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## **State Affairs Committee**

**Thursday, March 31, 2011**

**12:00 PM**

**Morris Hall (17 HOB)**

**Dean Cannon  
Speaker**

**Seth McKeel  
Chair**

# Committee Meeting Notice

## HOUSE OF REPRESENTATIVES

### State Affairs Committee

**Start Date and Time:** Thursday, March 31, 2011 12:00 pm  
**End Date and Time:** Thursday, March 31, 2011 02:45 pm  
**Location:** Morris Hall (17 HOB)  
**Duration:** 2.75 hrs

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

HM 9 Supporting the Marketing of Florida Seafood by Rouson  
HB 19 Compensation of County Officials by Mayfield  
HB 95 State Parks by Bemby, Brandes  
HM 363 Deepwater Horizon Oil Disaster/Penalties by Coley  
HB 529 Lee County Sheriff's Office by Caldwell  
CS/HM 685 Congressional Term Limits by Federal Affairs Subcommittee, Caldwell  
CS/HB 735 Division of Forestry by Agriculture & Natural Resources Subcommittee, Porter  
CS/HJR 1321 Miami-Dade County Home Rule Charter by Economic Affairs Committee, Lopez-Cantera  
CS/HM 1375 Greenhouse Gases by Federal Affairs Subcommittee, Fresen  
CS/HM 1401 Federal Intrusion into State's Clean Water Program by Federal Affairs Subcommittee, Steube  
HB 1435 911 Calls by Porter  
HB 1479 Land Application of Septage by Coley  
HB 7085 OGSR/Court Monitors in Guardianship Proceedings by Government Operations Subcommittee, Young  
HM 7153 Qualifying Improvements to Real Property by Federal Affairs Subcommittee, Plakon  
HB 7159 OGSR/Commission on Ethics Audits & Investigations by Government Operations Subcommittee, Patronis  
HB 7161 OGSR/Concealed Weapons or Firearms by Government Operations Subcommittee, Patronis  
HB 635 Group Insurance for Public Employees by Stargel  
CS/HB 399 Infrastructure Investment by Transportation & Highway Safety Subcommittee, Ray

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

PCB SAC 11-01 -- School Nutrition Programs

**NOTICE FINALIZED on 03/29/2011 16:27 by Love.John**



HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HM 9 Supporting the Marketing of Florida Seafood

SPONSOR(S): Rouson and others

TIED BILLS: IDEN./SIM. BILLS: SM 852

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Federal Affairs Subcommittee	12 Y, 0 N	Cyphers	Cyphers
2) State Affairs Committee		Cyphers <i>ML</i>	Hamby <i>Jdo</i>

SUMMARY ANALYSIS

House Memorial 9 urges Congress of the United States to support the marketing of Florida seafood. Specifically, the memorial urges Congress to:

- Allocate moneys generated from fishery product import tariffs for marketing Florida seafood;
- Pass legislation to create a national seafood marketing fund using fishery product import tariffs to finance the activities; and

The Memorial also urges the Florida Congressional Delegation to work with representatives of other seafood-producing states to promote domestic seafood.

The House Memorial does not amend, create, or repeal any provisions of the Florida Statutes.

The House Memorial has no fiscal impact on state or local government.



## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### Current Situation

###### Background

The United States imported edible and inedible fisheries products from over 42 countries, with a total value of over \$21.8 billion in 2009. Edible product imports alone were greater than \$13 billion.<sup>1</sup> U.S. exports, however, total only \$19.6 billion in the same year, representing a decline of nearly \$4 billion from the previous year's high of over \$24.3 billion.<sup>2</sup> In a study completed by the Florida Fish and Wildlife Conservation Commission (FWCC) in October 2010, the overall economic impact of saltwater fishing in Florida was estimated at approximately \$5.5 billion and 54,508 jobs. The same report places the total economic impact of the Florida Seafood Industry at \$5.66 billion and 108,695 jobs (2008).<sup>3</sup>

###### Deepwater Horizon Oil Spill

On April 20, 2010, in the Gulf of Mexico, the Deepwater Horizon<sup>4</sup> drilling rig experienced an explosion<sup>4</sup> that would take the lives of eleven people and mark the beginning of the largest environmental disaster in the history of the United States. By the end of April 22<sup>nd</sup>, eleven members of the crew of the Deepwater Horizon were missing and presumed deceased<sup>5</sup>; several other crew members were injured; the \$350 million oil rig owned by Transocean<sup>6</sup> had sunk to the bottom of the Gulf of Mexico; and oil and natural gas were leaking from pipes attached to the failed blowout preventer at the well head.

###### Response and Aftermath

The location of the leaking well site, known as the Macondo well, is approximately 45 miles southeast of Louisiana. As it became clear that the built-in measures to stop the leak had failed and that oil was beginning to spread away from the site of the leak, Governor Charlie Crist declared a state of emergency on April 30<sup>th</sup> for Escambia, Santa Rosa, Okaloosa, Walton, Bay, and Gulf counties<sup>7</sup>. On May 3<sup>rd</sup>, the governor's executive order was amended to add Franklin, Wakulla, Jefferson, Taylor, Dixie, Citrus, Hernando, Pasco, Pinellas, Hillsborough, Manatee, and Sarasota counties<sup>8</sup>.

After several failed attempts to stop the leak from the well, including a failed "top kill" effort between May 26 through 29, 2010<sup>9</sup>; leaking from the well was finally stopped on July 15, 2010<sup>10</sup>. A new "static kill" was successfully completed on August 4, 2010<sup>11</sup>, and on September 19, 2010, after the relief well

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<sup>1</sup> U.S. Department of Commerce, National Oceanic and Atmospheric Administration, National Marine Fisheries Service Office of Science and Technology: Fisheries of the United States, 2009.

<sup>2</sup> Id.

<sup>3</sup> Florida Fish and Wildlife Conservation Commission: Economics of Fish and Wildlife Recreation, Estimates Through October 2010.

<sup>4</sup> [http://www.nytimes.com/2010/04/22/us/22rig.html?\\_r=1&scp=1&sq=oil+rig+explosion&st=nyt](http://www.nytimes.com/2010/04/22/us/22rig.html?_r=1&scp=1&sq=oil+rig+explosion&st=nyt)

<sup>5</sup> <http://www.tampabay.com/incoming/as-oil-rig-sinks-hope-fades/1089672>

<sup>6</sup> National Commission on the BP Deepwater Horizon Oil Spill and Offshore Drilling: Report to the President, January 2011

<sup>7</sup> Office of the Governor, Executive Order Number 10-99 (Emergency Management – Deepwater Horizon) April 30, 2010

<sup>8</sup> Office of the Governor, Executive Order Number 10-100 (Emergency Management – Deepwater Horizon) May 3, 2010

<sup>9</sup> <http://www.nytimes.com/2010/05/30/us/30spill.html>

<sup>10</sup> <http://abcnews.go.com/WN/gulf-oil-spill-bps-cap-success-oil-stops/story?id=11173330>

<sup>11</sup> <http://www.nytimes.com/2010/08/05/us/05spill.html>

was finished and the well was cemented from beneath, Admiral Thad Allen announced that the well was "effectively dead."<sup>12</sup>

The federal government estimates the amount of oil released from the Macondo well to be approximately 4.9 million barrels or 205.8 million gallons of oil<sup>13</sup>. While 17 percent of the oil was captured at the wellhead (833,000 barrels), according to official oil budget reports, the remaining oil (4.2 million barrels) escaped immediate retrieval<sup>14</sup>.

Oil Budget (Released Aug. 4)		Oil Budget Technical Report		
Category	% of Total	Category	% of Total	Change
Direct Recovery	17%	Direct Recovery	17%	None
Burned	5%	Burned	5%	None
Skimmed	3%	Skimmed	3%	None
Chemically Dispersed	8%	Chemically Dispersed	16%	+8%
Naturally Dispersed	16%	Naturally Dispersed	13%	-3%
Evaporated or Dissolved	25%	Evaporated or Dissolved	23%	-2%
Other	26%	Other	23%	-3%

According to a report by Secretary of the Navy Ray Mabus, at its peak, the response to the oil spill included more than 47,000 personnel; 7,000 vessels; 120 aircraft; and many federal, state, and local agencies<sup>15</sup>. The final Situation Report by Florida's response team also noted the use of over 791,061 feet of boom; the removal of over 500,000 gallons of oil from Florida's shoreline; the deployment of 128 National Guardsmen; and the registration of 19,899 volunteers from all 50 states and 10 different countries<sup>16</sup>.

### Impact of Spill on Fisheries

By June 2, 2010, the total area of federal waters closed to fishing as a result of the Deepwater Horizon Oil Spill reached its apex of 88,522 square miles (37% of all federal waters in the Gulf of Mexico). As of February 2011, over 1041 square miles of federal waters remained closed.<sup>17</sup> In addition to closure of federal waters, the FWCC, in conjunction with other state agencies, declared parts of Escambia County closed to harvesting of saltwater fish, crabs and shrimp.<sup>18</sup> The closure was in effect from June 14, 2010, to July 31, 2010, for saltwater fish and to August 17, 2010, for shrimp.<sup>19</sup> State waters were reopened to all commercially harvested species on September 15, 2010, by FWC Executive Order 10-46.<sup>20</sup>

While there are many uncertainties regarding potential long-term environmental impacts from the spill, there is no evidence that Florida seafood is unsafe to eat. However, the reputation of Gulf

<sup>12</sup> <http://www.cbsnews.com/stories/2010/09/19/national/main6881308.shtml>

<sup>13</sup> National Commission on the BP Deepwater Horizon Oil Spill and Offshore Drilling: Report to the President, January 2011

<sup>14</sup> [http://www.noaanews.noaa.gov/stories2010/20101123\\_oilbudget.html](http://www.noaanews.noaa.gov/stories2010/20101123_oilbudget.html)

<sup>15</sup> America's Gulf Coast: A Long Term Recovery Plan after the Deepwater Horizon Oil Spill, September 2010

<sup>16</sup> Deepwater Horizon Response: Situation Report #114 (Final) August 26, 2010

<sup>17</sup> Congressional Research Service: The Deepwater Horizon Oil Spill and the Gulf of Mexico Fishing Industry, February 17, 2011.

<sup>18</sup> [http://www.myfwc.com/NEWSROOM/10/statewide/News\\_10\\_X\\_OilSpill19.htm](http://www.myfwc.com/NEWSROOM/10/statewide/News_10_X_OilSpill19.htm)

<sup>19</sup> [http://www.myfwc.com/NEWSROOM/10/statewide/News\\_10\\_X\\_OilSpill39.htm](http://www.myfwc.com/NEWSROOM/10/statewide/News_10_X_OilSpill39.htm)

<sup>20</sup> [http://myfwc.com/media/310640/EO\\_10\\_46\\_ReopenStateWatersGulfDeepwaterHorizon.pdf](http://myfwc.com/media/310640/EO_10_46_ReopenStateWatersGulfDeepwaterHorizon.pdf)

seafood for safety has been harmed by heavy exposure to information about the quantity of oil released into the Gulf of Mexico and the number of fisheries closed.<sup>21</sup>

In fact, in an AP poll from August 2010, respondents gave the following responses to the question:<sup>22</sup>

**"How confident are you that it is safe to eat seafood from the areas in the Gulf that were affected by the oil spill . . . ?"**

<b>Extremely confident</b>	<b>Very confident</b>	<b>Somewhat confident</b>	<b>Not too confident</b>	<b>Not confident at all</b>
%	%	%	%	%
5	7	33	24	31

Commissioner Charles Bronson of the Florida Department of Agriculture and Consumer Services sought to counteract the damaged reputation of seafood from the Gulf of Mexico by requesting \$59 million from BP for seafood testing, monitoring, and marketing over a ten year period. The final amount offered by BP in October 2010, however, was \$20 million over a three year period. \$10 million was allocated to the Division of Marketing for the marketing of Florida Seafood, and the remaining \$10 million was allocated to the Division of Food Safety for the continued testing and monitoring of seafood.<sup>23</sup>

### **Effects of Proposed Changes**

This memorial asks Congress to allocate funds from two separate sources that collect money based on the importation of foreign seafood and fisheries products,<sup>24</sup> and place a portion of the funds in a national seafood marketing fund to promote the marketing of domestic seafood.

Copies of the memorial are to be sent to the President of the United States, the President of the United States Senate, the Speaker of the United States House of Representatives and to each member of the Florida delegation to the United States Congress.

The legislation also includes whereas clauses in order to support the memorial. The whereas clauses include:

WHEREAS, Florida seafood products face constantly increasing domestic competition from imported seafood products, with more than 80 percent of the total seafood consumed in the United States currently originating in foreign countries, and

WHEREAS, effective domestic marketing of Florida seafood in the face of aggressive competition from foreign products requires innovative, forceful, and consistent promotion, and

WHEREAS, current annual funding for the domestic promotion of Florida seafood is insufficient to effectively develop the thriving markets that sustainable Florida seafood products merit, especially when competing with nationally supported promotional programs aimed at United States consumers by rival seafood-producing countries, and

WHEREAS, duties and tariffs on imported seafood products generate approximately \$280,000,000 annually for the United States Treasury, and

<sup>21</sup> <http://www.newsherald.com/articles/city-91445-increased-marketing.html>

<sup>22</sup> <http://www.pollingreport.com/energy.htm>

<sup>23</sup> <http://www.fl-seafood.com/news/10-25-10.htm>

<sup>24</sup> Duties are placed on imported seafood and other fish products, totaling up to \$282 million. Anti-dumping/countervailing duties are also placed on foreign products as well, reaching as much as \$400 million – based on information provided by the National Seafood Marketing Coalition.

WHEREAS, revenue from anti-dumping and countervailing duties on imported seafood products collected by the Federal Government total hundreds of millions of dollars annually, and

WHEREAS, federal revenue derived from the importation of competing seafood products is not presently made available for the marketing of seafood harvested and produced domestically, and

WHEREAS, using a portion of the revenue collected on the importation of foreign seafood products to promote United States seafood to domestic consumers will secure United States fisheries and seafood processing jobs, create robust and enduring domestic markets, and greatly enhance the nutritional value of national diets, and

WHEREAS, throughout recent history each spill or leak associated with the transportation or production of oil negatively affects the seafood industry through the closure of commercial and recreational fishing operations, the destruction of wildlife and natural habitat, or loss of market share, and

WHEREAS, in a recent survey conducted by the University of Minnesota, percent of respondents said the Deepwater Horizon oil spill has affected their seafood consumption habits somewhat, percent said they will not eat seafood from the Gulf of Mexico, and percent said they will eat less seafood regardless of its origin, and

WHEREAS, a new National Seafood Marketing Fund designed to promote and develop United States produced seafood would help the United States seafood industry now and in the future recoup damages related to oil spills that result in decreased market demand for seafood, and

WHEREAS, a small portion of oil revenues are a logical source of funding for a National Seafood Marketing Fund as mitigation for real damages incurred by the seafood industry and coastal communities...

**B. SECTION DIRECTORY:**

Not Applicable

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

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

1. Revenues:

None

2. Expenditures:

None

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

1. Revenues:

None

2. Expenditures:

None

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

None

**D. FISCAL COMMENTS:**

None

**III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

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

Not Applicable

**2. Other:**

None

**B. RULE-MAKING AUTHORITY:**

Not Applicable

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

None

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

HM9

2011

House Memorial

A memorial to the Congress of the United States, urging Congress to support the marketing of Florida seafood.

WHEREAS, Florida seafood products face constantly increasing domestic competition from imported seafood products, with more than 80 percent of the total seafood consumed in the United States currently originating in foreign countries, and

WHEREAS, effective domestic marketing of Florida seafood in the face of aggressive competition from foreign products

requires innovative, forceful, and consistent promotion, and

WHEREAS, current annual funding for the domestic promotion of Florida seafood is insufficient to effectively develop the thriving markets that sustainable Florida seafood products merit, especially when competing with nationally supported promotional programs aimed at United States consumers by rival seafood-producing countries, and

WHEREAS, duties and tariffs on imported seafood products generate approximately \$280,000,000 annually for the United States Treasury, and

WHEREAS, revenue from anti-dumping and countervailing duties on imported seafood products collected by the Federal Government total hundreds of millions of dollars annually, and

WHEREAS, federal revenue derived from the importation of competing seafood products is not presently made available for the marketing of seafood harvested and produced domestically, and

HM9

2011

28 WHEREAS, using a portion of the revenue collected on the  
 29 importation of foreign seafood products to promote United States  
 30 seafood to domestic consumers will secure United States  
 31 fisheries and seafood processing jobs, create robust and  
 32 enduring domestic markets, and greatly enhance the nutritional  
 33 value of national diets, and

34 WHEREAS, throughout recent history each spill or leak  
 35 associated with the transportation or production of oil  
 36 negatively affects the seafood industry through the closure of  
 37 commercial and recreational fishing operations, the destruction  
 38 of wildlife and natural habitat, or loss of market share, and

39 WHEREAS, in a recent survey conducted by the University of  
 40 Minnesota, 54 percent of respondents said the Deepwater Horizon  
 41 oil spill has affected their seafood consumption habits  
 42 somewhat, 44 percent said they will not eat seafood from the  
 43 Gulf of Mexico, and 31 percent said they will eat less seafood  
 44 regardless of its origin, and

45 WHEREAS, a new National Seafood Marketing Fund designed to  
 46 promote and develop United States produced seafood would help  
 47 the United States seafood industry now and in the future recoup  
 48 damages related to oil spills that result in decreased market  
 49 demand for seafood, and

50 WHEREAS, a small portion of oil revenues are a logical  
 51 source of funding for a National Seafood Marketing Fund as  
 52 mitigation for real damages incurred by the seafood industry and  
 53 coastal communities, NOW, THEREFORE,

54  
 55 Be It Resolved by the Legislature of the State of Florida:

HM9

2011

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57 That the Congress of the United States is requested to  
58 allocate moneys generated from federal marine and fishery  
59 product import tariffs for the domestic marketing of Florida  
60 seafood.

61 BE IT FURTHER RESOLVED that the Congress of the United  
62 States is urged to pass legislation dedicating a significant  
63 portion of marine and fishery product import tariffs to a  
64 national seafood marketing fund to promote domestic seafood  
65 products that face competition from foreign imports.

66 BE IT FURTHER RESOLVED that the Florida Congressional  
67 Delegation is urged to work with representatives of other  
68 seafood-producing states to secure adequate funding for  
69 effective and sustained domestic marketing of United States  
70 seafood.

71 BE IT FURTHER RESOLVED that copies of this memorial be  
72 dispatched to the President of the United States, to the  
73 President of the United States Senate, to the Speaker of the  
74 United States House of Representatives, and to each member of  
75 the Florida delegation to the United States Congress.



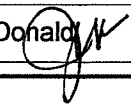
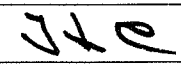


## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 19 Compensation of County Officials

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

**TIED BILLS:** IDEN./SIM. BILLS: SB 870

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Government Operations Subcommittee	14 Y, 0 N	McDonald	Williamson
2) State Affairs Committee		McDonald 	Hamby 

### SUMMARY ANALYSIS

Determining the compensation of Florida's county constitutional officers by state law was sanctioned by the State Constitution of 1885 and has been maintained in the State Constitution since the 1968 constitutional revision. The Legislature, however, did not authorize a salary compensation formula until 1973. Prior to that time, the authorization for changes in compensation for county constitutional officers required frequent legislative action.

The Legislature enacted chapter 145, F.S., to govern compensation of county officials. The intent for the legislative action was expressed as the need for a uniform salary law to replace the previous local law method of paying elected county officials, which was "haphazard, preferential, inequitable, and probably unconstitutional."

Current law does not permit a county commissioner, clerk of the circuit court, county comptroller, property appraiser, tax collector, sheriff, or supervisor of elections to reduce his or her salary or salary rate. In 2009, the law was amended to allow local school board members to reduce their salary rate on a voluntary basis.

The bill amends chapter 145, F.S., to authorize each member of a board of county commissioners, clerk of the circuit court, county comptroller, sheriff, supervisor of elections, property appraiser, and tax collector to voluntarily reduce his or her salary rate.

The fiscal impact is indeterminate. See "Fiscal Comments."

The bill takes effect July 1, 2011.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Background**

Determining the compensation of Florida's county constitutional officers by state law was sanctioned by the State Constitution of 1885 and has been maintained in the State Constitution since the 1968 constitutional revision.<sup>1</sup> The Legislature, however, did not authorize a salary compensation formula until 1973. Prior to that time, the authorization for changes in compensation for county constitutional officers required frequent legislative action.

##### Persons Covered by Compensation Requirements

The Legislature enacted chapter 145, F.S., to govern compensation of county officials.<sup>2</sup> The intent for the legislative action was expressed as the need for a uniform salary law to replace the previous local law method of paying elected county officials, which was "haphazard, preferential, inequitable, and probably unconstitutional."<sup>3</sup> Additionally, the Legislature specifically prohibited local special laws or general laws of local application pertaining to the compensation of members of boards of county commissioners, clerks of the circuit court, sheriffs, superintendents of schools, supervisors of elections, property appraisers, tax collectors, and district school board members.<sup>4</sup>

The law assumed that like offices would have similar duties and responsibilities and, therefore, based salary schedules, in large part, on differences in the population size of the respective county being served.<sup>5</sup> The current salary compensation formula specifies that the latest official population estimates for each county serve as a major component of the salary computation. In addition to the population estimates, the salary compensation formula contains five other components:

- Base salary and group rate components for the separate officers specified in various parts of the statute.<sup>6</sup>
- Initial factor component is currently set in law as a constant numerical value.<sup>7</sup>
- Annual factor and cumulative annual factor, used in the salary formula calculations, which are certified by the Department of Management Services.<sup>8</sup>

##### Exceptions to Compensation Requirements

The compensation requirements apply to all designated officers in all counties of the state, except those officials:

- Whose salaries are not subject to being set by the Legislature because of the provisions of a county home rule charter; or
- In a county with a consolidated form of government as provided in chapter 67-1320, L.O.F.

No member of a governing body of a chartered county or a county with a consolidated form of government is to be considered the equivalent of a county commissioner for determining the compensation of the member under his or her respective county charter.<sup>9,10</sup>

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<sup>1</sup> Art. II, s. 5, Fla. Const.

<sup>2</sup> Officials specifically governed by chapter 145, F.S., are boards of county commissioners, clerks of the circuit court, county comptrollers, sheriffs, supervisors of elections, property appraisers, and tax collectors.

<sup>3</sup> Section 145.011(2), F.S.

<sup>4</sup> Section 145.16(2), F.S.

<sup>5</sup> Section 145.011(4), F.S.

<sup>6</sup> Sections 145.031, 145.051, 145.071, 145.09, 145.10, 145.11, 1001.395, and 1001.47, F.S.

<sup>7</sup> Section 145.19(1)(c), F.S.

<sup>8</sup> Section 145.19(2), F.S. Certification from the Department of Management Services is received by September of each year.

<sup>9</sup> Sections 145.012 and 145.031(2), F.S.

<sup>10</sup> According to the Florida Association of Counties, there are 20 counties falling under this exception: Alachua, Brevard, Broward, Charlotte, Clay, Columbia, Duval Hillsborough, Lee, Leon, Miami-Dade, Orange, Osceola, Palm Beach, Pinellas, Polk, Sarasota,

The law, however, provides that, regardless of charter county status, the property appraiser, clerk of the circuit court, superintendent of schools, sheriff, supervisor of elections, and tax collector who, if qualified, must receive a special qualification salary in addition to their salaries, are covered by chapter 145, F.S.<sup>11</sup> The requirement for special qualification salary would appear to exclude a comptroller since there is no provision for such in chapter 145, F.S.<sup>12</sup>

#### Ability to Reduce Salary Rate

Current law does not permit a county commissioner, clerk of the circuit court, county comptroller, property appraiser, tax collector, sheriff, or supervisor of elections covered under chapter 145, F.S., to reduce his or her salary or salary rate.

In 2008, the general counsel for the St. Lucie County Sheriff's Department, on behalf of the sheriff, sought an Attorney General's opinion to determine if the sheriff could voluntarily reduce his salary below that established in chapter 145, F.S. The Attorney General ruling stated:

The Legislature has prescribed the salary for the sheriff as a county officer and the sheriff does not have the authority to alter such compensation. Nothing, however, precludes a sheriff from donating his or her salary, or a portion thereof, to the county once the sheriff has received the statutorily prescribed salary pursuant to section 145.071, Florida Statutes.

Accordingly, I am of the opinion that a sheriff may not voluntarily reduce his salary below that established by Chapter 145, Florida Statutes.<sup>13</sup>

#### 2009 and 2010 Amendments Affecting School Board Member Compensation

In 2009, s. 1001.395, F.S.,<sup>14</sup> was amended to provide that, notwithstanding that section and s. 145.19, F.S., school board members may reduce their salary rate on a voluntary basis. For the 2010-2011 fiscal year, the section was further amended to provide that, notwithstanding that section and s. 145.19, F.S., the salary of each school board member shall be the amount calculated according to s. 1001.395(1), F.S., or the district's beginning salary for teachers who hold baccalaureate degrees, whichever is less.

#### **Proposed Changes**

Effective July 1, 2011, the bill authorizes each member of a board of county commissioners, clerk of the circuit county, county comptroller, sheriff, supervisor of elections, property appraiser, and tax collector covered by chapter 145, F.S., to voluntarily reduce his or her salary rate.

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

**Section 1.** Amends s. 145.031, F.S., to authorize each member of a board of county commissioners to voluntarily reduce his or her salary rate.

**Section 2.** Amends s. 145.051, F.S., to authorize each clerk of the circuit court and each county comptroller to voluntarily reduce his or her salary rate.

**Section 3.** Amends s. 145.071, F.S., to authorize each sheriff to voluntarily reduce his or her salary rate.

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Seminole, Volusia, and Wakulla. See [www.fl-counties.com/Pages/About-Floridas-Counties/Charter-County-Information.aspx](http://www.fl-counties.com/Pages/About-Floridas-Counties/Charter-County-Information.aspx). Last visited February 26, 2011.

<sup>11</sup> Section 145.012, F.S.

<sup>12</sup> Sections 145.012 and 145.051, F.S.

<sup>13</sup> Florida Attorney General Opinion 2008-28.

<sup>14</sup> Section 1001.395, F.S., relates to district school board members and compensation.

**Section 4.** Amends s. 145.09, F.S., to authorize each supervisor of elections to voluntarily reduce his or her salary rate.

**Section 5.** Amends s. 145.10, F.S., to authorize each property appraiser to voluntarily reduce his or her salary rate.

**Section 6.** Amends s. 145.11, F.S., to authorize each tax collector to voluntarily reduce his or her salary rate.

**Section 7.** 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:

None.

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

Indeterminate. See "Fiscal Comments."

2. Expenditures:

Indeterminate. See "Fiscal Comments."

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

None.

### D. FISCAL COMMENTS:

The number of persons who will voluntarily participate in a salary rate reduction, the amount of the rate reduction, and the dollar associated with the reduction is difficult to estimate. The Office of Economic and Demographic Research (EDR) provided a range of salaries of elected county constitutional officers for fiscal year 2010-2011.

According to EDR, the salary figures for consolidated and charter counties might not be accurate due to the salary methodologies used by those counties. The salary figures do not include any special qualification salary available for certification persons available under chapter 145, F.S, and EDR urges counties to review the figures. The range of salaries for informational purposes is as follows:

- Clerk of the Court \$89,618 to \$173,405
- Property Appraiser \$89,618 to \$173,405
- Tax Collector \$89,618 to \$173,405
- Sheriff \$98,214 to \$182,001
- Supervisor of Elections \$73,029 to \$153,975<sup>15</sup>

<sup>15</sup> The Florida Legislature's Office of Economic and Demographic Research, *Salaries of Elected County Constitutional Officers and School District Officials for Fiscal Year 2010-2011 (September 2010)*, at 11-13.

### **III. COMMENTS**

#### **A. CONSTITUTIONAL ISSUES:**

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

Not applicable. The bill does not appear to require a county or municipality to spend funds or take an action requiring expenditures; reduce the authority that counties and municipalities have to raise revenues in the aggregate; or reduce the percentage of a state tax shared in the aggregate with counties and municipalities.

##### **2. Other:**

None.

#### **B. RULE-MAKING AUTHORITY:**

None.

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

None.

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

Not applicable.

1 A bill to be entitled  
 2 An act relating to compensation of county officials;  
 3 amending ss. 145.031, 145.051, 145.071, 145.09, 145.10,  
 4 and 145.11, F.S.; authorizing each member of a board of  
 5 county commissioners, each clerk of the circuit court,  
 6 county comptroller, each sheriff, each supervisor of  
 7 elections, each property appraiser, and each tax collector  
 8 to reduce his or her salary on a voluntary basis;  
 9 providing an effective date.

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

12  
 13 Section 1. Section 145.031, Florida Statutes, is amended  
 14 to read:

15 145.031 Board of county commissioners.—

16 (1) Each member of the board of county commissioners shall  
 17 receive as salary the amount indicated, based on the population  
 18 of his or her county. In addition, compensation shall be made  
 19 for population increments over the minimum for each population  
 20 group, which shall be determined by multiplying the population  
 21 in excess of the minimum for the grouping times the group rate.

22

Pop.		Base	Group Rate
Group	County Pop. Range	Salary	
	Minimum	Maximum	

23  
 24

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25	I	-0-	9,999	\$4,500	\$0.150
26	II	10,000	49,999	6,000	0.075
27	III	50,000	99,999	9,000	0.060
28	IV	100,000	199,999	12,000	0.045
29	V	200,000	399,999	16,500	0.015
30	VI	400,000	999,999	19,500	0.005
31	VII	1,000,000		22,500	0.000

32 (2) No member of a governing body of a chartered county or  
 33 a county with a consolidated form of government shall be deemed  
 34 to be the equivalent of a county commissioner for the purposes  
 35 of determining the compensation of such member under his or her  
 36 respective charter.

37 (3) Notwithstanding the provisions of this section or s.  
 38 145.19, each member of the board of county commissioners may  
 39 reduce his or her salary rate on a voluntary basis.

40 Section 2. Section 145.051, Florida Statutes, is amended  
 41 to read:

42 145.051 Clerk of circuit court; county comptroller.—

43 (1) Each clerk of the circuit court and each county  
 44 comptroller shall receive as salary the amount indicated, based  
 45 on the population of his or her county. In addition, a



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46 compensation shall be made for population increments over the  
 47 minimum for each population group, which shall be determined by  
 48 multiplying the population in excess of the minimum for the  
 49 group times the group rate.

50

Pop. Group	County Pop. Range		Base Salary	Group Rate
	Minimum	Maximum		
I	-0-	49,999	\$21,250	\$0.07875
II	50,000	99,999	24,400	0.06300
III	100,000	199,999	27,550	0.02625
IV	200,000	399,999	30,175	0.01575
V	400,000	999,999	33,325	0.00525
VI	1,000,000		36,475	0.00400

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59 (2) (a) There shall be an additional \$2,000 per year  
 60 special qualification salary for each clerk of the circuit court  
 61 who has met the certification requirements established by the  
 62 Supreme Court. Any clerk of the circuit court who is certified  
 63 during a calendar year shall receive in that year a pro rata  
 64 share of the special qualification salary based on the remaining

65 period of the year.

66 (b) In order to qualify for the special qualification  
 67 salary provided by paragraph (a), the clerk must complete the  
 68 requirements established by the Supreme Court within 6 years  
 69 after first taking office.

70 (c) After a clerk meets the requirements of paragraph (a),  
 71 in order to remain certified the clerk shall thereafter be  
 72 required to complete each year a course of continuing education  
 73 as prescribed by the Supreme Court.

74 (3) Notwithstanding the provisions of this section or s.  
 75 145.19, each clerk of the circuit court and each county  
 76 comptroller may reduce his or her salary rate on a voluntary  
 77 basis.

78 Section 3. Section 145.071, Florida Statutes, is amended  
 79 to read:

80 145.071 Sheriff.-

81 (1) Each sheriff shall receive as salary the amount  
 82 indicated, based on the population of his or her county. In  
 83 addition, a compensation shall be made for population increments  
 84 over the minimum for each group, which shall be determined by  
 85 multiplying the population in excess of the minimum for the  
 86 group times the group rate.

87

Pop.			Base	Group Rate
Group	County Pop.	Range	Salary	
	Minimum	Maximum		

88

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90	I	-0-	49,999	\$23,350	\$0.07875
91	II	50,000	99,999	26,500	0.06300
92	III	100,000	199,999	29,650	0.02625
93	IV	200,000	399,999	32,275	0.01575
94	V	400,000	999,999	35,425	0.00525
95	VI	1,000,000		38,575	0.00400

96 (2) (a) There shall be an additional \$2,000 per year  
 97 special qualification salary for each sheriff who has met the  
 98 qualification requirements established by the Department of Law  
 99 Enforcement. Any sheriff who so qualifies during a calendar year  
 100 shall receive in that year a pro rata share of the special  
 101 qualification salary based on the remaining period of the year.

102 (b) In order to qualify for the special qualification  
 103 salary described in paragraph (a), the sheriff must complete the  
 104 requirements specified in that paragraph within 6 years after  
 105 first taking office.

106 (c) After a sheriff meets the requirements of paragraph  
 107 (a), in order to remain qualified the sheriff shall thereafter  
 108 be required to complete each year a course of continuing  
 109 education as prescribed by the Department of Law Enforcement.

110 (3) Notwithstanding the provisions of this section or s.  
 111 145.19, each sheriff may reduce his or her salary rate on a

112 | voluntary basis.

113 | Section 4. Section 145.09, Florida Statutes, is amended to  
114 | read:

115 | 145.09 Supervisor of elections.—

116 | (1) Each supervisor of elections shall receive as salary  
117 | the amount indicated, based on the population of his or her  
118 | county. In addition, a compensation shall be made for population  
119 | increments over the minimum for each population group, which  
120 | shall be determined by multiplying the population in excess of  
121 | the minimum for the group times the group rate.

Pop. Group	County Pop. Range	Base Salary	Group Rate
	Minimum      Maximum		
I	-0-      49,999	\$17,228	\$0.075
II	50,000      99,999	20,228	0.060
III	100,000      199,999	23,228	0.025
IV	200,000      399,999	25,728	0.015
V	400,000      999,999	28,728	0.005
VI	1,000,000	31,728	0.004

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131 (2) The above salaries are based upon a 5-day workweek. If  
 132 a supervisor does not keep his or her office open 5 days per  
 133 week, then the salary will be prorated accordingly.

134 (3) (a) There shall be an additional \$2,000 per year  
 135 special qualification salary for each supervisor of elections  
 136 who has met the certification requirements established by the  
 137 Division of Elections of the Department of State. The Department  
 138 of State shall adopt rules to establish the certification  
 139 requirements. Any supervisor who is certified during a calendar  
 140 year shall receive in that year a pro rata share of the special  
 141 qualification salary based on the remaining period of the year.

142 (b) In order to qualify for the special qualification  
 143 salary described in paragraph (a), the supervisor must complete  
 144 the requirements established by the Division of Elections within  
 145 6 years after first taking office.

146 (c) After a supervisor meets the requirements of paragraph  
 147 (a), in order to remain certified the supervisor shall  
 148 thereafter be required to complete each year a course of  
 149 continuing education as prescribed by the division.

150 (4) Notwithstanding the provisions of this section or s.  
 151 145.19, each supervisor of elections may reduce his or her  
 152 salary rate on a voluntary basis.

153 Section 5. Section 145.10, Florida Statutes, is amended to  
 154 read:

155 145.10 Property appraiser.—

156 (1) Each property appraiser shall receive as salary the  
 157 amount indicated, based on the population of his or her county.  
 158 In addition, a compensation shall be made for population

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159 increments over the minimum for each population group, which  
 160 shall be determined by multiplying the population in excess of  
 161 the minimum for the group times the group rate.

162

Pop. Group	County Pop. Range		Base Salary	Group Rate
	Minimum	Maximum		
I	-0-	49,999	\$21,250	\$0.07875
II	50,000	99,999	24,400	0.06300
III	100,000	199,999	27,550	0.02625
IV	200,000	399,999	30,175	0.01575
V	400,000	999,999	33,325	0.00525
VI	1,000,000		36,475	0.00400

171 (2) (a) There shall be an additional \$2,000 per year  
 172 special qualification salary for each property appraiser who has  
 173 met the requirements of the Department of Revenue and has been  
 174 designated a certified Florida property appraiser. Any property  
 175 appraiser who is certified during a calendar year shall receive  
 176 in that year a pro rata share of the special qualification  
 177 salary based on the remaining period of the year. The department

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178 shall establish and maintain a certified Florida property  
 179 appraiser program.

180 (b) In order to qualify for the special qualification  
 181 salary described in paragraph (a), the property appraiser must  
 182 complete the requirements established by the Department of  
 183 Revenue within 4 years after first taking office.

184 (c) After a property appraiser meets the requirements of  
 185 paragraph (a), in order to remain certified the property  
 186 appraiser shall thereafter be required to complete each year a  
 187 course of continuing education as prescribed by the department.  
 188 The executive director of the Department of Revenue may, at his  
 189 or her discretion, waive the requirements of this paragraph for  
 190 any property appraiser who has reached 60 years of age and who  
 191 has been a property appraiser for 20 years.

192 (3) Notwithstanding the provisions of this section or s.  
 193 145.19, each property appraiser may reduce his or her salary  
 194 rate on a voluntary basis.

195 Section 6. Section 145.11, Florida Statutes, is amended to  
 196 read:

197 145.11 Tax collector.—

198 (1) Each tax collector shall receive as salary the amount  
 199 indicated, based on the population of his or her county. In  
 200 addition, a compensation shall be made for population increments  
 201 over the minimum for each population group, which shall be  
 202 determined by multiplying the population in excess of the  
 203 minimum for the group times the group rate.

204

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Pop. Group	County Pop. Range		Base Salary	Group Rate
	Minimum	Maximum		
I	-0-	49,999	\$21,250	\$0.07875
II	50,000	99,999	24,400	0.06300
III	100,000	199,999	27,550	0.02625
IV	200,000	399,999	30,175	0.01575
V	400,000	999,999	33,325	0.00525
VI	1,000,000		36,475	0.00400

213 (2) (a) There shall be an additional \$2,000 per year  
 214 special qualification salary for each tax collector who has met  
 215 the requirements of the Department of Revenue and has been  
 216 designated a certified Florida tax collector. Any tax collector  
 217 who is certified during a calendar year shall receive in that  
 218 year a pro rata share of the special qualification salary based  
 219 on the remaining period of the year. The department shall  
 220 establish and maintain a certified Florida tax collector  
 221 program.

222 (b) In order to qualify for the special qualification  
 223 salary described in paragraph (a), the tax collector must



224 | complete the requirements established by the Department of  
 225 | Revenue within 4 years after first taking office.

226 |         (c) After a tax collector meets the requirements of  
 227 | paragraph (a), in order to remain certified the tax collector  
 228 | shall thereafter be required to complete each year a course of  
 229 | continuing education as prescribed by the department.

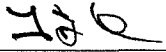
230 |         (3) Notwithstanding the provisions of this section or s.  
 231 | 145.19, each tax collector may reduce his or her salary rate on  
 232 | a voluntary basis.

233 |         Section 7. This act shall take effect July 1, 2011.



HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 95 State Parks  
**SPONSOR(S):** Bembry  
**TIED BILLS:** None **IDEN./SIM. BILLS:** SB 236

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Agriculture & Natural Resources Subcommittee	13 Y, 0 N	Cunningham	Blalock
2) Community & Military Affairs Subcommittee	15 Y, 0 N	Tait	Hoagland
3) State Affairs Committee		RC Cunningham	Hamby 

**SUMMARY ANALYSIS**

The Division of Recreation and Parks (division) within the Department of Environmental Protection oversees Florida's 160 state parks. Currently, active duty members and honorably discharged veterans of the United States Armed Forces (armed forces), National Guard, or reserve components receive a twenty-five percent discount on annual entrance passes to Florida's state parks. Veterans with service-connected disabilities receive free for life family annual entrance passes. Surviving spouses of deceased members of the armed forces, National Guard, or reserve components who have fallen in combat also receive free for life family annual entrance passes. Eligibility for these discounts is verified by the presentation of written documentation to the division.

The bill provides for parents of deceased members of the armed forces, National Guard, or reserve components who have fallen in combat to receive free lifetime annual entrance passes to Florida's state parks. Eligibility for these passes is verified by the presentation of written documentation to the division.

The division states that there will be a \$35,000 reduction in state park revenue. However, the division believes that the publicity and goodwill earned by this bill may lead to increased visitation to the parks, which may offset the loss of revenues.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Present Situation**

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

The division offers two types of annual passes: the individual annual entrance pass for \$60 and the family annual entrance pass for \$120. The family annual entrance pass allows up to eight people in a group admittance to most state parks.<sup>2</sup> According to the department, annual entrance pass sales accounted for \$1,758,157.95 in revenues during Fiscal Year 2009-10.<sup>3</sup>

Active duty members and honorably discharged veterans of the United States Armed Forces (armed forces), National Guard, or reserve components receive a twenty-five percent discount on annual entrance passes to Florida's state parks. Veterans with service-connected disabilities receive free for life family annual entrance passes. Surviving spouses of members of the armed forces, National Guard, or reserve components who have fallen in combat also receive free for life annual entrance passes.

The division offers active-duty Florida National Guard members, their spouses and minor children a fifty percent discount on the daily admission fee. In addition, the division offers a fifty percent discount on the daily admission fees for Florida residents participating in the Food Stamp program and a fifty percent discount on the base camping fees for Florida residents who are 65 years and older or are 100% disabled.

The division prescribes what constitutes satisfactory written documentation to prove eligibility for discounts.<sup>4</sup>

Satisfactory written documentation to prove eligibility for the 25% discount on Annual Entrance Passes for active duty and honorably discharged veterans of the armed forces, National Guard, or reserve units includes:

- Current military identification card showing the bearer as active duty, reserve, or retired member of a branch of the US Armed Forces, or
- Personal identification (i.e.: driver license, etc.) and
- Most recent DD Form 214, Certificate of Release or Discharge from Active Duty, showing the named individual's Character of Service as Honorable, or
- Other current official documentation from the Department of Defense, Department of Homeland Security, Department of Veterans Affairs or an appropriate branch of one of those agencies, naming the bearer as active duty, reserve, veteran, or retired member of the US Armed Forces.

---

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

<sup>2</sup> The two exceptions are Homosassa Springs and Weeki Wachee Springs, which limit admittance to two people per family annual entrance pass.

<sup>3</sup> Information on file with the House Community and Military Affairs Subcommittee.

<sup>4</sup> <http://www.floridastateparks.org/thingstoknow/annualpass.cfm>, last accessed March 1, 2011.

Satisfactory written documentation to prove eligibility for the Free for Life Family Annual Entrance Passes for honorably discharged U.S. veterans who have service-connected disabilities includes:

- Personal identification (i.e.: driver license) and
- Most recent DD Form 214, Certificate of Release or Discharge from Active Duty, showing the named individual's Character of Service as Honorable, or
- Other current official documentation from the Department of Defense, or one of those agencies, naming the bearer as veteran or retired military, and
- Current official documentation from the Department of Defense, Department of Homeland Security, Department of Veterans Affairs or an appropriate branch of one of the those agencies, naming the bearer as having sustained a service-related disability.

Satisfactory documentation to prove eligibility for Free for Life Family Annual Entrance Passes for surviving spouses of deceased members of the armed forces, National Guard, or reserve units who have fallen in combat includes:

- Personal identification (i.e.: driver license) and
- The final DD Form 214, Certificate of Release or Discharge from Active Duty, showing the date of death as the same date as the date of separation, and
- Marriage certificate or license, or death certificate showing the bearer as the spouse of the military member who has fallen in combat.

### **Effect of Proposed Changes**

The bill provides for parents of deceased members of the armed forces, National Guard, and reserve components who have fallen in combat to receive free lifetime annual entrance passes.

Required documentation to prove eligibility will include:

- Personal identification (i.e.: driver license) and
- Proof of parenthood, showing the bearer as the parent of the military member who has fallen in combat, and
- The final DD Form 214, Certificate of Release or Discharge from Active Duty, showing the date of death as the same date as the date of separation, or
- The DD Form 1300, Report of Casualty.

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

**Section 1:** Amends s. 258.0145, F.S., to include parents of veterans who fell in combat.

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

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

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

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

The division staff stated an estimated \$35,000 fiscal impact in their analysis of the bill. (See "Fiscal Comments" section below.)

##### **2. Expenditures:**

None.

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

1. Revenues:

See "Fiscal Comments" section below.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Parents of deceased members of the armed forces, National Guard, or reserve components who have fallen in combat will benefit from the legislation.

D. FISCAL COMMENTS:

The division states that there will be a \$35,000 reduction in state park revenue. However, according to the division, the publicity and goodwill earned by the state is expected result in increased visitation, which should offset any loss of revenues.

**III. COMMENTS**

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

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1                                   A bill to be entitled  
 2           An act relating to state parks; amending s. 258.0145,  
 3           F.S.; providing for the parents of certain deceased  
 4           veterans to receive lifetime annual entrance passes to  
 5           state parks at no charge; providing an effective date.

6  
 7   Be It Enacted by the Legislature of the State of Florida:

8  
 9           Section 1. Subsection (3) of section 258.0145, Florida  
 10          Statutes, is amended to read:

11           258.0145 Military state park fee discounts.—The Division  
 12          of Recreation and Parks shall provide the following discounts on  
 13          park fees to persons who present written documentation  
 14          satisfactory to the division which evidences their eligibility  
 15          for the discounts:

16           (3) Surviving spouses and parents of deceased members of  
 17          the United States Armed Forces, National Guard, or reserve  
 18          components thereof who have fallen in combat shall receive  
 19          lifetime family annual entrance passes at no charge.

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

Amendment No. /

COMMITTEE/SUBCOMMITTEE ACTION

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

---

1 Committee/Subcommittee hearing bill: State Affairs Committee  
2 Representative Bemby offered the following:

**Amendment (with directory and title amendments)**

Between lines 19 and 20, insert:

6 (4) Surviving spouses and parents of a law enforcement  
7 officer, as defined in s. 943.10(1), or a firefighter, as  
8 defined in s. 633.30(1), who has died in the line of duty shall  
9 receive lifetime family annual entrance passes at no charge.

13 -----  
14 **D I R E C T O R Y   A M E N D M E N T**

15 Remove line 10 and insert:

16 Statutes, is amended, and subsection (4) is added to that  
17 section, to read:



Amendment No.

20

21

-----

22

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

23

Remove line 4 and insert:

24

veterans and the spouse and parents of law enforcement

25

officers and firefighters who die in the line of duty to

26

receive annual entrance passes to

Amendment No. 2

COMMITTEE/SUBCOMMITTEE ACTION

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

1 Committee/Subcommittee hearing bill: State Affairs Committee  
 2 Representative Bemby offered the following:

**Amendment (with title amendment)**

Between lines 19 and 20, insert:

6 Section 2. Jack Mashburn Marina designated; Department of  
7 Environmental Protection to erect suitable markers.-

8 (1) The marina commonly referred to as the "boat basin" on  
9 Grand Lagoon at St. Andrews State Park in Bay County is  
10 designated as "Jack Mashburn Marina."

11 (2) The Department of Environmental Protection is directed  
12 to erect suitable markers designating Jack Mashburn Marina as  
13 described in subsection (1).

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

18 Remove line 5 and insert:

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 95 (2011)

Amendment No.

19 state parks at no charge; designating Jack Mashburn Marina  
20 in Bay County; directing the Department of Environmental  
21 Protection to erect suitable markers; providing an  
22 effective date.

Amendment No. **3**

COMMITTEE/SUBCOMMITTEE ACTION

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

---

1 Committee/Subcommittee hearing bill: State Affairs Committee  
2 Representative Bemby offered the following:

**Amendment (with title amendment)**

Between lines 19 and 20, insert:

6 Section 2. Any property within the state park system that  
7 has free-roaming animal populations is exempt from the  
8 provisions of s. 588.15, Florida Statutes.

9  
10  
11 -----  
12 **T I T L E A M E N D M E N T**

13 Remove line 5 and insert:

14 state parks at no charge; exempting parks within the  
15 state park system that have free-roaming animal  
16 populations from the liability provisions in s.  
17 588.15, F.S.; providing an effective date.

Amendment No. **4**

COMMITTEE/SUBCOMMITTEE ACTION

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

1 Committee/Subcommittee hearing bill: State Affairs Committee  
 2 Representative Bembry offered the following:

3  
 4 **Amendment (with title amendment)**

5 Between lines 19 and 20, insert:

6 Section 2. Section 380.0685, Florida Statutes, is amended  
 7 to read:

8 380.0685 State park in area of critical state concern in  
 9 county which creates land authority; surcharge on admission and  
 10 overnight occupancy.—The Department of Environmental Protection  
 11 shall impose and collect a surcharge of 50 cents per person per  
 12 day, or \$5 per annual family auto entrance permit, on admission  
 13 to all state parks in areas of critical state concern located in  
 14 a county which creates a land authority pursuant to s.  
 15 380.0663(1), and a surcharge of \$2.50 per night per campsite,  
 16 cabin, or other overnight recreational occupancy unit in state  
 17 parks in areas of critical state concern located in a county  
 18 which creates a land authority pursuant to s. 380.0663(1);  
 19 however, no surcharge shall be imposed or collected under this

Amendment No.

20 section for overnight use by nonprofit groups of organized group  
21 camps, primitive camping areas, or other facilities intended  
22 primarily for organized group use. Such surcharges shall be  
23 imposed within 90 days after any county creating a land  
24 authority notifies the Department of Environmental Protection  
25 that the land authority has been created. The proceeds from such  
26 surcharges, less a collection fee that shall be kept by the  
27 Department of Environmental Protection for the actual cost of  
28 collection, not to exceed 2 percent, shall be transmitted to the  
29 land authority of the county from which the revenue was  
30 generated. Such funds shall be used to purchase property in the  
31 area or areas of critical state concern in the county from which  
32 the revenue was generated. An amount not to exceed 10 percent  
33 may be used for administration and other costs incident to such  
34 purchases. However, the proceeds of the surcharges imposed and  
35 collected pursuant to this section in a state park or parks  
36 located wholly within a municipality, less the costs of  
37 collection as provided herein, shall be transmitted to that  
38 municipality for use by the municipality for land acquisition or  
39 for beach renourishment and restoration, including, but not  
40 limited to, costs associated with any design, permitting,  
41 monitoring, and mitigation of such work, as well as the work  
42 itself. The surcharges levied under this section shall remain  
43 imposed as long as the land authority is in existence.

44  
45  
46 -----  
47 T I T L E A M E N D M E N T

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 95 (2011)

Amendment No.

48 Remove line 5 and insert:  
49 state parks at no charge; amending s. 380.0685, F.S.,  
50 relating to surcharges on admission to, and overnight  
51 occupancy in, specified state parks in areas of critical  
52 state concern; providing for the use of proceeds from such  
53 surcharges derived from a state park or parks located  
54 wholly within a municipality for beach renourishment and  
55 restoration; providing an effective date.





HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HM 363 Deepwater Horizon Oil Disaster/Penalties

SPONSOR(S): Coley and others

TIED BILLS: IDEN./SIM. BILLS: SM 218

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Federal Affairs Subcommittee		Cyphers	Cyphers
2) State Affairs Committee		Cyphers <i>ML</i>	Hamby <i>JHQ</i>

SUMMARY ANALYSIS

The House Memorial urges the United States Congress to permit civil penalties recovered under the Clean Water Act (CWA) as a result of the Deepwater Horizon Oil Spill be used to provide long-term environmental and economic assistance to states bordering the Gulf of Mexico, as well as its current use in recovery efforts from any future spills.

The House Memorial does not amend, create, or repeal any provisions of the Florida Statutes.

The House Memorial has no fiscal impact on state or local government.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### Current Situation

On April 20, 2010 in the Gulf of Mexico, the Deepwater Horizon drilling rig experienced an explosion<sup>1</sup> that would take the lives of eleven people and mark the beginning of the largest environmental disaster in the history of the United States. By the end of April 22<sup>nd</sup>, eleven members of the crew of the Deepwater Horizon were missing and presumed deceased<sup>2</sup>; several other crew members were injured; the \$350 million oil rig owned by Transocean<sup>3</sup> had sunk to the bottom of the Gulf of Mexico; and oil and natural gas were leaking from pipes attached to the failed blowout preventer at the well head.

##### Response and Aftermath

The location of the leaking well site, known as the Macondo well, is approximately 45 miles southeast of Louisiana. As it became clear that the built-in measures to stop the leak had failed and that oil was beginning to spread away from the site of the leak, Governor Charlie Crist declared a state of emergency on April 30<sup>th</sup> for Escambia, Santa Rosa, Okaloosa, Walton, Bay, and Gulf counties<sup>4</sup>. On May 3<sup>rd</sup>, the governor's executive order was amended to add Franklin, Wakulla, Jefferson, Taylor, Dixie, Citrus, Hernando, Pasco, Pinellas, Hillsborough, Manatee, and Sarasota counties<sup>5</sup>.

After several failed attempts to stop the leak from the well, including a failed "top kill" effort between May 26 through 29, 2010<sup>6</sup>; leaking from the well was finally stopped on July 15, 2010<sup>7</sup>. A new "static kill" was successfully completed on August 4, 2010<sup>8</sup>, and on September 19, 2010, after the relief well was finished and the well was cemented from beneath, Admiral Thad Allen announced that the well was "effectively dead."<sup>9</sup>

The federal government estimates the amount of oil released from the Macondo well to be approximately 4.9 million barrels or 205.8 million gallons of oil<sup>10</sup>. While 17 percent of the oil was captured at the wellhead (833,000 barrels), according to official oil budget reports, the remaining oil (4.2 million barrels) escaped immediate retrieval<sup>11</sup>.

