Agriculture & Natural Resources Appropriations Subcommittee

March 31, 2014
4:00 PM – 6:00 PM
Reed Hall

Will Weatherford
Speaker

Ben Albritton
Chair

The Florida House of Representatives

Appropriations Committee

Agriculture & Natural Resources Appropriations Subcommittee

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AGENDA
March 31, 2014
4:00 PM—6:00 PM
Reed Hall (102 HOB)

I. Call to Order/ Roll Call

II. CS/HB 1123—Aquatic Preserves by Porter

III. CS/HB 1191—Telephone Solicitation by Cruz

IV. HB 7147—Department of Agriculture & Consumer Services by J. Diaz

V. CS/HB 1113—Onsite Sewage Treatment & Disposal Systems by Edwards

VI. CS/HB 703—Environmental Regulation by Patronis

VII. Closing Remarks and Adjournment

221 The Capitol, 402 South Monroe Street, Tallahassee, Florida 32399-1300
(850) 717-4811 Fax: (850) 488-9633

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1123 Aquatic Preserves
SPONSOR(S): Porter
TIED BILLS: None **IDEN./SIM. BILLS:** SB 1094

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Agriculture & Natural Resources Subcommittee	11 Y, 0 N, As CS	Kaiser	Blalock
2) Agriculture & Natural Resources Appropriations Subcommittee		Helpling	Massengale
3) State Affairs Committee			

SUMMARY ANALYSIS

In 1975, Florida enacted the Aquatic Preserve Act to ensure that state-owned submerged lands in areas with exceptional biological, aesthetic, and scientific value would be set aside forever as aquatic preserves for the benefit of future generations. The Department of Environmental Protection (DEP) currently manages 41 aquatic preserves in the state.

The bill creates the Nature Coast Aquatic Preserve (preserve), encompassing state-owned submerged lands, the water column upon those lands, and all publicly-owned islands in certain areas of Pasco, Hernando, and Citrus counties. The bill excludes privately-owned uplands unless the private landowner agrees to include those uplands in the preserve. The bill directs the Board of Trustees of the Internal Improvement Trust Fund (Board of Trustees) to maintain the preserve subject to restrictions on the following activities:

- Sales, transfers, or leases of the sovereign submerged lands.
- Drilling of wells, excavation for shell or minerals, or erection of structures other than docks.
- Seaward relocation of bulkhead lines or further establishment of bulkhead lines.
- Construction, replacement, or relocation of a seawall.
- Dredging or filling of submerged lands, which is not allowed except for the maintenance of marinas, piers, or docks.

The bill also authorizes the Board of Trustees to:

- Enter into agreements for establishing lines delineating sovereign submerged lands and privately-owned lands.
- Enter into agreements for the exchange of sovereign submerged lands for privately-owned lands.
- Accept gifts of land within or contiguous to the preserve.
- Negotiate or enter into agreements with owners of lands contiguous to public lands for any public or private use.
- Conduct restoration and enhancement efforts in the preserve and its tributaries.
- Stabilize eroding shorelines of the preserve and its tributaries that are contributing to turbidity by planting natural vegetation and by the placement of riprap.
- Take any action convenient for, or necessary to, the accomplishment of any of these authorized acts.

The bill also specifies that the establishment and management of aquatic preserves may not infringe upon the riparian rights of upland property owners. The bill authorizes enforcement pursuant to the Environmental Protection Act, and authorizes the Department of Legal Affairs to bring a civil action with a penalty of $5,000 per day against a person who violates the provisions of the bill. Lastly, the provisions in the bill are subject to the Florida Electrical Power Plant Siting Act.

The bill does not appear to have a fiscal impact on local governments. Strengthened environmental requirements related to dredging and filling activities and the erection of structures may result in an indeterminate, negative fiscal impact to the private sector.

DEP requires two additional staff and associated expenses for maintenance and management of the preserve. (See Fiscal Impact on State Government).

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Sovereign Submerged Lands

Upon attaining statehood in 1845, "the state of Florida by virtue of its sovereignty assumed title to and sovereignty over the navigable waters in the state and lands thereunder."[1] The title to lands under navigable waters passed from the United States to the state through operation of the federal "equal footing" doctrine,[2] and included the submerged bed up to the "ordinary high water mark" of navigable rivers and lakes.[3]

The Florida Constitution[4] provides that:

> The title to lands under navigable waters, within the boundaries of the state, which have not been alienated, including beaches below mean high water lines, is held by the state, by virtue of its sovereignty, in trust for all the people. Sale of such lands may be authorized by law, but only when in the public interest. Private use of portions of such lands may be authorized by law, but only when not contrary to the public interest.

Sovereign submerged lands include, but are not limited to, tidal lands, islands, sandbars, shallow banks, and lands waterward of the ordinary or mean high water line, beneath navigable fresh water or beneath tidally-influenced waters. Title to sovereign submerged lands is held by the Board of Trustees of the Internal Improvement Trust Fund (Board of Trustees).[5] The Board of Trustees is responsible for the acquisition, administration, management, control, supervision, conservation, protection, and disposition of all lands owned by the state, including all sovereign submerged lands.[6]

Aquatic Preserves

In 1975, Florida enacted the Aquatic Preserve Act with the intent that the state-owned submerged lands in areas that have exceptional biological, aesthetic, and scientific value be set aside forever as aquatic preserves or sanctuaries for the benefit of future generations. The Florida Statutes define an aquatic preserve as "an exceptional area of submerged lands and its associated waters set aside for being maintained essentially in its natural or existing condition."[7]

The Department of Environmental Protection's (DEP) Office of Coastal and Aquatic Managed Areas (CAMA) oversees the management of Florida's 41 aquatic preserves, three National Estuarine Research Reserves (NERR), National Marine Sanctuary, and the Coral Reef Conservation Program. These protected areas comprise more than 2.2 million acres of the most valuable submerged lands and select coastal uplands in Florida. Aquatic preserves serve many valuable ecological and economic functions, including providing nurseries for juvenile fish and other aquatic life, maintaining water quality, and providing habitat for shorebirds. The aquatic preserves are also valuable tourist destinations,

[1] Merrill-Stevens Co. v. Durkee, 62 Fla. 549, 57 So. 428, 432 (1912).
[2] Pollard v. Hagan, 44 U.S. 212 (1845).
[3] Coastal Petroleum Co. v. American Cyanamid Co., 492 So. 2d 339, 342 (Fla 1986)
[4] Art. X, s. 11 of the Florida Constitution.
[5] DEP, Use of State-Owned Lands, http://www.dep.state.fl.us/lands/submerged.htm.
[6] Section 253.03, F.S.
[7] Section 258.37(1), F.S.

providing a host of outdoor activities such as fishing, diving, snorkeling, swimming, bird watching, and boating.[8]

Section 258.41, F.S., authorizes the Board of Trustees to establish areas to be included in the aquatic preserve system, subject to confirmation by the Legislature, and provides that an aquatic preserve cannot be withdrawn from the state aquatic preserve system except by an act of the Legislature.

The Legislature has also designated by law certain areas to be included in the aquatic preserve system. These include the following:

- Cockroach Bay Aquatic Preserve.
- Gasparilla Sound-Charlotte Harbor Aquatic Preserve.
- Lemon Bay Aquatic Preserve.
- Terra Ceia Aquatic Preserve.
- Guana River Marsh Aquatic Preserve.
- Big Bend Seagrasses Aquatic Preserve.
- Boca Ciega Bay Aquatic Preserve.
- Biscayne Bay Aquatic Preserve.
- Oklawaha River Aquatic Preserve.

Current law[9] restricts certain activities, such as the construction of utility cables and pipes and spoil disposal, in aquatic preserves in order to conserve their unique biological, aesthetic, and scientific value. Section 258.42, F.S., directs the Board of Trustees to maintain aquatic preserves subject to the following requirements:

- No further sale, lease, or transfer of sovereign submerged lands may be approved or consummated by the Board of Trustees except when such sale, lease, or transfer is in the public interest.
- The Board of Trustees cannot approve the waterward relocation or setting of bulkhead lines waterward of the line of mean high water within the preserve except when public road and bridge construction projects have no reasonable alternative and it is shown to be not contrary to the public interest.
- No further dredging or filling of submerged lands may be approved by the Board of Trustees except for certain activities that must be authorized pursuant to a permit.

DEP rules further provide that only minimal or maintenance dredging is permitted in a preserve, and any alteration of the preserves' physical conditions is restricted unless the alteration enhances the quality or utility of the preserve or the public health generally. Minerals may not be mined (with the exception of oyster shells), and oil and gas well drilling is prohibited. However, the state is not prohibited from leasing the oil and gas rights and permitting drilling from outside the preserve to explore for oil and gas if approved by the Board of Trustees. Docking facilities and structures for shore protection are restricted as to size and location.[10]

Florida Electrical Power Plant Siting Act

The Power Plant Siting Act (PPSA)[11] is the state's centralized process for licensing large power plants. DEP acts as the lead agency in the certification process, which replaces local and state permits. DEP along with local governments and state agencies within whose jurisdiction the power plant is to be built, participate in the certification process. The certification addresses permitting, land use and zoning, and

[8] DEP, *Florida's Aquatic Preserves, Protecting our most Values Resource: A Program Overview, available at* http://www.dep.state.fl.us/coastal/downloads/Aquatic_Preserve_Overview_Jun06.pdf.
[9] Section 258.42, F.S.
[10] Administrative rules applicable to aquatic preserves generally may be found in Chapters 18-20, F.A.C., Management Policies, Standards and Criteria. However, every aquatic preserve in the state has specific restrictions and policies that are set out in the Florida Administrative Code.
[11] Sections 403.501-403.518, F.S.

property interests. A certification grants approval for the location of the power plant and its associated facilities such as a natural gas pipeline supplying the plant's fuel, rail lines for bringing coal to the site, and roadways and electrical transmission lines carrying power to the electrical grid, among others. As it relates to aquatic preserves, the PPSA specifically provides that the certification can exempt the applicant from state statutes or rules protecting aquatic preserves upon a finding that the public interests set forth in the PPSA override the public interest protected by the statute or rule.

The Nature Coast

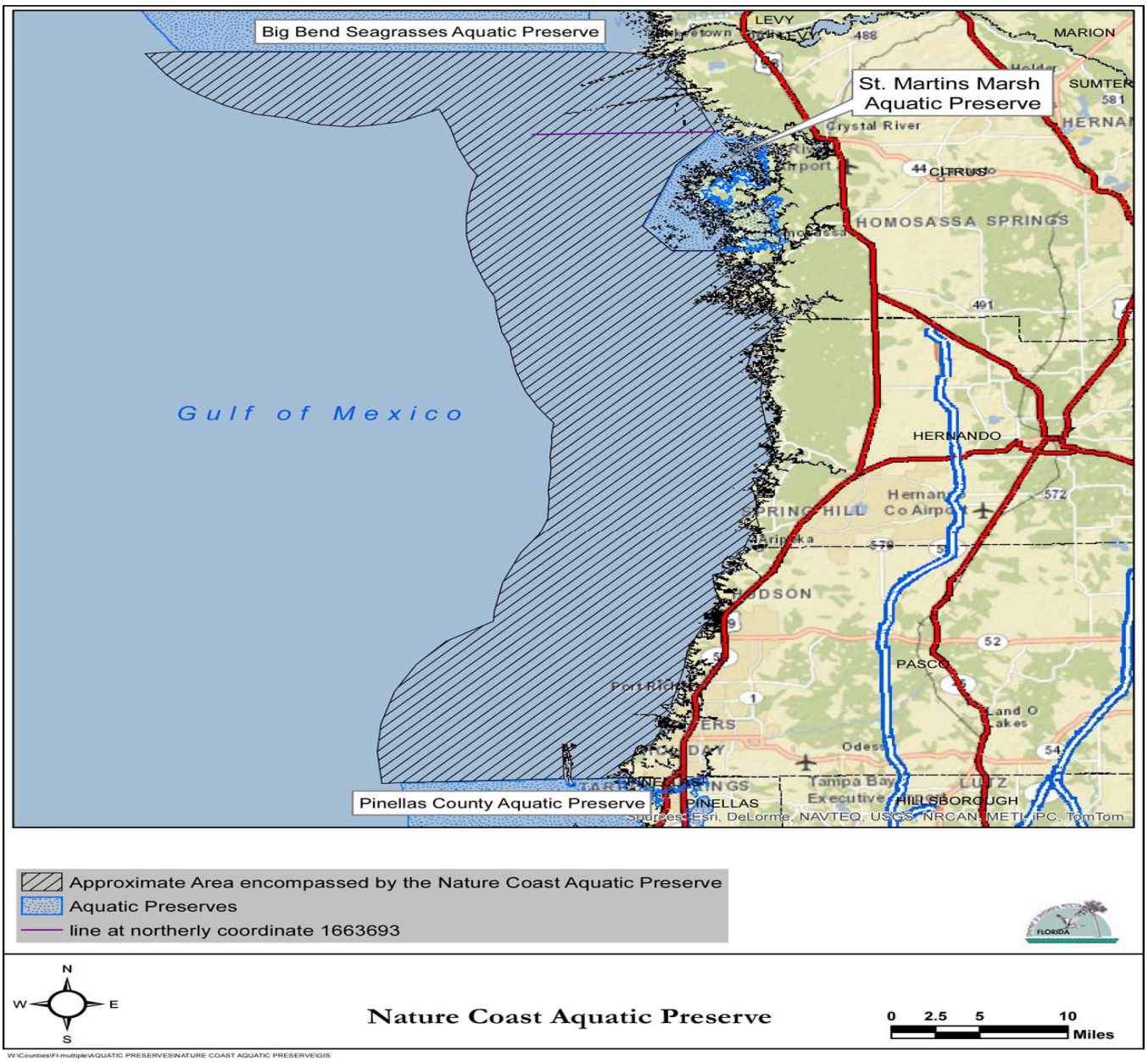
"The Nature Coast" is located along Florida's Big Bend region and encompasses 980,000 acres across eight counties (Citrus, Dixie, Hernando, Jefferson, Pasco, Levy, Taylor, and Wakulla).[12] This area is a sanctuary for 19 endangered species[13] and has many natural resources, including mangroves, spring fed rivers, limestone outcroppings, sandy beaches, oyster bars, mud flats, and seagrass beds.[14]

There are two designated aquatic preserves within the Nature Coast: the Big Bend Seagrass Aquatic Preserve, which extends from St. Marks to Cedar Key, and the St. Martins Marsh Aquatic Preserve, which extends from Crystal Bay through Homosassa Bay. The Nature Coast is bordered to the south by the Pinellas County Aquatic Preserve. The area between the Big Bend Seagrass Aquatic Preserve and the Pinellas County Aquatic Preserve, with the exception of the St. Martins Marsh Aquatic Preserve, is an undesignated shoreline consisting of Pasco, Hernando, and Citrus Counties. The aquatic preserve proposed by this legislation would lie between the St. Martins Aquatic Preserve and the Pinellas County Aquatic Preserve.

Effect of Proposed Changes

The bill establishes the Nature Coast Aquatic Preserve (preserve), and designates the boundaries of the preserve, which include state-owned submerged lands, the water column upon those lands, and all publicly-owned islands (see map below). The bill excludes privately-owned uplands unless the private landowner arranges to have his lands included in the preserve.

[12] Nature Coast Coalition, Nature Coast, http://www.naturecoastcoalition.com/nchistory.htm.
[13] *Id.*
[14] DEP, Senate Bill 1094 Agency Legislative Bill Analysis, February 27, 2014.



The bill directs the Board of Trustees to maintain the preserve subject to the following:

- Further sales, transfers, or leases of the sovereign submerged lands may not be approved unless there is extreme hardship and the Board of Trustees determines that the sale, transfer, or lease is in the public interest.
- Further dredging or filling of submerged lands may not be approved except:
  - Minimal dredging and spoiling of submerged lands may be authorized for existing public navigation projects, as a public necessity, or for preservation of the preserve.
  - Other alterations of the physical conditions of submerged lands may be authorized as necessary to enhance the quality and utility of the preserve.
  - Minimum dredging and filling of submerged lands may be authorized for the creation and maintenance of marinas, piers, or docks and the maintenance of existing attendant navigation channels and access roads.
  - Dredging of submerged lands may be authorized if the Board of Trustees determines that such dredging is necessary for eliminating conditions hazardous to the public health or for

eliminating stagnant waters, islands, and spoil banks and that such dredging would enhance the aesthetic and environmental quality and utility of the preserve.

- The Board of Trustees must give notice of dredging and filling before approving it.
- Drilling of wells, excavation for shell or minerals, or erection of structures other than docks within the preserve is prohibited.
- The Board of Trustees may not approve any seaward relocation of bulkhead lines or further establishment of bulkhead lines except when a proposed bulkhead line is located at the line of mean high water along the shoreline.
- Construction, replacement, or relocation of a seawall is prohibited without the approval of the Board of Trustees, and may be granted only if riprap construction is used in the seawall. The Board of Trustees may grant approval through a letter of consent.

For lands lying within the preserve, the bill also authorizes the Board of Trustees to:

- Enter into agreements for and establish lines delineating sovereign submerged lands and privately owned lands.
- Enter into agreements for the exchange of sovereign submerged lands for privately owned lands.
- Accept gifts of land within or contiguous to the preserve.
- Negotiate or enter into agreements with owners of lands contiguous to public lands for any public or private use.
- Conduct restoration and enhancement efforts in the preserve and its tributaries.
- Stabilize eroding shorelines of the preserve and its tributaries that are contributing to turbidity by planting natural vegetation and by the placement of riprap.[15]
- Take any action convenient for, or necessary to, the accomplishment of any of these authorized acts.

