Agriculture and Natural Resources Policy Committee

Meeting Packet

March 25, 2010
2:45 pm - 6:00 pm
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 25, 2010 02:45 pm

End Date and Time: Thursday, March 25, 2010 06:00 pm

Location: Reed Hall (102 HOB)
Duration: 3.25 hrs

Consideration of the following bill(s):

HB 207 Contamination Notification by Kriseman
CS/HB 831 Nassau County by Military & Local Affairs Policy Committee, Adkins
HB 1285 Cadmium in Children's Products by Thompson, G.
HB 1325 Aquatic Preserves by Schultz
HB 1361 Regulation of Vessels by Steinberg
HB 1559 Recycling by Rehwinkel Vasilinda

Consideration of the following proposed committee bill(s):

PCB ANR 10-13 -- Water Supply
PCB ANR 10-14 -- Drinking Water
PCB ANR 10-15 -- Florida Keys' Area

Consideration of the following proposed committee substitute(s):

PCSMB for HB 1407, HB 1367 & HB 1605 -- Water Management

NOTICE FINALIZED on 03/23/2010 16:21 by Cunningham.Reid

Agenda

AGRICULTURE AND NATURAL RESOURCES POLICY COMMITTEE

March 25, 2010
2:45-6:00 p.m.
Reed Hall

I. Call to Order

II. Roll Call

III. Opening Remarks by Chair Williams

IV. HB 207 by Rep. Kriseman – Contamination Notification

V. CS/HB 831 by Rep. Adkins – Nassau County

VI. HB 1285 by Rep. G. Thompson – Cadmium in Children's Products

VII. HB 1325 by Rep. Schultz – Aquatic Preserves

VIII. HB 1361 by Rep. Steinberg – Regulation of Vessels

IX. HB 1559 by Rep. Rehwinkel-Vasilinda – Recycling

X. PCB ANR 10-13 – Water Supply

XI. PCB ANR 10-14 – Drinking Water

XII. PCB ANR 10-15 – Florida Keys Area

XIII. PCSMB for HB 1407, HB 1367 and HB 1605 – Water Management

XIV. Closing Remarks by Chair Williams

XV. Adjourn

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 207 Contamination Notification
SPONSOR(S): Kriseman
TIED BILLS: **IDEN./SIM. BILLS:** SB 358, SB 602

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

SUMMARY ANALYSIS

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

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

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

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

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

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

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

HOUSE PRINCIPLES

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

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

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

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

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

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[1] Section 376.30701, F.S.
[2] Section 376.3071, F.S.
[3] Section 376.81, F.S.
[4] Section 376.3078, F.S.
[5] Ralph A. DeMeo, Carl Eldred, Leslie A. Utiger, Lynn S. Scruggs. *Insuring Against Environmental Unknowns, 23 J. Land Use & Envtl. L. 61* (Fall 2007), citing Deborah Alberto, *DEP Investigates Itself in Handling of Coronet*, Tampa Trib. (Sept. 24, 2003); Scott Carroll, *A Stormy End to Tallevast Talks*, Sarasota Herald-Trib. (Dec. 9, 2005); Scott Carroll, *Warrior Women with Community*

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

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

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

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

Effect of Bill

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

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

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

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

[6] Section 376.30702(2), F.S.

[7] *Id.*

[8] *Id.*

[9] Section 376.30702(3), F.S.

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

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

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

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

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

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

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

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

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

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

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

B. SECTION DIRECTORY:

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

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

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

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

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

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

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

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

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

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

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

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

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

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

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

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

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

None.

A bill to be entitled

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

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

Section 1. Section 376.30702, Florida Statutes, is amended

to read:

376.30702 Contamination notification.--

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

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

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

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

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

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

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

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

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

(3) DEPARTMENT'S NOTICE RESPONSIBILITIES.--

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

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

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

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

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

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

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

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

(b) The notice provided to:

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

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

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

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

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

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

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

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

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

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

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

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

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

Section 2. 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	_____

Council/Committee hearing bill: Agriculture & Natural Resources Policy Committee

Representative Kriseman offered the following:

Amendment (with title amendment)

Remove everything after the enacting clause and insert:

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

376.30702 Contamination notification.—

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

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

(2) INITIAL NOTICE OF CONTAMINATION ~~BEYOND PROPERTY BOUNDARIES~~.~~—~~

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

department district office and~~,~~ county health department~~, and all known lessees and tenants of the source property~~.

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

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

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

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

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

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

(3) DEPARTMENT'S NOTICE RESPONSIBILITIES.—

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

(b) Within 30 days after receiving the actual notice required under subsection (2), the department shall notify the following persons of the contamination for which notice was required pursuant to subsection (2):

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

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

3. The state representative and state senator representing the affected area.

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

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

b. Any properties identified within the boundaries of a contaminant plume located on a contaminant plume map provided pursuant to subparagraph (2)(b)4., any properties identified by a state licensed professional engineer or professional geologist through a certified site-specific determination that such contamination is reasonably likely to be present beyond the boundaries of the source property, or any properties within a 500-foot radius of each sampling point at which contamination is discovered where a contaminant plume map is not provided, if site rehabilitation was initiated pursuant to s. 376.30701 or an administrative or court order; and

c. Any properties identified within the boundaries of a contaminant plume located on a contaminant plume map provided pursuant to subparagraph (2)(b)4., any properties identified by a state licensed professional engineer or professional geologist through a certified site-specific determination that such contamination is reasonably likely to be present beyond the boundaries of the source property, or any properties within a 250-foot radius of each sampling point at which contamination is discovered where a contaminant plume map is not provided, if site rehabilitation was initiated pursuant to s. 376.3071(5), s. 376.3078(4), or s. 376.81, or at, or in connection with, a permitted solid waste management facility subject to a groundwater monitoring plan.

(c) The notice provided to:

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

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

(d)1. If the property at which contamination has been discovered is the site of a PreK-12 school as defined in s. 1003.01, the department shall mail ~~also send~~ a copy of the notice to the superintendent ~~chair of the school board~~ of the school district in which the property is located and direct the superintendent ~~said school board~~ to provide actual notice within

10 days to teachers and parents or guardians of students attending the school during the period of site rehabilitation.

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

3. If any property within a 1-mile radius of the sampling point at which contamination has been discovered during site rehabilitation pursuant to s. 376.30701 or an administrative or court order is the site of a PreK-12 school as defined in s. 1003.01, the department shall mail a copy of the notice to the superintendent of the school district in which the property is located.

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

5. If the property at which contamination has been discovered is the site of a public or private college or

university, the department shall mail a copy of the notice to the President of such private or public college or university and the chair of board of governors or trustees.

6. If any property within a 1-mile radius of the sampling point at which contamination has been discovered during site rehabilitation pursuant to s. 376.30701 or an administrative or court order is the site of a public or private college or university, the department shall mail a copy of the notice to the President of such private or public college or university and the chair of the board of governors or trustees.

7. If any property within a 250-foot radius of the sampling point at which contamination has been discovered during site rehabilitation pursuant to s. 376.3071(5), s. 376.3078(4), or s. 376.81 is the site of a public or private college or university, the department shall mail a copy of the notice to the President of such private or public college or university and the chair of the board of governors or trustees.

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

(f) The department shall provide quarterly a list to each United States Representative and both United States Senators of all contaminated sites being rehabilitated pursuant to s.

376.3071(5), s. 376.3078(4), s. 376.81, or s. 376.30701 that are located within that United States Representative's or United States Senator's legislative district.

(4) LOCAL GOVERNMENT'S NOTICE RESPONSIBILITIES.—Within 30 days after receiving the notice required under subsection (3), the local government shall mail a copy of the notice to the president of any homeowners' association created pursuant to chapter 720, the president or equivalent representative of any incorporated voluntary homeowners' or neighborhood association, and any other existing voluntary homeowners' or neighborhood associations that are not incorporated, but have registered with the applicable local government pursuant to local governmental requirements that is located within the areas identified in subsections (3)(b)4.a., (3)(b)4.b., or (3)(b)4.c.

(5) RECOVERY OF NOTIFICATION COSTS.—The department may recover the costs of postage, materials, and labor associated with notification from the party responsible for the contamination, unless site rehabilitation is eligible for state-funded cleanup pursuant to the risk-based corrective action provisions found in s. 376.3071(5) or s. 376.3078(4), and provided that sufficient funds exist within the trust funds to cover the cost of the notification.

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

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

Amendment No. 1

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

Remove the entire title and insert:

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

HOUSE OF REPRESENTATIVES LOCAL BILL STAFF ANALYSIS

BILL #: CS/HB 831 Nassau County
SPONSOR(S): Military & Local Affairs Policy Committee, Adkins
TIED BILLS: **IDEN./SIM. BILLS:**

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1)	Military & Local Affairs Policy Committee	11 Y, 2 N, As CS	Fudge	Hoagland
2)	Agriculture & Natural Resources Policy Committee		Cunningham	Reese
3)	Economic Development & Community Affairs Policy Council			
4)				
5)				

SUMMARY ANALYSIS

The Nassau River-St. Johns River Marshes Aquatic Preserve (Preserve) was designated an aquatic preserve on November 24, 1969, for the primary purpose of preserving the biological resources of the Nassau Sound area marshes and associated waters. The Preserve extends south from A1A and east from State Road 17 in Nassau County, to the St. Johns River in Duval County, which includes portions of the Nassau, Amelia, and Fort George rivers. The Preserve is bordered by two incorporated cities, Fernandina Beach and Jacksonville.

Activities on sovereignty lands in aquatic preserves are regulated by the Department of Environmental Protection (department). Specifically, the department prohibits private residential single-family docks from having a terminal platform size more than 160 square feet.

The bill allows certain single-family docks within the Preserve to retain a terminal platform that does not exceed a cumulative total deck and roof area of 800 square feet. However, should more than 50 percent of a nonconforming structure fall into a state of disrepair or be destroyed as a result of any natural or manmade force, the entire structure shall be brought into full compliance with the current rules of the Board of Trustees of the Internal Improvement Trust Fund.

Pursuant to House Rule 5.5(b), a local bill providing an exemption from general law may not be placed on the Special Order Calendar for expedited consideration. The provisions of House Rule 5.5(b) appear to apply to this bill.

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 Situations

The Nassau River-St. Johns River Aquatic Preserve (Preserve) was designated an aquatic preserve on November 24, 1969, for the primary purpose of preserving the biological resources of the Nassau Sound area marshes and associated waters. The Preserve extends south from A1A and east from State Road 17 in Nassau County, to the St. Johns River in Duval County, which includes portions of the Nassau, Amelia, and Fort George Rivers. The Preserve is bordered by two incorporated cities, Fernandina Beach and Jacksonville.

Activities on sovereignty lands in aquatic preserves are regulated by Rule 18-20.004, F.A.C. Section (5) of the rule prescribes the standards and criteria for docking facilities. Under this rule, private residential single-family docks may not have a terminal platform size more than 160 square feet. In addition, "should more than 50 percent of a nonconforming structure fall into a state of disrepair or be destroyed as a result of any natural or manmade force, the entire structure shall be brought into full compliance with the current rules of the Board. This shall not be construed to prevent routine repair."[1]

Effect of Proposed Changes

The affects an area within the Preserve between State Road 200 to the north and a line drawn between N30°32'44.890", W-81°33'08.68" and N30°32'40.001", W-81°32'55.79" to the south. This area encompasses approximately 99 docks that have terminal platforms that exceed 160 square feet.

Those existing single-family docks may be exempt from the 160 square feet requirement so long as cumulative total deck and roof area does not exceed 800 square feet and the owner applies for a letter of consent to use sovereignty submerged land from the Department of Environmental Protection (department). In addition, existing docks may be maintained or repaired within the footprint the same as or smaller than the footprint of the current structure. However, should more than 50 percent of a nonconforming structure fall into a state of disrepair or be destroyed as a result of any natural or manmade force, the entire structure shall be brought into full compliance with the current rules of the Board of Trustees of the Internal Improvement Trust Fund. The bill does not prohibit an owner from demolishing or removing his or her dock.

[1] Rule 18-20.004(5)(a)6., F.A.C.

Moreover, the bill does not prevent the department from taking enforcement action against the owner of the riparian parcel associated with a dock that does not meet the criteria after December 31, 2010.

B. SECTION DIRECTORY:

Section 1: Authorizes certain single-family docks to retain a terminal platform that does not exceed 800 square feet.

Section 2: Provides that the Department of Environmental Protection may take enforcement action against docks that do not meet the criteria in section 1 after December 31, 2010.

Section 3: Provides an effective date of upon becoming law.

II. NOTICE/REFERENDUM AND OTHER REQUIREMENTS

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

IF YES, WHEN? December 19, 2009.

WHERE? In the *Florida Times-Union*, a daily newspaper published in Nassau County, Florida.

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

IF YES, WHEN?

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

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

If the bill is not passed, property owners will be forced to deconstruct existing docks, thereby reducing property values for dock owners as well as surrounding property owners resulting in a corresponding reduction in ad valorem tax revenue.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:
None

B. RULE-MAKING AUTHORITY:
None

C. DRAFTING ISSUES OR OTHER COMMENTS:

Exemption from General Law

The CS exempts certain described single-family docks from the requirements of part IV of ch. 373, F.S., and ch. 258, F.S.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

On March 15, 2010, the Military & Local Affairs Policy Committee adopted a PCS allowing, with stipulations, certain single-family docks within the Preserve to retain a terminal platform that does not exceed a cumulative total deck and roof area of 800 square feet. It specifically references the rule that defines "terminal platform."

A bill to be entitled

An act relating to Nassau County; providing that certain single-family docks located in the Nassau River-St. Johns River Marshes Aquatic Preserve must meet specified criteria; authorizing the Department of Environmental Protection to take action against owners of docks that do not meet such criteria after a specified date; providing an effective date.

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

Section 1. Existing single-family docks constructed prior to June 1, 2009, that are located within Nassau County on Lofton Creek in the Nassau River-St. Johns River Marshes Aquatic Preserve between State Road 200 to the north and a line drawn between N30°32'44.890", W-81°33'08.68 and N30°32'40.001", W-81°32'55.79 to the south shall:

(1) Be exempt from the need to obtain a permit under part IV of chapter 373, Florida Statutes, for the existing dock or for modifications to the existing dock necessary to meet the conditions for applying for a letter of consent pursuant to this act.

(2) Notwithstanding the provisions of chapter 258, Florida Statutes, and rule 18-20, Florida Administrative Code, be allowed to retain a terminal platform, as defined in rule 18-20.003(67), Florida Administrative Code, with a cumulative total deck and roof area not to exceed 800 square feet, provided that by December 31, 2010, the owner of the riparian parcel

associated with the dock conforms the dock to meet the terminal platform size requirement, if necessary, and applies for a letter of consent to use sovereignty submerged lands from the Department of Environmental Protection acting on behalf of the Board of Trustees of the Internal Improvement Trust Fund. A letter of consent shall be issued once applicable criteria of this act are met and the owner shall record the original letter of consent in the Nassau County Official Records Book to run with the upland parcel.

(3) Be maintained or repaired within a footprint the same as or smaller than the footprint of the current structure in accordance with rule 18-21.004(7)(h), Florida Administrative Code. This subsection does not prohibit an owner from demolishing or removing such a dock. However, should more than 50 percent of a nonconforming structure fall into a state of disrepair or be destroyed as a result of any natural or manmade force, the entire structure shall be brought into full compliance with the current rules of the board.

Section 2. Nothing in this act shall be construed to prevent the Department of Environmental Protection from taking enforcement action against the owner of the riparian parcel associated with a dock that does not meet the criteria of section 1 after December 31, 2010.

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

A bill to be entitled

An act relating to cadmium in children's products; defining terms; prohibiting a person from using or applying cadmium in excess of a specified amount on any item of children's jewelry, toy, or child care article sold in this state; providing an exception; providing civil fines for the sale of an item of children's jewelry, toy, or child care article that contains cadmium; requiring that certain civil fines be waived under specified circumstances; providing that a knowing and intentional violation of the act is a felony of the third degree; providing criminal penalties; providing an effective date.

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

Section 1. Cadmium in children's products; limitations on use of cadmium; exceptions; civil fines; criminal penalties.—

(1) As used in this section, the term:

(a) "Child" means an individual who is 7 years of age or younger.

(b) "Child care article" means a product designed or intended by the manufacturer to facilitate the sleep, relaxation, or feeding of a child or to help a child with sucking or teething.

(c) "Children's jewelry" means jewelry that is made for, marketed for use by, or sold to a child.

(d) "Consumer" means an individual; a child, by and

through its parent or legal guardian; or a business, firm, association, joint venture, partnership, estate, trust, business trust, syndicate, fiduciary, corporation, any commercial entity, however denominated, or any other group or combination thereof.

(e) "Person" has the same meaning as provided in s. 1.01, Florida Statutes.

(f) "Toy" means an article designed and made for the amusement of a child and for the child's use during play.

(2)(a) A person may not use or apply cadmium in excess of 75 parts per million on any surface coating or substrate material on any item of children's jewelry, toy, or child care article, as determined through solubility testing for heavy metals defined in the American Society for Testing and Materials International Safety Specification on Toy Safety, ASTM standard F963, if the product is sold in this state.

(b) This section does not apply to the sale of a collectible toy that is not marketed to or intended to be used for play by a minor younger than 14 years of age.

(3) Except as otherwise provided in subsection (4), if a person who is not an individual consumer violates subsection (2), that person is liable for a civil fine of not more than:

(a) One hundred dollars per item, not to exceed $5,000, for the first violation.

(b) Five hundred dollars per item, not to exceed $25,000, for a second violation.

(c) One thousand dollars per item, not to exceed $50,000, for a third or subsequent violation.

(4) A civil fine imposed under subsection (3) must be

waived if the person acted in good faith to comply with this section, pursued compliance with due diligence, and promptly corrected any noncompliance after discovering the violation.

(5) If a person who is not an individual consumer knowingly and intentionally violates subsection (2), that person:

(a) Commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, Florida Statutes; and

(b) Is liable for a civil fine of not more than $3,000 per item, not to exceed $150,000 for the intentional violation.

Section 2. 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	_____

Council/Committee hearing bill: Agriculture & Natural Resources Policy Committee

Representative(s) Adkins offered the following:

Amendment

Remove lines 16-17 and insert:

between N30°32'44.890", W-81°33'08.68" and N30°32'40.001", W-81°32'55.79" to the south shall:

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1285 Cadmium in Children's Products
SPONSOR(S): Thompson
TIED BILLS: **IDEN./SIM. BILLS:** SB 2120

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1)	Agriculture & Natural Resources Policy Committee		Thompson	Reese
2)	Public Safety & Domestic Security Policy Committee			
3)	Full Appropriations Council on Education & Economic Development			
4)	General Government Policy Council			
5)				

SUMMARY ANALYSIS

The bill mirrors federal law, providing specific limits on the use of cadmium on children's jewelry, toys, or child care articles, and provides for definitions. The bill exempts the sale of a collectible toy that is not marketed to or intended to be used for play by a minor younger than 14 years of age.

Except as otherwise provided, the bill provides that a person who is not an individual consumer who violates this provision, is liable for a civil fine of not more than:

- One hundred dollars per item, not to exceed $5,000, for the first violation.
- Five hundred dollars per item, not to exceed $25,000, for a second violation.
- One thousand dollars per item, not to exceed $50,000, for a third or subsequent violation.

The bill requires such fines to be waived if the person acted in good faith to comply with this section, pursued compliance with due diligence, and promptly corrected any noncompliance after discovering the violation.

The bill creates a new third degree unranked felony for knowing and intentional violations of the bill's limits on the use of cadmium, punishable as provided for in ss. 775.082, 775.083, 775.084, F.S.

Although the bill creates a new third degree felony, it is impossible to forecast how many violations might occur, thus the actual fiscal impact on state and local governments is unknown. Associated medical and insurance costs to the private sector may be reduced. The Criminal Justice Impact Conference determined that the bill will have an insignificant impact on prison admissions and populations. (See Fiscal Comments section for additional details)

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:

Background

Cadmium is a natural element that is found in the earth's crust and is classified as a heavy metal.[1] All soils and rocks, including coal and mineral fertilizers, contain some cadmium. Most cadmium is extracted during the production of other metals like zinc, lead, and copper.[2] The chemical properties of cadmium describe it as a soft, malleable, bluish-white metal with a low melting point. Cadmium does not corrode easily and is used in batteries, pigments, metal coatings, and plastics.

Exposure to heavy metals is a health hazard. In addition to lead and mercury, cadmium has been identified as one of the most probable causes of disease related to heavy metal exposure observed in primary care medicine.[3] Both animal experiments and epidemiologic studies have confirmed that cadmium is toxic to kidney, liver, bone, and causes cancer.[4] The Agency for Toxic Substances and Disease Registry (ATSDR) has listed cadmium among the top seven of the 275 most hazardous substances in the environment.

Both adults and children can suffer from the effects of cadmium poisoning. Cadmium exposure, however, can start at a very young age. Babies and young children are more susceptible to cadmium poisoning than adults because they often put their hands or other objects in their mouths.[5] Once cadmium enters the body, it has a biological half-life of 10–30 years in the kidney and 5–10 years in the liver. Animal experiments have reported neurotoxic and behavioral effects of cadmium.[6] Similar effects have also been observed in human children. Several studies have reported higher concentrations of cadmium in children with mental retardation, learning difficulties, and dyslexia.[7]

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[1] Agency for Toxic Substances & Disease Registry, Case Studies in Environmental Medicine (CSEM) Cadmium Toxicity What is Cadmium; http://atsdr.cdc.gov/csem/cadmium/cadmium.html

[2] U.S. Department of Health and Human Services, Agency for Toxic Substances and Disease Registry, Division of Toxicology and Environmental Medicine ToxFAQs; Cadmium CAS #7440-43-9

[3] Environmental Health Perspectives, volume 117, number 10, October 2009

[4] Id.

[5] Bureau Veritas Consumer Products Services; www.bureauveritas.com/cps

[6] Gupta A, Gupta A, Chandra SV. 1991. Gestational cadmium exposure and brain development: a biochemical study. Ind Health 29(2):65–71.

[7] Environmental Health Perspectives, volume 117, number 10, October 2009

Present Situation

A recent Associated Press (AP) investigation has discovered high levels of cadmium present in certain charm bracelets and pendants. In response, the U.S. Consumer Product Safety Commission (CPSC), which regulates children's products, has opened a formal investigation into children's metal jewelry to determine the action CPSC needs to take. The AP investigation tested 103 pieces of children's jewelry in New York, Ohio, Texas, and California. The following table lists the results of the AP investigation:

Seller	Item	Level of Cadmium
Wal-Mart	Three Bracelet Charms	84% to 86%
Dollar N More Store, Rochester, NY	Four Rudolph the Red-Nosed Reindeer Bracelets	82% to 91%
Claire's	Two Charms on Best Friends Bracelets	89% to 91%
Wal-Mart	Pendants from four The Princes and The Frog Necklaces	25% to 35%

The American Society for Testing and Materials International (ASTM) is an international standards organization that develops voluntary standards to serve as a guide for design, trade and manufacturing. ASTM F963[8], is the toy safety standard. ASTM does not require or enforce compliance with its standards. Such standards, however, may become mandatory when referenced by an external contract, corporation, or government. Under the Federal 2008 Consumer Product Safety Improvement Act[9], ASTM F963 became mandatory, therefore regulating cadmium in coatings on children's toys.

Under ASTM F963, the coatings are tested for soluble or extractable cadmium and not total content.[10] Total cadmium provides for the total amount of cadmium present in a sample. Soluble cadmium provides for the amount of cadmium that can be extracted out of a sample typically using an acid solution similar to stomach acid. Depending on the type of material, soluble cadmium can be much lower than the total amount of cadmium actually present. Consequently, federal law may be unintentionally allowing for children's toys containing cadmium to enter onto the market.

Cadmium limits have been passed in California (CA Toy Safety Act) and Washington (WA Children's Safe Products Act). In addition, a New York law[11] requires the Health Commissioner to establish a cadmium limit for glazed ceramic tableware, crystal, china and other consumer products. States also have regulated cadmium in packaging, drinking water, batteries, electronics and e-waste. Several states have proposed legislation regulating cadmium in children's jewelry. Most of this legislation will limit the total content of cadmium in a product. The following is a table of current pending state legislation relating to cadmium:

State	Bill Number	Proposed Changes
California	SB 929	Prohibits the manufacturing, shipping, selling or offering for sale or offering for promotional purposes children's jewelry containing cadmium.
California	SB 1365	Amends an existing law that provides no person shall manufacture, sell, or exchange any toy that is contaminated with any toxic substance. Covers items coated with soluble compounds of cadmium.
Connecticut	HB 5314	Concerns child safe products and banning cadmium in children's products; phases out the use of certain chemicals in children's products and to ban cadmium in children's products.
Florida	HB 1285	Prohibits using or applying cadmium in excess of specified amount on any item of children's jewelry, toy, or child care article sold in this state

[8] American Society for Testing and Materials International; Standard Consumer Safety Specification for Toy Safety.
[9] PUBLIC LAW 110–314—AUG. 14, 2008
[10] Federal law limits the amount of soluble cadmium in product coatings to 75 parts per million.
[11] McKinney's Public Health Law § 1376-a

Illinios	HB 5040	Regulates the sale and distribution of children's products or product components containing cadmium and priority chemicals of high concern. Designates cadmium as a priority chemical.
Indiana	SB 540	Sets allowable content limits for lead, cadmium and phthalates in children's products.
Minnesota	SB 2385	Bans cadmium jewelry.
Mississippi	HB 938	Relates to children's products; sets limits for phthalates, lead and cadmium in certain products.
New Jersey	A 2259	Prohibits the sale of certain children's products containing lead, mercury, or cadmium.
New York	SB 6446	Directs the commissioner of health to establish standards for the cadmium that children's jewelry may contain.
New York	A 9755	Relates to the regulation of cadmium-added novelty consumer products.
New York	A 9771	Prohibits the use of cadmium in children's products.

Currently, the Florida Department of Environmental Protection (DEP) regulates through its air, wastewater, and solid and hazardous waste programs how and when metals in toxic concentrations enter the environment. Through agency rules[12], DEP oversees the cleanup of illegally released metals in toxic concentrations through its waste cleanup program. These metals include but are not limited to: arsenic, mercury, lead, aluminum, barium, nickel, cadmium, uranium, copper, chromium, zinc and beryllium. Currently there is no Florida law that regulates cadmium in children's products.

Proposed Changes

The bill mirrors federal law, prohibiting a person from using or applying cadmium in excess of 75 parts per million on any surface coating or substrate material on any item of children's jewelry, toy, or child care article, as determined through solubility testing for heavy metals defined in the ASTM standard F963, if the product is sold in Florida. The bill exempts the sale of a collectible toy that is not marketed to or intended to be used for play by a minor younger than 14 years of age.

Except as otherwise provided, a person who is not an individual consumer who violates this provision, is liable for a civil fine of not more than:

- One hundred dollars per item, not to exceed $5,000, for the first violation.
- Five hundred dollars per item, not to exceed $25,000, for a second violation.
- One thousand dollars per item, not to exceed $50,000, for a third or subsequent violation.

The bill requires civil fines imposed under this provision to be waived if the person acted in good faith to comply with this section, pursued compliance with due diligence, and promptly corrected any noncompliance after discovering the violation.

The bill creates a new third degree unranked felony for knowing and intentional violations of the limits on the use of cadmium on children's jewelry, toys, or child care articles provided for by the bill. Such violations are punishable as provided for in ss. 775.082, 775.083, 775.084, F.S.

The bill provides the following definitions:

- "Child" means an individual who is 7 years of age or younger.
- "Child care article" means a product designed or intended by the manufacturer to facilitate the sleep, relaxation, or feeding of a child or to help a child with sucking or teething.
- "Children's jewelry" means jewelry that is made for, marketed for use by, or sold to a child.
- "Consumer" means an individual; a child, by and through its parent or legal guardian; or a business, firm, association, joint venture, partnership, estate, trust, business trust, syndicate,

[12] Rule Chapter limits for surface water 62-302; Drinking water in 62-550; Target levels for water and soil can be found in 62-777

fiduciary, corporation, any commercial entity, however denominated, or any other group or combination thereof.

- "Person" has the same meaning as provided in s. 1.01, Florida Statutes, which includes individuals, children, firms, associations, joint adventures, partnerships, estates, trusts, business trusts, syndicates, fiduciaries, corporations, and all other groups or combinations.
- "Toy" means an article designed and made for the amusement of a child and for the child's use during play.

B. SECTION DIRECTORY:

Section 1. Creates an act relating to cadmium in children's products; defining terms; prohibiting a person from using or applying cadmium in excess of a specified amount on any item of children's jewelry, toy, or child care article sold in this state; providing an exception; providing civil fines for the sale of an item of children's jewelry, toy, or child care article that contains cadmium; requiring that certain civil fines be waived under specified circumstances; providing that a knowing and intentional violation of the act is a felony of the third degree; providing criminal penalties.

Section 2. Providing 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.

2. Expenditures:

   See FISCAL COMMENTS section.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   See FISCAL COMMENTS section.

2. Expenditures:

   See FISCAL COMMENTS section.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

To the extent that the bill may improve the health of children in Florida by reducing cadmium poisoning, associated medical and insurance costs to the private sector may be decreased.

D. FISCAL COMMENTS:

The bill creates a new third degree felony. According to the Department of Corrections, it costs the state approximately $20,000 per year for an incarcerated adult male. It is impossible to predict how many violations will occur relating to this new offense. The related fiscal impact is indeterminate.

Unless the bill expressly ranks the new felony offense on the state's offense severity ranking chart, s. 921.0022, F.S., the new felony will be "unranked." According to the Criminal Justice Impact Conference, this is not uncommon. An unranked, 3rd degree felony, defaults to Level 1 on the ranking chart, which is the least severe, thus imposing a lower percentage of related prison sentences.

Pursuant to s. 216.136(5), F.S., a function of the Criminal Justice Impact Conference (CJIC) is the development of official forecasts of prison admissions and population as they relate to new felonies. Typically, a new felony is not created until a consensus has been reached within the CJIC process. On

March 17, 2010, the CJIC met and concluded that the effects of HB 1285 will have an insignificant impact on prison admissions and populations.

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:

   According to the DACS, the bill's provisions do not impact the Division of Consumer Services as matters addressed by this bill are currently covered by federal law; therefore, calls addressing product safety issues of this type are referred to the federal Consumer Product Safety Commission.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to cadmium in children's products; defining terms; prohibiting a person from using or applying cadmium in excess of a specified amount on any item of children's jewelry, toy, or child care article sold in this state; providing an exception; providing civil fines for the sale of an item of children's jewelry, toy, or child care article that contains cadmium; requiring that certain civil fines be waived under specified circumstances; providing that a knowing and intentional violation of the act is a felony of the third degree; providing criminal penalties; providing an effective date.

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

Section 1. Cadmium in children's products; limitations on use of cadmium; exceptions; civil fines; criminal penalties.—

(1) As used in this section, the term:

(a) "Child" means an individual who is 7 years of age or younger.

(b) "Child care article" means a product designed or intended by the manufacturer to facilitate the sleep, relaxation, or feeding of a child or to help a child with sucking or teething.

(c) "Children's jewelry" means jewelry that is made for, marketed for use by, or sold to a child.

(d) "Consumer" means an individual; a child, by and

through its parent or legal guardian; or a business, firm, association, joint venture, partnership, estate, trust, business trust, syndicate, fiduciary, corporation, any commercial entity, however denominated, or any other group or combination thereof.

(e) "Person" has the same meaning as provided in s. 1.01, Florida Statutes.

(f) "Toy" means an article designed and made for the amusement of a child and for the child's use during play.

(2)(a) A person may not use or apply cadmium in excess of 75 parts per million on any surface coating or substrate material on any item of children's jewelry, toy, or child care article, as determined through solubility testing for heavy metals defined in the American Society for Testing and Materials International Safety Specification on Toy Safety, ASTM standard F963, if the product is sold in this state.

(b) This section does not apply to the sale of a collectible toy that is not marketed to or intended to be used for play by a minor younger than 14 years of age.

(3) Except as otherwise provided in subsection (4), if a person who is not an individual consumer violates subsection (2), that person is liable for a civil fine of not more than:

(a) One hundred dollars per item, not to exceed $5,000, for the first violation.

(b) Five hundred dollars per item, not to exceed $25,000, for a second violation.

(c) One thousand dollars per item, not to exceed $50,000, for a third or subsequent violation.

(4) A civil fine imposed under subsection (3) must be

waived if the person acted in good faith to comply with this section, pursued compliance with due diligence, and promptly corrected any noncompliance after discovering the violation.

(5) If a person who is not an individual consumer knowingly and intentionally violates subsection (2), that person:

(a) Commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, Florida Statutes; and

(b) Is liable for a civil fine of not more than $3,000 per item, not to exceed $150,000 for the intentional violation.

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

Amendment No.

COUNCIL/COMMITTEE ACTION

ADOPTED __ (Y/N)

ADOPTED AS AMENDED __ (Y/N)

ADOPTED W/O OBJECTION __ (Y/N)

FAILED TO ADOPT __ (Y/N)

WITHDRAWN __ (Y/N)

OTHER _____

Council/Committee hearing bill: Agriculture & Natural Resources Policy Committee

Representative Thompson, G. offered the following:

Amendment (with title amendment)

Remove everything after the enacting clause and insert:

Section 1. Cadmium in children's products; limitations on use of cadmium; exceptions; criminal penalties.—

(1) As used in this section, the term:

(a) "Child" means an individual who is 7 years of age or younger, unless otherwise specified.

(b) "Child care article" means a product designed or intended by the manufacturer to facilitate the sleep, relaxation, or feeding of a child or to help a child with sucking or teething.

(c) "Children's jewelry" means jewelry that is made for, marketed for use by, or sold to a child.

(d) "Consumer" means an actual or prospective purchaser, lessee, or recipient of consumer goods or services.

Amendment No.

(e) "Person" has the same meaning as provided in s. 1.01, Florida Statutes.

(f) "Toy" means an article designed and made for the amusement of a child and for the child's use during play.

(2) A person may not use or apply cadmium in excess of 75 parts per million on any surface coating or substrate material on any item of children's jewelry, toy, or child care article, as determined through solubility testing for heavy metals defined in the ASTM International Safety Specification on Toy Safety, ASTM standard F-963, if the product is sold in this state. This section does not apply to the sale of a collectible toy that is not marketed to or intended to be used for play by a child younger than 14 years of age.

(3) If a person, who is not an individual consumer, knowingly and intentionally violates subsection (2), that person commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, Florida Statutes.

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

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

Remove the entire title and insert:

A bill to be entitled

An act relating to cadmium in children's products; defining terms; prohibiting a person from using or applying cadmium in excess of a specified amount on any item of children's jewelry, toy, or child care article sold in this state; providing an exception;

Amendment No.

providing for a criminal penalty; providing an effective date.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1325 Aquatic Preserves
SPONSOR(S): Schultz and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 2674

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

SUMMARY ANALYSIS

The bill creates Florida's 42nd aquatic preserve, the Nature Coast Aquatic Preserve, along the coast of Pasco, Hernando, and Citrus Counties. This preserve, along with the other 41 aquatic preserves, will be managed by the Department of Environmental Protection's (DEPs) Office of Coastal and Aquatic Managed Areas.

The bill exempts privately owned uplands and submerged lands from any aquatic preserve dedication.

The bill appears to have no fiscal impact on local government; however, at the state level, the DEP estimates an initial start-up cost of $145,000 for office supplies, computers, furniture, 2 vehicles, 2 boats, and scientific field instruments. An estimated $350,000, in Fixed Capital Outlay, will also be needed to construct a field office, lab, meeting space and education displays. DEP hopes to co-locate with another land manager, and, if this happens, the estimated Fixed Capital Outlay needs could be reduced by half. Additionally, DEP is asking for 4 full-time employees, with $250,000 for salaries and operating expenses annually.

The bill has an effective date of July 1, 2011.

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

In 1975, Florida enacted the Aquatic Preserve Act with the intent that the state-owned submerged lands in areas which have exceptional biological, aesthetic, and scientific value, be set aside forever as aquatic preserves or sanctuaries for the benefit of future generations[1]. Florida statutes defines an aquatic preserve as an exceptional area of submerged lands and its associated waters set aside for being maintained essentially in its natural or existing condition.

The state restricts certain activities in aquatic preserves in order to conserve their unique biological, aesthetic and scientific value. Section 258.42, F.S., prohibits even the Board of Trustees of the Internal Improvement Trust Fund (BOT) from approving the sale, lease, or transfer of sovereignty submerged lands except when the transaction is in the public interest.

Only minimal or maintenance dredging may be permitted in a preserve, and any alteration of the preserves' physical conditions is restricted unless the alteration enhances the quality or utility of the preserve or the public health generally. Minerals may not be mined (with the exception of oyster shells), and oil and gas well drilling is prohibited. This prohibition will not prohibit the state from leasing the oil and gas rights and permitting drilling from outside the preserve to explore for oil and gas if approved by the BOT. Docking facilities and even structures for shore protection are restricted as to size and location[2].

The DEP's Office of Coastal and Aquatic Managed Areas oversees the management of Florida's 41 aquatic preserves, three National Estuarine Research Reserves (NERR), one National Marine Sanctuary and the Coral Reef Conservation Program. These protected areas comprise more than 4 million acres of the most valuable submerged lands and select coastal uplands in Florida[3].

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[1] Section 258.36, F.S.

[2] Administrative rules applicable to aquatic preserves generally may be found in Chapter 18-20.004, F.A.C., Management Policies, Standards and Criteria. However, every aquatic preserve in the state has specific restrictions and policies that are set out in the Florida Administrative Code.

[3] Department of Environmental Protection website, http://www.dep.state.fl.us/coastal/

Effect of Proposed Changes

The bill amends s. 258.39, F.S., by listing all counties in alphabetical order and including Pasco and Hernando Counties with aquatic preserves within the county boundaries.

The bill creates the 42nd aquatic preserve, Nature Coast Aquatic Preserve, along the coasts of Pasco, Hernando, and Citrus Counties, accounting for approximately 440,000 acres.

Finally, the bill exempts all privately owned uplands and submerged lands from all aquatic preserve dedications.

B. SECTION DIRECTORY:

Section 1. Amends s. 258.39, F.S., revising provisions relating to the boundaries of aquatic preserves; declaring described state-owned submerged lands in specified counties as aquatic preserves; creating the Nature Coast Aquatic Preserve; describing the boundaries thereof; clarifying an exemption from such dedication for certain lands.

Section 2.. Provides an effective date of July 1, 2011.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None

2. Expenditures:

   See Fiscal Comments

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None

2. Expenditures:

   None

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None

D. FISCAL COMMENTS:

According to DEP, the following is based on other aquatic preserve funding needs:

Non-recurring start up costs: $145,000 for office supplies, computers, furniture, 2 vehicles, 2 boats (inshore and offshore) and scientific field instruments.

An estimated $350,000 in Fixed Capital Outlay is needed to construct a field office, lab, meeting space and educational displays. DEP hopes to co-locate with another land manager to save money. If this happens, the estimated Fixed Capital Outlay needs could be reduced by half.

DEP is also asking for 4 FTE, $250,000 for salaries and operating expenses 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

A bill to be entitled

An act relating to aquatic preserves; amending s. 258.39, F.S.; revising provisions relating to the boundaries of aquatic preserves; declaring described state-owned submerged lands in specified counties as aquatic preserves; creating the Nature Coast Aquatic Preserve; describing the boundaries thereof; clarifying an exemption from such dedication for certain lands; providing an effective date.

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

Section 1. Section 258.39, Florida Statutes, is amended to read:

258.39 Boundaries of preserves.—The state-owned submerged lands included within the boundaries of Bay, Brevard, Charlotte, Citrus, Collier, Duval, Escambia, Flagler, Franklin, Gulf, Hernando, Indian River, Lake, Lee, Leon, Marion, Martin, Miami-Dade, Monroe, Nassau, Okaloosa, Orange, Palm Beach, Pasco, Pinellas, St. Johns, St. Lucie, Santa Rosa, Seminole, and Volusia ~~Nassau, Duval, St. Johns, Flagler, Volusia, Brevard, Indian River, St. Lucie, Charlotte, Pinellas, Martin, Palm Beach, Miami-Dade, Monroe, Collier, Lee, Citrus, Franklin, Gulf, Bay, Okaloosa, Marion, Santa Rosa, Hernando, and Escambia~~ Counties, as hereinafter described, ~~with the exception of privately held submerged lands lying landward of established bulkheads and of privately held submerged lands within Monroe County where the establishment of bulkhead lines is not~~

~~required,~~ are hereby declared to be aquatic preserves. Such aquatic preserve areas include:

(1) The Fort Clinch State Park Aquatic Preserve, as described in the Official Records of Nassau County in Book 108, pages 343-346, and in Book 111, page 409.

