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# **Agriculture and Natural Resources Policy Committee**

## **Meeting Packet**

**March 11, 2010  
8:30 am - 11:00 am  
102 Reed Hall**

**Larry Cretul  
Speaker**

**Trudi Williams  
Chair**

**Committee Meeting Notice**  
**HOUSE OF REPRESENTATIVES**

**Agriculture & Natural Resources Policy Committee**

**Start Date and Time:** Thursday, March 11, 2010 08:30 am  
**End Date and Time:** Thursday, March 11, 2010 11:00 am  
**Location:** Reed Hall (102 HOB)  
**Duration:** 2.50 hrs

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

HB 981 Citrus Fruit by Grimsley  
HB 1001 Grayton Beach State Park by Coley  
HB 1003 Solicitation of Funds by Drake  
HB 1145 State Park Entrance Fees by Bemby  
HB 1147 Saltwater Products Licenses by Bemby  
HB 1225 Sewage Disposal Facilities by Gibbons  
HB 1239 Docks by Patronis

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

PCB ANR 10-08 -- Agriculture  
PCB ANR 10-09 -- Demand Management Activities  
PCB ANR 10-10 -- Water Conservation

**NOTICE FINALIZED on 03/09/2010 16:16 by Cunningham.Reid**

## **Agenda**

### **AGRICULTURE AND NATURAL RESOURCES POLICY COMMITTEE**

**March 11, 2010**

**8:30 – 11:00 a.m.**

**Reed Hall**

- I. Call to Order**
- II. Roll Call**
- III. Opening Remarks by Chair Williams**
- IV. HB 981 by Rep. Grimsley – Citrus Fruit**
- V. HB 1001 by Rep. Coley – Grayton Beach State Park**
- VI. HB 1003 by Rep. Drake – Solicitation of Funds**
- VII. HB 1145 by Rep. Bembry – State Park Entrance Fees**
- VIII. HB 1147 by Rep. Bembry – Saltwater Products Licenses**
- IX. HB 1225 by Rep. Gibbons – Sewage Disposal Facilities**
- X. HB 1239 by Rep. Patronis – Docks**
- XI. PCB ANR 10-08 – Agriculture**
- XII. PCB ANR 10-09 – Consumptive Use Permits**
- XIII. PCB ANR 10-10 – Water Conservation**
- XIV. Closing Remarks by Chair Williams**
- XV. Adjourn**



HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 981 Citrus Fruit

SPONSOR(S): Grimsley

TIED BILLS: IDEN./SIM. BILLS:

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

SUMMARY ANALYSIS

The bill provides that the Citrus Research and Development Foundation, Inc.<sup>1</sup> (foundation), a direct support organization of the University of Florida shall serve as the advisory council for a citrus research marketing order. The foundation is responsible for providing advice on administering the order to the Department of Agriculture and Consumer Services (department), conducting citrus research, and performing duties assigned by the department. The foundation's board of trustees shall be composed of 13 members, including 10 citrus growers, two representatives from the University of Florida's Institute of Food and Agricultural Sciences, and one member appointed by the Commissioner of Agriculture.

The bill provides for the collection of agricultural assessments used to defray costs associated with marketing orders to be deposited in "the appropriate trust fund" rather than the General Inspection trust fund as required by current law. The bill replaces the one cent cap on assessment imposed on citrus fruit with a requirement the rate not exceed the rate established by the marketing order.

The bill expands the types of research that may be conducted by the department.

According to the department, it will be necessary for the citrus industry to increase the assessment on the producers in order to generate additional funds for citrus research. In November 2009, industry voted in favor of the self-imposed assessment.

If the rate is set at the maximum of three cents per box, approximately \$3,000,000 would be deposited into the appropriate trust fund.

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

<sup>1</sup> Established pursuant to s. 1004.28, F.S.

## 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

Many challenges, from weather to disease, face Florida's citrus growers. Recent freezes in Florida cost Florida an estimated 7.4 million boxes of fruit. Huanglongbing (HLB), also known as citrus greening, was discovered in Florida in 2005 and can destroy existing groves and prevent commercial production of citrus cultivars. The general control strategy is to eradicate all existing sources and replant healthy trees<sup>2</sup>. Wind, accompanied with heavy rains, and potential saltwater flooding, can wreak havoc on citrus crops<sup>3</sup>. The hurricanes of 2004-05 (Charley, Frances, Ivan and Jeanne), led to a four-fold increase in monthly detection of citrus canker that lasted 12 months as a result of the windblown rain<sup>4</sup>. Citrus canker, often spread through wind and rain, causes lesions on the fruit, defoliation of the tree, shoot die-back, and fruit drop.

In November 1991, Florida citrus growers voted to enact a citrus research order that requires a grower referendum every six years. The order established a "box tax" to help support citrus research for all growers in the state. The citrus research order covers all citrus (except limes) in the state of Florida.<sup>5</sup>

In a December 2009 referendum, Florida citrus growers voted to continue funding a self-imposed tax, which was increased from a maximum of one cent per box to a maximum of three cents per box, to support additional citrus research<sup>6</sup>. Due to the magnitude and scope of duties and responsibilities relating to the survival of the industry because of potential threats from various citrus pests and diseases, the industry recommended that a new organization be established in lieu of the Florida Citrus Production Research Advisory Council.

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<sup>2</sup> <http://edis.ifas.ufl.edu/pp133>

<sup>3</sup> <http://edis.ifas.ufl.edu/ch178>

<sup>4</sup> [http://www.ars.usda.gov/research/publications/publications.htm?SEQ\\_NO\\_115=186252](http://www.ars.usda.gov/research/publications/publications.htm?SEQ_NO_115=186252)

<sup>5</sup> <http://www.florida-agriculture.com/news/10-30-09.htm>

<sup>6</sup> <http://www.doacs.state.fl.us/press/2009/12092009.html>

## Effect of Proposed Changes

The bill provide that the Citrus Research and Development Foundation, Inc. (foundation), a direct support organization of the University of Florida, shall serve as the advisory council for a citrus research marketing order, and is responsible for:

- Providing advice on administering the order to the department;
- Conducting citrus research; and
- Performing duties assigned by the department.

The foundation's board of trustees shall be composed of 13 members, including 10 citrus growers, two representatives from the University of Florida's Institute of Food and Agricultural Sciences, and one member appointed by the Commissioner of Agriculture.

The bill amends s. 573.118, F.S., to replace the one cent per box cap on the assessment rate on citrus fruit with language limiting the rate to the amount established in the marketing order.

Currently, s. 581.031, F.S., limits research projects to citrus diseases, including but not limited to citrus canker and citrus greening. The bill amends s. 581.031, F.S., by removing "citrus diseases," thereby expanding the types of research that may be conducted by the department to any research purpose within the limits of appropriations made specifically for such purpose.

### B. SECTION DIRECTORY:

Section 1. Amends s. 573.112, F.S., providing that the Citrus Research and Development Foundation shall provide advice to the department with respect to citrus research marketing orders, conduct citrus research, and perform other duties assigned by the department.

Section 2. Amends s. 573.118, F.S., providing for the deposit of certain agricultural assessments and revising the cap on the assessment rate on citrus fruit.

Section 3. Amends s. 581.031, F.S., expanding the type of research projects that may be conducted by the department.

Section 4. Provides an effective date.

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

### A. FISCAL IMPACT ON STATE GOVERNMENT:

#### 1. Revenues:

The bill replaces the one cent per box cap on the assessment rate on citrus fruit with language limiting the rate to the amount established in the marketing order to be deposited in the appropriate trust fund and used by that entity. If the rate is set at the maximum of three cents per box, approximately \$3,000,000 would be deposited into the appropriate trust fund.

#### 2. Expenditures:

None

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

#### 1. Revenues:

None

#### 2. Expenditures:

None

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

According to the department, the citrus industry will have to increase the assessment to the producers in order to generate additional funds for citrus research. The industry voted, by a referendum conducted (November 16, 2009) for the self-imposed assessment. If the rate of assessment is fixed at the maximum rate established in the marketing order, it is estimated that the increase from one cent to three cents in the assessment cap would impact the citrus growers by approximately \$3,000,000 per year.

**D. FISCAL COMMENTS:**

None

**III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

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

Not applicable because this bill does not appear to affect municipal or county government.

**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 citrus fruit; amending s. 573.112,  
 3           F.S.; providing that the Citrus Research and Development  
 4           Foundation shall provide advice to the Department of  
 5           Agriculture and Consumer Services with respect to citrus  
 6           research marketing orders, conduct citrus research, and  
 7           perform other duties assigned by the department; amending  
 8           s. 573.118, F.S.; providing for the deposit of certain  
 9           agricultural assessments; revising the assessment rate on  
 10          citrus fruit; amending s. 581.031, F.S.; expanding the  
 11          type of research projects that may be conducted by the  
 12          department; providing an effective date.

13  
 14   Be It Enacted by the Legislature of the State of Florida:

15  
 16          Section 1. Subsection (7) is added to section 573.112,  
 17          Florida Statutes, to read:

18          573.112 Advisory council.—

19          (7) Notwithstanding any provision of this section, the  
 20          Citrus Research and Development Foundation, Inc., a direct-  
 21          support organization of the University of Florida established  
 22          pursuant to s. 1004.28, shall serve as the advisory council for  
 23          a citrus research marketing order, provide the department with  
 24          advice on administering the order, and, in accordance with the  
 25          order, conduct citrus research and perform other duties assigned  
 26          by the department. Notwithstanding s. 1004.28(3), the  
 27          foundation's board of directors shall be composed of 13 members,  
 28          including 10 citrus growers, 2 representatives of the

29 university's Institute of Food and Agricultural Sciences, and 1  
30 member appointed by the Commissioner of Agriculture.

31 Section 2. Subsections (1) and (6) of section 573.118,  
32 Florida Statutes, are amended to read:

33 573.118 Assessment; funds; audit; loans.-

34 (1) To provide funds to defray the necessary expenses  
35 incurred by the department in the formulation, issuance,  
36 administration, and enforcement of any marketing order, every  
37 person engaged in the production, distributing, or handling of  
38 agricultural commodities within this state, and directly  
39 affected by any marketing order, shall pay to the department, at  
40 such times and in such installments as the department may  
41 prescribe, such person's pro rata share of necessary expenses.  
42 Each person's share of expenses shall be that proportion which  
43 the total volume of agricultural commodities produced,  
44 distributed, or handled by the person during the current  
45 marketing season, or part thereof covered by such marketing  
46 order, is of the total volume of the commodities produced,  
47 distributed, or handled by all such persons during the same  
48 current marketing season or part thereof. The department, after  
49 receiving the recommendations of the advisory council, shall fix  
50 the rate of assessment on the volume of agricultural commodities  
51 sold or some other equitable basis. For convenience of  
52 collection, upon request of the department, handlers of the  
53 commodities shall pay any producer assessments. Handlers paying  
54 assessments for and on behalf of any producers may ~~shall, at~~  
55 ~~their discretion,~~ collect the producer assessments from any  
56 moneys owed by the handlers to the producers. The collected

HB 981

2010

57 | assessments shall be deposited into the appropriate General  
 58 | ~~Inspection~~ trust fund and ~~shall be~~ used for the sole purpose of  
 59 | implementing the marketing order for which the assessment was  
 60 | collected. The department is not subject to ~~the procedures found~~  
 61 | ~~in~~ s. 287.057 in the expenditure of these funds. However, the  
 62 | director of the Division of Marketing and Development shall file  
 63 | with the internal auditor of the department a certification of  
 64 | conditions and circumstances justifying each contract or  
 65 | agreement entered into without competitive bidding.

66 |       (6) An ~~Any~~ assessment levied upon citrus fruit under this  
 67 | section may not exceed the rate established in the marketing  
 68 | order and shall be at a rate not to exceed 1 cent per standard-  
 69 | packed box of citrus fruit grown and placed into the primary  
 70 | channel of trade in this state. All revenues from such  
 71 | ~~assessment collected by the department~~ shall be deposited into  
 72 | the Citrus Inspection Trust Fund.

73 |       Section 3. Subsection (32) of section 581.031, Florida  
 74 | Statutes, is amended to read:

75 |       581.031 Department; powers and duties.—The department has  
 76 | the following powers and duties:

77 |       (32) To The Department of Agriculture and Consumer  
 78 | ~~Services shall~~ conduct or cause to be conducted ~~these~~ research  
 79 | projects ~~on citrus diseases~~, including, but not limited to,  
 80 | citrus canker and citrus greening, which are recommended by the  
 81 | Florida Citrus Production Research Advisory Council, within the  
 82 | limits of appropriations made specifically for such purpose.

83 |       Section 4. This act shall take effect July 1, 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                      \_\_\_\_\_

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

5       **Amendment (with title amendment)**

6       Between lines 15 and 16, insert:

7       Section 1. Paragraph (b) of subsection (3) of section  
8 193.461, Florida Statutes, is amended to read:

9       193.461 Agricultural lands; classification and assessment;  
10 mandated eradication or quarantine program.—

11       (3)

12       (b) Subject to the restrictions specified ~~set out~~ in this  
13 section, only lands that ~~which~~ are used primarily for bona fide  
14 agricultural purposes shall be classified agricultural. The term  
15 "bona fide agricultural purposes" means good faith commercial  
16 agricultural use of the land.

17       1. In determining whether the use of the land for  
18 agricultural purposes is bona fide, the following factors may be  
19 taken into consideration:

Amendment No. 1

20 a.1. The length of time the land has been so used.

21 b.2. Whether the use has been continuous.

22 c.3. The purchase price paid.

23 d.4. Size, as it relates to specific agricultural use, but  
24 ~~in no event shall~~ a minimum acreage may not be required for  
25 agricultural assessment.

26 e.5. Whether an indicated effort has been made to care  
27 sufficiently and adequately for the land in accordance with  
28 accepted commercial agricultural practices, including, without  
29 limitation, fertilizing, liming, tilling, mowing, reforesting,  
30 and other accepted agricultural practices.

31 f.6. Whether the ~~such~~ land is under lease and, if so, the  
32 effective length, terms, and conditions of the lease.

33 g.7. Such other factors as may ~~from time to time~~ become  
34 applicable.

35 2. Offering property for sale does not constitute a  
36 primary use of land and may not be the basis for denying an  
37 agricultural classification if the land continues to be used  
38 primarily for bona fide agricultural purposes while it is being  
39 offered for sale.

40 Section 2. The amendment by this act to s. 193.461(3)(b),  
41 Florida Statutes, is remedial and clarifying in nature and  
42 applies retroactively to all parcels for which a final court  
43 order has not yet been entered as of the effective date of this  
44 act.

45 -----  
46  
47 **T I T L E A M E N D M E N T**

COUNCIL/COMMITTEE AMENDMENT

Bill No. HB 981 (2010)

Amendment No. 1

48 Remove line 2 and insert:  
49 An act relating to agriculture; amending s. 193.461, F.S.;  
50 clarifying that land classified as agricultural retains  
51 that classification when offered for sale under certain  
52 circumstances; providing for retroactive application;  
53 amending s. 573.112,

COUNCIL/COMMITTEE AMENDMENT

Bill No. HB 981 (2010)

Amendment No. 2

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) Grimsley offered the following:

**Amendment (with title amendment)**

Between lines 82 and 83, insert:

7 Section 4. Location of executive offices-The executive offices  
8 of the Department of Citrus shall be established and maintained  
9 at Bartow Lakeland.

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

Remove line 12 and insert:

14 department; amending s. 601.07, F.S.; establishing Bartow as the  
15 executive office of the Department of Citrus; providing an  
16 effective date.

COUNCIL/COMMITTEE AMENDMENT

Bill No. HB 981 (2010)

Amendment No. 3

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	_____	

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

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5  
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9

**Amendment**

Remove line 81 and insert:

Florida Citrus Research and Development Foundation, Inc., within  
the



Amendment No. 4

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) T. Williams offered the following:  
4

5 **Amendment (with title amendment)**

6 Between lines 82 and 83, insert:

7 Section 3. Subsections (4) and (9) of section 369.20,  
8 Florida Statutes, are amended to read:

9 369.20 Florida Aquatic Weed Control Act.—

10 (4) The commission shall also promote, develop, and support  
11 research activities directed toward the more effective and  
12 efficient control of aquatic plants. In the furtherance of this  
13 purpose, the commission may ~~is authorized to~~:

14 (a) Accept donations and grants of funds and services from  
15 both public and private sources;

16 (b) Contract or enter into agreements with public or  
17 private agencies or corporations for research and development of  
18 aquatic plant control methods or for the performance of aquatic  
19 plant control activities. The commission may enter into an  
20 agreement with the Department of Environmental Protection to

COUNCIL/COMMITTEE AMENDMENT

Bill No. HB 981 (2010)

Amendment No. 4

21 ensure the uniform regulation of pesticides applied to the  
22 waters of the state, including provision for coordinating agency  
23 staff and resources, through the implementation of permitting,  
24 compliance, and enforcement activities under ss. 403.088 and  
25 403.0885;

26 (c) Construct, acquire, operate, and maintain facilities  
27 and equipment; and

28 (d) Enter upon, or authorize the entry upon, private  
29 property for purposes of making surveys and examinations and to  
30 engage in aquatic plant control activities; and such entry shall  
31 not be deemed a trespass.

32 (9) ~~A permit issued pursuant to this section for~~ The  
33 application of herbicides to waters of in the state for the  
34 control of aquatic plants, algae, or invasive exotic plants is  
35 exempt from the requirement to obtain a water pollution  
36 operation permit except as provided in ss. pursuant to s.  
37 403.088 and 403.0885.

38 Section 4. Subsection (1) of section 403.088, Florida  
39 Statutes, is amended to read:

40 403.088 Water pollution operation permits; conditions.-

41 (1) ~~No person,~~ Without the written authorization of the  
42 department, a person may not shall discharge any waste into the  
43 waters of within the state ~~any waste~~ which, by itself or in  
44 combination with the wastes of other sources, reduces the  
45 quality of the receiving waters below the classification  
46 established for such waters ~~them~~. However, this section does  
47 ~~shall not be deemed to~~ prohibit the application of pesticides to  
48 such waters in the state for the control of insects, aquatic  
49 weeds, ~~or~~ algae, or other pests if provided the application is

COUNCIL/COMMITTEE AMENDMENT

Bill No. HB 981 (2010)

Amendment No. 4

50 performed in accordance with any of the following:

51 (a) Upon execution of the agreement provided in s.  
52 487.163(3), the department may develop a permit or other  
53 authorization as required by 33 U.S.C. s. 1342 for the  
54 application of pesticides. A person must obtain such permit or  
55 other authorization before applying pesticides to the waters of  
56 the state.