The bill requires the Board of Trustees to adopt and enforce rules to implement the bill's provisions and establish additional management criteria as necessary to accommodate special circumstances. The rules must also regulate human activity within the preserve in such a manner as to not unreasonably interfere with traditional public uses, such as sport fishing, commercial fishing, boating, and swimming.[16]

The bill further provides that the establishment and management of the preserve may not infringe upon the riparian rights of upland property owners adjacent to or within the preserve. In addition, the bill authorizes enforcement pursuant to the Environmental Protection Act,[17] and authorizes the Department of Legal Affairs to bring a civil action with a penalty of $5,000 per day against a person who violates the provisions of the bill.

B. SECTION DIRECTORY:

Section 1: Creates s. 258.3991, F.S., establishing the Nature Coast Aquatic Preserve.

Section 2: Provides an effective date of July 1, 2014.

[15] According to Merriam-Webster On-Line Dictionary, "riprap" means a foundation or sustaining wall of stones or chunks of concrete thrown together without order (as in deep water); also : a layer of this or similar material on an embankment slope to prevent erosion.
[16] According to DEP, Chapters 18-20, F.A.C., already include these provisions. Therefore, further rulemaking is unnecessary.
[17] Section 403.412, F.S., is the Environmental Protection Act, which authorizes the Department of Legal Affairs, any political subdivision, or citizen of the state to maintain an action for injunctive relief against any agency with the duty of enforcing laws, rules, and regulations for the protection of the air, water, and other natural resources of the state to compel such governmental authority to enforce such laws, rules, and regulations.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   According to DEP,[18] Florida currently has 41 aquatic preserves covering approximately 2.2 million acres. The proposed Nature Coast Aquatic Preserve would add approximately 520,000 acres.

   Based on historical information for the creation of an aquatic preserve, the potential operating costs to create and manage the Nature Coast Aquatic Preserve are as follows:

Salaries and Benefits - 2.0 FTEs	**FY 2014-2015**	**FY 2015-2016**
Salary Rate 71,939		
Salaries and Benefits		
(1 FTE) Manager - Environmental Specialist III	$59,398	$59,398
(1 FTE) Field/Office Biologist - Environmental Spec I	$46,703	$46,703
Total Salaries and Benefits	$106,101	$106,101
Expenses (uses existing State office space and surplus vehicle)		
Utilities	$1,200	$1,200
Office Supplies and Computers	$2,500	$700
Cell Phone	$1,500	$1,500
Fuel	$3,500	$3,500
Scientific , Education and Field Supplies	$9,000	$9,000
Vehicle/Vessel Maintenance and Repair	$8,000	$8,000
Total Expenses	$25,700	$23,900
Human Resources Allocation (2 FTE)	$688	$688
Total Operating Cost	**$132,489**	**$130,689**

Land Acquisition Trust Fund

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

[18] DEP, House Bill 1123 Agency Legislative Bill Analysis (revised), March 28, 2014

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

By creating an aquatic preserve, the bill strengthens certain environmental requirements related to dredging and filling activities and the erection of structures other than docks, which may result in an indeterminate, negative fiscal impact to the private sector.

D. FISCAL COMMENTS:

The bill allows the Department of Legal Affairs to bring an action for civil penalties of $5,000 per day for persons who violate provisions relating to the Nature Coast Aquatic Preserve.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill requires the Board of Trustees to adopt and enforce rules to implement the bill's provisions, provide additional preserve management criteria, and regulate human activity within the preserve. According to DEP, Chapters 18-20, F.A.C., already provide the Board of Trustees with rulemaking authority for these provisions.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Because the department indicates the need for two positions and related expenses to manage the preserve, an appropriation will be required.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 18, 2014, the Agriculture and Natural Resources Subcommittee reported HB 1123 favorably as a committee substitute. There was one amendment to HB 1123, which removed the word "existing." DEP had raised concerns that the bill as previously drafted would prohibit the construction of new docks, piers, and marinas within the boundaries of the Nature Coast Aquatic Preserve, and would prohibit a private riparian owner of uplands within the proposed aquatic preserve from leasing SSL for the construction of a new dock.

This analysis is drafted to the committee substitute as passed by the Agriculture and Natural Resources Subcommittee.

A bill to be entitled

An act relating to aquatic preserves; creating s. 258.3991, F.S.; creating the Nature Coast Aquatic Preserve; designating the preserve for inclusion in the aquatic preserve system; describing the boundaries of the preserve; outlining the authority of the Board of Trustees of the Internal Improvement Trust Fund in respect to the preserve; requiring the board to adopt rules to carry out this section; prohibiting the establishment and management of the preserve from infringing upon the riparian rights of upland property owners adjacent to or within the preserve; providing for enforcement and applicability; providing an effective date.

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

Section 1. Section 258.3991, Florida Statutes, is created to read:

258.3991 Nature Coast Aquatic Preserve.—

(1) DESIGNATION.—The following described area in Pasco, Hernando, and Citrus Counties is designated by the Legislature for inclusion in the aquatic preserve system under the Florida Aquatic Preserve Act of 1975 and shall be known as the "Nature Coast Aquatic Preserve." It is the intent of the Legislature that the Nature Coast Aquatic Preserve be preserved in an

essentially natural condition so that its biological and aesthetic value may endure for the enjoyment of future generations.

(2) BOUNDARIES.—

(a) For the purpose of this section, the Nature Coast Aquatic Preserve consists of the state-owned submerged lands lying west of the west right-of-way line of U.S. Highway 19 within the boundaries of Pasco County, as described in s. 7.51, Hernando County, as described in s. 7.27, and Citrus County, as described in s. 7.09, to the south boundary of St. Martins Marsh Aquatic Preserve, as described in s. 258.39(20), and the westerly projection thereof, and also including all the state-owned submerged lands within Citrus County lying west of the west boundary of St. Martins Marsh Aquatic Preserve, lying north of the westerly projection of the south boundary of St. Martins Marsh Aquatic Preserve, and lying south of a line extending westerly along northerly coordinate 1663693 feet, Florida West Zone (NAD83).

(b) The Nature Coast Aquatic Preserve includes the submerged bottom lands, the water column upon such lands, and all publicly owned islands within the boundaries of the preserve. Any privately owned upland within the boundaries of the preserve is excluded. However, the board may negotiate an arrangement with the owner of any privately owned upland by which such upland may be included in the preserve.

(3) AUTHORITY OF TRUSTEES.—The board shall maintain the

Nature Coast Aquatic Preserve subject to the following:

(a) Further sale, transfer, or lease of sovereignty submerged lands in the preserve may not be approved or consummated by the board, except upon a showing of extreme hardship on the part of the applicant and a determination by the board that such sale, transfer, or lease is in the public interest.

(b) Further dredging or filling of submerged lands of the preserve may not be approved by the board except:

1. Minimum dredging and spoiling of submerged lands may be authorized for existing public navigation projects, as a public necessity, or for preservation of the preserve according to the expressed intent of this section.

2. Other alteration of the physical conditions of submerged lands, including the placement of riprap, may be authorized as necessary to enhance the quality and utility of the preserve.

3. Minimum dredging and filling of submerged lands may be authorized for the creation and maintenance of marinas, piers, or docks and the maintenance of existing attendant navigation channels and access roads. Such projects may be authorized only upon a specific finding by the board that there is assurance that the project will be constructed and operated in a manner that will not adversely affect the water quality and utility of the preserve. This subparagraph does not authorize the connection of upland canals to the waters of the preserve.

4. Dredging of submerged lands may be authorized if the board determines that such dredging is necessary for eliminating conditions hazardous to the public health or for eliminating stagnant waters, islands, and spoil banks and that such dredging would enhance the aesthetic and environmental quality and utility of the preserve and is clearly in the public interest as determined by the board.

(c) Before approving any dredging or filling as provided in paragraph (b), the board must give public notice of such dredging or filling as required under s. 253.115.

(d) There may not be any drilling of wells, excavation for shell or minerals, or erection of structures other than docks within the preserve unless such activity is associated with an activity that is authorized under this section.

(e) The board may not approve any seaward relocation of bulkhead lines or further establishment of bulkhead lines except when a proposed bulkhead line is located at the line of mean high water along the shoreline. Construction, replacement, or relocation of a seawall is prohibited without the approval of the board, which may be granted only if riprap construction is used in the seawall. The board may grant approval under this paragraph by a letter of consent.

(f) Notwithstanding other provisions of this section, the board may, for lands lying within the Nature Coast Aquatic Preserve:

1. Enter into agreements for and establish lines

delineating sovereignty lands and privately owned lands.

2. Enter into agreements for the exchange of, and exchange, sovereignty lands for privately owned lands.

3. Accept gifts of land within or contiguous to the preserve.

4. Negotiate or enter into agreements with owners of lands contiguous to public lands for any public or private use of such lands.

5. Take any action convenient for, or necessary to, the accomplishment of any of the acts and matters authorized under this paragraph.

6. Conduct restoration and enhancement efforts in the preserve and its tributaries.

7. Stabilize eroding shorelines of the preserve and its tributaries which are contributing to turbidity by planting natural vegetation to the greatest extent feasible and by the placement of riprap, as determined by Pasco, Hernando, and Citrus Counties in conjunction with the Department of Environmental Protection.

(4) RULES.—

(a) The board shall adopt and enforce reasonable rules to carry out this section and to provide:

1. Additional preserve management criteria as necessary to accommodate special circumstances.

2. Regulation of human activity within the preserve in such a manner as not to interfere unreasonably with lawful and

traditional public uses of the preserve, such as sport fishing, commercial fishing, boating, and swimming.

(b) Other uses of the preserve or human activity within the preserve, although not originally contemplated, may be authorized by the board, but only subsequent to a formal finding of compatibility with the purposes of this section.

(5) RIPARIAN RIGHTS.—The establishment or the management of the Nature Coast Aquatic Preserve may not operate to infringe upon the riparian rights of upland property owners adjacent to or within the preserve. Reasonable improvement for ingress and egress, mosquito control, shore protection, public utility expansion, and similar purposes may be authorized by the board or the Department of Environmental Protection, subject to any other applicable laws under the jurisdiction of other agencies. However, before approving any such improvements, the board or the department must give public notice as required under s. 253.115.

(6) ENFORCEMENT.—This section may be enforced in accordance with s. 403.412. In addition, the Department of Legal Affairs may bring an action for civil penalties of $5,000 per day against a person as defined in s. 1.01 who violates this section or any rule or regulation issued hereunder.

(7) APPLICABILITY.—This section is subject to the "Florida Electrical Power Plant Siting Act" as described in ss. 403.501-403.518.

Section 2. This act shall take effect July 1, 2014.

Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

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

Committee/Subcommittee hearing bill: Agriculture & Natural Resources Appropriations Subcommittee

Representative Porter offered the following:

Amendment (with title amendment)

Between lines 155 and 156, insert:

Section 2. For the 2014-2015 fiscal year, the sums of $130,689 in recurring funds and $1,800 in nonrecurring funds are appropriated from the Land Acquisition Trust Fund to the Department of Environmental Protection, and two full-time equivalent positions with associated salary rate of 71,939 are authorized, for the purpose of managing and maintaining the Nature Coast Aquatic Preserve.

Amendment No. 1

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

Remove line 13 and insert:

for enforcement and applicability; providing an appropriation; providing an

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1191 Telephone Solicitation
SPONSOR(S): Business & Professional Regulation Subcommittee; Cruz
TIED BILLS: **IDEN./SIM. BILLS:** CS/CS/SB 450

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Business & Professional Regulation Subcommittee	12 Y, 0 N, As CS	Butler	Luczynski
2) Agriculture & Natural Resources Appropriations Subcommittee		Lolley	Massengale
3) Regulatory Affairs Committee			

SUMMARY ANALYSIS

Residents who do not wish to receive sales calls may have their residential, mobile, or paging device telephone number included on Florida's "Do Not Call" list. Individuals or entities that wish to make unsolicited telephone calls must acquire the list from the Department of Agriculture and Consumer Services, and unless an exception applies, must not initiate an outbound sales call to a number on the list.

The bill expands the definition of the term "telephonic sales call" to include text messaging in the type of unsolicited telephone calls that are prohibited by the "Do Not Call" program. In addition, the bill prohibits a telephone solicitor from sending text messages to a consumer who has previously communicated that he or she does not wish to be contacted.

The bill has a significant negative fiscal impact on the Department of Agriculture and Consumer Services (see Fiscal Analysis & Economic Impact Statement). The bill appropriates 3 positions and $168,278 from the General Inspection Trust Fund to the Department of Agriculture and Consumer Services to implement the provisions of the bill.

The bill has no fiscal impact on local government. Individuals and entities that solicit through telephonic sales calls may acquire Florida's Do Not list from the department at a maximum cost of $400 per year for the statewide listing.

The bill has an effective date of July 1, 2014.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

The Department of Agriculture and Consumer Services maintains the state's "Do Not Call" list, also known as the "no sales solicitation calls" list. Residents who do not wish to receive sales calls may have their residential, mobile, or paging device telephone number included on this list.[1] A "telephonic sales call" is defined as a call made by a telephone solicitor to a consumer to solicit the sale of consumer goods or services. Florida's "Do No Call" regulations are codified in s. 501.059, F.S.

Telephone solicitors[2] are prohibited from making telephonic sales calls to consumers who register for the "Do Not Call" program. There are several exceptions to this prohibition, including calls made in response to an express request of the person called; primarily in connection with an existing debt or contact, payment or performance of which has not been completed at the time of the call; to any individual with whom the telephone solicitor has a prior or existing business relationship; or by a newspaper publisher or his or her agent or employee in connection with his or her business.

In addition to those consumers registered for the "Do Not Call" program, a telephone solicitor may not call a consumer who previously communicated to the telephone solicitor that he or she does not wish to be contacted.

A telephone solicitor that contacts a person whose number is on the "Do Not Call" list, contacts a consumer who previously communicated to the telephone solicitor that he or she does not wish to be contacted, or makes a call that does not fall into one of the four exceptions is subject to penalties. The penalty may include a civil penalty[3] with a maximum fine of $10,000 per violation, or an administrative fine[4] with a maximum of $1,000 per violation, in addition to payment of the consumer's attorney fees and costs.

The federal Telephone Consumer Protection Act provides for restrictions on unsolicited advertisement to a telephone. The state's language is consistent with the federal law.

Effect of the Bill

The bill expands the term "telephonic sales calls" to include text messages, and prohibits transmitting certain text messages to a consumer if the consumer is on the "no sales solicitation calls" or "Do Not Call" list maintained by the department.

The bill also prohibits a telephone solicitor from contacting by text message consumers who have previously communicated that they do not wish to be contacted.

B. SECTION DIRECTORY:

Section 1 amends s. 501.059, F.S., prohibiting transmitting certain text messages to a consumer.

Section 2 provides an appropriation to the Department of Agriculture and Consumer Services.

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[1] Florida Department of Agriculture and Consumer Services, *Florida DO NOT CALL Program*, https://www.fldnc.com/About.aspx

[2] "Telephone solicitor" means a natural person, firm, organization, partnership, association, or corporation, or a subsidiary or affiliate thereof, doing business in this state, who makes or causes to be made a telephonic sales call, including, but not limited to, calls made by use of automated dialing or recorded message devices.

[3] Section 501.059(9)(a), F.S.

[4] Section 501.059(9)(b), F.S.

Section 3 provides an effective date of July 1, 2014.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

Because the bill prohibits sending unsolicited text messages to persons who register for the Do Not Call list, the department expects a 25 percent increase in administrative fines, resulting in an increase in recurring revenues of $30,725 deposited into the General Inspection Trust Fund. The department does not expect an increase in revenues from individuals and entities acquiring the statewide Do Not Call list.

Expenditures:

The bill provides an appropriation of three full-time equivalent positions with recurring expenditures of $152,175 and nonrecurring expenditures of $16,103 from the General Inspection Trust Fund. There would also be indirect costs of $24,851. Therefore, the net loss for Fiscal Year 2014-2015 is ($162,404) and for Fiscal Year 2015-2016 is ($146,301).

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Individuals and entities will be prohibited from sending unsolicited text messages to persons who register for the "Do Not Call" program, and to those who have otherwise previously communicated to the telephone solicitor that they do not wish to be contacted by a telephone solicitor. Individuals and entities that previously sent unsolicited text messages and did not acquire Florida's Do Not Call list may need to acquire the list from the department, at a maximum cost of $400 per year for the statewide listing.

D. FISCAL COMMENTS:

A review of the workload and estimated increase in the number of complaints indicates that the department could use one more position rather than three more.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 18, 2014, the Business & Professional Regulation Subcommittee adopted an amendment and reported the bill favorably as a committee substitute. The amendment added an appropriation for the department to implement the bill.

The staff analysis is drafted to reflect the committee substitute.

A bill to be entitled

An act relating to telephone solicitation; reordering and amending s. 501.059, F.S.; redefining the term "telephonic sales call"; prohibiting a telephone solicitor from transmitting certain text messages to a consumer if the consumer is on the "no sales solicitation calls" list maintained by the Department of Agriculture and Consumer Services or if the consumer has previously communicated such a request to the telephone solicitor; providing appropriations and authorizing positions; providing an effective date.