(2) Nassau River-St. Johns River Marshes Aquatic Preserve, as described in the Official Records of Duval County in Volume 3183, pages 547-552, and in the Official Records of Nassau County in Book 108, pages 232-237.

(3) Pellicer Creek Aquatic Preserve, as described in the Official Records of St. Johns County in Book 181, pages 363-366, and in the Official Records of Flagler County in Book 33, pages 131-134.

(4) Tomoka Marsh Aquatic Preserve, as described in the Official Records of Flagler County in Book 33, pages 135-138, and in the Official Records of Volusia County in Book 1244, pages 615-618.

(5) Mosquito Lagoon Aquatic Preserve, as described in the Official Records of Volusia County in Book 1244, pages 619-623, and in the Official Records of Brevard County in Book 1143, pages 190-194.

(6) Banana River Aquatic Preserve, as described in the Official Records of Brevard County in Book 1143, pages 195-198, and the sovereignty submerged lands lying within the following described boundaries: BEGIN at the intersection of the westerly ordinary high water line of Newfound Harbor with the North line of Section 12, Township 25 South, Range 36 East, Brevard County: Thence proceed northeasterly crossing Newfound Harbor to the

intersection of the South line of Section 31, Township 24 South, Range 37 East, with the easterly ordinary high water line of said Newfound Harbor; thence proceed northerly along the easterly ordinary high water line of Newfound Harbor to its intersection with the easterly ordinary high water line of Sykes Creek; thence proceed northerly along the easterly ordinary high water line of said creek to its intersection with the southerly right-of-way of Hall Road; thence proceed westerly along said right-of-way to the westerly ordinary high water line of Sykes Creek; thence southerly along said ordinary high water line to its intersection with the ordinary high water line of Newfound Harbor; thence proceed southerly along the westerly ordinary high water line of Newfound Harbor to the POINT OF BEGINNING.

(7)(a) Indian River-Malabar to Vero Beach Aquatic Preserve, as described in the Official Records of Brevard County in Book 1143, pages 199-202, and in the Official Records of Indian River County in Book 368, pages 5-8 and the sovereignty submerged lands lying within the following described boundaries, excluding those lands contained within the corporate boundary of the City of Vero Beach as of the effective date of this act: Commence at the intersection of the north line of Section 31, Township 28 South, Range 38 East, and the westerly mean high water line of Indian River for a point of beginning; thence from the said point of beginning proceed northerly, westerly, and easterly along the mean high water line of Indian River and its navigable tributaries to an intersection with the north line of Section 24, Township 28 South, Range 37 East; thence proceed easterly, to a point on the easterly mean high water line of

Indian River at its intersection with the north line of Section 20, Township 28 South, Range 38 East; thence proceed southerly, along the easterly mean high water line of Indian River to the most westerly tip of Blue Fish Point in said Section 20, thence proceed southwesterly to the intersection of the westerly mean high water line of Indian River with the north line of Section 31, Township 28 South, Range 38 East and the point of beginning: And also commence at the intersection of the northern Vero Beach city limits line in Section 25, Township 32 South, Range 39 East, and the westerly mean high water line of Indian River for the point of beginning: Thence from the said point of beginning proceed northerly, along the westerly mean high water line of Indian River and its navigable tributaries to an intersection with the south line of Section 14, Township 30 South, Range 38 East; thence proceed easterly, along the easterly projection of the south line of said Section 14, to an intersection with the easterly right-of-way line of the Intracoastal Waterway; thence proceed southerly, along the easterly right-of-way line of the Intracoastal Waterway, to an intersection with the northerly line of the Pelican Island National Wildlife Refuge; thence proceed easterly, along the northerly line of the Pelican Island National Wildlife Refuge, to an intersection with the easterly mean high water line of Indian River; thence proceed southerly along the easterly mean high water line of Indian River and its tributaries, to an intersection with the northern Vero Beach city limits line in Section 30, Township 32 South, Range 40 East; thence proceed westerly and southerly, along the northern Vero Beach city limits line to an intersection with the easterly

mean high water line of Indian River and the point of beginning.

(b) For purposes of the Indian River-Malabar to Vero Beach Aquatic Preserve, a lease of sovereign submerged lands for a noncommercial dock may be deemed to be in the public interest when the noncommercial dock constitutes a reasonable exercise of riparian rights and is consistent with the preservation of the exceptional biological, aesthetic, or scientific values which the aquatic preserve was created to protect.

(8) Indian River-Vero Beach to Fort Pierce Aquatic Preserve, as described in the Official Records of Indian River County in Book 368, pages 9-12, and in the Official Records of St. Lucie County in Book 187, pages 1083-1086. More specifically, within that description, the southern corporate line of Vero Beach refers to the southerly corporate boundary line of Vero Beach as it existed on June 3, 1970, which is also a westerly projection of the south boundary of "Indian Bay" subdivision as recorded in Plat Book 3, page 43, Docket No. 59267, Public Records of Indian River County, and State Road A1A refers to State Road A1A, North Beach Causeway, located north of Fort Pierce Inlet.

(9) Jensen Beach to Jupiter Inlet Aquatic Preserve, as described in the Official Records of St. Lucie County in Book 218, pages 2865-2869. More specifically, within that description, the southerly corporate line of the City of Fort Pierce refers to the southerly corporate boundary line of the City of Fort Pierce as it existed in 1969; and the western boundary of the preserve as it crosses the St. Lucie River is more specifically described as a line which connects the

intersection point of the westerly mean high-water line of the Indian River and the northerly mean high-water line of the St. Lucie River to the intersection point of the intersection of the westerly mean high-water line of the Intracoastal Waterway and the southerly mean high-water line of the St. Lucie River, lands within this preserve are more particularly described as lying and being in Sections 12, 13, 26, 35, and 36, Township 35 South, Range 40 East, and Sections 18, 19, 29, 30, and 32, Township 35 South, Range 41 East, and Sections 1 and 12, Township 36 South, Range 40 East, and Sections 5, 7, 8, 9, 16, 17, 18, 19, 20, 22, 27, 29, 32, and 34, Township 36 South, Range 41 East, and Sections 2, 3, 4, 9, 10, 11, 13, 14, 15, 22, 23, 24, 26, 35, and 36, Township 37 South, Range 41 East, and Sections 19, 30, 31, and 32, Township 37 South, Range 42 East, and Sections 1 and 12, Township 38 South, Range 41 East, and Sections 5, 6, 8, 16, 17, 19, 20, 21, 28, 29, 32, and 33, Township 38 South, Range 42 East, including the eastern portion of the Hanson Grant, east of Rocky Point Cove, and west of St. Lucie Inlet State Park, and portions of the Gomez Grant lying adjacent to Peck Lake and South Jupiter Narrows, and Sections 25, 26, 35, and 36, Township 39 South, Range 42 East, and Sections 1, 12, and 13, Township 40 South, Range 42 East, and Sections 7, 18, 19, 30, 31, and 32, Township 40 South, Range 43 East.

(10) Loxahatchee River-Lake Worth Creek Aquatic Preserve, as described in the Official Records of Martin County in Book 320, pages 193-196, and in the Official Records of Palm Beach County in Volume 1860, pages 806-809, and the sovereignty submerged lands lying within the following described boundaries:

Begin at the intersection of the easterly mean high water line of the North Fork of the Loxahatchee River with the northerly mean high water line of the Loxahatchee River, being in Section 36, Township 40 South, Range 43 East, Palm Beach County: Thence proceed easterly along the northerly mean high water line of the Loxahatchee River to the westerly right-of-way of U.S. Highway 1; thence proceed southerly along said right-of-way to the southerly mean high water line of said river; thence proceed easterly along the southerly mean high water line of said river to its intersection with the easterly mean high water line of the Lake Worth Creek; thence proceed northwesterly crossing the Loxahatchee River to the point of beginning: And also: Commence at the southwest corner of Section 16, Township 40 South, Range 42 East Martin County; thence proceed north along the west line of Section 16 to the mean high water line of the Loxahatchee River being the point of beginning: Thence proceed southerly along the easterly mean high water line of said river and its tributaries to a point of nonnavigability; thence proceed westerly to the westerly mean high water line of said river; thence proceed northerly along the westerly mean high water line of said river and its tributaries to its intersection with the westerly line of Section 16, Township 40 South, Range 42 East; thence proceed southerly along the said westerly section line to the point of beginning: And also begin where the southerly mean high water line of the Southwest Fork of the Loxahatchee River intersects the westerly line of Section 35, Township 40 South, Range 42 East: Thence proceed southwesterly along the southerly mean high water line of the Southwest Fork to the northeasterly

face of structure #46; thence proceed northwesterly along the face of said structure to the northerly mean high water line of the Southwest Fork; thence proceed northeasterly along said mean high water line to its intersection with the westerly line of Section 35, Township 40 South, Range 42 East; thence proceed southerly along westerly line of said section to the point of beginning.

(11) Biscayne Bay-Cape Florida to Monroe County Line Aquatic Preserve, as described in the Official Records of Miami-Dade County in Book 7055, pages 852-856, less, however, those lands and waters as described in s. 258.397.

(12) North Fork, St. Lucie Aquatic Preserve, as described in the Official Records of Martin County in Book 337, pages 2159-2162, and in the Official Records of St. Lucie County in Book 201, pages 1676-1679.

(13) Yellow River Marsh Aquatic Preserve, as described in the Official Records of Santa Rosa County in Book 206, pages 568-571.

(14) Fort Pickens State Park Aquatic Preserve, as described in the Official Records of Santa Rosa County in Book 220, pages 60-63, and in the Official Records of Escambia County in Book 518, pages 659-662.

(15) Rocky Bayou State Park Aquatic Preserve, as described in the Official Records of Okaloosa County in Book 593, pages 742-745.

(16) St. Andrews State Park Aquatic Preserve, as described in the Official Records of Bay County in Book 379, pages 547-550.

(17) St. Joseph Bay Aquatic Preserve, as described in the Official Records of Gulf County in Book 46, pages 73-76.

(18) Apalachicola Bay Aquatic Preserve, as described in the Official Records of Gulf County in Book 46, pages 77-81, and in the Official Records of Franklin County in Volume 98, pages 102-106.

(19) Alligator Harbor Aquatic Preserve, as described in the Official Records of Franklin County in Volume 98, pages 82-85.

(20) St. Martins Marsh Aquatic Preserve, as described in the Official Records of Citrus County in Book 276, pages 238-241.

(21) Matlacha Pass Aquatic Preserve, as described in the Official Records of Lee County in Book 800, pages 725-728.

(22) Pine Island Sound Aquatic Preserve, as described in the Official Records of Lee County in Book 648, pages 732-736.

(23) Cape Romano-Ten Thousand Islands Aquatic Preserve, as described in the Official Records of Collier County in Book 381, pages 298-301.

(24) Lignumvitae Key Aquatic Preserve, as described in the Official Records of Monroe County in Book 502, pages 139-142.

(25) Coupon Bight Aquatic Preserve, as described in the Official Records of Monroe County in Book 502, pages 143-146.

(26) Lake Jackson Aquatic Preserve, as established by chapter 73-534, Laws of Florida, and defined as authorized by law.

(27) Pinellas County Aquatic Preserve, as established by chapter 72-663, Laws of Florida; Boca Ciega Aquatic Preserve, as

established by s. 258.396; and the Biscayne Bay Aquatic Preserve, as established by s. 258.397. If any provision of this act is in conflict with an aquatic preserve established by s. 258.396, chapter 72-663, Laws of Florida, or s. 258.397, the stronger provision for the maintenance of the aquatic preserve shall prevail.

(28) Estero Bay Aquatic Preserve, the boundaries of which are generally: All of those sovereignty submerged lands located bayward of the mean high-water line being in Sections 13, 14, 15, 16, 17, 18, 21, 22, 23, 24, 25, 26, 27, 35, and 36, Township 46 South, Range 24 East; and in Sections 19, 20, 28, 29, and 34, Township 46 South, Range 24 East, lying north and east of Matanzas Pass Channel; and in Sections 19, 30, and 31, Township 46 South, Range 25 East; and in Sections 6, 7, 17, 18, 19, 20, 29, 30, 31, and 32, Township 47 South, Range 25 East; and in Sections 1, 2, 3, 11, 12, 13, 14, 24, and 25, Township 47 South, Range 24 East, in Lee County, Florida. Any and all submerged lands conveyed by the Trustees of the Internal Improvement Trust Fund prior to October 12, 1966, and any and all uplands now in private ownership are specifically exempted from this preserve.

(29) Cape Haze Aquatic Preserve, the boundaries of which are generally: That part of Gasparilla Sound, Catfish Creek, Whiddon Creek, "The Cutoff," Turtle Bay, and Charlotte Harbor lying within the following described limits: Northerly limits: Commence at the northwest corner of Section 18, Township 42 South, Range 21 East, thence south along the west line of said Section 18 to its intersection with the Government Meander Line of 1843-1844, and the point of beginning, thence southeasterly

along said meander line to the northwesterly shoreline of Catfish Creek, thence northeasterly along said shoreline to the north line of said Section 18, thence east along said north line to the easterly shoreline of Catfish Creek, thence southeasterly along said shoreline to the east line of said Section 18, thence south along said east line, crossing an arm of said Catfish Creek to the southerly shoreline of said creek, thence westerly along said southerly shoreline and southerly along the easterly shoreline of Catfish Creek to said Government Meander Line, thence easterly and southeasterly along said meander line to the northerly shoreline of Gasparilla Sound in Section 21, Township 42 South, Range 21 East, thence easterly along said northerly shoreline and northeasterly along the westerly shoreline of Whiddon Creek to the east west quarter line in Section 16, Township 42 South, Range 21 East, thence east along said quarter line and the quarter Section line of Section 15, Township 42 South, Range 21 East to the easterly shoreline of Whiddon Creek, thence southerly along said shoreline to the northerly shoreline of "The Cutoff," thence easterly along said shoreline to the westerly shoreline of Turtle Bay, thence northeasterly along said shoreline to its intersection with said Government Meander Line in Section 23, Township 42 South, Range 21 East, thence northeasterly along said meander line to the east line of Section 12, Township 42 South, Range 21 East, thence north along the east line of said Section 12, and the east line of Section 1, Township 42 South, Range 21 East to the northwest corner of Section 6, Township 42 South, Range 22 East, thence east along the north line and extension thereof of said Section 6 to a

point 2,640 feet east of the westerly shoreline of Charlotte Harbor and the end of the northerly limits. Easterly limits: Commence at the northwest corner of Section 6, Township 42 South, Range 22 East, thence east along the north line of said Section 6 and extension thereof to a point 2,640 feet east of the westerly shoreline of Charlotte Harbor and the point of beginning, thence southerly along a line 2,640 feet easterly of and parallel with the westerly shoreline of Charlotte Harbor and along a southerly extension of said line to the line dividing Charlotte and Lee Counties and the end of the easterly limits. Southerly limits: Begin at the point of ending of the easterly limits, above described, said point being in the line dividing Charlotte and Lee Counties, thence southwesterly along a straight line to the most southerly point of Devil Fish Key, thence continue along said line to the easterly right-of-way of the Intracoastal Waterway and the end of the southerly limits. Westerly limits: Begin at the point of ending of the southerly limits as described above, thence northerly along the easterly right-of-way line of the Intracoastal Waterway to its intersection with a southerly extension of the west line of Section 18, Township 42 South, Range 21 East, thence north along said line to point of beginning.

(30) Wekiva River Aquatic Preserve, the boundaries of which are generally: All the state-owned sovereignty lands lying waterward of the ordinary high-water mark of the Wekiva River and the Little Wekiva River and their tributaries lying and being in Lake, Seminole, and Orange counties and more particularly described as follows:

(a) In Sections 15, 16, 17, 20, 21, 22, 27, 28, 29, and 30, Township 20 South, Range 29 East. These sections are also depicted on the Forest City Quadrangle (U.S.G.S. 7.5 minute series-topographic) 1959 (70PR); and

(b) In Sections 3, 4, 8, 9, and 10, Township 20 South, Range 29 East and in Sections 21, 28, and 33, Township 19 South, Range 29 East lying north of the right-of-way for the Atlantic Coast Line Railroad and that part of Section 33, Township 19 South, Range 29 East lying between the Lake and Orange County lines and the right-of-way of the Atlantic Coast Line Railroad. These sections are also depicted on the Sanford SW Quadrangle (U.S.G.S. 7.5 minute series-topographic) 1965 (70-1); and

(c) All state-owned sovereignty lands, public lands, and lands whether public or private below the ordinary high-water mark of the Wekiva River and the Little Wekiva and their tributaries within the Peter Miranda Grant in Lake County lying below the 10 foot m.s.l. contour line nearest the meander line of the Wekiva River and all state-owned sovereignty lands, public lands, and lands whether public or private below the ordinary high-water mark of the Wekiva River and the Little Wekiva and their tributaries within the Moses E. Levy Grant in Lake County below the 10 foot m.s.l. contour line nearest the meander lines of the Wekiva River and Black Water Creek as depicted on the PINE LAKES 1962 (70-1), ORANGE CITY 1964 (70PR), SANFORD 1965 (70-1), and SANFORD S.W. 1965 (70-1) QUADRANGLES (U.S.G.S. 7.5 minute topographic); and

(d) All state-owned sovereignty lands, public lands, and lands whether public or private below the ordinary high-water

mark of the Wekiva River and the Little Wekiva River and their tributaries lying below the 10 foot m.s.l. contour line nearest the meander line of the Wekiva and St. Johns Rivers as shown on the ORANGE CITY 1964 (70PR), SANFORD 1965 (70-1), and SANFORD S.W. 1965 (70-1) QUADRANGLES (U.S.G.S. 7.5 minute topographic) within the following described property: Beginning at a point on the south boundary of the Moses E. Levy Grant, Township 19 South, Range 29 East, at its intersection with the meander line of the Wekiva River; thence south 60 1/2 degrees east along said boundary line 4,915.68 feet; thence north 29 1/2 degrees east 15,516.5 feet to the meander line of the St. Johns River; thence northerly along the meander line of the St. Johns River to the mouth of the Wekiva River; thence southerly along the meander line of the Wekiva River to the beginning; and

(e) All state-owned sovereignty lands, public lands, and lands whether public or private below the ordinary high-water mark of the Wekiva River and the Little Wekiva River and their tributaries within the Peter Miranda Grant lying east of the Wekiva River, less the following:

1. State Road 46 and all land lying south of said State Road No. 46.

2. Beginning 15.56 chains West of the Southeast corner of the SW 1/4 of the NE 1/4 of Section 21, Township 19 South, Range 29 East, run east 600 feet; thence north 960 feet; thence west 340 feet to the Wekiva River; thence southwesterly along said Wekiva River to point of beginning.

3. That part of the east 1/4 of the SW 1/4 of Section 22, Township 19 South, Range 29 East, lying within the Peter

Miranda Grant east of the Wekiva River.

(f) All the sovereignty submerged lands lying within the following described boundaries: Begin at the intersection of State Road 44 and the westerly ordinary high water line of the St. Johns River, Section 22, Township 17 South, Range 29 East, Lake County: Thence proceed southerly along the westerly ordinary high water line of said river and its tributaries to the intersection of the northerly right-of-way of State Road 400; thence proceed northeasterly along said right-of-way to the easterly ordinary high water line of the St. Johns River; thence proceed northerly along said ordinary high water line of the St. Johns River and its tributaries to its intersection with the easterly ordinary high water line of Lake Beresford; thence proceed northerly along the ordinary high water line of said lake to its intersection with the westerly line of Section 24, Township 17 South, Range 29 East; thence proceed northerly to the southerly right-of-way of West New York Avenue; thence proceed westerly along the southerly right-of-way of said avenue to its intersection with the southerly right-of-way line of State Road 44; thence proceed southwesterly along said right-of-way to the point of beginning.

(31) Rookery Bay Aquatic Preserve, the boundaries of which are generally: All of the state-owned sovereignty lands lying waterward of the mean high-water line in Rookery Bay and in Henderson Creek and the tributaries thereto in Collier County, Florida. Said lands are more particularly described as lying and being in Sections 27, 34, 35, and 36, Township 50 South, Range 25 East; in Section 31, Township 50 South, Range 26 East; in

Sections 1, 2, 3, 10, 11, 12, 13, 14, 23, 24, and 25, Township 51 South, Range 25 East; and in Sections 5, 6, 7, 8, 9, 10, 15, 16, 17, 18, 19, 20, 30, and 31, Township 51 South, Range 26 East, Collier County, Florida, and all the sovereignty submerged lands lying within the following described boundaries: Begin at the southwest corner of Section 30, Township 52 South, Range 27 East, Collier County: Thence proceed easterly along the southerly line of said Section 30 to the southwest corner of Section 29, Township 52 South, Range 27 East; proceed thence northerly along the westerly lines of Sections 29, 20 and 17 to the northwest corner of said Section 17; thence proceed westerly along the northerly line of Section 18 to the southeast corner of Section 12, Township 52 South, Range 26 East; thence proceed northerly along the easterly lines of Sections 12, 1, 36 and 25 to the northeast corner of said Section 25, Township 51 South, Range 26 East; thence proceed westerly along the northerly lines of Sections 25 and 26 to the northwest corner of said Section 26; thence proceed northerly to northeast corner of said Section 22; thence proceed westerly along the northerly lines of Sections 22 and 21 to the northwest corner of said Section 21; thence proceed southerly to the southwest corner of said Section 21; thence proceed westerly along the northerly line of Section 29 to the northwest corner thereof; thence proceed southerly along the westerly lines of Sections 29 and 32 to the southwest corner of said Section 32; thence proceed westerly to the northwest corner of Section 6, Township 52 South, Range 26 East; thence proceed southerly along a projection of Range line 25 East to its intersection with a line which runs westerly from

the southwest corner of Cape Romano - Ten Thousand Islands Aquatic Preserve; thence proceed easterly to the southwest corner of Cape Romano - Ten Thousand Islands Aquatic Preserve; thence proceed northerly to the point of beginning. Less and except: Begin at the southeast corner of Section 21, Township 52 South, Range 26 East; thence proceed northerly along the easterly lines of Sections 21 and 16 to the northeast corner of said Section 16, thence proceed northerly to the thread of John Stevens Creek; thence proceed northwesterly along the thread of said creek to its intersection with the thread of Marco River; thence proceed northwesterly and westerly along the thread of said river to its intersection with the thread of Big Marco Pass; thence proceed southwesterly along the thread of Big Marco Pass to its intersection with Range line 25 East; thence proceed southerly along Range line 25 East to a point which is west from the point of beginning: Thence proceed easterly to the point of beginning.

(32) Rainbow Springs Aquatic Preserve, the boundaries of which are generally: Commencing at the intersection of Blue Run with the Withlacoochee River in Section 35, Township 16 South, Range 18 East; thence run southeasterly and easterly along said Blue Run to the east boundary of said Section 35; thence continue easterly and northerly along said Blue Run through Section 36, Township 16 South, Range 18 East, to the north boundary of said Section 36; thence continue northerly and northeasterly along said Blue Run in Section 25, Township 16 South, Range 18 East, to the north boundary of the city limits of Dunnellon, Florida; thence from the north boundary of the

city limits of Dunnellon, Florida, in Section 25, Township 16 South, Range 18 East; thence run easterly along said Blue Run to its intersection with the east boundary line of said Section 25; thence continue easterly along said Rainbow River (Blue Run) into Section 30, Township 16 South, Range 19 East, thence northerly along said Rainbow River (Blue Run) through Sections 30 and 19, Township 16 South, Range 19 East, to a point on the north boundary of the northwest 1/4 of Section 18; thence continue to run northwesterly to the head of Rainbow Springs in Section 12, Township 16 South, Range 18 East.

(33) Nature Coast Aquatic Preserve, including all the state-owned submerged lands lying west of the west right-of-way line of U.S. Highway 19 within the boundaries of Pasco County, as described in s. 7.51, Hernando County, as described in s. 7.27, and Citrus County, as described in s. 7.09, to the southern boundary of St. Martins Marsh Aquatic Preserve as described in subsection (20) and the western projection thereof, and also including all the state-owned submerged lands within Citrus County lying west of the west boundary of St. Martins Marsh Aquatic Preserve, lying north of the westerly projection of the south boundary of St. Martins Marsh Aquatic Preserve, and lying south of a line extending westerly along northerly coordinate 1663693 feet, Florida West Zone (NAD83).

Any and all privately owned uplands and submerged lands ~~theretofore conveyed by the Trustees of the Internal Improvement Trust Fund and any and all uplands now in private ownership~~ are specifically exempted from this dedication.

Section 2. This act shall take effect July 1, 2011.

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1361 Regulation of Vessels
SPONSOR(S): Steinberg
TIED BILLS: **IDEN./SIM. BILLS:** SB 2506

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

SUMMARY ANALYSIS

During the 2009 Legislative Session, the Legislature passed HB 1423, which directed the Florida Fish and Wildlife Conservation Commission (FWCC), in consultation with the Department of Environmental Protection (DEP), to establish a pilot program in five locations to explore potential options for regulating the anchoring or mooring of non-live-aboard vessels outside the marked boundaries of public mooring fields.

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

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

Each location must be associated with a properly permitted mooring field. The FWCC, in consultation with the DEP, must select all locations prior to July 1, 2011.

If enacted, this bill deletes s. 327.60 (2)(f), F.S., and changes s. 327.60 (3), F.S., back to the language before the 2009 Legislative Session. The reinstated language states that "local governmental authorities are prohibited from regulating the anchoring outside of properly permitted mooring fields of non-live-aboard vessels in navigation." In doing so, the bill allows local government authorities to regulate the anchoring of live-aboard vessels not in navigation outside of the permitted marked boundaries of mooring fields.

According to the FWCC, there does not appear to be a fiscal impact to state agencies or local governments with the way the bill is currently written. See Fiscal Comments section.

The bill will take effect upon becoming law.

HOUSE PRINCIPLES

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

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Currently, local governments are prohibited from regulating the anchoring of vessels other than live-aboard vessels outside the marked boundaries of legally permitted mooring fields. According to FWCC, the unregulated anchoring and mooring leads to various problems including:

- The accumulation of anchored vessels in inappropriate locations;
- Unattended vessels;
- Vessels with no anchor watch (dragging anchor, no lights, bilge);
- Vessels that are not properly maintained;
- Vessels ignored by owners that tend to become derelict;
- Confusion with the interpretation of statutes that provide jurisdictional guidance for local governments.

A live-aboard vessel is defined as any vessel used solely as a residence and not for navigation; any vessel represented as a place of business or a professional or other commercial enterprise; or any vessel for which a declaration of domicile has been filed pursuant to s. 222.17, F.S. A commercial fishing boat is expressly excluded from the term 'live-aboard vessel' in s. 327.02 (17), F.S.[1]

FWCC staff met with interested stakeholders over a two-year period prior to the 2010 Legislative Session, to try to find solutions to the unregulated anchoring. FWCC Commissioners came up with two recommendations:

- Develop a model anchoring/mooring ordinance that local governments can adopt.
- Clarify State and local authority to regulate vessels. This would address the issues of unregulated anchoring, waterway management, and local government authority and recommend cleanup language for some of the more confusing boating statutes. Examples of this approach include combining and clarifying s. 327.22, F.S., (regulation of vessels by municipalities or counties); s. 327.40, F.S., (uniform waterway markers for safety and navigation; informational markers); s. 327.41, F.S., (uniform waterway regulatory markers); s. 327.46, F.S., (restricted areas); s. 327.60, F.S., (local regulations; limitations); and rule 68D-22 (Uniform Waterway Markers in Florida Waters), Florida Administrative Code.

[1] FWCC 2010 analysis, on file

HB 1423, which was passed during the 2009 Legislative Session, directed the FWCC, in consultation with the DEP, to establish a pilot program in five locations to explore potential options for regulating the anchoring or mooring of non-live-aboard vessels outside the marked boundaries of public mooring fields.

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

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

Each location must be associated with a properly permitted mooring field. The FWCC, in consultation with the DEP, must select all locations prior to July 1, 2011.

Notwithstanding the provisions of s. 327.60, F.S., a county or municipality selected for participation in the program may regulate by ordinance the anchoring of vessels, other than live-aboard vessels as defined in s. 327.02, F.S., outside of a mooring field. Any ordinance enacted under the pilot program may take effect and become enforceable only after the FWCC's approval. The FWCC may not approve any ordinance not consistent with the goals of the pilot program.

The FWCC shall:

- Provide consultation and technical assistance to each municipality or county selected for participation in the pilot program to facilitate accomplishment of the pilot program's goals;
- Coordinate the review of any proposed ordinance with the DEP, the Coast Guard; the Florida Inland Navigation District or the West Coast Inland Navigation District, as appropriate; and associations or other organizations representing vessel owners or operators;
- Monitor and evaluate at least annually each location selected for participation in the pilot program and make such modifications as may be necessary to accomplish the pilot program's goals.

The FWCC must submit a report of its findings and recommendations to the Governor, the President of the Senate, and the Speaker of the House of Representatives by January 1, 2014. The pilot program will expire on July 1, 2014, unless reenacted by the Legislature. All ordinances enacted under this section shall expire concurrently with the expiration of the pilot program and shall be inoperative and unenforceable thereafter.

Effect of Proposed Changes

The bill deletes s. 327.60 (2)(f), F.S., and changes s. 327.60 (3), F.S., back to the language before passage of HB 1423 during the 2009 Legislative Session. The reinstated language states that local governmental authorities are prohibited from regulating the anchoring outside of properly permitted mooring fields[2] of non-live-aboard vessels in navigation. In doing so, the bill allows local government authorities to regulate the anchoring of live-aboard vessels not in navigation outside of the permitted marked boundaries of mooring fields.

B. SECTION DIRECTORY:

Section 1. Amends s. 327.60, F.S., removing restrictions on county and municipality regulation of certain non-live-aboard vessels not in navigation.

[2] S. 327.40, F.S.

Section 2. Provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   Unknown

2. Expenditures:

   Unknown

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   See Fiscal Comments

2. Expenditures:

   See Fiscal Comments

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

FWCC states that if changes are made to the bill language to either match the bill to the title language (which pertains to certain non-live-aboard vessels not in navigation, whereas the bill refers to non-live-aboard vessels in navigation), or to try to provide local governments with more power to regulate live-aboard vessels then the following groups would be affected: Florida and non-resident boaters, the marine industry, boater groups, environmental groups, and commercial and residential waterside property owners subject to the provisions of this bill.

D. FISCAL COMMENTS:

According to FWCC, state agencies and local governments would not be fiscally impacted by the bill as currently written. If changes are made to the bill language to match the bill title, FWCC states the following state entities, as well as local governments, could be fiscally affected to an unknown degree: state law enforcement personnel, the DEP, the Board of Trustees of the Internal Improvement Trust Fund, the Department of Community Affairs, and FWCC.

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:

FWCC offered the following comments:

The reinsertion of the term "in navigation" to this statute does not affect the current state of the law for the following reason, "in navigation" is not defined within Florida Statute. Federal admiralty law however defines "in navigation" so broadly that only a vessel rendered practically incapable of transportation or movement is found to be not navigation. Therefore, the current bill language would allow local governments to regulate floating structures being used as living space (ie: live-aboards) that are incapable of transport upon the water. Local governments have that authority under the existing statute.

One way to achieve the purpose set forth in the title is to redefine the terms, "in navigation" or "live-aboard". Narrowing the definition of "live-aboard" found in 327.02(17) , F.S., or providing a definition of "in navigation" that is narrower than the Federal admiralty definition would provide local governments with more authority to regulate live-aboard vessels within their jurisdictions. However, it is important to note that any amendments to HB 1361 that provide a definition of "in navigation" or any change made to the 327.02, F.S., statutory definition of "live-aboard" will affect what vessels are impacted by the statutorily created pilot program. The current bill language will not affect the pilot program but if the bill language is changed to match the statement laid out in the title of the bill it could render the legislatively established pilot program moot.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to regulation of vessels; amending s. 327.60, F.S.; removing restrictions on county and municipality regulation of certain non-live-aboard vessels not in navigation; providing an effective date.

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

Section 1. Subsections (2) and (3) of section 327.60, Florida Statutes, are amended to read:

327.60 Local regulations; limitations.—

(2) Nothing in this chapter or chapter 328 shall be construed to prevent the adoption of any ordinance or local regulation relating to operation of vessels, except that a county or municipality shall not enact, continue in effect, or enforce any ordinance or local regulation:

(a) Establishing a vessel or associated equipment performance or other safety standard, imposing a requirement for associated equipment, or regulating the carrying or use of marine safety articles;

(b) Relating to the design, manufacture, installation, or use of any marine sanitation device on any vessel;

(c) Regulating any vessel upon the Florida Intracoastal Waterway;

(d) Discriminating against personal watercraft;

(e) Discriminating against airboats, for ordinances adopted after July 1, 2006, unless adopted by a two-thirds vote of the governing body enacting such ordinance;

~~(f) Regulating the anchoring of vessels other than live-aboard vessels outside the marked boundaries of mooring fields permitted as provided in s. 327.40;~~

(f) ~~(g)~~ Regulating engine or exhaust noise, except as provided in s. 327.65; or

(g) ~~(h)~~ That conflicts with any provisions of this chapter or any amendments thereto or rules adopted thereunder.

(3) Nothing in this section shall be construed to prohibit local governmental authorities from the enactment or enforcement of regulations which prohibit or restrict the mooring or anchoring of floating structures or live-aboard vessels within their jurisdictions or of any vessels within the marked boundaries of mooring fields permitted as provided in s. 327.40. However, local governmental authorities are prohibited from regulating the anchoring outside of such mooring fields of non-live-aboard vessels in navigation ~~vessels other than live-aboard vessels as defined in s. 327.02~~.

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

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 _____

Council/Committee hearing bill: Agriculture & Natural Resources Policy Committee

Representative Steinberg offered the following:

Amendment (with title amendment)

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

Remove lines 3-5 and insert:

327.60, F.S.; revising language related to the prohibition of county and municipality regulation of certain non-live-aboard vessels in navigation; providing an effective date.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1559 Recycling
SPONSOR(S): Rehwinkel and others
TIED BILLS: **IDEN./SIM. BILLS:**

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

SUMMARY ANALYSIS

The bill directs the Department of Environmental Protection (DEP) and Enterprise Florida, Inc. (EFI), to create the Recycling Business Assistance Center (Center) by July 1, 2010. The bill directs EFI to consult with state agency economic development liaisons and to coordinate between state agencies and the private sector on the strategy for developing new markets and expanding and enhancing existing markets for recyclable materials. The bill provides for specific duties of the Center.

The bill requires each county to reduce the amount of solid waste disposed of in landfills by 50 percent by 2012, 55 percent by 2014, 60 percent by 2016, 70 percent by 2018, and 75 percent by 2020 and provides that counties failing to meet and report such reduction requirements are to be placed on a noncompliance list posted on the DEP's website.

The bill requires the DEP to conduct at least one unannounced inspection annually at all waste-to-energy facilities to ensure that said facilities are in compliance with the solid waste permit conditions. Additionally, the DEP is required to give the facility only 24 hours' notice of a forthcoming inspection.

The bill provides a directive for EFI, in cooperation with the DEP, to contract with a solid waste consultant to conduct a study on the impact of the recycling industry on the state's economy and to submit the study to the Governor and the Legislature by January 1, 2011.

The bill repeals s. 288.1185, F.S., the Recycling Markets Advisory Committee, since it has been inactive for approximately 20 years. Also, the bill conforms a cross reference relating to the solid waste permitting section of law that is renumbered by the bill.

The mandates provision may apply because the bill arguably requires counties to spend funds or take actions requiring them to spend funds and reduces the authority of counties to raise total aggregate revenue over February 1, 1989, levels. The costs of implementing the new recycling goals and the amount of the reduction of revenues are indeterminate; therefore it is not known whether the bill is exempt due to having an insignificant fiscal impact.

Many of the bill's provisions will have no direct fiscal impact. Some of the provisions are expected to have an indirect fiscal impact on state and local governments and on the private sector. For details, see the FISCAL COMMENTS section of the analysis.

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

HOUSE PRINCIPLES

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

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Recyclable Solid Waste

In 1988, the Florida Legislature passed the Solid Waste Management Act (SWMA) which included a 30% recycling goal. According to the Department of Environmental Protection (DEP), as of 2007, Florida generates more than 32 million tons of municipal solid waste annually and the state's average recycling rate is 28%.

The Energy, Climate Change and Economic Security Act of 2008 (ECCESA)[1] described the long term goals for state and local governments, companies, and the general public to reduce the amount of recyclable solid waste disposed of by a statewide average of at least 75 percent by 2020. The ECCESA directed the DEP to conduct public hearings and submit a report, by January 1, 2010, with recommendations, on how to reach the goal. DEP's report to the Legislature recommended:

- Each state agency should report to the Department of Management Services (DMS) its total expenditures on materials with recycled content;
- An increase in recycling education opportunities in K-12 public schools;
- Development of statewide recognition programs to reward citizens, schools, cities and municipalities recycling efforts;
- That the Legislature direct DEP to review in five years the number of local governments that have implemented pay as you throw (PAYT) to determine if additional measures are needed to increase the adoption of PAYT;
- That the Legislature require all construction and demolition (C&D) waste be processed at a materials recovery facility prior to disposal;
- That the Legislature require commercial recycling in counties with over a 100,000 population and cities with over 50,000 population;
- That the Legislature consider the creation of a landfill disposal fee;
- That the Legislature consider enacting a bottle bill to increase recycling of beverage containers;
- That the Legislature allow DEP to reduce or modify the composting goal;
- That the Legislature create a Recycling Business Assistance Center to promote markets for the entire spectrum of recyclable municipal solid waste materials; and

[1] (House Bill 7135) signed into law by Governor Crist created section 403.7032, F.S.

- Encourage the flow of materials such as food waste, yard trash, and paper to organic recycling centers, etc.

According to the DEP, section 403.706, F.S., requires each county to implement a recycling program designed to reduce the amount of solid waste disposed of by 30%. Counties with populations of 100,000 or less may offer their citizens an "opportunity to recycle" in lieu of achieving the 30% reduction. Counties are authorized to achieve up to half of the goal through converting wood waste to fuels for use in facilities other than waste-to-energy facilities. Counties and municipalities are encouraged to form cooperative arrangements for implementing such programs.

The Recycling Markets Advisory Committee (RMAC) was created in conjunction with the state's Advance Disposal Fee (ADF) on bottles. Housed in the Office of Tourism Trade and Economic Development (OTTED), its purpose was to advise on developing markets for the materials affected by the ADF. The ADF was in effect for two years (1993-1995), at which point the Legislature allowed it to sunset. Consequently, while RMAC is still in the statutes,[2] it has been inactive since the mid 1990's.

Enterprise Florida, Inc.

Enterprise Florida, Inc. (EFI),[3] is a not-for-profit, public-private partnership that serves as Florida's statewide economic development organization. Florida law[4] provides that EFI's mission is to diversify Florida's economy and create better-paying jobs for its citizens by supporting, attracting and helping create business in innovative, high-growth industries. EFI is funded by the Legislature and cash and in-kind donations from private businesses. The law[5] provides that EFI is to aggressively market Florida's rural communities, distressed urban communities, brownfields, and enterprise zones as locations for potential new investment, to aggressively assist in the retention and expansion of existing businesses in these communities, and to aggressively assist these communities in the identification and development of new economic development opportunities for job creation. In support of its efforts, EFI is authorized to develop and implement programs or strategies that create and further Florida business, global business, and the import and export trade.

