

Agriculture and Natural Resources Policy Committee

Meeting Packet

**February 17, 2010
2:45 pm - 5:00 pm
102 Reed Hall**

**Larry Cretul
Speaker**

**Trudi Williams
Chair**

Committee Meeting Notice

HOUSE OF REPRESENTATIVES

(AMENDED 2/10/2010 4:23:32PM)

Amended(1)

Agriculture & Natural Resources Policy Committee

Start Date and Time: Wednesday, February 17, 2010 02:45 pm

End Date and Time: Wednesday, February 17, 2010 05:00 pm

Location: Reed Hall (102 HOB)

Duration: 2.25 hrs

Consideration of the following bill(s):

HB 207 Contamination Notification by Kriseman
HB 307 Water Protection and Sustainability Program by Boyd
HB 357 Registration of Farm Labor Contractors and Employees by McKeel
HB 431 Peace Creek Drainage District, Polk County by Wood
HB 435 Marketable Record Title by Abruzzo
HB 617 Limestone Mining by Bembry

Presentation: Economic, Environmental, and Energy Efficient Tractor Trailer Trucks

NOTICE FINALIZED on 02/10/2010 16:23 by Cunningham.Reid

Agenda

AGRICULTURE AND NATURAL RESOURCES POLICY COMMITTEE

February 17, 2010

2:45 p.m. – 5:00 p.m.

Reed Hall

- I. Call to Order**
- II. Roll Call**
- III. Opening Remarks by Chair Williams**
- IV. HB 207 by Rep. Kriseman – Contamination Notification**
- V. HB 307 by Rep. Boyd – Water Protection and Sustainability**
- VI. HB 357 by Rep. McKeel – Registration of Farm Labor Contractors and Employees**
- VII. HB 431 by Rep. Wood – Peace Creek Drainage District, Polk County**
- VIII. HB 435 by Rep. Abruzzo – Marketable Record Title**
- IX. HB 617 by Rep. Bembry – Limestone Mining**
- X. Presentation on Economic, Environmental, and Energy Efficient Tractor Trailer Trucks**
Mr. John Flynn – Fleet Advantage
- XI. Closing Remarks by Chair Williams**
- XII. Adjourn**

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 207
SPONSOR(S): Kriseman
TIED BILLS:

Contamination Notification

IDEN./SIM. BILLS: SB 358, SB 602

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Agriculture & Natural Resources Policy Committee</u>	_____	Lowrance <i>ALB</i>	Reese <i>RR</i>
2) <u>Military & Local Affairs Policy Committee</u>	_____	_____	_____
3) <u>Natural Resources Appropriations Committee</u>	_____	_____	_____
4) <u>General Government Policy Council</u>	_____	_____	_____
5) _____	_____	_____	_____

SUMMARY ANALYSIS

The bill increases the required contamination notifications by requiring additional notice of contamination be provided by the Department of Environmental Protection (DEP) to the following persons within 30 days after receiving the actual contamination notice:

- The mayor, the chair of the county commission, or the comparable senior elected official representing the affected area;
- The city manager, the county administrator, or the comparable senior elected official representing the affected area;
- The state senator, state representative, and United States Representative representing the affected area and both United States Senators;
- All real property owners, presidents and board members of any condominium association or sole owners of condominiums, lessees, and tenants of record of: 1) the property at which site rehabilitation is being conducted, if different from the person responsible for site rehabilitation; 2) any properties within a 500-foot radius of each sampling point at which contamination is discovered, if site-rehabilitation was initiated pursuant to s. 376.30701, F.S., or an administrative or court order and; 3) any properties within a 250-foot radius of each sampling point at which contamination is discovered or any properties identified on a contaminant plume map provided, if site rehabilitation was initiated pursuant to s. 376.3071(5), F.S., s. 376.3078(4), or s. 376.81, F.S.

The bill also requires the DEP to provide additional notice when property at which contamination has been discovered is the site of a private K-12 school or child care facility.

The bill requires the DEP to recoup all costs associated with notification from the person responsible for the site rehabilitation, unless the site is eligible for state-funded clean-up pursuant to s. 376.3071(5), F.S. or dry cleaning restoration pursuant s. 376.3078(4), F.S.

The bill requires local governments, within 30 days after receiving the actual contamination notice, to mail a copy of the notice to the president or comparable executive officer of each homeowners' association or neighborhood association within the affected area.

The bill appears to have a fiscal impact on state and local governments (See Fiscal Impacts Section Below).

The bill has an effective date of July 1, 2010.

HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

In 2003, the Florida Legislature passed Committee Substitute for HB 1123, commonly referred to as Global RBCA, which was signed into law by Governor Bush on June 20, 2003. Global RBCA extended the use of risk-based corrective action to all contaminated sites resulting from a discharge of pollutants or hazardous substances where legal responsibility for site rehabilitation exists pursuant to other provisions of chapters 376 and 403, F.S.¹ Risk-based corrective action is not a new principle. It has been used for several years in Florida at contaminated sites under the supervision of specific Department of Environmental Protection (DEP) programs, namely: the Petroleum Program,² the Brownfield Program,³ and the Dry-cleaning Facility Restoration Program.⁴ Risk-based corrective action utilizes site-specific data, modeling results, risk assessment studies, institutional controls (i.e., a deed restriction limiting future use to industrial only), engineering controls (i.e., placing an impervious surface over contaminated soils to prevent human exposure), or any combination thereof, to develop a unique remediation strategy for the site that considers the intended use of the property and aims to protect human health and safety and the environment. Based upon this information, risk-based corrective action may incorporate engineering controls, institutional controls, or even alternative cleanup target levels, to achieve a "No Further Action" determination from the DEP.

Shortly after the statute became effective, the DEP commenced the rulemaking process to implement the provisions of Global RBCA. During the rulemaking process there was lengthy debate over the notice provisions that required owners of contaminated property, upon the discovery of contamination beyond their property boundaries, to notify neighboring property owners that pollutants had been discovered on or under their property.

The proposed rule developed for the first rulemaking workshop was published in August 2004 and dramatically increased then existing notice requirements. These new notice provisions were developed in response to criticism of the DEP's actions in certain high profile cases in which property owners had not been notified of the migration of contamination from neighboring sites onto their property.⁵

¹ Section 376.30701, F.S.

² Section 376.3071, F.S.

³ Section 376.81, F.S.

⁴ Section 376.3078, F.S.

⁵ Ralph A. DeMeo, Carl Eldred, Leslie A. Utiger, Lynn S. Scruggs. *Insuring Against Environmental Unknowns*, 23 *J. Land Use & Envtl. L.* 61 (Fall 2007), citing Deborah Alberto, *DEP Investigates Itself in Handling of Coronet*, Tampa Trib. (Sept. 24, 2003); Scott Carroll, *A Stormy End to Tallevast Talks*, Sarasota Herald-Trib. (Dec. 9, 2005); Scott Carroll, *Warrior Women with Community*

Originally, the DEP proposed the requirement of verbal notice to affected property owners within three days of discovery of off-site migration of contaminants. Additionally, constructive notice was to be provided to residents and business tenants of any real property into which contamination migrated from the source property by publishing a "notice, at least 16 square inches in size, in a newspaper of general circulation in the area."

The DEP eventually modified these proposed notice provisions to require written notice to the DEP within ten days of the confirmed discovery (i.e., laboratory analytical data) of contamination on property beyond the boundaries of the property that is the subject of site rehabilitation activities. The final rule, which became legally effective on April 17, 2005, also sets out the specific information that is to be included when providing such notice to the DEP.

In response to the events at the Tallevast facility, the legislature passed HB 937, which essentially mirrored the notification requirements in Global RBCA. Committee Substitute for HB 937, often referred to as the Tallevast Bill, was signed into law by Governor Bush on May 24, 2004. For the most part, this legislation codified the contamination notification requirements promulgated in chapter 62-780 of the Florida Administrative Code, by requiring anyone conducting site rehabilitation of contaminated property to notify DEP of the existence of contamination and require DEP to notify owners of property at which contamination had been discovered.⁶ Specifically, the statute provides that if at any time during site rehabilitation, conducted pursuant to specific provisions of chapter 376, F.S., the person responsible for site rehabilitation or his or her agent or representative discovers from laboratory analytical results that contamination as defined in applicable DEP rules exists in any medium beyond the boundary of the property at which site rehabilitation was initiated, the person responsible for site rehabilitation shall give actual notice no later than ten days from such discovery to the DEP Division of Waste Management in Tallahassee.⁷ A copy of the notice must also be simultaneously mailed to the applicable DEP District Office, County Health Department, and all known lessees or tenants of the source property.⁸

Within thirty days of receiving the actual notice (or if the DEP already possessed information equivalent to that required by the notice, within thirty days of the effective date of the legislation), the DEP must notify all owners of record of real property, except for owners of property where contamination was discovered and where site rehabilitation was initiated.⁹ This particular provision required the DEP to review all sites undergoing DEP supervised site remediation and identify all instances of actual contamination beyond the source property boundaries.

Effect of Bill

The bill amends s. 376.30702, F.S., to add that the contamination notification requirements in this section also apply to site rehabilitation conducted pursuant to an administrative or court order.

The bill specifies that the contamination notification requirements in s. 376.30702, F.S., are triggered when the person responsible for site rehabilitation, the person's authorized agent, or another representative of the person discovers contamination in any groundwater, surface water, or soil at or beyond the boundaries of the property at which the site rehabilitation was initiated. The bill further provides that the contamination notice submitted to the DEP must include a contaminant plume map signed and sealed by a Florida-licensed professional engineer or geologist, if such a map is available.

The bill also requires the DEP, within 30 days after receiving the actual contamination notification, to verify that the person responsible for the site rehabilitation has complied with the notice requirements submitted to DEP. If the person fails to comply with the notice requirements, the DEP can pursue enforcement

Support, Sarasota Herald-Trib. (July 19, 2004); Editorial, *Coronet's Problems Were Kept Quiet for Far Too Long*, Tampa Trib. (Aug. 1, 2003).

⁶ Section 376.30702(2), F.S.

⁷ *Id.*

⁸ *Id.*

⁹ Section 376.30702(3), F.S.

The bill requires that within 30 days after receipt of the actual notice from the person responsible for site rehabilitation, DEP notify the following persons of the contamination:

- The mayor, the chair of the county commission, or the comparable senior elected official representing the affected area;
- The city manager, the county administrator, or the comparable senior administrative official representing the affected area;
- The state senator, state representative, and United States Representative representing the affected area and both United States Senators;
- All real property owners, presidents of any condominium associations or sole owners of condominiums, lessees, and the tenants of record for the property at which site rehabilitation is being conducted, if different from the person responsible for site rehabilitation;
- All real property owners, presidents of any condominium associations or sole owners of condominiums, lessees, and the tenants of record for any properties within a 500-foot radius of each sampling point at which contamination is discovered, if site rehabilitation was initiated pursuant to s. 376.30701, F.S. or an administrative court order;
- All real property owners, presidents and board members of any condominium associations or sole owners of condominiums, lessees, and tenants of record of any properties within a 250-foot radius of each sampling point at which contamination is discovered or any properties identified on a contaminant plume map provided, if site rehabilitation was initiated by the Inland Protection Trust Fund pursuant to s. 376.3071(5), F.S., dry cleaning facility restoration pursuant to s. 376.3078(4), or brownfield area cleanup pursuant to s. 376.81, F.S.

This bill specifies that the notice provided to local government officials must be mailed by certified mail and must advise the local government of its responsibility to mail a copy of the notice to the president or comparable executive officer of each homeowners' association or neighborhood association within the potentially affected area. The notice provided to real property owners, presidents of any condominium associations or sole owners of condominiums, lessees, and tenants of record can be delivered by certified mail, first-class mail, hand delivery, or door-hanger.

If the property where contamination has been discovered is the site of a school as defined in s. 1003.01, F.S.,¹⁰ the bill requires the DEP to mail a copy of the contamination notification to the superintendent of the school district in which the property is located and direct the superintendent to provide actual notice annually to teachers and parents or guardians of students or children attending the school during the period of site rehabilitation.

The bill also requires that if the property where contamination has been discovered is the site of a private K-12 school or child care facility as defined in 402.302, F.S.,¹¹ the DEP must mail a copy of the contamination notification to the governing board, principle, or owner of the school or child care facility and direct the governing board, principal, or owner to provide actual notice annually to teachers, parents or guardians of students, or children attending the school or child care facility during the period of site rehabilitation.

If any property within a 1-mile radius of the property at which contamination has been discovered during site rehabilitation pursuant to s. 376.30701 or an administrative or court order is the site of a

¹⁰ Under s. 1003.01, F.S., "School" means an organization of students for instructional purposes on an elementary, middle or junior high school, secondary or high school, or other public school level authorized under rules of the State Board of Education.

¹¹ Under 402.302, F.S., "Child care facility" includes any child care center or child care arrangement that provides child care for more than five children unrelated to the operator and that receives a payment, fee, or grant for any of the children receiving care, wherever operated, and whether or not operated for profit. The following are not included: Public schools and nonpublic schools and their integral programs; Summer camps having children in full-time residence; Summer day camps; Bible schools normally conducted during vacation periods; and Operators of transient establishments, as defined in chapter 509, which provide child care services solely for the guests of their establishment or resort, provided that all child care personnel of the establishment are screened according to the level 2 screening requirements of chapter 435.

school as defined in s. 1003.01, F.S.,¹² the bill requires the DEP to mail a copy of the notice to the superintendent of the school district in which the property is located and direct the superintendent to provide actual notice annually to the principal of the school. Further, if any property within a 250-foot radius of the property at which contamination has been discovered during site rehabilitation pursuant to s. 376.3071(5), F.S., s. 376.3078(4), F.S., or s. 376.81, F.S., is the site of a school as defined in s. 1003.01, F.S.,¹³ the DEP must mail a copy of the notice to the superintendent of the school district in which the property is located and direct the superintendent to provide actual notice annually to the principal of the school.

Within 30 days after receiving the actual notice from the DEP, the bill requires the local government to mail a copy of the notice to the president or comparable executive officer of each homeowners' association or neighborhood association within the potentially affected area.

The bill provides that the DEP shall recover all costs of postage, materials, and labor associated with notification from the responsible party, except when site rehabilitation is eligible for state-funded cleanup pursuant to the risk-based corrective action provisions found in s. 376.3071(5), F.S., or s. 376.3078(4), F.S.

B. SECTION DIRECTORY:

Section 1: Amends s. 376.30702, F.S., relating to contamination notification.

Section 2: Provides an effective date of July 1, 2010.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

According to the Department of Environmental Protection (DEP), there will be manageable startup costs to establish procedures for identifying parcels and schools that fall within a specified radius of a contamination location or are within an area defined by a plume map provided with a notice to the department. Because the department is the person responsible for site rehabilitation at sites that are eligible for state-funded cleanup programs, it will incur significant costs to identify and notify a large number of property owners, lessees and tenants each year. The Department of Health (DOH) may experience an increase in resident requests for information on public health impacts of contamination on or near their residences and drinking water supplies.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

Most local governments own contaminated property. They may incur increased costs associated with complying with the new notification requirements for those properties. The bill also requires local governments to mail a copy of any contamination notification that is received to the president or equivalent officer of each homeowner's association or neighborhood association within the

¹² Under s. 1003.01, F.S., "School" means an organization of students for instructional purposes on an elementary, middle or junior high school, secondary or high school, or other public school level authorized under rules of the State Board of Education.

¹³ Under s. 1003.01, F.S., "School" means an organization of students for instructional purposes on an elementary, middle or junior high school, secondary or high school, or other public school level authorized under rules of the State Board of Education.

potentially affected area. School districts will also experience increased costs for creating and mailing letters to teachers, parents, and guardians of schools within a 250 foot radius of a contaminated site.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

This bill appears to have a negative fiscal impact on the private sector by requiring the person responsible for site rehabilitation to reimburse the DEP for all costs associated with the additional contamination notification requirements established in the bill. Private K-12 schools and child care facilities will incur some costs to annually notify teachers and parents or guardians attending the school.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill requires local governments to mail a copy of any received contamination notification that they receive to the president or comparable executive officer of each homeowners' association or neighborhood association within the affected area.⁶ Consequently, the bill appears to require counties or municipalities to spend funds or take action requiring the expenditure of funds. However, this requirement appears to have an insignificant fiscal impact on local governments and would be exempt from the mandate provision.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

On lines 122 & 126, the bill indicates a particular radius (500 ft or 250 ft) from the contaminated "sampling point." However, on lines 172 & 180, the bill indicates that a particular radius be drawn from the contaminated "property." The irregularity of property boundaries could lead to arbitrary radius distinctions.

On line 133, 196, & 198, it is unclear who "local government officials" refers to. Assuming that "local government officials" on line 133 refers to the officials enumerated in subsection (3)(a)(1) and (3)(a)(2), clarification as to which of these parties is responsible for notifying the president or equivalent officers of each homeowners' association within the potentially affected area is still required to alleviate duplicative notification.

On lines 133-140, the bill provides explicit instruction on how to provide notice to local governments and to property owners, lessees and tenants and how persons responsible for site rehabilitation must demonstrate compliance with the law. However, similar instruction is not provided for notices sent to the department district office, the county health department, or state and federal elected officials.

On line 151-154, the bill provides that if the person responsible for site rehabilitation has not complied with the notice requirements, the department may pursue enforcement action. However, similar enforcement mechanisms are not provided for either local governments or school officials in meeting their notification requirements. Nor has the bill delegated specific rulemaking authority to DEP to pursue enforcement if such entities fail to comply with their notification requirements.

On line 160, 168, 179, & 186, it is unclear whether the superintendent is to send out contamination notifications to school officials immediately following receipt of the contamination notification from DEP and then annually thereafter; whether the superintendent has a quantified timeframe to send notification to school officials followed by annual notifications; or whether an alternative to either of these approaches was intended.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

None.

