of government, whether state, federal, or municipal.
- An act of God, which means an unforeseeable act exclusively occasioned by the violence of nature without the interference of any human agency.
- An act or omission of a third party without regard to whether such act or omission was or was not negligent.

The bill amends s. 403.973, F.S., to provide that projects for natural gas storage facilities permitted under chapter 377, F.S., are eligible for the expedited permitting process.

#### B. SECTION DIRECTORY:

**Section 1.** Provides a short title.

**Section 2.** Amends s. 211.02, F.S., relating to oil production tax, basis and rate of tax, and tertiary oil and mature field recovery oil.

**Section 3.** Amends s. 211.025, F.S., relating to gas production taxes.

**Section 4.** Amends s. 376.301, F.S., conforming a cross-reference.

**Section 5.** Amends s. 377.06, F.S., relating to the public policy of state concerning natural resources of oil and gas.

**Section 6.** Amends s. 377.18, F.S., relating to common sources of oil and gas.

**Section 7.** Amends s. 377.19, F.S., providing definitions.

**Section 8.** Amends s. 377.21, F.S., extending the jurisdiction of DEP's Division of Resource Management.

**Section 9.** Amends s. 377.22, F.S., relating to DEP's rules and orders.

**Section 10.** Amends s. 377.24, F.S., providing for the notice and permitting of storage in and recovery from natural gas storage reservoirs.

**Section 11.** Creates s. 377.2407, F.S., establishing a natural gas storage facility permit application process.

**Section 12.** Amends s. 377.241, F.S., providing criteria for the issuance of permits.

**Section 13.** Amends s. 377.242, F.S., relating to permits for drilling or exploring and extraction through well holes or by other means.

**Section 14.** Creates s. 377.2431, F.S., establishing conditions and procedures for granting natural gas storage facility permits.

**Section 15.** Creates s. 377.2432, F.S., providing for the protection of water supplies at natural gas storage facilities.

**Section 16.** Creates s. 377.2433, F.S., providing for the protection of natural gas storage facilities through an administrative hearing.

**Section 17.** Creates s. 377.2434, F.S., providing that property rights to injected natural gas are with the injector or the injector's heirs, successors, or assigns.

**Section 18.** Amends s. 377, 25, F.S., relating to production pools.

**Section 19.** Amends s. 377.28, F.S., relating to cycling, pooling, and unitization of oil and gas.

**Section 20.** Amends s. 377.29, F.S., relating to agreements in interest of conservation.

**Section 21.** Amends s. 377.30, F.S., relating to the limitation on the amount of oil or gas taken.

**Section 22.** Amends s. 377.34, F.S., relating to actions and injunctions by Division of Resource Management of DEP.

**Section 23.** Amends s. 377.37, F.S., relating to penalties.

**Section 24.** Amends s. 377.371, F.S., relating pollution prohibitions.

**Section 25.** Amends s. 403.973, F.S., relating to expedited permitting.

**Section 26.** Provides an effective date of July 1, 2013.

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

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

1. Revenues:

See Fiscal Comments Section below.

2. Expenditures:

See Fiscal Comments Section below.

### **B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

See Fiscal Comments Section below.

2. Expenditures:

See Fiscal Comments Section below.

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

The bill appears to have a positive fiscal impact on pipeline companies and private utility customers by providing more gas at peak times. The bill may also result in additional jobs where a natural gas storage facility is located.

**D. FISCAL COMMENTS:**

The bill appears to have a negative fiscal impact on DEP. DEP is directed to expand rulemaking, hold public workshops, train staff, review applicants, and issue permits for underground natural gas storage. These costs could be offset by permit fees. Secondly, DEP currently does not have the expertise to be able to regulate natural gas. DEP would have to hire an outside contractor with expertise to oversee the engineering reviews, rulemaking, and to implement the natural gas storage program. DEP states<sup>23</sup> that the overall economic benefits to the state from natural gas would outweigh the costs; however, the exact amount of costs and fees collected is unknown at this time.

The bill appears to have a positive fiscal impact on local governments as a result of local utilities benefitting from the increased availability of natural gas and potentially lower energy prices.

**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 with counties or municipalities.

**2. Other:**

None.

**B. RULE-MAKING AUTHORITY:**

The bill establishes DEP's rulemaking authority to issue orders and make rules establishing a regulatory framework for permitting and operational compliance enforcement of the storage and recovery of non-native gas within underground natural gas storage facilities.

The bill also provides that the authority of DEP to regulate natural gas storage is self-executing. A regulatory action taken by DEP, including, but not limited to, the receipt and processing of permit applications or the issuance of permits, cannot be deemed invalid solely because DEP has not yet adopted rules regarding such regulatory action.

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

DEP provided the following comments:

Line 485 requires injection, recovery, and observation well plans to be submitted as part of the gas storage facility application. The wells are to be permitted under the proposed gas storage facility permit instead of an individual well permit. DEP recommends permitting gas storage wells individually using existing oil and gas fields that have been depleted for the following reasons:

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<sup>23</sup> DEP 2013 analysis. On file with staff.  
STORAGE NAME: h1083.ANRS.DOCX  
DATE: 3/19/2013

- During the oil and gas permitting process the spacing, distribution, and geology of each well are significantly different so each well is carefully evaluated.
- Since current regulatory structure requires permitting individual wells, the tracking, filing, well naming conventions, and permit numbering systems are set up for individual tracking.
- If the gas storage wells were also permitted individually, the gas storage wells would integrate into the existing system with minimal changes so there should be no additional costs or time delays necessary to develop or update tracking systems.

Lastly, gas storage wells could be considered a type of service well in existing oil and gas program rules. The oil and gas program already permits injectors, disposal wells, and service wells. Adding natural gas storage wells would be a simple addition.

#### **IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

None.

1 A bill to be entitled

2 An act relating to underground natural gas storage;  
3 providing a short title; amending s. 211.02, F.S.;  
4 narrowing the use of the term "oil"; amending s.  
5 211.025, F.S.; narrowing the scope of the gas  
6 production tax to apply only to native gas; amending  
7 s. 376.301, F.S.; conforming a cross-reference;  
8 amending s. 377.06, F.S.; making grammatical changes;  
9 declaring underground natural gas storage to be in the  
10 public interest; amending s. 377.18, F.S.; clarifying  
11 common sources of oil and gas; amending s. 377.19,  
12 F.S.; modifying and providing definitions; amending s.  
13 377.21, F.S.; extending the jurisdiction of the  
14 Division of Resource Management of the Department of  
15 Environmental Protection; amending s. 377.22, F.S.;  
16 expanding the scope of the department's rules and  
17 orders; providing that the department's authority must  
18 be self-executing and that a regulatory action may not  
19 be deemed invalid solely because the department has  
20 not yet adopted a certain rule; amending s. 377.24,  
21 F.S.; providing for the notice and permitting of  
22 storage in and recovery from natural gas storage  
23 reservoirs; creating s. 377.2407, F.S.; establishing a  
24 natural gas storage facility permit application  
25 process; specifying requirements for an application,  
26 including fees; amending s. 377.241, F.S.; providing  
27 criteria that the division must consider in issuing  
28 permits; amending s. 377.242, F.S.; granting authority

29 to the department to issue permits to establish  
 30 natural gas storage facilities; creating s. 377.2431,  
 31 F.S.; establishing conditions and procedures for  
 32 granting natural gas storage facility permits;  
 33 limiting the right of a county or municipality to  
 34 regulate natural gas storage facilities; creating s.  
 35 377.2432, F.S.; providing for the protection of water  
 36 supplies at natural gas storage facilities; providing  
 37 that an operator is presumed responsible for pollution  
 38 of an underground water supply under certain  
 39 circumstances; creating s. 377.2433, F.S.; providing  
 40 for the protection of natural gas storage facilities  
 41 through an administrative hearing; creating s.  
 42 377.2434, F.S.; providing that property rights to  
 43 injected natural gas are with the injector or the  
 44 injector's heirs, successors, or assigns; providing  
 45 for compensation to the owner of the stratum and the  
 46 owner of the surface for use of or damage to the  
 47 surface or substratum; amending s. 377.25, F.S.;  
 48 limiting the scope of certain drilling unit  
 49 requirements; amending s. 377.28, F.S.; providing that  
 50 the department may consider the need for the operation  
 51 as a unit for the storage of natural gas; modifying  
 52 situations in which the department is required to  
 53 issue an order requiring unit operation; amending s.  
 54 377.29, F.S.; authorizing certain agreements between  
 55 owners and operators of a natural gas storage  
 56 facility; amending s. 377.30, F.S.; providing that

57 | limitations on the amount of oil or gas taken do not  
 58 | apply to nonnative gas recovered from a permitted  
 59 | natural gas storage facility; amending s. 377.34,  
 60 | F.S.; providing for legal action against a person who  
 61 | appears to be violating a rule that relates to the  
 62 | storage or recovery of natural gas; amending s.  
 63 | 377.37, F.S.; expanding penalties to reach persons who  
 64 | violate the terms of a permit relating to storage of  
 65 | gas in a natural gas storage facility; amending s.  
 66 | 377.371, F.S.; providing that a person storing gas in  
 67 | a natural gas storage facility may not pollute or  
 68 | otherwise damage certain areas and that a person who  
 69 | pollutes water by storing natural gas is liable for  
 70 | cleanup or other costs incurred by the state; amending  
 71 | s. 403.973, F.S.; allowing expedited permitting for  
 72 | natural gas storage facilities permitted under ch.  
 73 | 377, F.S.; providing that natural gas storage  
 74 | facilities are subject to certain requirements;  
 75 | providing an effective date.

76 |

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

78 |

79 | Section 1. This act may be cited as the "Florida  
 80 | Underground Natural Gas Storage Act."

81 | Section 2. Subsection (7) is added to section 211.02,  
 82 | Florida Statutes, to read:

83 | 211.02 Oil production tax; basis and rate of tax; tertiary  
 84 | oil and mature field recovery oil.—An excise tax is hereby



85 | levied upon every person who severs oil in the state for sale,  
 86 | transport, storage, profit, or commercial use. Except as  
 87 | otherwise provided in this part, the tax is levied on the basis  
 88 | of the entire production of oil in this state, including any  
 89 | royalty interest. Such tax shall accrue at the time the oil is  
 90 | severed and shall be a lien on production regardless of the  
 91 | place of sale, to whom sold, or by whom used, and regardless of  
 92 | the fact that delivery of the oil may be made outside the state.

93 | (7) As used in this section, the term "oil" does not  
 94 | include gas-phase hydrocarbons that are transported into the  
 95 | state, injected in the gaseous phase into a natural gas storage  
 96 | facility permitted under part I of chapter 377, and later  
 97 | recovered as a liquid hydrocarbon.

98 | Section 3. Subsection (6) is added to section 211.025,  
 99 | Florida Statutes, to read:

100 | 211.025 Gas production tax; basis and rate of tax.—An  
 101 | excise tax is hereby levied upon every person who severs gas in  
 102 | the state for sale, transport, profit, or commercial use. Except  
 103 | as otherwise provided in this part, the tax shall be levied on  
 104 | the basis of the entire production of gas in this state,  
 105 | including any royalty interest. Such tax shall accrue at the  
 106 | time the gas is severed and shall be a lien on production  
 107 | regardless of the place of sale, to whom sold, or by whom used  
 108 | and regardless of the fact that delivery of the gas may be made  
 109 | outside the state.

110 | (6) This section applies only to native gas as defined in  
 111 | s. 377.19.

112 | Section 4. Subsection (36) of section 376.301, Florida

113 Statutes, is amended to read:

114 376.301 Definitions of terms used in ss. 376.30-376.317,  
 115 376.70, and 376.75.—When used in ss. 376.30-376.317, 376.70, and  
 116 376.75, unless the context clearly requires otherwise, the term:

117 (36) "Pollutants" includes any "product" as defined in s.  
 118 377.19~~(11)~~, pesticides, ammonia, chlorine, and derivatives  
 119 thereof, excluding liquefied petroleum gas.

120 Section 5. Section 377.06, Florida Statutes, is amended to  
 121 read:

122 377.06 Public policy of state concerning natural resources  
 123 of oil and gas.—It is hereby declared ~~to be~~ the public policy of  
 124 this ~~the~~ state to conserve and control the natural resources of  
 125 oil and gas in this ~~said~~ state, and the products made from oil  
 126 and gas in this state ~~therefrom~~; to prevent waste of ~~said~~  
 127 natural resources; to provide for the protection and adjustment  
 128 of the correlative rights of the owners of the land in which the  
 129 ~~wherein said~~ natural resources lie, of ~~and~~ the owners and  
 130 producers of oil and gas resources and the products made from  
 131 oil and gas ~~therefrom~~, and of others interested in these  
 132 resources and products ~~therein~~; to safeguard the health,  
 133 property, and public welfare of the residents ~~citizens~~ of this  
 134 ~~said~~ state and other interested persons and for all purposes  
 135 indicated by the provisions in this section ~~herein~~. Further, it  
 136 is declared that underground storage of natural gas is in the  
 137 public interest because underground storage promotes  
 138 conservation of natural gas; makes gas more readily available to  
 139 the domestic, commercial, and industrial consumers of this  
 140 state; and allows the accumulation of large quantities of gas in

141 reserve for orderly withdrawal during emergencies or periods of  
 142 peak demand. It is not the intention of this section to limit,  
 143 ~~or~~ restrict, or modify in any way the provisions of this law.

144 Section 6. Section 377.18, Florida Statutes, is amended to  
 145 read:

146 377.18 Common sources of oil and gas.—All common sources  
 147 of supply of oil or native and gas ~~or either of them~~ shall have  
 148 the production ~~therefrom~~ controlled or regulated in accordance  
 149 with the provisions of this law.

150 Section 7. Section 377.19, Florida Statutes, is reordered  
 151 and amended to read:

152 377.19 Definitions.—As used ~~Unless the context otherwise~~  
 153 ~~requires, the words defined in this section shall have the~~  
 154 ~~following meanings when found in ss. 377.06, 377.07, and 377.10-~~  
 155 377.40, the term:

156 (1)~~(21)~~ "Completion date" means the day, month, and year  
 157 that a new productive well, a previously shut-in well, or a  
 158 temporarily abandoned well is completed, repaired, or  
 159 recompleted and the operator begins producing oil or gas in  
 160 commercial quantities.

161 (2) "Department" means the Department of Environmental  
 162 Protection.

163 (3)~~(1)~~ "Division" means the Division of Resource  
 164 Management of the Department of Environmental Protection.

165 (4)~~(7)~~ "Field" means the general area that ~~which~~ is  
 166 underlaid, or appears to be underlaid, by at least one pool. The  
 167 term, ~~and "field"~~ includes the underground reservoir, or  
 168 reservoirs, containing oil or gas, or both. The ~~terms~~ ~~words~~

169 "field" and "pool" mean the same thing if ~~when~~ only one  
 170 underground reservoir is involved; however, the term "field,"  
 171 unlike the term "pool," may relate to two or more pools.

172 (5) "Gas" means all natural gas, including casinghead gas,  
 173 and all other hydrocarbons not defined as oil in subsection (4).

174 (6) ~~(25)~~ "Horizontal well" means a well completed with the  
 175 wellbore in a horizontal or nearly horizontal orientation within  
 176 10 degrees of horizontal within the producing formation.

177 (7) ~~(13)~~ "Illegal gas" means gas that ~~which~~ has been  
 178 produced within the state from any well or wells in excess of  
 179 the amount allowed by any rule, regulation, or order of the  
 180 division, as distinguished from gas produced within the State of  
 181 Florida from a well not producing in excess of the amount so  
 182 allowed, which is "legal gas."

183 (8) ~~(12)~~ "Illegal oil" means oil that ~~which~~ has been  
 184 produced within the state from any well or wells in excess of  
 185 the amount allowed by rule, regulation, or order of the  
 186 division, as distinguished from oil produced within the state  
 187 from a well not producing in excess of the amount so allowed,  
 188 which is "legal oil."

189 (9) ~~(14)~~ "Illegal product" means a ~~any~~ product of oil or  
 190 gas, any part of which was processed or derived, in whole or in  
 191 part, from illegal gas or illegal oil or from any product  
 192 thereof, as distinguished from "legal product," which is a  
 193 product processed or derived to no extent from illegal oil or  
 194 illegal gas.

195 (10) "Lateral storage reservoir boundary" means the  
 196 projection up to the land surface of the maximum horizontal

197 | extent of the gas volume contained in a natural gas storage  
 198 | reservoir.

199 |       (11) "Native gas" means gas that occurs naturally within  
 200 | this state and does not include gas produced outside the state,  
 201 | transported to this state, and injected into a permitted natural  
 202 | gas storage facility.

203 |       (12) "Natural gas storage facility" means an underground  
 204 | reservoir used or to be used for the underground storage of  
 205 | natural gas, and any surface or subsurface structure,  
 206 | infrastructure, right, or appurtenance necessary or useful in  
 207 | the operation of the facility for the underground storage of  
 208 | natural gas, including any necessary or reasonable reservoir  
 209 | protective area as designated for the purpose of ensuring the  
 210 | safe operation of the storage of natural gas or protecting the  
 211 | natural gas storage facility from pollution, invasion, escape,  
 212 | or migration of gas, or any subsequent extension thereof.

213 |       (13) "Natural gas storage reservoir" means a pool or field  
 214 | suitable for or capable of being made suitable for the  
 215 | injection, storage, and recovery of gas.

216 |       (14)-~~(24)~~ "New field well" means an oil or gas well  
 217 | completed after July 1, 1997, in a new field as designated by  
 218 | the Department of Environmental Protection.

219 |       (15)-~~(4)~~ "Oil" means crude petroleum oil and other  
 220 | hydrocarbons, regardless of gravity, which are produced at the  
 221 | well in liquid form by ordinary production methods, and which  
 222 | are not the result of condensation of gas after it leaves the  
 223 | reservoir.

224 |       (16) "Oil and gas" has the same meaning as the term "oil

225 | or gas."

226 |        ~~(17)~~~~(19)~~ "Oil and gas administrator" means the State  
227 | Geologist.

228 |        ~~(17)~~ The use of the word "and" includes the word "or" and  
229 | the use of "or" includes "and," unless the context clearly  
230 | requires a different meaning, especially with respect to such  
231 | expressions as "oil and gas" or "oil or gas."

232 |        ~~(18)~~~~(20)~~ "Operator" means the entity who:

233 |        ~~(a)~~ Has the right to drill and to produce a well; or

234 |        ~~(b)~~ As part of a natural gas storage facility, injects, or  
235 | is engaged in the work of preparing to inject, gas into a  
236 | natural gas storage reservoir; or stores gas in, or removes gas  
237 | from, a natural gas storage reservoir.

238 |        ~~(19)~~~~(8)~~ "Owner" means the person who has the right to  
239 | drill into and to produce from any pool and to appropriate the  
240 | production ~~either~~ for the person or for the person and another,  
241 | or others.

242 |        ~~(20)~~~~(3)~~ "Person" means a ~~any~~ natural person, corporation,  
243 | association, partnership, receiver, trustee, guardian, executor,  
244 | administrator, fiduciary, or representative of any kind.

245 |        ~~(21)~~~~(6)~~ "Pool" means an underground reservoir containing  
246 | or appearing to contain a common accumulation of oil or gas or  
247 | both. Each zone of a general structure which is completely  
248 | separated from any other zone on the structure is considered a  
249 | separate pool as used herein.

250 |        ~~(22)~~~~(9)~~ "Producer" means the owner or operator of a well  
251 | or wells capable of producing oil or gas, or both.

252 |        ~~(23)~~~~(11)~~ "Product" means a ~~any~~ commodity made from oil or

253 gas and includes refined crude oil, crude tops, topped crude,  
 254 processed crude petroleum, residue from crude petroleum,  
 255 cracking stock, uncracked fuel oil, fuel oil, treated crude oil,  
 256 residuum, gas oil, casinghead gasoline, natural gas gasoline,  
 257 naphtha, distillate, condensate, gasoline, waste oil, kerosene,  
 258 benzine, wash oil, blended gasoline, lubricating oil, blends or  
 259 mixtures of oil with one or more liquid products or byproducts  
 260 derived from oil or gas, and blends or mixtures of two or more  
 261 liquid products or byproducts derived from oil or gas, whether  
 262 hereinabove enumerated or not.

263 (24)~~(15)~~ "Reasonable market demand" means the amount of  
 264 oil reasonably needed for current consumption, together with a  
 265 reasonable amount of oil for storage and working stocks.