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<sup>1</sup> [http://www.nytimes.com/2010/04/22/us/22rig.html?\\_r=1&scp=1&sq=oil+rig+explosion&st=nyt](http://www.nytimes.com/2010/04/22/us/22rig.html?_r=1&scp=1&sq=oil+rig+explosion&st=nyt)

<sup>2</sup> <http://www.tampabay.com/incoming/as-oil-rig-sinks-hope-fades/1089672>

<sup>3</sup> National Commission on the BP Deepwater Horizon Oil Spill and Offshore Drilling: Report to the President, January 2011

<sup>4</sup> Office of the Governor, Executive Order Number 10-99 (Emergency Management – Deepwater Horizon) April 30, 2010

<sup>5</sup> Office of the Governor, Executive Order Number 10-100 (Emergency Management – Deepwater Horizon) May 3, 2010

<sup>6</sup> <http://www.nytimes.com/2010/05/30/us/30spill.html>

<sup>7</sup> <http://abcnews.go.com/WN/gulf-oil-spill-bps-cap-success-oil-stops/story?id=11173330>

<sup>8</sup> <http://www.nytimes.com/2010/08/05/us/05spill.html>

<sup>9</sup> <http://www.cbsnews.com/stories/2010/09/19/national/main6881308.shtml>

<sup>10</sup> National Commission on the BP Deepwater Horizon Oil Spill and Offshore Drilling: Report to the President, January 2011

<sup>11</sup> [http://www.noaanews.noaa.gov/stories2010/20101123\\_oilbudget.html](http://www.noaanews.noaa.gov/stories2010/20101123_oilbudget.html)

Oil Budget (Released Aug. 4)		Oil Budget Technical Report		
Category	% of Total	Category	% of Total	Change
Direct Recovery	17%	Direct Recovery	17%	None
Burned	5%	Burned	5%	None
Skimmed	3%	Skimmed	3%	None
Chemically Dispersed	8%	Chemically Dispersed	16%	+8%
Naturally Dispersed	16%	Naturally Dispersed	13%	-3%
Evaporated or Dissolved	25%	Evaporated or Dissolved	23%	-2%
Other	26%	Other	23%	-3%

According to a report by Secretary of the Navy Ray Mabus, at its peak, the response to the oil spill included more than 47,000 personnel; 7,000 vessels; 120 aircraft; and many federal, state, and local agencies<sup>12</sup>. The final Situation Report by Florida's response team also noted the use of over 791,061 feet of boom; the removal of over 500,000 gallons of oil from Florida's shoreline; the deployment of 128 National Guardsmen; and the registration of 19,899 volunteers from all 50 states and 10 different countries<sup>13</sup>.

#### Claims Process

Under the provisions of Oil Pollution Act of 1990 (OPA), all "responsible parties" are liable for recovery costs and other damages resulting from an unpermitted release of oil into the navigable waters of the United States. The OPA, however, limits the damages to be paid by responsible parties at \$75 million per incident. However, according to a U.S. Coast Guard document on Oil Spill Liability Trust Fund Funding for Oil Spills, this limitation of liability disappears if the incident is found to have been caused by gross negligence; willful misconduct; or a violation of federal operating, construction, or safety regulations.<sup>14</sup> BP has said that it would not claim protection under the \$75 million limit under OPA<sup>15</sup>.

On June 1, 2010, the United States Attorney General Eric Holder announced the federal government would pursue all legal remedies to the disaster, including civil and criminal penalties in order to ensure accountability on the part any responsible party.<sup>16</sup> Later in June, at the request of President Obama, BP announced that it would create a trust that would total \$20 billion to pay all "legitimate claims"<sup>17</sup>.

All claims under OPA including recovery and damages related to individuals, governments and natural resources were to be paid out of this fund, though the \$20 billion amount was not intended to be a cap, according to BP.<sup>18</sup>

Until August 23, 2010, BP administered the payment of claims out of the trust fund, but the process of paying claims to individuals and businesses was subsequently turned over to an independent claims facility managed by Kenneth Feinberg with the opening of the Gulf Coast Claims Facility (GCCF)<sup>19</sup>.

<sup>12</sup> America's Gulf Coast: A Long Term Recovery Plan after the Deepwater Horizon Oil Spill, September 2010

<sup>13</sup> Deepwater Horizon Response: Situation Report #114 (Final) August 26, 2010

<sup>14</sup> <http://www.epa.gov/regulations/laws/opa.html>

<sup>15</sup> <http://www.bloomberg.com/news/2010-05-21/bp-waiver-of-75-million-spill-damage-cap-may-recognize-liability-reality.html>

<sup>16</sup> [http://www.upi.com/Top\\_News/US/2010/06/01/Obama-pledges-investigation-of-spill/UPI-57771275397263/](http://www.upi.com/Top_News/US/2010/06/01/Obama-pledges-investigation-of-spill/UPI-57771275397263/)

<sup>17</sup> <http://www.bp.com/genericarticle.do?categoryId=2012968&contentId=7062966>

<sup>18</sup> *Id.*

<sup>19</sup> <http://www.gulfcoastclaimsfacility.com/>

As of March 2, 2011, the total number of claimants to the GCCF reached 802,411. Of these claimants, 263,054 have been paid a total of \$3.46 billion thus far. Florida makes up 32% of all claims (254,557 claims) and 35.6% of all claims paid to date (97,271 claims paid totaling \$1.23 billion).<sup>20</sup>

### Claims for Natural Resource Damage

As mentioned above, the OPA makes responsible parties liable for damage caused as a result of unauthorized releases of oil. Pursuant to OPA, the party responsible for an oil spill is liable for any loss of natural resources (e.g., fish, animals, plants, and their habitats) and the services provided by the resource (e.g., drinking water, recreation).

When a spill occurs, natural resource trustees conduct a natural resource damage assessment to determine the extent of the harm. Trustees may include representatives from tribal governments as well as officials from state agencies (designated by the relevant Governor) and federal agencies (designated by the President), such as NOAA.<sup>21</sup>

The Oil Pollution Act (OPA) of 1990 states that the measure of natural resource damages includes:

- the cost of restoring, rehabilitating, replacing, or acquiring the equivalent of, the damaged natural resources;
- the diminution in value of those natural resources pending restoration; and
- the reasonable cost of assessing those damages.

Pursuant to OPA, NOAA developed regulations pertaining to natural resource damage assessments in 1996. Natural resource damages may include both losses of direct use and passive uses. Direct use value may derive from recreational (e.g., boating), commercial (e.g., fishing), or cultural or historical uses of the resource. In contrast, a passive-use value may derive from preserving the resource for its own sake or for enjoyment by future generations.<sup>22</sup>

The damages are compensatory, not punitive. Collected damages cannot be placed into the general treasury revenues of the federal or state government, but must be used to restore or replace lost resources. Indeed, NOAA's regulations focus on the costs of primary restoration -- returning the resource to its baseline condition -- and compensatory restoration -- addressing interim losses of resources and their services.<sup>23</sup>

Pursuant to OPA, the separate process of the Natural Resource Damage Assessment (NRDA) and restoration following the Deepwater Horizon began with the efforts of groups like the Deepwater Horizon Oil Spill Trustee Council to assess the damage.<sup>24</sup> The Council is comprised of trustees from each member state as well as representatives from the U.S. Department of the Interior, the National Oceanic and Atmospheric Administration, and the U.S. Fish and Wildlife Service.

In addition to the Council, the Gulf Coast Ecosystem Restoration Task Force was authorized through an Executive Order by President Obama in October, 2010.<sup>25</sup> The Task Force is intended to work with stakeholder groups (like the Deepwater Horizon Oil Spill Trustee Council) and build upon the Natural Resource Damage Assessment (NRDA) effort in order to achieve comprehensive, long-term recovery

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<sup>20</sup> Gulf Coast Claims Facility website; Overall Program Statistics; February 28, 2011

<sup>21</sup> Congressional Research Service: Oil Spills in U.S. Coastal Waters: Background, Governance, and Issues for Congress

<sup>22</sup> *Id.*

<sup>23</sup> *Id.*

<sup>24</sup> <http://www.dep.state.fl.us/deepwaterhorizon/who.htm>

<sup>25</sup> Executive Order 13554, by President Obama found at <http://www.whitehouse.gov/the-press-office/2010/10/05/executive-order-gulf-coast-ecosystem-restoration-task-force>

of the Gulf of Mexico. The Task force is comprised of state and federal leaders, and is chaired by U.S. Environmental Protection Agency Administrator, Lisa Jackson.<sup>26</sup>

The NRDA is to be conducted in three phases: Assessment, Planning, and Implementation,<sup>27</sup> and the process allows for the cooperation by the responsible parties. At this time, however, there are uncertainties regarding the magnitude of the environmental consequences of the spill as observed. There is some risk that the amount of long-term environmental restoration dollars that may be needed will be greater than the amount BP has committed, and it is not known if all environmental impacts identified by the State of Florida will be addressed through the NRDA process.

### Clean Water Act

The Clean Water Act contains provisions not covered by the OPA or other federal laws which allow for penalties to be levied when pollutants are discharged from a vessel or facility without authorization<sup>28</sup>. The civil penalties awarded as a product of the Clean Water Act can be assessed on two separate scales which can be chosen by federal authorities; per day or volumetrically. Section 311(b)(7) of the Act allows for a penalty of \$37,500 for each day in which a violation occurs or \$1,100 per-barrel of oil discharged without a permit. These penalties can be increased significantly if the unlawful discharge is the result of gross negligence or willful misconduct by the owner, operator, or any person in charge of a vessel, or in the case of the Deepwater Horizon, an offshore facility. In fact, the per-barrel penalty for discharges as a result of gross negligence or willful misconduct can be as much as \$4,300. The provisions, as potentially applied in this case, provide for a civil penalty range between \$5.4 billion and \$21.1 billion<sup>29</sup>.

Currently all funds derived from oil spill related civil penalties under the Clean Water Act must be placed into the Oil Spill Liability Trust Fund (OSLTF).<sup>30</sup> These funds can only be used for the purpose of unmet claims by responsible parties in future spill events. Further, all the total of all claims to the trust fund are limited by the cap of \$1 billion per pollution event.<sup>31</sup> In the case of the Deepwater Horizon disaster, no funds collected as a result of CWA penalties (other than the capped \$1 billion from the current balance in the OSLTF) could be used for economic or environmental recovery in the five Gulf states including Florida.

In his September 2010 report to the president regarding the Gulf oil spill, Secretary of the Navy, Ray Mabus recommended that federal law be changed to allow the use of penalties collected under CWA as a result of the Deepwater Horizon oil leak to be used for long-term economic and environmental recovery in the Gulf states. He believed that these funds should be used to mitigate economic and natural resource damage not covered by the OPA. He also called for a portion of penalties to go directly to the states for their individual long-term recovery and economic development efforts. Finally, he recommended that the remaining balance should go to the OSLTF for future spills.<sup>32</sup>

### **Effects of Proposed Changes**

If enacted, this memorial would request that Congress enact legislation which would change the distribution of civil penalties collected through the Clean Water Act as a result of the Deepwater Horizon oil spill.

Rather than all of the proceeds from penalties going to the Oil Spill Liability Trust Fund which would be used for damages and recovery from future oil spills, some portion of the proceeds would be deposited

<sup>26</sup> <http://www.restorethegulf.gov/task-force/about-task-force/about-task-force>

<sup>27</sup> <http://www.dep.state.fl.us/deepwaterhorizon/nrda.htm>

<sup>28</sup> Section 311(j)(1) of the Clean Water Act of 1972

<sup>29</sup> Range for penalty amounts is based on assumed unauthorized oil discharge of 4.9 million barrels

<sup>30</sup> National Commission on the BP Deepwater Horizon Oil Spill and Offshore Drilling; Staff Working Paper Number 14

<sup>31</sup> National Commission on the BP Deepwater Horizon Oil Spill and Offshore Drilling; Staff Working Paper Number 14

<sup>32</sup> America's Gulf Coast: A Long Term Recovery Plan after the Deepwater Horizon Oil Spill, September 2010

into the Gulf Coast Recovery Fund which would be administered by the Gulf Coast Recovery Council. The memorial also stipulates that proceeds should be directed to the five Gulf States (Florida, Alabama, Mississippi, Louisiana, and Texas) so that they may pursue their individual recovery efforts as well. Finally, the memorial provides that some amount of the civil penalties would still be deposited into the Oil Spill Liability Trust Fund for future spill events.

Copies of the memorial are to be sent to the President of the United States, the President of the United States Senate, the Speaker of the United States House of Representatives and to each member of the Florida delegation to the United States Congress.

The legislation also includes whereas clauses in order to support the memorial. The whereas clauses include:

WHEREAS, on the night of April 20, 2010, there was an explosion at the Deepwater Horizon oil rig which caused at least 170 million gallons of oil to spill into the Gulf of Mexico over the course of several months and wash up onto the coastlines of the five Gulf states, and

WHEREAS, this man-made disaster spoiled portions of Florida's coastline and waterways and devastated its fishing and tourism industries, and

WHEREAS, this man-made disaster has directly resulted in the loss of jobs and business for Floridians, and

WHEREAS, a preliminary study by the University of Central Florida predicted job losses of 195,000 and spending losses of \$10.9 billion if Florida's 23 counties along the Gulf Coast lose 50 percent of their tourism and leisure jobs and spending, and

WHEREAS, that preliminary study also predicted job losses of 39,000 and spending losses of \$2 billion if those same counties lose 10 percent of their tourism and leisure jobs and spending, and

WHEREAS, despite clean-up efforts, oil remains buried in the sand on the Gulf states' coastlines and in the waters offshore, and

WHEREAS, the amount of oil remaining in the Gulf waters is still unknown and some researchers have discovered oil below the sea's surface, including on the ocean floor, and

WHEREAS, although seafood caught off of Florida's coast is safe to eat and approximately 90 percent of the fishing closures in federal waters have been lifted, the long-term effect on the Gulf's sea life is still unknown, and

WHEREAS, under current law, any civil penalties recovered pursuant to the Clean Water Act must be deposited into the Oil Spill Liability Trust Fund to be used for clean-up and response efforts for future oil spills, and

WHEREAS, United States Secretary of the Navy, Ray Mabus, recommended that Congress dedicate a significant portion of any civil penalties recovered under the Clean Water Act to providing assistance for the region where the damage from the disaster occurred...

**B. SECTION DIRECTORY:**

None

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

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

1. Revenues:

None

2. Expenditures:

None

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

1. Revenues:

None

2. Expenditures:

None

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

None

**D. FISCAL COMMENTS:**

None

**III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

1. Applicability of Municipality/County Mandates Provision:

Not Applicable

2. Other:

None

**B. RULE-MAKING AUTHORITY:**

Not Applicable

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

None

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

House Memorial

A memorial to the Congress of the United States, urging Congress to dedicate penalties collected from parties responsible for the Deepwater Horizon oil disaster to repairing the environmental and economic damage caused by the disaster.

WHEREAS, on the night of April 20, 2010, there was an explosion at the Deepwater Horizon oil rig which caused at least 170 million gallons of oil to spill into the Gulf of Mexico over the course of several months and wash up onto the coastlines of the five Gulf states, and

WHEREAS, this man-made disaster spoiled portions of Florida's coastline and waterways and devastated its fishing and tourism industries, and

WHEREAS, this man-made disaster has directly resulted in the loss of jobs and business for Floridians, and

WHEREAS, a preliminary study by the University of Central Florida predicted job losses of 195,000 and spending losses of \$10.9 billion if Florida's 23 counties along the Gulf Coast lose 50 percent of their tourism and leisure jobs and spending, and

WHEREAS, that preliminary study also predicted job losses of 39,000 and spending losses of \$2 billion if those same counties lose 10 percent of their tourism and leisure jobs and spending, and

WHEREAS, despite clean-up efforts, oil remains buried in the sand on the Gulf states' coastlines and in the waters offshore, and



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29 WHEREAS, the amount of oil remaining in the Gulf waters is  
 30 still unknown and some researchers have discovered oil below the  
 31 sea's surface, including on the ocean floor, and

32 WHEREAS, although seafood caught off of Florida's coast is  
 33 safe to eat and approximately 90 percent of the fishing closures  
 34 in federal waters have been lifted, the long-term effect on the  
 35 Gulf's sea life is still unknown, and

36 WHEREAS, under current law, any civil penalties recovered  
 37 pursuant to the Clean Water Act must be deposited into the Oil  
 38 Spill Liability Trust Fund to be used for clean-up and response  
 39 efforts for future oil spills, and

40 WHEREAS, United States Secretary of the Navy, Ray Mabus,  
 41 recommended that Congress dedicate a significant portion of any  
 42 civil penalties recovered under the Clean Water Act to providing  
 43 assistance for the region where the damage from the disaster  
 44 occurred, NOW, THEREFORE,

45  
 46 Be It Resolved by the Legislature of the State of Florida:

47  
 48 That the Legislature requests the United States Congress to  
 49 enact legislation that permits any civil penalties recovered  
 50 under the Clean Water Act due to the Deepwater Horizon oil  
 51 disaster to be distributed in the following manner:

52 (1) Deposited into a newly created Gulf Coast Recovery  
 53 Fund, which is managed by a Gulf Coast Recovery Council and used  
 54 to provide assistance for long-term environmental and economic  
 55 recovery in the Gulf;

56 (2) Directed to the five Gulf states to enable each state

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57 | to pursue its own recovery efforts; and

58 |       (3) Deposited into the Oil Spill Liability Trust Fund for  
59 | future recovery efforts.

60 |       BE IT FURTHER RESOLVED that copies of this memorial be  
61 | dispatched to the President of the United States, to the  
62 | President of the United States Senate, to the Speaker of the  
63 | United States House of Representatives, and to each member of  
64 | the Florida delegation to the United States Congress.



**HOUSE OF REPRESENTATIVES STAFF ANALYSIS**

**BILL #:** CS/HB 399 Infrastructure Investment  
**SPONSOR(S):** Transportation & Highway Safety Subcommittee, Ray and others  
**TIED BILLS:** None **IDEN./SIM. BILLS:** None

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Transportation & Highway Safety Subcommittee	14 Y, 0 N, As CS	Johnson	Brown
2) State Affairs Committee		Blalock <i>AFB</i>	Hamby <i>zde</i>
3) Economic Affairs Committee			

**SUMMARY ANALYSIS**

Florida has 14 public deepwater seaports that are considered significant economic drivers for the regions in which they are located and for the state. The bill includes several environmental provisions related to seaports. Specifically, the bill:

- Requires the Secretary of the Department of Transportation to designate an assistant secretary duties related to enhancing economic prosperity;
- Requires the Florida Seaport Transportation and Economic Development (FSTED) Council to annually develop a project priority list;
- Requires each port to develop a master plan;
- Creates a new prevailing principle for the Florida Transportation Plan;
- Creates a new component of the Strategic Intermodal System;
- Exempts overwater piers, docks and similar structure in deepwater ports from the ports stormwater management system if the port has a Stormwater Pollution Prevention Plan which addresses the industrial activity located in the port;
- Requires the state Department of Environmental Protection (DEP) to issue a notice of intent for a port conceptual permit or a final permit within 30 days after receiving the application;
- Specifies that DEP’s notice of intent to issue a port conceptual permit creates a “rebuttable presumption” that the project or projects covered in the conceptual permit meet water-quality standards and sovereign-submerged land authorization requirements;
- Requires DEP to issue any requested construction permits from a port (that has been issued a conceptual permit) within 30 days of the request;
- Provides that permits for maintenance dredging are not required under certain circumstances;
- Provides that certain conveyances may not be considered receiving waters for the purposes of maintenance dredging;
- Grants consent to use any sovereignty submerged lands for maintenance dredging; and
- Provides for the disposal of spoil materials.

The bill may reduce certain costs for ports and port-related businesses, but the ports may incur some costs in developing their master plans.

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

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### Background

##### Background on Florida's seaports

Florida has 14 public seaports:<sup>1</sup> Port of Fernandina, Port of Fort Pierce, Jacksonville (JaxPort), Port of Key West, Port of Miami, Port of Palm Beach, Port Panama City, Port of Pensacola, Port Canaveral, Port Everglades, Port Manatee, Port St. Joe, Port of St. Petersburg, and Port of Tampa.

These seaports are considered significant economic drivers. Recent economic analyses and planning documents<sup>2</sup> prepared for the Florida Ports Council indicated that:

- In 2009, the maritime cargo activities at Florida seaports were responsible for generating more than 550,000 direct and indirect jobs and \$66 billion in total economic value.
- In 2009, the maritime cargo activities at Florida seaports contributed \$1.7 billion in state and local tax revenues.
- In 2009, the value of international trade moving through the 14 seaports was \$56.9 billion, down more than one-third from 2008. Still, the \$56.9 billion figure represented 55 percent of Florida's total international trade value of \$103 billion in 2009.
- Imports and exports continue to be fairly even. Of the \$56.9 billion in total value, imports were valued at \$27.6 billion and exports at \$29.2 billion.
- Based on 2009 figures, the average annual wage of Florida seaport-related jobs is \$54,400, more than double the average annual state wage for all other non-advanced degree workers (\$26,933) and over \$15,000 more than the average annual state wage for all occupations (\$38,470).
- The ROI for seaport projects is an estimated \$6.90 to \$1.

Florida's public seaports handled more than 121 million tons of cargo in FY 2006-2007, the most recent information available.<sup>3</sup> Of that, 19 million tons were exports, 50.3 million tons were imports, and 51.9 million tons were domestic shipments. In recent years, Asian nations have become key trading partners; in 2009, for example, 38 percent of water-borne imports from Asia entered the U.S. through Florida, 36 percent through Los Angeles-Long Beach, 13 percent through Savannah, and 4 percent through New York-New Jersey.<sup>4</sup> Central and South America continue to be Florida's most important export partners, with Western Europe a distant second.<sup>5</sup>

The cruise business also is a significant segment of Florida's seaport activity; in 2009, an estimated 12.7 million passengers embarked and disembarked from the nine ports with cruise operations. This equates to more than 54 percent of all U.S. cruise ship bookings.<sup>6</sup>

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<sup>1</sup> Listed in s. 403.021(9)(b), F.S. Interactive locator map is available at: [http://flaports.org/Sub\\_Content2.aspx?id=3](http://flaports.org/Sub_Content2.aspx?id=3). Last visited Feb. 28, 2011.

<sup>2</sup> Information for this section as gleaned from a 2010 Economic Action Plan for Florida Ports, available at [http://flaports.org/Assets/33201131346PM\\_2010\\_Economic\\_Action\\_Plan\\_for\\_Florida\\_A\\_Blueprint\\_to\\_Leverage\\_Florida\\_s\\_Strategic\\_State\\_Seaport\\_Partnership\\_January\\_2010.pdf](http://flaports.org/Assets/33201131346PM_2010_Economic_Action_Plan_for_Florida_A_Blueprint_to_Leverage_Florida_s_Strategic_State_Seaport_Partnership_January_2010.pdf) and from a 2011 economic analysis, available at [http://flaports.org/Assets/312011100301AM\\_Martin\\_Associates\\_Analysis\\_of\\_Seaport\\_Priority\\_Projects\\_February\\_2011.pdf](http://flaports.org/Assets/312011100301AM_Martin_Associates_Analysis_of_Seaport_Priority_Projects_February_2011.pdf) and other information provided by the Florida Ports Council. Last visited March 2, 2011.

<sup>3</sup> Available at <http://www.dot.state.fl.us/planning/trends/tc-report/Seaport032509.pdf>. Last visited March 1, 2010.

<sup>4</sup> Florida Trade and Logistics Study, page 17. Available at: [https://www.communicationsmgr.com/projects/1378/docs/FloridaTradeandLogisticsStudy\\_December2010.pdf](https://www.communicationsmgr.com/projects/1378/docs/FloridaTradeandLogisticsStudy_December2010.pdf). Last visited March 6, 2011.

<sup>5</sup> Chart available at <http://flaports.org/UserFiles/File/Statistics/Table%204.jpg>. Last visited March 1, 2010.

<sup>6</sup> Information provided by the Florida Ports Council and on file with the Senate Commerce and Tourism Committee.

## Panama Canal Project<sup>7</sup>

Built by the United States and opened in 1914, the Panama Canal is a 48-mile-long ship canal in the narrow Central American isthmus that joins the Atlantic and Pacific oceans. On December 31, 1999, ownership and control of the canal transferred from the United States to Panama. Today, the Panama Canal Authority (ACP) manages the canal.

The ACP has undertaken a \$5.2 billion modernization and expansion of the canal, which includes a third lock to move the new larger ships through the isthmus. Private investors and bank loans will finance some of the cost, and ACP is hoping that increased toll revenues from increased usage will generate enough money to pay for the rest of the project, which is expected to be completed by 2014.

For decades the Panama Canal has been a significant shipping lane for international maritime trade. Annual traffic has risen from about 1,000 ships in the canal's early days to 14,702 vessels in 2008. While the canal was built to handle the largest ships of its era, modern tankers and container vessels are bigger. As a result, these larger ships either take a different route or their owners do not use them in the Western Hemisphere, or, more commonly, goods are dropped off at seaports on the U.S. west and east coasts – depending on the final destination of the goods – and then hauled by truck or rail across the continent, where they may be loaded onto outbound ships. Some cargo stays in the United States, and some is further transported on land to points north or south. Once the expansion of the Panama Canal is completed larger cargo ships will be able to pass through the canal, thus increasing the number these larger vessels that could be available to enter Florida's ports, increasing potential trade opportunities. However, some of Florida's ports may also need to be expanded to accommodate the larger cargo vessels.

## **Current Situation**

### Department of Transportation

Section 20.23, F.S., creates the Department of Transportation (DOT) as a decentralized state agency and authorizes DOT's secretary to appoint up to three assistant secretaries who are directly responsible to the secretary to perform duties assigned by the secretary.

### The Florida Seaport Transportation and Economic Development Council

Section 311.09, F.S., establishes the Florida Seaport Transportation and Economic Development (FSTED) Council within DOT. The FSTED Council is required to develop a 5-Year Florida Seaport Mission Plan defining the goals and objectives concerning the development of port facilities and an intermodal transportation system. The Council also must annually submit a list of projects approved by the Council to be funded by FSTED for review by the Department of Community Affairs (DCA), DOT, and the Office of Tourism, Trade, and Economic Development (OTTED) for consistency with local comprehensive plans and certain statewide plans. Approved, consistent projects are included in the DOT Work Program.

### Florida Transportation Plan

Section 339.155, F.S. requires DOT to develop and annually update a statewide transportation plan, known as the Florida Transportation Plan (FTP). The FTP is to consider the entire state transportation system and examine the use of all modes of transportation to effectively and efficiently meet such needs. The purpose of the FTP is to establish and define the state's long-range transportation goals and objectives to be accomplished over a period of at least 20 years within the context of the State Comprehensive Plan, and any other statutory mandates and authorizations, and based upon the prevailing principles of:

- Preserving the existing transportation infrastructure;
- Enhancing Florida's economic competitiveness; and
- Improving travel choices to ensure mobility.

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<sup>7</sup> Numerous sources are available for information about the Panama Canal expansion project, but two basic sources are the Autoridad Panama de Canal (Panama Canal Authority) website, at <http://www.pancanal.com/eng/acp/index.html> and [http://en.wikipedia.org/wiki/Panama\\_Canal\\_expansion\\_project](http://en.wikipedia.org/wiki/Panama_Canal_expansion_project).

### Strategic Intermodal System (SIS)

The Strategic Intermodal System Plan (SIS) was established by the Florida Legislature in 2003 to enhance Florida's economic prosperity and competitiveness. The DOT works with its partners to determine investment needs based on the performance of the transportation system relative to the goals and objectives of the SIS. Chapter 339, F.S., includes provisions for developing and updating the SIS. The system encompasses transportation facilities of statewide and interregional significance and is focused on the efficient movement of passengers and freight. The SIS Highway Component was designated using the SIS/Emerging SIS criteria and thresholds and comprises:

- Interstate Highways,
- Florida's Turnpike,
- Selected urban expressways,
- Major arterial highways,
- Intermodal connectors between SIS, and
- Emerging SIS hubs and SIS corridors

The SIS Highway Component consists of 3,531 miles of SIS Highways and 761 miles of Emerging SIS Highways. In total, the SIS Highway Component is less than 4 percent of Florida's roads, yet carries almost 30 percent of all traffic. It carries more than two-thirds of all truck traffic using the State Highway System.

### Port planning and regulatory requirements

Section 163.3178, F.S., requires each applicable county and municipal comprehensive plan to include a chapter (or "element") on coastal zone management, and if applicable, the comprehensive master plan for the public seaport located within its geographic jurisdiction. These seaport master plans generally comprise a 25-year planning horizon for expansion, dredging, and other improvements at the particular ports.<sup>8</sup>

Dredging and other port projects that have the potential to impact water quality, sovereign submerged lands, sea grass and wildlife habitats, and upland disposal sites typically require permits from the U.S Army Corps of Engineers (Corps), or DEP and the water management districts under regulations found in chs. 161, 253, 373, and 403, F.S.

These agencies and the seaports work together early in the project planning process to identify environmental impacts and possible mitigation solutions. To that end, s. 311.105, F.S., creates the Florida Seaport Environmental Management Committee to serve as a forum for seaport-related environmental permitting issues. The committee is comprised of five seaport directors as voting members and representatives of DEP, DCA, the Corps, and the Florida Inland Navigation District as non-voting, ex officio members.

Section 311.105, F.S., also specifies the documentation required for applications submitted by seaports for joint coastal permits, which have duration of 5 years, and for 15-year conceptual joint coastal permits. These permits are designed to address in a comprehensive manner the variety of environmental impacts large-scale port projects might create.<sup>9</sup>

In 2010, the Legislature created s. 373.4133, F.S., which specifies the process by which any of the 14 seaports may seek a port conceptual permit from DEP. The purpose of the port conceptual permit is to serve as a multi-year blueprint for seaport infrastructure projects, and to streamline the regulatory review and approval process. Both seaports and private entities with controlling interests in property near the seaports may use the conceptual permit process.

A port conceptual permit constitutes the state's conceptual certification of a port's compliance with federal Clean Water Act regulations and the state's conceptual determination that the project is

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<sup>8</sup> The individual seaport master plans are available online at the ports' websites.

<sup>9</sup> See s. 403.061(37) and (38), F.S.

consistent with Florida's coastal zone management program. The conceptual permits may be issued for a period of up to 20 years and provide for one additional extension of 10 years.

### **Proposed Changes**

The bill amends s. 20.23, F.S., directing DOT's secretary to designate, to an assistant secretary, duties related to enhancing economic prosperity, including the responsibility to liaison with the Governor's head of economic development. The assistant secretary so designated will be responsible for providing the Office of the Governor with investment opportunities and transportation projects that:

- Expand the state's role as a global hub for trade and investment, and
- Enhance the state's supply chain used in processing, assembling, and shipping goods to western hemisphere markets.

The bill amends s. 311.09(3), F.S., relating to the FSTED Council's 5-year seaport mission plan to require the council to develop a list of priority projects and submit the list to DOT.

The bill creates. s.311.14(3), F.S., requiring each port to create a port master plan with a 10-year horizon. Each plan must include:

- An economic development component that identifies targeted business opportunities for increasing business and attracting new business for which a particular facility has a strategic advantage over its competitors, identifies financial resources and other inducements to encourage growth of existing business and acquisition of new business, and provides a projected schedule for attainment of the plan's goals.
- An infrastructure development and improvement component identifying all projected infrastructure improvements within the plan area which require improvement, expansion, or development in order for a port, airport, or railroad to attain a strategic advantage for competition with national and international competitors.
- A component that identifies all intermodal transportation facilities, including sea, air, rail, or road facilities, which are available or have potential, with improvements, to be available for necessary national and international commercial linkages and provides a plan for the integration of port, airport, and railroad activities with existing and planned transportation infrastructure.
- A component that identifies physical, environmental, and regulatory barriers to achievement of the plan goals and provides recommendations for overcoming those barriers.
- An intergovernmental coordination element that specifies modes and methods to coordinate plan goals and missions with the missions of FDOT, other state agencies, and affected local general-purpose governments.

To the extent feasible, port master plans must be consistent with local government comprehensive plans of the units of local government in which the port is located. Upon approval of a plan by the port's board, the plan is to be submitted to the FSTED Council.

The FSTED Council is required to review the master plans and prioritize strategic needs for inclusion in the Florida Seaport Mission Plan.

The bill amends s. 339.155, F.S., relating to the Florida Transportation Plan (plan) to provide that the plan must consider the needs of the entire state transportation system and examine the use of all modes of transportation to effectively and efficiently meet these needs. The bill also adds, "expanding the state's role as a hub for trade" to the list of the prevailing principle of the plan.

The bill amends s. 339.63, F.S., to add existing or planned facilities that significantly improve the state's competitive position to compete for the movement of additional goods into and through the state to the different types of facilities that form a component of an interconnected transportation system.



The bill amends s. 373.406, F.S., to add a general exemption to part IV, ch. 373, F.S., relating to the management and storage of surface waters. The bill provides that overwater piers, docks, and similar structures located in a deepwater port are not considered part of a stormwater management system for which stormwater treatment is required under chs. 373 or 403, F.S.,<sup>10</sup> if the port has a Stormwater Pollution Prevention Plan pursuant to the National Pollutant Discharge Elimination System Program which addresses the industrial activities conducted on all impervious overwater piers, docks, and similar structures located in the port.

The bill amends s. 373.4133, F.S., relating to port conceptual permits to clarify and expedite several permitting provisions. This bill:

- Requires DEP, notwithstanding any other provision of law, to issue a notice of intent within 30 days after receipt of an application for a port conceptual permit.
- Specifies that the DEP notice of intent to issue a port conceptual permit creates a rebuttable presumption<sup>11</sup> that development of the port or private facilities consistent with the approved port master plan complies with all applicable standards for the issuance of a port conceptual permit, an environmental resource permit (typically needed for dredging projects), and a sovereign submerged lands authorization (typically needed for dredging and for construction of near-shore facilities), pursuant to chs. 161, 253, 373, and 403, F.S. In such cases, the rebuttable presumption may be overcome only by clear and convincing evidence that the project does not comply with the required environmental standards.
- Requires DEP, upon issuing a port conceptual permit, and if necessary, an environmental resource permit or sovereign submerged lands authorization, to notify the U.S. Army Corps of Engineers that the project is in compliance with all state water quality and regulatory requirements, and to require DEP to issue any requested port construction permit within 30 days after receipt of the request.

The bill amends s. 403.813(3), F.S., to provide that a permit is not required under chs. 403 or 373, F.S., ch. 61-691, L.O.F.,<sup>12</sup> or chs. 25214 or 25270, 1949, L.O.F.,<sup>13</sup> for maintenance dredging conducted by the seaports or by inland navigation districts, if the dredging is to be performed is no more than is necessary to meet the original design specifications or configurations, the work is conducted in compliance with s. 379.2431(2)(d), F.S.,<sup>14</sup> and previously undisturbed natural areas are not significantly impacted.

The bill amends provisions relating to the discharge of return waters to provide that the point of discharge is into receiving waters. It also provides that ditches, pipes, and similar types of linear conveyances may not be considered receiving waters.

Current law provides that the state may not charge for material that s. 403.813(3), F.S., allows the public port or inland navigation district to remove. The bill grants consent to use any sovereignty submerged lands pursuant to s. 403.813, F.S.

The bill provides that if all requirements of the permit are satisfied, spoil materials may be deposited on a permitted disposal site or on a self-contained, upland spoil site that will prevent the escape of spoil material into the waters of the state.

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

## B. SECTION DIRECTORY:

Section 1 Amends s. 20.23, F.S., relating to the Department of Transportation.

<sup>10</sup> Chapter 373, F.S., relates to water resources. Chapter 403, F.S., relates to environmental control.

<sup>11</sup> "Rebuttable presumption" generally means a presumption of fact which can be overturned by persuasive and fact-based evidence to the contrary.

<sup>12</sup> Chapter 61-691, L.O.F., creates the Southwest Florida Water Management District.

<sup>13</sup> Chapters 25214 and 25270, 1948, L.O.F., create the Central and Southern Florida Flood Control District.

<sup>14</sup> s. 379.2431(2)(d), F.S., relates to the protection of manatees.

- Section 2 Amends s. 311.09, F.S., relating to the Florida Seaport and Economic Development Council.
- Section 3 Amends s. 311.14, F.S., relating to seaport planning.
- Section 4 Amends s. 339.155, F.S., relating to transportation planning.
- Section 5 Amends s. 339.63, F.S., relating to system facilities designated; additions and deletions.
- Section 6 Amends s. 373.406, F.S., relating to exemptions related to the management and storage of surface waters.
- Section 7 Amends s. 373.4133, F.S., relating to port conceptual permits.
- Section 8 Amends s. 403.813, F.S., related to permits issued at district centers; exceptions related to maintenance dredging.
- Section 9 Provides an effective date.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None

2. Expenditures:

DEP may incur additional costs associated with the expedited review of applications for port conceptual permits.

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None

2. Expenditures:

Requiring DEP to issue a notice of intent for a port conceptual permit within 30 days may provide more certainty to the ports thereby reducing their costs.

Ports may incur some additional costs associated with preparing port master plans.

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

Requiring DEP to issue a notice of intent for a port conceptual permit within 30 days may provide more certainty to port related businesses thereby reducing their costs.

### D. FISCAL COMMENTS:

None

## III. COMMENTS

### A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable: This bill does not appear to: require counties or municipalities to spend funds or take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue 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:

Section 163.3178, F.S. discusses seaport master plans in relation to the comprehensive planning process. The bill creates s 311.14(3), F.S., which requires ports to develop "master plans." It may be advisable to modify the term "master plan" in s. 311.14, F.S., to avoid confusion.

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

On March 22, 2011, the Transportation & Highway Safety adopted an amendment to its proposed committee substitute. The amendment:

- Requires the Secretary of DOT to designate an assistant secretary duties related to enhancing economic prosperity.
- Requires the FSTED Council to annually develop a project priority list.
- Requires each port to develop a master plan.
- Creates a new prevailing principle for the Florida Transportation Plan.
- Creates a new component of the SIS.

The analysis is written to the committee substitute.

1                                   A bill to be entitled  
 2           An act relating to infrastructure investment; amending s.  
 3           20.23, F.S.; requiring the Secretary of Transportation to  
 4           designate duties relating to certain investment  
 5           opportunities and transportation projects to an assistant  
 6           secretary; amending s. 311.09, F.S.; revising requirements  
 7           for the inclusion of certain goals and objectives in the  
 8           Florida Seaport Mission Plan; requiring the Florida  
 9           Seaport Transportation and Economic Development Council to  
 10          develop a priority list of projects and submit the list to  
 11          the Department of Transportation; amending s. 311.14,  
 12          F.S.; requiring certain ports to develop master plans;  
 13          providing criteria for such plans; requiring such plans to  
 14          be consistent with local government comprehensive plans;  
 15          requiring such plans to be submitted to the Florida  
 16          Seaport Transportation and Economic Development Council;  
 17          requiring the Florida Seaport Transportation and Economic  
 18          Development Council to review such plans and include  
 19          related information in the Florida Seaport Mission Plan;  
 20          amending s. 339.155, F.S.; clarifying and revising the  
 21          principles on which the Florida Transportation Plan is  
 22          based; amending s. 339.63, F.S.; adding certain existing  
 23          and planned facilities to the list of facilities included  
 24          in the Strategic Intermodal System and the Emerging  
 25          Strategic Intermodal System; amending s. 373.406, F.S.;  
 26          exempting overwater piers, docks, and structures located  
 27          in deepwater ports from stormwater management system  
 28          requirements under specified conditions; amending s.

29 373.4133, F.S.; requiring the Department of Environmental  
 30 Protection to issue a notice of intent for a port  
 31 conceptual permit within a specified time; providing that  
 32 a notice of intent to issue such permit creates a  
 33 rebuttable presumption of compliance with specified  
 34 standards and authorization; providing a standard for  
 35 overcoming such a presumption; requiring the department to  
 36 issue certain permits within a specified time and to  
 37 notify specified entities of certain compliance; amending  
 38 s. 403.813, F.S.; exempting specified seaports and inland  
 39 navigation districts from requirements to conduct  
 40 maintenance dredging under certain conditions; excluding  
 41 ditches, pipes, and similar linear conveyances from  
 42 consideration as receiving waters for the disposal of  
 43 dredged materials; authorizing public ports and inland  
 44 navigation districts to use sovereignty submerged lands in  
 45 connection with maintenance dredging; authorizing the  
 46 disposal of spoil material on specified sites; providing  
 47 an effective date.

48

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

50

51 Section 1. Paragraph (d) of subsection (1) of section  
 52 20.23, Florida Statutes, is amended to read:

53 20.23 Department of Transportation.—There is created a  
 54 Department of Transportation which shall be a decentralized  
 55 agency.

56 (1)

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57 (d) The secretary may appoint up to three assistant  
 58 secretaries who shall be directly responsible to the secretary  
 59 and who shall perform such duties as are assigned by the  
 60 secretary. The secretary shall designate to an assistant  
 61 secretary the duties related to enhancing economic prosperity,  
 62 including, but not limited to, the responsibility of liaison  
 63 with the head of economic development in the Executive Office of  
 64 the Governor. Such assistant secretary shall be directly  
 65 responsible for providing the Executive Office of the Governor  
 66 with investment opportunities and transportation projects that  
 67 expand the state's role as a global hub for trade and investment  
 68 and enhance the supply chain system in the state to process,  
 69 assemble, and ship goods to markets throughout the eastern  
 70 United States, Canada, the Caribbean, and Latin America. The  
 71 secretary may delegate to any assistant secretary the authority  
 72 to act in the absence of the secretary.

73 Section 2. Subsection (3) of section 311.09, Florida  
 74 Statutes, is amended to read:

75 311.09 Florida Seaport Transportation and Economic  
 76 Development Council.-

77 (3) The council shall prepare a 5-year Florida Seaport  
 78 Mission Plan defining the goals and objectives of the council  
 79 concerning the development of port facilities and an intermodal  
 80 transportation system consistent with the goals of the Florida  
 81 Transportation Plan developed pursuant to s. 339.155. The  
 82 Florida Seaport Mission Plan shall include specific  
 83 recommendations for the construction of transportation  
 84 facilities connecting any port to another transportation mode

85 and for the efficient, cost-effective development of  
 86 transportation facilities or port facilities for the purpose of  
 87 enhancing ~~international~~ trade, promoting cargo flow, increasing  
 88 cruise passenger movements, increasing port revenues, and  
 89 providing economic benefits to the state. The council shall  
 90 develop a priority list of projects based on these  
 91 recommendations annually and submit the list to the Department  
 92 of Transportation. The council shall update the 5-year Florida  
 93 Seaport Mission Plan annually and shall submit the plan no later  
 94 than February 1 of each year to the President of the Senate; the  
 95 Speaker of the House of Representatives; the Office of Tourism,  
 96 Trade, and Economic Development; the Department of  
 97 Transportation; and the Department of Community Affairs. The  
 98 council shall develop programs, based on an examination of  
 99 existing programs in Florida and other states, for the training  
 100 of minorities and secondary school students in job skills  
 101 associated with employment opportunities in the maritime  
 102 industry, and report on progress and recommendations for further  
 103 action to the President of the Senate and the Speaker of the  
 104 House of Representatives annually.

105 Section 3. Section 311.14, Florida Statutes, is amended to  
 106 read:

107 311.14 Seaport ~~freight-mobility~~ planning.-

108 (1) The Florida Seaport Transportation and Economic  
 109 Development Council, in cooperation with the Office of the State  
 110 Public Transportation Administrator within the Department of  
 111 Transportation, shall develop freight-mobility and trade-  
 112 corridor plans to assist in making freight-mobility investments

113 that contribute to the economic growth of the state. Such plans  
 114 should enhance the integration and connectivity of the  
 115 transportation system across and between transportation modes  
 116 throughout Florida for people and freight.

117 (2) The Office of the State Public Transportation  
 118 Administrator shall act to integrate freight-mobility and trade-  
 119 corridor plans into the Florida Transportation Plan developed  
 120 pursuant to s. 339.155 and into the plans and programs of  
 121 metropolitan planning organizations as provided in s. 339.175.  
 122 The office may also provide assistance in expediting the  
 123 transportation permitting process relating to the construction  
 124 of seaport freight-mobility projects located outside the  
 125 physical borders of seaports. The Department of Transportation  
 126 may contract, as provided in s. 334.044, with any port listed in  
 127 s. 311.09(1) or any such other statutorily authorized seaport  
 128 entity to act as an agent in the construction of seaport  
 129 freight-mobility projects.

130 (3) Each port shall develop a master plan with a 10-year  
 131 horizon. Each plan must include the following:

132 (a) An economic development component that identifies  
 133 targeted business opportunities for increasing business and  
 134 attracting new business for which a particular facility has a  
 135 strategic advantage over its competitors, identifies financial  
 136 resources and other inducements to encourage growth of existing  
 137 business and acquisition of new business, and provides a  
 138 projected schedule for attainment of the plan's goals.

139 (b) An infrastructure development and improvement  
 140 component that identifies all projected infrastructure



141 improvements within the plan area which require improvement,  
 142 expansion, or development in order for a port to attain a  
 143 strategic advantage for competition with national and  
 144 international competitors.

145 (c) A component that identifies all intermodal  
 146 transportation facilities, including sea, air, rail, or road  
 147 facilities, which are available or have potential, with  
 148 improvements, to be available for necessary national and  
 149 international commercial linkages and provides a plan for the  
 150 integration of port, airport, and railroad activities with  
 151 existing and planned transportation infrastructure.

152 (d) A component that identifies physical, environmental,  
 153 and regulatory barriers to achievement of the plan's goals and  
 154 provides recommendations for overcoming those barriers.

155 (e) An intergovernmental coordination component that  
 156 specifies modes and methods to coordinate plan goals and  
 157 missions with the missions of the Department of Transportation,  
 158 other state agencies, and affected local, general-purpose  
 159 governments.

160  
 161 To the extent feasible, the port master plan must be consistent  
 162 with the local government comprehensive plans of the units of  
 163 local government in which the port is located. Upon approval of  
 164 a plan by the port's board, the plan shall be submitted to the  
 165 Florida Seaport Transportation and Economic Development Council.

166 (4) The Florida Seaport Transportation and Economic  
 167 Development Council shall review the master plans submitted by  
 168 each port and prioritize strategic needs for inclusion in the

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169 Florida Seaport Mission Plan prepared pursuant to s. 311.09(3).

170 Section 4. Subsection (1) of section 339.155, Florida  
 171 Statutes, is amended to read:

172 339.155 Transportation planning.—

173 (1) THE FLORIDA TRANSPORTATION PLAN.—The department shall  
 174 develop and annually update a statewide transportation plan, to  
 175 be known as the Florida Transportation Plan. The plan shall be  
 176 designed so as to be easily read and understood by the general  
 177 public. The plan shall consider the needs of the entire state  
 178 transportation system and examine the use of all modes of  
 179 transportation to effectively and efficiently meet such needs.

180 The purpose of the Florida Transportation Plan is to establish  
 181 and define the state's long-range transportation goals and  
 182 objectives to be accomplished over a period of at least 20 years  
 183 within the context of the State Comprehensive Plan, and any  
 184 other statutory mandates and authorizations and based upon the  
 185 prevailing principles of:

186 (a) Preserving the existing transportation  
 187 infrastructure.†

188 (b) Enhancing Florida's economic competitiveness.† and

189 (c) Improving travel choices to ensure mobility.

190 (d) Expanding the state's role as a hub for trade and  
 191 investment. ~~The Florida Transportation Plan shall consider the~~  
 192 ~~needs of the entire state transportation system and examine the~~  
 193 ~~use of all modes of transportation to effectively and~~  
 194 ~~efficiently meet such needs.~~

195 Section 5. Subsection (2) of section 339.63, Florida  
 196 Statutes, is amended to read:

197 339.63 System facilities designated; additions and  
 198 deletions.—

199 (2) The Strategic Intermodal System and the Emerging  
 200 Strategic Intermodal System include four ~~three~~ different types  
 201 of facilities that each form one component of an interconnected  
 202 transportation system which types include:

203 (a) Existing or planned hubs that are ports and terminals  
 204 including airports, seaports, spaceports, passenger terminals,  
 205 and rail terminals serving to move goods or people between  
 206 Florida regions or between Florida and other markets in the  
 207 United States and the rest of the world.~~†~~

208 (b) Existing or planned corridors that are highways, rail  
 209 lines, waterways, and other exclusive-use facilities connecting  
 210 major markets within Florida or between Florida and other states  
 211 or nations.~~†~~~~and~~

212 (c) Existing or planned intermodal connectors that are  
 213 highways, rail lines, waterways or local public transit systems  
 214 serving as connectors between the components listed in  
 215 paragraphs (a) and (b).

216 (d) Existing or planned facilities that significantly  
 217 improve the state's competitive position to compete for the  
 218 movement of additional goods into and through this state.

219 Section 6. Subsection (12) is added to section 373.406,  
 220 Florida Statutes, to read:

221 373.406 Exemptions.—The following exemptions shall apply:

222 (12) All overwater piers, docks, and similar structures  
 223 located in a deepwater port listed in s. 311.09 may not be  
 224 considered part of a stormwater management system for which

225 stormwater treatment from impervious surfaces is required under  
 226 this chapter or chapter 403 if the port has a Stormwater  
 227 Pollution Prevention Plan pursuant to the National Pollutant  
 228 Discharge Elimination System Program, which addresses the  
 229 industrial activities conducted on all impervious overwater  
 230 piers, docks, and similar structures located in the port.

231 Section 7. Subsection (8) of section 373.4133, Florida  
 232 Statutes, is amended to read:

233 373.4133 Port conceptual permits.—

234 (8) Except as otherwise provided in this section, the  
 235 following procedures apply to the approval or denial of an  
 236 application for a port conceptual permit or a final permit or  
 237 authorization:

238 (a) Applications for a port conceptual permit, including  
 239 any request for the conceptual approval of the use of  
 240 sovereignty submerged lands, shall be processed in accordance  
 241 with the provisions of ss. 373.427 and 120.60. However, if the  
 242 applicant believes that any request for additional information  
 243 is not authorized by law or agency rule, the applicant may  
 244 request an informal hearing pursuant to s. 120.57(2) before the  
 245 Secretary of Environmental Protection to determine whether the  
 246 application is complete.

247 (b) Notwithstanding any other provision of law, the  
 248 department shall issue a notice of intent within 30 days after  
 249 receipt of an application for a port conceptual permit. Upon  
 250 issuance of the department's notice of intent to issue or deny a  
 251 port conceptual permit, the applicant shall publish a one-time  
 252 notice of such intent, prepared by the department, in the

253 newspaper with the largest general circulation in the county or  
 254 counties where the port is located.

255 (c) A notice of intent to issue a port conceptual permit  
 256 creates a rebuttable presumption that development of the port or  
 257 private facilities consistent with the approved port master plan  
 258 complies with all applicable standards for issuance of a  
 259 conceptual permit, an environmental resource permit, and  
 260 sovereign lands authorization pursuant to chapters 161, 253,  
 261 373, and 403. The presumption may be overcome only by clear and  
 262 convincing evidence.

263 (d) Upon issuance and finalization of a port conceptual  
 264 permit, and, if necessary, an environmental resource permit or  
 265 sovereign lands authorization pursuant to this section, the  
 266 department shall notify the United States Army Corps of  
 267 Engineers that the applicant is in compliance with all state  
 268 water quality and regulatory requirements and shall issue any  
 269 requested construction permit within 30 days after receipt of  
 270 the request.

271 (e)~~(e)~~ Final agency action on a port conceptual permit is  
 272 subject to challenge pursuant to ss. 120.569 and 120.57.  
 273 However, final agency action to authorize subsequent  
 274 construction of facilities contained in a port conceptual permit  
 275 may only be challenged by a third party for consistency with the  
 276 port conceptual permit.

277 (f)~~(d)~~ A person who will be substantially affected by a  
 278 final agency action described in paragraph (e) ~~(e)~~ must initiate  
 279 administrative proceedings pursuant to ss. 120.569 and 120.57  
 280 within 21 days after the publication of the notice of the

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281 | proposed action. If administrative proceedings are requested,  
 282 | the proceedings are subject to the summary hearing provisions of  
 283 | s. 120.574. However, if the decision of the administrative law  
 284 | judge will be a recommended order rather than a final order, a  
 285 | summary proceeding must be conducted within 90 days after a  
 286 | party files a motion for summary hearing, regardless of whether  
 287 | the parties agree to the summary proceeding.

288 | Section 8. Subsection (3) of section 403.813, Florida  
 289 | Statutes, is amended to read:

290 | 403.813 Permits issued at district centers; exceptions.—

291 | (3) A permit is not required under this chapter, chapter  
 292 | 373, chapter 61-691, Laws of Florida, or chapter 25214 or  
 293 | chapter 25270, 1949, Laws of Florida, for maintenance dredging  
 294 | conducted under this section by the seaports of Jacksonville,  
 295 | Port Canaveral, Fort Pierce, Palm Beach, Port Everglades, Miami,  
 296 | Port Manatee, St. Petersburg, Tampa, Port St. Joe, Panama City,  
 297 | Pensacola, Key West, and Fernandina or by inland navigation  
 298 | districts if the dredging to be performed is no more than is  
 299 | necessary to meet the original design specifications or  
 300 | configurations, the work is conducted in compliance with s.  
 301 | 379.2431(2)(d), and previously undisturbed natural areas are not  
 302 | significantly impacted. In addition:

303 | (a) A mixing zone for turbidity is granted within a 150-  
 304 | meter radius from the point of dredging while dredging is  
 305 | ongoing, except that the mixing zone may not extend into areas  
 306 | supporting wetland communities, submerged aquatic vegetation, or  
 307 | hardbottom communities.

308 | (b) The discharge of the return water from the site used

309 | for the disposal of dredged material shall be allowed only if  
 310 | such discharge does not result in a violation of water quality  
 311 | standards in the receiving waters. The return-water discharge  
 312 | into receiving waters shall be granted a mixing zone for  
 313 | turbidity within a 150-meter radius from the point of discharge  
 314 | into the receiving waters during and immediately after the  
 315 | dredging, except that the mixing zone may not extend into areas  
 316 | supporting wetland communities, submerged aquatic vegetation, or  
 317 | hardbottom communities. Ditches, pipes, and similar types of  
 318 | linear conveyances may not be considered receiving waters for  
 319 | the purposes of this paragraph.

320 |       (c) The state may not exact a charge for material that  
 321 | this subsection allows a public port or an inland navigation  
 322 | district to remove. In addition, consent to use any sovereignty  
 323 | submerged lands pursuant to this section is hereby granted.

324 |       (d) The use of flocculants at the site used for disposal  
 325 | of the dredged material is allowed if the use, including  
 326 | supporting documentation, is coordinated in advance with the  
 327 | department and the department has determined that the use is not  
 328 | harmful to water resources.

329 |       (e) If all requirements of the permit are satisfied, the  
 330 | spoil material may be deposited on a permitted disposal site or  
 331 | on a self-contained, upland spoil site that will prevent the  
 332 | escape of the spoil material into the waters of the state.

333 |       (f)~~(e)~~ This subsection does not prohibit maintenance  
 334 | dredging of areas where the loss of original design function and  
 335 | constructed configuration has been caused by a storm event,  
 336 | provided that the dredging is performed as soon as practical

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337 after the storm event. Maintenance dredging that commences  
338 within 3 years after the storm event shall be presumed to  
339 satisfy this provision. If more than 3 years are needed to  
340 commence the maintenance dredging after the storm event, a  
341 request for a specific time extension to perform the maintenance  
342 dredging shall be submitted to the department, prior to the end  
343 of the 3-year period, accompanied by a statement, including  
344 supporting documentation, demonstrating that contractors are not  
345 available or that additional time is needed to obtain  
346 authorization for the maintenance dredging from the United  
347 States Army Corps of Engineers.