57 (b) In consultation with the Department of Agriculture and  
58 Consumer Services and the Fish and Wildlife Conservation  
59 Commission, the department shall also develop a general permit  
60 under s. 403.0885(2), for the application of pesticides.

61 (c) The department shall also enter into agreements with  
62 the Department of Agriculture and Consumer Services pursuant to  
63 a program approved by the Department of Health, in the case of  
64 insect or other pest control, and with ~~or~~ the Fish and Wildlife  
65 Conservation Commission, in the case of aquatic weed, other  
66 aquatic pests, or algae control. ~~The department is directed to~~  
67 ~~enter into interagency agreements to establish the procedures~~  
68 ~~for program approval.~~ Such agreements must shall provide for  
69 public health, welfare, and safety, as well as environmental  
70 factors, and must ensure the uniform regulation of pesticides  
71 applied to waters of the state, including provisions for the  
72 coordination of agency staff and resources, through the  
73 implementation of permitting, compliance, and enforcement  
74 activities under this section and s. 403.0885. Pesticides that  
75 are ~~Approved programs must provide that only chemicals~~ approved  
76 for a ~~the~~ particular use by the United States Environmental  
77 Protection Agency or by the Department of Agriculture and  
78 Consumer Services ~~may be employed and that they be~~ applied in

Amendment No. 4

79 accordance with registered label instructions, state standards  
80 for such application, including any permit or other  
81 authorization required by this subsection, and the provisions of  
82 the Florida Pesticide Law, part I of chapter 487, are not  
83 subject to the acute toxicity provisions of rule 62-302.500,  
84 Florida Administrative Code.

85 Section 5. Subsection (3) is added to section 487.163,  
86 Florida Statutes, to read:

87 487.163 Information; interagency cooperation.—

88 (3) The department shall enter into an agreement with the  
89 Department of Environmental Protection to ensure the uniform  
90 regulation of pesticides applied to waters of the state,  
91 including provisions for the coordination of agency staff and  
92 resources, through the implementation of permitting, compliance,  
93 and enforcement activities under ss. 403.088 and 403.0885.  
94  
95  
96

97 -----  
98 **T I T L E A M E N D M E N T**

99 Remove line 12 and insert:

100 for sale; providing for retroactivity; amending s. 369.20, F.S.;

101 requiring the Fish and Wildlife Conservation Commission to enter

102 into an agreement with the Department of Environmental

103 Protection relating to the uniform application of pesticides to

104 the waters of the state; revising exemptions from water

105 pollution permits; amending s. 403.088, F.S.; providing permits

106 for applying pesticides to the waters of the state; requiring

107 the Department of Environmental Protection to enter into

COUNCIL/COMMITTEE AMENDMENT

Bill No. HB 981 (2010)

Amendment No. 4

108 | agreements with the Department of Agriculture and Consumer  
109 | Services and the Fish and Wildlife Conservation Commission  
110 | relating to the uniform application of pesticides to the waters  
111 | of the state; exempting certain pesticides from acute toxicity  
112 | provisions provided by rule; amending s. 487.163, F.S.;  
113 | requiring the Department of Agriculture and Consumer Services to  
114 | enter into an agreement with the Department of Environmental  
115 | Protection relating to the uniform application of pesticides to  
116 | the waters of the state; providing an effective date.

HB 1001

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1001

Grayton Beach State Park

SPONSOR(S): Coley

TIED BILLS:

IDEN./SIM. BILLS: SB 1882

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Agriculture & Natural Resources Policy Committee		Kaiser <i>[Signature]</i>	Reese <i>[Signature]</i>
2) Policy Council			
3) Natural Resources Appropriations Committee			
4) General Government Policy Council			
5)			

SUMMARY ANALYSIS

Florida statute<sup>1</sup> prohibits the naming of any state building, road, bridge, park, recreational complex, or other similar facility for any living person except as specifically provided by law.

The bill redesignates Grayton Beach State Park as the Bob Graham/Grayton Beach State Park and directs the Department of Environmental Protection to erect appropriate signs and markers to reflect the redesignation.

The bill does not appear to have a fiscal impact on local governments. The fiscal impact on state government will be approximately \$1,500 to change the park signage to reflect the redesignation. The effective date of this legislation is July 1, 2010.

<sup>1</sup> Section 267.062, F.S.

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

STORAGE NAME: h1001.ANR.doc

DATE: 3/1/2010

## 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:

Florida statute<sup>2</sup> prohibits the naming of any state building, road, bridge, park, recreational complex, or other similar facility for any living person except as specifically provided by law.

Grayton Beach State Park (park) is located in Walton County and comprises nearly 2,000 acres. The park's beaches consistently rank among the most beautiful and pristine beaches in the United States. Other activities available at the park include bicycling, boating, cabin/campground rental, canoeing/kayaking, fishing, swimming, hiking/nature trails, picnicking and wildlife viewing.

Bob Graham was Florida's 38<sup>th</sup> Governor, serving two terms from 1979 to 1987. He served as one of Florida's two United States Senators from 1987 to 2005. He was first elected to public office in 1966, where he served (2) two-year terms in the State House of Representatives. In 1970, he was elected to the State Senate, where he served (2) four-year terms.

After leaving political office in 2005, Senator Graham founded the Graham Center for Public Service (center) at the University of Florida. The center provides students with opportunities to train for future leadership positions, meet current policymakers, and take courses that prepare them for public service.

The bill redesignates Grayton Beach State Park as the Bob Graham/Grayton Beach State Park and directs the Department of Environmental Protection to erect appropriate signs and markers to reflect the redesignation.

#### B. SECTION DIRECTORY:

**Section 1:** Redesignates Grayton Beach State Park as the Bob Graham/Grayton Beach State Park; and, authorizes the Department of Environmental Protection to erect appropriate signs and markers to reflect the redesignation.

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

---

<sup>2</sup> Section 267.062, F.S.



## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None

2. Expenditures:

See "Fiscal Comments" section below.

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None

2. Expenditures:

None

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

None

### D. FISCAL COMMENTS:

The Department of Environmental Protection (DEP) estimates the fiscal impact to be approximately \$1,500 to change the park signage to reflect the redesignation. DEP states that the signage changes will include two park entrance signs at \$700 each and two park highway entrance signs at \$50 each.

## III. COMMENTS

### A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

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 Grayton Beach State Park; redesignating  
 3           Grayton Beach State Park as Bob Graham/Grayton Beach State  
 4           Park; directing the Division of Recreation and Parks of  
 5           the Department of Environmental Protection to erect  
 6           appropriate signs and markers; providing an effective  
 7           date.

8  
 9           WHEREAS, Bob Graham's roots in Walton County go back for  
 10          generations, and

11           WHEREAS, in the 1890s, Bob Graham's grandfather, Dr. Daniel  
 12          Simmons, opened a medical practice in Freeport, and

13           WHEREAS, Bob Graham's mother and her five siblings were  
 14          born in Walton County and his mother graduated from Walton  
 15          County High School in 1924, and

16           WHEREAS, in 1985, as Governor, Bob Graham strongly  
 17          supported the efforts of the residents of Walton County to  
 18          encourage the state to purchase the beachfront and the dunes and  
 19          forest land adjacent to Grayton Beach State Park, and

20           WHEREAS, this valuable addition to the park might never  
 21          have occurred without Bob Graham's personal involvement, and

22           WHEREAS, Bob Graham, as a former United States Senator,  
 23          Governor, State Senator, and State Representative for Florida,  
 24          is recognized as one of the state's most popular political  
 25          leaders and environmental policy advocates, NOW, THEREFORE,

26  
 27          Be It Enacted by the Legislature of the State of Florida:

28

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2010

29 Section 1. Bob Graham/Grayton Beach State Park  
30 designation.—

31 (1) Grayton Beach State Park is redesignated as the Bob  
32 Graham/Grayton Beach State Park.

33 (2) The Division of Recreation and Parks of the Department  
34 of Environmental Protection is directed to erect appropriate  
35 signs and markers designating the Bob Graham/Grayton Beach State  
36 Park as described in subsection (1).

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



HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1003

Solicitation of Funds

SPONSOR(S): Drake

TIED BILLS:

IDEN./SIM. BILLS: SB 348

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

SUMMARY ANALYSIS

Charitable organizations and sponsors that engage in solicitation activities in Florida must register with the Department of Agriculture and Consumer Services (DACS) and provide certain financial and background information, as required by chapter 496, F.S. Under specified circumstances, a person who is soliciting for a named individual and a charitable organization or sponsor that limits solicitation of contributions to the membership<sup>1</sup> of the charitable organization or sponsor, is exempt from said registration requirements.

The bill adds reputable military veteran's associations or organizations that are registered with the Department of Veterans' Affairs (DVA) to the list of exemptions from the registration requirements for charitable organizations and sponsors.

As discussed in the "Comments" section of the analysis, military veterans' associations and organizations do not register with the DVA. Consequently, the bill would not affect military veterans' organizations that are currently registered with the DACS.

If the bill were to be revised to exempt the types of military organizations that are registered with the DACS, there may be an insignificant loss of revenue to the state.

The bill's effective date is July 1, 2010.

<sup>1</sup> For purposes of this part, the term "membership" does not include those persons who are granted a membership upon making a contribution as a result of a solicitation.

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

STORAGE NAME: h1003.ANR.doc  
DATE: 3/10/2010

## 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**

Section 501(c)(3) of the Internal Revenue Code provides federal tax benefits to certain not-for-profit and charitable organizations.<sup>2</sup> Such organizations are commonly referred to as charitable organizations. To be tax exempt, an organization must be organized and operated exclusively for charitable purposes such as educational, religious, scientific, literary, fostering national or international sports competition, preventing cruelty to children or animals, or testing for public safety. Charitable organizations are reliant upon community support through the solicitation of funds as sources of revenue.

Charitable organizations or sponsors that engage in solicitation activities in Florida must register with the Department of Agriculture and Consumer Services (DACCS) and provide certain financial and background information, as required by chapter 496, F.S. Before engaging in solicitation activities, charitable organizations or sponsors are required to file an initial registration statement, an annual renewal statement, and an annual financial report with the DACCS.<sup>3</sup> Such registration must contain prescribed information<sup>4</sup> and be accompanied by the appropriate fee.<sup>5</sup>

Every charitable organization, sponsor, or parent organization filing on behalf of one or more chapters, branches, or affiliates that is required to register under this section must pay a single registration fee. A parent organization filing on behalf of one or more chapters, branches, or affiliates must total all contributions received by the chapters, branches, or affiliates included in the registration statement to determine registration fees. Fees are assessed as:

- Ten dollars, if the contributions received for the last fiscal or calendar year were less than \$5,000;
- Ten dollars, if the contributions actually raised or received from the public during the immediately preceding fiscal year by such organization or sponsor are no more than \$25,000 and the fundraising activities of such organization or sponsor are carried on by volunteers, members, officers, or permanent employees, who are not compensated, primarily to solicit such contributions, provided no part of the assets or income of such organization or sponsor inures to

<sup>2</sup> <http://www.irs.gov/charities/charitable/article/0,,id=96099,00.html>

<sup>3</sup> s. 496.405, F.S.

<sup>4</sup> s. 496.405(2), F.S.

<sup>5</sup> s. 496.405(4), F.S.

- the benefit of or is paid to any officer or member of such organization or sponsor or to any professional fundraising consultant, professional solicitor, or commercial co-venturer;
- Seventy-five dollars, if the contributions received for the last fiscal year were \$5,000 or more, but less than \$100,000;
  - One hundred twenty-five dollars, if the contributions received for the last fiscal year were \$100,000 or more, but less than \$200,000;
  - Two hundred dollars, if the contributions received for the last fiscal year were \$200,000 or more, but less than \$500,000;
  - Three hundred dollars, if the contributions received for the last fiscal year were \$500,000 or more, but less than \$1 million;
  - Three hundred fifty dollars, if the contributions received for the last fiscal year were \$1 million or more, but less than \$10 million; or
  - Four hundred dollars, if the contributions received for the last fiscal year were \$10 million or more.

A charitable organization or sponsor may be assessed a \$25 fee for each month of late filing after the date on which the annual renewal statement and financial report were due to be filed with the DACS.

Subject to notice and an opportunity for a hearing, the DACS is authorized to disapprove unsatisfactory registrations.<sup>6</sup> Fundraising consultants and professional solicitors are also required to register with the DACS.<sup>7</sup>

Currently, s. 496.406, F.S., provides the following exemptions to the registration requirements listed above:

- A person who is soliciting for a named individual provided that all the contributions collected without any deductions whatsoever are turned over to the beneficiary for her or his use and provided that the person has complied with certain statutory requirements, and
- A charitable organization or sponsor that limits solicitation of contributions to the membership<sup>8</sup> of the charitable organization or sponsor.

Currently, military veterans' associations and organizations do not register with the Department of Veterans Affairs.

### **Proposed Changes**

The bill amends s. 496.406, F.S., to exempt reputable military veteran's associations or organizations that are registered with the Department of Veterans' Affairs (DVA) from the registration requirements for charitable organizations and sponsors; however, such organizations do not currently register with DVA.

#### **B. SECTION DIRECTORY:**

Section 1. Amends s. 496.406, F.S., exempting reputable military veteran's associations or organizations that are registered with the Department of Veterans' Affairs from the requirements to register with the Department of Agriculture and Consumer Services.

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

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

---

<sup>6</sup> s. 496.405(7), F.S.

<sup>7</sup> ss. 496.409, 496.410, F.S.

<sup>8</sup> For purposes of this part, the term "membership" does not include those persons who are granted a membership upon making a contribution as a result of a solicitation.

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

1. Revenues:

None

2. Expenditures:

None

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

1. Revenues:

None

2. Expenditures:

None

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

See Fiscal Comments section.

**D. FISCAL COMMENTS:**

According to the DACS, in Fiscal Year 2008-09, military organizations that were registered with the DACS paid annual registration fees totaling \$41,660. If the bill were to be revised to exempt the types of military organizations that are registered with the DACS, there may be a loss of said revenue.

**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:**

The bill adds reputable military veteran's associations or organizations that are registered with the DVA to the list of exemptions from the registration requirements for charitable organizations and sponsors. Military veterans' associations and organizations do not register with the DVA, reputable or otherwise. In addition, the bill does not define "reputable" or provide for the DACS to determine if an organization is reputable.

**IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES**



1                                   A bill to be entitled  
 2           An act relating to the solicitation of funds; amending s.  
 3           496.406, F.S.; exempting certain veterans' organizations  
 4           from requirements to file registration statements with the  
 5           Department of Agriculture and Consumer Services; providing  
 6           an effective date.

7  
 8   Be It Enacted by the Legislature of the State of Florida:

9  
 10           Section 1. Section 496.406, Florida Statutes, is amended  
 11           to read:

12           496.406 Exemption from registration.—The following  
 13           charitable organizations and sponsors are exempt from the  
 14           requirements of s. 496.405:

15           (1) A person who is soliciting for a named individual,  
 16           provided that all the contributions collected without any  
 17           deductions whatsoever are turned over to the beneficiary for her  
 18           or his use and provided that the person has complied with the  
 19           requirements of s. 496.413.

20           (2) A charitable organization or sponsor which limits  
 21           solicitation of contributions to the membership of the  
 22           charitable organization or sponsor. For the purposes of this  
 23           paragraph, the term "membership" does not include those persons  
 24           who are granted a membership upon making a contribution as a  
 25           result of a solicitation.

26           (3) A reputable military veterans' association or  
 27           organization that is registered with the Department of Veterans'  
 28           Affairs.

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2010

29

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

COUNCIL/COMMITTEE AMENDMENT

Bill No. HB 1003 (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 Drake offered the following:

**Amendment (with title amendment)**

6 Remove lines 26-28 and insert:

7       (3) Any division, department, post, or chapter of a  
8 veterans' service organization granted a federal charter under  
9 Title 36, U.S.C.

10       Section 2. Paragraph (b) of subsection (3) of section  
11 295.187, Florida Statutes, is amended to read:

12       295.187 Florida Service-Disabled Veteran Business  
13 Enterprise Opportunity Act.—

14       (3) DEFINITIONS.—For the purpose of this section, the  
15 term:

16       (b) "Service-disabled veteran" means a veteran who is a  
17 permanent Florida resident with a service-connected disability  
18 ~~of 10 percent or greater~~ as determined by the United States  
19 Department of Veterans Affairs or who has been terminated from

COUNCIL/COMMITTEE AMENDMENT

Bill No. HB 1003 (2010)

Amendment No.

20 military service by reason of disability by the United States  
21 Department of Defense.

22 Section 3. Subsection (2) of section 296.06, Florida  
23 Statutes, is amended to read:

24 296.06 State policy; eligibility requirements.—

25 (2) To be eligible for residency in the home, a veteran  
26 must:

27 (a) Have wartime service as provided in s. 1.01(14) or  
28 peacetime service as defined in s. ~~ss. 1.01(14)~~ and 296.02.

29 (b) Have been a resident of the state for 1 year  
30 immediately preceding application and be a resident of the state  
31 at the time of application.

32 (c) Not be mentally ill, habitually inebriated, or  
33 addicted to drugs.

34 (d) Not owe money to the department for services rendered  
35 during any previous stay at a department facility.

36 (e) Have applied for all financial assistance reasonably  
37 available through governmental sources.

38 (f) Have been approved as eligible for care and treatment  
39 by the United States Department of Veterans Affairs.

40 Section 4. Subsection (1) of section 296.36, Florida  
41 Statutes, is amended to read:

42 296.36 Eligibility and priority of admittance.—

43 (1) To be eligible for admittance to the home, the person  
44 must be a veteran as provided defined in s. 1.01(14) or have  
45 eligible peacetime service as defined in s. 296.02 and must:

46 (a) Be in need of nursing home care.

Amendment No.

47 (b) Have been a resident of the state for 1 year  
48 immediately preceding, and at the time of application for,  
49 admission to the home.

50 (c) Not owe money to the department for services rendered  
51 during any previous stay at a department facility.

52 (d) Have applied for all financial assistance reasonably  
53 available through governmental sources.

54 (e) Have been approved as eligible for care and treatment  
55 by the United States Department of Veterans Affairs.