266 (25) "Reservoir protective area" means the area extending  
 267 up to and including 2,000 feet surrounding a natural gas lateral  
 268 storage reservoir boundary.

269 (26)~~(22)~~ "Shut-in well" means an oil or gas well that has  
 270 been taken out of service for economic reasons or mechanical  
 271 repairs.

272 (27) "Shut-in wellhead pressure" means the pressure at the  
 273 casinghead or wellhead when all valves are closed and no oil or  
 274 gas has been allowed to escape for at least 24 hours.

275 (28)~~(2)~~ "State" means the State of Florida.

276 (29)~~(23)~~ "Temporarily abandoned well" means a permitted  
 277 well or wellbore that has been abandoned by plugging in a manner  
 278 that allows reentry and redevelopment in accordance with oil or  
 279 gas rules of the Department of Environmental Protection.

280 (30)~~(16)~~ "Tender" means a permit or certificate of

281 clearance for the transportation or the delivery of oil, gas, or  
 282 products, approved and issued or registered under the authority  
 283 of the division.

284 ~~(31)(10)~~ "Waste," in addition to its ordinary meaning,  
 285 means "physical waste" as that term is generally understood in  
 286 the oil and gas industry. The term "waste" includes:

287 (a) The inefficient, excessive, or improper use or  
 288 dissipation of reservoir energy; and the locating, spacing,  
 289 drilling, equipping, operating, or producing of any oil or gas  
 290 well or wells in a manner that ~~which~~ results, or tends to  
 291 result, in reducing the quantity of oil or gas ultimately to be  
 292 stored or recovered from any pool in this state.

293 (b) The inefficient storing of oil; and the locating,  
 294 spacing, drilling, equipping, operating, or producing of any oil  
 295 or gas well or wells in a manner that causes, or tends ~~causing,~~  
 296 ~~or tending~~ to cause, unnecessary or excessive surface loss or  
 297 destruction of oil or gas.

298 (c) The producing of oil or gas in ~~such~~ a manner that  
 299 causes ~~as to cause~~ unnecessary water channeling or coning.

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

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

304 (f) The underground waste, however caused and whether or  
 305 not defined, which does not include seepage or migration of  
 306 injected nonnative gas from a natural gas storage reservoir.

307 (g) The creation of unnecessary fire hazards.

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



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309 both oil and gas, of gas in excess of the amount that ~~which~~ is  
 310 necessary in the efficient drilling or operation of the well.

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

312 (j) The unnecessary escape into the air of ~~Permitting~~ gas  
 313 produced from a gas well ~~to escape into the air.~~

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

318 ~~(32)-(18)~~ "Well site" means the general area around a well,  
 319 which area has been disturbed from its natural or existing  
 320 condition, as well as the drilling or production pad, mud and  
 321 water circulation pits, and other operation areas necessary to  
 322 drill for or produce oil or gas, or to inject gas into and  
 323 recover gas from a natural gas storage facility.

324 Section 8. Subsection (1) of section 377.21, Florida  
 325 Statutes, is amended to read:

326 377.21 Jurisdiction of division.—

327 (1) The division shall have jurisdiction and authority  
 328 over all persons and property necessary to administer and  
 329 enforce effectively the provisions of this law and all other  
 330 laws relating to the conservation of oil and gas or to the  
 331 storage of gas in and recovery of gas from natural gas storage  
 332 reservoirs.

333 Section 9. Subsection (2) of section 377.22, Florida  
 334 Statutes, is amended, and subsection (3) is added to that  
 335 section, to read:

336 377.22 Rules and orders.—

337 (2) The department shall issue orders and adopt rules  
 338 pursuant to ss. 120.536~~(1)~~ and 120.54 to implement and enforce  
 339 the provisions of this chapter. Such rules and orders shall  
 340 ensure that all precautions are taken to prevent the spillage of  
 341 oil or any other pollutant in all phases of the drilling for,  
 342 and extracting of, oil, gas, or other petroleum products, or  
 343 during the injection of gas into and recovery of gas from a  
 344 natural gas storage reservoir. The department shall revise such  
 345 rules from time to time as necessary for the proper  
 346 administration and enforcement of this chapter. Rules adopted  
 347 and orders issued in accordance with this section are ~~shall be~~  
 348 for, but ~~shall not be~~ limited to, the following purposes:

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

353 (b) To prevent the alteration of the sheet flow of water  
 354 in any area.

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

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

363 (e) To prevent the intrusion of water into an oil or gas  
 364 stratum from a separate stratum, except as provided by rules of

365 the division relating to the injection of water for proper  
 366 reservoir conservation and brine disposal.

367 (f) To require a reasonable bond, or other form of  
 368 security acceptable to the department, conditioned upon the  
 369 performance of the duty to plug properly each dry and abandoned  
 370 well and the full and complete restoration by the applicant of  
 371 the area over which geophysical exploration, drilling, or  
 372 production is conducted to the similar contour and general  
 373 condition in existence prior to such operation.

374 (g) To require and carry out a reasonable program of  
 375 producing or injecting wells, or monitoring or inspection of all  
 376 drilling operations ~~or producing wells,~~ including regular  
 377 inspections by division personnel.

378 (h) To require the making of reports showing the location  
 379 of all oil and gas wells; the making and filing of logs; the  
 380 taking and filing of directional surveys; the filing of  
 381 electrical, sonic, radioactive, and mechanical logs of oil and  
 382 gas wells; if taken, the saving of cutting and cores, the cuts  
 383 of which shall be given to the Bureau of Geology; and the making  
 384 of reports with respect to drilling and production records.  
 385 However, such information, or any part thereof, at the request  
 386 of the operator, shall be exempt from the provisions of s.  
 387 119.07(1) and held confidential by the division for a period of  
 388 1 year after the completion of a well.

389 (i) To prevent wells from being drilled, operated, or  
 390 produced in such a manner as to cause injury to neighboring  
 391 leases, ~~or~~ property, or natural gas storage reservoirs.

392 (j) To prevent the drowning by water of any stratum, or

393 part thereof, capable of producing oil or gas in paying  
 394 quantities and to prevent the premature and irregular  
 395 encroachment of water which reduces, or tends to reduce, the  
 396 total ultimate recovery of oil or gas from any pool.

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

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

402 (m) To prevent fires.

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

406 (o) To regulate the "shooting," perforating and chemical  
 407 treatment of wells.

408 (p) To regulate secondary recovery methods, including the  
 409 introduction of gas, air, water, or other substance into  
 410 producing formations.

411 (q) To regulate gas cycling operations.

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

414 (s)~~(r)~~ If necessary for the prevention of waste, as herein  
 415 defined, to determine, limit, and prorate the production of oil  
 416 or gas, or both, from any pool or field in the state.

417 (t)~~(s)~~ To require, either generally or in or from  
 418 particular areas, certificates of clearance or tenders in  
 419 connection with the transportation or delivery of oil or gas, or  
 420 any product.

421 (u)~~(t)~~ To regulate the spacing of wells and to establish  
 422 drilling units.

423 (v)~~(u)~~ To prevent, so far as is practicable, reasonably  
 424 avoidable drainage from each developed unit which is not  
 425 equalized by counterdrainage.

426 (w)~~(v)~~ To require that geophysical operations requiring a  
 427 permit be conducted in a manner which will minimize the impact  
 428 on hydrology and biota of the area, especially environmentally  
 429 sensitive lands and coastal areas.

430 (x)~~(w)~~ To regulate aboveground crude oil storage tanks in  
 431 a manner which will protect the water resources of the state.

432 (y)~~(x)~~ To act in a receivership capacity for fractional  
 433 mineral interests for which the owners are unknown or unlocated  
 434 and to administratively designate the operator as the lessee.

435 (3) Notwithstanding the grant of rulemaking authority in  
 436 this section, the authority of the department to regulate the  
 437 activities described in this section must be self-executing. A  
 438 regulatory action taken by the department, including, but not  
 439 limited to, the receipt and processing of permit applications or  
 440 the issuance of permits, may not be deemed invalid solely  
 441 because the department has not yet adopted rules regarding such  
 442 regulatory action.

443 Section 10. Subsections (1) and (2) of section 377.24,  
 444 Florida Statutes, are amended to read:

445 377.24 Notice of intention to drill well; permits;  
 446 abandoned wells and dry holes.—

447 (1) Before drilling a any well in search of oil or gas, or  
 448 before storing gas in or recovering gas from a natural gas

449 storage reservoir shall be drilled, the person who desires  
 450 desiring to drill, store, or recover oil or gas the same shall  
 451 notify the division upon such form as it may prescribe and shall  
 452 pay a reasonable fee set by rule of the department not to exceed  
 453 the actual cost of processing and inspecting for each well or  
 454 reservoir. The drilling of any well and the storing and  
 455 recovering of gas are is hereby prohibited until such notice is  
 456 given, the and such fee is has been paid, and the permit is  
 457 granted.

458 (2) An Each application for the drilling of a well in  
 459 search of oil or gas, or for the storing of gas in and  
 460 recovering of gas from a natural gas storage reservoir, in this  
 461 state must shall include the address of the residence of the  
 462 applicant, or applicants each applicant, which must address  
 463 shall be the address of each person involved in accordance with  
 464 the records of the Division of Resource Management until such  
 465 address is changed on the records of the division after written  
 466 request.

467 Section 11. Section 377.2407, Florida Statutes, is created  
 468 to read:

469 377.2407 Natural gas storage facility permit application  
 470 to inject gas into and recover gas from a natural gas storage  
 471 reservoir.-

472 (1) Before drilling a well to inject gas into and recover  
 473 gas from a natural gas storage reservoir, the person who desires  
 474 to conduct such operation shall apply to the department in the  
 475 manner described in this section or using such form as the  
 476 department may prescribe and shall pay a reasonable fee for

477 | processing to obtain a natural gas storage facility permit.

478 |       (2) Each application must contain:

479 |           (a) A detailed, three-dimensional description of the  
 480 | natural gas storage reservoir, including geologic-based  
 481 | descriptions of the reservoir boundaries, and the horizontal and  
 482 | vertical dimensions.

483 |           (b) A geographic description of the lateral reservoir  
 484 | boundary.

485 |           (c) A description and location of all injection, recovery,  
 486 | and observation wells, including casing and cementing plans for  
 487 | each well.

488 |           (d) A description of the reservoir protective area.

489 |           (e) Information demonstrating that the proposed natural  
 490 | gas storage reservoir is suitable for the storage and recovery  
 491 | of gas.

492 |           (f) Information identifying all known abandoned or active  
 493 | wells within the natural gas storage facility.

494 |           (g) A field-monitoring plan that requires, at a minimum,  
 495 | monthly field inspections of all wells that are part of the  
 496 | natural gas storage facility.

497 |           (h) A monitoring and testing plan for the well integrity.

498 |           (i) A well inspection plan that requires, at a minimum,  
 499 | the inspection of all wells that are part of the natural gas  
 500 | storage facility and plugged wells within the natural gas  
 501 | storage facility boundary.

502 |           (j) A casing inspection plan.

503 |           (k) A spill prevention and response plan.

504 |           (l) A well spacing plan.

505 (m) An operating plan for the natural gas storage  
 506 reservoir, which must include gas capacities, anticipated  
 507 operating conditions, and maximum storage pressure.

508 (n) A gas migration response plan.

509 (3) Each application may require additional information  
 510 that is deemed necessary to permit the development of wells;  
 511 drilling of wells; and operation of exploratory investigation,  
 512 injection of gas into and recovery of gas from reservoirs, and  
 513 monitoring of wells. Each well may be authorized under the  
 514 natural gas storage facility permit subject to each well  
 515 individually satisfying applicable well construction and  
 516 operation criteria under this part.

517 Section 12. Subsection (4) is added to section 377.241,  
 518 Florida Statutes, to read:

519 377.241 Criteria for issuance of permits.—The division, in  
 520 the exercise of its authority to issue permits as hereinafter  
 521 provided, shall give consideration to and be guided by the  
 522 following criteria:

523 (4) For activities and operations concerning a natural gas  
 524 storage facility, the nature, structure, and proposed use of the  
 525 natural gas storage reservoir is suitable for the storage and  
 526 recovery of gas without adverse effect to public health or  
 527 safety or the environment.

528 Section 13. Subsection (3) of section 377.242, Florida  
 529 Statutes, is amended to read:

530 377.242 Permits for drilling or exploring and extracting  
 531 through well holes or by other means.—The department is vested  
 532 with the power and authority:



533 (3) To issue permits to establish natural gas storage  
 534 facilities or construct wells for the injection and recovery of  
 535 any natural gas for ~~temporary~~ storage in natural gas storage  
 536 subsurface reservoirs.

537  
 538 Each permit shall contain an agreement by the permitholder that  
 539 the permitholder will not prevent inspection by division  
 540 personnel at any time. The provisions of this section  
 541 prohibiting permits for drilling or exploring for oil in coastal  
 542 waters do not apply to any leases entered into before June 7,  
 543 1991.

544 Section 14. Section 377.2431, Florida Statutes, is created  
 545 to read:

546 377.2431 Conditions for granting permits for natural gas  
 547 storage facilities.-

548 (1) A natural gas storage facility permit must be issued  
 549 for the life of the facility, subject to recertification every 5  
 550 years.

551 (2) Before issuing or reissuing a permit, the division  
 552 shall require satisfactory evidence of the following:

553 (a) The applicant has implemented, or is in the process of  
 554 implementing, programs for the control and mitigation of  
 555 pollution related to oil, petroleum products or their  
 556 byproducts, and other pollutants.

557 (b) The applicant or operator has acquired a lawful right  
 558 to drill, explore, or develop a natural gas storage reservoir  
 559 from a majority of the property interests, which may be acquired  
 560 through eminent domain or by any legal instrument conveying to

561 the applicant or operator such property interests or the right  
 562 to develop the natural gas storage reservoir; or the applicant  
 563 or operator has obtained a certificate of public convenience and  
 564 necessity for the natural gas storage reservoir from the Federal  
 565 Energy Regulatory Commission pursuant to the Natural Gas Act, 15  
 566 U.S.C. ss. 717 et seq.

567 (c) The applicant has used all reasonable means to  
 568 identify known wells that have been drilled into or through the  
 569 natural gas storage reservoir to determine the status of the  
 570 wells and whether inactive or abandoned wells have been properly  
 571 plugged. For any well that has not been properly plugged, before  
 572 conducting injection operations and after issuance of the  
 573 permit, the applicant must plug or recondition the well to  
 574 ensure the integrity of the storage reservoir.

575 (d) The applicant has tested the quality of water produced  
 576 by all water supply wells within the lateral boundary of the  
 577 natural gas storage facility and complied with all requirements  
 578 under s. 377.2432. The applicant shall provide to the department  
 579 and the owner of the water supply well a written copy of the  
 580 water quality data collected under this paragraph.

581 (3) All inspections and other reports required under this  
 582 section must be submitted to the department in the manner  
 583 prescribed by rule.

584 (4) A natural gas storage facility operator shall request  
 585 approval of a maximum storage pressure for a natural gas storage  
 586 reservoir in accordance with the following:

587 (a) The maximum shut-in wellhead pressure may not exceed  
 588 the highest shut-in wellhead pressure found to exist during the

589 production history of the reservoir, unless a higher pressure is  
 590 established by the department based on testing of caprock and  
 591 pool containment. The methods used for determining the higher  
 592 pressure must be approved by the department.

593 (b) If the shut-in wellhead pressure of the original  
 594 discovery or of the highest production is not known, or a higher  
 595 pressure has not been established through a method approved by  
 596 the department pursuant to paragraph (a), the maximum storage  
 597 reservoir pressure must be limited to a freshwater hydrostatic  
 598 gradient.

599 (5) The department may issue a permit to an applicant  
 600 regardless of whether the department has adopted rules for the  
 601 activities or operations authorized under this section, or rules  
 602 prescribing the forms of the application for a permit.

603 (6) A county or municipality may not adopt an ordinance,  
 604 resolution, comprehensive plan, or land development regulation,  
 605 or otherwise attempt to regulate or enforce any matter  
 606 concerning natural gas storage facilities governed under this  
 607 part.

608 Section 15. Section 377.2432, Florida Statutes, is created  
 609 to read:

610 377.2432 Natural gas storage facilities; protection of  
 611 water supplies.-

612 (1) An operator of a natural gas storage facility who  
 613 affects a public or private underground water supply by  
 614 pollution or diminution shall restore or replace the affected  
 615 supply with an alternate source of water adequate in quantity  
 616 and quality for the purposes served by the supply. The

617 department shall ensure that the quality of restored or replaced  
 618 water is comparable to the quality of the water before it was  
 619 affected by the operator.

620 (2) Unless rebutted by a defense established in subsection  
 621 (4), an operator is presumed responsible for pollution of an  
 622 underground water supply if:

623 (a) The water supply is within the horizontal boundary of  
 624 the natural gas storage facility; and

625 (b) The pollution occurred within 6 months after  
 626 completion of drilling or alteration of any well under or  
 627 associated with the natural gas storage facility permit.

628 (3) If the affected underground water supply is within the  
 629 rebuttable presumption area as provided in subsection (2) and  
 630 the rebuttable presumption applies, the operator shall provide a  
 631 temporary water supply if the water user is without a readily  
 632 available alternative source of water. The temporary water  
 633 supply provided under this subsection must be adequate in  
 634 quantity and quality for the purposes served by the affected  
 635 supply.

636 (4) A natural gas storage facility operator rebuts the  
 637 presumption in subsection (2) by affirmatively proving any of  
 638 the following:

639 (a) The pollution existed before the drilling or  
 640 alteration activity as determined by a predrilling or  
 641 prealteration survey.

642 (b) The landowner or water purveyor refused to allow the  
 643 operator access to conduct a predrilling or prealteration  
 644 survey.

645 (c) The water supply well is not within the lateral  
 646 boundary of the natural gas storage facility.

647 (d) The pollution occurred more than 6 months after  
 648 completion of drilling or alteration of any well under or  
 649 associated with the natural gas storage facility permit.

650 (e) The pollution occurred as the result of a cause other  
 651 than activities authorized under the natural gas storage  
 652 facility permit.

653 (5) An operator electing to preserve a defense under  
 654 subsection (4) must retain an independent certified laboratory  
 655 to conduct a predrilling or prealteration survey of the water  
 656 supply. A copy of survey results must be submitted to the  
 657 department and the landowner or water purveyor in the manner  
 658 prescribed by the department.

659 (6) An operator must provide written notice to the  
 660 landowner or water purveyor indicating that the presumption  
 661 established under subsection (2) may be void if the landowner or  
 662 water purveyor refused to allow the operator access to conduct a  
 663 predrilling or prealteration survey. Proof of written notice to  
 664 the landowner or water purveyor must be provided to the  
 665 department in order for the operator to retain the protections  
 666 under subsection (4).

667 (7) This section does not prevent a landowner or water  
 668 purveyor who claims pollution or diminution of a water supply  
 669 from seeking any other remedy at law or in equity.

670 Section 16. Section 377.2433, Florida Statutes, is created  
 671 to read:

672 377.2433 Protection of natural gas storage facilities;

673 remedies.-

674 (1) The department may not authorize the drilling of any  
 675 well into or through a permitted natural gas storage reservoir  
 676 or reservoir protective area, except upon conditions deemed by  
 677 the department to be sufficient to prevent the loss, migration,  
 678 or escape of gas from the natural gas storage reservoir. The  
 679 department shall provide written notice to the natural gas  
 680 storage facility operator of any application filed with the  
 681 department and any agency action taken related to drilling a  
 682 well into or through a permitted natural gas storage facility  
 683 boundary or reservoir protective area.

684 (2) As a condition for the issuance of a permit by the  
 685 department, an applicant seeking to drill a well into or through  
 686 a permitted natural gas storage facility boundary or reservoir  
 687 protective area must provide the affected natural gas storage  
 688 facility operator a reasonable right of entry to observe and  
 689 monitor all drilling activities.

690 (3) The department shall ensure that any well drilled into  
 691 or through a permitted natural gas storage reservoir or  
 692 reservoir protective area is cased and cemented in a manner  
 693 sufficient to protect the integrity of the natural gas storage  
 694 reservoir.