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

Section 1. Subsection (1) of section 501.059, Florida Statutes, is reordered and amended, and subsection (5) of that section is amended, to read:

501.059 Telephone solicitation.—

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

(g) ~~(a)~~ "Telephonic sales call" means a telephone call or text message ~~call made by a telephone solicitor~~ to a consumer~~,~~ for the purpose of soliciting a sale of any consumer goods or services, ~~or for the purpose of~~ soliciting an extension of credit for consumer goods or services, or ~~for the purpose of~~ obtaining information that will or may be used for the direct solicitation of a sale of consumer goods or services or an

extension of credit for such purposes.

(b) "Consumer goods or services" means ~~any~~ real property or ~~any~~ tangible or intangible personal property that ~~which~~ is normally used for personal, family, or household purposes, including, but not limited to ~~without limitation~~, any such property intended to be attached to or installed in any real property without regard to whether it is so attached or installed, as well as cemetery lots and timeshare estates, and any services related to such property.

(h) ~~(c)~~ "Unsolicited telephonic sales call" means a telephonic sales call other than a call made:

1. In response to an express request of the person called;

2. Primarily in connection with an existing debt or contract, if payment or performance of such debt or contract ~~which~~ has not been completed at the time of such call;

3. To a ~~any~~ person with whom the telephone solicitor has a prior or existing business relationship; or

4. By a newspaper publisher or his or her agent or employee in connection with his or her business.

(f) ~~(d)~~ "Telephone solicitor" means a ~~any~~ natural person, firm, organization, partnership, association, or corporation, or a subsidiary or affiliate thereof, doing business in this state, who makes or causes to be made a telephonic sales call, including, but not limited to, calls made by use of automated dialing or recorded message devices.

(a) ~~(e)~~ "Consumer" means an actual or prospective

purchaser, lessee, or recipient of consumer goods or services.

(e) ~~(f)~~ "Merchant" means a person who, directly or indirectly, offers or makes available to consumers any consumer goods or services.

(d) ~~(g)~~ "Doing business in this state" means ~~refers to~~ businesses that ~~who~~ conduct telephonic sales calls from a location in Florida or from other states or nations to consumers located in Florida.

(c) ~~(h)~~ "Department" means the Department of Agriculture and Consumer Services.

(5) A telephone solicitor may not initiate an outbound telephone call or text message to a consumer who has previously communicated to the telephone solicitor that he or she does not wish to receive an outbound telephone call or text message:

(a) Made by or on behalf of the seller whose goods or services are being offered; or

(b) Made on behalf of a charitable organization for which a charitable contribution is being solicited.

Section 2. For the 2014-2015 fiscal year, the sums of $152,175 in recurring funds and $16,103 in nonrecurring funds are appropriated from the General Inspection Trust Fund to the Department of Agriculture and Consumer Services, and three full-time equivalent positions with associated salary rate of 87,262 are authorized, for the purpose of implementing this act.

Section 3. This act shall take effect July 1, 2014.

Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

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

Committee/Subcommittee hearing bill: Agriculture & Natural Resources Appropriations Subcommittee

Representative Albritton offered the following:

Amendment

Remove lines 72-76 and insert:

$54,908 in recurring funds and $8,773 in nonrecurring funds are appropriated from the General Inspection Trust Fund to the Department of Agriculture & Consumer Services, and one full-time equivalent position with associated salary rate of 32,386 is authorized, for the purpose of implementing this act.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 7147 PCB EUS 14-01 Department of Agriculture and Consumer Services
SPONSOR(S): Energy & Utilities Subcommittee, Diaz
TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 1044

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Energy & Utilities Subcommittee	12 Y, 1 N	Whittier	Keating
1) Agriculture & Natural Resources Appropriations Subcommittee		Lolley	Massengale
2) Regulatory Affairs Committee			

SUMMARY ANALYSIS

The bill addresses the duties and responsibilities of the Department of Agriculture and Consumer Services with respect to energy issues. Specifically, the bill does the following:

- Authorizes the Commissioner of Agriculture to appoint a representative to the Southern States Energy Board;
- Adds a representative of the department to the Florida Building Commission;
- Clarifies that the department must promote all forms of renewable energy, not simply solar;
- Clarifies that the department must promote and provide reports and recommendations on both energy conservation and efficiency measures;
- Authorizes the department to work in cooperation with the Florida Energy Systems Consortium;
- Authorizes the department to post information on alternative fueling stations and electric vehicle charging stations on the department's website;
- Repeals the expired Solar Energy Systems Incentive Program and related cross-references;
- Repeals the expired Florida Energy Star Residential HVAC Rebate Program and related cross-references;

The bill does not appear to have a fiscal impact on state or local governments.

The bill may have a positive impact on the private sector by disseminating location and pricing information for alternative fuel and electric vehicle charging stations on the department's website and may facilitate the use of vehicles utilizing different types of energy.

Costs incurred as a result of posting on the website can be absorbed within existing resources.

HB 5001 provides an appropriation of $47,212 in recurring general revenue funds for the annual dues to the Southern States Energy Board.

The bill has an effective date of July 1, 2014.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Southern States Energy Board (Sections 1 and 3)

Present Situation

The Southern States Energy Board (SSEB or Board) is a non-profit interstate compact organization created by state law in 1960 and consented to by Congress[1] with a broad mandate to contribute to the economic and community well-being of the southern region.[2] Its mission is "to enhance economic development and the quality of life in the South through innovations in energy and environmental policies, programs and technologies."[3]

Sixteen southern states and two territories comprise the board: Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Maryland, Mississippi, Missouri, North Carolina, Oklahoma, Puerto Rico, South Carolina, Tennessee, Texas, U.S. Virgin Islands, Virginia, and West Virginia. Each jurisdiction is represented by the Governor and a Legislator from the House and Senate. A Governor serves as the chair and legislators serve as vice-chair and treasurer. Ex-officio non-voting Board members include a federal representative appointed by the President of the United States, the Southern Legislative Conference Energy and Environment Committee Chair, and the Board's executive director, who serves as secretary.[4]

According to the Board's website, the SSEB pursues its mission through the creation of programs in the fields of energy and environmental policy research, development and implementation, science and technology exploration, and related areas of concern. The SSEB "serves its members directly by providing timely assistance designed to develop effective energy and environmental policies and programs and represents its members before governmental agencies at all levels."[5]

According to its website, the Board's long-term goals are the following:

- Perform essential services that provide direct scientific and technical assistance to state governments;
- Develop, promote, and recommend policies and programs on energy, environment, and economic development that encourage sustainable development;
- Provide technical assistance to executive and legislative policy-makers and the private sector in order to achieve synthesis of energy, environment, and economic issues that ensure energy security and supply;
- Facilitate the implementation of energy and environmental policies between federal, state, and local governments and the private sector;
- Sustain business development throughout the region by eliminating barriers to the use of efficient energy and environmental technologies; and
- Support improved energy efficient technologies that pollute less and contribute to a clean global environment while protecting indigenous natural resources for future generations.[6]

According to the Board's website, core funding is comprised of appropriations from its 18 member jurisdictions, and each member's share of support is determined by a formula written into the original

[1] Public Laws 87-563 and 92-440.
[2] Southern States Energy Board website found at http://www.sseb.org/about/ (last visited on March 16, 2014).
[3] *Id.*
[4] *Id.*
[5] *Id.*
[6] *Id.*

Southern States Energy Compact (Compact). The formula uses relative state population, per capita, income and equal shares as factors. The Board has not requested an increase in state appropriations since 1987.[7]

Section 377.711, F.S., establishes Florida as a member of the Compact. Section 377.712, F.S., provides for Florida's participation on the SSEB, by requiring the Governor, the President of the Senate, and the Speaker of the House of Representatives to each appoint one member to the SSEB.[8] The section also authorizes departments, agencies, and officers of the state and its subdivisions to cooperate with the SSEB if the activities have been approved by either the Governor or the Florida Department of Health.

Effect of Proposed Changes

The bill gives authority to the Commissioner of Agriculture to serve as a member of the Southern States Energy Board or to appoint a deputy or assistant from the department to serve. This authority replaces existing language, removed in the bill, which authorized the Department of Agriculture and Consumer Services to represent Florida in the Southern States Energy Compact. This change provides greater consistency with the provisions of s. 377.712, F.S., which specify Florida's participation in the SSEB. The bill also replaces reference to the Department of Health with reference to the Department of Agriculture and Consumer Services.

Office of Energy (Section 2)

Present Situation

In response to the energy crisis in the 1970s, the State Energy Office was established by the Legislature in 1975.[9] Prior to becoming a part of the Department of Agriculture and Consumer Services, it has been housed in the Department of Administration, the Department of Community Affairs, the Department of Environmental Protection, and the Executive Office of the Governor. In 2006, the Legislature established the Florida Energy Commission, as an arm of the Legislature, to develop recommendations for legislation to establish a state energy policy.[10]

During the 2007 Legislative Session, the issue of fragmentation of energy policy governance was raised. At that time, there were many public sector entities playing a role in developing, implementing, or coordinating some aspect of Florida's energy policies: the Florida Energy Office within the Department of Environmental Protection; the Department of Community Affairs; the Florida Building Commission; the Department of Agriculture and Consumer Services; the Department of Management Services; the Department of Financial Services; the Public Service Commission; the Florida Energy Commission; and a host of colleges and universities.

In 2008,[11] the Legislature established the Florida Energy and Climate Commission (Commission or FECC) as the state entity responsible for recommending, implementing, and coordinating Florida's energy policy and for coordinating all federal energy programs delegated to the state. The measure, in effect, merged the Department of Environmental Protection's Florida Energy Office with the Legislature's Florida Energy Commission and administratively placed the new entity within the Executive Office of the Governor. In 2009, the Senate failed to confirm the membership of the Commission.

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[7] *Id.*
[8] Currently, the Florida members are Governor Rick Scott, Senator Anitere Flores, and Representative Jose Felix Diaz.
[9] Chapter 75-256, L.O.F.
[10] Former s. 377.901(5), F.S.
[11] Section 46, ch. 2008-227, L.O.F.

In 2011,[12] the Legislature abolished the Florida Energy and Climate Commission and transferred all of its powers, duties, functions, records, personnel, and property; unexpended balances of appropriations, allocations, and other funds; administrative authority; administrative rules; pending issues; and existing contracts from the Executive Office of the Governor to the Office of Energy (Office) within the Department of Agriculture and Consumer Services.

Among its responsibilities, the Office of Energy administers tax incentive programs, administers the provisions of the Florida Energy and Climate Protection Act, works cooperatively with other state entities regarding energy-related matters, and provides energy policy recommendations to the Legislature.

The department provides an annual report to the Governor and the Legislature reflecting its activities and its policy recommendations. The report must include a report from the Public Service Commission addressing, among other things, ongoing energy conservation programs and must include recommendations for energy conservation programs in the state. Further, the department must promote energy conservation in all energy use sectors throughout the state.[13]

The terms "energy conservation" and "energy efficiency" are often used interchangeably, but have distinct meanings. Energy conservation is generally defined as reduction in total levels of energy consumption.[14] An example is lowering the thermostat. Energy efficiency is generally defined as achieving more services from the same energy input or the same services from less energy input.[15] An example is replacing an incandescent light bulb with an LED light bulb. Programs addressed by the PSC include both energy conservation and energy efficiency measures.

The department must also promote the development and use of renewable energy resources. Current law requires it to do so by: establishing goals and strategies for increasing the use of solar energy in the state; aiding and promoting the commercialization of solar energy technology; identifying barriers to greater use of solar energy systems in this state; and investigating opportunities for solar electric vehicles and other solar energy manufacturing, distribution, installation, and financing efforts which will enhance Florida's position as a leader in solar energy research, development, and use.[16]

The Florida Energy Systems Consortium (consortium or FESC) promotes collaboration among experts in the State University System for the purposes of sharing energy-related expertise and assisting in the development and implementation of a comprehensive, long-term, environmentally compatible, sustainable, and efficient energy strategic plan for the state. The consortium is to focus on the research and development of innovative energy systems that will lead to alternative energy strategies, improved energy efficiencies, and expanded economic development for the state.[17] The consortium consists of all of the state universities and is administered at the University of Florida by a director appointed by the President of the University of Florida. The director reports to the Department of Agriculture and Consumer Services.[18]

Effect of Proposed Changes

For decades, the state has promoted attainment of energy conservation and energy efficiency. The bill clarifies that the duties of the department include making recommendations, collecting and disseminating information, and developing and conducting educational and training programs regarding energy efficiency in addition to conservation. The bill captures both "energy conservation" and "energy efficiency" programs to reflect the broad array of programs addressed by the Public Service

[12] Chapter 2011-142, L.O.F.
[13] Section 377.703(2)(f) and (i), F.S.
[14] *Florida's Electric Utilities: A Reference Guide*, Revised 1994 Edition, p. 35.
[15] See http://www.iea.org/topics/energyefficiency/
[16] Section 377.703(2)(h), F.S.
[17] Section 1004.648, F.S.
[18] *Id.*

Commission and clarifies that the department's recommendations and promotional efforts must address both. The bill clarifies that the department's efforts to promote renewable energy resources not be limited to solar energy technologies, but include all renewable resources.

The bill adds the Florida Energy Systems Consortium to the list of entities that the Office of Energy is to work with in cooperation.

Solar Energy Systems Incentive Program and Florida Energy Star Residential HVAC Rebate Program (Sections 4, 5, 6, 9, and 10)

The Legislature created the Solar Energy System Incentives Program (Solar Rebate Program or program) in 2006 to encourage homeowners and businesses to purchase and install solar energy systems. Rebates ranged from $100 for solar pool heaters to up to $100,000 for solar energy systems for businesses. Systems installed from July 1, 2006, to June 30, 2010, were eligible for limited rebates on the purchase and installation costs, subject to legislative appropriation.

Starting in 2006, the Legislature appropriated more than $25 million,[19] over the course of the program, in funding for the Solar Rebate Program. However, the program proved more popular than anticipated and funds were depleted. A backlog of more than $52 million in unpaid rebate applications had accumulated as of October 2010.

In August 2010, the Florida Energy and Climate Commission (FECC) created the Florida Energy Star Residential HVAC Rebate Program (HVAC Rebate Program) in accordance with s. 377.807, F.S. The program was intended to provide $1,500 rebates for the purchase and installation of eligible HVAC systems and was to commence August 30, 2010, and terminate on December 31, 2010, or when funds were depleted. The FECC announced the program in August 2010 without having authorized funding. The FECC sought funding through the Legislative Budget Commission (LBC). As the funding transfer request was not lawfully permissible, however, no action was taken by the LBC. Consequently, the FECC suspended the program and announced that all applications were pending legislative action.[20]

In November 2010 during Special Session A, the Legislature passed HB 15-A, which provided for payment of HVAC rebates and provided that any remaining funds, after processing payment of all approved HVAC rebates, be used to proportionally pay all approved, but unpaid, rebate applications in the Solar Rebate Program backlog. After the funds were exhausted, both programs were closed. New installations and purchases have not been eligible for rebates under those programs since 2010.

Effect of Proposed Changes

The Solar Energy System Incentives Program and the Florida Energy Star Residential HVAC Rebate Program are no longer in existence and all of the qualified applicants have received a rebate. The bill removes the expired programs and their associated definitions and cross-references from the statutes.

Alternative Fueling Stations and Electric Vehicle Charging Stations (Section 7)

Present Situation

[19] The Legislature provided the following funding for the program:
- FY 2006-07 $2.5 million in General Revenue;
- FY 2007-08 $3.5 million in General Revenue;
- FY 2008-09 $5.0 million in General Revenue; and
- FY 2009-10 $14.4 million in federal ARRA 2009 funds

[20] House Staff Analysis for HB 15-A (November 16, 2010) (on file with the Energy & Utilities Subcommittee).

Over the last decade, the state has adopted incentives for alternative-fuel vehicles. Most recently, in 2013, the Legislature created a program for natural gas fuel fleet conversions that began January 1, 2014. Administered by the Department of Agriculture and Consumer Services, the state offers a rebate for up to 50 percent of the eligible costs of a natural gas fuel fleet vehicle or bi-fuel operating system placed into service on or after July 1, 2013.[21] An applicant is eligible to receive a maximum rebate of $25,000 per vehicle up to a total of $250,000 per applicant per fiscal year, on a first-come, first-served basis.

Electric Vehicles (EVs) are becoming more commercially viable as a result of tax credits, the introduction of gasoline-electric hybrid technology, and improved batteries. As the technology becomes more established, EVs may become a more realistic alternative to gasoline and diesel-fueled vehicles.[22]

Estimates of the number of EVs in Florida, as provided by utilities and other organizations, ranged from approximately 1,000 to 6,000 in 2012[23] and are assumed to be higher in 2014. Because no agency tracks these figures formally, it is difficult to pinpoint the number more precisely, and future projections are even more speculative. The number of installed EV charging stations in the state is currently estimated at more than 400.[24]

Currently, there are alternative fuel and EV charging station locators available online, such as http://floridagas.org/ForVehicles/FuelStationMap.aspx and http://www.afdc.energy.gov/locator/stations, however, no source appears to provide a truly exhaustive list of alternative fuel or public charging stations.[25]

Effect of Proposed Changes

The bill creates s. 377.815, F.S., which authorizes the Department of Agriculture and Consumer Services to post on its website information relating to alternative fueling stations and electric vehicle charging stations.