348 Section 9. This act shall take effect July 1, 2011.



Amendment No. /

COMMITTEE/SUBCOMMITTEE ACTION

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

1     Committee/Subcommittee hearing bill:  State Affairs Committee  
 2     Representative Ray offered the following:

**Amendment**

Remove lines 222-230 and insert:

6       (12) All overwater piers, docks, and similar structures  
 7     located in a deepwater port listed in s. 311.09 shall not be  
 8     considered part of a stormwater management system for which  
 9     stormwater treatment from impervious surfaces is required under  
 10    this chapter or chapter 403 if the port has a Stormwater  
 11    Pollution Prevention Plan for industrial activities pursuant to  
 12    the National Pollutant Discharge Elimination System Program, and  
 13    the Plan also provides similar pollution prevention measures  
 14    for other activities, not subject to the National Pollutant  
 15    Discharge Elimination System Program, which occur on overwater  
 16    piers, docks, and similar structures.

Amendment No. 2

COMMITTEE/SUBCOMMITTEE ACTION

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

1 Committee/Subcommittee hearing bill: State Affairs Committee  
2 Representative(s) Ray offered the following:

3  
4 **Amendment (with directory and title amendments)**

5 Remove lines 234-287 and insert:

6 (8) Except as otherwise provided in this section, the  
7 following procedures apply to the approval or denial of an  
8 application for a port conceptual permit or a final permit or  
9 authorization:

10 (a) Applications for a port conceptual permit, including  
11 any request for the conceptual approval of the use of  
12 sovereignty submerged lands, shall be processed in accordance  
13 with the provisions of ss. 373.427 and 120.60, with the  
14 following exceptions:

15 1. An application for a port conceptual permit, and any  
16 applications for subsequent construction contained in a port  
17 conceptual permit, must be approved or denied within 60 days  
18 after receipt of a completed application.

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19       2. The department may request additional information no  
20 more than twice, unless the applicant waives this limitation in  
21 writing. If the applicant does not provide a response to the  
22 second request for additional information within 90 days or  
23 another time period mutually agreed upon between the applicant  
24 and department, the application shall be considered withdrawn.

25       3. However, if If the applicant believes that any request  
26 for additional information is not authorized by law or agency  
27 rule, the applicant may request an informal hearing pursuant to  
28 s. 120.57(2) before the Secretary of Environmental Protection to  
29 determine whether the application is complete.

30       4. If a nonapplicant petitions as a third party to  
31 challenge the department's issuance of a port conceptual permit,  
32 the petitioner initiating the action has the burden of ultimate  
33 persuasion and, in the first instance, has the burden of going  
34 forward with the evidence.

35

36 -----

37                   D I R E C T O R Y   A M E N D M E N T

38           Remove lines 231-232 and insert:

39           Section 7. Paragraph (a) of subsection (8) of section

40 373.4133, Florida Statutes, is amended to read:

41

42

43 -----

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

45           Remove lines 31-37 and insert:

COMMITTEE/SUBCOMMITTEE AMENDMENT

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46 conceptual permit within a specified time; providing that the  
47 department may request additional information no more than  
48 twice; providing that third party challenge petitioners have the  
49 ultimate burden of persuasion and have the burden of going  
50 forward with the evidence; amending

Amendment No. **3**

COMMITTEE/SUBCOMMITTEE ACTION

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

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1 Committee/Subcommittee hearing bill: State Affairs Committee  
2 Representative Ray offered the following:

**Amendment**

Remove lines 298-302 and insert:

3  
4  
5  
6 districts, provided that no more dredging is to be performed  
7 than is necessary to restore previously dredged areas to  
8 original design specifications or configurations, previously  
9 undisturbed natural areas are not significantly impacted, and  
10 the work conducted does not violate the protections for manatees  
11 under s.379.2431(2)(d). In addition:

Amendment No. **4**

COMMITTEE/SUBCOMMITTEE ACTION

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

1 Committee/Subcommittee hearing bill: State Affairs Committee  
 2 Representative(s) Ray offered the following:

3

4 **Amendment (with title amendment)**

5 Remove lines 329-332 and insert:

6 (e) The spoil material from the maintenance dredging is  
 7 authorized to be deposited in a self-contained, upland disposal  
 8 site, and such site, if existing as of January 1, 2011, does not  
 9 require a permit provided a Professional Engineer certifies the  
 10 site has been designed in accordance with generally accepted  
 11 engineering standards for such disposal sites, has adequate  
 12 capacity to receive and retain the dredged material, and has  
 13 operating and maintenance procedures established that allow for  
 14 discharge of return flow of water and to prevent the escape of  
 15 the spoil material into the waters of the state.

16 (f) Notice of intent to use this exemption shall be  
 17 provided to the Department at least thirty days prior to  
 18 commencement of maintenance dredging, and shall include, where

Amendment No.

19 applicable, the Professional Engineer certification required by  
20 paragraph (e).

21

22

23

-----

24

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

25

Remove line 46 and insert:

26

disposal of spoil material on specified sites under certain

27

conditions; providing that the notice of intent to use the

28

permit exemption for maintenance dredging be provided to the

29

Department of environmental Protection 30 days prior to the

30

commencement of dredging; providing




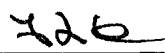


# HOUSE OF REPRESENTATIVES LOCAL BILL STAFF ANALYSIS

**BILL #:** HB 529 Lee County Sheriff's Office

**SPONSOR(S):** Caldwell

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

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Community & Military Affairs Subcommittee	15 Y, 0 N	Nelson	Hoagland
2) State Affairs Committee		Kliner 	Hamby 

## SUMMARY ANALYSIS

The Florida Legislature established the civil service system for the Lee County Sheriff's Office by special act in 1974. This act provides for a civil service board, qualifications and standards for employment, and employee benefits.

In 2010, the act was amended to limit retirement health insurance premium subsidies to those employees who commenced employment on or after October 1, 1986, and prior to October 1, 2010. HB 529 deletes the reference to October 1, 1986, because the use of this date inadvertently disqualified individuals from eligibility for the retirement health insurance subsidy.

According to the Economic Impact Statement, the bill will not have a fiscal effect.

The bill has an effective date of upon becoming law.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### Present Situation

##### Florida's Sheriffs/Civil Service

Sixty-six of Florida's 67 counties have elected sheriffs as their chief law-enforcement officers. Miami-Dade County has an appointed chief law-enforcement officer whose title is Director of the Miami-Dade Police Department. Sheriffs serve four-year terms,<sup>1</sup> and have county-wide jurisdiction that includes incorporated as well as unincorporated areas.

Section 14 of Art. III of the State Constitution provides:

By law there shall be created a civil service system for state employees, except those expressly exempted, and there may be created civil service systems and boards for county, district or municipal employees and for such offices thereof as are not elected or appointed by the governor, and there may be authorized such boards as are necessary to prescribe the qualifications, method of selection and tenure of such employees and officers.

The powers of the governing body of a county are set forth in s. 125.01, F.S. This power includes the authority, as provided in paragraph (u) of subsection (1) of s.125.01, F.S., to "[c]reate civil service systems and boards." Section 30.53, F.S., provides, in pertinent part, that "[t]he independence of the sheriffs shall be preserved concerning the...selection of personnel, and the hiring, firing, and setting of salaries of such personnel...."

A number of sheriffs have civil service systems established by the Legislature through special act, including: Alachua,<sup>2</sup> Baker,<sup>3</sup> Bay,<sup>4</sup> Brevard,<sup>5</sup> Broward,<sup>6</sup> Charlotte,<sup>7</sup> Citrus,<sup>8</sup> Clay,<sup>9</sup> Columbia,<sup>10</sup> Escambia,<sup>11</sup> Flagler,<sup>12</sup> Glades,<sup>13</sup> Hernando,<sup>14</sup> Indian River,<sup>15</sup> Lake,<sup>16</sup> Lee,<sup>17</sup> Leon,<sup>18</sup> Levy,<sup>19</sup> Madison,<sup>20</sup> Manatee,<sup>21</sup> Marion,<sup>22</sup> Martin,<sup>23</sup> Monroe,<sup>24</sup> Okaloosa,<sup>25</sup> Okeechobee,<sup>26</sup> Orange,<sup>27</sup> Osceola,<sup>28</sup> Palm

<sup>1</sup> Section 1(d), Art. VIII of the State Constitution.

<sup>2</sup> Chs. 84-388 and 86-342, L.O.F.

<sup>3</sup> Ch. 2006-318, L.O.F.

<sup>4</sup> Ch. 84-390, L.O.F.

<sup>5</sup> Ch. 83-373, L.O.F.

<sup>6</sup> Ch. 93-370, L.O.F.

<sup>7</sup> Chs. 79-436, 86-349 and 89-508, L.O.F.

<sup>8</sup> Ch. 2001-296, L.O.F.

<sup>9</sup> Chs. 89-522 and 93-397, L.O.F.

<sup>10</sup> Ch. 2004-413, L.O.F.

<sup>11</sup> Ch. 89-492, L.O.F.

<sup>12</sup> Chs. 90-450 and 2000-482, L.O.F.

<sup>13</sup> Ch. 2003-311, L.O.F.

<sup>14</sup> Ch. 2000-414, L.O.F.

<sup>15</sup> Ch. 2002-355, L.O.F.

<sup>16</sup> Chs. 90-386, 93-358 and 2005-349, L.O.F.

<sup>17</sup> Chs. 74-522, 87-446, 87-547, 95-514, 2007-320, 2008-276 and 2010-260, L.O.F.

<sup>18</sup> Ch. 83-456, L.O.F.

<sup>19</sup> Ch. 2007-290, L.O.F.

<sup>20</sup> Ch. 95-470, L.O.F.

<sup>21</sup> Ch. 89-472, L.O.F.

<sup>22</sup> Ch. 87-457, L.O.F.

<sup>23</sup> Ch. 93-388, L.O.F.

<sup>24</sup> Chs. 78-567, 89-410, 89-461, 97-345 and 98-507, L.O.F.

<sup>25</sup> Chs. 81-442, 85-472, and 90-492, L.O.F.

<sup>26</sup> Ch. 2006-338, L.O.F.

<sup>27</sup> Ch. 89-507, L.O.F.

Beach,<sup>29</sup> Pasco,<sup>30</sup> Pinellas,<sup>31</sup> Polk,<sup>32</sup> St. Lucie,<sup>33</sup> Santa Rosa,<sup>34</sup> Sarasota,<sup>35</sup> Seminole<sup>36</sup> and Walton<sup>37</sup> counties.

### Lee County Sheriff's Office/Retirement Health Insurance Benefits

The Florida Legislature established the civil service system for the Lee County Sheriff's Office pursuant to ch. 74-522, L.O.F. This special act subsequently was amended in 1987, 1995, 2007, 2008 and 2010. The act, as amended, provides for a civil service board, qualifications and standards for employment, and employee benefits.

Section 15 of the act relates to the funding of civil service board and retirement health insurance benefits. That section provides that effective October 1, 1986, the Sheriff will include annually in his or her budget a sufficient sum of money to pay a portion of the cost of the health and hospitalization insurance premiums for employees who retire after accumulating at least 15 or more years of full-time, active service with the office. Employer premiums payable under this provision are limited to major medical and hospitalization insurance, and are not available to any individual commencing employment on or after October 1, 2010.

At 15 years of service, the Sheriff's Office pays up to 75 percent of the portion of the retiree's health and hospitalization insurance premium that exceeds the amount of any health insurance subsidy paid to a retiree. For each full month of employment with the Lee County Sheriff's Office beyond 15 years, the Sheriff's Office pays an additional 0.416 percent per month through 19 years and 11 months of service. The insured retiree may purchase, at his or her own expense, group coverage for a qualified spouse or dependents. Employee premium payments and payments for insurance coverage of dependents are payable by the retiree.

At 20 years of service and beyond, the Lee County Sheriff's Office pays up to 100 percent of the portion of a retiree's health and hospitalization insurance premium that exceeds the first \$100 of any health insurance subsidy received by the retiree and, in addition, pays 50 percent of the health and hospitalization insurance premium for any qualified spouse or dependents of the retiree. Any employee premium payments and the balance of payments for dependents of the retiree are payable by the retiree or qualified dependent. Any increase or decrease to the health insurance subsidy by the state is factored into the provisions of this subsection.<sup>38</sup>

Premiums may be adjusted annually based on actual qualified group costs to the Lee County Sheriff's Office. At such time as a retiree or qualified dependent covered under this section becomes eligible for Medicare health insurance, it is his or her responsibility to enroll in and utilize Medicare benefits to pay primary, secondary or last payments to the extent provided by federal law. The Lee County Sheriff's Office treats an eligible retiree or qualified dependent as enrolled in Medicare parts A and B, regardless of actual enrollment, and bases its payments as if the retiree or qualified dependent has utilized his or her Medicare benefits.

In 2010, Section 15(6) of the Lee County Sheriff's Office civil service act was amended pursuant to ch. 2010-260, L.O.F., to limit retirement health insurance premium subsidies to those employees who had commenced employment on or after October 1, 1986, and prior to October 1, 2010.

---

<sup>28</sup> Chs. 89-516 and 2000-388, L.O.F.

<sup>29</sup> Chs. 93-367, 96-450, 97-325, 98-517, 99-437 and 2004-404, L.O.F.

<sup>30</sup> Ch. 90-491, L.O.F.

<sup>31</sup> Chs. 89-404, 90-395 and 2008-285, L.O.F.

<sup>32</sup> Chs. 88-443, 98-516 and 2006-320, L.O.F.

<sup>33</sup> Ch. 89-475, L.O.F.

<sup>34</sup> Ch. 2002-385, L.O.F.

<sup>35</sup> Ch. 86-344, L.O.F.

<sup>36</sup> Ch. 77-653, 80-612, 88-451, 89-457 and 97-376, L.O.F.

<sup>37</sup> Ch. 2007-319, L.O.F.

<sup>38</sup> The Lee County Sheriff's Office is a participating member of the Florida Retirement System. Section 112. 363, F.S., provides the current retiree health insurance subsidy.

## Effect of Proposed Changes

HB 1249 deletes language in the Lee County Sheriff's Office civil service act that limits the availability of retirement health insurance benefits to employees who commenced employment on or after October 1, 1986. When this language was added to the act, the October 1, 1986, date was used because it represented the point in time when the civil service act first required that funding for the subsidy be included in the Sheriff's budget. While the drafters used the date in an effort to provide a clear "bracket" for payment of these benefits, the language had the unintended consequence of disqualifying a number of employees.

The bill has an effective date of upon becoming law.

### B. SECTION DIRECTORY:

Section 1: Amends Section 15 of ch. 74-522, L.O.F., as amended, relating to payment of retirement health insurance benefits by the Lee County Sheriff's Office.

Section 2: Provides an effective date.

## II. NOTICE/REFERENDUM AND OTHER REQUIREMENTS

A. NOTICE PUBLISHED? Yes  No

IF YES, WHEN? December 13, 2010

WHERE? The *News-Press*, a daily newspaper of general circulation published in Lee County, Florida.

B. REFERENDUM(S) REQUIRED? Yes  No

IF YES, WHEN?

C. LOCAL BILL CERTIFICATION FILED? Yes, attached  No

D. ECONOMIC IMPACT STATEMENT FILED? Yes, attached  No

## III. COMMENTS

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

### Drafting Issues

None.

### Other Comments

This bill was jointly proposed by the Lee County Sheriff's Office and the Lee County Sheriff's Office Civil Service Board. According to the attorney for the Lee County Sheriff's Office Civil Service Board, no former employees were impacted by the passage of ch. 2010-260, L.O.F, as the Sheriff honored all subsidy payment obligations.<sup>39</sup>

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

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<sup>39</sup> February 23, 2011, correspondence from Robert C. Shearman.

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1 A bill to be entitled  
 2 An act relating to the Lee County Sheriff's Office;  
 3 amending chapter 74-522, Laws of Florida, as amended;  
 4 providing that certain retirement health insurance  
 5 benefits shall not be available to specified employees;  
 6 providing an effective date.

7  
 8 Be It Enacted by the Legislature of the State of Florida:  
 9

10 Section 1. Subsection (6) of section 15 of chapter 74-522,  
 11 Laws of Florida, as amended by chapter 2010-260, Laws of  
 12 Florida, is amended to read:

13 Section 15. Funding of civil service board and retirement  
 14 health insurance benefits.—

15 (6) Benefits payable under subsection (5).—Benefits  
 16 payable under subsection (5) are only available to employees  
 17 commencing employment ~~on or after October 1, 1986,~~ and prior to  
 18 October 1, 2010, who retire from the Florida Retirement System  
 19 and terminate employment after 15 or more years of service with  
 20 the Lee County Sheriff's Office. A member of the Florida  
 21 Retirement System employed prior to October 1, 2009, who has  
 22 been a full-time member of the Lee County Sheriff's Office for  
 23 the 10 years immediately preceding his or her retirement may  
 24 claim up to 5 years of previous service with another Florida  
 25 Retirement System employer subject to verification by the  
 26 Division of Retirement of the Department of Management Services  
 27 to meet the 15-year requirement as provided for in subsection  
 28 (5). Persons hired by the Lee County Sheriff's Office on or

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29 | after October 1, 2009, are not eligible to claim additional  
30 | years of service from previous Florida Retirement System  
31 | employers to qualify for employer-paid health and  
32 | hospitalization insurance benefits as provided for in subsection  
33 | (5).

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





HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 635 Group Insurance for Public Employees

SPONSOR(S): Stargel

TIED BILLS: IDEN./SIM. BILLS: SB 92

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) State Affairs Committee		Kliner	Hamby
2) Health & Human Services Committee			
3) Appropriations Committee			
4) Education Committee			

SUMMARY ANALYSIS

This bill establishes the School District Insurance Consortium (Consortium). Health, accident, and hospitalization insurance will be procured through the Consortium for school district officers, employees, and their dependents.

The Consortium will be managed by a nine-member board of directors with representation from school board members, superintendents, public school teachers or support personnel, and an individual with expertise in employee benefit systems. Directors serve two-year terms. The board of directors is authorized to hire staff, contract for services, and request technical support from the Department of Management Services (Department).

This bill requires competitive bid participation. Multiple providers are authorized and insurance coverage may be statewide or regionally-based. For regional coverage, the Consortium must include school districts of varying size.

This bill clarifies that collective bargaining is required, and specifies included subjects, consistent with current law.

An opt-out provision is available to any school district provided that the school board holds a properly noticed public meeting and finds that less expensive insurance is available elsewhere.

This bill takes effect July 1, 2011, with application to begin upon the latter of the date of July 1, 2012, or upon expiration or renewal of existing contracts, whichever occurs later.

The fiscal impact is indeterminate. The bill requires the Department of Management Services to provide technical services to the Consortium, as needed. The extent or type of such technical services is unknown at this time.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Present Situation**

##### Interlocal Agreements

Section 163.01, F.S., authorizes public agencies, including district school boards, to enter into interlocal agreements with one another for services and facilities. Such agreements may allow for one or more parties to provide services in exchange for payment or for a mutual exchange of services. Each party to an interlocal agreement must possess the authority to take the action called for in the agreement.<sup>1</sup>

##### Health Insurance for School District Employees

Chapter 112, F.S., addresses various conditions of employment, including retirement and group insurance for local governmental units, defined to include school boards.<sup>2</sup> Section 112.08, F.S., authorizes local governmental units to contract with private companies for the provision of all types of insurance, including life, health, accident, hospitalization, legal expense, and annuity insurance.<sup>3</sup> The local governmental unit is required to participate in the competitive bid process in procuring group insurance.<sup>4</sup> If the local governmental unit intends to self-insure, approval by the Office of Insurance Regulation is required, with approval to be based upon the actuarial soundness of the plan.<sup>5</sup> Currently, the 67 school districts purchase health, accident, and hospitalization insurance for officers, employees and dependents, as individual school districts.

##### Florida Law on Collective Bargaining

Chapter 447, F.S., addresses labor organizations. The district school board is considered the public employer for all employees of the district.<sup>6</sup> A public employee is generally defined as a person employed by a public employer.<sup>7</sup> Collective bargaining is required between the public employer and the bargaining agent of public employees in the following areas: wages, hours, and terms and conditions of employment.<sup>8</sup>

##### Health Insurance Premium Computation

When underwriting a group for health insurance, the insurer takes a number of factors into consideration. These can include:

- Benefit design
- Likely number of enrollees, plus dependents
- Age of enrollees
- Medical history or claims experience of participants, to include dependents
- Percent of employer contribution towards the premium
- Potential near-term changes in the size of the risk pool

Insurers can provide various rate tier structures. These include:

- Employee only
- Employee plus spouse

---

<sup>1</sup> Section 163.01(4), F.S.

<sup>2</sup> Section 112.08(1), F.S.

<sup>3</sup> Section 112.08(2)(a), F.S.

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

<sup>5</sup> Section 112.08(2)(a) and (b), F.S.

<sup>6</sup> Section 447.203(2), F.S.

<sup>7</sup> Section 447.203(3), F.S.

<sup>8</sup> Section 447.309(1), F.S.

- Employee plus one dependent
- Employee plus child(ren)
- Family {Employee, Spouse, and Child(ren)}

The benefit design, tier structure, and employer contribution for school districts is not standardized throughout the state.

### **Effect of Proposed Changes**

The bill requires school districts to enter into interlocal agreements to establish the School District Insurance Consortium (Consortium) for the provision of health, accident, and hospitalization insurance. A school board may opt out of the plan if, at a duly noticed public meeting, it determines that the purchase of insurance outside of the plan procured through the interlocal agreement is financially advantageous to the school district.

The Consortium is managed by a nine-member board of directors, with representation as follows:

- Three members who are elected school board members appointed by the Florida School Boards Association
- Three members who are elected or appointed school superintendents appointed by the Florida Association of District School Superintendents
- Two members who are public school teachers or support personnel appointed by the Florida Education Association
- One member who has experience in operating employee benefit systems.

Members serve two-year terms. It appears that reappointments are authorized. The board of directors is not paid for service to the board, but is authorized to hire staff or contract for staffing services.

The bill makes participation in the competitive bid process mandatory for Consortium-purchased insurance, consistent with current law on group insurance purchases by local governments. Insurance may be purchased for statewide or regional use, and if regional, the Consortium must include districts of different sizes. Multiple providers are authorized.

School districts are required to collectively bargain for all units of employees who will be provided insurance, consistent with current law.

The Department of Management Services must provide technical services to the Consortium, as requested.

To opt-out, a school board must hold a properly noticed public meeting and find that it is less expensive to purchase insurance elsewhere. Therefore, some school districts may continue to purchase insurance independently.

This bill takes effect July 1, 2011, with application to begin upon the latter of the date of July 1, 2012, or upon expiration or renewal of existing insurance contracts.

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

Section 1. Amends s. 112.08, F.S., by requiring school districts to procure group health insurance through a purchasing interlocal agreement.

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

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

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

1. Revenues:  
See, Section D FISCAL COMMENTS

2. Expenditures:  
See, Section D FISCAL COMMENTS

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

1. Revenues:  
See, Section D FISCAL COMMENTS

2. Expenditures:  
See, Section D FISCAL COMMENTS

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

With a greater volume of participants in the insurance pool, better benefits may be offered, resulting in cost savings for claimants. However, several challenges to insurance providers are noted:

- The opt-out provision creates the possibility that a district within the pool that can acquire more advantageous rates due to its participants' health, age, and experience will leave the Consortium. As a result, an insurance carrier offering to bid on the group as a whole will likely make conservative assumptions (with increasing rates) due to the exigency of an opt-out. If a district opts out, the carrier's response may be to raise rates further in order to cover the participant loss. This could result in more districts leaving the group for more advantageous rates.
- The bill requires school districts to engage in collective bargaining with regard to the insurance coverage that is offered by the carrier(s). It is unclear how long it will take to reach a collective agreement, depending upon the different types and levels of coverage offered by the carrier(s) and depending upon the number of participating districts and the intrinsic differences between individual employee organizations. In addition, collective bargaining contracts typically have terms lasting several years. It is unlikely that the terms for agreements among the school districts in the state, or within any region, are synchronized.

**D. FISCAL COMMENTS:**

Based on notes from the Senate analysis on CS/SB 2580, from the 2010 Regular Session, the Department of Education indicated that "economies of scale through joint purchases of group insurance will likely result in a cost savings to school districts, with the amount indeterminate at this time."<sup>9</sup>

The 2010 Senate analysis also noted an unknown fiscal impact to the Department of Management Services in providing technical services to the Consortium, as needed, because the scope of "technical services" is not defined.

### **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.

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<sup>9</sup> <http://archive.flsenate.gov/data/session/2010/Senate/bills/analysis/pdf/2010s2580.wpsc.pdf> The substance of this bill was filed as HB 1021 in the 2010 Regular Session. The House bill died without a hearing. The Senate companion, CS/SB 2580, passed the Senate and died in House Messages.

2. Other:

None noted.

B. RULE-MAKING AUTHORITY:

The bill provides no rule-making authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The bill specifies that a geographic group of districts shall include school districts of varying size. However, there are no definitions or guidelines provided for use in determining size categories.

The expiration date for existing contracts with bargaining units is unknown. If dates differ for contiguous school districts, it may be challenging in aligning contracts with the benefit plan year.

The "technical services" required by the Department of Management Services to the Consortium at the request of the board of directors request is not defined, consequently, the Department may be unable to budget for this service adequately.

The board of directors is authorized to employ staff or contract for staffing services. The bill is silent as to how the board will pay for such services.

The potential pool of participants may be affected if any of the school districts are self-insured.

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

1                   A bill to be entitled  
2           An act relating to group insurance for public employees;  
3           amending s. 112.08, F.S.; requiring that school districts  
4           procure certain types of insurance through interlocal  
5           agreements; providing an exception; requiring that each  
6           school district in this state enter into a specified type  
7           of interlocal agreement and establish the School District  
8           Insurance Consortium; providing purposes of the  
9           consortium; requiring that the consortium be governed by a  
10          board of directors consisting of a specified number of  
11          members; providing requirements for membership on the  
12          board; specifying terms of office for board members;  
13          authorizing the board to employ staff or contract for  
14          staffing services to be provided to the consortium;  
15          requiring that the Department of Management Services  
16          provide technical services to the consortium as requested  
17          by the board; requiring the consortium to advertise for  
18          competitive bids for health, accident, or hospitalization  
19          insurance, as well as certain insurance plans; requiring  
20          that the contracts for such insurance be let upon the  
21          basis of such bids; requiring that the consortium take  
22          certain actions and consider certain factors when defining  
23          coverage regions; authorizing the awarding of bids on a  
24          statewide or regional basis and the selection of multiple  
25          insurance providers; requiring that school districts  
26          engage in collective bargaining with the certified  
27          bargaining agent for any unit of employees for which

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28 health, accident, or hospitalization insurance is  
 29 provided; providing an effective date.

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

33 Section 1. Paragraph (a) of subsection (2) of section  
 34 112.08, Florida Statutes, is amended, and paragraph (d) is added  
 35 to that subsection, to read:

36 112.08 Group insurance for public officers, employees, and  
 37 certain volunteers; physical examinations.—

38 (2)(a) Notwithstanding any general law or special act to  
 39 the contrary, every local governmental unit is authorized to  
 40 provide and pay out of its available funds for all or part of  
 41 the premium for life, health, accident, hospitalization, legal  
 42 expense, or annuity insurance, or all or any kinds of such  
 43 insurance, for the officers and employees of the local  
 44 governmental unit and for health, accident, hospitalization, and  
 45 legal expense insurance for the dependents of such officers and  
 46 employees upon a group insurance plan and, to that end, to enter  
 47 into contracts with insurance companies or professional  
 48 administrators to provide such insurance. Before entering any  
 49 contract for insurance, the local governmental unit shall  
 50 advertise for competitive bids; and such contract shall be let  
 51 upon the basis of such bids. Beginning on July 1, 2012, or upon  
 52 the expiration or renewal date of any existing contract,  
 53 whichever occurs later, school districts shall procure such  
 54 insurance through a purchasing interlocal agreement as provided  
 55 in paragraph (d) unless the school board, at a duly noticed

56 public meeting, determines that the purchase of insurance  
 57 outside the plan procured through the interlocal agreement is  
 58 financially advantageous to the school district. If a  
 59 contracting health insurance provider becomes financially  
 60 impaired as determined by the Office of Insurance Regulation of  
 61 the Financial Services Commission or otherwise fails or refuses  
 62 to provide the contracted-for coverage or coverages, the local  
 63 government may purchase insurance, enter into risk management  
 64 programs, or contract with third-party administrators and may  
 65 make such acquisitions by advertising for competitive bids or by  
 66 direct negotiations and contract. The local governmental unit  
 67 may undertake simultaneous negotiations with those companies  
 68 that ~~which~~ have submitted reasonable and timely bids and are  
 69 found by the local governmental unit to be fully qualified and  
 70 capable of meeting all servicing requirements. Each local  
 71 governmental unit may self-insure any plan for health, accident,  
 72 and hospitalization coverage or enter into a risk management  
 73 consortium to provide such coverage, subject to approval based  
 74 on actuarial soundness by the Office of Insurance Regulation;  
 75 and each shall contract with an insurance company or  
 76 professional administrator qualified and approved by the office  
 77 to administer such a plan.

78 (d)1. Each school district in this state shall enter into  
 79 an interlocal agreement as provided in s. 163.01 to establish  
 80 the School District Insurance Consortium through which health,  
 81 accident, and hospitalization insurance shall be procured for  
 82 officers and employees of the school district and their  
 83 dependents unless the school board opts out in the manner set



84 forth in paragraph (a).

85 2. The consortium shall be governed by a board of  
 86 directors comprised of nine members, three of whom shall be  
 87 elected school board members appointed by the Florida School  
 88 Boards Association, Inc., three of whom shall be elected or  
 89 appointed superintendents of schools appointed by the Florida  
 90 Association of District School Superintendents, Inc., two of  
 91 whom shall be public school teachers or support personnel  
 92 appointed by the Florida Education Association, and one of whom  
 93 shall have experience in running employee-benefit systems, to be  
 94 appointed by the other members of the consortium. Consortium  
 95 board members shall be appointed to 2-year terms. The board may  
 96 employ staff or contract for staffing services to be provided to  
 97 the consortium. The Department of Management Services shall  
 98 provide technical services to the consortium as requested by the  
 99 board.

100 3. Notwithstanding any other provision of law, the  
 101 consortium shall advertise for competitive bids for such  
 102 insurance, and the contracts for such insurance shall be let  
 103 upon the basis of such bids. The consortium shall advertise for  
 104 proposals for a statewide insurance plan as well as plans  
 105 providing coverage on a regional basis. In determining  
 106 appropriate regions, the consortium shall group school districts  
 107 geographically in a manner that includes school districts of  
 108 varying sizes for the purpose of ensuring the availability of  
 109 coverage for all districts in the region. Contracts may be  
 110 awarded on a statewide or regional basis, and more than one  
 111 provider may be selected to provide insurance. School districts

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112 shall engage in collective bargaining with the certified  
113 bargaining agent for any unit of employees for which health,  
114 accident, or hospitalization insurance is provided, as required  
115 by part II of chapter 447, with regard to coverage offered, cost  
116 for dependent coverage, deductibles, optional coverage, and  
117 other matters that are subject to collective bargaining as  
118 required by state law.

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



**HOUSE OF REPRESENTATIVES STAFF ANALYSIS**

**BILL #:** CS/HM 685 Congressional Term Limits  
**SPONSOR(S):** Federal Affairs Subcommittee, Caldwell and others  
**TIED BILLS:**                   **IDEN./SIM. BILLS:**

<b>REFERENCE</b>	<b>ACTION</b>	<b>ANALYST</b>	<b>STAFF DIRECTOR or BUDGET/POLICY CHIEF</b>
1) Federal Affairs Subcommittee	14 Y, 1 N, As CS	Cyphers	Cyphers
2) State Affairs Committee		Cyphers <i>Mc</i>	Hamby <i>De</i>

**SUMMARY ANALYSIS**

The memorial asks the Congress of the United States to propose an amendment to the United States Constitution limiting the time a member of the United States House or Senate can serve.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### **Background**

##### Articles of Confederation

The Articles of Confederation were adopted by Congress on July 9, 1778, and were ratified by the states in 1781. The Articles acted as the foundation for a loose conglomeration of states until it was eventually replaced by the United States Constitution in 1787. The thirteen Articles of the Articles on Confederation addressed issues of governance ranging from national defense to the coining of money, to the settling of disputes between states. The Articles also addressed the length of term, as well as term limits, for members of the unicameral legislature.<sup>1</sup>

Specifically, Article V of the Articles of Confederation addressed the length of term as well as limits to the consecutive number of years which an elected representative could serve. It stated that the term of office for each delegate (Congress was a unicameral body at the time) would be one year, and that no delegate could serve more than three out of every six years.<sup>2</sup> Since the Articles of Confederation did not articulate the office of President of the United States, United States Senator, or the United States Supreme Court, there is no mention of their terms of service or any limits to those terms.

##### The Virginia Plan

The Virginia Plan, considered to be the most significant foundational document for the drafting of the U.S. Constitution, was drafted by James Madison and submitted to the Constitutional Convention in 1787. The Plan created a sharp difference with the Articles of Confederation in that it provided for a bicameral legislature.<sup>3</sup>

In the two bodies envisioned by the Virginia delegation, the Plan contemplates but does not enumerate, the actual terms of office. However, it does note that there should be a limit to the time one can serve in the legislature. The Plan provided more direction for the creation of a "National Executive" with limits placed on the number of terms the Executive could serve (one). It also provided the basis for a National Judiciary without limitation on their tenure in office other than service during "good behavior."<sup>4</sup>

##### The New Jersey Plan

A coalition of small states, led by New Jersey, created the New Jersey Plan in response to the Virginia Plan. This Plan, like the Virginia Plan, provides for only one term for the "Executive." It also provided for lifetime terms, assuming "good behavior", for a supreme "Tribunal of Judges." The Plan; however, fails to account for the make-up, term length, or term limits of Congress.<sup>5</sup>

##### The Hamilton Plan

Also called the "British Plan", the Hamilton Plan was offered to the Constitutional Convention as well in June of 1787. Hamilton's Plan called for a bicameral legislature comprised of an Assembly and the

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<sup>1</sup> Text for Articles of Confederation found at: <http://www.usconstitution.net/articles.html>

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

<sup>3</sup> Text for the Virginia Plan found at: [http://www.usconstitution.net/plan\\_va.html](http://www.usconstitution.net/plan_va.html)

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

<sup>5</sup> Text for New Jersey Plan found at: [http://www.usconstitution.net/plan\\_nj.html](http://www.usconstitution.net/plan_nj.html)

Senate. The Assembly was to consist of representatives elected by the people who would serve three year terms. No limitation was placed on the number of terms that could be served by members of the Assembly.<sup>6</sup>

Hamilton's vision for the Senate included Senators being elected to life terms by electoral districts in their home state. The Hamilton Plan also included life terms for members of a supreme judicial authority under the condition of "good behavior." Supreme executive authority under the Hamilton Plan would be vested in a "Governor" who would be selected under an electoral system, but would subsequently serve a life term notwithstanding death, removal or resignation.<sup>7</sup>

### The United States Constitution

The United States Constitution, as ratified by the states in 1788, creates the foundation for the three branches of government (Executive, Legislative, and Judicial) with a bicameral legislature.<sup>8</sup>

### President

The U.S. Constitution limits the length of each term for the President of the United States at four years<sup>9</sup>, but it did not address the issue of term limits until after the death of President Franklin Roosevelt in 1945. President Roosevelt died while serving his fourth term in office. The 22<sup>nd</sup> Amendment to the U.S. Constitution, ratified in 1951 states:

"No person shall be elected to the office of the President more than twice, and no person who has held the office of President, or acted as President, for more than two years of a term to which some other person was elected President shall be elected to the office of the President more than once. But this article shall not apply to any person holding the office of President when this article was proposed by the Congress, and shall not prevent any person who may be holding the office of President, or acting as President, during the term within which this article becomes operative from holding the office of President or acting as President during the remainder of such term."<sup>10</sup>

### Congress

The United States Constitution also addresses the term of service for members of Congress. It calls for two year terms for members of the House of Representatives and six year terms for members of the Senate.<sup>11</sup> Though no changes have occurred to the length of service or number of terms that members of Congress can serve, one significant change did take place with the passage of the 17<sup>th</sup> Amendment to the U.S. Constitution. The 17<sup>th</sup> Amendment, ratified in 1914 states:

"The Senate of the United States shall be composed of two Senators from each State, elected by the people thereof, for six years; and each Senator shall have one vote. The electors in each State shall have the qualifications requisite for electors of the most numerous branch of the State legislatures.

When vacancies happen in the representation of any State in the Senate, the executive authority of such State shall issue writs of election to fill such vacancies: Provided, That the legislature of any State may empower the executive thereof to make temporary appointments until the people fill the vacancies by election as the legislature may direct.

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<sup>6</sup> Text for the Hamilton Plan found at: [http://www.usconstitution.net/plan\\_brit.html](http://www.usconstitution.net/plan_brit.html)

<sup>7</sup> *Id.*

<sup>8</sup> Text for the United States Constitution found at: <http://www.usconstitution.net/const.html>

<sup>9</sup> *Id.*

<sup>10</sup> Text for 22<sup>nd</sup> Amendment to the U.S. Constitution found at: <http://www.usconstitution.net/const.html#Am22>

<sup>11</sup> Text for the United States Constitution found at: <http://www.usconstitution.net/const.html>

This amendment shall not be so construed as to affect the election or term of any Senator chosen before it becomes valid as part of the Constitution.”<sup>12</sup>

The result of the 17<sup>th</sup> Amendment is that United States Senators are no longer chosen by their state’s legislature. They are chosen, as with members of the House of Representatives, by the electors of the state.

Supreme Court

As contemplated by James Madison in the Virginia Plan and in the New Jersey Plan, the Supreme Court was created without being encumbered by a length of term or any limit to the amount of time that can served on the bench. Once again, the only limit to the Justices’ time on the bench is resignation, retirement, death, or removal for actions not considered within the definition of “good behavior.”<sup>13</sup>

Term Limits since the 22<sup>nd</sup> Amendment

A movement within states to enact term limits gained traction in the early 1990’s, starting with the state of California in 1990. Since then, a total of fifteen individual states have laws in place limiting the amount of time a state legislator can serve in office. Every state with term limits, with the exception of Louisiana, has enacted them as a result of a constitutional amendment initiative. Louisiana is the only state that voted to limit their time in office without the benefit of a constitutional initiative process. The Utah Legislature also voted term limits for themselves as well, but they later voted to repeal the limits.<sup>14</sup>

Six states have had their term limit laws repealed since 1997, but Utah and Idaho share the distinction of being the only two states in which the Legislature was the source of the repeal. In the other four states (Massachusetts, Oregon, Washington, and Wyoming), they were repealed based on decisions by their respective State Supreme Courts. The states with current term limits in place are<sup>15</sup>:

State	House		Senate		% Voted Yes
	Year Enacted	Limit	Year of Impact	Limit	
MAINE	1993	8	1996	8	67.6
CALIFORNIA	1990	6	1996	8	52.2
COLORADO	1990	8	1998	8	71
ARKANSAS	1992	6	1998	8	59.9
MICHIGAN	1992	6	1998	8	58.8
FLORIDA	1992	8	2000	8	76.8
OHIO	1992	8	2000	8	68.4
SOUTH DAKOTA	1992	8	2000	8	63.5
MONTANA	1992	8	2000	8	67
ARIZONA	1992	8	2000	8	74.2
MISSOURI	1992	8	2002	8	75
OKLAHOMA	1990	12	2004	12	67.3
NEBRASKA	2000	n/a	n/a	8	56
LOUISIANA	1995	12	2007	12	76
NEVADA	1996	12	2010	12	70.4

<sup>12</sup> Text for the 17<sup>th</sup> Amendment to the U.S. Constitution found at: <http://www.usconstitution.net/const.html#Am17>

<sup>13</sup> Text for the United States Constitution found at: <http://www.usconstitution.net/const.html>

<sup>14</sup> <http://www.ncsl.org/default.aspx?tabid=14839>

<sup>15</sup> <http://www.ncsl.org/LegislaturesElections/LegislatorsLegislativeStaffData/ChartofTermLimitsStates/tabid/14844/Default.aspx?TabId=14844>

By 1995, 23 states had passed laws imposing term limits on their states' Congressional delegations. During the same year; however, the U.S. Supreme Court ruled in *U.S. Term Limits, Inc. v. Thornton*, that state-imposed term limits on Congress were unconstitutional and that federal term limits could only be imposed through an amendment to the U.S. Constitution.<sup>16</sup>

Since the 1994, several attempts have been made to enact Congressional term limits, but thus far, none has received the necessary two-thirds vote from members to send the issue to the states for ratification.<sup>17</sup> In the 111<sup>th</sup> Congress, Senator Jim DeMint filed an amendment to the U.S. Constitution limiting U.S. Senators to two six-year terms and members of the House of Representatives to three two-year terms.<sup>18</sup>

More recently, Senator David Vitter has introduced a potential constitutional amendment for consideration during the 112<sup>th</sup> Congress to limit members of the U.S. Senate and the U.S. House of Representatives to twelve years each.<sup>19</sup> So far, no action has yet been taken on the measure.<sup>20</sup>

In order to be sent to the states, an individual amendment proposal must first be approved by a two-thirds vote in both chambers of Congress (290 votes in the House and 67 votes in the Senate). If approved by the U.S. Congress, the proposed amendment would be sent to the individual states for ratification. If the legislatures of at least three-fourths (39 states) approve the measure, then it will be officially ratified and become the 28<sup>th</sup> Amendment to the U.S. Constitution.<sup>21</sup>

### **Effects of Proposed Changes**

If enacted, this memorial would request that the United States Congress propose an amendment to the United States Constitution which will limit the number of terms in which members of the United States House and Senate may serve.

The legislation also contains whereas clauses in order to support the memorial. The whereas clauses include:

WHEREAS, Article V of the Constitution of the United States authorizes Congress to propose amendments to the Constitution which shall become valid when ratified by the states, and

WHEREAS, a continuous and growing concern has been expressed that the best interests of this nation will be served by limiting the terms of members of Congress, a concern expressed by the founding fathers, incorporated into the Articles of Confederation, attempted through legislation adopted by state legislatures, and documented in recent media polls...

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

None

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<sup>16</sup> <http://www.law.cornell.edu/supct/html/93-1456.ZO.html>

<sup>17</sup> The four constitutional amendments on term limits which the House rejected 29 March 1995 were sponsored by: Democrat [John Dingell](#) [12/12 retroactive], rejected 135-297; Republican [Bob Inglis](#) [6/12, un-retroactive], rejected 114-316; Republican [Van Hilleary](#) [12/12, unretroactive, but defers to more stringent state imposed limits], rejected 164-265; Republican [Bill McCollum](#) [12/12 unretroactive and would override more stringent state limits]; approved by less than the requisite 2/3, 227-204; on February 12, 1997 Congress did likewise by a margin of 217-211 [50.7%].

<sup>18</sup> [http://demint.senate.gov/public/index.cfm?p=PressReleases&ContentRecord\\_id=df3453ee-c1f0-e8d5-3fb3-77379823cf1c&ContentType\\_id=a2165b4b-3970-4d37-97e5-4832fcc68398&Group\\_id=9ee606ce-9200-47af-90a5-024143e9974c&YearDisplay=2009](http://demint.senate.gov/public/index.cfm?p=PressReleases&ContentRecord_id=df3453ee-c1f0-e8d5-3fb3-77379823cf1c&ContentType_id=a2165b4b-3970-4d37-97e5-4832fcc68398&Group_id=9ee606ce-9200-47af-90a5-024143e9974c&YearDisplay=2009)

<sup>19</sup> <http://thomas.loc.gov/cgi-bin/bdquery/D?d112:37:./temp/~bdbhtz::>

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

<sup>21</sup> [http://www.usconstitution.net/xconst\\_A5.html](http://www.usconstitution.net/xconst_A5.html)



## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None

2. Expenditures:

None

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None

2. Expenditures:

None

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

None

### D. FISCAL COMMENTS:

None

## III. COMMENTS

### A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not Applicable

2. Other:

None

### B. RULE-MAKING AUTHORITY:

Not Applicable

### C. DRAFTING ISSUES OR OTHER COMMENTS:

None

## IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

Amended 3/23/11 in Federal Affairs Subcommittee: The amendment removes twelve years as the consecutive years service limit in each body of Congress.

1 House Memorial

2 A memorial to the Congress of the United States, urging  
 3 Congress to propose to the states an amendment to the  
 4 Constitution of the United States that would limit the  
 5 consecutive terms of office which a member of the United  
 6 States Senate or the United States House of  
 7 Representatives may serve.

8  
 9 WHEREAS, Article V of the Constitution of the United States  
 10 authorizes Congress to propose amendments to the Constitution  
 11 which shall become valid when ratified by the states, and

12 WHEREAS, a continuous and growing concern has been  
 13 expressed that the best interests of this nation will be served  
 14 by limiting the terms of members of Congress, a concern  
 15 expressed by the founding fathers, incorporated into the  
 16 Articles of Confederation, attempted through legislation adopted  
 17 by state legislatures, and documented in recent media polls,  
 18 NOW, THEREFORE,

19  
 20 Be It Resolved by the Legislature of the State of Florida:

21  
 22 That the Florida Legislature respectfully petitions the  
 23 Congress of the United States to propose to the states an  
 24 amendment to the Constitution of the United States to limit the  
 25 number of consecutive terms which a person may serve in the  
 26 United States Senate or the United States House of  
 27 Representatives.

CS/HM 685

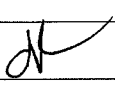
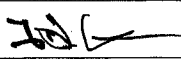
2011

28 | BE IT FURTHER RESOLVED that copies of this memorial be  
29 | dispatched to the President of the United States, to the  
30 | President of the United States Senate, to the Speaker of the  
31 | United States House of Representatives, and to each member of  
32 | the Florida delegation to the United States Congress.



## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 735 Division of Forestry  
**SPONSOR(S):** Porter  
**TIED BILLS:** None **IDEN./SIM. BILLS:** SB 1046

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Agriculture & Natural Resources Subcommittee	15 Y, 0 N, As CS	Kaiser	Blalock
2) Rulemaking & Regulation Subcommittee	11 Y, 0 N	Jensen	Rubottom
3) Agriculture & Natural Resources Appropriations Subcommittee	13 Y, 0 N	Lolley	Massengale
4) State Affairs Committee		Kaiser 	Hamby 

### SUMMARY ANALYSIS

The Division of Forestry (division) within the Department of Agriculture and Consumer Services (department) is responsible for managing more than one million acres of forest resources. Besides forest management, the division also provides wildfire prevention and suppression among its many other duties.

Florida has had an organized forestry service for more than 80 years. Prior to the State Governmental Reorganization Act of 1969<sup>1</sup> (act), the state forests fell under the jurisdiction of the Florida Forest Service (service). The service was led by the Florida Board of Forestry (board), which was appointed by, and reported directly to, the governor. The board was responsible for setting forest policy, as well as appointing state foresters, among other responsibilities.

With the passage of the act in 1969, the service became a division within the newly created Department of Agriculture and Consumer Services and the board was converted to the Florida Advisory Council, which reported to the Commissioner of Agriculture.

The bill changes the name of the Division of Forestry to the Florida Forest Service, as it was first designated in the early 1900s. The bill also changes the title of the director of the Division of Forestry to the State Forester.

The Department of Agriculture and Consumer Services (department) states that the fiscal impact of this legislation would be minimal<sup>2</sup> with the signage transition occurring over a 3-year period. The bill does not appear to have a fiscal impact on local governments.

<sup>1</sup> In 1968, Florida voters approved a new State Constitution that called for consolidation of a number of executive offices, requiring that 159 offices, boards, and departments be reorganized into "not more than twenty-five departments."

<sup>2</sup> \$6,600 (nonrecurring)

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### **Current Situation**

The Division of Forestry (division) within the Department of Agriculture and Consumer Services (department) is responsible for managing more than one million acres of forest resources. Besides forest management, the division also provides wildfire prevention and suppression among its many other duties.

Florida has had an organized forestry service for more than 80 years. Prior to the State Governmental Reorganization Act of 1969<sup>3</sup> (act), the state forests fell under the jurisdiction of the Florida Forest Service (service). The service was led by the Florida Board of Forestry (board), which was appointed by, and reported directly to, the governor. The board was responsible for setting forest policy, as well as appointing state foresters, among other responsibilities.

With the passage of the act in 1969, the service became a division within the newly created Department of Agriculture and Consumer Services and the board was converted to the Florida Advisory Council, which reported to the Commissioner of Agriculture.

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

The bill changes the name of the Division of Forestry to the Florida Forest Service, as it was first designated in the early 1900s. The bill also changes the title of the director of the Division of Forestry to the State Forester.

### B. SECTION DIRECTORY:

**Sections 1-5:** Amending ss. 20.14, 121.0515, 125.27, 253.036, and 258.501, F.S.; renaming the Division of Forestry as the Florida Forest Service.

**Section 6:** Amending s. 25.035, F.S.; renaming the director of the Division of Forestry as the State Forester.

**Section 7:** Amending s. 259.036, F.S.; renaming the Division of Forestry as the Florida Forest Service.

**Section 8:** Amending s. 259.037, F.S.; renaming the director of the Division of Forestry as the State Forester.

**Sections 9-11:** Amending ss. 259.101, 259.105, and 259.10521, F.S.; renaming the Division of Forestry as the Florida Forest Service.

**Section 12:** Amending s. 260.0142, F.S.; renaming the director of the Division of Forestry as the State Forester.

**Sections 13-67:** Amending ss. 261.03, 261.04, 261.06, 261.12, 317.0010, 317.0016, 373.591, 379.226, 403.7071, 479.16, 570.29, 570.548, 570.549, 570.903, 581.1843, 589.01, 589.011, 589.012, 589.04, 589.06, 589.07, 589.071, 589.08, 589.081, 589.09, 589.10, 589.101, 589.11, 589.12, 589.13, 589.14, 589.18, 589.19, 589.20, 589.21, 589.26, 589.27, 589.275, 589.277, 589.28, 589.29, 589.30, 589.31, 589.32, 589.33, 589.34, 590.01, 590.015, 590.02, 590.081, 590.091, 590.125, 590.14, 590.16, and 590.25, F.S.; renaming the Division of Forestry as the Florida Forest Service.

**Sections 68-69:** Amending ss. 590.33 and 590.34, F.S.; renaming the director of the Division of Forestry as the State Forester.

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<sup>3</sup> In 1968, Florida voters approved a new State Constitution that called for consolidation of a number of executive offices, requiring that 159 offices, boards, and departments be reorganized into "not more than twenty-five departments."

**Sections 70-71:** Amending ss. 590.35 and 590.42, F.S.; renaming the Division of Forestry as the Florida Forest Service.

**Section 72:** Amending chapter 591, F.S.; amending the name of Chapter 591, F.S., from "Forest Development" to "Community Forests."

**Sections 73-84:** Amending ss. 591.15, 591.16, 591.17, 591.18, 591.19, 591.20, 591.21, 591.22, 591.23, 591.24, 591.25, and 591.26, F.S.; revising terminology used in provisions relating to community forests, transferring and renumbering statute sections, and renaming the Division of Forestry as the Florida Forest Service.

**Sections 85-87:** Amending ss. 633.115, 633.821, and 790.15, F.S.; renaming the Division of Forestry as the Florida Forest Service.

**Section 88:** Providing 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 section.

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None

2. Expenditures:

None

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

None

### D. FISCAL COMMENTS:

The Department of Agriculture and Consumer Services (department) states that the fiscal impact of this legislation would be minimal<sup>4</sup> with the signage transition occurring over a 3-year period.

## 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.

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<sup>4</sup> \$6,600 (nonrecurring)

2. Other:

None

B. RULE-MAKING AUTHORITY:

None

C. DRAFTING ISSUES OR OTHER COMMENTS:

None

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

On March 8, 2011, the Agriculture and Natural Resources Subcommittee adopted one amendment to HB 735. The amendment was technical in nature, changing a reference to the "division" to the Florida Forest Service.



1                                   A bill to be entitled  
2       An act relating to the Division of Forestry; amending s.  
3       20.14, F.S.; renaming the Division of Forestry of the  
4       Department of Agriculture and Consumer Services as the  
5       Florida Forest Service; amending ss. 121.0515, 125.27,  
6       253.036, and 258.501, F.S.; conforming provisions;  
7       amending s. 259.035, F.S.; redesignating the director of  
8       the division as the State Forester; amending ss. 259.036,  
9       259.037, 259.101, 259.105, 259.10521, 260.0142, 261.03,  
10      261.04, 261.06, 261.12, 317.0010, 317.0016, 373.591,  
11      379.226, 403.7071, 479.16, 570.29, and 570.548, F.S.;  
12      conforming provisions; transferring, renumbering, and  
13      amending s. 570.549, F.S.; conforming provisions; amending  
14      ss. 570.903, 581.1843, 589.01, 589.011, 589.012, 589.04,  
15      589.06, and 589.07, F.S.; conforming provisions; amending  
16      s. 589.071, F.S.; clarifying what constitutes a violation  
17      of certain rules regulating traffic control in state  
18      forests for which penalties apply; conforming provisions;  
19      amending ss. 589.08, 589.081, 589.09, and 589.10, F.S.;  
20      conforming provisions; amending s. 589.101, F.S.;  
21      clarifying requirements for leases of the state's interest  
22      in oil, gas, and minerals in the Blackwater River State  
23      Forest; conforming provisions; amending s. 589.11, F.S.;  
24      clarifying an authorization for the state's cooperation  
25      with the United States Secretary of Agriculture under the  
26      federal Clarke-McNary Act; conforming a cross-reference to  
27      the repeal of certain federal provisions; conforming  
28      provisions; amending ss. 589.12, 589.13, 589.14, 589.18,

29 589.19, 589.20, and 589.21, F.S.; conforming provisions;  
 30 amending s. 589.26, F.S.; clarifying requirements for the  
 31 dedication of state park lands for public use; conforming  
 32 provisions; amending ss. 589.27, 589.275, and 589.277,  
 33 F.S.; conforming provisions; amending ss. 589.28, 589.29,  
 34 589.30, 589.31, 589.32, 589.33, and 589.34, F.S.;

35 clarifying requirements for assistance provided to  
 36 counties and municipalities by the Florida Forest Service  
 37 under cooperative agreements; conforming cross-references;  
 38 conforming provisions; amending ss. 590.01, 590.015,  
 39 590.02, 590.081, 590.091, 590.125, 590.14, 590.16, 590.25,  
 40 590.33, 590.34, and 590.35, F.S.; conforming provisions;  
 41 amending s. 590.42, F.S.; clarifying that funds received  
 42 or contributed by counties under a certain federal fire  
 43 assistance program are supplementary to certain county  
 44 fire control funds and assessments; conforming provisions;  
 45 redesignating the title of chapter 591, F.S.; amending s.  
 46 591.15, F.S.; conforming a short title; amending ss.  
 47 591.16, 591.17, 591.18, 591.19, and 591.20, F.S.; revising  
 48 terminology used in provisions relating to community  
 49 forests; conforming provisions; transferring, renumbering,  
 50 and amending ss. 591.21 and 591.22, F.S.; conforming  
 51 provisions; amending ss. 591.23, 591.24, and 591.25, F.S.;

52 conforming provisions; amending s. 591.26, F.S.;

53 clarifying provisions authorizing sale of community  
 54 forests upon referendum election; amending ss. 633.115,  
 55 633.821, and 790.15, F.S.; conforming provisions;  
 56 providing an effective date.