695 (4) A natural gas storage facility operator may petition  
 696 the department for a determination that any other activity is  
 697 causing gas migration, escape, or loss, or in any other respect  
 698 adversely affecting the integrity and use of the natural gas  
 699 storage reservoir. Upon the filing of such petition, the  
 700 department shall conduct a preliminary investigation and make a

701 preliminary determination of whether probable cause exists to  
 702 believe that the allegations of the petition may be true and  
 703 correct. If the department determines that probable cause  
 704 exists, the department shall:

705 (a) Require the activity allegedly causing the adverse  
 706 effect to immediately cease operations or take other steps  
 707 necessary to prevent harm pending a final determination.

708 (b) Refer the petition to the Division of Administrative  
 709 Hearings to conduct formal administrative proceedings pursuant  
 710 to ss. 120.57 and 120.569 to make findings of fact regarding the  
 711 allegations of the petition. Based upon such findings of fact,  
 712 the department shall enter a final order granting or denying the  
 713 petition. Any final order granting such petition must include  
 714 remedial measures to be undertaken by the activity alleged to be  
 715 causing gas migration up to and including complete cessation of  
 716 such activity. Final orders issued pursuant to this paragraph  
 717 are appealable pursuant to s. 120.68.

718 (5) This section does not prohibit a natural gas storage  
 719 facility operator from seeking any other remedy at law or in  
 720 equity.

721 Section 17. Section 377.2434, Florida Statutes, is created  
 722 to read:

723 377.2434 Property rights to injected natural gas.-

724 (1) All natural gas that has previously been reduced to  
 725 possession and that is subsequently injected into a natural gas  
 726 storage facility, whether the storage rights were acquired by  
 727 eminent domain or otherwise, are at all times the property of  
 728 the injector or the injector's heirs, successors, or assigns,

729 whether owned by the injector or stored under contract.

730 (2) Such gas may not be subject to the right of the owner  
 731 of the surface of the lands or of any mineral interest therein,  
 732 under which the natural gas storage facilities lie, or to the  
 733 right of any person, other than the injector or the injector's  
 734 heirs, successors, or assigns, to waste or otherwise interfere  
 735 with or exercise control over such gas, to produce, to take, or  
 736 to reduce to possession, by means of the law of capture or  
 737 otherwise. This subsection does not affect the ownership of  
 738 hydrocarbons occurring naturally within this state or the right  
 739 of the owner of the surface of the lands or of any mineral  
 740 interest therein to drill or bore through the natural gas  
 741 storage facilities in a manner that will protect the facilities  
 742 against pollution or the escape of stored natural gas.

743 (3) With regard to natural gas that has migrated to  
 744 adjoining property or to a stratum, or portion thereof, which  
 745 has not been condemned or otherwise purchased:

746 (a) The injector or the injector's heirs, successors, or  
 747 assigns:

748 1. May not lose title to or possession of the gas if the  
 749 injector or the injector's heirs, successors, or assigns can  
 750 prove by a preponderance of the evidence that the gas was  
 751 originally injected into the underground storage; and

752 2. Have the right to conduct tests on any existing wells  
 753 on adjoining property as may be reasonable to determine  
 754 ownership of the gas, but the tests are solely at the injector's  
 755 risk and expense.

756 (b) The owner of the stratum and the owner of the surface



757 are entitled to compensation, including compensation for use of  
 758 or damage to the surface or substratum, as provided by law.

759 Section 18. Subsection (3) of section 377.25, Florida  
 760 Statutes, is amended to read:

761 377.25 Production pools; drilling units.—

762 (3) Each well permitted to be drilled upon any drilling  
 763 unit shall be drilled approximately in the center thereof, with  
 764 such exception as may be reasonably necessary where the division  
 765 finds that the unit is partly outside the pool or, for some  
 766 other reason, a well approximately in the center of the unit  
 767 would be nonproductive or where topographical conditions are  
 768 such as to make the drilling approximately in the center of the  
 769 unit unduly burdensome or where the operator proposes to  
 770 complete the well with a horizontal or nearly horizontal well in  
 771 the producing zone. Whenever an exception is granted, the  
 772 division shall take such action as will offset any advantage  
 773 which the person securing the exception may have over other  
 774 producers by reason of the drilling of the well as an exception,  
 775 and so that drainage from developed units to the tract, with  
 776 respect to which the exception is granted, will be prevented or  
 777 minimized, and the producer of the well drilled, as an  
 778 exception, will be allowed to produce no more than his or her  
 779 just and equitable share of the oil and gas in the pool, as such  
 780 share is set forth in this section. This subsection does not  
 781 apply to injection wells associated with a natural gas storage  
 782 facility.

783 Section 19. Subsections (1), (2), and (4) of section  
 784 377.28, Florida Statutes, are amended to read:

785 377.28 Cycling, pooling, and unitization of oil and gas.—

786 (1) The department may consider the need for the operation  
 787 as a unit of an entire field, or of any pool or pools, portion  
 788 or portions, or combinations thereof within a field, for the  
 789 storage of natural gas, or for the production of oil or gas, or  
 790 both, and other minerals which may be associated and produced  
 791 therewith, in order to avoid the drilling of unnecessary wells,  
 792 otherwise to prevent waste, or to increase the ultimate storage  
 793 of gas and recovery of the unitized minerals by additional  
 794 recovery methods.

795 (2) The department shall issue an order requiring unit  
 796 operation if it finds that:

797 (a) Unit operation of the field, or of any pool or pools,  
 798 portion or portions, or combinations thereof within the field,  
 799 is reasonably necessary to prevent waste, to avoid the drilling  
 800 of unnecessary wells, or to increase the ultimate storage or  
 801 recovery of oil or gas by additional recovery methods; ~~and~~

802 (b) The estimated additional cost incident to the conduct  
 803 of such operation will not exceed the value of the estimated  
 804 additional recovery of oil or gas; and

805 (c) The additional recovery of oil or gas does not  
 806 adversely interfere with the storage or recovery of natural gas  
 807 within a natural gas storage reservoir.

808

809 The phrase "additional recovery methods" as used herein  
 810 includes, but is not limited to, the maintenance or partial  
 811 maintenance of reservoir pressures; recycling; flooding a pool  
 812 or pools, or parts thereof, with air, gas, water, liquid

813 hydrocarbons, any other substance, or any combination thereof;  
 814 or any other method of producing additional hydrocarbons  
 815 approved by the department.

816 (4) An order requiring unit operation does ~~shall~~ not  
 817 become effective unless and until the department makes a  
 818 finding, in the order or a supplemental order, of the following:

819 (a) A contract incorporating the unitization agreement has  
 820 been signed or ratified or approved in writing by the owners of  
 821 at least 75 percent in interest as costs are shared under the  
 822 terms of the order and by 75 percent in interest as production  
 823 is to be allocated to the royalty owners in the unit area. If  
 824 any entity owns both royalty interests and interests responsible  
 825 for costs, such party may vote as an owner responsible for costs  
 826 or as a royalty owner, at his or her election, but not as both,  
 827 and the entity's interest that is not voted shall be excluded in  
 828 calculating the percentages of consent and nonconsent.

829 (b) A contract incorporating the required arrangements for  
 830 operations has been signed or ratified or approved in writing by  
 831 the owners of at least 75 percent in interest as costs are  
 832 shared. However, if the contract is incorporating the  
 833 unitization agreement or arrangements for operations of a  
 834 unitization agreement, only 50 percent of the owners of the pore  
 835 space comprising the natural gas storage reservoir must sign or  
 836 ratify the contract or approve it in writing.

837  
 838 ~~and the department has made a finding to that effect either in~~  
 839 ~~the order or in a supplemental order.~~ Both contracts may be  
 840 encompassed in a single document. If ~~In the event~~ the required

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841 percentage interests have not signed, ratified, or approved the  
 842 ~~said~~ agreements within 6 months after the date of such order, or  
 843 within such extended period as the department may prescribe, it  
 844 shall be automatically revoked.

845 Section 20. Section 377.29, Florida Statutes, is amended  
 846 to read:

847 377.29 Agreements in interest of conservation.—Agreements  
 848 made in the interest of conservation of oil or gas, or both, or  
 849 for the prevention of waste, between and among owners and  
 850 operators, or both, or between and among owners and operators of  
 851 a natural gas storage facility, or both, owning separate  
 852 holdings in the same oil or gas pool, or in any area that  
 853 appears from geological or other data to be underlaid, by a  
 854 common accumulation of oil or gas, or both, or between and among  
 855 such owners or operators, or both, and royalty owners therein,  
 856 of the pool or area, or any part thereof, as a unit for  
 857 establishing and carrying out a plan for the cooperative  
 858 development and operation thereof, when such agreements are  
 859 approved by the division, are hereby authorized and may ~~shall~~  
 860 not be held or construed to violate any of the statutes of this  
 861 state relating to trusts, monopolies, or contracts and  
 862 combinations in restraint of trade.

863 Section 21. Subsection (4) is added to section 377.30,  
 864 Florida Statutes, to read:

865 377.30 Limitation on amount of oil or gas taken.—  
 866 (4) This section does not apply to nonnative gas recovered  
 867 from a permitted natural gas storage facility.

868 Section 22. Subsection (1) of section 377.34, Florida

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869 Statutes, is amended to read:

870 377.34 Actions and injunctions by division.-

871 (1) Whenever it appears ~~shall appear~~ that a ~~any~~ person is  
 872 violating, or threatening to violate, any statute of this state  
 873 with respect to the conservation of oil or gas, or both, or any  
 874 provision of this law, or any rule, regulation or order made  
 875 ~~thereunder~~ by any act done in the operation of a ~~any~~ well  
 876 producing oil or gas, or storing or recovering natural gas, or  
 877 by omitting an ~~any~~ act required to be done ~~thereunder~~, the  
 878 division, through its counsel, or the Department of Legal  
 879 Affairs on its own initiative, may bring suit against such  
 880 person in the Circuit Court in the County of Leon, state, or in  
 881 the circuit court in the county in which the well in question is  
 882 located, at the option of the division, or the Department of  
 883 Legal Affairs, to restrain such person or persons from  
 884 continuing such violation or from carrying out the threat of  
 885 violation. In such suit, the division, or the Department of  
 886 Legal Affairs, may obtain injunctions, prohibitory and  
 887 mandatory, including temporary restraining orders and temporary  
 888 injunctions, as the facts may warrant, including, when  
 889 appropriate, an injunction restraining any person from moving or  
 890 disposing of illegal oil, illegal gas or illegal product, and  
 891 any or all such commodities may be ordered to be impounded or  
 892 placed under the control of a receiver appointed by the court  
 893 if, in the judgment of the court, such action is advisable.

894 Section 23. Paragraph (a) of subsection (1) of section  
 895 377.37, Florida Statutes, is amended to read:

896 377.37 Penalties.-

897 (1) (a) Any person who violates any provision of this law  
 898 or any rule, regulation, or order of the division made under  
 899 this chapter or who violates the terms of any permit to drill  
 900 for or produce oil, gas, or other petroleum products referred to  
 901 in s. 377.242(1), or to store gas in a natural gas storage  
 902 facility, or any lessee, permitholder, or operator of equipment  
 903 or facilities used in the exploration for, drilling for, or  
 904 production of oil, gas, or other petroleum products, or storage  
 905 of gas in a natural gas storage facility, who refuses inspection  
 906 by the division as provided in this chapter, is liable to the  
 907 state for any damage caused to the air, waters, or property,  
 908 including animal, plant, or aquatic life, of the state and for  
 909 reasonable costs and expenses of the state in tracing the source  
 910 of the discharge, in controlling and abating the source and the  
 911 pollutants, and in restoring the air, waters, and property,  
 912 including animal, plant, and aquatic life, of the state.  
 913 Furthermore, such person, lessee, permitholder, or operator is  
 914 subject to the judicial imposition of a civil penalty in an  
 915 amount of not more than \$10,000 for each offense. However, the  
 916 court may receive evidence in mitigation. Each day during any  
 917 portion of which such violation occurs constitutes a separate  
 918 offense. Nothing herein shall give the department the right to  
 919 bring an action on behalf of any private person.

920 Section 24. Subsections (1) and (3) of section 377.371,  
 921 Florida Statutes, are amended to read:

922 377.371 Pollution prohibited; reporting, liability.—

923 (1) A ~~No~~ person drilling for or producing oil, gas, or  
 924 other petroleum products, or storing gas in a natural gas

925 storage facility, may not ~~shall~~ pollute land or water; damage  
 926 aquatic or marine life, wildlife, birds, or public or private  
 927 property; or allow any extraneous matter to enter or damage any  
 928 mineral or freshwater-bearing formation.

929 (3) Because it is the intent of this chapter to provide  
 930 the means for rapid and effective cleanup and to minimize  
 931 damages resulting from pollution in violation of this chapter,  
 932 if the waters of the state are polluted by the drilling, storage  
 933 of natural gas, or production operations of any person or  
 934 persons and such pollution damages or threatens to damage human,  
 935 animal, or plant life, public or private property, or any  
 936 mineral or water-bearing formation, said person shall be liable  
 937 to the state for all costs of cleanup or other damage incurred  
 938 by the state. In any suit to enforce claims of the state under  
 939 this chapter, it is ~~shall~~ not be necessary for the state to  
 940 plead or prove negligence in any form or manner on the part of  
 941 the person or persons conducting the drilling or production  
 942 operations; the state need only plead and prove the fact of the  
 943 prohibited discharge or other polluting condition and that it  
 944 occurred at the facilities of the person or persons conducting  
 945 the drilling or production operation. A ~~No~~ person or persons  
 946 conducting the drilling, storage, or production operation may  
 947 not ~~shall~~ be held liable if said person or persons prove that  
 948 the prohibited discharge or other polluting condition was the  
 949 result of any of the following:

- 950 (a) An act of war.
- 951 (b) An act of government, either state, federal, or
- 952 municipal.

953 (c) An act of God, which means an unforeseeable act  
 954 exclusively occasioned by the violence of nature without the  
 955 interference of any human agency.

956 (d) An act or omission of a third party without regard to  
 957 whether any such act or omission was or was not negligent.

958 Section 25. Paragraph (g) is added to subsection (3) of  
 959 section 403.973, Florida Statutes, and paragraph (b) of  
 960 subsection (14) of that section is amended, to read:

961 403.973 Expedited permitting; amendments to comprehensive  
 962 plans.—

963 (3)

964 (g) Projects for natural gas storage facilities that are  
 965 permitted under chapter 377 are eligible for the expedited  
 966 permitting process.

967 (14)

968 (b) Projects identified in paragraph (3)(f) or paragraph  
 969 (3)(g) or challenges to state agency action in the expedited  
 970 permitting process for establishment of a state-of-the-art  
 971 biomedical research institution and campus in this state by the  
 972 grantee under s. 288.955 are subject to the same requirements as  
 973 challenges brought under paragraph (a), except that,  
 974 notwithstanding s. 120.574, summary proceedings must be  
 975 conducted within 30 days after a party files the motion for  
 976 summary hearing, regardless of whether the parties agree to the  
 977 summary proceeding.

978 Section 26. This act shall take effect July 1, 2013.





Amendment No.1

COMMITTEE/SUBCOMMITTEE ACTION

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

1 Committee/Subcommittee hearing bill: Agriculture & Natural  
 2 Resources Subcommittee  
 3 Representative Eagle offered the following:

**Amendment (with title amendment)**

6 Remove everything after the enacting clause and insert:

7 Section 1. This act may be cited as the Florida  
 8 Underground Natural Gas Storage Act.

9 Section 2. Subsection (7) is added to section 211.02,  
 10 Florida Statutes, to read:

11 211.02 Oil production tax; basis and rate of tax; tertiary  
 12 oil and mature field recovery oil.--An excise tax is hereby  
 13 levied upon every person who severs oil in the state for sale,  
 14 transport, storage, profit, or commercial use. Except as  
 15 otherwise provided in this part, the tax is levied on the basis  
 16 of the entire production of oil in this state, including any  
 17 royalty interest. Such tax shall accrue at the time the oil is  
 18 severed and shall be a lien on production regardless of the  
 19 place of sale, to whom sold, or by whom used, and regardless of  
 20 the fact that delivery of the oil may be made outside the state.



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21       (7) As used in this section, the term oil does not include  
22 gas-phase hydrocarbons that are transported into the state,  
23 injected in the gaseous phase into a natural gas storage  
24 facility permitted under part I of chapter 377, and later  
25 recovered as a liquid hydrocarbon.

26       Section 3. Subsection (6) is added to section 211.025,  
27 Florida Statutes, to read:

28             211.025 Gas production tax; basis and rate of tax.—An  
29 excise tax is hereby levied upon every person who severs gas in  
30 the state for sale, transport, profit, or commercial use.  
31 Except as otherwise provided in this part, the tax shall be  
32 levied on the basis of the entire production of gas in this  
33 state, including any royalty interest. Such tax shall accrue at  
34 the time the gas is severed and shall be a lien on production  
35 regardless of the place of sale, to whom sold, or by whom used  
36 and regardless of the fact that delivery of the gas may be made  
37 outside the state.

38       (6) This section applies only to native gas as defined in  
39 s. 377.19.

40       Section 4. Subsection (36) of section 376.301, Florida  
41 Statutes, is amended to read:

42             376.301 Definitions of terms used in ss. 376.30-376.317,  
43 376.70, and 376.75.--When used in ss. 376.30-376.317, 376.70,  
44 and 376.75, unless the context clearly requires otherwise, the  
45 term:

46             (36) "Pollutants" includes any product as defined in s.  
47 377.19~~(11)~~, pesticides, ammonia, chlorine, and derivatives  
48 thereof, excluding liquefied petroleum gas.



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49 Section 5. Section 377.06, Florida Statutes, is amended to  
50 read:

51 377.06 Public policy of state concerning natural resources  
52 of oil and gas. It is hereby declared ~~to be~~ the public policy  
53 of this the state to conserve and control the natural resources  
54 of oil and gas in this said state, and the products made from  
55 oil and gas in this state therefrom; to prevent waste of said  
56 natural resources; to provide for the protection and adjustment  
57 of the correlative rights of the owners of the land in which the  
58 wherein said natural resources lie, of and the owners and  
59 producers of oil and gas resources and the products made from  
60 oil and gas therefrom, and of others interested in these  
61 resources and products therein; to safeguard the health,  
62 property, and public welfare of the residents citizens of this  
63 said state and other interested persons and for all purposes  
64 indicated by the provisions in this section herein. Further, it  
65 is declared that underground storage of natural gas is in the  
66 public interest because underground storage promotes  
67 conservation of natural gas; makes gas more readily available to  
68 the domestic, commercial, and industrial consumers of this  
69 state; and allows the accumulation of large quantities of gas in  
70 reserve for orderly withdrawal during emergencies or periods of  
71 peak demand. It is not the intention of this section to limit,  
72 ~~or~~ restrict, or modify in any way the provisions of this law.

73 Section 6. Section 377.18, Florida Statutes, is amended  
74 to read:

75 377.18 Common sources of oil and gas.--All common sources  
76 of supply of oil or native and gas ~~or either of them~~ shall have



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77 the production ~~therefrom~~ controlled or regulated in accordance  
78 with the provisions of this law.

79 Section 7. Section 377.19, Florida Statutes, is reordered  
80 and amended to read:

81 377.19 Definitions.--As used ~~Unless the context otherwise~~  
82 ~~requires, the words defined in this section shall have the~~  
83 ~~following meanings when found in ss. 377.06, 377.07, and 377.10~~  
84 ~~377.40, the term:~~

85 (3)~~(1)~~ "Division" means the Division of Resource  
86 Management of the Department of Environmental Protection.

87 (28)~~(2)~~ "State" means the State of Florida.

88 (20)~~(3)~~ "Person" means a ~~any~~ natural person, corporation,  
89 association, partnership, receiver, trustee, guardian, executor,  
90 administrator, fiduciary, or representative of any kind.

91 (15)~~(4)~~ "Oil" means crude petroleum oil and other  
92 hydrocarbons, regardless of gravity, which are produced at the  
93 well in liquid form by ordinary production methods, and which  
94 are not the result of condensation of gas after it leaves the  
95 reservoir.

96 (5) "Gas" means all natural gas, including casinghead  
97 gas, and all other hydrocarbons not defined as oil in subsection  
98 (4).

99 (21)~~(6)~~ "Pool" means an underground reservoir containing  
100 or appearing to contain a common accumulation of oil or gas or  
101 both. Each zone of a general structure which is completely  
102 separated from any other zone on the structure is considered a  
103 separate pool as used herein.

104 (4)~~(7)~~ "Field" means the general area that ~~which~~ is



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

111 (19)(8) "Owner" means the person who has the right to  
112 drill into and to produce from any pool and to appropriate the  
113 production ~~either~~ for the person or for the person and another,  
114 or others.