Proposed Changes

The bill directs the DEP and EFI to create the Recycling Business Assistance Center (Center) by July 1, 2010. The bill directs EFI to consult with state agency economic development liaisons[6] and to coordinate between state agencies and the private sector on the policy and overall strategic planning for developing new markets and expanding and enhancing existing markets for recyclable materials in this state, other states, and foreign countries. Specifically, the duties of the Center must include:

- Identifying and developing new markets and expanding and enhancing existing markets for recyclable materials;
- Pursuing expanded end uses for recycled materials;
- Targeting materials for concentrated market-development efforts;
- Developing proposals for new incentives for market development, focusing on targeted materials;
- Providing guidance on issues such as permitting, finance options for recycling-market development, site location, research and development, grant program criteria for recycled materials markets, and recycling markets education and information;
- Coordinating the efforts of various governmental entities having market-development responsibilities in order to optimize supply and demand for recyclable materials;
- Evaluating source-reduced products as they relate to state procurement policy, which must include, but not be limited to, the environmental and economic impact of source-reduced product purchases to the state. The term "source-reduced" means any method that reduces the

[2] s. 288.1185, F.S.
[3] Part VII, Chapter 288, F.S.
[4] s. 288.9015, F.S.
[5] s. 288.9015(2), F.S.
[6] s. 288.021, F.S.

volume or weight of a product while providing similar performance and service to users of such materials;

- Providing innovative solid waste management grants,[7] to reduce the flow of solid waste to disposal facilities and encourage the sustainable recovery of materials from Florida's waste stream;
- Providing below-market financing for companies that manufacture products from recycled materials or convert recyclable materials into raw materials for use in manufacturing, pursuant to the Florida Recycling Loan Program as administered by the Florida First Capital Finance Corporation;
- Maintaining a continuously updated online directory listing the public and private entities that collect, transport, broker, process, or remanufacture recyclable materials in the state;
- Providing information to private entities and industries in the state on the availability and benefits of using recycled materials;
- Distributing any materials prepared in implementing this subsection to the public, private entities, industries, governmental entities, or other organizations upon request; and
- Coordinating with the Agency for Workforce Innovation and its partners to provide job placement and job training services to job seekers.

The bill requires each county to reduce the amount of solid waste disposed of in landfills by 50 percent by 2012, 55 percent by 2014, 60 percent by 2016, 70 percent by 2018, and 75 percent by 2020. The bill provides that counties failing to meet such reduction requirements and failing to report to the DEP using the DEP's designated reporting format, are to be placed on a noncompliance list posted on the DEP's website.

The bill requires the DEP to conduct at least one unannounced inspection annually, at all waste-to-energy facilities, to ensure that said facilities are in compliance with their permit[8] conditions. Additionally, the DEP is required to give the facility only 24 hours' notice of a forthcoming inspection.

The bill provides a directive for Enterprise Florida, Inc., in cooperation with the DEP, to contract with a solid waste consultant to conduct a study on the impact of the recycling industry on the state's economy and to submit the study to the Governor, the President of the Senate, and the Speaker of the House of Representatives by January 1, 2011.

The bill repeals the Recycling Markets Advisory Committee[9] since it has been inactive for approximately 20 years. Also, the bill conforms a cross reference[10] relating to the solid waste permitting section of law[11] that is renumbered by the bill.

B. SECTION DIRECTORY:

Section 1. Amends s. 288.90151, F.S., directing the Department of Environmental Protection (DEP) and Enterprise Florida, Inc. (EFI), to create the Recycling Business Assistance Center by a certain date; requiring EFI to consult with state economic development liaisons.

Section 2. Amends s. 403.702, F.S., directing the DEP and EFI to create the Recycling Business Assistance Center by a certain date; providing duties.

Section 3. Amends s. 403.706, F.S., requiring counties to meet specified goals in reducing the disposal of solid waste in landfills; providing for a noncompliance list.

Section 4. Amends s. 403.707, F.S., providing for inspections of waste-to-energy facilities by the DEP.

[7] s. 403.7095, F.S.
[8] s. 403.707, F.S.
[9] s. 288.1185, F.S.
[10] s. 403.703, F.S.
[11] s. 403.707, F.S.

Section 5. Directs EFI and the DEP to contract for a specified study and to submit the study to the Governor and the Legislature.

Section 6. Amends s. 403.703, F.S.; conforming a cross-reference.

Section 7. Repeals s. 288.1185, 16 F.S., relating to the Recycling Markets Advisory Committee.

Section 8. Provides that the bill will take effect on July 1, 2010.

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:

   See Fiscal Comments below.

2. Expenditures:

   See Fiscal Comments below.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

See Fiscal Comments below.

D. FISCAL COMMENTS:

The bill provides for the development of new markets and expanding and enhancing existing markets for recyclable materials through the creation of the Recycling Business Assistance Center. These activities could lead to developments that may create positive fiscal impacts on the private sector and state and local governments. According to DEP, until the funding for the Recycling Business Assistance Center is established, it is difficult to estimate total revenues and expenditures to DEP.

Various counties and private businesses rely on landfills as a revenue source. Recycling rather than landfilling additional solid waste will likely reduce related revenues for county governments and the private sector. Also, the proposed county recycling requirements will likely increase related expenditures for counties. As the cost of implementing a new goal is difficult to determine, the fiscal impact to counties and the private sector is indeterminate.

According to DEP, "the more successful the proposed recycling initiatives are, the more economic benefits will accrue to that part of the private sector involved with processing and markets for recyclable materials. Various studies have shown that recycling creates more jobs directly and indirectly than disposal. Success of the proposed recycling initiatives in the bill should result in more competition and increased employment opportunities in both the private and the public sector."

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Article VII, section 18(a) of the state constitution provides that counties or municipalities shall not be bound by laws requiring them to spend funds or take actions requiring them to spend funds unless the law fulfills an important state interest and the law is passed by 2/3 of the membership of each house of the Legislature. Additionally, Article VII, section 18(b) of the state constitution prohibits the Legislature from enacting, amending or repealing any general 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.

The bill requires counties to achieve solid waste reduction goals. Meeting such goals will require counties to increase expenditures and will reduce the amount of taxable solid waste currently being received by landfills. Due to these requirements, the mandates provision may apply because the bill arguably requires counties to spend funds or take actions requiring them to spend funds and reduces the authority of counties to raise total aggregate revenue over February 1, 1989, levels. The costs of implementing the new recycling goals and the amount of the reduction of revenues are indeterminate; therefore it is not known whether the bill is exempt due to having an insignificant fiscal impact.

2. Other:

None

B. RULE-MAKING AUTHORITY:

None

C. DRAFTING ISSUES OR OTHER COMMENTS:

According to Enterprise Florida, Inc. (EFI): the bill is not consistent with EFI's mission. EFI has a specific mission to diversify Florida's economy through innovative, high-tech, high wage businesses; does not develop new markets within the state, rather it identifies existing markets within Florida that can be further developed; and is already able to assist recycling businesses that qualify under the incentive program.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to recycling; amending ss. 288.90151 and 403.7032, F.S.; directing the Department of Environmental Protection and Enterprise Florida, Inc., to create the Recycling Business Assistance Center by a certain date; providing requirements; requiring Enterprise Florida, Inc., to consult with state agency personnel; amending s. 403.706, F.S.; requiring counties to meet specified goals in reducing the disposal of solid waste in landfills; amending s. 403.707, F.S.; providing for inspections of waste-to-energy facilities by the Department of Environmental Protection; directing Enterprise Florida, Inc., and the Department of Environmental Protection to contract for a specified study and to submit the study to the Governor and the Legislature; amending s. 403.703, F.S.; conforming a cross-reference; repealing s. 288.1185, F.S., relating to the Recycling Markets Advisory Committee; providing an effective date.

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

Section 1. Subsection (9) is added to section 288.90151, Florida Statutes, to read:

288.90151 Return on investment from activities of Enterprise Florida, Inc.—

(9) Enterprise Florida, Inc., in cooperation with the Department of Environmental Protection, shall create the Recycling Business Assistance Center by July 1, 2011, pursuant

to the requirements of s. 403.7032(4). In carrying out its duties under this subsection, Enterprise Florida, Inc., shall consult with state agency personnel appointed to serve as economic development liaisons under s. 288.021.

Section 2. Subsection (4) is added to section 403.7032, Florida Statutes, to read:

403.7032 Recycling.—

(4) The Department of Environmental Protection, in cooperation with Enterprise Florida, Inc., shall create the Recycling Business Assistance Center by July 1, 2011. The purpose of the center shall be to serve as the mechanism for coordination among state agencies and the private sector to coordinate policy and overall strategic planning for developing new markets and expanding and enhancing existing markets for recyclable materials in this state, other states, and foreign countries. The duties of the center shall include, at a minimum:

(a) Identifying and developing new markets and expanding and enhancing existing markets for recyclable materials;

(b) Pursuing expanded end uses for recycled materials;

(c) Targeting materials for concentrated market-development efforts;

(d) Developing proposals for new incentives for market development, particularly focusing on targeted materials;

(e) Providing guidance on issues such as permitting, finance options for recycling-market development, site location, research and development, grant program criteria for recycled materials markets, and recycling markets education and information;

(f) Coordinating the efforts of various governmental entities having market-development responsibilities in order to optimize supply and demand for recyclable materials;

(g) Evaluating source-reduced products as they relate to state procurement policy. The evaluation shall include, but is not limited to, the environmental and economic impact of source-reduced product purchases to the state. For the purposes of this subsection, the term "source-reduced" means any method, process, product, or technology that significantly or substantially reduces the volume or weight of a product while providing, at a minimum, equivalent or generally similar performance and service to and for the users of such materials;

(h) Providing innovative solid waste management grants, pursuant to s. 403.7095, to reduce the flow of solid waste to disposal facilities and encourage the sustainable recovery of materials from Florida's waste stream;

(i) Providing below-market financing for companies that manufacture products from recycled materials or convert recyclable materials into raw materials for use in manufacturing, pursuant to the Florida Recycling Loan Program as administered by the Florida First Capital Finance Corporation;

(j) Maintaining a continuously updated online directory listing the public and private entities that collect, transport, broker, process, or remanufacture recyclable materials in the state;

(k) Providing information to private entities and industries in the state on the availability and benefits of using recycled materials;

(l) Distributing any materials prepared in implementing this subsection to the public, private entities, industries, governmental entities, or other organizations upon request; and

(m) Coordinating with the Agency for Workforce Innovation and its partners to provide job placement and job training services to job seekers through the state's workforce services programs.

Section 3. Paragraph (a) of subsection (2) of section 403.706, Florida Statutes, is amended to read:

403.706 Local government solid waste responsibilities.—

(2)(a) Each county shall implement a recyclable materials recycling program. Each county must reduce the amount of solid waste disposed of in landfills by 50 percent by 2012, 55 percent by 2014, 60 percent by 2016, 70 percent by 2018, and 75 percent by 2020. Counties that fail to meet such reduction requirements and report progress on their efforts to do so to the department using the department's designated reporting format shall be placed on a noncompliance list posted on the department's website. Counties and municipalities are encouraged to form cooperative arrangements for implementing recycling programs.

Section 4. Present subsections (8) through (14) of section 403.707, Florida Statutes, are renumbered as subsections (9) through (15), respectively, and a new subsection (8) is added to that section to read:

403.707 Permits.—

(8) The department must conduct annually at least one inspection of each waste-to-energy facility for the purposes of determining compliance with permit conditions. The facility

shall be given only 24 hours' notice of the inspection required under this subsection.

Section 5. Enterprise Florida, Inc., in cooperation with the Department of Environmental Protection, is directed to contract with a solid waste consultant to conduct a study on the impact of the recycling industry on the state's economy and to submit the study to the Governor, the President of the Senate, and the Speaker of the House of Representatives by January 1, 2011.

Section 6. Paragraph (b) of subsection (6) of section 403.703, Florida Statutes, is amended to read:

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

(6) "Construction and demolition debris" means discarded materials generally considered to be not water-soluble and nonhazardous in nature, including, but not limited to, steel, glass, brick, concrete, asphalt roofing material, pipe, gypsum wallboard, and lumber, from the construction or destruction of a structure as part of a construction or demolition project or from the renovation of a structure, and includes rocks, soils, tree remains, trees, and other vegetative matter that normally results from land clearing or land development operations for a construction project, including such debris from construction of structures at a site remote from the construction or demolition project site. Mixing of construction and demolition debris with other types of solid waste will cause the resulting mixture to be classified as other than construction and demolition debris. The term also includes:

(b) Except as provided in s. 403.707(10) ~~s. 403.707(9)(j)~~,

yard trash and unpainted, nontreated wood scraps and wood pallets from sources other than construction or demolition projects;

Section 7. Section 288.1185, Florida Statutes, is repealed.

Section 8. This act shall take effect July 1, 2010.

Amendment No.

COUNCIL/COMMITTEE ACTION

ADOPTED __ (Y/N)

ADOPTED AS AMENDED __ (Y/N)

ADOPTED W/O OBJECTION __ (Y/N)

FAILED TO ADOPT __ (Y/N)

WITHDRAWN __ (Y/N)

OTHER _____

Council/Committee hearing bill: Agriculture & Natural Resources Policy Committee

Representative Rehwinkel Vasilinda offered the following:

Amendment (with title amendment)

Remove everything after the enacting clause and insert:

Section 1. Section 403.7032, Florida Statutes, is amended to read:

403.7032 Recycling.—

(1) The Legislature finds that the failure or inability to economically recover material and energy resources from solid waste results in the unnecessary waste and depletion of our natural resources. As the state continues to grow, so will the potential amount of discarded material that must be treated and disposed of, necessitating the improvement of solid waste collection and disposal. Therefore, the maximum recycling and reuse of such resources are considered high-priority goals of the state.

(2) By the year 2020, the long-term goal for the recycling efforts of state and local governmental entities, private companies and organizations, and the general public is to reduce the amount of recyclable solid waste disposed of in waste management facilities, landfills, or incineration facilities by a statewide average of at least 75 percent. ~~However, any solid waste used for the production of renewable energy shall count toward the long-term recycling goal as set forth in this section.~~

(3) All state agencies, K-12 public schools, public institutions of higher learning, community colleges, and state universities must, at a minimum, annually report to the county using the department's designated reporting format all recycled materials from these entities. This includes all buildings that are occupied by municipal, county, or state employees or, if the building is managed by the Department of Management Services, those entities must report their recycling data to the county using the department's designated reporting format. Private businesses, other than certified recovered materials dealers, which have 50 or more employees and generate recyclable materials, such as, but not limited to, paper, metals, glass, plastics, textiles, rubber materials, and mulch, are strongly encouraged to report the amount of recycled materials to the county biennially starting January 1, 2011, using the department's designated reporting format. For reporting purposes, businesses that choose to contract with local entities to remove recyclables from their businesses for recycling may submit appropriate verification to the department and will be

considered as reporting a recycling rate. Private businesses that are not required to report recycling rates are encouraged to participate. Notwithstanding any other provision of state or local law, those private businesses reporting, other than certified recovered materials dealers, according to this subsection shall not be required to comply with any additional recycling reporting requirements regarding their recycling rates. Private businesses in compliance with the reporting requirement and those that voluntarily report shall be given additional preference under the procurement guidelines of s. 287.045. Private businesses having 25 employees or more which do not report recycling rates to the department shall have a zero percent recycling rate reported and are not eligible for additional preference under the procurement guidelines of s. 287.045.

(4) ~~(3)~~ The Department of Environmental Protection shall develop a comprehensive recycling program that is designed to achieve the percentage under subsection (2) and submit the program to the President of the Senate and the Speaker of the House of Representatives by January 1, 2010. The program may not be implemented until approved by the Legislature. The program must be developed in coordination with input from state and local entities, private businesses, and the public. Under the program, recyclable materials shall include, but are not limited to, metals, paper, glass, plastic, textile, rubber materials, and mulch. Components of the program shall include, but are not limited to:

(a) Programs to identify environmentally preferable purchasing practices to encourage the purchase of recycled, durable, and less toxic goods. The Department of Management Services shall modify its procurement system to report on green and recycled products purchased through the system by September 30, 2011.

(b) Programs to educate students in grades K-12 in the benefits of, and proper techniques for, recycling.

(c) Programs for statewide recognition of successful recycling efforts by schools, businesses, public groups, and private citizens.

(d) Programs for municipalities and counties to develop and implement efficient recycling efforts to return valuable materials to productive use, conserve energy, and protect natural resources.

(e) Programs by which the department can provide technical assistance to municipalities and counties in support of their recycling efforts.

(f) Programs to educate and train the public in proper recycling efforts.

(g) Evaluation of how financial assistance can best be provided to municipalities and counties in support of their recycling efforts.

(h) Evaluation of why existing waste management and recycling programs in the state have not been better used.

(5) The Department of Environmental Protection shall create the Recycling Business Assistance Center by December 1, 2010. In carrying out its duties under this subsection, the

Department of Environmental Protection shall consult with state agency personnel appointed to serve as economic development liaisons under s. 288.021 and seek technical assistance from Enterprise Florida, Inc., to ensure the Recycling Business Assistance Center is positioned to succeed. The purpose of the center shall be to serve as the mechanism for coordination among state agencies and the private sector in order to coordinate policy and overall strategic planning for developing new markets and expanding and enhancing existing markets for recyclable materials in this state, other states, and foreign countries. The duties of the center must include, at a minimum:

(a) Identifying and developing new markets and expanding and enhancing existing markets for recyclable materials;

(b) Pursuing expanded end uses for recycled materials;

(c) Targeting materials for concentrated market-development efforts;

(d) Developing proposals for new incentives for market development, particularly focusing on targeted materials;

(e) Providing guidance on issues such as permitting, finance options for recycling market development, site location, research and development, grant program criteria for recycled materials markets, recycling markets education and information, and minimum content;

(f) Coordinating the efforts of various governmental entities having market-development responsibilities in order to optimize supply and demand for recyclable materials;

(g) Evaluating source-reduced products as they relate to state procurement policy. The evaluation shall include, but is

not limited to, the environmental and economic impact of source-reduced product purchases to the state. For the purposes of this paragraph, the term "source-reduced" means any method, process, product, or technology that significantly or substantially reduces the volume or weight of a product while providing, at a minimum, equivalent or generally similar performance and service to and for the users of such materials;

(h) Providing evaluation of solid waste management grants, pursuant to s. 403.7095, to reduce the flow of solid waste to disposal facilities and encourage the sustainable recovery of materials from Florida's waste stream;

(i) Providing below-market financing for companies that manufacture products from recycled materials or convert recyclable materials into raw materials for use in manufacturing, pursuant to the Florida Recycling Loan Program as administered by the Florida First Capital Finance Corporation;

(j) Maintaining a continuously updated online directory, listing the public and private entities that collect, transport, broker, process, or remanufacture recyclable materials in the state;

(k) Providing information on the availability and benefits of using recycled materials to private entities and industries in the state;

(l) Distributing any materials prepared in implementing this subsection to the public, private entities, industries, governmental entities, or other organizations upon request; and

(m) Coordinating with the Agency for Workforce Innovation and its partners to provide job placement and job training

services to job seekers through the state's workforce services programs.

Section 2. Subsection (9) is added to section 288.9015, Florida Statutes, to read:

288.9015 Enterprise Florida, Inc.; purpose; duties.—

(9) Enterprise Florida, Inc., shall provide technical assistance to the Department of Environmental Protection in the creation of the Recycling Business Assistance Center pursuant to s. 403.7032(5). As the state's primary organization devoted to statewide economic development, Enterprise Florida, Inc., is encouraged to cooperate with the Department of Environmental Protection to ensure that the Recycling Business Assistance Center is positioned to succeed in helping to enhance and expand existing markets for recyclable materials in Florida, other states, and foreign countries.

Section 3. Subsection (1) of section 403.7046, Florida Statutes, is amended to read:

403.7046 Regulation of recovered materials.—

(1) Any person who handles, purchases, receives, recovers, sells, or is an end user of recovered materials shall annually certify to the department on forms provided by the department. The department may by rule exempt from this requirement generators of recovered materials; persons who handle or sell recovered materials as an activity which is incidental to the normal primary business activities of that person; or persons who handle, purchase, receive, recover, sell, or are end users of recovered materials in small quantities as defined by the department. The department shall adopt rules for the

certification of and reporting by such persons and shall establish criteria for revocation of such certification. ~~Prior to the adoption of such rules, the department shall appoint a technical advisory committee of no more than nine persons, including, at a minimum, representatives of the Florida Association of Counties, the Florida League of Cities, the Florida Recyclers Association, and the Florida Chapter of the National Solid Waste Management Association, to aid in the development of such rules.~~ Such rules shall be designed to elicit, at a minimum, the amount and types of recovered materials handled by registrants, and the amount and disposal site, or name of person with whom such disposal was arranged, of any solid waste generated by such facility. By February 1 of each year, registrants shall report all required information to the department and to all counties from which it received materials. Such rules may provide for the department to conduct periodic inspections. The department may charge a fee of up to $50 for each registration, which shall be deposited into the Solid Waste Management Trust Fund for implementation of the program.

Section 4. Subsection (3) of section 403.705, Florida Statutes, is amended to read:

403.705 State solid waste management program.—

(3) The department shall ~~periodically seek information from counties to~~ evaluate and report to the Legislature biennially on the state's success in meeting the solid waste reduction goal as described in s. 403.706(2).

Section 5. Subsections (2), (4), (7), and (21) of section 403.706, Florida Statutes, are amended to read:

403.706 Local government solid waste responsibilities.—

(2)(a) Each county shall implement a recyclable materials recycling program that shall have a goal of recycling solid waste by 40 percent by December 31, 2012, 50 percent by December 31, 2014, 60 percent by December 31, 2016, 70 percent by December 31, 2018, and 75 percent by December 31, 2020. Counties and municipalities are encouraged to form cooperative arrangements for implementing recycling programs.

(b) In order to assist in attaining the goals provided in this subsection, the Legislature finds that the recycling of construction and demolition debris is in the state's interest. Each county shall implement a program that shall have a goal of reducing construction and demolition debris disposed of in landfills by 40 percent by December 31, 2012, 50 percent by December 31, 2014, 60 percent by December 31, 2016, 70 percent by December 31, 2018, and 75 percent by December 31, 2020.

(c) All commercial and multifamily construction projects, including, but not limited to, apartment complexes, which begin construction on or after July 1, 2010, must provide an opportunity for the tenants and owners to recycle, including, if necessary, designated space for the placement of recycle receptacles for the occupants.

(d) If, by January 1 of 2013, 2015, 2017, 2019, or 2021, the county, as determined by the department, has not reached the previous year's recycling goal, as provided in this subsection, the department may direct the county to develop a plan to expand

recycling programs to existing commercial and multifamily dwellings, including, but not limited to, apartment complexes.

(e) If the state's recycling rate for the 2013 calendar year is below 40 percent, the department shall provide a report to the Legislature. The report may identify those additional programs or statutory changes needed to achieve the goals provided in this subsection. The report must include an evaluation of the costs to the public and private sectors to enact and administer these programs. The report shall be provided no later than 30 days prior to the 2015 Regular Session of the Legislature.

(f) ~~(b)~~ Such programs shall be designed to recover a significant portion of at least four of the following materials from the solid waste stream prior to final disposal at a solid waste disposal facility and to offer these materials for recycling: newspaper, aluminum cans, steel cans, glass, plastic bottles, cardboard, office paper, and yard trash. Local governments which operate permitted waste-to-energy facilities may retrieve ferrous and nonferrous metal as a byproduct of combustion.

(g) ~~(c)~~ Local governments are encouraged to separate all plastics, metal, and all grades of paper for recycling prior to final disposal and are further encouraged to recycle yard trash and other mechanically treated solid waste into compost available for agricultural and other acceptable uses.

~~(d) By July 1, 2010, each county shall develop and implement a plan to achieve a goal to compost organic materials that would otherwise be disposed of in a landfill. The goal~~

~~shall provide that up to 10 percent and no less than 5 percent of organic material would be composted within the county and the municipalities within its boundaries. The department may reduce or modify the compost goal if the county demonstrates to the department that achievement of the goal would be impractical given the county's unique demographic, urban density, or inability to separate normally compostable material from the solid waste stream. The composting plan is encouraged to address partnership with the private sector.~~

(h) ~~(e)~~ Each county is encouraged to consider plans for composting or mulching organic materials that would otherwise be disposed of in a landfill. The composting or mulching plans are encouraged to address partnership with the private sector.

(4)(a) A county's solid waste management and recycling programs shall be designed to provide for sufficient reduction of the amount of solid waste generated within the county and the municipalities within its boundaries in order to meet goals for the reduction of municipal solid waste prior to the final disposal or the incineration of such waste at a solid waste disposal facility. The goals shall provide, at a minimum, that the amount of municipal solid waste that would be disposed of within the county and the municipalities within its boundaries is designed to meet the requirements of subsection (2) ~~is reduced by at least 30 percent~~.

(b) A county may receive credit for one-half of the goal for waste reduction from the use of yard trash, or other clean wood waste or paper waste, in innovative programs including, but not limited to, programs that produce alternative clean-burning

fuels such as ethanol or that provide for the conversion of yard trash or other clean wood waste or paper waste to clean-burning fuel for the production of energy for use at facilities other than a waste-to-energy facility as defined in s. 403.7061. The provisions of this paragraph apply only if a county can demonstrate that:

1. The county has implemented a yard trash mulching or composting program, and

2. As part of the program, compost and mulch made from yard trash is available to the general public and in use at county-owned or maintained and municipally owned or maintained facilities in the county and state agencies operating in the county as required by this section.

(c) Solid waste used for the production of renewable energy shall count toward the long-term recycling goal as set forth in this section, provided the county in which a waste-to-energy facility is located has implemented and maintains a program that is designed to recycle at least 50 percent of municipal solid waste by means other than gasification or combustion. The duty to implement and maintain such recycling program does not apply to counties where debt service payment is pledged along with net revenues derived from the operation of the waste-to-energy facility.

(d) ~~(c)~~ A county with a population of 100,000 or less may provide its residents with the opportunity to recycle in lieu of achieving the goal set forth in this section ~~paragraph (a)~~. For the purposes of this section ~~subsection~~, the "opportunity to recycle" means that the county:

1.a. Provides a system for separating and collecting recyclable materials prior to disposal that is located at a solid waste management facility or solid waste disposal area; or

b. Provides a system of places within the county for collection of source-separated recyclable materials.

2. Provides a public education and promotion program that is conducted to inform its residents of the opportunity to recycle, encourages source separation of recyclable materials, and promotes the benefits of reducing, reusing, recycling, and composting materials.

(7) In order to assess the progress in meeting the goal established in subsection (2) ~~(4)~~, each county shall, by April 1 ~~November~~ each year, provide information to the department regarding its annual solid waste management program and recycling activities. The information by the county must, at a minimum, include:

(a) The amount of municipal solid waste disposed of at solid waste disposal facilities, by type of waste such as yard trash, white goods, clean debris, tires, and unseparated solid waste;

(b) The amount and type of materials from the municipal solid waste stream that were recycled; and

(c) The percentage of the population participating in various types of recycling activities instituted.

(d) Beginning with the data for the 2012 calendar year, the department shall annually, by July 1, post on its website the recycling rates of each county for the prior calendar year.

(21) Local governments are authorized to enact ordinances that require and direct all residential properties, multifamily dwellings, and apartment complexes and industrial, commercial, and institutional establishments as defined by the local government to establish programs for the separation of recyclable materials designated by the local government, which recyclable materials are specifically intended for purposes of recycling and for which a market exists, and to provide for their collection. Such ordinances may include, but are not limited to, provisions that prohibit any person from knowingly disposing of recyclable materials designated by the local government and that ensure the collection of recovered materials as necessary to protect public health and safety.

Section 6. Subsection (1) of section 403.7145, Florida Statutes, is amended, and subsections (3) and (4) are added to that section, to read:

403.7145 Recycling.—

(1) The Capitol and the House and Senate office buildings constitute the Capitol recycling area. The Florida House of Representatives, the Florida Senate, and the Office of the Governor, the Secretary of State, and each Cabinet officer who heads a department that occupies office space in the Capitol, shall institute a recycling program for their respective offices in the House and Senate office buildings and the Capitol. Provisions shall be made to collect and sell wastepaper and empty ~~aluminum~~ beverage containers ~~cans~~ generated by employee activities in these offices. The collection and sale of such materials shall be reported to Leon County using the

department's designated reporting format and coordinated with Department of Management Services recycling activities to maximize the efficiency and economy of this program. The Governor, the Speaker of the House of Representatives, the President of the Senate, the Secretary of State, and the Cabinet officers may authorize the use of proceeds from recyclable material sales for employee benefits and other purposes, in order to provide incentives to their respective employees for participation in the recycling program. Such proceeds may also be used to offset any costs of the recycling program. As a demonstration of leading by example, the Capitol Building's recycling rates shall be posted on the website of the Department of Management Services and shall include the details of the recycling rates for each Department of Management Services pool facility. The Department of Environmental Protection shall post recycling rates of each state-owned facility reported to the Department of Management Services.

(3) Prior to awarding any grants pursuant to s. 403.7095, the department shall develop and contract for an innovative recycling pilot project for the Capitol recycling area. Such project shall be designed to collect recyclable materials and create a more sustainable recycling system. Components of the project shall be designed to increase convenience, incentivize and measure participation, reduce material volume, and assist in achieving the recycling goals enumerated in s. 403.706.

(4) Each public airport operating in this state shall, to the greatest extent practicable, collect aluminum beverage cans and recyclable plastic and glass from the airlines and other

entities doing business at the airport and offer such materials for recycling. Each airport may retain and use any proceeds received from the sale of these materials for recycling to offset the costs associated with collecting and recycling such materials. Airport administration offices, airport vendors, and airlines are encouraged to coordinate the collection of recyclable waste to the greatest extent practicable. The provisions of this subsection are not intended to interfere with any already established recycling activity.

Section 7. Subsection (9) of section 403.707, Florida Statutes, is amended, and subsection (15) is added to that section, to read:

403.707 Permits.—

(9) The department shall establish a separate category for solid waste management facilities that accept only construction and demolition debris for disposal or recycling. The department shall establish a reasonable schedule for existing facilities to comply with this section to avoid undue hardship to such facilities. However, a permitted solid waste disposal unit that receives a significant amount of waste prior to the compliance deadline established in this schedule shall not be required to be retrofitted with liners or leachate control systems.

(a) The department shall establish reasonable construction, operation, monitoring, recordkeeping, financial assurance, and closure requirements for such facilities. The department shall take into account the nature of the waste accepted at various facilities when establishing these requirements, and may impose less stringent requirements,

including a system of general permits or registration requirements, for facilities that accept only a segregated waste stream which is expected to pose a minimal risk to the environment and public health, such as clean debris. The Legislature recognizes that incidental amounts of other types of solid waste are commonly generated at construction or demolition projects. In any enforcement action taken pursuant to this section, the department shall consider the difficulty of removing these incidental amounts from the waste stream.

(b) The department shall ~~not~~ require liners and leachate collection systems at individual disposal units constructed after July 1, 2010 ~~facilities unless it demonstrates, based upon the types of waste received, the methods for controlling types of waste disposed of, the proximity of groundwater and surface water, and the results of the hydrogeological and geotechnical investigations, that the facility is reasonably expected to result in violations of groundwater standards and criteria otherwise~~.

(c) The owner or operator shall provide financial assurance for closing of the facility in accordance with the requirements of s. 403.7125. The financial assurance shall cover the cost of closing the facility and 5 years of long-term care after closing, unless the department determines, based upon hydrogeologic conditions, the types of wastes received, or the groundwater monitoring results, that a different long-term care period is appropriate. However, unless the owner or operator of the facility is a local government, the escrow account described

in s. 403.7125(2) may not be used as a financial assurance mechanism.

(d) The department shall establish training requirements for operators of facilities, and shall work with the State University System or other providers to assure that adequate training courses are available. The department shall also assist the Florida Home Builders Association in establishing a component of its continuing education program to address proper handling of construction and demolition debris, including best management practices for reducing contamination of the construction and demolition debris waste stream.

(e) The issuance of a permit under this subsection does not obviate the need to comply with all applicable zoning and land use regulations.

(f) A permit is not required under this section for the disposal of construction and demolition debris on the property where it is generated, but such property must be covered, graded, and vegetated as necessary when disposal is complete.

(g) By January 1, 2012, all construction and demolition debris must be processed prior to disposal at a permitted materials recovery facility or at a permitted disposal facility. The facility must be designed and operated to separate and offer for recycling at least 60 percent of the material accepted and must have a long-term plan to separate at least 75 percent of the material accepted by December 31, 2020. This paragraph does not apply to any materials that have been source separated and offered for recycling. ~~It is the policy of the Legislature to encourage facilities to recycle. The department shall establish~~

~~criteria and guidelines that encourage recycling where practical and provide for the use of recycled materials in a manner that protects the public health and the environment. Facilities are authorized to recycle, provided such activities do not conflict with such criteria and guidelines.~~

(h) The department shall ensure that the requirements of this section are applied and interpreted consistently throughout the state. In accordance with s. 20.255, the Division of Waste Management shall direct the district offices and bureaus on matters relating to the interpretation and applicability of this section.

(i) The department shall provide notice of receipt of a permit application for the initial construction of a construction and demolition debris disposal facility to the local governments having jurisdiction where the facility is to be located.

(j) The Legislature recognizes that recycling, waste reduction, and resource recovery are important aspects of an integrated solid waste management program and as such are necessary to protect the public health and the environment. If necessary to promote such an integrated program, the county may determine, after providing notice and an opportunity for a hearing prior to April 30, 2008, that some or all of the material described in s. 403.703(6)(b) shall be excluded from the definition of "construction and demolition debris" in s. 403.703(6) within the jurisdiction of such county. The county may make such a determination only if it finds that, prior to June 1, 2007, the county has established an adequate method for

the use or recycling of such wood material at an existing or proposed solid waste management facility that is permitted or authorized by the department on June 1, 2007. The county is not required to hold a hearing if the county represents that it previously has held a hearing for such purpose, or if the county represents that it previously has held a public meeting or hearing that authorized such method for the use or recycling of trash or other nonputrescible waste materials and that such materials include those materials described in s. 403.703(6)(b). The county shall provide written notice of its determination to the department by no later than April 30, 2008; thereafter, the materials described in s. 403.703(6) shall be excluded from the definition of "construction and demolition debris" in s. 403.703(6) within the jurisdiction of such county. The county may withdraw or revoke its determination at any time by providing written notice to the department.

(k) Brazilian pepper and other invasive exotic plant species as designated by the department resulting from eradication projects may be processed at permitted construction and demolition debris recycling facilities or disposed of at permitted construction and demolition debris disposal facilities or Class III facilities. The department may adopt rules to implement this paragraph.

(15) The department must, at a minimum, conduct at least one unannounced inspection, on an annual basis, of each waste-to-energy facility for the purposes of determining compliance with permit conditions.

Section 8. Subsection (5) of section 403.7049, Florida Statutes, is amended to read:

403.7049 Determination of full cost for solid waste management; local solid waste management fees.—

(5) In order to assist in achieving the municipal solid waste reduction goal and the recycling provisions of s. 403.706(2) ~~s. 403.706(4)~~, a county or a municipality which owns or operates a solid waste management facility is hereby authorized to charge solid waste disposal fees which may vary based on a number of factors, including, but not limited to, the amount, characteristics, and form of recyclable materials present in the solid waste that is brought to the county's or the municipality's facility for processing or disposal.

Section 9. Paragraph (c) of subsection (2) of section 403.705, Florida Statutes, is amended to read:

403.705 State solid waste management program.—

(2) The state solid waste management program shall include, at a minimum:

(c) Planning guidelines and technical assistance to counties and municipalities to aid in meeting the municipal solid waste reduction goals established in s. 403.706(2) ~~s. 403.706(4)~~.

Section 10. Paragraph (c) of subsection (3) of section 403.7061, Florida Statutes, is amended to read:

403.7061 Requirements for review of new waste-to-energy facility capacity by the Department of Environmental Protection.—

Amendment No.

(3) An applicant must provide reasonable assurance that the construction of a new waste-to-energy facility or the expansion of an existing waste-to-energy facility will comply with the following criteria:

(c) The county in which the facility is located has implemented and maintains a solid waste management and recycling program that is designed to achieve the waste reduction goal set forth in s. 403.706(2) ~~s. 403.706(4)~~. For the purposes of this section, the provisions of s. 403.706(2) ~~s. 403.706(4)(c)~~ for counties having populations of 100,000 or fewer do not apply.

Section 11. Section 288.1185, Florida Statutes, is repealed.

Section 12. This act shall take effect July 1, 2010.

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

Remove the entire title and insert:

A bill to be entitled

An act relating to environmental protection; amending s. 403.7032, F.S.; requiring all public entities to report recycling data to the county using the format designated by the Department of Environmental Protection; requiring that certain private entities report the disposal of recyclable materials; requiring that businesses reporting such data be given preference under certain procurement guidelines; requiring the Department of Management Services to report on green and

recycled products purchased through its procurement system; directing the Department of Environmental Protection to create the Recycling Business Assistance Center; providing requirements for the center; amending s. 288.9015, F.S.; requiring Enterprise Florida, Inc., to provide technical assistance to the Department of Environmental Protection in the creation of the Recycling Business Assistance Center; amending s. 403.7046, F.S.; deleting a requirement that the Department of Environmental Protection appoint a technical advisory committee; clarifying reporting requirements; amending s. 403.705, F.S.; requiring that the department report biennially to the Legislature on the state's success in meeting solid waste reduction goals; amending s. 403.706, F.S.; requiring counties to meet specific recycling benchmarks; requiring the recycling of materials for new commercial and multifamily projects; providing authority for the Department of Environmental Protection to require a plan under certain conditions; requiring a report to the Legislature by the Department of Environmental Protection if recycling benchmarks are not met; eliminating a requirement that counties develop composting goals; clarifying the conditions under which waste to energy may be used as an option for meeting the recycling benchmarks; providing exceptions; providing deadlines for the reporting of recycling data; amending s. 403.7145, F.S.; revising recycling requirements for state buildings; providing for a pilot project; requiring each public airport in the state to collect aluminum beverage cans and recyclable plastic and glass from its place of business, or from the entities doing business at the airport, and to offer such materials for

recycling; amending s. 403.707, F.S.; requiring liners for new construction and demolition debris landfills; establishing recycling rates for source-separation activities; requiring inspections for waste-to-energy facilities; amending ss. 403.7049, 403.705, and 403.7061, F.S.; conforming cross-references; repealing s. 288.1185, F.S., relating to the Recycling Markets Advisory Committee; providing an effective date.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB ANR 10-13 Water Supply
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 state policy regarding alternative water supply development. The bill isolates conservation measures (or programs) that reduce the need for potable water, and construction projects that result in the beneficial use of reclaimed water and calls these measures "demand management." On the other hand, programs or projects that include desalinization, aquifer storage and recovery, reservoirs, and treated surface water or stormwater will comprise alternative water supply development.

The bill also:

- Sets goals to eliminate the use of potable water for landscape irrigation in all new residential and commercial construction and in all redevelopment of existing residential and commercial construction by the year 2013, and to use all reclaimed wastewater for beneficial purposes by the year 2030. Water management districts (WMDs) are directed to include demand management activities in their annual budgets and consolidated annual reports. Like alternative water supply development projects, Water Protection and Sustainability Program funds must be available for demand management activities.

- Directs the Department of Environmental Protection (DEP) Secretary to exercise general supervisory authority to ensure cooperative efforts between the DEP, WMDs, counties, municipalities, and special districts result in the construction and operation of certain alternative water supply projects. The Public Service Commission is required to provide for costs recovery for the construction of certain facilities and the applicable rate-setting authority is required to provide a specific rate structure for a utility that receives financial assistance from a WMD for demand management activities.

- Amends provisions relating to conditions for the issuance of a consumptive use permit (CUP) and prohibits the DEP or WMD board from issuing a CUP if the use will cause the source water body to fall below an established minimum flow or minimum level (MFL), and defines "source water body" as either surface water or groundwater. The bill also amends the "three-prong test" and directs the DEP or WMD board to consider and balance the specific factors to determine whether the proposed use of water is a reasonable-beneficial use, will not interfere with a present, existing legal use of water, and is consistent with the public interest.

- Provides that a public water supply system that uses traditional groundwater and alternative sources may continue to use groundwater sources if the alternative water supply is unreliable due to rainfall patterns. Such groundwater use will be considered to be in the public interest.

- Corrects several statutory cross references and deletes obsolete appropriations language.