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

Section 1. Paragraph (h) of subsection (2) of section 20.14, Florida Statutes, is amended to read:

20.14 Department of Agriculture and Consumer Services.—  
There is created a Department of Agriculture and Consumer Services.

(2) The following divisions of the Department of Agriculture and Consumer Services are established:

(h) Florida Forest Service ~~Forestry~~.

Section 2. Paragraph (b) of subsection (2) of section 121.0515, Florida Statutes, is amended to read:

121.0515 Special risk membership.—

(2) CRITERIA.—A member, to be designated as a special risk member, must meet the following criteria:

(b) The member must be employed as a firefighter and be certified, or required to be certified, in compliance with s. 633.35 and be employed solely within the fire department of a local government employer or an agency of state government with firefighting responsibilities. In addition, the member's duties and responsibilities must include on-the-scene fighting of fires, fire prevention, or firefighter training; direct supervision of firefighting units, fire prevention, or firefighter training; or aerial firefighting surveillance performed by fixed-wing aircraft pilots employed by the Florida Forest Service ~~Division of Forestry of the Department of Agriculture and Consumer Services~~; or the member must be the

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85 supervisor or command officer of a member or members who have  
 86 such responsibilities; provided, however, administrative support  
 87 personnel, including, but not limited to, those whose primary  
 88 duties and responsibilities are in accounting, purchasing,  
 89 legal, and personnel, shall not be included and further provided  
 90 that all periods of creditable service in fire prevention or  
 91 firefighter training, or as the supervisor or command officer of  
 92 a member or members who have such responsibilities, and for  
 93 which the employer paid the special risk contribution rate,  
 94 shall be included;

95 Section 3. Section 125.27, Florida Statutes, is amended to  
 96 read:

97 125.27 Countywide forest fire protection; authority of  
 98 Florida Forest Service ~~the Division of Forestry~~; state funding;  
 99 county fire control assessments; disposition; equipment  
 100 donations.-

101 (1) The Florida Forest Service ~~Division of Forestry~~ of the  
 102 ~~Department of Agriculture and Consumer Services~~ and the board of  
 103 county commissioners of each county in this state shall enter  
 104 into agreements for the establishment and maintenance of  
 105 countywide fire protection of all forest and wild lands within  
 106 the said county, with the total cost of such fire protection  
 107 being funded by state and federal funds. Each county shall,  
 108 under the terms of such agreements, be assessed each fiscal  
 109 year, as its share of the cost of providing such fire  
 110 protection, a sum in dollars equal to the total forest and wild  
 111 land acreage of the county, as determined by the Florida Forest  
 112 Service ~~Division of Forestry~~, multiplied by 7 cents. The forest

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113 and wild lands acreage included in such agreements shall be  
114 reviewed each year by the contracting parties and the number of  
115 forest and wild land acres and the annual fire control  
116 assessment adjusted so as to reflect the current forest acreage  
117 of the county. If In the event the Florida Forest Service  
118 ~~division~~ and the county commissioners do not agree, the Board of  
119 Trustees of the Internal Improvement Trust Fund shall make such  
120 acreage determination. All fire control assessments received by  
121 the Florida Forest Service ~~Division of Forestry~~ from the several  
122 counties under agreements made under ~~pursuant to~~ this section  
123 shall be deposited as follows:

124 (a) An amount equal to the total forest land and wild land  
125 acreage of the counties, multiplied by 4 cents, shall be  
126 distributed to the Incidental Trust Fund of the Florida Forest  
127 Service ~~Division of Forestry~~; and

128 (b) An amount equal to the total forest land and wild land  
129 acreage of the counties, multiplied by 3 cents, shall be  
130 distributed to the General Revenue Fund.

131 (2) The Florida Forest Service ~~Division of Forestry~~ may  
132 include provisions in the agreements authorized in this section,  
133 or execute separate or supplemental agreements with the several  
134 counties, county agencies, or municipalities, to provide  
135 communication services and other services directly related to  
136 fire protection within the county, other than forest fire  
137 control, on a cost reimbursable basis only, but ~~provided~~ the  
138 rendering of such services may ~~does~~ not hinder or impede in any  
139 way the Florida Forest Service's ~~division's~~ ability to  
140 accomplish its primary function with respect to forest fire

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141 control.

142 (3) The Department of Agriculture and Consumer Services  
 143 may lease, loan, or otherwise make available, without charge, to  
 144 state, county, and local governmental entities that have fire-  
 145 rescue ~~fire/rescue~~ responsibilities, new or used fire protection  
 146 equipment, vehicles, or supplies, including ~~which shall include~~  
 147 all such items received from public or private entities. The  
 148 department, and those private or public entities providing at no  
 149 cost, or de minimis cost, such items for loan or lease through  
 150 the department are, ~~shall not be held~~ liable for civil damages  
 151 resulting from use or possession of such items. Private or  
 152 public entities that donate fire-rescue ~~fire/rescue~~ equipment,  
 153 vehicles, or supplies directly to state, county, or local  
 154 governmental entities having fire-rescue ~~fire/rescue~~  
 155 responsibilities are ~~shall not be held~~ liable for civil damages  
 156 resulting from use or possession of such items.

157 Section 4. Section 253.036, Florida Statutes, is amended  
 158 to read:

159 253.036 Forest management.—All land management plans  
 160 described in s. 253.034(5) that ~~which~~ are prepared for parcels  
 161 larger than 1,000 acres shall contain an analysis of the  
 162 multiple-use potential of the parcel, which analysis shall  
 163 include the potential of the parcel to generate revenues to  
 164 enhance the management of the parcel. The lead agency shall  
 165 prepare the analysis, which shall contain a component or section  
 166 prepared by a qualified professional forester that ~~which~~  
 167 assesses the feasibility of managing timber resources on the  
 168 parcel for resource conservation and revenue generation purposes

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169 | through a stewardship ethic that embraces sustainable forest  
170 | management practices if the lead management agency determines  
171 | that the timber resource management is not in conflict with the  
172 | primary management objectives of the parcel. For purposes of  
173 | this section, practicing sustainable forest management means  
174 | meeting the needs of the present without compromising the  
175 | ability of future generations to meet their own needs by  
176 | practicing a land stewardship ethic that ~~which~~ integrates the  
177 | reforestation, managing, growing, nurturing, and harvesting of  
178 | trees for useful products with the conservation of soil, air and  
179 | water quality, wildlife and fish habitat, and aesthetics. The  
180 | Legislature intends that each lead management agency, whenever  
181 | practicable and cost effective, use the services of the Florida  
182 | Forest Service ~~Division of Forestry of the Florida Department of~~  
183 | ~~Agriculture and Consumer Services~~ or other qualified private  
184 | sector professional forester in completing such feasibility  
185 | assessments and implementing timber resource management. The  
186 | Legislature further intends that the lead management agency  
187 | develop a memorandum of agreement with the Florida Forest  
188 | Service ~~Division of Forestry~~ to provide for full reimbursement  
189 | for any services provided for the feasibility assessments or  
190 | timber resource management. All additional revenues generated  
191 | through multiple-use management or compatible secondary use  
192 | management shall be returned to the lead agency responsible for  
193 | such management and shall be used to pay for management  
194 | activities on all conservation, preservation, and recreation  
195 | lands under the agency's jurisdiction. In addition, such revenue  
196 | shall be segregated in an agency trust fund and shall remain

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197 | available to the agency in subsequent fiscal years to support  
 198 | land management appropriations.

199 | Section 5. Paragraph (a) of subsection (7) of section  
 200 | 258.501, Florida Statutes, is amended to read:

201 | 258.501 Myakka River; wild and scenic segment.—

202 | (7) MANAGEMENT COORDINATING COUNCIL.—

203 | (a) Upon designation, the department shall create a  
 204 | permanent council to provide interagency and intergovernmental  
 205 | coordination in the management of the river. The coordinating  
 206 | council shall be composed of one representative appointed from  
 207 | each of the following: the department, the Department of  
 208 | Transportation, the Fish and Wildlife Conservation Commission,  
 209 | the Department of Community Affairs, the Florida Forest Service  
 210 | ~~Division of Forestry of the Department of Agriculture and~~  
 211 | ~~Consumer Services~~, the Division of Historical Resources of the  
 212 | Department of State, the Tampa Bay Regional Planning Council,  
 213 | the Southwest Florida Water Management District, the Southwest  
 214 | Florida Regional Planning Council, Manatee County, Sarasota  
 215 | County, Charlotte County, the City of Sarasota, the City of  
 216 | North Port, agricultural interests, environmental organizations,  
 217 | and any others deemed advisable by the department.

218 | Section 6. Paragraph (b) of subsection (1) of section  
 219 | 259.035, Florida Statutes, is amended to read:

220 | 259.035 Acquisition and Restoration Council.—

221 | (1) There is created the Acquisition and Restoration  
 222 | Council.

223 | (b) The five remaining appointees shall be composed of the  
 224 | Secretary of Environmental Protection, the State Forester



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225 ~~director of the Division of Forestry of the Department of~~  
 226 ~~Agriculture and Consumer Services,~~ the executive director of the  
 227 Fish and Wildlife Conservation Commission, the director of the  
 228 Division of Historical Resources of the Department of State, and  
 229 the secretary of the Department of Community Affairs, or their  
 230 respective designees.

231 Section 7. Paragraph (a) of subsection (1) of section  
 232 259.036, Florida Statutes, is amended to read:

233 259.036 Management review teams.—

234 (1) To determine whether conservation, preservation, and  
 235 recreation lands titled in the name of the Board of Trustees of  
 236 the Internal Improvement Trust Fund are being managed for the  
 237 purposes for which they were acquired and in accordance with a  
 238 land management plan adopted pursuant to s. 259.032, the board  
 239 of trustees, acting through the Department of Environmental  
 240 Protection, shall cause periodic management reviews to be  
 241 conducted as follows:

242 (a) The department shall establish a regional land  
 243 management review team composed of the following members:

244 1. One individual who is from the county or local  
 245 community in which the parcel or project is located and who is  
 246 selected by the county commission in the county which is most  
 247 impacted by the acquisition.

248 2. One individual from the Division of Recreation and  
 249 Parks of the department.

250 3. One individual from the Florida Forest Service Division  
 251 ~~of Forestry of the Department of Agriculture and Consumer~~  
 252 ~~Services.~~

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253 4. One individual from the Fish and Wildlife Conservation  
254 Commission.

255 5. One individual from the department's district office in  
256 which the parcel is located.

257 6. A private land manager mutually agreeable to the state  
258 agency representatives.

259 7. A member of the local soil and water conservation  
260 district board of supervisors.

261 8. A member of a conservation organization.

262 Section 8. Subsection (1) of section 259.037, Florida  
263 Statutes, is amended to read:

264 259.037 Land Management Uniform Accounting Council.—

265 (1) The Land Management Uniform Accounting Council is  
266 created within the Department of Environmental Protection and  
267 shall consist of the director of the Division of State Lands,  
268 the director of the Division of Recreation and Parks, the  
269 director of the Office of Coastal and Aquatic Managed Areas, and  
270 the director of the Office of Greenways and Trails of the  
271 Department of Environmental Protection; the State Forester  
272 ~~director of the Division of Forestry of the Department of~~  
273 ~~Agriculture and Consumer Services~~; the executive director of the  
274 Fish and Wildlife Conservation Commission; and the director of  
275 the Division of Historical Resources of the Department of State,  
276 or their respective designees. Each state agency represented on  
277 the council has ~~shall have~~ one vote. The chair of the council  
278 shall rotate annually in the foregoing order of state agencies.  
279 The agency of the representative serving as chair of the council  
280 shall provide staff support for the council. The Division of

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281 State Lands shall serve as the recipient of and repository for  
 282 the council's documents. The council shall meet at the request  
 283 of the chair.

284 Section 9. Paragraph (e) of subsection (3) and subsection  
 285 (5) of section 259.101, Florida Statutes, are amended to read:

286 259.101 Florida Preservation 2000 Act.—

287 (3) LAND ACQUISITION PROGRAMS SUPPLEMENTED.—Less the costs  
 288 of issuance, the costs of funding reserve accounts, and other  
 289 costs with respect to the bonds, the proceeds of bonds issued  
 290 pursuant to this act shall be deposited into the Florida  
 291 Preservation 2000 Trust Fund created by s. 375.045. In fiscal  
 292 year 2000-2001, for each Florida Preservation 2000 program  
 293 described in paragraphs (a)-(g), that portion of each program's  
 294 total remaining cash balance which, as of June 30, 2000, is in  
 295 excess of that program's total remaining appropriation balances  
 296 shall be redistributed by the department and deposited into the  
 297 Save Our Everglades Trust Fund for land acquisition. For  
 298 purposes of calculating the total remaining cash balances for  
 299 this redistribution, the Florida Preservation 2000 Series 2000  
 300 bond proceeds, including interest thereon, and the fiscal year  
 301 1999-2000 General Appropriations Act amounts shall be deducted  
 302 from the remaining cash and appropriation balances,  
 303 respectively. The remaining proceeds shall be distributed by the  
 304 Department of Environmental Protection in the following manner:

305 (e) Two and nine-tenths percent to the Florida Forest  
 306 Service Division of Forestry of the Department of Agriculture  
 307 and Consumer Services to fund the acquisition of state forest  
 308 inholdings and additions pursuant to s. 589.07.

309  
 310 Local governments may use federal grants or loans, private  
 311 donations, or environmental mitigation funds, including  
 312 environmental mitigation funds required pursuant to s. 338.250,  
 313 for any part or all of any local match required for the purposes  
 314 described in this subsection. Bond proceeds allocated pursuant  
 315 to paragraph (c) may be used to purchase lands on the priority  
 316 lists developed pursuant to s. 259.035. Title to lands purchased  
 317 pursuant to paragraphs (a), (d), (e), (f), and (g) shall be  
 318 vested in the Board of Trustees of the Internal Improvement  
 319 Trust Fund. Title to lands purchased pursuant to paragraph (c)  
 320 may be vested in the Board of Trustees of the Internal  
 321 Improvement Trust Fund. The board of trustees shall hold title  
 322 to land protection agreements and conservation easements that  
 323 were or will be acquired pursuant to s. 380.0677, and the  
 324 Southwest Florida Water Management District and the St. Johns  
 325 River Water Management District shall monitor such agreements  
 326 and easements within their respective districts until the state  
 327 assumes this responsibility.

328 (5) Any funds received by the Florida Forest Service  
 329 ~~Division of Forestry~~ from the Preservation 2000 Trust Fund  
 330 pursuant to paragraph (3) (e) may only ~~shall~~ be used ~~only~~ to pay  
 331 the cost of the acquisition of lands in furtherance of outdoor  
 332 recreation and natural resources conservation in this state. The  
 333 administration and use of any funds received by the Florida  
 334 Forest Service ~~Division of Forestry~~ from the Preservation 2000  
 335 Trust Fund are ~~will be~~ subject to such terms and conditions  
 336 imposed thereon by the agency of the state responsible for the

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337 issuance of the revenue bonds, the proceeds of which are  
 338 deposited in the Preservation 2000 Trust Fund, including  
 339 restrictions imposed to ensure that the interest on any such  
 340 revenue bonds issued by the state as tax-exempt revenue bonds  
 341 are ~~will not be~~ included in the gross income of the holders of  
 342 such bonds for federal income tax purposes. All deeds for or  
 343 leases of ~~with respect to~~ any real property acquired with funds  
 344 received by the Florida Forest Service ~~Division of Forestry~~ from  
 345 the Preservation 2000 Trust Fund shall contain such covenants  
 346 and restrictions as are sufficient to ensure that the use of  
 347 such real property at all times complies with s. 375.051 and s.  
 348 9, Art. XII of the 1968 Constitution of Florida; and shall  
 349 contain reverter clauses providing for the reversion of title to  
 350 such property to the Board of Trustees of the Internal  
 351 Improvement Trust Fund or, in the case of a lease of such  
 352 property, providing for termination of the lease upon a failure  
 353 to use the property conveyed thereby for such purposes.

354 Section 10. Paragraph (f) of subsection (3) of section  
 355 259.105, Florida Statutes, is amended to read:

356 259.105 The Florida Forever Act.—

357 (3) Less the costs of issuing and the costs of funding  
 358 reserve accounts and other costs associated with bonds, the  
 359 proceeds of cash payments or bonds issued pursuant to this  
 360 section shall be deposited into the Florida Forever Trust Fund  
 361 created by s. 259.1051. The proceeds shall be distributed by the  
 362 Department of Environmental Protection in the following manner:

363 (f) One and five-tenths percent to the Florida Forest  
 364 Service ~~Division of Forestry of the Department of Agriculture~~

365 ~~and Consumer Services~~ to fund the acquisition of state forest  
 366 inholdings and additions pursuant to s. 589.07, the  
 367 implementation of reforestation plans or sustainable forestry  
 368 management practices, and for capital project expenditures as  
 369 described in this section. At a minimum, 1 percent, but ~~and~~ no  
 370 more than 10 percent, of the funds allocated for the acquisition  
 371 of inholdings and additions pursuant to this paragraph may ~~shall~~  
 372 be spent on capital project expenditures identified during the  
 373 time of acquisition which meet land management planning  
 374 activities necessary for public access.

375 Section 11. Subsections (1) and (2) and paragraph (b) of  
 376 subsection (3) of section 259.10521, Florida Statutes, are  
 377 amended to read:

378 259.10521 Citizen support organization; use of property.-

379 (1) DEFINITION ~~DEFINITIONS.~~ As used in ~~For the purpose of~~  
 380 this section, the term "citizen support organization" means ~~an~~  
 381 ~~organization that is:~~

382 ~~(a)~~ a Florida corporation not for profit incorporated  
 383 under ~~the provisions of~~ chapter 617 and approved by the  
 384 Department of State that is:

385 ~~(a)(b)~~ Organized and operated to conduct programs and  
 386 activities in the best interest of the state; raise funds;  
 387 request and receive grants, gifts, and bequests of money;  
 388 acquire, receive, hold, invest, and administer, in its own name,  
 389 securities, funds, objects of value, or other property, real or  
 390 personal; and make expenditures to or for the direct or indirect  
 391 benefit of the Babcock Crescent B Ranch;

392 (b)(c) Determined by the Fish and Wildlife Conservation

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393 Commission and the Florida Forest Service ~~Division of Forestry~~  
 394 ~~within the Department of Agriculture and Consumer Services~~ to be  
 395 consistent with the goals of the state in acquiring the ranch  
 396 and in the best interests of the state; and

397 (c) ~~(d)~~ Approved in writing by the Fish and Wildlife  
 398 Conservation Commission and the Florida Forest Service ~~Division~~  
 399 ~~of Forestry~~ to operate for the direct or indirect benefit of the  
 400 ranch and in the best interest of the state. Such approval must  
 401 ~~shall~~ be given in a letter of agreement from the Fish and  
 402 Wildlife Conservation Commission and the Florida Forest Service  
 403 ~~Division of Forestry~~. Only one citizen support organization may  
 404 be created to operate for the direct or indirect benefit of the  
 405 Babcock Crescent B Ranch.

406 (2) USE OF PROPERTY.—

407 (a) The Fish and Wildlife Conservation Commission and the  
 408 Florida Forest Service ~~Division of Forestry~~ may permit, without  
 409 charge, appropriate use of fixed property and facilities of the  
 410 Babcock Crescent B Ranch by a citizen support organization,  
 411 subject to ~~the provisions of~~ this section. Such use must be  
 412 directly in keeping with the approved purposes of the citizen  
 413 support organization and may not be made at times or places that  
 414 would unreasonably interfere with recreational opportunities for  
 415 the general public.

416 (b) The Fish and Wildlife Conservation Commission and the  
 417 Florida Forest Service ~~Division of Forestry~~ may adopt rules  
 418 prescribing the conditions ~~prescribe by rule any condition~~ with  
 419 which the citizen support organization must ~~shall~~ comply in  
 420 order to use fixed property or facilities of the ranch.

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421 (c) The Fish and Wildlife Conservation Commission and the  
422 Florida Forest Service may ~~Division of Forestry shall~~ not permit  
423 the use of any fixed property or facilities of the ranch by a  
424 citizen support organization that does not provide equal  
425 membership and employment opportunities to all persons  
426 regardless of race, color, religion, sex, age, or national  
427 origin.

428 (3) PARTNERSHIPS.—

429 (b) The Legislature may annually appropriate funds from  
430 the Land Acquisition Trust Fund for use only as state matching  
431 funds, in conjunction with private donations in aggregates of at  
432 least \$60,000, matched by \$40,000 of state funds, for a total  
433 minimum project amount of \$100,000 for capital improvement  
434 facility development at the ranch at either individually  
435 designated locations or for priority projects within the overall  
436 ranch system. The citizen support organization may acquire  
437 private donations under ~~pursuant to~~ this section, and matching  
438 state funds for approved projects may be provided in accordance  
439 with this subsection. The Fish and Wildlife Conservation  
440 Commission and the Florida Forest Service may ~~Division of~~  
441 ~~Forestry are authorized to properly~~ recognize and honor a  
442 private donor by placing a plaque or other appropriate  
443 designation noting the contribution on project facilities or by  
444 naming project facilities after the person or organization that  
445 provided matching funds. The Fish and Wildlife Conservation  
446 Commission and the Florida Forest Service may ~~Division of~~  
447 ~~Forestry are authorized to adopt necessary administrative rules~~  
448 to administer ~~carry out the purposes of~~ this subsection.



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449 Section 12. Paragraph (d) of subsection (1) of section  
450 260.0142, Florida Statutes, is amended to read:

451 260.0142 Florida Greenways and Trails Council;  
452 composition; powers and duties.—

453 (1) There is created within the department the Florida  
454 Greenways and Trails Council which shall advise the department  
455 in the execution of the department's powers and duties under  
456 this chapter. The council shall be composed of 21 members,  
457 consisting of:

458 (d) The following 10 ~~remaining~~ members ~~shall include~~:

459 1. The Secretary of Environmental Protection or a  
460 designee.

461 2. The executive director of the Fish and Wildlife  
462 Conservation Commission or a designee.

463 3. The Secretary of Community Affairs or a designee.

464 4. The Secretary of Transportation or a designee.

465 5. The State Forester ~~Director of the Division of Forestry~~  
466 ~~of the Department of Agriculture and Consumer Services~~ or a  
467 designee.

468 6. The director of the Division of Historical Resources of  
469 the Department of State or a designee.

470 7. A representative of the water management districts.  
471 Membership on the council shall rotate among the five districts.  
472 The districts shall determine the order of rotation.

473 8. A representative of a federal land management agency.  
474 The Secretary of Environmental Protection shall identify the  
475 appropriate federal agency and request designation of a  
476 representative from the agency to serve on the council.

477 9. A representative of the regional planning councils ~~to~~  
 478 ~~be~~ appointed by the Secretary of Environmental Protection in  
 479 consultation with the Secretary of Community Affairs. Membership  
 480 on the council shall rotate among the seven regional planning  
 481 councils. The regional planning councils shall determine the  
 482 order of rotation.

483 10. A representative of local governments ~~to be~~ appointed  
 484 by the Secretary of Environmental Protection in consultation  
 485 with the Secretary of Community Affairs. Membership shall  
 486 alternate between a county representative and a municipal  
 487 representative.

488 Section 13. Subsections (5) through (12) of section  
 489 261.03, Florida Statutes, are renumbered as subsections (4)  
 490 through (11), respectively, and present subsections (4) and (11)  
 491 of that section are amended to read:

492 261.03 Definitions.—As used in this chapter, the term:

493 ~~(4) "Division" means the Division of Forestry of the~~  
 494 ~~Department of Agriculture and Consumer Services.~~

495 (10) ~~(11)~~ "Trust fund" means the Incidental Trust Fund of  
 496 the Florida Forest Service ~~Division of Forestry of the~~  
 497 ~~Department of Agriculture and Consumer Services.~~

498 Section 14. Subsection (1) of section 261.04, Florida  
 499 Statutes, is amended to read:

500 261.04 Off-Highway Vehicle Recreation Advisory Committee;  
 501 members; appointment.—

502 (1) Effective July 1, 2003, the Off-Highway Vehicle  
 503 Recreation Advisory Committee is created within the Florida  
 504 Forest Service ~~Division of Forestry~~ and consists of nine

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505 members, all of whom are appointed by the Commissioner of  
 506 Agriculture. The appointees shall include one representative of  
 507 the Department of Agriculture and Consumer Services, one  
 508 representative of the Department of Highway Safety and Motor  
 509 Vehicles, one representative of the Department of Environmental  
 510 Protection's Office of Greenways and Trails, one representative  
 511 of the Fish and Wildlife Conservation Commission, one citizen  
 512 with scientific expertise in disciplines relating to ecology,  
 513 wildlife biology, or other environmental sciences, one  
 514 representative of a licensed off-highway vehicle dealer, and  
 515 three representatives of off-highway vehicle recreation groups.  
 516 In making these appointments, the commissioner shall consider  
 517 the places of residence of the members to ensure statewide  
 518 representation.

519 Section 15. Section 261.06, Florida Statutes, is amended  
 520 to read:

521 261.06 Florida Forest Service; functions, duties, and  
 522 responsibilities ~~of the department.~~—The following are functions,  
 523 duties, and responsibilities of the Florida Forest Service  
 524 ~~department through the division:~~

525 (1) Coordinating ~~Coordination~~ of the planning,  
 526 development, conservation, and rehabilitation of state lands in  
 527 and for the system.

528 (2) Coordinating ~~Coordination~~ of the management,  
 529 maintenance, administration, and operation of state lands in the  
 530 system and providing ~~the provision~~ of law enforcement and  
 531 appropriate public safety activities.

532 (3) Managing ~~Management~~ of the trust fund and approving

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533 ~~approval of~~ the advisory committee's budget recommendations.

534 (4) Implementing ~~Implementation of~~ the program, including  
 535 the ultimate approval of grant applications submitted by  
 536 governmental agencies or entities or nongovernmental entities.

537 (5) Coordinating the program ~~Coordination~~ to help ensure  
 538 compliance with environmental laws and regulations for ~~of~~ the  
 539 public program ~~and~~ lands in the system.

540 (6) Implementing ~~Implementation of~~ the policies  
 541 established by the advisory committee.

542 (7) Providing ~~Provision of~~ staff assistance to the  
 543 advisory committee.

544 (8) Preparing ~~Preparation of~~ plans for public lands in, or  
 545 proposed to be included in, the system.

546 (9) Conducting surveys and preparing ~~the preparation of~~  
 547 studies ~~as are necessary or desirable~~ for implementing the  
 548 program.

549 (10) Recruiting ~~Recruitment~~ and using ~~utilization of~~  
 550 volunteers to further the program.

551 (11) Adopting rules ~~Rulemaking authority~~ to administer  
 552 ~~implement the provisions of~~ ss. 261.01-261.10.

553 Section 16. Section 261.12, Florida Statutes, is amended  
 554 to read:

555 261.12 Designated off-highway vehicle funds within the  
 556 Incidental Trust Fund of the Florida Forest Service ~~Division of~~  
 557 ~~Forestry of the Department of Agriculture and Consumer~~  
 558 ~~Services.~~

559 (1) The designated off-highway vehicle funds of the trust  
 560 fund shall consist of deposits from the following sources:

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561 (a) Fees paid to the Department of Highway Safety and  
 562 Motor Vehicles for the titling of off-highway vehicles.

563 (b) Revenues and income from any other sources required by  
 564 law or ~~as~~ appropriated by the Legislature for deposit ~~to be~~  
 565 ~~deposited~~ into the trust fund as designated off-highway vehicle  
 566 funds.

567 (c) Donations from private sources that are designated as  
 568 off-highway vehicle funds.

569 (d) Interest earned on designated off-highway vehicle  
 570 funds on deposit in the trust fund.

571 (2) Designated off-highway vehicle funds in the trust fund  
 572 shall be available for recommended allocation by the Off-Highway  
 573 Vehicle Recreation Advisory Committee and the department ~~of~~  
 574 ~~Agriculture and Consumer Services~~ and upon annual appropriation  
 575 by the Legislature, exclusively for the following:

576 (a) Implementation of the Off-Highway Vehicle Recreation  
 577 Program by the department ~~of Agriculture and Consumer Services,~~  
 578 including which includes personnel and other related expenses, ~~and~~  
 579 administrative and operating expenses, and expenses related to  
 580 safety, training, and rider education programs; ~~and~~ managing,  
 581 maintaining, and rehabilitating ~~management, maintenance, and~~  
 582 ~~rehabilitation of~~ lands in the Off-Highway Vehicle Recreation  
 583 Program's system of lands and trails; and, if funds are  
 584 available, acquiring ~~acquisition of~~ lands for inclusion ~~to be~~  
 585 ~~included~~ in the system and managing, maintaining, and  
 586 rehabilitating ~~the management, maintenance, and rehabilitation~~  
 587 ~~of~~ such lands.

588 (b) Approved grants to governmental agencies or entities

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589 or nongovernmental entities that wish to provide or improve off-  
590 highway vehicle recreation areas or trails for public use on  
591 public lands, provide environmental protection and restoration  
592 to affected natural areas in the system, provide enforcement of  
593 applicable regulations related to the system and off-highway  
594 vehicle activities, or provide education in the operation of  
595 off-highway vehicles.

596 (c) Matching funds to be used to match grant funds  
597 available from other sources.

598 (3) Notwithstanding s. 216.301 and pursuant to s. 216.351,  
599 any balance of designated off-highway vehicle funds in the trust  
600 fund at the end of any fiscal year shall remain in the trust  
601 fund ~~therein~~ and shall be available for the purposes set out in  
602 this section and as otherwise provided by law.

603 Section 17. Section 317.0010, Florida Statutes, is amended  
604 to read:

605 317.0010 Disposition of fees.—The department shall deposit  
606 all funds received under this chapter, less administrative costs  
607 of \$2 per title transaction, into the Incidental Trust Fund of  
608 the Florida Forest Service ~~Division of Forestry of the~~  
609 ~~Department of Agriculture and Consumer Services.~~

610 Section 18. Section 317.0016, Florida Statutes, is amended  
611 to read:

612 317.0016 Expedited service; applications; fees.—The  
613 department shall provide, through its agents and for use by the  
614 public, expedited service on title transfers, title issuances,  
615 duplicate titles, recordation of liens, and certificates of  
616 repossession. A fee of \$7 shall be charged for this service,

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617 | which is in addition to the fees imposed by ss. 317.0007 and  
 618 | 317.0008, and \$3.50 of this fee shall be retained by the  
 619 | processing agency. All remaining fees shall be deposited in the  
 620 | Incidental Trust Fund of the Florida Forest Service ~~Division of~~  
 621 | ~~Forestry of the Department of Agriculture and Consumer Services.~~  
 622 | Application for expedited service may be made by mail or in  
 623 | person. The department shall issue each title applied for under  
 624 | ~~pursuant to~~ this section within 5 working days after receipt of  
 625 | the application except for an application for a duplicate title  
 626 | certificate covered by s. 317.0008(3), in which case the title  
 627 | must be issued within 5 working days after compliance with the  
 628 | department's verification requirements.

629 |       Section 19. Paragraph (h) of subsection (1) of section  
 630 | 373.591, Florida Statutes, is amended to read:

631 |       373.591 Management review teams.—

632 |       (1) To determine whether conservation, preservation, and  
 633 | recreation lands titled in the names of the water management  
 634 | districts are being managed for the purposes for which they were  
 635 | acquired and in accordance with land management objectives, the  
 636 | water management districts shall establish land management  
 637 | review teams to conduct periodic management reviews. The land  
 638 | management review teams shall be composed of the following  
 639 | members:

640 |       (h) One individual from the Florida Forest Service  
 641 | ~~Department of Agriculture and Consumer Services' Division of~~  
 642 | ~~Forestry.~~

643 |       Section 20. Subsection (10) of section 379.226, Florida  
 644 | Statutes, is amended to read:

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645 379.226 Florida Territorial Waters Act; alien-owned  
 646 commercial fishing vessels; prohibited acts; enforcement.—

647 (10) Harbormasters and law enforcement agencies may ~~are~~  
 648 ~~authorized to~~ request assistance from the Civil Air Patrol in  
 649 the surveillance of suspect vessels. Aircraft of the Florida  
 650 Forest Service Division of Forestry of the Department of  
 651 Agriculture and Consumer Services or other state or county  
 652 agencies which are conveniently located and not otherwise  
 653 occupied may be similarly used ~~utilized~~.

654 Section 21. Subsection (6) of section 403.7071, Florida  
 655 Statutes, is amended to read:

656 403.7071 Management of storm-generated debris.—Solid waste  
 657 generated as a result of a storm event that is the subject of an  
 658 emergency order issued by the department may be managed as  
 659 follows:

660 (6) Local governments or their agents may conduct the  
 661 burning of storm-generated yard trash, other storm-generated  
 662 vegetative debris, or untreated wood from construction and  
 663 demolition debris in air-curtain incinerators without prior  
 664 notice to the department. Within 10 days after commencing such  
 665 burning, the local government shall notify the department in  
 666 writing describing the general nature of the materials burned;  
 667 the location and method of burning; and the name, address, and  
 668 telephone number of the representative of the local government  
 669 to contact concerning the work. The operator of the air-curtain  
 670 incinerator is subject to any requirement of the Florida Forest  
 671 Service Division of Forestry or of any other agency concerning  
 672 authorization to conduct open burning. Any person conducting



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673 open burning of vegetative debris is also subject to such  
674 requirements.

675 Section 22. Subsection (5) of section 479.16, Florida  
676 Statutes, is amended to read:

677 479.16 Signs for which permits are not required.—The  
678 following signs are exempt from the requirement that a permit  
679 for a sign be obtained under the provisions of this chapter but  
680 are required to comply with the provisions of s. 479.11(4)-(8):

681 (5) Danger or precautionary signs relating to the premises  
682 on which they are located; forest fire warning signs erected  
683 under the authority of the Florida Forest Service ~~Division of~~  
684 ~~Forestry of the Department of Agriculture and Consumer Services;~~  
685 and signs, notices, or symbols erected by the United States  
686 Government under the direction of the United States Forestry  
687 Service.

688 Section 23. Subsection (8) of section 570.29, Florida  
689 Statutes, is amended to read:

690 570.29 Departmental divisions.—The department shall  
691 include the following divisions:

692 (8) Florida Forest Service Forestry.

693 Section 24. Section 570.548, Florida Statutes, is amended  
694 to read:

695 570.548 Florida Forest Service; State Forester ~~Division of~~  
696 ~~Forestry;~~ powers and duties.—

697 (1) The duties of the Florida Forest Service ~~Division of~~  
698 ~~Forestry~~ include, but are not limited to, administering and  
699 enforcing those powers and responsibilities of the Florida  
700 Forest Service ~~division~~ prescribed in chapters 589, 590, and 591

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701 and ~~the~~ rules adopted under those chapters ~~pursuant thereto~~ and  
 702 in other forest fire, forest protection, and forest management  
 703 laws of this state.

704 Section 25. Section 570.549, Florida Statutes, is  
 705 transferred, renumbered as subsection (2) of section 570.548,  
 706 Florida Statutes, and amended to read:

707 ~~570.549 Director; duties.-~~

708 (2) (a) (1) The head director of the Florida Forest Service  
 709 shall be the State Forester, who ~~Division of Forestry~~ shall be  
 710 appointed by the commissioner and shall serve at the  
 711 commissioner's pleasure.

712 (b) (2) ~~It shall be the duty of~~ The State Forester shall  
 713 ~~director of this division to~~ direct and supervise the overall  
 714 operation of the Florida Forest Service ~~division~~ and ~~to~~ exercise  
 715 such other powers and duties as authorized by the department.

716 Section 26. Subsection (1) of section 570.903, Florida  
 717 Statutes, is amended to read:

718 570.903 Direct-support organization.-

719 (1) When the Legislature authorizes the establishment of a  
 720 direct-support organization to provide assistance for the  
 721 museums, the Florida Agriculture in the Classroom Program, the  
 722 Florida State Collection of Arthropods, the Friends of the  
 723 Florida State Forests Program of the Florida Forest Service  
 724 ~~Division of Forestry, and~~ the Forestry Arson Alert Program, and  
 725 other programs of the department, the following provisions shall  
 726 govern the creation, use, powers, and duties of the direct-  
 727 support organization:—

728 (a) The department shall enter into a memorandum or letter

729 of agreement with the direct-support organization, which shall  
 730 specify the approval of the department, the powers and duties of  
 731 the direct-support organization, and rules with which the  
 732 direct-support organization must ~~shall~~ comply.

733 (b) The department may permit, without charge, appropriate  
 734 use of property, facilities, and personnel of the department by  
 735 a direct-support organization, subject to ~~the provisions of~~ ss.  
 736 570.902 and 570.903. The use shall be directly in keeping with  
 737 the approved purposes of the direct-support organization and may  
 738 ~~shall~~ not be made at times or places that would unreasonably  
 739 interfere with opportunities for the general public to use  
 740 department facilities for established purposes.

741 (c) The department shall prescribe by contract or by rule  
 742 conditions with which a direct-support organization must ~~shall~~  
 743 comply in order to use property, facilities, or personnel of the  
 744 department or museum. Such rules shall provide for budget and  
 745 audit review and oversight by the department.

746 (d) The department may ~~shall~~ not permit the use of  
 747 property, facilities, or personnel of the museum, department, or  
 748 designated program by a direct-support organization that ~~which~~  
 749 does not provide equal employment opportunities to all persons  
 750 regardless of race, color, religion, sex, age, or national  
 751 origin.

752 Section 27. Subsection (7) of section 581.1843, Florida  
 753 Statutes, is amended to read:

754 581.1843 Citrus nursery stock propagation and production  
 755 and the establishment of regulated areas around citrus  
 756 nurseries.—

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757 (7) The department shall relocate foundation source trees  
 758 maintained by the Division of Plant Industry from various  
 759 locations, including those in Dundee and Winter Haven, to  
 760 protective structures at the Florida Forest Service's ~~Division~~  
 761 ~~of Forestry~~ nursery in Chiefland or to other protective sites  
 762 located a minimum of 10 miles from any commercial citrus grove.

763 Section 28. Section 589.01, Florida Statutes, is amended  
 764 to read:

765 589.01 Florida Forestry Council.—The Florida Forestry  
 766 Council, ~~hereinafter called the "council,"~~ is hereby created  
 767 within the Florida Forest Service ~~in the Division of Forestry of~~  
 768 ~~the Department of Agriculture and Consumer Services.~~ The council  
 769 shall be composed of five members appointed by the Department of  
 770 Agriculture and Consumer Services for terms of 4 years.

771 (1) There shall be one member of the council from each of  
 772 the following areas of forestry:

773 (a) The pulp and paper manufacturing industry.

774 (b) A forest products industry other than that described  
 775 in paragraph (a).

776 (c) A timber or timber products dealer.

777 (d) An individual forest landowner.

778 (e) An active member of a statewide conservation  
 779 organization having as one of its principal objectives the  
 780 conservation and development of the forest resource.

781 (2) At least ~~Not fewer than~~ two but not ~~or~~ more than three  
 782 nominations must ~~shall~~ be made for each appointment to  
 783 ~~membership on~~ the council, and any statewide organization  
 784 representing an area of forestry represented on the council may

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785 make nominations.

786 (3) The council shall meet at the call of its chair, at  
 787 the request of a majority of its membership or of the Department  
 788 of Agriculture and Consumer Services, or at such times as the  
 789 department may prescribe ~~be prescribed~~ by rule ~~its rules~~.

790 (4) A majority of the members of the council constitutes  
 791 ~~shall constitute~~ a quorum for all purposes, and an act by a  
 792 majority of such quorum at any meeting constitutes ~~shall~~  
 793 ~~constitute~~ an official act of the council.

794 (5) The powers and duties of the council are to ~~shall be~~  
 795 ~~as follows~~:

796 (a) ~~To~~ Consider and study the entire field of forestry.†

797 (b) ~~To~~ Advise, counsel, and consult, upon request, with  
 798 the Department of Agriculture and Consumer Services and the  
 799 State Forester ~~director of the Division of Forestry~~ upon request  
 800 in connection with the adoption ~~promulgation~~, administration,  
 801 and enforcement of all laws and rules relating to forestry.†

802 (c) ~~To~~ Consider all matters submitted to the council ~~it~~ by  
 803 the Department of Agriculture and Consumer Services or the State  
 804 Forester. ~~director of the Division of Forestry~~;

805 (d) ~~To~~ Offer suggestions and recommendations to the  
 806 Department of Agriculture and Consumer Services and the State  
 807 Forester ~~director of the Division of Forestry~~ on the council's  
 808 ~~its~~ own initiative with ~~in~~ regard to changes in the laws and  
 809 rules relating to forestry for ~~as may be deemed advisable to~~  
 810 ~~secure~~ the effective administration and enforcement of such laws  
 811 and rules relating to the work of the Florida Forest Service.  
 812 ~~division; and~~

813 (e) ~~To~~ Keep a complete record of all of the council's ~~its~~  
 814 proceedings, showing the names of the members present at each  
 815 meeting and any action taken by the council, and ~~to~~ file and  
 816 maintain such records in the Florida Forest Service ~~Division of~~  
 817 ~~Forestry~~ as a public record.

818 Section 29. Section 589.011, Florida Statutes, is amended  
 819 to read:

820 589.011 Use of state forest lands; fees; rules.—The  
 821 Florida Forest Service may:

822 (1) ~~The Division of Forestry of the Department of~~  
 823 ~~Agriculture and Consumer Services may~~ Grant privileges, permits,  
 824 leases, and concessions for the use of state forest lands,  
 825 timber, and forest products for purposes not inconsistent with  
 826 ~~the provisions of~~ this chapter.

827 (2) ~~The Division of Forestry is authorized to~~ Grant  
 828 easements for rights-of-way, over, across, and upon state forest  
 829 lands for the construction and maintenance of public roads,  
 830 poles and lines for the transmission and distribution of  
 831 electrical power, pipelines for the distribution and  
 832 transportation of oils and gases, and poles and lines for  
 833 telephone and telegraphic purposes ~~and for public roads~~, under  
 834 such conditions and limitations as the Florida Forest Service  
 835 ~~division~~ may impose.

836 (3) ~~The Division of Forestry shall have the power to~~ Set  
 837 and charge reasonable fees or rent for the use or operation of  
 838 facilities on state forests or any lands leased by or otherwise  
 839 assigned to the Florida Forest Service ~~division~~ for management  
 840 purposes. Moneys collected from such fees and rent shall be

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841 deposited into the Incidental Trust Fund of the Florida Forest  
 842 Service division.

843 (4) ~~The Division of Forestry may~~ Adopt and enforce rules  
 844 necessary for the protection, use ~~utilization~~, occupancy, and  
 845 development of state forest lands or any lands leased by or  
 846 otherwise assigned to the Florida Forest Service division for  
 847 management purposes. Any person who violates ~~violating~~ or  
 848 otherwise fails ~~failing~~ to comply with ~~any provision of this~~  
 849 subsection or any rule adopted under this subsection commits a  
 850 noncriminal violation as defined in s. 775.08(3), punishable  
 851 only by a fine, not to exceed \$500 per violation. ~~Jurisdiction~~  
 852 ~~shall be with~~ The appropriate county court has jurisdiction.

853 (5) ~~The Division of Forestry may~~ Prohibit on state forest  
 854 lands, or any lands leased by or otherwise assigned to the  
 855 Florida Forest Service division for management purposes,  
 856 activities that interfere with management objectives, create a  
 857 nuisance, or pose a threat to public safety. Such prohibited  
 858 activities must be posted with signs not more than 500 feet  
 859 apart along, and at each corner of, the boundaries of the land.  
 860 The signs must be placed along the boundary line of posted land  
 861 in a manner and in such position as to be clearly noticeable  
 862 from outside the boundary line. A person who violates ~~the~~  
 863 ~~provisions of~~ this subsection commits a misdemeanor of the  
 864 second degree, punishable as provided in s. 775.082 or s.  
 865 775.083.

866 (6) ~~The Division of Forestry may~~ Enter into contracts or  
 867 agreements, with or without competitive bidding or procurement,  
 868 to make available, on a fair, reasonable, and nondiscriminatory

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869 basis, property and other structures under the Florida Forest  
 870 Service's ~~division~~ control for the placement of new facilities  
 871 by any wireless provider of mobile service as defined in 47  
 872 U.S.C. s. 153(27) or 47 U.S.C. s. 332(d) or any  
 873 telecommunications company as defined in s. 364.02 when it is  
 874 determined to be practical and feasible to make such property or  
 875 other structures available. The Florida Forest Service ~~division~~  
 876 may, without adopting a rule, charge a just, reasonable, and  
 877 nondiscriminatory fee for the placement of the facilities,  
 878 payable annually, based on the fair market value of space used  
 879 by comparable communications facilities in the state. The  
 880 Florida Forest Service ~~division~~ and a wireless provider or  
 881 telecommunications company may negotiate the reduction or  
 882 elimination of a fee in consideration of services provided to  
 883 the Florida Forest Service ~~division~~ by the wireless provider or  
 884 telecommunications company. All such fees collected by the  
 885 Florida Forest Service ~~division~~ shall be deposited in the  
 886 Incidental Trust Fund.

887 Section 30. Section 589.012, Florida Statutes, is amended  
 888 to read:

889 589.012 Friends of Florida State Forests Program.—The  
 890 Friends of Florida State Forests Program is established within  
 891 the Department of Agriculture and Consumer Services. Its purpose  
 892 is to provide support and assistance for existing and future  
 893 programs of the Florida Forest Service ~~Division of Forestry~~.  
 894 ~~These programs must be consistent with the division's mission~~  
 895 ~~statement which is incorporated by reference.~~ The purpose of the  
 896 program is to:



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897 (1) Conduct programs and activities related to  
 898 environmental education, fire prevention, recreation, and forest  
 899 management.

900 (2) Identify and pursue methods to provide resources and  
 901 materials for these programs.

902 (3) Establish a statewide method to integrate these  
 903 resources and materials.

904 Section 31. Section 589.04, Florida Statutes, is amended  
 905 to read:

906 589.04 Florida Forest Service; duties ~~of division~~.

907 (1) The Florida Forest Service ~~Division of Forestry~~ shall  
 908 cooperate with federal, state, and local governmental agencies,  
 909 nonprofit organizations, and other persons to:

910 (a) Promote and encourage forest fire protection, forest  
 911 environmental education, forest land stewardship, good forest  
 912 management, tree planting and care, forest recreation, and the  
 913 proper management of public lands.

914 (b) Apply for, solicit, and receive grants, funds,  
 915 services, equipment, and supplies from those agencies,  
 916 organizations, firms, and individuals.

917 (2) All grant proceeds and funds received for these  
 918 purposes shall be deposited in the Incidental Trust Fund of the  
 919 Florida Forest Service. Expenditures of these funds shall be for  
 920 the purposes established in this section.

921 (3) The Florida Forest Service ~~Division of Forestry~~ shall  
 922 provide direction for the multiple-use management of forest  
 923 lands owned by the state; serve as the lead management agency  
 924 for state-owned land primarily suited for forest resource

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925 management; and provide to other state agencies having land  
 926 management responsibilities technical guidance and management  
 927 plan development for managing the forest resources on state-  
 928 owned lands managed for other objectives. Multiple-use  
 929 management includes ~~Multiple-purpose use shall include~~, but is  
 930 not limited to, water-resource protection, forest-ecosystems  
 931 protection, natural-resource-based low-impact recreation, and  
 932 sustainable timber management for forest products.

933 (4) The Florida Forest Service ~~Division of Forestry~~ shall  
 934 begin immediately an aggressive program to reforest and  
 935 afforest, with appropriate tree species, lands over which the  
 936 Florida Forest Service ~~division~~ has forest resource management  
 937 responsibility.

938 Section 32. Section 589.06, Florida Statutes, is amended  
 939 to read:

940 589.06 Warrants for payment of accounts.—Upon the  
 941 presentation to the Chief Financial Officer of any accounts duly  
 942 approved by the Florida Forest Service ~~Division of Forestry~~,  
 943 accompanied by such itemized vouchers or accounts as shall be  
 944 required by her or him, the Chief Financial Officer shall audit  
 945 the same and draw a warrant for the amount for which the account  
 946 is audited, payable out of funds to the credit of the Florida  
 947 Forest Service ~~division~~.

948 Section 33. Section 589.07, Florida Statutes, is amended  
 949 to read:

950 589.07 Florida Forest Service ~~Division~~ may acquire lands  
 951 for forest purposes.—The Florida Forest Service ~~Division of~~  
 952 ~~Forestry~~, on behalf of the state and subject to the restrictions

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953 mentioned in s. 589.08, may acquire lands, suitable for state  
 954 forest purposes, by gift, donation, contribution, purchase, or  
 955 otherwise and may enter into agreements with the Federal  
 956 Government, or any other agency, for acquiring by gift,  
 957 purchase, or otherwise, such lands as are, in the judgment of  
 958 the Florida Forest Service ~~division~~, suitable and desirable for  
 959 state forests. The acquisition procedures for state lands  
 960 provided in s. 259.041 do not apply to acquisition of land by  
 961 the Florida Forest Service ~~Division of Forestry~~.

962 Section 34. Section 589.071, Florida Statutes, is amended  
 963 to read:

964 589.071 Traffic control within state forest or ~~division-~~  
 965 ~~assigned~~ lands assigned to Florida Forest Service.—The Florida  
 966 Forest Service, ~~Division of Forestry~~ on behalf of the state, may  
 967 adopt rules to control ingress, egress, and all other movement  
 968 of motor vehicles, bicycles, horses, and pedestrians, as well as  
 969 all other types of traffic, within a state forest or any lands  
 970 leased by or otherwise assigned to the Florida Forest Service  
 971 ~~division~~ for management purposes, outside of the designated  
 972 right-of-way of state or county-maintained roads, and may  
 973 designate special areas off the roadways for the operation of  
 974 recreational type vehicles that ~~which~~ need not be licensed or  
 975 operated by licensed drivers. Any person who violates ~~violating~~  
 976 or otherwise fails ~~failing~~ to comply with ~~any of the provisions~~  
 977 ~~of this section~~ or any rule ~~rules~~ adopted under this section  
 978 commits ~~pursuant hereto is guilty of~~ a noncriminal violation as  
 979 defined in s. 775.08(3), punishable only by a fine not to exceed  
 980 \$500. ~~Jurisdiction shall be with~~ The appropriate county court

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981 has jurisdiction.

982 Section 35. Section 589.08, Florida Statutes, is amended  
 983 to read:

984 589.08 Land acquisition restrictions.—

985 (1) The Florida Forest Service may not ~~Division of~~  
 986 ~~Forestry shall~~ enter into an ~~no~~ agreement for the acquisition,  
 987 lease, or purchase of any land or for any other purpose that  
 988 pledges ~~whatsoever which shall pledge~~ the credit of, or  
 989 obligates ~~obligate~~ in any manner ~~whatsoever~~, the state to pay  
 990 any sum of money or other thing of value for such purpose, and  
 991 the Florida Forest Service may ~~said division shall~~ not in any  
 992 manner or for any purpose pledge the credit of or obligate the  
 993 state to pay any sum of money.

994 (2) The Florida Forest Service ~~division~~ may receive, hold  
 995 the custody of, and exercise the control of any lands, and set  
 996 aside into a separate, distinct, and inviolable fund, any  
 997 proceeds derived from the sales of the products of such lands,  
 998 the use thereof in any manner, or the sale of such lands, except  
 999 for ~~save~~ the 25 percent of the proceeds to be paid into the  
 1000 State School Fund as provided by law. The Florida Forest Service  
 1001 ~~division~~ may use and apply such funds for the acquisition, use,  
 1002 custody, management, development, or improvement of any lands  
 1003 vested in or subject to the control of the Florida Forest  
 1004 Service ~~division~~. After full payment is ~~has been~~ made for the  
 1005 purchase of a state forest to the Federal Government or other  
 1006 grantor, 15 percent of the gross receipts from a state forest  
 1007 shall be paid to the fiscally constrained county or counties, as  
 1008 described in s. 218.67(1), in which it is located in proportion

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1009 to the acreage located in each county for use by the county or  
 1010 counties for school purposes.

1011 Section 36. Section 589.081, Florida Statutes, is amended  
 1012 to read:

1013 589.081 Withlacoochee State Forest and Goethe State  
 1014 Forest; payment of portion of gross receipts.—The Florida Forest  
 1015 Service ~~Division of Forestry~~ shall pay 15 percent of the gross  
 1016 receipts from Withlacoochee State Forest and the Goethe State  
 1017 Forest to each fiscally constrained county, as described in s.  
 1018 218.67(1), in which a portion of the respective forest is  
 1019 located in proportion to the forest acreage located in such  
 1020 county. The funds must be equally divided between the board of  
 1021 county commissioners and the school board of each fiscally  
 1022 constrained county.

1023 Section 37. Section 589.09, Florida Statutes, is amended  
 1024 to read:

1025 589.09 Use of lands acquired.—All lands acquired by the  
 1026 Florida Forest Service ~~Division of Forestry~~ on behalf of the  
 1027 state shall be in the custody of and subject to the  
 1028 jurisdiction, management, and control of the Florida Forest  
 1029 Service ~~said division~~, and, for such purposes and the use  
 1030 ~~utilization~~ and development of such land, the Florida Forest  
 1031 Service ~~said division~~ may use the proceeds of the sale of any  
 1032 products therefrom, the proceeds of the sale of any such lands,  
 1033 except for ~~save the~~ 25 percent of such proceeds which shall be  
 1034 paid into the State School Fund as required by s. 1010.71(1),  
 1035 and such other funds as may be appropriated for use by the  
 1036 Florida Forest Service ~~division~~, and in the opinion of the

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1037 Florida Forest Service ~~such division~~, available for such uses  
 1038 and purposes.

1039 Section 38. Section 589.10, Florida Statutes, is amended  
 1040 to read:

1041 589.10 Disposition of lands.—The Florida Forest Service  
 1042 ~~Division of Forestry~~, with the concurrence of the Board of  
 1043 Trustees of the Internal Improvement Trust Fund and the  
 1044 Governor, may sell, exchange, lease, or otherwise dispose of any  
 1045 lands under its jurisdiction by ~~the provisions of~~ this chapter  
 1046 when in its judgment it is advantageous to the state ~~to do so~~ in  
 1047 the interest of the highest orderly development, improvement,  
 1048 and management of the state forests and state parks. All such  
 1049 sales, exchanges, leases, or dispositions of such lands require  
 1050 ~~shall be~~ at least 30 days' ~~upon a 30-day~~ public notice, to be  
 1051 given in the manner deemed reasonable by the Florida Forest  
 1052 Service division.