115 (22)(9) "Producer" means the owner or operator of a well  
116 or wells capable of producing oil or gas, or both.

117 (31)(10) "Waste," in addition to its ordinary meaning,  
118 means physical waste as that term is generally understood in  
119 the oil and gas industry. The term "waste" includes:

120 (a) The inefficient, excessive, or improper use or  
121 dissipation of reservoir energy; and the locating, spacing,  
122 drilling, equipping, operating, or producing of any oil or gas  
123 well or wells in a manner that ~~which~~ results, or tends to  
124 result, in reducing the quantity of oil or gas ultimately to be  
125 stored or recovered from any pool in this state.

126 (b) The inefficient storing of oil; and the locating,  
127 spacing, drilling, equipping, operating, or producing of any oil  
128 or gas well or wells in a manner that causes, or tends ~~causing,~~  
129 ~~or tending~~ to cause, unnecessary or excessive surface loss or  
130 destruction of oil or gas.

131 (c) The producing of oil or gas in ~~such~~ a manner that  
132 causes ~~as to cause~~ unnecessary water channeling or coning.



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

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

137 (f) The underground waste, however caused and whether or  
138 not defined, which does not include seepage or migration of  
139 injected nonnative gas from a natural gas storage reservoir.

140 (g) The creation of unnecessary fire hazards.

141 (h) The escape into the open air, from a well producing  
142 both oil and gas, of gas in excess of the amount that ~~which~~ is  
143 necessary in the efficient drilling or operation of the well.

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

145 (j) The unnecessary escape into the air of ~~Permitting~~ gas  
146 produced from a gas well ~~to escape into the air.~~

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

151 ~~(23)-(11)~~ "Product" means a ~~any~~ commodity made from oil or  
152 gas and includes refined crude oil, crude tops, topped crude,  
153 processed crude petroleum, residue from crude petroleum,  
154 cracking stock, uncracked fuel oil, fuel oil, treated crude oil,  
155 residuum, gas oil, casinghead gasoline, natural gas gasoline,  
156 naphtha, distillate, condensate, gasoline, waste oil, kerosene,  
157 benzine, wash oil, blended gasoline, lubricating oil, blends or  
158 mixtures of oil with one or more liquid products or byproducts  
159 derived from oil or gas, and blends or mixtures of two or more  
160 liquid products or byproducts derived from oil or gas, whether



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161 hereinabove enumerated or not.

162       ~~(8)-(12)~~ "Illegal oil" means oil that ~~which~~ has been  
163 produced within the state from any well or wells in excess of  
164 the amount allowed by rule, regulation, or order of the  
165 division, as distinguished from oil produced within the state  
166 from a well not producing in excess of the amount so allowed,  
167 which is "legal oil."

168       ~~(7)-(13)~~ "Illegal gas" means gas that ~~which~~ has been  
169 produced within the state from any well or wells in excess of  
170 the amount allowed by any rule, regulation, or order of the  
171 division, as distinguished from gas produced within the State of  
172 Florida from a well not producing in excess of the amount so  
173 allowed, which is "legal gas."

174       ~~(9)-(14)~~ "Illegal product" means a ~~any~~ product of oil or  
175 gas, any part of which was processed or derived, in whole or in  
176 part, from illegal gas or illegal oil or from any product  
177 thereof, as distinguished from "legal product," which is a  
178 product processed or derived to no extent from illegal oil or  
179 illegal gas.

180       ~~(24)-(15)~~ "Reasonable market demand" means the amount of  
181 oil reasonably needed for current consumption, together with a  
182 reasonable amount of oil for storage and working stocks.

183       ~~(30)-(16)~~ "Tender" means a permit or certificate of  
184 clearance for the transportation or the delivery of oil, gas, or  
185 products, approved and issued or registered under the authority  
186 of the division.

187       ~~(17) The use of the word "and" includes the word "or"~~  
188 ~~and the use of "or" includes "and," unless the context~~



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189 ~~clearly requires a different meaning, especially with respect to~~  
190 ~~such expressions as "oil and gas" or "oil or gas."~~

191 (32)-(18) "Well site" means the general area around a  
192 well, which area has been disturbed from its natural or existing  
193 condition, as well as the drilling or production pad, mud and  
194 water circulation pits, and other operation areas necessary to  
195 drill for or produce oil or gas, or to inject gas into and  
196 recover gas from a natural gas storage facility.

197 (17)-(19) "Oil and gas administrator" means the State  
198 Geologist.

199 (18)-(20) "Operator" means the entity who:

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

201 (b) As part of a natural gas storage facility, injects, or  
202 is engaged in the work of preparing to inject, gas into a  
203 natural gas storage reservoir; or stores gas in, or removes gas  
204 from, a natural gas storage reservoir.

205 (1)-(21) "Completion date" means the day, month, and year  
206 that a new productive well, a previously shut-in well, or a  
207 temporarily abandoned well is completed, repaired, or  
208 recompleted and the operator begins producing oil or gas in  
209 commercial quantities.

210 (26)-(22) "Shut-in well" means an oil or gas well that has  
211 been taken out of service for economic reasons or mechanical  
212 repairs.

213 (29)-(23) "Temporarily abandoned well" means a permitted  
214 well or wellbore that has been abandoned by plugging in a manner  
215 that allows reentry and redevelopment in accordance with oil or  
216 gas rules of the Department of Environmental Protection.





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217 ~~(14)-(24)~~ "New field well" means an oil or gas well  
218 completed after July 1, 1997, in a new field as designated by  
219 the Department of Environmental Protection.

220 ~~(6)-(25)~~ "Horizontal well" means a well completed with the  
221 wellbore in a horizontal or nearly horizontal orientation within  
222 10 degrees of horizontal within the producing formation.

223 (2) "Department" means the Department of Environmental  
224 Protection.

225 (10) "Lateral storage reservoir boundary" means the  
226 projection up to the land surface of the maximum horizontal  
227 extent of the gas volume contained in a natural gas storage  
228 reservoir.

229 (11) "Native gas" means gas that occurs naturally within  
230 this state and does not include gas produced outside the state,  
231 transported to this state, and injected into a permitted natural  
232 gas storage facility.

233 (12) "Natural gas storage facility" means an underground  
234 reservoir from which oil or gas have previously been produced  
235 and which is used or to be used for the underground storage of  
236 natural gas, and any surface or subsurface structure,  
237 infrastructure, right, or appurtenance necessary or useful in  
238 the operation of the facility for the underground storage of  
239 natural gas, including any necessary or reasonable reservoir  
240 protective area as designated for the purpose of ensuring the  
241 safe operation of the storage of natural gas or protecting the  
242 natural gas storage facility from pollution, invasion, escape,  
243 or migration of gas, or any subsequent extension thereof. The  
244 term does not mean a transmission, distribution, or gathering



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245 pipeline or system that is not used primarily as integral piping  
246 for a natural gas storage facility.

247 (13) "Natural gas storage reservoir" means a pool or  
248 field from which oil or gas have previously been produced and  
249 which is suitable for or capable of being made suitable for the  
250 injection, storage, and recovery of gas.

251 (16) "Oil and gas" has the same meaning as the term "oil  
252 or gas."

253 (25) "Reservoir protective area" means the area extending  
254 up to and including 2,000 feet surrounding a natural gas lateral  
255 storage reservoir boundary.

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

259 Section 8. Subsection (1) of section 377.21, Florida  
260 Statutes, is amended to read:

261 377.21 Jurisdiction of division.--

262 (1) The division shall have jurisdiction and authority  
263 over all persons and property necessary to administer and  
264 enforce effectively the provisions of this law and all other  
265 laws relating to the conservation of oil and gas or to the  
266 storage of gas in and recovery of gas from natural gas storage  
267 reservoirs.

268 Section 9. Subsection (2) of section 377.22, Florida  
269 Statutes, is amended, and subsection (3) is added to that  
270 section, to read:

271 377.22 Rules and orders.--

272 (2) The department shall issue orders and adopt rules



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273 pursuant to ss. 120.536~~(1)~~ and 120.54 to implement and enforce  
274 the provisions of this chapter. Such rules and orders shall  
275 ensure that all precautions are taken to prevent the spillage of  
276 oil or any other pollutant in all phases of the drilling for,  
277 and extracting of, oil, gas, or other petroleum products, or  
278 during the injection of gas into and recovery of gas from a  
279 natural gas storage reservoir. The department shall revise such  
280 rules from time to time as necessary for the proper  
281 administration and enforcement of this chapter. Rules adopted  
282 and orders issued in accordance with this section are ~~shall be~~  
283 for, but ~~shall~~ not be limited to, the following purposes:

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

288 (b) To prevent the alteration of the sheet flow of water  
289 in any area.

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

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

298 (e) To prevent the intrusion of water into an oil or gas  
299 stratum from a separate stratum, except as provided by rules of  
300 the division relating to the injection of water for proper



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301 reservoir conservation and brine disposal.

302 (f) To require a reasonable bond, or other form of  
303 security acceptable to the department, conditioned upon the  
304 performance of the duty to plug properly each dry and abandoned  
305 well and the full and complete restoration by the applicant of  
306 the area over which geophysical exploration, drilling, or  
307 production is conducted to the similar contour and general  
308 condition in existence prior to such operation.

309 (g) To require and carry out a reasonable program of  
310 producing or injecting wells, or monitoring or inspection of all  
311 drilling operations ~~or producing wells~~, including regular  
312 inspections by division personnel.

313 (h) To require the making of reports showing the location  
314 of all oil and gas wells; the making and filing of logs; the  
315 taking and filing of directional surveys; the filing of  
316 electrical, sonic, radioactive, and mechanical logs of oil and  
317 gas wells; if taken, the saving of cutting and cores, the cuts  
318 of which shall be given to the Bureau of Geology; and the making  
319 of reports with respect to drilling and production records.  
320 However, such information, or any part thereof, at the request  
321 of the operator, shall be exempt from the provisions of s.  
322 119.07(1) and held confidential by the division for a period of  
323 1 year after the completion of a well.

324 (i) To prevent wells from being drilled, operated, or  
325 produced in such a manner as to cause injury to neighboring  
326 leases, ~~or property~~, or natural gas storage reservoirs.

327 (j) To prevent the drowning by water of any stratum, or  
328 part thereof, capable of producing oil or gas in paying



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329 quantities and to prevent the premature and irregular  
330 encroachment of water which reduces, or tends to reduce, the  
331 total ultimate recovery of oil or gas from any pool.

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

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

337 (m) To prevent fires.

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

341 (o) To regulate the "shooting," perforating and chemical  
342 treatment of wells.

343 (p) To regulate secondary recovery methods, including the  
344 introduction of gas, air, water, or other substance into  
345 producing formations.

346 (q) To regulate gas cycling operations.

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

349 (s)~~(r)~~ If necessary for the prevention of waste, as  
350 herein defined, to determine, limit, and prorate the production  
351 of oil or gas, or both, from any pool or field in the state.

352 (t)~~(s)~~ To require, either generally or in or from  
353 particular areas, certificates of clearance or tenders in  
354 connection with the transportation or delivery of oil or gas, or  
355 any product.

356 (u)~~(t)~~ To regulate the spacing of wells and to establish



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357 drilling units.

358 ~~(v)(u)~~ To prevent, so far as is practicable, reasonably  
359 avoidable drainage from each developed unit which is not  
360 equalized by counterdrainage.

361 ~~(w)(v)~~ To require that geophysical operations requiring a  
362 permit be conducted in a manner which will minimize the impact  
363 on hydrology and biota of the area, especially environmentally  
364 sensitive lands and coastal areas.

365 ~~(x)(w)~~ To regulate aboveground crude oil storage tanks in  
366 a manner which will protect the water resources of the state.

367 ~~(y)(\*)~~ To act in a receivership capacity for fractional  
368 mineral interests for which the owners are unknown or unlocated  
369 and to administratively designate the operator as the lessee.

370 (3) Notwithstanding the grant of rulemaking authority in  
371 this section, a regulatory action taken by the department,  
372 including, but not limited to, the receipt and processing of  
373 permit applications or the issuance of permits, may not be  
374 deemed invalid solely because the department has not yet adopted  
375 rules regarding such regulatory action.

376 Section 10. Subsections (1) and (2) of section 377.24,  
377 Florida Statutes, are amended to read:

378 377.24 Notice of intention to drill well; permits;  
379 abandoned wells and dry holes.--

380 (1) Before drilling a any well in search of oil or gas,  
381 or before storing gas in or recovering gas from a natural gas  
382 storage reservoir shall be drilled, the person who desires  
383 desiring to drill, store, or recover oil or gas the same shall  
384 notify the division upon such form as it may prescribe and shall



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385 pay a reasonable fee set by rule of the department not to exceed  
386 the actual cost of processing and inspecting for each well or  
387 reservoir. The drilling of any well and the storing and  
388 recovering of gas are is hereby prohibited until such notice is  
389 given, the and such fee is has been paid, and the permit is  
390 granted.

391 (2) An Each application for the drilling of a well in  
392 search of oil or gas, or for the storing of gas in and  
393 recovering of gas from a natural gas storage reservoir, in this  
394 state must shall include the address of the residence of the  
395 applicant, or applicants each applicant, which must address  
396 shall be the address of each person involved in accordance with  
397 the records of the Division of Resource Management until such  
398 address is changed on the records of the division after written  
399 request.

400 Section 11. Section 377.2407, Florida Statutes, is created  
401 to read:

402 377.2407 Natural gas storage facility permit application  
403 to inject gas into and recover gas from a natural gas storage  
404 reservoir.--

405 (1) Before drilling a well to inject gas into and recover  
406 gas from a natural gas storage reservoir, the person who desires  
407 to conduct such operation shall apply to the department in the  
408 manner described in this section or using such form as the  
409 department may prescribe and shall pay a reasonable fee for  
410 processing to obtain a natural gas storage facility permit.

411 (2) Each application must contain:

412 (a) A detailed, three-dimensional description of the



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413 natural gas storage reservoir, including geologic-based  
414 descriptions of the reservoir boundaries, and the horizontal and  
415 vertical dimensions.

416 (b) A geographic description of the lateral reservoir  
417 boundary.

418 (c) A description and location of all injection, recovery,  
419 withdrawal only, and observation wells, including casing and  
420 cementing plans for each well.

421 (d) A description of the reservoir protective area.

422 (e) Information demonstrating that the proposed natural  
423 gas storage reservoir is suitable for the storage and recovery  
424 of gas.

425 (f) Information identifying all known abandoned or active  
426 wells within the natural gas storage facility.

427 (g) A field-monitoring plan that requires, at a minimum,  
428 monthly field inspections of all wells that are part of the  
429 natural gas storage facility.

430 (h) A monitoring and testing plan for the well integrity.

431 (i) A well inspection plan that requires, at a minimum,  
432 the inspection of all wells that are part of the natural gas  
433 storage facility and plugged wells within the natural gas  
434 storage facility boundary.

435 (j) A casing inspection plan.

436 (k) A spill prevention and response plan.

437 (l) A well spacing plan.

438 (m) An operating plan for the natural gas storage  
439 reservoir, which must include gas capacities, anticipated  
440 operating conditions, and maximum storage pressure.





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441 (n) A gas migration response plan.

442 (3) Each application may require additional information  
443 that is deemed necessary to permit the development of wells;  
444 drilling of wells; and operation of exploratory investigation,  
445 injection of gas into and recovery of gas from reservoirs,  
446 withdrawal of water through withdrawal only wells, and  
447 monitoring of wells. Each well may be authorized under the  
448 natural gas storage facility permit subject to each well  
449 individually satisfying applicable well construction and  
450 operation criteria under this part.

451 Section 12. Subsections (4) and (5) are added to section  
452 377.241, Florida Statutes, to read:

453 377.241 Criteria for issuance of permits.--The division,  
454 in the exercise of its authority to issue permits as hereinafter  
455 provided, shall give consideration to and be guided by the  
456 following criteria:

457 (4) For activities and operations concerning a natural gas  
458 storage facility, the nature, structure, and proposed use of the  
459 natural gas storage reservoir is suitable for the storage and  
460 recovery of gas without adverse effect to public health or  
461 safety or the environment.

462 (5) No permit shall be issued for a natural gas storage  
463 facility that includes a natural gas storage reservoir that is  
464 located in any aquifer containing water with a total dissolved  
465 solids concentration of 10,000 mg/l or less, in any offshore  
466 location in the Gulf of Mexico, the Straits of Florida, or the  
467 Atlantic Ocean, or an offshore salt dome.

468 Section 13. Subsection (3) of section 377.242, Florida



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469 Statutes, is amended to read:

470 377.242 Permits for drilling or exploring and extracting  
471 through well holes or by other means.--The department is vested  
472 with the power and authority:

473 (3) To issue permits to establish natural gas storage  
474 facilities or construct wells for the injection and recovery of  
475 any natural gas for temporary storage in natural gas storage  
476 subsurface reservoirs.

477  
478 Each permit shall contain an agreement by the permitholder that  
479 the permitholder will not prevent inspection by division  
480 personnel at any time. The provisions of this section  
481 prohibiting permits for drilling or exploring for oil in coastal  
482 waters do not apply to any leases entered into before June 7,  
483 1991.

484 Section 14. Section 377.2431, Florida Statutes, is  
485 created to read:

486 377.2431 Conditions for granting permits for natural gas  
487 storage facilities.--

488 (1) A natural gas storage facility permit must be issued  
489 for the life of the facility, subject to recertification every 5  
490 years.

491 (2) Before issuing or reissuing a permit, the division  
492 shall require satisfactory evidence of the following:

493 (a) The applicant has implemented, or is in the process of  
494 implementing, programs for the control and mitigation of  
495 pollution related to oil, petroleum products or their  
496 byproducts, and other pollutants.



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497 (b) The applicant or operator has acquired a lawful right  
498 to drill, explore, or develop a natural gas storage reservoir  
499 from owners of a majority of the storage rights, or the  
500 applicant or operator has obtained a certificate of public  
501 convenience and necessity for the natural gas storage reservoir  
502 from the Federal Energy Regulatory Commission pursuant to the  
503 Natural Gas Act, 15 U.S.C. ss. 717 et seq.

504 (c) The applicant has used all reasonable means to  
505 identify known wells that have been drilled into or through the  
506 natural gas storage reservoir to determine the status of the  
507 wells and whether inactive or abandoned wells have been properly  
508 plugged. For any well that has not been properly plugged,  
509 before conducting injection operations and after issuance of the  
510 permit, the applicant must plug or recondition the well to  
511 ensure the integrity of the storage reservoir.

512 (d) The applicant has tested the quality of water produced  
513 by all water supply wells within the lateral boundary of the  
514 natural gas storage facility and complied with all requirements  
515 under s. 377.2432. The applicant shall provide to the  
516 department and the owner of the water supply well a written copy  
517 of the water quality data collected under this paragraph.

518 (3) All inspections and other reports required under this  
519 section must be submitted to the department in the manner  
520 prescribed by rule.

521 (4) A natural gas storage facility operator shall request  
522 approval of a maximum storage pressure for a natural gas storage  
523 reservoir in accordance with the following:



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524 (a) The maximum shut-in bottom hole pressure may not  
525 exceed the highest shut-in bottom hole pressure found to exist  
526 during the production history of the reservoir, unless a higher  
527 pressure is established by the department based on testing of  
528 caprock and pool containment. The methods used for determining  
529 the higher pressure must be approved by the department.

530 (b) If the shut-in bottom hole pressure of the original  
531 discovery or of the highest production is not known, or a higher  
532 pressure has not been established through a method approved by  
533 the department pursuant to paragraph (a), the maximum storage  
534 reservoir pressure must be limited to a freshwater hydrostatic  
535 gradient.

536 (5) The department may issue a permit to an applicant  
537 regardless of whether the department has adopted rules for the  
538 activities or operations authorized under this section, or rules  
539 prescribing the forms of the application for a permit.

540 (6) A county or municipality may not adopt an ordinance,  
541 resolution, comprehensive plan, or land development regulation,  
542 or otherwise attempt to regulate or enforce any matter  
543 concerning natural gas storage facilities governed under this  
544 part.

545 Section 15. Section 377.2432, Florida Statutes, is  
546 created to read:

547 377.2432 Natural gas storage facilities; protection of  
548 water supplies.--

549 (1) An operator of a natural gas storage facility who  
550 affects a public or private underground water supply by  
551 pollution or diminution shall restore or replace the affected



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552 supply with an alternate source of water adequate in quantity  
553 and quality for the purposes served by the supply. The  
554 department shall ensure that the quality of restored or replaced  
555 water is comparable to the quality of the water before it was  
556 affected by the operator.