A bill to be entitled

An act relating to contamination notification; amending s. 376.30702, F.S.; revising contamination notification provisions; requiring individuals responsible for site rehabilitation to provide notice of site rehabilitation to specified entities; revising provisions relating to the content of such notice; requiring the Department of Environmental Protection to provide notice of site rehabilitation to specified entities and certain property owners; providing an exemption; requiring the department to verify compliance with notice requirements; authorizing the department to pursue enforcement measures for noncompliance with notice requirements; revising the department's contamination notification requirements for certain public schools; requiring the department to provide specified notice to private K-12 schools and child care facilities; requiring the department to provide specified notice to public schools within a specified area; providing notice requirements, including directives to extend such notice to certain other persons; requiring local governments to provide specified notice of site rehabilitation; requiring the department to recover notification costs from responsible parties; providing an effective date.

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

Section 1. Section 376.30702, Florida Statutes, is amended

29 to read:

30 376.30702 Contamination notification.--

31 (1) FINDINGS; INTENT; APPLICABILITY.--The Legislature
 32 finds ~~and declares~~ that when contamination is discovered by any
 33 person as a result of site rehabilitation activities conducted
 34 pursuant to the risk-based corrective action provisions found in
 35 s. 376.3071(5), s. 376.3078(4), s. 376.81, or s. 376.30701, or
 36 pursuant to an administrative or court order, it is in the
 37 public's best interest that potentially affected persons be
 38 notified of the existence of such contamination. Therefore,
 39 persons discovering such contamination shall notify the
 40 department and those identified under this section of ~~the such~~
 41 discovery in accordance with the requirements of this section,
 42 ~~and the department shall be responsible for notifying the~~
 43 ~~affected public~~. The Legislature intends that ~~for the provisions~~
 44 ~~of~~ this section ~~to~~ govern the notice requirements for early
 45 notification of the discovery of contamination.

46 (2) INITIAL NOTICE OF CONTAMINATION ~~BEYOND PROPERTY~~
 47 ~~BOUNDARIES~~.--

48 (a) If at any time during site rehabilitation conducted
 49 pursuant to s. 376.3071(5), s. 376.3078(4), s. 376.81, ~~or~~ s.
 50 376.30701, or an administrative or court order the person
 51 responsible for site rehabilitation, the person's authorized
 52 agent, or another representative of the person discovers from
 53 laboratory analytical results that comply with appropriate
 54 quality assurance protocols specified in department rules that
 55 contamination as defined in applicable department rules exists
 56 in any groundwater, surface water, or soil at or ~~medium~~ beyond

57 the boundaries of the property at which site rehabilitation was
 58 initiated ~~pursuant to s. 376.3071(5), s. 376.3078(4), s. 376.81,~~
 59 ~~or s. 376.30701~~, the person responsible for site rehabilitation
 60 shall give actual notice as soon as possible, but no later than
 61 10 days after the ~~from such~~ discovery, to the Division of Waste
 62 Management at the department's Tallahassee office. The actual
 63 notice must ~~shall~~ be provided on a form adopted by department
 64 rule and mailed by certified mail, return receipt requested. The
 65 person responsible for site rehabilitation shall simultaneously
 66 provide mail a copy of the ~~such~~ notice to the appropriate
 67 department district office and, county health department, ~~and~~
 68 ~~all known lessees and tenants of the source property.~~

69 (b) The notice must ~~shall~~ include the following
 70 information:

71 1.(a) The location of the property at which site
 72 rehabilitation was initiated ~~pursuant to s. 376.3071(5), s.~~
 73 ~~376.3078(4), s. 376.81, or s. 376.30701~~ and contact information
 74 for the person responsible for site rehabilitation, the person's
 75 authorized agent, or another representative of the person.

76 2.(b) A listing of all record owners of the ~~any~~ real
 77 property, ~~other than the property at which site rehabilitation~~
 78 ~~was initiated pursuant to s. 376.3071(5), s. 376.3078(4), s.~~
 79 ~~376.81, or s. 376.30701~~, at which contamination has been
 80 discovered; the parcel identification number for ~~any~~ such ~~real~~
 81 property; the owner's address listed in the current county
 82 property tax office records; and the owner's telephone number.
 83 ~~The requirements of this paragraph do not apply to the notice to~~
 84 ~~known tenants and lessees of the source property.~~

85 3.(e) Separate tables for ~~by medium, such as~~ groundwater,
 86 soil, and surface water which, or sediment, that list sampling
 87 locations identified on the vicinity map described in
 88 subparagraph 4.; sampling dates; names of contaminants detected
 89 above cleanup target levels; their corresponding cleanup target
 90 levels; the contaminant concentrations; and whether the cleanup
 91 target level is based on health, nuisance, organoleptic, or
 92 aesthetic concerns.

93 4.(d) A vicinity map that shows each sampling location
 94 with corresponding laboratory analytical results described in
 95 subparagraph 3. and the date on which the sample was collected
 96 and that identifies the property boundaries of the property at
 97 which site rehabilitation was initiated ~~pursuant to s.~~
 98 ~~376.3071(5), s. 376.3078(4), s. 376.81, or s. 376.30701~~ and any
 99 ~~the~~ other properties at which contamination has been discovered
 100 during such site rehabilitation. If available, a contaminant
 101 plume map signed and sealed by a state-licensed professional
 102 engineer or geologist may be included with the vicinity map.

103 (3) DEPARTMENT'S NOTICE RESPONSIBILITIES.--

104 (a) Within 30 days after receiving the actual notice
 105 required under subsection (2), the department shall notify the
 106 following persons of the contamination:

107 1. The mayor, the chair of the county commission, or the
 108 comparable senior elected official representing the affected
 109 area.

110 2. The city manager, the county administrator, or the
 111 comparable senior administrative official representing the
 112 affected area.

113 3. The state senator, state representative, and United
 114 States Representative representing the affected area and both
 115 United States Senators.

116 4. All real property owners, presidents of any condominium
 117 associations or sole owners of condominiums, lessees, and the
 118 tenants of record for:

119 a. The property at which site rehabilitation is being
 120 conducted, if different from the person responsible for site
 121 rehabilitation;

122 b. Any properties within a 500-foot radius of each
 123 sampling point at which contamination is discovered, if site
 124 rehabilitation was initiated pursuant to s. 376.30701 or an
 125 administrative or court order; and

126 c. Any properties within a 250-foot radius of each
 127 sampling point at which contamination is discovered or any
 128 properties identified on a contaminant plume map provided
 129 pursuant to subparagraph (2)(b)4., if site rehabilitation was
 130 initiated pursuant to s. 376.3071(5), s. 376.3078(4), or s.
 131 376.81.

132 (b) The notice provided to:

133 1. Local government officials shall be mailed by certified
 134 mail, return receipt requested, and must advise the local
 135 government of its responsibilities under subsection (4).

136 2. Real property owners, presidents of any condominium
 137 associations or sole owners of condominiums, lessees, and
 138 tenants of record may be delivered by certified mail, return
 139 receipt requested, first-class mail, hand delivery, or door
 140 hanger.

141 (c) Within 30 days after receiving the actual notice
 142 required under ~~pursuant to~~ subsection (2), ~~or within 30 days of~~
 143 ~~the effective date of this act if the department already~~
 144 ~~possesses information equivalent to that required by the notice,~~
 145 the department shall verify that the person responsible for site
 146 rehabilitation has complied with the notice requirements of this
 147 section send a copy of such notice, or an equivalent
 148 ~~notification, to all record owners of any real property, other~~
 149 ~~than the property at which site rehabilitation was initiated~~
 150 ~~pursuant to s. 376.3071(5), s. 376.3078(4), s. 376.81, or s.~~
 151 ~~376.30701, at which contamination has been discovered. If the~~
 152 person responsible for site rehabilitation has not complied with
 153 the notice requirements, the department may pursue enforcement
 154 as provided under this chapter and chapter 403.

155 (d)1. If the property at which contamination has been
 156 discovered is the site of a school as defined in s. 1003.01, the
 157 department shall mail ~~also send~~ a copy of the notice to the
 158 superintendent chair of the school board of the school district
 159 in which the property is located and direct the superintendent
 160 ~~said school board~~ to provide actual notice annually to teachers
 161 and parents or guardians of students attending the school during
 162 the period of site rehabilitation.

163 2. If the property at which contamination has been
 164 discovered is the site of a private K-12 school or a child care
 165 facility as defined in s. 402.302, the department shall mail a
 166 copy of the notice to the governing board, principal, or owner
 167 of the school or child care facility and direct the governing
 168 board, principal, or owner to provide actual notice annually to

169 teachers and parents or guardians of students or children
 170 attending the school or child care facility during the period of
 171 site rehabilitation.

172 3. If any property within a 1-mile radius of the property
 173 at which contamination has been discovered during site
 174 rehabilitation pursuant to s. 376.30701 or an administrative or
 175 court order is the site of a school as defined in s. 1003.01,
 176 the department shall mail a copy of the notice to the
 177 superintendent of the school district in which the property is
 178 located and direct the superintendent to provide actual notice
 179 annually to the principal of the school.

180 4. If any property within a 250-foot radius of the
 181 property at which contamination has been discovered during site
 182 rehabilitation pursuant to s. 376.3071(5), s. 376.3078(4), or s.
 183 376.81 is the site of a school as defined in s. 1003.01, the
 184 department shall mail a copy of the notice to the superintendent
 185 of the school district in which the property is located and
 186 direct the superintendent to provide actual notice annually to
 187 the principal of the school.

188 (e) Along with the copy of the notice ~~or its equivalent,~~
 189 the department shall include a letter identifying sources of
 190 additional information about the contamination and a telephone
 191 number to which further inquiries should be directed. The
 192 department may collaborate with the Department of Health to
 193 develop such sources of information and to establish procedures
 194 for responding to public inquiries about health risks associated
 195 with contaminated sites.

196 (4) LOCAL GOVERNMENT'S NOTICE RESPONSIBILITIES.--Within 30

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197 days after receiving the actual notice required under subsection
 198 (2), the local government shall mail a copy of the notice to the
 199 president or equivalent officer of each homeowners' association
 200 or neighborhood association within the potentially affected area
 201 as described in subsection (2).

202 (5) RECOVERY OF NOTIFICATION COSTS.--The department shall
 203 recover the costs of postage, materials, and labor associated
 204 with notification from the responsible party, unless site
 205 rehabilitation is eligible for state-funded cleanup pursuant to
 206 the risk-based corrective action provisions found in s.
 207 376.3071(5) or s. 376.3078(4).

208 (6)(4) RULEMAKING AUTHORITY.--The department shall adopt
 209 rules and forms pursuant to ss. 120.536(1) and 120.54 to
 210 administer ~~implement~~ the requirements of this section.

211 Section 2. This act shall take effect July 1, 2010.

COUNCIL/COMMITTEE AMENDMENT

Bill No. HB 207 (2010)

Amendment No. 1

COUNCIL/COMMITTEE 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 Council/Committee hearing bill: Agriculture & Natural Resources
2 Policy Committee

3 Representative Kriseman offered the following:

4
5 **Amendment (with title amendment)**

6 Remove everything after the enacting clause and insert:

7 Section 1. Section 376.30702, Florida Statutes, is amended to
8 read:

9 376.30702 Contamination notification.—

10 (1) FINDINGS; INTENT; APPLICABILITY.—The Legislature finds
11 ~~and declares~~ that when contamination is discovered by any person
12 as a result of site rehabilitation activities conducted pursuant
13 to the risk-based corrective action provisions found in s.
14 376.3071(5), s. 376.3078(4), s. 376.81, or s. 376.30701, or
15 pursuant to an administrative or court order, it is in the
16 public's best interest that potentially affected persons be
17 notified of the existence of such contamination. Therefore,
18 persons discovering such contamination shall notify the
19 department and those identified under this section of the such

COUNCIL/COMMITTEE AMENDMENT

Bill No. HB 207 (2010)

Amendment No. 1

20 discovery in accordance with the requirements of this section,
21 ~~and the department shall be responsible for notifying the~~
22 ~~affected public.~~ The Legislature intends that ~~for the provisions~~
23 ~~of this section to~~ govern the notice requirements for early
24 notification of the discovery of contamination.

25 (2) INITIAL NOTICE OF CONTAMINATION ~~BEYOND PROPERTY~~
26 ~~BOUNDARIES.~~-

27 (a) If at any time during site rehabilitation conducted
28 pursuant to s. 376.3071(5), s. 376.3078(4), s. 376.81, ~~or~~ s.
29 376.30701, or an administrative or court order the person
30 responsible for site rehabilitation, the person's authorized
31 agent, or another representative of the person discovers from
32 laboratory analytical results that comply with appropriate
33 quality assurance protocols specified in department rules that
34 contamination as defined in applicable department rules exists
35 in any groundwater, surface water, or soil medium beyond the
36 boundaries of the property at which site rehabilitation was
37 initiated ~~pursuant to s. 376.3071(5), s. 376.3078(4), s. 376.81,~~
38 ~~or s. 376.30701,~~ the person responsible for site rehabilitation
39 shall give actual notice as soon as possible, but no later than
40 10 days after the ~~from such~~ discovery, to the Division of Waste
41 Management at the department's Tallahassee office. The actual
42 notice must ~~shall~~ be provided on a form adopted by department
43 rule and mailed by certified mail, return receipt requested. The
44 person responsible for site rehabilitation shall simultaneously
45 provide by certified mail, return receipt requested, ~~mail~~ a copy
46 of the ~~such~~ notice to the appropriate department district office

Amendment No. 1

47 | ~~and, county health department, and all known lessees and tenants~~
48 | ~~of the source property.~~

49 | **(b)** The notice must ~~shall~~ include the following
50 | information:

51 | **1.(a)** The location of the property at which site
52 | rehabilitation was initiated ~~pursuant to s. 376.3071(5), s.~~
53 | ~~376.3078(4), s. 376.81, or s. 376.30701~~ and contact information
54 | for the person responsible for site rehabilitation, the person's
55 | authorized agent, or another representative of the person.

56 | **2.(b)** A listing of all record owners of the any real
57 | property, ~~other than the property at which site rehabilitation~~
58 | ~~was initiated pursuant to s. 376.3071(5), s. 376.3078(4), s.~~
59 | ~~376.81, or s. 376.30701,~~ at which contamination has been
60 | discovered; the parcel identification number for any such real
61 | property; the owner's address listed in the current county
62 | property tax office records; and the owner's telephone number.
63 | ~~The requirements of this paragraph do not apply to the notice to~~
64 | ~~known tenants and lessees of the source property.~~

65 | **3.(c)** Separate tables for by ~~medium,~~ such as groundwater,
66 | soil, and surface water which, ~~or sediment,~~ that list sampling
67 | locations identified on the vicinity map described in
68 | subparagraph 4.; sampling dates; names of contaminants detected
69 | above cleanup target levels; their corresponding cleanup target
70 | levels; the contaminant concentrations; and whether the cleanup
71 | target level is based on health, nuisance, organoleptic, or
72 | aesthetic concerns.

73 | **4.(d)** A vicinity map that shows each sampling location
74 | with corresponding laboratory analytical results described in

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75 subparagraph 3. and the date on which the sample was collected
76 and that identifies the property boundaries of the property at
77 which site rehabilitation was initiated pursuant to s.
78 ~~376.3071(5), s. 376.3078(4), s. 376.81, or s. 376.30701~~ and any
79 the other properties at which contamination has been discovered
80 during such site rehabilitation. If available, a contaminant
81 plume map signed and sealed by a state-licensed professional
82 engineer or geologist may be included with the vicinity map.

83 (3) DEPARTMENT'S NOTICE RESPONSIBILITIES.-

84 (a) Within 15 ~~30~~ days after receiving the actual notice
85 required under pursuant to subsection (2), or within 30 days of
86 the effective date of this act if the department already
87 possesses information equivalent to that required by the notice,
88 the department shall verify that the person responsible for site
89 rehabilitation has complied with the notice requirements of
90 subsection (2) send a copy of such notice, or an equivalent
91 notification, to all record owners of any real property, other
92 than the property at which site rehabilitation was initiated
93 pursuant to s. 376.3071(5), s. 376.3078(4), s. 376.81, or s.
94 ~~376.30701,~~ at which contamination has been discovered. If the
95 person responsible for site rehabilitation has not complied with
96 the notice requirements of subsection (2), then the department
97 may pursue enforcement as provided under this chapter and
98 chapter 403.

99 (b) Within 30 days after receiving the actual notice
100 required under subsection (2), the department shall notify the
101 following persons of the contamination:

Amendment No. 1

102 1. The mayor, the chair of the county commission, or the
103 comparable senior elected official representing the affected
104 area.

105 2. The city manager, the county administrator, or the
106 comparable senior administrative official representing the
107 affected area.

108 3. The state senator, state representative, and United
109 States Representative representing the affected area and both
110 United States Senators.

111 4. All real property owners, presidents of any homeowners'
112 associations, presidents of any condominium associations or sole
113 owners of condominiums, lessees, and the tenants of record for:

114 a. Any real property, other than the property at which
115 site rehabilitation was initiated pursuant to s. 376.3071(5), s.
116 376.3078(4), s. 376.81, or s. 376.30701, at which contamination
117 has been discovered;

118 b. Any properties within a 500-foot radius of each
119 sampling point at which contamination is discovered or any
120 properties identified on a contaminant plume map provided
121 pursuant to subparagraph (2)(b)4., if site rehabilitation was
122 initiated pursuant to s. 376.30701 or an administrative or court
123 order; and

124 c. Any properties within a 250-foot radius of each
125 sampling point at which contamination is discovered or any
126 properties identified on a contaminant plume map provided
127 pursuant to subparagraph (2)(b)4., if site rehabilitation was
128 initiated pursuant to s. 376.3071(5), s. 376.3078(4), or s.

COUNCIL/COMMITTEE AMENDMENT

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129 376.81, or at, or in connection with, a permitted solid waste
130 management facility subject to a groundwater monitoring plan.

131 (c) The notice provided to:

132 1. Local government officials described in this subsection
133 shall be mailed by certified mail, return receipt requested.