1053 Section 39. Section 589.101, Florida Statutes, is amended  
 1054 to read:

1055 589.101 Blackwater River State Forest; lease of board's  
 1056 interest in gas, oil, and other minerals.—Notwithstanding ~~the~~  
 1057 ~~provisions of~~ ss. 253.51-253.61, the Florida Forest Service may  
 1058 ~~Division of Forestry is hereby expressly granted the authority~~  
 1059 ~~to~~ lease its 25-percent interest in oil, gas, and other minerals  
 1060 within the boundaries of the Blackwater River State Forest;  
 1061 ~~provided,~~ however, such leases may only ~~that grants shall~~ be  
 1062 made ~~only~~ to the lessee or lessees holding the 75-percent  
 1063 interest in such ~~said~~ minerals retained by the United States in  
 1064 its conveyance to this state. The concurrence of the Board of

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1065 Trustees of the Internal Improvement Trust Fund required by s.  
 1066 589.10 ~~is shall~~ not be necessary under ~~the provisions of~~ this  
 1067 section.

1068 Section 40. Section 589.11, Florida Statutes, is amended  
 1069 to read:

1070 589.11 Duties of Florida Forest Service under federal  
 1071 ~~division as to~~ Clarke-McNary Act Law.—

1072 (1) The Florida Forest Service may, ~~Division of Forestry~~  
 1073 ~~is designated and authorized as an~~ the agent of the state, ~~to~~  
 1074 cooperate with the United States Secretary of Agriculture under  
 1075 s. 5 of the federal ~~the provisions of "ss. 4 and 5, Chapter 348,~~  
 1076 ~~43 Statutes 654, Acts of Congress, June 7, 1924, known as the~~  
 1077 Clarke-McNary Act, 16 U.S.C. s. 568, Law," to assist owners of  
 1078 farms in establishing, improving, and renewing woodlots,  
 1079 shelterbelts, windbreaks, and other valuable forest growth; in  
 1080 growing and renewing useful timber crops; and in cooperating ~~to~~  
 1081 ~~cooperate~~ with the wood-using industries or other agencies,  
 1082 governmental or otherwise, interested in proper land use, forest  
 1083 management, and conservative forest utilization.

1084 (2) As a means of providing seedling trees for the  
 1085 purposes of this section, the Florida Forest Service may  
 1086 ~~division is authorized to~~ operate a seedling tree nursery  
 1087 program and ~~to~~ set reasonable prices for the sale to the public  
 1088 of seedling trees. Receipts from the sale of seedling trees  
 1089 shall be deposited into the Incidental Trust Fund of the Florida  
 1090 Forest Service ~~division~~.

1091 Section 41. Section 589.12, Florida Statutes, is amended  
 1092 to read:

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1093 (Substantial rewording of section. See  
 1094 s. 589.12, F.S., for present text.)  
 1095 589.12 Rulemaking.—The Florida Forest Service may adopt  
 1096 rules and take other reasonable and necessary actions to  
 1097 administer ss. 589.07-589.11.

1098 Section 42. Section 589.13, Florida Statutes, is amended  
 1099 to read:

1100 589.13 Lien of Florida Forest Service ~~division~~ and other  
 1101 parties, for forestry work, etc.—Liens prior in dignity to all  
 1102 others accruing thereafter shall exist in favor of the following  
 1103 persons, boards, firms, or corporations upon the following  
 1104 described real estate, under the following circumstances  
 1105 ~~hereinafter mentioned:~~

1106 (1) The Florida Forest Service ~~Division of Forestry~~, the  
 1107 United States Government, or other governmental authority, upon  
 1108 all lands covered in any cooperative or other agreement entered  
 1109 into between the landowner and the Florida Forest Service  
 1110 ~~division~~ (which term shall embrace and include agreements with  
 1111 the Florida Forest Service ~~Division of Forestry~~).~~†~~

1112 (2) The United States Government or other governmental  
 1113 authority, for the prevention and control of woods fires and  
 1114 other forestry work to the extent of the amounts expended by the  
 1115 Florida Forest Service ~~such division, service,~~ or other  
 1116 governmental authority for and on behalf of the landowner and  
 1117 not paid by the landowner under the terms of such ~~said~~  
 1118 agreement.

1119 Section 43. Section 589.14, Florida Statutes, is amended  
 1120 to read:



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1121           589.14 Enforcement of lien; notice.—The Florida Forest  
 1122 Service ~~Division of Forestry~~, United States Government, or other  
 1123 governmental authority is ~~shall be~~ entitled to the subject ~~said~~  
 1124 real estate in equity for the value of such expenditures made by  
 1125 it in pursuance of any such agreement, and may, at any time  
 1126 after the expenditure thereof and after default in payment  
 1127 thereof by the landowner in accordance with the terms of such  
 1128 agreement, file in the office of the clerk of the circuit court  
 1129 of the county in which the property is located, and have  
 1130 recorded in the record of liens kept by such clerk, a notice of  
 1131 the expenditures made in pursuance of such agreement and of  
 1132 default of the landowner in the payment of same in accordance  
 1133 with the terms thereof (the form of notice being provided in s.  
 1134 589.15), and from the date of the filing of such notice, the  
 1135 rights of purchasers or creditors of such landowner shall be  
 1136 subject and subordinate to the claim set out in the notice.

1137           Section 44. Section 589.18, Florida Statutes, is amended  
 1138 to read:

1139           589.18 Florida Forest Service; Division to make certain  
 1140 investigations.—The Florida Forest Service ~~Division of Forestry~~  
 1141 shall conduct investigations and make surveys to determine the  
 1142 areas of land in the state that ~~which~~ are available and suitable  
 1143 for reforestation projects and state forests, and may make  
 1144 recommendations ~~recommend~~ to the Board of Trustees of the  
 1145 Internal Improvement Trust Fund, any state agency, or any agency  
 1146 created by state law that ~~which~~ is authorized to accept lands in  
 1147 the name of the state, concerning their acquisition. The Florida  
 1148 Forest Service ~~is division~~ shall be considered ~~as~~ a state agency

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1149 for purposes of ~~under~~ this section ~~law~~.

1150 Section 45. Section 589.19, Florida Statutes, is amended  
1151 to read:

1152 589.19 Creation of certain state forests; naming of  
1153 certain state forests.—

1154 (1) When the Board of Trustees of the Internal Improvement  
1155 Trust Fund, any state agency, or any agency created by state law  
1156 that is, authorized to accept reforestation lands in the name of  
1157 the state, approves the recommendations of the Florida Forest  
1158 Service ~~Division of Forestry~~ in reference to the acquisition of  
1159 land and acquires ~~acquire~~ such land, such ~~the said~~ board, ~~state~~  
1160 ~~agency~~, or agency ~~created by state law~~, may formally designate  
1161 and dedicate any area as a reforestation project, or state  
1162 forest, and where so designated and dedicated, such area shall  
1163 be under the administration of the Florida Forest Service,  
1164 ~~division~~ which may ~~shall be authorized to~~ manage and administer  
1165 such ~~said~~ area according to the purpose for which it was  
1166 designated and dedicated.

1167 (2) The first state forest acquired by the Board of  
1168 Trustees of the Internal Improvement Trust Fund in Baker County  
1169 is designated as ~~to be named~~ the John M. Bethea State Forest.  
1170 This designation honors ~~is to honor~~ Mr. John M. Bethea, ~~who was~~  
1171 Florida's fourth State Forester and a native of Baker County,  
1172 ~~and~~ whose distinguished career in state government spanned 46  
1173 years ~~and who is a native of Baker County~~.

1174 (3) The state forest managed by the Florida Forest Service  
1175 ~~Division of Forestry~~ in Seminole County is designated as ~~to be~~  
1176 ~~named~~ the Charles H. Bronson State Forest. This designation

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1177 honors ~~to honor~~ Charles H. Bronson, the tenth Commissioner of  
 1178 Agriculture, for his distinguished contribution to this state's  
 1179 agriculture and natural resources.

1180 Section 46. Section 589.20, Florida Statutes, is amended  
 1181 to read:

1182 589.20 Cooperation by Florida Forest Service ~~division~~.—The  
 1183 Florida Forest Service ~~Division of Forestry~~ may cooperate with  
 1184 other state agencies that, ~~who~~ are custodians of lands that  
 1185 ~~which~~ are suitable for forestry purposes, in the designation and  
 1186 dedication of such lands for forestry purposes when, in the  
 1187 opinion of the state agencies concerned, such lands are suitable  
 1188 for these purposes and can be so administered. Upon the  
 1189 designation and dedication of such ~~said~~ lands for these purposes  
 1190 by the agencies concerned, such ~~said~~ lands shall be administered  
 1191 by the Florida Forest Service ~~division~~.

1192 Section 47. Section 589.21, Florida Statutes, is amended  
 1193 to read:

1194 589.21 Management to be for public interest.—All state  
 1195 forests and reforestation projects mentioned in this chapter  
 1196 shall be managed and administered by the Florida Forest Service  
 1197 ~~Division of Forestry~~ in the interests of the public. If the  
 1198 public interests are not already safeguarded and clearly defined  
 1199 by law or by regulations adopted by the state agencies  
 1200 authorized by law to administer such lands, or in the papers  
 1201 formally transferring such ~~said~~ projects to the Florida Forest  
 1202 Service ~~division~~ for administration, ~~then, and in that event,~~  
 1203 the Florida Forest Service ~~division~~ may define the purposes  
 1204 ~~purpose~~ of such projects ~~said project~~. Such definition of

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1205 purposes shall be construed to have the authority of law.

1206 Section 48. Section 589.26, Florida Statutes, is amended  
1207 to read:

1208 589.26 Dedication of state park lands for public use.—The  
1209 Florida Forest Service may periodically ~~Division of Forestry is~~  
1210 ~~authorized and empowered, from time to time, to~~ dedicate and  
1211 reserve for the use of the public all or any part of the lands  
1212 ~~heretofore or hereafter~~ acquired by the Florida Forest Service  
1213 ~~said Division of Forestry~~ for park purposes, regardless of when  
1214 such lands are acquired; provided, however, such that said  
1215 dedication and reservation are ~~shall be~~ subject to such rules  
1216 and regulations, as to reasonable use by the public, as may be  
1217 adopted by the Division of Recreation and Parks of the  
1218 Department of Environmental Protection.

1219 Section 49. Section 589.27, Florida Statutes, is amended  
1220 to read:

1221 589.27 Power of eminent domain; procedure.—Whenever the  
1222 Florida Forest Service finds ~~Division of Forestry shall find~~ it  
1223 necessary to acquire private property for state forests, for ~~or~~  
1224 rights-of-way for state forest roads, or for exercising any of  
1225 the powers and duties assigned ~~authorized and prescribed~~ by law  
1226 ~~to be exercised and performed by the~~ Florida Forest Service  
1227 ~~Division of Forestry, the~~ Florida Forest Service may ~~Division of~~  
1228 ~~Forestry is hereby empowered and authorized to~~ exercise the  
1229 right of eminent domain and ~~to proceed to~~ condemn such ~~said~~  
1230 property in the same manner as provided by law for the  
1231 condemnation of private property by counties.

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1232 Section 50. Section 589.275, Florida Statutes, is amended  
 1233 to read:

1234 589.275 Planting of indigenous trees on state lands.—The  
 1235 ~~It is the intent of the~~ Legislature intends to partially restore  
 1236 the character of the state's original domain ~~of Florida~~ by  
 1237 planting native trees on state lands, and to this end all state  
 1238 lands shall have a portion of such lands designated for  
 1239 indigenous trees, to be established and maintained by the using  
 1240 agency with the assistance of the Florida Forest Service  
 1241 ~~Division of Forestry of the Department of Agriculture and~~  
 1242 ~~Consumer Services~~. If the Florida Forest Service ~~division~~, or  
 1243 primary managing agency, determines that any state lands are  
 1244 unsuitable for this purpose, such lands are ~~shall be~~ exempt from  
 1245 this requirement.

1246 Section 51. Section 589.277, Florida Statutes, is amended  
 1247 to read:

1248 589.277 Tree planting programs.—

1249 (1) The ~~Division of Forestry of the~~ Florida Forest Service  
 1250 ~~Department of Agriculture and Consumer Services~~ shall administer  
 1251 federal, state, and privately sponsored tree planting programs  
 1252 designed to assist private rural landowners and urban  
 1253 communities.

1254 (2) Contributions from governmental and private sources  
 1255 for tree planting programs may be accepted into the Federal  
 1256 Grants Trust Fund.

1257 (3) The Florida Forest Service shall ~~Division of Forestry~~  
 1258 ~~is authorized and directed to~~ develop and implement guidelines  
 1259 and procedures under which the financial resources of the fund

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1260 allocated for tree planting programs may be used ~~utilized~~ for  
 1261 urban and rural reforestation.

1262 (4) Grants to municipalities, counties, nonprofit  
 1263 organizations, and qualifying private landowners may be made  
 1264 from allocated moneys in the fund for the purpose of purchasing,  
 1265 planting, and maintaining native tree species.

1266 (5) The Florida Forest Service ~~Division of Forestry~~ shall  
 1267 assist the Department of Education in developing programs that  
 1268 teach the importance of trees in the urban, rural, and global  
 1269 environment.

1270 Section 52. Section 589.28, Florida Statutes, is amended  
 1271 to read:

1272 589.28 County commissions or municipalities authorized to  
 1273 cooperate with Florida Forest Service ~~Division of Forestry~~.—  
 1274 County commissions or municipalities may ~~are authorized to~~  
 1275 cooperate with the Florida Forest Service ~~Division of Forestry~~  
 1276 ~~of the Department of Agriculture and Consumer Services~~ in  
 1277 providing assistance in forestry and forest-related knowledge  
 1278 and skills to stimulate the production of timber wealth through  
 1279 the proper use of forest land and ~~to~~ protect and improve the  
 1280 beauty of urban and suburban areas by helping to create in them  
 1281 an attractive and healthy environment through the proper use of  
 1282 trees and related plant associations. County commissions or  
 1283 municipalities may ~~are hereby authorized to~~ appropriate funds  
 1284 and enter into cooperative agreements with the Florida Forest  
 1285 Service ~~Division of Forestry~~ under the terms and conditions set  
 1286 forth in ss. 589.28-589.34.

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1287 Section 53. Section 589.29, Florida Statutes, is amended  
 1288 to read:

1289 589.29 Quality of assistance.—Any advice and assistance  
 1290 provided under ss. 589.28-589.34 is ~~shall be~~ the responsibility  
 1291 of the State Forester and the Florida Forest Service ~~Division of~~  
 1292 ~~Forestry~~ and shall be conducted under the supervision of a  
 1293 professional forester in an efficient and competent manner by  
 1294 personnel who have the required education, training, and  
 1295 experience to accomplish the objectives of these sections.

1296 Section 54. Section 589.30, Florida Statutes, is amended  
 1297 to read:

1298 589.30 Duty of district forester. ~~It shall be the duty of~~  
 1299 The district forester shall ~~to~~ direct all work in accordance  
 1300 with ~~the~~ law and with rules adopted by ~~regulations of the~~  
 1301 Florida Forest Service ~~Division of Forestry~~; gather and  
 1302 disseminate information in the management of commercial timber,  
 1303 including establishment, protection, and use ~~utilization~~; and  
 1304 assist in the development and use of forest lands for outdoor  
 1305 recreation, watershed protection, and wildlife habitat. The  
 1306 district forester or his or her representative shall provide  
 1307 encouragement and technical assistance to individuals and urban  
 1308 and county officials in the planning, establishment, and  
 1309 management of trees and plant associations to enhance the beauty  
 1310 of the urban and suburban environment and meet outdoor  
 1311 recreational needs.

1312 Section 55. Section 589.31, Florida Statutes, is amended  
 1313 to read:

1314 589.31 Cooperative agreement.—Before any assistance is

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1315 provided under ss. 589.28-589.34 ~~this law~~, the county or  
 1316 municipality and the Florida Forest Service Division of  
 1317 ~~Forestry~~, through their duly constituted representatives, shall  
 1318 enter into a mutually satisfactory cooperative agreement  
 1319 covering the specific duties, and set up a budget for any fiscal  
 1320 period beginning July 1 and ending June 30, ~~and~~ The county's or  
 1321 municipality's share of the budget provided shall be remitted  
 1322 ~~turned over~~ to the Florida Forest Service Division of Forestry,  
 1323 one-half on or before July 1, and the remainder on or before  
 1324 January 1, and deposited ~~placed~~ in the Incidental Trust Fund of  
 1325 the Florida Forest Service Division of Forestry.

1326 Section 56. Section 589.32, Florida Statutes, is amended  
 1327 to read:

1328 589.32 Cost of providing county or municipal forestry  
 1329 assistance.—The cost of county or municipal forestry assistance  
 1330 provided under ~~the provisions of~~ ss. 589.28-589.34 shall be  
 1331 jointly determined and paid by the Florida Forest Service  
 1332 ~~Division of Forestry~~ and the county commission or municipality.  
 1333 Such cost must and shall be at least not less than 40 percent of  
 1334 the cost of the equivalent of 1 person-year of assistance.  
 1335 However, the county or municipality share may ~~shall~~ not exceed  
 1336 ~~the sum of~~ \$3,000 per annum for each person-year of assistance  
 1337 provided.

1338 Section 57. Section 589.33, Florida Statutes, is amended  
 1339 to read:

1340 589.33 Expenditure of budgeted funds.—The Florida Forest  
 1341 Service shall expend any money budgeted for a fiscal period  
 1342 ~~shall be expended by the Division of Forestry~~ during the period



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1343 for which it was budgeted, and amounts not expended or  
 1344 specifically obligated by contract or other legal procedure  
 1345 during that period shall be available for the next fiscal period  
 1346 or shall be returned to the Florida Forest Service ~~Division of~~  
 1347 ~~Forestry~~ and the county or municipality in the same proportions  
 1348 as appropriated. However, if when 40 percent of the cost of 1  
 1349 person-year of assistance equals or exceeds \$3,000, ~~then in that~~  
 1350 ~~event~~ all of the budget balance reverts ~~will revert~~ to the  
 1351 Florida Forest Service ~~Division of Forestry~~.

1352 Section 58. Section 589.34, Florida Statutes, is amended  
 1353 to read:

1354 589.34 Revocation of agreement.—Any agreement or revision  
 1355 thereof entered into by the Florida Forest Service ~~Division of~~  
 1356 ~~Forestry~~ and a county or municipality under ss. 589.28-589.34  
 1357 ~~the provisions of this law~~ shall continue from year to year,  
 1358 unless written notice is given to the other party 30 days before  
 1359 ~~prior to~~ July 1 of any year of the intention to discontinue the  
 1360 work and cancel the agreement.

1361 Section 59. Section 590.01, Florida Statutes, is amended  
 1362 to read:

1363 590.01 Wildfire protection.—The Florida Forest Service  
 1364 ~~division~~ has the primary responsibility for preventing,  
 1365 detecting, and suppressing ~~prevention, detection, and~~  
 1366 ~~suppression of~~ wildfires wherever they may occur. The Florida  
 1367 Forest Service ~~division~~ shall provide leadership and direction  
 1368 in evaluating, coordinating, allocating ~~the evaluation,~~  
 1369 ~~coordination, allocation of~~ resources for, and monitoring ~~of~~  
 1370 wildfire management and protection. The Florida Forest Service

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1371 | ~~division~~ shall promote natural resource management and fuel  
 1372 | reduction through the use of prescribed fire and other fuel  
 1373 | reduction measures.

1374 | Section 60. Subsections (2) through (5) of section  
 1375 | 590.015, Florida Statutes, are renumbered as subsections (1)  
 1376 | through (4), respectively, and present subsection (1) of that  
 1377 | section is amended to read:

1378 | 590.015 Definitions.—As used in this chapter, the term:

1379 | ~~(1) "Division" means the Division of Forestry of the~~  
 1380 | ~~Department of Agriculture and Consumer Services.~~

1381 | Section 61. Section 590.02, Florida Statutes, is amended  
 1382 | to read:

1383 | 590.02 Florida Forest Service; ~~Division~~ powers, authority,  
 1384 | and duties; liability; building structures; Florida Center for  
 1385 | Wildfire and Forest Resources Management Training.—

1386 | (1) The Florida Forest Service ~~division~~ has the following  
 1387 | powers, authority, and duties:

1388 | (a) To enforce the provisions of this chapter.†

1389 | (b) To prevent, detect, suppress, and extinguish wildfires  
 1390 | wherever they may occur on public or private land in this state  
 1391 | and to do all things necessary in the exercise of such powers,  
 1392 | authority, and duties.†

1393 | (c) To provide firefighting crews, who shall be under the  
 1394 | control and direction of the Florida Forest Service ~~division~~ and  
 1395 | its designated agents.†

1396 | (d) To appoint center managers, forest area supervisors,  
 1397 | forestry program administrators, a forest protection bureau  
 1398 | chief, a forest protection assistant bureau chief, a field

1399 operations bureau chief, deputy chiefs of field operations,  
 1400 district managers, senior forest rangers, investigators, forest  
 1401 rangers, firefighter rotorcraft pilots, and other employees who  
 1402 may, at the ~~division's~~ discretion of the Florida Forest Service,  
 1403 be certified as forestry firefighters under ~~pursuant to~~ s.  
 1404 633.35(4). Notwithstanding any other provisions of law  
 1405 ~~notwithstanding,~~ center managers, district managers, the forest  
 1406 protection assistant bureau chief, and deputy chiefs of field  
 1407 operations ~~shall~~ have Selected Exempt Service status in the  
 1408 state personnel designation.†

1409 (e) To develop a training curriculum for forestry  
 1410 firefighters that contains ~~which must contain~~ the basic  
 1411 volunteer structural fire training course approved by the  
 1412 Florida State Fire College of the Division of State Fire Marshal  
 1413 and a minimum of 250 hours of wildfire training.†

1414 (f) To adopt ~~make~~ rules to administer ~~accomplish the~~  
 1415 ~~purposes of~~ this chapter.†

1416 (g) To provide fire management services and emergency  
 1417 response assistance and to set and charge reasonable fees for  
 1418 performance of those services. Moneys collected from such fees  
 1419 shall be deposited into the Incidental Trust Fund of the Florida  
 1420 Forest Service. ~~division; and~~

1421 (h) To require all state, regional, and local government  
 1422 agencies operating aircraft in the vicinity of an ongoing  
 1423 wildfire to operate in compliance with the applicable state  
 1424 Wildfire Aviation Plan.

1425 (2) ~~Division~~ Employees of the Florida Forest Service, and  
 1426 the firefighting crews under their control and direction, may

1427 | enter upon any lands for the purpose of preventing and  
 1428 | suppressing wildfires and investigating smoke complaints or open  
 1429 | burning not in compliance with authorization and to enforce ~~the~~  
 1430 | ~~provisions of~~ this chapter.

1431 |         (3) Employees of the Florida Forest Service ~~division~~ and  
 1432 | of federal, state, and local agencies, and all other persons and  
 1433 | entities that are under contract or agreement with the Florida  
 1434 | Forest Service ~~division~~ to assist in firefighting operations as  
 1435 | well as those entities, called upon by the Florida Forest  
 1436 | Service ~~division~~ to assist in firefighting may, in the  
 1437 | performance of their duties, set counterfires, remove fences and  
 1438 | other obstacles, dig trenches, cut firelines, use water from  
 1439 | public and private sources, and carry on all other customary  
 1440 | activities in the fighting of wildfires without incurring  
 1441 | liability to any person or entity.

1442 |         (4) The department may build structures, notwithstanding  
 1443 | chapters 216 and 255, not to exceed a cost of \$50,000 per  
 1444 | structure from existing resources on forest lands, federal  
 1445 | excess property, and unneeded existing structures. These  
 1446 | structures must meet all applicable building codes.

1447 |         (5) The Florida Forest Service ~~division~~ shall organize its  
 1448 | operational units to most effectively prevent, detect, and  
 1449 | suppress wildfires, and, to that end, may employ the necessary  
 1450 | personnel to manage its activities in each unit. The Florida  
 1451 | Forest Service ~~division~~ may construct lookout towers, roads,  
 1452 | bridges, firelines, and other facilities and may purchase or  
 1453 | fabricate tools, supplies, and equipment for firefighting. The  
 1454 | Florida Forest Service ~~division~~ may reimburse the public and

1455 private entities that it engages to assist in the suppression of  
 1456 wildfires for their personnel and equipment, including aircraft.

1457 (6) The Florida Forest Service ~~division~~ shall undertake  
 1458 privatization alternatives for fire prevention activities  
 1459 including constructing fire lines and conducting prescribed  
 1460 burns and, where appropriate, entering into agreements or  
 1461 contracts with the private sector to perform such activities.

1462 (7) The Florida Forest Service ~~division~~ may organize,  
 1463 staff, equip, and operate the Florida Center for Wildfire and  
 1464 Forest Resources Management Training. The center shall serve as  
 1465 a site where fire and forest resource managers can obtain  
 1466 current knowledge, techniques, skills, and theory as they relate  
 1467 to their respective disciplines.

1468 (a) The center may establish cooperative efforts involving  
 1469 federal, state, and local entities; hire appropriate personnel;  
 1470 and engage others by contract or agreement with or without  
 1471 compensation to assist in carrying out the training and  
 1472 operations of the center.

1473 (b) The center shall provide wildfire suppression training  
 1474 opportunities for rural fire departments, volunteer fire  
 1475 departments, and other local fire response units.

1476 (c) The center shall ~~will~~ focus on curriculum related to,  
 1477 but not limited to, fuel reduction, an incident management  
 1478 system, prescribed burning certification, multiple-use land  
 1479 management, water quality, forest health, environmental  
 1480 education, and wildfire suppression training for structural  
 1481 firefighters.

1482 (d) The center may assess appropriate fees for food,

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1483 lodging, travel, course materials, and supplies in order to meet  
 1484 its operational costs and may grant free meals, room, and  
 1485 scholarships to persons and other entities in exchange for  
 1486 instructional assistance.

1487 (e) An advisory committee consisting of the following  
 1488 individuals or their designees must review program curriculum,  
 1489 course content, and scheduling:

1490 1. The State Forester or his or her designee. ~~Director of~~  
 1491 ~~the Florida Division of Forestry; the assistant director of the~~  
 1492 ~~Florida Division of Forestry;~~

1493 2. The director of the School of Forest Resources and  
 1494 Conservation of the University of Florida.†

1495 3. The director of the Division of Recreation and Parks of  
 1496 the Department of Environmental Protection.†

1497 4. The director of the Division of the State Fire  
 1498 Marshal.†

1499 5. The director of the Florida Chapter of The Nature  
 1500 Conservancy.†

1501 6. The executive vice president of the Florida Forestry  
 1502 Association.†

1503 7. The president of the Florida Farm Bureau Federation.†

1504 8. The executive director of the Fish and Wildlife  
 1505 Conservation Commission.†

1506 9. The executive director of a water management district  
 1507 ~~as~~ appointed by the Commissioner of Agriculture.†

1508 10. The supervisor of the National Forests in Florida.†

1509 11. The president of the Florida Fire Chief's  
 1510 Association.† ~~and~~

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1511           12. The executive director of the Tall Timbers Research  
1512 Station.

1513           (8) The Cross City Work Center is designated as ~~shall be~~  
1514 ~~named~~ the L. Earl Peterson Forestry Station. This designation  
1515 honors ~~is to honor Mr.~~ L. Earl Peterson, Florida's sixth State  
1516 Forester and a native of Dixie County, whose distinguished  
1517 career in state government ~~has~~ spanned 44 years, ~~and who is a~~  
1518 ~~native of Dixie County.~~

1519           Section 62. Subsection (3) of section 590.081, Florida  
1520 Statutes, is amended to read:

1521           590.081 Severe drought conditions; burning prohibited.—

1522           (3) It is unlawful for any person to set fire to, or cause  
1523 fire to be set to, any wild lands or to build a campfire or  
1524 bonfire or to burn trash or other debris within the designated  
1525 area of a severe drought emergency unless a written permit is  
1526 obtained from the Florida Forest Service ~~division~~ or its  
1527 designated agent.

1528           Section 63. Section 590.091, Florida Statutes, is amended  
1529 to read:

1530           590.091 Designation of railroad rights-of-way as wildfire  
1531 hazard areas.—

1532           (1) The Florida Forest Service ~~division~~ may annually  
1533 designate, on or before October 1, those railroad rights-of-way  
1534 in this state that ~~which~~ are known wildfire hazard areas.

1535           (2) It shall be the duty of all railroad companies  
1536 operating in this state to maintain their rights-of-way  
1537 designated as provided in subsection (1), as known wildfire  
1538 hazard areas, in an approved condition as shall be prescribed by

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1539 rule of the Florida Forest Service ~~division~~ and to provide  
 1540 adequate firebreaks where needed, so as to prevent fire from  
 1541 igniting or spreading from rights-of-way to adjacent property.

1542 Section 64. Paragraph (b) of subsection (1), paragraph (a)  
 1543 of subsection (2), paragraphs (a), (b), and (e) of subsection  
 1544 (3), and subsection (4) of section 590.125, Florida Statutes,  
 1545 are amended to read:

1546 590.125 Open burning authorized by the Florida Forest  
 1547 Service ~~division~~.—

1548 (1) DEFINITIONS.—As used in this section, the term:

1549 (b) "Certified prescribed burn manager" means an  
 1550 individual who successfully completes the certification program  
 1551 of the Florida Forest Service ~~division~~ and possesses a valid  
 1552 certification number.

1553 (2) NONCERTIFIED BURNING.—

1554 (a) Persons may be authorized to burn wild land or  
 1555 vegetative land-clearing debris in accordance with this  
 1556 subsection if:

1557 1. There is specific consent of the landowner or his or  
 1558 her designee;

1559 2. Authorization has been obtained from the Florida Forest  
 1560 Service ~~division~~ or its designated agent before starting the  
 1561 burn;

1562 3. There are adequate firebreaks at the burn site and  
 1563 sufficient personnel and firefighting equipment for the control  
 1564 of the fire;

1565 4. The fire remains within the boundary of the authorized  
 1566 area;



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1567 5. Someone is present at the burn site until the fire is  
1568 extinguished;

1569 6. The Florida Forest Service ~~division~~ does not cancel the  
1570 authorization; and

1571 7. The Florida Forest Service ~~division~~ determines that air  
1572 quality and fire danger are favorable for safe burning.

1573 (3) CERTIFIED PRESCRIBED BURNING; LEGISLATIVE FINDINGS AND  
1574 PURPOSE.—

1575 (a) The application of prescribed burning is a land  
1576 management tool that benefits the safety of the public, the  
1577 environment, and the economy of the state. The Legislature finds  
1578 that:

1579 1. Prescribed burning reduces vegetative fuels within wild  
1580 land areas. Reduction of the fuel load reduces the risk and  
1581 severity of wildfire, thereby reducing the threat of loss of  
1582 life and property, particularly in urban areas.

1583 2. Most of Florida's natural communities require periodic  
1584 fire for maintenance of their ecological integrity. Prescribed  
1585 burning is essential to the perpetuation, restoration, and  
1586 management of many plant and animal communities. Significant  
1587 loss of the state's biological diversity will occur if fire is  
1588 excluded from fire-dependent systems.

1589 3. Forestland and rangeland constitute significant  
1590 economic, biological, and aesthetic resources of statewide  
1591 importance. Prescribed burning on forestland prepares sites for  
1592 reforestation, removes undesirable competing vegetation,  
1593 expedites nutrient cycling, and controls or eliminates certain  
1594 forest pathogens. On rangeland, prescribed burning improves the

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1595 | quality and quantity of herbaceous vegetation necessary for  
1596 | livestock production.

1597 |       4. The state purchased hundreds of thousands of acres of  
1598 | land for parks, preserves, wildlife management areas, forests,  
1599 | and other public purposes. The use of prescribed burning for  
1600 | management of public lands is essential to maintain the specific  
1601 | resource values for which these lands were acquired.

1602 |       5. A public education program is necessary to make  
1603 | citizens and visitors aware of the public safety, resource, and  
1604 | economic benefits of prescribed burning.

1605 |       6. Proper training in the use of prescribed burning is  
1606 | necessary to ensure maximum benefits and protection for the  
1607 | public.

1608 |       7. As Florida's population continues to grow, pressures  
1609 | from liability issues and nuisance complaints inhibit the use of  
1610 | prescribed burning. Therefore, the Florida Forest Service  
1611 | ~~division~~ is urged to maximize the opportunities for prescribed  
1612 | burning conducted during its daytime and nighttime authorization  
1613 | process.

1614 |       (b) Certified prescribed burning pertains only to  
1615 | broadcast burning. It must be conducted in accordance with this  
1616 | subsection and:

1617 |       1. May be accomplished only when a certified prescribed  
1618 | burn manager is present on site with a copy of the prescription  
1619 | from ignition of the burn to its completion.

1620 |       2. Requires that a written prescription be prepared before  
1621 | receiving authorization to burn from the Florida Forest Service  
1622 | ~~division~~.

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1623 3. Requires that the specific consent of the landowner or  
 1624 his or her designee be obtained before requesting an  
 1625 authorization.

1626 4. Requires that an authorization to burn be obtained from  
 1627 the Florida Forest Service ~~division~~ before igniting the burn.

1628 5. Requires that there be adequate firebreaks at the burn  
 1629 site and sufficient personnel and firefighting equipment for the  
 1630 control of the fire.

1631 6. Is considered to be in the public interest and does not  
 1632 constitute a public or private nuisance when conducted under  
 1633 applicable state air pollution statutes and rules.

1634 7. Is considered to be a property right of the property  
 1635 owner if vegetative fuels are burned as required in this  
 1636 subsection.

1637 (e) The Florida Forest Service ~~division~~ shall adopt rules  
 1638 for the use of prescribed burning and for certifying and  
 1639 decertifying certified prescribed burn managers based on their  
 1640 past experience, training, and record of compliance with this  
 1641 section.

1642 (4) WILDFIRE HAZARD REDUCTION TREATMENT BY THE FLORIDA  
 1643 FOREST SERVICE ~~DIVISION~~.—The Florida Forest Service ~~division~~ may  
 1644 conduct fuel reduction initiatives, including, but not limited  
 1645 to, burning and mechanical and chemical treatment, on any area  
 1646 of wild land within the state which is reasonably determined to  
 1647 be in danger of wildfire in accordance with the following  
 1648 procedures:

1649 (a) Describe the areas that will receive fuels treatment  
 1650 to the affected local governmental entity.

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1651 (b) Publish a treatment notice, including a description of  
 1652 the area to be treated, in a conspicuous manner in at least one  
 1653 newspaper of general circulation in the area of the treatment  
 1654 not less than 10 days before the treatment.

1655 (c) Prepare, and the county tax collector shall include  
 1656 with the annual tax statement, a notice to be sent to all  
 1657 landowners in each township designated by the Florida Forest  
 1658 Service ~~division~~ as a wildfire hazard area. The notice must  
 1659 describe particularly the area to be treated and the tentative  
 1660 date or dates of the treatment and must list the reasons for and  
 1661 the expected benefits from the wildfire hazard reduction.

1662 (d) Consider any landowner objections to the fuels  
 1663 treatment of his or her property. The landowner may apply to the  
 1664 State Forester ~~director of the division~~ for a review of  
 1665 alternative methods of fuel reduction on the property. If the  
 1666 State Forester ~~director~~ or his or her designee does not resolve  
 1667 the landowner objection, the State Forester ~~director~~ shall  
 1668 convene a panel made up of the local forestry unit manager, the  
 1669 fire chief of the jurisdiction, and the affected county or city  
 1670 manager, or any of their designees. If the panel's  
 1671 recommendation is not acceptable to the landowner, the landowner  
 1672 may request further consideration by the Commissioner of  
 1673 Agriculture or his or her designee and shall thereafter be  
 1674 entitled to an administrative hearing pursuant to ~~the provisions~~  
 1675 ~~of~~ chapter 120.

1676 Section 65. Section 590.14, Florida Statutes, is amended  
 1677 to read:

1678 590.14 Notice of violation; penalties.—

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1679 (1) If a Florida Forest Service ~~division~~ employee  
1680 determines that a person has violated chapter 589 or this  
1681 chapter, he or she may issue a notice of violation indicating  
1682 the statute violated. This notice shall ~~will~~ be filed with the  
1683 Florida Forest Service ~~division~~ and a copy forwarded to the  
1684 appropriate law enforcement entity for further action if  
1685 necessary.

1686 (2) In addition to any penalties provided by law, any  
1687 person who causes a wildfire or permits any authorized fire to  
1688 escape the boundaries of the authorization or to burn past the  
1689 time of the authorization is liable for the payment of all  
1690 reasonable costs and expenses incurred in suppressing the fire  
1691 or \$150, whichever is greater. All costs and expenses incurred  
1692 by the Florida Forest Service ~~division~~ shall be payable to the  
1693 Florida Forest Service ~~division~~. When such costs and expenses  
1694 are not paid within 30 days after demand, the Florida Forest  
1695 Service ~~division~~ may take proper legal proceedings for the  
1696 collection of the costs and expenses. Those costs incurred by an  
1697 agency acting at the ~~division's~~ direction of the Florida Forest  
1698 Service are recoverable by that agency.

1699 (3) The department may also impose an administrative fine,  
1700 not to exceed \$1,000 per violation of any section of chapter 589  
1701 or this chapter. The fine shall be based upon the degree of  
1702 damage, the prior violation record of the person, and whether  
1703 the person knowingly provided false information to obtain an  
1704 authorization. The fines shall be deposited in the Incidental  
1705 Trust Fund of the Florida Forest Service ~~division~~.

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1706 (4) The penalties provided in this section shall extend to  
 1707 both the actual violator and the person or persons, firm, or  
 1708 corporation causing, directing, or permitting the violation.

1709 Section 66. Section 590.16, Florida Statutes, is amended  
 1710 to read:

1711 590.16 Rewards.—The Florida Forest Service ~~division~~, in  
 1712 its discretion, may offer and pay rewards for information  
 1713 leading to the arrest and conviction of any person who violates  
 1714 ~~any provision of~~ this chapter.

1715 Section 67. Section 590.25, Florida Statutes, is amended  
 1716 to read:

1717 590.25 Penalty for preventing or obstructing  
 1718 extinguishment of wildfires.—Any person who interferes ~~Whoever~~  
 1719 ~~shall interfere~~ with, obstructs, ~~obstruct~~ or commits ~~commit~~ any  
 1720 act aimed to obstruct the extinguishment of wildfires by the  
 1721 employees of the Florida Forest Service ~~division~~ or any other  
 1722 person engaged in the extinguishment of a wildfire, or who  
 1723 damages or destroys any equipment being used for such purpose,  
 1724 commits ~~shall be guilty of~~ a felony of the third degree,  
 1725 punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

1726 Section 68. Section 590.33, Florida Statutes, is amended  
 1727 to read:

1728 590.33 State compact administrator; compact advisory  
 1729 committee.—In pursuance of art. III of the compact, the State  
 1730 Forester ~~director of the division~~ shall act as compact  
 1731 administrator for Florida of the Southeastern Interstate Forest  
 1732 Fire Protection Compact during his or her term of office as  
 1733 State Forester ~~director~~, and his or her successor as compact

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1734 administrator shall be his or her successor as State Forester  
 1735 ~~director of the division~~. As compact administrator, he or she  
 1736 shall be an ex officio member of the advisory committee of the  
 1737 Southeastern Interstate Forest Fire Protection Compact, and  
 1738 chair ex officio of the Florida members of the advisory  
 1739 committee. There shall be four members of the Southeastern  
 1740 Interstate Forest Fire Protection Compact Advisory Committee  
 1741 from Florida. Two of the members from Florida shall be members  
 1742 of the Legislature of Florida, one from the Senate and one from  
 1743 the House of Representatives, and the terms of any such members  
 1744 shall terminate at the time they cease to hold legislative  
 1745 office, and their successors as members shall be named in like  
 1746 manner. The Governor shall appoint the other two members from  
 1747 Florida, one of whom shall be associated with forestry or forest  
 1748 products industries. The terms of such members shall be 3 years  
 1749 and such members shall hold office until their respective  
 1750 successors are ~~shall be~~ appointed and qualified. Vacancies  
 1751 occurring in the office of such members for ~~from~~ any reason or  
 1752 cause shall be filled by appointment by the Governor for the  
 1753 unexpired term. The State Forester, ~~director of the division~~ as  
 1754 compact administrator for Florida, may delegate, from time to  
 1755 time, to any deputy or other subordinate in his or her  
 1756 department or office, the power to be present and participate,  
 1757 including voting, as his or her representative or substitute at  
 1758 any meeting of or hearing by or other proceeding of the compact  
 1759 administrators or of the advisory committee. The terms of each  
 1760 of the initial four memberships, whether appointed at said time  
 1761 or not, shall begin upon the date upon which the compact becomes

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1762 ~~shall become~~ effective in accordance with art. II of said  
 1763 compact. Any member of the advisory committee may be removed  
 1764 from office by the Governor upon charges and after a hearing.

1765 Section 69. Section 590.34, Florida Statutes, is amended  
 1766 to read:

1767 590.34 State compact administrator and compact advisory  
 1768 committee members; powers; aid from other state agencies.—There  
 1769 is hereby granted to the State Forester ~~director of the~~  
 1770 ~~division~~, as compact administrator and chair ex officio of the  
 1771 Florida members of the advisory committee, and to the members  
 1772 from Florida of the advisory committee all the powers provided  
 1773 for in the compact and all the powers necessary or incidental to  
 1774 the carrying out of the compact in every particular. All  
 1775 officers of Florida are hereby authorized and directed to do all  
 1776 things falling within their respective provinces and  
 1777 jurisdiction necessary or incidental to the carrying out of the  
 1778 compact in every particular; it being hereby declared to be the  
 1779 policy of the state to perform and carry out the said compact  
 1780 and to accomplish the purposes thereof. All officers, bureaus,  
 1781 departments, and persons of and in the state government or  
 1782 administration of the state are hereby authorized and directed  
 1783 at convenient times and upon request of the compact  
 1784 administrator or of the advisory committee to furnish  
 1785 information data relating to the purposes of the compact  
 1786 possessed by them or any of them to the compact administrator of  
 1787 the advisory committee. They are further authorized to aid the  
 1788 compact administrator or the advisory committee by loan of



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1789 personnel, equipment, or other means in carrying out the  
 1790 purposes of the compact.

1791 Section 70. Section 590.35, Florida Statutes, is amended  
 1792 to read:

1793 590.35 Construction of ss. 590.31-590.34.—Any powers  
 1794 herein granted to the Florida Forest Service ~~division~~ shall be  
 1795 regarded as in aid of and supplemental to and in no case a  
 1796 limitation upon any of the powers vested in the Florida Forest  
 1797 Service ~~division~~ by other laws of Florida or by the laws of the  
 1798 States of Alabama, Georgia, Kentucky, Mississippi, North  
 1799 Carolina, South Carolina, Tennessee, Virginia, and West Virginia  
 1800 or by the Congress or the terms of the compact.

1801 Section 71. Section 590.42, Florida Statutes, is amended  
 1802 to read:

1803 590.42 Federally funded fire protection assistance  
 1804 programs.—

1805 (1) The Florida Forest Service ~~Division of Forestry of the~~  
 1806 ~~Department of Agriculture and Consumer Services~~ may enter into  
 1807 agreements with the United States Secretary of Agriculture ~~of~~  
 1808 ~~the United States~~ in order to participate in the federal  
 1809 Volunteer Rural Community Fire Assistance ~~Protection~~ Program  
 1810 authorized by 16 U.S.C. s. 2106 ~~Pub. L. No. 92-419~~, whereby the  
 1811 Federal Government provides financial assistance to the states  
 1812 on a matching basis of up to 50 percent of expenditures for such  
 1813 purposes.

1814 (2) With respect to the formulation of projects relating  
 1815 to fire protection of livestock, wildlife, crops, pastures,  
 1816 orchards, rangeland, woodland, farmsteads, or other

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1817 improvements, and other values in rural areas, for which such  
 1818 federal matching funds are available, any participating county  
 1819 or fire department may contribute to the nonfederal matching  
 1820 share and may also contribute such other nonfederal cooperation  
 1821 as may be deemed necessary by the Florida Forest Service  
 1822 ~~division.~~

1823 (3) Any financial assistance received by, or contributions  
 1824 to the nonfederal matching share provided by, a participating  
 1825 county under ~~The provisions of~~ this section are supplementary to  
 1826 any county fire control funds or assessments under the  
 1827 ~~provisions of~~ s. 125.27.

1828 Section 72. The title of chapter 591, Florida Statutes, is  
 1829 redesignated as "COMMUNITY FORESTS."

1830 Section 73. Section 591.15, Florida Statutes, is amended  
 1831 to read:

1832 (Substantial rewording of section. See  
 1833 s. 591.15, F.S., for present text.)

1834 591.15 Short title.—This chapter may be cited as the  
 1835 "Florida Community Forest Law."

1836 Section 74. Subsection (1) of section 591.16, Florida  
 1837 Statutes, is amended to read:

1838 591.16 Community forests; purposes.—The general purposes  
 1839 of this law are:

1840 (1) To encourage counties, municipalities ~~cities, towns,~~  
 1841 and school districts to utilize idle lands for productive forest  
 1842 purposes.

1843 Section 75. Section 591.17, Florida Statutes, is amended  
 1844 to read:

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1845           591.17 ~~Community forests;~~ Definitions.—As used in this  
 1846 chapter, the term ~~terms hereinafter used,~~ unless the text  
 1847 ~~clearly indicates a different meaning,~~ shall be as follows:

1848           (1)~~(2)~~ The term "Community forest" means ~~shall mean~~ any  
 1849 forest area established under this chapter ~~law~~ by a county,  
 1850 municipality ~~city, town,~~ or school district.

1851           (2)~~(8)~~ The term "Contiguous sale" means ~~shall mean~~ sale of  
 1852 like forest products from adjoining areas that normally would be  
 1853 in the same sale area as determined by the forester on the  
 1854 forestry committee.

1855           (3)~~(4)~~ "County" or "municipality" includes ~~The term~~  
 1856 "~~counties, cities, towns~~" shall mean any recognized political  
 1857 subdivision of ~~the~~ state government.

1858           (4)~~(7)~~ The term "Forest products" means ~~shall mean~~ any  
 1859 product produced from trees.

1860           (5)~~(3)~~ The term "Forestry committee" means ~~shall mean~~ the  
 1861 appointed committee for directing the activities of community  
 1862 forests.

1863           (6)~~(1)~~ The term "Governing board" means ~~shall~~  
 1864 ~~mean~~ county commissioners, city commission ~~commissioners,~~ town  
 1865 council ~~councils,~~ school board ~~boards,~~ or any other governing  
 1866 body of a county, municipality ~~counties, cities, towns,~~ or  
 1867 school district ~~districts.~~

1868           (6) The term "division" shall mean ~~the Division of~~  
 1869 ~~Forestry of the Department of Agriculture and Consumer Services.~~

1870           (7)~~(5)~~ The term "School district" means ~~an shall mean~~  
 1871 individual school district ~~districts~~ of a county or a vocational  
 1872 agricultural department ~~departments~~ located in such a district

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1873 ~~these districts.~~

1874 Section 76. Section 591.18, Florida Statutes, is amended  
1875 to read:

1876 591.18 ~~Community forests;~~ Purchase or establishment.—All  
1877 counties, municipalities ~~cities, towns,~~ or school districts,  
1878 through their governing boards, may ~~are hereby empowered to~~  
1879 establish, from lands owned by such county, municipality ~~city,~~  
1880 ~~town,~~ or school district in fee simple, or ~~to~~ acquire by  
1881 purchase or gift, lands at present covered with forest or tree  
1882 growth, or suitable for the growth of trees, and ~~to~~ administer  
1883 the same under the direction of the Florida Forest Service  
1884 ~~Division of Forestry,~~ in accordance with the practice and  
1885 principles of scientific forestry, for the benefit of such ~~the~~  
1886 ~~said~~ counties, municipalities ~~cities, towns,~~ or school  
1887 districts. Such tracts may be of any size suitable for the  
1888 purpose but must be located within the county embracing the  
1889 county, municipality ~~city, town,~~ or school district., ~~provided~~  
1890 ~~that it shall be requisite for~~ The governing board availing  
1891 itself of ~~the provisions of this chapter shall~~ law ~~to~~ submit to  
1892 the Florida Forest Service ~~Division of Forestry,~~ and secure its  
1893 approval of the area and location of any lands proposed to be  
1894 acquired or used for the purposes of county, municipality ~~city,~~  
1895 ~~town,~~ or school district forests.

1896 Section 77. Section 591.19, Florida Statutes, is amended  
1897 to read:

1898 591.19 ~~Community forests;~~ Tax delinquent lands.—The  
1899 Department of Revenue, the Board of Trustees of the Internal  
1900 Improvement Trust Fund, and counties, municipalities ~~cities,~~

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1901 ~~towns~~, school districts, or any other public agency holding fee  
 1902 simple or tax certificate lands ~~are hereby empowered to, and~~  
 1903 may, upon application to them, transfer title of fee simple  
 1904 lands not in other public use to any county, municipality city,  
 1905 ~~town~~, or school district for forest purposes as described under  
 1906 this chapter if law, ~~provided~~ such lands are approved by the  
 1907 Florida Forest Service Division of Forestry for this purpose.

1908 Section 78. Section 591.20, Florida Statutes, is amended  
 1909 to read:

1910 591.20 ~~Community forests;~~ Forestry committee; duties;  
 1911 appropriations.-

1912 (1) The governing board of any county, municipality city,  
 1913 ~~town~~, or school district desiring to establish community forests  
 1914 ~~after enactment of this law~~ shall appoint a forestry committee,  
 1915 consisting of three members, as follows: one member of governing  
 1916 board, one member from the Florida Forest Service Division of  
 1917 ~~Forestry~~ to be designated by the Florida Forest Service  
 1918 ~~division~~, and one taxpayer of the county, municipality city,  
 1919 ~~town~~, or school district who is not a member of the governing  
 1920 board. The first two members of such committee shall hold office  
 1921 until replaced in their respective official positions. The third  
 1922 member shall hold office for 3 years. Any vacancy shall be  
 1923 filled at the first regular session of the governing board after  
 1924 the vacancy occurs. The president of the committee shall be  
 1925 selected by the three members for a 1-year term at their first  
 1926 regular meeting. The representative of the Florida Forest  
 1927 Service may ~~Division of Forestry shall~~ not serve as an officer  
 1928 of the committee or ~~nor~~ be responsible for making reports. All

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1929 members shall serve without compensation, but are entitled to  
 1930 reimbursement ~~shall be reimbursed~~ for travel expenses as  
 1931 provided in s. 112.061.

1932 Section 79. Section 591.21, Florida Statutes, is  
 1933 transferred, renumbered as subsections (2) and (3) of section  
 1934 591.20, Florida Statutes, and amended to read:

1935 ~~591.21 Community forests; duties of forestry committee.~~

1936 (2) ~~(1)~~ ~~It shall be the duty of~~ The forestry committee  
 1937 shall ~~to~~ advise the governing board in acquiring, developing,  
 1938 and managing the forest, and in making contracts, agreements,  
 1939 and permits for and with the forest, and, if desirable, in  
 1940 hiring a qualified forester and laborers and in making rules and  
 1941 regulations for operating the forest.

1942 (3) ~~(2)~~ For any sale in excess of \$100, the governing body  
 1943 must ~~shall~~ ask for and receive open competitive bids and  
 1944 purchase from the lowest and best bidder. For sale of forest  
 1945 products in excess of \$500 for the total contract, the sale  
 1946 shall be advertised in one issue each of 2 consecutive weeks in  
 1947 a county newspaper of general circulation, and the highest and  
 1948 best bid shall be accepted. Contiguous sales may ~~shall~~ not be  
 1949 made.

1950 Section 80. Section 591.22, Florida Statutes, is  
 1951 transferred, renumbered as subsection (4) of section 591.20,  
 1952 Florida Statutes, and amended to read:

1953 ~~591.22 Community forests; appropriations.~~

1954 (4) Counties, municipalities ~~cities, towns,~~ or school  
 1955 districts in which forestry committees are ~~have been~~ appointed  
 1956 may appropriate money from available funds to be used by such

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1957 | ~~committees said committee~~ to carry out the purposes of this  
 1958 | chapter law. ~~Each~~ The forestry committee shall annually adopt  
 1959 | ~~each year make~~ a budget of recommendation for acquisition and  
 1960 | operation and management of the forest for approval by the  
 1961 | governing board.

1962 | Section 81. Section 591.23, Florida Statutes, is amended  
 1963 | to read:

1964 | 591.23 ~~Community forests;~~ Revenues; use.—Revenue from the  
 1965 | forests shall be credited to the general fund of counties,  
 1966 | municipalities ~~cities, towns,~~ or school districts; ~~provided,~~  
 1967 | however, revenues from lands under land use agreements with  
 1968 | youth organizations such as chapters of the Future Farmers of  
 1969 | America must, ~~shall~~ be disposed of subject to the terms of such  
 1970 | agreements. When the revenue from any forest other than these  
 1971 | under such land use agreements, ~~exceeds~~ the necessary expenses  
 1972 | of the forest, including desirable acquisition, the excess shall  
 1973 | ~~will~~ be used by the governing board for regular purposes and in  
 1974 | reduction of taxation.

1975 | Section 82. Section 591.24, Florida Statutes, is amended  
 1976 | to read:

1977 | 591.24 ~~Community forests;~~ Fiscal reports.—A fiscal year  
 1978 | report of expenditures, income, sales, development, and  
 1979 | management shall be made by the forestry committee to the  
 1980 | governing board of the county, municipality ~~city, town,~~ or  
 1981 | school district, and a copy shall be sent to the Florida Forest  
 1982 | Service ~~Division of Forestry~~. All reports shall be audited by  
 1983 | the regular auditor of the county, municipality ~~city, town,~~ or  
 1984 | school district.

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1985 Section 83. Section 591.25, Florida Statutes, is amended  
 1986 to read:

1987 591.25 ~~Community forests;~~ Fire protection, etc.—All lands  
 1988 entered or acquired under ~~the provisions of this chapter law~~  
 1989 shall be protected at all times from wildfire and shall be kept  
 1990 and maintained as a permanent public forest except as  
 1991 hereinafter provided. The timber growing on such forest lands  
 1992 ~~thereon~~ shall be cut in accordance with forestry methods  
 1993 approved by the Florida Forest Service ~~Division of Forestry~~ and  
 1994 in such a manner as to perpetuate succeeding stands of trees.  
 1995 All such forest lands shall be open to the use of the public for  
 1996 recreational purposes so far as such recreational purposes do  
 1997 not interfere with, or prevent the use of, such lands to the  
 1998 best advantage as a public forest as determined by the forestry  
 1999 committee.

2000 Section 84. Section 591.26, Florida Statutes, is amended  
 2001 to read:

2002 591.26 ~~Community forests;~~ Sale upon referendum approval.—~~A~~  
 2003 ~~If it becomes desirable to sell any~~ community forest or portion  
 2004 thereof may be sold if such sale is as determined jointly  
 2005 proposed by the governing board and forestry committee and  
 2006 approved by a majority, ~~it shall be put to a vote of those~~  
 2007 electors voting ~~the people~~ at any regular election ~~and a~~  
 2008 ~~majority of those voting must approve the action.~~ If such sale  
 2009 is approved by the electors, any funds received from the ~~such~~  
 2010 sale shall be deposited in the general fund of the county,  
 2011 municipality ~~city, town,~~ or school district making the sale and  
 2012 used in consolidating existing community forests or in



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2013 establishing another community forest.