56

57

58

59

60

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

61

Remove lines 2-5 and insert:

62

An act relating to veterans; amending s. 496.406, F.S.;

63

exempting certain veterans' organizations from requirements to

64

file registration statements with the Department of Agriculture

65

and Consumer Services; amending s. 295.187, F.S.; revising the

66

definition of the term "service-disabled veteran" for purposes

67

of the Florida Service-Disabled Veteran Business Enterprise

68

Opportunity Act; amending s. 296.06, F.S.; revising eligibility

69

requirements for residency in the Veterans' Domiciliary Home of

70

Florida; amending s. 296.36, F.S.; revising eligibility

71

requirements for admittance into a licensed health care facility

72

operated by the Department of Veterans' Affairs; providing



**HOUSE OF REPRESENTATIVES STAFF ANALYSIS**

**BILL #:** HB 1145                      State Park Entrance Fees

**SPONSOR(S):** Bembry and others

**TIED BILLS:**                                      **IDEN./SIM. BILLS:** SB 2256

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<b>REFERENCE</b>	<b>ACTION</b>	<b>ANALYST</b>	<b>STAFF DIRECTOR</b>
1) <u>Agriculture &amp; Natural Resources Policy Committee</u>	_____	Kaiser <i>[Signature]</i>	Reese <i>[Signature]</i>
2) <u>Natural Resources Appropriations Committee</u>	_____	_____	_____
3) <u>General Government Policy Council</u>	_____	_____	_____
4) _____	_____	_____	_____
5) _____	_____	_____	_____

---

**SUMMARY ANALYSIS**

The Division of Recreation and Parks (division) within the Department of Environmental Protection (department) oversees Florida's 160 state parks. The division has statutory authority<sup>1</sup> to charge reasonable fees for the use or operation of facilities and concessions in the state parks. The monies collected from these fees are deposited into the State Park Trust Fund (trust fund), which is used for the administration, improvement and maintenance of the state parks and acquisition of lands for state park purposes.

The bill provides for active duty members and veterans of the United States Armed Forces (armed forces) and reserve forces to receive a twenty-five percent discount on annual entrance passes to Florida's state parks. The bill also provides for veterans with service-connected disabilities to receive a lifetime family annual entrance pass at no charge. Surviving spouses of members of the armed forces and reserve forces who have fallen in combat shall also receive a lifetime family annual entrance pass at no charge. The division shall prescribe what constitutes satisfactory documentation to evidence eligibility.

The division states that there will be a potential reduction in state park revenue, which is indeterminate at this time. However, the division states that the publicity and goodwill earned by the state is expected to offset the loss in revenues and result in increased visitation, thereby generating additional economic benefit for the local communities and the state. The effective date of this legislation is July 1, 2010.

<sup>1</sup> Section 258.014(1), F.S.

## 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 Division of Recreation and Parks (division) within the Department of Environmental Protection (department) oversees Florida's 160 state parks. The division has statutory authority<sup>2</sup> to charge reasonable fees for the use or operation of facilities and concessions in the state parks. The monies collected from these fees are deposited into the State Park Trust Fund (trust fund), which is used for the administration, improvement and maintenance of the state parks and any acquisition of lands for state park purposes.

The division currently offers two types of annual entrance passes; the family annual entrance pass for \$120, and the individual annual entrance pass for \$60.<sup>3</sup> At this time, there are no discounts on the purchase price of the annual passes.

The division offers a discount of one-half off of the daily admission fee to Florida National Guard active members, spouses and minor children. In addition, the division offers one-half off of daily admission fees for Florida residents participating in the Food Stamp program; and one-half off of the base camping fee for Florida residents who are 65 years and older or who are 100% disabled.

Currently, more than half of the fifty states in the United States offer some form of discount for entry into their state parks for veterans of the armed forces.

##### **Effect of Proposed Changes**

The bill provides for active duty members and veterans of the United States Armed Forces (armed forces) and reserve forces to receive a twenty-five percent discount on annual entrance passes to Florida's state parks. The bill provides for veterans with service-connected disabilities to receive a lifetime family annual entrance pass at no charge. Surviving spouses of members of the armed forces and reserve forces who have fallen in combat shall also receive a lifetime family annual entrance pass at no charge. The division shall prescribe what constitutes satisfactory documentation to evidence eligibility.

---

<sup>2</sup> Section 258.014(1), F.S.

<sup>3</sup> During FY 2008-09, annual entrance pass sales accounted for approximately \$2 million in revenues.



**B. SECTION DIRECTORY:**

**Section 1:** Creates s. 258.0145, F.S.; provides discounts on park fees for members and veterans of the United States Armed Forces, reserve forces, and surviving spouses of certain veterans.

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

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

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

1. Revenues:

See "Fiscal Comments" section below.

2. Expenditures:

None

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

1. Revenues:

See "Fiscal Comments" section below.

2. Expenditures:

None

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

Persons who are active duty armed forces, reserve forces, veterans and/or surviving spouses will benefit from this legislation.

**D. FISCAL COMMENTS:**

The Division of Recreation and Parks (division) within the Department of Environmental Protection (department) states that there will be a potential reduction in state park revenue, which is indeterminate at this time. However, the division states that the publicity and goodwill earned by the state is expected to offset the loss in revenues and result in increased visitation, thereby generating additional economic benefit for the local communities and the state.

For the most part, there would be no fiscal impact on local governments. However, according to the department's website<sup>4</sup>, some counties impose a surcharge in addition to the division's entrance fee. It is unclear whether the surcharge would be waived as well as the entrance fee. If the surcharges were waived, this may represent a potential reduction in revenue for the counties that impose the surcharge.

**III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

1. Applicability of Municipality/County Mandates Provision:

This legislation does not appear to affect county or municipal government.

2. Other:

None

---

<sup>4</sup> <http://www.floridastateparks.org/thingstoknow/fees.cfm>

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 state park entrance fees; creating s.  
 3           258.0145, F.S.; providing discounts on annual passes for  
 4           members and veterans of the United States Armed Forces and  
 5           reserve forces and for surviving spouses of certain  
 6           veterans; providing an effective date.

7  
 8   Be It Enacted by the Legislature of the State of Florida:

9  
 10       Section 1. Section 258.0145, Florida Statutes, is created  
 11       to read:

12       258.0145 Military state park fee discounts.—The Division  
 13       of Recreation and Parks shall provide the following discounts on  
 14       park fees to persons who present written documentation  
 15       satisfactory to the division which evidences their eligibility  
 16       for the discounts:

17       (1) Active duty members and honorably discharged veterans  
 18       of the United States Armed Forces, National Guard, or reserve  
 19       components thereof shall receive a 25 percent discount on annual  
 20       entrance passes.

21       (2) Honorably discharged veterans who have service-  
 22       connected disabilities shall receive lifetime family annual  
 23       entrance passes at no charge.

24       (3) Surviving spouses of deceased members of the United  
 25       States Armed Forces, National Guard, or reserve components  
 26       thereof who have fallen in combat shall receive lifetime family  
 27       annual entrance passes at no charge.

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

COUNCIL/COMMITTEE AMENDMENT

Bill No. HB 1145 (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 Bembry offered the following:  
4

5 **Amendment (with title amendment)**

6 Between lines 27 and 28, insert:

7 Section 2. Subsections (3), (4), (5), (6) and (7) are  
8 added to section 258.004, Florida Statutes, to read:

9 258.004 Duties of division.—

10 (3) The Division of Recreation and Parks shall study and  
11 appraise the recreation needs of the state and assemble and  
12 disseminate information relative to recreation.

13 (4) The Division of Recreation and Parks shall provide  
14 consultation assistance to the Department of Community Affairs  
15 and to local governing units as to the protection, organization  
16 and administration of local recreation systems and as to the  
17 planning and design of local recreation areas and facilities.

18 (5) The Division of Recreation and Parks shall assist in  
19 recruiting, training and placing recreation personnel.

COUNCIL/COMMITTEE AMENDMENT

Bill No. HB 1145 (2010)

Amendment No.

20       (6) The Division of Recreation and Parks shall sponsor and  
21 promote recreation institutes, workshops, seminars, and  
22 conferences throughout the state.

23       (7) The Division of Recreation and Parks shall cooperate  
24 with state and federal agencies, private organizations, and  
25 commercial and industrial interests in the promotion of a state  
26 recreation program.

27  
28  
29       -----  
30                   **T I T L E   A M E N D M E N T**

31       Remove line 6 and insert:  
32 veterans; amending s. 258.004, F.S.; revising the duties of the  
33 Division of Recreation and Parks; providing an effective date.



**HOUSE OF REPRESENTATIVES STAFF ANALYSIS**

**BILL #:** HB 1147

Saltwater Products Licenses

**SPONSOR(S):** Bembry

**TIED BILLS:**

**IDEN./SIM. BILLS:**

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

**SUMMARY ANALYSIS**

The bill provides that a resident 65 years of age or older, who has held a valid saltwater products license for the previous three years, is not required to pay the annual individual saltwater products license fee, which is required to commercially harvest or sell any saltwater products in Florida.

If the bill is enacted, the Florida Fish and Wildlife Conservation Commission (FWCC) will receive 8% less in revenues generated by salt water products licenses, which are deposited into the Marine Resource Conservation Trust Fund for administration of the license program and management of marine fisheries. Pursuant to s. 328.76, F.S., the Department of Agriculture and Consumer Services (DACS) receives 25% of revenues generated by the sale of saltwater products licenses. The DACS will receive an estimated \$15,662 fewer dollars annually. See Fiscal Comments section.

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:

##### **Current Situation**

Section 379.361, F.S., provides that every person, firm, or corporation that sells, offers for sale, barter, or exchanges for merchandise any saltwater products, or which harvests saltwater products with certain gear or equipment as specified by law, must have a valid saltwater products license (SPL). A saltwater product is defined as any marine fish, shellfish, clam, invertebrate, sponge, jellyfish, coral, crustacean, lobster, crab, shrimp, snail, marine plant, echinoderm, sea star, brittle star or urchin, except non-living shells and salted, cured, canned or smoked seafood<sup>1</sup>. SPL holders can only sell to a licensed Florida saltwater products wholesale dealer.

Currently, the fee for a license issued in the name of a resident commercial saltwater fisher is \$50 (individual SPL); \$100 fee for a license issued to a specific registration number of a vessel (vessel SPL); and \$150 fee for a license issued in a resident's name that authorizes him/her and crew to fish from any vessel (crew SPL).

Commercial fishers must also purchase endorsements to harvest certain species and the endorsements range anywhere from \$25 to \$250, depending on the fishery.

According to the FWCC's analysis, in 2008-09, FWCC issued 10,981 SPLs to Florida residents: 6,359 were individual SPLs. Of the 6,359 individual SPLs, 1,253 were to fishers who will be age 65 or older by June 30, 2010.

SPL fees are deposited into the Marine Resources Conservation Trust Fund. The trust fund is used by FWCC to support marine research, fishery enhancement, statistics development, artificial reefs, law enforcement, license administration, fishery management, manatee rehabilitation, and marine turtle conservation.

There has been a decrease in sales for SPLs, down 30% over a 10-year period.

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<sup>1</sup> Florida Fish and Wildlife Conservation Commission analysis (on file)



## **Effect of Proposed Changes**

The bill provides that a resident 65 years of age or older, who has held a valid license for the previous three years, is not required to pay the annual individual SPL fee.

### **B. SECTION DIRECTORY:**

Section 1. Amends s. 379.361, F.S., providing that specified residents are exempt from the annual fee for a saltwater products license.

Section 2. 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:**

Resident commercial saltwater fishers who are 65 years of age or older and who have had held a valid license for the previous three years, will be exempt from paying the \$50 individual fee. However, they will still have to pay fees for various endorsements that are required.

### **D. FISCAL COMMENTS:**

#### **FWCC**

Total revenues generated by sales of SPLs to resident commercial fishers in 2008-09 were \$788,450, of which \$62,660 (8%) was from sales of individual SPLs to fishers age 65 or older. FWCC will have an 8% decrease in revenues to be deposited into the Marine Resource Conservation Trust Fund.

#### **Department of Agriculture and Consumer Services (DACS)**

The DACS receives 25% of revenues generated by the sale of SPLs pursuant to s. 328.76, F.S., for purposes of providing marketing and extension services, including industry education and information. If revenues were to decrease by \$62,660, DACS would receive an estimated \$15,662 less annually.

### 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:

None

### IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

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1                   A bill to be entitled  
 2           An act relating to saltwater products licenses; amending  
 3           s. 379.361, F.S.; providing that specified residents are  
 4           exempt from the annual fee for a saltwater products  
 5           license; providing an effective date.  
 6

7 Be It Enacted by the Legislature of the State of Florida:  
 8

9           Section 1. Paragraph (e) of subsection (2) of section  
 10          379.361, Florida Statutes, is amended to read:

11          379.361 Licenses.—

12          (2) SALTWATER PRODUCTS LICENSE.—

13          (e) The annual fee for a saltwater products license is:

14           1. For a license issued in the name of an individual which  
 15          authorizes only that individual to engage in commercial fishing  
 16          activities from the shore or a vessel: a resident must pay \$50;  
 17          a nonresident must pay \$200; or an alien must pay \$300. However,  
 18          a resident 65 years of age or older who has held a valid license  
 19          for the previous 3 years is not required to pay the annual fee.

20           2. For a license issued in the name of an individual which  
 21          authorizes that named individual to engage in commercial fishing  
 22          activities from the shore or a vessel and also authorizes each  
 23          person who is fishing with the named individual aboard a vessel  
 24          to engage in such activities: a resident must pay \$150; a  
 25          nonresident must pay \$600; or an alien must pay \$900.

26           3. For a license issued to a valid commercial vessel  
 27          registration number which authorizes each person aboard such  
 28          registered vessel to engage in commercial fishing activities: a

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29 resident, or a resident firm or corporation, must pay \$100; a  
 30 nonresident, or a nonresident firm or corporation, must pay  
 31 \$400; or an alien, or an alien firm or corporation, must pay  
 32 \$600. For purposes of this subparagraph, a resident firm or  
 33 corporation means a firm or corporation formed under the laws of  
 34 this state; a nonresident firm or corporation means a firm or  
 35 corporation formed under the laws of any state other than  
 36 Florida; and an alien firm or corporation means a firm or  
 37 corporation organized under any laws other than laws of the  
 38 United States, any United States territory or possession, or any  
 39 state of the United States.

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



HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1225

Sewage Disposal Facilities

SPONSOR(S): Gibbons

TIED BILLS:

IDEN./SIM. BILLS: SB 2354

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1)	Agriculture & Natural Resources Policy Committee		Deslatte JD	Reese JR
2)				
3)				
4)				
5)				

SUMMARY ANALYSIS

Currently, any sewage disposal facility that has been discharging through an ocean outfall on July 1, 2008, shall install a functioning reuse system no later than December 31, 2025. A "functioning reuse system" means an environmentally, economically, and technically feasible system that provides a minimum of 60 percent of the facility's actual flow on an annual basis for irrigation of public access areas, residential properties, or agricultural crops; aquifer recharge; groundwater recharge; industrial cooling; or other acceptable reuse purposes authorized by the Department of Environmental Protection (DEP). Flows directed from the outfall facilities to other facilities that will provide 100 percent reuse of the redirected flows prior to December 31, 2025, count towards meeting the 60 percent requirement. For utilities operating more than one outfall, the reuse requirement can be met if the combined actual reuse flows from facilities served by the outfalls is at least 60 percent of the sum of the total actual flows from these facilities, including flows diverted to other facilities for 100 percent reuse prior to December 31, 2025. In the event treatment in addition to the advanced wastewater treatment and management requirements is needed in order to support a functioning reuse system, such treatment must be fully operational no later than December 31, 2025.

The bill requires that any facility that diverts wastewater flow from a facility that discharges domestic wastewater through an ocean outfall to which it has previously contributed wastewater flow, is required to meet the 60 percent reuse requirement and that reuse must be credited to the facility discharging domestic wastewater through an ocean outfall.

There is no fiscal impact to state government. If a facility, either a local government or private entity, diverts flow, then that party will be responsible for the cost of meeting the 60 percent reuse requirement for the diverted flow and the facility discharging through an ocean outfall will get credit toward its reuse requirement.

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:

##### Current Situation

Section 403.086, F.S., provides that by December 31, 2018, sewage disposal facilities with ocean outfall discharges must implement advanced wastewater treatment and management requirements. "Advanced wastewater treatment and management requirements" means the advanced waste treatment requirements set forth in subsection (4) of s. 403.086, F.S., or a reduction in outfall baseline loadings of total nitrogen and total phosphorus which is equivalent to that which would be achieved by the advanced waste treatment requirements in subsection (4) of s. 403.086, F.S., or a reduction in cumulative outfall loadings of total nitrogen and total phosphorus occurring between December 31, 2008, and December 31, 2025, which is equivalent to that which would be achieved if the advanced waste treatment requirements in subsection (4) of s. 403.086, F.S., were fully implemented beginning December 31, 2018, and continued through December 31, 2025. The DEP will establish the baseline loadings of pollutants (nitrogen and phosphorus) based on existing 5 year average loadings and will use the baseline loadings for the determination of required nutrient reductions. The baseline loadings and required loading reductions of total nitrogen and total phosphorus shall be expressed as an average annual daily loading value. The advanced wastewater and management requirements must be deemed to be met for a facility that has installed a fully functioning reuse system comprising 100 percent of the facility's average annual daily flow no later than 2018.

Any facility that has been discharging through an ocean outfall on July 1, 2008, must install a functioning reuse system no later than December 31, 2025. A "functioning reuse system" means an environmentally, economically, and technically feasible system that provides a minimum of 60 percent of the facility's actual flow on an annual basis for irrigation of public access areas, residential properties, or agricultural crops; aquifer recharge; groundwater recharge; industrial cooling; or other acceptable reuse purposes authorized by the DEP. The term "facility's actual flow on an annual basis" means the annual average flow of domestic wastewater discharging through a facility's ocean outfall, as determined by the DEP, using monitoring data available. Flows directed from the outfall facilities to other facilities that will provide 100 percent reuse of the redirected flows prior to December 31, 2025, count towards meeting the 60 percent requirement. For utilities operating more than one outfall, the reuse requirement can be met if the combined actual reuse flows from facilities served by the outfalls is at least 60 percent of the sum of the total actual flows from these facilities, including flows diverted to other facilities for 100 percent reuse prior to December 31, 2025. In the event treatment in addition to the advanced wastewater treatment and management requirements is needed in order to support a functioning reuse system, such treatment shall be fully operational no later than December 31, 2025.

The discharge of wastewater through ocean outfalls is prohibited after December 31, 2025, except as a backup discharge that is part of a functioning reuse system authorized by the DEP. A backup discharge may occur only during periods of reduced demand for reclaimed water in the reuse system, such as periods of wet weather, and shall comply with the advanced wastewater treatment and management requirements.