134 2. Real property owners, presidents of any homeowners'
135 associations, presidents of any condominium associations or sole
136 owners of condominiums, lessees, and tenants of record shall be
137 delivered by certified mail, return receipt requested, first-
138 class mail, hand delivery, or door hanger.

139 (d)1. If the property at which contamination has been
140 discovered is the site of a school as defined in s. 1003.01, the
141 department shall ~~mail also send~~ a copy of the notice to the
142 superintendent ~~chair of the school board~~ of the school district
143 in which the property is located and direct the superintendent
144 ~~said school board~~ to provide actual notice within 10 days to
145 teachers and parents or guardians of students attending the
146 school during the period of site rehabilitation.

147 2. If the property at which contamination has been
148 discovered is the site of a private K-12 school or a child care
149 facility as defined in s. 402.302, the department shall mail a
150 copy of the notice to the governing board, principal, or owner
151 of the school or child care facility and direct the governing
152 board, principal, or owner to provide actual notice within 10
153 days to teachers and parents or guardians of students or
154 children attending the school or child care facility during the
155 period of site rehabilitation.

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156 3. If any property within a 1-mile radius of the sampling
157 point at which contamination has been discovered during site
158 rehabilitation pursuant to s. 376.30701 or an administrative or
159 court order is the site of a school as defined in s. 1003.01,
160 the department shall mail a copy of the notice to the
161 superintendent of the school district in which the property is
162 located.

163 4. If any property within a 250-foot radius of the
164 sampling point at which contamination has been discovered during
165 site rehabilitation pursuant to s. 376.3071(5), s. 376.3078(4),
166 or s. 376.81, or at, or in connection with, a permitted solid
167 waste management facility subject to a groundwater monitoring
168 plan, is the site of a school as defined in s. 1003.01, the
169 department shall mail a copy of the notice to the superintendent
170 of the school district in which the property is located.

171 (e) Along with the copy of the notice ~~or its equivalent,~~
172 the department shall include a letter identifying sources of
173 additional information about the contamination and a telephone
174 number to which further inquiries should be directed. The
175 department may collaborate with the Department of Health to
176 develop such sources of information and to establish procedures
177 for responding to public inquiries about health risks associated
178 with contaminated sites.

179 (4) RECOVERY OF NOTIFICATION COSTS.—The department shall
180 recover the costs of postage, materials, and labor associated
181 with notification from the responsible party, unless site
182 rehabilitation is eligible for state-funded cleanup pursuant to

Amendment No. 1

183 | the risk-based corrective action provisions found in s.
184 | 376.3071(5) or s. 376.3078(4).

185 | (5)-(4) RULEMAKING AUTHORITY.—The department shall adopt
186 | rules and forms pursuant to ss. 120.536(1) and 120.54 to
187 | administer ~~implement~~ the requirements of this section.

188 | Section 2. This act shall take effect July 1, 2010.

189 |
190 |

191 | -----

192 | **T I T L E A M E N D M E N T**

193 | Remove the entire title and insert:

194 | An act relating to contamination notification; amending s.
195 | 376.30702, F.S.; revising contamination notification provisions;
196 | requiring individuals responsible for site rehabilitation to
197 | provide notice of site rehabilitation to specified entities;
198 | revising provisions relating to the content of such notice;
199 | requiring the Department of Environmental Protection to provide
200 | notice of site rehabilitation to specified entities and certain
201 | property owners; requiring the department to verify compliance
202 | with notice requirements; authorizing the department to pursue
203 | enforcement measures for noncompliance with notice requirements;
204 | revising the department's contamination notification
205 | requirements for certain public schools; requiring the
206 | department to provide specified notice to private K-12 schools
207 | and child care facilities; requiring the department to provide
208 | specified notice to public schools within a specified area;
209 | providing notice requirements, including directives to extend
210 | such notice to certain other persons; requiring the department

COUNCIL/COMMITTEE AMENDMENT

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211 | to recover notification costs from responsible parties;
212 | providing an effective date.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS



BILL #: HB 307

Water Protection and Sustainability Program

SPONSOR(S): Boyd

TIED BILLS:

IDEN./SIM. BILLS:

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Agriculture & Natural Resources Policy Committee		Kliner 	Reese 
2) Natural Resources Appropriations Committee			
3) General Government Policy Council			
4)			
5)			

SUMMARY ANALYSIS

The bill amends paragraph (c) of s. 373.1961(3), F.S., providing flexibility to the Northwest Florida and the Suwannee River Water Management Districts in using funds from their respective Water Protection and Sustainability Trust Funds.

The bill authorizes the Northwest Florida and Suwannee River Water Management Districts to use any funds deposited by the state into their Water Protection and Sustainability Trust Funds to be used for regional water supply planning, water resource development, and water protection and sustainability projects. Current law requires all such funds be used to assist in funding project construction costs of alternative water supply projects. Current law allows districts that have not completed a water supply plan, or that have not identified the need for any alternative water supply projects, to use these funds for water resource development projects.

HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

The Florida Department of Environmental Protection (DEP) manages the quality and quantity of water in the state through its relationship with the state's five water management districts (collectively referred to as "the districts"), which are tasked with the preservation and management of Florida's water resources. The districts include the Northwest Florida Water Management District, Suwannee River Water Management District, St. Johns River Water Management District, South Florida Water Management District and Southwest Florida Water Management District.

Chapter 373, Florida Statutes, charges the districts with managing regional water supplies, water quality, flood protection, and the protection of natural systems. The Legislature has directed the districts to engage in plan development and implementation, regulation, land acquisition, financial and technical assistance, water resource restoration, water resource development, and other activities to achieve the statutory water management objectives.

In 1998, the water management districts prepared water supply assessments to determine the existing and future water needs and evaluate the adequacy of existing and potential sources to meet the reasonable-beneficial needs for the next 20 years. For those areas where the sources were determined not to be adequate to meet the future needs, the districts were required to prepare regional water supply plans. The Suwannee River Water Management District's (SRWMD) water supply assessment concluded that supplies were adequate to meet the 2020 needs. Periodically, the SRWMD re-evaluates their needs and supplies. The Northwest Florida, St. Johns River, South Florida and Southwest Florida Water Management Districts determined that sources were not adequate to meet all these future needs while sustaining the natural resources. By August 2001, these four districts completed regional water supply plans. Each year the districts are required to prepare a Five-Year Water Resource Development Work Program that describes implementation strategies for the water resource development component of regional water supply plans.¹

Beginning in fiscal year 2005-2006, the state annually provides a portion of those revenues deposited into the Water Protection and Sustainability Program Trust Fund for the purpose of providing funding assistance for the development of alternative water supplies pursuant to the Water Protection and

¹ Source: <http://www.dep.state.fl.us/WATER/waterpolicy/rwsp.htm>, last reviewed February 8, 2010.

Sustainability Program.² The DEP distributes these revenues into the alternative water supply trust fund accounts created by each district for the purpose of alternative water supply development under the following funding formula:

- Thirty percent to the South Florida Water Management District;
- Twenty-five percent to the Southwest Florida Water Management District;
- Twenty-five percent to the St. Johns River Water Management District;
- Ten percent to the Suwannee River Water Management District; and
- Ten percent to the Northwest Florida Water Management District.

The statewide funds provided pursuant to the Water Protection and Sustainability Program serve to supplement existing water management district funding for alternative water supply development assistance. The districts are required to include the amount of funds allocated for water resource development that supports alternative water supply development and the funds allocated for alternative water supply projects selected for inclusion in the Water Protection and Sustainability Program in their annual tentative and adopted budget submittals. The goal of each district is to match the state funding provided to the district for alternative water supply development. Only the Suwannee River and the Northwest Florida Water Management Districts are not required to meet the match requirements, but they are encouraged to try to achieve the match requirement to the greatest extent practicable.

Section 373.196, F.S., relating to alternative water supply development, mandates cooperative efforts between municipalities, counties, special districts, water management districts, and the DEP, in the development of water supplies and to provide for alternative water supply development.

In regards to funding for alternative water resource projects, subsection (3) of s. 373.1961, F.S., provides that the districts and the state share a percentage of revenues with water providers and users, to be used to supplement other funding sources in the development of alternative water supplies. Public and private water users include local governments, water, wastewater, and reuse utilities, municipal, special district, industrial, and agricultural water users.

Pursuant to this section, if a district has not completed any regional water supply plan, or the regional water supply plan does not identify the need for any alternative water supply projects, funds deposited in that district's trust fund may be used for water resource development projects, including, but not limited to, springs protection. Presently, the Suwannee River Water Management District is the only district to not complete a regional water supply plan, however, the goal is to have one completed this year. As the lesser funded of the five districts, both the Northwest Florida and the Suwannee River Water Management Districts desire more flexibility in the use of funds from the Water Protection and Sustainability Program Trust Fund, if and when funding is restored.

Effect of Proposed Change

The bill amends paragraph (c) of s. 373.1961(3), F.S., providing that funds deposited into the Suwannee River and the Northwest Florida Water Management Districts' Water Protection and Sustainability Program Trust Funds may be used for regional water supply planning and water protection and sustainability projects, in addition to resource development and springs protection.

² In 2009, however, funding for that program ended in the 2009 Special Session "A" and the trust fund was swept. Currently, no funds are flowing into that trust fund. The Water Protection and Sustainability Program (s. 403.890, F.S.) was established in 2005 to support water-related programs such as Total Maximum Daily Loads, Surface Water Improvement Management and Disadvantaged Small Community Wastewater Grants. When available, the program also includes funding for alternative water supply development projects such as desalination, reuse and reservoirs.

B. SECTION DIRECTORY:

Section 1. Amends paragraph (c) of s. 373.1961(3), F.S., providing flexibility to the Northwest Florida and the Suwannee River Water Management Districts in using funds from their respective Water Protection and Sustainability Trust Funds.

Section 2. Provides an effective date of July 1, 2010.

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:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

In the 2009 Special Session A, funding for the Water Protection and Sustainability Program ceased, and monies in the trust fund were swept for other uses. No funds flow into that program at this time. If and when funds are provided by the Legislature to the Northwest Florida and Suwannee River Water Management Districts' Water Protection and Sustainability Trust Funds, the bill will allow greater flexibility in the use of said funds by those districts.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill does not appear to require municipalities or counties to take 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 a state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill does not provide rulemaking.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

HB 307

2010

29 | ~~trust fund~~ may be used for regional water supply planning, water
30 | resource development, and water protection and sustainability
31 | projects, including, but not limited to, springs protection.

32 | Section 2. This act shall take effect July 1, 2010.

COUNCIL/COMMITTEE AMENDMENT

Bill No. HB 307 (2010)

Amendment No.

COUNCIL/COMMITTEE 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 Council/Committee hearing bill: Agriculture & Natural Resources
2 Policy Committee
3 Representative Boyd offered the following:
4
5

Amendment

6 Remove lines 25-30 and insert:
7 ~~any alternative water supply projects,~~ Funds deposited in the
8 Water Protection and Sustainability Program Trust Fund to the
9 credit of the Northwest Florida Water Management District and
10 the Suwannee River Water Management District ~~that district's~~
11 ~~trust fund~~ may also be used for regional water supply planning,
12 water resource development, and water resource

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 357

Registration of Farm Labor Contractors and Employees

SPONSOR(S): McKeel

TIED BILLS:

IDEN./SIM. BILLS: SB 1150

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Agriculture & Natural Resources Policy Committee		Lowrance <i>BL</i>	Reese <i>JR</i>
2) Insurance, Business & Financial Affairs Policy Committee			
3) General Government Policy Council			
4)			
5)			

SUMMARY ANALYSIS

A farm labor contractor is any person who recruits, transports, supplies, or hires one or more farm workers to work for, or under the direction, supervision, or control of a third person, or directs, supervises, or controls the work.¹

The Migrant and Seasonal Agricultural Worker Protection Act requires a farm contractor to obtain a federal certificate of registration from the United States Department of Labor.² In addition, section 450.30, F.S., requires farm labor contractors to obtain a state certificate of registration from the Florida Department of Business and Professional Regulation (DBPR).³ Under current law, a farm labor contractor will not be granted a state certificate of registration without obtaining and holding a valid federal certificate of registration.⁴

The bill states that if a farm labor contractor's federal certificate expires, the DBPR will renew the state certificate of registration if such a person files a timely application for renewal of the federal certificate. However, the department shall suspend, revoke, or refuse to issue or renew a certificate of registration if the U.S. Secretary of Labor suspends, revokes, or refuses to issue or renew the farm labor contractor's federal certificate.

The bill appears to have no fiscal impact on local government. According to the DBPR, the department will be required to track and revoke certificates that are not approved at the federal level, but the anticipated increase in workload can be addressed within existing resources.

The effective date of this act is July 1, 2010.

¹ Section 450.28(1), F.S.

² 29 U.S.C. §1811(a)

³ Section 450.30, F.S.

⁴ Section 450.31(1)(b), F.S.

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

STORAGE NAME: h0357.ANR.doc

DATE: 2/10/2010

HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

A farm labor contractor is any person who recruits, transports into or within the state, supplies, or hires at any one time in any calendar year one or more farm workers to work for, or under the direction, supervision, or control of a third person, or directs, supervises, or controls the work.⁵

The Migrant and Seasonal Agricultural Worker Protection Act of 1983⁶ requires a farm labor contractor to obtain a federal certificate of registration issued pursuant to the Act from the United States Department of Labor.⁷ No person shall engage in any farm labor contracting activity unless such person has a certificate of registration from the Secretary of Labor.⁸

Registration under the Act is required whether or not licensing or registration is required under state law.⁹ Under the U.S. Code, an initial certificate of registration shall expire twelve months after issuance.¹⁰ However, a certificate can be extended by filing an application for renewal with the Secretary at least 30 days prior to its expiration date.¹¹ The farm labor contractor will maintain the authority to operate as if under a valid federal certificate until the renewal application has been finally determined by the Secretary.¹²

Section 450.271, F.S., provides that the Florida Department of Business and Professional Regulation (DBPR) may enter into agreements with the Secretary of Labor of the United States to authorize the DBPR to administer the Act within the state.

The DBPR requires farm labor contractors to be registered with the DBPR.¹³ The DBPR has the authority to issue, revoke, suspend and refuse to issue or renew a certificate of registration if the farm labor contractor does not hold a valid federal certificate of registration as a farm labor contractor.¹⁴

⁵ Section 450.28(1), F.S.

⁶ 29 U.S.C. §1801 (1983)

⁷ 29 U.S.C. §1811(a)

⁸ *Id.*

⁹ 29 C.F.R. 500.46

¹⁰ 29 U.S.C. §1814(b)(1)

¹¹ 29 U.S.C. §1814(b)(1)(B)

¹² *Id.*

¹³ Section 450.30, F.S.

Effect of Bill

The bill provides that if a farm labor contractor's federal certificate expires, the DBPR will renew the state certificate of registration if such a person files a timely application for renewal of his/her federal certificate with the U.S. Department of Labor.

However, the DBPR is required to suspend, revoke, or refuse to issue or renew a certificate of registration if the U.S. Secretary of Labor suspends, revokes, or refuses to issue or renew the farm labor contractor's federal certificate.

B. SECTION DIRECTORY:

Section 1: Amends 450.31, F.S., to permit renewal of a state certificate of registration for farm labor contractors whose federal certificates have expired, under certain circumstances, and to require the DBPR to suspend, revoke, or refuse to issue or renew certificates of registration under certain circumstances.

Section 2: Provides an effective date of July 1, 2010.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None

2. Expenditures:

See *Fiscal Comments*

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None

2. Expenditures:

None

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None

D. FISCAL COMMENTS:

According to the Department of Business and Professional Regulation, the department will be required to track and revoke certificates that are not approved at the federal level, but the anticipated increase in workload can be addressed within existing resources.

¹⁴ Section 450.31, F.S.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not require counties or municipalities to spend funds or take an action requiring the expenditure of funds. The bill does not reduce the percentage of a state tax shared with counties or municipalities. The bill does not reduce the authority that municipalities have to raise revenue.

2. Other:

None

B. RULE-MAKING AUTHORITY:

None

C. DRAFTING ISSUES OR OTHER COMMENTS:

None

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

1 A bill to be entitled

2 An act relating to registration of farm labor contractors
 3 and employees; amending s. 450.31, F.S.; requiring the
 4 renewal of farm labor contractor and employee certificates
 5 of registration under certain circumstances; requiring the
 6 Department of Business and Professional Regulation to
 7 suspend, revoke, or refuse to issue or renew certificates
 8 of registration under certain circumstances; providing an
 9 effective date.

10
 11 Be It Enacted by the Legislature of the State of Florida:

12
 13 Section 1. Paragraph (b) of subsection (1) and paragraphs
 14 (e), (f), and (g) of subsection (2) of section 450.31, Florida
 15 Statutes, are amended, subsections (3) through (7) are
 16 renumbered as subsections (4) through (8), respectively, and a
 17 new subsection (3) is added to that section, to read:

18 450.31 Issuance, revocation, and suspension of, and
 19 refusal to issue or renew, certificate of registration.--

20 (1) The department shall not issue to any person a
 21 certificate of registration as a farm labor contractor, nor
 22 shall it renew such certificate, until:

23 (b) Such person has obtained and holds a valid federal
 24 certificate of registration as a farm labor contractor, or a
 25 farm labor contractor employee, unless exempt by federal law.

26 However, the department shall renew a certificate of
 27 registration after such person's federal certificate of

28 | registration expires if such person files a timely application
 29 | for renewal with the United States Department of Labor.

30 | (2) The department may revoke, suspend, or refuse to issue
 31 | or renew any certificate of registration when it is shown that
 32 | the farm labor contractor has:

33 | (e) Failed to pay unemployment compensation taxes as
 34 | determined by the Agency for Workforce Innovation; or

35 | ~~(f) Been denied, or had suspended or revoked, a federal~~
 36 | ~~certificate of registration as a farm labor contractor; or~~

37 | (f)~~(g)~~ Failed to pay federal employee taxes as determined
 38 | by the Internal Revenue Service.