2014 Section 85. Paragraph (b) of subsection (1) and paragraph  
 2015 (b) of subsection (2) of section 633.115, Florida Statutes, are  
 2016 amended to read:

2017 633.115 Fire and Emergency Incident Information Reporting  
 2018 Program; duties; fire reports.-

2019 (1)

2020 (b) The Division of State Fire Marshal shall consult with  
 2021 the Florida Forest Service ~~Division of Forestry of the~~  
 2022 ~~Department of Agriculture and Consumer Services~~ and the Bureau  
 2023 of Emergency Medical Services of the Department of Health to  
 2024 coordinate data, ensure accuracy of the data, and limit  
 2025 duplication of efforts in data collection, analysis, and  
 2026 reporting.

2027 (2) The Fire and Emergency Incident Information System  
 2028 Technical Advisory Panel is created within the Division of State  
 2029 Fire Marshal. The panel shall advise, review, and recommend to  
 2030 the State Fire Marshal with respect to the requirements of this  
 2031 section. The membership of the panel shall consist of the  
 2032 following 15 members:

2033 (b) One member from the Florida Forest Service ~~Division of~~  
 2034 ~~Forestry of the Department of Agriculture and Consumer Services,~~  
 2035 appointed by the State Forester ~~division director.~~

2036 Section 86. Paragraph (e) of subsection (6) of section  
 2037 633.821, Florida Statutes, is amended to read:

2038 633.821 Workplace safety.-

2039 (6)

2040 (e) This subsection does not apply to wildland or

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2041 | prescribed live fire training exercises sanctioned by the  
 2042 | Florida Forest Service ~~Division of Forestry of the Department of~~  
 2043 | ~~Agriculture and Consumer Services~~ or the National Wildfire  
 2044 | Coordinating Group.

2045 | Section 87. Subsection (1) of section 790.15, Florida  
 2046 | Statutes, is amended to read:

2047 | 790.15 Discharging firearm in public.—

2048 | (1) Except as provided in subsection (2) or subsection  
 2049 | (3), any person who knowingly discharges a firearm in any public  
 2050 | place or on the right-of-way of any paved public road, highway,  
 2051 | or street or who ~~whoever~~ knowingly discharges any firearm over  
 2052 | the right-of-way of any paved public road, highway, or street or  
 2053 | over any occupied premises commits ~~is guilty of~~ a misdemeanor of  
 2054 | the first degree, punishable as provided in s. 775.082 or s.  
 2055 | 775.083. This section does not apply to a person lawfully  
 2056 | defending life or property or performing official duties  
 2057 | requiring the discharge of a firearm or to a person discharging  
 2058 | a firearm on public roads or properties expressly approved for  
 2059 | hunting by the Fish and Wildlife Conservation Commission or the  
 2060 | Florida Forest Service ~~Division of Forestry~~.

2061 | Section 88. This act shall take effect July 1, 2011.



**HOUSE OF REPRESENTATIVES STAFF ANALYSIS**

**BILL #:** CS/HJR 1321 Miami-Dade County Home Rule Charter

**SPONSOR(S):** Lopez-Cantera

**TIED BILLS:** IDEN./SIM. **BILLS:** SJR 1954

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Economic Affairs Committee	16 Y, 0 N, As CS	Rojas	Tinker
2) State Affairs Committee		Deslatte <i>SD</i>	Hamby <i>JAO</i>

**SUMMARY ANALYSIS**

CS/HJR 1321 proposes to amend the State Constitution to create the constitutional authority for Miami-Dade County's Home Rule Charter to be amended by a special law of the Legislature, provided that the special law is then approved by the vote of electors of Miami-Dade County. The resolution also proposes to change references to "Metropolitan Dade County" to reflect the county's present name, "Miami-Dade County."

Each house of the Legislature must pass a joint resolution by a three-fifths vote in order for the proposal to be placed on the ballot. CS/HJR 1321 provides for the proposed constitutional amendment to be submitted to the electors of Florida for approval or rejection at the next general election or at an earlier special election specifically authorized by law for that purpose.

CS/HJR 1321 impacts state funds to the extent that the cost of placing the constitutional amendment on the ballot must be administered by the Department of State. The department has estimated the publication costs for advertising the joint resolution will be \$67,611.18. This sum will depend on the final wording of the joint resolution and the language that is to be placed on the ballot.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### PRESENT SITUATION:

In 1956, an amendment to the 1885 Florida Constitution provided that Dade County has the authority to adopt, revise, and amend from time to time a home rule charter government for Dade County.<sup>1</sup> The voters of Dade County approved that charter on May 21, 1957. Dade County, now known as Miami-Dade County, has unique home rule status.

Section 6 (e), Art. VIII, s. 6(e) of the State Constitution provides that the Metropolitan Dade County Home Rule Charter provisions shall be valid if authorized under s. 11, Art. VIII, s. 11 of the State Constitution of 1885, as amended. However, s. 11 (5), Art. VIII of the 1885 State Constitution prohibits any charter provisions in conflict with the Constitution or with general law relating to Miami-Dade County.<sup>2</sup>

Section 11 (5), Art VIII of the State Constitution further provides that this charter and any subsequent ordinances enacted pursuant to this charter may conflict with, modify or nullify any existing local, special or general law applicable only to Dade County. Accordingly, Miami-Dade County ordinances enacted pursuant to the Metropolitan Dade County Home Rule Charter may implicitly, as well as expressly, amend or repeal a special act, when it conflicts with a Miami-Dade County ordinance.

In *Chase v. Cowart*, the Florida Supreme Court concluded that:

When the Legislature enacted Chapter 31420, Laws of 1956, creating the metropolitan charter and providing the method of presenting the home rule charter to the voters of Dade County, and more specifically when the electors of Dade County adopted the home rule charter on May 21, 1957, the authority of the Legislature in affairs of local government in Dade County ceased to exist. Thereafter, the Legislature may lawfully exercise this power only through passage of general acts applicable to Dade County and any other one or more counties, or a municipality in Dade County and any other one or more municipalities in the State.<sup>3</sup>

In a 1989 opinion, the Attorney General cited *Dade County v. Dade County League of Municipalities*,<sup>4</sup> for the proposition that, following adoption of the Dade County Home Rule Charter, the Legislature is limited to enacting only general laws relating to Miami-Dade County and may not amend a special act relating to a municipality within Miami-Dade County that was enacted prior to the adoption of the Dade County Home Rule Charter<sup>5</sup>.

#### **Constitutional Provision for Amending the Constitution**

Section 1, Art. XI, of the State Constitution, provides for amendment to the state constitution by the Legislature. The Legislature is authorized to propose amendments to the Constitution by joint resolution passed by three-fifths of the membership of each house. The amendment must be placed before the electorate at the next general election held after the proposal has been filed with the Secretary of State's office; alternatively, the amendment may be voted on at a special election held for that purpose.

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<sup>1</sup> Section 11, Art. VIII, of the State Constitution of 1885, as amended

<sup>2</sup> See also, *Dade County v. Wilson*, 386 So. 2d 556 (Fla. 1980).

<sup>3</sup> 102 So. 2d 147 (Fla.1958),

<sup>4</sup> 104 So. 2d 512, 517 (Fla. 1958)

<sup>5</sup> AGO 1989-9, See also, *Dickenson v. Board of Public Instruction of Dade County*, 217 So.2d 553, 555 (Fla. 1969).

## EFFECT OF THE JOINT RESOLUTION:

CS/HJR 1321 proposes to amend the State Constitution to create the constitutional authority for Miami-Dade County's Home Rule Charter to be amended by a special law of the Legislature, provided that the special law is then approved by the vote of electors of Miami-Dade County. The resolution also proposes to change references to "Metropolitan Dade County" to reflect the county's present name, "Miami-Dade County."

Each house of the Legislature must pass a joint resolution by a three-fifths vote in order for the proposal to be placed on the ballot. The House Joint Resolution provides for the proposed constitutional amendment to be submitted to the electors of Florida for approval or rejection at the next general election or at an earlier special election specifically authorized by law for that purpose.

In addition to methods available locally, changes to the Miami-Dade County Charter could also now be enacted with the following process;

1. A bill proposing a special law that would serve as a charter amendment would be approved at a meeting of the local legislative delegation.
2. The bill would be filed by a member of that delegation with the Florida House of Representatives and/or the Florida Senate.
3. The bill would require passage by the Legislature.
4. The special law would be placed on the ballot and require approval by the electors of Miami-Dade County.

### B. SECTION DIRECTORY:

As this legislation is a joint resolution proposing a constitutional amendment, it does not contain bill sections. The joint resolution proposes to amend s. 6 of Art. VIII of the State Constitution, to authorize the amendment of Miami-Dade County's Home Rule Charter by special law.

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

### A. FISCAL IMPACT ON STATE GOVERNMENT:

#### 1. Revenues:

The joint resolution does not have a fiscal impact on state revenues.

#### 2. Expenditures:

Section 5(d), Art. XI of the State Constitution, requires proposed amendments or constitutional revisions to be published in a newspaper of general circulation in each county where a newspaper is published. The amendment or revision must be published once in the 10th week and again in the sixth week immediately preceding the week the election is held. The Division of Elections within the Department of State estimated that the average cost per word to advertise an amendment to the State Constitution is \$106.14 for this fiscal year. The department has estimated the publication costs for advertising the joint resolution will be \$67,611.18. This sum will depend on the final wording of the joint resolution and the language that is to be placed on the ballot.

The department normally is the defendant in lawsuits challenging proposed amendments to the Florida Constitution. The cost for defending these lawsuits has ranged from \$10,000 to \$150,000, depending on a number of variables.

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

#### 1. Revenues:

The joint resolution does not appear to have a fiscal impact on local revenues.

2. Expenditures:

The joint resolution will have an indeterminate negative fiscal impact on Miami-Dade County. To the extent that special laws relating to Miami-Dade County are enacted, the county will have to expend funds to put those charter amendments on the ballot.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

N/A

D. FISCAL COMMENTS:

See, Fiscal Impact on State Government, above.

### III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The joint resolution does not appear to require a county or municipality to spend funds or take an action requiring expenditures; reduce the authority that counties and municipalities had as of February 1, 1989, to raise revenues in the aggregate; or reduce the percentage of a state tax shared in the aggregate with counties and municipalities as of February 1, 1989.

2. Other:

Section 1, Art. of the State Constitution provides for proposed changes to the Constitution by the Legislature:

**SECTION 1: Proposal by legislature.** – Amendment of a section or revision of one or more articles, or the whole, of this constitution may be proposed by joint resolution agreed to by three-fifths of the membership of each house of the Legislature. The full text of the joint resolution and the vote of each member voting shall be entered on the journal of each house.

If passed by the Legislature, the proposed amendment must be submitted to the electors at the next general election held more than 90 days after the joint resolution is filed with the custodian of state records. The proposed amendment must be published, once in the tenth week and once in the sixth week immediately preceding the week of the election, in one newspaper of general circulation in each county where a newspaper is published. Submission of a proposed amendment at an earlier special election requires the affirmative vote of three-fourths of the membership of each house of the Legislature and is limited to a single amendment or revision. Section 5(e), Art. XI, of the State Constitution requires 60 percent voter approval for a proposed constitutional amendment to pass.

If the proposed amendment or revision is approved by vote of the electors, it will be effective as an amendment to or revision of the constitution of the state on the first Tuesday after the first Monday in January following the election.

B. RULE-MAKING AUTHORITY:

N/A

C. DRAFTING ISSUES OR OTHER COMMENTS:

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

On March 24, 2011, the Economic Affairs Committee adopted an amendment to correct scrivener's errors in the joint resolution.



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House Joint Resolution

A joint resolution proposing an amendment to Section 6 of Article VIII of the State Constitution to authorize amendments or revisions to the home rule charter of Miami-Dade County by special law approved by a vote of the electors; providing requirements for a bill proposing such a special law.

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

That the following amendment to Section 6 of Article VIII of the State Constitution is agreed to and shall be submitted to the electors of this state for approval or rejection at the next general election or at an earlier special election specifically authorized by law for that purpose:

ARTICLE VIII

LOCAL GOVERNMENT

SECTION 6. Schedule to Article VIII.—

(a) This article shall replace all of Article VIII of the Constitution of 1885, as amended, except those sections expressly retained and made a part of this article by reference.

(b) COUNTIES; COUNTY SEATS; MUNICIPALITIES; DISTRICTS.  
 The status of the following items as they exist on the date this article becomes effective is recognized and shall be continued until changed in accordance with law: the counties of the state; their status with respect to the legality of the sale of intoxicating liquors, wines and beers; the method of selection of county officers; the performance of municipal functions by

29 | county officers; the county seats; and the municipalities and  
 30 | special districts of the state, their powers, jurisdiction and  
 31 | government.

32 | (c) OFFICERS TO CONTINUE IN OFFICE. Every person holding  
 33 | office when this article becomes effective shall continue in  
 34 | office for the remainder of the term if that office is not  
 35 | abolished. If the office is abolished the incumbent shall be  
 36 | paid adequate compensation, to be fixed by law, for the loss of  
 37 | emoluments for the remainder of the term.

38 | (d) ORDINANCES. Local laws relating only to  
 39 | unincorporated areas of a county on the effective date of this  
 40 | article may be amended or repealed by county ordinance.

41 | (e) CONSOLIDATION AND HOME RULE. Article VIII, Sections  
 42 | 9, 10, 11 and 24, of the Constitution of 1885, as amended, shall  
 43 | remain in full force and effect as to each county affected, as  
 44 | if this article had not been adopted, until that county shall  
 45 | expressly adopt a charter or home rule plan pursuant to this  
 46 | article. All provisions of the Miami-Dade ~~Metropolitan-Dade~~  
 47 | County Home Rule Charter, heretofore or hereafter adopted by the  
 48 | electors of Miami-Dade ~~Dade~~ County pursuant to Article VIII,  
 49 | Section 11, of the Constitution of 1885, as amended, shall be  
 50 | valid, and any amendments to such charter shall be valid;  
 51 | provided that the said provisions of such charter and the said  
 52 | amendments thereto are authorized under said Article VIII,  
 53 | Section 11, of the Constitution of 1885, as amended. However,  
 54 | notwithstanding any provision of Article VIII, Section 11, of  
 55 | the Constitution of 1885, as amended, or any limitations under  
 56 | this subsection, the Miami-Dade County Home Rule Charter may be

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57 amended or revised by special law approved by the electors of  
 58 Miami-Dade County and, if approved, shall be deemed an amendment  
 59 or revision of the charter by the electors of Miami-Dade County.  
 60 A bill proposing such a special law must be approved at a  
 61 meeting of the local legislative delegation and filed by a  
 62 member of that delegation.

63 (f) DADE COUNTY; POWERS CONFERRED UPON MUNICIPALITIES. To  
 64 the extent not inconsistent with the powers of existing  
 65 municipalities or general law, the Metropolitan Government of  
 66 Miami-Dade ~~Dade~~ County may exercise all the powers conferred now  
 67 or hereafter by general law upon municipalities.

68 (g) DELETION OF OBSOLETE SCHEDULE ITEMS. The legislature  
 69 shall have power, by joint resolution, to delete from this  
 70 article any subsection of this Section 6, including this  
 71 subsection, when all events to which the subsection to be  
 72 deleted is or could become applicable have occurred. A  
 73 legislative determination of fact made as a basis for  
 74 application of this subsection shall be subject to judicial  
 75 review.

76 BE IT FURTHER RESOLVED that the following statement be  
 77 placed on the ballot:

78 CONSTITUTIONAL AMENDMENT  
 79 ARTICLE VIII, SECTION 6

80 AUTHORIZING AMENDMENTS TO MIAMI-DADE COUNTY HOME RULE  
 81 CHARTER BY SPECIAL LAW APPROVED BY REFERENDUM.—Authorizes  
 82 amendments or revisions to the Miami-Dade County Home Rule  
 83 Charter by a special law when the law is approved by a vote of  
 84 the electors of Miami-Dade County. A bill proposing such a

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85 | special law must be approved at a meeting of the local  
86 | legislative delegation and filed by a member of that delegation.  
87 | It also conforms references in the State Constitution to reflect  
88 | the county's current name.



## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HM 1375 Greenhouse Gases

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

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

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Federal Affairs Subcommittee	9 Y, 4 N, As CS	Cyphers <i>me</i>	Cyphers
2) State Affairs Committee		Cyphers <i>me</i>	Hamby <i>Jde</i>

### SUMMARY ANALYSIS

In 2008, the United States Supreme Court ruled in *Massachusetts v. EPA* that if the agency found that Greenhouse Gases (GHGs) emissions from motor vehicles could be reasonably expected to cause harm to public safety and welfare, then the Environmental Protection Agency (EPA) had a duty to regulate the emissions under the Clean Air Act (CAA). Since the Court's direction in *Massachusetts v. EPA* and the agency's subsequent "endangerment finding" in 2009, the agency has moved to regulate both mobile and stationary sources of GHG emissions.

While legislation has been introduced in the 111<sup>th</sup> and 112<sup>th</sup> Congresses to limit the EPA's ability to regulate GHGs under the CAA, none has made it through the legislative process to become law so far. Without legislative direction to the contradict the agency's duty as articulated in *Massachusetts v. EPA*, the agency's first rules governing stationary sources of GHGs went into effect on January 2, 2011.

If passed, this Memorial will urge Congress to take action to clarify EPA's specific regulatory authority regarding the limitation of GHGs.

The House Memorial does not amend, create, or repeal any provisions of the Florida Statutes.

The House Memorial has no fiscal impact on state or local government.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### Background

In 1999, a large group of organizations petitioned the United States Environmental Protection Agency (EPA) to regulate emissions of Greenhouse Gases (GHG) from new automobiles.<sup>1</sup> The groups cited the duty of the EPA to regulate “pollutants” under the Clean Air Act (CAA).<sup>2</sup> Provisions of the CAA direct the EPA Administrator to develop standards to regulate the emission of air pollutants from any class or classes of new motor vehicles that could cause or contribute to air pollution which may reasonably be anticipated to endanger public health or welfare. After receiving thousands of comments from interested parties until 2003, the EPA denied the Section 202 petition. The rationale for the denial by the agency was largely captured in a memorandum issued on the same day the agency action took place. The memorandum concluded that the CAA does not grant EPA authority to regulate Carbon Dioxide (CO<sub>2</sub>) and other GHG emissions based on their potential to impact climate.<sup>3</sup>

#### *Massachusetts v. EPA*

EPA’s denial of the Section 202 petition led to a lawsuit (*Massachusetts v. EPA*) in the United States Court of Appeal for the District of Columbia Circuit (D.C. Circuit). The petitioners in the case included twelve states: California, Connecticut, Illinois, Massachusetts, Maine, New Jersey, New Mexico, New York, Oregon, Rhode Island, Vermont, and Washington; three cities: New York, Baltimore, and Washington, D.C.; two U.S. territories: American Samoa and Northern Mariana Islands; and several environmental groups. Opposing the challenge, besides EPA, were ten states: Alaska, Idaho, Kansas, Michigan, North Dakota, Nebraska, Ohio, South Dakota, Texas, and Utah. Groups representing the automobile industry also opposed the challenge.<sup>4</sup>

In 2005, a three judge panel rejected the suit in a split decision. The rejection, according to one of the judges (Randolph), was that the EPA had properly exercised its discretion in choosing not to wield its Section 202 authority. Judge Randolph held that CAA, Section 202(a)(1), directs the EPA Administrator to prescribe standards for any motor vehicle emissions that “in his judgment” cause harmful air pollution. Judge Randolph read “in his judgment” broadly to allow EPA consideration of not only scientific uncertainty about the effects of GHGs but also policy considerations that justify not regulating. Thus, EPA in his view was entitled to rely, as it had, on policy factors for GHG control measures. The other judge to reject the suit, Judge Sentelle, found that the petitioners lacked standing to bring the suit.<sup>5</sup>

Even though the D.C. Circuit decision did not cover the question of whether Section 202 of the CAA authorized the regulation of GHG, the U.S. Supreme Court decided to take up *Massachusetts v. EPA*. On April 2, 2007, the Supreme Court handed down their decision based on a 5-4 margin. The Court found that GHGs constituted “air pollution”, as found in the CAA and that the EPA acted improperly by denying the 1999 petition seeking regulation of GHGs for new automobiles.<sup>6</sup> The decision rejected EPA’s contention that it did not have the authority to regulation GHGs in automobiles.

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<sup>1</sup> Carbon dioxide, methane, nitrous oxide, and hydrofluorocarbons

<sup>2</sup> CAA Section 202(a)(1)

<sup>3</sup> EPA, Control of Emissions from New Highway Vehicles and Engines, 68 Fed. Reg. 52922 (September 8, 2003).

<sup>4</sup> Congressional Research Service – The Supreme Court’s Climate Change Decision: *Massachusetts v. EPA*

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

<sup>6</sup> *Id.*

The result of the Court's findings was that the EPA was only to consider whether the pollutant, CO<sub>2</sub> in this case, "may reasonably be anticipated to endanger public health or welfare." While the Court did not directly compel EPA to regulate GHG emissions from new motor vehicles directly, it said that if the EPA made a finding of endangerment, then they would have to act.

### **North Carolina v. EPA**

Following the U.S. Supreme Court's decision in *Massachusetts v. EPA*, a separate case affected EPA's ability to enact regulatory schemes. In 2005, EPA announced that it would use existing CAA authority to promulgate final regulations similar to legislation ("Clear Skies") proposed to limit utility emissions of Sulfur dioxide (SO<sub>2</sub>) and Nitrous oxide (NOx) in 28 eastern states and the District of Columbia.<sup>7</sup>

The result of the new regulatory scheme was the Clean Air Interstate Rule (CAIR), which established cap-and-trade provisions that mimicked those of Clear Skies, but the regulations were for the eastern half of the U.S. only. Under CAIR, the EPA sought to decrease emissions of SO<sub>2</sub> by 53% and NOx emissions 48% by 2015.<sup>8</sup> The regulatory program was consequently challenged, and on July 11, 2008, the D.C. Circuit reached a unanimous decision bringing CAIR to a halt. In *North Carolina v. EPA*, the court found that EPA lacked authority to promulgate a regional cap-and-trade rule under Section 110 of the CAA.

### **"Endangerment Finding" and EPA Rulemaking**

Under a new administration, and as a result of *North Carolina v. EPA* and *Massachusetts v. EPA* two years earlier, the EPA made an "endangerment finding" based on their conclusion that GHG emissions endanger public health and welfare through the potential effects of climate change. The finding was finalized on December 15, 2009. Consequently, EPA's determination required the agency to take action under the CAA to reduce the amount of "pollution" which can cause the harm.

On April 1, 2010, the EPA Administrator signed final regulations requiring auto manufacturers to limit emissions of GHGs from new cars and light trucks. Those regulations will subsequently trigger at least two other CAA provisions affecting stationary sources of "air pollution", such as electric power plants. First, according to EPA, effective January 2, 2011, new or modified major stationary sources will have to undergo New Source Review (NSR) with respect to their GHG emissions in addition to any other pollutants subject to regulation under the Clean Air Act that they emit. This review will require affected sources to install Best Available Control Technology (BACT) to address their GHG emissions. In the later years of implementation, existing sources, in addition to new ones will have to obtain permits under Title V of the Clean Air Act or modify their existing permits.<sup>9</sup>

### **Congressional Reaction to EPA Rulemaking**

The potential for EPA to regulate GHG emissions mobile and stationary sources has led some in Congress to suggest that federal action is needed to stop the agency from proceeding. During the 111<sup>th</sup> Congress, legislation was introduced in both the U.S. House and Senate to achieve such results. Four resolutions were filed seeking disapproval of the endangerment finding under the CAA through use of the Congressional Review Act.<sup>10</sup> Five other bills were filed to hinder EPA rulemaking authority by: requiring the reevaluation of the endangerment finding; providing that GHGs are not subject to the CAA; limiting EPA's

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<sup>7</sup> *Federal Register*, May 12, 2005 (70 FR 25162).

<sup>8</sup> U.S. EPA, Office of Air and Radiation: "Clean Air Interstate Rule - Basic Information"

<http://www.epa.gov/interstateairquality/basic.html>.

<sup>9</sup> <http://www.epa.gov/nsr/documents/20100413fs.pdf>

<sup>10</sup> From Congressional Research Service: Clean Air Issues in 112<sup>th</sup> Congress, January 4, 2011. Senate Resolution 26 and House Resolutions 66, 76, and 77



ability to regulate GHG emissions from motor vehicles; and temporarily suspending the Agency's ability to regulate some stationary sources of GHG emissions.<sup>11</sup>

Since the 112<sup>th</sup> Congress has taken office, additional measures have been filed in Congress to address EPA's responsibility to regulate GHGs under the CAA, but it is unclear whether legislation will pass. The Obama administration has indicated that efforts to undo EPA's regulatory authority will likely face the President's veto.<sup>12</sup> The following bills have already been identified as potential platforms for opposition to the current regulatory climate:<sup>13</sup>

HR 97 - Introduced by Rep. Blackburn (R-TN)

Amends CAA to exclude carbon dioxide, water vapor, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride from the definition of "pollutant," and it prohibits the use of the CAA for regulations related to climate change.

HR 153 - Rep. Poe (R-TX)

Prohibits the use of EPA funds to enact a cap and trade program or regulate of GHGs from stationary sources.

HR 199 - Rep. Capito (R-WV)

Delays the regulation of carbon dioxide and methane from stationary sources for two years from enactment.

HR 279 - Rep. Fortenberry (R-NE)

Prohibits the regulation of methane from livestock using the CAA.

HR 910 - Reprs. Upton (R-MI) and Whitfield (R-KY)

This proposal questions human-caused climate change, amends the CAA to prohibit EPA from issuing regulations concerning greenhouse gases for the purposes of addressing climate change, and excludes GHGs from the definition of "air pollutant." The bill exempts rulemakings for emissions standards and Corporate Average Fuel Economy (CAFE) standards for light-duty vehicles (May 2010) and medium- and heavy-duty vehicles (November 2010) and statutorily authorized programs addressing climate change.

S 228 - Sen. Barrasso (R-WY)

Prohibits the President or any Federal agency from promulgating regulations to control GHGs, or considering climate effects of GHGs in any rule, or take other actions unless controls of the gas are related to non-climate effects. Exemption for this prohibition is made for the joint rulemakings for emissions standards and CAFE standards for light-duty vehicles (May 2010).

S 231 - Sen. Rockefeller (D-WV)

Delays EPA GHG regulations for stationary sources for two years, and exempts light-duty and medium/heavy -duty vehicle standards from that delay.

S 482 - Sen. Inhofe (R-OK)

Senate version of HR 910

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<sup>11</sup> From Congressional Research Service: Clean Air Issues in 112<sup>th</sup> Congress, January 4, 2011. House Resolutions 974, 4396, and 4753; and Senate Bills 1622 and 3072

<sup>12</sup> <http://dailycaller.com/2011/03/16/legislation-to-block-epa-regulations-make-significant-gains-in-congress/>

<sup>13</sup> <http://www.pewclimate.org/federal/congress>

## Effects of Proposed Changes

This memorial urges Congress to take action to clarify the EP's specific regulatory authority regarding GHGs.

Copies of the memorial are to be sent to the President of the United States, the President of the United States Senate, the Speaker of the House of Representatives, and to each member of the Florida delegation to the United States Congress.

The legislation also includes whereas clauses in order to support the memorial. The whereas clauses include:

WHEREAS, the Environmental Protection Agency has released an Advance Notice of Proposed Rulemaking that describes a nationwide plan to regulate greenhouse gases under the Clean Air Act, and

WHEREAS, the Environmental Protection Agency's plan to regulate greenhouse gases is very expansive in scope, envisioning a nationwide cap and trade program for greenhouse gases, additional motor vehicle regulations, and economy-wide restrictions impacting a wide range of industries, including dairy and beef operations, office buildings, hospitals, schools, large homes, and houses of worship, and even regulating the greenhouse gas emissions from lawnmowers, and

WHEREAS, the United States Court of Appeals for the District of Columbia Circuit has recently ruled that the Environmental Protection Agency does not have authority to carry out a cap and trade plan under the Clean Air Act, and

WHEREAS, the Environmental Protection Agency's plan represents policymaking that is the prerogative of the legislative branch, and

WHEREAS, even committed proponents of ambitious greenhouse gas regulation have expressed doubts about the Advance Notice of Proposed Rulemaking approach, and

WHEREAS, climate change is a global issue, not a local or regional pollution issue, which the Clean Air Act was designed to address, and

WHEREAS, the Environmental Protection Agency's plan would impose a massive economic burden on America without appreciably reducing worldwide concentrations of greenhouse gases

### B. SECTION DIRECTORY:

Not Applicable

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

#### 1. Revenues:

None

#### 2. Expenditures:

None

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

1. Revenues:

None

2. Expenditures:

None

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

None

**D. FISCAL COMMENTS:**

None

**III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

1. Applicability of Municipality/County Mandates Provision:

Not Applicable

2. Other:

None

**B. RULE-MAKING AUTHORITY:**

Not Applicable

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

None

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

**Amendment 03-23-11:** The amendment removed an outdated "whereas" clause that referred to Advanced Notice of Proposed Rulemaking.

House Memorial

A memorial to the Congress of the United States, urging Congress to take additional action to clarify and specify the Environmental Protection Agency's legal and regulatory obligations with respect to greenhouse gases.

WHEREAS, the Environmental Protection Agency has begun implementation of rulemaking that describes a nationwide plan to regulate greenhouse gases under the Clean Air Act, and

WHEREAS, the Environmental Protection Agency's plan to regulate greenhouse gases is very expansive in scope, envisioning a nationwide cap and trade program for greenhouse gases, additional motor vehicle regulations, and economy-wide restrictions impacting a wide range of industries, including dairy and beef operations, office buildings, hospitals, schools, large homes, and houses of worship, and even regulating the greenhouse gas emissions from lawnmowers, and

WHEREAS, the United States Court of Appeals for the District of Columbia Circuit has ruled that the Environmental Protection Agency does not have authority to carry out a cap and trade plan under the Clean Air Act, and

WHEREAS, the Environmental Protection Agency's plan represents policymaking that is the prerogative of the legislative branch and that exceeds its administrative authority to execute the laws enacted by Congress, and

WHEREAS, climate change is a global issue, not a local or regional pollution issue, which the Clean Air Act was designed to address, and

CS/HM 1375

2011

29           WHEREAS, the Environmental Protection Agency's plan would  
 30 impose a massive economic burden on America without appreciably  
 31 reducing worldwide concentrations of greenhouse gases, NOW,  
 32 THEREFORE,

33  
 34 Be It Resolved by the Legislature of the State of Florida:

35  
 36           That the Congress of the United States is urged to take  
 37 additional action to clarify and specify the Environmental  
 38 Protection Agency's legal and regulatory obligations with  
 39 respect to greenhouse gases.

40           BE IT FURTHER RESOLVED that copies of this memorial be  
 41 dispatched to the President of the United States, to the  
 42 President of the United States Senate, to the Speaker of the  
 43 United States House of Representatives, and to each member of  
 44 the Florida delegation to the United States Congress.


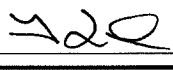


## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HM 1401 Federal Intrusion into State's Clean Water Program

**SPONSOR(S):** Steube

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

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Federal Affairs Subcommittee	11 Y, 0 N, As CS	Cyphers	Cyphers
2) State Affairs Committee		Cyphers 	Hamby 

### SUMMARY ANALYSIS

On December 6, 2010, the United States Environmental Protection Agency (EPA) published final rules establishing numeric nutrient criteria for Florida lakes, streams, rivers, and springs. A portion of the final rule, relating to establishing site-specific alternative criteria, became effective on February 4, 2011. The remainder of the final rule becomes effective on March 6, 2012.

The fiscal impact of the EPA's rule on industrial dischargers, municipal wastewater and urban stormwater facilities, agriculture, and the regulatory agencies is unclear. EPA-generated annualized cost estimates to achieve the numeric criteria (\$130-\$150 million) differ dramatically from estimates provided by the Florida Department of Environmental Protections (DEP) (\$5.7 - \$8.4 billion). One study places the estimates for wastewater utilities alone at between \$24 billion and \$51 billion in capital costs for additional wastewater treatment facilities and annual operating costs between \$4 million and \$1 billion to comply with the federal numeric nutrient criteria.

Several parties, representing environment advocates, state and local governments, water utilities, wastewater, stormwater, agriculture, and fertilizer industries, have challenged the EPA-promulgated numeric nutrient rules in federal court. With the exception of the challenge filed by environmental groups, the complaints share a common theme; that the EPA's actions are arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law; in excess of statutory jurisdiction, authority, or limitations, or short of statutory authority; or without observance of procedures required by law.

This memorial urges the United States Congress to prevent the EPA from overextending its mandate and to direct the agency not to intrude into Florida's previously approved clean water program.

The House Memorial does not amend, create, or repeal any provisions of the Florida Statutes.

The House Memorial has no fiscal impact on state or local government.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### Background

In recognition of the need to more proactively address impairment of state waters due to nutrients, the Florida Department of Environmental Protection (DEP) implemented a detailed, United States Environmental Protection Agency (EPA) approved plan for the development of numeric nutrient criteria and recently discussed revisions to Chapter 62-302, FAC (Water Quality Standards) and Chapter 62-303, FAC (Impaired Waters Rule) to establish numeric nutrient criteria for lakes and streams. DEP selected the "dose-response" approach (investigating the effects of nutrients on biological communities) as the primary method for the development of scientifically defensible numeric nutrient criteria

This process required extensive methods development, staff training, and quality assurance oversight to ensure the defensibility of the resulting products. The elements of this development and assessment process to date include such components as habitat assessment for streams and lakes, benthic invertebrate indices for streams and lakes, a vegetation index for lakes, and a periphyton index for streams. These activities represent significant investments in staff time and contractual services, with recent and planned funding associated with nutrient criteria development in Florida totaling nearly \$20 million dollars.<sup>1</sup>

In 2002, the DEP submitted to the EPA its initial *DRAFT Numeric Nutrient Criteria Development Plan*. The DEP and the EPA reached mutual agreement on the Plan on July 7, 2004.<sup>2</sup> The DEP revised its Plan in September, 2007, to reflect an evolved strategy and technical approach, and again received agreement from the EPA on September 28, 2007.<sup>3</sup> From 2002 through 2009, the DEP conducted 22 meetings with a group of scientists and experts that formed the Nutrient Technical Advisory Committee (TAC). TAC experts came from a variety of backgrounds, including environmental groups, the EPA, environmental and economic consultants, and representatives from state and local governments.

While the approved plan called for adoption of the criteria by the end of 2010, DEP accelerated its efforts to adopt numeric nutrient criteria in response to the EPA's January 14, 2009, determination that numeric nutrient water quality criteria are necessary in Florida to implement the Clean Water Act (CWA).

#### The EPA is Sued over Florida's Narrative Criteria

On July 17, 2008, five environmental groups (the Florida Wildlife Federation, Sierra Club, Conservancy of Southwest Florida, Environmental Confederation of Southwest Florida, and St. Johns Riverkeeper) sued the EPA, alleging failure on the part of the federal agency to comply with the CWA. The EPA initially defended the suit and contested the plaintiffs' arguments. However, in an EPA internal memorandum from December, 2008, the writer warned that a judicial finding in favor of the plaintiffs could result in the EPA being required to promulgate numeric nutrient rules for the other 49 states. The internal memorandum

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<sup>1</sup> The DEP's *Florida Numeric Nutrient Criteria History and Status Summary*. This document, and other documentation of nutrient criteria study results, including statistical analyses and interpretation, are found at: <http://www.dep.state.fl.us/water/wqssp/nutrients/>

<sup>2</sup> The DEP's *Florida Numeric Nutrient Criteria History and Status Summary*. The DEP's approach conceptualized establishing ecological sub-regions as a starting point for regionalization efforts it saw as necessary to establish nutrient criteria.

<sup>3</sup> The DEP's 2007 Plan utilized EPA guidance and proposed the development of regional nutrient criteria for streams based upon the "reference site" approach to determine nutrient characteristics at minimally-disturbed, biologically healthy sites. The EPA's 2007 letter memorializing the mutual agreement with the DEP may be accessed here: <http://www.dep.state.fl.us/water/wqssp/nutrients/docs/epa-092807.pdf>



proposes a strategy to avoid this possibility: if the EPA issues a s. 303(c)(4)(B) necessity determination, that may be used as a basis to settle the lawsuit and request a dismissal from the court.<sup>4</sup>

On January 14, 2009, the EPA placed the DEP on formal notice that numerical criteria for nutrients were necessary for compliance with the CWA. This notice triggered a deadline of one year for the EPA to develop numeric nutrient criteria for Florida's surface waters and 24 months to develop numeric criteria for coastal waters, unless the state proposed criteria acceptable to the EPA before final promulgation. On August 19, 2009, the EPA entered into a consent decree to settle the lawsuit filed by the five environmental groups. The EPA committed to propose numeric nutrient standards for inland waters (lakes and flowing waters), as well as for estuarine and coastal waters, by certain dates.<sup>5</sup> The DEP did not formally submit numeric nutrient criteria to the EPA before the deadline.

In drafting the proposed rule, the EPA had the benefit of more than seven years of DEP data and analysis, DEP's nutrient plans, as well as technical support documentation. The DEP maintained contact with the EPA while the EPA formulated the proposed rule.

On January 14, 2010, EPA Administrator Lisa Jackson signed EPA's rule proposing numeric nutrient criteria for Florida's fresh waters. Ten months later, on November 14, 2010, Administrator Jackson signed the final rule adopting numeric nutrient criteria for Florida's fresh waters. On December 6, 2010, the EPA published its final administrative rule. Fifteen months from the publication date, the established numeric water quality standards for nutrients in Florida's inland lakes and flowing waters take effect.

### Comparison of the EPA's Final Rule and the DEP Plan

In general, the quantitative values promulgated by the EPA for lakes and streams are similar to those in the DEP's NNC Plan, and the value reached for springs is identical. In key areas related to implementation, however, there are significant differences in the two approaches. The DEP's multi-tiered approach (numerical criteria with follow-up biological assessment) was not adopted by the EPA. The DEP demonstrated that some water bodies with nutrient thresholds that exceed the value of undisturbed reference waters have healthy biota and do not need restoration. The DEP's intent was to have "biological confirmation" that nutrient concentrations above the numeric standard actually resulted in biological impairment of the water body.

The EPA also rejected the DEP's approach to protect downstream lake values by using the narrative criteria, and instead promulgated an equation to adjust in-stream total phosphorus criteria to protect downstream lakes. This will likely result in more stringent instream values. Additionally, the EPA did not accept Florida's existing nutrient Total Maximum Daily Loads (TMDLs) as meeting CWA Water Quality Standards (WQS) under the new rule, even though the TMDLs have already been approved by the EPA. As a result, the DEP must re-establish to the EPA that water bodies with approved TMDLs comply with provisions of the CWA.

### Cost of Compliance

The fiscal impact of the EPA's rule on industrial dischargers, municipal wastewater and urban stormwater facilities, agriculture, and the regulatory agencies is unclear. EPA-generated annualized cost estimates to achieve the numeric criteria (\$130-\$150 million) differ dramatically from estimates provided by the DEP (\$5.7 - \$8.4 billion). The difference in cost estimates is largely due to the different baselines utilized by the

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<sup>4</sup> Only 15 months earlier, the EPA agreed with Florida's methodology and plan to finalize numeric nutrient rules by the end of 2010. The DEP was not a party to the lawsuit, however, several groups representing utilities, local governments, and agriculture in the state intervened.

<sup>5</sup> The EPA numeric nutrient criteria for Florida's inland waters (except for south Florida) will be effective March 6, 2012. The EPA will propose numeric nutrient criteria for Florida's estuaries, flowing waters in south Florida (including canals), and the downstream protection values for flowing waters into estuaries on or before November 14, 2011. The deadline for promulgating a final rule is August 15, 2012.

two entities: the EPA based its cost estimates on the difference between the EPA criteria and the criteria in the draft DEP Plan.

A study commissioned by the Florida Water Environment Association Utility Council in November, 2010, estimates that wastewater utilities alone will spend between \$24 billion and \$51 billion in capital costs for additional wastewater treatment facilities and incur increases in annual operating costs between \$4 million and \$1 billion to comply with the federal numeric nutrient criteria. According to the commissioned study, the EPA's cost estimate inadequately accounted for existing baseline conditions, failed to address all direct costs, and did not consider all indirect costs to businesses and the public, including the costs of uncertainty.

If the EPA enforces "end-of-pipe" criteria (requiring all discharger effluent levels to be at or below the federally-promulgated standards), the total annual costs could range from \$3.1 to \$8.4 billion (based on the estimated fifth and ninety-fifth percentile of costs). Even if EPA enforces criteria to less strict BMPs and Limit of Technology standards in which effluent is not at or below the federal standard, then the annual costs could range from \$1.0 to \$3.2 billion (based on the estimated fifth and ninety-fifth percentile of costs in this scenario).

Because numeric nutrient criteria are water body-specific, the expected costs for compliance will be largely site-specific and contingent upon the level of impairment. The EPA only recently published guidance documents detailing how the rule is to be implemented and cost estimates have not yet been updated.

### Legal Challenges to the EPA's Final Rule

Several parties, representing environmental advocates, state and local governments, water utilities, wastewater, stormwater, agriculture, and fertilizer industries, have challenged the EPA-promulgated numeric nutrient rules in federal court.<sup>6</sup> With the exception of the challenge filed by environmental groups, the complaints share a common theme; that the EPA's actions are arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law; in excess of statutory jurisdiction, authority, or limitations, or short of statutory authority; or without observance of procedures required by law.<sup>7</sup> EarthJustice, representing the environmental groups, is challenging the portion of the Final Rule providing a watershed approach to Site Specific Alternative Criteria.

The legal challenges were filed in federal courts located in Tallahassee and in Pensacola, Florida. To date, the Pensacola cases were transferred to Tallahassee and may be consolidated. The EPA has not yet established which documents will comprise the administrative record for the case.

This memorial urges the United States Congress to prevent the EPA from overextending its mandate and to direct the agency not to intrude into Florida's previously approved clean water program.

Copies of the memorial are to be sent to the President of the United States, the President of the United States Senate, the Speaker of the United States House of Representatives and to each member of the Florida delegation to the United States Congress.

The legislation also includes whereas clauses in order to support the memorial. The whereas clauses include:

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<sup>6</sup> The State of Florida v. Jackson, Case No. 03:10-cv-503-RV-MD; The Mosaic Company, Inc., v. Jackson, Case No. 03:10-cv-506-RV-EMT; The Fertilizer Institute v. U.S. EPA, Case No. 03:10-cv-507-RS-MD; CF Industries, Inc., v. Jackson, Case No. 03:10-cv-513-MCR-MD; Destin Water Users, Inc., South Walton Utility Co., Inc., Emerald Coast Utilities Authority, City of Panama City, Okaloosa County Board of County Commissioners v. Jackson, Case No. 03:10-cv-532-MCR-EMT; Florida League of Cities, Inc., and Florida Stormwater Association, Inc., v. Lisa P. Jackson, Case No. 3:11-cv-11; Florida Pulp and Paper Association Environmental Affairs, Inc., Southeast Milk, Inc., and Florida Fruit and Vegetable Association v. Lisa Jackson, Case No. 3:11-cv-47-MCR/EMT; Florida Wildlife Federation v. EPA, Case No. 04:10-cv-511-SPM-WCS (filed prior to promulgation); Florida Wildlife Federation v. Jackson, Case No. 04:08-cv-324-RH-WCS (filed before the issuance of the Determination Letter).

<sup>7</sup> 5 U.S.C. s. 706(2)(A)(C) and (D).

WHEREAS, on December 7, 2010, the State of Florida filed a lawsuit against the United States Environmental Protection Agency over federal intrusion into Florida's clean water program, and

WHEREAS, the lawsuit alleges that the agency's action is inconsistent with the intent of Congress when it based the Clean Water Act on the idea of cooperative federalism whereby the states would be responsible for the control of water quality with oversight by the agency, and

WHEREAS, the control of nutrient loading from predominately nonpoint sources involves traditional states' rights and responsibilities for water and land resource management, which Congress expressly intended to preserve in the Clean Water Act, and

WHEREAS, the lawsuit specifically alleges that the agency's rule and its January 2009 necessity determination for adopting numeric nutrient water quality criteria for Florida's waters were arbitrary, capricious, and an abuse of discretion, and requests the court to enjoin the agency's administrator from implementing the numeric water quality criteria for Florida in the rule, and

WHEREAS, prior to the agency's announcement that it would be implementing new rules for Florida, the state had been diligently working through its Total Maximum Daily Load Program to adopt numeric standards for impaired bodies of water, and

WHEREAS, the agency had already approved Florida's Total Maximum Daily Load Program on the basis that it was sufficient to meet the requirements of the Clean Water Act, as referenced in a letter dated September 28, 2007, and

WHEREAS, as recently as January 2010, the agency praised Florida for implementing "some of the most progressive nutrient management strategies in the nation," and the Total Maximum Daily Load Program had a timetable for implementation through 2011, and

WHEREAS, despite the fact that Florida was working to implement its approved program and was seeing successes, the agency reversed its determinations in 2009 and informed the state that new federal rules and criteria would be developed and implemented by the agency, preempting the approved state program, and

WHEREAS, according to the state's lawsuit, the agency has continued to rely on a methodology that is neither scientifically sound nor cite specific for Florida's waters, and

WHEREAS, in April, the agency's own Science Advisory Board joined the Florida Department of Environmental Protection, the Florida Department of Agriculture and Consumer Services, the University of Florida's Institute of Food and Agricultural Sciences, the Florida Legislature, and others in expressing serious concerns that the agency's methods for developing numeric nutrient water quality criteria are scientifically flawed, and

WHEREAS, the State of Florida has significant concerns with regard to the cost of implementing the new numeric nutrient water quality criteria proposed by the agency...

## B. SECTION DIRECTORY:

### II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

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

##### 1. Revenues:

None

2. Expenditures:

None

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None

2. Expenditures:

None

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None

D. FISCAL COMMENTS:

None

**III. COMMENTS**

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not Applicable

2. Other:

None

B. RULE-MAKING AUTHORITY:

Not Applicable

C. DRAFTING ISSUES OR OTHER COMMENTS:

None

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

3/28/2011 – One technical amendment was passed correcting a misspelling. The word “cite” was replaced by “site”, on Line 50.

CS/HM 1401

2011

House Memorial

A memorial to the Congress of the United States, urging Congress to keep the United States Environmental Protection Agency from overextending its mandate and to direct the agency not to intrude into Florida's previously approved clean water program.

WHEREAS, on December 7, 2010, the State of Florida filed a lawsuit against the United States Environmental Protection Agency over federal intrusion into Florida's clean water program, and

WHEREAS, the lawsuit alleges that the agency's action is inconsistent with the intent of Congress when it based the Clean Water Act on the idea of cooperative federalism whereby the states would be responsible for the control of water quality with oversight by the agency, and

WHEREAS, the control of nutrient loading from predominately nonpoint sources involves traditional states' rights and responsibilities for water and land resource management, which Congress expressly intended to preserve in the Clean Water Act, and

WHEREAS, the lawsuit specifically alleges that the agency's rule and its January 2009 necessity determination for adopting numeric nutrient water quality criteria for Florida's waters were arbitrary, capricious, and an abuse of discretion, and requests the court to enjoin the agency's administrator from implementing the numeric water quality criteria for Florida in the rule, and

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 30 be implementing new rules for Florida, the state had been  
 31 diligently working through its Total Maximum Daily Load Program  
 32 to adopt numeric standards for impaired bodies of water, and

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 39 management strategies in the nation," and the Total Maximum  
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 43 implement its approved program and was seeing successes, the  
 44 agency reversed its determinations in 2009 and informed the  
 45 state that new federal rules and criteria would be developed and  
 46 implemented by the agency, preempting the approved state  
 47 program, and

48 WHEREAS, according to the state's lawsuit, the agency has  
 49 continued to rely on a methodology that is neither  
 50 scientifically sound nor site specific for Florida's waters, and

51 WHEREAS, in April, the agency's own Science Advisory Board  
 52 joined the Florida Department of Environmental Protection, the  
 53 Florida Department of Agriculture and Consumer Services, the  
 54 University of Florida's Institute of Food and Agricultural  
 55 Sciences, the Florida Legislature, and others in expressing  
 56 serious concerns that the agency's methods for developing

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57 | numeric nutrient water quality criteria are scientifically  
 58 | flawed, and

59 |       WHEREAS, the State of Florida has significant concerns with  
 60 | regard to the cost of implementing the new numeric nutrient  
 61 | water quality criteria proposed by the agency, NOW, THEREFORE,  
 62 |

63 | Be It Resolved by the Legislature of the State of Florida:  
 64 |

65 |       That the Congress of the United States is urged to keep the  
 66 | United States Environmental Protection Agency from overextending  
 67 | its mandate and to direct the agency not to intrude into  
 68 | Florida's previously approved clean water program.

69 |       BE IT FURTHER RESOLVED that copies of this memorial be  
 70 | dispatched to the President of the United States, to the  
 71 | President of the United States Senate, to the Speaker of the  
 72 | United States House of Representatives, and to each member of  
 73 | the Florida delegation to the United States Congress.





HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1435 911 Calls  
SPONSOR(S): Porter  
TIED BILLS: IDEN./SIM. BILLS:SB 1310

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) State Affairs Committee		Keating <i>CK</i>	Hamby <i>ZJQ</i>
2) Judiciary Committee			

SUMMARY ANALYSIS

Since 1973, Florida's state and local governments have been building and updating technology to support a 911 system that serves its citizens and visitors in emergency situations. In May 1997, the system achieved statewide implementation. The system was upgraded to Enhanced 911 (E911) services, which identifies callers' telephone numbers and addresses to local dispatchers, for wireline and landline calls in September 2005. In March 2008, the system was upgraded to E911 services for wireless calls. E911 service is available currently in all 67 counties.

State, county, and local government entities administer Florida's E911 system.

Current law provides a public records exemption for the name, address, telephone number, or personal information about, or information which may identify, any person requesting emergency service or reporting an emergency by accessing an emergency communications E911 system. Such information may be released only to a public safety agency.

Due to technological advances, more and more E911 recordings are accessible to the public via the Internet, radio, and television. The emergency often times is a very personal and traumatizing event. As such, some states have begun prohibiting the release of E911 recordings.

The bill prohibits a person from publishing or broadcasting, or allowing to be published or broadcast, a recording of a call to a telephone emergency service such as "911" if the call is either: (1) made by a minor; or (2) made by an adult, unless the voices of all persons on the recording are obscured or masked in a manner that makes those persons unidentifiable. The bill prohibits publication or broadcast through any means of mass communication, including, but not limited to, radio, television, and the Internet. The bill provides that violations of this prohibition shall constitute a misdemeanor of the second degree, punishable as provided in s. 775.082, F.S., or s. 775.083, F.S. The bill does not appear to create or expand a public records exemption.

According to the First Amendment Foundation, the bill may constitute an unconstitutional restraint under the First Amendment of the U.S. Constitution by prohibiting the mass publication or broadcast of recordings lawfully obtained as public records. However, the bill expressly provides that it may not be construed to abridge a person's protected rights under the First Amendment of the Constitution of the United States or s. 4, Art. I of the State Constitution. Thus, it appears to leave this determination to the courts.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### Present Situation

##### E911 System

Since 1973, Florida's state and local governments have been building and updating technology to support a 911 system that serves its citizens and visitors in emergency situations.<sup>1</sup> In May 1997, the system achieved statewide implementation. The system was upgraded to Enhanced 911 (E911) services, which identifies callers' telephone numbers and addresses to local dispatchers, for wireline and landline calls in September 2005. In March 2008, the system was upgraded to E911 services for wireless calls. E911 service is available currently in all 67 counties.<sup>2</sup>

Florida currently has 235 public safety answering points, also known as call centers, which receive emergency 911 calls. Staff in these call centers include call-takers, dispatchers, and dual call-taker/dispatchers. Call-takers answer calls and record necessary information such as the caller's name and the nature of the emergency, and relay this information to dispatchers who assess the information, determine the type of emergency response needed, and direct appropriate emergency services to respond to the call. In some call centers, call-taking and dispatch functions are performed by the same individual (dual call-taker/dispatcher).<sup>3</sup>

State, county, and local government entities administer Florida's E911 system.

The Department of Management Services coordinates the statewide system but has no authority to monitor emergency services. The department provides technical assistance to counties on technology standards and operational capabilities, helps design and implement new communications and data systems, and assists with staff training. The department also develops and updates a statewide emergency communications E911 system plan, which provides guidance to counties but permits them to design and maintain their own 911 systems and plans.<sup>4</sup> The department's statewide 911 coordinator reviews county plans and inspects call centers for compliance with the state plan.

##### E911 Board

The E911 Board was established by the Legislature in 2007 to administer the Emergency Communications Number E911 System Fund (E911 Trust Fund),<sup>5</sup> which is the main funding source for 911 communications in the state.<sup>6</sup> The board consists of nine members, including the Department of Management Services' E911 system director, who is designated by the Secretary of the Department of Management Services and serves as chair.<sup>7</sup> With oversight by the department, the board administers

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<sup>1</sup> Section 365.171, F.S., also known as the Florida Emergency Communications Number E911 State Plan Act, required the Technology program within the Department of Management Services to develop, maintain, and implement appropriate modifications for a statewide emergency communications E911 system plan.

<sup>2</sup> Office of Program Policy Analysis & Government Accountability Report No. 10-12, *911 Call Center Training in Florida Varies; Options Exist for Creating Minimum Standards*, January 2010, at 1 and 2.

<sup>3</sup> *Id.* at 2.

<sup>4</sup> Section 365.171(4), F.S.

<sup>5</sup> Section 365.172(5)(a), F.S.

<sup>6</sup> The E911 Trust Fund is derived from a monthly fee (not to exceed 50 cents) on each wireless and non-wireless voice communication subscriber with a Florida billing address. The E911 Board makes disbursements from the E911 Trust Fund for wireless service provider E911 deployment and services, county E911 funding for equipment and services, rural county grants, E911 state grants, and E911 Board administration and operations.

<sup>7</sup> Pursuant to s. 365.172(5)(b), F.S., the Governor appoints the remaining eight members: four county coordinators from a large, medium, and rural county and an at-large representative recommended by the Florida Association of Counties, two local exchange carrier members, and two members from the wireless telecommunications industry.

the fund and disburses revenues to the department, wireless providers, and counties for specific authorized expenses.