It defines the term "alternative fuel" to mean "nontraditional transportation fuel, such as pure methanol, ethanol, and other alcohols; blends of 85 percent or more of alcohol with gasoline; natural gas and liquid fuels domestically produced from natural gas; liquefied petroleum gas; coal-derived liquid fuels; hydrogen; electricity; pure biodiesel; fuels, other than alcohol, derived from biological materials; and P-series fuels."

Specifically, the bill specifies that an owner or operator of an alternative fueling station that is available in Florida may report any of the following information to the department (to be posted on the department's website):

- The type of alternative fuel available.
- The station's name, address, or location.
- The fees or costs associated with the alternative fuel that is available for purchase.

The owner or operator of an electric vehicle charging station that is available in Florida may report any of the following information to the department (to be posted on the department's website):

- The station's name, address, or location.

[21] Ch. 2013-198, L.O.F
[22] Florida Public Service Commission, *Report on Electric Vehicle Charging*, p. 1 (December 2012).
[23] *Id.*
[24] Department of Agriculture and Consumer Services, Office of Energy, website: http://www.freshfromflorida.com/Energy/Electric-Vehicle-Charging-Stations-Infrastructure (last viewed on March 17, 2014).
[25] *Id.*

- The fees or costs, if any, associated with the electric vehicle charging services provided by the station.

Florida Building Commission (Section 8)

Present Situation

The Florida Building Commission (ss. 553.74 - 553.77, F.S.) is a 26-member technical body responsible for the development, maintenance, and interpretation of the Florida Building Code. The Commission also approves products for statewide acceptance and administers the Building Code Training Program. Members are appointed by the Governor and confirmed by the Senate and include the following design professionals, contractors, and government experts in the various disciplines covered by the code:

- One architect registered to practice in this state and actively engaged in the profession.
- One structural engineer registered to practice in this state and actively engaged in the profession.
- One air-conditioning or mechanical contractor certified to do business in this state and actively engaged in the profession.
- One electrical contractor certified to do business in this state and actively engaged in the profession.
- One member from fire protection engineering or technology who is actively engaged in the profession.
- One general contractor certified to do business in this state and actively engaged in the profession.
- One plumbing contractor licensed to do business in this state and actively engaged in the profession.
- One roofing or sheet metal contractor certified to do business in this state and actively engaged in the profession.
- One residential contractor licensed to do business in this state and actively engaged in the profession.
- Three members who are municipal or district codes enforcement officials, one of whom is also a fire official.
- One member who represents the Department of Financial Services.
- One member who is a county codes enforcement official.
- One member of a Florida-based organization of persons with disabilities or a nationally chartered organization of persons with disabilities with chapters in this state.
- One member of the manufactured buildings industry who is licensed to do business in this state and is actively engaged in the industry.
- One mechanical or electrical engineer registered to practice in this state and actively engaged in the profession.
- One member who is a representative of a municipality or a charter county.
- One member of the building products manufacturing industry who is authorized to do business in this state and is actively engaged in the industry.
- One member who is a representative of the building owners and managers industry who is actively engaged in commercial building ownership or management.
- One member who is a representative of the insurance industry.
- One member who is a representative of public education.
- One member who is a swimming pool contractor licensed to do business in this state and actively engaged in the profession.
- One member who is a representative of the green building industry and who is a third-party commission agent, a Florida board member of the United States Green Building Council or Green Building Initiative, a professional who is accredited under the International Green

Construction Code (IGCC), or a professional who is accredited under Leadership in Energy and Environmental Design (LEED).
- One member who is a representative of a natural gas distribution system and who is actively engaged in the distribution of natural gas in this state.
- One member who shall be the chair.

The Department of Agriculture and Consumer Services, under the Florida Energy Efficiency and Conservation Act, is required, among other duties, to be a party in the proceedings to adopt energy efficiency and conservation goals and is to file with the Public Service Commission comments on those proposed goals,[26] including an analysis of the impact of state and local building codes and appliance efficiency standards on the need for utility-sponsored conservation and energy efficiency measures and programs.[27]

Effect of Proposed Changes

The bill adds a representative of the Department of Agriculture and Consumer Services to the Florida Building Commission. The bill specifies that this representative be appointed from a list of three nominees provided by the Commissioner of Agriculture. If the Governor refuses to appoint a nominee from this list, the Governor must inform the commissioner within 60 days of receipt of the list, and the commissioner must submit a new list of three nominees.

B. SECTION DIRECTORY:

Section 1. Amends s. 377.6015, F.S., removing the power of the Department of Agricultural and Consumer Services to represent the state in the Southern States Energy Compact.

Section 2. Amends s. 377.703, F.S., expanding the promotion of the development and use of renewable energy resources from goals related to solar energy to renewable energy in general.

Section 3. Amends s. 377.712, F.S., authorizing the Commissioner of Agriculture to appoint a member to the Southern States Energy Board.

Section 4. Amends s. 377.801, F.S., conforming a cross-reference.

Section 5. Amends s. 377.802, F.S., revising the purpose of the Florida Energy and Climate Protection Act.

Section 6. Amends s. 377.803, F.S., conforming provisions to changes made by the Act.

Section 7. Creates s. 377.815, F.S., authorizing the Department of Agriculture and Consumer Services to post on its website information relating to alternative fueling stations or electric vehicle charging stations and defining the term "alternative fuel."

Section 8. Amends s. 553.74, F.S., adding a member to the Florida Building Commission as a representative of the Department of Agriculture and Consumer Services.

Section 9. Repeals s. 377.806, F.S., relating to the Solar Energy System Incentives Program.

Section 10. Repeals s. 377.807, F.S., relating to the Energy-Efficient Appliance Rebate Program.

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[26] In accordance with s. 366.82(2), F.S., the Public Service Commission shall adopt appropriate goals for increasing the efficiency of energy consumption and increasing the development of demand-side renewable energy systems, specifically including goals designed to increase the conservation of expensive resources, such as petroleum fuels, to reduce and control the growth rates of electric consumption, to reduce the growth rates of weather-sensitive peak demand, and to encourage development of demand-side renewable energy resources.

[27] Section 366.82(5) F.S.

Section 11. Provides an effective date of July 1, 2014.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   HB 5001 provides an appropriation of $47,212 in recurring general revenue funds for the annual dues to the Southern States Energy Board.

2. Expenditures:

   Posting on the website can be absorbed within existing resources.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Having access to location and pricing information for alternative fuel and electric vehicle charging stations may facilitate the use of vehicles utilizing these types of energy.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

Not applicable.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to the Department of Agriculture and Consumer Services; amending s. 377.6015, F.S.; removing a provision relating to the department's duty to represent the state in the Southern States Energy Compact; amending s. 377.703, F.S.; requiring the department's annual report to include recommendations for energy efficiency; revising provisions relating to the promotion of the development and use of renewable energy resources; directing the department to cooperate with the Florida Energy Systems Consortium in the development and use of renewable energy resources; amending s. 377.712, F.S.; authorizing the Commissioner of Agriculture to serve on or appoint a representative to the Southern States Energy Board; redirecting authority to approve proposed activities relating to the Southern States Energy Compact from the Department of Health to the department; amending s. 377.801, F.S.; conforming a cross-reference; amending ss. 377.802 and 377.803, F.S.; conforming provisions to changes made by the act; creating s. 377.815, F.S.; authorizing the department to post on its website information relating to alternative fueling stations and electric vehicle charging stations; defining the term "alternative fuel"; authorizing the owner or operator of an alternative

fueling station or an electric vehicle charging station to report certain information; amending s. 553.74, F.S.; providing for the appointment of a department representative to the Florida Building Commission; deleting obsolete provisions; repealing ss. 377.806 and 377.807, F.S., relating to the Solar Energy System Incentives Program and the energy-efficient appliance rebate program, respectively; providing an effective date.

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

Section 1. Paragraph (e) of subsection (2) of section 377.6015, Florida Statutes, is amended to read:

377.6015 Department of Agriculture and Consumer Services; powers and duties.—

(2) The department shall:

~~(e) Represent Florida in the Southern States Energy Compact pursuant to ss. 377.71-377.712.~~

Section 2. Paragraphs (f), (h), and (i) of subsection (2) of section 377.703, Florida Statutes, are amended to read:

377.703 Additional functions of the Department of Agriculture and Consumer Services.—

(2) DUTIES.—The department shall perform the following functions, unless as otherwise provided, consistent with the development of a state energy policy:

(f) The department shall submit an annual report to the Governor and the Legislature reflecting its activities and recommending ~~making recommendations of~~ policies for improvement of the state's response to energy supply and demand and its effect on the health, safety, and welfare of the residents of this state ~~people of Florida~~. The report must ~~shall~~ include a report from the Florida Public Service Commission on electricity and natural gas and information on energy efficiency and conservation programs conducted and underway in the past year and ~~shall~~ include recommendations for energy efficiency and conservation programs for the state, including~~, but not limited to, the following factors~~:

1. Formulation of specific recommendations for improvement in the efficiency of energy utilization in governmental, residential, commercial, industrial, and transportation sectors.

2. Collection and dissemination of information relating to energy efficiency and conservation.

3. Development and conduct of educational and training programs relating to energy efficiency and conservation.

4. An analysis of the ways in which state agencies are seeking to implement s. 377.601(2), the state energy policy, and recommendations for better fulfilling this policy.

(h) The department shall promote the development and use of renewable energy resources, in conformance with chapter 187 and s. 377.601, by:

1. Establishing goals and strategies for increasing the

use of renewable ~~solar~~ energy in this state.

2. Aiding and promoting the commercialization of renewable energy resources ~~solar energy technology~~, in cooperation with the Florida Energy Systems Consortium, the Florida Solar Energy Center, Enterprise Florida, Inc., and any other federal, state, or local governmental agency that ~~which~~ may seek to promote research, development, and the demonstration of renewable ~~solar~~ energy equipment and technology.

3. Identifying barriers to greater use of renewable ~~solar~~ energy systems in this state, and developing specific recommendations for overcoming identified barriers, with findings and recommendations to be submitted annually in the report to the Governor and Legislature required under paragraph (f).

4. In cooperation with the Department of Environmental Protection, the Department of Transportation, the Department of Economic Opportunity, Enterprise Florida, Inc., the Florida Energy Systems Consortium, the Florida Solar Energy Center, and the Florida Solar Energy Industries Association, investigating opportunities, pursuant to the national Energy Policy Act of 1992, the Housing and Community Development Act of 1992, and any subsequent federal legislation, for renewable energy resources, ~~solar~~ electric vehicles, and other renewable ~~solar~~ energy manufacturing, distribution, installation, and financing efforts that ~~which will~~ enhance this state's position as the leader in renewable ~~solar~~ energy research, development, and use.

5. Undertaking other initiatives to advance the development and use of renewable energy resources in this state.

In the exercise of its responsibilities under this paragraph, the department shall seek the assistance of the renewable ~~solar~~ energy industry in this state and other interested parties and may ~~is authorized to~~ enter into contracts, retain professional consulting services, and expend funds appropriated by the Legislature for such purposes.

(i) The department shall promote energy efficiency and conservation in all energy use sectors throughout the state and be ~~shall constitute~~ the state agency primarily responsible for this function. The Department of Management Services, in consultation with the department, shall coordinate the energy conservation programs of all state agencies and review and comment on the energy conservation programs of all state agencies.

Section 3. Section 377.712, Florida Statutes, is amended to read:

377.712 Florida participation.—

(1)(a) The Governor shall appoint one member of the Southern States Energy Board. The member or the Governor may designate another person as the deputy or assistant to such member.

(b) The President of the Senate shall appoint one member of the Southern States Energy Board. The member or the president

may designate another person as the assistant or deputy to such member.

(c) The Speaker of the House of Representatives shall appoint one member of the Southern States Energy Board. The member or the speaker may designate another person as the assistant or deputy to such member.

(d) The Commissioner of Agriculture may serve, or may appoint a deputy or assistant from the department to serve, as a member of the Southern States Energy Board.

(2) Any supplementary agreement entered into under s. 377.711(6) requiring the expenditure of funds may ~~shall~~ not become effective as to Florida until the required funds are appropriated by the Legislature.

(3) Departments, agencies, and officers of this state, and its subdivisions are authorized to cooperate with the board in the furtherance of ~~any of~~ its activities pursuant to the compact, provided such proposed activities have been made known to, and have the approval of, ~~either~~ the Governor or the department ~~of Health~~.

Section 4. Section 377.801, Florida Statutes, is amended to read:

377.801 Short title.—Sections 377.801-377.804 ~~377.801-377.807~~ may be cited as the "Florida Energy and Climate Protection Act."

Section 5. Section 377.802, Florida Statutes, is amended to read:

377.802 Purpose.—This act is intended to provide incentives for Florida's citizens, businesses, school districts, and local governments to take action to diversify the state's energy supplies, reduce dependence on foreign oil, and mitigate the effects of climate change by providing funding for activities designed to achieve these goals. The grant programs in this act are intended to stimulate capital investment in and enhance the market for renewable energy technologies and technologies intended to diversify Florida's energy supplies, reduce dependence on foreign oil, and combat or limit climate change impacts. ~~This act is also intended to provide incentives for the purchase of energy-efficient appliances and rebates for solar energy equipment installations for residential and commercial buildings.~~

Section 6. Section 377.803, Florida Statutes, is amended to read:

377.803 Definitions.—As used in ss. 377.801-377.804 ~~377.801-377.807~~, the term:

(1) "Act" means the Florida Energy and Climate Protection Act.

(2) "Department" means the Department of Agriculture and Consumer Services.

(3) "Person" means an individual, partnership, joint venture, private or public corporation, association, firm, public service company, or any other public or private entity.

(4) "Renewable energy" means electrical, mechanical, or

thermal energy produced from a method that uses one or more of the following fuels or energy sources: hydrogen, biomass, as defined in s. 366.91, solar energy, geothermal energy, wind energy, ocean energy, waste heat, or hydroelectric power.

(5) "Renewable energy technology" means any technology that generates or utilizes a renewable energy resource.

~~(6) "Solar energy system" means equipment that provides for the collection and use of incident solar energy for water heating, space heating or cooling, or other applications that would normally require a conventional source of energy such as petroleum products, natural gas, or electricity that performs primarily with solar energy. In other systems in which solar energy is used in a supplemental way, only those components that collect and transfer solar energy shall be included in this definition.~~

~~(7) "Solar photovoltaic system" means a device that converts incident sunlight into electrical current.~~

~~(8) "Solar thermal system" means a device that traps heat from incident sunlight in order to heat water.~~

Section 7. Section 377.815, Florida Statutes, is created to read:

377.815 Alternative fueling stations and electric vehicle charging stations.—The Department of Agriculture and Consumer Services may post information on its website relating to alternative fueling stations and electric vehicle charging stations that are available for public use in this state.

(1) As used in this section, the term "alternative fuel" means nontraditional transportation fuel, such as pure methanol, ethanol, and other alcohols; blends of 85 percent or more of alcohol with gasoline; natural gas and liquid fuels domestically produced from natural gas; liquefied petroleum gas; coal-derived liquid fuels; hydrogen; electricity; pure biodiesel; fuels, other than alcohol, derived from biological materials; and P-series fuels.

(2) An owner or operator of an alternative fueling station that is available in this state may report the following information to the department:

(a) The type of alternative fuel available.

(b) The station's name, address, or location.

(c) The fees or costs associated with the alternative fuel that is available for purchase.

(3) The owner or operator of an electric vehicle charging station that is available in this state may report the following information to the department:

(a) The station's name, address, or location.

(b) The fees or costs, if any, associated with the electric vehicle charging services provided by the station.

Section 8. Subsection (1) of section 553.74, Florida Statutes, is amended to read:

553.74 Florida Building Commission.—

(1) The Florida Building Commission is created and located within the Department of Business and Professional Regulation

for administrative purposes. Members are appointed by the Governor subject to confirmation by the Senate. The commission is composed of 27 ~~26~~ members, consisting of the following:

(a) One architect registered to practice in this state and actively engaged in the profession. The American Institute of Architects, Florida Section, is encouraged to recommend a list of candidates for consideration.

(b) One structural engineer registered to practice in this state and actively engaged in the profession. The Florida Engineering Society is encouraged to recommend a list of candidates for consideration.

(c) One air-conditioning or mechanical contractor certified to do business in this state and actively engaged in the profession. The Florida Air Conditioning Contractors Association, the Florida Refrigeration and Air Conditioning Contractors Association, and the Mechanical Contractors Association of Florida are encouraged to recommend a list of candidates for consideration.

(d) One electrical contractor certified to do business in this state and actively engaged in the profession. The Florida Association of Electrical Contractors ~~Association~~ and the National Electrical Contractors Association, Florida Chapter, are encouraged to recommend a list of candidates for consideration.

(e) One member from fire protection engineering or technology who is actively engaged in the profession. The

Florida Chapter of the Society of Fire Protection Engineers and the Florida Fire Marshals and Inspectors Association are encouraged to recommend a list of candidates for consideration.

(f) One general contractor certified to do business in this state and actively engaged in the profession. The Associated Builders and Contractors of Florida, the Florida Associated General Contractors Council, and the Union Contractors Association are encouraged to recommend a list of candidates for consideration.

(g) One plumbing contractor licensed to do business in this state and actively engaged in the profession. The Florida Association of Plumbing, Heating, and Cooling Contractors is encouraged to recommend a list of candidates for consideration.

(h) One roofing or sheet metal contractor certified to do business in this state and actively engaged in the profession. The Florida Roofing, Sheet Metal, and Air Conditioning Contractors Association and the Sheet Metal and Air Conditioning Contractors' ~~Contractors~~ National Association are encouraged to recommend a list of candidates for consideration.