See Fiscal Comments regarding the fiscal impact of the bill. 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

State Water Supply Planning

In response to concerns about comprehensive water supply planning, the Florida Legislature in 1997 amended Chapter 373, F.S., to include a new process for regional water supply planning. The process requires each water management district (WMD) to assess whether existing and anticipated sources of water are sufficient to serve projected future population needs over a 20-year planning period. Based on the assessments, WMDs are required to develop and update regional water supply plans for those areas where water supplies are determined to be inadequate to supply projected demand over the planning period. The WMDs are required to develop their regional water supply plans in an open public process. They share the data and modeling tools with all affected parties during this process and consider input and comments.[1]

The statute makes a distinction between water resource and water supply development. Water resource development is primarily the responsibility of the WMDs and includes such things as collection and evaluation of water resource data, structural and nonstructural programs to manage water resources, construction and operation of major public works facilities for flood control and water storage, and technical assistance to water utilities.[2] Water resource development projects are designed to create identifiable, quantifiable supplies of water from traditional or alternative sources.

Water supply development is primarily the responsibility of water utilities and other water users and is defined as the planning, design, construction, operation and maintenance of public or private facilities for water collection, treatment and distribution for sale, resale or end use.[3] Water supply development assistance represents the WMDs' financial assistance for regional or local water supply development projects.

Based on earlier reports from the state's WMDs, it became clear that if the state's population growth meets the estimated projections, then some parts of the state will not have adequate groundwater to meet the demand that is expected to come from that growth. This understanding became the foundation of the development of "alternative" water supplies to supplement traditional groundwater sources.

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[1] Section 373.0361(5), F.S.

[2] Section 373.019(19), F.S.

[3] Section 373.019(21), F.S.

Alternative Water Supply Development

The Florida Water Protection and Sustainability Program was created through passage of Senate Bill 444 during the 2005 Legislative Session. The law encourages cooperation between municipalities, counties, and the state's five WMDs in the protection and development of water supplies. More specifically, the law requires the regional water supply planning function of WMDs to promote alternative water supply projects. For example, a project that traps and treats stormwater accommodates growth and serves to reduce the use of traditional ground and surface water supplies, such as aquifers and lakes.[4] The overarching purpose of the program is to provide cost-share funding for construction of alternative water supply projects.

Cost-sharing occurs on a reimbursement basis for construction costs of alternative water supply development projects. To be considered eligible for the cost-share funding program, projects must first be identified in the WMD District Water Supply Plan (DWSP). After projects are incorporated into the DWSP, they are evaluated as to their suitability for the funding program. The identification of water supply development projects in the DWSP does not guarantee funding assistance through this funding program. Projects are evaluated for cost-share funding based on consideration of the 13 factors described in 373.1961(3)(f) and (g), F.S. WMD staff evaluates potential projects and recommends projects to the WMD's governing board, which selects projects for inclusion in the program. The cost-share reimbursement caps at 40 percent of construction costs, although projects selected for the program may be allocated less than 40 percent reimbursement. The WMD determines the percentage of reimbursement typically on a case-by-case basis. The entity constructing the project is required to pay at least 60 percent of the project construction costs.

Although the law allows the governing board some flexibility to consider its own factors, it lists specific criteria for evaluating and selecting priority projects, to wit:

- Whether the project provides substantial environmental benefits by preventing or limiting adverse water resource impacts.
- Whether the project reduces competition for water supplies.
- Whether the project brings about replacement of traditional sources in order to help implement a minimum flow or level or a reservation.
- Whether the project will be implemented by a consumptive use permittee that has achieved the targets contained in a goal-based water conservation program approved pursuant to s. 373.227.
- The quantity of water supplied by the project as compared to its cost.
- Projects in which the construction and delivery to end users of reuse water is a major component.
- Whether the project will be implemented by a multijurisdictional water supply entity or regional water supply authority.
- Whether the project implements reuse that assists in the elimination of domestic wastewater ocean outfalls as provided in s. 403.086(9).
- Whether the project is part of a plan to implement two or more alternative water supply projects, all of which will be operated to produce water at a uniform rate for the participants in a multijurisdictional water supply entity or regional water supply authority.
- The percentage of project costs to be funded by the water supplier or water user.
- Whether the project proposal includes sufficient preliminary planning and engineering to demonstrate that the project can reasonably be implemented within the timeframes provided in the regional water supply plan.
- Whether the project is a subsequent phase of an alternative water supply project that is underway.

[4] Other examples of alternative water supply projects that will be considered for funding include the use of saline water sources, Aquifer Storage and Recovery (storing water deep in an aquifer system during times of excess and recovering the stored water during dry times when it is needed), and Reclaimed Water Use (utilizing reclaimed water for a beneficial purpose, including irrigation of residential lots, golf courses and other green space, ground water recharge, and industrial use).

- Whether and in what percentage a local government or local government utility is transferring water supply system revenues to the local government general fund in excess of reimbursements for services received from the general fund, including direct and indirect costs and legitimate payments in lieu of taxes.[5]

Beginning in fiscal year 2005-2006, the state annually provides a portion of those revenues deposited into the Water Protection and Sustainability Program Trust Fund for the purpose of providing funding assistance for the development of alternative water supplies pursuant to the Water Protection and Sustainability Program.[6] The Water Protection and Sustainability Program was established in 2005 to support water-related programs such as Total Maximum Daily Loads, Surface Water Improvement Management and Disadvantaged Small Community Wastewater Grants.[7] When available, the program also includes funding for alternative water supply development projects such as desalination, reuse and reservoirs. Statutorily these revenues are distributed into the alternative water supply trust fund accounts created by each WMD for the purpose of alternative water supply development under the following formula:

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

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

Consumptive Use Permits and the "Three-prong Test"

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 WMDs under Part II of Chapter 373, 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 water management district to a user in another district).

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 they exceed certain thresholds. 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.

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 s. 373. 223(1), F.S., that states:

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[5] Section 373.1961(3)(f) and (g), F.S.

[6] In 2009 funding for that program ended in the 2009 Special Session "A" and the trust fund was swept. Currently, no funds are flowing into that trust fund.

[7] Section 403.890, F.S.

(1) To obtain a permit pursuant to the provisions of this chapter, the applicant must establish that the proposed use of water:

(a) Is a reasonable-beneficial use as defined in s. 373.019;
(b) Will not interfere with any presently existing legal use of water; and
(c) Is consistent with the public interest.

The three-prong test actually has two "public interest" tests. Paragraph (c) requires the CUP applicant establish that the proposed use of water is consistent with the public interest. In paragraph (a), the term "reasonable-beneficial use" is defined in subsection 373.019(16), F.S., to mean "the use of water in such quantity as is necessary for economic and efficient utilization for a purpose and in a manner which is both reasonable and consistent with the public interest."

In order to discern the reason why there are two public interest tests in the "three prong test", one may turn to A Model Water Code ("Code"), the legislative proposal drafted by law professors at the University of Florida, upon which the Florida Water Resources Act of 1972 was patterned.[8] The authors published the Code with a Commentary that helps explain the complex and nuanced model law. The Commentary note on Section 2.02 of the Code helps to explain the reason for two public interest tests:

> . . . . Subpart (a) requires that the proposed use meet the requirements of the reasonable-beneficial standard. Subpart (b) requires that the proposed use not interfere with presently existing uses of water. This category would include domestic uses exempted under Sec. 2.01(1) of the Model Code, as well as existing uses exercised under the authority of a valid permit. Subpart (c) requires that the use not conflict with the public interest. For example, a proposed use otherwise valid, which would have an unreasonably harmful effect on fish and wildlife might well be rejected as being inconsistent with the express statement of public interest in the protection of fish and wildlife found in Sec. 1.02(3). . . .
>
> Sec. 1.02(3) of the Code provides that "adequate provision shall be made for the protection and procreation of fish and wildlife, the maintenance of proper ecological balance and scenic beauty, and the preservation and enhancement of waters of the state for navigation, public recreation, municipal uses, and public water supply; such objectives are declared to be in the public interest."

Under paragraph (a), the evaluation of the public interest component of the reasonable-beneficial use test concerns whether the proposed utilization of water is consistent with the public interest. This evaluation may turn on how much water is proposed to be used and how that water is going to be used. The public interest test under paragraph (c) is used, therefore, to evaluate any adverse impacts to the waterbody from which the water is proposed to be withdrawn, including whether there are adverse environmental impacts that would conflict with the public interest in providing protection from these impacts.

Administrative Rules and the "Three-prong Test"

The DEP administrative rule for water supply protection and management is found at Rule 62-40.410, F.A.C., and is applicable to the regulated use of water pursuant to Part II of Chapter 373, F.S. Subsection (2) of that rule provides eighteen factors to consider in determining whether the proposed water use is a reasonable-beneficial use. The administrative rule does not list factors that specifically address consistency with "the public interest." Subsection (2) states:

(2) In determining whether a water use is a reasonable-beneficial use, the following factors will be considered:

(a) The quantity of water requested for the use;
(b) The demonstrated need for the use;
(c) The suitability of the use to the source of water;

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[8] Frank E. Maloney, Professor of Law and former Dean, Holland Law Center, University of Florida, Richard C. Ausness, Associate professor of Law, Holland Law Center, and J. Scott Morris, Associate Professor of Law, Law Center, Southern Methodist University. In addition to the Code, House staff acknowledges Tampa Bay Water's General Counsel, Rick Lotspiech, who generously shared his thoughts and notes on the "three-prong test" issue.

(d) The purpose and value of the use;
(e) The extent and amount of harm caused;
(f) The practicality of mitigating any harm by adjusting the quantity or method of use;
(g) Whether the impact of the withdrawal extends to land not owned or legally controlled by the user;
(h) The method and efficiency of use;
(i) Water conservation measures taken and available to be taken;
(j) The feasibility of alternative sources such as reclaimed water, stormwater, aquifer storage and recovery, brackish water and salt water;
(k) The present and projected demand for the source of water;
(l) The long-term yield available from the source of water;
(m) The extent of water quality degradation caused;
(n) Whether the proposed use would cause or contribute to flood damage;
(o) Whether the proposed use would significantly induce or increase saltwater intrusion;
(p) The amount of water which can be withdrawn without causing harm to the resource;
(q) Whether the proposed use would adversely affect public health; and
(r) Whether the proposed use would significantly affect natural systems.

Of the listed "reasonable-beneficial use" factors in the DEP rule, it is clear that several paragraphs address how much water is proposed to be used and how that water is going to be used, and several paragraphs address impacts of the withdrawal of water from the source waterbody.

Water Management District Rules
Currently, Northwest Florida WMD and Suwannee River WMD require that the CUP applicant meet the three-prong test and "comply with the provisions of Rule 62-40.210, F.A.C."[9] The Southwest Florida WMD administrative rule 40D-2.301, F.A.C., lists conditions for the issuance of water use permits that reiterates the three-prong rule of s. 373. 223(1), F.S., and provides 14 additional criteria that relate to the amount of water to be used, how it is to be used, and possible adverse impacts to the water body. The St. Johns River and the South Florida WMDs do not have administrative rules that mirror the DEP Rule. The Southwest Florida, St. Johns River and the South Florida WMDs have also published guidelines for navigating the CUP procedure that may be found online.[10]

Effect of Proposed Changes
The bill amends state policy regarding alternative water supply development. In short, the bill isolates conservation measures (or programs) that reduce the need for potable water, and construction projects that result in the beneficial use of reclaimed water, and calls these measures "demand management." On the other hand, programs or projects that include desalinization, aquifer storage and recovery, reservoirs, and treated surface water or stormwater will comprise alternative water supply development.

The bill identifies the conservation of potable water and the use of reclaimed wastewater as two demand management tools and sets two goals in this conservation effort: to eliminate the use of potable water for landscape irrigation in all new residential and commercial construction and in all redevelopment of existing residential and commercial construction by the year 2013, and to use all reclaimed wastewater for beneficial purposes by the year 2030. Current state policy for resource allocation continues to encourage "local sources first" to meet a geographic area's need for water and the bill adds *recovery and storage of surface groundwater, stormwater, and reclaimed water* to the list of alternative water supply sources that should be considered.

The bill provides the following definitions:
"Alternative water supplies" means potential supplies of water from nontraditional groundwater sources that may be developed for potable uses, including, but not limited to, desalinated surface and

[9] (FN Northwest Florida WMD rules are found in Rule 40A-2.301, F.A.C. Suwannee River WMD rules are found in Rule 40B-2.301, F.A.C.).
[10] St. John's 137 page Guide may be found at http://www.sjrwmd.com/handbooks/cuphandbook.html, while South Florida's 128 page Guide is here: http://my.sfwmd.gov/portal/page/portal/xweb%20-%20release%202/water%20use%20permits. Southwest Florida's 103 page guide may be found at: http://www.swfwmd.state.fl.us/permits/wup/#manual.

groundwater and treated fresh surface waters. Such supplies do not include conservation measures or waters that are used to reduce the demand for potable water supplies.

"Capital costs" means planning, design, engineering, and project construction costs for alternative water supply projects and demand management activities.

"Demand management" means methods used by water utilities to reduce the demand for potable water supplies, including, but not limited to, programs that result in the conservation of potable water and construction projects that result in the beneficial use of reclaimed water for nonpotable uses.

"Program costs" means costs associated with the implementation of water conservation activities that result in the conservation of potable water and reduce the need for the construction of alternative water supply projects.

The bill amends current statutory roles of WMDs, local governments, water supply authorities and entities, special districts, and water utilities with regard to alternative water supply development to include demand management activities. Current law directs WMD's to provide technical and financial assistance to local governments and publicly-owned water utilities regarding alternative water supply development, and directs WMDs to support the development and implementation of regional water resource management strategies, the construction, operation, and maintenance of public works facilities, and the formulation of structural and non-structural programs for alternative water supply projects. The bill requires WMDs to do all of the above for demand management activities as well. The bill directs the DEP Secretary to exercise general supervisory authority to ensure cooperative efforts between the DEP, WMDs, counties, municipalities, and special districts result in the timely construction and operation of certain alternative water supply projects.

The bill directs local governments, regional water supply authorities, multijurisdictional water supply entities, special districts, and publicly-owned and privately owned water utilities to work cooperatively to formulate and implement strategies for demand management as well as alternative water supply development. These entities are directed further to cooperatively plan, design, construct, operate, and maintain projects for both.

The bill includes demand management activities in provisions relating to the identification of water supply needs and funding criteria. WMDs are directed to include demand management activities in their annual budgets and consolidated annual reports. Water Protection and Sustainability Program funds must be available for demand management activities as they are currently for alternative water supply development projects.[11] Demand management activities may be included in projects and activities submitted to WMD governing boards for financial assistance. The Public Service Commission is required to provide for cost recovery for the construction of certain facilities and to provide a specific rate structure for a utility that receives financial assistance from a WMD for demand management activities.

The bill amends provisions relating to conditions for the issuance of a CUP. The DEP or WMD board is prohibited from issuing a CUP if the use will cause the source water body to fall below an established MFL, and the term "source water body" is defined to mean either surface water or groundwater. The bill also amends the "three-prong test" and directs the DEP or WMD board to consider and balance the following factors to determine whether the proposed use of water is a reasonable-beneficial use, will not interfere with a present, existing legal use of water, and is consistent with the public interest.

Under the reasonable-beneficial use test:

(a) The quantity of water requested for the use;
(b) The demonstrated need for the use;
(c) The suitability of the source of water for the use;
(d) The purpose and value of the use;
(e) The method and efficiency of the use;

[11] The bill directs sixty percent of revenues to fund alternative water supply projects with the remainder funding demand management activities.

(f) Whether the use will cause or contribute to flood damage; and
(g) Whether the use will adversely affect public health.

Under the test determining an interference with an existing use of water:
(a) All existing permitted uses of water from the proposed source;
(b) The quantity of water that each permit authorizes to be withdrawn;
(c) The use of water that each permit authorizes; and
(d) The term of each permit.

Under the consistent with the public interest test:
(a) Whether the impact of the withdrawal to the source water body extends to land not owned or legally controlled by the user;
(b) The feasibility of using alternative sources to the source water body such as reclaimed water, stormwater, aquifer storage and recovery, brackish water, and salt water;
(c) The present and projected demand for the source water body;
(d) The long-term yield available from the source water body;
(e) The extent of water quality degradation caused to the source water body;
(f) Whether the use will significantly induce or increase saltwater intrusion to the source water body; and
(g) The water conservation measures implemented and the water conservation measures available for implementation.

The bill provides additional factors for the public interest test, in addition to the ones above, if a MFL has not been established for the source water body:
(a) The extent and amount of harm caused to the fish and wildlife resources of the source water body;
(b) The practicality of mitigating any harm caused to the source water body by adjusting the quantity or method of use; and
(c) The amount of water that can be withdrawn from the source water body without causing harm to the resource.

The bill authorizes the DEP or WMD to reserve water for specified purposes but restricts their authority to issue a CUP if the proposed withdrawal would adversely affect the reservation of water.

The bill provides that a public water supply system that uses traditional groundwater and alternative sources may continue to use groundwater sources if the alternative water supply is unreliable due to rainfall patterns. Such groundwater use will be considered to be in the public interest.

Finally, the bill makes several statutory cross references and deletes obsolete appropriations language.

B. SECTION DIRECTORY:

Section 1. Amends s. 373.016, F.S., revising provisions relating to the declaration of policy for the state water resource plan to include demand management, and providing specified goals for the conservation of potable water and the use of reclaimed water. Also conforms a statutory cross-reference.

Section 2. Amends s. 373.019, F.S., clarifying the definitions of "alternative water supplies" and "capital costs", and defining the terms "demand management" and "program costs".

Section 3. Amends s. 373.196, F.S., revising provisions relating to alternative water supply development to include demand management, and directing the Secretary of the Department of Environmental Protection to exercise general supervisory authority regarding the construction and operation of certain alternative water supply projects. This section provides direction for the roles of WMDs, local governments, water supply authorities and entities, special districts, and water utilities with regard to demand management activities. This section requires the inclusion of demand management activities in WMD annual budgets and requires funds from the Water Protection and Sustainability Program be made available for demand management activities.

Section 4. Amends s. 373.1961, F.S., revising provisions relating to the identification of water supply needs and funding criteria for water supply projects to include demand management activities, clarifying provisions relating to projects and activities submitted to WMD governing boards for financial assistance, requiring certain rate structures for utilities receiving financial assistance for demand management activities, providing for the disbursal of specified revenues to fund the implementation of demand management activities, requiring WMDs to include demand management activities in consolidated annual reports, and providing for recovery of costs for the construction of certain facilities. This section also deletes obsolete appropriation provisions.

Section 5. Amends s. 373.223, F.S., revising provisions relating to conditions for issuance of a consumptive use of water permit and prohibiting the issuance of permits under specified conditions. The bill directs WMD boards and the DEP to consider specified criteria in evaluating permit applications and authorizes WMD boards and the DEP to reserve waters for specified purposes. This section provides authority to a water supplier that relies upon traditional groundwater and an alternative supply to use groundwater if the alternative supply is unreliable due to rainfall patterns and provides the continued use of groundwater sources to be in the public interest.

Section 6. Amends s. 403.890, F.S., deleting obsolete appropriation provisions and revising provisions relating to the Water Protection and Sustainability Program to provide funding for the implementation of demand management.

Sections 7 - 15. Amends ss. 373.036, 373.0361, 373.1962, 373.217, 373.2234, 373.229, 373.421, 403.813, and 556.102, F.S., conforming statutory cross-references.

Section 16. 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:

   There may be costs associated with rulemaking by the DEP and the WMDs.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   Local government public water supply utilities may benefit from the conservation measures in the same manner as private utilities. See, Part II, C., below.

2. Expenditures:

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 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:

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:

The bill directs the DEP Secretary to exercise general supervisory authority to ensure cooperative efforts between the DEP, WMDs, counties, municipalities, and special districts result in the timely construction and operation of certain alternative water supply projects. The DEP Secretary does not have supervisory authority over counties, municipalities or other special districts and only has statutory authorization to exercise general supervisory authority over WMDs. Section 373.026(7), F.S

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to water resources; amending s. 373.016, F.S.; revising provisions relating to the declaration of policy for the state water resource plan to include demand management; providing specified goals for the conservation of potable water and the use of reclaimed water; conforming a cross-reference; amending s. 373.019, F.S.; clarifying the definitions of "alternative water supplies" and "capital costs"; defining the terms "demand management" and "program costs"; amending s. 373.196, F.S.; revising provisions relating to alternative water supply development to include demand management; providing for the Secretary of Environmental Protection to exercise general supervisory authority regarding the construction and operation of certain alternative water supply projects; providing for the roles of water management districts, local governments, water supply authorities and entities, special districts, and water utilities with regard to demand management activities; providing for the inclusion of demand management activities in water management district annual budgets; requiring funds from the Water Protection and Sustainability Program to be made available for demand management activities; amending s. 373.1961, F.S.; revising provisions relating to the identification of water supply needs and funding criteria for water supply projects to include demand management activities; clarifying provisions relating to projects and activities submitted to water management district

governing boards for financial assistance; requiring certain rate structures for utilities receiving financial assistance for demand management activities; providing for the disbursal of specified revenues to fund the implementation of demand management activities; providing for the inclusion of demand management activities in water management district consolidated annual reports; providing for recovery of costs for the construction of certain facilities; deleting obsolete appropriation provisions; amending s. 373.223, F.S.; revising provisions relating to conditions for issuance of a consumptive use of water permit; prohibiting the issuance of permits under specified conditions; defining the term "source water body"; requiring water management district governing boards and the Department of Environmental Protection to consider specified criteria in evaluating permit applications; authorizing governing boards and the department to reserve waters for specified purposes; providing that the continued use of groundwater sources is in the public interest under certain conditions; amending s. 403.890, F.S.; deleting obsolete appropriation provisions; revising provisions relating to the Water Protection and Sustainability Program to provide funding for the implementation of demand management; amending ss. 373.036, 373.0361, 373.1962, 373.217, 373.2234, 373.229, 373.421, 403.813, and 556.102, F.S.; conforming cross-references; providing an effective date.

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

Section 1. Paragraph (a) of subsection (4) of section 373.016, Florida Statutes, is amended, and subsection (7) is added to that section, to read:

373.016 Declaration of policy.—

(4)(a) Because water constitutes a public resource benefiting the entire state, it is the policy of the Legislature that the waters in the state be managed on a state and regional basis. Consistent with this directive, the Legislature recognizes the need to allocate water throughout the state so as to meet all reasonable-beneficial uses. However, the Legislature acknowledges that such allocations have in the past adversely affected the water resources of certain areas in this state. To protect such water resources and to meet the current and future needs of those areas with abundant water, the Legislature directs the department and the water management districts to encourage the use of water from sources nearest the area of use or application whenever practicable. Such sources shall include all naturally occurring water sources and all alternative water sources, including, but not limited to, desalination, conservation, reuse of nonpotable reclaimed water and stormwater, and aquifer storage and recovery <u>of surficial groundwater, stormwater, and reclaimed water</u>. Reuse of potable reclaimed water and stormwater shall not be subject to the evaluation described in <u>s. 373.223(9)(a)-(g)</u> ~~s. 373.223(3)(a)-(g)~~. However, this directive to encourage the use of water, whenever practicable, from sources nearest the area of use or

application shall not apply to the transport and direct and indirect use of water within the area encompassed by the Central and Southern Florida Flood Control Project, nor shall it apply anywhere in the state to the transport and use of water supplied exclusively for bottled water as defined in s. 500.03(1)(d), nor shall it apply to the transport and use of reclaimed water for electrical power production by an electric utility as defined in section 366.02(2).

(7)(a) The Legislature recognizes that managing the demand for water supplies, including surface water and groundwater, is critical to ensuring the availability of sufficient water for all existing and future reasonable-beneficial uses and natural systems and that two of the most important demand management tools are the conservation of potable water and the use of reclaimed wastewater.

(b) The Legislature strongly encourages the use of nonpotable water for nonpotable uses and recognizes that an unacceptable amount of potable water is used to irrigate residential and commercial landscapes. Therefore, the Legislature establishes a goal to eliminate the use of potable water for landscape irrigation in all new residential and commercial construction and in all redevelopment of existing residential and commercial construction by the year 2013. The Legislature further encourages the elimination of the use of potable water for nonpotable uses if it is economically and technologically feasible to use nonpotable water for such uses.

(c) The Legislature also recognizes that an unacceptable amount of highly treated domestic wastewater is discharged into

surface waters and underground aquifers and that such reclaimed wastewater is a valuable resource that can be stored and used for nonpotable uses. Therefore, the Legislature establishes a goal to use all reclaimed wastewater for beneficial purposes by the year 2030.

Section 2. Section 373.019, Florida Statutes, is amended to read:

373.019 Definitions.—When appearing in this chapter or in any rule, regulation, or order adopted pursuant thereto, the term:

(1) "Alternative water supplies" means potential supplies of water from nontraditional groundwater sources that may be developed for potable uses, including, but not limited to, desalinated surface and groundwater and treated fresh surface waters. Such supplies do not include conservation measures or waters that are used to reduce the demand for potable water supplies ~~salt water; brackish surface and groundwater; surface water captured predominately during wet-weather flows; sources made available through the addition of new storage capacity for surface or groundwater, water that has been reclaimed after one or more public supply, municipal, industrial, commercial, or agricultural uses; the downstream augmentation of water bodies with reclaimed water; stormwater; and any other water supply source that is designated as nontraditional for a water supply planning region in the applicable regional water supply plan~~.

(2) "Capital costs" means planning, design, engineering, and project construction costs for alternative water supply projects and demand management activities.

(3) "Coastal waters" means waters of the Atlantic Ocean or the Gulf of Mexico within the jurisdiction of the state.

(4) "Demand management" means methods used by water utilities to reduce the demand for potable water supplies, including, but not limited to, programs that result in the conservation of potable water and construction projects that result in the beneficial use of reclaimed water for nonpotable uses.

(5) ~~(4)~~ "Department" means the Department of Environmental Protection or its successor agency or agencies.

(6) ~~(5)~~ "District water management plan" means the regional water resource plan developed by a governing board under s. 373.036.

(7) ~~(6)~~ "Domestic use" means the use of water for the individual personal household purposes of drinking, bathing, cooking, or sanitation. All other uses shall not be considered domestic.

(8) ~~(7)~~ "Florida water plan" means the state-level water resource plan developed by the department under s. 373.036.

(9) ~~(8)~~ "Governing board" means the governing board of a water management district.

(10) ~~(9)~~ "Groundwater" means water beneath the surface of the ground, whether or not flowing through known and definite channels.

(11) ~~(10)~~ "Impoundment" means any lake, reservoir, pond, or other containment of surface water occupying a bed or depression in the earth's surface and having a discernible shoreline.

(12) ~~(11)~~ "Independent scientific peer review" means the

review of scientific data, theories, and methodologies by a panel of independent, recognized experts in the fields of hydrology, hydrogeology, limnology, and other scientific disciplines relevant to the matters being reviewed under s. 373.042.

(13) ~~(12)~~ "Multijurisdictional water supply entity" means two or more water utilities or local governments that have organized into a larger entity, or entered into an interlocal agreement or contract, for the purpose of more efficiently pursuing water supply development or alternative water supply development projects listed pursuant to a regional water supply plan.

(14) ~~(13)~~ "Nonregulated use" means any use of water which is exempted from regulation by the provisions of this chapter.

(15) ~~(14)~~ "Other watercourse" means any canal, ditch, or other artificial watercourse in which water usually flows in a defined bed or channel. It is not essential that the flowing be uniform or uninterrupted.

(16) ~~(15)~~ "Person" means any and all persons, natural or artificial, including any individual, firm, association, organization, partnership, business trust, corporation, company, the United States of America, and the state and all political subdivisions, regions, districts, municipalities, and public agencies thereof. The enumeration herein is not intended to be exclusive or exhaustive.

(17) "Program costs" means costs associated with the implementation of water conservation activities that result in the conservation of potable water and reduce the need for the

construction of alternative water supply projects.

(18) ~~(16)~~ "Reasonable-beneficial use" means the use of water in such quantity as is necessary for economic and efficient utilization for a purpose and in a manner which is both reasonable and consistent with the public interest.

(19) ~~(17)~~ "Regional water supply plan" means a detailed water supply plan developed by a governing board under s. 373.0361.

(20) ~~(18)~~ "Stream" means any river, creek, slough, or natural watercourse in which water usually flows in a defined bed or channel. It is not essential that the flowing be uniform or uninterrupted. The fact that some part of the bed or channel has been dredged or improved does not prevent the watercourse from being a stream.

(21) ~~(19)~~ "Surface water" means water upon the surface of the earth, whether contained in bounds created naturally or artificially or diffused. Water from natural springs shall be classified as surface water when it exits from the spring onto the earth's surface.

(22) ~~(20)~~ "Water" or "waters in the state" means any and all water on or beneath the surface of the ground or in the atmosphere, including natural or artificial watercourses, lakes, ponds, or diffused surface water and water percolating, standing, or flowing beneath the surface of the ground, as well as all coastal waters within the jurisdiction of the state.

(23) ~~(21)~~ "Water management district" means any flood control, resource management, or water management district operating under the authority of this chapter.

(24) ~~(22)~~ "Water resource development" means the formulation and implementation of regional water resource management strategies, including the collection and evaluation of surface water and groundwater data; structural and nonstructural programs to protect and manage water resources; the development of regional water resource implementation programs; the construction, operation, and maintenance of major public works facilities to provide for flood control, surface and underground water storage, and groundwater recharge augmentation; and related technical assistance to local governments and to government-owned and privately owned water utilities.

(25) ~~(23)~~ "Water resource implementation rule" means the rule authorized by s. 373.036, which sets forth goals, objectives, and guidance for the development and review of programs, rules, and plans relating to water resources, based on statutory policies and directives. The waters of the state are among its most basic resources. Such waters should be managed to conserve and protect water resources and to realize the full beneficial use of these resources.

(26) ~~(24)~~ "Water supply development" means the planning, design, construction, operation, and maintenance of public or private facilities for water collection, production, treatment, transmission, or distribution for sale, resale, or end use.

(27) ~~(25)~~ For the sole purpose of serving as the basis for the unified statewide methodology adopted pursuant to s. 373.421(1), as amended, "wetlands" means those areas that are inundated or saturated by surface water or groundwater at a

frequency and a duration sufficient to support, and under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soils. Soils present in wetlands generally are classified as hydric or alluvial, or possess characteristics that are associated with reducing soil conditions. The prevalent vegetation in wetlands generally consists of facultative or obligate hydrophytic macrophytes that are typically adapted to areas having soil conditions described above. These species, due to morphological, physiological, or reproductive adaptations, have the ability to grow, reproduce, or persist in aquatic environments or anaerobic soil conditions. Florida wetlands generally include swamps, marshes, bayheads, bogs, cypress domes and strands, sloughs, wet prairies, riverine swamps and marshes, hydric seepage slopes, tidal marshes, mangrove swamps and other similar areas. Florida wetlands generally do not include longleaf or slash pine flatwoods with an understory dominated by saw palmetto. Upon legislative ratification of the methodology adopted pursuant to s. 373.421(1), as amended, the limitation contained herein regarding the purpose of this definition shall cease to be effective.

(28) ~~(26)~~ "Works of the district" means those projects and works, including, but not limited to, structures, impoundments, wells, streams, and other watercourses, together with the appurtenant facilities and accompanying lands, which have been officially adopted by the governing board of the district as works of the district.

Section 3. Section 373.196, Florida Statutes, is amended to read:

373.196 Alternative water supply development and demand management.—

(1) The purpose of this section is to encourage cooperation in the development of water supplies and to provide for alternative water supply development and demand management.

(a) Demands on natural supplies of fresh water to meet the needs of a rapidly growing population and the needs of the environment, agriculture, industry, and mining will continue to increase.

(b) There is a need for the development of alternative water supplies for Florida to sustain its economic growth, economic viability, and natural resources.

(c) Cooperative efforts between municipalities, counties, special districts, water management districts, and the Department of Environmental Protection are mandatory in order to meet the water needs of rapidly urbanizing areas in a manner that will supply adequate and dependable supplies of water where needed without resulting in adverse effects upon the areas from which such water is withdrawn. Such efforts should use all practical means of obtaining water, including, but not limited to, withdrawals of surface water and groundwater, reuse, and desalinization, and will necessitate not only cooperation but also well-coordinated activities. Municipalities, counties, and special districts are encouraged to create regional water supply authorities as authorized in s. 373.1962 or multijurisdictional water supply entities. The Secretary of Environmental Protection

shall exercise general supervisory authority pursuant to s. 373.026(7) as necessary to ensure that such cooperative efforts result in the timely construction and operation of alternative water supply projects needed to meet the public water supply demand.

(d) Alternative water supply development and demand management must receive priority funding attention to decrease demand for potable water and increase the available supplies of water to meet all existing and future reasonable-beneficial uses and to benefit the natural systems.

(e) Cooperation between counties, municipalities, regional water supply authorities, multijurisdictional water supply entities, special districts, and publicly owned and privately owned water utilities in the development of countywide and multicountywide alternative water supply projects will allow for necessary economies of scale and efficiencies to be achieved in order to accelerate the development of new, dependable, and sustainable alternative water supplies.

(f) It is in the public interest that county, municipal, industrial, agricultural, and other public and private water users, the Department of Environmental Protection, and the water management districts cooperate and work together in the development of alternative water supplies and the implementation of demand management activities to avoid the adverse effects of competition for limited supplies of water. Public moneys or services provided to private entities for alternative water supply development and demand management may constitute public purposes that also are in the public interest.

(2)(a) Sufficient water must be available for all existing and future reasonable-beneficial uses and the natural systems, and the adverse effects of competition for water supplies must be avoided.

(b) Water supply development, ~~and~~ alternative water supply development, and demand management must be conducted in coordination with water management district regional water supply planning.

(c) Funding for the development of alternative water supplies and the implementation of demand management activities shall be a shared responsibility of water suppliers and users, the State of Florida, and the water management districts, with water suppliers and users having the primary responsibility and the State of Florida and the water management districts being responsible for providing funding assistance.

(3) The primary roles of the water management districts in water resource development as it relates to supporting alternative water supply development and demand management are:

(a) The formulation and implementation of regional water resource management strategies that support alternative water supply development and demand management;

(b) The collection and evaluation of surface water and groundwater data to be used for a planning level assessment of the feasibility of alternative water supply development projects;

(c) The construction, operation, and maintenance of major public works facilities for flood control, surface and underground water storage, and groundwater recharge augmentation

to support alternative water supply development and demand management;

(d) Planning for alternative water supply development and demand management as provided in regional water supply plans in coordination with local governments, regional water supply authorities, multijurisdictional water supply entities, special districts, and publicly owned and privately owned water utilities and self-suppliers;

(e) The formulation and implementation of structural and nonstructural programs to protect and manage water resources in support of alternative water supply projects and demand management activities; and

(f) The provision of technical and financial assistance to local governments and publicly owned and privately owned water utilities for alternative water supply projects and demand management activities.

(4) The primary roles of local government, regional water supply authorities, multijurisdictional water supply entities, special districts, and publicly owned and privately owned water utilities in alternative water supply development and demand management shall be:

(a) The planning, design, construction, operation, and maintenance of alternative water supply development projects and demand management activities;

(b) The formulation and implementation of alternative water supply development and demand management strategies and programs;

(c) The planning, design, construction, operation, and

maintenance of facilities to collect, divert, produce, treat, transmit, and distribute water for sale, resale, or end use; and

(d) The coordination of alternative water supply development projects and demand management activities with the appropriate water management district having jurisdiction over the activity.

(5) Nothing in this section shall be construed to preclude the various special districts, municipalities, and counties from continuing to operate existing water production and transmission facilities or to enter into cooperative agreements with other special districts, municipalities, and counties for the purpose of meeting their respective needs for dependable and adequate supplies of water; however, the obtaining of water through such operations shall not be done in a manner that results in adverse effects upon the areas from which such water is withdrawn.

(6)(a) The statewide funds provided pursuant to the Water Protection and Sustainability Program serve to supplement existing water management district or basin board funding for alternative water supply development and demand management assistance and should not result in a reduction of such funding. Therefore, the water management districts shall include in the annual tentative and adopted budget submittals required under this chapter the amount of funds allocated for water resource development that supports alternative water supply development and demand management and the funds allocated for alternative water supply projects and demand management activities selected for inclusion in the Water Protection and Sustainability Program. It shall be the goal of each water management district

and basin boards that the combined funds allocated annually for these purposes be, at a minimum, the equivalent of 100 percent of the state funding provided to the water management district for alternative water supply development and demand management. If this goal is not achieved, the water management district shall provide in the budget submittal an explanation of the reasons or constraints that prevent this goal from being met, an explanation of how the goal will be met in future years, and affirmation of match is required during the budget review process as established under s. 373.536(5). The Suwannee River Water Management District and the Northwest Florida Water Management District shall not be required to meet the match requirements of this paragraph; however, they shall try to achieve the match requirement to the greatest extent practicable.

(b) State funds from the Water Protection and Sustainability Program created in s. 403.890 shall be made available for financial assistance for the project construction costs of alternative water supply development projects and demand management activities selected by a water management district governing board for inclusion in the program.

Section 4. Subsections (2), (3), (5), and (6) of section 373.1961, Florida Statutes, are amended to read:

373.1961 Water production; general powers and duties; identification of needs; funding criteria; economic incentives; reuse funding.—

(2) IDENTIFICATION OF WATER SUPPLY NEEDS IN DISTRICT BUDGET.—The water management district shall implement its

448 responsibilities as expeditiously as possible in areas subject
449 to regional water supply plans. Each district's governing board
450 shall include in its annual budget the amount needed for the
451 fiscal year to assist in implementing alternative water supply
452 development projects and demand management activities.
453 (3) FUNDING.—
454 (a) The water management districts and the state shall
455 share a percentage of revenues with water providers and users,
456 including local governments, water, wastewater, and reuse
457 utilities, municipal, special district, industrial, and
458 agricultural water users, and other public and private water
459 users, to be used to supplement other funding sources in the
460 development of alternative water supplies and the implementation
461 of demand management activities.
462 (b) Beginning in fiscal year 2005-2006, the state shall
463 annually provide a portion of those revenues deposited into the
464 Water Protection and Sustainability Program Trust Fund for the
465 purpose of providing funding assistance for the development of
466 alternative water supplies and the implementation of demand
467 management activities pursuant to the Water Protection and
468 Sustainability Program. At the beginning of each fiscal year,
469 beginning with fiscal year 2005-2006, such revenues shall be
470 distributed by the department into the alternative water supply
471 and demand management trust fund accounts created by each
472 district for the purpose of alternative water supply development
473 and demand management under the following funding formula:
474 1. Thirty percent to the South Florida Water Management
475 District;

2. Twenty-five percent to the Southwest Florida Water Management District;

3. Twenty-five percent to the St. Johns River Water Management District;

4. Ten percent to the Suwannee River Water Management District; and

5. Ten percent to the Northwest Florida Water Management District.

(c) The financial assistance for alternative water supply projects and demand management projects allocated in each district's budget as required in s. 373.196(6) shall be combined with the state funds and used to assist in funding the ~~project~~ construction costs of alternative water supply projects and the construction and program costs of demand management activities selected by the governing board. If the district has not completed any regional water supply plan, or the regional water supply plan does not identify the need for any alternative water supply projects or demand management activities, funds deposited in that district's trust fund may be used for water resource development projects, including, but not limited to, springs protection.

(d) All alternative water supply projects and demand management activities submitted to the governing board for consideration shall reflect the total capital costs ~~cost~~ for implementation. The costs shall be itemized ~~segregated~~ pursuant to the categories described in s. 373.019(2) ~~the definition of capital costs~~. Demand management activities that do not involve construction projects shall reflect the total program costs

pursuant to s. 373.019(17).

(e) Applicants for alternative water supply projects and demand management activities that may receive funding assistance pursuant to the Water Protection and Sustainability Program shall, at a minimum, be required to pay 60 percent of the project's construction costs. The water management districts may, at their discretion, totally or partially waive this requirement for projects and activities sponsored by financially disadvantaged small local governments as defined in former s. 403.885(5). The water management districts or basin boards may, at their discretion, use ad valorem or federal revenues to assist an ~~a project~~ applicant in meeting the requirements of this paragraph.