### **Effect of Proposed Changes**

The bill requires that any facility that diverts wastewater flow from a facility that discharges domestic wastewater through an ocean outfall to which it has previously contributed wastewater flow, is required to meet the 60 percent reuse requirement and that reuse shall be credited to the facility discharging domestic wastewater through an ocean outfall.

#### **B. SECTION DIRECTORY:**

Section 1. Amends s. 403.086, F.S., requiring facilities contributing domestic wastewater to facilities discharging through ocean outfalls to meet specified reuse requirements if they divert such flows from the facilities discharging through ocean outfalls; providing that such reuse is credited to the facilities discharging through ocean outfalls.

Section 2. Provides an effective date.

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

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

1. Revenues:

None

2. Expenditures:

None

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

1. Revenues:

See Fiscal Comments below

2. Expenditures:

See Fiscal Comments below

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

None

#### **D. FISCAL COMMENTS:**

According to DEP, if no party currently contributing flow chooses to divert that flow, there is no fiscal impact. If a party does divert flow, that party will be responsible for the cost of meeting the 60 percent reuse requirement for the diverted flow and the facility discharging through an ocean outfall will get credit toward its reuse requirement. DEP also states that if the bill does not pass, if a party does divert flow there might be a cost savings to that party, but there would be an increased cost and possible inability to comply with the reuse requirement of s. 403.086(9), F.S., for the facility discharging through an ocean outfall.



### 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:

According to DEP, as drafted the bill language is somewhat confusing, since it uses the term 'facility' to refer to two different parties: the domestic wastewater facilities that discharge through an ocean outfall on July 1, 2008, and other parties or entities, such as a city, that contribute wastewater flow to the domestic wastewater facilities that discharge through an ocean outfall on July 1, 2008.

### IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

1                   A bill to be entitled  
 2           An act relating to sewage disposal facilities; amending s.  
 3           403.086, F.S.; requiring facilities contributing domestic  
 4           wastewater to facilities discharging through ocean  
 5           outfalls to meet specified reuse requirements if they  
 6           divert such flows from the facilities discharging through  
 7           ocean outfalls; providing that such reuse is credited to  
 8           the facilities discharging through ocean outfalls;  
 9           providing an effective date.

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

12  
 13           Section 1. Paragraph (i) is added to subsection (9) of  
 14           section 403.086, Florida Statutes, to read:

15           403.086 Sewage disposal facilities; advanced and secondary  
 16           waste treatment.—

17           (9) The Legislature finds that the discharge of domestic  
 18           wastewater through ocean outfalls wastes valuable water supplies  
 19           that should be reclaimed for beneficial purposes to meet public  
 20           and natural systems demands. The Legislature also finds that  
 21           discharge of domestic wastewater through ocean outfalls  
 22           compromises the coastal environment, quality of life, and local  
 23           economies that depend on those resources. The Legislature  
 24           declares that more stringent treatment and management  
 25           requirements for such domestic wastewater and the subsequent,  
 26           timely elimination of ocean outfalls as a primary means of  
 27           domestic wastewater discharge are in the public interest.

28           (i) A facility that diverts wastewater flow from a

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29 | facility that discharges domestic wastewater through an ocean  
30 | outfall to which it had previously contributed wastewater flow  
31 | is required to meet the 60-percent reuse requirement of  
32 | paragraph (c), and that reuse shall be credited to the facility  
33 | discharging domestic wastewater through an ocean outfall.

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



**HOUSE OF REPRESENTATIVES STAFF ANALYSIS**



**BILL #:** HB 1239

Docks

**SPONSOR(S):** Patronis

**TIED BILLS:**

**IDEN./SIM. BILLS:** SB 1118

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Agriculture &amp; Natural Resources Policy Committee</u>		Kliner 	Reese 
2) <u>Natural Resources Appropriations Committee</u>			
3) <u>General Government Policy Council</u>			
4) _____			
5) _____			

**SUMMARY ANALYSIS**

HB 1239 incorporates several sections from CS/HB 7143, which passed the House but died in Senate Messages during the 2009 Regular Session. Specifically, the bill:

- Allows for roof structures over certain dock facilities in aquatic preserves;
- Removes the need for a variance for docks in certain shellfish waters;
- Directs the Department of Environmental Protection (DEP) to develop a list of activities for applicants to consider for meeting mitigation or public interest requirements;
- Directs the DEP to develop a project management plan to implement an e-permitting program, and requires the plan be submitted to the President of the Florida Senate, Speaker of the Florida House of Representatives, and the Legislative Committee on Intergovernmental Relations;
- Directs the DEP to expand, if economically feasible, the use of online self-certification for appropriate exemptions and general permits issued by the DEP and water management districts (WMDs).
- Prohibits local governments from specifying the method or form of documentation that a project meets the provisions for authorization under chapters 161, 253, 373, or 403, F.S.; and,
- Authorizes the use of different construction materials and minor deviations to allow upgrades to current structural and design standards for the replacement of docks.

The bill appears to have no fiscal impact on local governments. At the state government level, there may be costs associated with rulemaking by the DEP.

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:

##### 2009 Environmental Regulatory Reform

During the 2009 Regular Session, the Florida House of Representatives passed CS/HB 7143, which was an environmental regulatory reform bill that addressed myriad issues, including: construction, operating, and building permits; coastal construction permit applications; permitting of certain environmental restoration activities; docks; Florida-friendly landscaping; mining; home inspection; and elevator inspection.

HB 1239 incorporates several sections from CS/HB 7143, which passed the House but died in Senate Messages, which relate to the regulation and permitting of docks, environmental mitigation, and e-permitting.

**Section 1** amends subsection (3) of s. 258.42, F.S., allowing boat slips in aquatic preserves to have a roof with an overhang not more than 1-foot beyond the footprint of the boat lift. Such roofs may not be considered to be part of the square footage calculations of the terminal platform.

##### Current Situation

Authorization is required for any construction or use on, over or under submerged lands owned by the state. Typical construction projects on sovereign submerged lands include docks, piers, seawalls and dredging of access channels. Activities and uses may be authorized by letter of consent, easement or lease, while some may qualify for consent by rule or an exception. The DEP serves as the regulator of activities over state-owned lands, while the Board of Trustees of the Internal Improvement Trust Fund (Board) serves as the proprietor of these state-owned lands and determines how the public's interests may best be served. The largest projects or ones of heightened public concern require review and authorization by the Board, while staff of the DEP and the WMDs have been delegated the authority to take action on others.

Sections of Florida's coastal landscapes have been set aside for protection as aquatic preserves to ensure that the environment may be protected for bird rookeries, fish nurseries, freshwater springs, salt marshes, seagrass meadows, and mangrove forests. In 1975, Florida enacted the Aquatic Preserve Act to conserve the natural condition of these resources. Today, Florida has 41 aquatic preserves, encompassing almost two million acres. Part II of ch. 258, F.S., authorizes the Board's maintenance of

these preserves. Rule 18-20, F.A.C., authorized by ch. 258, F.S., provides very specific directions and limitations on the type, size, and location of structures within aquatic preserves. For instance, Rule 18-20.004(5)(b)6., F.A.C., limits the terminal platform (the "T" at the end of the dock walkway) size to no more than 160 square feet. These strict guidelines are primarily for the maintenance of the natural conditions of the preserves, the propagation of fish and wildlife, and public recreation, including hunting and fishing where deemed appropriate by the Board and the managing agency.<sup>1</sup>

### Effect of Proposed Change

The bill permits boat slips in aquatic preserves to have a roof with an overhang not more than 1-foot beyond the footprint of the boat lift. Such roofs may not be considered to be part of the square footage calculations of the terminal platform. If a dock structure is currently exempt pursuant to s. 403.813, F.S., the exemption may be lost if the addition of a roof structure results in the structure exceeding the allowed square footage.

**Section 2** amends s. 403.061(29), F.S., removing the need for a variance for docks in certain shellfish waters; creates subsection (40) of s. 403.061, F.S., requiring the DEP to develop a list of activities for applicants to consider for meeting mitigation or public interest requirements; prohibiting local governments from specifying the method or form of documentation that a project meets the provisions for authorization under chapters 161, 253, 373, or 403, F.S.; creates subsection (41) of s. 403.061, F.S., and, creates subsection (42) of s. 403.061, F.S., requiring the DEP to develop a project management plan to implement an e-permitting program and requiring a report submission of plan to the Legislature by January 15, 2011.

### Current Situation

#### *Docks in shellfish waters*

Currently, certain activities that cause impacts to wetlands or other surface waters are exempt by statute and rule from the need for regulatory permits. To be exempt by rule, the activities must have been previously determined by the DEP to be capable of causing no more than minimal individual and cumulative adverse impacts to wetlands and other surface waters. Currently, s. 403.061(29), F.S., provides authorization to DEP to adopt by rule special criteria to protect Class II shellfish harvesting waters. People seeking to build a residential dock in shellfish waters are required to apply for a variance for a permit from the DEP. However, according to the DEP, the Florida Department of Agriculture and Consumer Services, the agency that regulates the harvesting of shellfish, does not comment on such variances unless the proposed dock contains more than 10 slips. This routinely causes a delay in the project that might be avoided if the variance procedure was superseded by administrative rule.

#### *Mitigation*

The Florida Legislative Committee on Intergovernmental Relations (LCIR) in March, 2007, issued an interim project report titled *Improving Consistency and Predictability in Dock and Marina Permitting*. This concluded a 2-year project to review current permitting practices and identify opportunities to improve the consistency and predictability in the permitting of water related facilities in Florida. According to the LCIR report, a proposed marine construction project, for instance, is subject to regulatory mitigation requirements, and, if the project involves state submerged lands it is subject to proprietary or public interest mitigation requirements as well. Regulatory mitigation is essentially an action or series of actions to offset the adverse impacts to the environment from the proposed project. In contrast, public interest mitigation may be viewed as compensation to the state and the citizens of Florida for use of sovereignty submerged lands in addition to actions to offset adverse impacts to sovereign lands and associated resources from the proposed project. A common concern of DEP staff, as well as local governments and marine contractors and consultants, is that identifying appropriate projects or activities to serve as mitigation continues to be based on guesswork and time consuming negotiations with permit applicants. According to the LCIR report, the marine construction industry

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<sup>1</sup> Administrative case law holds that dock structures having roofs "not completely closed in and/or climatized for human habitation are deemed to be water dependent activities" and are included in the calculation of square footage for pre-empted areas. *Sutton v. Hubbard*, 17 FALR 3492, 3497 (Fla. DEP 1995).

contends that permitting staff require the applicant to suggest a project or set of activities to meet the public interest and/or mitigation requirements only to be told that the proposed activities are insufficient. While the expense of public interest and regulatory mitigation activities are sometimes identified by marine contractors as excessive relative to the type, size, and location of the proposed project, the most frequently cited problem in interviews and surveys is the uncertainty and unpredictability of what will be acceptable.

*E-permitting:*

The DEP currently accepts certain types of permit applications on-line and provides an online self-certification process for private docks associated with detached individual single-family homes on the adjacent uplands, provided the dock being constructed is the sole dock on the parcel. Through this electronic process, one may immediately determine whether a private single family dock can be constructed without further notice or review by the DEP. This includes notification of qualification for the U.S. Army Corps of Engineers' State Programmatic General Permit (SPGP IV). In addition, Florida's five WMDs have designed and support a shared permitting portal. This portal is designed to direct the user to the appropriate WMD's Web site for obtaining information regarding the WMD's permitting programs, applying for permits, and submitting permit compliance information. The WMDs issue several types of permits. The three most common permits deal with how much water is used (consumptive use permits), the construction of wells (well construction permits), and how new development affects water resources (environmental resource permits (ERPs)).<sup>2</sup>

*Self certification:*

According to the LCIR report, in interviews with stakeholder groups, some local governments often do not accept self-certification for permit-exempt projects identified in statute, rule, or listed in the DEP's Self-Certification Process for Single-Family Docks. Some local governments require a "signature" from DEP permit review staff to verify the exempt status of the projects submitted under Self-Certification, notwithstanding the fact that current law neither requires nor provides for a "signature" from the DEP as an alternative or as supplemental to Self-Certification.

Effect of Proposed Change

*Docks in shellfish waters*

The bill authorizes the DEP to amend its rules to include special criteria for approval of docking facilities with 10 or fewer slips where construction and operation of such facilities will not result in the closure of shellfish waters. The language deletes the reference to Class II waters because there are Class III approved shellfish waters to which the same rules apply. Deletion of the reference to the Environmental Regulation Commission (ERC) is a technical correction that recognizes that elsewhere in statute the ERP rules are exempted from ERC review.<sup>3</sup>

*Mitigation:*

The bill directs the DEP to identify projects and activities that serve as regulatory and public interest mitigation for all environmental permitting. The bill declares the contents of such a list are not a rule as defined in chapter 120, F.S., and listing a specific project or activity does not imply approval by the DEP for such project or activity. In addition, each county government is encouraged to develop an inventory of projects or activities for inclusion on the list by obtaining input from local stakeholder groups in the public, private, and nonprofit sectors, including local governments, port authorities, marine contractors, other representatives of the marine construction industry, environmental or conservation organizations, and other interested parties. Counties may establish dedicated funds for depositing public interest donations into a reserve for future public interest projects, including improvements to on-water law enforcement.

*E-permitting*

The bill directs the DEP to develop a project management plan to implement an e-permitting program that allows for timely submittal and exchange of permit application and compliance information that

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<sup>2</sup> See: <http://www.flwaterpermits.com/>

<sup>3</sup> According to the DEP, this reference to the ERC is outdated and has been superseded by statute.



yields positive benefits in support of the DEP's mission, permit applicants, permit holders, and the public. The plan shall include an implementation timetable, estimated costs, and transaction fees. The DEP is directed to submit the plan to the President of the Senate, Speaker of the House of Representatives and the Legislative Committee on Intergovernmental Relations by January 15, 2011.

*Self-certification:*

The bill prohibits a local government from specifying the method or form of documentation that a project meets the provisions for authorization under chapters 161, 253, 373, or 403, F.S., including Internet based programs of the DEP or WMDs that provide for self certification. The bill encourages the DEP and the WMDs to expand the use of Internet based self-certification services for appropriate exemptions and general permits.

**Section 3** amends s. 403.813, F.S., clarifying the language exempting from permit the repair or replacement of docks.

Current Situation

Although not part of the LCIR findings in the report dated March, 2007, marine industry representatives contend there are occasions when it is counterintuitive to rebuild a damaged or destroyed dock or pier to its prior configuration if the prior configuration was of poor design or placement. If there are minor deviations that are proposed in writing to the DEP or a WMD prior to construction, however, either the DEP or the WMD may exempt the construction or repair if the agency determines it will have only minimal or insignificant individual or cumulative adverse impacts on the water resources of the WMD. According to the DEP, reasonable flexibility is routinely provided. For instance, the DEP will not preclude anyone from building a smaller dock, or reconstructing a dock so it is higher over the water, or using the latest structural standards for reconstruction or replacement.

Section 403.813(2)(d), F.S., provides the criteria required for a permitting exemption for the replacement or repair of an existing dock or pier provided no fill is used, and the dock or pier is in the same location, configuration and dimension of the dock or pier being replaced or repaired. As this exemption applies to a single family dock as well as a marina, the DEP reports that it is important not to increase or change the "footprint" over sovereignty submerged lands, as this would necessarily require a review by the DEP to discern the potential environmental impacts.

Effect of Proposed Change

The section authorizes the use of different construction materials or minor deviations to allow upgrades to current structural and design standards in the repair or replacement of dock structures.

**Section 4** provides an effective date.

**B. SECTION DIRECTORY:**

Section 1. Amends s. 258.42, F.S., providing for roof structures over certain dock facilities.

Section 2:

- Amends s. 403.061(29), F.S., removing the need for a variance for docks in certain shellfish waters;
- Creates s. 403.061(40), F.S., requiring the DEP to develop a list of activities for applicants to consider for meeting mitigation or public interest requirements; prohibiting local governments from specifying the method or form of documentation that a project meets the provisions for authorization under chapters 161, 253, 373, or 403, F.S.;
- Creates s. 403.061(41), F.S., requiring the DEP to develop a project management plan to implement an e-permitting program and requires a report; and,
- Creates 403.061(42), F.S., addressing self-certification - Notwithstanding any other provision of law a local government is prohibited from specifying the method or form of documentation that a project meets the provisions for authorization under chapters 161, 253, 373, or 403, F.S.

Section 3. Amends s. 403.813, F.S., regarding the repair or replacement of docks.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The DEP is authorized to promulgate rules to allow docking in shellfish waters and there may be associated costs.

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

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

Those who need to comply with mitigation requirements may be able to consult a list of activities for applicants to consider for meeting mitigation or public interest requirements that is developed by the DEP.

### 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 noted.

### B. RULE-MAKING AUTHORITY:

The bill authorizes the DEP to amend its rules for provide criteria for approval of docking facilities in shellfish waters.

### 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 docks; amending s. 258.42, F.S.;  
 3           authorizing the placement of roofs on certain residential  
 4           single-family docks; amending s. 403.061, F.S.;  
 5           authorizing the Department of Environmental Protection to  
 6           adopt rules that include special criteria for approving  
 7           certain docking facilities in shellfish harvesting waters;  
 8           deleting an obsolete provision; authorizing the department  
 9           to maintain a list of projects or activities for  
 10          applicants to consider when developing proposals in order  
 11          to meet mitigation or public interest requirements;  
 12          authorizing the department to develop a project management  
 13          plan to implement an e-permitting program; authorizing the  
 14          department to expand online self-certification for certain  
 15          exemptions and general permits; prohibiting local  
 16          governments from specifying the method or form for  
 17          documenting that a project meets specified requirements;  
 18          amending s. 403.813, F.S.; clarifying provisions relating  
 19          to permits issued at district centers to authorize the use  
 20          of different construction materials or minor deviations  
 21          when replacing or repairing docks and piers; providing an  
 22          effective date.

23  
 24   Be It Enacted by the Legislature of the State of Florida:

25  
 26           Section 1. Paragraph (e) of subsection (3) of section  
 27   258.42, Florida Statutes, is amended to read:  
 28           258.42 Maintenance of preserves.—The Board of Trustees of

29 the Internal Improvement Trust Fund shall maintain such aquatic  
 30 preserves subject to the following provisions:

31 (3)

32 (e) ~~There shall be no erection of Structures~~ may not be  
 33 erected within the preserve, except:

34 1. Private residential docks may be approved for  
 35 reasonable ingress or egress of riparian owners. Slips at  
 36 private residential single-family docks that contain boat lifts  
 37 or davits that do not float in the water when loaded may not, in  
 38 whole or in part, be enclosed by walls, but may be roofed if the  
 39 roof does not overhang more than 1 foot beyond the footprint of  
 40 the boat lift. Such roofs are not included in the square-footage  
 41 calculation of a terminal platform.