39 | (3) The department shall suspend, revoke, or refuse to
 40 | issue or renew a certificate of registration upon the United
 41 | States Secretary of Labor's suspension, revocation, or refusal
 42 | to issue or renew the federal certificate of registration.

43 | Section 2. This act shall take effect July 1, 2010.

HOUSE OF REPRESENTATIVES LOCAL BILL STAFF ANALYSIS

BILL #: HB 431

Peace Creek Drainage District, Polk County

SPONSOR(S): Wood

TIED BILLS:

IDEN./SIM. BILLS:

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1)	Military & Local Affairs Policy Committee	14 Y, 0 N	Fudge	Hoagland
2)	Agriculture & Natural Resources Policy Committee		Deslatte <i>JD</i>	Reese <i>AR</i>
3)	Natural Resources Appropriations Committee			
4)	Economic Development & Community Affairs Policy Council			
5)				

SUMMARY ANALYSIS

This bill dissolves the Peace Creek Drainage District (PCDD) and transfers all assets and indebtedness of the district, if any, to the Southwest Florida Water Management District effective July 1, 2010.

The bill is effective upon becoming law.

HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

The Peace Creek Drainage District (PCDD), located in Polk County, was established pursuant to ch. 6458, Laws of Florida (L.O.F.), in 1913, which provides the statutory framework for creating drainage districts. On April 6, 1915, the Board of Supervisors of the PCDD levied and assessed a tax amounting to 22.24848 percent of the benefits assessed to or against each tract or parcel within the PCDD declared to be benefitted by the PCDD. At that time a referendum was not required for the assessment. Also in 1915, the Legislature legalized and validated the assessment of lands in the PCDD. The jurisdiction of the PCDD covers approximately 45,000 total acres that are used primarily for agricultural purposes, and includes the Peace Creek Drainage Canal (Canal). The 34-mile long Canal was constructed by the PCDD around 1915 for the purpose of draining land for agricultural use. Construction of the Canal was funded by assessments levied against property owners in the PCDD. The PCDD has not levied any assessment or tax in decades or performed any Canal maintenance. The PCDD is governed by a three-member board elected by the landowners within the PCDD. The owner of each one acre, or less, is entitled to one vote per acre. The board meets on an annual basis or at the call of the chair. The PCDD currently possesses the powers of a drainage district under ch. 298, F.S.

The PCDD states that there are no outstanding financial liabilities other than legal, accounting and secretary/treasurer billing for which it has not received a recent statement.

Section 189.4042(2), F.S., states that "for any independent district that has ad valorem taxation powers, the same procedure required to grant such independent district taxation powers shall also be required to dissolve or merge the district." As stated above, the Legislature passed a special act to "legalize and validate the assessment of lands in the Peace Creek Drainage District, in Polk County, Florida, for drainage purposes" Chapter 7090, L.O.F. Consequently, this local bill is the appropriate method to abolish the district.

The bill abolishes the PCDD on July 1, 2010.

B. SECTION DIRECTORY:

- Section 1: Abolishes the Peace Creek Drainage District and transfers all assets and indebtedness, if any, to the Southwest Florida Water Management District.
- Section 2: Repeals chapter laws affecting the district.
- Section 3: Provides an effective date of upon becoming law.

II. NOTICE/REFERENDUM AND OTHER REQUIREMENTS

A. NOTICE PUBLISHED? Yes No

IF YES, WHEN? October 31, 2009.

WHERE? In the *News Chief*, published in Polk County, Florida.

B. REFERENDUM(S) REQUIRED? Yes No

IF YES, WHEN?

C. LOCAL BILL CERTIFICATION FILED? Yes, attached No

D. ECONOMIC IMPACT STATEMENT FILED? Yes, attached No

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The Southwest Florida Water Management District passed a resolution on August 25, 2009, supporting this bill. The District anticipates that expenditures for fiscal year 2011 will be \$250,000 and represent maintenance activities to improve the conveyance of the canal including sediment removal and regular aquatic vegetation removal. The anticipated fiscal year 2012 expenditures of \$200,000, include funds for the operation and maintenance of the canal.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

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A bill to be entitled
An act relating to the Peace Creek Drainage District, Polk
County; abolishing the district; providing for transfer of
assets and indebtedness; repealing special acts relating
to the district; providing an effective date.

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

Section 1. The Peace Creek Drainage District, a district
existing under chapter 298, Florida Statutes, is abolished and
its assets and indebtedness, if any, in accordance with section
189.444, Florida Statutes, are transferred to the Southwest
Florida Water Management District on July 1, 2010.

Section 2. Chapters 7090 (1915), 13721 (1929), 19380
(1939), 19414 (1939), 19627 (1939), 20803 (1941), and 22881
(1945), Laws of Florida, are repealed.

Section 3. This act shall take effect upon becoming a law.

HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

The Florida Marketable Record Title Act (MRTA) provides that one who holds title to land based on a root of title at least 30 years old, takes free and clear ownership of title and extinguishes all matters arising prior to the root of the title¹ that are not referenced in the root of title. Due to the vast holdings of each of the water management districts (districts) and the Board of Trustees of the Internal Improvement Trust Fund (Board), it is a burden for the districts and the Board to expend significant resources in monitoring the status of title of all district land holdings, filing notices to protect district interests, and defending its interest in land holdings where they may be challenged based on MRTA.

Section 712.03, F.S., identifies those interests in property that are not extinguished by marketable record title. Currently only sovereignty submerged lands and covenants recorded under the provisions of chapter 376, F.S., or chapter 403, F.S., expressly exempt governmental interests from extinguishment. Another provision of s. 712.03, F.S., exempts easements from extinguishment, when any parts of the easement are in use. The easement exception implicates governmental entities who acquire conservation easements and land protection agreements. The "easement in use" exception was originally intended to apply to visible use on the ground, by which an owner would have notice that someone else might be using the land. Conservation easements and land protection agreements, however, are not necessarily visible on the ground, so uncertainty surrounds whether the "easement in use" exception protects those interests from extinguishment by the MRTA.

Effect of the Bill

This bill creates s. 712.03(9), F.S., and amends s. 712.04, F.S., respectively, to create an exception to the applicability of MARTA for any right, title, or interest held by the Board of Trustees of the Internal Improvement Trust Fund, any water management district created pursuant to ch. 373, F.S., or the federal government. These amendments also resolve the confusion over whether conservation easements and land protection agreements were "easements in use" and prevent rights and interests acquired with public funds for public benefit from being extinguished.

¹ "Root of title" means any title transaction purporting to create or transfer the estate claimed by any person and which is the last title transaction to have been recorded at least 30 years prior to the time when marketability is being determined. Stated differently, the "root of title" for purposes of the Marketable Record Title Act is the most recent deed or other title transaction recorded in the unbroken chain of title at least 30 years in the past.

B. SECTION DIRECTORY:

Section 1. Creates s. 712.03(9), F.S., related to exceptions to the Marketable Record Title Act.

Section 2. Amends s. 712.04, F.S., providing conforming language.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The Board of Trustees of the Internal Improvement Trust Fund and water management districts may see reduced litigation costs from the clarification of titles to lands vested in the state. However, these litigation savings, if any, are indeterminate.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to: require counties or municipalities to spend funds or take an 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 a state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

None.

1 A bill to be entitled
 2 An act relating to marketable record title; amending s.
 3 712.03, F.S.; revising the exceptions to marketability by
 4 including any right, title, or interest held by the Board
 5 of Trustees of the Internal Improvement Trust Fund, a
 6 water management district, or the United States; amending
 7 s. 712.04, F.S.; conforming provisions to changes made by
 8 the act; providing an effective date.

9
 10 Be It Enacted by the Legislature of the State of Florida:

11
 12 Section 1. Section 712.03, Florida Statutes, is amended to
 13 read:

14 712.03 Exceptions to marketability.—A ~~Such~~ marketable
 15 record title does ~~shall~~ not affect or extinguish the following
 16 rights:

17 (1) Estates or interests, easements, and use restrictions
 18 disclosed by and defects inherent in the muniments of title on
 19 which the said estate is based, beginning with the root of
 20 title, + ~~provided, however,~~ that a general reference in any ~~of~~
 21 ~~such~~ muniments to easements, use restrictions, or other
 22 interests created before ~~prior to~~ the root of title is ~~shall~~ not
 23 be sufficient to preserve them unless specific identification by
 24 reference to book and page of record or by name of recorded plat
 25 is ~~be~~ made therein to a recorded title transaction which
 26 imposed, transferred, or continued such easement, use
 27 restrictions, or other interests; subject, however, to ~~the~~
 28 ~~provisions of~~ subsection (5).

29 (2) Estates, interests, claims, or charges, or any
 30 covenant or restriction, preserved by the filing of a proper
 31 notice in accordance with this chapter ~~the provisions hereof~~.

32 (3) Rights of any person in possession of the lands, so
 33 long as such person is in such possession.

34 (4) Estates, interests, claims, or charges arising out of
 35 a title transaction that ~~which~~ has been recorded after
 36 ~~subsequent to~~ the effective date of the root of title.

37 (5) Recorded or unrecorded easements or rights, interest
 38 or servitude in the nature of easements, rights-of-way, and
 39 terminal facilities, including those of a public utility or ~~of a~~
 40 governmental agency, so long as such easements or rights,
 41 interest or servitude, rights-of-way, and terminal facilities
 42 ~~the same~~ are in use. ~~used and~~ The use of any part of a recorded
 43 or unrecorded easement or right, interest or servitude in the
 44 nature of an easement, right-of-way, or terminal facility
 45 excepts thereof shall except from the operation hereof the right
 46 to the entire use of such easement or right, interest or
 47 servitude, right-of-way, or terminal facility thereof. ~~No~~ Notice
 48 need not be filed in order to preserve the lien of any mortgage
 49 or deed of trust or any supplement thereto encumbering any such
 50 recorded or unrecorded easements, or rights, interest, or
 51 servitude in the nature of easements, rights-of-way, and
 52 terminal facilities. However, this subsection does not preserve
 53 ~~nothing herein shall be construed as preserving~~ to the mortgagee
 54 or grantee of any such mortgage or deed of trust or any
 55 supplement thereto any greater rights than the rights of the
 56 mortgagor or grantor.

57 (6) Rights of any person in whose name the land is
 58 assessed on the county tax rolls for such period of time as the
 59 land is so assessed and which rights are preserved for a period
 60 of 3 years after the land is last assessed in such person's
 61 name.

62 (7) State title to lands beneath navigable waters acquired
 63 by virtue of sovereignty.

64 (8) A restriction or covenant recorded pursuant to chapter
 65 376 or chapter 403.

66 (9) Any right, title, or interest held by the Board of
 67 Trustees of the Internal Improvement Trust Fund, a water
 68 management district created under chapter 373, or the United
 69 States.

70 Section 2. Section 712.04, Florida Statutes, is amended to
 71 read:

72 712.04 Interests extinguished by marketable record title.—
 73 Subject to ~~the matters stated in s. 712.03, a such~~ marketable
 74 record title is ~~shall be~~ free and clear of all estates,
 75 interests, claims, or charges ~~whatsoever~~, the existence of which
 76 depends upon any act, title transaction, event, or omission that
 77 occurred before ~~prior to~~ the effective date of the root of
 78 title. Except as provided in s. 712.03, all such estates,
 79 interests, claims, or charges, however denominated, whether they
 80 ~~such estates, interests, claims, or charges~~ are or appear to be
 81 held or asserted by a person sui juris or under a disability,
 82 whether such person is within or without the state, ~~whether such~~
 83 ~~person is~~ natural or corporate, or ~~is~~ private or governmental,
 84 are hereby declared to be null and void. However, except that

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2010

85 | this chapter does ~~shall not be deemed to~~ affect any right,
86 | title, or interest of the United States, Florida, or any of its
87 | officers, boards, commissions, or other agencies reserved in the
88 | patent or deed by which the United States, Florida, or any of
89 | its agencies parted with title.

90 | Section 3. This act shall take effect July 1, 2010.

Amendment No.

COUNCIL/COMMITTEE 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 Council/Committee hearing bill: Agriculture & Natural Resources
2 Policy Committee
3 Representative Abruzzo offered the following:

Amendment (with title amendment)

Remove everything after the enacting clause and insert:

Section 1. Subsection (9) is added to section 712.03,
Florida Statutes, to read:

712.03 Exceptions to marketability.—Such marketable record
title shall not affect or extinguish the following rights:

(9) Any right, title, or interest held by the Board of
Trustees of the Internal Improvement Trust Fund, any water
management district created under chapter 373, or the United
States.

Section 2. Section 712.04, Florida Statutes, is amended to
read:

712.04 Interests extinguished by marketable record title.—
Subject to ~~the matters stated in s. 712.03, a~~ such marketable
record title is ~~shall be~~ free and clear of all estates,

Amendment No.

20 interests, claims, or charges ~~whatsoever~~, the existence of which
 21 depends upon any act, title transaction, event, or omission that
 22 occurred before ~~prior to~~ the effective date of the root of
 23 title. Except as provided in s. 712.03, all such estates,
 24 interests, claims, or charges, however denominated, whether they
 25 ~~such estates, interests, claims, or charges~~ are or appear to be
 26 held or asserted by a person sui juris or under a disability,
 27 whether such person is within or without the state, ~~whether such~~
 28 ~~person is~~ natural or corporate, or ~~is~~ private or governmental,
 29 are ~~hereby~~ declared to be null and void. However, except that
 30 this chapter does ~~shall not be deemed to~~ affect any right,
 31 title, or interest of the United States, Florida, or any of its
 32 officers, boards, commissions, or other agencies reserved in the
 33 patent or deed by which the United States, Florida, or any of
 34 its agencies parted with title.

35 Section 3. This act shall take effect July 1, 2010.

36
 37 -----
 38 **T I T L E A M E N D M E N T**

39 Remove the entire title and insert:

40 A bill to be entitled

41 An act relating to marketable record title; amending s.
 42 712.03, F.S.; revising the exceptions to marketability by
 43 including any right, title, or interest held by the Board
 44 of Trustees of the Internal Improvement Trust Fund, any
 45 water management district, or the United States; amending
 46 s. 712.04, F.S.; conforming provisions to changes made by
 47 the act; providing an effective date.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 617

Limestone Mining

SPONSOR(S): Bembry

TIED BILLS:

IDEN./SIM. BILLS: SB 1338

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Agriculture & Natural Resources Policy Committee		Deslatte <i>TD</i>	Reese <i>AR</i>
2) Natural Resources Appropriations Committee			
3) General Government Policy Council			
4)			
5)			

SUMMARY ANALYSIS

The bill replaces outdated mitigation ratio language, specific to limestone, with the use of the uniform wetland mitigation assessment method when determining the amount of wetland mitigation. The bill proposes that for limestone mines, the amount of the financial responsibility mechanism for the construction of wetland mitigation be reduced from the amount required for the impacts during the entire life of the project to the amount required for three years of impacts. The initial amount of financial responsibility for permitted activities will be provided for 110% of the estimated mitigation costs affected in the first three years of operations. Each year after that, the amount of the financial responsibility will be updated for the next year of operations.

The bill would authorize limestone mine operators to apply for a life-of-the-mine permit. The Department of Environmental Protection (DEP) will coordinate and integrate the processing of the application with the application for other permits, such as industrial wastewater discharge permits and National Pollution Discharge and Elimination System (NPDES) permits. For applications filed prior to July 1, 2010, the permit must be approved or denied within 90 days.

The bill provides that the amendments to the above statutes will be retroactively applied to permits granted after September 1, 2009.

Finally, the bill conforms statutory references to use the term 'limestone'.

DEP estimates a negligible fiscal impact on the collection of permit fees since the permit fees collected would be the same as the aggregate of the fees for new permit applications and modifications.

The bill takes effect upon becoming law.

HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Aggregate Mine Permitting

The Mandatory Nonphosphate Program, within the DEP's Bureau of Mine Reclamation, administers the laws and regulations related to the reclamation of mined land and the protection of water resources (water quality, water quantity and wetlands) at mines extracting heavy minerals, fuller's earth, limestone, dolomite & shell, gravel, sand, dirt, clay, peat, and other solid resources (except phosphate). The section administers two regulatory programs: Environmental Resource Permitting (ERP) and Reclamation.

- ERP regulates the creation or alteration of water bodies, including old mine pits. It may also be required for the creation of impervious areas and for certain projects exclusively in uplands. These permits focus on how the activity will affect wetlands, water quality, and water quantity. How changes to wetlands affect wildlife are also considered when ERPs are issued.
- Reclamation means the reasonable rehabilitation of land where resource extraction has occurred. Areas disturbed by mining operations, and subject to the reclamation requirements, must be reclaimed after mining is complete. Debris, litter, junk, worn-out or unusable equipment or materials must be appropriately disposed. The land must be recontoured and stabilized to control erosion. Bare areas must be revegetated. Prior to mining, the operator must provide a conceptual mining and reclamation plan or a reclamation notice.

Specific to limestone mining, s. 378.501, F.S., provides that no operator may begin the process of limestone resource extraction at a new mine without notifying the Secretary of DEP of the intention to mine. The operator's notice of intent to mine must include, but not be limited to:

- The operator's conceptual mining plan, which is comprised of such maps and other supporting documents as may be reasonably required by the DEP, the operator's time schedule that assures that the reclamation process is achieved in a timely manner, and the operator's estimated life of the mine.
- The operator's signed acknowledgment of the limestone reclamation performance standards provided by s. 378.503, F.S.

In addition to the regulatory programs discussed above, many mining activities are subject to other regulatory requirements. If water will be pumped or moved, a water/consumptive use permit may be required from the water management district. If wetlands or surface waters will be altered, a federal dredge and fill permit may be required from the U.S. Army Corps of Engineers. In order to address stormwater runoff and industrial waste discharges, an industrial wastewater permit may be required from the Industrial Wastewater Program within the DEP.