(i) One residential contractor licensed to do business in this state and actively engaged in the profession. The Florida Home Builders Association is encouraged to recommend a list of candidates for consideration.

(j) Three members who are municipal or district codes enforcement officials, one of whom is also a fire official. The Building Officials Association of Florida and the Florida Fire

Marshals and Inspectors Association are encouraged to recommend a list of candidates for consideration.

(k) One member who represents the Department of Financial Services.

(l) One member who is a county codes enforcement official. The Building Officials Association of Florida is encouraged to recommend a list of candidates for consideration.

(m) One member of a Florida-based organization of persons with disabilities or a nationally chartered organization of persons with disabilities with chapters in this state.

(n) One member of the manufactured buildings industry who is licensed to do business in this state and is actively engaged in the industry. The Florida Manufactured Housing Association is encouraged to recommend a list of candidates for consideration.

(o) One mechanical or electrical engineer registered to practice in this state and actively engaged in the profession. The Florida Engineering Society is encouraged to recommend a list of candidates for consideration.

(p) One member who is a representative of a municipality or a charter county. The Florida League of Cities and the Florida Association of Counties are encouraged to recommend a list of candidates for consideration.

(q) One member of the building products manufacturing industry who is authorized to do business in this state and is actively engaged in the industry. The Florida Building Material Association, the Florida Concrete and Products Association, and

the Fenestration Manufacturers Association are encouraged to recommend a list of candidates for consideration.

(r) One member who is a representative of the building owners and managers industry who is actively engaged in commercial building ownership or management. The Building Owners and Managers Association is encouraged to recommend a list of candidates for consideration.

(s) One member who is a representative of the insurance industry. The Florida Insurance Council is encouraged to recommend a list of candidates for consideration.

(t) One member who is a representative of public education.

(u) One member who is a swimming pool contractor licensed to do business in this state and actively engaged in the profession. The Florida Swimming Pool Association and the United Pool and Spa Association are encouraged to recommend a list of candidates for consideration.

(v) One member who is a representative of the green building industry and who is a third-party commission agent, a Florida board member of the United States Green Building Council or Green Building Initiative, a professional who is accredited under the International Green Construction Code (IGCC), or a professional who is accredited under Leadership in Energy and Environmental Design (LEED).

(w) One member who is a representative of a natural gas distribution system and who is actively engaged in the

distribution of natural gas in this state. The Florida Natural Gas Association is encouraged to recommend a list of candidates for consideration.

(x) One member who is a representative of the Department of Agriculture and Consumer Services who is appointed from a list of three nominees provided by the Commissioner of Agriculture. If the Governor refuses to appoint a nominee from the list, the Governor shall inform the commissioner within 60 days after receipt of the list and the commissioner shall submit a new list of three nominees.

(y) ~~(x)~~ One member who shall be the chair.

~~Any person serving on the commission under paragraph (c) or paragraph (h) on October 1, 2003, and who has served less than two full terms is eligible for reappointment to the commission regardless of whether he or she meets the new qualification.~~

Section 9. Sections 377.806 and 377.807, Florida Statutes, are repealed.

Section 10. This act shall take effect July 1, 2014.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1113 Onsite Sewage Treatment and Disposal Systems
SPONSOR(S): Agriculture & Natural Resources Subcommittee; Edwards and others
TIED BILLS: None **IDEN./SIM. BILLS:** SB 1160

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Agriculture & Natural Resources Subcommittee	12 Y, 1 N, As CS	Renner	Blalock
2) Agriculture & Natural Resources Appropriations Subcommittee		Helpling	Massengale
3) State Affairs Committee			

SUMMARY ANALYSIS

Septage is defined as a mixture of sludge, fatty materials, human feces, and wastewater removed during the pumping of an onsite sewage treatment and disposal system (septic tank). Approximately 100,000 onsite septic tanks are pumped each year, generating 100 million gallons of septage requiring treatment and disposal. The septage is treated and disposed of at a number of septage treatment facilities regulated by the Department of Health (DOH). The treated septage may then be spread over the land at DOH-regulated land application sites. In addition to septage, onsite systems serving restaurants include tanks that separate grease from the sewage stream and that grease is hauled, treated and land applied similarly to septage. There are currently 92 DOH-regulated land application sites that receive treated septage from 108 DOH-regulated septage treatment facilities. Approximately 40 percent of septage removed from septic tanks is treated at septage treatment facilities and then taken to the land application sites.

In 2010, the Legislature enacted a law prohibiting the land application of septage from septic tanks effective January 1, 2016.

The bill delays the effective date of the prohibition on the land application of septage from January 1, 2016 to January 1, 2018. The bill also directs the Department of Environmental Protection (DEP), in consultation with DOH, the Department of Agriculture and Consumer Services Office of Agricultural Water Policy, the University of Florida Institute of Food and Agricultural Sciences, local governments, and individuals representing domestic wastewater treatment professionals, solid waste management professionals, onsite wastewater treatment professionals, waste-energy development facilities, private utilities, investor-owned utilities, and environmental organizations, to examine and report on the potential options for safely and appropriately disposing or reusing septage, including, but not limited to the following:

- An inventory of domestic wastewater utilities and solid waste management facilities that are known to receive and treat septage;
- An inventory of permitted septage land application sites;
- An analysis of the nutrient concentrations of septage;
- An analysis of the technical limitations for domestic wastewater utilities and solid waste management facilities to receive and treat septage; and
- The transfer of regulatory authority over the land application of septage from DOH to DEP, including the environmental benefits of applying the nutrient management plan requirements, setback, site-monitoring requirements, and provisions of DEP's rules relating to the land application of septage.

DEP is required to submit a report of its findings and recommendations to the Governor, the President of the Senate, and the Speaker of the House of Representatives by March 1, 2015.

The bill delays the potential indeterminate negative fiscal impact on septic tank pumpers, septic haulers, and owners of septic tanks resulting from the increased cost of disposing of septage using alternative methods. The bill delays the potential insignificant negative fiscal impact on DOH resulting from the loss of permit revenues. The bill may also have an indeterminate but insignificant negative fiscal impact on DEP for the cost of submitting the report. The bill does not appear to have a fiscal impact on local governments.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Septage is defined as a mixture of sludge, fatty materials, human feces, and wastewater removed during the pumping of an onsite sewage treatment and disposal system (septic tank).[1] Approximately 100,000 septic tanks are pumped each year, generating 100 million gallons of septage requiring treatment and disposal.[2] The septage is treated and disposed of at a number of septage treatment facilities regulated by the Department of Health (DOH). The treated septage is then spread over the land at DOH-regulated land application sites.[3] In addition to septage, onsite systems serving restaurants include tanks that separate grease from the sewage stream and that grease is hauled, treated and land applied similarly to septage. There are currently 92 DOH-regulated land application sites that receive treated septage from 108 DOH-regulated septage treatment facilities. Approximately 40 percent of septage removed from septic tanks is treated at septage treatment facilities and then taken to the land application sites.[4]

In 2010, the Legislature enacted a law[5] prohibiting the land application of septage from septic tanks effective January 1, 2016.[6] In addition, the bill required DOH, in consultation with the Department of Environmental Protection (DEP), to provide a report to the Governor and the Legislature recommending alternative methods to establish enhanced treatment levels for the land application of septage by February 1, 2011. The report, which was received on February 1, 2011, provided the following alternatives to the land application of septage as it is currently performed:[7]

- **Treatment of septage at domestic wastewater treatment facilities** – Treating septage takes advantage of available wastewater treatment facilities' capacity while at the same time centralizing waste treatment operations. However, accepting septage, which is a high strength waste, has the potential to upset wastewater treatment facilities processes and may result in a variety of increased operation and maintenance requirements and costs. Furthermore, the distance between central facilities with available treatment capacity and the locations where septage is collected in rural areas can make transport to such facilities cost prohibitive.
- **Disposal of septage at landfills** – Acceptance of septage at Class I landfills has positive impacts to the landfills because it increases microbial activity within the landfills and results in increased waste decomposition and more rapid waste stabilization. However, landfill instability may result due to disposal of the wet waste stream, and increased difficulty in operating compaction equipment may result due to creation of a slick working surface. Many landfills choose not to accept loads of septage, making land application sites one of the only available options for the disposal of septage.
- **Increasing the treatment level for land application** – The current practice of lime stabilization for two hours at a pH of 12 meets the federal regulations, so the necessity of higher levels of treatment is questionable.
- **Possible enhancements to existing land application p actices** – Current land application rules meet the requirements for nutrient reduction and management under federal regulations. Any enhancement would be above what the EPA currently requires for septage management

[1] Section 381.0065(2)(n), F.S.
[2] See Department of Health, Report on Alternative Methods for the Treatment and Disposal of Septage, February 1, 2011, available at http://www.doh.state.fl.us/environment/ostds/index.html.
[3] Criteria for the land application of septage may be found in ch. 64E-6.010, F.A.C.
[4] See Department of Health, Report on Alternative Methods for the Treatment and Disposal of Septage, February 1, 2011, available at http://www.doh.state.fl.us/environment/ostds/index.html.
[5] ch. 2010-205, L.O.F.
[6] Section 381.0065(6), F.S.
[7] Department of Health, Report on Alternative Methods for the Treatment and Disposal of Septage, February 1, 2011, available at http://www.doh.state.fl.us/environment/ostds/index.html.

and land application. Possible enhancements include requiring third-party oversight of septage treatment and land application activities and changing operational procedures.

Other alternatives to the land application of septage are incineration, bioenergy production, and conversion to fertilizer, but these processes require larger capital investments.[8]

Effect of Proposed Changes

The bill delays the effective date of the prohibition on the land application of septage from January 1, 2016 to January 1, 2018. The bill also directs the Department of Environmental Protection (DEP), in consultation with DOH, the Department of Agriculture and Consumer Services Office of Agricultural Water Policy, the University of Florida Institute of Food and Agricultural Sciences, local governments, and individuals representing domestic wastewater treatment professionals, solid waste management professionals, onsite wastewater treatment professionals, waste-energy development facilities, private utilities, investor-owned utilities, and environmental organizations, to examine and report on the potential options for safely and appropriately disposing or reusing septage, including, but not limited to the following:

- An inventory of domestic wastewater utilities and solid waste management facilities that are known to receive and treat septage;
- An inventory of permitted septage land application sites;
- An analysis of the nutrient concentrations of septage;
- An analysis of the technical limitations for domestic wastewater utilities and solid waste management facilities to receive and treat septage; and
- The transfer of regulatory authority over the land application of septage from DOH to DEP, including the environmental benefits of applying the nutrient management plan requirements, setback, site-monitoring requirements, and provisions of DEP's rules relating to the land application of septage.

DEP is required to submit a report of its findings and recommendations to the Governor, the President of the Senate, and the Speaker of the House of Representatives by March 1, 2015.

B. SECTION DIRECTORY:

Section 1 amends s. 381.0065, F.S., delaying the effective date of the prohibition on the land application of septage from January 1, 2016 to January 1, 2018.

Section 2 directs DEP, in consultation with various entities and individuals, to examine potential options for safe and appropriate disposal or reuse of septage and to submit a report to the Governor and the Legislature by March 1, 2015.

Section 2 provides an effective date of July 1, 2014.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

DOH currently permits 92 land application sites, with an annual fee of $200 per site, resulting in a total of $18,400 per year in revenues. When the prohibition takes effect in 2016 pursuant to current law, DOH will lose $18,400 in revenue per year from these permitted sites. By delaying the

[8] *Id.*

effective date of the prohibition on the land application of septage, the bill also delays this potential insignificant negative fiscal impact on DOH.

2. Expenditures:

The bill may have an indeterminate but insignificant negative fiscal impact on DEP for the cost of submitting the report.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill does not appear to have a fiscal impact on local government revenues.

2. Expenditures:

The bill does not appear to have a fiscal impact on local government expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The land application of septage from septic tanks provides a method for disposal that is typically lower in cost than alternative methods. When the prohibition on land application takes effect in 2016 pursuant to current law, septic tank pumpers and septage haulers will have to find approved municipal wastewater treatment plants or facilities that receive biosolids, which typically cost more than land application due to driving distance and fees for disposal. These costs would likely result in higher pumpout costs to people who own septic tanks. By delaying the effective date of the prohibition on land application of septage, the bill also delays the potential indeterminate negative fiscal impact on septic tank owners.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill does not appear to create a need for rulemaking or require additional rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 18, 2014, the Agriculture & Natural Resources Subcommittee adopted one strike-all amendment and reported the bill favorably with a committee substitute. The amendment changes the date of prohibition on the land application of septage from January 1, 2020 (what is currently in the bill) to January 1, 2018. The amendment also directs DEP, in consultation with various entities and individuals, to examine potential options for safe and appropriate disposal or reuse of septage and to submit a report to the Governor, the President of the Senate, and the Speaker of the House of Representatives by March 1, 2015.

A bill to be entitled

An act relating to onsite sewage treatment and disposal systems; amending s. 381.0065, F.S.; delaying the effective date of the prohibition against the land application of septage from onsite sewage treatment and disposal systems; directing the Department of Environmental Protection, in consultation with various entities and individuals, to examine potential options for safe and appropriate disposal or reuse of septage and submit a report to the Governor and Legislature; providing an effective date.

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

Section 1. Subsection (6) of section 381.0065, Florida Statutes, is amended to read:

381.0065 Onsite sewage treatment and disposal systems; regulation.—

(6) LAND APPLICATION OF SEPTAGE PROHIBITED.—Effective January 1, 2018 ~~2016~~, the land application of septage from onsite sewage treatment and disposal systems is prohibited.

Section 2. (1) The Department of Environmental Protection, in consultation with the Department of Health, the Department of Agriculture and Consumer Services Office of Agricultural Water Policy, the University of Florida Institute of Food and Agricultural Sciences, local governments, and

individuals representing domestic wastewater treatment professionals, solid waste management professionals, onsite wastewater treatment professionals, waste-energy development facilities, private utilities, investor-owned utilities, and environmental organizations, shall examine and report on the potential options for safely and appropriately disposing or reusing septage, including, but not limited to:

(a) An inventory of domestic wastewater utilities and solid waste management facilities that are known to receive and treat septage.

(b) An inventory of permitted septage land application sites.

(c) An analysis of the nutrient concentrations of septage.

(d) An analysis of the technical limitations for domestic wastewater utilities and solid waste management facilities to receive and treat septage.

(e) The transfer of regulatory authority over the land application of septage from the Department of Health to the Department of Environmental Protection, including the environmental benefits of applying the nutrient management plan requirements, setbacks, site-monitoring requirements, and provisions of chapter 62-640, Florida Administrative Code, to the land application of septage.

(2) The Department of Environmental Protection shall submit a report of its findings and recommendations to the Governor, the President of the Senate, and the Speaker of the

House of Representatives by March 1, 2015.

Section 3. This act shall take effect July 1, 2014.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 703 Environmental Regulation
SPONSOR(S): Agriculture & Natural Resources Subcommittee and Patronis
TIED BILLS: None **IDEN./SIM. BILLS:** SB 1464

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Agriculture & Natural Resources Subcommittee	10 Y, 2 N, As CS	Renner	Blalock
2) Agriculture & Natural Resources Appropriations Subcommittee		Helpling	Massengale
3) State Affairs Committee			

SUMMARY ANALYSIS

This is a comprehensive bill that changes multiple areas of state law, including the following:

- Prevents counties from continuing to adopt duplicative wetlands, springs protection, and stormwater regulations for agricultural lands after July 1, 2003, by modifying, amending, or readopting regulations adopted prior to July 1, 2003.
- Reduces the voting requirement for approval of a local government's proposed comprehensive plan or plan amendment by requiring approval by a "simple majority" vote of the members of the governing body, rather than requiring approval by "at least a simple majority."
- Prohibits a local government from rescinding a prior land use approval solely because the land continues to be used for bona fide agricultural purposes and qualifies for an agricultural classification.
- Exempts a lessee of sovereign submerged lands for a private residential multi-family dock from permit fees for a certain area of the dock.
- Prohibits local governments from requiring water control districts to meet additional regulatory requirements for certain structures included within a water control plan if an environmental resource permit or federal dredge and fill permit has been issued and the structures are incorporated in a plat of the county or city within which the water control district lies.
- Authorizes WMDs and DEP to issue a consumptive use permit (CUP) for up to 50 years to landowners who, individually or collectively, make available lands to enable the expeditious development of dispersed water storage projects that provide water resource benefits and alternative water supply development.
- Authorizes WMDs or DEP to issue a CUP for up to 30 years for an approved development of regional impact that is located in a rural area of critical economic concern.
- Requires certain local governments to follow water well construction criteria and applicable standards adopted by DEP or a WMD and preempts additional local government water well construction permitting regulations.
- Allows an applicant for a mitigation bank permit to satisfy the financial responsibility requirement by submitting proof of insurance in a form approved by DEP or a WMD.
- Requires regional water supply plans to incorporate the water needs, water sources, water resource development projects, and water supply development projects identified in an adopted long-term master plan or a master plan development order.
- Specifies that the provision of law authorizing the issuance of variances by DEP for discharges of waste into waters of the state or for hazardous waste management requirements does not prohibit the issuance of moderating provisions.
- Creates a solid waste landfill closure account within the Solid Waste Management Trust Fund to provide funding for the closing and long-term care of solid waste management facilities.
- Provides a two-year extension for certain state environmental permits and local government development permits.