(f) The governing boards shall determine those alternative water supply projects and demand management activities that will be selected for financial assistance. The governing boards may establish factors to determine project and activity funding; however, significant weight shall be given to the following factors:

1. Whether the project or activity provides substantial environmental benefits by preventing or limiting adverse water resource impacts.

2. Whether the project or activity reduces competition for water supplies.

3. Whether the project or activity brings about replacement of traditional sources in order to help implement a minimum flow or level or a reservation.

4. Whether the project or activity will be implemented by

a consumptive use permittee that has achieved the targets contained in a goal-based water conservation program approved pursuant to s. 373.227.

5. The quantity of water supplied by the project or activity as compared to its cost.

6. Projects or activities in which the construction and delivery to end users of reuse water is a major component.

7. Whether the project or activity will be implemented by a multijurisdictional water supply entity or regional water supply authority.

8. Whether the project or activity implements reuse that assists in the elimination of domestic wastewater ocean outfalls as provided in s. 403.086(9).

(g) Additional factors to be considered in determining alternative water supply project and demand management activity funding shall include:

1. Whether the project or activity is part of a plan to implement two or more alternative water supply projects, all of which will be operated to produce water at a uniform rate for the participants in a multijurisdictional water supply entity or regional water supply authority.

2. The percentage of project or activity costs to be funded by the water supplier or water user.

3. Whether the project or activity proposal includes sufficient preliminary planning and engineering to demonstrate that the project can reasonably be implemented within the timeframes provided in the regional water supply plan.

4. Whether the project or activity is a subsequent phase

of an alternative water supply project or demand management activity that is underway.

5. Whether and in what percentage a local government or local government utility is transferring water supply system revenues to the local government general fund in excess of reimbursements for services received from the general fund, including direct and indirect costs and legitimate payments in lieu of taxes.

(h) After conducting one or more meetings to solicit public input on eligible projects, including input from those entities identified pursuant to s. 373.036(2)(a)3.d. for implementation of alternative water supply projects, the governing board of each water management district shall select projects for funding assistance based upon the criteria set forth in paragraphs (f) and (g). The governing board may select a project identified or listed as an alternative water supply development project in the regional water supply plan, or allocate up to 20 percent of the funding for alternative water supply projects that are not identified or listed in the regional water supply plan but are consistent with the goals of the plan.

(i) Without diminishing amounts available through other means described in this paragraph, the governing boards are encouraged to consider establishing revolving loan funds to expand the total funds available to accomplish the objectives of this section. A revolving loan fund created under this paragraph must be a nonlapsing fund from which the water management district may make loans with interest rates below prevailing

market rates to public or private entities for the purposes described in this section. The governing board may adopt resolutions to establish revolving loan funds which must specify the details of the administration of the fund, the procedures for applying for loans from the fund, the criteria for awarding loans from the fund, the initial capitalization of the fund, and the goals for future capitalization of the fund in subsequent budget years. Revolving loan funds created under this paragraph must be used to expand the total sums and sources of cooperative funding available for the development of alternative water supplies. The Legislature does not intend for the creation of revolving loan funds to supplant or otherwise reduce existing sources or amounts of funds currently available through other means.

(j) For each utility that receives financial assistance from the state or a water management district for an alternative water supply project or demand management activity, the water management district shall require the appropriate rate-setting authority to develop rate structures for water customers in the service area of the funded utility that will:

1. Promote the conservation of water; ~~and~~

2. Promote the use of water from alternative water supplies; and

3. Promote demand management.

(k) The governing boards shall establish a process for the disbursal of revenues pursuant to this subsection.

(l) Sixty percent of revenues dispersed pursuant to this subsection shall fund the development of alternative water

supplies and 40 percent of such revenues shall fund the implementation of demand management activities.

(m) ~~(l)~~ All revenues made available pursuant to this subsection must be encumbered annually by the governing board when it approves alternative water supply projects and demand management activities sufficient to expend the available revenues.

(n) ~~(m)~~ This subsection is not subject to the rulemaking requirements of chapter 120.

(o) ~~(n)~~ By March 1 of each year, as part of the consolidated annual report required by s. 373.036(7), each water management district shall submit a report on the disbursal of all budgeted amounts pursuant to this section. Such report shall describe all alternative water supply projects and demand management activities funded as well as the quantity of new water to be created or saved as a result of such projects and activities and shall account separately for any other moneys provided through grants, matching grants, revolving loans, and the use of district lands or facilities to implement regional water supply plans.

(p) ~~(o)~~ The Florida Public Service Commission shall allow entities under its jurisdiction constructing or participating in constructing facilities that provide alternative water supplies or reduce the demand for potable water to recover their full, prudently incurred cost of constructing such facilities through their rate structure. If construction of a facility or participation in construction is pursuant to or in furtherance of a regional water supply plan, the cost shall be deemed to be

prudently incurred. Every component of an alternative water supply or demand management facility constructed by an investor-owned utility shall be recovered in current rates. Any state or water management district cost-share is not subject to the recovery provisions allowed in this paragraph.

~~(5) FUNDING FOR ALTERNATIVE WATER SUPPLY.—Notwithstanding subsection (3), and for the 2008-2009 fiscal year only, $5,000,000 provided for alternative water supply shall be allocated as shown in the General Appropriations Act. This subsection expires July 1, 2009.~~

~~(6) For the 2008-2009 fiscal year only, funds remaining to be distributed, after the distribution provided for in subsection (5), pursuant to paragraph (3)(b) shall be allocated as follows:~~

~~(a) Fifty percent to the Northwest Florida Water Management District.~~

~~(b) Fifty percent to the Suwannee River Water Management District.~~

Section 5. Section 373.223, Florida Statutes, is amended to read:

373.223 Conditions for a permit.—

(1) To obtain a permit pursuant to the provisions of this chapter, the applicant must establish that the proposed use of water:

(a) Is a reasonable-beneficial use as defined in s. 373.019;

(b) Will not interfere with any presently existing legal use of water; and

(c) Is consistent with the public interest.

(2) The governing board or the department may not issue a permit if the proposed use would cause the source water body to fall below the minimum flow or minimum water level established pursuant to ss. 373.042 and 373.0421. As used in this section, the term "source water body" means the water body, either surface water or groundwater, from which an applicant is proposing to withdraw water.

(3) In determining whether the proposed use of water is a reasonable-beneficial use, the governing board or the department shall consider and balance the following criteria:

(a) The quantity of water requested for the use;

(b) The demonstrated need for the use;

(c) The suitability of the source of water for the use;

(d) The purpose and value of the use;

(e) The method and efficiency of the use;

(f) Whether the use will cause or contribute to flood damage; and

(g) Whether the use will adversely affect public health.

(4) In determining whether the proposed use of water will interfere with an existing use of water, the governing board or the department shall consider and balance the following criteria:

(a) All existing permitted uses of water from the proposed source;

(b) The quantity of water that each permit authorizes to be withdrawn;

(c) The use of water that each permit authorizes; and

(d) The term of each permit.

(5) In determining whether the proposed use of water is consistent with the public interest, the governing board or the department shall consider and balance the following criteria:

(a) Whether the impact of the withdrawal to the source water body extends to land not owned or legally controlled by the user;

(b) The feasibility of using alternative sources to the source water body such as reclaimed water, stormwater, aquifer storage and recovery, brackish water, and salt water;

(c) The present and projected demand for the source water body;

(d) The long-term yield available from the source water body;

(e) The extent of water quality degradation caused to the source water body;

(f) Whether the use will significantly induce or increase saltwater intrusion to the source water body; and

(g) The water conservation measures implemented and the water conservation measures available for implementation.

(6) If a minimum flow or minimum water level has not been established for the source water body, in determining whether the proposed use is consistent with the public interest, the governing board or the department, in addition to the criteria listed in subsection (5), shall consider and balance the following criteria:

(a) The extent and amount of harm caused to the fish and wildlife resources of the source water body;

(b) The practicality of mitigating any harm caused to the source water body by adjusting the quantity or method of use; and

(c) The amount of water that can be withdrawn from the source water body without causing harm to the resource.

(7) Reservations of water may be established pursuant to subsection (10) by the governing board or the department for the purpose of reserving certain quantities of water from use. Such reservations may be needed in order to provide for additional protection of fish and wildlife or the public health and safety, beyond that which can be provided by minimum flows and minimum water levels. The governing board or the department may not issue a permit if the proposed withdrawal would adversely impact a reservation of water established for the source water body.

(8) ~~(2)~~ The governing board or the department may authorize the holder of a use permit to transport and use ground or surface water beyond overlying land, across county boundaries, or outside the watershed from which it is taken if the governing board or department determines that such transport and use is consistent with the public interest, and no local government shall adopt or enforce any law, ordinance, rule, regulation, or order to the contrary.

(9) ~~(3)~~ Except for the transport and use of water supplied by the Central and Southern Florida Flood Control Project, and anywhere in the state when the transport and use of water is supplied exclusively for bottled water as defined in s. 500.03(1)(d), any water use permit applications pending as of April 1, 1998, with the Northwest Florida Water Management

District and self-suppliers of water for which the proposed water source and area of use or application are located on contiguous private properties, when evaluating whether a potential transport and use of ground or surface water across county boundaries is consistent with the public interest, pursuant to paragraph (1)(c), the governing board or department shall consider:

(a) The proximity of the proposed water source to the area of use or application.

(b) All impoundments, streams, groundwater sources, or watercourses that are geographically closer to the area of use or application than the proposed source, and that are technically and economically feasible for the proposed transport and use.

(c) All economically and technically feasible alternatives to the proposed source, including, but not limited to, desalination, conservation, reuse of nonpotable reclaimed water and stormwater, and aquifer storage and recovery.

(d) The potential environmental impacts that may result from the transport and use of water from the proposed source, and the potential environmental impacts that may result from use of the other water sources identified in paragraphs (b) and (c).

(e) Whether existing and reasonably anticipated sources of water and conservation efforts are adequate to supply water for existing legal uses and reasonably anticipated future needs of the water supply planning region in which the proposed water source is located.

(f) Consultations with local governments affected by the

proposed transport and use.

(g) The value of the existing capital investment in water-related infrastructure made by the applicant.

Where districtwide water supply assessments and regional water supply plans have been prepared pursuant to ss. 373.036 and 373.0361, the governing board or the department shall use the applicable plans and assessments as the basis for its consideration of the applicable factors in this subsection.

(10) ~~(4)~~ The governing board or the department, by regulation, may reserve from use by permit applicants, water in such locations and quantities, and for such seasons of the year, as in its judgment may be required for the protection of fish and wildlife or the public health and safety. Such reservations shall be subject to periodic review and revision in the light of changed conditions. However, all presently existing legal uses of water shall be protected so long as such use is not contrary to the public interest.

(11) ~~(5)~~ In evaluating an application for consumptive use of water which proposes the use of an alternative water supply project as described in the regional water supply plan and provides reasonable assurances of the applicant's capability to design, construct, operate, and maintain the project, the governing board or department shall presume that the alternative water supply use is consistent with the public interest under paragraph (1)(c). However, where the governing board identifies the need for a multijurisdictional water supply entity or regional water supply authority to develop the alternative water

supply project pursuant to s. 373.0361(2)(a)2., the presumption shall be accorded only to that use proposed by such entity or authority. This subsection does not effect evaluation of the use pursuant to the provisions of paragraphs (1)(a) and (b), subsections (8) ~~(2)~~ and (9) ~~(3)~~, and ss. 373.2295 and 373.233.

(12) If a proposed alternative water supply project is part of an integrated public water supply system that uses water from both alternative sources and traditional groundwater sources, and the alternative water supply is unreliable due to rainfall patterns, the continued use of more reliable groundwater sources shall be presumed to be consistent with the public interest as a means of providing for the public health, safety, and welfare of the water supply system customers.

Section 6. Section 403.890, Florida Statutes, is amended to read:

403.890 Water Protection and Sustainability Program~~; intent; goals; purposes~~.—

~~(1) Effective July 1, 2006, revenues transferred from the Department of Revenue pursuant to s. 201.15(1)(c)2. shall be deposited into the Water Protection and Sustainability Program Trust Fund in the Department of Environmental Protection. These revenues and any other additional revenues deposited into or appropriated to the Water Protection and Sustainability Program Trust Fund shall be distributed by the Department of Environmental Protection in the following manner:~~

~~(a) Sixty percent to the Department of Environmental Protection for the implementation of an alternative water supply program as provided in s. 373.1961.~~

~~(b) Twenty percent for the implementation of best management practices and capital project expenditures necessary for the implementation of the goals of the total maximum daily load program established in s. 403.067. Of these funds, 85 percent shall be transferred to the credit of the Department of Environmental Protection Water Quality Assurance Trust Fund to address water quality impacts associated with nonagricultural nonpoint sources. Fifteen percent of these funds shall be transferred to the Department of Agriculture and Consumer Services General Inspection Trust Fund to address water quality impacts associated with agricultural nonpoint sources. These funds shall be used for research, development, demonstration, and implementation of the total maximum daily load program under s. 403.067, suitable best management practices or other measures used to achieve water quality standards in surface waters and water segments identified pursuant to s. 303(d) of the Clean Water Act, Pub. L. No. 92-500, 33 U.S.C. ss. 1251 et seq. Implementation of best management practices and other measures may include cost-share grants, technical assistance, implementation tracking, and conservation leases or other agreements for water quality improvement. The Department of Environmental Protection and the Department of Agriculture and Consumer Services may adopt rules governing the distribution of funds for implementation of capital projects, best management practices, and other measures. These funds shall not be used to abrogate the financial responsibility of those point and nonpoint sources that have contributed to the degradation of water or land areas. Increased priority shall be given by the~~

~~department and the water management district governing boards to those projects that have secured a cost-sharing agreement allocating responsibility for the cleanup of point and nonpoint sources.~~

~~(c) Ten percent shall be disbursed for the purposes of funding projects pursuant to ss. 373.451-373.459 or surface water restoration activities in water-management-district-designated priority water bodies. The Secretary of Environmental Protection shall ensure that each water management district receives the following percentage of funds annually:~~

~~1. Thirty-five percent to the South Florida Water Management District;~~

~~2. Twenty-five percent to the Southwest Florida Water Management District;~~

~~3. Twenty-five percent to the St. Johns River Water Management District;~~

~~4. Seven and one-half percent to the Suwannee River Water Management District; and~~

~~5. Seven and one-half percent to the Northwest Florida Water Management District.~~

~~(d) Ten percent to the Department of Environmental Protection for the Disadvantaged Small Community Wastewater Grant Program as provided in s. 403.1838.~~

~~(2) Applicable beginning in the 2007-2008 fiscal year, revenues transferred from the Department of Revenue pursuant to s. 201.15(1)(c)2. shall be deposited into the Water Protection and Sustainability Program Trust Fund in the Department of Environmental Protection. These revenues and any other~~

~~additional~~ Revenues deposited into or appropriated to the Water Protection and Sustainability Program Trust Fund shall be distributed by the Department of Environmental Protection in the following manner:

(1) ~~(a)~~ Sixty-five percent to the Department of Environmental Protection for the implementation of ~~an~~ alternative water supply projects and demand management activities ~~program~~ as provided in s. 373.1961.

(2) ~~(b)~~ Twenty-two and five-tenths percent for the implementation of best management practices and capital project expenditures necessary for the implementation of the goals of the total maximum daily load program established in s. 403.067. Of these funds, 83.33 percent shall be transferred to the credit of the Department of Environmental Protection Water Quality Assurance Trust Fund to address water quality impacts associated with nonagricultural nonpoint sources. Sixteen and sixty-seven hundredths percent of these funds shall be transferred to the Department of Agriculture and Consumer Services General Inspection Trust Fund to address water quality impacts associated with agricultural nonpoint sources. These funds shall be used for research, development, demonstration, and implementation of the total maximum daily load program under s. 403.067, suitable best management practices or other measures used to achieve water quality standards in surface waters and water segments identified pursuant to s. 303(d) of the Clean Water Act, Pub. L. No. 92-500, 33 U.S.C. ss. 1251 et seq. Implementation of best management practices and other measures may include cost-share grants, technical assistance,

implementation tracking, and conservation leases or other agreements for water quality improvement. The Department of Environmental Protection and the Department of Agriculture and Consumer Services may adopt rules governing the distribution of funds for implementation of capital projects, best management practices, and other measures. These funds shall not be used to abrogate the financial responsibility of those point and nonpoint sources that have contributed to the degradation of water or land areas. Increased priority shall be given by the department and the water management district governing boards to those projects that have secured a cost-sharing agreement allocating responsibility for the cleanup of point and nonpoint sources.

(3) ~~(c)~~ Twelve and five-tenths percent to the Department of Environmental Protection for the Disadvantaged Small Community Wastewater Grant Program as provided in s. 403.1838.

(4) ~~(d)~~ On June 30, 2009, and every 24 months thereafter, the Department of Environmental Protection shall request the return of all unencumbered funds distributed pursuant to this section. These funds shall be deposited into the Water Protection and Sustainability Program Trust Fund and redistributed pursuant to the provisions of this section.

~~(3) For the 2008-2009 fiscal year only, moneys in the Water Protection and Sustainability Program Trust Fund shall be transferred to the Ecosystem Management and Restoration Trust Fund for grants and aids to local governments for water projects as provided in the General Appropriations Act. This subsection expires July 1, 2009.~~

~~(4) For fiscal year 2005-2006, funds deposited or appropriated into the Water Protection and Sustainability Program Trust Fund shall be distributed as follows:~~

~~(a) One hundred million dollars to the Department of Environmental Protection for the implementation of an alternative water supply program as provided in s. 373.1961.~~

~~(b) Funds remaining after the distribution provided for in subsection (1) shall be distributed as follows:~~

~~1. Fifty percent for the implementation of best management practices and capital project expenditures necessary for the implementation of the goals of the total maximum daily load program established in s. 403.067. Of these funds, 85 percent shall be transferred to the credit of the Department of Environmental Protection Water Quality Assurance Trust Fund to address water quality impacts associated with nonagricultural nonpoint sources. Fifteen percent of these funds shall be transferred to the Department of Agriculture and Consumer Services General Inspection Trust Fund to address water quality impacts associated with agricultural nonpoint sources. These funds shall be used for research, development, demonstration, and implementation of suitable best management practices or other measures used to achieve water quality standards in surface waters and water segments identified pursuant to s. 303(d) of the Clean Water Act, Pub. L. No. 92-500, 33 U.S.C. ss. 1251 et seq. Implementation of best management practices and other measures may include cost-share grants, technical assistance, implementation tracking, and conservation leases or other agreements for water quality improvement. The Department~~

~~of Environmental Protection and the Department of Agriculture and Consumer Services may adopt rules governing the distribution of funds for implementation of best management practices. These funds shall not be used to abrogate the financial responsibility of those point and nonpoint sources that have contributed to the degradation of water or land areas. Increased priority shall be given by the department and the water management district governing boards to those projects that have secured a cost-sharing agreement allocating responsibility for the cleanup of point and nonpoint sources.~~

~~2. Twenty-five percent for the purposes of funding projects pursuant to ss. 373.451-373.459 or surface water restoration activities in water-management-district-designated priority water bodies. The Secretary of Environmental Protection shall ensure that each water management district receives the following percentage of funds annually:~~

~~a. Thirty-five percent to the South Florida Water Management District;~~

~~b. Twenty-five percent to the Southwest Florida Water Management District;~~

~~c. Twenty-five percent to the St. Johns River Water Management District;~~

~~d. Seven and one-half percent to the Suwannee River Water Management District; and~~

~~e. Seven and one-half percent to the Northwest Florida Water Management District.~~

~~3. Twenty-five percent to the Department of Environmental Protection for the Disadvantaged Small Community Wastewater~~

~~Grant Program as provided in s. 403.1838.~~

~~Prior to the end of the 2008 Regular Session, the Legislature must review the distribution of funds under the Water Protection and Sustainability Program to determine if revisions to the funding formula are required. At the discretion of the President of the Senate and the Speaker of the House of Representatives, the appropriate substantive committees of the Legislature may conduct an interim project to review the Water Protection and Sustainability Program and the funding formula and make written recommendations to the Legislature proposing necessary changes, if any.~~

~~(5) For the 2009-2010 fiscal year only, funds shall be distributed as follows:~~

~~(a) Thirty-one and twenty-one hundredths percent to the Department of Environmental Protection for the implementation of an alternative water supply program as provided in s. 373.1961.~~

~~(b) Twenty-six and eighty-seven hundredths percent for the implementation of best management practices and capital project expenditures necessary for the implementation of the goals of the total maximum daily load program established in s. 403.067. Of these funds, 86 percent shall be transferred to the credit of the Water Quality Assurance Trust Fund of the Department of Environmental Protection to address water quality impacts associated with nonagricultural nonpoint sources. Fourteen percent of these funds shall be transferred to the General Inspection Trust Fund of the Department of Agriculture and Consumer Services to address water quality impacts associated~~

~~with agricultural nonpoint sources. These funds shall be used for research, development, demonstration, and implementation of the total maximum daily load program under s. 403.067, suitable best management practices, or other measures used to achieve water quality standards in surface waters and water segments identified pursuant to s. 303(d) of the Clean Water Act, Pub. L. No. 92-500, 33 U.S.C. ss. 1251 et seq. Implementation of best management practices and other measures may include cost-share grants, technical assistance, implementation tracking, and conservation leases or other agreements for water quality improvement. The Department of Environmental Protection and the Department of Agriculture and Consumer Services may adopt rules governing the distribution of funds for implementation of capital projects, best management practices, and other measures. These funds may not be used to abrogate the financial responsibility of those point and nonpoint sources that have contributed to the degradation of water or land areas. Increased priority shall be given by the department and the water management district governing boards to those projects that have secured a cost-sharing agreement that allocates responsibility for the cleanup of point and nonpoint sources.~~

~~(c) Forty-one and ninety-two hundredths percent to the Department of Environmental Protection for the Disadvantaged Small Community Wastewater Grant Program as provided in s. 403.1838.~~

~~This subsection expires July 1, 2010.~~

Section 7. Paragraph (d) of subsection (1) and paragraph

(b) of subsection (7) of section 373.036, Florida Statutes, are amended to read:

373.036 Florida water plan; district water management plans.—

(1) FLORIDA WATER PLAN.—In cooperation with the water management districts, regional water supply authorities, and others, the department shall develop the Florida water plan. The Florida water plan shall include, but not be limited to:

(d) Goals, objectives, and guidance for the development and review of programs, rules, and plans relating to water resources, based on statutory policies and directives. The state water policy rule, renamed the water resource implementation rule pursuant to s. 373.019(25) ~~s. 373.019(23)~~, shall serve as this part of the plan. Amendments or additions to this part of the Florida water plan shall be adopted by the department as part of the water resource implementation rule. In accordance with s. 373.114, the department shall review rules of the water management districts for consistency with this rule. Amendments to the water resource implementation rule must be adopted by the secretary of the department and be submitted to the President of the Senate and the Speaker of the House of Representatives within 7 days after publication in the Florida Administrative Weekly. Amendments shall not become effective until the conclusion of the next regular session of the Legislature following their adoption.

(7) CONSOLIDATED WATER MANAGEMENT DISTRICT ANNUAL REPORT.—

(b) The consolidated annual report shall contain the following elements, as appropriate to that water management

district:

1. A district water management plan annual report or the annual work plan report allowed in subparagraph (2)(e)4.

2. The department-approved minimum flows and levels annual priority list and schedule required by s. 373.042(2).

3. The annual 5-year capital improvements plan required by s. 373.536(6)(a)3.

4. The alternative water supplies annual report required by s. 373.1961(3)(o) ~~s. 373.1961(3)(n)~~.

5. The final annual 5-year water resource development work program required by s. 373.536(6)(a)4.

6. The Florida Forever Water Management District Work Plan annual report required by s. 373.199(7).

7. The mitigation donation annual report required by s. 373.414(1)(b)2.

Section 8. Paragraph (h) of subsection (2) and subsection (7) of section 373.0361, Florida Statutes, are amended to read:

373.0361 Regional water supply planning.—

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

(h) Reservations of water adopted by rule pursuant to s. 373.223(10) ~~s. 373.223(4)~~ within each planning region.

(7) Nothing contained in the water supply development component of a regional water supply plan shall be construed to require local governments, government-owned or privately owned water utilities, special districts, self-suppliers, regional water supply authorities, multijurisdictional water supply

entities, or other water suppliers to select a water supply development project identified in the component merely because it is identified in the plan. Except as provided in s. 373.223(9) and (11) ~~s. 373.223(3) and (5)~~, the plan may not be used in the review of permits under part II unless the plan or an applicable portion thereof has been adopted by rule. However, this subsection does not prohibit a water management district from employing the data or other information used to establish the plan in reviewing permits under part II, nor does it limit the authority of the department or governing board under part II.

Section 9. Subsection (9) of section 373.1962, Florida Statutes, is amended to read:

373.1962 Regional water supply authorities.—

(9) Where a water supply authority exists pursuant to this section or s. 373.1963 under a voluntary interlocal agreement that is consistent with requirements in s. 373.1963(1)(b) and receives or maintains consumptive use permits under this voluntary agreement consistent with the water supply plan, if any, adopted by the governing board, such authority shall be exempt from consideration by the governing board or department of the factors specified in s. 373.223(3)(a)-(g) and the submissions required by s. 373.229(9) ~~s. 373.229(3)~~. Such exemptions shall apply only to water sources within the jurisdictional areas of such voluntary water supply interlocal agreements.

Section 10. Subsection (2) of section 373.217, Florida Statutes, is amended to read:

373.217 Superseded laws and regulations.—

(2) It is the further intent of the Legislature that Part II of the Florida Water Resources Act of 1972, as amended, as set forth in ss. 373.203-373.249, shall provide the exclusive authority for requiring permits for the consumptive use of water and for authorizing transportation thereof pursuant to s. 373.223(8) ~~s. 373.223(2)~~.

Section 11. Section 373.2234, Florida Statutes, is amended to read:

373.2234 Preferred water supply sources.—The governing board of a water management district is authorized to adopt rules that identify preferred water supply sources for consumptive uses for which there is sufficient data to establish that a preferred source will provide a substantial new water supply to meet the existing and projected reasonable-beneficial uses of a water supply planning region identified pursuant to s. 373.0361(1), while sustaining existing water resources and natural systems. At a minimum, such rules must contain a description of the preferred water supply source and an assessment of the water the preferred source is projected to produce. If an applicant proposes to use a preferred water supply source, that applicant's proposed water use is subject to s. 373.223(1), except that the proposed use of a preferred water supply source must be considered by a water management district when determining whether a permit applicant's proposed use of water is consistent with the public interest pursuant to s. 373.223(1)(c). A consumptive use permit issued for the use of a preferred water supply source must be granted, when requested by

the applicant, for at least a 20-year period and may be subject to the compliance reporting provisions of s. 373.236(4). Nothing in this section shall be construed to exempt the use of preferred water supply sources from the provisions of ss. 373.016(4) and 373.223(8) and (9) ~~373.223(2) and (3)~~, or be construed to provide that permits issued for the use of a nonpreferred water supply source must be issued for a duration of less than 20 years or that the use of a nonpreferred water supply source is not consistent with the public interest. Additionally, nothing in this section shall be interpreted to require the use of a preferred water supply source or to restrict or prohibit the use of a nonpreferred water supply source. Rules adopted by the governing board of a water management district to implement this section shall specify that the use of a preferred water supply source is not required and that the use of a nonpreferred water supply source is not restricted or prohibited.

Section 12. Subsection (3) of section 373.229, Florida Statutes, is amended to read:

373.229 Application for permit.—

(3) In addition to the information required in subsection (1), all permit applications filed with the governing board or the department which propose the transport and use of water across county boundaries shall include information pertaining to factors to be considered, pursuant to s. 373.223(9) ~~s. 373.223(3)~~, unless exempt under s. 373.1962(9).

Section 13. Subsection (1) of section 373.421, Florida Statutes, is amended to read:

373.421 Delineation methods; formal determinations.—

(1) The Environmental Regulation Commission shall adopt a unified statewide methodology for the delineation of the extent of wetlands as defined in s. 373.019(27) ~~s. 373.019(25)~~. This methodology shall consider regional differences in the types of soils and vegetation that may serve as indicators of the extent of wetlands. This methodology shall also include provisions for determining the extent of surface waters other than wetlands for the purposes of regulation under s. 373.414. This methodology shall not become effective until ratified by the Legislature. Subsequent to legislative ratification, the wetland definition in s. 373.019(27) ~~s. 373.019(25)~~ and the adopted wetland methodology shall be binding on the department, the water management districts, local governments, and any other governmental entities. Upon ratification of such wetland methodology, the Legislature preempts the authority of any water management district, state or regional agency, or local government to define wetlands or develop a delineation methodology to implement the definition and determines that the exclusive definition and delineation methodology for wetlands shall be that established pursuant to s. 373.019(27) ~~s. 373.019(25)~~ and this section. Upon such legislative ratification, any existing wetlands definition or wetland delineation methodology shall be superseded by the wetland definition and delineation methodology established pursuant to this chapter. Subsequent to legislative ratification, a delineation of the extent of a surface water or wetland by the department or a water management district, pursuant to a formal

determination under subsection (2), or pursuant to a permit issued under this part in which the delineation was field-verified by the permitting agency and specifically approved in the permit, shall be binding on all other governmental entities for the duration of the formal determination or permit. All existing rules and methodologies of the department, the water management districts, and local governments, regarding surface water or wetland definition and delineation shall remain in full force and effect until the common methodology rule becomes effective. However, this shall not be construed to limit any power of the department, the water management districts, and local governments to amend or adopt a surface water or wetland definition or delineation methodology until the common methodology rule becomes effective.

Section 14. Paragraphs (r) and (u) of subsection (1) of section 403.813, Florida Statutes, are amended to read:

403.813 Permits issued at district centers; exceptions.—

(1) A permit is not required under this chapter, chapter 373, chapter 61-691, Laws of Florida, or chapter 25214 or chapter 25270, 1949, Laws of Florida, for activities associated with the following types of projects; however, except as otherwise provided in this subsection, nothing in this subsection relieves an applicant from any requirement to obtain permission to use or occupy lands owned by the Board of Trustees of the Internal Improvement Trust Fund or any water management district in its governmental or proprietary capacity or from complying with applicable local pollution control programs authorized under this chapter or other requirements of county

and municipal governments:

(r) The removal of aquatic plants, the removal of tussocks, the associated replanting of indigenous aquatic plants, and the associated removal from lakes of organic detrital material when such planting or removal is performed and authorized by permit or exemption granted under s. 369.20 or s. 369.25, provided that:

1. Organic detrital material that exists on the surface of natural mineral substrate shall be allowed to be removed to a depth of 3 feet or to the natural mineral substrate, whichever is less;

2. All material removed pursuant to this paragraph shall be deposited in an upland site in a manner that will prevent the reintroduction of the material into waters in the state except when spoil material is permitted to be used to create wildlife islands in freshwater bodies of the state when a governmental entity is permitted pursuant to s. 369.20 to create such islands as a part of a restoration or enhancement project;

3. All activities are performed in a manner consistent with state water quality standards; and

4. No activities under this exemption are conducted in wetland areas, as defined by s. 373.019(27) ~~s. 373.019(25)~~, which are supported by a natural soil as shown in applicable United States Department of Agriculture county soil surveys, except when a governmental entity is permitted pursuant to s. 369.20 to conduct such activities as a part of a restoration or enhancement project.

The department may not adopt implementing rules for this paragraph, notwithstanding any other provision of law.

(u) Notwithstanding any provision to the contrary in this subsection, a permit or other authorization under chapter 253, chapter 369, chapter 373, or this chapter is not required for an individual residential property owner for the removal of organic detrital material from freshwater rivers or lakes that have a natural sand or rocky substrate and that are not Aquatic Preserves or for the associated removal and replanting of aquatic vegetation for the purpose of environmental enhancement, providing that:

1. No activities under this exemption are conducted in wetland areas, as defined by s. 373.019(27) ~~s. 373.019(25)~~, which are supported by a natural soil as shown in applicable United States Department of Agriculture county soil surveys.

2. No filling or peat mining is allowed.

3. No removal of native wetland trees, including, but not limited to, ash, bay, cypress, gum, maple, or tupelo, occurs.

4. When removing organic detrital material, no portion of the underlying natural mineral substrate or rocky substrate is removed.

5. Organic detrital material and plant material removed is deposited in an upland site in a manner that will not cause water quality violations.

6. All activities are conducted in such a manner, and with appropriate turbidity controls, so as to prevent any water quality violations outside the immediate work area.

7. Replanting with a variety of aquatic plants native to

the state shall occur in a minimum of 25 percent of the preexisting vegetated areas where organic detrital material is removed, except for areas where the material is removed to bare rocky substrate; however, an area may be maintained clear of vegetation as an access corridor. The access corridor width may not exceed 50 percent of the property owner's frontage or 50 feet, whichever is less, and may be a sufficient length waterward to create a corridor to allow access for a boat or swimmer to reach open water. Replanting must be at a minimum density of 2 feet on center and be completed within 90 days after removal of existing aquatic vegetation, except that under dewatered conditions replanting must be completed within 90 days after reflooding. The area to be replanted must extend waterward from the ordinary high water line to a point where normal water depth would be 3 feet or the preexisting vegetation line, whichever is less. Individuals are required to make a reasonable effort to maintain planting density for a period of 6 months after replanting is complete, and the plants, including naturally recruited native aquatic plants, must be allowed to expand and fill in the revegetation area. Native aquatic plants to be used for revegetation must be salvaged from the enhancement project site or obtained from an aquatic plant nursery regulated by the Department of Agriculture and Consumer Services. Plants that are not native to the state may not be used for replanting.

8. No activity occurs any farther than 100 feet waterward of the ordinary high water line, and all activities must be designed and conducted in a manner that will not unreasonably

restrict or infringe upon the riparian rights of adjacent upland riparian owners.

9. The person seeking this exemption notifies the applicable department district office in writing at least 30 days before commencing work and allows the department to conduct a preconstruction site inspection. Notice must include an organic-detrital-material removal and disposal plan and, if applicable, a vegetation-removal and revegetation plan.

10. The department is provided written certification of compliance with the terms and conditions of this paragraph within 30 days after completion of any activity occurring under this exemption.

Section 15. Subsection (6) of section 556.102, Florida Statutes, is amended to read:

556.102 Definitions.—As used in this act:

(6) "Excavate" or "excavation" means any manmade cut, cavity, trench, or depression in the earth's surface, formed by removal of earth, intended to change the grade or level of land, or intended to penetrate or disturb the surface of the earth, including land beneath the waters of the state, as defined in s. 373.019(22) ~~s. 373.019(20)~~, and the term includes pipe bursting and directional drilling or boring from one point to another point beneath the surface of the earth, or other trenchless technologies.

Section 16. 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	_____

Council/Committee hearing PCB: Agriculture & Natural Resources Policy Committee

Representative(s) Williams offered the following:

Amendment 1

Remove lines 79-80 and insert:

stormwater, ~~and~~ aquifer storage and recovery and the recovery and storage of surficial groundwater, stormwater, and reclaimed water. Reuse of potable

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB ANR 10-14 Drinking Water
SPONSOR(S): Agriculture & Natural Resources Policy Committee
TIED BILLS: **IDEN./SIM. BILLS:**

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

SUMMARY ANALYSIS

Funds to establish or capitalize the Clean Water State Revolving Fund (CWSRF) programs are provided through federal government grants and state matching funds. The CWSRF provides low-interest loans to eligible entities for planning, designing, and constructing *water pollution control facilities*; loan repayments are then recycled back into the program to fund additional water quality protection projects. The Florida Water Pollution Control Financing Corporation is a nonprofit public-benefit corporation that was established to finance or refinance water pollution control activities.

The Safe Drinking Water Act of 1996 established a Drinking Water SRF (DWSRF) program, administered by the Department of Environmental Protection (DEP) to make funds available to drinking water systems to finance infrastructure improvements to ensure the protection of safe drinking water. The DWSRF Program provides low-interest loans to eligible entities for planning, designing, and constructing *public water facilities.*

The bill renames the Florida Water Pollution Control Financing Corporation as the Florida Water Pollution Control and Drinking Water Financing Corporation (Corporation) and expands the authority of the Corporation to authorize bonds for the DEP's DWSRF program. The proceeds from the bonds related to the DWSRF will be used to fund local government drinking water infrastructure projects. Projects and activities that may be funded are those eligible under the federal Safe Drinking Water Act.

Expansion of the Corporation's authority to issue bonds to finance drinking water projects does not require the appropriation of state dollars nor are any state dollars at risk as a result of bond issuance. All bonds will be backed exclusively by the repayments of the local governments and other owners of drinking water systems receiving SRF loans.

The bill provides that this bill will take effect upon becoming a law.

HOUSE PRINCIPLES

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

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

State Revolving Fund (SRF) programs provide financial savings for projects that benefit the environment, including protection of public health and conservation of local watersheds. Federal and state contributions fund loans for a wide variety of water quality projects including all types of stormwater, watershed protection or restoration, and estuary management projects, as well as more traditional municipal wastewater treatment projects including water reuse and conservation projects.[1]

The SRF programs allow states to provide funding for their highest-priority water quality needs. Funds to establish or capitalize the Clean Water State Revolving Fund (CWSRF) programs are provided through federal government grants and state matching funds that are equal to 20 percent of federal government grants. CWSRF provides low-interest loans to eligible entities for planning, designing, and constructing *water pollution control facilities*; loan repayments are then recycled back into the program to fund additional water quality protection projects. The revolving nature of these programs provides for an ongoing funding source.[2]

The Florida Water Pollution Control Financing Corporation (Corporation) is a nonprofit public-benefit corporation that was established to finance or refinance water pollution control activities.[3] The long-term purpose for the Corporation is to contribute to statewide compliance with water quality standards through the planning, design and construction of cost-effective wastewater treatment and stormwater management facilities, non-point source pollution management systems, and estuary conservation and management programs.[4]The Corporation is governed by a board of directors consisting of the Governor's Budget Director (or designee), the Chief Financial Officer (or designee), and the Secretary of Environmental Protection (or designee). The executive director of the State Board of Administration shall direct and supervise the affairs of the corporation.[5]

According to the U.S. Environmental Protection Agency, water systems must make significant investments to install, upgrade, or replace infrastructure to continue to ensure the provision of safe drinking water. Installation of new treatment facilities can improve the quality of drinking water and

[1] Florida DEP, "Water Facilities Funding", www.dep.state.fl.us/water/wff
[2] Florida DEP, "Clean Water State Revolving Fund Loan Program", http://www.dep.state.fl.us/water/wff/cwsrf/index.htm
[3] Section 403.1837(1)
[4] Florida DEP, "Clean Water State Revolving Fund Loan Program", http://www.dep.state.fl.us/water/wff/cwsrf/index.htm
[5] Section 403.1837(2)

better protect public health. Improvements are also needed to help those water systems experiencing a threat of contamination due to aging infrastructure systems.[6]

The Safe Drinking Water Act of 1996 established a Drinking Water SRF (DWSRF) program, administered by the Department of Environmental Protection (DEP) to make funds available to drinking water systems to finance infrastructure improvements to ensure the protection of safe drinking water. The DWSRF Program provides low-interest loans to eligible entities for planning, designing, and constructing *public water facilities*. The DEP solicits project information throughout the year. The information is used to establish the project priority list for the following annual cycle. Funds are made available for pre-construction loans to rate-based public water systems, construction loans of at least $75,000, and pre-construction grants and construction grants to small financially disadvantaged communities. The loan terms include a 20-year (30-year for financially disadvantaged communities) amortization and low-interest rates. Small community assistance is available for communities having populations less than 10,000. Each year 15% of the funds are reserved exclusively for their use. In addition, small communities may qualify for loans from the unreserved 85% of the funds.[7]

Effect of Bill

The bill adds the definitions of "bonds" and "corporation."