As an alternative, operators who mine heavy minerals or fuller's earth can apply for life-of-the-mine permits. The application for a life-of-the-mine permit is reviewed based on the requirements of the statutes and rules for the ERP and conceptual mining and reclamation plan. The DEP will coordinate and integrate the processing of the application with the applications for the other permits. The application for the life-of-the-mine permit must be approved or denied within 135 days of a complete application. It should be noted that this period is longer than the 90-day period for ERPs and conceptual mining and reclamation plans¹.

Mining and wetland mitigation

Before dredging or filling of a wetland area can begin, the financial responsibility for the completion of wetland mitigation must be provided. The financial responsibility mechanism must be equal to 110% of the estimated mitigation costs for all mitigation proposed during the life of the project. This mechanism can be very high for large projects with an expected long life expectancy and may be provided years prior to the adverse impacts to wetlands. An exception to this is an ERP for phosphate mining. For these type of permits, the initial financial responsibility mechanism must be sufficient for the mitigation of impacts to wetlands and other surface waters during the first three years of operation. After that, the financial responsibility mechanism is updated annually. The types of acceptable financial responsibility mechanisms are provided in the rules of the water management districts. The provisions of this subsection do not apply to any mitigation required pursuant to a permit initially issued by the DEP or water management district prior to January 1, 2005².

Limestone

Section 378.403(8), F.S., defines limestone as any extracted material composed principally of calcium or magnesium carbonate. According to the DEP, this definition can also include material that can be called dolomite, dolostone, marble, shell, sandy shell, coquina, chalk, marl, marl stone, travertine, and tufa. Many statutes use the terms 'limerock' or 'lime rock', however, these terms are not defined in statute.

Effect of Proposed Changes

The bill amends s. 373.414, F.S., replacing outdated mitigation ratio language, specific to limestone, with the use of the uniform wetland mitigation assessment method when determining the amount of wetland mitigation. The bill proposes that for limestone mines, the amount of the financial responsibility mechanism for the construction of wetland mitigation be reduced from the amount required for the impacts during the entire life of the project to the amount required for three years of impacts. The initial amount of financial responsibility for permitted activities will be provided for 110% of the estimated mitigation costs affected in the first three years of operations. Each year after that, the amount of the financial responsibility will be updated for the next year of operations.

The bill amends s. 378.901, F.S., authorizing limestone mine operators to apply for life-of-the-mine permits. DEP will coordinate and integrate the processing of the application with the application for other permits, such as industrial wastewater discharge permits and NPDES permits. For applications filed prior to July 1, 2010, the permit must be approved or denied within 90 days.

The bill also provides that the amendments to the above statutes will be retroactively applied to permits granted after September 1, 2009.

¹ Department of Environmental Protection 2010 analysis

² *Id.*

Finally, the bill conforms statutory references to use the term 'limestone'.

B. SECTION DIRECTORY:

Section 1. Amends s. 373.414, F.S., eliminating criteria for determining the ratio of mitigation-to-wetlands loss relating to limestone and sand mining; revising financial responsibility for mitigation for wetlands and other surface waters required by a permit for activities associated with the extraction of limestone; conforming terminology.

Section 2. Amends s. 378.901, F.S., authorizing mine operators proposing to mine or extract limestone to apply for a life-of-the-mine permit; providing an exception for life-of-the-mine permit application review requirements.

Section 3. Amends s. 316.520, F.S., conforming terminology

Section 4. Amends s. 337.0261, F.S., conforming terminology

Section 5. Amends s. 373.4149, F.S., conforming terminology

Section 6. Amends s. 373.41492, F.S., conforming terminology

Section 7. Amends s. 373.4415, F.S., conforming terminology

Section 8. Amends s. 377.244, F.S., conforming terminology

Section 9. Amends s. 378.403, F.S., conforming terminology

Section 10. Amends s. 378.4115, F.S., conforming terminology

Section 11. Provides for retroactive applicability

Section 12. Provides an effective date

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

See Fiscal Comments below

2. Expenditures:

See Fiscal Comments below

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None

2. Expenditures:

None

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

According to DEP's analysis, limestone mine operators taking advantage of the proposed changes will be required to update the estimated mitigation costs and financial responsibility mechanism annually.

DEP also notes that the operators will have a lower amount of the financial assurance mechanism encumbered at any given time during the life of the project.

D. FISCAL COMMENTS:

DEP expects there will be a negligible effect on the collection of permit fees since the permit fees collected under the proposed changes (life-of-the-mine permit) would be the same as the aggregate of the fees for new permit applications and modifications.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This 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:

DEP provided the following comments:

Line 67 of the bill applies the financial responsibility provisions to the extraction of limestone **and** phosphate. In this context only a mine that extracts both limestone and phosphate could meet the provisions of s. 373.414(19)(a), F.S. as amended.

Line 102-103 of the bill attempts to correct a potential processing time clock issue with respect to the statutory 135-day processing time for applications filed before July 1, 2010, if this bill passes. There are a number of problems with this approach including 1) doing so has the effect of shortening the processing timeframe from 135-days to the 90-days provide by Ch. 120 thus reducing the agency time to process for some of the most complicated applications; 2) by making this retroactive to any application filed before July 1, 2010 the bill creates the potential of an **instant** default issuance of a permit for any application that is on day 90+ on the effective date of the bill; and 3) makes any application filed before July 1, 2010 ineligible for the tolling of the processing time period of s. 120.60 including any application currently benefiting from that provision. As such this language creates more problems than it solves therefore staff recommends that the language be removed from the bill.

Lines 292 to 297 are intended to apply the amendments to ss. 373.414 and 378.901 retroactively to any permit granted by the Department, under those statutes, after September 1, 2009. Ignoring the potential legal issues associated with applying a statutory change retroactively without a finding of an overriding public purpose it is difficult to determine what, if anything, this provision accomplishes that could not be accomplished under existing law if the other provisions of the bill, except as noted above, were to pass. Indeed the new provisions of ss 373.414 and 378.901 cannot be retroactively applied to permits already issued by the Department without agency action to modify those permits if such modification is desired and requested by the permit holder. Should this bill become law any limestone mine:

- application filled after the bill becomes law could benefit from the statutory amendments contained in this bill;

- application currently under review at the time the bill becomes law could, at the request of the applicant and with appropriate adjustment of the processing time clock, be reviewed in accordance with the amendments contained in this bill; and
- permit issued prior to this bill becoming law could, at the request of the permit holder and subject to review by the department, be modified in accordance with the amendments contained in this bill.

Based on this analysis DEP staff recommend the bill be amended to delete Section 11 in its entirety.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

1 A bill to be entitled
 2 An act relating to limestone mining; amending s. 373.414,
 3 F.S.; eliminating criteria for determining the ratio of
 4 mitigation-to-wetlands loss relating to limestone and sand
 5 mining; providing that financial responsibility for
 6 mitigation for wetlands and other surface waters required
 7 by a permit for activities associated with the extraction
 8 of limestone are subject to approval by the department as
 9 part of permit application review; conforming terminology;
 10 amending s. 378.901, F.S.; authorizing mine operators
 11 proposing to mine or extract limestone to apply for a
 12 life-of-the-mine permit; providing an exception for life-
 13 of-the-mine permit application review requirements;
 14 amending ss. 316.520, 337.0261, 373.4149, 373.41492,
 15 373.4415, 377.244, 378.403, and 378.4115, F.S.; conforming
 16 terminology; providing for retroactive applicability;
 17 providing an effective date.

18
 19 Be It Enacted by the Legislature of the State of Florida:

20
 21 Section 1. Paragraph (d) of subsection (6), subsection
 22 (16), and paragraph (a) of subsection (19) of section 373.414,
 23 Florida Statutes, are amended to read:

24 373.414 Additional criteria for activities in surface
 25 waters and wetlands.—

26 (6)

27 (d) Onsite reclamation of the mine pit for limestone
 28 ~~limerock~~ and sand mining shall be conducted in accordance with

29 the requirements of chapter 378.

30 ~~1.~~ Mitigation activities for limestone ~~limerock~~ and sand
 31 mining must offset the regulated activities' adverse impacts on
 32 surface waters and wetlands. Mitigation activities shall be
 33 located on site, unless onsite mitigation activities are not
 34 feasible, in which case, offsite mitigation as close to the
 35 activities as possible shall be required. However, mitigation
 36 banking may be an acceptable form of mitigation, whether on or
 37 off site, as judged on a case-by-case basis.

38 ~~2. The ratio of mitigation to wetlands loss shall be~~
 39 ~~determined on a case-by-case basis and shall be based on the~~
 40 ~~quality of the wetland to be impacted and the type of mitigation~~
 41 ~~proposed.~~

42 (16) Until October 1, 2000, regulation under rules adopted
 43 pursuant to this part of any sand, ~~limerock,~~ or limestone mining
 44 activity which is located in Township 52 South, Range 39 East,
 45 sections 1, 2, 3, 10, 11, 12, 13, 14, 15, 22, 23, 24, 25, 26,
 46 27, 34, 35, and 36; in Township 52 South, Range 40 East,
 47 sections 6, 7, 8, 18, and 19; in Township 53 South, Range 39
 48 East, sections 1, 2, 13, 21, 22, 23, 24, 25, 26, 33, 34, 35, and
 49 36; and in Township 54 South, Range 38 East, sections 24, and
 50 25, and 36, shall not include the rules adopted pursuant to
 51 subsection (9). In addition, until October 1, 2000, such
 52 activities shall continue to be regulated under the rules
 53 adopted pursuant to ss. 403.91-403.929, 1984 Supplement to the
 54 Florida Statutes 1983, as amended, as such rules existed prior
 55 to the effective date of the rules adopted pursuant to
 56 subsection (9) and such dredge and fill jurisdiction shall be

57 that which existed prior to January 24, 1984. In addition, any
 58 such sand, ~~limerock~~, or limestone mining activity shall be
 59 approved by Miami-Dade County and the United States Army Corps
 60 of Engineers. This section shall only apply to mining activities
 61 which are continuous and carried out on land contiguous to
 62 mining operations that were in existence on or before October 1,
 63 1984.

64 (19) (a) Financial responsibility for mitigation for
 65 wetlands and other surface waters required by a permit issued
 66 pursuant to this part for activities associated with the
 67 extraction of limestone and phosphate are subject to approval by
 68 the department as part of permit application review. Financial
 69 responsibility for permitted activities which will occur over a
 70 period of 3 years or less of mining operations must be provided
 71 to the department prior to the commencement of mining operations
 72 and shall be in an amount equal to 110 percent of the estimated
 73 mitigation costs for wetlands and other surface waters affected
 74 under the permit. For permitted activities which will occur over
 75 a period of more than 3 years of mining operations, the initial
 76 financial responsibility demonstration shall be in an amount
 77 equal to 110 percent of the estimated mitigation costs for
 78 wetlands and other surface waters affected in the first 3 years
 79 of operation under the permit; and, for each year thereafter,
 80 the financial responsibility demonstration shall be updated,
 81 including to provide an amount equal to 110 percent of the
 82 estimated mitigation costs for the next year of operations under
 83 the permit for which financial responsibility has not already
 84 been demonstrated and to release portions of the financial

85 responsibility mechanisms in accordance with applicable rules.

86 Section 2. Subsection (2) and paragraph (c) of subsection
87 (4) of section 378.901, Florida Statutes, are amended to read:

88 378.901 Life-of-the-mine permit.—

89 (2) As an alternative to, and in lieu of, separate
90 applications for permits required by part IV of chapter 373 and
91 part IV of this chapter, each operator who proposes to mine or
92 extract heavy minerals, limestone, or fuller's earth clay may
93 apply to the bureau for a life-of-the-mine permit.

94 (4) Notwithstanding the provisions of s. 378.405, an
95 application for a life-of-the-mine permit must be reviewed as
96 follows:

97 (c) A life-of-the-mine permit must be approved or denied
98 by the bureau within 135 days after receipt of the original
99 completed application, receipt of the timely requested
100 additional information, or correction of errors or omissions.
101 The 135-day period must be tolled in accordance with s. 120.60.
102 This paragraph does not apply to applications for permits to
103 mine or extract limestone filed before July 1, 2010.

104 Section 3. Subsection (2) of section 316.520, Florida
105 Statutes, is amended to read:

106 316.520 Loads on vehicles.—

107 (2) It is the duty of every owner and driver, severally,
108 of any vehicle hauling, upon any public road or highway open to
109 the public, dirt, sand, limestone ~~lime rock~~, gravel, silica, or
110 other similar aggregate or trash, garbage, any inanimate object
111 or objects, or any similar material that could fall or blow from
112 such vehicle, to prevent such materials from falling, blowing,

113 or in any way escaping from such vehicle. Covering and securing
 114 the load with a close-fitting tarpaulin or other appropriate
 115 cover or a load securing device meeting the requirements of 49
 116 C.F.R. s. 393.100 or a device designed to reasonably ensure that
 117 cargo will not shift upon or fall from the vehicle is required
 118 and shall constitute compliance with this section.

119 Section 4. Subsections (1) and (4) of section 337.0261,
 120 Florida Statutes, are amended to read:

121 337.0261 Construction aggregate materials.—

122 (1) DEFINITIONS.—"Construction aggregate materials" means
 123 crushed stone, limestone, dolomite, ~~limerock~~, shell rock,
 124 cemented coquina, sand for use as a component of mortars,
 125 concrete, bituminous mixtures, or underdrain filters, and other
 126 mined resources providing the basic material for concrete,
 127 asphalt, and road base.

128 (4) EXPEDITED PERMITTING.—Due to the state's critical
 129 infrastructure needs and the potential shortfall in available
 130 construction aggregate materials, limestone ~~limerock~~
 131 environmental resource permitting and reclamation applications
 132 filed after March 1, 2007, are eligible for the expedited
 133 permitting processes contained in s. 403.973. Challenges to
 134 state agency action in the expedited permitting process for
 135 establishment of a limestone ~~limerock~~ mine in this state under
 136 s. 403.973 are subject to the same requirements as challenges
 137 brought under s. 403.973(14)(a), except that, notwithstanding s.
 138 120.574, summary proceedings must be conducted within 30 days
 139 after a party files the motion for summary hearing, regardless
 140 of whether the parties agree to the summary proceeding.

141 Section 5. Subsection (4) of section 373.4149, Florida
 142 Statutes, is amended to read:

143 373.4149 Miami-Dade County Lake Belt Plan.—

144 (4) The identification of the Miami-Dade County Lake Belt
 145 Area shall not preempt local land use jurisdiction, planning, or
 146 regulatory authority in regard to the use of land by private
 147 land owners. When amending local comprehensive plans, or
 148 implementing zoning regulations, development regulations, or
 149 other local regulations, Miami-Dade County shall strongly
 150 consider limestone mining activities and ancillary operations,
 151 such as lake excavation, including use of explosives, rock
 152 processing, cement, concrete and asphalt products manufacturing,
 153 and ancillary activities, within the rock mining supported and
 154 allowable areas of the Miami-Dade County Lake Plan adopted by
 155 subsection (1); provided, however, that limestone ~~limerock~~
 156 mining activities are consistent with wellfield protection.
 157 Rezoning or amendments to local comprehensive plans concerning
 158 properties that are located within 1 mile of the Miami-Dade Lake
 159 Belt Area shall be compatible with limestone mining activities.
 160 No rezoning, variances, or amendments to local comprehensive
 161 plans for any residential purpose may be approved for any
 162 property located in sections 35 and 36 and the east one-half of
 163 sections 24 and 25, Township 53 South, Range 39 East until such
 164 time as there is no active mining within 2 miles of the
 165 property. This section does not preclude residential development
 166 that complies with current regulations.

167 Section 6. Subsection (2) and paragraph (b) of subsection
 168 (6) of section 373.41492, Florida Statutes, are amended to read:

169 373.41492 Miami-Dade County Lake Belt Mitigation Plan;
 170 mitigation for mining activities within the Miami-Dade County
 171 Lake Belt.—

172 (2) To provide for the mitigation of wetland resources
 173 lost to mining activities within the Miami-Dade County Lake Belt
 174 Plan, effective October 1, 1999, a mitigation fee is imposed on
 175 each ton of limestone ~~limerock~~ and sand extracted by any person
 176 who engages in the business of extracting limestone ~~limerock~~ or
 177 sand from within the Miami-Dade County Lake Belt Area and the
 178 east one-half of sections 24 and 25 and all of sections 35 and
 179 36, Township 53 South, Range 39 East. The mitigation fee is
 180 imposed for each ton of limestone ~~limerock~~ and sand sold from
 181 within the properties where the fee applies in raw, processed,
 182 or manufactured form, including, but not limited to, sized
 183 aggregate, asphalt, cement, concrete, and other limestone
 184 ~~limerock~~ and concrete products. The mitigation fee imposed by
 185 this subsection for each ton of limestone ~~limerock~~ and sand sold
 186 shall be 12 cents per ton beginning January 1, 2007; 18 cents
 187 per ton beginning January 1, 2008; and 24 cents per ton
 188 beginning January 1, 2009. To upgrade a water treatment plant
 189 that treats water coming from the Northwest Wellfield in Miami-
 190 Dade County, a water treatment plant upgrade fee is imposed
 191 within the same Lake Belt Area subject to the mitigation fee and
 192 upon the same kind of mined limestone ~~limerock~~ and sand subject
 193 to the mitigation fee. The water treatment plant upgrade fee
 194 imposed by this subsection for each ton of limestone ~~limerock~~
 195 and sand sold shall be 15 cents per ton beginning on January 1,
 196 2007, and the collection of this fee shall cease once the total

197 amount of proceeds collected for this fee reaches the amount of
 198 the actual moneys necessary to design and construct the water
 199 treatment plant upgrade, as determined in an open, public
 200 solicitation process. Any limestone ~~limerock~~ or sand that is
 201 used within the mine from which the limestone ~~limerock~~ or sand
 202 is extracted is exempt from the fees. The amount of the
 203 mitigation fee and the water treatment plant upgrade fee imposed
 204 under this section must be stated separately on the invoice
 205 provided to the purchaser of the limestone ~~limerock~~ or sand
 206 product from the limestone ~~limerock~~ or sand miner, or its
 207 subsidiary or affiliate, for which the fee or fees apply. The
 208 limestone ~~limerock~~ or sand miner, or its subsidiary or
 209 affiliate, who sells the limestone ~~limerock~~ or sand product
 210 shall collect the mitigation fee and the water treatment plant
 211 upgrade fee and forward the proceeds of the fees to the
 212 Department of Revenue on or before the 20th day of the month
 213 following the calendar month in which the sale occurs.