557 (2) Unless rebutted by a defense established in subsection  
558 (4), an operator is presumed responsible for pollution of an  
559 underground water supply if:

560 (a) The water supply is within the horizontal boundary of  
561 the natural gas storage facility; and

562 (b) The pollution occurred within 6 months after  
563 completion of drilling or alteration of any well under or  
564 associated with the natural gas storage facility permit, or the  
565 initial injection of gas into the natural gas storage reservoir,  
566 whichever is later.

567 (3) If the affected underground water supply is within the  
568 rebuttable presumption area as provided in subsection (2) and  
569 the rebuttable presumption applies, the operator shall provide a  
570 temporary water supply if the water user is without a readily  
571 available alternative source of water. The temporary water  
572 supply provided under this subsection must be adequate in  
573 quantity and quality for the purposes served by the affected  
574 supply.

575 (4) A natural gas storage facility operator rebuts the  
576 presumption in subsection (2) by affirmatively proving any of  
577 the following:



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578 (a) The pollution existed before the drilling or  
579 alteration activity as determined by a predrilling or  
580 prealteration survey.

581 (b) The landowner or water purveyor refused to allow the  
582 operator access to conduct a predrilling or prealteration  
583 survey.

584 (c) The water supply well is not within the lateral  
585 boundary of the natural gas storage facility.

586 (d) The pollution occurred more than 6 months after  
587 completion of drilling or alteration of any well under or  
588 associated with the natural gas storage facility permit.

589 (e) The pollution occurred as the result of a cause other  
590 than activities authorized under the natural gas storage  
591 facility permit.

592 (5) An operator electing to preserve a defense under  
593 subsection (4) must retain an independent certified laboratory  
594 to conduct a predrilling or prealteration survey of the water  
595 supply. A copy of survey results must be submitted to the  
596 department and the landowner or water purveyor in the manner  
597 prescribed by the department.

598 (6) An operator must provide written notice to the  
599 landowner or water purveyor indicating that the presumption  
600 established under subsection (2) may be void if the landowner or  
601 water purveyor refused to allow the operator access to conduct a  
602 predrilling or prealteration survey. Proof of written notice to  
603 the landowner or water purveyor must be provided to the  
604 department in order for the operator to retain the protections  
605 under subsection (4).



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606       (7) This section does not prevent a landowner or water  
607 purveyor who claims pollution or diminution of a water supply  
608 from seeking any other remedy at law or in equity.

609       Section 16. Section 377.2433, Florida Statutes, is  
610 created to read:

611       377.2433 Protection of natural gas storage facilities;  
612 remedies.--

613       (1) The department may not authorize the drilling of any  
614 well into or through a permitted natural gas storage reservoir  
615 or reservoir protective area, except upon conditions deemed by  
616 the department to be sufficient to prevent the loss, migration,  
617 or escape of gas from the natural gas storage reservoir. The  
618 department shall provide written notice to the natural gas  
619 storage facility operator of any application filed with the  
620 department and any agency action taken related to drilling a  
621 well into or through a permitted natural gas storage facility  
622 boundary or reservoir protective area.

623       (2) As a condition for the issuance of a permit by the  
624 department, an applicant seeking to drill a well into or through  
625 a permitted natural gas storage facility boundary or reservoir  
626 protective area must provide the affected natural gas storage  
627 facility operator a reasonable right of entry to observe and  
628 monitor all drilling activities.

629       (3) The department shall ensure that any well drilled into  
630 or through a permitted natural gas storage reservoir or  
631 reservoir protective area is cased and cemented in a manner  
632 sufficient to protect the integrity of the natural gas storage  
633 reservoir.



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634 (4) A natural gas storage facility operator may petition  
635 the department for a determination that any other activity is  
636 causing gas migration, escape, or loss, or in any other respect  
637 adversely affecting the integrity and use of the natural gas  
638 storage reservoir. Upon the filing of such petition, the  
639 department shall conduct a preliminary investigation and make a  
640 preliminary determination of whether probable cause exists to  
641 believe that the allegations of the petition may be true and  
642 correct. If the department determines that probable cause  
643 exists, the department shall:

644 (a) Require the activity allegedly causing the adverse  
645 effect to immediately cease operations or take other steps  
646 necessary to prevent harm pending a final determination.

647 (b) Refer the petition to the Division of Administrative  
648 Hearings to conduct formal administrative proceedings pursuant  
649 to ss. 120.57 and 120.569 to make findings of fact regarding the  
650 allegations of the petition. Based upon such findings of fact,  
651 the department shall enter a final order granting or denying the  
652 petition. Any final order granting such petition must include  
653 remedial measures to be undertaken by the activity alleged to be  
654 causing gas migration up to and including complete cessation of  
655 such activity. Final orders issued pursuant to this paragraph  
656 are appealable pursuant to s. 120.68.

657 (5) This section does not prohibit a natural gas storage  
658 facility operator from seeking any other remedy at law or in  
659 equity.

660 Section 17. Section 377.2434, Florida Statutes, is  
661 created to read:





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662 377.2434 Property rights to injected natural gas.--

663 (1) All natural gas that has previously been reduced to  
664 possession and that is subsequently injected into a natural gas  
665 storage facility is at all times the property of the injector or  
666 the injector s heirs, successors, or assigns, whether owned by  
667 the injector or stored under contract.

668 (2) Such gas may not be subject to the right of the owner  
669 of the surface of the lands or of any mineral interest therein,  
670 under which the natural gas storage facilities lie, or to the  
671 right of any person, other than the injector or the injector s  
672 heirs, successors, or assigns, to waste or otherwise interfere  
673 with or exercise control over such gas, to produce, to take, or  
674 to reduce to possession, by means of the law of capture or  
675 otherwise. This subsection does not affect the ownership of  
676 hydrocarbons occurring naturally within this state or the right  
677 of the owner of the surface of the lands or of any mineral  
678 interest therein to drill or bore through the natural gas  
679 storage facilities in a manner that will protect the facilities  
680 against pollution or the escape of stored natural gas.

681 (3) With regard to natural gas that has migrated to  
682 adjoining property or to a stratum, or portion thereof, which  
683 has not been condemned or otherwise purchased:

684 (a) The injector or the injector s heirs, successors, or  
685 assigns:

686 1. May not lose title to or possession of the gas if the  
687 injector or the injector s heirs, successors, or assigns can  
688 prove by a preponderance of the evidence that the gas was  
689 originally injected into the underground storage; and



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690       2. Have the right to conduct tests on any existing wells  
691 on adjoining property as may be reasonable to determine  
692 ownership of the gas, but the tests are solely at the injector s  
693 risk and expense.

694       (b) The owner of the stratum and the owner of the surface  
695 are entitled to compensation, including compensation for use of  
696 or damage to the surface or substratum, as provided by law.

697       Section 18. Subsection (3) of section 377.25, Florida  
698 Statutes, is amended to read:

699       377.25 Production pools; drilling units.--

700       (3) Each well permitted to be drilled upon any drilling  
701 unit shall be drilled approximately in the center thereof, with  
702 such exception as may be reasonably necessary where the division  
703 finds that the unit is partly outside the pool or, for some  
704 other reason, a well approximately in the center of the unit  
705 would be nonproductive or where topographical conditions are  
706 such as to make the drilling approximately in the center of the  
707 unit unduly burdensome or where the operator proposes to  
708 complete the well with a horizontal or nearly horizontal well in  
709 the producing zone. Whenever an exception is granted, the  
710 division shall take such action as will offset any advantage  
711 which the person securing the exception may have over other  
712 producers by reason of the drilling of the well as an exception,  
713 and so that drainage from developed units to the tract, with  
714 respect to which the exception is granted, will be prevented or  
715 minimized, and the producer of the well drilled, as an  
716 exception, will be allowed to produce no more than his or her  
717 just and equitable share of the oil and gas in the pool, as such



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718 share is set forth in this section. This subsection does not  
719 apply to injection wells associated with a natural gas storage  
720 facility.

721 Section 19. Subsections (1), (2), and (4) of section  
722 377.28, Florida Statutes, are amended to read:

723 377.28 Cycling, pooling, and unitization of oil and gas.--

724 (2) The department shall issue an order requiring unit  
725 operation if it finds that:

726 (a) Unit operation of the field, or of any pool or pools,  
727 portion or portions, or combinations thereof within the field,  
728 is reasonably necessary to prevent waste, to avoid the drilling  
729 of unnecessary wells, or to increase the ultimate  
730 recovery of oil or gas by additional recovery methods; ~~and~~

731 (b) The estimated additional cost incident to the conduct  
732 of such operation will not exceed the value of the estimated  
733 additional recovery of oil or gas; and

734 (c) The additional recovery of oil or gas does not  
735 adversely interfere with the storage or recovery of natural gas  
736 within a permitted natural gas storage reservoir.

737 Section 20. Subsection (4) is added to section 377.30,  
738 Florida Statutes, to read:

739 377.30 Limitation on amount of oil or gas taken.--

740 (4) This section does not apply to nonnative gas recovered  
741 from a permitted natural gas storage facility.

742 Section 21. Subsection (1) of section 377.34, Florida  
743 Statutes, is amended to read:

744 377.34 Actions and injunctions by division.--

745 (1) Whenever it appears ~~shall appear~~ that a ~~any~~ person is



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746 violating, or threatening to violate, any statute of this state  
747 with respect to the conservation of oil or gas, or both, or any  
748 provision of this law, or any rule, regulation or order made  
749 ~~thereunder~~ by any act done in the operation of a any well  
750 producing oil or gas, or storing or recovering natural gas, or  
751 by omitting an any act required to be done ~~thereunder~~, the  
752 division, through its counsel, or the Department of Legal  
753 Affairs on its own initiative, may bring suit against such  
754 person in the Circuit Court in the County of Leon, state, or in  
755 the circuit court in the county in which the well in question is  
756 located, at the option of the division, or the Department of  
757 Legal Affairs, to restrain such person or persons from  
758 continuing such violation or from carrying out the threat of  
759 violation. In such suit, the division, or the Department of  
760 Legal Affairs, may obtain injunctions, prohibitory and  
761 mandatory, including temporary restraining orders and temporary  
762 injunctions, as the facts may warrant, including, when  
763 appropriate, an injunction restraining any person from moving or  
764 disposing of illegal oil, illegal gas or illegal product, and  
765 any or all such commodities may be ordered to be impounded or  
766 placed under the control of a receiver appointed by the court  
767 if, in the judgment of the court, such action is advisable.

768 Section 22. Paragraph (a) of subsection (1) of section  
769 377.37, Florida Statutes, is amended to read:

770 377.37 Penalties.--

771 (1)(a) Any person who violates any provision of this law  
772 or any rule, regulation, or order of the division made under  
773 this chapter or who violates the terms of any permit to drill



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774 for or produce oil, gas, or other petroleum products referred to  
775 in s. 377.242(1), or to store gas in a natural gas storage  
776 facility, or any lessee, permitholder, or operator of equipment  
777 or facilities used in the exploration for, drilling for, or  
778 production of oil, gas, or other petroleum products, or storage  
779 of gas in a natural gas storage facility, who refuses inspection  
780 by the division as provided in this chapter, is liable to the  
781 state for any damage caused to the air, waters, or property,  
782 including animal, plant, or aquatic life, of the state and for  
783 reasonable costs and expenses of the state in tracing the source  
784 of the discharge, in controlling and abating the source and the  
785 pollutants, and in restoring the air, waters, and property,  
786 including animal, plant, and aquatic life, of the state.  
787 Furthermore, such person, lessee, permitholder, or operator is  
788 subject to the judicial imposition of a civil penalty in an  
789 amount of not more than \$10,000 for each offense. However, the  
790 court may receive evidence in mitigation. Each day during any  
791 portion of which such violation occurs constitutes a separate  
792 offense. Nothing herein shall give the department the right to  
793 bring an action on behalf of any private person.

794 Section 23. Subsections (1) and (3) of section 377.371,  
795 Florida Statutes, are amended to read:

796 377.371 Pollution prohibited; reporting, liability.--

797 (1) A ~~No~~ person drilling for or producing oil, gas, or  
798 other petroleum products, or storing gas in a natural gas  
799 storage facility, may not ~~shall~~ pollute land or water; damage  
800 aquatic or marine life, wildlife, birds, or public or private  
801 property; or allow any extraneous matter to enter or damage any



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802 mineral or freshwater-bearing formation.

803 (3) Because it is the intent of this chapter to provide  
804 the means for rapid and effective cleanup and to minimize  
805 damages resulting from pollution in violation of this chapter,  
806 if the waters of the state are polluted by the drilling, storage  
807 of natural gas, or production operations of any person or  
808 persons and such pollution damages or threatens to damage human,  
809 animal, or plant life, public or private property, or any  
810 mineral or water-bearing formation, said person shall be liable  
811 to the state for all costs of cleanup or other damage incurred  
812 by the state. In any suit to enforce claims of the state under  
813 this chapter, it is ~~shall~~ not be necessary for the state to  
814 plead or prove negligence in any form or manner on the part of  
815 the person or persons conducting the drilling or production  
816 operations; the state need only plead and prove the fact of the  
817 prohibited discharge or other polluting condition and that it  
818 occurred at the facilities of the person or persons conducting  
819 the drilling or production operation. A ~~No~~ person or persons  
820 conducting the drilling, storage, or production operation may  
821 not ~~shall~~ be held liable if said person or persons prove that  
822 the prohibited discharge or other polluting condition was the  
823 result of any of the following:

824 (a) An act of war.

825 (b) An act of government, either state, federal, or  
826 municipal.

827 (c) An act of God, which means an unforeseeable act  
828 exclusively occasioned by the violence of nature without the  
829 interference of any human agency.



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830 (d) An act or omission of a third party without regard to  
831 whether any such act or omission was or was not negligent.

832 Section 24. Paragraph (g) is added to subsection (3) of  
833 section 403.973, Florida Statutes, and paragraph (b) of  
834 subsection (14) of that section is amended, to read:

835 403.973 Expedited permitting; amendments to comprehensive  
836 plans.--

837 (3)

838 (g) Projects for natural gas storage facilities that are  
839 permitted under chapter 377 are eligible for the expedited  
840 permitting process.

841 (h) Projects to construct interstate natural gas pipelines  
842 subject to certification by the Federal Energy Regulatory  
843 Commission.

844 (14)

845 (b) Projects identified in paragraphs (3) (f), (g), or (h)  
846 or challenges to state agency action in the expedited  
847 permitting process for establishment of a state-of-the-art  
848 biomedical research institution and campus in this state by the  
849 grantee under s. 288.955 are subject to the same requirements as  
850 challenges brought under paragraph (a), except that,  
851 notwithstanding s. 120.574, summary proceedings must be  
852 conducted within 30 days after a party files the motion for  
853 summary hearing, regardless of whether the parties agree to the  
854 summary proceeding.

855 (19) The following projects are ineligible for review under  
856 this part:

857 (b) A project, the primary purpose of which is to:



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858 1. Effect the final disposal of solid waste, biomedical  
859 waste, or hazardous waste in this state.

860 2. Produce electrical power, unless the production of  
861 electricity is incidental and not the primary function of the  
862 project or the electrical power is derived from a fuel source  
863 for renewable energy as defined in s. 366.91(2)(d).

864 3. Extract natural resources.

865 4. Produce oil.

866 5. Construct, maintain, or operate an oil, petroleum,  
867 ~~natural gas~~, or sewage pipeline.

868 Section 25. The department is not required to adopt rules  
869 relating to natural gas storage within two years of the  
870 effective date of this act. Subject to satisfying all conditions  
871 or requirements under this act, the department, however, may  
872 issue a permit to an applicant for a natural gas storage  
873 facility regardless of whether the department has adopted rules  
874 for the activities or operations authorized under this act.

875 Section 26. This act shall take effect July 1, 2013.

876

877

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

879 Remove everything before the enacting clause and insert:  
880 An act relating to underground natural gas storage; providing a  
881 short title; amending s. 211.02, F.S.; narrowing the use of the  
882 term "oil"; amending s. 211.025, F.S.; narrowing the scope of  
883 the gas production tax to apply only to native gas; amending s.  
884 376.301, F.S.; conforming a cross-reference; amending s. 377.06,  
885 F.S.; making grammatical changes; declaring underground natural





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886 gas storage to be in the public interest; amending s. 377.18,  
887 F.S.; clarifying common sources of oil and gas; amending s.  
888 377.19, F.S.; modifying and providing definitions; amending s.  
889 377.21, F.S.; extending the jurisdiction of the Division of  
890 Resource Management of the Department of Environmental  
891 Protection; amending s. 377.22, F.S.; expanding the scope of the  
892 department's rules and orders; providing that the department s  
893 authority must be self-executing and that a regulatory action  
894 may not be deemed invalid solely because the department has not  
895 yet adopted a certain rule; amending s. 377.24, F.S.; providing  
896 for the notice and permitting of storage in and recovery from  
897 natural gas storage reservoirs; creating s. 377.2407, F.S.;  
898 establishing a natural gas storage facility permit application  
899 process; specifying requirements for an application, including  
900 fees; amending s. 377.241, F.S.; providing criteria that the  
901 division must consider in issuing permits; amending s. 377.242,  
902 F.S.; granting authority to the department to issue permits to  
903 establish natural gas storage facilities; creating s. 377.2431,  
904 F.S.; establishing conditions and procedures for granting  
905 natural gas storage facility permits; limiting the right of a  
906 county or municipality to regulate natural gas storage  
907 facilities; creating s. 377.2432, F.S.; providing for the  
908 protection of water supplies at natural gas storage facilities;  
909 providing that an operator is presumed responsible for pollution  
910 of an underground water supply under certain circumstances;  
911 creating s. 377.2433, F.S.; providing for the protection of  
912 natural gas storage facilities through an administrative  
913 hearing; creating s.377.2434, F.S.; providing that property



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914 rights to injected natural gas are with the injector or the  
915 injector s heirs, successors, or assigns; providing for  
916 compensation to the owner of the stratum and the owner of the  
917 surface for use of or damage to the surface or substratum;  
918 amending s. 377.25, F.S.; limiting the scope of certain drilling  
919 unit requirements; amending s. 377.28, F.S.; providing that the  
920 department may consider the need for the operation as a unit for  
921 the storage of natural gas; modifying situations in which the  
922 department is required to issue an order requiring unit  
923 operation; amending s. 377.29, F.S.; authorizing certain  
924 agreements between owners and operators of a natural gas storage  
925 facility; amending s. 377.30, F.S.; providing that limitations  
926 on the amount of oil or gas taken do not apply to nonnative gas  
927 recovered from a permitted natural gas storage facility;  
928 amending s. 377.34, F.S.; providing for legal action against a  
929 person who appears to be violating a rule that relates to the  
930 storage or recovery of natural gas; amending s. 377.37, F.S.;  
931 expanding penalties to reach persons who violate the terms of a  
932 permit relating to storage of gas in a natural gas storage  
933 facility; amending s. 377.371, F.S.; providing that a person  
934 storing gas in a natural gas storage facility may not pollute or  
935 otherwise damage certain areas and that a person who pollutes  
936 water by storing natural gas is liable for cleanup or other  
937 costs incurred by the state; amending s. 403.973, F.S.; allowing  
938 expedited permitting for natural gas storage facilities  
939 permitted under ch. 377, F.S.; allowing expedited permitting for  
940 certain natural gas pipeline projects; providing that natural



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941 gas storage facilities and natural gas pipeline projects are  
942 subject to certain requirements; providing an effective date.  
943



## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 1085 Public Records/Natural Gas Storage Facility Permit  
**SPONSOR(S):** Eagle  
**TIED BILLS:** HB 1083 **IDEN./SIM. BILLS:** SB 984

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

### SUMMARY ANALYSIS

Article I, s. 24(a) of the State Constitution guarantees every person a right to inspect or copy any public record of the legislative, executive, and judicial branches of government. The Legislature, however, may provide by general law for the exemption of records from the requirements of Article I, s. 24(a). The general law must state with specificity the public necessity justifying the exemption (public necessity statement) and must be no broader than necessary to accomplish its purpose.

The bill provides a public records exemption for information that an applicant for a natural gas storage facility permit provides to Department of Environmental Protection (DEP) relating to leasing plans, exploration budgets, proprietary well design or completion plans, geological or engineering studies related to storage reservoir performance characteristics, field utilization strategies or operating plans, commercial or marketing studies, or other proprietary confidential business information or trade secret as defined by Florida law.