### Boards of County Commissioners

Boards of County Commissioners are the responsible fiscal agent and ultimate authority for 911 services in each county. Each board designates a county 911 coordinator who serves as a point of contact for local call centers, reports on system status, and submits the county 911 plan to the department. These plans describe county 911 system infrastructure and staffing for each call center. Call centers are operated typically by city police departments and county sheriffs' offices. Call centers may establish their own training protocols and quality assurance measures.<sup>8</sup>

### Public Record Exemption for the E911 System

Current law provides that

[a]ny record, recording, or information, or portions thereof, obtained by a public agency<sup>9</sup> or a public safety agency<sup>10</sup> for the purpose of providing services in an emergency and which reveals the name, address, telephone number, or personal information about, or information which may identify any person requesting emergency service or reporting an emergency by accessing an emergency communications E911 system is confidential and exempt<sup>11</sup> from the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution . . . .<sup>12</sup>

In short, the name, address, telephone number, or personal information about, or information that may identify, any person requesting emergency services or reporting an emergency is confidential and exempt from public records requirements. Such information may be released only to a public safety agency.<sup>13</sup>

Due to technological advances, more and more E911 recordings are accessible to the public via the Internet, radio, and television. E911 recordings provide the listener with an eyewitness account of the emergency at hand. The emergency often times is a very personal and traumatizing event. As such, some states have begun prohibiting the release of E911 recordings.

### Protections in Other States

In Maine, the audio recording of a call placed to a 911 system for the purpose of requesting service from a law enforcement, fire, or medical agency is deemed private data on individuals with respect to the individual making the call. However, a written transcript of the audio recording is considered public except for certain circumstances. A transcript is prepared upon request, and the person requesting the

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<sup>8</sup> Office of Program Policy Analysis & Government Accountability Report No. 10-12, *911 Call Center Training in Florida Varies; Options Exist for Creating Minimum Standards*, January 2010, at 2.

<sup>9</sup> Section 365.171(3)(c), F.S., defines "public agency" to mean the state and any city, county, city and county, municipal corporation, chartered organization, public district, or public authority located in whole or in part within this state which provides, or has authority to provide, firefighting, law enforcement, ambulance, medical, or other emergency services.

<sup>10</sup> Section 365.171(3)(d), F.S., defines "public safety agency" to mean a functional division of a public agency which provides firefighting, law enforcement, medical, or other emergency services.

<sup>11</sup> There is a difference between records the Legislature designates as exempt from public record requirements and those the Legislature deems confidential and exempt. A record classified as exempt from public disclosure may be disclosed under certain circumstances. See *WFTV, Inc. v. The School Board of Seminole*, 874 So.2d 48, 53 (Fla. 5th DCA 2004), review denied 892 So.2d 1015 (Fla. 2004); *City of Riviera Beach v. Barfield*, 642 So.2d 1135 (Fla. 4th DCA 1994); *Williams v. City of Minneola*, 575 So.2d 687 (Fla. 5th DCA 1991) If the Legislature designates a record as confidential and exempt from public disclosure, such record may not be released by the custodian of public records to anyone other than the persons or entities specifically designated in the statutory exemption. (See Attorney General Opinion 85-62, August 1, 1985).

<sup>12</sup> Section 365.171(12), F.S.

<sup>13</sup> *Id.*

transcript is required to pay the actual cost of transcribing the call, in addition to any other applicable costs.<sup>14</sup>

Mississippi provides that all emergency telephone calls and telephone call transmissions and all recordings of such calls are confidential. The recordings may be used only for purposes as may be needed for law enforcement, fire, medical rescue, or other emergency services.<sup>15</sup>

In Pennsylvania, “[r]ecords or parts of records . . . pertaining to audio recordings, telephone or radio transmissions received by emergency dispatch personnel, including 911 recordings” are not a public record. However, an agency or a court may release 911 recordings if it determines the public interest in disclosure outweighs the interest in nondisclosure.<sup>16</sup> South Dakota has similar protections and release standards as those in Pennsylvania.<sup>17</sup>

Rhode Island provides that all 911 telephone calls and telephone call transmissions and all tapes containing records of 911 telephone calls are confidential.<sup>18</sup>

### **Effect of Proposed Changes**

The bill prohibits a person from publishing or broadcasting, or allowing to be published or broadcast, a recording of a call to a telephone emergency service such as “911” if the call is either: (1) made by a minor; or (2) made by an adult, unless the voices of all persons on the recording are obscured or masked in a manner that makes those persons unidentifiable. The bill prohibits publication or broadcast through any means of mass communication, including, but not limited to, radio, television, and the Internet.

The bill provides that violations of this prohibition shall constitute a misdemeanor of the second degree, punishable as provided in s. 775.082, F.S., or s. 775.083, F.S.<sup>19</sup>

The bill states that it may not be construed to abridge the rights of any person that are protected by the First Amendment of the Constitution of the United States or s. 4, Art. I of the State Constitution.<sup>20</sup>

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

**Section 1.** Creates an undesignated section of law related to publishing or prohibiting certain recording of 911 calls.

**Section 2.** Provides an effective date.

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

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

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

None.

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<sup>14</sup> Minn. Stat. s. 13.82.

<sup>15</sup> Miss. Code s. 19-5-319.

<sup>16</sup> 65 P.S. s. 67.708.

<sup>17</sup> S.D. Cod. Laws s. 1-27-1.5.

<sup>18</sup> R.I. Gen. Laws s. 39-21.1-17.

<sup>19</sup> Section 775.082, F.S., provides for sentencing of up to 60 days imprisonment for conviction for a second degree misdemeanor. Section 775.083, F.S., provides for a fine of up to \$500 for conviction for a second degree misdemeanor.

<sup>20</sup> Section 4, Article I of the State Constitution provides:

Freedom of speech and press.—Every person may speak, write and publish sentiments on all subjects but shall be responsible for the abuse of that right. No law shall be passed to restrain or abridge the liberty of speech or of the press. In all criminal prosecutions and civil actions for defamation the truth may be given in evidence. If the matter charged as defamatory is true and was published with good motives, the party shall be acquitted or exonerated.

2. Expenditures:

Law enforcement and the judicial system may incur costs associated with the interpretation and enforcement of the bill's provisions and the adjudication of violations of the bill's provisions.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

Law enforcement and the judicial system may incur costs associated with the interpretation and enforcement of the bill's provisions and the adjudication of violations of the bill's provisions.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Private sector publishers and broadcasters may incur costs associated with obscuring or masking adult voices on 911 recordings that are published or broadcast through means of mass communications.

D. FISCAL COMMENTS:

None.

### III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

The bill does not appear to create or expand a public records exemption. Current law provides an exemption for a recording or portions thereof that reveal the name, address, telephone number, or personal information about, or information that may identify, any person requesting emergency services or reporting an emergency.

According to the First Amendment Foundation, the bill may constitute an unconstitutional restraint under the First Amendment of the U.S. Constitution by prohibiting the mass publication or broadcast of recordings lawfully obtained as public records. However, the bill expressly provides that it may not be construed to abridge a person's protected rights under the First Amendment of the Constitution of the United States or s. 4, Art. I of the State Constitution. Thus, it appears to leave this determination to the courts.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

#### IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

1                                   A bill to be entitled  
 2       An act relating to 911 calls; prohibiting the publication  
 3       or broadcast of recordings of calls to 911 emergency  
 4       services made by minors; prohibiting the publication or  
 5       broadcast of recordings of such calls made by adults  
 6       unless the voices of all persons recorded are obscured or  
 7       masked so as to render the persons recorded  
 8       unidentifiable; providing construction; providing criminal  
 9       penalties; providing an effective date.

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

12  
 13       Section 1. Publishing or broadcasting certain recordings  
 14 of 911 calls.—

15       (1) A person may not publish or broadcast, or cause or  
 16 allow to be published or broadcast, through any means of mass  
 17 communication, including, but not limited to, radio, television,  
 18 and the Internet, a recording of a call to a telephone emergency  
 19 service such as "911":

20       (a) Made by a minor.

21       (b) Made by an adult unless the voices of all persons  
 22 recorded are obscured or masked so as to render the persons  
 23 recorded unidentifiable.

24       (2) This section may not be construed to abridge the  
 25 rights of any person that are protected by the First Amendment  
 26 to the Constitution of the United States or s. 4, Art. I of the  
 27 State Constitution.

28       (3) Any person who violates this section commits a

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29 | misdemeanor of the second degree, punishable as provided in s.  
30 | 775.082 or s. 775.083, Florida Statutes.

31 | Section 2. This act shall take effect October 1, 2011.



COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 1435 (2011)

Amendment No.

COMMITTEE/SUBCOMMITTEE ACTION

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

1 Committee/Subcommittee hearing bill: State Affairs Committee  
2 Representative(s) Kriseman offered the following:

3  
4 **Amendment (with title amendment)**

5 Remove lines 19-23 and insert:

6 service such as "911" made by a minor, unless the name and  
7 address of the minor is obscured or masked so as to render the  
8 minor unidentifiable.

9  
10  
11 -----  
12 **T I T L E A M E N D M E N T**

13 Remove lines 4-7 and insert:

14 services made by a minor unless the name and address of the  
15 minor is obscured or masked so as to render the minor





HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1479 Land Application of Septage

SPONSOR(S): Coley

TIED BILLS: None IDEN./SIM. BILLS: None

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Agriculture & Natural Resources Subcommittee	10 Y, 5 N	Deslatte	Blalock
2) State Affairs Committee		Deslatte 	Hamby 

SUMMARY ANALYSIS

During the 2010 session, SB 550 was passed by the Legislature and signed into law by the Governor. The bill contained a number of provisions relating to onsite sewage treatment and disposal systems. The bill created a statewide septic tank evaluation program and required the Department of Health (DOH) to undertake rulemaking and implement the first phase of the evaluation program by January 1, 2011, with full statewide implementation by January 1, 2016. During the 2010 special session, the Legislature extended the implementation date to July 1, 2011. The bill also prohibited the land application of septage from onsite sewage treatment and disposal systems by January 1, 2016. In addition, the bill required that the DOH, in consultation with the Department of Environmental Protection (DEP), provide a report to the Governor, the President of the Senate, and the Speaker of the House of Representatives, recommending alternative methods to establish enhanced treatment levels for the land application of septage from onsite sewage and disposal systems by February 1, 2011.

The bill repeals the prohibition on the land application of septage from septic tank pumpouts that goes into effect on January 1, 2016, and the requirement that DOH provide a report recommending alternative methods to establish enhanced treatment levels for the land application of septage from onsite sewage and disposal systems by February 1, 2011.

The bill has a positive fiscal impact on the DOH. The DOH currently has 92 land application sites permitted, with an annual fee of \$200 per site. Total revenue to the DOH for permitting these sites is \$18,400. Repealing the ban on land application of septage would allow the DOH to continue its current permitting program for these sites. The bill does not have a fiscal impact on local governments.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### Current Situation

During the 2010 session, SB 550 was passed by the Legislature and signed into law by the Governor. The bill contained a number of provisions relating to onsite sewage treatment and disposal systems. The bill created a statewide septic tank evaluation program and required the Department of Health (DOH) to undertake rulemaking and implement the first phase of the evaluation program by January 1, 2011, with full statewide implementation by January 1, 2016. During the 2010 special session, the Legislature extended the implementation date to July 1, 2011. The bill also prohibited the land application of septage from onsite sewage treatment and disposal systems by January 1, 2016. In addition, the bill required that the DOH, in consultation with the Department of Environmental Protection (DEP), provide a report to the Governor, the President of the Senate, and the Speaker of the House of Representatives, recommending alternative methods to establish enhanced treatment levels for the land application of septage from onsite sewage and disposal systems by February 1, 2011.

##### \* Effect of Proposed Changes

The bill repeals the prohibition on the land application of septage from septic tank pumpouts that goes into effect on January 1, 2016, and the requirement that DOH provide a report recommending alternative methods to establish enhanced treatment levels for the land application of septage from onsite sewage and disposal systems by February 1, 2011.

#### B. SECTION DIRECTORY:

**Section 1.** Amends s. 381.0065, F.S., terminating the future imposition of the prohibition of the land application of septage from onsite sewage treatment and disposal systems.

**Section 2.** Providing an effective date.

### II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

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

##### 1. Revenues:

The bill appears to have a positive fiscal impact on state government revenues (See Fiscal Comments Section).

##### 2. Expenditures:

None

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

##### 1. Revenues:

None

##### 2. Expenditures:

None

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

According to the DOH analysis, land application of septage provides an additional alternative for disposal. With the termination of the ban on land application of septage, septic tank pumpers/septage haulers can continue business as usual. Without the termination of the ban on land application of septage, these businesses would, over the next five years, have had to find approved municipal wastewater treatment plants or biosolids receiving facilities that accept septage at a typically higher cost than land application due to driving distance and fees for disposal. These costs would also result in higher pumpout costs to people that own septic tanks.

**D. FISCAL COMMENTS:**

According to the DOH analysis, repeal of the termination on land application of septage allows the DOH to continue its current permitting program for these sites. DOH currently has 92 land application sites permitted, with an annual fee of \$200 per site. Total revenue to the DOH for permitting these sites is \$18,400.

**III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

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

Not Applicable. This bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditures of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

**2. Other:**

None

**B. RULE-MAKING AUTHORITY:**

None

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

None

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

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1 A bill to be entitled  
 2 An act relating to the land application of septage;  
 3 amending s. 381.0065, F.S.; terminating the future  
 4 imposition of the prohibition of the land application of  
 5 septage from onsite sewage treatment and disposal systems;  
 6 providing an effective date.

7  
 8 Be It Enacted by the Legislature of the State of Florida:  
 9

10 Section 1. Subsection (7) of section 381.0065, Florida  
 11 Statutes, is amended to read:

12 381.0065 Onsite sewage treatment and disposal systems;  
 13 regulation.—

14 ~~(7) LAND APPLICATION OF SEPTAGE PROHIBITED. Effective~~  
 15 ~~January 1, 2016, the land application of septage from onsite~~  
 16 ~~sewage treatment and disposal systems is prohibited. By February~~  
 17 ~~1, 2011, the department, in consultation with the Department of~~  
 18 ~~Environmental Protection, shall provide a report to the~~  
 19 ~~Governor, the President of the Senate, and the Speaker of the~~  
 20 ~~House of Representatives, recommending alternative methods to~~  
 21 ~~establish enhanced treatment levels for the land application of~~  
 22 ~~septage from onsite sewage and disposal systems. The report~~  
 23 ~~shall include, but is not limited to, a schedule for the~~  
 24 ~~reduction in land application, appropriate treatment levels,~~  
 25 ~~alternative methods for treatment and disposal, enhanced~~  
 26 ~~application site permitting requirements including any~~  
 27 ~~requirements for nutrient management plans, and the range of~~  
 28 ~~costs to local governments, affected businesses, and individuals~~

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29 ~~for alternative treatment and disposal methods. The report shall~~  
30 ~~also include any recommendations for legislation or rule~~  
31 ~~authority needed to reduce land application of septage.~~

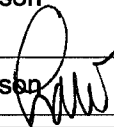
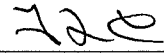
32       Section 2. This act shall take effect July 1, 2011.





**HOUSE OF REPRESENTATIVES STAFF ANALYSIS**

**BILL #:** HB 7085      PCB GVOPS 11-05      OGSR/Court Monitors in Guardianship Proceedings  
**SPONSOR(S):** Government Operations Subcommittee, Young  
**TIED BILLS:**            **IDEN./SIM. BILLS:** SB 568

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Government Operations Subcommittee	13 Y, 0 N	Williamson	Williamson
1) State Affairs Committee		Williamson 	Hamby 

**SUMMARY ANALYSIS**

The Open Government Sunset Review Act requires the Legislature to review each public record and each public meeting exemption five years after enactment. If the Legislature does not reenact the exemption, it automatically repeals on October 2nd of the fifth year after enactment.

A court monitor or an emergency court monitor may be appointed by a court upon inquiry by an interested person or upon its own motion. A monitor has the authority to investigate, seek information, examine documents, and interview the ward. The monitor must report his or her findings to the court. A monitor may receive a reasonable fee as determined by the court and paid from the property of the ward.

Current law provides public record exemptions for certain judicial records relating to court monitors in guardianship proceedings. The order of any court appointing a court monitor is confidential and exempt from public records requirements and an order appointing a court monitor on an emergency basis is exempt only. Reports of a court monitor or an emergency court monitor relating to the medical condition, financial affairs, or mental health of the ward are confidential and exempt from public records requirements. Such reports may be available for inspection as determined by a court or upon a showing of good cause. The public record exemptions expire if a court makes a finding of probable cause; however, information otherwise made confidential or exempt retains its status. Court determinations relating to a finding of no probable cause and court orders finding no probable cause in the nonemergency and emergency court monitor contexts also are confidential and exempt from public records requirements. However, the court may allow access upon a showing of good cause.

The bill reenacts and reorganizes the public record exemptions, which will repeal on October 2, 2011, if this bill does not become law. The bill removes the confidential status of court orders appointing nonemergency court monitors for consistency while retaining the exempt status of such orders. It also removes reference to "court determination relating to a finding of no probable cause" with regards to determinations and orders finding no probable cause. This reference is removed because, in practice, the probable cause determination is contained in a written order included in the guardianship file. In essence, it simplifies the exemption by clearly stating any order finding no probable cause is confidential and exempt from public records requirements.

The bill does not appear to have a fiscal impact on state or local governments.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### **Background**

##### Open Government Sunset Review Act

The Open Government Sunset Review Act<sup>1</sup> sets forth a legislative review process for newly created or substantially amended public record or public meeting exemptions. It requires an automatic repeal of the exemption on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.

The Act provides that a public record or public meeting exemption may be created or maintained only if it serves an identifiable public purpose. In addition, it may be no broader than is necessary to meet one of the following purposes:

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

If, and only if, in reenacting an exemption that will repeal, the exemption is expanded (essentially creating a new exemption), then a public necessity statement and a two-thirds vote for passage are required.<sup>2</sup> If the exemption is reenacted with grammatical or stylistic changes that do not expand the exemption, if the exemption is narrowed, or if an exception to the exemption is created<sup>3</sup> then a public necessity statement and a two-thirds vote for passage are not required.

##### Court Records

Florida courts have consistently held that the judiciary is not an "agency" for purposes of the Public Records Act.<sup>4,5</sup> The Florida Supreme Court, however, has found that "both civil and criminal proceedings in Florida are public events" and that it will "adhere to the well established common law right of access to court proceedings and records."<sup>6</sup> Furthermore, there is a constitutional guarantee of access to judicial records established in the Florida Constitution.<sup>7</sup> The constitutional provision provides for public access to judicial records, except for those records expressly exempted by the State Constitution, Florida law in effect on July 1, 1993, court rules in effect on November 3, 1992, or by future acts of the Legislature in accordance with the Constitution.<sup>8</sup>

##### Guardianship

The intent of the Florida Guardianship Law<sup>9</sup> is to provide the least restrictive form of guardianship necessary to provide assistance to a person who is not fully capable of taking care of his or her own needs.<sup>10</sup>

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<sup>1</sup> Section 119.15, F.S.

<sup>2</sup> Section 24(c), Art. I of the State Constitution.

<sup>3</sup> An example of an exception to a public record exemption would be allowing another agency access to confidential or exempt records.

<sup>4</sup> Chapter 119, F.S.

<sup>5</sup> *Times Publishing Co. v. Ake*, 660 So. 2d 255 (Fla. 1995) (holding that the judiciary, as a coequal branch of government, is not an "agency" subject to control by another coequal branch of government).

<sup>6</sup> *Barron v. Florida Freedom Newspapers*, 531 So. 2d 113, 116 (Fla. 1988).

<sup>7</sup> Section 24(a), Art. I of the State Constitution.

<sup>8</sup> Section 24(c) and (d), Art. I of the State Constitution.

<sup>9</sup> Chapter 744, F.S.

<sup>10</sup> Section 744.1012, F.S.

Any person may file, under oath, a petition for determination of incapacity alleging that a person is incapacitated.<sup>11</sup> Within five days after a petition for determination of incapacity has been filed, a court must appoint an examining committee comprised of three health care professionals to examine and report the condition of the alleged incapacitated person.<sup>12</sup> If a majority of the examining committee members determine the alleged incapacitated person is not incapacitated, the court must dismiss the petition for determination of incapacity.<sup>13</sup> If a majority of the members determine the alleged incapacitated person is incapacitated, the court must hold a hearing on the petition. If, after a hearing, the court determines a person is incapacitated, the court also must find that alternatives to guardianship were considered and that no alternatives to guardianship sufficiently address the problems of the incapacitated person and appoint a guardian.<sup>14</sup>

#### Authority of a Guardian

An order appointing a guardian must state the nature of the guardianship as either plenary<sup>15</sup> or limited.<sup>16</sup> If the nature is limited, the order must state that the guardian may exercise only those delegable rights that have been removed from the incapacitated person and specifically delegated to the guardian. Finally, the order must state the specific powers and duties of the guardian.<sup>17</sup>

The order must preserve an incapacitated person's right to make decisions to the extent that he or she is able to do so.<sup>18</sup> A guardian is empowered with the authority to protect the assets of the ward and to use the ward's property to provide for his or her care. Some of the powers of the guardian may be exercised only with court approval.<sup>19</sup>

#### Court Monitoring in Guardianship Cases

##### *Nonemergency Court Monitors*

A court monitor may be appointed by a court upon inquiry by an interested person or upon its own motion. A family member or any person with a personal interest in the proceedings may not serve as a court monitor. The order appointing the monitor must be served upon the guardian, the ward, and any other person determined by the court.<sup>20</sup>

A court monitor has the authority to investigate, seek information, examine documents, and interview the ward. The court monitor must report his or her findings to the court.<sup>21</sup> If it appears from the monitor's report that further action by the court is necessary to protect the ward's interests, the court must hold a hearing with notice and enter any order necessary to protect the ward.<sup>22</sup> A monitor may receive a reasonable fee as determined by the court and paid from the property of the ward. If the court determines that a motion to appoint a court monitor was made in bad faith, the court may assess the costs of the proceeding, including attorney's fees, against the movant.<sup>23</sup>

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<sup>11</sup> Section 744.331(1), F.S.

<sup>12</sup> Section 744.331(3), F.S.

<sup>13</sup> Section 744.331(4), F.S.

<sup>14</sup> See s. 744.331(6)(b) and (f), F.S.

<sup>15</sup> Section 744.102(9)(b), F.S., defines "plenary guardian" to mean "a person who has been appointed by the court to exercise all delegable legal rights and powers of the ward after the court has found that the ward lacks the capacity to perform all of the tasks necessary to care for his or her person or property."

<sup>16</sup> Section 744.102(9)(a), F.S., defines "limited guardian" to mean "a guardian who has been appointed by the court to exercise the legal rights and powers specifically designated by court order entered after the court has found that the ward lacks the capacity to do some, but not all, of the tasks necessary to care for his or her person or property, or after the person has voluntarily petitioned for appointment of a limited guardian."

<sup>17</sup> Section 744.344(1), F.S.

<sup>18</sup> Section 744.344(2), F.S.

<sup>19</sup> Section 744.441, F.S.

<sup>20</sup> Section 744.107(1), F.S.

<sup>21</sup> Section 744.107(2), F.S.

<sup>22</sup> Section 744.107(3), F.S.

<sup>23</sup> Section 744.107(4), F.S.

### Emergency Court Monitors

Upon inquiry of an interested person or upon its own motion, the court may appoint a court monitor on an emergency basis without providing notice to the guardian, the ward, or other interested parties. The court must specifically find that:

- There appears to be imminent danger that the physical or mental health or safety of the ward will be seriously impaired; or
- The ward's property is in danger of being wasted, misappropriated, or lost unless immediate action is taken.<sup>24</sup>

The authority of a court monitor appointed on an emergency basis expires 60 days after the date of appointment or upon a finding of no probable cause, whichever occurs first. However, the authority of such monitor may be extended for an additional 30 days upon a showing that the emergency conditions still exist.<sup>25</sup>

Within 15 days after the entry of the order appointing a court monitor on an emergency basis, such monitor must file his or her report<sup>26</sup> of findings and recommendations to the court.<sup>27</sup> The court reviews the report and determines whether there is probable cause to take further action to protect the ward or property of the ward.<sup>28</sup> If the court finds probable cause, it must issue an order to show cause to the guardian or other respondent including the specific facts constituting the conduct charged and requiring the respondent to appear before the court to address the allegations.<sup>29</sup> Following the hearing on the order to show cause, the court may impose sanctions on the respondent and take any other action necessary to protect the ward.<sup>30</sup>

An emergency court monitor may receive a reasonable fee as determined by the court and paid from the property of the ward.<sup>31</sup> If the court determines that a motion to appoint an emergency court monitor was made in bad faith, the court may assess the costs of the proceeding, including attorney's fees, against the movant.<sup>32</sup>

### Public Record Exemption under Review

Current law provides public record exemptions for certain judicial records related to court monitors in guardianship proceedings.<sup>33</sup>

The order of any court appointing a court monitor is confidential and exempt<sup>34</sup> from public records requirements<sup>35</sup> while an order appointing a court monitor on an emergency basis is exempt only.<sup>36</sup> Reports of a court monitor or an emergency court monitor relating to the medical condition, financial affairs, or mental health of the ward are confidential and exempt from public records requirements.<sup>37</sup> Such reports may be available for inspection as determined by a court or upon a showing of good

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<sup>24</sup> Section 744.1075(1)(a), F.S.

<sup>25</sup> Section 744.1075(1)(b), F.S.

<sup>26</sup> The report must be verified and may be supported by documents or other evidence.

<sup>27</sup> Section 744.1075(2), F.S.

<sup>28</sup> Section 744.1075(3), F.S.

<sup>29</sup> Section 744.1075(4)(a), F.S.

<sup>30</sup> Section 744.1075(4)(c), F.S.

<sup>31</sup> No full-time state, county, or municipal employee or officer may be paid a fee for services as an emergency court monitor.

<sup>32</sup> Section 744.1075(5), F.S.

<sup>33</sup> Chapter 2006-129, L.O.F.; codified as s. 744.1076, F.S.

<sup>34</sup> There is a difference between records the Legislature designates as exempt from public record requirements and those the Legislature deems confidential and exempt. A record classified as exempt from public disclosure may be disclosed under certain circumstances. (See *WFTV, Inc. v. The School Board of Seminole*, 874 So.2d 48, 53 (Fla. 5th DCA 2004), review denied 892 So.2d 1015 (Fla. 2004); *City of Riviera Beach v. Barfield*, 642 So.2d 1135 (Fla. 4th DCA 1994); *Williams v. City of Minneola*, 575 So.2d 687 (Fla. 5th DCA 1991). If the Legislature designates a record as confidential and exempt from public disclosure, such record may not be released, by the custodian of public records, to anyone other than the persons or entities specifically designated in the statutory exemption. (See Attorney General Opinion 85-62, August 1, 1985).

<sup>35</sup> Section 744.1076(1)(a), F.S.

<sup>36</sup> Section 744.1076(2)(a), F.S.

<sup>37</sup> Section 744.1076(1)(b) and (2)(b), F.S.

cause.<sup>38</sup> The public record exemptions expire if a court makes a finding of probable cause; however, information otherwise made confidential or exempt retains its status.<sup>39</sup>

Court determinations relating to a finding of no probable cause and court orders finding no probable cause in the nonemergency and emergency court monitor contexts also are confidential and exempt from public records requirements. However, the court may allow access upon a showing of good cause.<sup>40</sup>

Pursuant to the Open Government Sunset Review Act, the exemptions will repeal on October 2, 2011, unless reenacted by the Legislature.<sup>41</sup>

### **Effect of Bill**

The bill removes the repeal date, thereby reenacting the public record exemptions. It reorganizes the section to group like provisions.

The bill removes the confidential status of court orders appointing nonemergency court monitors for consistency while retaining the exempt status of such orders. The change also allows nonemergency court monitors to share the order with others, as necessary, to aid in the monitor's investigation.

The bill removes reference to "court determination relating to a finding of no probable cause" with regards to determinations and orders finding no probable cause. This reference is removed because, in practice, the probable cause determination is contained in a written order included in the guardianship file. In essence, the bill simplifies the exemption by clearly stating any order finding no probable cause is confidential and exempt from public records requirements.

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

Section 1 amends s. 744.1076, F.S., to reenact the public record exemptions for court records relating to court monitors in guardianship proceedings.

Section 2 provides an effective date of October 1, 2011.

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

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

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

None.

#### **2. Expenditures:**

None.

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

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

None.

#### **2. Expenditures:**

None.

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<sup>38</sup> *Id.*

<sup>39</sup> Section 744.1076(1)(c) and (2)(c), F.S.

<sup>40</sup> Section 744.1076(3), F.S.

<sup>41</sup> Section 744.1076(4), F.S.

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

None.

**D. FISCAL COMMENTS:**

None.

**III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

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

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

**2. Other:**

None.

**B. RULE-MAKING AUTHORITY:**

None.

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

None.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

None.

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1                                   A bill to be entitled  
 2           An act relating to a review under the Open Government  
 3           Sunset Review Act; amending s. 744.1076, F.S., relating to  
 4           public record exemptions for court records relating to  
 5           court monitors in guardianship proceedings; consolidating  
 6           provisions; providing that orders appointing nonemergency  
 7           court monitors are exempt rather than confidential and  
 8           exempt; providing that only court orders finding no  
 9           probable cause are confidential and exempt; removing the  
 10          scheduled repeal of the exemption; providing an effective  
 11          date.

12  
 13   Be It Enacted by the Legislature of the State of Florida:

14  
 15          Section 1. Section 744.1076, Florida Statutes, is amended  
 16          to read:

17          744.1076 Court orders appointing court monitors and  
 18          emergency court monitors; reports of court monitors; orders  
 19          finding findings ~~of~~ no probable cause; public records  
 20          exemptions.-

21          (1) (a) The order of any court appointing a court monitor  
 22          pursuant to s. 744.107 or an emergency court monitor pursuant to  
 23          s. 744.1075 is ~~confidential and~~ exempt from ~~s. 119.07(1) and s.~~  
 24          24(a), Art. I of the State Constitution.

25          (b) The reports of an appointed court monitor or emergency  
 26          court monitor relating to the medical condition, financial  
 27          affairs, or mental health of the ward ~~that are required pursuant~~  
 28          to ~~s. 744.107~~ are confidential and exempt from ~~s. 119.07(1) and~~

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29 s. 24(a), Art. I of the State Constitution. Such reports may be  
 30 subject to inspection as determined by the court or upon a  
 31 showing of good cause.

32 (c) The public records exemptions provided in this  
 33 subsection expire if a court makes a finding of probable cause,  
 34 except that information otherwise made confidential or exempt  
 35 shall retain its confidential or exempt status.

36 ~~(2)(a) The order of any court appointing a court monitor~~  
 37 ~~on an emergency basis pursuant to s. 744.1075 is exempt from s.~~  
 38 ~~119.07(1) and s. 24(a), Art. I of the State Constitution.~~

39 ~~(b) The reports of a court monitor appointed on an~~  
 40 ~~emergency basis relating to the medical condition, financial~~  
 41 ~~affairs, or mental health of the ward that are required pursuant~~  
 42 ~~to s. 744.1075 are confidential and exempt from s. 119.07(1) and~~  
 43 ~~s. 24(a), Art. I of the State Constitution. Such reports may be~~  
 44 ~~subject to inspection as determined by the court or upon a~~  
 45 ~~showing of good cause.~~

46 ~~(c) The public records exemptions provided in this~~  
 47 ~~subsection expire if a court makes a finding of probable cause,~~  
 48 ~~except that information otherwise made confidential or exempt~~  
 49 ~~shall retain its confidential or exempt status.~~

50 (2)(3) Court determinations relating to a finding of no  
 51 probable cause and Court orders finding no probable cause  
 52 pursuant to s. 744.107 or s. 744.1075 are confidential and  
 53 exempt from ~~s. 119.07(1) and s. 24(a), Art. I of the State~~  
 54 ~~Constitution; however, such orders ~~determinations and findings~~~~  
 55 may be subject to inspection as determined by the court or upon  
 56 a showing of good cause.



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57 | ~~(4) This section is subject to the Open Government Sunset~~  
 58 | ~~Review Act in accordance with s. 119.15 and shall stand repealed~~  
 59 | ~~on October 2, 2011, unless reviewed and saved from repeal~~  
 60 | ~~through reenactment by the Legislature.~~

61 | Section 2. This act shall take effect October 1, 2011.



HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HM 7153 PCB FAS 11-02 Qualifying Improvements to Real Property

SPONSOR(S): Federal Affairs Subcommittee, Plakon

TIED BILLS: IDEN./SIM. BILLS:

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Federal Affairs Subcommittee	10 Y, 2 N	Cyphers	Cyphers
1) State Affairs Committee		Cyphers <i>me</i>	Hamby <i>me</i>

SUMMARY ANALYSIS

During the 2010 Legislative Session, the Legislature passed CS/HB 7179, which created s. 163.08, F.S. The new law (Chapter 2010-139, Laws of Florida) provides the expressed authority to local governments regarding qualified improvements to real property.

The statute provides that if a local government passes an ordinance or adopts a resolution to create a program to provide up-front financing for energy conservation and efficiency, renewable energy, or wind resistance improvements, a property owner within the jurisdiction of that local government may apply to the local government for funding to finance a qualifying improvement and voluntarily enter into a financing agreement with the local government. Finance agreements under this framework include the repayment of the financed amount as a non-ad valorem assessment placed on the property owner's property tax bill.

On July 6, 2010, the Federal Housing Finance Agency (FHFA) acted to halt the local option finance programs contemplated in s. 163.08, F.S. This action on the part FHFA constitutes federal interference regarding the right of local governments to place assessments on real property.

If enacted, this memorial would request that Congress act to affirm the authority of local governments to implement energy conservation and efficiency, renewable energy, and wind resistance improvements programs as authorized under Chapter 2010-139, Laws of Florida.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### Background

Over the last several years, the Florida Legislature has placed an increased emphasis on promoting renewable energy, energy conservation, enhanced energy efficiency, and windstorm resistance in Florida. The Property Assessed Clean Energy (PACE) Program is a model that has gained national popularity in recent years as an innovative way for local governments to encourage property owners to reduce energy consumption and increase energy efficiency.

The PACE model allows individual residential, commercial, or industrial property owners to contract directly with qualified contractors for energy efficiency and renewable energy projects, and local governments provide the upfront funding for the project through proceeds of a revenue bond issuance. The bonds proceeds used to finance the projects are then repaid over a number of years through an assessment on participating property owners' property by means of the owners' tax bills. As of 2010, though, there were no provisions in the Florida Statutes which expressly provided for such a program.

##### Florida Legislation

During the 2010 Legislative Session, the Legislature passed CS/HB 7179, which created s. 163.08, F.S. The new law (Chapter 2010-139, Laws of Florida) provides the expressed authority to local governments (counties and municipalities) regarding qualified improvements to real property. The statute provides that if a local government passes an ordinance or adopts a resolution to create a program to provide up-front financing for energy conservation and efficiency, renewable energy, or wind resistance improvements, a property owner within the jurisdiction of that local government may apply to the local government for funding to finance a qualifying improvement and voluntarily enter into a financing agreement with the local government.

If utilizing a non-ad valorem assessment to finance the qualifying improvement, the local government must follow the uniform method for the levy, collection, and enforcement of non-ad valorem assessments, enumerated in s. 197.3632, F.S. This section requires a resolution by the local government, public hearings, published notices in the newspaper, and individual mail notices to property owners informing them of the assessment and their right to attend a public hearing. Under current law, the special assessment process must be initiated prior to January 1 of each year.

The bill also authorizes local governments to: partner with one or more local governments for the purpose of providing and financing qualifying improvements; levy a non-ad valorem assessment to fund a qualifying improvement; incur debt to provide financing for qualifying improvements; and collect costs incurred from financing qualifying improvements through a non-ad valorem assessment. The bill provides that no provision in any agreement between a local government and an energy, power, or utility provider shall limit or prohibit any local government from exercising its authority under the section and that the section is additional and supplemental to county and municipal home rule authority.

The agreements can be for any number of years, but since the intent of the program is to spread the full cost of improvements over a period of time to allow utility or insurance cost savings to the property owner to cover the costs of the improvements, a payback period of up to 20 years or more would not be uncommon for more expensive improvements. Regardless of the amount of financing or length of repayment period, the decision to enter into any agreement is strictly voluntary for local governments as well as property owners.

## Qualifying Improvements

All qualifying improvements must be affixed to a building or facility that is part of the property and, if the work requires a license, must be performed by a properly certified or registered contractor. Qualifying improvements include energy conservation and efficiency improvements, renewable energy improvements, and wind resistance improvements. However, the program does not cover wind resistance improvements in buildings or facilities under new construction.

## Allowances for Local Governments

The bill authorizes a local government to do the following when implementing a qualifying improvement financing program:

- Partner with one or more local governments for the purpose of providing and financing qualifying improvements.
- Allow a qualifying improvement program to be administered by a for-profit entity or a not-for-profit organization on behalf of and at the discretion of the local government.
- Levy a non-ad valorem assessment to fund a qualifying improvement.
- Incur debt (bonds or loans) to provide financing for qualifying improvements, payable from revenues received from the improved property or any other available lawful revenue source.
- Collect costs incurred from financing qualifying improvements through a non-ad valorem assessment on the benefitted property.

## Responsibilities of Local Governments

Prior to entering into a financing agreement, a local government is required to “reasonably determine” that:

- All property taxes and any other assessments levied on the property tax bill are paid and have not been delinquent for the past three years or the property owner’s period of ownership, whichever is less;
- There are no involuntary liens on the property;
- No notices of default or other evidence of property-based debt delinquency have been recorded during the past three years or the property owner’s period of ownership, whichever is less; and
- The property owner is current on all mortgage debt on the property.

## Responsibilities of Property Owner and Mortgage Holder

The statute provides that, at least 30 days before entering into the financing agreement, the property owner must provide notice to the mortgage holder or loan servicer of the intent to enter into the agreement, the maximum amount to be financed, and the maximum annual assessment that will be required to repay the amount. Though the statute does not allow the mortgage holder to accelerate payments based on the homeowner’s participation in a program, it does recognize the mortgage holder or loan servicer’s ability to increase the required monthly escrow by an amount necessary to annually pay the qualifying improvement assessment. If the property is sold prior to the end of the repayment period, the new owner takes over the remaining special assessment payments as part of the property’s annual tax bill.

Without the consent of the mortgage holder or loan servicer, the total amount of any non-ad valorem assessment or municipal or county lien for a property cannot exceed 20 percent of the just value of the property, as determined by the county property appraiser. However, if the energy conservation, efficiency, or a renewable energy qualifying improvement is supported by an energy audit, the amount financed is not limited to 20 percent if the audit demonstrates that the annual energy savings from the qualified improvement equals or exceeds the annual repayment amount of the assessment or lien.

Each contract for the initial sale of a parcel (newly-constructed property) which is subject to a non-ad valorem assessment imposed pursuant to this act, must include the following statement: "THE . . . (name of local government) . . . HAS IMPOSED A NON-ADVALOREM ASSESSMENT ON THIS PROPERTY. THIS ASSESSMENT IS IN ADDITION TO OTHER LOCAL GOVERNMENTAL ASSESSMENTS AND ALL OTHER ASSESSMENTS PROVIDED FOR BY LAW."

### Non-Ad Valorem Assessments

Chapter 197, F.S., governs tax collections, sales and liens. "Non-ad valorem assessment" is defined in s. 197.3632, F.S., as "only those assessments that are not based upon millage and which can become a lien against a homestead as permitted in s. 4, Art. X of the State Constitution." Section 4(a), Art. X of the State Constitution provides, in part that, "There shall be exempt from forced sale under process of any court, and no judgment, decree or execution shall be a lien thereon, except for the payment of taxes and assessments thereon...."

Section 197.3632(3)(a), F.S., requires local governments electing to use the uniform method of collecting assessments for the first time to adopt a resolution at a public hearing prior to January 1, or March 1 if the property appraiser and tax collector agree. The resolution must state the need for the levy and include a legal description of the property subject to the levy. In addition, the local government must publish notice of its intent to use the uniform method for collecting such assessment.

### States with Local Option Financing

Twenty five states have authorized PACE or PACE-like local option financing programs for renewal energy, energy efficiency, and/or windstorm mitigation since 2008. Those states include: California, Colorado, Florida, Georgia, Hawaii, Illinois, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Missouri, Nevada, New Hampshire, New Mexico, New York, North Carolina, Ohio, Oklahoma, Oregon, Texas, Vermont, Virginia, and Wisconsin.<sup>1</sup>

### FHFA Action and Response

The Federal Housing Finance Agency (FHFA) was created on July 30, 2008, when President George W. Bush signed into law the Housing and Economic Recovery Act of 2008. The Agency was created to oversee components of the secondary mortgage markets in the United States, including Fannie Mae, Freddie Mac, and the Federal Home Loan Banks.<sup>2</sup> The law combined the staffs of the Office of Federal Housing Enterprise Oversight (OFHEO), the Federal Housing Finance Board (FHFB), and the Government Sponsored Enterprises (GSE) mission office at the Department of Housing and Urban Development (HUD). As of June 2008, the combined debt and obligations of these GSEs totaled \$6.6 trillion, exceeding the total publicly held debt of the United States by \$1.3 trillion. The GSEs also purchased or guaranteed 84% of new mortgages in the United States.<sup>3</sup>

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<sup>1</sup> <http://www.dsireusa.org/>

<sup>2</sup> Fannie Mae and Freddie Mac own and/or securitize approximately 70 percent of all residential loans in the United States.

<sup>3</sup> <http://www.fhfa.gov/Default.aspx>

As the regulatory agency over Fannie Mae and Freddie Mac, the FHFA released a letter calling for a pause to what it referred to as the proliferation of PACE and PACE-like programs. The principal reason given for halting the development and implementation of the programs is that most of them place the repayment of improvements financed through local programs ahead of the mortgage (first lien position). FHFA claims that the priority position of these liens, in part, "...represent a key alteration of traditional mortgage lending practice. The present significant risk to lenders and secondary market entities, may alter valuations for mortgage-backed securities and are not essential for successful programs to spur energy conservation."

There were three differing responses to the directive given by FHFA. First, some local governments, like Sonoma County, California, have adjusted their programs to remove the lien priority over the property owner's mortgage. The consequences of doing that, however, are that they are now forced to fund their program out of the county's general fund since bond markets have required a first lien or another source of revenue to back the bonds. This exposes the county to higher financial risk as well as the possibility of placing the county's credit rating at risk.<sup>4</sup>

Another strategy employed in response to the FHFA directive has been litigation. On July 14, 2010, the Attorney General of California brought suit against FHFA asserting that the Agency overstepped their authority by improperly ignoring the states' right to define what is in the public interest. The suit also alleges that FHFA failed to engage in the official rulemaking process prior to releasing its July 6, 2010, prohibition. In October, 2010, Leon County, Florida filed a lawsuit against FHFA as well, claiming the county's right to collect assessments for their PACE-like LEAP program under the Florida Constitution (Articles VII and X).

The third strategy in response to the actions of FHFA has been legislative in nature. During the 111<sup>th</sup> Congress, legislation was filed in the House of Representatives (HR 5766 July 15, 2010 by Rep. Thompson<sup>5</sup>) and Senate (S 3642 July 22, 2010 by Sen. Boxer<sup>6</sup>) directing FHFA to accept PACE underwriting standards as found in, "Guidelines for Pilot PACE Financing Programs," issued on May 7, 2010, by the Department of Energy.<sup>7</sup> The PACE Assessment Protection Act of 2010 was never heard in a committee of either body, but there is some expectation among proponents that similar legislation will be reintroduced in the 112<sup>th</sup> Congress.

### Effect of Proposed Changes

If enacted, this memorial would request that Congress act to affirm the authority of local governments to implement energy conservation and efficiency, renewable energy, and wind resistance improvements programs as authorized under Chapter 2010-139, Laws of Florida.

The legislation also includes whereas clauses in order to support the memorial. The whereas clauses include:

WHEREAS, utility bills represent a major expense for home and business owners, and

WHEREAS, hurricanes and other wind storm events pose significant threats to Florida citizens and property, and

WHEREAS, energy conservation and efficiency and reduced reliance on fossil fuel energy generation enhance the welfare of the public by reducing energy bills and diversifying energy production, and

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<sup>4</sup> National Renewable Energy Laboratory: Energy Analysis – Fact Sheet Series on Financing of Renewables and Efficiency

<sup>5</sup> <http://www.govtrack.us/congress/bill.xpd?bill=h111-5766>

<sup>6</sup> <http://www.govtrack.us/congress/bill.xpd?bill=s111-3642>

<sup>7</sup> <http://www1.eere.energy.gov/wip/pace.html>

WHEREAS, wind storm protection reduces damage to the improved property and property in the vicinity of the improved property from hurricanes and other wind events, and

WHEREAS, the upfront costs of such improvements and the time required for resulting cost savings to cover the costs of the improvements prevent property owners from making otherwise cost-effective energy and wind resistance improvements, and

WHEREAS, state and local governments have embraced programs that allow local governments to facilitate the financing of energy conservation and efficiency, renewable energy and, in Florida, wind resistance improvements because of the potential to cut energy bills, increase homeowners' cash flow for mortgage payments and other bills or investments, reduce mortgage default risk, and potentially reduce property insurance by reducing property damage risk, by encouraging investment in energy conservation and efficiency, renewable energy, and wind resistance property improvements, and

WHEREAS, unemployment in Florida is at record levels, in the construction sector in particular, and the State of Florida anticipates the implementation of such programs would create employment opportunities for thousands of Florida citizens, and

WHEREAS, the State of Florida has determined that the reduced reliance on fossil fuels for electrical generation and the increased wind resistance of Florida properties to wind storm events are of benefit to the citizens of the State of Florida, and

WHEREAS, in Chapter 2010-139, Laws of Florida, now codified in s. 163.08, Florida Statutes, the State of Florida authorized local governments to create programs to promote such deployment of energy conservation and efficiency, renewable energy, and wind resistance measures at residential and commercial properties, and

WHEREAS, such financing programs are an innovative local government solution to assist property owners in financing energy conservation and efficiency, renewable energy, and wind resistance improvements to their homes and businesses on a voluntary basis, and

WHEREAS, twenty-two other states have passed laws enabling local governments to develop such programs, and

WHEREAS, despite such programs' potential to decrease the burden of household expenses for Floridians who participate, the Federal Housing Finance Agency (FHFA) and the Office of the Comptroller of the Currency on July 6, 2010, issued statements that immediately stalled implementation of such programs in Florida and froze the progress of most existing similar programs nationwide, and

WHEREAS, the FHFA actions have resulted in lawsuits around the nation, and Congressional action would rapidly and efficiently resolve those disputes...

**B. SECTION DIRECTORY:**

Not Applicable

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

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

**1. Revenues:**

None

**2. Expenditures:**

None



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

1. Revenues:

None

2. Expenditures:

None

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

None

**D. FISCAL COMMENTS:**

None

**III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

1. Applicability of Municipality/County Mandates Provision:

Not Applicable

2. Other:

None

**B. RULE-MAKING AUTHORITY:**

Not Applicable

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

None

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

HM7153

2011

House Memorial

A memorial to the Congress of the United States, urging Congress to support or initiate action that would allow local governments to fully implement programs designed to encourage voluntary energy conservation and efficiency, renewable energy, and wind resistance improvements by homeowners and businesses.

WHEREAS, utility bills represent a major expense for home and business owners, and

WHEREAS, hurricanes and other wind storm events pose significant threats to Florida citizens and property, and

WHEREAS, energy conservation and efficiency and reduced reliance on fossil fuel energy generation enhance the welfare of the public by reducing energy bills and diversifying energy production, and

WHEREAS, wind storm protection reduces damage to the improved property and property in the vicinity of the improved property from hurricanes and other wind events, and

WHEREAS, the upfront costs of such improvements prevent property owners from making otherwise cost-effective energy and wind resistance improvements, and

WHEREAS, state and local governments have embraced programs that allow local governments to facilitate the financing of energy conservation and efficiency, renewable energy, and, in Florida, wind resistance improvements because of the remarkable potential to cut energy bills, increase homeowners' cash flow for mortgage payments and other bills or investments, reduce

HM 7153

2011

29 mortgage default risk, and potentially reduce property insurance  
 30 by reducing property damage risk by encouraging investment in  
 31 energy conservation and efficiency, renewable energy, and wind  
 32 resistance property improvements, and

33 WHEREAS, unemployment in Florida is at record levels, in  
 34 the construction sector in particular, and the State of Florida  
 35 anticipates that the implementation of such programs would  
 36 create employment opportunities for thousands of Florida  
 37 citizens, and

38 WHEREAS, the State of Florida has determined that reduced  
 39 reliance on fossil fuels for electrical generation and increased  
 40 wind resistance of Florida properties to wind storm events are  
 41 of benefit to the citizens of the State of Florida, and

42 WHEREAS, in Chapter 2010-139, Laws of Florida, now codified  
 43 in s. 163.08, Florida Statutes, the State of Florida authorized  
 44 local governments to create programs to promote the  
 45 implementation of energy conservation and efficiency, renewable  
 46 energy, and wind resistance measures at residential and  
 47 commercial properties, and

48 WHEREAS, such financing programs are an innovative local  
 49 government solution to assist property owners in financing  
 50 energy conservation and efficiency, renewable energy, and wind  
 51 resistance improvements to their homes and businesses on a  
 52 voluntary basis, and

53 WHEREAS, twenty-two other states have passed laws enabling  
 54 local governments to develop such programs, and

55 WHEREAS, despite such programs' potential to decrease the  
 56 burden of household expenses for Floridians who participate, the

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2011

57 | Federal Housing Finance Agency and the Office of the Comptroller  
 58 | of the Currency on July 6, 2010, issued statements that  
 59 | immediately stalled implementation of such programs in Florida  
 60 | and froze the progress of most existing similar programs  
 61 | nationwide, and

62 |       WHEREAS, the Federal Housing Finance Agency's actions have  
 63 | resulted in lawsuits around the nation, and Congressional action  
 64 | would rapidly and efficiently resolve those disputes, NOW,  
 65 | THEREFORE,

66 |  
 67 | Be It Resolved by the Legislature of the State of Florida:  
 68 |

69 |       That Congress is urged to quickly restore the potential of  
 70 | job creation and economic development through voluntary state-  
 71 | authorized energy conservation and efficiency, renewable energy,  
 72 | and wind resistance programs by supporting the implementation of  
 73 | these programs by local governments in Florida through  
 74 | Congressional action that affirms the authority of local  
 75 | governments to implement these programs in Florida pursuant to  
 76 | Chapter 2010-139, Laws of Florida.

77 |       BE IT FURTHER RESOLVED that copies of this memorial be  
 78 | dispatched to the President of the United States, to the  
 79 | President of the United States Senate, to the Speaker of the  
 80 | United States House of Representatives, and to each member of  
 81 | the Florida delegation to the United States Congress.



**HOUSE OF REPRESENTATIVES STAFF ANALYSIS**

**BILL #:** HB 7159    PCB GVOPS 11-11    OGSR/Commission on Ethics Audits & Investigations  
**SPONSOR(S):** Government Operations Subcommittee, Patronis  
**TIED BILLS:**            **IDEN./SIM. BILLS:** SB 2056

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Government Operations Subcommittee	12 Y, 0 N	Williamson	Williamson
1) State Affairs Committee		Williamson <i>raw</i>	Hamby <i>ZJO</i>

**SUMMARY ANALYSIS**

The Open Government Sunset Review Act requires the Legislature to review each public record and each public meeting exemption five years after enactment. If the Legislature does not reenact the exemption, it automatically repeals on October 2nd of the fifth year after enactment.

Current law provides a public record and public meeting exemption for records and meetings relating to an audit or investigation of a lobbying firm lobbying the executive branch or the Constitution Revision Commission. Records relating to an audit of the lobbying firm or relating to an investigation of violations of the lobbying compensation reporting laws are confidential and exempt from public records requirements. In addition, meetings of the Commission on Ethics (commission) that are held pursuant to such investigation or at which such audit is discussed are exempt from public meetings requirements.

The exemptions expire if the lobbying firm provides a written request for such investigation and associated records and meetings to be made public or, if the commission determines there is probable cause that an audit reflects a violation of the reporting laws.

The bill reenacts the public record and public meeting exemptions, which will repeal on October 2, 2011, if this bill does not become law. It also reorganizes the exemptions and makes editorial changes.

The bill does not appear to have a fiscal impact on state or local governments.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### Background

##### Open Government Sunset Review Act

The Open Government Sunset Review Act<sup>1</sup> sets forth a legislative review process for newly created or substantially amended public record or public meeting exemptions. It requires an automatic repeal of the exemption on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.

The Act provides that a public record or public meeting exemption may be created or maintained only if it serves an identifiable public purpose. In addition, it may be no broader than is necessary to meet one of the following purposes:

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

If, and only if, in reenacting an exemption that will repeal, the exemption is expanded (essentially creating a new exemption), then a public necessity statement and a two-thirds vote for passage are required.<sup>2</sup> If the exemption is reenacted with grammatical or stylistic changes that do not expand the exemption, if the exemption is narrowed, or if an exception to the exemption is created<sup>3</sup> then a public necessity statement and a two-thirds vote for passage are not required.

##### Commission on Ethics

Article II, s. (8)(f) of the State Constitution provides for "an independent commission to conduct investigations and make public reports on all complaints concerning breach of public trust by public officers or employees not within the jurisdiction of the judicial qualifications commission." As such, the Commission on Ethics (commission) was created to serve as guardian of the standards of conduct for officers and employees of the state, county, city, or other political subdivision of the state.<sup>4</sup>

The commission is composed of nine members; no more than five members may be from the same political party at any one time, and no member may hold any public employment or qualify as a lobbyist. A member of the commission may not lobby any state or local governmental entity.<sup>5</sup>

##### Lobbying before the Executive Branch or the Constitution Revision Commission

A person may not lobby an agency until he or she has registered as a lobbyist with the commission. Registration is due upon initially being retained to lobby and is renewable on a calendar year basis thereafter.<sup>6</sup> A lobbyist must promptly send a written statement to the commission canceling the registration for a principal upon termination of the lobbyist's representation.<sup>7</sup>

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<sup>1</sup> Section 119.15, F.S.

<sup>2</sup> Section 24(c), Art. I of the State Constitution.

<sup>3</sup> An example of an exception to a public record exemption would be allowing another agency access to confidential or exempt records.

<sup>4</sup> Section 112.320, F.S.

<sup>5</sup> Section 112.321(1), F.S.

<sup>6</sup> Section 112.3215(3), F.S.

<sup>7</sup> Section 112.3215(7), F.S.