214 (6)

215 (b) Expenditures of the mitigation fee must be approved by
 216 an interagency committee consisting of representatives from each
 217 of the following: the Miami-Dade County Department of
 218 Environmental Resource Management, the Department of
 219 Environmental Protection, the South Florida Water Management
 220 District, and the Fish and Wildlife Conservation Commission. In
 221 addition, the limestone ~~limerock~~ mining industry shall select a
 222 representative to serve as a nonvoting member of the interagency
 223 committee. At the discretion of the committee, additional
 224 members may be added to represent federal regulatory,

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2010

225 environmental, and fish and wildlife agencies.

226 Section 7. Section 373.4415, Florida Statutes, is amended
227 to read:

228 373.4415 Role of Miami-Dade County in processing permits
229 for limestone ~~limerock~~ mining in Miami-Dade County Lake Belt.—
230 The department and Miami-Dade County shall cooperate to
231 establish and fulfill reasonable requirements for the
232 departmental delegation to the Miami-Dade County Department of
233 Environmental Resource Management of authority to implement the
234 permitting program under ss. 373.403-373.439 for limestone
235 ~~limerock~~ mining activities within the geographic area of the
236 Miami-Dade County Lake Belt which was recommended for mining in
237 the report submitted to the Legislature in February 1997 under
238 s. 373.4149. The delegation of authority must be consistent with
239 s. 373.441 and chapter 62-344, Florida Administrative Code. To
240 further streamline permitting within the Miami-Dade County Lake
241 Belt, the department and Miami-Dade County are encouraged to
242 work with the United States Army Corps of Engineers to establish
243 a general permit under s. 404 of the Clean Water Act for
244 limestone ~~limerock~~ mining activities within the geographic area
245 of the Miami-Dade County Lake Belt consistent with the report
246 submitted in February 1997. Miami-Dade County is further
247 encouraged to seek delegation from the United States Army Corps
248 of Engineers for the implementation of any such general permit.
249 This section does not limit the authority of the department to
250 delegate other responsibilities to Miami-Dade County under this
251 part.

252 Section 8. Subsection (2) of section 377.244, Florida

253 Statutes, is amended to read:

254 377.244 Conditions for granting permits for surface
255 exploratory and extraction operations.—

256 (2) The provisions of this act shall not apply to the
257 exploration and removal from lands of peat, muck, marl,
258 limestone, ~~limerock~~, kaolin, fuller's earth, phosphate, common
259 clays, gravel, shell, sand, and similar substances, it being the
260 legislative determination that the mining and extraction
261 operations, and the grants of authority under which these
262 activities are conducted for said substances exempted from the
263 provisions of this act, are dissimilar from the exploratory and
264 extraction operations and the grants of authority under which
265 these activities are conducted for substances which come within
266 the purview of the regulatory provisions of this act.

267 Section 9. Subsection (17) of section 378.403, Florida
268 Statutes, is amended to read:

269 378.403 Definitions.—As used in this part, the term:

270 (17) "Resource" means soil, clay, peat, stone, gravel,
271 sand, limestone ~~limerock~~, metallic ore, or any other solid
272 substance of commercial value found in natural deposits on or in
273 the earth, except phosphate, which is regulated by part III.

274 Section 10. Section 378.4115, Florida Statutes, is amended
275 to read:

276 378.4115 County certification for limestone ~~limerock~~
277 mining in the Miami-Dade County Lake Belt.—The department and
278 Miami-Dade County shall cooperate to establish and fulfill
279 reasonable requirements for the departmental certification of
280 the Miami-Dade County Department of Environmental Resource

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2010

281 Management to implement the reclamation program under ss.
 282 378.401-378.503 for limestone ~~limerock~~ mining activities within
 283 the geographic area of the Miami-Dade County Lake Belt which was
 284 recommended for mining in the report submitted to the
 285 Legislature in February 1997 under s. 373.4149. The delegation
 286 of implementing authority must be consistent with s. 378.411 and
 287 chapter 62C-36, Florida Administrative Code. Further, the
 288 reclamation program shall maximize the efficient mining of
 289 limestone, and the littoral area surrounding the lake
 290 excavations shall not be required to be greater than 100 feet
 291 average in width.

292 Section 11. The amendments to ss. 373.414 and 378.901,
 293 Florida Statutes, made by this act, other than the conforming of
 294 terminology, apply retroactively to any permit granted by the
 295 Department of Environmental Protection under part IV of chapter
 296 373, Florida Statutes, or part IV of chapter 378, Florida
 297 Statutes, after September 1, 2009.

298 Section 12. This act shall take effect upon becoming a
 299 law.

Strike-All Amendment No. 1

COUNCIL/COMMITTEE 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 Council/Committee hearing bill: Agriculture & Natural Resources
2 Policy Committee
3 Representative(s) Bemby offered the following:

4
5 **Strike-All Amendment (with title amendment)**

6 Remove everything after the enacting clause and insert:

7
8 Section 1. Paragraph (a) of subsection (19) of section
9 373.414, Florida Statutes, is amended to read:

10 373.414 Additional criteria for activities in surface
11 waters and wetlands.-

12 (19)(a) Financial responsibility for mitigation for
13 wetlands and other surface waters required by a permit issued
14 pursuant to this part for activities associated with the
15 extraction of limestone and phosphate are subject to approval by
16 the department as part of permit application review. Financial
17 responsibility for permitted activities which will occur over a
18 period of 3 years or less of mining operations must be provided
19 to the department prior to the commencement of mining operations

Strike-All Amendment No. 1

20 and shall be in an amount equal to 110 percent of the estimated
21 mitigation costs for wetlands and other surface waters affected
22 under the permit. For permitted activities which will occur over
23 a period of more than 3 years of mining operations, the initial
24 financial responsibility demonstration shall be in an amount
25 equal to 110 percent of the estimated mitigation costs for
26 wetlands and other surface waters affected in the first 3 years
27 of operation under the permit; and, for each year thereafter,
28 the financial responsibility demonstration shall be updated,
29 including to provide an amount equal to 110 percent of the
30 estimated mitigation costs for the next year of operations under
31 the permit for which financial responsibility has not already
32 been demonstrated and to release portions of the financial
33 responsibility mechanisms in accordance with applicable rules.
34

35 Section 2. Subsection (2) of section 378.901, Florida
36 Statutes, is amended to read:

37 378.901 Life-of-the-mine permit.—

38 (2) As an alternative to, and in lieu of, separate
39 applications for permits required by part IV of chapter 373 and
40 part IV of this chapter, each operator who proposes to mine or
41 extract heavy minerals, limestone, or fuller's earth clay may
42 apply to the bureau for a life-of-the-mine permit. Nothing
43 herin shall limit or restrict the authority of a local
44 government to approve, approve with conditions, deny, or impose
45 a permit duration different than the permit duration issued by
46 the department, pursuant to this subsection.
47

Strike-All Amendment No. 1

48 Section 3. This act shall take effect upon becoming a law.

49

50 -----

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

52 Remove lines 3-17 and insert:

53 F.S.; providing that financial responsibility for mitigation for
54 wetlands and other surface waters required by a permit for
55 activities associated with the extraction of limestone are
56 subject to approval by the department as part of permit
57 application review; conforming terminology; amending s. 378.901,
58 F.S.; authorizing mine operators proposing to mine or extract
59 limestone to apply for a life-of-the-mine permit; providing an
60 effective date.

John J. Flynn, Fleet Advantage
Presentation to Florida Legislature

Florida Clean Air Program (FCAP)

Creating Commerce, Jobs, Revenue and
Improving Health



Florida Clean Air Program Fleet Advantage



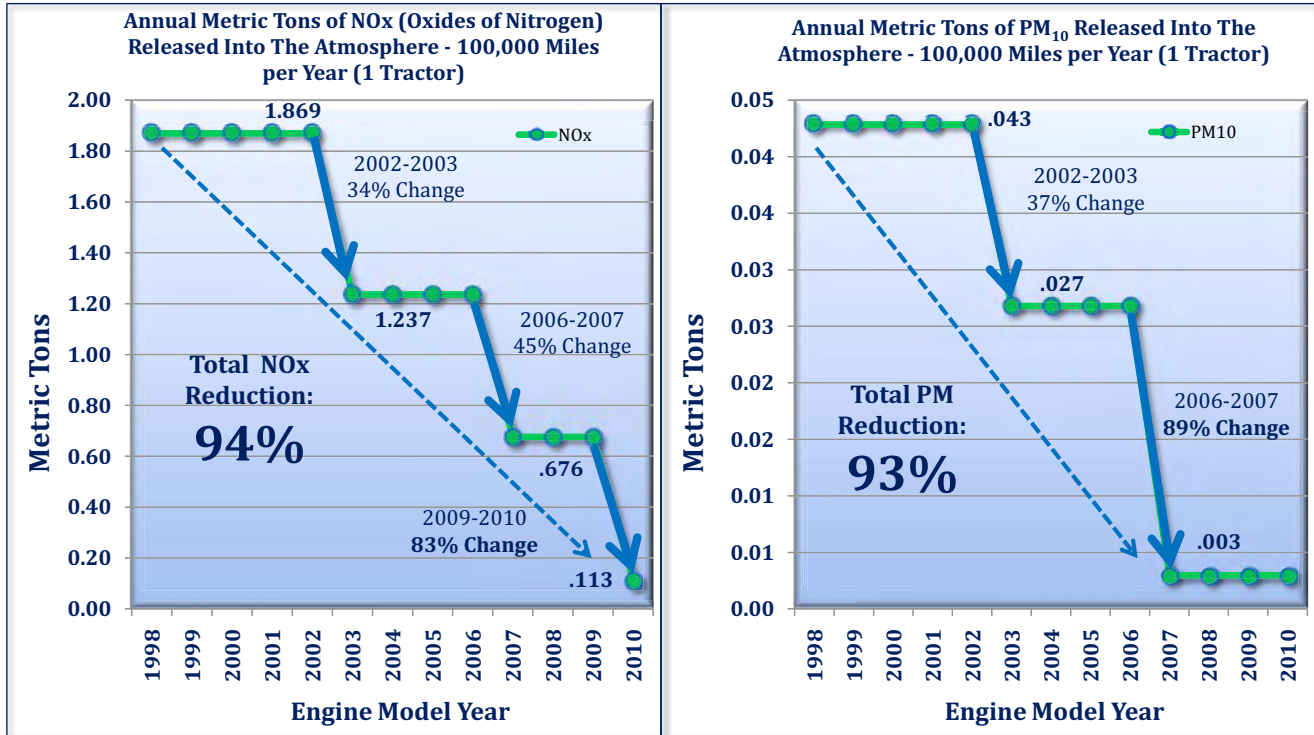
Florida Clean Air Program



Useful Economic Life of Tractor is approximately 30 years

Clean Air Program

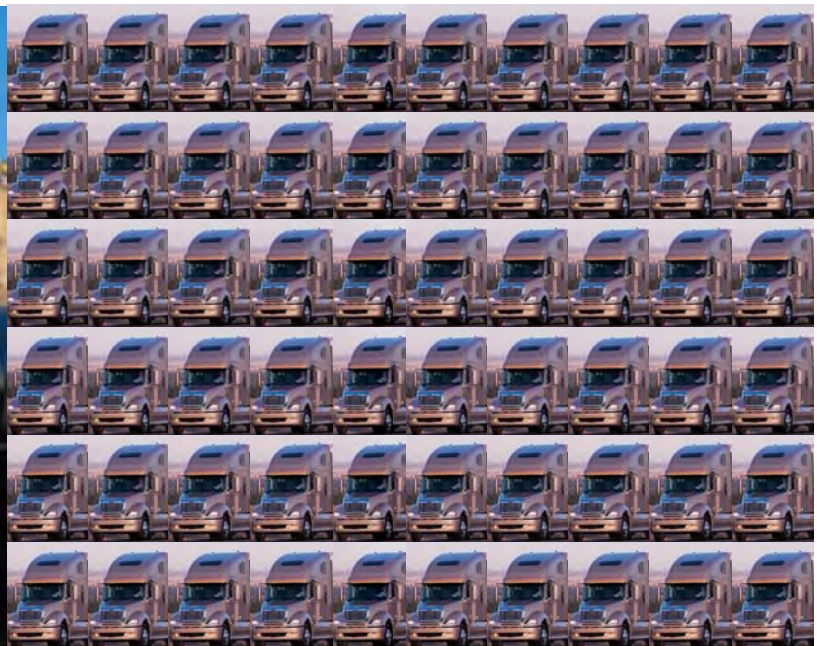
Reductions in Diesel Exhaust Emissions by Model Year



Florida Clean Air Program

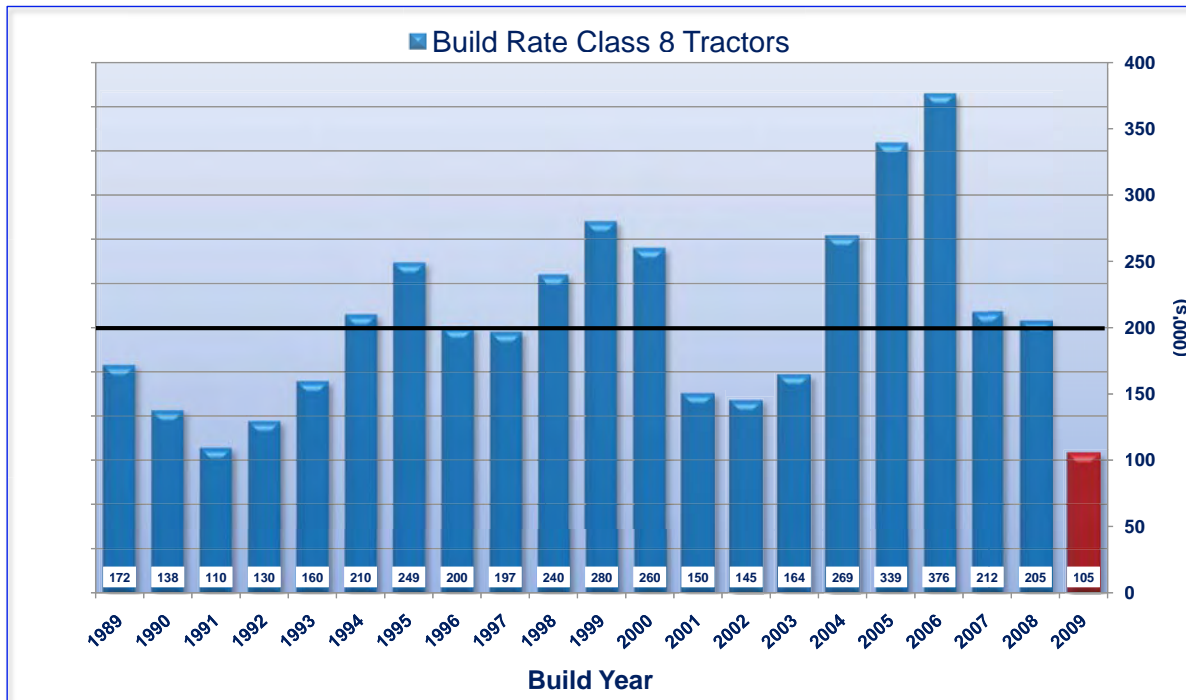
Dirty diesel emissions of
ONE pre 1990

Equal that of
SIXTY 2010 models



Florida Clean Air Program

Build Rates for Class 8 Tractors



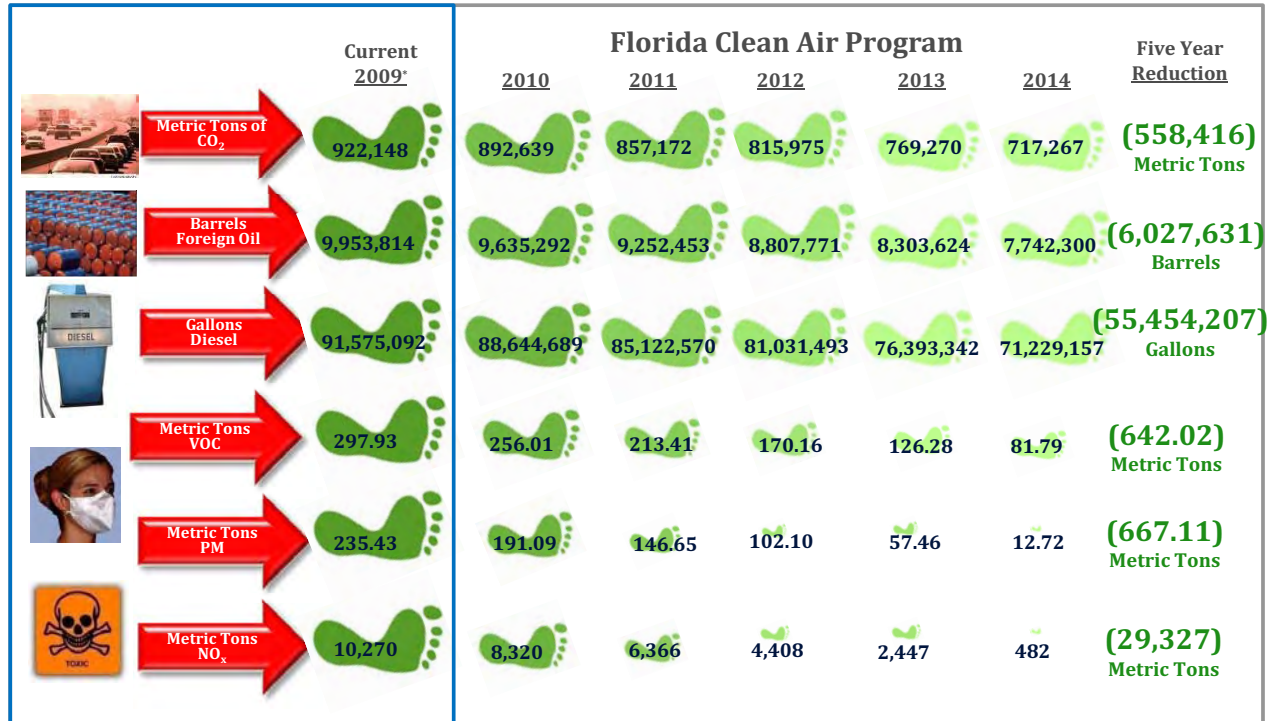
Florida Clean Air Program

Environment and Health Benefits



Florida Clean Air Program

Five Year Reduction at 1,000 Tractors Per Year



5,000 Tractors/ 2002 MY/MPG = 5.5/MPY = 100,000 per Tractor

Florida Clean Air Program

Replacing 5,000 Dirty Diesels reduces CO₂ is the equivalent of taking the Vandolah Power Plant offline for about 5 years