The bill provides that the public records exemption is subject to the Open Sunset Review Act and stands repealed on October 2, 2018, unless reviewed and saved from repeal through reenactment by the Legislature. The bill also provides a statement of public necessity as required by the State Constitution.

The bill does not have a fiscal impact on the state or local government.

The bill has an effective date of October 1, 2013, if HB 1083 or similar legislation is adopted in the same legislative session.

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

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Present Situation**

##### Public Records Law

Article I, s. 24(a) of the State Constitution sets forth the state's public policy regarding access to government records. The section guarantees every person a right to inspect or copy any public record of the legislative, executive, and judicial branches of government. The Legislature, however, may provide by general law for the exemption of records from the requirements of Article I, s. 24(a). The general law must state with specificity the public necessity justifying the exemption (public necessity statement) and must be no broader than necessary to accomplish its purpose.

Public policy regarding access to government records is addressed further in s. 119.07(1), F.S., which guarantees every person a right to inspect and copy any state, county, or municipal record. Furthermore, the Open Government Sunset Review Act provides that a public record exemption may be created or maintained only if it serves an identifiable public purpose. In addition, it may be no broader than is necessary to meet one of the following purposes:

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

##### Underground Natural Gas Storage

Natural gas can be stored for an indefinite period of time. When natural gas reaches its destination, it is not always needed right away and can be injected into underground storage facilities.<sup>1</sup>

Underground natural gas storage provides pipelines, local distribution companies, producers, and pipeline shippers with an inventory management tool, seasonal supply backup, and access to natural gas needed to avoid imbalances between receipts and deliveries on a pipeline network.<sup>2</sup>

There are three types of underground storage sites used in the United States. They are:

- Depleted natural gas or oil fields (326 sites),<sup>3</sup>
- Aquifers (43 sites),<sup>4</sup> or
- Salt caverns (31 sites).<sup>5</sup>

Under the Natural Gas Act,<sup>6</sup> the Federal Energy Regulatory Commission (FERC) determines the rate-setting methods for interstate pipeline companies, sets rules for business practices, and is responsible

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<sup>1</sup> See NaturalGas.org at <http://www.naturalgas.org/naturalgas/storage.asp>

<sup>2</sup> See U.S. Energy Information Administration website on 'Underground Natural Gas Storage.' See [http://www.eia.gov/pub/oil\\_gas/natural\\_gas/analysis\\_publications/ngpipeline/undgrnd\\_storage.html](http://www.eia.gov/pub/oil_gas/natural_gas/analysis_publications/ngpipeline/undgrnd_storage.html)

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

<sup>4</sup> *Id.*

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

<sup>6</sup> Natural Gas Act, 15 U.S.C., § 717 et seq.

for authorizing the siting, construction, and operations of interstate pipelines, natural gas storage fields, and liquefied natural gas facilities. The Natural Gas Act does not apply to the production, gathering, or local distribution of natural gas.

Currently, Florida has no regulatory provisions for underground natural gas storage facilities. The Oil and Gas Program is the permitting authority within the Department of Environmental Protection's (DEP's) Mining and Minerals Regulation Program in the Division of Water Resource Management (Division). Companies interested in the exploration or production of hydrocarbons in Florida are regulated by the Oil and Gas Program. Primary responsibilities of the Program include conservation of oil and gas resources, correlative rights protection, maintenance of health and human safety, and environmental protection. These concerns are addressed through a system of permits and field inspections to insure compliance. Primary duties include permitting geophysical operations (usually seismic prospecting), permitting drilling or operating wells (all separate permits), and tracking activities through use of a computer database. All permitted activities are inspected by staff of the Oil and Gas Program.

**Effect of Proposed Changes**

The bill provides a public records exemption for information that an applicant seeking a natural gas storage facility permit must provide to DEP relating to leasing plans, exploration budgets, proprietary well design or completion plans, geological or engineering studies related to storage reservoir performance characteristics, field utilization strategies or operating plans, commercial or marketing studies, or other proprietary confidential business information or trade secret as defined by Florida law.

The bill provides that the public records exemption is subject to the Open Sunset Review Act and stands repealed on October 2, 2018, unless reviewed and saved from repeal through reenactment by the Legislature. The bill also provides the following statement of public necessity as required by the State Constitution:<sup>7</sup>

The Legislature finds that it is a public necessity that information provided to the Department of Environmental Protection which relates to leasing plans, exploration budgets, proprietary well design or completion plans, geological or engineering studies related to storage reservoir performance characteristics, field utilization strategies or operating plans, commercial or marketing studies, or other proprietary confidential business information or trade secret provided by a person in conjunction with an application to establish an underground natural gas storage facility as defined in s. 377.19, Florida Statutes, be made confidential and exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution for a period of 10 years. The disclosure of such proprietary confidential business information or trade secret could injure an applicant in the marketplace by giving competitors detailed insight into technical assessments, design, and experience, thereby putting the applicant at a competitive disadvantage. Without this exemption, applicants could be less willing to expend or commit to expend the substantial resources necessary to determine the feasibility of establishing, permitting, and operating an underground natural gas storage facility, resulting in limited opportunities for developing the additional natural gas storage capacity that Florida critically needs to meet current and future residential, commercial, and industrial energy needs. The resulting lack of resources could hinder the ability of electric utility services to optimize services to their customers and could adversely affect those customers by depriving them of the opportunities and energy security that comes with domestic reserves of natural gas stored underground.

<sup>7</sup> Section 24(c), Art. I of the State Constitution.  
STORAGE NAME: h1085.ANRS.DOCX  
DATE: 3/18/2013

Proprietary confidential business information and trade secret information derives actual or potential independent economic value from not being generally known to, and not being readily ascertainable by, other persons who can derive economic value from its disclosure or use. The Department of Environmental Protection, in the course of reviewing and issuing permitting decisions relating to underground natural gas storage facility permits, may need to obtain proprietary confidential business information. Disclosure of such information could destroy the value of that property, if disclosed within 10 years after submittal, and could not only cause economic harm to the applicant providing the information, but the reduced competition for provision of domestic underground storage of natural gas could also adversely affect energy utility customers. The exemption created by this act will enhance the ability to increase domestic storage of natural gas, thereby creating a significant benefit to energy utility customers. In finding that the public records exemption created by this act is a public necessity, the Legislature also finds that any public benefit derived from disclosure of the information is significantly outweighed by the public and private harm that could result from disclosure within 10 years after submittal of such proprietary confidential business information.

**B. SECTION DIRECTORY:**

**Section 1.** Creates s. 377.24075, F.S., creating an exemption from public records requirements for certain information provided in an application for a natural gas storage facility permit to inject and recover gas into and from a natural gas storage reservoir; providing for future review and repeal of the public records exemption under the Open Government Sunset Review Act.

**Section 2.** Provides a statement of public necessity.

**Section 3.** Provides an effective date contingent upon the passage of HB 1083 or similar legislation.

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

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

1. Revenues:

None.

2. Expenditures:

None.

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

None.

2. Expenditures:

None.

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

None.



D. FISCAL COMMENTS:

None.

**III. COMMENTS**

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

Vote Requirement

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

Public Necessity Statement

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

B. RULE-MAKING AUTHORITY:

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

C. DRAFTING ISSUES OR OTHER COMMENTS:

Other Comments: Retroactive Application

The Supreme Court of Florida has ruled that a public records exemption is not to be applied retroactively unless the legislation clearly expresses intent that such exemption is to be applied retroactively. The bill does expressly provide that the public records exemption applies to identifying information held before, on, or after the effective date of the exemption.

First Amendment Foundation Concerns

The First Amendment Foundation has raised concerns that the bill, as currently written, is unconstitutionally overbroad and that the scope of the exemption needs to be narrowed to exempt only trade secrets and proprietary confidential business information.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

None.

1                                   A bill to be entitled  
 2           An act relating to public records; creating s.  
 3           377.24075, F.S.; creating an exemption from public  
 4           records requirements for certain information provided  
 5           in an application for a natural gas storage facility  
 6           permit to inject and recover gas into and from a  
 7           natural gas storage reservoir; providing for future  
 8           review and repeal of the public records exemption  
 9           under the Open Government Sunset Review Act; providing  
 10          a statement of public necessity; providing a  
 11          contingent effective date.

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

15           Section 1. Section 377.24075, Florida Statutes, is created  
 16   to read:

17           377.24075 Exemption from public records requirements.-

18           (1) Any information that an applicant provides to the  
 19   Department of Environmental Protection pursuant to s. 377.2407  
 20   relating to leasing plans, exploration budgets, proprietary well  
 21   design or completion plans, geological or engineering studies  
 22   related to storage reservoir performance characteristics, field  
 23   utilization strategies or operating plans, commercial or  
 24   marketing studies, or other proprietary confidential business  
 25   information or trade secret as defined in s. 812.081 which could  
 26   provide an economic advantage to competitors is confidential and  
 27   exempt from s. 119.07(1) for a period of 10 years.

28           (2) This section is subject to the Open Government Sunset

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29 Review Act in accordance with s. 119.15 and shall stand repealed  
30 on October 2, 2018, unless reviewed and saved from repeal  
31 through reenactment by the Legislature.

32 Section 2. (1) The Legislature finds that it is a public  
33 necessity that information provided to the Department of  
34 Environmental Protection which relates to leasing plans,  
35 exploration budgets, proprietary well design or completion  
36 plans, geological or engineering studies related to storage  
37 reservoir performance characteristics, field utilization  
38 strategies or operating plans, commercial or marketing studies,  
39 or other proprietary confidential business information or trade  
40 secret provided by a person in conjunction with an application  
41 to establish an underground natural gas storage facility as  
42 defined in s. 377.19, Florida Statutes, be made confidential and  
43 exempt from s. 119.07(1), Florida Statutes, and s. 24(a),  
44 Article I of the State Constitution for a period of 10 years.  
45 The disclosure of such proprietary confidential business  
46 information or trade secret could injure an applicant in the  
47 marketplace by giving competitors detailed insight into  
48 technical assessments, design, and experience, thereby putting  
49 the applicant at a competitive disadvantage. Without this  
50 exemption, applicants could be less willing to expend or commit  
51 to expend the substantial resources necessary to determine the  
52 feasibility of establishing, permitting, and operating an  
53 underground natural gas storage facility, resulting in limited  
54 opportunities for developing the additional natural gas storage  
55 capacity that Florida critically needs to meet current and  
56 future residential, commercial, and industrial energy needs. The

57 resulting lack of resources could hinder the ability of electric  
58 utility services to optimize services to their customers and  
59 could adversely affect those customers by depriving them of the  
60 opportunities and energy security that comes with domestic  
61 reserves of natural gas stored underground.

62 (2) Proprietary confidential business information and  
63 trade secret information derives actual or potential independent  
64 economic value from not being generally known to, and not being  
65 readily ascertainable by, other persons who can derive economic  
66 value from its disclosure or use. The Department of  
67 Environmental Protection, in the course of reviewing and issuing  
68 permitting decisions relating to underground natural gas storage  
69 facility permits, may need to obtain proprietary confidential  
70 business information. Disclosure of such information could  
71 destroy the value of that property, if disclosed within 10 years  
72 after submittal, and could not only cause economic harm to the  
73 applicant providing the information, but the reduced competition  
74 for provision of domestic underground storage of natural gas  
75 could also adversely affect energy utility customers. The  
76 exemption created by this act will enhance the ability to  
77 increase domestic storage of natural gas, thereby creating a  
78 significant benefit to energy utility customers. In finding that  
79 the public records exemption created by this act is a public  
80 necessity, the Legislature also finds that any public benefit  
81 derived from disclosure of the information is significantly  
82 outweighed by the public and private harm that could result from  
83 disclosure within 10 years after submittal of such proprietary  
84 confidential business information.

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85           Section 3. This act shall take effect October 1, 2013, if  
86           HB 1083 or similar legislation is adopted in the same  
87           legislative session or an extension thereof and becomes a law.



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COMMITTEE/SUBCOMMITTEE ACTION

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

1 Committee/Subcommittee hearing bill: Agriculture & Natural  
 2 Resources Subcommittee  
 3 Representative Eagle offered the following:

**Amendment (with title amendment)**

Remove everything after the enacting clause and insert:

Section 1. Section 377.24075, Florida Statutes, is created to read:

377.24075 Exemption from public records requirements.-

Proprietary business information held by the Department of Environmental Protection in accordance with its statutory duties with respect to an application for a natural gas storage facility permit is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

(1) As used in this section, the term "proprietary business information" means information that:

(a) Is owned or controlled by the applicant or a person affiliated with the applicant.

(b) Is intended to be private and is treated by the applicant as private because disclosure would harm the applicant



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21 or the applicant's business operations.

22 (c) Has not been disclosed except as required by law or a  
23 private agreement that provides that the information will not be  
24 released to the public.

25 (d) Is not publicly available or otherwise readily  
26 ascertainable through proper means from another source in the  
27 same configuration as requested by the department.

28 (e) Includes, but is not limited to:

29 1. Trade secrets.

30 2. Leasing plans, real property acquisition plans,  
31 exploration budgets, or marketing studies, the disclosure of  
32 which would impair the efforts of the applicant or its  
33 affiliates to contract for goods or services or to acquire real  
34 property interests on favorable terms.

35 3. Competitive interests, which may include well design or  
36 completion plans, geological or engineering studies related to  
37 storage reservoir performance characteristics, or field  
38 utilization strategies or operating plans, the disclosure of  
39 which would impair the competitive business of the applicant  
40 providing the information.

41 (f) May be found in a document:

42 1. Filed with the Department of Environmental Protection by  
43 the applicant or affiliated person seeking a natural gas storage  
44 facility permit pursuant to s. 377.2407; or

45 2. Sent to the Department of Environmental Protection from  
46 another governmental entity for use by the department in the  
47 performance of its duties. This subparagraph applies only if the  
48 information is otherwise confidential or exempt as held by the  
49 governmental entity.

50 (2) The Department of Environmental Protection may disclose



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51 confidential and exempt proprietary business information:

52 (a) Pursuant to a court order;

53 (b) If the applicant to which it pertains gives prior  
54 written consent; or

55 (c) To another state agency in this or another state or to  
56 a federal agency if the recipient agrees in writing to maintain  
57 the confidential and exempt status of the document, material, or  
58 other information and has verified in writing its legal  
59 authority to maintain such confidentiality.

60 (3) This section is subject to the Open Government Sunset  
61 Review Act in accordance with s. 119.15 and shall stand repealed  
62 on October 2, 2018, unless reviewed and saved from repeal  
63 through reenactment by the Legislature.

64 Section 2. (1) The Legislature finds that it is a public  
65 necessity that proprietary business information provided to the  
66 Department of Environmental Protection which relates to trade  
67 secrets, leasing plans, real property acquisition plans,  
68 exploration budgets, proprietary well design or completion  
69 plans, geological or engineering studies related to storage  
70 reservoir performance characteristics, field utilization  
71 strategies or operating plans, commercial or marketing studies,  
72 or other proprietary business information provided by a person  
73 in conjunction with an application to establish an underground  
74 natural gas storage facility as defined in s. 377.19, Florida  
75 Statutes, be made confidential and exempt from s. 119.07(1),  
76 Florida Statutes, and s. 24(a), Article I of the State  
77 Constitution. The disclosure of such proprietary business  
78 information could injure an applicant in the marketplace by  
79 giving competitors detailed insight into technical assessments,  
80 design, and experience, thereby putting the applicant at a





Amendment No. 1

81 competitive disadvantage. Without this exemption, applicants  
82 might be less willing to expend or commit to expend the  
83 substantial resources necessary to determine the feasibility of  
84 establishing, permitting, and operating an underground natural  
85 gas storage facility, resulting in limited opportunities for  
86 developing the additional natural gas storage capacity that this  
87 state critically needs to meet current and future residential,  
88 commercial, and industrial energy needs. The resulting lack of  
89 resources could hinder the ability of electric utility services  
90 to optimize services to their customers and could adversely  
91 affect those customers by depriving them of the opportunities  
92 and energy security that comes with domestic reserves of natural  
93 gas stored underground.

94 (2) Proprietary business information derives actual or  
95 potential independent economic value from not being generally  
96 known to and not being readily ascertainable by other persons  
97 who can derive economic value from its disclosure or use. The  
98 Department of Environmental Protection, in the course of  
99 reviewing and issuing permitting decisions relating to  
100 underground natural gas storage facility permits, may need to  
101 obtain proprietary business information. Disclosure of such  
102 information could destroy the value of that property and could  
103 cause economic harm to the applicant providing the information.  
104 Additionally, the reduced competition for the provision of  
105 domestic underground storage of natural gas could adversely  
106 affect energy utility customers. The exemption created by this  
107 act will enhance the ability to increase domestic storage of  
108 natural gas, thereby creating a significant benefit to energy  
109 utility customers. In finding that the public records exemption  
110 created by this act is a public necessity, the Legislature also



Amendment No. 1

111 finds that any public benefit derived from disclosure of the  
112 information is significantly outweighed by the public and  
113 private harm that could result from disclosure after submittal  
114 of such proprietary business information.

115 Section 3. This act shall take effect October 1, 2013, if  
116 SB 958 or similar legislation is adopted in the same legislative  
117 session or an extension thereof and becomes a law.  
118

119 -----

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

121 Remove everything before the enacting clause and insert:

122 An act relating to public records; creating s.  
123 377.24075, F.S.; creating an exemption from public  
124 records requirements for certain information provided  
125 in an application for a natural gas storage facility  
126 permit to inject and recover gas into and from a  
127 natural gas storage reservoir; providing for future  
128 review and repeal of the public records exemption  
129 under the Open Government Sunset Review Act; providing  
130 a statement of public necessity; providing a  
131 contingent effective date.  
132



## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 1121 Community Cats  
**SPONSOR(S):** Raschein  
**TIED BILLS:** None **IDEN./SIM. BILLS:** SB 1320

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Agriculture & Natural Resources Subcommittee		Kaiser <i>JK</i>	Blalock <i>AFB</i>
2) Local & Federal Affairs Committee			
3) Civil Justice Subcommittee			
4) State Affairs Committee			

### SUMMARY ANALYSIS

One cat and her offspring can produce up to 370,000 kittens in seven years. Many of these animals are abandoned, stray, or feral cats that have limited human contact. These cats typically live in groups called colonies and are known as "community cats." If left uncontrolled to breed, these community cats can spread disease and become health and safety hazards to people.

One option that can help curtail community cat overpopulation is the implementation of trap, neuter, and release (TNR) programs. Several counties have implemented this type of population control program with success. However, there are concerns that the release of community cats back to where they were trapped constitutes abandonment and therefore violates state animal cruelty laws.

The bill amends current law to provide definitions for "community cat," "community cat caregiver," and "community cat program." "Community cat" means an outdoor, free-roaming cat that lacks visible owner identification. "Community cat caregiver" means any person other than an owner or custodian who provides food, water, or shelter to one or more community cats as part of a community cat program. "Community cat program" means a program in which an eligible cat is examined by a licensed veterinarian, sterilized, vaccinated for rabies and any other diseases deemed appropriate by the veterinarian, ear-tipped, and then returned to the area where it was originally captured.

The bill specifically provides that community cats are considered a domestic species and the release of a community cat by a community cat program does not constitute abandonment or unlawful release of the cat. The bill also provides that a county or municipality is not precluded from enacting an ordinance related to community cat programs designed to humanely curtail community cat population growth. In addition, the bill provides that a county or municipality that adopts an ordinance related to such community cat programs is immune from all criminal and civil liability for its adoption of such ordinance.

Lastly, the bill provides that a veterinarian or community cat caregiver who provides services or care for a cat in a community cat program is immune from criminal and civil liability for any decisions made or services rendered through a community cat program, except for willful and wanton misconduct.

The bill does not appear to have a fiscal impact on state government. It may have an insignificant positive fiscal impact on local governments.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### Present Situation

One cat and her offspring can produce up to 370,000 kittens in seven years. Many of these animals are abandoned, stray, or feral cats that have had limited human contact. Much of the time, these animals end up in animal shelters and are eventually euthanized because they are not socialized to humans and, therefore, unadoptable. These cats typically live in groups called colonies and are known as "community cats." If left uncontrolled to breed, these cats can spread disease and become health and safety hazards to people.