Each lobbying firm must file a compensation report with the commission for each calendar quarter during which one or more of the firm's lobbyists were registered to represent a principal.<sup>8</sup> The reporting statements must be electronically filed no later than 45 days after the end of each reporting period.<sup>9</sup>

The commission must investigate:

- Every sworn complaint filed with it that alleges a person has failed to register, has failed to submit a compensation report, or has knowingly submitted false information in any required report or registration.<sup>10</sup>
- Any lobbying firm, agency, officer, or employee upon receipt of information from a sworn complaint or from a random audit of lobbying reports indicating a possible violation other than a late-filed report.<sup>11</sup>

#### Public Record and Public Meeting Exemptions under Review

In 2005, the Legislature created a public record exemption for records relating to an audit or investigation of a lobbying firm lobbying the executive branch or the Constitution Revision Commission.<sup>12</sup>

Records relating to an audit of the lobbying firm or relating to an investigation of violations of the lobbying compensation reporting laws are confidential and exempt<sup>13</sup> from public records requirements. In addition, commission meetings held pursuant to such investigation or at which such audit is discussed are exempt from public meetings requirements.

The exemptions expire if the lobbying firm provides a written request for such investigation and associated records and meetings to be made public or, if the commission determines there is probable cause that an audit reflects a violation of the reporting laws.<sup>14</sup>

Pursuant to the Open Government Sunset Review Act, the exemptions will repeal on October 2, 2011, unless reenacted by the Legislature.

#### **Effect of Bill**

The bill removes the repeal date, thereby reenacting the public record and public meeting exemptions for records and meetings associated with such audits and investigations conducted by the commission. It also reorganizes the exemptions and makes editorial changes.

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

Section 1 amends s. 112.3215, F.S., to reenact the public record and public meeting exemptions for certain audits and investigations conducted by the Commission on Ethics.

Section 2 provides an effective date of October 1, 2011.

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<sup>8</sup> Section 112.3215(5)(a)1., F.S.

<sup>9</sup> The reporting periods are as follows: January 1 through March 31, April 1 through June 30, July 1 through September 30, and October 1 through December 31. Section 112.3215(5)(c), F.S.

<sup>10</sup> Section 112.3215(8)(a), F.S.

<sup>11</sup> Section 112.3215(8)(c), F.S.

<sup>12</sup> Chapter 2005-361, L.O.F.; codified as s. 112.3215(8)(d), F.S.

<sup>13</sup> There is a difference between records the Legislature designates as exempt from public record requirements and those the Legislature deems confidential and exempt. A record classified as exempt from public disclosure may be disclosed under certain circumstances. (*See WFTV, Inc. v. The School Board of Seminole*, 874 So.2d 48, 53 (Fla. 5th DCA 2004), review denied 892 So.2d 1015 (Fla. 2004); *City of Riviera Beach v. Barfield*, 642 So.2d 1135 (Fla. 4th DCA 1994); *Williams v. City of Minneola*, 575 So.2d 687 (Fla. 5th DCA 1991). If the Legislature designates a record as confidential and exempt from public disclosure, such record may not be released, by the custodian of public records, to anyone other than the persons or entities specifically designated in the statutory exemption. (*See Attorney General Opinion 85-62*, August 1, 1985).

<sup>14</sup> Section 112.3215(8)(d), F.S.



## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

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

None.

### D. FISCAL COMMENTS:

None.

## III. COMMENTS

### A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

### B. RULE-MAKING AUTHORITY:

None.

### C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

## IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.

HB 7159

2011

1 A bill to be entitled  
 2 An act relating to a review under the Open Government  
 3 Sunset Review Act; amending s. 112.3215, F.S., which  
 4 provides an exemption from public records and public  
 5 meetings requirements for certain audits and  
 6 investigations conducted by the Commission on Ethics;  
 7 reorganizing the exemptions; making editorial changes;  
 8 removing the scheduled repeal of the exemptions; providing  
 9 an effective date.

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

12  
 13 Section 1. Paragraph (d) of subsection (8) of section  
 14 112.3215, Florida Statutes, is amended to read:

15 112.3215 Lobbying before the executive branch or the  
 16 Constitution Revision Commission; registration and reporting;  
 17 investigation by commission.—

18 (8)

19 (d)1. Records relating to an audit conducted pursuant to  
 20 this section or an investigation conducted pursuant to this  
 21 section or s. 112.32155 are confidential and exempt from s.  
 22 119.07(1) and s. 24(a), Art. I of the State Constitution.~~7~~ and

23 2. Any portion of a meeting wherein ~~meetings held pursuant~~  
 24 ~~to~~ such ~~an~~ investigation or ~~at which such an~~ audit is discussed  
 25 is ~~are~~ exempt from s. 286.011 and s. 24(b), Art. I of the State  
 26 Constitution.

27 3. The exemptions no longer apply if ~~either until~~ the  
 28 lobbying firm requests in writing that such investigation and

HB 7159

2011

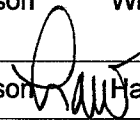
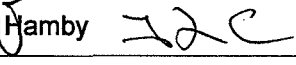
29 | associated records and meetings be made public or ~~until~~ the  
30 | commission determines there is probable cause that the audit  
31 | reflects a violation of the reporting laws. ~~This paragraph is~~  
32 | ~~subject to the Open Government Sunset Review Act in accordance~~  
33 | ~~with s. 119.15 and shall stand repealed on October 2, 2011,~~  
34 | ~~unless reviewed and saved from repeal through reenactment by the~~  
35 | ~~Legislature.~~

36 |       Section 2. This act shall take effect October 1, 2011.



## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 7161    PCB GVOPS 11-14    OGSR/Concealed Weapons or Firearms  
**SPONSOR(S):** Government Operations Subcommittee, Patronis  
**TIED BILLS:**            **IDEN./SIM. BILLS:** SB 604

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Government Operations Subcommittee	12 Y, 0 N	Williamson	Williamson
1) State Affairs Committee		Williamson 	Hamby  ZJC

### SUMMARY ANALYSIS

The Open Government Sunset Review Act requires the Legislature to review each public record and each public meeting exemption five years after enactment. If the Legislature does not reenact the exemption, it automatically repeals on October 2nd of the fifth year after enactment.

Current law provides a public record exemption for personal identifying information of an applicant for or recipient of a license to carry a concealed weapon or concealed firearm. Such information must be disclosed:

- With the express written consent of the applicant or licensee or his or her legally authorized representative.
- By court order upon a showing of good cause.
- Upon request by a law enforcement agency in connection with the performance of lawful duties, which includes access to any automated database containing such information maintained by the Department of Agriculture and Consumer Services.

The bill reenacts the public record exemption for personal identifying information of an applicant for or recipient of a license to carry a concealed weapon or concealed firearm, which will repeal on October 2, 2011, if this bill does not become law.

The bill does not appear to have a fiscal impact on state or local governments.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### Background

##### Open Government Sunset Review Act

The Open Government Sunset Review Act<sup>1</sup> sets forth a legislative review process for newly created or substantially amended public record or public meeting exemptions. It requires an automatic repeal of the exemption on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.

The Act provides that a public record or public meeting exemption may be created or maintained only if it serves an identifiable public purpose. In addition, it may be no broader than is necessary to meet one of the following purposes:

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

If, and only if, in reenacting an exemption that will repeal, the exemption is expanded (essentially creating a new exemption), then a public necessity statement and a two-thirds vote for passage are required.<sup>2</sup> If the exemption is reenacted with grammatical or stylistic changes that do not expand the exemption, if the exemption is narrowed, or if an exception to the exemption is created<sup>3</sup> then a public necessity statement and a two-thirds vote for passage are not required.

##### Concealed Weapons and Concealed Firearms

Current law authorizes the Department of Agriculture and Consumer Services (department) to issue licenses to carry concealed weapons or concealed firearms<sup>4</sup> to qualified persons. The license is valid in Florida for seven years from the date of issuance. The license must include a color photograph of the licensee. The licensee must carry the license and valid identification at all times when in possession of the concealed weapon or firearm.<sup>5</sup>

An applicant for such license must submit to the department a completed application, a nonrefundable license fee, a full set of fingerprints, a photocopy of a certificate or an affidavit attesting to the applicant's completion of a firearms course, and a full frontal view color photograph<sup>6</sup> of the applicant.<sup>7</sup>

The application must include:

- The name, address, place and date of birth, race, and occupation of the applicant.
- A statement that the applicant is in compliance with licensure requirements.
- A statement that the applicant has been furnished with a copy of chapter 790, F.S., relating to weapons and firearms.
- A warning that the application is executed under oath.

---

<sup>1</sup> Section 119.15, F.S.

<sup>2</sup> Section 24(c), Art. I of the State Constitution.

<sup>3</sup> An example of an exception to a public record exemption would be allowing another agency access to confidential or exempt records.

<sup>4</sup> Section 790.06(1), F.S., defines "concealed weapons or concealed firearms" to mean a handgun, electronic weapon or device, tear gas gun, knife, or billie. It does not include a machine gun.

<sup>5</sup> Violation of s. 790.06(1), F.S., constitutes a noncriminal violation with a penalty of \$25. Section 790.06(1), F.S.

<sup>6</sup> The photograph must be taken within the preceding 30 days. The head, including hair, must measure 7/8 of an inch wide and 1 1/8 inches high. Section 790.06(5)(e), F.S.

<sup>7</sup> Section 790.06(5), F.S.

- A statement that the applicant desires a concealed weapon or firearms license as a means of lawful self-defense.<sup>8</sup>

From 2010 to 2011, the department received 74,980 new applications and 53,516 renewal applications. Of those, the department issued 74,092 new licenses and 53,104 renewal licenses. To date, there are 793,809 valid licenses for concealed weapons or concealed firearms.<sup>9</sup>

#### Public Record Exemption under Review

In late 2005, an Orlando television station published on its website application information regarding holders of a concealed weapon license. The television station along with members of the Florida Legislature received numerous complaints concerning the Internet publication of such information.<sup>10</sup>

As a result, in 2006, the Legislature created a public record exemption for personal identifying information of an applicant for or recipient of a license to carry a concealed weapon or concealed firearm.<sup>11</sup> Such information held by the Division of Licensing of the department before, on, or after July 1, 2006,<sup>12</sup> is confidential and exempt<sup>13</sup> from public records requirements. Such information must be disclosed:

- With the express written consent of the applicant or licensee or his or her legally authorized representative.
- By court order upon a showing of good cause.
- Upon request by a law enforcement agency in connection with the performance of lawful duties, which includes access to any automated database containing such information maintained by the department.<sup>14</sup>

Pursuant to the Open Government Sunset Review Act, the exemption will repeal on October 2, 2011, unless reenacted by the Legislature.<sup>15</sup>

#### **Effect of Bill**

The bill removes the repeal date, thereby reenacting and saving from repeal the public record exemption for personal identifying information of an applicant for or recipient of a license to carry a concealed weapon or concealed firearm.

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

Section 1 amends s. 790.0601, F.S., to reenact the public record exemption for personal identifying information of an applicant for or recipient of a license to carry a concealed weapon or concealed firearm.

Section 2 provides an effective date of October 1, 2011.

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<sup>8</sup> Section 790.06(4), F.S.

<sup>9</sup> *Concealed Weapon/Firearm Summary Report* at [http://licgweb.doacs.state.fl.us/stats/cw\\_monthly.html](http://licgweb.doacs.state.fl.us/stats/cw_monthly.html) (last viewed March 20, 2011).

<sup>10</sup> House of Representatives Staff Analysis, HB 687 CS (March 29, 2006), at 2.

<sup>11</sup> Chapter 2006-102, L.O.F.; codified as s. 790.0601, F.S.

<sup>12</sup> The Supreme Court of Florida ruled that a public record exemption is not to be applied retroactively unless the legislation clearly expresses intent that such exemption is to be applied retroactively. *Memorial Hospital-West Volusia, Inc. v. News-Journal Corporation*, 729 So.2d 373 (Fla. 2001).

<sup>13</sup> There is a difference between records the Legislature designates as exempt from public record requirements and those the Legislature deems confidential and exempt. A record classified as exempt from public disclosure may be disclosed under certain circumstances. (*See WFTV, Inc. v. The School Board of Seminole*, 874 So.2d 48, 53 (Fla. 5th DCA 2004), review denied 892 So.2d 1015 (Fla. 2004); *City of Riviera Beach v. Barfield*, 642 So.2d 1135 (Fla. 4th DCA 1994); *Williams v. City of Minneola*, 575 So.2d 687 (Fla. 5th DCA 1991). If the Legislature designates a record as confidential and exempt from public disclosure, such record may not be released, by the custodian of public records, to anyone other than the persons or entities specifically designated in the statutory exemption. (*See* Attorney General Opinion 85-62, August 1, 1985).

<sup>14</sup> Section 790.0601(2), F.S.

<sup>15</sup> Section 790.0601(3), F.S.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

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

None.

### D. FISCAL COMMENTS:

None.

## III. COMMENTS

### A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

### B. RULE-MAKING AUTHORITY:

None.

### C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

## IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.



HB 7161

2011

1                   A bill to be entitled  
2           An act relating to a review under the Open Government  
3           Sunset Review Act; repealing s. 790.0601(3), F.S., to  
4           remove the scheduled repeal of an exemption from public  
5           records requirements for personal identifying information  
6           of an applicant for or recipient of a license to carry a  
7           concealed weapon or firearm; providing an effective date.

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

10  
11           Section 1. Subsection (3) of section 790.0601, Florida  
12 Statutes, is repealed.

13           Section 2. This act shall take effect October 1, 2011.


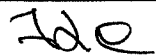


HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB SAC 11-01 School Nutrition Programs

SPONSOR(S): State Affairs Committee

TIED BILLS: IDEN./SIM. BILLS:

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: State Affairs Committee		Kaiser 	Hamby 

SUMMARY ANALYSIS

The National School Lunch Program (NSLP), the School Breakfast Program (SBP), the Summer Food Service Program (SFSP), the Commodity Food Distribution Program, and the Emergency Food Assistance Program (TEFAP) are all federal programs administered by the U.S. Department of Agriculture (USDA) at the national level. At the state level in Florida, the NSLP, SBP, and SFSP are administered by the Department of Education (DOE), while the Commodity Food Distribution Program and TEFAP are administered by the Department of Agriculture and Consumer Services (DACs).

The bill implements a type two transfer of the school food and nutrition program from the DOE to the DACs and names the act as the "Healthy Schools for Healthy Lives Act". The transfer includes all powers, duties, functions, records, personnel, property, pending issues and existing contracts, administrative authority, administrative rules, and unexpended balances of appropriations, allocations, and other funds for the administration of the school food and nutrition programs. The bill also transfers the Food and Nutrition Services Trust Fund<sup>1</sup> in the DOE to the DACs.<sup>2</sup>

The bill authorizes the DACs to conduct, supervise, and administer all school food and nutrition programs that are carried out using federal or state funds or funds from other sources. The bill authorizes the DACs to coordinate with the federal government to take advantage of any federal financial allotments and assistance that would benefit the school food and nutrition programs. The DACs may act as an agent of, or contract with, the federal government, another state agency, or any county or municipal government regarding the administration of the school food and nutrition program, including the distribution of funds provided by the federal government in support of the school food and nutrition program.

The bill requires each school district to submit an updated copy of its wellness policy and physical education policy to the DOE and the DACs when a change or revision is made. The DACs, as well as the DOE, shall provide website links to information regarding the nutritional content of foods and beverages and to healthful food choices in accordance with the dietary guidelines of the USDA.

And lastly, the bill transfers statutory language regarding the administration of the school food and nutrition program from Chapter 1006, F.S., which falls under the jurisdiction of the DOE, to Chapter 570, F.S., which falls under the jurisdiction of the DACs.

For the 2010-11 FY, Florida's matching funds included \$8.9 million for the school lunch program; \$7.6 million for the school breakfast program, and \$344,433 for cafeteria inspection fees.<sup>3</sup> The federal reimbursement for the same fiscal period totaled \$804 million.

<sup>1</sup> FLAIR number 48-2-2315, in DOE, is transferred to DACs, FLAIR number 42-2-2315.

<sup>2</sup> Federal law requires that state education agencies administer the school food and nutrition program. However, two states, Texas and New Jersey, have sought and received federal approval to administer their school food and nutrition programs through their agricultural agency. Therefore, Florida would have to apply for, and receive, a waiver before the DACs could take over the administration of the school food and nutrition program.

<sup>3</sup> All monies are from General Revenue.

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

STORAGE NAME: pcb01.SAC.DOCX

DATE: 3/3/2011

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### **Current Situation**

The National School Lunch Program (NSLP), the School Breakfast Program (SBP), the Summer Food Service Program (SFSP), the Commodity Food Distribution Program, and the Emergency Food Assistance Program (TEFAP) are all federal programs administered by the U.S. Department of Agriculture (USDA) at the national level. At the state level in Florida, the NSLP, SBP, and SFSP are administered by the Department of Education (DOE), while the Commodity Food Distribution Program and TEFAP are administered by the Department of Agriculture and Consumer Services (DACCS).

#### School Lunch Program (SLP)

The national SLP is a federally assisted meal program that provides nutritionally balanced, low-cost or free lunches to more than 31 million children each school day.<sup>4</sup>

School districts and independent schools that choose to take part in the SLP get cash subsidies and donated commodities from the USDA for each meal they serve. In return, they must serve lunches that meet federal requirements, and they must offer free or reduced-price lunches to eligible children. School lunches must meet the applicable recommendations of the Dietary Guidelines for Americans, which recommend that no more than 30 percent of an individual's calories come from fat, and less than 10 percent from saturated fat. Regulations also require for school lunches to provide one-third of the Recommended Dietary Allowances of protein, Vitamin A, Vitamin C, iron, calcium, and calories. While the SLP must meet federal nutrition requirements, the decision regarding the specific foods to serve and how they are prepared are made by local school food authorities.

Any child at a participating school may purchase a meal through the SLP. Children from families with incomes at or below 130 percent of the poverty level<sup>5</sup> are eligible for free meals. Children from families with incomes between 130 percent and 185 percent of the poverty level are eligible for reduced-price meals.<sup>6</sup> Children from families with incomes over 185 percent of poverty pay a full price, though their meals are still subsidized to some extent. Local school food authorities set their own prices for full-price (paid) meals, but must operate their meal services as non-profit programs.

To participate in the school lunch program in Florida, schools must apply through the DOE and complete the necessary requirements for participation. The requirements include:

- Completion of the application process.
- Attend "Child Nutrition" training.
- Maintain documentation and verification of children's eligibility category and count meals by eligibility category (free, reduced price, and paid meals).
- Maintain meal production records and inventory records that document the amount and types of food served.
- Utilize one of the four menu planning options.
- Maintain records of On-site Accountability Reviews.
- Maintain records of all program income and expenditures.

Once approved, the schools receive funding from the DOE for each lunch and breakfast meal served as long as they meet established state and federal regulations.<sup>7</sup> The DOE conducts periodic reviews of the school lunch and breakfast programs to ensure that state and federal regulations are being met.

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<sup>4</sup> Based on information from fiscal year 2009.

<sup>5</sup> For the period July 1, 2010 through June 30, 2011, 130 percent of the poverty level is \$28,665 for a family of four; 185 percent is \$40,793.

<sup>6</sup> Reduced-price meals may not cost more than 40 cents.

<sup>7</sup> The state must adhere to a matching funds requirement in the National School Lunch Act. For 2010-11, the state's matching requirement was \$8.9 million, which came from General Revenue.

The DOE has rule-making authority for the administration and operation of the school food service programs.

#### School Breakfast Program (SBP)

Florida law requires the SBP to be offered in all elementary public and charter schools. The SBP must be offered in schools in which 80 percent or more of the students are eligible for free or reduced-price meals. District school boards are encouraged to provide universal-free school breakfast meals to all students in each elementary, middle, and high school. The schools can choose to make the breakfast meals available at alternate areas on the school campus, such as kiosks near bus ramps.

School districts set the prices for the breakfast meals annually. Unless the district school board approves lower rates, the cost of the breakfast meals may not exceed the combined federal reimbursements and state allocations.

District school boards may approve or disapprove a policy, after taking public testimony, making universal-free school breakfast meals available to all students in each middle and high school in which 80 percent or more of the students are eligible for free or reduced-price meals. The breakfast meal must be available for students arriving at school on the school bus less than 15 minutes before the first bell rings, in which case the student will be allowed at least 15 minutes to eat the breakfast.

School districts are responsible for disseminating information annually to students regarding the district's school breakfast program. This must be done through school announcements and written notice provided to all parents.

School districts may operate the SBP providing for food preparation at the school site or in central locations with distributions to designated satellite schools or any combination thereof.

The Commissioner of Education must make every reasonable effort to ensure that schools designated as "severe need" schools receive the highest rate of reimbursement for which they are entitled for each breakfast meal served.<sup>8</sup> The DOE is responsible for allocating the monies appropriated by the Legislature each year to the school districts based on each district's total number of free and reduced-price breakfast meals served.

#### Children's Summer Nutrition Program (SNP)

The SNP, also known as the "Ms. Willie Ann Glenn Act," operates through the NSLP or SBP as a way of feeding children, 18 years and under, from low-income areas during the summer months.

Florida law directs school districts to develop a plan to sponsor a SNP with operational sites within 5 miles of at least one elementary school with 50 percent or more of the students eligible for free or reduced-price school meals and for a duration of 35 consecutive days. Secondary sites must be within 10 miles of each elementary school with 50 percent or more of the students eligible for free or reduced-price school meals.

A district school board may opt out of sponsoring a SNP. To qualify for the exemption, the district must include the issue on an agenda at a regular or special district school board meeting that is publicly noticed, provide residents an opportunity to participate in the discussion and vote on whether to be exempt from sponsoring a SNP. After deciding to become exempt, the district school board must notify the Commissioner of Education within 10 days. The district must revisit the decision to be exempt each year and notify the Commissioner of Education accordingly.

If a district school board chooses to be exempt from the SNP, the board may encourage not-for-profit entities to sponsor the SNP. Neither the district school board, school district nor the Commissioner of

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<sup>8</sup> A "severe needs" school is a school that served 40% or more of its lunches as free and reduced in the 2<sup>nd</sup> preceding year. Severe need may be applied for at any time during the school year; however, payment is only retroactive for 60 days.

Education may be held responsible for any liability as a result of a not-for-profit entity failing to complete the requirements of the SNP.

The superintendent of schools may cooperate with municipal and county governmental agencies and private, not-for-profit leaders in identifying an entity and location to sponsor the SNP. Current law requires each school district with a SNP to report where the SNP will be located to the DOE by April 15 of each year. By February 15 of each year, the DOE must provide each district school board with a list of local organizations that have filed letters of intent to participate in the SNP in order for a district school board to be able to determine how many sites are needed to serve the children and where to place each site.

#### Seamless Summer Option (SSO)

School districts participating in the SLP or SBP are eligible to apply for the SSO to serve free meals to low-income children, 18 years old and under. This option reduces paperwork and administrative burdens. The reimbursement rates are the same as with the SLP and the SBP. School districts sponsor this program.

#### Special Milk Program (SMP)

The SMP provides milk to children in schools, child care institutions and eligible camps that do not participate in other federal child nutrition meal service programs. The program reimburses schools and institutions for the milk they serve. Schools in the SLP or the SBP may also participate in the SMP to provide milk to children in half-day pre-kindergarten and kindergarten programs where children do not have access to school meal programs.

#### Fresh Fruit and Vegetable Program (FFVP)

The FFVP provides all children in participating schools with a variety of free fresh fruits and vegetables outside of the breakfast and lunch service. It is an effective and creative way of introducing fresh fruits and vegetables as healthy snack options.

#### Florida Farm Fresh Schools Program (FFSP)

The FFSP was created to address the need of school children for not only nutritious food for healthy physical and intellectual development, but also to combat diseases related to poor nutrition and obesity. The FFSP requires the DOE to develop policies pertaining to school food services that encourage school districts to buy fresh and high-quality foods grown in the state, when feasible. The program encourages farmers in the state to sell their products to school districts and schools. The school districts and schools are encouraged to select foods based on maximum nutritional content and to buy organic food products when feasible. The DOE is directed to provide outreach, guidance and training to the school districts, schools, and various other organizations<sup>9</sup> involved in school food services regarding the benefits of fresh food products grown in the state.

#### Other

The DOE currently requires each school district to submit an updated copy of its wellness policy and physical education policy when a change or revision is made. The DOE is required to provide website links to information regarding the nutritional content of foods and beverages and to healthful food choices in accordance with the dietary guidelines of the USDA.

#### Commodity Food Distribution Program

Through the Commodity Food Distribution Program, the USDA purchases foods through direct appropriations from Congress, and under surplus-removal and price-support activities. The foods are distributed to state agencies for use by school food authorities participating in the NSLP. In Florida, DACS is the agency responsible for commodity distribution.

#### The Emergency Food Assistance Program (TEFAP)

TEFAP is a federal program that helps improve the diets of low-income Americans, regardless of age, by providing them with emergency food and nutrition assistance at no cost. Under TEFAP, commodity

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<sup>9</sup> School food service directors, parent and teacher organizations, and students.

foods are made available by the USDA to the states. The states provide the food to eligible recipient agencies that distribute it to the needy through local emergency feeding organizations such as food banks, food pantries, soup kitchens or other feeding sights.

In Florida, the recipient agencies are selected by the DACS, every four years, as a result of a competitive procurement process or bid. TEFAP commodities are provided to each of the contracted recipient agencies according to the counties they serve. Each county's share is determined using a formula that bases the allocation on each county's relative share of the state's total number of persons with incomes below the poverty line and the total number of unemployed persons. This formula, which is similar to the one used by the federal government to allocate resources to the states, is adjusted annually.

#### DOE Administration of Child Nutrition Programs

The DOE employs 45 staff with an administrative budget of \$6,461,745<sup>10</sup> to administer the school and child nutrition programs for the following sponsors:

- 248 SLP sponsors, including 3,578 breakfast sites, 3,651 lunch sites, and 1,655 snack sites;
- 135 SNP and SSO sponsors;
- 18 SMP sponsors; and
- 133 elementary schools that are participating in the 2010-2011 FFVP.

In addition, the DOE:

- Operates and maintains a web-based computer application to process \$745 million of claims reimbursements, sponsor applications, administrative program reviews, and federal reports.
- Provides sponsor training and technical support in child nutrition, food safety, and administrative services for all sponsors.
- Conducts on-site monitoring and administrative reviews of program administration and meal services for all sponsors.
- Evaluates and provides nutrient analysis of breakfast and lunch menus for all sponsors.
- Provides outreach throughout the state to attract potential sponsors for the SNP and increase participation in the SBP.

To provide these services, the DOE works with the Florida Atlantic University to administer two grants:

- \$700,000 to deliver on-site training in a variety of areas, including producing and maintaining appropriate food service records, food preparation and safety, preparing and serving fresh fruits and vegetables, and the production of training videos; and
- \$900,000 to observe and evaluate the scope of difficulties related to compliance, provide technical assistance to individual sponsors, provide technical assistance to companies that contract to deliver food products and services, assist sponsors with completing paperwork and taking the steps necessary to achieve and maintain regulatory compliance related free and reduced meals, and the maintenance and technical support of DOE's "FUNDamental" financial software, which is used to measure critical indicators of the financial effectiveness of a sponsor's child nutrition program.

#### Alliances and Initiatives

The DOE established the Farm to School (F2S) Alliance to combat childhood obesity and meet the HealthierUS School Challenge criteria, a statewide training initiative for school food service professionals on how to prepare and serve meals that comply with the 2005 Dietary Guidelines for Americans. The DOE coordinates F2S training, serves as the lead on the National F2S Network Regional Steering Committee, and commits staff time to the HealthierUS School Challenge and First Lady Michelle Obama's Let's Move Campaign. In January of 2011, an F2S Alliance meeting was held to "Build a Framework" for Florida F2S Programs. The Florida-Grown School Lunch Week is being planned for October 2011, to highlight products grown in Florida.

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<sup>10</sup> Based on the 2010-11 fiscal year.

The F2S Alliance meetings have been attended by representatives from the United States Department of Agriculture, Farm Bureau, University of Florida Extension Offices, Florida Agriculture in the Classroom, Florida Fruit and Vegetable Association, Florida School Nutrition Association, R.C. Hatton Farms, U.S. Foodservice Food Distribution, Florida Action for Healthy Kids, Florida Dairy Council, Sustainable Agriculture Research and Education, Whole Foods, and organic growers.

The DOE provides outreach, guidance, and information to approximately 800 small farmers, their families, and the communities they serve about how to become involved and form business relationships with schools. DOE has garnered support from R.C. Hatton Farms, one of Florida's larger farmers, to assist with bringing smaller farmers into the discussion regarding food safety and distribution of their products.

For the past three years, FNM has conducted presentations at the Florida School Nutrition Association Conference on procurement, distribution, and applications of food safety principles associated with local farm-grown produce.

The DOE actively supports interagency participation and coordination with the USDA, Florida Department of Health, Florida Department of Children and Families, Florida Coordinated School Health Partnership, Coordinated School Health Initiatives, the Florida Food and Nutrition Advisory Council, and various other entities.

#### Integration into the Curriculum and Classroom

Nutrition education is provided through collaboration with the Office of Healthy Schools (OHS) within the DOE. The DOE's school food and nutrition programs partner with the OHS to assess and respond to the nutrition education and resource needs of school districts across the state. The OHS is partially funded with DOE school food and child nutrition administrative expense funds and employs a program director and nutrition coordinator. Through this partnership, the DOE is able to integrate nutrition education into core subject areas like language arts and science. Examples of initiatives from this collaboration include:

- Participation in Celebrate Literacy Week - OHS works in partnership with the Just Read, Florida! Office to promote literacy throughout the state by raising awareness of the nutrition-related programs and projects offered by the DOE, including the importance of school breakfast and school gardens. In January 2011, volunteers across 28 school districts and 1,100 classrooms read "Our Super Garden: Learning the Power of Healthy Eating by Eating What We Grow" by Anne Nagro.
- In February 2011, OHS, in partnership with the DOE's Language Arts Coordinator, Just Read, Florida!, and the Florida Department of Health's Comprehensive Cancer Control Program, provided Seed Folks kits, containing lesson plans and activities challenging language arts benchmarks, to middle school students.
- Gardening for Grades Regional Trainings - Through a partnership with DOE's Science Coordinator, OHS has collaborated with Florida Agriculture in the Classroom to serve science teachers through nine regional Gardening for Grades training sessions in the spring of 2011. Note: Gardening for Grades is a program funded by specialty crop grants, awarded by the DACS.
- Foods of the Month Kits - In March 2011, OHS provided approximately 550 nutrition education resources specifically designed for the school cafeteria through the Foods of the Month (FoM) kits. FoM kits help schools enhance the nutrition education programming and improve dietary offerings in school meals by using the cafeteria as a learning laboratory.
- Healthy School District Trainings - Five regional Healthy School District Trainings will be conducted in March 2011, using the Coordinated School Health approach to provide district teams with the tools necessary to improve the health and wellness of their district's students and staff through Wellness Policy Committees and School Health Advisory Committees (SHACs).



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

The DACS administers the Commodity Program portion of the SLP and the SNP. The Richard B. Russell National School Lunch Act requires that no less than 12% of the federal support received by schools pursuant to the SLP each year must be in the form of USDA food (commodities).

Each year, the DACS receives an allocation from the USDA based on the number of meals served the previous year. As the state agency responsible for ordering the commodities for the schools, the DACS provides information to the schools on which foods the USDA intends to acquire, determines from the schools how much, if any, of each of the commodities available they would like to requisition and orders the foods. The USDA is responsible for procuring and purchasing these commodities.

During school year 2010, the DACS provided over 69 million pounds of USDA food valued at approximately \$55,516,427 to about 193 participating schools (public school districts, private schools, residential child care institutions, etc.) throughout the state. An additional \$4,442,500 in fresh fruits and vegetables was also provided.

In 2011, the DACS will provide over 75 million pounds of USDA food, valued at over \$66 million, in addition to another \$3,077,000 in fresh fruits and vegetables to participating Florida schools.

The DACS developed and maintains the Florida Farm to School Program website to bring schools and farmers together to assess each other's needs and determine how best to meet those needs. As a founding member of the Farm to School Alliance, the DACS participates and provides input at Alliance meetings. For the last three years, the DACS has participated in various panel presentations and exhibitions promoting the consumption of fresh produce at the Florida Small Farms and Alternative Enterprises Conference.

For years, the DACS has been an active participant in the Florida School Nutrition Association annual conference. In addition to conducting workshops on the administration of the USDA foods, the DACS, in conjunction with the Department of Defense, is an exhibitor at the conference, promoting the consumption of fresh produce, in particular Florida fresh fruits and vegetables, in schools. At the 2011 conference, the DACS' chef will be demonstrating ways to entice students to consume more Florida fruits and vegetables.

In keeping with the DACS' mission of providing healthy nutrition from the time children are young, the DACS has developed the Fresh From Florida Kids. The program is designed to help parents instill healthy eating habits in their children who are just beginning to eat solid food. Research suggests that taste preferences and eating habits are fully developed by the time a child is three years old, so starting early is essential.

As children get older, the DACS introduces them to good nutrition through Xtreme Cuisine. Xtreme Cuisine Cooking School teaches children about nutrition and introduces them to an array of fresh, nutritious foods available in Florida. The program can be used by teachers, extension agents, health and family services professionals, and many others who work with Florida youth to teach children the nutritional attributes and other pertinent information about Florida agricultural commodities while providing basic cooking skills.

### Office of Program Policy and Government Accountability (OPPAGA), Report No. 09-02

In January 2009, the OPPAGA reviewed the practices of school districts for ways to reduce their food service program costs. In the report, *Best Practices Could Help School Districts Reduce Their Food Service Program Costs*, the OPPAGA found:

- Districts should maximize the use of USDA commodities.
- Districts should ensure that program employees have access to policies and procedures.
- Districts should ensure that the food service staff receives appropriate training.
- Districts should promote their food service program.
- Districts should identify and reduce participation barriers.

## Office of Program Policy and Government Accountability (OPPAGA), Report No. 09-03

The OPPAGA reviewed Florida's school nutrition programs in January 2009. In the report, *No Changes Are Necessary to the State's Organization of School Nutrition Programs*, the OPPAGA found:

- The current structure aligns key program activities with the core missions of state agencies.
- There is no compelling reason to change the current structure of Florida's school nutrition programs.
- Changing the structure would not produce identifiable cost savings or other substantial benefits.
- Transferring programs and functions from one agency to another would likely result in short-term disruptions in services to school districts.

In the same report, the OPPAGA outlines advantages of consolidating the school nutrition and commodity programs in Florida, including:

- Potential efficiencies;
- Improved coordination;
- Increased program visibility and administrative support; and
- Programs could take advantage of the DACS' food and nutrition mission and expertise.

### Waiver Request Requirements

Section 12 of the Richard B. Russell National School Lunch Act (NSLA)<sup>11</sup> requires "state educational agencies" have an agreement with the USDA, which affirms the administrative responsibilities for these programs. It is not allowable for a state to transfer the NSLP to a non-educational state agency, such as the DACS, unless the state officially requests a waiver of the law and applicable program regulations and the USDA approves this waiver request.

A waiver request submitted by a state must include specific details in order to be considered. The requirements for a waiver are set forth in section 12(1) of the NSLA. At a minimum the request must include:

- Identification of the state agency for which the waiver is being sought, including a description of the size and scope of its program.
- A description of the specific statutory or regulatory requirements for which the waiver is being sought.
- A description of the impediments to the efficient operation and administration of the program that caused the waiver to be sought.
- A description of the actions the state has undertaken to remove any state-level barriers, either statutory or regulatory, to achieve the result sought under the waiver (if applicable).
- A description of the state's expectation as to how the waiver will improve services and the expected outcomes if the waiver is granted.
- A description of the process used by the state to provide notice and information to the public regarding the proposed waiver.

In addition, the waiver must provide information and assurance that there will be no increase in the federal cost of the program.

### **Effect of Proposed Changes**

The bill implements a type two transfer of the school food and nutrition program from the Department of Education (DOE) to the Department of Agriculture and Consumer Services (DACs) and refers to the act as the "Healthy Schools for Healthy Lives Act". The transfer includes all powers, duties, functions, records, personnel, property, pending issues and existing contracts, administrative authority, administrative rules, and unexpended balances of appropriations, allocations, and other funds for the administration of the school food and nutrition programs. The bill also transfers the Food and Nutrition Services Trust Fund<sup>12</sup> in the DOE to the DACs.<sup>13</sup>

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<sup>11</sup> [42 U.S.C. 1760]

<sup>12</sup> FLAIR number 48-2-2315, in DOE, is transferred to DACS, FLAIR number 42-2-2315.

<sup>13</sup> Federal law requires that state education agencies administer the school food and nutrition program. However, two states, Texas and New Jersey, have sought and received federal approval to administer their school food and nutrition

The bill authorizes the DACS to conduct, supervise and administer all school food and nutrition programs that are carried out using federal or state funds or funds from other sources. The bill authorizes the DACS to coordinate with the federal government to benefit from any federal financial allotments and assistance that would benefit the school food and nutrition programs. The DACS may act as an agent of, or contract with, the federal government, another state agency, or any county or municipal government regarding the administration of the school food and nutrition program, including the distribution of funds provided by the federal government in support of the school food and nutrition program.

The bill requires each school district to submit an updated copy of its wellness policy and physical education policy to the DOE and the DACS when a change or revision is made. The DACS, as well as the DOE, shall provide website links to information regarding the nutritional content of foods and beverages and to healthful food choices in accordance with the dietary guidelines of the USDA.

And lastly, the bill transfers statutory language regarding the administration of the school food and nutrition program from Chapter 1006, F.S., which falls under the jurisdiction of the DOE, to Chapter 570, F.S., which falls under the jurisdiction of the DACS.

#### B. SECTION DIRECTORY:

**Section 1:** Designates the act as the "Healthy Schools for Healthy Lives Act."

**Section 2:** Transfers the Food and Nutrition Services Trust Fund from the Department of Education (DOE) to the Department of Agriculture and Consumer Services (DACS).

**Section 3:** Transfers all powers, duties, functions, records, personnel, property, pending issues and existing contracts, administrative authority, administrative rules, and unexpended balances of appropriations, allocations, and other funds for the administration of the school food and nutrition program by a type two transfer from the DOE to the DACS.

**Section 4:** Creates s. 570.98, F.S.; directs the DACS to conduct, supervise and administer all school food and nutrition programs carried out using federal or state funds, or funds from any other source; and, directs the DACS to cooperate with the federal government and its agencies and instrumentalities to receive benefit of all federal financial allotments and assistance possible to carry out the school food and nutrition program.

**Section 5:** Transfers and renumbers s. 1006.06, F.S., to s. 570.981, F.S.; changes jurisdiction from the DOE to the DACS; and, removes obsolete dates.

**Section 6:** Transfers and renumbers s. 1006.0606, F.S., to s. 570.982, F.S.; removes obsolete dates; and, changes jurisdiction from the DOE to the DACS.

**Section 7:** Transfers and renumbers s. 1010.77, F.S., to s. 570.983, F.S.; changes jurisdiction from the DOE to the DACS.

**Section 8:** Amends s. 1003.453, F.S.; removes obsolete dates; requires school districts to submit a copy of its school wellness policy to the DACS when a change or revision is made; and, requiring the DACS to provide website access to information regarding nutritional content of foods and beverages as well as healthful food choices in accordance with the dietary guidelines of the United States Department of Agriculture.

**Section 9:** Provides an effective date of July 1, 2011.

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programs through their agricultural agency. Therefore, Florida would have to apply for, and receive, a waiver before the DACS could take over the administration of the school food and nutrition program.

## 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:

None

2. Expenditures:

None

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

None

### D. FISCAL COMMENTS:

<b>Program</b>	<b>FY 2010-11</b>	<b>FY 2011-12</b>
National School Lunch Program State Match General Revenue	\$8.9 million	\$8.9 million
School Breakfast Program State Match General Revenue	\$7.6 million	\$5.6 million
Cafeteria Inspection Fees General Revenue*	\$344,433	\$344,433
USDA Food and Nutrition Services Trust Fund	\$804.3 million	\$942.3 million

\*Available remaining balance used to offset a small portion of participating schools' health inspection costs.

In FY 2009-10, FDOE received \$631,410 in indirect earnings as a result participation in the National School Lunch Program. These earnings are used to support management activities that are department-wide in nature and include activities such as purchasing, accounting, human resources, grants management and legal services.

## 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:**

Rule-making authority regarding the school food and nutrition program is granted to the Department of Agriculture and Consumer Services through the type two transfer.

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

Currently, the bill has an effective date of July 1, 2011. It may be beneficial to add a provision stating that the transfer does not become effective until a waiver<sup>14</sup> from the U.S. Department of Agriculture is granted.

And lastly, an amendment to repeal s. 1010.77, F.S., may be necessary to remove the obsolete reference to the Food and Nutrition Services Trust Fund.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

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<sup>14</sup> Federal law requires that state education agencies administer the school food and nutrition program. However, two states, Texas and New Jersey, have sought and received federal approval to administer their school food and nutrition programs through their agricultural agency. Therefore, Florida would have to apply for, and receive, a waiver before the DACS could take over the administration of the school food and nutrition program.

BILL

ORIGINAL

YEAR

1                                   A bill to be entitled  
 2           An act relating to school food and nutrition programs;  
 3           providing a short title; transferring the Food and  
 4           Nutrition Services Trust Fund in the Department of  
 5           Education to the Department of Agriculture and Consumer  
 6           Services; transferring and reassigning functions and  
 7           responsibilities, including records, personnel, property,  
 8           and unexpended balances of appropriations and other  
 9           resources for the administration of the school food and  
 10          nutrition programs from the Department of Education to the  
 11          Department of Agriculture and Consumer Services; creating  
 12          s. 570.98, F.S.; requiring the Department of Agriculture  
 13          and Consumer Services to conduct, supervise, and  
 14          administer all school food and nutrition programs;  
 15          requiring the department to cooperate fully with the  
 16          United States Government; authorizing the department to  
 17          act as agent of, or contract with, the Federal Government,  
 18          other state agencies, or any county or municipal  
 19          government for the administration of the school food and  
 20          nutrition programs; transferring, renumbering, and  
 21          amending s. 1006.06, F.S., relating to school food service  
 22          programs; conforming provisions to changes made by the  
 23          act; deleting obsolete provisions; transferring,  
 24          renumbering, and amending ss. 1006.0606 and 1010.77, F.S.;  
 25          relating to the children's summer nutrition program and  
 26          the Food and Nutrition Services Trust Fund, respectively;  
 27          conforming provisions to changes made by the act; deleting  
 28          obsolete provisions; amending s. 1003.453, F.S.; requiring

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29 each school district to send an updated copy of its  
 30 wellness policy and physical education policy to the  
 31 Department of Education and the Department of Agriculture  
 32 and Consumer Services; deleting obsolete provisions;  
 33 requiring certain information to be accessible from the  
 34 website of the Department of Agriculture and Consumer  
 35 Services; providing an effective date.  
 36

37 Be It Enacted by the Legislature of the State of Florida:  
 38

39 Section 1. This act may be cited as the "Healthy Schools  
 40 for Healthy Lives Act."

41 Section 2. The Food and Nutrition Services Trust Fund,  
 42 FLAIR number 48-2-2315, in the Department of Education is  
 43 transferred to the Department of Agriculture and Consumer  
 44 Services, FLAIR number 42-2-2315.

45 Section 3. All powers, duties, functions, records,  
 46 personnel, property, pending issues and existing contracts,  
 47 administrative authority, administrative rules, and unexpended  
 48 balances of appropriations, allocations, and other funds for the  
 49 administration of the school food and nutrition programs are  
 50 transferred by a type two transfer, as defined in s. 20.06(2),  
 51 Florida Statutes, from the Department of Education to the  
 52 Department of Agriculture and Consumer Services.

53 Section 4. Section 570.98, Florida Statutes, is created to  
 54 read:

55 570.98 School food and nutrition programs.-

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56       (1) The department shall conduct, supervise, and  
 57 administer all school food and nutrition programs that will be  
 58 carried out using federal or state funds, or funds from any  
 59 other source.

60       (2) The department shall cooperate fully with the United  
 61 States Government and its agencies and instrumentalities so that  
 62 the department may receive the benefit of all federal financial  
 63 allotments and assistance possible to carry out the purposes of  
 64 this chapter.

65       (3) The department may act as agent of, or contract with,  
 66 the Federal Government, another state agency, or any county or  
 67 municipal government for the administration of the school food  
 68 and nutrition programs, including the distribution of funds  
 69 provided by the Federal Government to support the school food  
 70 and nutrition programs.

71       Section 5. Section 1006.06, Florida Statutes, is  
 72 transferred, renumbered as section 570.981, Florida Statutes,  
 73 and amended to read:

74       570.981 ~~1006.06~~ School food service programs.—

75       (1) In recognition of the demonstrated relationship  
 76 between good nutrition and the capacity of students to develop  
 77 and learn, it is the policy of the state to provide standards  
 78 for school food service and to require district school boards to  
 79 establish and maintain an appropriate private school food  
 80 service program consistent with the nutritional needs of  
 81 students.

82       (2) The department ~~State Board of Education~~ shall adopt  
 83 rules covering the administration and operation of the school



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84 food service programs.

85 (3) Each district school board shall consider the  
 86 recommendations of the district school superintendent and adopt  
 87 policies to provide for an appropriate food and nutrition  
 88 program for students consistent with federal law and department  
 89 ~~State Board of Education~~ rule.

90 (4) The state shall provide the state National School  
 91 Lunch Act matching requirements. The funds provided shall be  
 92 distributed in such a manner as to comply with the requirements  
 93 of the National School Lunch Act.

94 (5) (a) Each district school board shall implement school  
 95 breakfast programs that make breakfast meals available to all  
 96 students in each elementary school. ~~By the beginning of the~~  
 97 ~~2010-2011 school year,~~ Universal school breakfast programs shall  
 98 be offered in schools in which 80 percent or more of the  
 99 students are eligible for free or reduced-price meals. Each  
 100 school shall, to the maximum extent practicable, make breakfast  
 101 meals available to students at an alternative site location,  
 102 which may include, but need not be limited to, alternative  
 103 breakfast options as described in publications of the Food and  
 104 Nutrition Service of the United States Department of Agriculture  
 105 for the federal School Breakfast Program.

106 (b) ~~Beginning with the 2009-2010 school year,~~ Each school  
 107 district must annually set prices for breakfast meals at rates  
 108 that, combined with federal reimbursements and state  
 109 allocations, are sufficient to defray costs of school breakfast  
 110 programs without requiring allocations from the district's  
 111 operating funds, except if the district school board approves

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112 lower rates.

113 (c) Each district school board is encouraged to provide  
 114 universal-free school breakfast meals to all students in each  
 115 elementary, middle, and high school. ~~By the beginning of the~~  
 116 ~~2010-2011 school year,~~ Each district school board shall approve  
 117 or disapprove a policy, after receiving public testimony  
 118 concerning the proposed policy at two or more regular meetings,  
 119 which makes universal-free school breakfast meals available to  
 120 all students in each elementary, middle, and high school in  
 121 which 80 percent or more of the students are eligible for free  
 122 or reduced-price meals.

123 (d) ~~Beginning with the 2009-2010 school year,~~ Each  
 124 elementary, middle, and high school shall make a breakfast meal  
 125 available if a student arrives at school on the school bus less  
 126 than 15 minutes before the first bell rings and shall allow the  
 127 student at least 15 minutes to eat the breakfast.

128 (e) Each school district shall annually provide to all  
 129 students in each elementary, middle, and high school information  
 130 prepared by the district's food service administration regarding  
 131 its school breakfast programs. The information shall be  
 132 communicated through school announcements and written notice  
 133 sent to all parents.

134 (f) A district school board may operate a breakfast  
 135 program providing for food preparation at the school site or in  
 136 central locations with distribution to designated satellite  
 137 schools or any combination thereof.

138 (g) The commissioner shall make every reasonable effort to  
 139 ensure that any school designated as a "severe need school"

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140 receives the highest rate of reimbursement to which it is  
 141 entitled under 42 U.S.C. s. 1773 for each breakfast meal served.

142 (h) The department shall annually allocate among the  
 143 school districts funds provided from the school breakfast  
 144 supplement in the General Appropriations Act based on each  
 145 district's total number of free and reduced-price breakfast  
 146 meals served.

147 (6) The Legislature, recognizing that school children need  
 148 nutritious food not only for healthy physical and intellectual  
 149 development but also to combat diseases related to poor  
 150 nutrition and obesity, establishes the Florida Farm Fresh  
 151 Schools Program within the department ~~of Education as the lead~~  
 152 ~~agency for the program~~. The program shall comply with the  
 153 regulations of the National School Lunch Program and require:

154 (a) The department ~~of Education to work with the~~  
 155 ~~Department of Agriculture and Consumer Services~~ to develop  
 156 policies pertaining to school food services which encourage:

157 1. School districts to buy fresh and high-quality foods  
 158 grown in this state when feasible.

159 2. Farmers in this state to sell their products to school  
 160 districts and schools.

161 3. School districts and schools to demonstrate a  
 162 preference for competitively priced organic food products.

163 (b) School districts and schools to make reasonable  
 164 efforts to select foods based on a preference for those that  
 165 have maximum nutritional content.

166 (c) The department ~~of Education, in collaboration with the~~  
 167 ~~Department of Agriculture and Consumer Services,~~ to provide

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168 outreach, guidance, and training to school districts, schools,  
 169 school food service directors, parent and teacher organizations,  
 170 and students about the benefits of fresh food products from  
 171 farms in this state.

172 Section 6. Section 1006.0606, Florida Statutes, is  
 173 transferred, renumbered as section 570.982, Florida Statutes,  
 174 and amended to read:

175 570.982 ~~1006.0606~~ Children's summer nutrition program.—

176 (1) This section may be cited as the "Ms. Willie Ann Glenn  
 177 Act."

178 (2) Each district school board shall develop a plan ~~by May~~  
 179 ~~1, 2006,~~ to sponsor a summer nutrition program ~~beginning the~~  
 180 ~~summer of 2006~~ to operate sites in the school district as  
 181 follows:

182 (a) Within 5 miles of at least one elementary school at  
 183 which 50 percent or more of the students are eligible for free  
 184 or reduced-price school meals and for the duration of 35  
 185 consecutive days; and

186 (b) Except as operated pursuant to paragraph (a), within  
 187 10 miles of each elementary school at which 50 percent or more  
 188 of the students are eligible for free or reduced-price school  
 189 meals.

190 (3) (a) A district school board ~~boards~~ may be exempt from  
 191 sponsoring a summer nutrition program pursuant to this section.  
 192 A district school board seeking such exemption must include the  
 193 issue on an agenda at a regular or special district school board  
 194 meeting that is publicly noticed, provide residents an  
 195 opportunity to participate in the discussion, and vote on

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196 whether to be exempt from this section. The district school  
 197 board shall notify the Commissioner ~~of Education~~ within 10 days  
 198 after it decides to become exempt from this section.

199 (b) Each year the district school board shall reconsider  
 200 its decision to be exempt from the provisions of this section  
 201 and shall vote on whether to continue the exemption from  
 202 sponsoring a summer nutrition program. The district school board  
 203 shall notify the Commissioner ~~of Education~~ within 10 days after  
 204 each subsequent year's decision to continue the exemption.

205 (c) If a district school board elects to be exempt from  
 206 sponsoring a summer nutrition program under this section, the  
 207 district school board may encourage not-for-profit entities to  
 208 sponsor the program. If a not-for-profit entity chooses to  
 209 sponsor the summer nutrition program but fails to perform with  
 210 regard to the program, the district school board, the school  
 211 district, and the department ~~of Education~~ are not required to  
 212 continue the program and shall be held harmless from any  
 213 liability arising from the discontinuation of the summer  
 214 nutrition program.

215 (4) The superintendent of schools may collaborate with  
 216 municipal and county governmental agencies and private, not-for-  
 217 profit leaders in implementing the plan. Although schools have  
 218 proven to be the optimal site for a summer nutrition program,  
 219 any not-for-profit entity may serve as a site or sponsor. By  
 220 April 15 of each year, each school district with a summer  
 221 nutrition program shall report to the department the district's  
 222 summer nutrition program sites in compliance with this section.

223 (5) The department shall provide to each district school

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224 board by February 15 of each year a list of local organizations  
 225 that have filed letters of intent to participate in the summer  
 226 nutrition program in order that a district school board is able  
 227 to determine how many sites are needed to serve the children and  
 228 where to place each site.

229 Section 7. Section 1010.77, Florida Statutes, is  
 230 transferred, renumbered as section 570.983, Florida Statutes,  
 231 and amended to read:

232 570.983 ~~1010.77~~ Food and Nutrition Services Trust Fund.—  
 233 Chapter 99-34, Laws of Florida, re-created the Food and  
 234 Nutrition Services Trust Fund to record revenue and  
 235 disbursements of Federal Food and Nutrition funds received by  
 236 the department ~~of Education~~ as authorized in s. 570.981 ~~1006.06~~.

237 Section 8. Section 1003.453, Florida Statutes, is amended  
 238 to read:

239 1003.453 School wellness and physical education policies;  
 240 nutrition guidelines.—

241 (1) ~~By September 1, 2006,~~ Each school district shall  
 242 submit to the Department of Education a copy of its school  
 243 wellness policy as required by the Child Nutrition and WIC  
 244 Reauthorization Act of 2004 and a copy of its physical education  
 245 policy required under s. 1003.455. Each school district shall  
 246 annually review its school wellness policy and physical  
 247 education policy and provide a procedure for public input and  
 248 revisions. In addition, each school district shall send an  
 249 updated copy of its wellness policy and physical education  
 250 policy to the department and to the Department of Agriculture  
 251 and Consumer Services when a change or revision is made.

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252 (2) ~~By December 1, 2006,~~ The department shall post links  
 253 to each school district's school wellness policy and physical  
 254 education policy on its website so that the policies can be  
 255 accessed and reviewed by the public. Each school district shall  
 256 provide the most current versions of its school wellness policy  
 257 and physical education policy on the district's website.

258 (3) ~~By December 1, 2006,~~ The department must provide on  
 259 its website links to resources that include information  
 260 regarding:

261 (a) Classroom instruction on the benefits of exercise and  
 262 healthful eating.

263 (b) Classroom instruction on the health hazards of using  
 264 tobacco and being exposed to tobacco smoke.

265 (c) The eight components of a coordinated school health  
 266 program, including health education, physical education, health  
 267 services, and nutrition services.

268 (d) The core measures for school health and wellness, such  
 269 as the School Health Index.

270 (e) Access for each student to the nutritional content of  
 271 foods and beverages and to healthful food choices in accordance  
 272 with the dietary guidelines of the United States Department of  
 273 Agriculture. This information shall also be accessible from the  
 274 website of the Department of Agriculture and Consumer Services.

275 (f) Multiple examples of school wellness policies for  
 276 school districts.

277 (g) Examples of wellness classes that provide nutrition  
 278 education for teachers and school support staff, including  
 279 encouragement to provide classes that are taught by a licensed

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280 nutrition professional from the school nutrition department.

281 (4) School districts are encouraged to provide basic  
282 training in first aid, including cardiopulmonary resuscitation,  
283 for all students, beginning in grade 6 and every 2 years  
284 thereafter. Private and public partnerships for providing  
285 training or necessary funding are encouraged.

286 Section 9. This act shall take effect July 1, 2011.