The bill renames the Florida Water Pollution Control Financing Corporation as the Florida Water Pollution Control and Drinking Water Financing Corporation (Corporation). Subsequently, the bill expands the authority of the Corporation to authorize bonds to fulfill the purposes of the DWSRF as well as the Clean Water SRF (CWSRF). The Corporation is authorized to:

- Borrow money and issue notes, bonds, certificates of indebtedness, or other obligations in the DWSRF;
- Operate any program to provide financial assistance authorized under the DWSRF, which may be funded from funds received under a service contract with the DEP, from the proceeds of bonds issued by the Corporation, or from any other funding sources obtained by the Corporation;
- Sell all or any portion of the loans issued under DWSRF;
- Evaluate all financial and market conditions necessary for the purpose of making prudent, sound, financially responsible, and cost-effective decisions in order to secure additional funds to fulfill the purposes of the DWSRF;
- Enter into one or more service contracts with the DEP in connection with financing the functions, projects, and activities provided in the DWSRF. The service contracts may provide for the transfer of all or a portion of the funds in the Drinking Water Revolving Loan Trust Fund to the Corporation for use by the Corporation for costs incurred in its operations.

The Corporation is exempt from taxation and assessments on its income and any property, assets or revenues acquired, received, or used in the furtherance of the purposes of the DWSRF. Benefits or earnings of the Corporation may not benefit any private person, except persons receiving loans under the DWSRF.

Under the provisions of the bill, DEP is authorized to:

- Make or request the Corporation to make loans, grants, and deposits to community water systems, nonprofit transient noncommunity water systems, and nonprofit nontransient noncommunity water systems to assist them in planning, designing, and constructing public water systems, unless such systems are for-profit privately owned or investor-owned public water systems that regularly serve 1,500 service connections or more within a single certified or franchised area.
- Administer all programs operated from funds secured through the activities of the Corporation

[6] U.S. EPA, Drinking Water State Revolving Fund (DWSRF), http://www.epa.gov/safewater/dwsrf/index.html

[7] Florida DEP, Drinking Water State Revolving Fund (DWSRF), http://www.dep.state.fl.us/water/wff/dwsrf/

- Adopt rules regarding the procedural and contractual relationship between the DEP and the Corporation.
- Require evidence of credit worthiness and adequate security to ensure that each loan recipient can meet their loan obligations.

The bill stipulates that payments from the DWSRF under any service contract entered into by the DEP is subject to annual appropriation by the Legislature. The Fund is exempt from the termination provisions of s.19(f)(2), Art. III of the State Constitution.

B. SECTION DIRECTORY:

Section 1: Amends s. 403.1837, F.S. renaming the Florida Water Pollution Control Financing Corporation as the Florida Water Pollution Control and Drinking Water Financing Corporation and revising provisions regarding purpose, powers, and duties of Corporation.

Section 2: Amends s. 403.8532, F.S. to define "bonds" and "corporation", and to specify the scope of DEPs authority.

Section 3: Amends s. 403.8533, F.S. to specify that payments under any service contract are subject to annual appropriation and the fund is exempt from specified termination provisions of the State constitution.

Section 4: Amends ss. 11.45, F.S., to conform terminology to convey that the Auditor General has authority to conduct audits of the Florida Water Pollution Control and Drinking Water Financing Corporation.

Section 5: Amends s. 403.1835, F.S. to conform terminology.

Section 6: Provides that the act shall be effective upon becoming a law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   According to the DEP, the revenues from bond proceeds will depend on decisions by the Financing Corporation, under advice from the Division of Bond Finance, the DEP and other advisors, relating to funding demand, the characteristics of the loan pool, and market conditions. The ability periodically to bond is expected to enhance program funding capacity by 25-30% over time from its current $60-$70 million per year capacity.

2. Expenditures:

   As with current SRF bonds, loan repayments to the DWSRF will be used to cover the debt service on any bonds issued for drinking water. The DEP provides that state appropriations are not required to implement the bonding aspects of the SRF programs.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   The DEP suggests that the ability to issue bonds on behalf of the DWSRF will expand the program's capacity to provide below market rate loans to local governments and other owners of water systems to fund infrastructure projects. The low-interest rate loans provide cost saving to local governments and owners that might otherwise seek loans or issue local government bonds at market rates that they may not be able to afford.

The ability of the Corporation to issue bonds, combined with additional federal funding—if state match is made available by the Legislature—expands the long term capacity of the SRF (similar to the effect of compounding interest), which in turn makes more funds available for local governments and other water system owners.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

According to the DEP, the ability of the Corporation to issue bonds will allow the DWSRF to fund more projects, thereby creating jobs for consulting firms, engineers, construction contractors, and other workers, who in turn inject money into the local economies. The lower financing costs of the SRF benefit owners of water systems by allowing them to build more infrastructure for less cost, which in turn means lower rates and other charges for system customers.

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, 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:

The bill authorizes the Department of Environmental Protection (DEP) to adopt rules regarding the procedural and contractual relationship between the DEP and the Corporation.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to drinking water; amending s. 403.1837, F.S.; renaming the Florida Water Pollution Control Financing Corporation as the Florida Water Pollution Control and Drinking Water Financing Corporation; revising provisions regarding the purpose, powers, and duties of the corporation; providing that specified drinking water projects and activities are eligible for financing; amending s. 403.8532, F.S.; defining the terms "bonds" and "corporation"; authorizing the Department of Environmental Protection to make or request the corporation to make loans, grants, and deposits for planning, designing, and constructing specified public water systems; requiring the department to administer programs funded by the corporation; authorizing the department to adopt rules regarding the procedural and contractual relationship between the department and the corporation; clarifying requirements for rules relating to loan security criteria; clarifying the purpose of the Drinking Water Revolving Loan Trust Fund; amending s. 403.8533, F.S.; providing that specified use of funds from the trust fund is subject to annual appropriation; providing that the trust fund is exempt from specified termination provisions; amending ss. 11.45 and 403.1835, F.S.; conforming terminology; providing an effective date.

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

Section 1. Subsection (1), paragraphs (f), (g), and (h) of subsection (3), and subsections (4), (5), (7), and (11) of section 403.1837, Florida Statutes, are amended to read:

403.1837 Florida Water Pollution Control and Drinking Water Financing Corporation.—

(1) The Florida Water Pollution Control and Drinking Water Financing Corporation is created as a nonprofit public-benefit corporation for the purpose of financing or refinancing the costs of water pollution control projects and activities described in ss. ~~s.~~ 403.1835 and 403.8532. The projects and activities described in those sections ~~that section~~ are found to constitute a public governmental purpose; be necessary for the health, safety, and welfare of all residents; and include legislatively approved fixed capital outlay projects. The fulfillment of the purposes of the corporation promotes the health, safety, and welfare of the people of the state and serves essential governmental functions and a paramount public purpose. The activities of the corporation are specifically limited to assisting the department in implementing financing activities to provide funding for the programs authorized in ss. ~~s.~~ 403.1835 and 403.8532. All other activities relating to the purposes for which the corporation raises funds are the responsibility of the department, including, but not limited to, development of program criteria, review of applications for financial assistance, decisions relating to the number and amount of loans or other financial assistance to be provided, and enforcement of the terms of any financial assistance agreements provided through funds raised by the corporation. The

corporation shall terminate upon fulfillment of the purposes of this section.

(3) The corporation shall have all the powers of a corporate body under the laws of the state to the extent not inconsistent with or restricted by this section, including, but not limited to, the power to:

(f) Borrow money and issue notes, bonds, certificates of indebtedness, or other obligations or evidences of indebtedness described in ss. ~~s.~~ 403.1835 and 403.8532.

(g) Operate, as specifically directed by the department, any program to provide financial assistance authorized under ss. ~~s.~~ 403.1835(3) and 403.8532, which may be funded from any funds received under a service contract with the department, from the proceeds of bonds issued by the corporation, or from any other funding sources obtained by the corporation.

(h) Sell all or any portion of the loans issued under ss. ~~s.~~ 403.1835 and 403.8532 to accomplish the purposes of this section and ss. ~~s.~~ 403.1835 and 403.8532.

(4) The corporation shall evaluate all financial and market conditions necessary and prudent for the purpose of making sound, financially responsible, and cost-effective decisions in order to secure additional funds to fulfill the purposes of this section and ss. ~~s.~~ 403.1835 and 403.8532.

(5) The corporation may enter into one or more service contracts with the department under which the corporation shall provide services to the department in connection with financing the functions, projects, and activities provided for in ss. ~~s.~~ 403.1835 and 403.8532. The department may enter into one or more

service contracts with the corporation and provide for payments under those contracts pursuant to ss. ~~s.~~ 403.1835(9) and 403.8532, subject to annual appropriation by the Legislature. The service contracts may provide for the transfer of all or a portion of the funds in the Wastewater Treatment and Stormwater Management Revolving Loan Trust Fund and the Drinking Water Revolving Loan Trust Fund to the corporation for use by the corporation for costs incurred by the corporation in its operations, including, but not limited to, payment of debt service, reserves, or other costs in relation to bonds issued by the corporation, for use by the corporation at the request of the department to directly provide the types of local financial assistance provided for in ss. ~~s.~~ 403.1835(3) and 403.8532(3), or for payment of the administrative costs of the corporation. The department may not transfer funds under any service contract with the corporation without specific appropriation for such purpose in the General Appropriations Act, except for administrative expenses incurred by the State Board of Administration or other expenses necessary under documents authorizing or securing previously issued bonds of the corporation. The service contracts may also provide for the assignment or transfer to the corporation of any loans made by the department. The service contracts may establish the operating relationship between the department and the corporation and shall require the department to request the corporation to issue bonds before any issuance of bonds by the corporation, to take any actions necessary to enforce the agreements entered into between the corporation and other

parties, and to take all other actions necessary to assist the corporation in its operations. In compliance with s. 287.0641 and other applicable provisions of law, the obligations of the department under the service contracts do not constitute a general obligation of the state or a pledge of the faith and credit or taxing power of the state, nor may the obligations be construed in any manner as an obligation of the State Board of Administration or entities for which it invests funds, or of the department except as provided in this section as payable solely from amounts available under any service contract between the corporation and the department, subject to appropriation. In compliance with this subsection and s. 287.0582, service contracts must expressly include the following statement: "The State of Florida's performance and obligation to pay under this contract is contingent upon an annual appropriation by the Legislature."

(7) The corporation is exempt from taxation and assessments of any nature whatsoever upon its income and any property, assets, or revenues acquired, received, or used in the furtherance of the purposes provided in ss. 403.1835, ~~and~~ 403.1838, and 403.8532. The obligations of the corporation incurred under subsection (6) and the interest and income on the obligations and all security agreements, letters of credit, liquidity facilities, or other obligations or instruments arising out of, entered into in connection with, or given to secure payment of the obligations are exempt from all taxation; however, the exemption does not apply to any tax imposed by chapter 220 on the interest, income, or profits on debt

obligations owned by corporations.

(11) The benefits or earnings of the corporation may not inure to the benefit of any private person, except persons receiving grants and loans under ss. ~~s.~~ 403.1835 and 403.8532.

Section 2. Subsections (2), (3), (9), and (14) of section 403.8532, Florida Statutes, are amended to read:

403.8532 Drinking water state revolving loan fund; use; rules.—

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

(a) "Bonds" means bonds, certificates, or other obligations of indebtedness issued by the Florida Water Pollution Control and Drinking Water Financing Corporation under this section and s. 403.1837.

(b) "Corporation" means the Florida Water Pollution Control and Drinking Water Financing Corporation.

(c) ~~(a)~~ "Financially disadvantaged community" means the service area of a project to be served by a public water system that meets criteria established by department rule and in accordance with federal guidance.

(d) ~~(b)~~ "Local governmental agency" means any municipality, county, district, or authority, or any agency thereof, or a combination of two or more of the foregoing acting jointly in connection with a project, having jurisdiction over a public water system.

(e) ~~(c)~~ "Public water system" means all facilities, including land, necessary for the treatment and distribution of water for human consumption and includes public water systems as defined in s. 403.852 and as otherwise defined in the federal

Safe Drinking Water Act, as amended. Such systems may be publicly owned, privately owned, investor-owned, or cooperatively held.

(f) ~~(d)~~ "Small public water system" means a public water system which regularly serves fewer than 10,000 people.

(3) The department is authorized to make or request the corporation to make loans, grants, and deposits to community water systems, nonprofit transient noncommunity water systems, and nonprofit nontransient noncommunity water systems to assist them in planning, designing, and constructing public water systems, unless such public water systems are for-profit privately owned or investor-owned systems that regularly serve 1,500 service connections or more within a single certified or franchised area. However, a for-profit privately owned or investor-owned public water system that regularly serves 1,500 service connections or more within a single certified or franchised area may qualify for a loan only if the proposed project will result in the consolidation of two or more public water systems. The department is authorized to provide loan guarantees, to purchase loan insurance, and to refinance local debt through the issue of new loans for projects approved by the department. Public water systems are authorized to borrow funds made available pursuant to this section and may pledge any revenues or other adequate security available to them to repay any funds borrowed. The department shall administer all programs operated from funds secured through the activities of the corporation under s. 403.1837 to carry out the purposes of this section. The department shall administer loans so that amounts

credited to the Drinking Water Revolving Loan Trust Fund in any fiscal year are reserved for the following purposes:

(a) At least 15 percent to qualifying small public water systems.

(b) Up to 15 percent to qualifying financially disadvantaged communities.

(c) However, if an insufficient number of the projects for which funds are reserved under this subsection ~~paragraph~~ have been submitted to the department at the time the funding priority list authorized under this section is adopted, the reservation of these funds shall no longer apply. The department may award the unreserved funds as otherwise provided in this section.

(9) The department may adopt rules regarding the procedural and contractual relationship between the department and the corporation under s. 403.1837 and ~~is authorized to make~~ rules necessary to carry out the purposes of this section and the federal Safe Drinking Water Act, as amended. Such rules shall:

(a) Set forth a priority system for loans based on public health considerations, compliance with state and federal requirements relating to public drinking water systems, and affordability. The priority system shall give special consideration to the following:

1. Projects that provide for the development of alternative drinking water supply projects and management techniques in areas where existing source waters are limited or threatened by saltwater intrusion, excessive drawdowns,

contamination, or other problems;

2. Projects that provide for a dependable, sustainable supply of drinking water and that are not otherwise financially feasible; and

3. Projects that contribute to the sustainability of regional water sources.

(b) Establish the requirements for the award and repayment of financial assistance.

(c) Require evidence of credit worthiness and adequate security, including identification of revenues to be pledged and documentation of their sufficiency for loan repayment and pledged revenue coverage, to ensure that each loan recipient can meet its loan repayment requirements.

(d) Require each project receiving financial assistance to be cost-effective, environmentally sound, implementable, and self-supporting.

(e) Implement other provisions of the federal Safe Drinking Water Act, as amended.

(14) ~~All moneys available for financial assistance under this section shall be deposited in~~ The Drinking Water Revolving Loan Trust Fund established under s. 403.8533 shall be used exclusively to carry out the purposes of this section. Any funds therein which are not needed on an immediate basis for financial assistance shall be invested pursuant to s. 215.49. State revolving fund capitalization grants awarded by the Federal Government, state matching funds, and investment earnings thereon shall be deposited into the fund. The principal and interest of all loans repaid and investment earnings thereon

shall be deposited into the fund.

Section 3. Section 403.8533, Florida Statutes, is amended to read:

403.8533 Drinking Water Revolving Loan Trust Fund.—

(1) There is created the Drinking Water Revolving Loan Trust Fund to be administered by the Department of Environmental Protection for the purposes of:

(a) Funding for low-interest loans for planning, engineering design, and construction of public drinking water systems and improvements to such systems;

(b) Funding for compliance activities, operator certification programs, and source water protection programs; ~~and~~

(c) Funding for administering loans by the department; and

(d) Payment of amounts payable under any service contract entered into by the department under s. 403.1837, subject to annual appropriation by the Legislature.

(2) The trust fund shall be used for the deposit of all moneys awarded by the Federal Government to fund revolving loan programs. All moneys in the fund that are not needed on an immediate basis for loans shall be invested pursuant to s. 215.49. The principal and interest of all loans repaid and investment earnings shall be deposited into this fund.

(3) Pursuant to s. 19(f)(3), Art. III of the State Constitution, the Drinking Water Revolving Loan Trust Fund is exempt from the termination provisions of s. 19(f)(2), Art. III of the State Constitution.

Section 4. Paragraph (o) of subsection (3) of section 11.45, Florida Statutes, is amended to read:

11.45 Definitions; duties; authorities; reports; rules.—

(3) AUTHORITY FOR AUDITS AND OTHER ENGAGEMENTS.—The Auditor General may, pursuant to his or her own authority, or at the direction of the Legislative Auditing Committee, conduct audits or other engagements as determined appropriate by the Auditor General of:

(o) The Florida Water Pollution Control and Drinking Water Financing Corporation created pursuant to s. 403.1837.

Section 5. Paragraphs (b) and (c) of subsection (2) and subsections (3) and (10) of section 403.1835, Florida Statutes, are amended to read:

403.1835 Water pollution control financial assistance.—

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

(b) "Bonds" means bonds, certificates, or other obligations of indebtedness issued by the Florida Water Pollution Control and Drinking Water Financing Corporation under this section and s. 403.1837.

(c) "Corporation" means the Florida Water Pollution Control and Drinking Water Financing Corporation.

(3) The department may provide financial assistance through any program authorized under s. 603 of the Federal Water Pollution Control Act (Clean Water Act), Pub. L. No. 92-500, as amended, including, but not limited to, making grants and loans, providing loan guarantees, purchasing loan insurance or other credit enhancements, and buying or refinancing local debt. This financial assistance must be administered in accordance with

this section and applicable federal authorities. The department shall administer all programs operated from funds secured through the activities of the Florida Water Pollution Control and Drinking Water Financing Corporation under s. 403.1837, to fulfill the purposes of this section.

(a) The department may make or request the corporation to make loans to local government agencies, which agencies may pledge any revenue available to them to repay any funds borrowed.

(b) The department may make or request the corporation to make loans, grants, and deposits to other entities eligible to participate in the financial assistance programs authorized under the Federal Water Pollution Control Act, or as a result of other federal action, which entities may pledge any revenue available to them to repay any funds borrowed. Notwithstanding s. 17.57, the department may make deposits to financial institutions which earn less than the prevailing rate for United States Treasury securities with corresponding maturities for the purpose of enabling such financial institutions to make below-market interest rate loans to entities qualified to receive loans under this section and the rules of the department.

(c) The department shall administer financial assistance so that at least 15 percent of the funding made available each year under this section is reserved for use by small communities during the year it is reserved.

(d) The department may make grants to financially disadvantaged small communities, as defined in s. 403.1838, using funds made available from grant allocations on loans

authorized under subsection (4). The grants must be administered in accordance with s. 403.1838.

(10) The department may adopt rules regarding program administration; project eligibilities and priorities, including the development and management of project priority lists; financial assistance application requirements associated with planning, design, construction, and implementation activities, including environmental and engineering requirements; financial assistance agreement conditions; disbursement and repayment provisions; auditing provisions; program exceptions; the procedural and contractual relationship between the department and the Florida Water Pollution Control and Drinking Water Financing Corporation under s. 403.1837; and other provisions consistent with the purposes of this section.

Section 6. This act shall take effect upon becoming a law.

COUNCIL/COMMITTEE AMENDMENT

PCB Name: PCB ANR 10-14 (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	_____

Council/Committee hearing PCB: Agriculture & Natural Resources Policy Committee

Representative(s) Williams offered the following:

Amendment

Remove line 87 and insert:

403.8533, subject to annual appropriation by the legislature.

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	_____

Council/Committee hearing PCB: Agriculture & Natural Resources Policy Committee

Representative(s) Williams offered the following:

Amendment

Remove lines 193-196 and insert:

any funds borrowed. The department shall administer the loans so that amounts

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	_____

Council/Committee hearing PCB: Agriculture & Natural Resources Policy Committee

Representative(s) Williams offered the following:

Amendment

Remove lines 308-312 and insert:

this section and applicable federal authorities. ~~The department shall administer all programs operated from funds secured through the activities of the Florida Water Pollution Control Financing Corporation under s. 403.1837, to fulfill the purposes of this section.~~

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB ANR 10-15 Florida Keys' Wastewater
SPONSOR(S): Agriculture & Natural Resources Policy Committee
TIED BILLS: **IDEN./SIM. BILLS:**

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

SUMMARY ANALYSIS

The bill clarifies current law authorizing the issuance of Everglades restoration bonds to finance wastewater facilities within the Florida Keys Area of Critical State Concern. Authorized bonds may not to exceed $200 million and are limited to $50 million per fiscal year.

The bill revises legislative intent relating to the Keys Area of Critical State Concern to add intent to: promote an appropriate land acquisition and protection strategy for environmental lands within the Florida Keys; protect and improve the nearshore water quality of the Florida Keys through the construction and operation of wastewater management facilities; and ensure that the population of the Florida Keys can be safely evacuated.

The bill makes removal of the Area of Critical State Concern designation for the Keys Area contingent on the completion of the wastewater treatment work plan, specified in rules of the Florida Administration Commission (Commission).

The bill adds the detailed onsite sewage treatment system requirements in chapter 99-395, L.O.F. to statute, and requires, after July 1, 2010, all new, modified, or repaired systems to meet higher treatment standards. The bill extends the wastewater compliance deadline for existing onsite sewage treatment systems from July 1, 2010, to July 1, 2015.

The bill extends from July 1, 2010, to December 31, 2015, the completion deadline for required wastewater treatment facilities, and requires all new and improved facilities to meet standards by December 31, 2015. Wastewater treatment facilities in operation as of July 1, 2010, which are located within areas to be served by Monroe County, municipalities in Monroe County, or special districts, and which are owned by other entities, are not required to comply with the standards until January 1, 2016. Permits in effect for those facilities as of June 30, 2010, are extended until December 31, 2015, or until the facility is connected to a local government central wastewater system.

All wastewater treatment facilities in operation after December 31, 2015, must comply with the treatment and disposal requirements and with Department of Environmental Protection (DEP) rules.

The DEP is authorized to adopt rules necessary to carry out the bill's provisions relating to sewage disposal facilities. All sewage treatment facilities must monitor effluent for total nitrogen and total phosphorus concentration as required by DEP rule.

The bill repeals sections 4 of chapter 99-395, LOF, as amended by section 6 of chapter 2006-223, LOF, and sections 5 and 6 of chapter 99-395, LOF.

The bill does not appear to have a direct fiscal impact on the state. The bill delays implementation of current wastewater treatment standards. Many local governments have already met requirements under the Area of Critical State Concern Work Program, and others are in the process of meeting the requirements and have generated the majority of revenues. See Fiscal Comments Section.

HOUSE PRINCIPLES

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

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

The Florida Keys Area was designated as an area of critical state concern over 30 years ago for the purpose of providing state policies to guide decision making at the local level to protect natural resources and the environment, reverse the deterioration of water quality, and facilitate orderly, well-planned growth while protecting property rights. Current law provides that while any land development regulation or element of a local comprehensive plan in the Florida Keys (all of Monroe County excluding the city of Key West) may be enacted, amended or rescinded by the local government, the regulation or element is not effective until approved by the Department of Community Affairs (DCA), and that all local development regulations or comprehensive plans must be in compliance with statutory principles for guiding development.

Under current law (s. 380.0552, F.S.), the area of critical state concern designation for the Florida Keys was to be removed by October 1, 2009, unless the Florida Administration Commission found that substantial progress toward achieving specified goals – including wastewater treatment requirements -- has not been achieved. After removal of the designation as an area of critical state concern, DCA was required to review proposed local comprehensive plans, and any amendments to existing comprehensive plans, which are applicable to the Florida Keys Area, for compliance with the following:

- Adoption of construction schedules for wastewater facilities improvements in the annually adopted capital improvements element and adoption of standards for the construction of wastewater treatment facilities which meet or exceed the criteria of chapter 99-395, Laws of Florida.
- Adoption of goals, objectives, and policies to protect public safety and welfare in the event of a natural disaster by maintaining a hurricane evacuation clearance time for permanent residents of no more than 24 hours.

In the 1990s, concerns were raised about nutrients from sewage entering the nearshore waters of the Florida Keys from both onsite sewage treatment and disposal systems (septic tanks and cesspits) and from central wastewater treatment facilities. In order to address these concerns, the 1999 Legislature established uniform sewage treatment and disposal standards in the Keys for both onsite sewage treatment and disposal systems (OSTDS), which are permitted by the Department of Health (DOH), and wastewater treatment plants, which are permitted by the DEP.

Ch. 99-395, L.O.F., requires that each OSTDS either cease discharging or comply with the stringent effluent water quality standards provided by law and the rules of the DEP or the DOH, as applicable, by 2010. For central wastewater treatment facilities, the treatment standards were strengthened by: eliminating all surface water discharges by the year 2006; requiring proper operation, maintenance and performance monitoring of all sewage treatment systems; and requiring the upgrading of all systems to meet the enhanced sewage treatment requirements specified in the bill by the year 2010.

In the Annual Assessment Report for the Florida Keys Area of Critical State Concern covering the time period of July 13, 2006, to July 12, 2007, the DCA recommended to the Administration Commission that it make a finding that Monroe County has not made substantial progress toward completion of Year 10 of the Work Program. The recommendation was based on the DEP's June 2007 report, "Report to the Department of Community Affairs – 10-Year Work
Program for Monroe County Florida Keys Wastewater Improvements." The report concluded that:

> While progress has been made in upgrading and building new wastewater infrastructure in the Keys, there is a long way to go and a tremendous amount of work to be done. There are indications, at least in some areas, that progress has slowed. It is clear from both on-site inspection and the information provided by local governments - both in terms of the progress to date and the uncertainty of many of the completion schedules - that not all facilities will meet the July 1, 2010 deadline.

During the 2007 Legislative Session, concerns were expressed regarding the lack of specific plans and estimated costs associated with meeting the wastewater requirements established in ch. 99-395, L.O.F. Due in part to these concerns, the Legislature did not appropriate funds to assist local governments in the Keys with the construction of wastewater systems necessary to meet the 2010 deadline. During the 2007 Legislative Interim, the House Environment & Natural Resources Council conducted an interim project to develop a plan to address the wastewater needs of the Florida Keys in the most cost effective and efficient manner. The goal of the project was to work with the DEP to facilitate the establishment, through interlocal agreements or other means, of a single local government entity responsible for coordinating with the state throughout the life of the project. This local government entity selected to serve this role was the Monroe County Board of County Commissioners. The coordinated entity was expected to provide the following items:

- A single comprehensive plan identifying existing and proposed projects, including a priority of sequencing projects, needed to meet the comprehensive wastewater needs in the Keys.
- The status of existing and proposed projects and whether they are expected to meet the 2010 deadline.
- A listing of the projected and actual project costs associated with completed and proposed projects.
- A listing of existing and proposed sources and amount of funds needed to complete the necessary projects.

In addition, policy options were developed and analyzed to provide assistance in funding the expedited implementation of the comprehensive wastewater plan contingent upon receipt of the information listed above.

After a series of meetings and ongoing conversations, Monroe County submitted a Keys Wastewater Plan on December 4, 2007, that, with subsequent addendums, addresses the above requirements.

The Keys Wastewater Plan provides a comprehensive summary of county-wide progress toward achieving compliance with the 2010 wastewater effluent standards. The plan includes background information for each local government and utility responsible for installation of wastewater treatment facilities. The plan also includes costs associated with completed and remaining projects, which is provided on a county-wide basis, as well as for each wastewater project. A summary of unfunded costs per year was compiled based on information submitted by each wastewater entity.

The 2008 Legislature amended s. 215.619, F.S., to authorize the issuance of Everglades restoration bonds to fund costs associated with the Florida Keys Area of Critical State Concern Protection Program to restore and conserve natural systems through the implementation of water management projects, including wastewater management projects identified in the Key's Wastewater Plan dated November 2007. Total bonds are not to exceed $50 million per fiscal year, for no more than 4 fiscal years. The duration of the bonds may not exceed 20 annual maturities, and the bonds must mature by December 31, 2040.

As of February 2010, Key West, Key Colony Beach and Layton operate facilities compliant with the July 1, 2010 deadline. Marathon and Key Largo are nearing completion of central systems, but will not meet the deadline. Islamorada and unincorporated Monroe County are in various stages of planning, design and construction-but facilities to serve the majority of people in these areas are years from completion. Any of the more than 200 existing facilities that have not upgraded to meet the treatment standards will be in violation on July 1, 2010-this includes most existing facilities and many homeowners[1].

Effect of Proposed Changes

The bill amends s. 215.619, F.S., clarifying that the issuance of any state bonds to finance wastewater facilities within the Florida Keys Area of Critical State Concern. Bonds are not to exceed $200 million and are limited to $50 million per fiscal year. Proceeds from the bonds must be managed by DEP for the purpose of entering into financial assistance agreements with local governments located in the Florida Keys Area of Critical State Concern to finance or refinance the cost of constructing sewage collection, treatment, and disposal facilities.

The bill amends s. 380.0552, F.S., relating to the Keys Area designation as an Area of Critical State Concern, adding legislative intent to promote an appropriate land acquisition and protection strategy for environmentally sensitive lands within the Florida Keys; to protect and improve the nearshore water quality of the Florida Keys through the construction and operation of wastewater management facilities; and to ensure that the population of the Florida Keys can be safely evacuated.

The bill makes removal of the Florida Keys Area of Critical State Concern designation contingent on the work program completion, specified in rules of the Commission. Starting on November 30, 2010, a written report must be submitted annually by the Department of Community Affairs (DCA) to the Commission describing the progress of the Florida Keys toward completing the work program tasks. The DCA must recommend removal of the designation if it determines that:

1. All of the work program tasks have been completed, including the construction of, operation of, and connection to central wastewater management facilities pursuant to s. 403.086(10), F.S., and upgrade of onsite sewage treatment and disposal systems pursuant to s. 381.0065(4)(1), F.S.
2. All local comprehensive plans and land development regulations and the administration of such plans and regulations are adequate to protect the Florida Keys Area, fulfill legislative intent, and are consistent with and further the principles for guiding development.
3. A local government has adopted a resolution at a public hearing recommending the removal of the designation.

Once the Commission receives the report, the Commission must determine if the requirements have been fulfilled and may remove the designation of the Florida Keys as an area of critical state concern. If the designation is removed, the Commission will initiate rulemaking to repeal any rules relating to the designation within 60 days. If the requirements have not been met for removal, the Commission will provide a written report to the local governments within 30 days detailing the tasks that must be completed by the local government. The Commission's determination may be reviewed pursuant to chapter 120, F.S. All proceedings must be conducted by the Division of Administrative Hearings and must be initiated within 30 days after the Commission issues its determination. The Commission may adopt rules or revise existing rules as necessary to administer these provisions.

[1] Department of Environmental Protection 2010 analysis, on file

The bill revises the statutory principles for guiding development in the Keys to add the following principles:

1. Protecting and improving water quality by providing for the construction, operation, maintenance, and replacement of stormwater management facilities; central sewage collection; treatment and disposal facilities; and the installation and proper operation and maintenance of onsite sewage treatment.
2. Ensuring the improvement of nearshore water quality by requiring the construction and operation of wastewater management facilities that meet the requirements of s. 381.0065(4)(l) and s. 403.086(10), F.S., as applicable, and by directing growth to areas served by central wastewater treatment facilities through permit allocation systems.

The bill provides that any amendments to local comprehensive plans in the Florida Keys Area must be reviewed for compliance with the following:

1. Construction schedules and detailed capital financing plans for wastewater management improvements in the annually adopted capital improvements element, and standards for the construction of wastewater treatment and disposal facilities or collection systems that meet or exceed the criteria in s. 403.086910, F.S., for wastewater treatment and disposal facilities or s. 381.0065(4)(1), F.S., for onsite sewage treatment and disposal systems.
2. Goals, objectives, and policies to protect public safety and welfare in the event of a natural disaster by maintaining a hurricane evacuation clearance time for permanent residents of no more than 24 hours, which will be in accordance with a methodology approved by the DCA.

The bill amends s. 381.0065, F.S., to require Monroe County, each municipality, and those special districts established for the purpose of the collection, transmission, treatment, or disposal of sewage to ensure, in accordance with the specific schedules adopted by the Commission under s. 380.0552, F.S., the completion of onsite sewage treatment and disposal system upgrades to meet the requirements applicable to onsite sewage treatment systems. The bill adds the detailed onsite sewage treatment system requirements in chapter 99-395, L.O.F, to the statute, and extends the wastewater compliance deadline for existing onsite sewage treatment systems from July 1, 2010, to July 1, 2015. The bill requires that after July 1, 2010, all new, modified, or repaired systems must meet the higher treatment standards. The onsite sewage treatment and disposal systems must produce an effluent that contains no more than the following concentrations:

- Biochemical Oxygen Demand of 10 mg/1.
- Suspended Solids of 10 mg/1.
- Total Nitrogen of 10 mg/1.
- Total Phosphorus of 1 mg/1.

In addition, onsite sewage treatment and disposal systems discharging to injection wells must provide basic disinfection as defined by DEP rule.

In areas scheduled to be served by central sewer by December 31, 2015, an exception is made to the 2010 deadline to provide that if the property owner has paid a connection fee or assessment for connection to the central sewer system, an onsite sewage treatment and disposal system may be repaired to certain minimum standards. Onsite sewage treatment and disposal systems must be monitored for total nitrogen and phosphorous concentrations.

The Department of Health (DOH) is required to enforce proper installation, operation, and maintenance of onsite sewage treatment and disposal systems pursuant to this chapter, including ensuring that the appropriate level of treatment described above is met.

Monroe County, each municipality, and those special districts established for the purpose of collection, transmission, treatment, or disposal of sewage may require connecting onsite sewage treatment and disposal systems to a central sewer system within 30 days after notice of availability of service.

The bill amends s. 403.086, F.S., providing legislative findings that the only practical and cost-effective way to fundamentally improve wastewater management in the Florida Keys is for local governments to complete the wastewater or sewage treatment and disposal facilities initiated under the work program of Commission rule 28-20, Florida Administrative Code (FAC), and the Monroe County Sanitary Master Wastewater Plan of 2000. The bill declares that the construction and operation of comprehensive central wastewater systems in accordance with this subsection is in the public interest. To give effect to those findings, the bill applies these requirements to all domestic wastewater facilities in Monroe County, including privately owned facilities, unless otherwise provided.

The bill adds the detailed onsite sewage treatment system requirements in chapter 99-395, L.O.F to the statute, and prohibits the discharge of domestic wastewater into surface waters. All new required wastewater systems must be completed by December 31, 2015, including facilities located outside local government and special district service areas.

Wastewater treatment facilities that have design capacities greater than or equal to 100,000 gallons/day must produce an effluent that contains no more than the following concentrations:

- Biochemical Oxygen Demand of 5 mg/1.
- Suspended Solids of 5 mg/1.
- Total Nitrogen of 3 mg/1.
- Total Phosphorus of 1 mg/1.

Facilities that have design capacities of less than 100,000 gallons/day must produce an effluent that contains no more of the following:

- Biochemical Oxygen Demand of 10 mg/1.
- Suspended Solids of 10 mg/1.
- Total Nitrogen of 10 mg/1.
- Total Phosphorus of 1 mg/1.

Class V injection wells must also meet certain requirements. A backup well may only be used under certain conditions. However, disposal systems serving as backups to reuse systems must comply with the provisions of this section.

For wastewater treatment facilities in operation as of July 1, 2010, which are located within areas to be served by Monroe County, municipalities in Monroe County, or special districts, and which are owned by other entities, the above requirements do not apply until January 1, 2016. Permits in effect for those facilities as of June 30, 2010, are extended until December 31, 2015, or until the facility is connected to a local government central wastewater system.

Wastewater treatment facilities in operation after December 31, 2015, must comply with the treatment and disposal requirements of this section and DEP rules.

The bill provides that if it is demonstrated that a discharge, even if the discharge is otherwise in compliance with the standards established in the bill, will cause or contribute to a violation of state water quality standards, the DEP shall:

1. Require more stringent effluent limitations;
2. Order the point or method of discharge changed;
3. Limit the duration or volume of the discharge; or
4. Prohibit the discharge.

All sewage treatment facilities must monitor effluent for total nitrogen and total phosphorus concentration as required by DEP rule. The county, each municipality, or special districts may require connecting wastewater treatment facilities owned by other entities to a central sewer system within 30

days after notice of availability of service. DEP may adopt rules necessary to carry out the section relating to sewage disposal facilities.

The bill repeals sections 4 of chapter 99-395, LOF, as amended by section 6 of chapter 2006-223, LOF, and sections 5 and 6 of chapter 99-395, LOF.

B. SECTION DIRECTORY:

Section 1. Amends s. 215.619, F.S., authorizing the issuance of bonds to be used to finance the cost of construction sewage facilities in the Florida Keys Area.

Section 2. Amends s. 380.0552, F.S., revising legislative intent relating to the designation of the Florida Keys as an area of critical state concern; revising the procedures for removing the designation; providing for administrative review of such removal rather than judicial review; authorizing the Administration Commission to adopt rules or revise existing rules; revising the principles guiding development; revising compliance requirements for reviewing comprehensive plan amendments.

Section 3. Amends s. 381.0065, F.S., providing additional requirements for onsite sewage treatment and disposal systems in Monroe County.

Section 4. Amends s. 403.086, F.S., providing legislative findings and discharge requirements for wastewater facilities in Monroe County.

Section 5. Repeals sections 4, 5, and 6 of chapter 99-395, Laws of Florida, as amended, relating to sewage treatment in the Florida Keys.

Section 6. 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 section

2. Expenditures:

   See Fiscal Comments section

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

DEP offered the following comments:

> Direct Private Sector Costs: Private sector costs (whether business owners or individual homeowners) would be experienced in one of two ways: paying for central sewer service through connection fees, impact fees and monthly sewer charges (or similar system charges); or paying for an upgraded onsite sewage treatment and disposal system. The cost of central sewer service depends on a wide range of factors, including: facility construction costs, which vary based on design as well as economic conditions; amount of wastewater flow contributed to

the system, or amount of water used; composition of charges, as different utility systems include different elements in their charges; cost of financing, both to the local government and to the customer if the local government offers financing options for system charges; and receipt of external funding, whether state or federal grants or loans. The cost of upgraded onsite systems are more straightforward and may be $10,000 - $20,000 depending on circumstances.

There is no single master source of comparative water and sewer rates; even where rate completely; there are different minimum charges (base rates); and unit charges ("gallons per") vary significantly as well—all of which may reflect policies about water conservation, energy use and other factors. The Miami-Dade Water & Sewer Department periodically compiles limited comparative water and sewer rate information, most recently updated in September 2009 and posted on the agency's website at http://www.miamidade.gov/wasd/rate-compare.asp. It reflects rates ranging between $25.24 per month (Chicago) and $138.31 per month (Atlanta). Average monthly bills posted for Florida communities are Cape Coral ($108.79), St. Petersburg ($63.02), Jacksonville ($58.62), Ft. Lauderdale ($56.79), Tampa ($45.64), Orlando ($45.38), Palm Beach County ($44.82), and Miami-Dade ($40.03). Rates for Islamorada and unincorporated Monroe County would be expected to fall toward the higher end of these rates. As previously noted, the receipt of external funding, whether state or federal grants or loans, helps underwrite costs and reduce customer rates and other charges.

Direct Private Sector Benefits: Central sewer service typically raises property values. Construction and construction-related activities provide jobs and inject money into local economies in the short run (typically 2-4 years). Longer term jobs related to facility operation, administration, laboratory work, etc., often result. Improved local water quality would likely enhance tourism, including eco-tourism, fishing (sporting and commercial), and other marine recreation—all of which provide substantial economic benefits.

D. FISCAL COMMENTS:

DEP offered the following comments:

To the extent the construction of central wastewater facilities is already required under the Area of Critical State Concern Work Program, the legislation itself does not impose any new costs on local governments in the Florida Keys. Furthermore, Key West, Key Colony Beach and Layton have already met the requirements and Key Largo and Marathon have generated the majority of revenues to do so (including funds from DEP grants and loans).

The estimated cost of the remaining central systems to be completed in Islamorada and unincorporated Monroe County vary greatly and will continue to vary based on shifting designs as well as economic circumstances. In July 2009, these costs were estimated by Monroe County local governments to be just over $357.3 million ($132.8 million for Islamorada and $224.5 for unincorporated Monroe County). The impact of these costs, aside from changes relating to shifting designs and economic circumstances, depend on financing rates (from whatever sources), the term over which costs are amortized, and whether or not supplementary grants or other state and federal financial assistance has been secured. The provision of wastewater service is a common local government responsibility, generally paid for through connection fees, impact fees, assessments, monthly user charges, or other system charges. These charges may be reduced by success in securing grants or low-interest loans from the state, as have other local governments in the Keys. The costs of building wastewater facilities in the Keys generally run higher than they do in the rest of Florida because of the geology. The income and wealth levels in these communities are generally substantially higher than the state average.