The bill has an indeterminate but likely insignificant negative fiscal impact on state government. The bill has a positive and negative insignificant fiscal impact on local governments. The bill has an insignificant but positive impact on the private sector. (See Fiscal Analysis and Economic Impact Statement section for more details).

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Section 1. Agricultural Lands and Practices

Present Situation

Section 163.3162, F.S., prohibits governmental entities[1] from adopting or enforcing any duplicative ordinance, resolution, regulation, rule, or policy that limits activity of a bona fide farm or farm operation[2] on agricultural land if such activity is:

- Regulated through implemented best management practices (BMPs), interim measures, or regulations adopted as rules under ch. 120, F.S., by the Department of Environmental Protection (DEP), the Department of Agriculture and Consumer Services (DACS), or a water management district (WMD) as part of a statewide or regional program; or
- Expressly regulated by the United States Department of Agriculture, the United States Army Corps of Engineers, or the United States Environmental Protection Agency.

However, s. 163.3162(3)(i), F.S., provides that the prohibition on governmental entities adopting or enforcing certain duplicative ordinances, resolutions, regulations, rules, or policies does not limit a county's power to enforce wetlands, springs protection, or stormwater ordinances, regulations, or rules adopted before July 1, 2003.

Effect of Proposed Changes

The bill amends s. 163.3162(3)(i), F.S., to prevent counties from continuing to adopt duplicative wetlands, springs protection, and stormwater regulations after July 1, 2003, by modifying, amending, or readopting regulations that were originally adopted prior to July 1, 2003.

Section 2. Process for Adoption of Comprehensive Plan or Plan Amendment

Present Situation

Section 163.3184, F.S., sets forth the state's review process for the adoption of local government comprehensive plans (plans) and plan amendments. Generally, plan amendments adopted by local governments follow the expedited review process.[3] However, plan amendments that are in an area of critical state concern, propose a rural land stewardship area, propose a development of regional impact, or are new plans for newly incorporated municipalities must follow the state coordinated review process.[4]

Under the expedited and coordinated review process, each local governing body proposing a plan or plan amendment must transmit the proposed comprehensive plan or plan amendment to the reviewing agencies[5] within 10 working days after the first public hearing.

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[1] Section 163.3162(2)(d), F.S., defines a 'governmental entity' as municipalities, counties, school boards, special districts, and other local entities within the jurisdiction of one county created by general or special law or local ordinance. It does not include a WMD, a water control district established under ch. 298, F.S., or a special district created by special act for water management purposes.

[2] Bona fide farm or farm operation is defined in s. 193.461, F.S., as good faith commercial agricultural use of the land based on the length of time the land has been so used, whether the use has been continuous, indication that an effect has been made to care sufficiently and adequately for the land in accordance with accepted commercial agricultural practices, and size as it relates to the specific agricultural use, among other things.

[3] Section 163.3184(3), F.S.

[4] Section 163.3184(4), F.S.

[5] Pursuant to s. 163.3184(1)(c), F.S., 'reviewing agencies' means: 1. The state land planning agency; 2. The appropriate regional planning council; 3. The appropriate WMD; 4. DEP; 5. The Department of State; 6. The Department of Transportation; 7. In the case of plan amendments relating to

Section 163.3184(11), F.S., provides that the procedure for transmittal of a proposed plan or plan amendment must be by an affirmative vote of *not less than a majority* of the members of the governing body present at the hearing.

Effect of Proposed Changes

The bill amends s. 163.3184(11), F.S., reducing the voting requirement for the procedure for transmittal of a proposed plan or plan amendment by specifying that affirmative votes from only a "simple majority" of the members of the governing body present at the hearing are required, rather than "not less than a majority" of those members. Therefore, voting requirements adopted by a local government for proposed plans or plan amendments that are more stringent than a simple majority, such as a super majority vote, would be prohibited.

Section 3. Agricultural Lands Affected by a Comprehensive Plan

Present Situation

Local governments have the authority to establish land use designations for lands within their jurisdictional boundary. These land use designations generally include agricultural, residential, and industrial. Local governments can also amend the designated land uses to allow for more intensive or less intensive uses. In some instances, a landowner of agricultural land may request a local government to approve a land use change authorizing the land to be used for a more intensive purpose, such as for residential instead of agricultural. Many times a landowner may seek a more intensive land use authorization knowing that actual development of the land may not occur for some years in the future. There have been reports that certain local governments have approved more intensive land uses for lands classified as agricultural for ad valorem property tax purposes and then rescinded the land use changes when the agricultural property owner continued to use the land for a bona fide agricultural purpose qualifying for an agricultural classification.

Section 163.3194(5), F.S., provides that the agricultural classification of land for ad valorem property taxation purposes cannot be affected by any adopted comprehensive plan, but nothing prohibits a local government from rescinding a land use change where the land maintains its agricultural classification.

Effect of Proposed Changes

The bill amends s. 163.3194(5), F.S., to prohibit a local government from rescinding a prior land use approval solely because the land continues to be used for bona fide agricultural purposes and qualifies for an agricultural classification.

Section 4. Lease of Sovereignty Submerged Lands for Private Residential Docks and Piers

Present Situation

Upon statehood, Florida gained title to all sovereign submerged lands[6] within its boundaries, to be held in trust for the public.[7] The Board of Trustees of the Internal Improvement Trust Fund (BOT) is responsible for the acquisition, administration, management, control, supervision, conservation, protection, and disposition of such lands.[8] The Florida Constitution authorizes the sale of sovereign

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public schools, the Department of Education; 8. In the case of plans or plan amendments that affect a military installation, the commanding officer of the affected military installation; 9. In the case of county plans and plan amendments, the Fish and Wildlife Conservation Commission and the Department of Agriculture and Consumer Services; and 10. In the case of municipal plans and plan amendments, the county in which the municipality is located.

[6] In Florida, "submerged lands" are "publicly owned lands below the ordinary high-water mark of fresh waters and below the mean high-water line of salt waters extending seaward to the outer jurisdiction of the state." Section 253.03(8)(b), F.S.

[7] *Broward v. Marbry*, 50 So. 826, 829-30 (Fla. 1909).

[8] Section 253.03(1), F.S.

submerged lands, but only when in the public interest, and authorizes private use of portions of such lands, but only when not contrary to the public interest.[9]

Section 253.03(7), F.S., specifies that, when disposing of sovereign submerged lands, the BOT is required to "ensure maximum benefit and use." The BOT also has the authority to adopt regulations pertaining to anchoring, mooring, or otherwise attaching to the bottom and the establishment of anchorages on sovereign submerged lands.

Florida recognizes "riparian rights" for landowners with waterfront property bordering on navigable waters.[10] Section 253.141(1), F.S., specifies that these rights include ingress, egress, boating, bathing, fishing, and others as defined by law. Riparian landowners must obtain the BOT's authorization for installing and maintaining docks, piers, and boat ramps on sovereign submerged land.[11] Under the BOT's rules, "dock" generally means a fixed or floating structure, including moorings and access walkways, used for the purpose of mooring and accessing vessels.[12] Authorization may be in the form of consent by rule, letter of consent, or lease.[13] All leases authorizing activities on sovereign submerged lands must include provisions for lease fee adjustments and annual payments.[14]

Section 253.0347, F.S., establishes the sovereign submerged lands lease requirements for a private residential single-family and multi-family dock. Section 253.0347(2)(f), F.S., provides that a lessee of sovereign submerged lands for a private residential multi-family dock designed to moor boats up to the number of units within the multi-family development *is not required to pay lease fees* for a preempted area equal to or less than 10 times the riparian shoreline along sovereign submerged land on the affected waterbody times the number of units with docks in the private multi-family development.[15] For example, if a large condominium building owns 1,000 square feet of shoreline and has 100 units with docks, the condominium association would be exempt from paying lease fees on a preempted area of 1 million square feet of sovereign submerged lands (10 x 1000 sq ft of shoreline x 100 units = Preempted area of 1 million sq ft).

Under current law,[16] statewide environmental resource permits are required to construct private residential single-family and multi-family docks on sovereign submerged lands. DEP also requires that applicants for such permits pay a one-time permit fee. Multi-family docks that are less than 1,000 square feet are exempt and do not require a permit or permit fee.[17] A general permit is required for multi-family docks that do not exceed 2,000 square feet and the permit fee is $250.[18] Individual permits are required for all other multi-family docks that do not qualify as an exempt or general permit and the permit fee begins at $420 and can increase depending on the number of slips and size of the dock.[19]

Effect of Proposed Changes

The bill amends s. 253.0347(2)(f), F.S., to provide that a lessee of sovereign submerged lands for a private residential multi-family dock is not required to pay permit fees, as discussed above, for the preempted area.

[9] Article X, Section 11 of the Florida Constitution.
[10] Section 253.141(1), F.S. These rights are appurtenant to and inseparable from the riparian land; the rights inure to the property owner, but the rights are not proprietary in nature. *Id.*
[11] Rule 18-21.005(1)(d), F.A.C.
[12] *See* Rule 18-20.003(19), F.A.C.; Rule 18-21.003(2), F.A.C.
[13] Rule 18.21.005(1), F.A.C.
[14] Rule 18-21.008(1)(b)(2), F.A.C.
[15] Section 253.0347, F.S.
[16] Section 373.4131(1)(a), F.S.
[17] Rule 62-330.051, F.A.C.
[18] Rule 62-300.427, F.A.C.
[19] Rule 62-300.054, F.A.C.

Section 5. Water Control Plans

Present Situation

Water control districts have a long history in Florida. As early as the 1830s, the Legislature passed a special act authorizing landowners to construct drainage ditches across adjacent lands to discharge excess water. Following the passage of several special acts creating drainage districts, the Legislature passed the state's first general drainage law, the General Drainage Act of 1913 (now codified in Chapter 298, F.S.), to establish a single procedure for creating drainage districts and to provide general law provisions governing the operation of these districts. Between 1913 and 1972, the General Drainage Act remained virtually unchanged. In 1972 and 1979, the Legislature amended the act to change the name of these districts to water management districts and then to 'water control districts.'

Chapter 298, F.S., contains provisions governing the creation and operation of water control districts. Section 298.01, F.S., restricts the creation of new water control districts to special acts of the Legislature (independent water control districts) and under the provisions of s. 125.01, F.S. (dependent water control districts).

Effective October 1998, any plan of reclamation, water management plan, or plan of improvement developed and implemented by a water control district is considered a "water control plan."

A water control plan for a district must contain the following, if applicable:[20]

- Descriptions of the district's statutory authority;
- Maps delineating all boundaries of the district and subdistricts;
- Descriptions of all land and facility uses;
- Engineering descriptions for each facility's ability to store water;
- Descriptions of any environmental or water quality program that the water control district has implemented or plans to implement;
- Map of areas outside the district where the district provides service;
- Detailed descriptions of proposed facilities in the next 5 years; and
- Descriptions of the administrative structure of the district.

Before adopting a water control plan or plan amendment, the district's board of supervisors must submit the proposed plan or amendment to the jurisdictional water management district for review.[21]

Section 298.225(6), F.S., provides that the review or approval of the water control plan by the applicable WMD does not constitute the granting of any permit necessary for the construction or operation of any water control district work and cannot be relied upon as any future agency action on a permit application. Water control district projects are not exempt from obtaining all applicable state and federal environmental permits.

Effect of Proposed Changes

The bill amends s. 298.225(6), F.S., to prohibit local governments from requiring additional authorizations or permits for certain structures, such as ditches, dikes, water control structures, canals, or pump stations included within a water control plan if an environmental resource permit or federal s. 404 dredge and fill permit has been issued, and such structures are incorporated in a plat of the county or city within which the water control district lies.

[20] Section 298.225(3), F.S.
[21] Section 298.225(5), F.S.

Section 6. Dispersed Water Storage

Present Situation

Consumptive Use Permitting

For water uses other than private wells for domestic use, DEP and the WMDs have the authority to require any person seeking to use 'waters in the state'[22] to obtain a consumptive use permit (CUP). A CUP establishes the duration and type of allowed water use as well as the maximum amount that may be used. Pursuant to s. 373.219, F.S., each CUP must be consistent with the objectives of the WMD and may not be harmful to the water resources of the area. To obtain a CUP, an applicant must establish that the proposed use of water satisfies the statutory test, commonly referred to as 'the three-prong test.' Specifically, the proposed water use:

1. Must be a reasonable-beneficial use.[23]
2. May not interfere with any presently existing legal use of water; and
3. Must be consistent with the public interest.[24]

Duration of Permits

Multiple sections of law allow for CUPs of varying durations to be issued depending on the circumstances, including:

- CUPs must be granted for a period of 20 years if requested by the applicant and there is sufficient data to provide reasonable assurance that the conditions for permit issuance will be met for the duration of the permit. If either of these requirements is not met, a CUP with a shorter duration may be issued to reflect the period for which reasonable assurances can be provided.[25]
- CUPs may be granted for up to 50 years in the case of a municipality or other governmental body or of a public works or public service corporation if a long-term permit is required to provide for the retirement of bonds for the construction of waterworks and waste disposal facilities.[26]
- CUPs approved for the development of alternative water supplies must have term of at least 20 years if there is sufficient data to provide reasonable assurance that the conditions for permit issuance will be met for the duration of the permit. However, if the permittee issues bonds for the construction of the project, upon request of the permittee before the expiration of the permit, the permit must be extended for such additional time as is required for the retirement of bonds, not including any refunding or refinancing of the bonds, if the governing board determines that the use will continue to meet the conditions for the issuance of the permit.[27]
- CUPs for alternative water supply projects for a period of 30 to 37 years, if certain criteria are met.[28]

In addition, s. 373.236(6), F.S., provides that where landowners make extraordinary contributions of lands or construction funding to enable the expeditious implementation of alternative water supply development projects, WMDs and DEP may grant CUPS for those projects for up to 50 years to

[22] Section 373.019(22), F.S., defines 'water' or 'waters in the state' to mean any and all water on or beneath the surface of the ground or in the atmosphere, including natural or artificial watercourses, lakes, ponds, or diffused surface water and water percolating, standing, or flowing beneath the surface of the ground, as well as all coastal waters within the jurisdiction of the state.
[23] Section 373.019(16), F.S., defines 'reasonable-beneficial use' to mean the use of water in such quantity as is necessary for economic and efficient utilization for a purpose and in a manner that is both reasonable and consistent with the public interest.
[24] Section 373.223(1), F.S.
[25] Section 373.236(1), F.S.
[26] Section 373.236(3), F.S.
[27] Section 373.236(5)(a), F.S.
[28] Section 373.236(5)(b), F.S.

municipalities, counties, special districts, regional water supply authorities, multijurisdictional water supply entities, and publicly or privately owned utilities.

Effect of Proposed Changes

The bill amends s. 373.236(6), F.S., to authorize WMDs and DEP to grant CUPs for up to 50 years to landowners, individually or collectively, who make available lands to enable the expeditious development of projects involving dispersed surface water storage and release or surface water storage and recharge that provide water resource benefits and alternative water supply development.

The bill also allows a CUP to authorize water uses by individual project participants to commence on different dates if the CUP is issued to landowners who make land available for dispersed water storage or to municipalities, counties, special districts, regional water supply authorities, multijurisdictional water supply entities, and publicly or privately owned utilities engaged in alternative water supply projects.

Section 6. 30-year Consumptive Use Permit for a Development of Regional Impact Located within a Rural Area of Critical Economic Concern

Present Situation

Section 380.06, F.S., defines the term "development of regional impact" (DRI) as any development that, because of its character, magnitude, or location, would have a substantial effect upon the health, safety, or welfare of citizens of more than one county. This section also sets statewide guidelines and standards to be used in determining whether particular developments will undergo development of regional impact review.

Section 288.0656, F.S., defines the term "rural area of critical economic concern" as a rural community, or a region composed of rural communities, designated by the Governor, that has been adversely affected by an extraordinary economic event, severe or chronic distress, or a natural disaster or that presents a unique economic development opportunity of regional impact.

Effect of Proposed Changes

The bill authorizes WMDs and DEP to grant a CUP for up to 30 years for an approved development of regional impact that is located in a rural area of critical economic concern.

Section 7. Implementation of Programs for Regulating Water Wells

Present Situation

Section 373.308, F.S., directs DEP to authorize the governing board of a WMD to implement a program for the issuance of permits for the location, construction, repair, and abandonment of water wells. Upon authorization from DEP, issuance of well permits is the sole responsibility of the WMD, delegated local government, or local county health department. The statute prohibits other local governmental entities from imposing additional or duplicate requirements or fees or establish a separate program for the permitting of the location, abandonment, boring, or other activities reasonably associated with the installation and abandonment of a groundwater well. DEP is authorized to prescribe minimum standards for the location, construction, repair, and abandonment of water wells throughout all or parts of the state.

Effect of Proposed Changes

The bill amends s. 373.308, F.S., to require a delegated local government to follow water well construction criteria and applicable standards adopted by DEP or a WMD. In addition, the bill specifies

that the DEP or WMD criteria and standards preempt additional local government water well construction permitting regulations.

Section 8. Licensure of Water Well Contractors

Present Situation

Any person wishing to engage in business as a water well contractor must obtain a license from a WMD.[29] The WMD licensure is the only water well contractor license required for the location, construction, repair, or abandonment of water wells in the state or any political subdivision.