Northern Star Generations Vandolah Power Plant in Wauchula, Fl. Emitted 120,517 MT of CO₂ In 2007*

*CARMA (Carbon Monitoring for Action)
Median Size for Florida Power Plants

Florida Clean Air Program

Composition of Toxic Diesel Exhaust

Carbon Monoxide
Carbon Dioxide
Sulfur Dioxide
Nitrogen Oxides
Aldehydes
Hydrocarbons
PAH Compounds
VOC Compounds
Mercury Compounds
Formaldehyde

Benzene
Elemental carbon
Sulfates
Hydrocarbons
PAH compounds
Carbon dioxide
Particulate Matter 10
Particulate Matter 2.5
Acetaldehyde
Acrolein

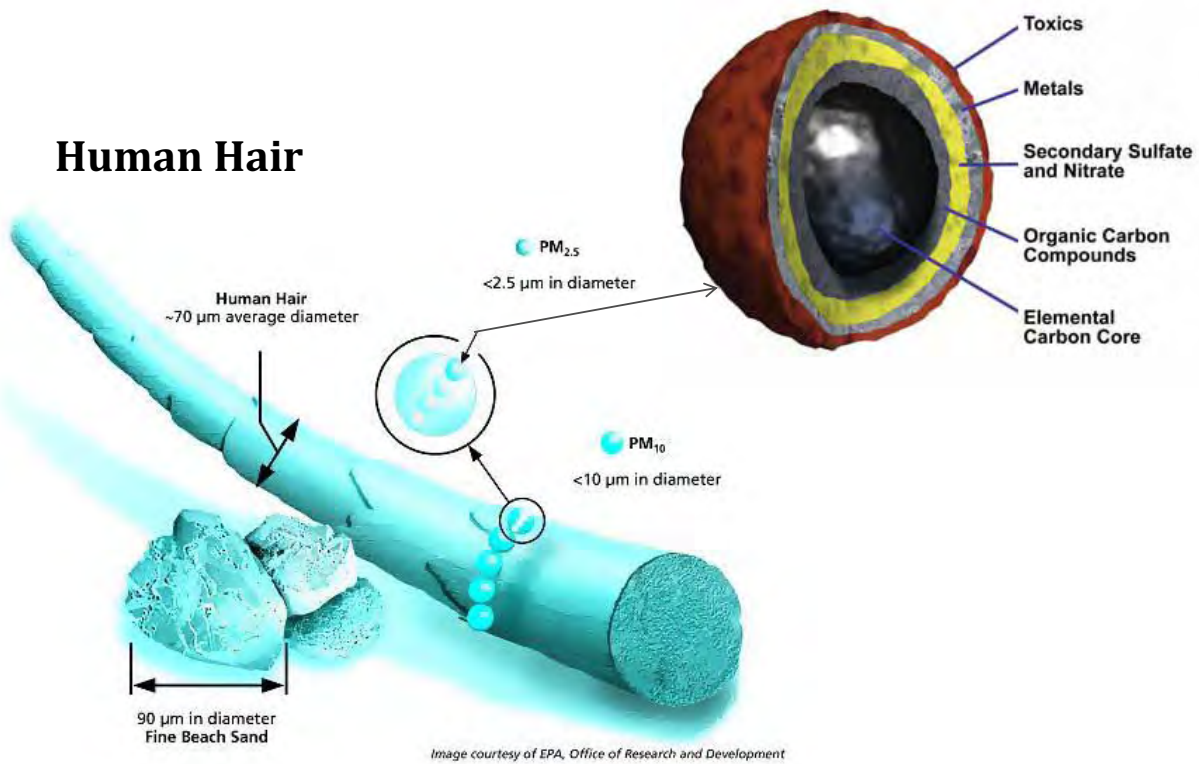
Florida Clean Air Program

Health Effects of Toxic Diesel Exhaust Particulate Matter in U.S.

- Poses cancer risk 7.5 times higher than **combined** cancer risk from all other air toxins
- Directly responsible for the premature death of 21,000 people in the U.S. annually including 3,000 deaths from lung cancer
- Directly responsible for 27,000 heart attacks annually
- Directly responsible for 400,000 asthma attack annually

Florida Clean Air Program

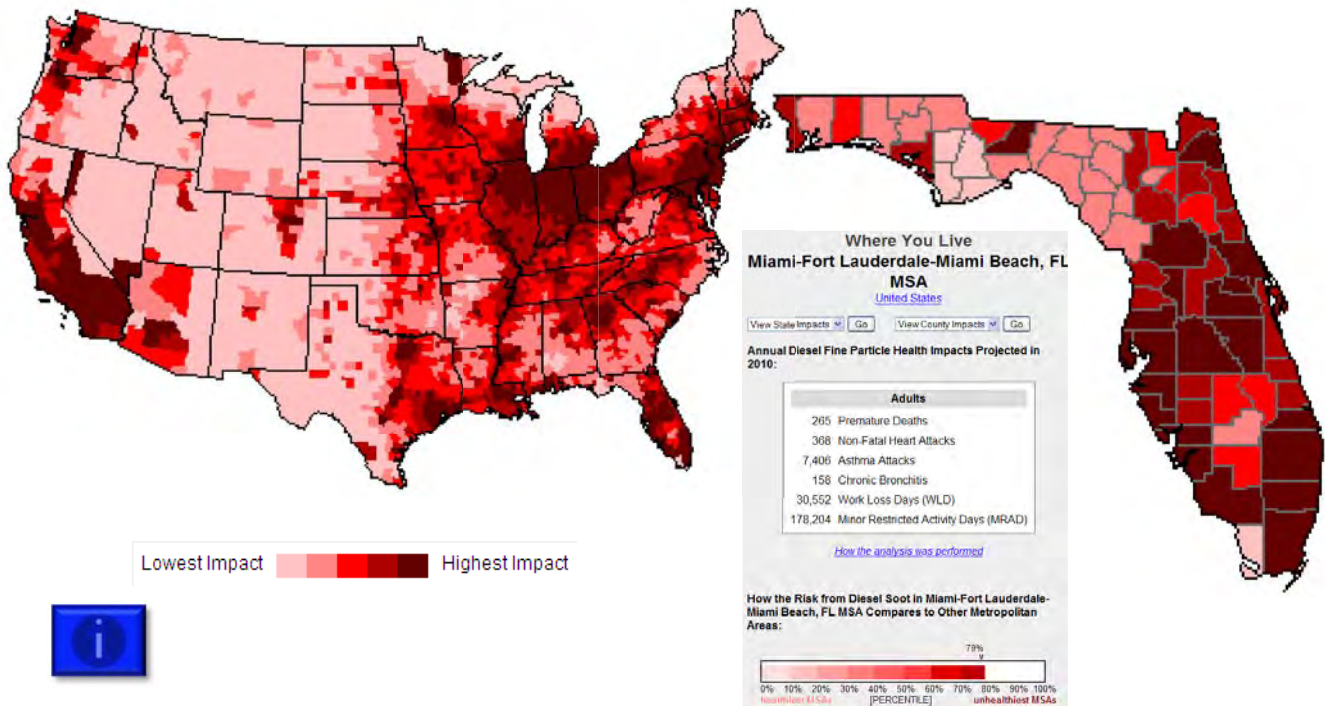
Composition of Diesel Exhaust Particulate Matter



Clean Air Task Force: Diesel Health in America: The Lingering Threat

Florida Clean Air Program

Concentration Areas of Toxic Diesel Exhaust Particulate Matter—U.S. and Florida



Clean Air Task Force: Diesel Health in America: The Lingering Threat

Florida Clean Air Program

Associated Press- Value of Statistical Life

The 'value of a statistical life' is \$6.9 million in today's dollars, the EPA reckoned in May, 2008—a drop of nearly \$1 million from just five years ago.

The Associated Press discovered the change after a review of cost-benefit analyses over more than a dozen years.

Though it may seem like a harmless bureaucratic recalculation, the devaluation has real consequences.

When drawing up regulations, government agencies put a value on human life and then weigh the costs versus the lifesaving benefits of the proposed rule. The less a life is worth to the government, the less the need for a regulation, such as tighter restrictions on pollution. –AP July 10, 2008

Florida Clean Air Program

Health Effects of Diesel Particulate Matter—Florida, 2010

Annual Diesel Fine Particle Health Impacts Projected in 2010: Florida

Adults

808	Premature Deaths
1,075	Non-Fatal Heart Attacks
20,795	Asthma Attacks
451	Chronic Bronchitis
86,006	Work Loss Days (WLD)
504,208	Minor Restricted Activity Days (MRAD)

Children

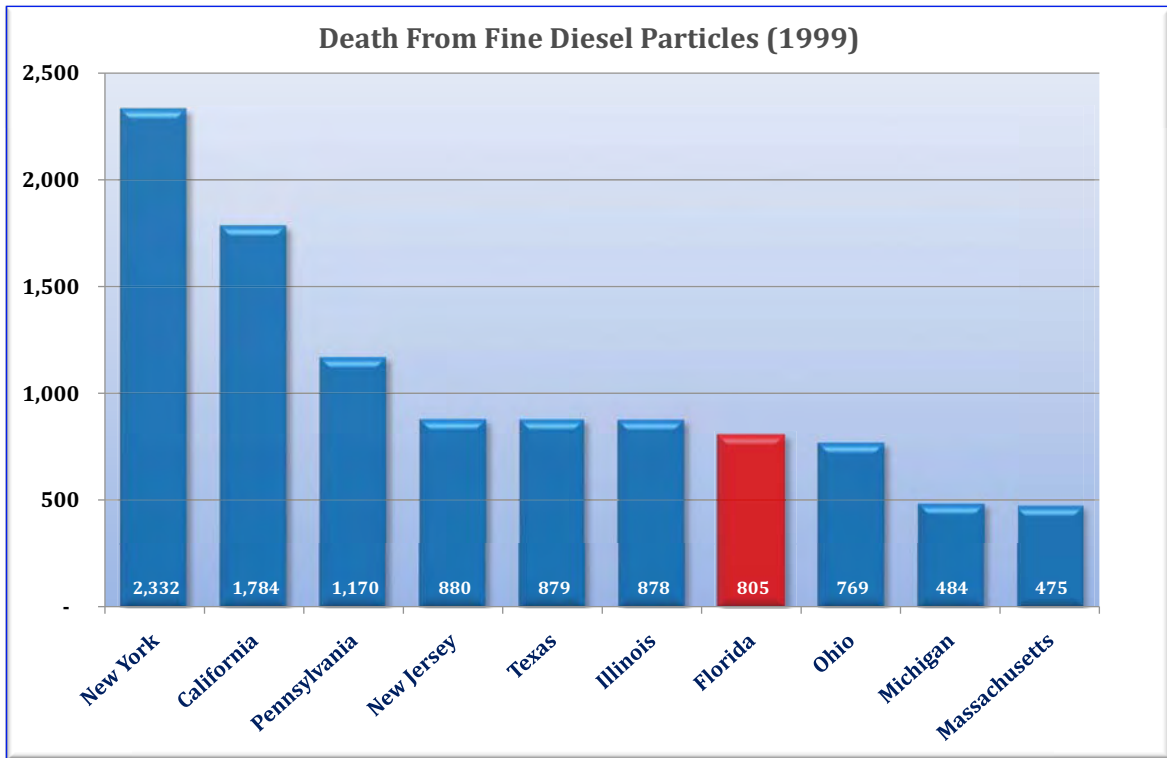
5	Deaths
687	Asthma ER Visits
1,061	Acute Bronchitis
12,651	Lower Respiratory Symptoms
9,645	Upper Respiratory Symptoms

2010 Monetized Value of Health Impacts

6.5 Billion

Florida Clean Air Program

Florida Ranks 7th in Deaths by PM



Clean Air Task Force: Diesel Health in America: The Lingering Threat

Florida Clean Air Program

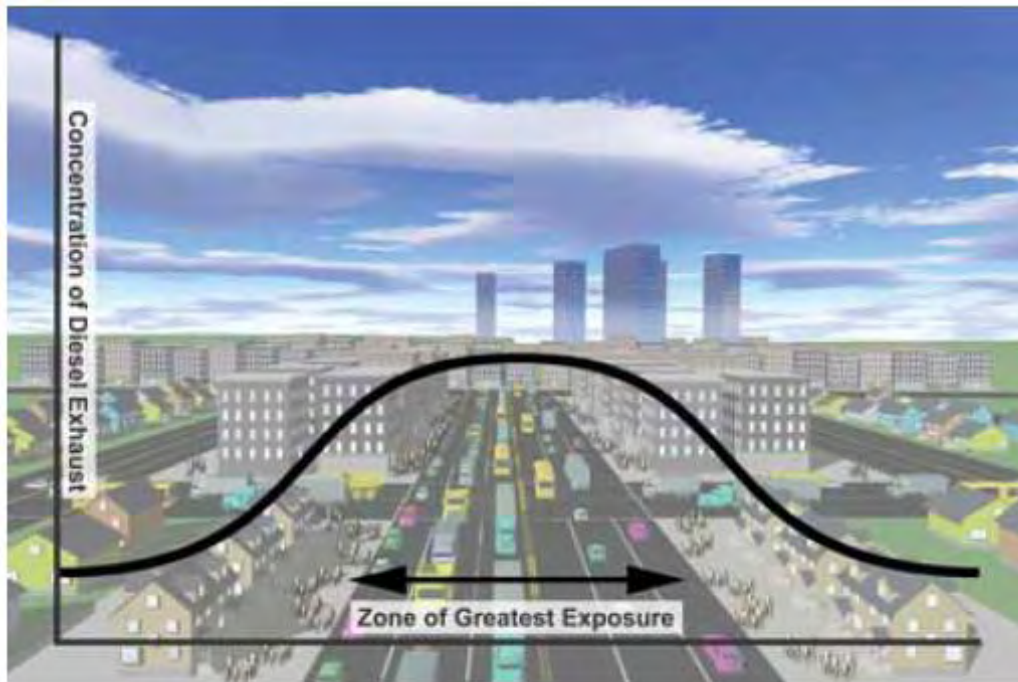
Diesel 'Hotspots'

- Distribution Centers, Loading Docks & Depots affect truck drivers, dock workers and diesel engine mechanics
 - Studies show that these occupations have a 40% higher rate of lung cancer
- Urban and low-income neighborhoods have disproportionately high levels of diesel exhaust
 - High volume of diesel truck traffic in neighborhoods where PM is emitted at ground level
 - Neighborhoods where distribution centers and depots are located
- Population that carries a disproportionate amount of the burden is:
 - African Americans who have the highest mortality rate from asthma
- Commuters have high level of exposure to diesel particulate matter

Clean Air Task Force: Diesel Health in America: The Lingering Threat

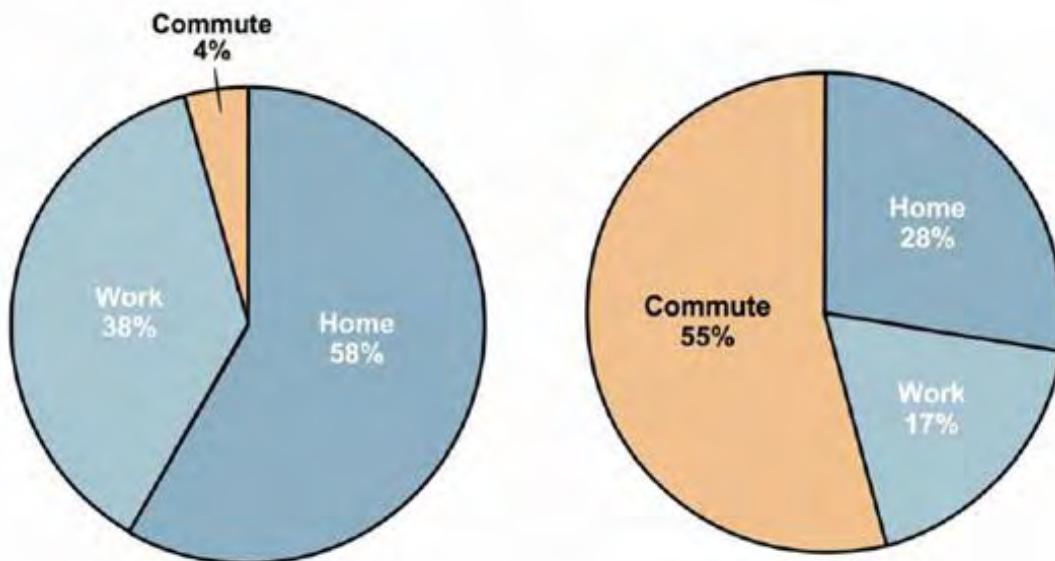
Florida Clean Air Program

Zone of Exposure



Florida Clean Air Program

Daily Commute



Daily Commute consumes 4% of day while exposing drivers and passengers to greater than 50% of the days fine particulate matter