42 2. Private residential multislip docks may be approved if  
 43 located within a reasonable distance of a publicly maintained  
 44 navigation channel, or a natural channel of adequate depth and  
 45 width to allow operation of the watercraft for which the docking  
 46 facility is designed without the craft having an adverse impact  
 47 on marine resources. The distance shall be determined in  
 48 accordance with criteria established by the trustees by rule,  
 49 based on ~~a consideration of~~ the depth of the water, nature and  
 50 condition of bottom, and presence of manatees.

51 3. Commercial docking facilities shown to be consistent  
 52 with the use or management criteria of the preserve may be  
 53 approved if the facilities are located within a reasonable  
 54 distance of a publicly maintained navigation channel, or a  
 55 natural channel of adequate depth and width to allow operation  
 56 of the watercraft for which the docking facility is designed

57 | without the craft having an adverse impact on marine resources.  
 58 | The distance shall be determined in accordance with criteria  
 59 | established by the trustees by rule, based on ~~a consideration of~~  
 60 | the depth of the water, nature and condition of bottom, and  
 61 | presence of manatees.

62 |         4. Structures for shore protection, including restoration  
 63 | of seawalls at their previous location or upland of or within 18  
 64 | inches waterward of their previous location, approved  
 65 | navigational aids, or public utility crossings authorized under  
 66 | paragraph (a) may be approved.

67 |  
 68 | A ~~No~~ structure under this paragraph or chapter 253 may not ~~shall~~  
 69 | be prohibited solely because the local government fails to adopt  
 70 | a marina plan or other policies dealing with the siting of such  
 71 | structures in its local comprehensive plan.

72 |         Section 2. Subsection (29) of section 403.061, Florida  
 73 | Statutes, is amended, present subsection (40) is renumbered as  
 74 | section (43), and new subsections (40), (41), and (42) are added  
 75 | to that section, to read:

76 |         403.061 Department; powers and duties.—The department  
 77 | shall have the power and the duty to control and prohibit  
 78 | pollution of air and water in accordance with the law and rules  
 79 | adopted and promulgated by it and, for this purpose, to:

80 |         (29) Adopt by rule special criteria to protect Class II  
 81 | shellfish harvesting waters. Such rules may include special  
 82 | criteria for approving docking facilities that have 10 or fewer  
 83 | slips if the construction and operation of such facilities will  
 84 | not result in the closure of shellfish waters. ~~Rules previously~~

85 ~~adopted by the department in rule 17-4.28(8)(a), Florida~~  
 86 ~~Administrative Code, are hereby ratified and determined to be a~~  
 87 ~~valid exercise of delegated legislative authority and shall~~  
 88 ~~remain in effect unless amended by the Environmental Regulation~~  
 89 ~~Commission.~~

90 (40) Maintain a list of projects or activities, including  
 91 mitigation banks, which applicants may consider when developing  
 92 proposals in order to meet the mitigation or public interest  
 93 requirements of this chapter, chapter 253, or chapter 373. The  
 94 contents of such list are not a rule as defined in chapter 120,  
 95 and listing a specific project or activity does not imply  
 96 department approval for such project or activity. Each county  
 97 government is encouraged to develop an inventory of projects or  
 98 activities for inclusion on the list by obtaining input from  
 99 local stakeholders in the public, private, and nonprofit  
 100 sectors, including local governments, port authorities, marine  
 101 contractors, other representatives of the marine construction  
 102 industry, environmental or conservation organizations, and other  
 103 interested parties. A county may establish dedicated trust funds  
 104 for depositing public interest donations to be used for future  
 105 public interest projects, including improving on-water law  
 106 enforcement capabilities.

107 (41) Develop a project management plan to implement an e-  
 108 permitting program that allows for timely submission and  
 109 exchange of permit application and compliance information that  
 110 benefits the department's mission, permit applicants,  
 111 permitholders, and the public. The plan must include an  
 112 implementation timetable, estimated costs, and transaction fees.

113 The department shall submit the plan to the President of the  
 114 Senate, the Speaker of the House of Representatives, and the  
 115 Legislative Committee on Intergovernmental Relations by January  
 116 15, 2011.

117 (42) Expand the use of online self-certification for  
 118 appropriate exemptions and general permits issued by the  
 119 department and the water management districts if such expansion  
 120 is economically feasible. Notwithstanding any other provision of  
 121 law, a local government may not specify the method or form for  
 122 documenting that a project meets the requirements for  
 123 authorization under chapter 161, chapter 253, chapter 373, or  
 124 this chapter. This includes Internet-based department programs  
 125 that provide for self-certification.

126  
 127 The department shall implement such programs in conjunction with  
 128 its other powers and duties and shall place special emphasis on  
 129 reducing and eliminating contamination that presents a threat to  
 130 humans, animals or plants, or to the environment.

131 Section 3. Paragraph (d) of subsection (1) of section  
 132 403.813, Florida Statutes, is amended to read:

133 403.813 Permits issued at district centers; exceptions.—

134 (1) A permit is not required under this chapter, chapter  
 135 373, chapter 61-691, Laws of Florida, or chapter 25214 or  
 136 chapter 25270, 1949, Laws of Florida, for activities associated  
 137 with the following types of projects; however, except as  
 138 otherwise provided in this subsection, nothing in this  
 139 subsection relieves an applicant from any requirement to obtain  
 140 permission to use or occupy lands owned by the Board of Trustees



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141 of the Internal Improvement Trust Fund or any water management  
 142 district in its governmental or proprietary capacity or from  
 143 complying with applicable local pollution control programs  
 144 authorized under this chapter or other requirements of county  
 145 and municipal governments:

146 (d) The replacement or repair of existing docks and piers,  
 147 except that ~~no~~ fill material may not ~~is to~~ be used and ~~provided~~  
 148 ~~that~~ the replacement or repaired dock or pier must be ~~is~~ in the  
 149 same location and of the same configuration and dimensions as  
 150 the dock or pier being replaced or repaired. This does not  
 151 preclude the use of different construction materials or minor  
 152 deviations to allow upgrades to current structural and design  
 153 standards.

154 Section 4. This act shall take effect July 1, 2010.

COUNCIL/COMMITTEE AMENDMENT

Bill No. HB 1239 (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(s) Patronis offered the following:

4

5 **Amendment 1**

6 Remove line 40 and insert:  
7 the boat stored at the lift. Such roofs are not included in the  
8 square-footage

COUNCIL/COMMITTEE AMENDMENT

Bill No. HB 1239 (2010)

Amendment No. 2

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	_____	

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

4  
5 **Amendment 2**

6 Remove line 80 and insert:

7 (29) Adopt by rule special criteria to protect Class II and

8 III

Amendment No. 3

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) Patronis offered the following:

**Amendment (with title amendment)**

Remove lines 107-109 and insert:

(41) Implement an e-permitting program that allows for  
timely submission and exchange of permit application that

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

Remove lines 12-13 and insert:

Authorizing the department to implement an e-permitting program;  
authorizing the





## 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:

##### **Section 1:**

In 2003, the Legislature passed CS/CS/SB 1660, which prohibited counties from adopting any ordinance, resolution, regulation, rule, or policy to prohibit, restrict, regulate, or otherwise limit an activity of a bona fide farm or farm operation on land that is classified as agricultural<sup>4</sup>, if such activity is regulated through best management practices (BMPs) or by an existing state, regional, or federal regulatory program. Prior to the enactment of this legislation, several counties had proposed regulations on various agricultural operations in the state that were duplicative and more restrictive than those already dictated through BMPs or an existing governmental regulatory program. The bill did not explicitly prohibit the enforcement of existing measures. Some counties are imposing stormwater utility fees on agricultural lands where the farm operation has an agricultural discharge permit or implements BMPs.

This bill prohibits counties from enforcing regulations on activities currently meeting state, regional or federal regulations on a bona fide farm operation on land classified as agricultural. The powers of a county to enforce applicable wetland protection ordinances, regulations or rules adopted prior to July 1, 2003, are not limited by the provisions of the bill. Additional exceptions are provided for areas located in the Wekiva River Protection Area and when a program is operated under a delegation agreement from a state agency and a water management district. The bill provides that a local government may not impose an assessment or fee for stormwater management on land classified as agricultural if the farm operation has a National Pollutant Discharge Elimination System (NPDES) permit, an environmental resource permit (ERP), a works of the district permit or implements BMPs<sup>5</sup>.

The bill permits counties that adopted ordinances prior to March 1, 2009 to continue to charge an assessment or fee for stormwater management on agricultural land as long as the ordinance or resolution provides credits against the assessment or fee for implementation of BMPs<sup>6</sup>; stormwater quality and quantity measures required as part of the NPDES permit, ERP, or works-of-the-district permit; or implements BMPs, which are demonstrated to be equivalent or greater stormwater benefit than the BMPs implemented pursuant to Chapter 120, F.S.

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<sup>4</sup> Section 193.461, F.S.

<sup>5</sup> The BMPs interim measures or regulations must have been adopted as rules under Chapter 120, F.S. by the Department of Environmental Protection, the Department of Agriculture and Consumer Services or a water management district as part of a statewide or regional program.

<sup>6</sup> *Id*

**Section 2:**

Current law<sup>7</sup> states that if a farm operation has been operating for one year or more and was not a nuisance at the time it was established, it cannot be considered a nuisance thereafter as long as it conforms to generally accepted agricultural and management practices. Florida law further states that the farm operation does not become a nuisance as a result of a change in ownership, a change in the type of farm product being produced, a change in conditions in or around the locality of the farm, or a change brought about to comply with BMPs adopted by local, state or federal agencies.

Conditions that invalidate the nuisance protection include:

- The presence of untreated or improperly treated human waste, garbage, offal, dead animals, dangerous waste materials, or gases that are harmful to human or animal life.
- The presence of improperly built or improperly maintained septic tanks, water closets or privies.
- The keeping of diseased animals that is dangerous to human health, unless such animals are kept in accordance with current state or federal disease control programs.
- The presence of unsanitary places where animals are slaughtered, which may give rise to diseases harmful to human or animal life.

In 2007, a developer in Polk County built a housing development next to an established blueberry grower. The entrances to the development and the grower's operation were adjacent. The grower posted a "buyers beware" sign at the entrance to his farm stating that he used propane cannons to scare birds from his blueberry bushes. The developer sued the blueberry farmer stating that the sign was hindering the sales of homes in the development. The case was eventually dropped.

The Department of Agriculture & Consumer Services (department) states that it receives 8-12 complaints per year regarding the "nuisance" law and speculates there are at least 10 times as many that are never brought to the attention of the department.

The bill creates the "Agricultural Land Acknowledgement Act", which requires a political subdivision, prior to issuing a local land use permit, building permit, or certificate of occupancy for nonagricultural land located contiguous to sustainable agricultural land, to have the applicant for the permit or certificate sign and submit to the political subdivision a written acknowledgement of neighboring sustainable agricultural land.

The bill provides specific information to be included in the acknowledgement and provides that such acknowledgement is a public record and must be maintained by the political subdivision as a permanent record. The bill also requires that a copy of the Acknowledgement of Neighboring Agricultural Land be presented to prospective purchasers of residential property contiguous to sustainable agricultural land prior to or at the time the contract for sale is signed.

The department, in cooperation with the Department of Revenue, is granted rule-making authority to administer the provisions of this section of law.

Georgia has similar language in the Georgia Department of Community Affairs' "Model Land Use Management Code."

**Section 3:**

Florida law<sup>8</sup> exempts any natural person from obtaining an occupational license to sell agricultural products<sup>9</sup> that were grown in the state by said natural person. While the statutes provide a definition for "person," no definition is provided for "natural person." Hence, the statute is interpreted differently in different counties in regards to the exemption. The bill strikes the word "natural" to exempt any "person" from obtaining an occupational license.

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<sup>7</sup> Section 823.14(4), F.S.

<sup>8</sup> Section 205.064, F.S.

<sup>9</sup> Agricultural products include grove, horticultural, floricultural, tropical piscicultural, or tropical fish farm products, with the exception of intoxicating liquors, wine or beer.



#### **Section 4:**

Florida law provides various exemptions from obtaining a driver's license, one of those being "...any person while driving or operating any road machine, farm tractor, or implement of husbandry temporarily operated or moved on a highway."<sup>10</sup> Currently, a farm tractor is defined in statute<sup>11</sup> as "a motor vehicle designed and used primarily as a farm implement for drawing plows, mowing machines, and other implements of husbandry."

When this term was codified in statute several years ago, there was no other motor vehicle able to pull wagons and other farm machinery, other than a truck. In the past several years, farmers have begun using utility-type vehicles, such as ATVs, John Deere Gators, golf carts and others, as well as tractors, in agricultural operations. While these utility vehicles are generally used in the fields and around the agricultural production areas, it is necessary at times to gain access to state roadways for a brief distance to get from one field to another or to the production area.

The bill amends the definition to clarify that a farm tractor may be operated incidentally on the roads of the state as transportation between the owner's or operator's headquarters and the farm, grove, or orchard or between one farm, grove, or orchard and another.

#### **Section 5:**

The Florida License and Bond Law (law)<sup>12</sup> was enacted in 1941 to give market protection to producers of perishable agricultural commodities. The law is intended to facilitate the marketing of Florida agricultural products by encouraging a better understanding between buyers and sellers and by providing a marketplace that is relatively free of unfair trading practices and defaults.

In 2004, the Committee on Agriculture in the Florida House of Representatives reviewed the law as part of an interim project and recommended changes to the then-current statutes. During the 2005 Legislative Session, HB 1231 implemented the recommendations suggested by the interim project. Based on one of the recommendations, the bill amended the definition of the term "agricultural products" to include tropical foliage as a non-exempt agricultural product produced in the state. Until that point, tropical foliage had been exempt from the provisions of the law. For the most part, agricultural products considered exempt from the law are generally those offered by growers or groups of growers selling their own product(s); all persons who buy for cash and pay at the time of purchase with U.S. currency; dealers operating as bonded licensees under the Federal Packers and Stockyards Act; or retail operations purchasing less than \$1,000 in product per month from Florida producers.

Due to the manner by which the foliage business is conducted, the change implemented by HB 1231 has not proven beneficial to the foliage industry and the industry has requested a reenactment of the exemption. This bill reverses the legislation enacted in 2005 to return tropical foliage to exempted status from the provisions of the law.

#### **Section 6:**

Nonresidential farm buildings have always maintained exempt status from building codes except for a brief period in 1998 when the statewide building code was amended and the exemption was inadvertently left out. In the recent past, some counties and municipalities have started assessing impact fees and/or requiring permits for nonresidential farm buildings, even though the buildings are never inspected and are exempt from building codes.

In October 2001, then-Attorney General Bob Butterworth wrote in an opinion to Nicolas Camuccio, Gilchrist Assistant County Attorney, "...*The plain language of sections 553.73(7)(c)<sup>13</sup> and 604.50, Florida Statutes, exempts all nonresidential buildings located on a farm from state and local building codes. Thus, to the extent that the State Minimum Building Codes require an individual to obtain a*

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<sup>10</sup> Section 322.04 (1)(b), F.S.

<sup>11</sup> Section 322.01(20), F.S.

<sup>12</sup> Sections 604.15-604.34, F.S.

<sup>13</sup> This cite has changed to s. 553.73(9)(c), F.S., since the opinion was written.

*permit for the construction, alteration, repair, or demolition of a building or structure, no such permits are required for nonresidential buildings located on a farm..."*

The bill exempts farm fences from the Florida Building Code, and exempts farm fences and nonresidential farm buildings from county or municipal codes and fees, except for code provisions implementing local, state, or federal floodplain management regulations.

The definition of "nonresidential farm building" is amended to clarify that it may a temporary or permanent structure and is not intended to be used as a residential dwelling. The definition includes examples of types of buildings that are exempt from county or municipal codes and fees.

#### **Section 7:**

Crop insurance is purchased by agricultural producers for protection against either the loss of their crops due to natural disasters or the loss of revenue due to declines in the prices of agricultural commodities. In the United States, a subsidized multi-peril federal insurance program, administered by the Risk Management Agency, is available to most farmers. The program is authorized by the Federal Crop Insurance Act (title V of the Agricultural Adjustment Act of 1938, P.L. 75-430).

Multi-peril crop insurance covers the broad perils of drought, flood, insects, disease, etc., which may affect many insureds at the same time and present the insurer with excessive losses. To make this class of insurance, the perils are often bundled together in a single policy, called a multi-peril crop insurance (MPCI) policy. MPCI coverage is usually offered by a government insurer and premiums are usually partially subsidized by the government. The earliest MPCI program was first implemented in 1938 by the Federal Crop Insurance Corporation (FCIC), an agency of the U.S. Department of Agriculture. The FCIC authorizes reinsurers. Certain crop insurers are interested in doing business in Florida, but are currently unable to write insurance because of current statutory constructs regarding gross writing ratios.

The bill allows insurance companies, when calculating their gross writing ratio, to not include gross written premiums for federal multi-peril crop insurance that is ceded to the Federal Crop Insurance Cooperation (FCIC) and authorized reinsurers. The bill requires liabilities for ceded reinsurance premiums payable to the FCIC and authorized reinsurers to be netted against the asset for amounts recoverable from reinsurers. Insurers who write other insurance products along with federal multi-peril crop insurance must disclose, either in the notes to the annual and quarterly financial statement or as a supplement to the financial statement, a breakout of the gross written premiums for federal multi-peril crop insurance.

#### **Section 8:**

There are currently two sections in statute<sup>14</sup> that address open burning of materials used in agricultural production. They differ only in the products listed as approved for open burning. The bill amends the language in Chapter 823, F.S., to mirror the language in Chapter 403, F.S., which is the most recent expression of the Legislature.

### **B. SECTION DIRECTORY:**

**Section 1:** Amends s. 163.3162, F.S.; prohibits a county from enforcing certain ordinances and/or resolutions relating to land classified as agricultural under certain circumstances; and, prohibits the county from imposing a tax, assessment or fee for stormwater management in certain circumstances.

**Section 2:** Creates s. 163.3163, F.S.; creates the "Agricultural Land Acknowledgement Act"; provides legislative findings and intent; provides definitions; requires applicants for certain development permits to sign and submit an acknowledgement of neighboring sustainable agricultural land; provides for such acknowledgement to become a public record and permanently maintained by the political subdivision; and, allows the Department of Agriculture and Consumer Services to adopt rules to administer the provisions of this section.