Long Run Effects Other Than Normal Growth: The completion of central wastewater systems would provide jobs and likely increase area property values, both of which enhance local economies. Improved local water quality would likely enhance tourism, including eco-tourism, fishing (sporting and commercial), and other marine recreation—all of which provide substantial economic benefits.

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:

The bill grants the Administration Commission rulemaking authority to administer revised statutory provisions governing the removal of designation as an Area of Critical State Concern. The bill grants DEP rulemaking authority to carry out discharge requirements for sewage treatment facilities.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to the Florida Keys Area; amending s. 215.619, F.S.; authorizing the issuance of bonds to be used to finance the cost of constructing sewage facilities in the Florida Keys Area; amending s. 380.0552, F.S.; revising legislative intent relating to the designation of the Florida Keys as an area of critical state concern; revising the procedures for removing the designation; providing for administrative review of such removal rather than judicial review; authorizing the Administration Commission to adopt rules or revise existing rules; revising the principles guiding development; revising compliance requirements for reviewing comprehensive plan amendments; amending s. 381.0065, F.S.; providing additional requirements for onsite sewage treatment and disposal systems in Monroe County; amending s. 403.086, F.S.; providing legislative findings and discharge requirements for wastewater facilities in Monroe County; repealing sections 4, 5, and 6 of ch. 99-395, Laws of Florida, as amended, relating to sewage treatment in the Florida Keys; providing an effective date.

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

Section 1. Subsection (1) of section 215.619, Florida Statutes, is amended to read:

215.619 Bonds for Everglades restoration.—

(1) The issuance of Everglades restoration bonds to

finance or refinance the cost of the acquisition and improvement of land, water areas, and related property interests and resources for the purpose of implementing the Comprehensive Everglades Restoration Plan under s. 373.470, the Lake Okeechobee Watershed Protection Plan under s. 373.4595, the Caloosahatchee River Watershed Protection Plan under s. 373.4595, the St. Lucie River Watershed Protection Plan under s. 373.4595, and the Florida Keys Area of Critical State Concern protection program under ss. 380.05 and 380.0552 in order to restore and conserve natural systems through the implementation of water management projects, including wastewater management projects identified in the "Keys Wastewater Plan," dated November 2007, and submitted to the Florida House of Representatives on December 4, 2007, is authorized in accordance with s. 11(e), Art. VII of the State Constitution.

(a) Everglades restoration bonds, except refunding bonds, may be issued only in fiscal years 2002-2003 through 2019-2020 and may not be issued in an amount exceeding $100 million per fiscal year unless:

1. ~~(a)~~ The Department of Environmental Protection has requested additional amounts in order to achieve cost savings or accelerate the purchase of land; or

2. ~~(b)~~ The Legislature authorizes an additional amount of bonds not to exceed $200 million, and limited to $50 million per fiscal year, ~~for no more than 4 fiscal years,~~ specifically for the purpose of funding the Florida Keys Area of Critical State Concern protection program. Proceeds from the bonds shall be managed by the Department of Environmental Protection for the

purpose of entering into financial assistance agreements with local governments located in the Florida Keys Area of Critical State Concern to finance or refinance the cost of constructing sewage collection, treatment, and disposal facilities.

(b) The duration of Everglades restoration bonds may not exceed 20 annual maturities~~,~~ and ~~those bonds~~ must mature by December 31, 2040. Except for refunding bonds, a series of bonds may not be issued unless an amount equal to the debt service coming due in the year of issuance has been appropriated by the Legislature. Beginning July 1, 2010, the Legislature shall analyze the ratio of the state's debt to projected revenues before authorizing the issuance of ~~prior to the authorization to issue any~~ bonds under this section.

Section 2. Subsections (2), (4), (7), and (9) of section 380.0552, Florida Statutes, are amended to read:

380.0552 Florida Keys Area; protection and designation as area of critical state concern.—

(2) LEGISLATIVE INTENT.—It is ~~hereby declared that~~ the intent of the Legislature to ~~is~~:

(a) ~~To~~ Establish a land use management system that protects the natural environment of the Florida Keys.

(b) ~~To~~ Establish a land use management system that conserves and promotes the community character of the Florida Keys.

(c) ~~To~~ Establish a land use management system that promotes orderly and balanced growth in accordance with the capacity of available and planned public facilities and services.

(d) ~~To~~ Provide ~~for~~ affordable housing in close proximity to places of employment in the Florida Keys.

(e) ~~To~~ Establish a land use management system that promotes and supports a diverse and sound economic base.

(f) ~~To~~ Protect the constitutional rights of property owners to own, use, and dispose of their real property.

(g) ~~To~~ Promote coordination and efficiency among governmental agencies that have ~~with~~ permitting jurisdiction over land use activities in the Florida Keys.

(h) Promote an appropriate land acquisition and protection strategy for environmentally sensitive lands within the Florida Keys.

(i) Protect and improve the nearshore water quality of the Florida Keys through the construction and operation of wastewater management facilities that meet the requirements of ss. 381.0065(4)(l) and 403.086(10), as applicable.

(j) Ensure that the population of the Florida Keys can be safely evacuated.

(4) REMOVAL OF DESIGNATION.—

(a) ~~Between July 12, 2008, and August 30, 2008, the state land planning agency shall submit a written report to the Administration Commission describing in detail the progress of the Florida Keys Area toward accomplishing the tasks of the work program as defined in paragraph (c) and providing a recommendation as to whether substantial progress toward accomplishing the tasks of the work program has been achieved. Subsequent to receipt of the report, the Administration Commission shall determine, prior to October 1, 2008, whether~~

~~substantial progress has been achieved toward accomplishing the tasks of the work program.~~ The designation of the Florida Keys Area as an area of critical state concern under this section may be recommended for removal upon fulfilling the legislative intent under subsection (2) and completion of all the work program tasks specified in rules of the Administration Commission ~~shall be removed October 1, 2009, unless the Administration Commission finds, after receipt of the state land planning agency report, that substantial progress has not been achieved toward accomplishing the tasks of the work program. If the designation of the Florida Keys Area as an area of critical state concern is removed, the Administration Commission, within 60 days after removal of the designation, shall initiate rulemaking pursuant to chapter 120 to repeal any rules relating to the designation of the Florida Keys Area as an area of critical state concern. If, after receipt of the state land planning agency's report, the Administration Commission finds that substantial progress toward accomplishing the tasks of the work program has not been achieved, the Administration Commission shall provide a written report to the Monroe County Commission within 30 days after making such finding detailing the tasks under the work program that must be accomplished in order for substantial progress to be achieved within the next 12 months.~~

(b) Beginning November 30, 2010, the state land planning agency shall annually submit a written report to the Administration Commission describing the progress of the Florida Keys Area toward completing the work program tasks specified in

commission rules. The land planning agency shall recommend removing the Florida Keys Area from being designated as an area of critical state concern to the commission if it determines that:

1. All of the work program tasks have been completed, including construction of, operation of, and connection to central wastewater management facilities pursuant to s. 403.086(10) and upgrade of onsite sewage treatment and disposal systems pursuant to s. 381.0065(4)(l);

2. All local comprehensive plans and land development regulations and the administration of such plans and regulations are adequate to protect the Florida Keys Area, fulfill the legislative intent specified in subsection (2), and are consistent with and further the principles guiding development; and

3. A local government has adopted a resolution at a public hearing recommending the removal of the designation.

~~(b) If the designation of the Florida Keys Area as an area of critical state concern is not removed in accordance with paragraph (a), the state land planning agency shall submit a written annual report to the Administration Commission on November 1 of each year, until such time as the designation is removed, describing the progress of the Florida Keys Area toward accomplishing remaining tasks under the work program and providing a recommendation as to whether substantial progress toward accomplishing the tasks of the work program has been achieved. The Administration Commission shall determine, within 45 days after receipt of the annual report, whether substantial~~

~~progress has been achieved toward accomplishing the remaining tasks of the work program. The designation of the Florida Keys Area as an area of critical state concern under this section shall be removed unless the Administration Commission finds that substantial progress has not been achieved toward accomplishing the tasks of the work program. If the designation of the Florida Keys Area as an area of critical state concern is removed, the Administration Commission, within 60 days after removal of the designation, shall initiate rulemaking pursuant to chapter 120 to repeal any rules relating to the designation of the Florida Keys Area as an area of critical state concern. If the Administration Commission finds that substantial progress has not been achieved, the Administration Commission shall provide to the Monroe County Commission, within 30 days after making its finding, a report detailing the tasks under the work program that must be accomplished in order for substantial progress to be achieved within the next 12 months.~~

(c) After receipt of the state land planning agency report and recommendation, the Administration Commission shall determine whether the requirements have been fulfilled and may remove the designation of the Florida Keys as an area of critical state concern. If the commission removes the designation, it shall initiate rulemaking to repeal any rules relating such designation within 60 days. If, after receipt of the state land planning agency's report and recommendation, the commission finds that the requirements for recommending removal of designation have not been met, the commission shall provide a written report to the local governments within 30 days after

making such a finding detailing the tasks that must be completed by the local government.

~~(c) For purposes of this subsection, the term "work program" means the 10-year work program as set forth in rule 28-20.110, Florida Administrative Code, on January 1, 2006, excluding amendments to the work program that take effect after January 1, 2006.~~

(d) The ~~determination of the~~ Administration Commission's determination concerning the removal of the designation of the Florida Keys as an area of critical state concern ~~Commission as to whether substantial progress has been made toward accomplishing the tasks of the work program~~ may be ~~judicially~~ reviewed pursuant to chapter 120 ~~86~~. All proceedings shall be conducted by the Division of Administrative Hearings and must be initiated within 30 days after the commission issues its determination ~~in the circuit court of the judicial circuit where the Administration Commission maintains its headquarters and shall be initiated within 30 days after rendition of the Administration Commission's determination~~. ~~The Administration Commission's determination as to whether substantial progress has been made toward accomplishing the tasks of the work program shall be upheld if it is supported by competent and substantial evidence and shall not be subject to administrative review under chapter 120.~~

(e) After removal of the designation of the Florida Keys as an area of critical state concern, the state land planning agency shall review proposed local comprehensive plans, and any amendments to existing comprehensive plans, which are applicable

to the Florida Keys Area, the boundaries of which were described in chapter 28-29, Florida Administrative Code, as of January 1, 2006, for compliance ~~with subparagraphs 1. and 2., in addition to reviewing proposed local comprehensive plans and amendments for compliance~~ as defined in s. 163.3184. All procedures and penalties described in s. 163.3184 apply to the review conducted pursuant to this paragraph.

~~1. Adoption of construction schedules for wastewater facilities improvements in the annually adopted capital improvements element and adoption of standards for the construction of wastewater treatment facilities which meet or exceed the criteria of chapter 99-395, Laws of Florida.~~

~~2. Adoption of goals, objectives, and policies to protect public safety and welfare in the event of a natural disaster by maintaining a hurricane evacuation clearance time for permanent residents of no more than 24 hours. The hurricane evacuation clearance time shall be determined by a hurricane evacuation study conducted in accordance with a professionally accepted methodology and approved by the state land planning agency.~~

(f) The Administration Commission may adopt rules or revise existing rules as necessary to administer this subsection.

(7) PRINCIPLES FOR GUIDING DEVELOPMENT.—State, regional, and local agencies and units of government in the Florida Keys Area shall coordinate their plans and conduct their programs and regulatory activities consistent with the principles for guiding development as specified ~~set forth~~ in chapter 27F-8, Florida Administrative Code, as amended effective August 23, 1984, which

~~chapter~~ is ~~hereby~~ adopted and incorporated herein by reference. For the purposes of reviewing the consistency of the adopted plan, or any amendments to that plan, with the principles for guiding development, and any amendments to the principles, the principles shall be construed as a whole and ~~no~~ specific provisions may not ~~provision shall~~ be construed or applied in isolation from the other provisions. However, the principles for guiding development ~~as set forth in chapter 27F-8, Florida Administrative Code, as amended effective August 23, 1984,~~ are repealed 18 months from July 1, 1986. After repeal, ~~the following shall be the principles with which~~ any plan amendments must be consistent with the following principles:

(a) Strengthening ~~To strengthen~~ local government capabilities for managing land use and development so that local government is able to achieve these objectives without continuing ~~the continuation of~~ the area of critical state concern designation.

(b) Protecting ~~To protect~~ shoreline and marine resources, including mangroves, coral reef formations, seagrass beds, wetlands, fish and wildlife, and their habitat.

(c) Protecting ~~To protect~~ upland resources, tropical biological communities, freshwater wetlands, native tropical vegetation (for example, hardwood hammocks and pinelands), dune ridges and beaches, wildlife, and their habitat.

(d) Ensuring ~~To ensure~~ the maximum well-being of the Florida Keys and its citizens through sound economic development.

(e) Limiting ~~To limit~~ the adverse impacts of development

on the quality of water throughout the Florida Keys.

(f) Enhancing ~~To enhance~~ natural scenic resources, promoting ~~promote~~ the aesthetic benefits of the natural environment, and ensuring ~~ensure~~ that development is compatible with the unique historic character of the Florida Keys.

(g) Protecting ~~To protect~~ the historical heritage of the Florida Keys.

(h) Protecting ~~To protect~~ the value, efficiency, cost-effectiveness, and amortized life of existing and proposed major public investments, including:

1. The Florida Keys Aqueduct and water supply facilities;

2. Sewage collection, treatment, and disposal facilities;

3. Solid waste collection, treatment, and disposal facilities;

4. Key West Naval Air Station and other military facilities;

5. Transportation facilities;

6. Federal parks, wildlife refuges, and marine sanctuaries;

7. State parks, recreation facilities, aquatic preserves, and other publicly owned properties;

8. City electric service and the Florida Keys Electric Co-op; and

9. Other utilities, as appropriate.

(i) Protecting and improving water quality by providing for the construction, operation, maintenance, and replacement of stormwater management facilities; central sewage collection; treatment and disposal facilities; and the installation and

proper operation and maintenance of onsite sewage treatment and disposal systems.

(j) Ensuring the improvement of nearshore water quality by requiring the construction and operation of wastewater management facilities that meet the requirements of s. 381.0065(4)(l) and s. 403.086(10), as applicable, and by directing growth to areas served by central wastewater treatment facilities through permit allocation systems.

(k) ~~(i)~~ Limiting ~~To limit~~ the adverse impacts of public investments on the environmental resources of the Florida Keys.

(l) ~~(j)~~ Making ~~To make~~ available adequate affordable housing for all sectors of the population of the Florida Keys.

(m) ~~(k)~~ Providing ~~To provide~~ adequate alternatives for the protection of public safety and welfare in the event of a natural or manmade disaster and for a postdisaster reconstruction plan.

(n) ~~(l)~~ Protecting ~~To protect~~ the public health, safety, and welfare of the citizens of the Florida Keys and maintain the Florida Keys as a unique Florida resource.

(9) MODIFICATION TO PLANS AND REGULATIONS.—

(a) Any land development regulation or element of a local comprehensive plan in the Florida Keys Area may be enacted, amended, or rescinded by a local government, but the enactment, amendment, or rescission becomes ~~shall become~~ effective only upon ~~the~~ approval ~~thereof~~ by the state land planning agency. The state land planning agency shall review the proposed change to determine if it is in compliance with the principles for guiding development specified ~~set forth~~ in chapter 27F-8, Florida

Administrative Code, as amended effective August 23, 1984, and must ~~shall either~~ approve or reject the requested changes within 60 days after ~~of~~ receipt ~~thereof~~. Amendments to local comprehensive plans in the Florida Keys Area must also be reviewed for compliance with the following:

1. Construction schedules and detailed capital financing plans for wastewater management improvements in the annually adopted capital improvements element, and standards for the construction of wastewater treatment and disposal facilities or collection systems that meet or exceed the criteria in s. 403.086(10) for wastewater treatment and disposal facilities or s. 381.0065(4)(l) for onsite sewage treatment and disposal systems.

2. Goals, objectives, and policies to protect public safety and welfare in the event of a natural disaster by maintaining a hurricane evacuation clearance time for permanent residents of no more than 24 hours. The hurricane evacuation clearance time shall be determined by a hurricane evacuation study conducted in accordance with a professionally accepted methodology and approved by the state land planning agency.

(b) ~~Further,~~ The state land planning agency, after consulting with the appropriate local government, may, no more ~~often~~ than once per ~~a~~ year, recommend to the Administration Commission the enactment, amendment, or rescission of a land development regulation or element of a local comprehensive plan. Within 45 days following the receipt of such recommendation ~~by the state land planning agency~~, the commission shall reject the recommendation, or accept it with or without modification and

adopt it~~,~~ by rule, including any changes. ~~Any~~ Such local development regulation or plan must ~~shall~~ be in compliance with the principles for guiding development.

Section 3. Paragraph (l) of subsection (4) of section 381.0065, Florida Statutes, is amended to read:

381.0065 Onsite sewage treatment and disposal systems; regulation.—

(4) PERMITS; INSTALLATION; AND CONDITIONS.—A person may not construct, repair, modify, abandon, or operate an onsite sewage treatment and disposal system without first obtaining a permit approved by the department. The department may issue permits to carry out this section, but shall not make the issuance of such permits contingent upon prior approval by the Department of Environmental Protection, except that the issuance of a permit for work seaward of the coastal construction control line established under s. 161.053 shall be contingent upon receipt of any required coastal construction control line permit from the Department of Environmental Protection. A construction permit is valid for 18 months from the issuance date and may be extended by the department for one 90-day period under rules adopted by the department. A repair permit is valid for 90 days following ~~from~~ the date of issuance. An operating permit must be obtained prior to the use of any aerobic treatment unit or if the establishment generates commercial waste. Buildings or establishments that use an aerobic treatment unit or generate commercial waste shall be inspected by the department at least annually to assure compliance with the terms of the operating permit. The operating permit for a commercial wastewater system

is valid for 1 year from the date of issuance and must be renewed annually. The operating permit for an aerobic treatment unit is valid for 2 years from the date of issuance and must be renewed every 2 years. If all information pertaining to the siting, location, and installation conditions or repair of an onsite sewage treatment and disposal system remains the same, a construction or repair permit for the onsite sewage treatment and disposal system may be transferred to another person, if the transferee files, within 60 days after the transfer of ownership, an amended application providing all corrected information and proof of ownership of the property. There is no fee associated with the processing of this supplemental information. A person may not contract to construct, modify, alter, repair, service, abandon, or maintain any portion of an onsite sewage treatment and disposal system without being registered under part III of chapter 489. A property owner who personally performs construction, maintenance, or repairs to a system serving his or her own owner-occupied single-family residence is exempt from registration requirements for performing such construction, maintenance, or repairs on that residence, but is subject to all permitting requirements. A municipality or political subdivision of the state may not issue a building or plumbing permit for any building that requires the use of an onsite sewage treatment and disposal system unless the owner or builder has received a construction permit for such system from the department. A building or structure may not be occupied and a municipality, political subdivision, or any state or federal agency may not authorize occupancy until the

department approves the final installation of the onsite sewage treatment and disposal system. A municipality or political subdivision of the state may not approve any change in occupancy or tenancy of a building that uses an onsite sewage treatment and disposal system until the department has reviewed the use of the system with the proposed change, approved the change, and amended the operating permit.

(a) Subdivisions and lots in which each lot has a minimum area of at least one-half acre and either a minimum dimension of 100 feet or a mean of at least 100 feet of the side bordering the street and the distance formed by a line parallel to the side bordering the street drawn between the two most distant points of the remainder of the lot may be developed with a water system regulated under s. 381.0062 and onsite sewage treatment and disposal systems, provided the projected daily sewage flow does not exceed an average of 1,500 gallons per acre per day, and provided satisfactory drinking water can be obtained and all distance and setback, soil condition, water table elevation, and other related requirements of this section and rules adopted under this section can be met.

(b) Subdivisions and lots using a public water system as defined in s. 403.852 may use onsite sewage treatment and disposal systems, provided there are no more than four lots per acre, provided the projected daily sewage flow does not exceed an average of 2,500 gallons per acre per day, and provided that all distance and setback, soil condition, water table elevation, and other related requirements that are generally applicable to the use of onsite sewage treatment and disposal systems are met.

(c) Notwithstanding paragraphs (a) and (b), for subdivisions platted of record on or before October 1, 1991, when a developer or other appropriate entity has previously made or makes provisions, including financial assurances or other commitments, acceptable to the Department of Health, that a central water system will be installed by a regulated public utility based on a density formula, private potable wells may be used with onsite sewage treatment and disposal systems until the agreed-upon densities are reached. In a subdivision regulated by this paragraph, the average daily sewage flow may not exceed 2,500 gallons per acre per day. This section does not affect the validity of existing prior agreements. After October 1, 1991, the exception provided under this paragraph is not available to a developer or other appropriate entity.

(d) Paragraphs (a) and (b) do not apply to any proposed residential subdivision with more than 50 lots or to any proposed commercial subdivision with more than 5 lots where a publicly owned or investor-owned sewerage system is available. It is the intent of this paragraph not to allow development of additional proposed subdivisions in order to evade the requirements of this paragraph.

(e) Onsite sewage treatment and disposal systems must not be placed closer than:

1. Seventy-five feet from a private potable well.

2. Two hundred feet from a public potable well serving a residential or nonresidential establishment having a total sewage flow of greater than 2,000 gallons per day.

3. One hundred feet from a public potable well serving a

residential or nonresidential establishment having a total sewage flow of less than or equal to 2,000 gallons per day.

4. Fifty feet from any nonpotable well.

5. Ten feet from any storm sewer pipe, to the maximum extent possible, but in no instance shall the setback be less than 5 feet.

6. Seventy-five feet from the mean high-water line of a tidally influenced surface water body.

7. Seventy-five feet from the mean annual flood line of a permanent nontidal surface water body.

8. Fifteen feet from the design high-water line of retention areas, detention areas, or swales designed to contain standing or flowing water for less than 72 hours after a rainfall or the design high-water level of normally dry drainage ditches or normally dry individual lot stormwater retention areas.

(f) Except as provided under paragraphs (e) and (t), no limitations shall be imposed by rule, relating to the distance between an onsite disposal system and any area that either permanently or temporarily has visible surface water.

(g) All provisions of this section and rules adopted under this section relating to soil condition, water table elevation, distance, and other setback requirements must be equally applied to all lots, with the following exceptions:

1. Any residential lot that was platted and recorded on or after January 1, 1972, or that is part of a residential subdivision that was approved by the appropriate permitting agency on or after January 1, 1972, and that was eligible for an

onsite sewage treatment and disposal system construction permit on the date of such platting and recording or approval shall be eligible for an onsite sewage treatment and disposal system construction permit, regardless of when the application for a permit is made. If rules in effect at the time the permit application is filed cannot be met, residential lots platted and recorded or approved on or after January 1, 1972, shall, to the maximum extent possible, comply with the rules in effect at the time the permit application is filed. At a minimum, however, those residential lots platted and recorded or approved on or after January 1, 1972, but before January 1, 1983, shall comply with those rules in effect on January 1, 1983, and those residential lots platted and recorded or approved on or after January 1, 1983, shall comply with those rules in effect at the time of such platting and recording or approval. In determining the maximum extent of compliance with current rules that is possible, the department shall allow structures and appurtenances thereto which were authorized at the time such lots were platted and recorded or approved.

2. Lots platted before 1972 are subject to a 50-foot minimum surface water setback and are not subject to lot size requirements. The projected daily flow for onsite sewage treatment and disposal systems for lots platted before 1972 may not exceed:

a. Two thousand five hundred gallons per acre per day for lots served by public water systems as defined in s. 403.852.

b. One thousand five hundred gallons per acre per day for lots served by water systems regulated under s. 381.0062.

(h)1. The department may grant variances in hardship cases which may be less restrictive than the provisions specified in this section. If a variance is granted and the onsite sewage treatment and disposal system construction permit has been issued, the variance may be transferred with the system construction permit, if the transferee files, within 60 days after the transfer of ownership, an amended construction permit application providing all corrected information and proof of ownership of the property and if the same variance would have been required for the new owner of the property as was originally granted to the original applicant for the variance. There is no fee associated with the processing of this supplemental information. A variance may not be granted under this section until the department is satisfied that:

a. The hardship was not caused intentionally by the action of the applicant;

b. No reasonable alternative, taking into consideration factors such as cost, exists for the treatment of the sewage; and

c. The discharge from the onsite sewage treatment and disposal system will not adversely affect the health of the applicant or the public or significantly degrade the groundwater or surface waters.

Where soil conditions, water table elevation, and setback provisions are determined by the department to be satisfactory, special consideration must be given to those lots platted before 1972.

2. The department shall appoint and staff a variance review and advisory committee, which shall meet monthly to recommend agency action on variance requests. The committee shall make its recommendations on variance requests at the meeting in which the application is scheduled for consideration, except for an extraordinary change in circumstances, the receipt of new information that raises new issues, or when the applicant requests an extension. The committee shall consider the criteria in subparagraph 1. in its recommended agency action on variance requests and shall also strive to allow property owners the full use of their land where possible. The committee consists of the following:

a. The Division Director for Environmental Health of the department or his or her designee.

b. A representative from the county health departments.

c. A representative from the home building industry recommended by the Florida Home Builders Association.

d. A representative from the septic tank industry recommended by the Florida Onsite Wastewater Association.

e. A representative from the Department of Environmental Protection.

f. A representative from the real estate industry who is also a developer in this state who develops lots using onsite sewage treatment and disposal systems, recommended by the Florida Association of Realtors.

g. A representative from the engineering profession recommended by the Florida Engineering Society.

Members shall be appointed for a term of 3 years, with such appointments being staggered so that the terms of no more than two members expire in any one year. Members shall serve without remuneration, but if requested, shall be reimbursed for per diem and travel expenses as provided in s. 112.061.

(i) A construction permit may not be issued for an onsite sewage treatment and disposal system in any area zoned or used for industrial or manufacturing purposes, or its equivalent, where a publicly owned or investor-owned sewage treatment system is available, or where a likelihood exists that the system will receive toxic, hazardous, or industrial waste. An existing onsite sewage treatment and disposal system may be repaired if a publicly owned or investor-owned sewerage system is not available within 500 feet of the building sewer stub-out and if system construction and operation standards can be met. This paragraph does not require publicly owned or investor-owned sewerage treatment systems to accept anything other than domestic wastewater.

1. A building located in an area zoned or used for industrial or manufacturing purposes, or its equivalent, when such building is served by an onsite sewage treatment and disposal system, must not be occupied until the owner or tenant has obtained written approval from the department. The department shall not grant approval when the proposed use of the system is to dispose of toxic, hazardous, or industrial wastewater or toxic or hazardous chemicals.

2. Each person who owns or operates a business or facility in an area zoned or used for industrial or manufacturing

purposes, or its equivalent, or who owns or operates a business that has the potential to generate toxic, hazardous, or industrial wastewater or toxic or hazardous chemicals, and uses an onsite sewage treatment and disposal system that is installed on or after July 5, 1989, must obtain an annual system operating permit from the department. A person who owns or operates a business that uses an onsite sewage treatment and disposal system that was installed and approved before July 5, 1989, need not obtain a system operating permit. However, upon change of ownership or tenancy, the new owner or operator must notify the department of the change, and the new owner or operator must obtain an annual system operating permit, regardless of the date that the system was installed or approved.

3. The department shall periodically review and evaluate the continued use of onsite sewage treatment and disposal systems in areas zoned or used for industrial or manufacturing purposes, or its equivalent, and may require the collection and analyses of samples from within and around such systems. If the department finds that toxic or hazardous chemicals or toxic, hazardous, or industrial wastewater have been or are being disposed of through an onsite sewage treatment and disposal system, the department shall initiate enforcement actions against the owner or tenant to ensure adequate cleanup, treatment, and disposal.

(j) An onsite sewage treatment and disposal system for a single-family residence that is designed by a professional engineer registered in the state and certified by such engineer as complying with performance criteria adopted by the department

must be approved by the department subject to the following:

1. The performance criteria applicable to engineer-designed systems must be limited to those necessary to ensure that such systems do not adversely affect the public health or significantly degrade the groundwater or surface water. Such performance criteria shall include consideration of the quality of system effluent, the proposed total sewage flow per acre, wastewater treatment capabilities of the natural or replaced soil, water quality classification of the potential surface-water-receiving body, and the structural and maintenance viability of the system for the treatment of domestic wastewater. However, performance criteria shall address only the performance of a system and not a system's design.

2. The technical review and advisory panel shall assist the department in the development of performance criteria applicable to engineer-designed systems.

3. A person electing to utilize an engineer-designed system shall, upon completion of the system design, submit such design, certified by a registered professional engineer, to the county health department. The county health department may utilize an outside consultant to review the engineer-designed system, with the actual cost of such review to be borne by the applicant. Within 5 working days after receiving an engineer-designed system permit application, the county health department shall request additional information if the application is not complete. Within 15 working days after receiving a complete application for an engineer-designed system, the county health department either shall issue the permit or, if it determines

that the system does not comply with the performance criteria, shall notify the applicant of that determination and refer the application to the department for a determination as to whether the system should be approved, disapproved, or approved with modification. The department engineer's determination shall prevail over the action of the county health department. The applicant shall be notified in writing of the department's determination and of the applicant's rights to pursue a variance or seek review under the provisions of chapter 120.

4. The owner of an engineer-designed performance-based system must maintain a current maintenance service agreement with a maintenance entity permitted by the department. The maintenance entity shall obtain a biennial system operating permit from the department for each system under service contract. The department shall inspect the system at least annually, or on such periodic basis as the fee collected permits, and may collect system-effluent samples if appropriate to determine compliance with the performance criteria. The fee for the biennial operating permit shall be collected beginning with the second year of system operation. The maintenance entity shall inspect each system at least twice each year and shall report quarterly to the department on the number of systems inspected and serviced.

5. If an engineer-designed system fails to properly function or fails to meet performance standards, the system shall be re-engineered, if necessary, to bring the system into compliance with the provisions of this section.

(k) An innovative system may be approved in conjunction

with an engineer-designed site-specific system which is certified by the engineer to meet the performance-based criteria adopted by the department.

(l) For the Florida Keys, the department shall adopt a special rule for the construction, installation, modification, operation, repair, maintenance, and performance of onsite sewage treatment and disposal systems which considers the unique soil conditions and ~~which considers~~ water table elevations, densities, and setback requirements. On lots where a setback distance of 75 feet from surface waters, saltmarsh, and buttonwood association habitat areas cannot be met, an injection well, approved and permitted by the department, may be used for disposal of effluent from onsite sewage treatment and disposal systems. The following additional requirements apply to onsite sewage treatment and disposal systems in Monroe County:

1. The county, each municipality, and those special districts established for the purpose of the collection, transmission, treatment, or disposal of sewage shall ensure, in accordance with the specific schedules adopted by the Administration Commission under s. 380.0552, the completion of onsite sewage treatment and disposal system upgrades to meet the requirements of this paragraph.

2. Onsite sewage treatment and disposal systems must cease discharge by December 31, 2015, or must comply with department rules and provide the level of treatment which, on a permitted annual average basis, produces an effluent that contains no more than the following concentrations:

a. Biochemical Oxygen Demand (CBOD5) of 10 mg/l.

b. Suspended Solids of 10 mg/l.

c. Total Nitrogen, expressed as N, of 10 mg/l.

d. Total Phosphorus, expressed as P, of 1 mg/l.

In addition, onsite sewage treatment and disposal systems discharging to an injection well must provide basic disinfection as defined by department rule.

3. On or after July 1, 2010, all new, modified, and repaired onsite sewage treatment and disposal systems must provide the level of treatment described in subparagraph 2. However, in areas scheduled to be served by central sewer by December 31, 2015, if the property owner has paid a connection fee or assessment for connection to the central sewer system, an onsite sewage treatment and disposal system may be repaired to the following minimum standards:

a. The existing tanks must be pumped and inspected and certified as being watertight and free of defects in accordance with department rule; and

b. A sand-lined drainfield or injection well in accordance with department rule must be installed.

4. Onsite sewage treatment and disposal systems must be monitored for total nitrogen and total phosphorus concentrations as required by department rule.

5. The department shall enforce proper installation, operation, and maintenance of onsite sewage treatment and disposal systems pursuant to this chapter, including ensuring that the appropriate level of treatment described in subparagraph 2. is met.

6. The county, each municipality, and those special districts established for the purpose of collection, transmission, treatment, or disposal of sewage may require connecting onsite sewage treatment and disposal systems to a central sewer system within 30 days after notice of availability of service.

(m) No product sold in the state for use in onsite sewage treatment and disposal systems may contain any substance in concentrations or amounts that would interfere with or prevent the successful operation of such system, or that would cause discharges from such systems to violate applicable water quality standards. The department shall publish criteria for products known or expected to meet the conditions of this paragraph. In the event a product does not meet such criteria, such product may be sold if the manufacturer satisfactorily demonstrates to the department that the conditions of this paragraph are met.

(n) Evaluations for determining the seasonal high-water table elevations or the suitability of soils for the use of a new onsite sewage treatment and disposal system shall be performed by department personnel, professional engineers registered in the state, or such other persons with expertise, as defined by rule, in making such evaluations. Evaluations for determining mean annual flood lines shall be performed by those persons identified in paragraph (2)(i). The department shall accept evaluations submitted by professional engineers and such other persons as meet the expertise established by this section or by rule unless the department has a reasonable scientific basis for questioning the accuracy or completeness of the

evaluation.

(o) The department shall appoint a research review and advisory committee, which shall meet at least semiannually. The committee shall advise the department on directions for new research, review and rank proposals for research contracts, and review draft research reports and make comments. The committee is comprised of:

1. A representative of the Division of Environmental Health of the Department of Health.

2. A representative from the septic tank industry.

3. A representative from the home building industry.

4. A representative from an environmental interest group.

5. A representative from the State University System, from a department knowledgeable about onsite sewage treatment and disposal systems.

6. A professional engineer registered in this state who has work experience in onsite sewage treatment and disposal systems.

7. A representative from local government who is knowledgeable about domestic wastewater treatment.

8. A representative from the real estate profession.

9. A representative from the restaurant industry.

10. A consumer.

Members shall be appointed for a term of 3 years, with the appointments being staggered so that the terms of no more than four members expire in any one year. Members shall serve without remuneration, but are entitled to reimbursement for per diem and

travel expenses as provided in s. 112.061.

(p) An application for an onsite sewage treatment and disposal system permit shall be completed in full, signed by the owner or the owner's authorized representative, or by a contractor licensed under chapter 489, and shall be accompanied by all required exhibits and fees. No specific documentation of property ownership shall be required as a prerequisite to the review of an application or the issuance of a permit. The issuance of a permit does not constitute determination by the department of property ownership.

(q) The department may not require any form of subdivision analysis of property by an owner, developer, or subdivider prior to submission of an application for an onsite sewage treatment and disposal system.

(r) Nothing in this section limits the power of a municipality or county to enforce other laws for the protection of the public health and safety.

(s) In the siting of onsite sewage treatment and disposal systems, including drainfields, shoulders, and slopes, guttering shall not be required on single-family residential dwelling units for systems located greater than 5 feet from the roof drip line of the house. If guttering is used on residential dwelling units, the downspouts shall be directed away from the drainfield.

(t) Notwithstanding the provisions of subparagraph (g)1., onsite sewage treatment and disposal systems located in floodways of the Suwannee and Aucilla Rivers must adhere to the following requirements:

1. The absorption surface of the drainfield shall not be subject to flooding based on 10-year flood elevations. Provided, however, for lots or parcels created by the subdivision of land in accordance with applicable local government regulations prior to January 17, 1990, if an applicant cannot construct a drainfield system with the absorption surface of the drainfield at an elevation equal to or above 10-year flood elevation, the department shall issue a permit for an onsite sewage treatment and disposal system within the 10-year floodplain of rivers, streams, and other bodies of flowing water if all of the following criteria are met:

a. The lot is at least one-half acre in size;

b. The bottom of the drainfield is at least 36 inches above the 2-year flood elevation; and

c. The applicant installs either: a waterless, incinerating, or organic waste composting toilet and a graywater system and drainfield in accordance with department rules; an aerobic treatment unit and drainfield in accordance with department rules; a system approved by the State Health Office that is capable of reducing effluent nitrate by at least 50 percent; or a system approved by the county health department pursuant to department rule other than a system using alternative drainfield materials. The United States Department of Agriculture Soil Conservation Service soil maps, State of Florida Water Management District data, and Federal Emergency Management Agency Flood Insurance maps are resources that shall be used to identify flood-prone areas.

2. The use of fill or mounding to elevate a drainfield

system out of the 10-year floodplain of rivers, streams, or other bodies of flowing water shall not be permitted if such a system lies within a regulatory floodway of the Suwannee and Aucilla Rivers. In cases where the 10-year flood elevation does not coincide with the boundaries of the regulatory floodway, the regulatory floodway will be considered for the purposes of this subsection to extend at a minimum to the 10-year flood elevation.

(u) The owner of an aerobic treatment unit system shall maintain a current maintenance service agreement with an aerobic treatment unit maintenance entity permitted by the department. The maintenance entity shall obtain a system operating permit from the department for each aerobic treatment unit under service contract. The maintenance entity shall inspect each aerobic treatment unit system at least twice each year and shall report quarterly to the department on the number of aerobic treatment unit systems inspected and serviced. The owner shall allow the department to inspect during reasonable hours each aerobic treatment unit system at least annually, and such inspection may include collection and analysis of system-effluent samples for performance criteria established by rule of the department.

(v) The department may require the submission of detailed system construction plans that are prepared by a professional engineer registered in this state. The department shall establish by rule criteria for determining when such a submission is required.

Section 4. Subsection (10) is added to section 403.086,

Florida Statutes, to read:

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

(10) The Legislature finds that the discharge of inadequately treated and managed domestic wastewater from dozens of small wastewater facilities and thousands of septic tanks and other onsite systems in the Florida Keys compromises the quality of the coastal environment, including nearshore and offshore waters, and threatens the quality of life and local economies that depend on those resources. The Legislature also finds that the only practical and cost-effective way to fundamentally improve wastewater management in the Florida Keys is for the local governments in Monroe County, including those special districts established for the purpose of collection, transmission, treatment, or disposal of sewage, to timely complete the wastewater or sewage treatment and disposal facilities initiated under the work program of Administration Commission rule 28-20, Florida Administrative Code, and the Monroe County Sanitary Master Wastewater Plan, dated June 2000. The Legislature therefore declares that the construction and operation of comprehensive central wastewater systems in accordance with this subsection is in the public interest. To give effect to those findings, the requirements of this subsection apply to all domestic wastewater facilities in Monroe County, including privately owned facilities, unless otherwise provided under this subsection.

(a) The discharge of domestic wastewater into surface waters is prohibited.

(b) Monroe County, each municipality, and those special districts established for the purpose of collection, transmission, treatment, or disposal of sewage in Monroe County shall complete the wastewater collection, treatment, and disposal facilities within its jurisdiction designated as hot spots in the Monroe County Sanitary Master Wastewater Plan, dated June 2000, specifically listed in Exhibits 6-1 through 6-3 of Chapter 6 of the plan and mapped in Exhibit F-1 of Appendix F of the plan. The required facilities and connections, and any additional facilities or other adjustments required by rules adopted by the Administration Commission under s. 380.0552, must be completed by December 31, 2015, pursuant to specific schedules established by the commission. Domestic wastewater facilities located outside local government and special district service areas must meet the treatment and disposal requirements of this subsection by December 31, 2015.

(c) After December 31, 2015, all new or expanded domestic wastewater discharges must comply with the treatment and disposal requirements of this subsection and department rules.

(d) Wastewater treatment facilities having design capacities:

1. Greater than or equal to 100,000 gallons per day must provide basic disinfection as defined by department rule and the level of treatment which, on a permitted annual average basis, produces an effluent that contains no more than the following concentrations:

a. Biochemical Oxygen Demand (CBOD5) of 5 mg/l.

b. Suspended Solids of 5 mg/l.

c. Total Nitrogen, expressed as N, of 3 mg/l.

d. Total Phosphorus, expressed as P, of 1 mg/l.