Florida Clean Air Program

Value of Health Benefits

- U.S. EPA calculates that for every **One Dollar** invested in reduction of diesel emissions, results in a **Thirteen Dollar** return on investment in health and economic benefits
- Almost 30% of Florida Budget is spent on Medicaid and Health Care

Florida Clean Air Program

Acid Rain

- EPA Eastern Lakes Survey stated that Florida contains the largest population of acidic lakes in the U.S.
- Approximately 12% of Florida lakes were Highly acidic, a level which implies little or no life can exist in the lake
- Acid rain (mainly in the form of nitrogen oxides), is causing serious damage in Atlantic coastal waters, bays and large lakes
- Acidic depositions increase corrosiveness of water and cause increased solubility of heavy metals from soil into groundwater
- Ozone causes serious respiratory problems that include chronic bronchitis, asthma and increased mortality
- In 2003 mercury in Florida rainfall measured more than five times the federal health standard for lakes, affecting the food chain

Florida Clean Air Program

Employment and Economic Benefits



Florida Clean Air Program Benefits

- Stimulates Florida Economy and increases Florida Revenues
- Stimulates Job Growth and Business Development
- Significantly Improves Environment
- Dramatically Reduces Health Care Costs

Florida Clean Air Program

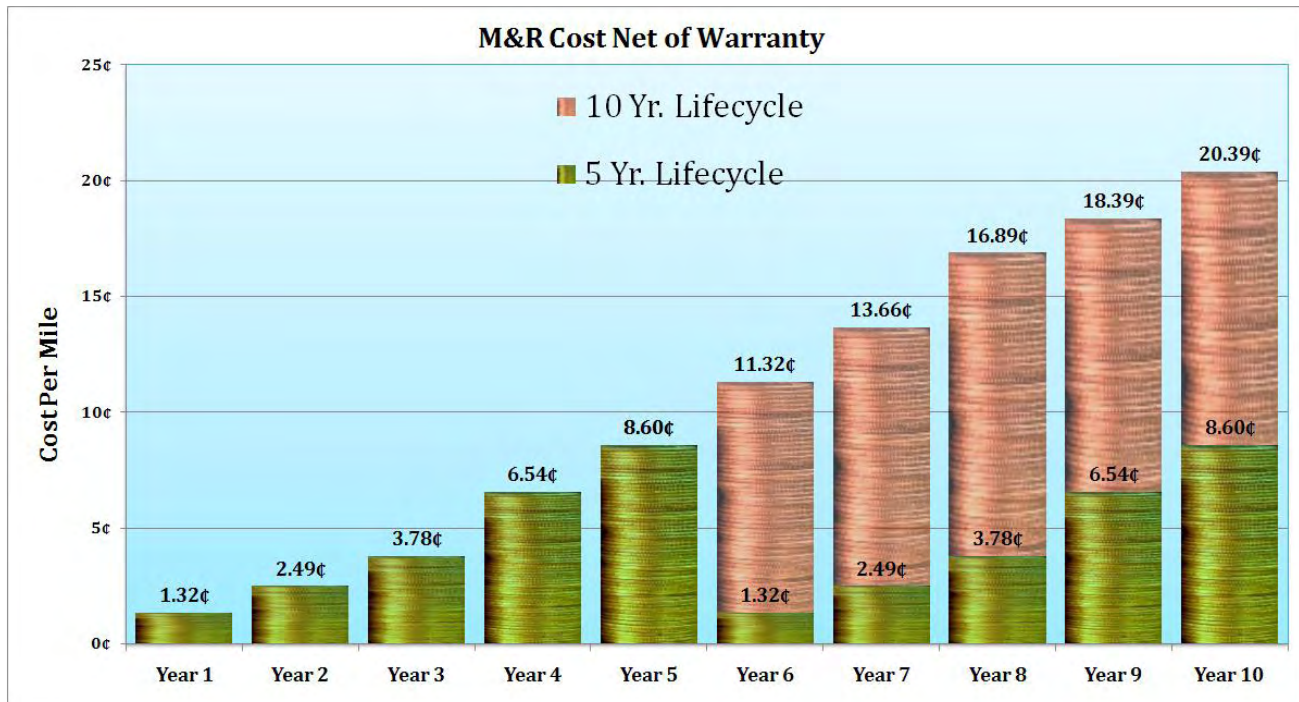
Lease vs. Loan Purchase Analysis

Tractor Cost \$110,000

	<u>Purchase</u>	<u>Lease</u>
Down Payment:	\$22,000	\$0
Sales Tax:	<u>\$6,600</u>	<u>\$0</u> (Paid in lease payment)
Total Cash Up Front:	\$28,600	\$0

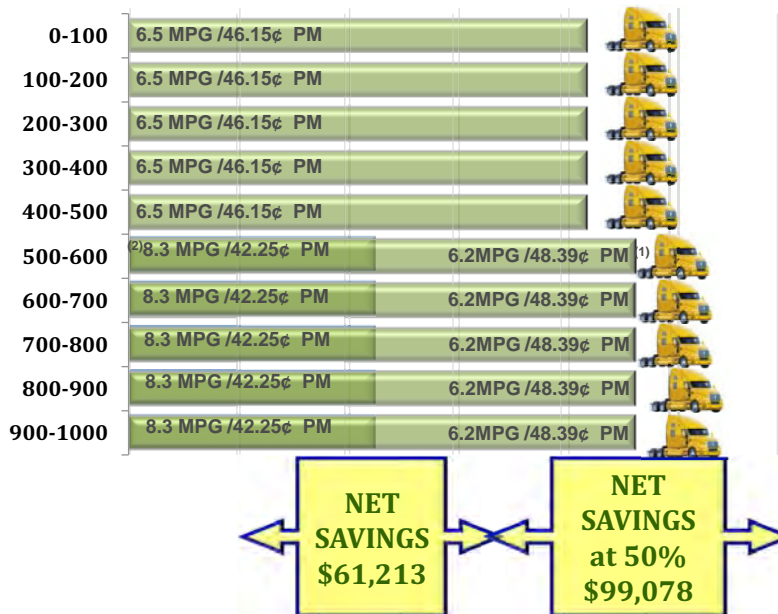
60 Monthly Payments: **\$102,060** **\$102,900**

Maintenance and Repair Cost Analysis 1,000,000 Mile Lifecycle vs. 500,000 Mile Lifecycle



Total Savings Years 6 - 10 = \$57,910

Fuel Economy Analysis
Based on \$3.00 per Gallon
1,000,000-Mile Lifecycle vs. 500,000-Mile Lifecycle



Fleet Advantage installs proprietary hardware and web based software to monitor and manage fuel economy

⁽¹⁾ Increase cost reflects a 5% loss due to engine driveline and component wear
⁽²⁾ Increase MPG represents a 5% technological improvement per model yr.

Florida Clean Air Program

Florida Revenues

Cost of one new Tractor is \$110,000
 Includes Federal Excise Tax \$11,786
 Florida FET return portion is 87%

FET Portion Returned to Florida: \$10,254
State Sales Tax General Revenue: \$6,300
Per Truck Revenue Generated: \$16,554

*Florida receives \$.87 back on every dollar of FET sent to Washington
 **Paid on receipts over lease term

How The Florida Clean Air Program Will Double Florida FET Return Revenues

Business As Usual vs. FCAP

		BAU	FCAP
	Year	Purchase	Lease
FET to FL:	1	\$10,253	\$10,253
Sales Tax:		\$6,600	\$1,188
Titling:		\$75	\$75
Sales Tax:	2	\$0	\$1,188
Sales Tax:	3	\$0	\$1,188
Sales Tax:	4	\$0	\$1,188
Sales Tax:	5	\$0	\$1,188
FET to FL:	6	\$0	\$10,253
Sales Tax:		\$0	\$2,688 ⁽¹⁾
Titling:		\$0	\$150
Sales Tax:	7	\$0	\$1,188
Sales Tax:	8	\$0	\$1,188
Sales Tax:	8	\$0	\$1,188
Sales Tax:	10	\$0	\$1,188
Total:		\$16,928	\$34,111

(1) Includes used truck sales tax and title fee

Florida Clean Air Program

Creating Revenue for Florida

Fuel savings of \$166,362,621 to Florida Companies will either:

Increase 5.5% Corporate Tax Revenue to Florida by \$9,149,944

OR:

Encourage Business Expansion creating Jobs and Infrastructure

*55,454,207 gal @\$3 per gallon

Florida Clean Air Program

Creating Revenue and Jobs for Florida Corporations

- Companies operating transportation vehicles in the state of Florida:
 - Will gain a competitive advantage through reduced, fixed and variable transportation costs.
 - Receive an increase in expansion capital with the lease funding
 - Generate more jobs

Florida Clean Air Program

Creating Revenue and Jobs for Florida Truck Dealers

- Florida truck dealers will sell more new trucks, create more revenue and more jobs:
 - Sales Jobs
 - Service and Maintenance Jobs
 - Administrative Jobs
 - Titling and Registration Service Jobs

Florida Clean Air Program

New Technology that Creates the Need For Infrastructure & Jobs

- Added Infrastructure at Truck Stops and Service Stations
- Additional Service, Maintenance and Delivery Jobs
- DEF Sales Revenues and Related Sales Tax
- Retrofit of Older Trucks that are being Replaced by New
 - Environmental Retrofit Jobs
 - Particulate filter Sales, Support and Revenues

Florida Clean Air Program

Creating Revenue & Jobs for U.S. Truck Manufacturers

- Generates Revenue for truck manufacturers and creates jobs:
 - Creates one sustainable job per year, per truck
 - Sales Jobs
 - Administrative Jobs

Florida Clean Air Program

Creating Revenue & Jobs for Florida Manufacturers and Suppliers

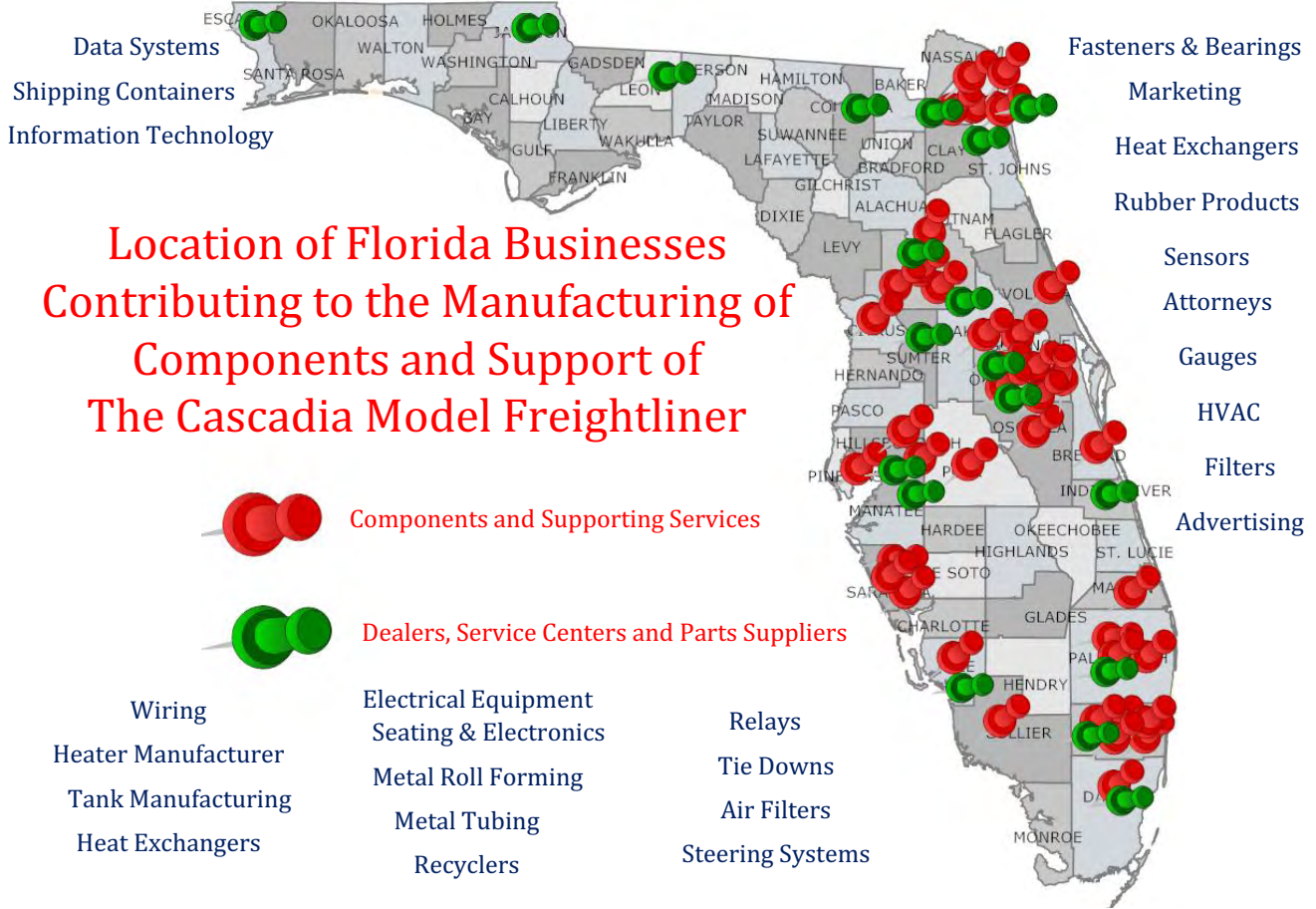
- Generates Revenue for Florida component suppliers to OEM's and creates jobs in support businesses:
 - Manufacturing Jobs
 - Sales Jobs
 - Administrative Jobs

Florida Clean Air Program

List of Florida Businesses Contributing to the Manufacturing Components and Support of Cascadia Model Freightliner

BLOCKER TRANSFER & STORAGE	SAINT PETERSBURG FL	NESCON, INC.	SANFORD FL
BUSCOM INTERNATIONAL, INC.	JUPITER FL	OFAB, INC	OCALA FL
CF GOMMA	JACKSONVILLE FL	PALL INDUSTRIAL HYDRAULICS	FORT MYERS FL
CHAMP PRODUCTS, INC.	SARASOTA FL	PERMIT BOOKS INC.	HOLLYWOOD FL
CLASS 1 HARNESS, INC.	OCALA FL	PRO POLY OF AMERICA, INC	OCALA FL
CLASS 1, INC.	OCALA FL	PURADYN FILTER TECH INC.	BOYNTON BEACH FL
COMPSEE, INC.	PALM BAY FL	PYRAMID MOULDINGS, INC.	JACKSONVILLE FL
CPS SYSTEMS	PALM CITY FL	QSTRAINT	FORT LAUDERDALE FL
FISCHER INTERNATIONAL SYSTEMS CORP	NAPLES FL	RAFAB SPECIALTY FABRICATION	ORLANDO FL
FX MARKETING GROUP	TAMPA FL	SALIKA PRODUCTIONS, INC.	JUPITER FL
HAMMOND ELECTRONICS,	ORLANDO FL	SANDLER,TRAVIS, & ROSENBERG P.A.	MIAMI FL
HI-STAT MANUFACTURING, INC	SARASOTA FL	SEN-DURE PRODUCTS INC	FORT LAUDERDALE FL
HOSELINE INC	SAINT CLOUD FL	SONG CHUAN USA INC	POMPANO BEACH FL
INDUSTRIAL CONTAINER SERVICES- NC LL	ORLANDO FL	SY-KLONE INTERNATIONAL LTD	JACKSONVILLE FL
INTERTEK INDUSTRIAL CORP	JACKSONVILLE FL	TACO METALS	LONGWOOD FL
LEAR ELECTRONICS AND ELECTRICAL	TAMPA FL	TECHNOLOGY CONSERVATION GROUP, INC	LECANTO FL
MARRIOTT INTERNATIONAL INC	ORLANDO FL	TECNOGRAFIC INC.	FORT LAUDERDALE FL
NASCAR	DAYTONA BEACH FL	TELEFLEX INC	SARASOTA FL
		TOM NEHL TRUCK CO.	JACKSONVILLE FL
		TPI, A WILBERT COMPANY	AUBURNDALE FL

Florida Clean Air Program



Florida Clean Air Program

Benefits

	<i>FCAP</i>
Stimulate Business	✓
Create Jobs	✓
Generate Revenues	✓
Reduce Fuel Consumption	✓
Improve Air Quality	✓
Reduce Health Care Costs	✓
Clean-Up Environment	✓
Save Lives	✓

Florida Clean Air Program

Replacement and Retrofit Benefits

Health and Environmental Benefits

- Reduction Premature Death
- Reduction Lung Cancer
- Reduction Cardiac Arrest
- Reduction Asthma & Chronic Lung Disease
- Reduction Health Care Costs
- Decrease in Particulate Matter Emissions
- Decrease in NOx Emissions
- Decreased in CO2 Emissions
- Environmental Justice Low Income Neighborhoods
- Neighborhoods along major corridors
- Cleaner Ports & Cities
- Increased Tourism & Beautification
- Attract more business to Florida
- Decreased Acid Rain
- Farming
- Fishing
- Wildlife
- Historic Buildings
- Trees & Birds
- Corrosion of Bridges
- Drinking Water
- Automotive Coatings
- Increased Farming & Fishing Revenues

Income and Job Creation

- Increased FET
- Increased State Sales Tax
- Titling & Registration Fees
- Increased Truck Sales Florida Dealers
- Particulate Filters & DEF Sales and Infrastructure
- Increased Truck Manufacture
- Components Suppliers & Sales
- Increased Federal Income Taxes
- Increased Social Security & Medicare
- Increased Employer Paid Health Benefits
- Increased Unemployment Tax
- Decreased Unemployment Payments

Benefits to Participants

- Lower Fuel Costs
- Lower Delivery Costs
- Lower Maintenance and Repair Costs
- Lower cost to customers
- Expand Business
- Hire More Workers

Color Code

- Jobs Creation
- Income Benefit
- Health Benefit
- State Economy Benefits
- Environment Benefit
- Participant Benefit