<sup>14</sup> ss. 403.707(2)(e) and 823.145, F.S.

**Section 3:** Amends s. 205.064, F.S.; revises exemption eligibility for a local business tax receipt.

**Section 4:** Amends s. 322.01, F.S.; revises the definition of "farm tractor."

**Section 5:** Amends s. 604.15, F.S.; revises the definition of "agricultural products."

**Section 6:** Amends s. 604.50, F.S.; provides an exemption for farm fences from the Florida Building Code; provides an exemption for nonresidential farm buildings and farm fences from any county or municipal code or fee; and, revises the definition of "nonresidential farm building."

**Section 7:** Amends s. 624.4095, F.S.; requires that gross written premiums not be included when calculating the insurer's gross ratio; requires liabilities for ceded reinsurance premiums be netted against the asset for amounts recoverable from reinsurers; and, requires insurer writing other insurance products together with federal multi-peril crop insurance to disclose a breakout of the gross written premiums for multiple-peril crop insurance.

**Section 8:** Amends s. 823.145, F.S.; revises the agricultural materials that are allowed to be openly burned.

**Section 9:** Provides an effective date of July 1, 2010.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

	(FY 10-11) <u>Amount/FTE</u>	(FY 11-12) <u>Amount/FTE</u>
1. Revenues:		
Recurring		
Agricultural Products Dealers License		
(General Inspection Trust Fund)	\$ (22,800)	\$ (22,800)
2. Expenditures:		
None		

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

#### 1. Revenues:

The Revenue Estimating Conference (conference) has not yet reviewed this legislation. However, in 2009, the conference determined that the provisions of identical legislation would have a negative indeterminate impact on local government revenues. See "Fiscal Comments" section below.

#### 2. Expenditures:

Indeterminate

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

The bill provides relief to agricultural producers who are being assessed with assessments, fees and/or business tax receipts by counties or municipalities.

The bill also exempts dealers who sell tropical foliage from the requirement to be licensed and bonded. According to the Department of Agriculture and Consumer Affairs, it will decrease the protection provided by the agricultural bond and create a financial vulnerability for those growers who no longer have the protection of ensuring they are paid for their product.

D. FISCAL COMMENTS:

The Division of Marketing (division) within the Department of Agriculture and Consumer Services reports that there are approximately 598 tropical foliage dealers who are currently licensed by the division. Of the 598 who have tropical foliage licenses, only 76 deal in tropical foliage alone. By exempting tropical foliage dealers from the definition of agricultural products, the division will experience a loss of revenue in the General Inspection Trust Fund of \$22,800 for FY 2010-11 and a loss of \$22,800 for FY 2011-12. The loss of revenue is insignificant.

The Revenue Estimating Conference (conference) has not yet reviewed this legislation; however, the following comments relate to identical legislation filed during the 2009 Legislative Session.

Provisions of this bill that (1) prohibit a county or municipality from imposing an assessment or fee for storm water management on certain lands, and (2) exempt nonresidential farm buildings and fences from county or municipal codes or fees will have a negative indeterminate impact on local government revenues as determined by the Revenue Estimating Conference.

In 2008, the Office of Economic and Demographic Research (EDR) was able to identify eleven county stormwater utilities. Of those, six indicated that they exempted agricultural parcels from paying any assessment or fee and five indicated that they did not provide such an exemption. In March of 2008, EDR conducted a telephone survey of the five county stormwater utilities that had indicated that they did not fully exempt agricultural lands. The purpose of the survey was to attempt to identify the potential revenue that might be lost if the provisions of the proposed legislation relating to stormwater management assessments or fees were enacted. Two of the five counties responded to the survey as follows:

<u>County</u>	<u>Potential Lost Revenue</u>
Sarasota	\$118,500
Pasco	\$71,924

**Total \$190,424**

The amendment to s. 604.50, F.S., expands the exemption afforded to nonresidential farm buildings from the state, city and county building codes to any nonresidential farm building or farm fence from any county or municipal code or fee. This would appear to include land use planning, environmental and virtually any local code or fee, including locally imposed impact fees.

According to a survey conducted by the Legislative Committee on Intergovernmental Relations in 2006, no local governments reported imposing impact fees specifically on agricultural buildings. In a limited telephone survey conducted in March 2008, respondents indicated that local construction projects were typically evaluated for infrastructure impacts, such as public safety or transportation, at the time of plan review and permitting. Since nonresidential farm buildings are not subject to state and local building codes, they often escape this scrutiny. Only one county, Jefferson County, reported imposing a fee on a nonresidential farm building in the past. According to Jefferson County staff, they imposed a public safety impact fee on a 4,650 square foot nonresidential agricultural building due to its intended office and warehouse uses. The fee was believed to be \$1,488.

**III. COMMENTS**

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The mandate provision appears to apply because the bill reduces the authority that counties have to raise revenues. The bill prohibits a county from imposing an assessment or fee for stormwater management on certain lands and exempts non-residential farm buildings and fences from fees.

The Revenue Estimating Conference (conference) has not yet had an opportunity to review the fiscal impact of this legislation. However, in 2009, the conference determined that the provisions of identical legislation would have had a negative indeterminate impact on local government revenues. Staff anticipated that the impact would not exceed \$1.9 million statewide. Therefore, if the fiscal impact this year is the same as last year's legislation, the bill should be exempt from the mandates provision because the fiscal impact is insignificant.

Additionally, the mandate provision may apply because the bill prohibits local cities and counties from imposing a local business tax on persons engaged in the selling of farm, aquacultural, grove, horticultural, floricultural, tropical piscicultural, or tropical fish farm products, or products manufactured therefrom. The Revenue Estimating Conference has not yet determined if the fiscal impact is significant or if an exemption to the mandate provision applies.

In the absence of an applicable exemption or exception, Article VII, section 18(b) of the Florida Constitution prohibits the legislature from enacting, amending or repealing a law if the anticipated effect of doing so would be to reduce the authority that municipalities or counties have to raise revenues in the aggregate, as such authority exists on February 1, 1989, unless the law is approved by a two-thirds vote of the membership of each house.

2. Other:

None

B. RULE-MAKING AUTHORITY:

The Department of Agriculture and Consumer Services, in cooperation with the Department of Revenue, is granted rule-making authority to implement the provisions of the "Agricultural Land Acknowledgement Act."

C. DRAFTING ISSUES OR OTHER COMMENTS:

The Department of Agriculture and Consumer Services (department) states that, in July 2007, a firm dealing in tropical foliage was ordered to pay over \$97,000 to a South Florida nursery for tropical foliage it purchased but failed to pay for. During the 2008-09 FY, the department processed claims totaling \$13,325 filed by Florida producers against agricultural dealers listing tropical foliage among the commodities handled.

#### IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

1 A bill to be entitled  
 2 An act relating to agriculture; amending s. 163.3162,  
 3 F.S.; prohibiting a county from enforcing certain limits  
 4 on the activity of a bona fide farm operation on  
 5 agricultural land under certain circumstances; prohibiting  
 6 a county from charging agricultural lands for stormwater  
 7 management assessments and fees under certain  
 8 circumstances; allowing an assessment to be collected if  
 9 credits against the assessment are provided for  
 10 implementation of best management practices; providing  
 11 exemptions from certain restrictions on a county's powers  
 12 over the activity on agricultural land; providing a  
 13 definition; providing for application; creating s.  
 14 163.3163, F.S.; creating the "Agricultural Land  
 15 Acknowledgement Act"; providing legislative findings and  
 16 intent; providing definitions; requiring an applicant for  
 17 certain development permits to sign and submit an  
 18 acknowledgement of certain contiguous agricultural lands  
 19 as a condition of the political subdivision issuing the  
 20 permits; specifying information to be included in the  
 21 acknowledgement; requiring that the acknowledgement be  
 22 recorded in the official county records; authorizing the  
 23 Department of Agriculture and Consumer Services to adopt  
 24 rules; amending s. 205.064, F.S.; authorizing a person  
 25 selling certain agricultural products who is not a natural  
 26 person to qualify for an exemption from obtaining a local  
 27 business tax receipt; amending s. 322.01, F.S.; revising  
 28 the term "farm tractor" for purposes of drivers' licenses;

29 | amending s. 604.15, F.S.; revising the term "agricultural  
 30 | products" to make tropical foliage exempt from regulation  
 31 | under provisions relating to dealers in agricultural  
 32 | products; amending s. 604.50, F.S.; exempting farm fences  
 33 | from the Florida Building Code; revising the term  
 34 | "nonresidential farm building"; exempting nonresidential  
 35 | farm buildings and farm fences from county and municipal  
 36 | codes and fees; specifying that the exemptions do not  
 37 | apply to code provisions implementing certain floodplain  
 38 | regulations; amending s. 624.4095, F.S.; requiring that  
 39 | gross written premiums for certain crop insurance not be  
 40 | included when calculating the insurer's gross writing  
 41 | ratio; requiring that liabilities for ceded reinsurance  
 42 | premiums be netted against the asset for amounts  
 43 | recoverable from reinsurers; requiring that insurers who  
 44 | write other insurance products disclose a breakout of the  
 45 | gross written premiums for crop insurance; amending s.  
 46 | 823.145, F.S.; expanding the materials used in  
 47 | agricultural operations that may be disposed of by open  
 48 | burning; providing certain limitations on open burning;  
 49 | providing an effective date.

50 |

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

52 |

53 | Section 1. Subsection (4) of section 163.3162, Florida  
 54 | Statutes, is amended to read:

55 | 163.3162 Agricultural Lands and Practices Act.—

56 (4) DUPLICATION OF REGULATION.—Except as otherwise  
 57 provided in this section and s. 487.051(2), and notwithstanding  
 58 any other law, including any provision of chapter 125 or this  
 59 chapter:7

60 (a) A county may not exercise any of its powers to adopt  
 61 or enforce any ordinance, resolution, regulation, rule, or  
 62 policy to prohibit, restrict, regulate, or otherwise limit an  
 63 activity of a bona fide farm operation on land classified as  
 64 agricultural land pursuant to s. 193.461, if such activity is  
 65 regulated through implemented best management practices, interim  
 66 measures, or regulations adopted as rules under chapter 120  
 67 ~~developed~~ by the Department of Environmental Protection, the  
 68 Department of Agriculture and Consumer Services, or a water  
 69 management district ~~and adopted under chapter 120~~ as part of a  
 70 statewide or regional program; or if such activity is expressly  
 71 regulated by the United States Department of Agriculture, the  
 72 United States Army Corps of Engineers, or the United States  
 73 Environmental Protection Agency.

74 (b) A county may not charge an assessment or fee for  
 75 stormwater management on a bona fide farm operation on land  
 76 classified as agricultural land pursuant to s. 193.461, if the  
 77 farm operation has a National Pollutant Discharge Elimination  
 78 System permit, environmental resource permit, or works-of-the-  
 79 district permit or implements best management practices adopted  
 80 as rules under chapter 120 by the Department of Environmental  
 81 Protection, the Department of Agriculture and Consumer Services,  
 82 or a water management district as part of a statewide or  
 83 regional program.



84 (c) For each county that, before March 1, 2009, adopted a  
 85 stormwater utility ordinance or resolution, adopted an ordinance  
 86 or resolution establishing a municipal services benefit unit, or  
 87 adopted a resolution stating the county's intent to use the  
 88 uniform method of collection pursuant to s. 197.3632 for such  
 89 stormwater ordinances, the county may continue to charge an  
 90 assessment or fee for stormwater management on a bona fide farm  
 91 operation on land classified as agricultural pursuant to s.  
 92 193.461, if the ordinance or resolution provides credits against  
 93 the assessment or fee on a bona fide farm operation for:

94 1. The implementation of best management practices adopted  
 95 as rules under chapter 120 by the Department of Environmental  
 96 Protection, the Department of Agriculture and Consumer Services,  
 97 or a water management district as part of a statewide or  
 98 regional program;

99 2. The stormwater quality and quantity measures required  
 100 as part of a National Pollutant Discharge Elimination System  
 101 permit, environmental resource permit, or works-of-the-district  
 102 permit; or

103 3. The implementation of best management practices or  
 104 alternative measures which the landowner demonstrates to the  
 105 county to be of equivalent or greater stormwater benefit than  
 106 those provided by implementation of best management practices  
 107 adopted as rules under chapter 120 by the Department of  
 108 Environmental Protection, the Department of Agriculture and  
 109 Consumer Services, or a water management district as part of a  
 110 statewide or regional program, or stormwater quality and  
 111 quantity measures required as part of a National Pollutant

112 Discharge Elimination System permit, environmental resource  
 113 permit, or works-of-the-district permit.

114 (d)~~(a)~~ When an activity of a farm operation takes place  
 115 within a wellfield protection area as defined in any wellfield  
 116 protection ordinance adopted by a county, and the implemented  
 117 best management practice, regulation, or interim measure does  
 118 not specifically address wellfield protection, a county may  
 119 regulate that activity pursuant to such ordinance. This  
 120 subsection does not limit the powers and duties provided for in  
 121 s. 373.4592 or limit the powers and duties of any county to  
 122 address an emergency as provided for in chapter 252.

123 (e)~~(b)~~ This subsection may not be construed to permit an  
 124 existing farm operation to change to a more excessive farm  
 125 operation with regard to traffic, noise, odor, dust, or fumes  
 126 where the existing farm operation is adjacent to an established  
 127 homestead or business on March 15, 1982.

128 (f)~~(e)~~ This subsection does not limit the powers of a  
 129 predominantly urbanized county with a population greater than  
 130 1,500,000 and more than 25 municipalities, not operating under a  
 131 home rule charter adopted pursuant to ss. 10, 11, and 24, Art.  
 132 VIII of the Constitution of 1885, as preserved by s. 6(e), Art.  
 133 VIII of the Constitution of 1968, which has a delegated  
 134 pollution control program under s. 403.182 and includes drainage  
 135 basins that are part of the Everglades Stormwater Program, to  
 136 enact ordinances, regulations, or other measures to comply with  
 137 the provisions of s. 373.4592, or which are necessary to  
 138 carrying out a county's duties pursuant to the terms and

139 conditions of any environmental program delegated to the county  
 140 by agreement with a state agency.

141 (g)~~(d)~~ For purposes of this subsection, a county ordinance  
 142 that regulates the transportation or land application of  
 143 domestic wastewater residuals or other forms of sewage sludge  
 144 shall not be deemed to be duplication of regulation.

145 (h) This subsection does not limit a county's powers to:

146 1. Enforce wetlands, springs protection, or stormwater  
 147 ordinances, regulations, or rules adopted before July 1, 2003.

148 2. Enforce wetlands, springs protection, or stormwater  
 149 ordinances, regulations, or rules pertaining to the Wekiva River  
 150 Protection Area.

151 3. Enforce ordinances, regulations, or rules as directed  
 152 by law or implemented consistent with the requirements of a  
 153 program operated under a delegation agreement from a state  
 154 agency or water management district.

155  
 156 As used in this paragraph, the term "wetlands" has the same  
 157 meaning as defined in s. 373.019.

158 (i) The provisions of this subsection that limit a  
 159 county's authority to adopt or enforce any ordinance,  
 160 regulation, rule, or policy, or to charge any assessment or fee  
 161 for stormwater management, apply only to a bona fide farm  
 162 operation as described in this subsection.

163 (j) This subsection does not apply to a municipal services  
 164 benefit unit established before March 1, 2009, pursuant to s.  
 165 125.01(1)(q), predominately for flood control or water supply  
 166 benefits.

167 Section 2. Section 163.3163, Florida Statutes, is created  
 168 to read:

169 163.3163 Applications for development permits; disclosure  
 170 and acknowledgement of contiguous sustainable agricultural  
 171 land.—

172 (1) This section may be cited as the "Agricultural Land  
 173 Acknowledgement Act."

174 (2) The Legislature finds that nonagricultural land which  
 175 neighbors agricultural land may adversely affect agricultural  
 176 production and farm operations on the agricultural land and may  
 177 lead to the agricultural land's conversion to urban, suburban,  
 178 or other nonagricultural uses. The Legislature intends to reduce  
 179 the occurrence of conflicts between agricultural and  
 180 nonagricultural land uses and encourage sustainable agricultural  
 181 land use. The purpose of this section is to ensure that  
 182 generally accepted agricultural practices will not be subject to  
 183 interference by residential use of land contiguous to  
 184 sustainable agricultural land.

185 (3) As used in this section, the term:

186 (a) "Contiguous" means touching, bordering, or adjoining  
 187 along a boundary. For purposes of this section, properties that  
 188 would be contiguous if not separated by a roadway, railroad, or  
 189 other public easement are considered contiguous.

190 (b) "Farm operation" has the same meaning as defined in s.  
 191 823.14.

192 (c) "Sustainable agricultural land" means land classified  
 193 as agricultural land pursuant to s. 193.461 which is used for a  
 194 farm operation that uses current technology, based on science or

195 research and demonstrated measurable increases in productivity,  
 196 to meet future food, feed, fiber, and energy needs, while  
 197 considering the environmental impacts and the social and  
 198 economic benefits to the rural communities.

199 (4) (a) Before a political subdivision issues a local land  
 200 use permit, building permit, or certificate of occupancy for  
 201 nonagricultural land contiguous to sustainable agricultural  
 202 land, the political subdivision shall require that, as a  
 203 condition of issuing the permit or certificate, the applicant  
 204 for the permit or certificate sign and submit to the political  
 205 subdivision, in a format that is recordable in the official  
 206 records of the county in which the political subdivision is  
 207 located, a written acknowledgement of contiguous sustainable  
 208 agricultural land in the following form:

210 ACKNOWLEDGEMENT OF CONTIGUOUS SUSTAINABLE AGRICULTURAL LAND

211  
 212 I, ...(name of applicant)..., understand that my property  
 213 located at ...(address of nonagricultural land)..., as  
 214 further described in the attached legal description, is  
 215 contiguous to sustainable agricultural land located at  
 216 ...(address of agricultural land)..., as further described  
 217 in the attached legal description.

218 I acknowledge and understand that the farm operation  
 219 on the contiguous sustainable agricultural land identified  
 220 herein will be conducted according to generally accepted  
 221 agricultural practices as provided in the Florida Right to  
 222 Farm Act, s. 823.14, Florida Statutes.

223 Signature: ... (signature of applicant)....  
 224 Date: ... (date)....  
 225

226 (b) An acknowledgement submitted to a political  
 227 subdivision under paragraph (a) shall be recorded in the  
 228 official records of the county in which the political  
 229 subdivision is located.