Each person seeking a license must apply to take the licensure examination. Applications must be made to the WMD where the applicant resides or where the principal business is located. In order to take the licensure examination, the applicant must:[30]

- Be at least 18 years of age;
- Have two years of experience in constructing, repairing, or abandoning water wells, which must be verified by providing:
  - Evidence of the length of time the applicant has been engaged in the business of the construction, repair, or abandonment of water wells as a major activity, as attested to by a letter from three of the following persons:
    - A water well contractor.
    - A water well driller.
    - A water well parts and equipment vendor.
    - A water well inspector employed by a governmental agency.
  - A list of at least 10 water wells that the applicant has constructed, repaired, or abandoned within the preceding five years. Of these wells, at least seven must have been constructed by the applicant.
- Have completed the application form and remitted a nonrefundable application fee.

Effects of Proposed Changes

The bill revises the requirements for licensure as a water well contractor by deleting a water well driller and a water well parts and equipment vendor from the list of persons who may attest to the length of time an applicant has been engaged in the water well contractor business. Therefore, two letters will be required, one from a water well contractor and a water well inspector employed by a governmental agency.

Sections 9 and 10. Mitigation Bank Permits

Present Situation

Section 373.4135, F.S., directs DEP and the WMDs to participate in and encourage the establishment of private and public mitigation banks and offsite regional mitigation. Mitigation banking is a practice in which an environmental enhancement and preservation project is conducted by a public agency or private entity (banker) to provide mitigation for unavoidable wetland impacts within a defined region (mitigation service area). The bank is the site itself, and the currency sold by the banker to the impact permittee is a credit, which represents the wetland ecological value equivalent to the complete restoration of one acre.[31] The number of potential credits permitted for the bank and the credit debits required for impact permits are determined by DEP or a WMD.

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[29] Section 373.323, F.S.
[30] Section 373.323(3), F.S.
[31] *See* DEP website on 'Mitigation and Mitigation Banking.' This information may be viewed at http://www.dep.state.fl.us/water/wetlands/mitigation/mitigation_banking.htm.

Section 373.4136(1), F.S., and Rule 62-342, F.A.C., provide the framework for the establishment and operation of mitigation banks. A mitigation bank permit constitutes authorization to construct, alter, operate, maintain, abandon, or remove any surface water management system necessary to establish and operate the mitigation bank. To obtain a mitigation bank permit, the applicant must, among other things, provide reasonable assurance that the applicant can meet the financial responsibility requirements prescribed for mitigation banks. Financial responsibility may be established by surety bonds, performance bonds, irrevocable letters of credit, or trust funds.[32] If a bond or an irrevocable letter of credit is used as the financial mechanism, a standby trust fund must be established, in which all payments under the bonds or irrevocable letter of credit must be directly deposited.[33]

Effect of Proposed Changes

The bill amends s. 373.4136(1), F.S., to allow an applicant for a mitigation bank permit to show that he or she can meet the financial responsibility requirements prescribed for mitigation banks by submitting proof of insurance in a form approved by DEP or a WMD. The bill also directs DEP and each WMD to adopt rules by January 1, 2015, to implement this provision.

Section 11. Regional Water Supply Planning

Present Situation

Regional Water Supply Planning

Section 373.709(1), F.S., requires the governing board of each WMD to conduct water supply planning for a water supply planning region within the district where it determines that existing sources of water are not adequate to:

- Supply water for all existing and future reasonable-beneficial uses; and
- Sustain the water resources and related natural systems for the planning period.

The planning must be conducted in an open public process and in coordination and cooperation with local governments, regional water supply authorities, government-owned and privately owned water and wastewater utilities, multijurisdictional water supply entities, self-suppliers, reuse utilities, DEP, DACS, and other affected and interested parties. A determination by the WMD governing board that initiation of a regional water supply plan for a specific planning region is not needed must be reevaluated by the board at least once every five years and the board must initiate a regional water supply plan, if needed.

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

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

[32] Rule R62-342.700, F.A.C.
[33] *Id.*

The regional water supply plans typically list water resource development and water supply development options that can meet the projected reasonable-beneficial use needs of the water supply region. The plans normally include a mix of traditional and alternative water supply options.[34] Traditional water supplies come from surface water sources, such as lakes and rivers, and from groundwater withdrawals. Alternative water supplies include activities such as treating wastewater for agricultural use, desalination of saltwater or brackish water to produce drinking water, and surface and rain water storage. Water consumers either purchase or self-supply water. Self-supplied water often comes from on-site wells or through surface water retention, among other methods.

Long-term Master Plan

Section 163.3245, F.S., authorizes local governments, or combinations of local governments, to adopt a sector plan[35] into their comprehensive plans. Sector plans must encompass a long-term master plan for the entire planning area as part of the comprehensive plan and adoption by local development order of two or more detailed specific area plans that implement the long-term master plan.

Long-term master plans must include maps, illustrations, and text supported by data and analysis to address the following which includes, but is not limited to, land uses, water supply and conservation measures, and regionally significant natural resources and policies setting forth the procedures for protection or conservation.

Once a long-term master plan becomes legally effective, the water needs, water sources and water resource development, and water supply development projects must be incorporated into the applicable district and regional water supply plans.[36] A WMD may also issue CUPs for durations commensurate with the long-term master plan or detailed specific area plan while considering the ability of the master plan area to contribute to regional water supply availability and the need to maximize reasonable-beneficial use of the water resource.[37]

Master Plan Development Order

A development of regional impact (DRI) is defined as any development which, because of its character, magnitude, or location, would have a substantial effect upon the health, safety, or welfare of citizens of more than one county.[38] Section 380.06(2), F.S., provides for both state and regional review of local land use decisions involving DRIs. Regional Planning Councils coordinate the review process with local, regional, state and federal agencies and recommend conditions of approval or denial to local governments. DRIs are also reviewed by the Department of Economic Opportunity as the state land planning agency, for compliance with state law and to identify the regional and state impacts of large-scale developments.

If a development project includes two or more DRIs, a developer may file a comprehensive DRI application.[39] If a proposed development is planned for development over an extended period of time, the developer may file an application for master development approval of the project and agree to present subsequent increments of the development for preconstruction review. This agreement must be entered into by the developer, the regional planning agency, and the appropriate local government having jurisdiction.[40]

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[34] *See* the DEP website on "Regional Water Supply Planning." This information may be viewed at http://www.dep.state.fl.us/water/waterpolicy/rwsp.htm
[35] Sector plans are defined in s. 163.3164, F.S., as the process in which one or more local governments engage in long-term planning for a large area and address regional issues through adoption of detailed specific area plans within the planning area as a means of fostering innovative planning and development strategies, reducing overlapping data and analysis requirements, protecting regionally significant resources and facilities, and addressing extrajurisdictional impacts.
[36] Section 163.3245(4)(b), F.S.
[37] *Id.*
[38] Section 380.06(1), F.S.
[39] Section 380.06(21)(a), F.S.
[40] Section 380.0621(b), F.S.

Prior to adoption of the master plan development order, the developer, the landowner, the appropriate regional planning agency, and the local government having jurisdiction must review the draft of the development order to ensure that anticipated regional impacts have been adequately addressed and that information requirements for subsequent incremental application review are clearly defined. The development order for a master application must specify the information which must be submitted with an incremental application and must identify those issues which can result in the denial of an incremental application.

The review of subsequent incremental applications must be limited to that information specifically required and those issues specifically raised by the master development order, unless substantial changes in the conditions underlying the approval of the master plan development order are demonstrated or the master development order is shown to have been based on substantially inaccurate information.

Effect of Proposed Changes

The bill amends s. 373.709, F.S., to require regional water supply plans to incorporate the water needs, water sources, water resource development projects, and water supply development projects identified in an adopted long-term master plan or a master plan development order, and these projects are exempt from the analyses required in s. 373.709(2), F.S., described above.

Section 12. Variances

Present Situation

Section 403.201, F.S., authorizes DEP to grant a variance from the provisions of the Florida Air and Water Pollution Control Act[41] or the rules and regulations adopted pursuant to the act.

DEP may grant a variance or a renewal of a variance for any of the following reasons:

- There is no practicable means known or available for the adequate control of the pollution involved.
- Compliance with the particular requirement or requirements from which a variance is sought will necessitate the taking of measures which, because of their extent or cost, must be spread over a considerable period of time.
- To relieve or prevent another kind of hardship. Variances and renewals granted under this provision must be limited to a period of 24 months, except that variances granted for electrical power plant and transmission line siting may extend for the life of the permit certification.

Variances will not be granted from any provision or requirement concerning discharges of waste into waters of the state or hazardous waste management that would result in the provision or requirement being less stringent than a comparable federal provision or requirement, except for research, development, and demonstration permits under s. 403.70715, F.S.

Examples of moderating provisions include, but are not limited to, allowing certain exemptions, establishing mixing zones, using best available technology standards for meeting water quality standards under certain circumstances, etc.

Effects of Proposed Changes

The bill amends s. 403.201, F.S., to specify that nothing in the section prohibits the issuance of moderating provisions under state law.

[41] Chapter 403, F.S.

Section 13. Solid Waste Management Trust Fund

Present Situation

A solid waste management facility may not be operated, maintained, constructed, expanded, modified, or closed without an appropriate and currently valid permit issued by DEP.[42]

Section 403.709, F.S., creates the Solid Waste Management Trust Fund (SWMTF) to fund solid waste management activities. Annual revenues from waste tire fees and license and permit fees deposited into the SWMTF are allocated for certain activities in the following manner:

- Up to 40 percent for funding solid waste activities of DEP and other state agencies.
- Up to 4.5 percent for funding research and training programs relating to solid waste management through the Center for Solid and Hazardous Waste Management.
- Up to 11 percent to DACS for mosquito control.
- Up to 4.5 percent for funding to the Department of Transportation for litter prevention and control programs through a certified Keep America Beautiful Affiliate at the local level.
- A minimum of 40 percent for funding a solid waste management grant program pursuant to s. 403.7095, F.S., for activities relating to recycling and waste reduction, including waste tires requiring final disposal.

Pursuant to s. 403.704(9), F.S., DEP must develop rules to require closure of solid waste management facilities under certain circumstances. The rules currently require that all disposal facilities close within six months after they cease receiving waste by properly sloping the sides; covering the waste with two feet of dirt and, in some cases, a barrier layer; vegetating the dirt; and establishing a stormwater system.[43] The rules also require disposal facilities to perform long-term care for between 5 and 30 years, which includes monitoring ground water and gas, maintaining the final cover, and maintaining the stormwater system.[44]

Section 403.7125, F.S., requires owners or operators of landfills to provide financial assurance that they can cover closure costs. Section 403.707(9)(c), F.S., applies this requirement to construction and demolition debris disposal facilities. Both sections allow DEP to specify allowable financial mechanisms, but neither specifically requires that insurance be allowed. In Rule 62-701.630, F.A.C, DEP authorizes owners and operators to offer closure insurance as proof of financial assurance.

DEP has identified eight facilities that have been abandoned or were ordered closed, and pose or are expected to pose an environmental threat if closure is not completed. All eight used insurance to provide financial assurance. In all of these cases, the owner/operator was a limited liability company financially unable to pay for closure costs. DEP does not have a mechanism to access the insurance money to pay third party contractors to perform closure and long-term care activities.

Effect of Proposed Changes

The bill amends s. 403.709, F.S., to create a solid waste landfill closure account within the SWMTF to provide funding for the closing and long-term care of solid waste management facilities. DEP may use funds from the account to contract with a third party for the closing and long-term care of a solid waste management facility if:

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[42] *See* s. 403.707(1), F.S.
[43] Rule 62-701.600, F.A.C.
[44] Rule 62-701.620, F.A.C.

- The facility has or had a DEP permit to operate the facility;
- The permittee provided proof of financial assurance for closure in the form of an insurance certificate;
- The facility is deemed to be abandoned or has been ordered to close by DEP;
- Closure is accomplished in substantial accordance with a closure plan approved by DEP; and
- DEP has written documentation that the insurance company issuing the closure insurance policy will provide or reimburse the funds required to complete closing and long-term care of the facility.

Funds received by DEP as reimbursement from the insurance company for the costs of closing or long-term care of the facility must be deposited into the solid waste landfill closure account.

Section 14. Providing a 2-year Permit Extension.

Present Situation

In 2009,[45] the Legislature provided a 2-year extension and renewal for the following permits that at the time had an expiration date of September 1, 2008, through January 1, 2012:

- Any environmental resource permit issued by DEP or a WMD; and
- Any local government-issued development order or building permit.

The 2-year extension also applied to certain build out dates.

Those with valid permits or other authorization that were eligible for the 2-year extension were required to notify the authorizing agency in writing no later than December 1, 2009, identifying the specific authorization for which the holder intended to use the extension and the anticipated timeframe for acting on the authorization.

The 2-year extensions did not apply to a permit or authorization:

- Under any programmatic or regional general permit issued by the Army Corps of Engineers;
- Held by an owner or operator determined to be in significant noncompliance with the conditions of the permit; and
- That would delay or prevent compliance with a court order if extended.

Extended permits continued to be governed by the rules in effect at the time the permit was issued, except when it could be demonstrated that the rules in effect at the time would create an immediate threat to public safety or health.

This applied to any modification of the plans, terms, and conditions of the permit that lessens the environmental impact, except that any such modification could not extend the time limit beyond two additional years.

The Legislature in 2010[46] reauthorized the 2-year extensions granted in 2009 because the underlying law was being challenged in court.[47]

In 2010,[48] the Legislature also provided another 2-year extension and renewal from the date of expiration for permits that at the time had an expiration date of September 1, 2008, through January 1, 2012. The types of permits eligible for the extension were identical to the types eligible in 2009. The 2-

[45] s. 14, ch. 2009-96, L.O.F.
[46] s. 47, ch. 2010-147, L.O.F.
[47] Because ch. 2009-96, L.O.F., was involved in pending litigation, see *City of Weston v. Crist*, Case No. 09-CA-2639 (Fla. 2d Cir. Ct. 2010), the Legislature in 2010 reauthorized the permit extensions granted in ch. 2009-96, L.O.F. in order to protect those who had relied on the extensions.
[48] s. 46, ch. 2010-147, L.O.F.

year extension granted in 2010 was in addition to the 2-year extension granted in 2009. Those with valid permits or other authorization that were eligible for the 2-year extension were required to notify the authorizing agency in writing by December 31, 2010, identifying the specific authorization for which the holder intended to use the extension and the anticipated timeframe for acting on the authorization.

Because the 2-year extensions granted in 2009 and 2010 only applied to those permits and authorizations that had expiration dates of September 1, 2008 through January 1, 2012, there were certain permits and authorizations that were extended beyond the September 1, 2008, to January 1, 2012, window by the 2009 2-year extension, and therefore, were unable to take advantage of the 2010 2-year extension.

In 2011, the Legislature[49] again extended and renewed permits previously extended in 2009 and 2010 for a period of 2 additional years from their previously scheduled expiration date. The holder of a valid permit or authorization eligible for this 2-year extension was required to notify the authorizing agency in writing by December 31, 2011, identifying the specific authorization for which the holder intended to use the extension and the anticipated timeframe for acting on the authorization. Permits that were extended by a total of 4 years pursuant 2009 and 2010 extensions were not eligible for this extension.

The bill also, in recognition of the 2011 real estate market conditions, extended and renewed for a period of 2 more years with conditions, any building permit, and any environmental resource permit issued by DEP or by a WMD, which had an expiration date from January 1, 2012, through January 1, 2014. This extension included any local government-issued development order or building permit including certificates of levels-of-service and is in addition to any existing permit extension. Development of Regional Impact development order extensions were not eligible for this extension and any permit that has received a cumulative extension of 4 years pursuant to the 2009 and 2010 extensions were not eligible for this 2-year extension.

In 2012, the Legislature enacted a law[50] providing that any building permit, and any environmental resource permit issued by DEP or a WMD, which had an expiration date from January 1, 2012, through January 1, 2014, was extended and renewed for 2 years after its previously scheduled date of expiration. This extension included any local government-issued development order or building permit including certificates of levels of service. This did not prohibit conversion from the construction phase to the operation phase upon completion of construction. Under HB 503, any permit extensions that were granted pursuant to this bill and the previous extensions in 2009, 2010, and 2011, could not exceed 4 years in total.

Effect of Proposed Changes

The bill renews the extension from previous years by providing that any building permit, and any environmental resource permit issued by DEP or a WMD, that has an expiration date from January 1, 2012, through January 1, 2015, is extended and renewed for 2 years after its previously scheduled date of expiration. This extension includes any local government-issued development order or building permit, including certificates of levels of service. This does not prohibit conversion from the construction phase to the operation phase upon completion of construction. This extension is in addition to any existing permit extension; however, permit extensions granted pursuant to this bill and the 2009, 2010, and 2011 extensions cannot exceed five years in total.

The dates for commencement and completion for any required mitigation associated with a phased construction project are also extended so that mitigation takes place in the same timeframe relative to the phase as originally permitted.

The extension does not apply to the following:

[49] s. 79, ch. 2011-139, L.O.F.
[50] s. 24, ch. 2012-205, L.O.F.

- A permit or other authorization under any programmatic or regional general permit issued by the Army Corps of Engineers.
- A permit or other authorization held by an owner or operator determined to be in significant noncompliance with the conditions of the permit or authorization as established through the issuance of a warning letter or notice of violation, the initiation of formal enforcement, or other equivalent action by the authorizing agency.
- A permit or other authorization, if granted an extension that would delay or prevent compliance with a court order.

Permits extended under this section of the bill will continue to be governed by the rules in effect at the time the permit was issued, unless it is demonstrated that the rules in effect at the time the permit was issued would create an immediate threat to public safety or health. This provision applies to any modification of the plans, terms, and conditions of the permit that lessens the environmental impact, except that any such modification does not extend the time limit beyond 2 additional years.