Studies have shown that managing community cats through trap-neuter-return (TNR) programs can result in reduced community cat populations.<sup>1</sup> Under a TNR program, cats are humanely trapped, examined by a veterinarian, spayed or neutered, vaccinated and permanently identified by a harmless ear notch.<sup>2</sup> The cats are then returned to where they were originally trapped.

Animal cruelty is defined in s. 828.27(1), F.S., to mean any act of neglect, torture, or torment that causes unjustifiable pain or suffering of an animal. Section 828.27(2), F.S., also provides that the governing body of a county or municipality is authorized to enact ordinances relating to animal control or cruelty. These ordinances must provide:

- That a violation of such an ordinance is a civil infraction.
- A maximum civil penalty not exceeding \$500.
- A civil penalty of less than the maximum civil penalty if the person who has committed the civil infraction does not contest the citation.
- Issuance of a citation by an officer who has probable cause to believe that a person has committed an act in violation of an ordinance.
- The citation may be contested in the county court.
- That if a person fails to pay the civil penalty, fails to appear in court to contest the citation, or fails to appear in court for certain aggravated or recurrent law violations as required by subsection (6), the court may issue an order to show cause upon the request of the governing body of the county or municipality. This order shall require such persons to appear before the court to explain why action on the citation has not been taken. If any person who is issued such order fails to appear in response to the court's directive, he/she may be held in contempt of court.
- Such procedures and provisions as are necessary to implement any ordinances enacted under the authority of this section.

In addition, s. 828.27, F.S., provides that nothing contained in this section prevents any county or municipality from enacting any ordinance relating to animal control or cruelty which is identical to the provisions of chapter 828, F.S., or any other state law, except as to penalty. However, no county or municipal ordinance relating to animal control or cruelty can conflict with the provisions of chapter 828, F.S., or any other state law. Notwithstanding these provisions, the governing body of any county or municipality is authorized to enact ordinances prohibiting or regulating noise from any domesticated animal, the violation of which is punishable upon conviction by a fine not to exceed \$500 or by imprisonment in the county jail for a period not to exceed 60 days, or by both such fine and imprisonment, for each violation of such ordinance. These provisions do not apply to animals on land zoned for agricultural purposes.

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<sup>1</sup> <http://www.spcaflorida.org/community-cats/>

<sup>2</sup> The ear tip or notch is a universal sign that the cat has been trapped and fixed.

There have been some concerns that the release of community cats under a community cat TNR program back to where they were originally trapped could constitute abandonment and, thus, violate state animal cruelty laws.

### **Effect of Proposed Changes**

The bill amends section 828.27, F.S., to provide definitions for “community cat,” “community cat caregiver,” and, “community cat program.” “Community cat” means an outdoor, free-roaming cat that lacks visible owner identification. “Community cat caregiver” means any person other than an owner or custodian who provides food, water, or shelter to one or more community cats as part of a community cat program. “Community cat program” means a program in which an eligible cat is examined by a licensed veterinarian, sterilized, vaccinated for rabies and any other diseases deemed appropriate by the veterinarian, ear-tipped, and then returned to the area where it was originally captured.

The bill provides that community cats are considered a domestic species<sup>3</sup> and the release of a community cat by a community cat program does not constitute abandonment or unlawful release of the cat under chapter 828, F.S. The bill also provides that a county or municipality is not precluded from enacting an ordinance related to community cat programs designed to humanely curtail community cat population growth. In addition, the bill provides that a county or municipality that adopts an ordinance related to such community cat programs is immune from all criminal and civil liability for its adoption of such ordinance. Lastly, the bill provides that a veterinarian or community cat caregiver who provides services or care for a cat in a community cat program is immune from criminal and civil liability for any decisions made or services rendered through a community cat program, except for willful and wanton misconduct.

#### **B. SECTION DIRECTORY:**

**Section 1:** Amends s. 828.27, F.S.; providing definitions; providing that release of a community cat by a community cat program is not abandonment or unlawful release of the cat under specified circumstances; providing that counties and municipalities may enact ordinances relating to community cat programs to curtail community cat population growth; providing immunity for such ordinances; providing that a veterinarian or community cat caregiver who provides services or care for cats in a community cat program is immune from criminal and civil liability; and, providing an exception.

**Section 2:** Provides an effective date of upon becoming law.

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

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

1. Revenues:

None

2. Expenditures:

None

#### **B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

None

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<sup>3</sup> As defined in s. 585.01, F.S.  
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2. Expenditures:

See Fiscal Comments section

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None

D. FISCAL COMMENTS:

According to studies,<sup>4</sup> implementing a TNR program can result in local governments seeing a decline in expenditures associated trapping, holding, and euthanizing stray, abandoned, and feral cats.

**III. COMMENTS**

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None

B. RULE-MAKING AUTHORITY:

None

C. DRAFTING ISSUES OR OTHER COMMENTS:

Utah and Illinois have enacted similar legislation endorsing "community cats programs."

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

None

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<sup>4</sup> John Dunham & Associates, *The Fiscal Impact of Trap, Neuter and Return Policies in Controlling Feral Cat Populations in the United States*, 2010.

1                   A bill to be entitled  
 2           An act relating to community cats; amending s. 828.27,  
 3           F.S.; providing definitions; providing that release of  
 4           a community cat by a community cat program is not  
 5           abandonment or unlawful release of the cat under  
 6           specified provisions; providing that counties and  
 7           municipalities may enact ordinances relating to  
 8           community cat programs to curtail community cat  
 9           population growth; providing immunity for such  
 10          ordinances; providing that a veterinarian or community  
 11          cat caregiver who provides services or care for cats  
 12          in a community cat program is immune from criminal and  
 13          civil liability; providing an exception; providing an  
 14          effective date.

15  
 16   Be It Enacted by the Legislature of the State of Florida:

17  
 18          Section 1. Paragraphs (c) through (g) of subsection (1) of  
 19          section 828.27, Florida Statutes, are redesignated as paragraphs  
 20          (f) through (j), respectively, new paragraphs (c), (d), and (e)  
 21          are added to that subsection, a new subsection (7) is added to  
 22          that section, and present subsection (7) of that section is  
 23          amended, to read:

24          828.27 Local animal control or cruelty ordinances;  
 25          penalty.—

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

27          (c) "Community cat" means an outdoor, free-roaming cat  
 28          that lacks visible owner identification.



29           (d) "Community cat caregiver" means any person other than  
 30 an owner or custodian who provides food, water, or shelter to  
 31 one or more community cats as part of a community cat program.

32           (e) "Community cat program" means a program in which an  
 33 eligible cat is examined by a licensed veterinarian, sterilized,  
 34 vaccinated for rabies and any other diseases deemed appropriate  
 35 by the veterinarian, ear-tipped, then returned to the area where  
 36 it was originally captured.

37           (7)(a) Community cats are considered a domestic species  
 38 under s. 585.01 and release of a community cat by a community  
 39 cat program is not abandonment or unlawful release of the cat  
 40 under this chapter.

41           (b) This subsection does not prevent any county or  
 42 municipality from enacting any ordinance related to community  
 43 cat programs designed to humanely curtail community cat  
 44 population growth. A county or municipality that adopts an  
 45 ordinance related to such community cat programs is immune from  
 46 all criminal and civil liability for its adoption of such an  
 47 ordinance.

48           (c) A veterinarian or community cat caregiver who provides  
 49 services or care for a cat in a community cat program is immune  
 50 from criminal and civil liability for any decisions made or  
 51 services rendered under this subsection, except for willful and  
 52 wanton misconduct.

53           (8)(7) ~~Nothing contained in~~ This section does not shall  
 54 prevent any county or municipality from enacting any ordinance  
 55 relating to animal control or cruelty which is identical to ~~the~~  
 56 ~~provisions of~~ this chapter or any other state law, except as to

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57 | penalty. However, no county or municipal ordinance relating to  
 58 | animal control or cruelty may ~~shall~~ conflict with ~~the provisions~~  
 59 | ~~of~~ this chapter or any other state law. Notwithstanding ~~the~~  
 60 | ~~provisions of~~ this subsection, the governing body of any county  
 61 | or municipality may ~~is authorized to~~ enact ordinances  
 62 | prohibiting or regulating noise from any domesticated animal,  
 63 | violation of which shall be punishable upon conviction by a fine  
 64 | not to exceed \$500 or by imprisonment in the county jail for a  
 65 | period not to exceed 60 days, or by both such fine and  
 66 | imprisonment, for each violation of such ordinance. This  
 67 | subsection does ~~shall~~ not apply to animals on land zoned for  
 68 | agricultural purposes.

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



Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

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

1 Committee/Subcommittee hearing bill: Agriculture & Natural  
 2 Resources Subcommittee  
 3 Representative Raschein offered the following:

**Amendment**

6 Remove lines 36-52 and insert:  
 7 it was originally captured immediately after any recovery period  
 8 as recommended by a veterinarian.

9 (7) (a) Community cats are considered a domestic animal  
 10 under s. 585.01 and release of a community cat by a community  
 11 cat caregiver associated with a community cat program is not  
 12 abandonment or unlawful release of the cat under this chapter.

13 (b) A county or municipality may enact any ordinances  
 14 necessary to establish a community cat program designed to  
 15 curtail community cat population growth and nothing in this  
 16 subsection shall prevent any county or municipality from  
 17 enacting such ordinances.



## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 1393 Agricultural Storage and Shipping Containers  
**SPONSOR(S):** Beshears  
**TIED BILLS:** None **IDEN./SIM. BILLS:** CS/SB 654

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

### SUMMARY ANALYSIS

Reports across the country indicate that, due to the increased cost of plastic, the theft of plastic pallets and merchandise containers has escalated. In addition, current law provides certain protection for owners of marked or branded field boxes, pallets, crates, containers, or receptacles used in the production, harvesting, packing, transportation, or marketing of fruits or vegetables or their byproducts by establishing penalties for violations of specific provisions relating to the containers.<sup>1</sup> However, these statutory protections do not currently apply to similar items used for transportation or storage of agricultural products.

The bill expands the current statutory protections for owners of certain containers to include those used for storage and transportation of agricultural or other commodities. The bill also creates similar protection for owners of plastic bulk merchandise containers by providing that a person who purchases five or more plastic bulk merchandise containers from one seller must:

- Obtain from the seller proof of ownership of the containers.
- Maintain a record that contains the date of the transaction; the seller's or consignee's name, address, and telephone number; and, a description of the containers, including the number of containers being sold, each container's serial number, and other identifying marks.
- Verify the seller's identity with a valid driver's license or other government-issued photo identification card and maintain a copy of the identification card in the record of the sale.
- Make a non-cash payment for five or more plastic bulk merchandise containers and record the method of payment used in each transaction.

In addition, the bill provides that a purchaser must maintain required records for at least two years after the date of purchase or delivery, whichever is later. State attorneys of the judicial circuits may inspect these records at any time upon reasonable notice.

A person who violates these provisions in a transaction valued at \$10,000 or less commits a misdemeanor of the first degree, punishable by a definite term of imprisonment not exceeding one year or a fine not exceeding \$1,000. A person who violates these provisions in a transaction valued at more than \$10,000 commits a felony of the first degree, punishable by a term of imprisonment not exceeding 30 years or a fine not exceeding \$10,000. In the case of habitual offenders, the term of imprisonment is for life.

A person who violates these provisions is liable to the owner of a stolen plastic bulk merchandise container for three times the replacement value of the stolen container. The owner of the stolen container may bring an action in a court of competent jurisdiction to recover monetary damages, attorney fees, and costs incurred in maintaining the action. These provisions do not apply to the collection, receipt, or recycling of plastic bulk merchandise containers by the operator of a waste management facility.

The bill does not appear to have a fiscal impact on local governments. The bill has a negligible positive fiscal impact on state government.

<sup>1</sup> For ease of reading, "container" is used in this analysis to refer to field boxes, pallets, crates, containers, or receptacles.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### Present Situation

Section 506.19, F.S., provides that a person who owns containers<sup>2</sup> used in the general production, harvesting, packing, transportation, or marketing of fruits or vegetables or their byproducts in the state may adopt for his/her exclusive use and ownership a particular mark or brand to designate and distinguish his/her ownership of the containers. An owner may identify his/her containers with such mark or brand in the form of such combinations, initials, symbols, designs, or names as he/she may desire, by plainly and distinctly stamping, stenciling, painting, cutting, etching, or burning the mark or brand into or upon both ends or sides of such containers. The presence of the identifying mark or brand must be filed and recorded with the Department of Agriculture and Consumer Services (department) and serves as prima facie evidence in any court in the state of ownership of such container by the person who recorded the mark or brand with the department and bears the registered number.

Chapter 506, F.S.,<sup>3</sup> provides protection for owners of marked or branded field boxes, pallets, crates, containers, or receptacles used in the production, harvesting, packing, transportation, or marketing of fruits or vegetables or their byproducts by establishing penalties for:

- Unauthorized possession of protected containers;
- Alteration or obliteration of marks or brands on protected containers;
- Purchase of protected containers from persons other than the registered owner;
- Refusal to deliver protected containers to the registered owner upon demand; and
- Sending protected containers out of state.

Other sections of ch. 506, F.S. provide protection for owners of shopping carts, laundry carts, dairy cases, egg baskets, poultry boxes, and bakery containers.<sup>4</sup> However, the above statutory protections do not currently apply to similar items used for transportation or storage of agricultural products.

Recently, there have been numerous reports regarding the theft of plastic pallets and other reusable containers. An article in the Los Angeles Times reported that this is becoming a nationwide problem due to the rise in the price of oil, which has driven up the cost of plastic. Arizona enacted legislation in 2012 to track down persons stealing the plastic pallets and turning them in for cash value at recycling centers. California has also enacted legislation to protect plastic pallets from theft. In Florida, a man was recently arrested for allegedly stealing pallets from a Home Depot parking lot. Though he claimed that he thought the pallets were trash and could be taken, he was charged with grand theft. He eventually pled guilty to disorderly conduct.

##### Effect of Proposed Changes

The bill amends s. 506.19, F.S., to provide that persons who own containers used for the storage or transport of agricultural or other commercial goods may adopt a mark or brand for his/her exclusive use and ownership, which is similar to what is currently allowed for containers used in the general production, harvesting, packing, transportation, or marketing of fruits or vegetables or their byproducts. The bill also specifies that, for purposes of any court of administrative proceeding, if a copy of the mark

<sup>2</sup> For ease of reading, "container" is used in this analysis to refer to field boxes, pallets, crates, containers, or receptacles.

<sup>3</sup> Sections 506.19-506.28, F.S.

<sup>4</sup> Sections 506.501-506.519, F.S.

or brand is filed and recorded with the department, the presence of the identifying mark or brand and the required registration number on any container is prima facie evidence of ownership.

The bill creates s. 506.265, F.S., which provides the following definitions:

- “Bona fide purchaser” means a person who in good faith makes a purchase without knowledge of another person’s outstanding rights.
- “Plastic bulk merchandise container” means a plastic crate or shell used by a product manufacturer, distributor, or retailer for the bulk transportation or storage of goods, and includes a plastic pallet used as a portable platform upon which containers, products, or materials may be placed to facilitate handling.
- “Proof of ownership” means a bill of sale or other evidence showing that a person who claims to be the owner of an item is the bona fide purchaser who purchased the item for fair market value.

The bill also provides that a person who purchases five or more plastic bulk merchandise containers from one seller must:

- Obtain from the seller proof of ownership of the containers.
- Maintain a record that contains the date of the transaction; the seller’s or consignee’s name, address, and telephone number; and a description of the containers, including the number of containers being sold, each container’s serial number, and other identifying marks.
- Must verify the seller’s identity with a valid driver’s license or other government-issued photo identification card and maintain a copy of the identification card in the record of the sale.
- Make a non-cash payment for five or more plastic bulk merchandise containers and record the method of payment used in each transaction.

In addition, the bill provides that a purchaser must maintain required records for at least two years after the date of purchase or delivery, whichever is later. State attorneys of the judicial circuits may inspect these records at any time upon reasonable notice.

A person who violates these provisions in a transaction valued at \$10,000 or less commits a misdemeanor of the first degree, punishable by a definite term of imprisonment not exceeding one year or a fine not exceeding \$1,000. A person who violates these provisions in a transaction valued at more than \$10,000 commits a felony of the first degree, punishable by a term of imprisonment not exceeding 30 years or a fine not exceeding \$10,000. In the case of habitual offenders, the term of imprisonment is for life.

A person who violates these provisions is liable to the owner of a stolen plastic bulk merchandise container for three times the replacement value of the stolen container. The owner of the stolen container may bring an action in a court of competent jurisdiction to recover monetary damages, attorney fees, and costs incurred in maintaining the action.

These provisions do not apply to the collection, receipt, or recycling of plastic bulk merchandise containers by the operator of a waste management facility.

## B. SECTION DIRECTORY:

**Section 1:** Amends s. 506.19, F.S., authorizing the use of certain brands and marks on containers used for the storage and transport of agricultural and other commercial products to designate and distinguish ownership of containers.

**Section 2:** Creates s. 506.265, F.S., providing definitions; providing requirements for the sale and purchase of a specified number of plastic bulk merchandise containers; providing that prosecuting

attorneys may inspect records of purchase at any time upon reasonable notice; providing criminal and civil penalties; and providing an exception for the operator of a waste management facility.

**Section 3:** Provides an effective date of October 1, 2013.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

See Fiscal Comments section.

2. Expenditures:

None

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None

2. Expenditures:

None

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

Owners of plastic bulk merchandise containers that wish to be protected by the provisions of this legislation will incur charges of an indeterminate amount in order to comply with the registration and record-keeping requirements.

### D. FISCAL COMMENTS:

The Department of Agriculture and Consumer Services anticipates an insignificant increase in revenues from an increase in registrations for containers used for the storage and transportation of agricultural or other commodities.

## III. COMMENTS

### A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None

### B. RULE-MAKING AUTHORITY:

None



C. DRAFTING ISSUES OR OTHER COMMENTS:

On line 80 of the bill, "driver" should be amended to "driver's." Also, on line 102 of the bill, "money" should be amended to "monetary."

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

None

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A bill to be entitled  
 An act relating to agricultural storage and shipping  
 containers; amending s. 506.19, F.S.; authorizing the  
 use of certain brands and marks on containers used for  
 the storage and transport of agricultural and other  
 commercial products to designate and distinguish  
 ownership of the containers; creating s. 506.265,  
 F.S.; providing definitions; providing requirements  
 for the sale and purchase of a specified number of  
 plastic bulk merchandise containers; providing that  
 prosecuting attorneys may inspect records of purchase  
 at any time upon reasonable notice; providing criminal  
 and civil penalties; providing an exception for the  
 operator of a waste management facility; providing an  
 effective date.

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

Section 1. Section 506.19, Florida Statutes, is amended to  
 read:

506.19 Protection of owners of marked or branded field  
 boxes or other specified containers; recordation.—Any person who  
~~owns being the owner of~~ field boxes, pallets, crates,  
 containers, or receptacles used in the general production,  
 harvesting, packing, transportation, or marketing of fruits or  
 vegetables or their byproducts or used for the storage or  
transport of agricultural or other commercial goods in this the  
 state may adopt for his or her exclusive use and ownership a

29 ~~particular~~ mark or brand that designates or distinguishes ~~to~~  
 30 ~~designate and distinguish~~ his or her ownership thereof and may  
 31 identify his or her field boxes, pallets, crates, containers, or  
 32 receptacles ~~so used~~ with a such mark or brand using in the form  
 33 ~~of such combinations,~~ initials, symbols, designs, ~~or~~ names, or  
 34 any combination thereof ~~as he or she may desire,~~ by plainly and  
 35 distinctly stamping, stenciling, painting, cutting, etching, or  
 36 burning the mark or brand ~~same~~ into or upon both ends or sides  
 37 of ~~the such~~ field boxes, pallets, crates, receptacles, or  
 38 containers. For purposes of any court or administrative  
 39 proceeding, if a copy of the mark or brand is filed and recorded  
 40 with the Department of Agriculture and Consumer Services  
 41 pursuant to this chapter, ~~and~~ the presence of this such  
 42 identifying mark or brand and the required registration number  
 43 on any field box, pallet, crate, container, or receptacle is  
 44 ~~whenever a copy or description thereof shall have been filed and~~  
 45 ~~recorded in the office of the Department of Agriculture and~~  
 46 ~~Consumer Services as herein provided for, shall, in any court~~  
 47 ~~and in any proceedings in this state,~~ be prima facie evidence of  
 48 the ownership ~~of such boxes, pallets, crates, containers, or~~  
 49 ~~receptacles by the person in whose name such mark or brand may~~  
 50 ~~have been recorded, provided such mark or brand shall have been~~  
 51 ~~recorded with the Department of Agriculture and Consumer~~  
 52 ~~Services as herein provided and shall bear the registered number~~  
 53 ~~herein provided for.~~

54 Section 2. Section 506.265, Florida Statutes, is created  
 55 to read:

56 506.265 Purchase of plastic bulk merchandise containers.-

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

58 (a) "Bona fide purchaser" means a person who in good faith  
 59 makes a purchase without knowledge of another person's  
 60 outstanding rights.