230 (c) The Department of Agriculture and Consumer Services,  
 231 in cooperation with the Department of Revenue, may adopt rules  
 232 to administer this section.

233 Section 3. Subsection (1) of section 205.064, Florida  
 234 Statutes, is amended to read:

235 205.064 Farm, aquacultural, grove, horticultural,  
 236 floricultural, tropical piscicultural, and tropical fish farm  
 237 products; certain exemptions.-

238 (1) A local business tax receipt is not required of any  
 239 ~~natural~~ person for the privilege of engaging in the selling of  
 240 farm, aquacultural, grove, horticultural, floricultural,  
 241 tropical piscicultural, or tropical fish farm products, or  
 242 products manufactured therefrom, except intoxicating liquors,  
 243 wine, or beer, when such products were grown or produced by such  
 244 ~~natural~~ person in the state.

245 Section 4. Subsection (20) of section 322.01, Florida  
 246 Statutes, is amended to read:

247 322.01 Definitions.-As used in this chapter:

248 (20) "Farm tractor" means a motor vehicle that is:

249 (a) Operated principally on a farm, grove, or orchard in  
 250 agricultural or horticultural pursuits and that is operated on

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251 the roads of this state only incidentally to transportation  
 252 between the owner's or operator's headquarters and the farm,  
 253 grove, or orchard or between one farm, grove, or orchard and  
 254 another; or

255 (b) Designed and used primarily as a farm implement for  
 256 drawing plows, mowing machines, and other implements of  
 257 husbandry.

258 Section 5. Subsection (1) of section 604.15, Florida  
 259 Statutes, is amended to read:

260 604.15 Dealers in agricultural products; definitions.—For  
 261 the purpose of ss. 604.15-604.34, the following words and terms,  
 262 when used, shall be construed to mean:

263 (1) "Agricultural products" means the natural products of  
 264 the farm, nursery, grove, orchard, vineyard, garden, and apiary  
 265 (raw or manufactured); sod; ~~tropical foliage~~; horticulture; hay;  
 266 livestock; milk and milk products; poultry and poultry products;  
 267 the fruit of the saw palmetto (meaning the fruit of the Serenoa  
 268 repens); limes (meaning the fruit Citrus aurantifolia, variety  
 269 Persian, Tahiti, Bearss, or Florida Key limes); and any other  
 270 nonexempt agricultural products produced in the state, except  
 271 tobacco, sugarcane, tropical foliage, timber and timber  
 272 byproducts, forest products as defined in s. 591.17, and citrus  
 273 other than limes.

274 Section 6. Section 604.50, Florida Statutes, is amended to  
 275 read:

276 604.50 Nonresidential farm buildings and farm fences.—

277 (1) Notwithstanding any other law to the contrary, any  
 278 nonresidential farm building or farm fence is exempt from the

279 Florida Building Code and any county or municipal ~~building~~ code  
 280 or fee, except for code provisions implementing local, state, or  
 281 federal floodplain management regulations.

282 (2) As used in ~~For purposes of~~ this section, the term:

283 (a) "Nonresidential farm building" means any temporary or  
 284 permanent building or support structure that is classified as a  
 285 nonresidential farm building on a farm under s. 553.73(9)(c) or  
 286 that is used primarily for agricultural purposes, is located on  
 287 a farm that is not used as a residential dwelling, and is  
 288 located on land that is an integral part of a farm operation or  
 289 is classified as agricultural land under s. 193.461, and is not  
 290 intended to be used as a residential dwelling. The term may  
 291 include, but is not limited to, a barn, greenhouse, shade house,  
 292 farm office, storage building, or poultry house.

293 (b) The term "Farm" has the same meaning is as provided  
 294 defined in s. 823.14.

295 Section 7. Subsection (7) is added to section 624.4095,  
 296 Florida Statutes, to read:

297 624.4095 Premiums written; restrictions.—

298 (7) For purposes of this section and s. 624.407, with  
 299 regard to capital and surplus required, gross written premiums  
 300 for federal multiple-peril crop insurance that is ceded to the  
 301 Federal Crop Insurance Corporation and authorized reinsurers  
 302 shall not be included when calculating the insurer's gross  
 303 writing ratio. The liabilities for ceded reinsurance premiums  
 304 payable for federal multiple-peril crop insurance ceded to the  
 305 Federal Crop Insurance Corporation and authorized reinsurers  
 306 shall be netted against the asset for amounts recoverable from



307 reinsurers. Each insurer that writes other insurance products  
 308 together with federal multiple-peril crop insurance shall  
 309 disclose in the notes to the annual and quarterly financial  
 310 statement, or file a supplement to the financial statement that  
 311 discloses, a breakout of the gross written premiums for federal  
 312 multiple-peril crop insurance.

313 Section 8. Section 823.145, Florida Statutes, is amended  
 314 to read:



315 823.145 Disposal by open burning of certain materials  
 316 ~~mulch plastic~~ used in agricultural operations.—Polyethylene  
 317 agricultural mulch plastic; damaged, nonsalvageable, untreated  
 318 wood pallets; and packing material that cannot be feasibly  
 319 recycled, which are used in connection with agricultural  
 320 operations related to the growing, harvesting, or maintenance of  
 321 crops, may be disposed of by open burning provided that no  
 322 public nuisance or any condition adversely affecting the  
 323 environment or the public health is created thereby and that  
 324 state or federal national ambient air quality standards are not  
 325 violated.

326 Section 9. This act shall take effect July 1, 2010.



**HOUSE OF REPRESENTATIVES STAFF ANALYSIS**

**BILL #:** PCB ANR 10-09 Consumptive Use Permits  
**SPONSOR(S):** Agriculture & Natural Resources Policy Committee  
**TIED BILLS:** **IDEN./SIM. BILLS:**

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.:	Agriculture & Natural Resources Policy Committee		Kliner 	Reese 
1)				
2)				
3)				
4)				
5)				

**SUMMARY ANALYSIS**

The bill amends specific sections of Part II of Chapter 373, F.S., relating to consumptive use permits (CUPs). Specifically, the bill:

- Provides that when the Department of Environmental Protection (DEP) or the water management district (WMD) board is evaluating an application for a CUP, and an applicant proposes the implementation of "significant demand management activities" or the use of an alternative water supply project, and provides certain assurances, the permitting agency shall presume that the consumptive use of water is consistent with the public interest.
- Directs the DEP or the WMD board to address a CUP applicant's reduced need for a permitted water allocation by increasing the permit's duration, rather than reducing the allocation, provided the reduced need is due to "significant demand management activities" or an alternative water supply project. The DEP or WMD board is required to approve permits for the implementation of "significant demand management activities" for a term for at least 20 years.
- Provides that an applicant will not be subject to a permit revocation by the DEP or the WMD board for nonuse of the resource provided the applicant proves that a reduction in water use is the result of "significant demand management activities" or the development of alternative water supply projects that exceed the requirement of the permit.

The bill appears to have no fiscal impact on local governments. At the state government level, there may be costs associated with rulemaking by the DEP.

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:

##### Current Situation

##### Consumptive Use Permits

A consumptive use permit (CUP), also called a water use permit, constitutes authorization to withdraw a specified amount of water for a specified time either from the ground or from a surface water body. CUPs are generally issued by the water management districts (WMDs) under Part II of Chapter 373, F.S., specifically s. 373.223, F.S. State law allows the DEP to issue CUPs where an applicant proposes an "inter-district transfer" of water (i.e. from a source within one WMD to a user in another WMD).

The water permitted to be withdrawn under a CUP is most often used for agricultural and other types of irrigation, for drinking water for public consumption, and in the manufacturing processes of various products. CUPs were created as the key mechanism by which the WMDs and the state can regulate the consumption of water for the most beneficial uses and in the best interest of the public.

People or entities wishing to utilize a water supply – whether an aquifer, a river or lake, or an "alternative supply" such as stormwater or seawater – must obtain a CUP if certain thresholds are exceeded. For example, persons who propose withdrawing water through a well whose diameter exceeds 6 inches, or who would withdraw more than 100,000 gallons a day, or who are supplying more than their domestic needs, must obtain a CUP. Each WMD's list of thresholds is slightly different, as are the penalties for failure to obtain a CUP prior to withdrawing water.

A CUP may be issued only if the applicant can establish that the proposed use of the water meets the "three prong test" specified in ss. 373. 223(1), F.S.; that is, the proposed use of water: (1) is a reasonable-beneficial use (meaning it is both an economic and efficient utilization of water for a purpose and in a manner which is both reasonable and consistent with the public interest); (2) will not interfere with any presently existing legal use of water; and (3) is consistent with the public interest.

## Effect of Proposed Changes

### Conditions for a permit

Currently, subsection (5) of s. 373.223, F.S., provides that an alternative water supply development project identified by a WMD is presumed to be in the public interest, which meets one of the requirements of the “three-prong” test required for the issuance of a consumptive use permit.

The bill provides that if the applicant for a CUP proposes either an alternative water supply project or “significant demand management activities”, and provides assurances of the applicant’s capability to implement the demand management strategies or to design, construct, operate, and maintain the alternative water supply project, the *consumptive use of water* will be presumed to be in the public interest, satisfying one of the requirements of the “three-prong” test required for the issuance of a consumptive use permit. Applicants will be required to comply with the remaining two conditions for a consumptive use permit: demonstrate that the project will have a reasonable beneficial use and does not interfere with any existing legal users.

### Duration of a CUP and Reporting Requirements

The duration of a CUP may vary, and permits may range from five years to twenty years or more, depending upon the circumstances. For instance, s. 373.236, F.S., provides for a 20-year duration for permits approved for the development of alternative water supplies. If the permittee issues bonds for the construction of the project, the permit may be extended, at the request of the permittee, to cover the time required to retire the bonds, provided the WMD board determines that the use will continue to meet the conditions for issuance of the permit. This section authorizes the governing board of a WMD to require a permittee holding a 20-year CUP to file a compliance report every five years during the term of the permit. The report must provide reasonable assurance to the board that the initial conditions for the issuance of the permit are met. A permit that is modified under this section is not subject to review of competing consumptive use applications, provided there is no increase in the permitted allocation, permit duration, and no change in the water source (unless the change is requested by the WMD).

The bill provides direction for the DEP or the WMD board in the event the permittee’s need for the initial water allocation amount decreases due to the use of demand management activities or by the development of an alternative water supply project. Provided the initial conditions for the permit can still be met, the DEP or the WMD board is required to address the decreased need by increasing the duration of the permit, rather than reducing the quantity of water initially permitted. A permit that is modified under this section will not be subject to competing uses provided the increase in permit duration was due to demand management activities or the development of a water supply project that exceeded the requirement of the permit.

The bill provides for a 20-year duration for permits approved for significant demand management activities, and also provides for a permit extension at the request of the permittee to cover the time required to retire bonds that are issued for the construction of a demand management project.

### Revocation of a CUP for Non-use

Currently, s. 373.243, F.S., authorizes the DEP or the WMD boards to revoke a CUP for the nonuse of the water supply allowed by the permit for a period of 2 years or more, unless the user can prove that his or her nonuse was due to extreme hardship caused by factors beyond the user’s control.<sup>1</sup>

The bill provides an exception for a determination of non-use of the resource resulting in a revocation of the permit if the non-use was due to the implementation of demand management activities or due to the development of an alternative water supply project that exceeds the requirement of the permit.

---

<sup>1</sup> Other actions that may result in a revocation include: any material false statement in documentation required under the permit or statute, a willful violation of the conditions of the permit, or a violation of any provision of Chapter 273, F.S.

**B. SECTION DIRECTORY:**

Section 1. Amends subsection (5) of s. 373.223, F.S., directing the DEP or a WMD board, when evaluating an application for a CUP, where an applicant proposes the implementation of "significant demand management activities" or the use of an alternative water supply project, and provides certain assurances, to presume the consumptive use of water is consistent with the public interest.

Section 2. Amends subsections (4) and (5) of s. 373.236, F.S., directing the DEP or the WMD board to address a CUP applicant's reduced need for a permitted water allocation by increasing the permit's duration, rather than reducing the allocation, provided the reduced need is due to "significant demand management activities" or an alternative water supply project, provided the DEP or WMD does not determine the increased duration will not meet the initial conditions of the permit. The DEP or WMD boards are required to approve permits for the implementation of "significant demand management activities" for a term for at least 20 years.

Section 3. Amends subsection (4) of s. 373.243, F.S., providing that an applicant who proves that a reduction in water use that is the result of "significant demand management activities" or the development of an alternative water supply project that exceeds the requirement of the permit will not be subject to a permit revocation by the DEP or the WMD board for nonuse of the resource.

Section 4. 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:

The DEP and WMDs may need to implement rulemaking to develop definitions, examples of "significant demand management activities" and standards for such practices.

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

1. Revenues:

Local government public water supply utilities may benefit from the implementation of demand management practices in the same manner as private utilities. See, Part II, C., below.

2. Expenditures:

None.

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

The implementation of demand management activities may inure to the benefit of utilities that provide public water resources and that implement demand management practices. In theory, demand management activities will "flatten" the demand curve for the subject resource. In practice, one of the activities that might be used is "cost-reflective pricing" in which the cost of water is increased to incentivize conservation. A utility that increases its prices to reduce demand for water may be able to sell to a greater number of customers who will use less but pay more per gallon.

**D. FISCAL COMMENTS:**

None.

### 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, does not appear to reduce the authority that counties or municipalities have to raise revenue in the aggregate, and does not appear to reduce the percentage of state tax shared with counties or municipalities.

##### 2. Other:

None noted.

#### B. RULE-MAKING AUTHORITY:

No rulemaking authority is provided.

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

Staff recommends the following amendments to the bill as drafted:

- Provide specific rulemaking authority to the DEP to develop definitions, examples, and standards for the implementation of demand management activities when evaluating CUP applications.
- Amend line 30 of the bill to provide that the alternative water supply or the significant demand management activities is consistent with the public interest test.

### IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

1 A bill to be entitled  
 2 An act relating to consumptive use permits; amending s.  
 3 373.223, F.S.; providing for the evaluation of permit  
 4 applications for consumptive use of water for the  
 5 implementation of significant demand management  
 6 activities; providing that such use is consistent with the  
 7 public interest; amending s. 373.236, F.S.; providing for  
 8 the modification and extension of consumptive use permits  
 9 for significant demand management activities and  
 10 alternative water supply projects under specified  
 11 conditions; amending s. 373.243, F.S.; providing for an  
 12 exception to certain revocation of consumptive use permits  
 13 for significant demand management activities and  
 14 alternative water supply projects; providing an effective  
 15 date.

16  
 17 Be It Enacted by the Legislature of the State of Florida:

18  
 19 Section 1. Subsection (5) of section 373.223, Florida  
 20 Statutes, is amended to read:

21 373.223 Conditions for a permit.-

22 (5) In evaluating an application for consumptive use of  
 23 water which proposes the implementation of significant demand  
 24 management activities or the use of an alternative water supply  
 25 project as described in the regional water supply plan and  
 26 provides reasonable assurances of the applicant's capability to  
 27 implement the significant demand management activities or to  
 28 design, construct, operate, and maintain the alternative water



29 supply project, the governing board or department shall presume  
 30 that the consumptive ~~alternative water supply~~ use of water is  
 31 consistent with the public interest under paragraph (1)(c).  
 32 However, where the governing board identifies the need for a  
 33 multijurisdictional water supply entity or regional water supply  
 34 authority to develop the alternative water supply project  
 35 pursuant to s. 373.0361(2)(a)2., the presumption shall be  
 36 accorded only to that use proposed by such entity or authority.  
 37 This subsection does not effect evaluation of the use pursuant  
 38 to the provisions of paragraphs (1)(a) and (b), subsections (2)  
 39 and (3), and ss. 373.2295 and 373.233.

40 Section 2. Subsections (4) and (5) of section 373.236,  
 41 Florida Statutes, are amended to read:

42 373.236 Duration of permits; compliance reports.-

43 (4) Where necessary to maintain reasonable assurance that  
 44 the conditions for issuance of a 20-year permit can continue to  
 45 be met, the governing board or department, in addition to any  
 46 conditions required pursuant to s. 373.219, may require a  
 47 compliance report by the permittee every 5 years during the term  
 48 of a permit. This report shall contain sufficient data to  
 49 maintain reasonable assurance that the initial conditions for  
 50 permit issuance are met. Following review of this report, the  
 51 governing board or the department may modify the permit to  
 52 ensure that the use meets the conditions for issuance. Any  
 53 decrease in the permittee's need for the permitted allocation  
 54 due to the implementation of significant demand management  
 55 activities or the development of alternative water supply  
 56 projects that exceed the requirements of the permit, such as

57 | implementation of a functioning reuse system pursuant to s.  
 58 | 403.086(9), shall be addressed by the governing board or  
 59 | department through an increase of the permit duration rather  
 60 | than a reduction of the permitted allocation, unless the  
 61 | governing board or department determines that the increased  
 62 | duration will not meet the initial conditions for issuance.  
 63 | Permit modifications pursuant to this subsection shall not be  
 64 | subject to competing applications, provided there is no increase  
 65 | in the permitted allocation or permit duration, and no change in  
 66 | source, except for changes in source requested by the district  
 67 | or increases in permit duration due to the implementation of  
 68 | significant demand management activities or the development of  
 69 | alternative water supply projects that exceed the requirements  
 70 | of the permit. This subsection shall not be construed to limit  
 71 | the existing authority of the department or the governing board  
 72 | to modify or revoke a consumptive use permit.

73 | (5) Permits approved for the implementation of significant  
 74 | demand management activities or the development of alternative  
 75 | water supply projects ~~supplies~~ shall be granted for a term of at  
 76 | least 20 years. However, if the permittee issues bonds for the  
 77 | construction of significant demand management activities or an  
 78 | alternative water supply ~~the~~ project, upon request of the  
 79 | permittee prior to the expiration of the permit, that permit  
 80 | shall be extended for such additional time as is required for  
 81 | the retirement of bonds, not including any refunding or  
 82 | refinancing of such bonds, provided that the governing board  
 83 | determines that the use will continue to meet the conditions for  
 84 | the issuance of the permit. Such a permit is subject to

85 compliance reports under subsection (4).