The provisions in this section of the bill do not impair the authority of a county or municipality to require the owner of a property that has notified the county or municipality of the owner's intent to receive the extension of time granted to maintain and secure the property in a safe and sanitary condition in compliance with applicable laws and ordinances.

B. SECTION DIRECTORY:

Section 1. Amends s. 163.3162, F.S., relating to agricultural lands and practices.

Section 2. Amends s. 163.3184, F.S., relating to the process for adoption of comprehensive plans or plan amendments.

Section 3. Amends s. 163.3194, F.S., relating to the legal status of comprehensive plans.

Section 4. Amends s. 253.0347, F.S., relating to the lease of sovereignty submerged lands for private residential docks and piers.

Section 5. Amends s. 298.225, F.S., relating to water control plans.

Section 6. Amends s. 373.236, F.S., relating to the duration of permits for alternative water supply development projects.

Section 7. Amends s. 373.308, F.S., relating to the implementation of programs for regulating water wells.

Section 8. Amends s. 373.323, F.S., relating to the licensure of water well contractors.

Section 9. Amends s. 373.4136, F.S., relating to the establishment and operation of mitigation banks.

Section 10. Directs DEP and the WMDs to adopt rules relating to the use of insurance as a mechanism for providing financial responsibility.

Section 11. Amends s. 373.709, F.S., relating to regional water supply planning.

Section 12. Amends s. 403.201, F.S., relating to variances.

Section 13. Amends s. 403.709, F.S., relating to the Solid Waste Management Trust Fund.

Section 14. Providing a two-year extension for certain permits.

Section 15. Provides an effective date of July 1, 2014.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   See Fiscal Comments section.

2. Expenditures:

   See Fiscal Comments section.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   See Fiscal Comments Section.

2. Expenditures:

   The bill has a potentially positive fiscal impact on water control districts that do not need additional local government authorizations or permits if they have been issued certain permits.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill has a potentially positive but likely insignificant fiscal impact on a lessee of sovereignty submerged lands for a private residential multifamily dock who do not have to pay permit fees for a certain preempted area.

The bill has an indeterminate but likely insignificant positive fiscal impact on landowners who receive 50 year CUP permits for alternative water supply development projects.

The bill has an indeterminate but likely insignificant positive fiscal impact for applicants for a mitigation bank permit that can satisfy the financial responsibility requirement by submitting proof of insurance in a form approved by DEP or a WMD.

The bill has a potentially positive fiscal impact on those that have certain permits that are being extended and renewed for two years.

D. FISCAL COMMENTS:

This bill has an indeterminate but likely insignificant impact on DEP for the loss of permit fees for private residential multi-family docks on sovereign submerged lands.

The bill has an indeterminate but likely insignificant negative fiscal impact on DEP and the WMDs for issuing 50-year permits. This provision may result in DEP and the WMDs issuing fewer CUP permits and, thus, receiving fewer permit fees.

The bill has an indeterminate but likely insignificant impact on DEP for rule development to implement the insurance provisions within the mitigation bank program.

DEP may use funds from the solid waste landfill closure account within the Solid Waste Management Trust Fund (SWMTF) to pay third party contractors to perform closure and long-term care activities, if necessary. DEP expects that the insurance company insuring landfill closure will either pay the third party directly or under the bill will be required to reimburse DEP for any payments DEP makes to the third party. Where DEP is required to pay contractors directly for closure activities and then be reimbursed by the insurance company, DEP will be required to expend funds from the SWMTF. The bill

requires DEP to have written documentation that states the insurance company will provide or reimburse funds expended from the SWMTF to complete closing and long-term care of a facility resulting in a neutral fiscal impact to the fund.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

The bill may implicate the single subject requirement in Art. III, s. 6 of the Florida Constitution, which requires that "every law shall embrace but one subject and matter properly connected therewith." However, with regard to the test to be applied by the court in determining whether a particular provision violates the single subject rule, the fact that the scope of a legislative enactment is broad and comprehensive is not fatal so long as the matters included in the enactment have a natural or logical connection.[51] It is unclear whether a court would find that any of the provisions in the bill violates the single subject constitutional provision.

B. RULE-MAKING AUTHORITY:

The bill directs DEP and each WMD to adopt rules by January 1, 2015, to implement the provision allowing applicants to satisfy the financial responsibility requirement for a mitigation bank permit by submitting proof of insurance.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

Not applicable.

[51] *Franklin vs. State*, 887 So. 2d 1063 (Fla. 2004).

A bill to be entitled

An act relating to environmental regulation; amending s. 163.3162, F.S.; specifying the authority of counties to enforce certain wetlands, springs protection, and stormwater ordinances, regulations, and rules; amending s. 163.3184, F.S.; revising procedures for the transmittal and adoption of a comprehensive plan or plan amendment; amending s. 163.3194, F.S.; prohibiting local governments from rescinding certain land use approvals; amending s. 253.0347, F.S.; exempting certain lessees of sovereignty submerged lands from certain permit fees; amending s. 298.225, F.S.; exempting certain facilities, structures, and improvements from additional local government authorizations and permits; amending s. 373.236, F.S.; authorizing consumptive use permit durations for certain projects and developments; authorizing multiple commencement dates for certain consumptive use permits; amending s. 373.308, F.S.; requiring delegated local governments to follow certain criteria and standards for water well construction; preempting certain water well construction permitting regulations; amending s. 373.323, F.S.; revising requirements to take the water well contractor licensure examination; amending s. 373.4136, F.S.; providing that proof of insurance

meets a certain mitigation bank permit requirement; directing the Department of Environmental Protection and water managements districts to adopt specified rules; amending s. 373.709, F.S.; requiring certain criteria to be incorporated into regional water supply plans; amending s. 403.201, F.S.; providing applicability of prohibited variances relating to certain discharges of waste; amending s. 403.709, F.S.; establishing a solid waste landfill closure account within the Solid Waste Management Trust Fund for specified purposes; providing for the deposit of certain funds into the account; providing a 2-year permit extension; providing an effective date.

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

Section 1. Paragraph (i) of subsection (3) of section 163.3162, Florida Statutes, is amended to read:

163.3162 Agricultural Lands and Practices.—

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

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

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

excluding any modification, readoption, or amendment approved on or after July 1, 2003.

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

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

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

Section 2. Paragraph (a) of subsection (11) of section 163.3184, Florida Statutes, is amended to read:

163.3184 Process for adoption of comprehensive plan or plan amendment.—

(11) PUBLIC HEARINGS.—

(a) The procedure for transmittal of a complete proposed comprehensive plan or plan amendment pursuant to subparagraph (3)(b)1. and paragraph (4)(b) and for adoption of a comprehensive plan or plan amendment pursuant to subparagraphs (3)(c)1. and (4)(e)1. shall be by affirmative vote requiring ~~of not less than~~ a simple majority of the members of the governing body present at the hearing. The adoption of a comprehensive plan or plan amendment shall be by ordinance. For the purposes of transmitting or adopting a comprehensive plan or plan

amendment, the notice requirements in chapters 125 and 166 are superseded by this subsection, except as provided in this part.

Section 3. Subsection (5) of section 163.3194, Florida Statutes, is amended to read:

163.3194 Legal status of comprehensive plan.—

(5)(a) The tax-exempt status of lands classified as agricultural under s. 193.461 may ~~shall~~ not be affected by any comprehensive plan adopted under this act as long as the land meets the criteria set forth in s. 193.461.

(b) A local government may not rescind a prior land use approval solely because the underlying land continues to be used for bona fide agricultural purposes in a manner which qualifies for an agricultural classification under s. 193.461.

Section 4. Paragraph (f) of subsection (2) of section 253.0347, Florida Statutes, is amended to read:

253.0347 Lease of sovereignty submerged lands for private residential docks and piers.—

(2)

(f) A lessee of sovereignty submerged lands for a private residential multifamily dock designed to moor boats up to the number of units within the multifamily development is not required to pay lease or permit fees for a preempted area equal to or less than 10 times the riparian shoreline along sovereignty submerged land on the affected waterbody times the number of units with docks in the private multifamily development.

Section 5. Subsection (6) of section 298.225, Florida Statutes, is amended to read:

298.225 Water control plan; plan development and amendment.—

(6) The review or approval of the water control plan by the applicable water management district shall not constitute the granting of any permit necessary for the construction or operation of any water control district work and cannot be relied upon as any future agency action on a permit application. Notwithstanding any other provision of law, if any of the facilities, structures, or improvements, including, but not limited to, ditches, dikes, water control structures, canals, or pump stations, included within a water control plan have been issued an environmental resource permit pursuant to part IV of chapter 373, or a permit has been issued pursuant to s. 404 of the Federal Clean Water Act, 33 U.S.C. s. 1344, and such structures are incorporated in a plat of the county or city within which the water control district lies, additional local government authorizations or permits are not required to implement, construct, or maintain the permitted facilities, structures, or improvements.

Section 6. Subsection (6) of section 373.236, Florida Statutes, is amended, and subsection (8) is added to that section, to read:

373.236 Duration of permits; compliance reports.—

(6)(a) The Legislature finds that the need for alternative

water supply development projects to meet anticipated public water supply demands of the state is so important that it is essential to encourage participation in and contribution to these projects by private-rural-land owners who characteristically have relatively modest near-term water demands but substantially increasing demands after the 20-year planning period in s. 373.709.

1. ~~Therefore,~~ Where such landowners make extraordinary contributions of lands or construction funding to enable the expeditious implementation of such projects, water management districts and the department may grant permits for such projects for a period of up to 50 years to municipalities, counties, special districts, regional water supply authorities, multijurisdictional water supply entities, and publicly or privately owned utilities, with the exception of any publicly or privately owned utilities created for or by a private landowner after April 1, 2008, which have entered into an agreement with the private landowner for the purpose of more efficiently pursuing alternative public water supply development projects identified in a district's regional water supply plan and meeting water demands of both the applicant and the landowner.

2. Where landowners, individually or collectively, make available lands to enable the expeditious development of projects involving dispersed surface water storage and release or surface water storage and recharge which provide water resource benefits and alternative water supply development, the

water management districts and the department may grant permits for such projects for a period of up to 50 years.

(b) A permit under paragraph (a):

1. May authorize the uses of the individual project participants to begin on different dates.

2. May be granted only for that period for which there is sufficient data to provide reasonable assurance that the conditions for permit issuance will be met.

3. ~~Such a permit~~ Shall require a compliance report by the permittee every 5 years during the term of the permit. The report shall contain sufficient data to maintain reasonable assurance that the conditions for permit issuance applicable at the time of district review of the compliance report are met. After review of the ~~this~~ report, the governing board or the department may modify the permit to ensure that the use meets the conditions for issuance.

(c) This subsection does not limit the existing authority of the department or the governing board to modify or revoke a consumptive use permit.

(8) Water management districts and the department may grant a permit for a period of up to 30 years for a development of regional impact that is approved pursuant to s. 380.06 and located in a rural area of critical economic concern as defined in s. 288.0656.

Section 7. Subsection (5) is added to section 373.308, Florida Statutes, to read:

373.308 Implementation of programs for regulating water wells.—

(5) Delegated local governments must follow water well construction criteria and applicable standards adopted by the department or water management district, and such criteria and standards shall preempt additional local government water well construction permitting regulations.

Section 8. Paragraph (b) of subsection (3) of section 373.323, Florida Statutes, is amended to read:

373.323 Licensure of water well contractors; application, qualifications, and examinations; equipment identification.—

(3) An applicant who meets the following requirements shall be entitled to take the water well contractor licensure examination:

(b) Has at least 2 years of experience in constructing, repairing, or abandoning water wells. Satisfactory proof of such experience shall be demonstrated by providing:

1. Evidence of the length of time the applicant has been engaged in the business of the construction, repair, or abandonment of water wells as a major activity, as attested to by a letter from ~~three of~~ the following persons:

a. A water well contractor.

~~b. A water well driller.~~

~~c. A water well parts and equipment vendor.~~

b.~~d.~~ A water well inspector employed by a governmental agency.

2. A list of at least 10 water wells that the applicant has constructed, repaired, or abandoned within the preceding 5 years. Of these wells, at least seven must have been constructed, as defined in s. 373.303(2), by the applicant. The list shall also include:

a. The name and address of the owner or owners of each well.

b. The location, primary use, and approximate depth and diameter of each well that the applicant has constructed, repaired, or abandoned.

c. The approximate date the construction, repair, or abandonment of each well was completed.

Section 9. Paragraph (i) of subsection (1) of section 373.4136, Florida Statutes, is amended to read:

373.4136 Establishment and operation of mitigation banks.—

(1) MITIGATION BANK PERMITS.—The department and the water management districts may require permits to authorize the establishment and use of mitigation banks. A mitigation bank permit shall also constitute authorization to construct, alter, operate, maintain, abandon, or remove any surface water management system necessary to establish and operate the mitigation bank. To obtain a mitigation bank permit, the applicant must provide reasonable assurance that:

(i) It can meet the financial responsibility requirements prescribed for mitigation banks. Submitting proof of insurance in a form approved by the department or water management

district is an option for satisfying this condition.

Section 10. By January 1, 2015, the Department of Environmental Protection and each water management district shall adopt rules to implement the amendment to s. 373.4136(1)(i), Florida Statutes.

Section 11. Subsection (9) of section 373.709, Florida Statutes, is renumbered as subsection (10), and a new subsection (9) is added to that section to read:

373.709 Regional water supply planning.—

(9) The water needs, water sources, water resource development projects, and water supply development projects identified in a long-term master plan adopted pursuant to s. 163.3245 or a master plan development order issued under s. 380.06(21) shall be incorporated into a regional water supply plan adopted pursuant to this section and are exempt from the analyses required under subsection (2).

Section 12. Subsection (2) of section 403.201, Florida Statutes, is amended to read:

403.201 Variances.—

(2) A ~~No~~ variance may not ~~shall~~ be granted from any provision or requirement concerning discharges of waste into waters of the state or hazardous waste management which would result in the provision or requirement being less stringent than a comparable federal provision or requirement, except as provided in s. 403.70715. However, this subsection does not prohibit the issuance of moderating provisions under state law.

Section 13. Subsection (5) is added to section 403.709, Florida Statutes, to read:

403.709 Solid Waste Management Trust Fund; use of waste tire fees.—There is created the Solid Waste Management Trust Fund, to be administered by the department.

(5)(a) Notwithstanding subsection (1), a solid waste landfill closure account is established within the Solid Waste Management Trust Fund to provide funding for the closing and long-term care of solid waste management facilities. The department may use funds from the account to contract with a third party for the closing and long-term care of a solid waste management facility if:

1. The facility has or had a department permit to operate the facility.

2. The permittee provided proof of financial assurance for closure in the form of an insurance certificate.

3. The facility is deemed to be abandoned or was ordered to close by the department.

4. Closure is accomplished in substantial accordance with a closure plan approved by the department.

5. The department has written documentation that the insurance company issuing the closure insurance policy will provide or reimburse the funds required to complete closing and long-term care of the facility.

(b) The department shall deposit the funds received from the insurance company as reimbursement for the costs of closing

or long-term care of the facility into the solid waste landfill closure account.

Section 14. (1) Any local government-issued development order or building permit, including certificates of levels of service, and any building permit or permit issued by the Department of Environmental Protection or by a water management district pursuant to part IV of chapter 373, Florida Statutes, which has an expiration date from January 1, 2012, through January 1, 2015, is extended and renewed for a period of 2 years after its previously scheduled date of expiration. This section does not prohibit conversion from the construction phase to the operation phase upon completion of construction. This extension is in addition to any existing permit extension, including an extension under s. 252.363, resulting from a declaration of a state of emergency by the Governor. Extensions granted pursuant to this section; section 14 of chapter 2009-96, Laws of Florida, as reauthorized by section 47 of chapter 2010-147, Laws of Florida; section 46 of chapter 2010-147, Laws of Florida; or section 74 or section 79 of chapter 2011-139, Laws of Florida, are limited to a total of 5 years. Further, specific development order extensions granted pursuant to s. 380.06(19)(c)2., Florida Statutes, cannot be further extended by this section.

(2) The commencement and completion dates for any required mitigation associated with a phased construction project are extended so that mitigation takes place in the same timeframe relative to the phase as originally permitted.

(3) The extension provided for in subsection (1) does not apply to:

(a) A permit or other authorization under any programmatic or regional general permit issued by the Army Corps of Engineers.

(b) A permit or other authorization held by an owner or operator determined to be in significant noncompliance with the conditions of the permit or authorization as established through the issuance of a warning letter or notice of violation, the initiation of formal enforcement, or other equivalent action by the authorizing agency.

(c) A permit or other authorization, if granted an extension that would delay or prevent compliance with a court order.

(4) Permits extended under this section shall continue to be governed by the rules in effect at the time that the permit was issued, except if it is demonstrated that the rules in effect at the time that the permit was issued would create an immediate threat to public safety or health. This subsection applies to any modification of the plans, terms, and conditions of the permit that lessens the environmental impact, except that any such modification does not extend the time limit beyond 2 additional years.

(5) This section does not impair the authority of a county or municipality to require the owner of a property that has notified the county or municipality of the owner's intent to

receive the extension of time granted pursuant to this section to maintain and secure the property in a safe and sanitary condition in compliance with applicable laws and ordinances.

Section 15. This act shall take effect July 1, 2014.