61 (b) "Plastic bulk merchandise container" means a plastic  
 62 crate or shell used by a product manufacturer, distributor, or  
 63 retailer for the bulk transportation or storage of goods, and  
 64 includes a plastic pallet used as a portable platform upon which  
 65 containers, products, or materials may be placed to facilitate  
 66 handling.

67 (c) "Proof of ownership" means a bill of sale or other  
 68 evidence showing that a person who claims to be the owner of an  
 69 item is the bona fide purchaser who purchased the item for fair  
 70 market value.

71 (2) A person who purchases five or more plastic bulk  
 72 merchandise containers from one seller shall:

73 (a) Obtain from the seller proof of ownership of the  
 74 containers.

75 (b) Maintain a record that contains the date of the  
 76 transaction; the seller's or consignee's name, address, and  
 77 telephone number; and a description of the containers, including  
 78 the number of containers being sold, each container's serial  
 79 number, and other identifying marks.

80 (c) Verify the seller's identity with a valid driver  
 81 license or other government-issued photo identification card and  
 82 maintain a copy thereof in the record of sale.

83 (d) Make a noncash payment for five or more plastic bulk  
 84 merchandise containers and record the method of payment used in

85 | each transaction.

86 |       (3) The purchaser shall maintain required records for at

87 | least 2 years after the date of purchase or delivery, whichever

88 | is later. State attorneys of the judicial circuits in this state

89 | may inspect these records at any time upon reasonable notice.

90 |       (4) (a) A person who violates this section in a transaction

91 | valued at \$10,000 or less commits a misdemeanor of the first

92 | degree, punishable as provided in s. 775.082 or s. 775.083.

93 |       (b) A person who violates this section in a transaction

94 | valued at more than \$10,000 commits a felony of the first

95 | degree, punishable as provided in s. 775.082, s. 775.083, or s.

96 | 775.084.

97 |       (c) A person who violates this section is liable to the

98 | owner of a stolen plastic bulk merchandise container for three

99 | times the replacement value of the stolen plastic bulk

100 | merchandise container. The owner of the plastic bulk merchandise

101 | container may bring an action in a court of competent

102 | jurisdiction to recover money damages and attorney fees and

103 | costs incurred in maintaining the action.

104 |       (5) This section does not apply to the collection,

105 | receipt, or recycling of plastic bulk merchandise containers by

106 | the operator of a waste management facility.

107 |       Section 3. This act shall take effect October 1, 2013.



Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

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

1 Committee/Subcommittee hearing bill: Agriculture & Natural  
 2 Resources Subcommittee  
 3 Representative Beshears offered the following:

**Amendment (with title amendment)**

Remove lines 61-106 and insert:

7 (b) "Noncash payment" means payment by a method other than  
8 the use of coins or currency.

9 (c) "Plastic bulk merchandise container" means a plastic  
10 crate or shell used by a product manufacturer, distributor, or  
11 retailer for the bulk transportation or storage of goods, and  
12 includes a plastic pallet used as a portable platform upon which  
13 containers, products, or materials may be placed to facilitate  
14 handling.

15 (d) "Proof of ownership" means a bill of sale or other  
16 evidence showing that a person who claims to be the owner of an  
17 item is the bona fide purchaser who purchased the item for fair  
18 market value.

19 (2) A person who purchases five or more plastic bulk  
20 merchandise containers from one seller shall:



Amendment No. 1

21 (a) Obtain from the seller proof of ownership of the  
22 containers.

23 (b) Maintain a record that contains the date of the  
24 transaction; the seller's or consignee's name, address, and  
25 telephone number; and a description of the containers, including  
26 the number of containers being sold, each container's serial  
27 number, and other identifying marks.

28 (c) Verify the seller's identity with a valid driver's  
29 license or other government-issued photo identification card and  
30 maintain a copy thereof in the record of sale.

31 (d) Make a noncash payment for five or more plastic bulk  
32 merchandise containers and record the method of payment used in  
33 each transaction.

34 (3) The purchaser shall maintain required records for at  
35 least 2 years after the date of purchase or delivery, whichever  
36 is later. State attorneys of the judicial circuits in this state  
37 may inspect these records at any time upon reasonable notice.

38 (4) (a) A person who violates this section in a transaction  
39 valued at \$10,000 or less commits a misdemeanor of the first  
40 degree, punishable as provided in s. 775.082 or s. 775.083.

41 (b) A person who violates this section in a transaction  
42 valued at more than \$10,000 commits a felony of the third  
43 degree, punishable as provided in s. 775.082, s. 775.083, or s.  
44 775.084.

45 (c) A person who violates this section is liable to the  
46 owner of a stolen plastic bulk merchandise container for three  
47 times the replacement value of the stolen plastic bulk  
48 merchandise container. The owner of the plastic bulk merchandise



Amendment No. 1

49 container may bring an action in a court of competent  
50 jurisdiction to recover monetary damages and attorney fees and  
51 costs incurred in maintaining the action.

52 (5) This section does not apply to the collection,  
53 receipt, or recycling of plastic bulk merchandise containers by  
54 the operator of a waste management facility or an entity exempt  
55 from federal income tax under s. 501(c)(3) of the Internal  
56 Revenue Code.

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**T I T L E   A M E N D M E N T**

Remove line 14 and insert:  
operator of a waste management facility and certain tax-exempt  
entities; providing an





## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** PCB ANRS 13-03 Total Maximum Daily Loads  
**SPONSOR(S):** Agriculture & Natural Resources Subcommittee  
**TIED BILLS:** None **IDEN./SIM. BILLS:** None

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Agriculture & Natural Resources Subcommittee		Rosenthal <i>ER</i>	Blalock <i>AFB</i>

### SUMMARY ANALYSIS

Under the federal Clean Water Act (CWA), states are required to adopt water quality standards (WQS) for their navigable waters, and to review and update those standards at least every three years. These standards must include:

- Designation of a waterbody's beneficial uses, such as water supply, recreation, fish propagation, or navigation;
- Water quality criteria that define the amounts of pollutants, in either numeric or narrative form, that the waterbody can contain without impairment of the designated beneficial uses; and
- Anti-degradation requirements.

When a waterbody is unable to maintain its WQS, it is designated as impaired. In such a situation, the Environmental Protection Agency (EPA) or the state must set a total maximum daily load (TMDL) establishing the maximum amount of a given pollutant the waterbody can accept while still meeting WQS associated with its designated use. In Florida, the Department of Environmental Protection (DEP) is granted the authority to establish TMDLs via the Watershed Restoration Act of 1999.

The Florida Administrative Procedure Act (APA) requires state agencies to assess whether a Statement of Estimated Regulatory Cost (SERC) must be prepared in conjunction with the promulgation of an administrative rule, such as the establishment of a TMDL for an impaired waterbody. The preparation of a SERC is required if a proposed rule will have an adverse impact on small business, or if it is likely to directly or indirectly increase regulatory costs by more than \$200,000 within one year of implementation. If the SERC analysis indicates the rule is likely to have a specific economic impact exceeding \$1 million aggregated over five years, then the rule must be ratified by the Legislature before going into effect. The APA requires that the rule be submitted to the President of the Senate and the Speaker of the House of Representatives no later than 30 days prior to the next regular legislative session, and the rule may not take effect until it is ratified by the Legislature.

The bill amends current law to exempt rules establishing TMDLs from the legislative ratification requirement in the APA.

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

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### Present Situation

##### **The Federal Clean Water Act (CWA)**

The federal Clean Water Act (CWA or “the Act”), codified at 33 U.S.C. Sec. 1251 et. seq., was enacted in 1972 in order to “restore and maintain the chemical, physical, and biological integrity of the Nation’s waters.”<sup>1</sup> One of the pillars of the CWA is section 303, which requires states to adopt water quality standards (WQS) for their navigable waters, and to review and update those standards at least every three years. These standards must include:

- Designation of a waterbody’s beneficial uses, such as water supply, recreation, fish propagation, or navigation;
- Water quality criteria that define the amounts of pollutants, in either numeric or narrative form, that the waterbody can contain without impairment of the designated beneficial uses; and
- Anti-degradation requirements.<sup>2</sup>

Although the CWA gives states the primary authority to set WQS, they are reviewable by the Environmental Protection Agency (EPA).<sup>3</sup> If at any time EPA determines that a revised or new standard is necessary to meet the requirements of the CWA, the EPA Administrator is authorized to adopt revised WQS.<sup>4</sup> Moreover, the CWA requires EPA to set WQS for any waterbody where a state fails to do so.<sup>5</sup>

The CWA is focused primarily on point sources of water pollution. Point source pollution can be defined generally as any human-controlled “discernible, confined, and discrete” conveyance into jurisdictional waters.<sup>6</sup> The CWA directly regulates point source pollution via the National Pollution Discharge Elimination System (NPDES) permitting process.<sup>7</sup> The NPDES program prohibits the discharge of pollutants from a point source into navigable waters except as provided for in an NPDES permit.<sup>8</sup> In practice, the NPDES method of regulation can be best visualized as “end-of-the-pipe” controls that clean up waste water before it is discharged into a waterbody. The primary focus of the NPDES permitting program is municipal (Publicly Owned Treatment Works) and non-municipal (industrial) direct dischargers, and the primary mechanism for controlling discharges of pollutants to receiving waters is establishing effluent limitations. NPDES permits require a point source to meet established effluent limits, which are based on applicable technology-based and water quality-based standards. The intent of technology-based effluent limits in NPDES permits is to require a minimum level of treatment of pollutants for point source discharges based on the best available control technologies, while allowing the discharger to use any available control technique to meet the limits.

On the other hand, non-point source pollution encompasses all forms of water pollution not classified as point source, such as stormwater runoff. Regulation of nonpoint source pollution typically relies on

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<sup>1</sup> CWA s. 101(a).

<sup>2</sup> CWA s. 303(c)(2)(A).

<sup>3</sup> CWA s. 303(a).

<sup>4</sup> CWA s. 1313(c)(4)(B).

<sup>5</sup> CWA s. 303(c).

<sup>6</sup> CWA s. 502(14). Courts have held that human beings themselves are not point sources under the CWA. *See* U.S. v. Plaza Health Labs, 3 F.3d 643 (2d. Cir. 1993). The CWA also established exceptions whereby certain agricultural activities are not considered point source.

<sup>7</sup> CWA s. 402.

<sup>8</sup> CWA s. 402.

controls -- such as best management practices -- that directly impact how the land itself is used. Except in limited situations, nonpoint sources are not regulated by the CWA, but states do require nonpoint sources to reduce their pollution, especially when a waterbody is impaired. For example, Florida requires nonpoint sources to implement best management practices in order for an impaired waterbody to achieve the requisite WQS pursuant to a Basin Management Action Plan.

When the NPDES system is inadequate for a waterbody to maintain its WQS, the waterbody is designated as "impaired."<sup>9</sup> A particular segment of a waterbody may be designated as impaired as well. For a waterbody or segment designated as impaired, the CWA requires that EPA or the state set a total maximum daily load (TMDL),<sup>10</sup> which establishes the maximum amount of a given pollutant the waterbody can accept while still meeting water quality standards associated with its designated use.<sup>11</sup> The purpose of a TMDL "is to provide a basis for allocating acceptable loads among all of the known pollutant sources in a watershed so that appropriate control measures can be implemented and water quality standards achieved."<sup>12</sup> A TMDL thus takes into account both point source and non-point source pollution. Once a TMDL is established, it can affect the NPDES permit limitations for point sources discharging into the waterbody or segment. Moreover, a TMDL must account for "seasonal variations and a margin of safety which takes into account any lack of knowledge concerning the relationship between effluent limitations and water quality."<sup>13</sup>

Florida's Watershed Restoration Act of 1999, s. 403.067, F.S., lays out the process for establishing TMDLs in Florida. The Florida Department of Environmental Protection (DEP) must periodically submit to EPA a list of waterbodies or segments for which TMDL assessments will be conducted.<sup>14</sup> If the assessments show that a particular waterbody is not meeting its WQS, DEP is then required to set a TMDL, which is done through the chapter 120, F.S., rulemaking process.<sup>15</sup>

#### ***Florida Wildlife Federation, Inc. v. Browner***

Florida's slow progress in implementing TMDLs resulted in a lawsuit being brought in 1999 by several environmental groups seeking to compel EPA to establish TMDLs for Florida's impaired waterbodies.<sup>16</sup> As mentioned above, although states have the primary responsibility for implementing the CWA, the Act requires EPA to take action where states fail to do so. The litigation culminated with the issuance of a consent decree requiring that where the state failed to establish TMDLs for 710 waterbody segments identified as impaired, EPA must do so.<sup>17</sup> The consent decree also established a timetable for compliance.<sup>18</sup> Under the consent decree, TMDLs were to be proposed according to an annual reporting schedule over the course of a 13 year period.<sup>19</sup> Florida was given until September 30<sup>th</sup> of each year to establish TMDLs for said year for each of the identified waterbodies.<sup>20</sup> In the event that the state failed to do so, the EPA was required to set any remaining TMDLs within a "reasonable time."<sup>21</sup> 2013 is the last year for which the timing requirements described above remain in effect under the consent decree.<sup>22</sup>

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<sup>9</sup> CWA s. 303(d).

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

<sup>11</sup> *Id.*

<sup>12</sup> Florida Dept. of Environmental Protection, Total Maximum Daily Load for Iron for Hatchet Creek, Alachua County, Florida, Pg. 6.

<sup>13</sup> CWA s. 303(d).

<sup>14</sup> Section 403.067(2), F.S.

<sup>15</sup> *Id.*

<sup>16</sup> Florida Wildlife Federation, Inc. v. Browner, Case No. 98-356 (N.D. Fla. July 1999). Similar suits were brought in 38 other states as well.

<sup>17</sup> Consent Decree, Florida Wildlife Federation, Inc. v. Browner, Case No. 98-356 (N.D. Fla. July 1999).

<sup>18</sup> *Id.* at Exhibit A.

<sup>19</sup> *Id.*

<sup>20</sup> *Id.*

<sup>21</sup> *Id.*

<sup>22</sup> *Id.*

## Legislative Rule Ratification Requirement

As part of the administrative rulemaking process, s. 120.541, F.S. requires that the Division of Environmental Assessment and Restoration (DEAR) conduct an assessment of whether a Statement of Estimated Regulatory Cost (SERC) must be prepared in conjunction with the promulgation of an administrative rule, such as the establishment of a TMDL for an impaired waterbody.<sup>23</sup> If a SERC is required, staff within the Bureau of Watershed Restoration then conducts a multi-step economic analysis of the regulatory costs that are anticipated to be incurred were the rule to be adopted.

Section 120.541(1)(b), F.S., requires the preparation of a SERC if the proposed TMDL will have an adverse impact on small business or if the proposed rule is likely to directly or indirectly increase regulatory costs in excess of \$200,000 within one year of implementation of the rule. Alternatively, preparation of a SERC is triggered when a substantially affected person submits a good faith written proposal for a lower cost regulatory alternative which substantially accomplishes the objectives of the law being implemented.<sup>24</sup>

If there are no NPDES municipal separate storm sewer system permit holders and no NPDES industrial or domestic wastewater facilities within the area affected by the rule, there is no expectation that small businesses will be adversely affected or that regulatory costs will be increased by \$200,000 in the first year of TMDL implementation. As such, a SERC is not prepared in these instances (absent the submission of a lower cost regulatory alternative by a substantially affected person). However, the SERC development checklist provided by the Office of Fiscal Accountability and Regulatory Reform (OFARR) still will be completed and must be approved (signed/dated) by the Secretary of DEP, indicating that no SERC was necessary for that rule. If a SERC is prepared, the SERC checklist will acknowledge that a SERC is needed and the Secretary of DEP will approve (sign/date) the checklist to indicate such.

In all cases where DEAR staff prepares a SERC, the economic analysis is designed to determine whether the impact of the rule will result in regulatory costs exceeding one million dollars over a five year period.<sup>25</sup> The DEAR staff must also include in its SERC estimates of: the number of individuals and entities likely to be required to comply with the rule; the cost to the agency of enforcing the proposed rule; its effect on local revenues; and transactional costs associated with the rule.<sup>26</sup> In the event that the estimated regulatory cost exceeds the one million dollar threshold, s. 120.541(3), F.S., requires that the rule be ratified by the Florida Legislature before taking effect. The rule must be submitted to the President of the Senate and the Speaker of the House of Representatives no less than 30 days prior to the beginning of the next regular legislative session.<sup>27</sup> The proposed rule will not become effective until it is ratified by the legislature.<sup>28</sup>

### **Effect of Proposed Changes**

The bill amends s. 403.067(6)(c), F.S., to include a provision exempting DEP's promulgation of rules establishing TMDLs from the legislative ratification requirement of s. 120.541(3), F.S. As a result, TMDLs promulgated by DEP in the future would not require legislative ratification before taking effect, even if the associated regulatory costs exceed the one million dollar threshold.

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<sup>23</sup> Sec. 120.541, F.S.

<sup>24</sup> Sec. 120.541(1)(a), F.S.

<sup>25</sup> Sec. 120.541(2), F.S.

<sup>26</sup> Sec. 120.541(2)(a)(1)-(3), Fla. Stat.

<sup>27</sup> Sec. 120.541(2)(g)(3), Fla. Stat.

<sup>28</sup> *Id.*

**B. SECTION DIRECTORY:**

Section 1: Amending s. 403.067, F.S., providing that administrative rules adopted by the Department of Environmental Protection to establish total maximum daily loads calculations and allocations are not subject to the Legislative ratification requirements.

Section 2: Provides an effective date of July 1, 2013.

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

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

1. Revenues:

None.

2. Expenditures:

None.

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

None.

2. Expenditures:

None.

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

None.

**D. FISCAL COMMENTS:**

None.

**III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

**B. RULE-MAKING AUTHORITY:**

None.

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

None.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

None.

1 A bill to be entitled  
 2 An act relating to total maximum daily loads; amending  
 3 s. 402.067, F.S.; providing that administrative rules  
 4 adopted by the Department of Environmental Protection  
 5 to establish total maximum daily loads calculations  
 6 and allocations are not subject to the requirements of  
 7 s. 120.541(3), F.S.; providing an effective date.

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

10  
 11 Section 1. Paragraph (c) of subsection (6) of section  
 12 403.067, Florida Statutes, is amended to read:

13 403.067 Establishment and implementation of total maximum  
 14 daily loads.—

15 (6) CALCULATION AND ALLOCATION.—

16 (c) Adoption of rules. The total maximum daily load  
 17 calculations and allocations established under this subsection  
 18 for each water body or water body segment shall be adopted by  
 19 rule by the secretary pursuant to ss. 120.536(1), 120.54, and  
 20 403.805. Where additional data collection and analysis are  
 21 needed to increase the scientific precision and accuracy of the  
 22 total maximum daily load, the department is authorized to adopt  
 23 phased total maximum daily loads that are subject to change as  
 24 additional data becomes available. Where phased total maximum  
 25 daily loads are proposed, the department shall, in the detailed  
 26 statement of facts and circumstances justifying the rule,  
 27 explain why the data are inadequate so as to justify a phased  
 28 total maximum daily load. The rules adopted pursuant to this

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29 | paragraph are ~~shall~~ not ~~be~~ subject to approval by the  
 30 | Environmental Regulation Commission and are not subject to the  
 31 | provisions of s. 120.541(3). As part of the rule development  
 32 | process, the department shall hold at least one public workshop  
 33 | in the vicinity of the water body or water body segment for  
 34 | which the total maximum daily load is being developed. Notice of  
 35 | the public workshop shall be published not less than 5 days nor  
 36 | more than 15 days before the public workshop in a newspaper of  
 37 | general circulation in the county or counties containing the  
 38 | water bodies or water body segments for which the total maximum  
 39 | daily load calculation and allocation are being developed.

40 |       Section 2. This act shall take effect July 1, 2013.