86 Section 3. Subsection (4) of section 373.243, Florida  
 87 Statutes, is amended to read:

88 373.243 Revocation of permits.—The governing board or the  
 89 department may revoke a permit as follows:

90 (4) For nonuse of the water supply allowed by the permit  
 91 for a period of 2 years or more, the governing board or the  
 92 department may revoke the permit permanently and in whole unless  
 93 the user can prove that his or her nonuse was due to extreme  
 94 ~~hardship caused by~~ factors beyond the user's control or due to  
 95 reductions in water use caused by the implementation of  
 96 significant demand management activities or the development of  
 97 alternative water supply projects that exceed the requirements  
 98 of the permit. For a permit issued pursuant to s. 373.236(7),  
 99 the governing board or the department may revoke the permit only  
 100 if the nonuse of the water supply allowed by the permit is for a  
 101 period of 4 years or more.

102 Section 4. This act shall take effect July 1, 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                                    \_\_\_\_\_

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1 Council/Committee hearing PCB: Agriculture & Natural Resources  
2 Policy Committee  
3 Representative(s) Williams offered the following:  
4

5           **Amendment 1 (with title amendment)**

6           Remove line 30 and insert:  
7 that the alternative water supply use or significant demand  
8 management activities is  
9



10  
11 -----  
12                                   **T I T L E   A M E N D M E N T**

13           Remove line 6 and insert:  
14 activities; providing that demand management activities are  
15 consistent with the



**HOUSE OF REPRESENTATIVES STAFF ANALYSIS**

**BILL #:** PCB ANR 10-10 Water Conservation  
**SPONSOR(S):** Agriculture & Natural Resources Policy Committee  
**TIED BILLS:** **IDEN./SIM. BILLS:**

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.:	Agriculture & Natural Resources Policy Committee		Kliner 	Reese 
1)				
2)				
3)				
4)				
5)				

**SUMMARY ANALYSIS**

The bill codifies the name of the currently existing state-wide water conservation program and the attendant guide, the Conserve Florida Clearinghouse, and the Conserve Florida Clearinghouse Guide (the Guide), respectively. The bill provides that the Guide is an appropriate tool to assist public water supply utilities in developing plans in order to meet conservation requirements for obtaining consumptive use permits (CUPs). Water management districts and public water supply utilities are encouraged to use the Guide to develop conservation plans, report conservation practices and measures used in CUPs, evaluate proposals for cost sharing of conservation activities, and assessing the effectiveness of conservation projects.

Use of the Guide is encouraged, but not mandatory, for a public water supply utility to develop a goal-based water conservation plan, however, any plan must include a means to measure the utility's progress toward its conservation goal or goals. A proposed plan may serve as a partial or as an entire alternative to water conservation requirements adopted by the district.

Current law provides that water conservation requirements imposed as a condition of obtaining a CUP shall be deemed satisfied if a utility provides reasonable assurance that its plan will achieve effective water conservation at least as well as the water conservation requirements adopted by the water management district. The bill removes the comparison between the utility's plan and the water management districts' adopted water conservation requirements. In its place the bill requires the utility to provide reasonable assurances that the goal-based water conservation plan will provide cost-effective water conservation to achieve a reasonable demand for water considering the customers, service area, and other individual circumstances of the utility. If such assurances are met, the water management district must approve the utility's plan and the water conservation requirements for a CUP are presumed satisfied.

The bill also deletes an obsolete statutory provision requiring the DEP to submit a progress report on water conservation efforts by December 1, 2005.

The bill has an effective date of July 1, 2010, and does not appear to have a significant fiscal impact to state or local government.

## 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

Following an exceptionally severe drought in 1999-2001, the Department of Environmental Protection (DEP), along with the state's five water management districts, water providers, water users, and other stakeholders, participated in the Florida Water Conservation Initiative, a collaborative effort to address water conservation measures. In the final report of the Initiative, published in April 2002, the participants collectively recommended further pursuit of a wide range of water conservation tools, including agriculture and landscape irrigation techniques, indoor water use, the use of reclaimed water, and measures for industrial, commercial, and institutional water use.<sup>1</sup> The report recognized public water supply as the second largest water use sector in Florida, and acknowledged conservation as an important management tool for public water supply utilities. The DEP, the water management districts, the Florida Public Service Commission, the Utility Council of the American Water Works Association (Florida Section), the Utility Council of the Florida Water Environment Association, and the Florida Rural Water Association signed a Joint Statement of Commitment to cooperatively develop a comprehensive water conservation program.<sup>2</sup>

During the 2004 Regular Session, the Florida Legislature enacted HB 293, which codified many of the findings presented in the final report of the initiative. HB 293 created, among other things, a new section 373.227, F.S., encouraging the use of efficient, effective, and affordable water conservation measures, and providing that a goal-based, accountable, tailored water conservation program should be emphasized for public water supply utilities. The section states that the overall water conservation goal of the state is "to prevent and reduce wasteful, uneconomical, impractical, or unreasonable use of water resources." To achieve these conservation objectives, the legislation emphasizes "goal-based, accountable, tailored, and measurable water conservation programs for public water supply." The section directs the DEP, in cooperation with the water management districts and the other stakeholders, to develop a statewide water conservation program for public water supply utilities, and to create a clearinghouse or inventory for water conservation programs and practices available to public water supply utilities which provides an integrated statewide database for information on public water supply conservation programs and practices and their effectiveness.<sup>3</sup>

<sup>1</sup> [http://www.dep.state.fl.us/water/waterpolicy/docs/WCI\\_2002\\_Final\\_Report.pdf](http://www.dep.state.fl.us/water/waterpolicy/docs/WCI_2002_Final_Report.pdf)

<sup>2</sup> [http://www.dep.state.fl.us/water/waterpolicy/docs/JSOC--new\\_small.pdf](http://www.dep.state.fl.us/water/waterpolicy/docs/JSOC--new_small.pdf)

<sup>3</sup> In addition, the program must include cost and benefit data on individual water conservation practices, standardized public water supply conservation definitions, and standardized quantitative and qualitative performance measures.

Pursuant to s. 373.227, F.S., water management districts must give public water supply utilities wide latitude in selecting a rate structure when utilities use water conservation or drought rate structures as a conservation practice. The district may not revise or fix rates, and their rate review is limited to whether the utility has provided reasonable assurance that the rate structure contains a schedule of rates designed to promote efficient use of water by providing economic incentives.

As part of an application for a consumptive use permit (CUP), the water conservation requirements that are imposed as a condition of obtaining a CUP shall be deemed satisfied if the utility provides reasonable assurance that a proposed goal-based water conservation plan will achieve effective water conservation at least as well as the water conservation requirements adopted by the district.<sup>4</sup> If the plan fails to meet the water conservation goal(s) by the timeframes specified in the permit, the utility is required to revise the plan to address the deficiency or employ the water conservation requirements that would otherwise apply in the absence of an approved goal-based plan.

The DEP and the other stakeholders developed common definitions and performance measures for evaluating water conservation programs and practices. The definitions and measures have been incorporated into a water conservation planning and reporting guide that is available online. The Guide is an interactive web-based application (software and database) to aid utilities in developing utility-specific conservation goals, selecting best management practices to meet those goals, measuring and reporting results, and adjusting their conservation programs as needed to better meet conservation goals.<sup>5</sup>

### Effect of Proposed Changes

The bill codifies the name of the currently existing state-wide water conservation program and the attendant guide, the Conserve Florida Clearinghouse, and the Conserve Florida Clearinghouse Guide (the Guide), respectively. The bill provides that the Guide is an appropriate tool to assist public water supply utilities in developing plans in order to meet conservation requirements for obtaining consumptive use permits (CUPs). Water management districts and public water supply utilities are encouraged to use the Guide to develop conservation plans, report conservation practices and measures used in CUPs, evaluate proposals for cost sharing of conservation activities, and assessing the effectiveness of conservation projects.

Use of the Guide is encouraged, but not mandatory, for a public water supply utility to develop a goal-based water conservation plan, however, any plan must include a means to measure the utility's progress toward its conservation goal or goals. A proposed plan may serve as a partial or as an entire alternative to water conservation requirements adopted by the district.

Current law provides that water conservation requirements that are imposed as a condition of obtaining a CUP shall be deemed satisfied if, by comparison, the utility provides reasonable assurance that its plan will achieve effective water conservation at least as well as the water conservation requirements adopted by the water management district. The bill removes the comparison between the utility's plan and the water management districts' adopted water conservation requirements. In its place the bill requires the utility to provide reasonable assurances that the goal-based water conservation plan will provide cost-effective water conservation to achieve a reasonable demand for water considering the customers, service area, and other individual circumstances of the utility. If such assurances are met, the water management district must approve the utility's plan and the water conservation requirements for a CUP are presumed satisfied.

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<sup>4</sup> A consumptive use permit, also called a water use permit, constitutes authorization to withdraw a specified amount of water for a specified time either from the ground or from a surface water body. CUPs are generally issued by the water management districts under Part II of Chapter 373, specifically Section 373.223, F.S. State law allows the Department of Environmental Protection to issue CUPs where an applicant proposes an "inter-district transfer" of water (i.e. from a source within one water management district to a user in another water management district). A CUP may be issued only if the applicant can establish that the proposed use of the water meets the "three prong test" specified in ss. 373. 223(1), F.S.; that is, the proposed use of water: (1) is a reasonable-beneficial use (meaning it is both an economic and efficient utilization of water for a purpose and in a manner which is both reasonable and consistent with the public interest); (2) will not interfere with any presently existing legal use of water; and (3) is consistent with the public interest.

<sup>5</sup> <http://www.conservefloridawater.org/default.asp>



The bill also deletes an obsolete statutory provision requiring the DEP to submit a progress report on water conservation efforts by December 1, 2005.

**B. SECTION DIRECTORY:**

Section 1. Amends s. 373.227, F.S., providing a name for the currently existing state-wide water conservation program and program guide to assist public water supply utilities in developing water conservation plans. While use of the guide is not mandatory, this section encourages utilities to use the guide, and requires that any water conservation plan must include means with which to measure a utility's progress toward its goals. The section further revises the standard a water conservation plan must meet to satisfy the water conservation requirements imposed as a condition of obtaining a CUP.

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:

Rulemaking by the DEP may be necessary to address the standard by which a utility meets the water conservation requirements that are imposed as a condition for receiving a CUP by the utility's use of a water conservation plan.

**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:

This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, does not appear to reduce the authority that counties or municipalities have to raise revenue in the aggregate, and does not appear to reduce the percentage of state tax shared with counties or municipalities.

2. Other:

**B. RULE-MAKING AUTHORITY:**

None is provided. Existing law grants broad rulemaking authority to the DEP for the amended subsections in s. 373.227, F.S.

**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 the comprehensive statewide water  
 3 conservation program; amending s. 373.227, F.S.; revising  
 4 provisions of the program to provide for a Conserve  
 5 Florida Clearinghouse and a Conserve Florida Clearinghouse  
 6 Guide to assist public water supply utilities in  
 7 developing goal-based water conservation plans to meet  
 8 water conservation requirements for obtaining consumptive  
 9 use permits; encouraging water management districts and  
 10 public water supply utilities to use the guide for water  
 11 conservation plans, reports, and assessments; revising  
 12 provisions for goal-based water conservation plans  
 13 submitted by public water supply utilities as part of  
 14 consumptive use permit applications; revising provisions  
 15 requiring water management districts to approve such  
 16 plans; deleting an obsolete provision requiring the  
 17 Department of Environmental Protection to submit a report  
 18 on the program to the Governor, the Legislature, and  
 19 substantive legislative committees by a specified date;  
 20 providing an effective date.

21  
 22 Be It Enacted by the Legislature of the State of Florida:

23  
 24 Section 1. Section 373.227, Florida Statutes, is amended  
 25 to read:

26 373.227 Water conservation; legislative findings;  
 27 legislative intent; objectives; comprehensive statewide water  
 28 conservation program requirements.-

29 (1) The Legislature recognizes that the proper  
 30 conservation of water is an important means of achieving the  
 31 economical and efficient utilization of water necessary, in  
 32 part, to constitute a reasonable-beneficial use. The overall  
 33 water conservation goal of the state is to prevent and reduce  
 34 wasteful, uneconomical, impractical, or unreasonable use of  
 35 water resources. The Legislature finds that the social,  
 36 economic, and cultural conditions of the state relating to the  
 37 use of public water supply vary by service area and that public  
 38 water supply utilities must have the flexibility to tailor water  
 39 conservation measures to best suit their individual  
 40 circumstances. The Legislature encourages the use of efficient,  
 41 effective, and affordable water conservation measures. Where  
 42 water is provided by a public water supply utility, the  
 43 Legislature intends that a variety of conservation measures be  
 44 made available and used to encourage efficient water use. To  
 45 achieve these conservation objectives, the state should  
 46 emphasize goal-based, accountable, tailored, and measurable  
 47 water conservation programs for public water supply. For  
 48 purposes of this section, the term "public water supply utility"  
 49 includes both publicly owned and privately owned public water  
 50 supply utilities that sell potable water on a retail basis to  
 51 end users.

52 (2) To implement the findings in subsection (1), the  
 53 department, in cooperation with the water management districts  
 54 and other stakeholders, shall develop a comprehensive statewide  
 55 water conservation program for public water supply. The program  
 56 should:

57 (a) Encourage utilities to implement water conservation  
 58 programs that are economically efficient, effective, affordable,  
 59 and appropriate;

60 (b) Allow no reduction in, and increase where possible,  
 61 utility-specific water conservation effectiveness over current  
 62 programs;

63 (c) Be goal-based, accountable, measurable, and  
 64 implemented collaboratively with water suppliers, water users,  
 65 and water management agencies;

66 (d) Include cost and benefit data on individual water  
 67 conservation practices to assist in tailoring practices to be  
 68 effective for the unique characteristics of particular utility  
 69 service areas, focusing upon cost-effective measures;

70 (e) Use standardized public water supply conservation  
 71 definitions and standardized quantitative and qualitative  
 72 performance measures for an overall system of assessing and  
 73 benchmarking the effectiveness of water conservation programs  
 74 and practices;

75 (f) Create a Conserve Florida Clearinghouse ~~or inventory~~  
 76 for water conservation programs and practices available to  
 77 public water supply utilities which will provide an integrated  
 78 statewide database for the collection, evaluation, and  
 79 dissemination of quantitative and qualitative information on  
 80 public water supply conservation programs and practices and  
 81 their effectiveness. The clearinghouse ~~or inventory~~ should have  
 82 technical assistance capabilities to aid in the design,  
 83 refinement, and implementation of water conservation programs  
 84 and practices. The clearinghouse ~~or inventory~~ shall also provide

85 | for continual assessment of the effectiveness of water  
 86 | conservation programs and practices;

87 |       (g) Develop a standardized water conservation planning  
 88 | process for utilities; and

89 |       (h) Develop and maintain a Florida-specific Conserve  
 90 | Florida Clearinghouse Guide ~~water conservation guidance document~~  
 91 | containing a menu of affordable and effective water conservation  
 92 | practices to assist public water supply utilities in the design  
 93 | and implementation of goal-based, utility-specific water  
 94 | conservation plans tailored for their individual service areas  
 95 | as provided in subsection (5) ~~(4)~~.

96 |       (3) The Conserve Florida Clearinghouse Guide is recognized  
 97 | as an appropriate tool to assist public water supply utilities  
 98 | in developing goal-based water conservation plans to meet the  
 99 | water conservation requirements for obtaining consumptive use  
 100 | permits. Water management districts and public water supply  
 101 | utilities are encouraged to use the guide in developing water  
 102 | conservation plans, reporting on the implementation of water  
 103 | conservation practices and measures included in consumptive use  
 104 | permits, evaluating proposals for financial cost sharing of  
 105 | water conservation activities, and assessing the effectiveness  
 106 | of water conservation projects.

107 |       (4) ~~(3)~~ Regarding the use of water conservation or drought  
 108 | rate structures as a conservation practice, a water management  
 109 | district shall afford a public water supply utility wide  
 110 | latitude in selecting a rate structure and shall limit its  
 111 | review to whether the utility has provided reasonable assurance  
 112 | that the rate structure contains a schedule of rates designed to

113 promote efficient use of water by providing economic incentives.  
 114 A water management district shall not fix or revise rates.

115 (5)~~(4)~~ As part of an application for a consumptive use  
 116 permit, a public water supply utility may propose a goal-based  
 117 water conservation plan that is tailored to its individual  
 118 circumstances as a partial or entire alternative to the water  
 119 conservation requirements adopted by the appropriate water  
 120 management district. The public water supply utility is  
 121 encouraged, but not required, to use the Conserve Florida  
 122 Clearinghouse Guide in developing its goal-based water  
 123 conservation plan. The plan may include a schedule for  
 124 implementing the utility's water conservation goal or goals. The  
 125 plan must include a means for measuring progress towards the  
 126 water conservation goal or goals ~~must be measurable.~~

127 (6) If a public water supply utility elects to develop a  
 128 goal-based water conservation plan, the utility shall submit the  
 129 plan to the appropriate water management district. The water  
 130 management district shall approve the plan if the utility  
 131 provides reasonable assurance that the plan will provide cost-  
 132 effective ~~achieve effective~~ water conservation to achieve a  
 133 reasonable demand for water considering the customers, service  
 134 area, and other individual circumstances of the utility. An  
 135 approved goal-based ~~at least as well as the water conservation~~  
 136 ~~requirements adopted by the appropriate water management~~  
 137 ~~district and is otherwise consistent with s. 373.223, the~~  
 138 ~~district must approve the plan which shall satisfy water~~  
 139 conservation requirements for ~~imposed as a condition of~~  
 140 obtaining a consumptive use permit. The conservation measures

141 | ~~included in an approved goal-based water conservation plan may~~  
 142 | ~~be reviewed periodically and updated as needed to ensure~~  
 143 | ~~efficient water use for the duration of the permit.~~ If the plan  
 144 | fails to meet the water conservation goal or goals by the  
 145 | timeframes specified in the permit, the public water supply  
 146 | utility shall revise the plan to address the deficiency or, at  
 147 | the utility's option, employ the water conservation requirements  
 148 | that would otherwise apply in the absence of an approved goal-  
 149 | based plan.

150 | ~~(5) By December 1, 2005, the department shall submit a~~  
 151 | ~~written report to the President of the Senate, the Speaker of~~  
 152 | ~~the House of Representatives, and the appropriate substantive~~  
 153 | ~~committees of the Senate and the House of Representatives on the~~  
 154 | ~~progress made in implementing the comprehensive statewide water~~  
 155 | ~~conservation program for public water supply required by this~~  
 156 | ~~section. The report must include any statutory changes and~~  
 157 | ~~funding requests necessary for the continued development and~~  
 158 | ~~implementation of the program.~~

159 | (7)~~(6)~~ The department or a water management district may  
 160 | adopt rules pursuant to ss. 120.536(1) and 120.54 to carry out  
 161 | the purposes of this section.

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