2. Less than 100,000 gallons per day must provide basic disinfection as defined by department rule and the level of treatment which, on a permitted annual average basis, produces an effluent that contains no more than the following concentrations:

a. Biochemical Oxygen Demand (CBOD5) of 10 mg/l.

b. Suspended Solids of 10 mg/l.

c. Total Nitrogen, expressed as N, of 10 mg/l.

d. Total Phosphorus, expressed as P, of 1 mg/l.

(e) Class V injection wells, as defined by department or Department of Health rule, must meet the following requirements and otherwise comply with department or Department of Health rules, as applicable:

1. If the design capacity of the facility is less than 1 million gallons per day, the injection well must be at least 90 feet deep and cased to a minimum depth of 60 feet or to such greater cased depth and total well depth as may be required by department rule.

2. Except as provided in subparagraph 3. for backup wells, if the design capacity of the facility is equal to or greater than 1 million gallons per day, each primary injection well must be cased to a minimum depth of 2,000 feet or to such greater depth as may be required by department rule.

3. If an injection well is used as a backup to a primary injection well, the following conditions apply:

a. The backup well may be used only when the primary

injection well is out of service because of equipment failure, power failure, or the need for mechanical integrity testing or repair;

b. The backup well may not be used for more than a total of 500 hours during any 5-year period unless specifically authorized in writing by the department;

c. The backup well must be at least 90 feet deep and cased to a minimum depth of 60 feet, or to such greater cased depth and total well depth as may be required by department rule; and

d. Fluid injected into the backup well must meet the requirements of paragraph (d).

(f) The requirements of paragraphs (d) and (e) do not apply to:

1. Class I injection wells as defined by department rule, including any authorized mechanical integrity tests;

2. Authorized mechanical integrity tests associated with Class V wells as defined by department rule; or

3. The following types of reuse systems authorized by department rule:

a. Slow-rate land application systems;

b. Industrial uses of reclaimed water; and

c. Use of reclaimed water for toilet flushing, fire protection, vehicle washing, construction dust control, and decorative water features.

However, disposal systems serving as backups to reuse systems must comply with the other provisions of this subsection.

(g) For wastewater treatment facilities in operation as of

July 1, 2010, which are located within areas to be served by Monroe County, municipalities in Monroe County, or those special districts established for the purpose of collection, transmission, treatment, or disposal of sewage but which are owned by other entities, the requirements of paragraphs (d) and (e) do not apply until January 1, 2016. Wastewater operating permits issued pursuant to this chapter and in effect for these facilities as of June 30, 2010, are extended until December 31, 2015, or until the facility is connected to a local government central wastewater system, whichever occurs first. Wastewater treatment facilities in operation after December 31, 2015, must comply with the treatment and disposal requirements of this subsection and department rules.

(h) If it is demonstrated that a discharge, even if the discharge is otherwise in compliance with this subsection, will cause or contribute to a violation of state water quality standards, the department shall:

1. Require more stringent effluent limitations;

2. Order the point or method of discharge changed;

3. Limit the duration or volume of the discharge; or

4. Prohibit the discharge.

(i) All sewage treatment facilities must monitor effluent for total nitrogen and total phosphorus concentration as required by department rule.

(j) The department shall require the levels of operator certification and staffing necessary to ensure proper operation and maintenance of sewage facilities.

(k) The department may adopt rules necessary to carry out

this subsection.

(1) The county, each municipality, and those special districts established for the purpose of collection, transmission, treatment, or disposal of sewage may require connecting wastewater treatment facilities owned by other entities to a central sewer system within 30 days after notice of availability of service.

Section 5. Section 4 of chapter 99-395, Laws of Florida, as amended by section 6 of chapter 2006-223, Laws of Florida; section 5 of chapter 99-395, Laws of Florida; and section 6 of chapter 99-395, Laws of Florida, as amended by section 1 of chapter 2001-337 and section 1 of chapter 2004-455, Laws of Florida, are repealed.

Section 6. This act shall take effect upon becoming a law.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCSMB for HB 1407,HB 1367 & HB 1605 Water Management
SPONSOR(S): Hays, Holder, Mayfield
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 directs county and municipal governments that use state water resources for water supply purposes, in cooperation with the applicable water management district (WMD), to conduct an evaluation of water resources that might reasonably be considered to be a primary source of water and determine if the water resources are adequately protected from sources of pollution and from land uses incompatible with their protection.

The bill amends statutory provisions relating to the make-up of water basin boards. If there are two WMD board members sitting on a water basin board, the pair will rotate the chair/co-chair position on an annual basis. If there is a vacancy on a water basin board, a quorum of total remaining basin board members may transact business until a successor is appointed. Finally, the bill places a Southwest Florida WMD board member on the Manasota Basin Board beginning July 1, 2010.

The bill exempts WMD cooperative funding programs from Chapter 120, F.S., rulemaking requirements unless any portion of an approved program affects the substantial interests of a party. The bill requires a WMD board to acquire specific Legislative authority for acquisition costs in excess of $50 million and for professional service procurement costs in excess of $5 million. The bill restricts the issuance of certificates of participation by a WMD for the purchase of land. The bill directs WMD governing boards to conduct reviews for lands for which title is vested in the WMD. The purpose of the review is to determine which lands are no longer needed for conservation and restoration, or are no longer considered environmentally critical or sensitive. Such lands will be made available for purchase so the property can be reentered onto the county ad valorem tax roll of the county in which such land is located.

The bill creates a water management district governing board nominating commission consisting of 9 members, three appointed by the Governor, three appointed by the President of the Senate, and three appointed by the Speaker of the House of Representatives. The Executive Office of the Governor will provide all administrative support for the governing board nominating commission and shall adopt rules necessary to administer this section.

Under the bill, a commissioner is considered a "state officer" for purposes of financial disclosure requirements, may not be a current or former WMD governing board member, may hold public office, is not eligible during his or her term of office and for a period of 2 years thereafter for appointment to any board for which the commission has the authority to make nominations, may be suspended for cause by the person who appointed him or her, and must submit to the Governor three recommended nominees for each district governing board position. Under the bill, a nominee must reside in the territorial jurisdiction of the governing board to which the commission will recommend appointments, and must have significant experience in one or more of the following areas: agriculture, the development industry, local government, government-owned or privately owned water utilities, law, civil engineering, environmental science, hydrology, accounting, or finance. The Governor shall select appointees from the list of recommended nominees for any vacant WMD board position.

The bill appears to have no negative fiscal impact on local governments. At the state government level, there may be costs associated with rulemaking and administrative duties by the Executive Office of the Governor.
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
Management of Surface and Ground Waters

State and District
The Florida Department of Environmental Protection (DEP) regulates activities that affect natural systems primarily through the Environmental Resource Permit (ERP) program, implemented jointly by the DEP and the water management districts (WMDs). The ERP program regulates most land (upland, wetland, and other surface water) alterations throughout the state. In addition to the Federal State Programmatic General Permit, the regulatory program also includes implementation of a statewide National Pollutant Discharge Elimination System (NPDES) program. In addition, activities located on or using state-owned sovereign submerged lands also require applicable proprietary authorizations (including Consents of Use, Leases, and Easements).

The comprehensive nature of the state program is broader than the federal regulatory program in that it also regulates alterations of uplands that may affect surface water flows, addresses issues of flooding and stormwater treatment, and protects isolated wetlands[1]. The Clean Water Act does not give the federal government regulatory jurisdiction over isolated wetlands, except when such wetlands are adjacent to navigable waters of the United States[2]. The state program is in addition to, not in place of or superseded by, the federal permit programs. Applicants must get all applicable permits and authorizations from both the state and the federal government before beginning work[3].

The DEP manages the quality and quantity of water in Florida through its relationship with the state's WMDs which are tasked with the preservation and management of Florida's water resources. The

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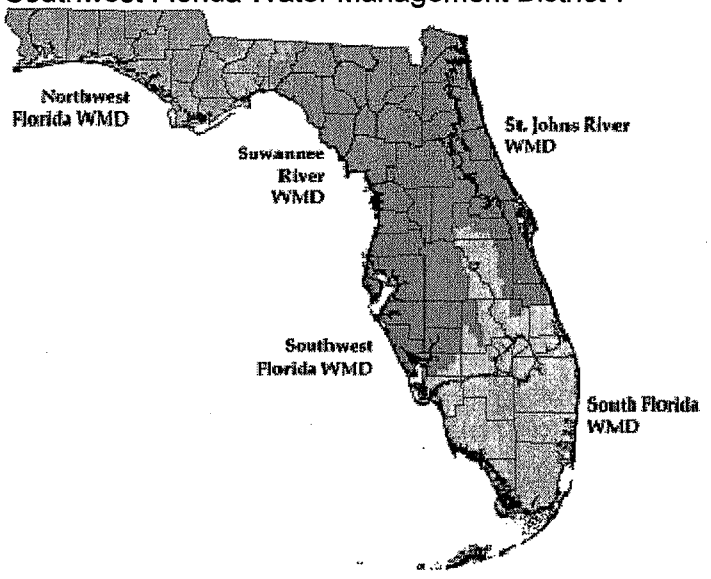
[1] Section 373.414(2), F.S., allows the DEP and/or the WMDs to establish size thresholds of isolated wetlands below which "impacts on fish and wildlife and their habitats will not be considered...and shall be based on biological and hydrological evidence that shows the fish and wildlife values of such areas to be minimal." In addition, paragraph (a) of that subsection provides that the DEP and the WMDs must establish criteria for the protection of threatened and endangered species in isolated wetlands regardless of size and land use.

[2] On January 9, 2001, the United States Supreme Court held that the U.S. Army Corps of Engineers (ACOE) does not have regulatory jurisdiction under the Clean Water Act over isolated, non-navigable, intrastate, wetlands, except when such wetlands are adjacent to navigable waters of the United States. Solid Waste Agency of Northern Cook County v. U.S. Army Corps of Engineers, No. 99-1178, 531 U.S. 159 (January 9, 2001).

[3] An applicant for a federal dredge and fill permit will apply directly to either the DEP or the applicable WMD using the same form that is used for the state ERP or wetland resource permit. The DEP and the WMD will forward the application to the ACOE for concurrent federal permit processing (which can only be issued after issuance of the applicable state permit that grants or waives water quality certification).

WMDs include the Northwest Florida Water Management District, Suwannee River Water Management District, St. Johns River Water Management District, South Florida Water Management District and Southwest Florida Water Management District[4].



Operating Agreements between the DEP and the WMDs outline specific responsibilities to each agency for any given application. Under those agreements, the DEP generally reviews and takes actions on applications involving:

- Solid waste, hazardous waste, domestic waste, and industrial waste facilities;
- Mining;
- Power plants, transmission and communication cables and lines, natural gas and petroleum exploration, production, and distribution lines and facilities;
- Docking facilities and attendant structures and dredging that are not part of a larger plan of residential or commercial development;
- Navigational dredging conducted by governmental entities, except when part of a larger project that a WMD has the responsibility to permit;
- Systems serving only one single-family dwelling unit or residential unit not part of a larger common plan of development;
- Systems located in whole or in part seaward of the coastal construction control line;
- Seaports; and
- Smaller, separate water-related activities not part of a larger plan of development (such as boat ramps, mooring buoys, and artificial reefs)

Chapter 373, Florida Statutes, charges the WMDs with managing regional water supplies, water quality, flood protection, and the protection of natural systems. The Legislature has directed the WMDs to engage in plan development and implementation, regulation, land acquisition, financial and technical assistance, water resource restoration, water resource development, and other activities to achieve the statutory water management objectives[5]. By statute, each WMD is overseen by a governing board which is appointed by the Governor and confirmed by the Senate[6].

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[4] The Water Resources Act of 1972 (Chapter 373, Florida Statutes) mandated that five WMDs be created to manage the water resources of the state. After a process which took several years, the WMDs' boundaries were drawn based on natural, hydrologic basins rather than political or county limits to allow for effective and efficient planning and management. These boundaries are generally as they exist today.

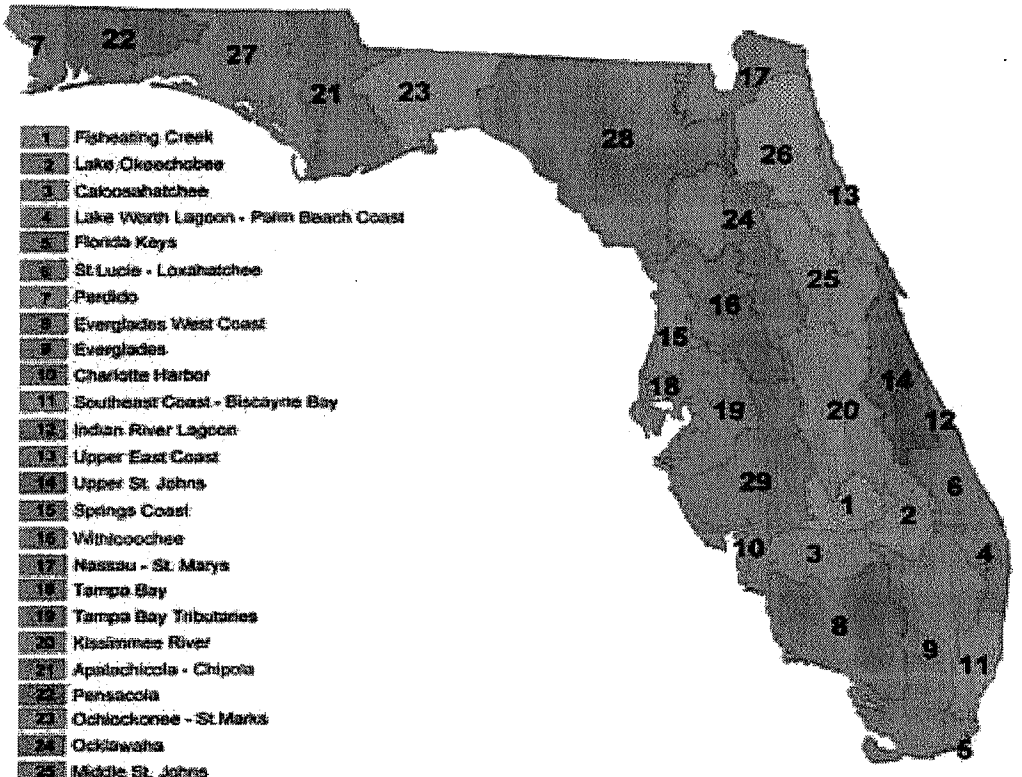
[5] In 1975, the Legislature proposed a constitutional amendment to authorize WMDs to levy ad valorem property taxes to help fund water resource management efforts. As a result, Article VII, Section 9 of the Florida Constitution authorizes the WMDs to levy ad valorem taxes based on taxable property values within each district's boundaries. The Northwest Florida WMD is limited to a constitutional millage cap of 0.05 mill, while the remaining four WMDs are limited to a maximum of 1.00 mill. In addition to ad valorem, other WMDs revenue sources include the United States Government, the State of Florida, local governments within the district, and other district sources like permit fees and interest earnings on investments.

[6] Each of the WMDs has nine board members, with the exception of the Southwest Florida WMD, which has eleven members.

WMDs have the authority to levy ad valorem (property) taxes to support water management activities. In addition to the authority to issue general obligation bands, pursuant to s. 373.563, F.S., the WMDs are authorized to issue revenue bonds in accordance with guidelines provided in s. 373.584, F.S.[7]

The DEP and WMDs use a watershed approach in the regulation of natural systems. A watershed is the geographic area through which water flows across the land and drains into a common body of water, whether a stream, river, lake, or ocean. Much of the water comes from rainfall and the stormwater runoff. The quality and quantity of stormwater is affected by all the alterations to the land including agriculture, roadways, urban development, and the activities of people within a watershed. Because the surface water features and stormwater runoff within a watershed ultimately drain to other bodies of water, it is essential to consider these downstream impacts when developing and implementing water quality protection and restoration actions.

Basin Boards
Florida has 52 large watersheds or basins. In order to make environmental management easier, more effective and more uniform across programs, DEP has grouped these watersheds into 29 groups of basins.



Any areas within a WMD may be designated by the WMD governing board as subdistricts or basins by resolution, with the exception of basins within the St. Johns River Water Management District, which are approved by the Legislature. Each basin has a board composed of not less than three members, but must include one representative from each of the counties included in the basin. Members serve for a period of 3 years or until a successor is appointed, but usually not more than 180 days after the end of the term. Each basin board chooses a vice chair and a secretary to serve for a period of 1 year. The basin board chair is typically a member of the WMD governing board of the district residing in the basin.

[7] Pursuant to s. 373.584(4)(a), F.S., "bonds" means bonds, debentures, notes, certificates of indebtedness, certificates of participation, mortgage certificates, or other obligations or evidences of indebtedness of any type or character.

If no member resides in the basin, a member of the governing board is designated as chair by the chair of the WMD board. Members of basin boards are appointed by the Governor and subject to confirmation by the Senate. Refusal or failure of the Senate to confirm an appointment creates a vacancy in the office.

Statutory duties of basin boards, pursuant to s. 373.0695, F.S., include:

- The preparation of engineering plans for development of the water resources of the basin and the conduct of public hearings on such plans.
- The development and preparation of an overall basin plan of secondary water control facilities for the guidance of subdrainage districts and private land owners in the development of their respective systems of water control, which will be connected to the primary works of the basin to complement the engineering plan of primary works for the basin.
- The preparation of the annual budget for the basin and the submission of such budget to the WMD governing board for inclusion in the WMD budget.
- The consideration and prior approval of final construction plans of the district for works to be constructed in the basin.
- The administration of the affairs of the basin.
- Planning for and, upon request by a county, municipality, private utility, or regional water supply authority, providing water supply and transmission facilities for the purpose of assisting such counties, municipalities, private utilities, or regional water supply authorities within or serving the basin.

Local Governments

In addition to complying with state and WMD ordinances, county and city governments manage natural systems through compliance with Chapter 163, Part II, F.S. (The Local Government Comprehensive Planning and Land Development Regulation Act (or the Growth Management Act, or Act). The Growth Management Act requires cities and counties to adopt comprehensive plans and authorizes the Department of Community Affairs (DCA), Division of Community Planning, to review comprehensive plans and plan amendments for compliance with the Act and related administrative rules. Other review agencies, including the regional planning councils, WMDs, the Departments of State, Transportation, Environmental Protection, and Agriculture and Consumer Services, and the Florida Fish and Wildlife Conservation Commission also review comprehensive plans and amendments and issue recommended objections to the DCA. With limited exceptions, local governments may amend their comprehensive plans twice per year[8].

Regarding policy objectives, a comprehensive plan must include a conservation element for "the conservation, use, and protection of natural resources in the area, including air, water, water recharge areas, wetlands, waterwells, estuarine marshes, soils, beaches, shores, flood plains, rivers, bays, lakes, harbors, forests, fisheries and wildlife, marine habitat, minerals, and other natural and environmental resources[9]." The broadly drafted statute and rule afford local government latitude to tailor protection for wetlands in addition to the regulations provided by state environmental laws. The Florida Administrative Rule authorized by the statutory conservation requirement provides very general considerations for wetland protection and conservation[10]:

> (3) Policies Addressing the Protection and Conservation of Wetlands.
>
> (a) Wetlands and the natural functions of wetlands shall be protected and conserved. The adequate and appropriate protection and conservation of wetlands shall be accomplished through a comprehensive planning process which includes consideration

[8] For instance, small-scale amendments, as defined by section 163.3187(1)(c), F.S., are not reviewed by the DCA. Small-scale amendments take effect within 31 days unless challenged by an affected party. An affected party has 30 days following the local government's adoption at a public hearing to challenge the small- scale amendment.

[9] Section 163.3177(6)(d), F.S. See also: http://www.dca.state.fl.us/fdcp/dcp/compplanning/).

[10] Rule 9J-5.013(3), F.A.C. Conservation Element (Submission Procedures, revised April 17, 2006)

of the types, values, functions, sizes, conditions and locations of wetlands, and which is based on supporting data and analysis.

(b) Future land uses which are incompatible with the protection and conservation of wetlands and wetland functions shall be directed away from wetlands. The type, intensity or density, extent, distribution and location of allowable land uses and the types, values, functions, sizes, conditions and locations of wetlands are land use factors which shall be considered when directing incompatible land uses away from wetlands. Land uses shall be distributed in a manner that minimizes the effect and impact on wetlands. The protection and conservation of wetlands by the direction of incompatible land uses away from wetlands shall occur in combination with other goals, objectives and policies in the comprehensive plan. Where incompatible land uses are allowed to occur, mitigation shall be considered as one means to compensate for loss of wetlands functions.

Using its comprehensive plan, a local government creates a future land use map that identifies environmentally sensitive areas, such as wetland systems, and uses policy objectives within the comprehensive plan to restrict wetland impingement or direct incompatible land uses away from sensitive areas. Local governments may direct incompatible land uses away from wetlands by imposing buffers or setbacks either through a component of their land use plan or through land development regulations. In addition, a local government may pass ordinances requiring no net loss of wetlands, prohibiting impacts altogether, restricting single family home density, prohibiting development, requiring on-site mitigation or mitigation in-county, or requiring specific mitigation ratios for wetland restorative efforts.

Florida Statutes and Administrative Code sections authorize and provide procedures and considerations for the DEP to delegate the ERP program to local governments. (FN Section 373.441, F.S., and its implementing rule chapter 62-344, F.A.C., provides delegation authority.) Delegation allows the local government to review and approve or deny the state permits at the same time the local authorizations are granted or denied. The statute directs that rules shall "seek to increase governmental efficiency" and "maintain environmental standards." Delegations can be granted only where:

- The local government can demonstrate that delegation would further the goal of providing an efficient, effective, and streamlined permitting program; and
- The local government can demonstrate that it has the financial, technical, and administrative capabilities and desire to effectively and efficiently implement and enforce the program, and protection of environmental resources will be maintained.

According to the statute, delegation includes the applicability of Chapter 120, F. S., to local government programs when the ERP program is delegated to counties, municipalities, or local pollution control programs. Since its implementation in 1993, only Broward County has a comprehensive ERP delegation that is subject to certain limits, for instance, issues relating to Sovereignty Submerged Lands[11].

Effect of Proposed Change

The bill directs county and municipal governments that use state water resources for water supply purposes, in cooperation with the applicable WMD, to conduct an evaluation of water resources that might reasonably be considered to be a primary source of water and determine if the water resources are adequately protected from sources of pollution and from land uses incompatible with their protection.

The bill amends statutory provisions relating to the make-up of water basin boards. If there are two WMD board members sitting on a water basin board, the pair will rotate the chair/co-chair position on

[11] Six local governments have delegation for mangrove trimming (Mangrove Coordination), and other local jurisdictions have some limited delegated authority (Local Program Delegation).

an annual basis. If there is a vacancy on a water basin board, a quorum of total remaining basin board members may transact business until a successor is appointed. Finally, the bill places a Southwest Florida WMD board member on the Manasota Basin board beginning July 1, 2010.

The bill exempts WMD cooperative funding programs from Chapter 120, F.S., rulemaking requirements unless any portion of an approved program affects the substantial interests of a party. The bill requires a WMD board to acquire specific Legislative authority for land acquisition costs in excess of $50 million and for professional service procurement costs in excess of $5 million. The bill restricts a WMD from issuing certificates of participation for the purchase of land. The bill directs WMD governing boards to conduct reviews for lands for which title is vested in the WMD. The purpose of the review is to determine which lands are no longer needed for conservation and restoration, or are no longer considered environmentally critical or sensitive. Such lands will be made available for purchase so the property can be reentered onto the county ad valorem tax roll.

The bill creates a Water Management District Nominating Commission consisting of 9 members:

- Three shall be appointed by the Governor to serve terms ending July 1, 2014.
- Three shall be appointed by the President of the Senate to serve terms ending July 1, 2013.
- Three shall be appointed by the Speaker of the House of Representatives to serve terms ending July 1, 2012. Thereafter, appointed commissioners shall serve four year terms.

In making appointments, the Governor, the President of the Senate, and the Speaker of the House of Representatives shall seek to ensure that, to the extent possible, the membership of the governing board nominating commission reflects the racial, ethnic, and gender diversity of the state and shall also consider the adequacy of representation of each geographic region within the state. The Executive Office of the Governor will provide all administrative support for the governing board nominating commission and shall adopt rules necessary to administer this section.

Under the bill, a commissioner:

- Is considered a "state officer" for purposes of financial disclosure requirements;
- May not be a current or former WMD governing board member;
- May hold public office;
- Is not eligible during his or her term of office and for a period of 2 years thereafter for appointment to any board for which the commission has the authority to make nominations;
- May be suspended for cause by the person who appointed him or her; and,
- Shall submit to the Governor three recommended nominees for each district governing board position.

Under the bill, a nominee:

- Must reside in the territorial jurisdiction of the governing board to which the commission will recommend appointments; and,
- Must have significant experience in one or more of the following areas: agriculture, the development industry, local government, government-owned or privately-owned water utilities, law, civil engineering, environmental science, hydrology, accounting, or finance.

The Governor shall select appointees from the list of recommended nominees for a vacant WMD board position.

B. SECTION DIRECTORY:

Section 1 creates s. 153.112, F.S., directing county commissions, in cooperation with WMDs, to conduct an evaluation of primary water resources.

Section 2 creates s. 1 80.133, F.S., directing municipalities, in cooperation with WMDs, to conduct an evaluation of primary water resources.

Section 3 amends s. 373.0693, F.S.; revising provisions relating to the membership, terms of service, and quorum requirements, of basin boards; revising provisions relating to the membership of the Manasota Basin board; providing for the designation of a member of the Southwest Florida WMD governing board to serve on the basin board.

Section 4 amends s. 373.171, F.S., exempting WMD cooperative funding programs from certain rulemaking requirements.

Section 5 creates s. 373.0725, F.S., establishing a water management district governing board nominating commission, establishing selection and eligibility criteria for nominees and commissioners, providing for terms and duties of commission members, requiring the Executive Office of the Governor to provide administrative support to the commission and to adopt rules.

Section 6 amends s. 373.086, F.S., requiring WMD governing boards to obtain legislative authorization for acquisition costs and professional service procurement costs in excess of specified amounts.

Section 7 amends s. 373.089, F.S.; requiring WMD governing boards to review inventory of and make available for purchase specified lands.

Section 8 amends s. 373.584, F.S., restricting a WMD from issuing certificates of participation for the purchase of land.

Section 9 amends s. 112.3145, F.S., providing that members of the WMD governing board nominating commission are state officers for purposes of financial disclosure requirements

Section 10 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.

2. Expenditures:

   See, FISCAL COMMENTS.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   See, FISCAL COMMENTS.

2. Expenditures:

   See, FISCAL COMMENTS.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Lands titled to WMDs may become open for sale to the public if the governing boards determine that certain lands are not needed for conservation and restoration, or are no longer considered environmentally critical or sensitive.

D. FISCAL COMMENTS:

WMD boards that sell certain lands in their inventories will no longer need to expend funds for the management of said lands. If the land was purchased with state funds, proceeds from said sales will be returned to a trust fund. Lands purchased with WMD ad valorem will be returned to the WMD operating budget. Local governments may experience an increase in ad valorem revenue if WMDs sell certain lands that are subsequently returned to the county tax roll.

There will be expenses for the Executive Office of the Governor associated with rulemaking and with providing administrative duties for the Water Management District Nominating Commission.

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:

Rulemaking authority is provided to the Executive Office of the Governor relating to the administration of the Water Management District Nominating Commission.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The bill section creating the Water Management District Nominating Commission provides a very broad grant of rulemaking authority to the Executive Office of the Governor. In addition, that section does not authorize compensation, per diem, or travel expenses that may be incurred by Commissioners in the execution of their duties.

Commission nominees are required to have significant experience in one or more of the following areas: agriculture, the development industry, local government, government-owned or privately owned water utilities, law, civil engineering, environmental science, hydrology, accounting, or finance. Staff notes that tourism and activities that are water dependent (e.g., boating, fishing) also add significantly to state revenues.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to water management; creating ss. 153.112 and 180.133, F.S.; directing counties and municipalities, in cooperation with water management districts, to conduct an evaluation of primary water resources; amending s. 373.0693, F.S.; revising provisions relating to the membership of basin boards; specifying the terms of service for basin board members designated by district governing board chairs; providing that basin board members designated by district governing board chairs are voting members and counted for quorum purposes; providing for designated district governing board members to serve as basin board chairs and co-chairs; authorizing basin boards to transact official business under certain conditions; revising provisions relating to the membership of the Manasota Basin board; providing for the designation of a member of the district governing board to serve on the basin board; amending s. 373.171, F.S.; exempting cooperative funding programs from certain rulemaking requirements; creating s. 373.0725, F.S.; establishing a water management district governing board nominating commission; providing criteria for governing board member nominees; providing for the appointment of commission members by the Governor, the President of the Senate, and the Speaker of the House of Representatives; providing for terms and duties of commission members; requiring the Executive Office of the Governor to provide administrative support to the commission and to adopt rules; amending s.

373.086, F.S.; requiring governing boards to obtain legislative authorization for acquisition costs and professional service procurement costs in excess of specified amounts; amending s. 373.089, F.S.; requiring governing boards to review and make available for purchase specified lands; amending section 373.584, F.S., restricting the issuance of certificates of participation by districts for the purchase of land; amending s. 112.3145, F.S.; providing that members of the water management district governing board nominating commission are state officers for purposes of financial disclosure requirements; providing an effective date.

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

Section 1. Section 153.112, Florida Statutes, is created to read:

153.112 Protection of water resources.—A county commission that uses state water resources for water supply purposes shall, in cooperation with the relevant water management districts, conduct an evaluation of water resources that might reasonably be considered to be a primary source of water from which all or part of the county's water supplies are derived. The evaluation must determine if the water resources are adequately protected from sources of pollution and from land uses incompatible with their protection.

Section 2. Section 180.133, Florida Statutes, is created to read:

180.133 Protection of municipal water resources.—The governing body of a municipality that provides water utility services that use state water resources for water supply purposes shall, in cooperation with the relevant water management districts, conduct an evaluation of water resources that might reasonably be considered to be a primary source of water from which all or part of the municipality's water supplies are derived. The evaluation must determine if the water resources are adequately protected from sources of pollution and from land uses incompatible with their protection.

Section 3. Subsections (1) through (7) of section 373.0693, Florida Statutes, are amended to read:

373.0693 Basins; basin boards.—

(1)(a) Any areas within a district may be designated by the district governing board as subdistricts or basins. The designations of such basins shall be made by resolution of the district governing board ~~by resolutions thereof~~. The district governing board ~~of the district~~ may change the boundaries of such basins, or create new basins, by resolution.

(2) Each basin shall be under the control of a basin board ~~which shall be~~ composed of at least ~~not less than~~ three members, including one or more representatives ~~but shall include one representative~~ from each of the counties included in the basin.

(3) Except for a member of the district governing board serving on a basin board pursuant to subsection (6), each member of a ~~the various~~ basin board ~~boards~~ shall be appointed ~~serve~~ for ~~a period of~~ 3 years or until a successor is appointed, but not more than 180 days after the end of the term.~~, except that~~ The

~~board~~ membership of each new basin board shall be divided into three groups as equally as possible, with members in such groups to be appointed for 1, 2, and 3 years, respectively. Each basin board shall choose a vice chair and a secretary to serve for ~~a period of~~ 1 year. The term of office of a basin board member shall ~~be construed to~~ commence on March 2 preceding the date of appointment and ~~to~~ terminate March 1 of the year of the end of a term or ~~may continue~~ until a successor is appointed, but not more than 180 days after the end of the expired term. A member of the district governing board serving on a basin board pursuant to subsection (6) shall serve for a period commensurate with his or her term on the governing board.

(4) Except for a member of the district governing board serving on a basin board pursuant to subsection (6), members of a basin board ~~boards~~ shall be appointed by the Governor, subject to confirmation by the Senate at the next regular session of the Legislature; and the refusal or failure of the Senate to confirm an appointment shall create a vacancy in the office to which the appointment was made.

(5) Basin board members shall serve without ~~receive no~~ compensation ~~for services as such;~~ but are entitled to reimbursement for per diem and travel expenses as provided in s. 112.061~~, while officially on work for the district, they shall receive their actual travel expenses between their respective places of residence and the place where official district business is conducted, subsistence, lodging, and other expenses in the amount actually incurred. These expenses may not exceed the statutory amount allowed state officers and employees~~. This

subsection applies retroactively to the effective date of the creation of each of the five separate water management districts.

(6)(a) Notwithstanding any other provision of ~~the provisions of any other~~ general or special law ~~to the contrary~~, a member of the district governing board ~~of the district~~ residing in the basin or, if no member resides in the basin, a member of the district governing board designated by the chair of the district governing board shall be a voting member of the basin board and counted for purposes of establishing a quorum.

(b) A governing board member shall serve as the chair of the basin board. If more than one governing board member is designated to a basin board, each shall rotate as co-chair of the basin board. The chair or co-chair shall preside at all meetings of the basin board, except that the vice chair may preside in the ~~his or her~~ absence of the chair and co-chair. The chair shall be the liaison officer of the district in all affairs in the basin and shall be kept informed of all such affairs.

(c) If a vacancy occurs on a basin board, a quorum of the total remaining members of the basin board may continue to transact official business until a successor is appointed.

(d) ~~(b)~~ Basin boards within the Southwest Florida Water Management District shall meet regularly as determined by a majority vote of the basin board members. Subject to notice requirements of chapter 120, special meetings, both emergency and nonemergency, may be called ~~either~~ by the chair or the elected vice chair ~~of the basin board~~ or upon request of two

basin board members. The district staff shall include on the agenda of any basin board meeting any item for discussion or action requested by a member of that basin board. The district staff shall notify any basin board, as well as their respective counties, of any vacancies occurring in the district governing board or their respective basin boards.

(7) ~~At 11:59 p.m. on December 31, 1976, the Manasota Watershed Basin of the Ridge and Lower Gulf Coast Water Management District, which is annexed to the Southwest Florida Water Management District by change of its boundaries pursuant to chapter 76-243, Laws of Florida, shall be formed into a subdistrict or basin of the Southwest Florida Water Management District, subject to the same provisions as the other basins in such district. Such subdistrict shall be designated initially as the Manasota Basin. The members of the governing board of the Manasota Watershed Basin of the Ridge and Lower Gulf Coast Water Management District shall become members of the governing board of the Manasota Basin of the Southwest Florida Water Management District.~~ Notwithstanding other provisions in this section, beginning on July 1, 2010 ~~2001~~, the membership of the Manasota Basin Board shall be comprised of two members from Manatee County, ~~and~~ two members from Sarasota County, and a member of the district governing board designated by the chair of the district governing board pursuant to subsection (6). ~~Matters relating to tie votes shall be resolved pursuant to subsection (6) by the chair designated by the governing board to vote in case of a tie vote.~~

Section 4. Paragraph (d) is added to subsection (1) of section 373.171, Florida Statutes, to read:

373.171 Rules.—

(5) Cooperative funding programs are not subject to the rulemaking requirements of chapter 120. However, any portion of an approved program which affects the substantial interests of a party shall be subject to s. 120.569.

Section 5. Section 373.0725, Florida Statutes, is created to read:

373.0725 Water management district governing board nominating commission.—

(1)(a) Members of each water management district governing board shall be nominated for appointment by a commission composed of 9 members.

(b) Commission members shall submit to the Governor three recommended nominees for each district governing board position. Nominees must reside in the territorial jurisdiction of the governing board to which the commission will recommend appointments and must have significant experience in one or more of the following areas: agriculture, the development industry, local government, government-owned or privately owned water utilities, law, civil engineering, environmental science, hydrology, accounting, or finance.

(c) The Governor shall select appointees from the list of nominees recommended for a position.

(2) A current or former governing board member may not be a member of the governing board nominating commission. A member of the governing board nominating commission may hold public

office. A member of the governing board nominating commission is not eligible for appointment, during his or her term of office and for a period of 2 years thereafter, to any board for which the commission has the authority to make nominations. All acts of the governing board nominating commission must be made with a concurrence of a majority of its members.

(3) Members shall be appointed to the governing board nominating commission in the following manner:

(a) The Governor shall appoint three members for terms ending July 1, 2014.

(b) The President of the Senate shall appoint three members for terms ending July 1, 2013.

(c) The Speaker of the House of Representatives shall appoint three members for terms ending July 1, 2012.

Every subsequent appointment, except the appointment of a member of the Senate and of the House of Representatives and an appointment to fill a vacant, unexpired term, shall be for 4 years. Each expired term or vacancy shall be filled by appointment in the same manner as the member whose position is being filled.

(4) In making appointments, the Governor, the President of the Senate, and the Speaker of the House of Representatives shall seek to ensure that, to the extent possible, the membership of the governing board nominating commission reflects the racial, ethnic, and gender diversity of the state and shall also consider the adequacy of representation of each geographic region within the state.

(5) A member of the governing board nominating commission may be suspended for cause by the person who appointed him or her.

(6) The governing board nominating commission shall recommend appointments to the governing board of a water management district pursuant to s. 373.073. A quorum of the commission is necessary to take any action or transact any business. For purposes of this section, a majority of the commission members shall constitute a quorum. However, if a vacancy occurs, a majority of the total remaining commission members shall constitute a quorum.

(7) The Executive Office of the Governor shall provide all administrative support for the governing board nominating commission and shall adopt rules necessary to administer this section.

Section 6. Subsection (4) is added to section 373.086, Florida Statutes, to read:

373.086 Providing for district works.—

(4) The governing board must obtain specific legislative authorization for any acquisition costs in excess of $50 million and for any professional service procurement costs in excess of $5 million.

Section 7. Paragraph (e) is added to subsection (6) of section 373.089, Florida Statutes, to read:

373.089 Sale or exchange of lands, or interests or rights in lands.—The governing board of the district may sell lands, or interests or rights in lands, to which the district has acquired title or to which it may hereafter acquire title in the

following manner:

(6) Any lands the title to which is vested in the governing board of a water management district may be surplused pursuant to the procedures set forth in this section and s. 373.056 and the following:

(e) For any lands for which title is vested in the governing board, the governing board shall conduct reviews to determine which lands are no longer needed for conservation and restoration purposes or no longer considered environmentally critical or sensitive and make such lands available for purchase so long as the property can be reentered onto the county ad valorem tax roll.

Section 8. Subsection (2) of section 373.584, Florida Statutes, is amended to read:

(2) Revenues derived by the district from the Water Management Lands Trust Fund as provided in s. 373.59 or any other revenues of the district may be pledged to the payment of such revenue bonds; however, the ad valorem taxing powers of the district may not be pledged to the payment of such revenue bonds without prior compliance with the requirements of the State Constitution as to the affirmative vote of the electors of the district and with the requirements of s. 373.563, and bonds payable from the Water Management Lands Trust Fund shall be issued solely for the purposes set forth in s. 373.59. Revenue bonds and notes shall be, and shall be deemed to be, for all purposes, negotiable instruments, subject only to the provisions of the revenue bonds and notes for registration. Except as otherwise provided in this section, the~~The~~ powers and authority

of districts to issue revenue bonds, including, but not limited to, bonds to finance a stormwater management system as defined by s. 373.403, and to enter into contracts incidental thereto, and to do all things necessary and desirable in connection with the issuance of revenue bonds, shall be coextensive with the powers and authority of municipalities to issue bonds under state law. The provisions of this section constitute ~~full and complete~~ authority for the issuance of revenue bonds and shall be liberally construed to effectuate its purpose. However, notwithstanding any provision of this section or any other law, districts shall not have the power or authority to issue certificates of participation to fund the acquisition of land.

Section 9. Paragraph (c) of subsection (1) of section 112.3145, Florida Statutes, is amended to read:

112.3145 Disclosure of financial interests and clients represented before agencies.—

(1) For purposes of this section, unless the context otherwise requires, the term:

(c) "State officer" means:

1. Any elected public officer, excluding those elected to the United States Senate and House of Representatives, not covered elsewhere in this part and any person who is appointed to fill a vacancy for an unexpired term in such an elective office.

2. An appointed member of each board, commission, authority, or council having statewide jurisdiction, excluding a member of an advisory body.

3. A member of the Board of Governors of the State University System or a state university board of trustees, the Chancellor and Vice Chancellors of the State University System, and the president of a state university.

4. A member of the judicial nominating commission for any district court of appeal or any judicial circuit.

5. A member of the water management district governing board nominating commission.

Section 10. This act shall take effect July 1, 2010.